

2. JUNKYARDS: Local Zoning Not Preempted By State Licensing Scheme. *Corey v. Town of Merrimack*. 140 N.H. 426 (Nov. 9, 1996).

The Coreys' deal to sell their junkyard for \$415,000 [Ahem! — make that “junque-yard] was conditioned on getting all necessary permits. When the Town attached some zoning compliance conditions to the local permit, the sale fell through. The trial court granted damages for an unconstitutional “taking,” finding that since the junkyard was adjacent to a federal highway, it was subject to licensing only by the State under RSA [236:90-110](#) (rather than by the Town under RSA [236:111-129](#)) — that local licensing was therefore preempted, and that the Town's requirements were thus *per se* “arbitrary and unreasonable” for purposes of “takings.” The Town appealed.

(a) Two Licensing Schemes Are Mutually Exclusive. First, Justice Batchelder upheld the literal language of RSA [236:101](#) — that in locations where junkyards are licensed by the State (within 1000 ft. of federal aid highways), local licensing laws don't apply.

[TOWNS AND CITIES LISTEN UP! Both the State Dept. of Transportation and most municipalities have assumed in the past that local licensing *did* overlap the State's power in these locations. If your town relies solely on licensing under RSA 236 to control junkyards, it's now clear you *cannot* use those provisions to control junkyards near federal aid highways. So unless you also address junkyards through zoning, your local scheme is full of holes (Probably rusty ones!)]

(b) Junkyard Zoning Not Preempted. Although the DOT does license junkyards adjacent to federal aid highways, the Court found that the DOT's only role is to regulate esthetics through fencing and screening. State licensing was therefore not intended by the Legislature as a “comprehensive regulatory scheme” of the sort, which would preempt local zoning regulations. Since the Town had power to impose conditions on a junkyard, its regulations weren't *per se* unreasonable for “takings” purposes.

[NOTE: NHMA filed an *amicus curiae* brief in support of the Town in this case. **P.S.** After the Town's victory in the Supreme Court, the case went back to trial, and the jury still awarded “takings” damages to the Coreys — despite the fact that the junkyard later sold for around 3/4 of the original contract price. The Selectmen, apparently fed up, decided not to appeal again.]