

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Town of Lincoln

v.

Joseph Chenard

Supreme Court Case No.: 2020-0316

REPLY BRIEF OF JOSEPH CHENARD

By his attorneys,
Bruce J. Marshall Law Offices, PLLC

Dated: March 2, 2021

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The Appellant requests fifteen minutes of oral argument before the full court, to be presented by Bruce J. Marshall, Esq.

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ARGUMENT

I. THE TRIAL COURT LAWFULLY DENIED THE TOWN OF LINCOLN COSTS AND ATTORNEY FEES.

1. On the one hand the Town of Lincoln (“Lincoln”) argues that the Trial Court properly applied RSA 236:111 to the instant facts while simultaneously arguing that costs and fees should be assessed pursuant to RSA 676:17, II. Although Chenard disputes the Trial Court’s application of RSA 236:111 for the reasons set forth in Chenard’s Brief, Lincoln’s analysis escapes sound logic. Especially when one considers that Lincoln acknowledges that Chenard is not operating a junk yard business, but instead maintains their junk yard classification is based on their erroneous presumption that RSA 236:111 applies to the residential outdoor storage of personal property when visible to the public. *Trial Trans.* @ p. 40, l. 2-8. Lincoln is merely attempting to use New Hampshire’s “junk yard” statutes as a means to monitor the cleanliness of residential yards rather than developing their own ordinance to address same. Lincoln’s zoning ordinance is devoid any restriction on the outdoor storage of personal property. *Trial Trans.* @ p. 74, l. 3-4. Nor does the zoning ordinance prevent outdoor storage of recycled materials. *Trial Trans.* @ p.75, l. 19-21. Lincoln’s zoning ordinance does not even incorporate the State statutory definition of junk yard. *Trial Trans.* @ p. 22, l. 13-19. Lincoln’s zoning ordinance is also devoid any notice to the public as to how Lincoln determines the existence of a junk yard. *Trial Trans.* @ p. 23, l. 12-15. The public is simply left to guess what Lincoln may or may not consider a junk yard. Lincoln does claim however to secretly rely solely on New Hampshire’s “junk yard” statutes to regulate junk yards, albeit incorrectly. *Trial Trans.* @ l. 9-11. In doing so Lincoln subjectively determines whether or not a property rises to the level of a junk yard. *Trial Trans.* @ p. 85, l. 14-20. The only time Lincoln’s zoning ordinance comes remotely close to defining a junk yard is when it lists junk yards as an “industrial use”. *See Trial Exhibit 2*. Merriam-Webster defines industrial as “of or relating to industry...engaged in industry.” Clearly residential

outdoor storage of personal property cannot, in any reasonable manner, be considered to be an industrial use of one's residential property.

2. In seeking relief, Lincoln relies in part on their assertion that Chenard never obtained a special exception for a junk yard as is required for of industrial use junk yards. *Id.* Yet Lincoln never provided any evidence at trial nor even alleged that Chenard was operating a junk yard business or an industrial operation. They instead acknowledged that Chenard merely stored personal belongings outside. *Trial Trans.* @ p. 92, l. 19-23, p. 95, l. 3-16. Absent such evidence, it is a legal impossibility to conclude that Lincoln's zoning ordinance was somehow violated by Chenard's storage of personal belongings outside.

3. Furthermore, Lincoln considers New Hampshire's "junk yard" statutes to be dependent on the quantity of material stored as opposed to whether or not a junk yard business is in operation. *Trial Trans.* @ p. 95, l. 3-21. Recall Lincoln's Town Manager testified that it was dependent on his subjective determination. *Id.* @ l. 17-25. Recall further that Lincoln's Town Manager testified that he could not specify to the Trial Court what quantity of personal belongings stored outside a residence somehow triggered his interpretation of a junk yard classification while acknowledging that Lincoln regulations were devoid any restriction of same. *Trial Trans.* @ p. 96, l. 2-13, p. 45, l. 1-6. Lincoln could not even specify what quantity of a given material constituted a junk yard under New Hampshire's "junk yard" statute. *Trial Trans.* @ p. 94, l. 25, p. 95, l. 1p. 47, l. 17-22, p. 85, l. 14-20. Nor could Lincoln offer any evidence as to what quantity of so-called junk was stored on each of Chenard's parcels. *Trial Trans.* @ p. 36, l.7-23.

4. Upon reconsideration, because Lincoln's zoning ordinance is devoid reference to New Hampshire's "junk yard" statutes or any alternative definition of junk yard, the Trial Court lawfully concluded that the zoning ordinance on its face did not "express the intent of the enacting body." *See June 8, 2020 Order* @ p.3. Given this, the Trial Court reasonably equated "junk yard" as referenced in Lincoln's zoning ordinance to that defined by RSA 236:91. Applying the plain and ordinary meaning to "junk yard" the

Trial Court concluded it was in reference to resalable junk. *Id.* Given the Trial Court had already determined that the materials stored outside on the Chenard properties were his personal belongings and for his own personal use, the Trial Court properly determined Chenard was “not using his Properties as a “Junk Yard”” under the provision of Lincoln’s zoning ordinance. *Id.* @ p.4.

CONCLUSION

5. Both Lincoln and the Trial Court have erroneously applied the facts in the instant matter to the applicable law. Considering Lincoln’s zoning ordinance makes no reference to New Hampshire’s “junk yard” and instead only identifies “junk yard” as an industrial use, together with the Trial Court’s determination that Chenard only stored personal belongings out of doors for personal use, correct application of the applicable law requires Lincoln’s Cross Appeal be denied and the Trial Court’s Order be vacated as unlawfully classifying Chenard’s properties as “junk yards.” For these reasons and those detailed above and in Appellant’s Brief, Chenard requests that this Supreme Court find that the Trial Court erred as a matter of law with respect to its classifying of Chenard’s properties as junk yards pursuant to New Hampshire statute and affirm the Trial Court’s denial of fees and costs.

REQUEST FOR ORAL ARGUMENT

Chenard respectfully renews its prior request for oral argument, to be presented by Bruce J. Marshall, Esq.

The undersigned counsel hereby certifies that a copy of the appealed decision has been previously provided as appendix to its initial Brief.

Respectfully submitted,

Joseph Chenard

By and through his Attorneys,

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CERTIFICATE OF SERVICE

I, Bruce J. Marshall do hereby certify that a copy of the foregoing document has been sent through the Court's electronic filing system to all parties.

/s/ Bruce J. Marshall
Bruce J. Marshall, Esquire