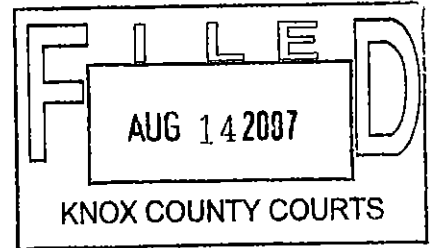


STATE OF MAINE  
KNOX, ss

SUPERIOR COURT  
CIVIL ACTION  
AP-06-003

ROBERT GASSETT,  
PATRICIA BOLZ,  
AVERY LARNED,  
THERON MOORE,  
CHRISTINE MORAND,  
LUCY GOULET.  
SAMUEL F. MANNING, and  
SUSAN H. MANNING



Petitioners

v.

DECISION & ORDER

THE INHABITANTS OF THE TOWN  
OF CAMDEN

Defendant

AND

CAMDEN AFFORDABLE HOUSING  
ORGANIZATION

Party-in-Interest

This action came before the court on petitioners' appeal pursuant to M.R. Civ. P. 80B from the Town of Camden's Planning Board's (the Board) approval of Camden Affordable Housing Association's (CAHO) subdivision application for the Lupine Terrace Subdivision.

### **PROCEDURAL HISTORY & BACKGROUND**

The petitioners' filed their appeal on May 17, 2006. On June 2, 2006, party-in-interest, CAHO, filed an answer. On August 18, 2006, petitioners filed their brief. On September 6, 2006, the petitioners' filed a motion to amend the

complaint removing some of the petitioners and an amended complaint. On September 25, 2006, the Town of Camden filed its brief. CAHO filed its brief on September 26, 2006. On October 10, 2006, the petitioners replied to the briefs filed by the Town and CAHO. On October 16, 2006, this Court granted petitioners' motion to amend the complaint. Oral arguments on the appeal were heard on May 11, 2007.

### DISCUSSION

A court will uphold a board's decision unless that decision is an abuse of discretion, contrary to law or lacks the support of substantial evidence on the record. *Uliano v. Bd. of Envt.l Prot.*, 2005 ME 88, ¶¶ 6-7, 876 A.2d 16, 18. The interpretation of a zoning ordinance is a question of law that the Court reviews *de novo*. *Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 15, 831 A.2d 422, 427. The court may not substitute its own judgment for that of the Board. *Forbes v. Town of Southwest Harbor*, 2001 ME 9, ¶ 6, 763 A.2d 1183, 1186. The plaintiffs raise four challenges on appeal: notice, adequacy of the Board's findings, the Town's Subdivision Ordinance conflicts with state law and the Town's Subdivision Ordinance is unconstitutional.

#### A. Notice to Abutters

"The Board shall also notify by certified mail, return receipt requested, all abutting property owners of the proposed subdivision." Subdivision Ordinance, Town of Camden, Maine, art. IV, §5(B), p. 409 (effective June 1987, rev. March 15, 1988, June 14, 1989, March 12, 1990). Abutting property owners are also required to be notified upon receipt of the final application. *Id.* art. IV, § 6(D).

The Town failed to notify abutting landowners in accordance with the ordinance by sending the notice late, however, petitioners stated in their brief and in oral argument that they were not prejudiced by this failure of the town and, therefore, no remedy on this basis is warranted.

B. The Board's Findings of Fact

1) Design Standards for the Open Space Zoning

In districts other than the Rural-A, Rural-2 and Coastal Residential Districts where residential development is allowed, the provisions of this Article shall be optional. In such districts, notwithstanding other provisions of this Ordinance, the Planning Board in reviewing and approving proposed residential subdivisions may modify provisions relating to space and bulk to permit innovative approaches to housing and environmental design in accordance with the standards of this Article.

Article IX, § 2(2) "Open Space Zoning," *Zoning Ordinance of the Town of Camden, Maine* (eff. November 4, 1992). The design standards are "objectives (which are listed in order of priority as it is recognized that some may conflict with others on a given site)." *Id.* § 4. For the districts not zoned Rural-1, Rural-2, or Coastal, development is allowed:

- (a) where on-site wastewater disposal is to be used, on suitable soils for subsurface wastewater disposal;
- (b) in a manner that minimizes the length of the roadways, public utility lines, and other infrastructure within the proposed development;
- (c) in a manner that maximizes as part of the required open space the amount of contiguous land suitable for recreational use;
- (d) to provide planting, landscaping, fencing, and screening to buffer the development from, and integrate it with, the character of any surrounding development;
- (e) in locations where buildings will not interfere with the solar access of other properties.

