

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. Yor-25-345

MICK LAND DEVELOPMENT, INC.,

Petitioner/Appellant,

vs.

TOWN OF SOUTH BERWICK

Respondent/Appellee

On appeal from the York County Superior Court
Docket No. AP-24-5 and AP-24-25

**BRIEF OF RESPONDENT/APPELLEE TOWN OF SOUTH
BERWICK**

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Table of Contents

Table of Authorities	3
Introduction	5
Statement of Facts and Procedural History.....	6
Summary of the Argument.....	12
Standard of Review.....	13
Argument	15
A. The Planning Board Has the Authority to Impose Conditions of Approval.	15
B. The Planning Board’s Decision is Supported by Substantial Evidence.....	18
C. The Planning Board’s Decision Was Not Arbitrary, Capricious, or Unreasonable	22
Conclusion	23

Table of Authorities

Cases

<i>AngleZ Behav. Health Servs. v. Dep't of Health & Hum. Servs.</i> , 2020 ME 26, 226 A.3d 762, 768	22, 23
<i>Belgrade Shores, Inc.</i> , 371 A.2d 413, 416 (Me. 1977).....	16, 18
<i>Bizier v. Town of Turner</i> , 2011 ME 116, 32 A.3d 1048.....	15
<i>Curtis v. Town of South Thomaston</i> , 1998 ME 63, 708 A.2d 657.....	16
<i>Duffy v. Town of Berwick</i> , 2013 ME 105, 82 A.3d 148.....	14, 15
<i>Fitanides v. City of Saco</i> , 2015 ME 32, 113 A.3d 1088.....	13
<i>Friends of Lamoine v. Town of Lamoine</i> , 2020 ME 70, 234 A.3d. 214, 222.....	14
<i>Gorham v. Town of Cape Elizabeth</i> , 625 A.2d 898, 903 (Me. 1993).....	14
<i>Juliano v. Town of Poland</i> , 1999 ME 42, 725 A.2d 545	13
<i>Murray v. City of Portland</i> , 2023 ME 57, 301 A.3d 777	13
<i>Ouellette v. Saco River Corridor Comm'n</i> , 2022 ME 42, 278 A.3d 1183, 1191.....	23
<i>Thacker v. Konover Dev. Corp.</i> , 2003 ME 30, 818 A.2d 1013	14, 18, 21
<i>Town of Kittery v. Dineen</i> , 2017 ME 53, 157 A.3d 788.....	13, 14
<i>Twigg v. Town of Kennebunk</i> , 662 A.2d 914, 916 (Me.1995).....	14, 22
<i>Watts v. Board of Environmental Protection</i> , 2014 ME 91, 97 A.3d 115.....	13, 21

Other Authorities

South Berwick, Me., Code § 121-12(E) (Oct. 10, 2017).....	17
South Berwick, Me., Code § 121-31(H) & (I) (Oct. 17, 2017)	16
South Berwick, Me., Code § 121-36(A)(C),(D) (Oct. 17, 2017)	16
South Berwick, Me., Code § 140-77(E) (Oct. 24, 2017).....	16, 17

Introduction

Defendant/Appellee Town of South Berwick (the “Town”) submits this Brief in opposition to Plaintiff/Appellant Mick Land Development, Inc.’s (“Appellant”) appeal of the Town Planning Board’s (the “Board”) decision to condition its approval of Appellant’s Major Site Plan Application (the “Application”) requiring the posting of signage restricting access to the Appellant’s subdivision via Meadow Pond Road to emergency vehicles only (the “Condition”). In reviewing evidence presented over numerous meetings, the Board determined that the Condition was required to address pedestrian and bicycle traffic within the subdivision. The Condition is reasonable and supported by substantial evidence in the record. The Board based its decision on a correct application of the law, competent evidence in the record, and did not abuse its discretion in making its findings.

