

# **Sutton v. Town of Gilford: New Hampshire Supreme Court's Holding May Have Chilling Effect on Relationships Between Landowners and Towns**

Details

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Over 20 years ago, the New Hampshire Supreme Court held that New Hampshire towns must provide assistance to citizens in navigating the municipal waters. See *Carbonneau v. Rye*, 120 N.H. 96 (1980). Now, in light of *Sutton v. Town of Gilford*, landowners will be forced to think twice before relying on the advice they get from and agreements they reach with New Hampshire municipalities.

In *Sutton*, the New Hampshire Supreme Court held that: (1) a landowner may not always rely on the advice given by municipal official; (2) a non-party's statutory rights do not trump an agreement between a landowner and the town; and (3) municipalities can involuntarily merge non-conforming lots. See *Sutton v. Town of Gilford*, No. 2008-674, (N.H. March 30, 2010).

## I. Facts.

Aichinger purchased lake front property on Governor's Island in Gilford in 2002. See *Sutton v. Town of Gilford*, No. 2008-674, slip op. at 2 (N.H. March 30, 2010). At one time, the property was comprised of two parcels. In the 1980s, the town merged both lots to create a single lot. Although the lots were described separately in Aichinger's Deed, at the time she purchased the property, the land was identified on tax maps and taxed as a single lot.

In 2006, Aichinger contacted a town official who found no evidence of a voluntary merger of the two lots, but presumed that the lots were merged involuntarily by automatic mergers. The town official also stated to Aichinger that "*the Courts threw out that law*" and that he believed "*all automatic mergers were effectively voided.*" Subsequently, the town issued separate addresses for each lot and Aichinger began to implement a plan to remove the existing buildings on one lot and construct two new single family homes on each lot. To that end, Aichinger obtained a building permit.

Almost a year later, in May of 2007, the town official wrote to Aichinger indicating that after consulting with town counsel, he realized that his previous advice had been in error and that Aichinger, in fact, owned a single, merged lot. Aichinger appealed this decision to the Gilford ZBA. Prior to the ZBA hearing, Aichinger entered into a settlement agreement with the Board of Selectmen that recognized that the property consisted of "*two separate and distinct parcels of land.*"

In July of 2007, Sutton, an abutting landowner, filed suit in Superior Court, to prevent Aichinger from developing the property as two separate lots, to declare that the town

could enforce its merger ordinance, and to require the Town to enforce its zoning ordinance. *Id.* at 4.

## II. Merger.

The Court held that RSA 674:39-A (voluntary merger) governs voluntary mergers by owners of two or more parcels of land, but does not prohibit a municipality from adopting an ordinance providing for the automatic merging of lots for zoning purposes.

## III. Municipal Estoppel.

The Court also held that Aichinger could not rely on the statement of the town official that the property was not merged because she knew or should have known that the representations made by town officials were materially incorrect, and, thus, any reliance was unreasonable. In particular, the Court noted that there was evidence in the record that Aichinger was aware of the case of *Governor's Island Club v. Town of Gilford*, 124 N.H. 126 (1983), a decision that treated the property as a single lot more than 17 years before Aichinger purchased her property. Similarly, the Court said that Aichinger unreasonably relied upon the representation of the town official that the town's merger requirement was "*no longer on the books*" because Aichinger could have reviewed the town ordinance which would have shown that the merger provision was still in effect and applicable to the property.

## IV. The Agreement Between Aichinger and the Town.

Finally, the Court declined to decide whether the Town was bound by the terms of the agreement between the Town and Aichinger. *Id.* at 15. The New Hampshire Supreme Court held that it could not say that Sutton statutorily protected rights were trumped by an agreement between Aichinger and the Town to which she was not a party. Therefore, the question of whether such a settlement agreement is valid and enforceable remains unresolved at this time.

## V. Conclusion.

Homeowners often seek input and perspective from town officials. Now, in light of *Sutton v. Town of Gilford*, landowners' reliance on information provided by town must be tempered by what a court may decide the landowner should have known about the history of his own property. Similarly, a court may decide that landowners' reliance on information provided by a town official is limited by what the landowner might have found if the landowner had verified the accuracy of the information against the town's ordinance. Finally, the question of whether settlement agreements between towns and landowners will be enforced when challenged by third parties remains unresolved.

For additional information or questions regarding the effects of the Court's decision in *Sutton v. Town of Gilford*, please contact [Kevin O'Shea](#), [Peter F. Imse](#) or another member of Sulloway's [Real Estate, Land Use and Finance](#) practice group.

