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THE SUPREME COURT OF NEW HAMPSHIRE

Carroll
Case No. 2025-0077
Citation: Martin v. Far Echo Harbor Club, 2026 N.H. 9

DONALD J. MARTIN

v.

FAR ECHO HARBOR CLUB, INC.

Submitted: November 6, 2025
Opinion Issued: March 3, 2026

Ransmeier & Spellman P.C., of Concord (Biron L. Bedard and Bridget M. Denzer on the brief), for the plaintiff.

Morrison Mahoney LLP, of Manchester (Linda M. Smith and Edwin F. Landers, Jr. on the brief), for the defendant.

DONOVAN, J.

[¶1] The plaintiff, Donald J. Martin, appeals a decision of the Superior Court (Attorri, J.) granting summary judgment to the defendant, Far Echo Harbor Club, Inc., on the plaintiff's petition to quiet title. The plaintiff argues that the trial court erred by concluding that his property does not have implied or prescriptive easement rights to use roadways and a lakefront beach area owned by the defendant. We conclude that the trial court erred by granting

summary judgment to the defendant on the plaintiff's claim that his property has implied easement rights for the use of two nearby roadways, including Park Lane. We also conclude, however, that the trial court properly granted summary judgment to the defendant on the plaintiff's implied and prescriptive easement claims for the use of the defendant's other roadways and lakefront beach area. Accordingly, we affirm in part, reverse in part, and remand.

I. Background

[¶2] The following facts are established by the summary judgment record. The plaintiff and the defendant both own real property in Moultonborough to the northeast of Lake Winnipesaukee between the lake and Moultonboro Neck Road. The plaintiff's property, identified as Town of Moultonborough Tax Map 245, Lot 062 and referred to by the parties as Lot 3, abuts Park Lane, which the defendant owns.[1] The defendant, a nonprofit corporation, owns roadways, paths, and a lakefront beach area (Lot 200), the use of which it reserves for its members. The parties dispute whether Lot 3 has rights to use the defendant's property — specifically, the roadways and Lot 200.

[¶3] The parties' properties derive from a parcel of land that was once owned by Leisuretime, Inc. In 1959, Leisuretime recorded a subdivision plan in the Carroll County Registry of Deeds dividing the property into more than 100 numbered lots, as well as "Boat & Beach Area #200" (Lot 200) and "Play Area #300" (Lot 300). The 1959 plan does not demarcate northerly or easterly boundaries for the Lot 300 play area.[2] The 1959 subdivision plan is appended to this opinion as Exhibit A.

[¶4] Leisuretime thereafter began conveying the subdivided lots. Lot 1, which Leisuretime deeded to William and Irene Hauger in 1960, was among the early conveyances. A second deed in 1966 expressly conveyed to the Haugers:

> A right of ingress and egress over roads as shown on [the 1959 subdivision plan] to Lot No. 1 as shown on said Plan . . . together with a right of use and enjoyment of the boat and beach area referred to as Area No. 200 as shown on said plan, said rights to be enjoyed in common with other lot owners within the subdivision and subject to the rules and regulations of Far Echo Harbor Club.

[¶5] In 1968, Leisuretime sold its property, subject to existing liens, easements, and prior conveyances, to Preferred Properties, Inc. (PPI). The

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[1] The plaintiff, who has been a member of defendant Far Echo Harbor Club, Inc. since 1984, has access to the defendant's roadways and lakefront beach area by way of his ownership of other nearby properties — specifically, Lots 49, 59, and 79 (collectively, "the Farmhouse"). The plaintiff also owns the property between Lot 3 and the Farmhouse.

[2] Park Lane was formerly called Park Drive.

following year, PPI deeded all unsold lots "shown on a revised plan of lots of Far Echo Harbor" to Invesco, Inc., although PPI retained ownership of Lot 200, Lot 300, and the roadways and paths. The deed conveyed to Invesco a list of lots "[t]ogether with the right to use in common with others all rights of way as shown on said plan, and the right to use for boating, bathing, swimming, and recreational purposes that area as designated on said plan as Area #200," subject to PPI's "right to erect docks and other recreational facilities thereon."