In an effort to distract from the evidentiary support for the Board’s imposition of a condition of approval, Appellants argue that the Board’s decision to impose the Condition was unlawful and exceeded its jurisdiction under the Town’s ordinances. These arguments fail to obscure that all the Board did in its review was apply the Town’s ordinances to the application before it and impose a condition of approval that was reasonable, tied to a specific review standard, and supported by evidence in the record. In sum, this appeal is without merit and therefore should be denied.

Statement of Facts and Procedural History

Appellant is the owner of a 174-acre parcel of land situated off Meadow Pond Road in South Berwick, Maine. (A. 44, R. 144.) The planned subdivision (“Phase III”) represents the third phase of the Meadow Pond Subdivision. (A. 132, 153.) Phase III (also referred to as “Samville,” or “Samville Estates”) consists of 174 acres with 35 residential lots. (A. 132, 153.) Phases I and II connect with Phase III (collectively the “Subdivisions”) at the cul-de-sac on Meadow Pond Road. (A. 115, R. 16.) Samville Estates will also be accessed from Industry Drive in the Town of Berwick. (A. 117, 132, 137.)

On April 8, 2022, Appellant submitted an application for cluster subdivision review under the Town’s Ordinances for Samville Estates. (A. 113-115, R 9-16.) As part of the review process, the Board held numerous public meetings discussing the Application.¹ (A. 36, 155-161, 167- 170, 174, 201-217, 218-228, 229-236, 258, 288-299, 300, R. 79-84.)

During these meetings, local residents raised numerous concerns related to the impact that added traffic from Samville Estates along Meadow Pond Road would have on neighborhood safety. (A. 160, 167, R. 660.) At the April 19, 2023 meeting,

¹ These meetings occurred on April 20, 2022, May 18, 2022, December 7, 2022, January 4, 2023, April 19, 2023, May 3, 2023, June 7, 2023, November 1, 2023, November 15, 2023, February 21, 2024, March 6, 2024, July 17, 2024, and August 7, 2024.

the attorney for the Meadow Pond Homeowners Association from the Phase I and II developments reported to the Board that “the roads [within the subdivision] are curvy and very winding, and the visibility is not great” and that the road extension for Samville would be located at “the most congestive part of the existing subdivision” and allowing through traffic would “create a danger.” (A. 160.) Similarly, at the May 3, 2023 meeting, residents noted Meadow Pond Road was “curvy” with “blind spots.” (A. 167.) At the same time, residents informed the Board that, of the eighteen children residing in Phases I and II, many bike and rollerblade in and around the road. (A. 167-168.) One resident expressed concerns with visibility when leaving Meadow Pond Estates subdivision onto Knights Pond Road and stated that exiting the subdivision was “dangerous.” (A.167). The Board learned more about these safety conditions in an email from a resident to the Town Code Enforcement Officer on May 5, 2023, specifically regarding visibility, the curvy nature of Meadow Pond Road, and the need for increased lighting and speed bumps. (A. 179.) To address their concerns, the residents requested that the Planning Board require a gate and knock box at the entrance to Samville. (A. 167.) Additionally, residents stated at the February 21, 2024, meeting that signage excluding all non-emergency vehicles from accessing Samville Estates via Meadow Pond Road would resolve “99 percent of the conditions [they] had requested that were all safety related.” (A. 236.)

As part of the Application, Appellant presented a traffic assessment to the Board, with an initial recommendation that primary access to Samville should be via Meadow Pond Road with secondary access from Industry Drive, with a locked Knox box on Industry Drive to keep industrial and residential traffic separated. (A. 137-140.) The assessment noted that Samville Estates would generate an additional 350 one-way weekday trips each day, with 28 one-way trips in the AM peak hour and 37 during the PM peak hour. (A. 138.) It further noted that the increased traffic would have no significant impact off-site beyond the access drives on capacity or traffic operations, that there were no high crash locations within the vicinity of the site, and that sight distance for the proposed access points will exceed the recommended minimums. (A. 138-140.) Appellants also provided an updated, second, assessment that did not meaningfully alter the analysis above. (A. 149-152.)

