

1-1-1999

## Greenan v. Lobban, 717 A.2d 989 (N.H. 1998)

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Madoline Wallace, Court Report, Greenan v. Lobban, 717 A.2d 989 (N.H. 1998), 2 U. Denv. Water L. Rev. 346 (1999).

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Addressing the city's contention that Minnesota statutes allow it to recover costs through use, availability, or connection charges, taxes, or special assessments, the court stated that this authority is limited. Both the Johnsons and the court recognized that a city has the power to collect improvement costs via availability or connection charges, special assessments, or taxes. A municipality is not allowed, however, to recover judicially disallowed fees through an otherwise legitimate exercise of its authority. The court noted that "such a charge is impermissible if it is imposed discriminatorily as a way of subverting [a reduction or avoidance of an assessment]."

Because the "lateral benefit fee" was assessed against only those landowners that received judicially reduced assessments, the court determined that the fee in this case was an improper special assessment. The court held that "this fee constitutes an unconstitutional taking of private property and is impermissible regardless of whether the recoupment effort is under the guise of an assessment or a connection charge." Accordingly, the Johnsons received a refund for the amount that exceeded the previous judicial decree.

*Michael Fischer*

## **NEW HAMPSHIRE**

**Greenan v. Lobban, 717 A.2d 989 (N.H. 1998)** (holding that grantor intended to convey title of land extending to lake's shore line and that non-riparians did not gain right-of-way to the beach outside of delineated boundaries by a prescriptive or a deeded right-of-way).

Defendant owned riparian lots on Newfound Lake ("Lake") in Bridgewater, New Hampshire. The plaintiffs owned non-riparian lots with ten-foot-wide right-of-way easements for access to the Lake's beach. The plaintiffs used the beach in front of and near the right-of-way for forty years. Beginning in the 1980s the defendants asked the plaintiffs to restrict their use to the area inside the right-of-way's boundaries. Because the plaintiffs refused, the defendants constructed barriers and posted "no trespassing" signs on either side of the right of way.

The plaintiffs sued the defendants to quiet title claiming deeded and prescriptive rights to use the beach up to the natural high water mark. The lower court rejected the plaintiffs' contention and ruled that the defendants owned the beach to the high water line and owned exclusive littoral rights to the water and lakebed. However, the court found that the location of the plaintiffs' deeded right-of-way extended beyond the delineated boundaries; thus, the plaintiffs could traverse additional land.

Both parties appealed the superior court ruling. The plaintiffs challenged the court's finding that the defendants' property extended to the high water mark. The defendants challenged the location of the plaintiffs' deeded right-of-way.

The New Hampshire Supreme Court upheld the superior court ruling that the defendants' property extended to the high water mark. Because the grantor worded the defendants' deed ambiguously, the Court used extrinsic evidence to find the grantor's intent. The defendants introduced, and the court accepted, a letter from the grantor's attorney that stated that the grantor intended to convey complete title extending to the shore. Further, the supreme court rejected the plaintiffs' contention that they owned the land by prescription by finding that the defendants permitted the plaintiffs to use the beach; thus, the plaintiffs did not satisfy prescription's adverse element.

Additionally, the supreme court overturned the superior court ruling concerning the location of the plaintiff's deeded right-of-way. The supreme court found that the ruling of the lower court contradicted the deed's plain language because it created a right-of-way that bisected the defendants' properties. Both the defendants' and the plaintiffs' deeds dictated that the right-of-way separated the defendants' properties.

*Madoline Wallace*

## OHIO

**Long Beach Association, Inc. v. Jones, 697 N.E.2d 208 (Ohio 1998)** (holding that a plat for a block containing a lagoon did not create a separate subdivision which would prevent owners of lots in other blocks of the subdivision from using the lagoon).

In 1923, the Long Beach Company ("Company") submitted a plat for subdivision. It included blocks A, B, and C. The Company subdivided only blocks A and C into lots at this time. The Company did not subdivide Block B, situated between blocks A and C, into lots until the Company submitted a separate plat in 1927. The 1927 plat, entitled "Long Beach Subdivision of Block B," stated that Lot E, which included a lagoon and private lane, "[was] for the use of lot owners within the subdivision." The appellants purchased lots in Block B and contended that the language in the plat dedication supported the claim that the lagoon was for the exclusive use of the residents of Block B. The trial court dismissed all of the appellants' claims. Upon appeal, the court of appeals held that the trial court erred in dismissing the counterclaims of trespass, conversion, and unjust enrichment, and affirmed summary judgment on the claim of