[¶6] In May 1972, PPI recorded plans subdividing Lot 300. The final subdivision plan depicts the subdivided Lot 300 abutting "Far Echoes Road" to the northwest, "Park Lane" to the southwest, "Preferred Properties 'Barn Parcel'" to the south, and "Moultonboro Neck Road" to the east. As relevant here, the plan shows Lot 3 abutting Park Lane. The 1972 subdivision plan is appended to this opinion as Exhibit B.

[¶7] Two months later, in July 1972, PPI conveyed "[a]ll boat docks and wharfs, together with the stairs and walkways thereto, presently situated at Far Echo Harbor Club . . . together with the right to construct and maintain additional boat docks and wharfs" to the defendant. In April 1973, PPI also conveyed the roadways and Lot 200 to the defendant, although it reserved the right to convey use rights for the Lot 200 beach area specifically to the lots comprising the "Farmhouse."

[¶8] In November 1972, PPI conveyed Lot 3 and Lot 4 from the subdivided Lot 300 to Russell A. Roberts. The Roberts deed, however, did not expressly grant any right of ingress or egress over or access to any other property owned by PPI, including Lot 200. In 1975, Roberts conveyed Lot 3 to Allyn and Phyllis Gordon. In 1986, the Gordons conveyed Lot 3 to David Sunderland as custodian of Laura E. Sunderland and Ann Lee Sunderland, and in 2000, Sunderland conveyed Lot 3 to Darren Petersen.

[¶9] In August 2002, the then-chairman of the defendant's executive committee responded to an inquiry by Petersen and informed him that the parcel from which Lot 3 derived "never had beach rights, but was to be common land," and "[w]hen the land was divided into three lots and sold out of the community (a decision made by the developer), the new lots no longer had any connection to the Far Echo Harbor Club Association." He noted, however, that Petersen was "personally always welcome on the Far Echo Harbor waterfront as a guest under [his] parents' membership." In 2015, the defendant again advised Petersen that "[t]he original deed from [PPI] to Russell A. Roberts does not make Lot #3 and Lot #4 part of Far Echo Harbor Association."

[¶10] Petersen conveyed Lot 3 to the plaintiff in 2018. The plaintiff thereafter filed a petition to quiet title, seeking a declaration that Lot 3 "enjoys the right to use all common areas and any other rights as enjoyed by members"

of Far Echo Harbor Club. In the alternative, he sought a prescriptive easement "to use Community Area #200 and all other common areas" owned by the defendant.

[¶11] The defendant moved for summary judgment, and the trial court granted its motion. Regarding the plaintiff's quiet title claim, the trial court found that the plaintiff could not demonstrate the existence of a right to use the defendant's property because "Lot 3, as a subdivided part of Lot 300, was not part of a common scheme which enjoyed the benefits as a 'member[] of Far Echo Harbor Club' in the conveyance from PPI" to the defendant. Regarding the plaintiff's prescriptive easement claim, the trial court determined that the plaintiff "cannot identify any person who adversely used [the defendant's] property and owned property rights to the subdivided Lot 300," and that he had failed to "set forth specific facts showing that there is a genuine issue for trial."

[¶12] The plaintiff moved for reconsideration. The defendant objected, and the trial court denied the plaintiff's motion "for the reasons stated in the objection and in the original order." This appeal followed.

II. Discussion

[¶13] When reviewing the trial court's grant of summary judgment, we consider the affidavits, and all inferences properly drawn therefrom, in the light most favorable to the non-moving party. Loeffler v. Bernier, 173 N.H. 180, 183 (2020). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the grant of summary judgment. Id. We review the trial court's application of the law to the facts de novo. Id. "[A] party opposing summary judgment must do so by affidavits or by reference to depositions, answers to interrogatories, or admissions, . . . set[ting] forth specific facts showing that there is a genuine issue for trial." Granite State Mgmt. & Res. v. City of Concord, 165 N.H. 277, 290 (2013) (quotation omitted). A fact is material if it affects the outcome of the litigation under the applicable substantive law. Franciosa v. Hidden Pond Farm, 171 N.H. 350, 354 (2018).

