

SUPREME COURT OF NEW HAMPSHIRE

Walter W. Fischer, Trustee of Walter W. Fischer 1993 Trust v. New Hampshire State Building Code Review Board

914 A.2d 1234 (N.H. 2006) · No. 2006-155 · Decided December 20, 2006

SUMMARY

The Supreme Court of New Hampshire affirmed a superior court decision upholding the reclassification of nine buildings from two-family dwellings to lodging or rooming houses under the State Fire Code. The court held that the reclassification was not an unconstitutional retrospective application, did not impair a vested property right, and was rationally related to fire-safety objectives. It also concluded that the code's existing-building provision did not exempt the properties from compliance and that the petitioner received adequate procedural protections.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	December 20, 2006
DOCKET	2006-155
DISPOSITION	affirmed
PROCEDURAL POSTURE	The petitioner appealed the superior court's affirmance of the New Hampshire State Building Code Review Board's determination that buildings on nine properties did not qualify as two-family dwellings under the State Fire Code.
STANDARD OF REVIEW	On appeal from the board's decision to the superior court, the appellant bears the burden of showing that the board's decision was clearly unreasonable or unlawful. The Supreme Court will not disturb the trial court's decision unless it is unsupported by the evidence or legally erroneous.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Walter W. Fischer, Trustee of Walter W. Fischer 1993 Trust v. New Hampshire State Building Code Review Board

TOPICS

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QUESTIONS PRESENTED

1. Whether applying the current State Fire Code classification to the petitioner's existing buildings was an unconstitutional retrospective application under Part I, Article 23 of the New Hampshire Constitution.
2. Whether the petitioner had a vested or grandfathered right to continued classification of the properties as two-family dwellings under Part I, Article 12 of the New Hampshire Constitution.
3. Whether State Fire Code section 1-9.2 exempted the existing occupied buildings from code provisions applicable to existing lodging or rooming houses.
4. Whether the code's distinction between related and unrelated occupants violated equal protection.
5. Whether the procedures used by the fire marshal and the board denied the petitioner due process or required a public hearing under the rulemaking process.

HOLDINGS

1. Applying the correct current fire-code occupancy classification prospectively to the properties was not an unconstitutional retrospective application because the petitioner was not penalized for conduct completed before the code's enactment.
2. The petitioner had no vested right to continued classification of the properties as two-family dwellings for purposes of fire-code application.
3. *Durham v. White Enterprises* did not establish a constitutional vested right applicable here, and State Fire Code section 1-9.2 did not exempt the petitioner's preexisting occupied buildings from compliance with code provisions applicable to existing buildings.
4. The State Fire Code's distinction between related and unrelated occupants did not violate equal protection because it was an economic and social classification rationally related to the permissible objective of protecting people and property from fire hazards.
5. The petitioner was not entitled to an adjudicative hearing before the state fire marshal under former Saf-C 6006.02 because that rule was preempted by RSA 155-A:11, and no public rulemaking hearing was required because the fire marshal enforced an existing rule rather than adopting a new one.

KEY QUOTATIONS

“The constitutional ban of retrospective operation does not prevent a city from enacting and enforcing ordinances to protect the health and safety of the community.” (1237)

“There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.” (1237)

“The provisions of the code at issue were adopted by agency rule.” (1238)

“We conclude that section 1-9.2 does not exempt preexisting, occupied buildings from compliance with code provisions applicable to existing buildings.” (1239)

FACTUAL BACKGROUND

The buildings were constructed as two-family dwellings in 1968 and were leased to groups of four to six University of New Hampshire students. Local fire officials classified the buildings as two-family dwellings through at least May 2002. After a 2002 fire, the Durham Fire Marshal determined in 2003 that the buildings were improperly classified, reclassified them as lodging or rooming houses, and required modifications to comply with the State Fire Code.

PROCEDURAL HISTORY

The Durham Fire Marshal reclassified the petitioner's properties from two-family dwellings to lodging or rooming houses and required code-compliance modifications. The state fire marshal affirmed, and the Building Code Review Board affirmed that decision. The Superior Court affirmed the board's determination, except that it remanded a waiver request to the fire marshal. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Conservation Law Found. v. N.H. Wetlands Council, 150 N.H. 1, 4, 834 A.2d 193 (2003)
- Van Sickel v. Boyes, 797 P.2d 1267, 1271 (Colo. 1990)
- Dugas v. Town of Conway, 125 N.H. 175, 181-182, 480 A.2d 71 (1984)
- Loundsbury v. City of Keene, 122 N.H. 1006, 1009, 453 A.2d 1278 (1982)
- City of Seattle v. Hinckley, 40 Wash. 468, 82 P. 747, 748-49 (1905)
- Durham v. White Enterprises, Inc., 115 N.H. 645, 647-651, 348 A.2d 706 (1975)
- Appeal of Flynn, 145 N.H. 422, 423, 764 A.2d 881 (2000)
- Appeal of Alley, 137 N.H. 40, 42, 623 A.2d 223 (1993)
- Woodman v. Perrin, 124 N.H. 545, 549, 474 A.2d 999 (1984)
- Village of Belle Terre v. Boraas, 416 U.S. 1, 7-8, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974)