

Court Rules in Favor of Year-Round Status of Two Lakefront Homes

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HAMPSTEAD — A year-long battle between local residents James and Amy Johnston and the Town of Hampstead came to a close recently, when the Rockingham Superior Court granted the couple year-round status for two of their homes on Sunset Lake.

The Johnstons own three properties on Sunset Lakes, one of which they acknowledge is for seasonal use only. A problem occurred over a year ago when the Johnstons decided to sell their homes. A potential buyer inquired at the town office as to the home's status, and was told the home was a seasonal residence.

This sparked a battle

between the Johnstons and the town. The Johnstons spoke with Kris Emerson, the chief building official for Hampstead, who determined the properties were seasonal. They then appealed Emerson's decision and took their case to the Zoning Board of Adjustment. The Zoning Board agreed with Emerson, leading the Johnstons to seek relief at Superior Court.

The Johnstons claim that when both properties were purchased, one in 1994 and one in 2004, they inquired about them and were told both homes had year-round status.

The Zoning Board dismissed this as evidence because the Johnstons could not remember the name of the town staff who offered that information, nor did

they receive anything in writing.

The tax cards for each home did not state they were seasonal homes at the time the Johnstons purchased them. Amy Johnston had been living year round in the home purchased in 1994 since the sale, and declared it her sole residence for all purposes, including voting and motor vehicle registration.

The Seasonal Zoning Ordinance of 1976 requires property owners to take certain measures in order for their houses to be used on a year-round basis for occupancy. As with most zoning ordinances, there was a grandfathering provision stating that none of the conditions of the ordinance would be applicable to any homes being used on a year-

round basis when the ordinance was passed.

Superior Court Judge Kenneth McHugh was faced with determining whether the properties were lived in on a full-time basis before 1976.

The Johnstons provided evidence of prior owners and longtime neighbors stating the properties were occupied full time prior to 1976. That information contradicted what the Zoning Board had received.

In addition to the prior owners, the Johnstons claimed the tax cards did not list the properties as seasonal. The court recognized tax cards as a key piece of evidence as to how the town categorizes property.

Judge McHugh criticized the town for its lack of record

keeping. "(It should) not be too much to demand that the Town clearly indicate on each tax card its conclusion as to the status of each of these Wash Pond fronted (properties)," he wrote.

Town officials admitted that had the Johnstons not tried to sell their homes, the problem would never have surfaced.

Regarding this, Judge McHugh stated, "A sale of property should not be the mechanism by which a determination is made as to the year-round status of a particular piece of property."

The judge's decision to grant the properties year-round status was based on several factors, including the less than definite record keeping by the town, as well as the fact that the only workload."

"credible and objective" evidence, the tax cards suggested that both lots had year-round status. He determined that the evidence supported that houses had been lived in year round for many years.

"We decided not to appeal based upon cost and that we probably wouldn't get very far in the Supreme Court in Concord," Emerson said of the court's decision. However, Emerson warned that the judge's ruling is specific to the Johnston property and does not apply to all lots in Zone B.

The town is currently in the process of updating and clarifying the status of properties. Asked how long this would take, Emerson said, "It could take well over a year, depending upon the workload."