A. Easements by Implication

[¶14] We first consider the plaintiff's arguments that Lot 3 has implied easement rights to use Park Lane under two theories: estoppel by deed and equitable estoppel (estoppel in pais). As an initial matter, the defendant counters that the plaintiff failed to raise these arguments in the trial court and that they are not preserved for appeal. The plaintiff responds that he preserved these arguments by raising them in his motion for reconsideration.

[¶15] In his motion for reconsideration, the plaintiff argued that the trial court "overlooked both fact and law when making its ruling" because Park Lane and other roadways are "shown on the subdivision plan and referenced as a boundary" in the property description of Lot 3. He also asserted that Lot 3 "enjoys the rights of access to at least Park Lane and Far Echo Road" because "the operative plan subdividing Lot #300 clearly shows Park Lane and Far Echo Road, suggesting that the grantor . . . intended to convey rights of access to the roadways." The defendant objected, disputing the plaintiff's claim that the prior deed's reference to the subdivision plan demonstrated an "intent to convey right of access" to its roadways. The trial court denied the plaintiff's motion "for the reasons stated in the objection and in the original order." Accordingly, we conclude that the plaintiff's argument is preserved for appeal. See Ross, Tr. v. Ross, 170 N.H. 331, 337 (2017) (concluding argument was preserved because "although the trial court did not address [the defendant's argument] in its order, the defendants' failure to raise the issue earlier did not deprive the trial court of the opportunity to address it"); Mortgage Specialists v. Davey, 153 N.H. 764, 786-87 (2006).

[¶16] Turning to the merits, the plaintiff argues that the 1972 Roberts deed's use of Park Lane as a boundary call for Lot 3, and that deed's reference to the 1972 subdivision plan, created implied easement rights to use Park Lane. He claims that the defendant is therefore estopped "from denying that Lot 3 has an easement to use Park Lane." The defendant, on the other hand, claims that estoppel by deed is inapplicable here because the Roberts deed contained no covenants and did not use Park Lane as a boundary call. It also asserts that the plaintiff cannot, as a matter of law, demonstrate that equitable estoppel applies because he cannot demonstrate reliance on language in prior deeds in Lot 3's chain of title.

[¶17] Resolving this issue requires the interpretation of deeds, which presents a question of law that we review de novo. White v. Auger, 171 N.H. 660, 663 (2019). When interpreting a deed, we give it the meaning intended by the parties at the time they wrote it, taking into account the surrounding circumstances at that time. Id. If the language of the deed is clear and unambiguous, we will interpret the intended meaning from the deed itself without resort to extrinsic evidence. Id. at 663-64. If, however, the language of the deed is ambiguous, extrinsic evidence of the parties' intentions and the circumstances surrounding the conveyance may be used to clarify its terms. Id. at 664.

[¶18] We have previously recognized that "[w]here property is conveyed in a deed and one or more of the calls is an abuttal on a private way there is a grant or at least a presumption of a grant of an easement in such way when the way is owned by the grantor." Loeffler, 173 N.H. at 183; 700 Lake Avenue Realty Co. v. Dolleman, 121 N.H. 619, 623 (1981); see also Greenwood v. The Wilton Railroad, 23 N.H. 261, 265 (1851). In these circumstances, "the

grantor, and all claiming under him, are estopped by deed from denying such an easement exists," and "[i]t is of no consequence that the fee to the [private way] remains in the hands of the original grantor or his assigns, or that the grantor did not intend to grant an easement, or that the easement is not one of necessity." Dolleman, 121 N.H. at 623 (citations omitted). "Such an estoppel is one by deed because the deed on its face makes either an express grant or one arising by necessary implication and prevents the grantor from denying the representation made." Id. at 624 (citation omitted).