On March 6, 2024, the Board ultimately approved the Application. (A. 36-42.) In concluding that the traffic requirement in Section 121-12(E) of the Subdivision Ordinance was met, the Board found the following:

This standard has been met. A Traffic Impact Assessment was completed with a date of October 13, 2022 and is within the application documents. To limit residential traffic from this development from traveling through the existing Meadow Pond Phase 1 and 2, the Planning Board imposed Condition 6. This condition requires a sign stating “emergency access only” on the roadway connecting the new development and Meadow Pond Phases 1 and 2, which allows for a 2nd point of egress in the case of emergency but does not cause undue burden on the residential roadways existing in Meadow Pond Phases 1 and 2. All residential traffic from the new development must utilize the

Industry Drive entrance, except in the case of an emergency.

(A. 38.)

The Board also imposed several conditions for approval, including the aforementioned Condition 6 (“the Condition”). (A. 42.) The Condition reads as follows: “The new private road access from Meadow Pond Road into Samville Estates Subdivision will be posted with appropriate road signs stating, ‘Emergency Access Only,’ and ‘No Thru Way.’” (A. 42.) On April 5, 2024, Appellant appealed this decision to the Superior Court. On May 17, upon agreement by the parties, Appellant filed a Motion to Stay the appeal to allow for continued settlement discussions.

On June 7, 2024, Appellant filed an amendment request (the “Amendment Request”) with the Board seeking to amend the Condition. (A. 259-286.) At the Board meeting on July 17, 2024, the Appellant presented the application and requested that the Condition be amended to instead require the posted sign to simply read “No Thru Trucks” to prevent construction vehicles on Industry Drive from utilizing Samville Estates and Meadow Pond Road as access to Knights’s Pond Road and Harvey Road. (A. 288-299.) In support of its application the Appellant also submitted a summary of its previous traffic assessments. (A. 276-279.) The Board found that the submitted summary, however, did not meaningfully contradict or supplement the findings of the first assessment. (*Compare A. 276-279 with A. 137-*

138.) The summary did note that if all access to Samville Estates was provided via Industry Drive, MDOT would require a full-traffic impact study, including updated turning movement counts, revised trip assignments, level of service and capacity analysis for the Route 4/Industry Drive intersection, among other analyses. (A. 278.) During the public hearing, residents again reiterated concerns related to traffic safety within the Subdivisions. (A. 296, R. 660.) Residents also testified as to the lack of information provided by the Appellant through the traffic impact study related to pedestrian and cyclist safety, and regarding traffic concerns related to the Knights Pond Road access point. (R. 660.)

Consistent with its March 6, 2024 conditional approval, on September 17, 2024, the Board determined that Appellant did not present enough information to amend the Condition and denied the Amendment Request. (A. 43.)

On August 15, 2024, Appellant filed the instant 80B Complaint and, with the consent of the Town, moved to consolidate the matter with a pending, related, appeal. After briefing, the Court remanded the appeal to the Board to develop additional findings of fact and conclusions of law. Specifically, the Court instructed the Board to clarify its basis for imposing specific conditions regulating traffic within the pertinent subdivision. As such, on January 8, 2025, the Board adopted supplemental findings of facts and conclusions of law (the “Remanded Findings”), as ordered. (A.44) In addressing the Condition, the Board found the following as it

relates to the traffic and street standards in Sections 121-12.E, 121-23, and 121-44 of the Subdivision Ordinance:

This standard has been met. The Planning Board received a number of materials related to the potential increase in traffic as a result of the proposed subdivision and specifically connecting the Existing Meadow Pond Estates and Industry Drive. A Traffic Impact Assessment was completed with a date of October 13, 2022 and is within the application documents.

The Planning Board also received testimony from traffic professional and current residents of Meadow Pond Estates Phases I and II. Neighboring residents indicated that the additional traffic from the proposed subdivision combined with the existing layout of the roads of Phases I and II would result in adverse impact to pedestrian and bicycle traffic if not mitigated.

