

SUPREME COURT OF NEW HAMPSHIRE

Town of Newbury v. Landrigan

165 N.H. 236 (2013) · Decided August 21, 2013

SUMMARY

The New Hampshire Supreme Court affirmed a ruling that the respondents' conduct and that of prior owners merged two adjacent nonconforming lots into a single parcel. Because the respondents conveyed the property as separate lots without planning board approval, the court held that they unlawfully subdivided the property under RSA 674:35 and RSA 676:16. The court upheld injunctive relief and a \$2,000 fine.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Bassett, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.
JURISDICTION	New Hampshire
DECIDED	August 21, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The respondents appealed from a superior court order finding that they unlawfully subdivided their property without planning-board approval, granting injunctive relief, and imposing a \$2,000 fine.
STANDARD OF REVIEW	In a land-use case, the court upholds the superior court's decision unless it is unsupported by the evidence or legally erroneous. Factual findings are upheld unless unsupported by the evidence, and legal rulings are upheld unless erroneous as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Steven Landrigan, Philomena Landrigan v. Town of Newbury

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QUESTIONS PRESENTED

1. Whether the conduct of the respondents and their predecessors merged two contiguous, nonconforming lots by abandoning or abolishing the individual lot line.
2. Whether the respondents' separate conveyances of the historically merged lots constituted an unlawful subdivision requiring planning-board approval under RSA 674:35 and RSA 676:16.
3. Whether the superior court's factual findings concerning the chain of title, recorded plans, expert testimony, and treatment of the property were supported by the evidence.

HOLDINGS

1. Owners may effectuate the merger of contiguous, nonconforming lots independently of a town ordinance by conduct that results in abandonment or abolition of the individual lot lines.
2. Because the respondents owned a single parcel when they separately conveyed lots 3 and 4, the conveyances constituted an unlawful subdivision under RSA 674:35 and RSA 676:16 absent prior planning-board approval.
3. The superior court's finding that the lots had merged was supported by ample evidence and was neither legally erroneous nor unsupported by the record.

KEY QUOTATIONS

“Therefore, Sutton does not abrogate the longstanding rule that owners can effectuate a merger of contiguous, non-conforming lots, independent of any town ordinance, “by behavior which results in an abandonment or abolition of the individual lot lines.”” (165 N.H. at 239)

“Accordingly, we uphold the trial court’s ruling that the respondents owned a single parcel in 2008 when they conveyed lots 3 and 4 separately, thereby subdividing their property in violation of RSA 674:35 and RSA 676:16.” (165 N.H. at 241)

FACTUAL BACKGROUND

The property originated as two contiguous lots, lots 3 and 4, along with several adjacent parcels. Over several decades, deeds, recorded plans, tax assessments, building-permit applications, and the owners' treatment of the property described or treated it as one parcel, and the internal boundary between lots 3 and 4 was depicted as abandoned or omitted. The respondents purchased the property believing it was a single lot, later recorded survey plats, and in 2010 executed two deeds purporting to convey the property as separate lots without obtaining planning-board approval.

PROCEDURAL HISTORY

The Town of Newbury brought an action in superior court after the respondents executed deeds purporting to convey portions of their property as separate lots without obtaining subdivision approval. Following an evidentiary hearing, the Superior Court found that the respondents and their predecessors had merged the lots through their conduct and that the respondents violated the applicable subdivision statutes. The respondents appealed to the Supreme Court of New Hampshire, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Town of Windham v. Lawrence Sav. Bank, 146 N.H. 517, 519 (2001)
- Town of Seabrook v. Tra-Sea Corp., 119 N.H. 937, 942-43 (1979)
- Robillard v. Town of Hudson, 120 N.H. 477, 478-80 (1980)
- Sutton v. Town of Gilford, 160 N.H. 43, 46-50, 53-58 (2010)
- Town of Atkinson v. Malborn Realty Trust, 164 N.H. 62, 67 (2012)
- Cook v. Sullivan, 149 N.H. 774, 780 (2003)
- Finlay v. Stevens, 93 N.H. 124, 129 (1944)
- Roberts v. Town of Windham, 165 N.H. 186 (2013)

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