

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

### **In Case No. 2014-0177, Town of Newbury & a. v. New Hampshire Department of Fish & Game & a., the court on December 5, 2014, issued the following order:**

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is unnecessary in this case. This is the second time this case has reached us on appeal. See Town of Newbury v. N.H. Fish & Game Dep't, 165 N.H. 142 (2013). In this appeal, the petitioners, the Town of Newbury and the Lake Sunapee Protective Association, appeal the decision of the Superior Court (Smukler, J.) denying their petition for a writ of certiorari requesting that the trial court reverse the decision of respondent New Hampshire Council on Resources and Development (CORD) approving a boat launch design by respondent New Hampshire Fish and Game Department (F & G) on land abutting Lake Sunapee which was originally acquired by the Land Conservation Investment Program (LCIP). Subsequently, the legislature transferred management of all land acquired under the LCIP to CORD, and CORD assigned management of the parcel at issue to F & G. See id. at 143. We affirm.

Following remand from our decision in Town of Newbury, the trial court addressed the petitioners' request for certiorari relief based upon the ground that CORD's decision approving the boat launch design violated certain provisions in RSA chapter 162-C. Certiorari is an extraordinary remedy that is not granted as a matter of right, but rather at the discretion of the trial court. 74 Cox St. v. City of Nashua, 156 N.H. 228, 230 (2007). The writ is granted only when it is needed to serve the substantial ends of justice. Id. Review on certiorari is limited to whether the agency acted illegally with respect to jurisdiction, authority, or observance of the law, whereby it arrived at a conclusion which could not legally or reasonably be made or unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously. Id.

After conducting a hearing and taking a view of the parcel at issue, the trial court found that: (1) CORD did not violate RSA 162-C:6, II (2014) by failing to manage the property in accordance with any private agreements entered into at the time the property was purchased because "the record clearly reflects that the property was always intended to be a boat launch"; (2) CORD did not violate RSA 162-C:6, III (2014) "when it considered property outside the 3.3 acres at issue" in order to determine "that the proposed development of [the] parcel . . . serves the conservation objectives it is tasked with upholding by protecting other properties and public interests"; and (3) RSA 162-C:10

(2014), the public trust provision in RSA chapter 162-C, “does not limit CORD’s discretion to permit development of a boat launch in some circumstances.” As a result, the trial court concluded that the petitioners had failed to sustain their burden of showing that CORD’s decision approving the boat launch design was illegal or unreasonable. We will uphold the trial court’s decision on a certiorari petition unless it is not supported by the evidence or is erroneous as a matter of law. 74 Cox St., 156 N.H. at 230.

On appeal, the petitioners argue that the trial court erred by misreading RSA 162-C:6, II and III to allow CORD “merely to ‘consider’” preservation of natural beauty and other conservation values on the parcel rather than “‘manage’ all LCIP lands ‘so as to preserve’” their natural beauty and other conservation values. The petitioners further contend that the trial court erred by finding that CORD’s approval of the boat launch design in this case did not violate RSA 162-C:10. The petitioners also assert, for the first time on appeal, that, if the pertinent provisions in RSA chapter 162-C are ambiguous, the chapter’s legislative history supports their interpretation.

As the appealing parties, the petitioners have the burden of demonstrating reversible error. Gallo v. Traina, 166 N.H. \_\_\_, \_\_\_ (decided September 12, 2014). Based upon our review of the trial court’s well-reasoned order, the petitioners’ challenges to it, the relevant statutory law, and the record submitted on appeal, we conclude that the petitioners have not demonstrated reversible error. See id.

Affirmed.

DALIANIS, C.J., and CONBOY, LYNN, and BASSETT, J.J., concurred.

**Eileen Fox,  
Clerk**

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