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North End Realty, LLC v. Thomas Mattos, et al., C.A. NO.: SU - 09-93-A

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The Rhode Island Supreme Court recently held that a municipality may not impose a fee-in-lieu on developers without specific statutory authorization from the General Assembly to do such. In *North End Realty, LLC v. Thomas Mattos, et al.*, matter (C.A. NO.: SU - 09-93-A), the Rhode Island Supreme Court was confronted with the issue of whether the Town of East Greenwich's controversial \$200,000 fee-in-lieu of construction of affordable housing units imposed upon developers seeking a subdivision of five lots or less was legal. North End Realty, LLC, a property owner sought subdivision approval from the Town for a five (5) lot subdivision to develop five (5) residential dwellings.

During the course of the approval process, the Town passed three new ordinances, which included a requirement that the developers either designate 15% of the units in any subdivision or major residential land development as affordable housing or pay the sum of \$200,000 as a fee-in-lieu of constructing the required number of affordable housing units. North End Realty, LLC brought suit against the Town arguing that the fee-in-lieu is illegal as there is no statutory authority granted by the General Assembly to enact such a controversial and substantial fee.

In its decision, the Rhode Island Supreme Court ruled in favor of the developer, North End Realty, LLC, directing that the Town be enjoined from imposing, assessing, or collecting the fee-in-lieu. The court stated that "the imposition by East Greenwich of the fee-in-lieu constitutes an action ultra vires of the authority delegated by the home rule charter to the town council."

If there are any other persons who are faced with this issue or one which is similar, please contact Michael Kelly at The Law Offices of Michael A. Kelly, P.C. or mkelly@maklawfirm.com.

Michael Kelly and John Mancini are partners at The Law Offices of Michael A. Kelly, P.C., Providence, R.I.