[¶19] In Dolleman, we distinguished cases "where the face of the deed itself represents that the conveyed parcel borders on a way" from those "where the deed only refers to a plan which in turn indicates the existence or planned construction of streets and ways." Dolleman, 121 N.H. at 623; compare Greenwood, 23 N.H. at 265 (deed described premises "as bounded on the corner" of two named streets), with Regan v. Hovanian, 115 N.H. 40, 41 (1975) (deeds referenced recorded plan that depicted streets), and Douglass v. Company, 76 N.H. 254, 255-56 (1911) (deed referred to recorded plan). In the latter circumstance, implied easements for the use of streets may arise when property owners "all took title with reference to the same plan which showed the various streets." Regan, 115 N.H. at 42-43.

[¶20] When "the deed refers with particularity to a recorded map or plat . . . the grantor adopts and incorporates the map as a part of the deed, and the boundaries set forth on the map should be construed as if written in the deed." Duchesnaye v. Silva, 118 N.H. 728, 732 (1978). Commentators and other jurisdictions are in accord. See 25 Am. Jur. 2d Easements and Licenses § 21 (2004) ("[W]hen a property owner subdivides land and sells lots with reference to a plat, the purchasers of those lots are granted easements in the roadways shown on the subdivision plan . . . and the easement granted to the purchasers is appurtenant to the property . . . ."); Hickey v. Pathways Ass'n, Inc., 37 N.E.3d 1003, 1017-18 (Mass. 2015) ("[E]asements to ways shown on a plan may be recognized based on references to that plan in a deed" because a "plan referred to in a deed becomes a part of the contract so far as may be necessary to aid in the identification of the lots and to determine the rights intended to be conveyed.").

[¶21] Here, the deed conveying Lot 3 and Lot 4 from PPI to Roberts described the property, in relevant part, as:

> Two (2) tracts or parcels of land, together with any improvements thereon . . . being shown as Lot #3 and #4 on a plan for [PPI] . . . dated May 15, 1972 . . . more particularly bounded and described as follows:
> LOT #3: Beginning at an iron pin set in the ground on the Easterly side of Park Lane, so-called, at the Northwest corner of Lot #3 . . . .

[¶22] The deed's description of Lot 3 references and thereby incorporates PPI's 1972 subdivision plan, which shows Lot 3 abutting Park Lane. The 1972 plan also shows "Far Echoes Road," which is labeled in the record as "Far Echo Harbor Road" and "Far Echo Road." When PPI conveyed Lot 3 to Roberts by deed with reference to the 1972 subdivision plan, the plan "became an essential part of [the] conveyance." McCleary v. Lourie, 80 N.H. 389, 392 (1922). As a matter of law, Lot 3 was thus granted an implied easement to use the roadways shown on the 1972 subdivision plan: Park Lane and Far Echo Road. See Regan, 115 N.H. at 42-43; Douglass, 76 N.H. at 256.[3]

[¶23] The plaintiff next argues that the trial court erred by concluding that the lots shown on PPI's 1972 subdivision plan, including Lot 3, were not granted rights to use the defendant's property arising from the existence of a common scheme of development together with the lots shown on Leisuretime's 1959 subdivision plan. The plaintiff relies upon Gage for the proposition that "[w]henever it appears that the original owner has adopted a general scheme of development, and has inserted in his deeds of lots restrictions intended by him and agreed by the purchasers to be for their reciprocal benefit, an equitable right is shown." Nashua Hospital v. Gage, 85 N.H. 335, 339 (1932). The equitable right discussed in Gage, however, was the right to enforce a restriction on the use of land as an equitable servitude. Id. at 335-36, 338; see also Gauthier v. Robinson, 122 N.H. 365, 368 (1982). "The rationale for enforcing promises restricting the use of land as equitable servitudes is that he who takes land with notice of a restriction upon it will not in equity and good conscience be permitted to act in violation of the terms of these restrictions." Traficante v. Pope, 115 N.H. 356, 359 (1975) (quotation omitted).

