

█ In construing language not defined in the body of the ordinance we also "look to the ordinance as a whole and attempt to discern the meaning intended by the framers." *Trottier v. City of Lebanon*, 117 N.H. 148, 150, 370 A.2d 275, 277 (1977). The Greenland zoning ordinance permits designated "recreational camping areas" provided that they are not used as "permanent dwellings," so that their occupants do not "add to the school or general population of the Town of Greenland." Zoning Ordinance Art. IV, 12. The record reveals also that the town allows residents to park travel trailers and utility trailers on their property. Furthermore, we note that in the commercial zone where the Bunkers' property is located both trailer parks and trailer or mobile home dealerships are permitted uses under the ordinance. Taking the ordinance as a whole, it is clear that trailers or mobile homes may be present elsewhere in the town provided they are not set up or installed for occupancy.

█ Because the Bunkers' mobile home has never been installed on their lot in a manner that would make it fit for occupancy, we hold that article VII, section 5 of the ordinance is not applicable and therefore that the presence of the mobile home on their property does not violate the ordinance.

Exceptions sustained; petition dismissed.

All concurred.

Grafton
No. 78-133

TOWN OF RUMNEY

v.

EDWARD BANEL, TRUSTEE FOR STEPHEN E. BANEL,
VICTORIA J. BANEL & ELIZABETH C. BANEL

November 15, 1978

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bility and well-known location, the selectmen determined that defendant's property was ideal for the planned landfill. No test borings were made on any other site.

In 1976, the citizens of the town voted in favor of purchasing, or if necessary, taking by eminent domain the defendant's property. After failing to acquire the land by purchase, the selectmen filed a declaration of taking concerning some fourteen acres of defendant's land. Defendant then filed a bill in equity seeking to raise the issue of necessity under RSA ch. 498-A (Supp. 1977) and to enjoin the taking. He also filed an appeal from the taking. A hearing on the appeal was held before a Master (*Walter L. Murphy, Esq.*), who recommended that the declaration of taking be vacated pending a determination of necessity, and that the town, pending the same determination, pay rent to the defendant for the land. A decree in accordance with that recommendation was entered by *Johnson, J.* Thereafter a hearing was held before the same master on the question of necessity. The master concluded that the town had shown such "reasonable necessity" as would support the taking. A decree in accordance with this finding was entered by *Batchelder, J.* After a third hearing, it was ordered that the town continue to pay rent to defendant pending the outcome of this appeal. All exceptions were reserved and transferred by *Batchelder, J.*

This State's Eminent Domain Procedure Act, RSA ch. 498-A (Supp. 1977), provides that "it is not intended to enlarge or diminish the rights given by law to any condemnee to challenge the necessity for any condemnation." RSA 498-A:1 (Supp. 1977). Based upon this language, the trial court ruled that a condemnee had the right to contest the necessity issue, and that ruling became the law of the case. There is no issue before us as to the correctness of that ruling and we express no opinion with regard to it.

■ In establishing the reason for a taking "[a]bsolute necessity is not required"; rather, only "reasonable necessity" need be shown. *Cooperative School Dist. v. Gregg*, 111 N.H. 60, 62, 274 A.2d 787, 789 (1971). The defendant concedes this and agrees that the master was correct in ruling that the town did not have to prove that defendant's land was the only suitable site or even the best site for the proposed landfill. See *id.*; *Latchis v. State Highway Bd.*, 120 Vt. 120, 134 A.2d 191 (1957); 29A C.J.S. *Eminent Domain* § 91 (1965); 26 Am. Jur. 2d *Eminent Domain* § 113 (1966). The defendant also agrees that it is reasonably necessary for the town to provide a suitable site for the disposal of refuse. Defendant claims, however, that it has not been demonstrated that it is reasonably necessary to take his

land as opposed to someone else's. He contends that the master erred in not requiring greater consideration and evidence regarding other sites.

The trial court's findings, if reasonably made, are binding on this court. *Archambault v. Adams*, 118 N.H. 634, 392 A.2d 139 (1978). The court found that all but six of the possible alternative sites were eliminated for reasons unrelated to soil suitability, including the factors of location and accessibility. None of the owners of the remaining sites were willing to sell even if their property was found to be otherwise suitable. Thus, whatever site was chosen, eminent domain would have to be the procedure used for acquisition. The test borings proved that defendant's property was perfectly suited to the intended purpose. Moreover, the town had already expended funds for improving the road to defendant's land, and the public, through years of continued practice, was accustomed to bringing their refuse to that site. The trial court was entitled to conclude even without the test boring evidence that none of the other potential sites would prove any more suitable than defendant's land. Even accepting defendant's theory regarding consideration of alternative sites, we hold that there was sufficient evidence concerning them and that the court's findings could reasonably be made on the evidence. There is no indication in the record of fraud, bad faith, or abuse of discretion. *Brouillard v. Atwood*, 116 N.H. 842, 367 A.2d 596 (1976). Defendant's exceptions are therefore overruled.

The town excepts to the order of the court requiring the payment of rent to defendant. At the hearing on this issue, the master concluded that the parties had agreed that the town should continue renting the land during the pendency of defendant's appeal. The town now asks us to rule that the rent so paid since the declaration of taking be either returned to it or applied against defendant's damages. The town argues that the finding of necessity should revert back to the original filing of its declaration, that title vested in it as of that time, and that it should not be required to pay rent for its own property. We disagree with this argument. The original declaration of taking was vacated, thus divesting the town of any title it had acquired. There is no indication that the final determination of necessity was intended to make the town's title run back to the original filing. The rent paid need neither be returned nor applied against defendant's damages.

Exceptions overruled.

All concurred.