

SUPREME COURT OF NEW HAMPSHIRE

Green Crow Corp. v. Town of New Ipswich, 157 N.H. 344

950 A.2d 163 (2008) · No. No. 2007-559 · Decided May 30, 2008

SUMMARY

The Supreme Court of New Hampshire held that RSA 231:28 incorporates the occasion requirement of RSA 231:8, so a petitioner seeking to upgrade and reclassify a Class VI road as a Class V highway must show that occasion exists for the layout. The court further held that selectmen may not consider anticipated impacts from future development, such as effects on schools, public safety systems, or municipal infrastructure, as part of the occasion analysis under RSA chapter 231. The matter was remanded.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	May 30, 2008
DOCKET	No. 2007-559
DISPOSITION	remanded
PROCEDURAL POSTURE	Interlocutory appeal without ruling from the Superior Court under Supreme Court Rule 9. The superior court transferred two questions of law concerning the interpretation of RSA 231:28 and RSA 231:8.
STANDARD OF REVIEW	Questions of statutory interpretation are reviewed de novo; the court is the final arbiter of statutory meaning.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Hampshire.
PARTIES	Green Crow Corporation v. Town of New Ipswich

TOPICS

- statutory interpretation
- legislative intent
- municipal law
- zoning
- interlocutory appeal

PRACTICE AREAS

- municipal law
- statutory interpretation
- land use and zoning
- appellate procedure

QUESTIONS PRESENTED

1. Whether RSA 231:28 incorporates the occasion requirement of RSA 231:8 for a petition to upgrade and reclassify an existing Class VI road as a Class V highway.
2. Whether, when applying the occasion requirement, the board of selectmen or superior court may consider the anticipated municipal, environmental, infrastructure, and land-use impacts of development that may result from the road upgrade.

HOLDINGS

1. RSA 231:28 incorporates the occasion requirement of RSA 231:8. A petitioner seeking permission to upgrade a Class VI road to a Class V road must show that occasion exists for the layout.
2. The occasion analysis under RSA 231:8 does not authorize the board of selectmen, or the superior court on de novo review, to use a requested highway layout or upgrade as a vehicle for conducting land-use planning or zoning concerning anticipated future development.

KEY QUOTATIONS

“We answer the first question in the affirmative, the second in the negative, and remand.” (164)

“Accordingly, a petitioner requesting permission from the board of selectmen to upgrade a class VI road to a class V road must show that occasion exists for the layout of that road.” (167)

“We conclude, however, that the legislature did not intend for a board of selectmen to use its authority to determine occasion for the layout or upgrade of a highway under RSA 231:8 as a vehicle for effectively conducting land use planning or zoning.” (172)

FACTUAL BACKGROUND

Green Crow Corporation petitioned the New Ipswich board of selectmen under RSA 231:28 to upgrade and reclassify approximately 4,100 feet of Binney Hill Road from a Class VI highway to Class V standards. The proposed upgrade was conditioned on obtaining final approvals for a three-phase cluster subdivision involving approximately 130 homes. The selectmen denied the petition because Green Crow failed to establish that a proper occasion existed under RSA 231:8, and Green Crow appealed.

PROCEDURAL HISTORY

Green Crow petitioned the New Ipswich board of selectmen to conditionally lay out and reclassify portions of an existing Class VI highway as a Class V highway to facilitate a proposed residential development. The selectmen denied the petition for failure to establish that a proper occasion existed. Green Crow appealed to the superior court, which transferred the two legal questions to the Supreme Court of New Hampshire without ruling.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded for proceedings consistent with the court's answers: the occasion requirement applies, but the selectmen and superior court may not use the occasion analysis to conduct land-use planning or zoning based on anticipated future development.

CASES CITED

- Alonzi v. Northeast Generation Services Co., 156 N.H. ___, 940 A.2d 1153 (2008)
- Wolfeboro Neck Prop. Owners Assoc. v. Town of Wolfeboro, 146 N.H. 449, 452, 773 A.2d 633 (2001)
- Weare Land Use Assoc. v. Town of Weare, 153 N.H. 510, 511-12, 899 A.2d 255 (2006)
- Town of Hinsdale v. Town of Chesterfield, 153 N.H. 70, 73, 889 A.2d 32 (2005)
- Appeal of Ann Miles Builder, 150 N.H. 315, 318, 837 A.2d 335 (2003)
- Rodgers Dev. Co. v. Town of Tilton, 147 N.H. 57, 59-61, 781 A.2d 1029 (2001)
- Rockhouse Mt. Property Owners Assoc. v. Town of Conway, 133 N.H. 130, 133-137, 574 A.2d 380 (1990)
- Amoskeag Industries v. Manchester, 93 N.H. 335, 338-39, 41 A.2d 917 (1945)
- Locke Dev. Corp. v. Barnstead, 115 N.H. 642, 643-44, 349 A.2d 598 (1975)
- Jackson v. Ray, 126 N.H. 759, 762-63, 497 A.2d 1191 (1985)