STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-AP-2018-05

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| FRIENDS OF LAMOINE, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>TOWN OF LAMOINE,<br><br>Defendant.<br><br>HAROLD MACQUINN, INC.,<br><br>Party in Interest. | ) | ORDER ON HAROLD MACQUINN, INC.'S MOTION FOR RECONSIDERATION OF AMENDED JUDGMENT |

On June 17, 2019, this Court entered an order (the "Order") granting in part and denying in part the motion for reconsideration or to alter or amend the judgment filed by Party in Interest Harold MacQuinn, Inc. ("MacQuinn"). Although the Court substantively amended its original order based on valid points raised in MacQuinn's motion, the revised analysis did not change the Court's ruling in its original order granting the appeal in this case brought by Plaintiffs Friends of Lamoine and Jeffrey Dow, as Trustee for the Tweedie Trust ("Friends") pursuant to M.R. Civ. P. 80B—the practical result of which was to prevent MacQuinn from expanding an existing gravel pit in the Town of Lamoine (the "Town").

MacQuinn has now moved for reconsideration of the Order pursuant to M.R. Civ. P. 59(e), raising new arguments directed specifically at the Court's revised analysis. The Court considers the motion on its merits because it raises arguments that are unique to the revised analysis in the amended judgment and thus could not have been presented previously. See

M.R. Civ. P. 7(b)(5). Nonetheless, for the reasons explained below, the Court denies the motion.[1]

In its revised analysis, the Court affirmed the Planning Board's denial of MacQuinn's application under Lamoine's Site Plan Review Ordinance ("SPRO") based on its finding that MacQuinn's application for a permit under the SPRO presented insufficient evidence that the proposed expansion would (1) "preserve the landscape in its natural state insofar as practicable by minimizing tree removal [and] disturbance of soil" and (2) "maintain and preserve . . . the isolated wetland to the maximum extent." (Pl.'s Ex. C-8.)[2] The Court further concluded that this finding was supported by substantial record evidence. MacQuinn argues that there is not substantial record evidence to support either of the Planning Board's explicit findings, and urges the Court to reconsider its conclusion to the contrary in the Order.

"Substantial evidence is evidence that a reasonable mind would accept as sufficient to support a conclusion." *Id*. ¶ 12 (quoting *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, ¶ 8, 746 A.2d 368). "The possibility of drawing two inconsistent conclusions from the evidence does not make the evidence insubstantial." *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, ¶ 8, 746 A.2d 368 (citing *Veilleux v. City of Augusta*, 684 A.2d 413, 415 (Me. 1996)); *see also Herrick v. Town of Mech. Falls*, 673 A.2d 1348, 1349-50 (Me. 1996). Furthermore, the party challenging the sufficiency of the evidence "has the burden of showing that the record evidence *compels* a contrary conclusion." *Tarason v. Town of S. Berwick*, 2005 ME 30, ¶ 6, 868 A.2d 230 (citing *Twigg v. Town of Kennebunk*, 662 A.2d 914, 916 (Me. 1995); *Boivin v. Town*

[1] The period to oppose MacQuinn's motion has not yet expired and Friends has not yet filed an opposing memorandum. However, under M.R. Civ. P. 7(b)(5), "[t]he court may in its discretion deny a motion for reconsideration without hearing and before opposition is filed."

[2] Under its revised analysis, it is unnecessary for the Court to rely on implicit findings regarding Cousins Hill, which had formed the basis for the Court's order on Friends' appeal prior to MacQuinn's first motion for reconsideration.

*of Sanford*, 588 A.2d 1197, 1199 (Me. 1991)) (emphasis added). *See also Herrick v. Town of Mech. Falls*, 673 A.2d 1348, 1349 (Me. 1996). In other words, to vacate the Planning Board's findings, MacQuinn "must demonstrate that *no competent evidence* supports the Planning Board's conclusions." *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 12, 750 A.2d 577 (citing *Twigg v. Town of Kennebunk*, 662 A.2d 914, 916 (Me. 1995)) (emphasis added).

MacQuinn systematically argues why the record evidence cited by the Court and relied upon by the Planning Board *could* support a finding that the proposed expansion zone would not endanger the isolated wetland, but such an argument is misplaced on appeal, where the Court cannot substitute its judgment for that of the Planning Board. For example, in arguing that the Planning Board—and the Court—may have misread the map located at page 615 of its application, MacQuinn concedes that the proposed expansion area comes within "a little under 600 feet" of "Wetland C," the westernmost of the four wetlands within the vicinity of the proposed expansion, and partially surrounds the wetland in an L-shape. Whether extraction in the expansion area at such a distance preserves the wetland "to the maximum extent" is classic factfinding entrusted to the Planning Board under Lamoine's SPRO. The Court cannot second-guess the Planning Board's determination. In other words, even this map is competent evidence that the Planning Board could have relied upon in making its finding: it depicts a proposed extraction area that approaches and partially surrounds an isolated wetland identified by MacQuinn in its application.

MacQuinn points out that the wetland is located within land owned by MacQuinn for which it has already received SPRO approval for gravel extraction, as depicted on the map, and argues that this demonstrates the "absurdity" of the Planning Board's finding. The Court does not find this argument persuasive. The fact that a prior composition of the Planning

Board reached a different conclusion on a different application is irrelevant to whether substantial record evidence supports the Planning Board's finding denying MacQuinn's expansion application. *See Sproul*, 2000 ME 30, ¶ 8, 746 A.2d 368 ("The possibility of drawing two inconsistent conclusions from the evidence does not make the evidence insubstantial.")

In sum, on reconsideration, the Court maintains its conclusion that the Planning Board's finding that the proposed expansion will not maintain and preserve the isolated wetland to the maximum extent is supported by substantial evidence in the record.

MacQuinn further argues that the Planning Board's finding that MacQuinn's proposed expansion would not preserve the landscape in its natural state as much as practicable, by minimizing tree removal and disturbance of soil, is not supported by substantial evidence. Although the Planning Board did not expressly find that the expansion would cause trees to be removed and soil disturbed in the parcel, that point has never been in controversy. Effectively, although couched in terms of substantial evidence, MacQuinn's argument is that the Planning Board committed an abuse of discretion in failing to waive these requirements of section J.1 because they would always defeat SPRO approval of gravel extraction. The Court has previously rejected the argument that it was an abuse of discretion for the Planning Board to apply section J.1 and declines to consider MacQuinn's reargument of the point. *See Shaw v. Shaw*, 2003 ME 153, ¶ 8, 839 A.2d 714 (citation omitted).

For all of the foregoing reasons, MacQuinn's motion for reconsideration of the amended judgment is denied.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

So Ordered.

Dated: July 9, 2019

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Michael A. Duddy
Judge, Business and Consumer Docket