

SUPREME COURT OF NEW HAMPSHIRE

Johnson v. Town of Wolfeboro Planning Board

157 N.H. 94 (2008) · No. 2007-653 · Decided April 4, 2008

SUMMARY

The Supreme Court of New Hampshire held that condominium unit owners had standing to challenge a planning board's approval of a special use permit for an adjacent property. Applying the Weeks factors, the court found that the owners' proximity to the proposed structure, the significance of the proposed change, and their participation in the administrative proceedings established a direct and definite interest. The court reversed the dismissal for lack of standing and remanded.

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	April 4, 2008
DOCKET	2007-653
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The petitioners appealed the superior court's dismissal, for lack of standing, of their petition for review of a planning board decision granting a special use permit to an intervenor.
STANDARD OF REVIEW	Because the underlying facts were undisputed, the court reviewed the trial court's standing determination de novo. A motion challenging standing requires the trial court to look beyond unsubstantiated allegations and determine from the facts whether the plaintiffs demonstrated a right to relief.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Clinton A. Johnson, Cynthia Johnson v. Town of Wolfeboro Planning Board, Sheepshead Bay, LLC

TOPICS

- zoning
- judicial review of agency action
- municipal law
- appellate procedure
- real estate

PRACTICE AREAS

municipal law

administrative law

real estate

appellate procedure

QUESTIONS PRESENTED

1. Whether the Johnsons had standing as persons aggrieved under RSA 677:15, I, to challenge the planning board's approval of Sheepshead's special use permit.
2. Whether the condominium board's decision not to oppose the development, or any purported agreement with Sheepshead, deprived individual condominium owners of standing to challenge the land-use decision.
3. Whether the superior court properly dismissed the petition for lack of standing.

HOLDINGS

1. A condominium board's authority over common areas and internal condominium matters does not, absent express authorization in the declaration or bylaws, extinguish individual unit owners' legal rights or authorize the board to contract away their standing to challenge a land-use decision affecting their individual property interests.
2. The Johnsons had standing as a matter of law under the Weeks factors because their unit was near the proposed development, the proposed change was significant, they alleged an immediate effect on their use and enjoyment of their property, and they actively participated in the planning board proceedings.

KEY QUOTATIONS

“Even assuming that such a contract did exist, however, it could not abrogate the standing of individual unit owners as there is no provision in the PHC declaration or bylaws granting the board the authority to contract away the standing rights of individual unit owners.” (17)

“Based upon application of the Weeks factors, the facts in this case confer standing upon the Johnsons as a matter of law.” (18)

FACTUAL BACKGROUND

The Johnsons owned a condominium unit at Pine Harbor Condominiums in Wolfeboro, approximately 200 feet from the boundary of Sheepshead Bay, LLC's adjacent parcel and less than 500 feet from its proposed dwelling. Sheepshead sought a special use permit to replace an existing seasonal cottage with a substantially larger, year-round home and septic system located within the town's wetlands buffer zone and Wetlands Conservation Overlay District. The Johnsons submitted written objections to the planning board and participated in the permit hearing, asserting that the proposal would interfere with their use and enjoyment of their unit and the condominium common area.

PROCEDURAL HISTORY

The Wolfeboro Planning Board granted Sheepshead Bay, LLC, a special use permit to replace an existing seasonal cottage with a larger year-round dwelling and septic system. The Johnsons petitioned the superior court

for review, but the court dismissed the petition for lack of standing. The Supreme Court of New Hampshire reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court's dismissal for lack of standing was reversed. The matter was remanded for further proceedings consistent with the opinion.

CASES CITED

- Ossipee Auto Parts v. Ossipee Planning Board, 134 N.H. 401, 403-04, 593 A.2d 241 (1991)
- Joyce v. Town of Weare, 156 N.H. ___, ___, 937 A.2d 919, 922-23 (2007)
- Kuznicki v. Mason, 273 Va. 166, 639 S.E.2d 308, 312 (2007)
- Strauss v. Oyster River Condominium Trust, 417 Mass. 442, 631 N.E.2d 979, 981 (1994)
- Bernstein v. Chief Building Inspector, 52 Mass. App. Ct. 422, 754 N.E.2d 133, 136-37 (2001)
- Gordon v. State Building Code Appeals Board, 70 Mass. App. Ct. 12, 872 N.E.2d 794, 800 (2007), review denied, 450 Mass. 1104, 877 N.E.2d 599 (2007)
- Simpson v. Young, 153 N.H. 471, 474, 899 A.2d 216 (2006)
- Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541, 545, 404 A.2d 294 (1979)
- Thomas v. Town of Hooksett, 153 N.H. 717, 719-21, 903 A.2d 963 (2006)