While the materials received do ensure safe motor vehicle passage, the shape and resulting vehicles speeds do not provide assurances to pedestrian and bicycle traffic without mitigation. In response to concerns on pedestrian and bicycle traffic on the Existing Meadow Pond Road as a result of the added traffic, the Planning Board has imposed Condition 6.

Condition 6 will limit residential traffic from this development from traveling through the existing Meadow Pone Phases 1 and 2. The reduction of residential traffic will ensure safe traffic circulation for pedestrians and bicyclists within Phase 1 and 2 of Meadow Pond Estates.

This condition requires a sign stating “emergency access only” on the roadway connecting the new development and Meadow Pond Phases 1 and 2, which allows for a 2nd point of egress in the case of emergency but does not cause an undue burden on the residential roadways existing in Meadow Pond Phase 1 and 2. All residential traffic from the new development must utilize the industry drive entrance, except in case of emergency.

...
(A. 48).

The Town submitted the Remanded Findings to the Court on January 15, 2025 clarifying the specific factual bases for the Board's decision. The Remanded Findings explicitly tied the Board's determinations to the record evidence, providing the factual basis necessary for this Court to proceed with its review of the merits of the appeal. (*See* A. 44.) Plaintiff requested permission from the Court for supplemental briefing, which was granted on January 27, 2025.

Following supplemental briefing, the Superior Court affirmed the decision of the Planning Board in its Order on May 6, 2025, finding that decision to impose the Condition was supported by competent evidence in the record, and was not arbitrary, capricious or an abuse of discretion due to the Board's safety concerns and reliance on the relevant ordinance standard. (A. 21-23). The Appellant then filed a Notice of Appeal to this Court, and the present appeal followed.

Summary of the Argument

Appellee Town of South Berwick respectfully requests that this Court affirm the South Berwick Planning Board decision to condition its approval of Appellant's Major Site Plan Application on Appellant posting signage restricting access to the Appellant's subdivision via Meadow Pond Road to emergency vehicles only. Because the Board based its decision on a correct application of the law, competent

evidence in the record, and did not abuse its discretion in making its findings, the appeal must be denied and this Court should affirm the Board's decision.

Standard of Review

When the Superior Court acts as an intermediate appellate court, this Court reviews the Planning Board's decision directly for error of law, abuse of discretion or findings not supported by substantial evidence in the record. *Murray v. City of Portland*, 2023 ME 57, ¶ 13, 301 A.3d 777. A court must uphold the decisions of a municipal board unless their conclusions were unlawful, arbitrary, capricious or unreasonable. *Juliano v. Town of Poland*, 1999 ME 42, ¶ 5, 725 A.2d 545. The Appellants bear the burden of persuasion on appeal. *Fitanides v. City of Saco*, 2015 ME 32, ¶ 8, 113 A.3d 1088.

In reviewing a municipal board's fact-finding, the Court must "examine the entire record to determine whether, on the basis of all the testimony and exhibits before it, the [municipal body] could fairly and reasonably find the facts as it did." *Town of Kittery v. Dineen*, 2017 ME 53, ¶ 25, 157 A.3d 788 (quoting *Beal v. Town of Stockton Springs*, 2017 ME 6, 153 A.3d 768). A court will not "weigh the merits of evidence or substitute [its] judgment for that of the [body]." *Watts v. Board of Environmental Protection*, 2014 ME 91, ¶ 11, 97 A.3d 115.

The Court “must affirm the findings of fact if they are supported by *any* competent evidence in the record.” *Town of Kittery*, 2017 ME 53, ¶ 25, 157 A.3d 788 (emphasis added); *Thacker v. Konover Dev. Corp.*, 2003 ME 30, ¶ 8, 818 A.2d 1013. “Substantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion.” *Town of Kittery*, 2017 ME 53, ¶ 25, 157 A.3d 788. (quotations omitted). For this reason, a board’s finding is “not wrong” or unsupported by substantial evidence simply because two inconsistent conclusions can be drawn from the evidence. *Twigg v. Town of Kennebunk*, 662 A.2d 914, 916 (Me.1995); *See Friends of Lamoine v. Town of Lamoine*, 2020 ME 70, ¶ 21, 234 A.3d. 214, 222.