[¶24] Here, the subdivided lots shown on Leisuretime's 1959 subdivision plan were conveyed with express rights to use the Lot 200 beach area. The plaintiff does not argue that these express rights for the use of the Lot 200 beach area constitute restrictions that were intended to inure to the benefit of all of the Far Echo Harbor Club lots. See Gage, 85 N.H. at 339. Thus, the plaintiff does not seek the enforcement of an equitable servitude. Rather, he seeks to secure for Lot 3 an implied easement for use of the defendant's property — specifically, its roadways and the Lot 200 lakefront beach area. While our cases recognize that a common scheme of development may give rise

[3] In Gagnon v. Moreau, we stated that "where lots are sold by reference to a recorded plat or plan showing existing or proposed streets which constitute boundaries of the lots, a conveyance ordinarily operates to convey to the grantee the fee simple to land underlying adjoining streets and rights of way to the center line thereof," in addition to "easements to use such rights of way as well as others which do not bound the lot conveyed." Gagnon v. Moreau, 107 N.H. 507, 509 (1967). Here, the plaintiff did not seek "the fee simple to land underlying" Park Lane in his petition. Furthermore, the Roberts deed's description of Lot 3 as bounded by "iron pin[s] set in the ground" on the side of Park Lane, and the fact that PPI later conveyed the roadways, including Park Lane, to the defendant, indicate that PPI did not intend to convey "to the grantee the fee simple to land underlying adjoining streets." Id.

to enforceable equitable servitudes, see, e.g., Gauthier, 122 N.H. at 367; Varney v. Fletcher, 106 N.H. 464, 465-67 (1965), they do not recognize the creation of a right of use arising from the existence of a common scheme of development. But cf. Burke v. Pierro, 159 N.H. 504, 508-10 (2009) (finding insufficient evidence of common scheme of development where plaintiffs asserted "entitlement to an equitable servitude implied from a common scheme of development" for use of defendants' property).

[¶25] The plaintiff's reliance upon Gage, and his argument that Lot 3 may obtain a property interest in Lot 200 arising from a common scheme of development, therefore, are misplaced. Even if the plaintiff were able to establish that Lot 3 was intended to be part of a common scheme of development together with the lots shown on the 1959 subdivision plan, the existence of such a common scheme of development would not grant Lot 3 an implied easement for the use of the defendant's property. Given this conclusion, we need not address the plaintiff's argument that the trial court construed the evidence in the defendant's favor and overlooked other evidence in the record that was material to whether Lot 3 and the Far Echo Harbor Club lots were intended to be part of a common scheme of development.

B. Easement by Prescription

[¶26] Finally, we address the plaintiff's argument that the trial court erred by granting summary judgment to the defendant on the plaintiff's prescriptive easement claim. A party claiming to have a prescriptive easement must prove by a balance of probabilities twenty years' adverse, continuous, uninterrupted use of the land claimed in such a manner as to give notice to the record owner that an adverse claim was being made to it. Stowell v. Andrews, 171 N.H. 289, 297 (2018). "The nature of the use must have been such as to show that the owner knew or ought to have known that the right was being exercised, not in reliance upon the owner's toleration or permission, but without regard to the owner's consent." Id. (quotation omitted). Use is adverse when it is trespassory, meaning that it consists of a wrong which the fee holder can prevent or for which he can obtain damages by means of legal action. Id.

[¶27] To establish a prescriptive easement to the defendant's property, including the Lot 200 lakefront beach area, the plaintiff was required to prove that his predecessors in title to Lot 3 used the property now owned by the defendant for a period of twenty or more years; that such use was adverse, continuous, and uninterrupted; and that the defendant or its predecessors had notice thereof. See id. The plaintiff alleged in his petition that the prior owners of Lot 3 used the defendant's roadways and "enjoyed access to Community Area #200 and other common areas" for a period of twenty-eight years between November 1973 and August 2002. The trial court determined that the plaintiff had failed to identify any person who had adversely used Far Echo Harbor Club property and owned property rights to the subdivided Lot 300.

