

STATE OF MAINE  
CUMBERLAND, SS.

BUSINESS AND CONSUMER COURT  
LOCATION: PORTLAND  
Docket No. BCD-CV-16-32

SOIL PREPARATION, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOWN OF PLYMOUTH, )  
 )  
 Defendant. )  
 )

ORDER ON PLAINTIFF’S MOTION  
FOR PARTIAL RECONSIDERATION

Plaintiff Soil Preparation, Inc. (“SPI”) has moved for partial reconsideration of the court’s March 28, 2017 order denying Plaintiff’s motion for summary judgment on Counts I, III, V of its complaint and granting summary judgment for Defendant Town of Plymouth (the “Town”) on those counts pursuant to Maine Rule of Civil Procedure 56(c). For the following reasons, SPI’s motion for partial reconsideration is granted.

**BACKGROUND**

As set forth in the court’s March 28, 2017 order on SPI’s motion for summary judgment, SPI operates a solid waste facility in Plymouth, Maine licensed by the Maine Department of Environmental Protection (“DEP”). SPI receives and processes septage, sludge, and other materials from several municipalities, quasi-municipal entities, and licensed haulers throughout Maine.

On March 19, 2016, the Town adopted “An Ordinance Regulating Solid Waste Facilities” (the “Solid Waste Ordinance” or “Ordinance”). On or about May 9, 2016, the Town sent a letter to SPI informing it of the new Solid Waste Ordinance and instructing SPI to submit an application for a new permit to the Planning Board. SPI filed a complaint against the Town on July 28, 2016. SPI’s complaint set forth seven counts for declaratory judgment challenging the

validity and applicability of the Ordinance and two civil rights claims pursuant to 42 U.S.C. § 1983. The Town answered on August 26, 2016. This matter was subsequently transferred to the Business and Consumer Court.

During a telephonic conference with the court on December 14, 2016, SPI represented to the court that Counts I, III, and V of its complaint presented dispositive legal issues that could be decided without discovery. The court stayed discovery and set a briefing schedule for SPI to submit a motion for summary judgment on Counts I, III, and V. SPI filed its motion for summary judgment on January 9, 2017. SPI requested that the court enter summary judgment declaring: (1) that the authority the Town intends to exercise pursuant to the Solid Waste Ordinance exceeds the powers allowed by the Legislature pursuant to 38 M.R.S. § 1310-U of the Maine Hazardous Waste, Septage and Solid Waste Management Act (the “Solid Waste Act”) (Count I); (2) that § 1310-U specifies the areas in which municipalities can impose standards, that the Ordinance exceeds those areas, and that Ordinance is therefore invalid (Count III); and (3) that, pursuant to the terms of § 1.2 of the Ordinance, the Town’s Solid Waste Ordinance does not apply to SPI’s pre-existing facility (Count V).

On March 28, 2017, the court entered an order denying SPI’s motion for summary judgment on Counts I, III, and V. In its order, the court rejected SPI’s arguments regarding § 1310-U and its interpretation of the Ordinance. The court also entered summary judgment in favor of the Town on Counts I, III, and V pursuant to Maine Rule of Civil Procedure 56(c).

SPI filed a motion of partial reconsideration on April 7, 2017. SPI does not object to the court’s denial of its motion for summary judgment. (Pl. Mot. Reconsider 2, 6.) SPI only requests that the court vacate its entry of summary judgment for the Town. (*Id.* at 8.) The Town

filed an opposition on April 21, 2017. SPI filed its reply on April 28, 2017. Oral argument was held on May 5, 2017.

### **STANDARD OF REVIEW**

Motions for reconsideration are permitted to bring to the court's attention an error, omission, or new material that could not previously have been presented. M.R. Civ. P. 7(b)(5). A motion to reconsider a judgment shall be treated as motion to alter or amend the judgment. M.R. Civ. P. 59(e). The court will grant a motion to amend the judgment if "it is reasonably clear that prejudicial error has been committed or that substantial justice has not been done." *Cates v. Farrington*, 423 A.2d 539, 541 (Me. 1980).

### **ANALYSIS**

SPI asserts that its motion for summary judgment was not comprehensive, but rather, limited to certain, discrete issues of law appropriate for summary judgment. (Pl. Reply 1-2.) SPI contends that the court's entry of summary judgment in favor of the Town as the non-moving party was overly broad because it precluded SPI from litigating any further legal or factual issues that may arise under Counts I, III, and V. (Pl. Mot. Reconsider 6.)

Count I of SPI's complaint seeks a declaratory judgment that the Solid Waste Ordinance exceeds the authority granted by the Legislature under § 1310-U and § 1305(6) of the Solid Waste Act. (Compl. ¶¶ 38-43; Pl. Mot. Summ. J. 2.) Count III of SPI's complaint seeks a declaratory judgment that § 1310-U specifies the areas in which municipalities can impose standards on solid waste facilities, that the Ordinance exceeds those areas, and that Ordinance is therefore invalid (Count III). (Compl. ¶¶ 53-64; Pl. Mot. Summ. J. 2.)