Even where contradictory evidence may exist, “[t]he fact that two inconsistent conclusions can be drawn from the evidence does not mean that a board’s finding is unsupported by substantial evidence[.]” *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898, 903 (Me. 1993) (citations omitted), and “[t]he fact that the record before the Board is inconsistent or could support a different decision does not render the decision wrong.” *Duffy v. Town of Berwick*, 2013 ME 105, ¶ 22, 82 A.3d 148 (internal quotations omitted).

The Court reviews ordinance language *de novo* for its plain meaning and will “construe its terms reasonably in light of the purposes and objectives of the ordinance and its general structure.” *Bizier v. Town of Turner*, 2011 ME 116, ¶ 14,

32 A.3d 1048 (internal quotations omitted). Moreover, “[a]lthough interpretation of an ordinance is a question of law, [the court] accord[s] substantial deference to [a] Planning Board’s characterizations and fact-findings as to what meets ordinance standards.” *Id.* at ¶ 8. Last, when interpreting an ordinance, courts should seek to give effect to the legislative intent. *See Duffy*, 2013 ME 105, ¶ 23, 82 A.3d 148.

Argument

A. The Planning Board Has the Authority to Impose Conditions of Approval

The Town’s Zoning and Subdivision Ordinances each give authority to the Board to impose conditions generally and to impose the Condition under the facts presented.

First, the Town’s Site Plan Review provisions within the Zoning Ordinance explicitly gives the Planning Board authority to impose conditions when a site plan application meets all of the review criteria. The Site Plan Review provision in Section 140-77(E) of the Zoning Ordinance provides that “upon consideration of the [review standards], the Planning Board may attach such conditions, in addition to those required elsewhere in this chapter, that it finds legally necessary to further the purposes of this chapter and section and to protect the long-range health, safety, and

welfare of the Town.” South Berwick, Me., Code § 140-77(E) (Oct. 24, 2017)²; (A. 101.)

Further, the Subdivision Ordinance also clearly anticipates that the Planning Board may impose conditions as part of its review. Section 121-31(H) & (I) of the Subdivision Ordinance requires the Planning Board to state any conditions of approval when granting approval to a preliminary plan, and notes that the Board may require additional changes as a result of further study of the subdivision in final form or as a result of new information. South Berwick, Me., Code § 121-31(H) & (I) (Oct. 17, 2017) (A. 73.) As part of final review, the final plan must include any approval conditions made by the Board as part of the preliminary plan approval, the Board may further allow for a performance guarantee “as a condition of the approval,” and then the Planning Board must “approve, modify and approve, or disapprove the application...”. South Berwick, Me., Code § 121-36(A)(C),(D) (Oct. 17, 2017); (A. 75.) This plain authority by itself is fatal to Plaintiff’s argument that the imposition of the Condition was somehow unlawful or outside of the scope of the Board’s authority.

Further, the Condition is specifically related to the Subdivision standards. Under the Subdivision Ordinance the Board is required to consider pedestrian and

² This Court has further held that boards may impose conditions on development applications to promote the public welfare and safety. *See, e.g., Curtis v. Town of South Thomaston*, 1998 ME 63, ¶ 6, 708 A.2d 657; *In re Belgrade Shores*, 371 A.2d 413, 415 (Me. 1977).

road safety when reviewing the Application. (A. 62); South Berwick, Me., Code § 121-12(E) (Oct. 10, 2017) (“The subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed...”); (A. 102); South Berwick, Me., Code § 140-77(E)(2) (Oct. 24, 2017) (“Internal vehicular circulation. The layout of the site shall provide for the safe movement of passenger, service and emergency vehicles throughout the site. The road network shall provide for vehicular and pedestrian safety...”).

