

SUPREME COURT OF NEW HAMPSHIRE

Cayten v. New Hampshire Department of Environmental Services

155 N.H. 647 (2007) · Decided July 13, 2007

SUMMARY

The New Hampshire Supreme Court considered an abutter’s challenge to a dredge and fill permit issued for construction of a dug-in boathouse on Squam Lake. The court held that dismissed petitioners could not use the statutory intervention provision to bypass wetlands-council reconsideration and appeal requirements. It also held that wetlands avoidance-and-minimization standards applied to protected-wetland impacts but not to the upland boathouse, and remanded with instructions to strike the disputed petitioners.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	July 13, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Intervenor Cambi appealed the superior court's decision overturning the New Hampshire Wetlands Council's affirmance of DES's issuance of a dredge and fill permit. Cambi also appealed denial of its motion to strike certain parties.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The Supreme Court will not disturb the superior court's decision unless it is unsupported by the evidence or legally erroneous. The superior court reviews a wetlands council decision under RSA 482-A:10, XI and may set it aside for legal error or when the decision is unjust or unreasonable by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Laurie J. Hall, Trustee of the Cambi Squam Lake Realty Trust, Cambi Squam Lake Realty Trust v. Marianna L. Cayten, C. Gene Cayten, New Hampshire Department of Environmental Services

TOPICS

wetlands

environmental law

administrative law

judicial review of agency action

statutory interpretation

PRACTICE AREAS

Environmental law

Administrative law

Appellate procedure

Statutory interpretation

QUESTIONS PRESENTED

1. Whether RSA 482-A:10, XII allowed property owners who had been excluded by the Wetlands Council and had not sought reconsideration of that exclusion to become parties in the superior court appeal.
2. Whether the Wetlands Bureau and Wetlands Council were required to apply the wetlands statute's avoidance-and-minimization standards to the upland portion of a dug-in boathouse project.

HOLDINGS

1. RSA 482-A:10, XII does not create a bypass around the statutory reconsideration and appeal process. Persons excluded by the Wetlands Council who did not seek reconsideration could not use paragraph XII to regain party status in the superior court.
2. The Wetlands Bureau properly retained jurisdiction over the entire project but was required to apply RSA chapter 482-A and Rule Env-Wt 302.03 only to the lakebed dredging and bank-excavation portions within protected wetlands, not to the boathouse located entirely landward of the bank.

KEY QUOTATIONS

“We do not believe that by using the phrase “[a]ny person” in RSA 482-A:10, XII, the legislature intended to create a bypass around the statutory reconsideration requirement” (654)

“The bureau retained jurisdiction over the entire project, including the portion conducted wholly landward of the bank, but, correctly, it applied the Rule 302.03 requirements only to those portions of the project within protected wetlands.” (657)

FACTUAL BACKGROUND

Cambi proposed a Squam Lake project involving dredging lakebed, excavating bank, installing rip-rap, and constructing a dug-in boathouse. After DES required changes, the boathouse was relocated entirely landward of the lake's bank, and the Wetlands Bureau issued a dredge and fill permit while requiring compliance with the Comprehensive Shoreland Protection Act. The Caytens, abutting property owners, challenged the permit, and additional nearby property owners sought to participate despite not having pursued the required reconsideration process.

PROCEDURAL HISTORY

DES's Wetlands Bureau issued Cambi a permit for dredging, bank excavation, rip-rap installation, and construction of a dug-in boathouse. The Caytens sought reconsideration, appealed to the Wetlands Council, and then petitioned the superior court. The council dismissed or denied intervention by additional supporting property owners, while the superior court allowed those individuals to remain parties and ruled that wetlands

permitting standards applied to the upland boathouse area. The Supreme Court of New Hampshire reversed both rulings and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the superior court for further proceedings consistent with the opinion, including striking the disputed petitioners. The superior court may address the unresolved notice claim in the first instance; the Supreme Court did not review the ruling allowing a further hearing on that claim.

CASES CITED

- Greenland Conservation Commission v. New Hampshire Wetlands Council, 154 N.H. 529 (2006)
- Rye Beach Country Club v. Town of Rye, 143 N.H. 122 (1998)
- Appeal of Lorette, 154 N.H. 271 (2006)
- In the Matter of Liquidation of Home Insurance Co., 154 N.H. 472 (2006)
- In re Guardianship of E.L., 154 N.H. 292 (2006)