

State of New Hampshire Supreme Court

NO. 06-0150

MAUREEN BALDWIN-LAMPER, LEWIS LAMPER, GAIL EMERY,
ELEANOR GLEITSMANN, DANIEL BYRON, PETER O'HEARN,
ANDREA MARTEL & MICHAEL MILLS

v.

CITY OF LACONIA, NEW HAMPSHIRE

NOTICE OF MANDATORY CROSS APPEAL OF MAUREEN BALDWIN-LAMPER, &a
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.
Law Office of Joshua Gordon
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www.AppealsLawyer.net

State of New Hampshire Supreme Court

NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; or (7) a landlord/tenant action or a possessory action filed under RSA chapter 540.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

Maureen Baldwin-Lamper, Lewis Lamper, Gail Emery, Eleanor Gleitsmann, Daniel Byron, Peter O'Hearn, Andrea Martel & Michael Mills v. City of Loconia, New Hampshire
05-E-0052 & 05-E-0069

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Belknap County Superior Court (*Vaughan, J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

Lewis Lamper
137 White Oaks Rd.
Laconia, NH 03247

Maureen Baldwin-Lamper
137 White Oaks Rd.
Laconia, NH 03247

Gail Emery
235 White Oaks Rd.
Laconia, NH 03246

3B. NAME, FIRM, ADDRESS & TELEPHONE
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon
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26 S. Main St., #175
Concord, N.H. 03301
(603) 226-4225
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4A. NAME & ADDRESS OF OPPOSING PARTY

The City of Laconia
45 Beacon Street East
Laconia, NH 03246

4B. NAME, FIRM, ADDRESS, & TELEPHONE
NUMBER OF OPPOSING COUNSEL

Laura A. Spector, Esq.
Mitchell & Bates PA
25 Beacon Street East Suite 2
Laconia, NH 03246-3445
(603) 524 - 3885

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Intervener/applicant:

Donald and Frances Bossey
New Hope Drive,
Laconia, NH 03246

Represented by:

Patrick H. Wood, Esq.
Wescott Millham & Dyer LLP
28 Bowman Street
PO Box 1700
Laconia, NH 03247-1700
(603) 524 - 2166

Scott Hogan, Esq. (representing appellants in lower court)
Law Office of Scott E. Hogan
27 Riverside Farm Drive
Lee, NH 03824
(603) 659 - 9090

6. DATE OF CLERK'S NOTICE OF DECISION
~~OR SENTENCING~~

January 17, 2006

DATE OF CLERK'S NOTICE OF DECISION
ON POST-TRIAL MOTION

February 14, 2006

7. CRIMINAL CASES: DEFENDANT'S
SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There is no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

none known

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE
DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

Zoning Board

- 1 Did the court err in approving the subdivision when the ZBA granted variances to allow 22 residences rather than the 11 allowed by the zoning ordinance, and the ordinance had been recently amended with the intent to prevent the scope of precisely this sort of project?
- 2 Did the court err in approving the subdivision when the ZBA used an improper standard in that it applied the *Simplex v. Newington* standard when the *Simplex* standard has been specifically eclipsed by *Boccia v. Portsmouth* for area variances as explained in *Shoplund v. Enfield*?
- 3 Regardless of what standard was employed, did the court err in approving the subdivision when there was no evidence beyond unsupported assertions upon which to make findings for area variances?
- 4 Even if unsupported assertions are considered adequate evidence, did the court err in approving the subdivision when those assertions did not meet the area variance standards?
- 5 Did the court err in approving the subdivision when it will alter the nature of the neighborhood which now consists of 7 homes on a narrow unpaved road, and the subdivision will add 22 homes, a wide paved road, and triple the traffic volume?

Planning Board

- 6 Did the court err in exercising jurisdiction over the planning board's grant of the subdivision plan when it was merely conditionally and not finally approved?
- 7 Even though the road will be improved under the proposal, did the court err in approving the subdivision when the planning board did not adequately consider a number of public safety issues?
- 8 Did the court err in approving the subdivision when the planning board failed to consider the report of the conservation commission regarding extensive wetlands on the property as required by the zoning ordinance?
- 9 Did the court err in approving the subdivision when the planning board allowed the proposed residences access to town water and sewer but the existing homes have wells and septic systems, but they will have to endure the detriment of construction and public safety issues that will be caused by the additional residences yet not enjoy the benefit of municipal services?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

March 16, 2006

Joshua L. Gordon, Esq.

ATTACHMENTS

(1)	CLERK’S NOTICE (regarding order on merits) (Jan. 17, 2006)	7
(2)	ORDER (Jan. 17, 2006)	8
(3)	CLERK’S NOTICE (regarding motion to reconsider) (Feb. 14, 2006)	20
(5)	ORDER ON MOTION TO RECONSIDER (Feb. 13, 2006)	21

TRANSCRIPT ORDER FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED						
Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Steno/ Recorded	Previously Prepared?*	Deposit
10/20/05	Trial	1 hour	<i>Vaughan, J.</i>	Steno.	no	\$175
DO NOT SEND DEPOSIT AT THIS TIME						TOTAL DEPOSIT: \$175

SCHEDULE OF DEPOSITS

Length of Proceeding

Hearing or trial of one hour or less
Hearing or trial up to ½ day
Hearing or trial of more than ½ day
Previously prepared portions

Deposit Amount

\$ 175
\$ 450
\$ 900/day
Number of pages x \$.50 per page per copy if additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

* For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.