Here, the Board specifically concluded that the imposition of the Condition would “ensure safe traffic circulation for pedestrians and bicyclists within Phase 1 and 2 of Meadow Pond Estates” and tied the imposition condition to the requirements in Section 121-12(E). (A. 38; A. 48.) The imposition of a condition to further the objective of ensuring safe traffic circulation within the subdivision falls squarely within the authority granted to the Board by the Ordinances, because the Board has the power to grant a condition to further the purpose of the ordinance - including to ensure safe traffic circulation.

Finally, the Board would be empowered to deny a site plan if it determined that pedestrians would not be sufficiently safe, and the power to deny an application on a given basis necessarily implies the authority to issue a condition of approval to address this same concern. *See In re Belgrade Shores, Inc.*, 371 A.2d 413, 416 (Me.

1977) (“A series of disapprovals pending the applicant's correction of deficiencies in its proposal would achieve the same effect as conditional approval. We therefore view the choice between those two methods as a question of semantics and, as such, fully within the Board's discretion . . .”).

The Board’s authority to impose the Condition is derived from the plain language of the Ordinances and from its duty to consider pedestrian and road safety. The Condition was explicitly imposed in furtherance of the health and safety objectives contemplated by the Ordinances. Even in the absence of an explicit provision, the Board possesses the inherent authority to impose a condition of approval in lieu of denial of an application on that same basis. Because this plain explicit and implicit authority exists, Appellant’s contention that the Board’s actions here were arbitrary, ultra vires or otherwise unlawful is wholly without merit.

B. The Planning Board’s Decision is Supported by Substantial Evidence

The core of Appellant’s appeal presents a straightforward question for the Court to address: whether the Condition—which addresses safety concerns *within* the Subdivisions—is reasonable and supported by substantial evidence in the record.

Under applicable law, a complete lack of competent evidence in support of the Board’s decision is required in order to vacate the Board’s decision. *Thacker*, 2003 ME 30, ¶ 8, 818 A.2d 1013.

Ample evidence exists in the record to support the Board's imposition of the Condition. The evidence in outlined in the original March 2, 2024 Findings, the September 17, 2024 Findings of Fact from Appellant's Application to Amend the Condition, and the January 9, 2025 Remanded Findings of Fact, which add to and contextualize the Board's Findings, provide more than sufficient evidence to accept and support the Board's position.

Residents presented detailed testimony to the Board related to the pedestrian and vehicular safety concerns within the neighboring subdivisions stemming from Samville Estates on multiple occasions. At the April 19, 2023 meeting, abutting residents testified to the Board that "the roads [within the Phases I and II] are curvy and very winding, and the visibility is not great." (A. 160.) The residents also noted that the signage at issue in this appeal would be at "the most congestive part of the existing subdivision" and allowing through traffic would "create a danger." (A. 160.)

Moreover, at the May 3, 2023, meeting, residents noted that Meadow Pond Road was "curvy" with "blind spots." (A. 167). At that same meeting, residents informed the Board that, of the eighteen children residing in Phases I and II, many play in and around an area near the proposed signage. (A. 167). The Board heard more concerns about unsafe conditions within the Subdivisions in an email from a resident to the Town Code Enforcement Officer on May 5, 2023. (A. 179). Accordingly based on the substantial evidence before it, the Board, in response to

the initial application, properly imposed the Condition which aims to promote public safety by decreasing through traffic through the Subdivisions.

In addition, the Board's decision to deny Plaintiff's request to amend its application was supported by substantial evidence in the record. During the July 17, 2024 meeting, the Board continued to hear from residents regarding safety concerns. Specifically, residents highlighted the lack of information related to pedestrian and cyclist safety within the traffic impact study submitted by the Applicant. (A. 49, R. 660). At the same meeting, in addition to concerns about increased traffic from Knights Pond Road access point, residents continued to emphasize traffic safety concerns related to utilizing Meadow Pond Road as the main entrance instead of Industry Drive. (A. 296, R. 660). Accordingly, the Chair of the Board noted that, "there are legitimate traffic issues existing in Meadow Pond with pedestrian safety issues." (A. 295). At the same meeting a separate Board member noted that the Condition was imposed because of "safety issues" in the Subdivisions. (A. 297). In sum, the Board correctly denied the amended application upon competent record evidence.

