

Supreme Court to hear case of Gilmanton man who wants to build helicopter pad near house

GILMANTON — The New Hampshire Supreme Court is scheduled to hear a case today involving a Province Road resident who wants to land his helicopter on his property.

Glenn Tonnesen, who owns about 230-acres of one of
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region's oldest roads, wants to put a helipad in the vicinity of his house. Tonnesen intends to retire to the Province Road property and as part of his retirement he plans to occasionally fly a helicopter to and from the Province Road property for private use," according to papers filed with the state's highest court.

But town officials say they have the right to regulate the takeoff and landing of aircraft in the rural zoning ordinance and that it is only permitted by special exception, which Tonnesen has not received.

Tonnesen originally asked the Zoning Board of Adjustment (ZBA) for a special exception to the zoning regulations that would grant him permission to build a 25-foot-by-25-foot landing area for his Robinson R44 helicopter on his property. He said he would be permitted to fly his helicopter because it was an "accessory," rather than primary use, of his residential property, and therefore permitted under the zoning ordinance.

But the ZBA unanimously voted to deny down Tonnesen's request.

He then appealed his cause to Champaign County Superior Court but Judge Lawrence Smukler ruled in the town's favor.

Now the Supreme Court is poised to hear Tonnesen's appeal of the lower court's decision.

According to documents filed at the town clerk's office in Concord, Tonnesen claims the local court committed a legal error when it held he does not have a right to take off and land his helicop-

ter on his private property. He cites state statutes regarding the authority granted zoning boards, specifically RSA 674 which states, "Unless specifically proscribed by local land use regulation, aircraft takeoffs and landings on private land by the owner of such land or by a person who resides on such land shall be considered a valid and permitted accessory use."

"Gilmanton's regulation of aircraft landing areas in the rural zone does not specifically proscribe aircraft takeoffs and landing, it can only regulate this activity," Tonnesen argues in his legal paperwork.

But the town says that by regulating the takeoff and landing of aircraft as a special exception it has the authority to either grant or deny permission for the activity. "By the plain terms of the town's zoning ordinance an aircraft takeoff and landing site is not identified as a 'permitted use,'" officials write in their court documents. "Rather, the zoning ordinance provides that a landowner cannot locate an aircraft takeoff or landing area within the rural zoning district unless he first secures a special exception."

Officials also cite a 1984 case in the town of Merrimack that stated that without the power to use special exceptions in the zoning regulations, "Both town and applicants would lack a tool to adjust the pursuit of private interests to reasonable regulation in the public interest."

The two sides will be given 15 minutes to present oral arguments before the Supreme Court today.

— Ray Carbone

TUESDAY

*Gilmanton
man defeated
again in fight
for helicopter
landing pad*

GILMANTON — A retired local man who wanted to have the right to take off and land his helicopter on his Province Road property has lost his appeal to the N.H. Supreme Court.

Glenn Tonnesen, who owns about 230-acres of one of the region's oldest roads, planned to put a heli-pad close to his house and use his Robinson R44 helicopter as part of his retirement lifestyle. On July 17, 2006, he asked the
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Zoning Board of Adjustment (ZBA) for a special exception that would have allowed him to build the 25-foot-by-25-foot cement landing area.

The ZBA turned him down and when he asked for a rehearing, he was refused.

Tonnesen then took his case to the Belknap County Superior Court. He asked for a declaratory judgment against the board's rulings.

But a trial before Judge Lawrence Smukler ended in a ruling supporting the ZBA.

Finally Tonnesen appealed the superior court's decision to the Supreme Court.

He claimed the local court erred when it held he doesn't have a right use his helicopter on his property because the practice is allowable in the rural zone under the town's zoning regulations as a "special exception."

But in a ruling handed down Thursday, the Supreme Court judges sided with the local jury.

"Aircraft use on private land has, from time to time, been a contentious issue," the court admitted. However

Gilmanton's zoning statutes plainly state that the takeoff and landing of helicopters on property in its rural zone is allowable only after a "special exception" is granted by the ZBA.

The issue comes down to what is considered an "accessory use" of the land — in other words, a use that would not be commonly expected on a certain piece of property, the court wrote in its judgment.

"By plain language (state statute) expressly allows a town to 'regulate and control' accessory uses on private land," the ruling reads. "By definition, therefore, a town need not completely prohibit use of land for aircraft landings and takeoffs or permit this use as a right, but may 'regulate and control' use of land for this purpose."

Tonnesen had argued the zoning regulations were unclear and therefore should either permit or deny aircraft takeoffs or landings.

"To the extent that the petitioner (Tonnesen) contends that, as a general principle, a town may not regulate or control an accessory use by way of a special exception, we disagree," the judges wrote.