

SUPREME COURT OF NEW HAMPSHIRE

Sutton v. Town of Gilford, 160 N.H. 43

992 A.2d 709 (2010) · No. No. 2008-674 · Decided March 30, 2010

SUMMARY

The Supreme Court of New Hampshire considered a dispute over whether two contiguous substandard lots on Governor's Island had been automatically merged under the Town of Gilford's zoning ordinance. The court held that exhaustion of administrative remedies barred the abutting landowner's challenge to construction authorized by an amended building permit, but did not bar her declaratory judgment claim concerning the property's merged status. It further held that RSA 674:39-a, governing voluntary mergers, did not preclude municipalities from adopting automatic merger provisions, and affirmed the finding that the lots had merged.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Duggan, J.; Brock, C.J., retired, specially assigned
JURISDICTION	New Hampshire
DECIDED	March 30, 2010
DOCKET	No. 2008-674
DISPOSITION	other
PROCEDURAL POSTURE	Sutton appealed orders granting Barbara Aichinger summary judgment on Sutton's petition for a writ of mandamus and denying Sutton's request for a permanent injunction. Aichinger cross-appealed rulings denying dismissal for failure to exhaust administrative remedies, declaring that her property had merged into a single lot, rejecting municipal estoppel, denying reopening of the hearing, and denying attorney's fees.
STANDARD OF REVIEW	Statutory and zoning-ordinance interpretation are reviewed de novo. Factual findings are upheld unless unsupported by the evidence, and legal rulings are affirmed unless erroneous as a matter of law. Municipal-estoppel rulings are upheld unless unsupported by the evidence or erroneous as a matter of law. The court also applied the exhaustion doctrine to challenges to building permits.

PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of New Hampshire
PARTIES	Rita Sutton and another v. Town of Gilford and another

TOPICS

zoning exhaustion of remedies statutory interpretation municipal law appellate procedure

PRACTICE AREAS

real estate zoning municipal law administrative law appellate procedure

QUESTIONS PRESENTED

1. Whether Sutton's failure to appeal Aichinger's amended building permit to the zoning board of adjustment barred Sutton's request for injunctive relief challenging construction authorized by that permit.
2. Whether failure to exhaust administrative remedies barred Sutton's request for a declaratory judgment concerning whether Aichinger's parcels had merged.
3. Whether RSA 674:39-a precluded Gilford from automatically merging contiguous nonconforming lots under its zoning ordinance.
4. Whether the ordinance's exception for a lawful and preexisting principal use on each lot prevented automatic merger.
5. Whether the Town's representations and agreement with Aichinger established municipal estoppel or altered the merged status of the property.
6. Whether the superior court abused its discretion by refusing to reopen the merits hearing to receive additional evidence on merger and municipal estoppel.

HOLDINGS

1. The exhaustion doctrine barred Sutton from seeking injunctive relief in superior court to challenge construction undertaken pursuant to the October 29, 2007 amended building permit because she failed to appeal that permit to the zoning board of adjustment.
2. Failure to appeal the amended building permit did not bar Sutton's declaratory-judgment claim seeking a determination that Aichinger owned a single merged lot.
3. RSA 674:39-a, which authorizes voluntary merger by a property owner, does not prohibit a municipality from requiring automatic merger of contiguous nonconforming lots in common ownership through its zoning ordinance.
4. Aichinger's two parcels had been automatically merged into a single lot under Gilford's zoning ordinance.

5. The ordinance exception for a lawful and preexisting principal use on each lot did not apply because the structure on former lot 9 was an accessory guest house and garage, not a single-family residence constituting a principal use.
6. The Town was not municipally estopped from enforcing its automatic-merger ordinance because Aichinger's reliance on the Town officials' erroneous representations was unreasonable.
7. The agreement between Aichinger and the Town did not defeat Sutton's statutorily protected claims concerning the property's merged status because Sutton was not a party to the agreement.
8. The superior court did not err by denying Aichinger's request to reopen the hearing to present additional evidence on merger and municipal estoppel.

KEY QUOTATIONS

“Generally, parties must exhaust their administrative remedies before appealing to the courts.” (at 717)

“The plain language of RSA 674:39-a gives property owners the right to merge contiguous lots, but nothing in its language precludes a town from automatically merging such lots pursuant to its zoning ordinance.” (at 719)

“Therefore, the record reasonably supports the trial court's conclusion that the “lawful and preexisting principal use” exception to the automatic merger provision does not apply.” (at 722)

FACTUAL BACKGROUND

Aichinger owned two contiguous substandard parcels on Governor's Island in Gilford, containing a residence on one parcel and a garage with an attached guest house on the other. The Town's records and the Governor's Island Club records treated the parcels as one lot under an automatic-merger provision in the zoning ordinance, although Aichinger's deed described them separately. Town officials initially advised Aichinger that the parcels were legally separate, after which she undertook substantial development activity and entered an agreement with the Town treating the parcels as separate; the Town later reversed its position. Sutton, an abutting landowner, challenged the development and sought a declaration that the parcels remained merged.

PROCEDURAL HISTORY

Sutton, an abutting landowner, filed a superior court action seeking injunctive and declaratory relief concerning Aichinger's proposed development of two contiguous nonconforming lots, as well as mandamus against the Town. The superior court granted summary judgment against the mandamus claim, later ruled that the lots had legally merged, rejected municipal estoppel, denied injunctive relief because Aichinger could replace the existing guest structure, and denied attorney's fees and a request to reopen the hearing. The Supreme Court of New Hampshire reversed dismissal of the injunction claim insofar as it concerned construction under the amended permit, affirmed the merger and municipal-estoppel rulings, and otherwise affirmed.

DISPOSITION

other

CASES CITED

- McNamara v. Hersh, 157 N.H. 72, 945 A.2d 18 (2008)
- V.S.H. Realty, Inc. v. City of Rochester, 118 N.H. 778, 394 A.2d 317 (1978)
- Pheasant Lane Realty Trust v. City of Nashua, 143 N.H. 140, 720 A.2d 73 (1998)
- McKenzie v. Town of Eaton Zoning Bd. of Adjustment, 154 N.H. 773, 917 A.2d 193 (2007)
- Vogel v. Vogel, 137 N.H. 321, 627 A.2d 595 (1993)
- Town of Amherst v. Gilroy, 157 N.H. 275, 950 A.2d 193 (2008)
- Verizon New England v. City of Rochester, 151 N.H. 263, 855 A.2d 497 (2004)
- Guy v. Town of Temple, 157 N.H. 642, 956 A.2d 272 (2008)
- Appeal of Weaver, 150 N.H. 254, 837 A.2d 294 (2003)
- Morgenstern v. Town of Rye, 147 N.H. 558, 794 A.2d 782 (2001)
- Governor's Island Club v. Town of Gilford, 124 N.H. 126, 467 A.2d 246 (1983)
- Simplex Technologies v. Town of Newington, 145 N.H. 727, 766 A.2d 713 (2001)
- Anderson v. Motorsports Holdings, 155 N.H. 491, 926 A.2d 261 (2007)
- Trottier v. City of Lebanon, 117 N.H. 148, 370 A.2d 275 (1977)
- Feins v. Town of Wilmot, 154 N.H. 715, 919 A.2d 788 (2007)
- Thomas v. Town of Hooksett, 153 N.H. 717, 903 A.2d 963 (2006)
- Trachy v. LaFramboise, 146 N.H. 178, 770 A.2d 1097 (2001)