SPI's motion for summary judgment argued that that § 1310-U expressly or by clear

implication preempted the Town's municipal home rule authority to adopt ordinances regarding solid waste management. (Pl. Mot. Summ. J. 15, 18.) SPI further argued that, although § 1310-U preempted municipal authority, the statute permitted municipalities to adopt ordinances in the limited areas identified therein. (*Id.* at 14.) SPI argued that the Town's Solid Waste Ordinance exceeded the authority permitted to it under § 1310-U because (1) the Ordinance claims authority "coterminous" with the State's authority, (2) the Ordinance subjects existing facilities to permitting requirements by treating them like new facilities, and (3) § 8.2 and § 8.4 of the Ordinance claim *de facto* authority for the Town to enforce State and Federal enforcement and licensing decisions. (*Id.* at 19-21.) The court rejected these arguments for the reasons stated in its March 28, 2017 order.

In its motion for reconsideration, SPI contends that, in addition to allegations regarding § 1310-U, Count I also included allegations that the Ordinance exceeds the limits on municipal authority by § 1305(6) of the Solid Waste Act. (Pl. Reply 6; Compl. ¶ 40.) SPI argues it did not raise § 1305(6) as part of its motion for summary judgment and that it is now precluded from litigating any claims regarding § 1305(6) under Count I. (Pl. Reply 7-8.) SPI also contends that the court's order precludes it from arguing under Count I that the Town has exceeded its authority to adopt standards under § 1310-U in ways not addressed in the motion for summary judgment. (*Id.* at 8-9.) Specifically, SPI asserts it should not be precluded from arguing that the Town exceeded its authority under § 1310-U by incorporating into its Ordinance DEP standards that were adopted by DEP under authority other than Chapter 13 of Title 38 and Articles 5-A and 6 of Chapter 3 of Title 38. (*Id.*)

Regarding Count III, SPI asserts that its motion for summary judgment did not argue that

any particular standards in the Ordinance were “more strict than” those allowed under § 13010-U because SPI sought to challenge only the Town’s authority to enact the Ordinance in the first place. (*Id.* at 10.) SPI contends that the wording of the Ordinance could be challenged as “more strict than” the standards set forth in Chapter 13 of Title 38 by applying the Solid Waste Act’s standards to existing facilities. (*Id.* at 9-10.) SPI also contends that certain quantitative standards in the Ordinance may actually be “more strict than” that those set forth in the applicable statutes or rules. (*Id.* at 10-12.) SPI asserts that the court’s entry of summary judgment on Count III precludes it from raising these arguments. (*Id.*)

Count V of SPI’s complaint seeks a declaratory judgment that the Town’s Solid Waste Ordinance does not apply to SPI’s solid waste facility. (Compl. ¶¶ 72-80; Pl. Mot. Summ. J. 2.) In its motion for summary judgment, SPI argued that, pursuant to the express terms of § 1.2 of the Ordinance, the Town’s Solid Waste Ordinance simply did not apply to SPI’s facility because SPI was not seeking a permit from a governmental authority that had not been obtained or become final prior to the effective date of the Ordinance. (Pl. Mot. Summ. J. 22-23.) SPI also argued that the Town’s interpretation of § 1.2 and § 8.1 of the Ordinance, requiring SPI to apply for a new permit for its pre-existing facility, violated the presumption against retroactive legislation. (*Id.* at 26-29.) The court rejected these arguments for the reasons stated in its March 28, 2017 order.

SPI contends that in determining whether a law may apply retroactively, the court must examine: (1) whether there was an express intent to make law retroactive; and (2) whether the retroactive application violates any provisions of the Maine Constitution. (Pl. Reply 12-13); *see MacImage of Me., LLC v. Androscoggin Cty.*, 2012 ME 44, ¶ 21, 40 A.3d 975. SPI’s motion for

summary judgment did not put forth any arguments regarding the constitutionality of the Ordinance's retroactive application. (Pl. Mot. Summ. J. 26-29; Pl. Reply to Mot. Summ. J. 19-24.) Thus, the court did not address the issue in its order. SPI argues that the court's entry of summary judgment on Count V precludes it from raising any constitutional challenges to the alleged retroactive application of the Town's Ordinance. (Pl. Reply 12-13.)

Lastly, SPI argues that, because no discovery has been conducted in this action, there may be genuine issues of fact regarding Counts I, III, and V that have yet to be developed by the parties. (*Id.* at 14.)

Based on the foregoing, the court is convinced there are additional issues of law and questions of fact that SPI may be able to develop regarding Counts I, III, and V of the complaint. Those potential issues were beyond the scope of discrete issues of law raised in SPI's early motion for summary judgment. SPI should not be precluded developing and raising those issues later in this litigation. Therefore, the court will vacate its entry of summary judgment for the Town on Counts I, III, and V.

### **CONCLUSION**

Plaintiff Soil Preparation, Inc.'s motion for partial reconsideration is **GRANTED**. The court's entry of summary judgment in favor of Defendant Town of Plymouth on Counts I, III, and V of Plaintiff's complaint is **VACATED**.

The Clerk is instructed to enter this Order on the docket for this case incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