[¶28] The plaintiff submits that this conclusion was error and that the trial court construed the evidence in the defendant's favor. He maintains that prior owners of Lot 3, who did not own other property in Far Echo Harbor Club, used the defendant's property — specifically, the Lot 200 beach area — from 1981 to 2018. Regarding the time period from 2002 until 2018: in August 2002, the defendant granted Petersen permissive use of the beach area "as a guest under [his] parents' membership." Although the plaintiff asserts that Petersen therefore did not have permission to use the defendant's roadways, there is no evidence in the record regarding Petersen's use of the defendant's roadways to support the plaintiff's claim. Because Petersen's permissive use presumably continued until he conveyed Lot 3 to the plaintiff in 2018, our inquiry as to adverse use of the defendant's property is limited to the period before August 2002.

[¶29] As the defendant contends, the plaintiff lacks first-hand knowledge of any adverse use that might have occurred before 1984, when he first purchased another property that was part of Far Echo Harbor Club. The plaintiff nonetheless claims that there is evidence in the record that he "observed the prior owners of Lot 3 visiting Lot 3 and using Park Lane and Lot 200 between the time that he became a member of [Far Echo Harbor Club] in 1984 until 2002" and that, during those years, "no owner of Lot 3 owned another lot in FEHC or was given permission by [Far Echo Harbor Club] to use Park Lane and Lot 200." We note that the plaintiff's argument — that there is evidence that the prior owners of Lot 3 adversely used the Lot 200 lakefront beach area from 1984 to 2002 — falls short of establishing twenty years of adverse use of the defendant's property. See id.

[¶30] At his deposition, the plaintiff, referring to Lot 3, recalled that he "would see cars parked over there in the summertime." He did not, however, remember seeing any of the people who parked their cars at Lot 3 use the Lot 200 beach area, although he "assumed they were . . . using the beach for the day." He also stated that he did not know whether the people he had observed parking at Lot 3 "had other property within the Far Echo Harbor Club community" that would have separately granted them beach access rights. Furthermore, he could not identify any individuals in particular who previously owned Lot 3 and adversely used the Lot 200 lakefront beach area.

[¶31] The plaintiff's testimony is insufficient to create a genuine issue of material fact as to a prescriptive easement. See Granite State Mgmt. & Res., 165 N.H. at 290 (explaining that party opposing summary judgment must do so by "set[ting] forth evidentiary, and not ultimate, facts" and that "mere general averments [are] insufficient"). That the plaintiff observed cars parked at Lot 3 during the summer, and his assumption that the cars he saw parked at Lot 3 belonged to prior owners of Lot 3 who were also using the beach area without permission, without more, do not demonstrate twenty years of adverse, continuous, uninterrupted use of the defendant's property. See Stowell, 171

N.H. at 297. Therefore, we conclude that the trial court properly granted summary judgment to the defendant on the plaintiff's prescriptive easement claim.

III. Conclusion

[¶32] To summarize, we conclude that the trial court erred by granting summary judgment to the defendant on the plaintiff's claim that Lot 3 has implied easement rights as a matter of law to use the roadways shown on the 1972 subdivision plan: Park Lane and Far Echo Road. In addition, we conclude that Lot 3 lacks either an implied or a prescriptive easement for use of the defendant's other roadways and the Lot 200 beach area, and that the trial court properly granted summary judgment to the defendant on those claims. We therefore reverse the trial court's grant of summary judgment only as to Lot 3's right to use Park Lane and Far Echo Road and remand for further proceedings consistent with this opinion.

Affirmed in part; reversed in part; and remanded.

MACDONALD, C.J., and COUNTWAY and GOULD, JJ., concurred.

