

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

Westward Shores Plaintiffs

v.

Northgate Ossipee, LLC;  
Northgate Ossipee Lessee, LLC;  
Town of Ossipee;  
Joan Brassil; and  
Anthony J. Aversa

Docket No. 212-2018-CV-00150

**ORDER ON PLAINTIFFS' MOTION FOR RECONSIDERATION**

The plaintiffs, a number of residents of Westward Shores, have filed a motion for reconsideration and clarification of this court's February 6, 2019 order (the "order") granting the defendants' motion to dismiss Count IV of the complaint, which alleged violation of RSA 205-A:21 by defendants Joan Brassil ("Brassil") and Anthony Aversa ("Aversa"). (Court index ##25, 26.) In the alternative, the plaintiffs request clarification of the court's order. (Court index #26.) The defendants object. (Court index ##27, 28.) Based on review of the parties' pleadings, the court finds it is not necessary to schedule a hearing on this matter. See Super. Ct. Civ. R. 12(e).

Motions to reconsider must "state, with particular clarity, points of law or fact that the court has overlooked or misapprehended and shall contain such argument in support of the Motion as the movant desires to present . . . ." Id.

In its order, the court found that the plaintiffs failed to state a claim for violation of RSA 205-A:21, which governs the sale of manufactured housing parks, because Westward Shores best fits the statutory definition of a campground, RSA 216-I:1, VII, but not that of a manufactured

housing park, RSA 205-A:1, II. (Order at 4–6.) As such, the court granted the defendants’ motion to dismiss. (Id. at 6.)

The plaintiffs now argue that in rendering its decision, the court either overlooked or misapprehended certain points of law or fact. (Pls.’ Mot. Recons. at 2.<sup>1</sup>) The plaintiffs contend that the court misinterpreted the statutory definitions of “manufactured housing” and “recreational vehicle,” see RSA 205-A:1, I, RSA 216-I:1, VIII, to find that the plaintiffs’ “Improvements,”<sup>2</sup> located at various campsites within Westward Shores, are recreational vehicles rather than manufactured homes. (See id.) As such, the plaintiffs argue that the court incorrectly determined that Westward Shores is a campground rather than a manufactured housing park. (See id.)

In its order, the court found that Westward Shores, like the plaintiffs’ Improvements, is used for temporary, rather than permanent dwelling. (Order at 6.) The court also found that neither Westward Shores nor the plaintiffs’ Improvements are used for continuous residential occupancy, unlike manufactured housing as described in RSA 205-A:1, I(a). (Id.) Therefore, the court found that Westward Shores is most consistent with the statutory definition of a campground, and that therefore, it is not a manufactured housing park. (Id.) Because Westward Shores is not a manufactured housing park, the court held that RSA 205-A:21, which regulates only manufactured housing parks, did not apply to Westward Shores. (Id.) Accordingly, the court neither overlooked nor misapprehended any point of law or of fact.

The plaintiffs also argue that under the Town of Ossipee Zoning Ordinance, the plaintiffs’ use of their Improvements as manufactured homes is a lawfully non-conforming use

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<sup>1</sup> To the extent that the pleadings are not paginated, the court assigns sequential page numbers to the pleadings, starting on the first page and ending on the last page.

<sup>2</sup> Although the plaintiffs have not explicitly defined what they mean when they refer to Improvements, the court uses that term herein to refer to the units owned by the plaintiffs that have additions or improvements, some of which are extensive, located at Westward Shores. (See Compl. ¶ 20.)

because, at the time the ordinance was adopted, State law defined manufactured homes but did not define recreational vehicles. (See Pls.' Mot. Recons. at 7.) Accordingly, the plaintiffs essentially argue that the State campground statute, RSA Chapter 216-I, did not preempt the lawfully non-conforming use of the plaintiffs' Improvements. (See id.)

The court finds these arguments unpersuasive. In bringing their suit, the plaintiffs seek the statutory remedy, RSA 205-A:22, for an alleged violation of RSA 205-A:21, a State statute. Because they seek a statutory remedy for the alleged violation of a State statute, the court finds that the statutory definitions found within RSA Chapters 205-A and 216-I control the plaintiffs' claims and remedies in this case. Accordingly, the court neither overlooked nor misapprehended any point of law or of fact. The plaintiffs' motion for reconsideration is therefore denied.

Finally, the plaintiffs request that the court clarify its order. (Pls.' Mot. Recons. at 2.) Upon review of its order, and in light of the plaintiffs' claims under Counts II and III of the complaint, the court agrees that clarification is warranted in this case.

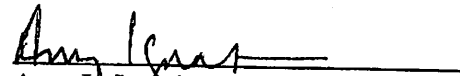
The court found in its order that the plaintiffs' Improvements "are recreational vehicles designed for 'temporary and not permanent dwelling' under RSA 216-I:1, VIII . . . ," and that the Improvements "are not manufactured housing under RSA 205-A:1, I(a) because the units are not designed for long-term and continuous residential occupancy." (Order at 6.) In making these findings of fact, the court did not make a binding legal determination as to the statutory definition of the Improvements under RSA 216-I:1, VIII or RSA 205-A:1, 1(a). Rather, in deciding whether Westward Shores is a campground or a manufactured housing park, the court sought to contrast the defining characteristics of campgrounds and manufactured housing parks. That is to say, whereas campgrounds are used exclusively for temporary dwelling, see RSA 216-I:1, VII, manufactured housing parks are not. See RSA 205-A:1, I(a); RSA 205-A:1, II.

Because the campsites at Westward Shores are intended only for temporary dwelling, and because the plaintiffs' Improvements are in fact only used for temporary dwelling, Westward Shores is best defined as a campground. Therefore, the question of how the Improvements themselves are defined as a matter of law remains unresolved.

For the foregoing reasons, the plaintiffs' motion for reconsideration is DENIED.

So Ordered.

Date: April 23, 2019

  
Amy L. Ignatius  
Presiding Justice