*Id.* at § 4(3).

On March 1, 2006, the Board voted in favor of the following finding of fact:

The applicant has satisfied the Purpose of Article IX, Open Space Zoning because their Plan has provided for flexibility of design in employing reduced lot sizes and reduced lot frontages, has allowed for an area of open space where there was not one before, provides space for passive recreation, efficiently uses the land by locating the passive recreation space on the land least suitable for development instead of trying to reformulate that land into buildable land, and has provided opportunities for affordable housing.

R. at 16(l), p. 6.

The petitioners concede in their brief that the Board made findings that the subdivision plan met the design standards of the Open Space Zoning Ordinance. See R. at 16(l), p. 5. The petitioners argue that the Board failed to make a finding that the plan met the purpose of the ordinance. Contrary to the petitioners' assertions, the Board did make findings of fact concerning the purpose of the subdivision ordinance as indicated above. The record contains a substantial amount of evidence that the Board could have relied upon in making their findings and it is not the function of this court to substitute its judgment for that of the Board's. The petitioners fail to point to facts, or lack thereof, in the record upon which the board made its decision to support its contention that the record does not support the Board's decision.

## 2) Subdivision Criteria Concerning Roads

The petitioners also assert that the Board's findings concerning traffic, road congestion and unsafe conditions with respect to Beech Street, Thomas Street, and Cobb Road were not supported by substantial evidence in the record. The petitioners next argue that the Board failed to use its power to bring Beech Street into compliance with the subdivision ordinance that requires all *proposed* streets to be designed and constructed in accordance with the subdivision

ordinance. However, by the terms of the ordinance, only new roads must meet these requirements. The Board did make a finding of fact that “the proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.” R. at 16(m), p. 6. Furthermore, the petitioners contend that the Board did not adopt their views concerning pedestrian safety. It is not the function of this court to question the evidence that the board chose to rely upon in making its decision, rather the court must determine if such evidence exists. The petitioners presented their arguments to the Board and the Board chose to adopt the position of the developer of the subdivision, which is supported by the record.

C. Does the Town’s Ordinance Conflict with State Law

In its brief, petitioner’s assert that some provisions of the zoning ordinance conflict with state law, but that those conflicts are not relevant to this appeal. The court will not review issues irrelevant to the appeal.

D. Is the Ordinance Unconstitutional

An ordinance requirement that proposed development “conserve the natural beauty” is unconstitutional because it fails to provide reasonable standards to guide those to whom the ordinance is being applied. *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 12, 752 A.2d 183, 186. See also *Stucki v. Plavin*, 291 A.2d 508, 510 (Me. 1972).

The petitioners assert that certain language makes the Open Space Ordinance unconstitutional because it contains no clear standards and therefore is an unlawful delegation of authority to the Board. The main language at issue

seems to be the words “innovative” and “environmental” in the purpose section of the open space zoning provision of Camden’s zoning ordinance, specifically:

the Planning Board in reviewing and approving proposed residential subdivisions may modify provisions relating to space and bulk to permit innovative approaches to housing and environmental design in accordance with the standards of this Article.

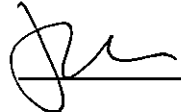
Zoning Ordinance of the Town of Camden, Maine art. IX, § 2(2) (November 4, 1992). By the terms of the purpose section, an applicant must meet specific design standards, enumerated in the article in order to obtain approval of a proposed subdivision.

Also, the petitioner asserts terms such as “minimizing” and “maximizing,” in the design standards make the standards unconstitutionally vague. The term minimizing is defined as: “To reduce to the smallest possible amount, extent, size, or degree.” *The American Heritage Dictionary of the English Language* (Houghton Mifflin Co., 4th ed. 2004.) at <http://dictionary.reference.com/browse/minimizing>. The term maximizing is defined as: “To increase or make as great as possible.” *The American Heritage Dictionary of the English Language* (Houghton Mifflin Co., 4th ed. 2004.) at <http://dictionary.reference.com/browse/maximizing>. These terms are not impermissibly vague. Both terms are not fixed points, but do give defined standards, while remaining neutral enough to apply to the numerous possible plans that are to be considered under the ordinance.

**CONCLUSION**

The petitioners' appeal is DENIED and the decision of the Board is AFFIRMED. The clerk shall incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: 8/13/07



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Joyce A. Wheeler, Justice