<u>Exhibit A</u>

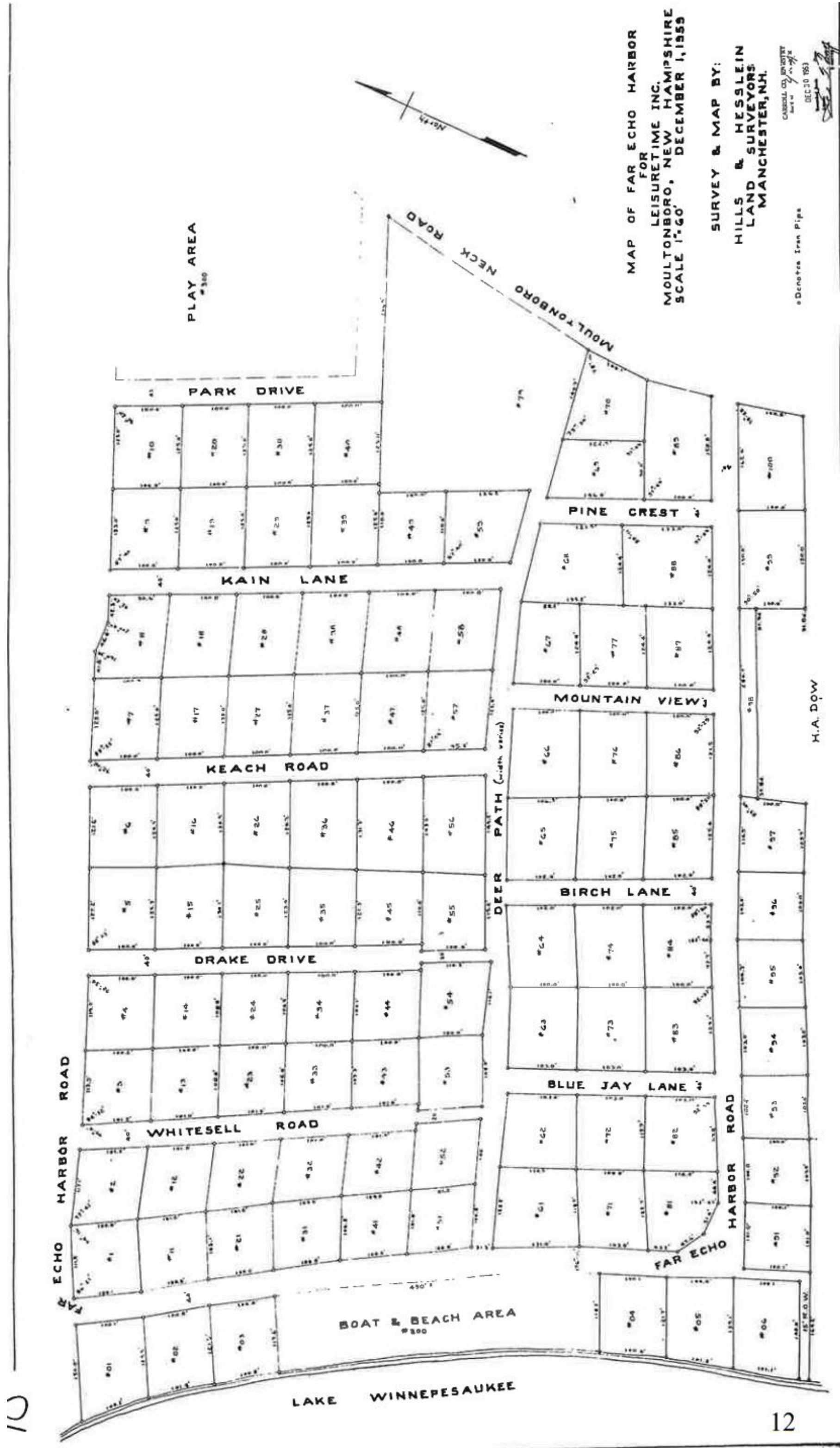

Exhibit B