

SUPREME COURT OF NEW HAMPSHIRE

Cherry v. Town of Hampton Falls

150 N.H. 720 (2004) · Decided April 16, 2004

SUMMARY

The New Hampshire Supreme Court reviewed the denial of a subdivision application and special use permit by the Hampton Falls Planning Board. The court held that the board reasonably required the applicants to address impacts on the wetlands buffer and demonstrate that no feasible alternative route would have a lesser detrimental impact. The court reversed the trial court’s ruling that the board’s decision was unlawful and unreasonable.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	April 16, 2004
DISPOSITION	reversed
PROCEDURAL POSTURE	The Town of Hampton Falls and its Planning Board appealed from a Superior Court order ruling that the Planning Board's denial of the plaintiffs' subdivision and special-use-permit applications was unlawful and unreasonable.
STANDARD OF REVIEW	The Supreme Court upheld the trial court unless its decision was unsupported by the evidence or legally erroneous, asking whether a reasonable person could have reached the same decision based on the evidence. Under RSA 677:15, V, the trial court could reverse or modify the Planning Board's decision for legal error or unreasonableness but could not substitute its judgment for the Board's.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Town of Hampton Falls, Hampton Falls Planning Board v. Ernest M. Cherry, Jr., Carole A. Cherry

TOPICS

- wetlands
- zoning
- municipal law
- appellate procedure
- standard of review

PRACTICE AREAS

municipal law

environmental law

real estate

land-use law

QUESTIONS PRESENTED

1. Whether the Superior Court erred by ruling that the Planning Board's denial of the plaintiffs' special-use permit and subdivision application was unlawful and unreasonable.
2. Whether the Hampton Falls Zoning Ordinance's references to wetlands in sections 8.5.1.2 and 8.5.1.3 included the 100-foot wetlands buffer.
3. Whether a wetlands permit issued by the New Hampshire Department of Environmental Services Wetlands Board established compliance with the more restrictive requirements of the municipal ordinance.

HOLDINGS

1. The Planning Board's interpretation of the Hampton Falls Zoning Ordinance as requiring the plaintiffs to address the proposed road's impact on the wetlands and the 100-foot wetlands buffer was neither unlawful nor unreasonable.
2. The Superior Court erred in finding that the Planning Board's denial was unlawful and unreasonable because the record supported the Board's determination that the plaintiffs had not satisfied the ordinance's wetlands-impact and feasible-alternative requirements.
3. The New Hampshire Department of Environmental Services Wetlands Board permit did not establish that the plaintiffs satisfied the Hampton Falls Zoning Ordinance because it did not address the proposed construction's impact on the wetlands buffer.

KEY QUOTATIONS

“Therefore, it was neither unlawful nor unreasonable for the planning board to require the plaintiffs to establish that the design and construction of the proposed subdivision road would minimize detrimental impact upon the wetlands buffer and that no feasible alternative design would have a less detrimental impact.” (150 N.H. at 724)

“The permit alone, however, does not prove that the requirements of subsection 8.5 have been satisfied since it does not address the impact of the proposed construction on the wetlands buffer.” (150 N.H. at 725)

FACTUAL BACKGROUND

The plaintiffs proposed a nineteen-lot subdivision on 84.5 acres in Hampton Falls, with a paved road requiring the filling of approximately 10,500 square feet of wetlands. The Hampton Falls Zoning Ordinance required a special-use permit for roads in or near the Wetlands Conservation District and required the applicants to minimize detrimental impacts and show that no feasible route with less impact existed. Although the plaintiffs' experts discussed road designs and safety concerns, one expert conceded that he had not analyzed the proposed road's impact on the wetlands buffer. The Planning Board requested an alternative design addressing the buffer and mitigation options, but the plaintiffs declined and maintained that their proposal was the most viable option.

PROCEDURAL HISTORY

The plaintiffs applied to subdivide 84.5 acres into nineteen lots, including a paved road requiring wetland filling and a special-use permit under the Hampton Falls Zoning Ordinance. The Planning Board denied the permit and subdivision application because the plaintiffs had not shown that the proposed design minimized impacts on the wetlands and buffer or that no feasible, less-damaging alternative existed. The Superior Court reversed, finding that the application satisfied the ordinance; the Supreme Court of New Hampshire reversed the Superior Court.

DISPOSITION

reversed

CASES CITED

- Richmond Co. v. City of Concord, 149 N.H. 312, 314 (2003)
- Saturley v. Town of Hollis, 129 N.H. 757, 760 (1987)
- NBAC Corp. v. Town of Weare, 147 N.H. 328, 332 (2001)
- Exeter Hosp. Medical Staff v. Board of Trustees of Exeter Health Resources, 148 N.H. 492, 499 (2002)

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