Finally, the Remanded Findings of Fact consolidate the full scope of evidence the Board considered: the Subdivision Plan, multiple traffic assessments, the Appellant's argument on appeal of the Condition, five public hearings, testimony

from the public, insights from the Board’s May 3, 2023 Site Walk, and the Board’s own jurisdiction and minimum requirements for approval. (A. 44-50.)

As a result of the full record of evidence before it, the Board noted that “while the materials received do ensure safe motor vehicle passage, the shape and responding vehicle speeds to not provide assurances to pedestrian and bicycle traffic without mitigation. In response to concerns on pedestrian and bicycle traffic on the existing Meadow Pond Road as a result of the [traffic from the proposed subdivision], the Planning Board has imposed [the Condition].” (Remanded Findings 5; A. 48.)

The relevant standard of review is whether *any* competent record evidence—which includes the testimony—supports the Board’s determination, not whether the residents’ testimony is corroborated by *additional* record evidence or through a weighing of the merits of the evidence in the record. *See Thacker*, 2003 ME 30, ¶ 8, 818 A.2d 1013; *Watts*, 2014 ME 91, ¶ 11, 97 A.3d 115. The Board reasonably relied upon testimony in the record to support its decision. As such, there is competent evidence in the record, and the analysis need not go further. “The Board’s

decision is not wrong because the record is inconsistent or a different conclusion could be drawn from it.” *Twigg*, 662 A.2d at 916.

Because there is ample competent evidence that a reasonable mind can accept as adequate in support of the Board’s determination, the Court should affirm the Board’s determination to impose the Condition.

C. The Planning Board’s Decision Was Not Arbitrary, Capricious, or Unreasonable

The Court’s arbitrary, capricious or unreasonable standard is high, such that a decision is not arbitrary or capricious “unless its action is ‘wilful and unreasoning’ and ‘without consideration of facts or circumstances.’” *AngleZ Behav. Health Servs. v. Dep’t of Health & Hum. Servs.*, 2020 ME 26, ¶ 23, 226 A.3d 762, 768 (quoting *Kroeger v. Dep’t of Env’t. Prot.*, 2005 ME 50, ¶ 8, 870 A. 2d 566).

The Board’s decision is not wilful and unreasoning because it worked dutifully within its legal authority as outlined above to address a safety concern not addressed by the Appellant’s Application based on the record evidence before it. Appellant’s disagreement with the Condition does not mean that it is an unreasoned decision.

Second, the Board considered the facts and circumstances when it reviewed evidence provided by the applicant and third-party experts, asked questions, considered comments from the public, and asked for more information at thirteen

public meetings.³ The Board referred to Section 121-123(E) as authority to impose the Condition based on safety concerns present to the Board as part of the record. All of this demonstrates that the Board's action on Appellant's subdivision was considered and not at all arbitrary or capricious. *See e.g. AngleZ*, 2020 ME 26, ¶ 25, 226 A.3d 762; *Ouellette v. Saco River Corridor Comm'n*, 2022 ME 42, ¶ 22, 278 A.3d 1183.

Conclusion

The Planning Board carefully reviewed Plaintiff's application and evidence brought to its attention regarding traffic safety within the Meadow Pond Subdivision over the course of many meetings. There is substantial evidence in the record to support the Board's decision to impose the Condition. For the foregoing reasons, the Planning Board's decision to include the Condition did not exceed the Board's authority, the Board based its decision on competent evidence in the record, and the Board's actions were not arbitrary or capricious. As such, the Town respectfully requests that the Court deny Mick Land Development, Inc.'s appeal and affirm the Superior Court order affirming the decision of the South Berwick Planning Board.

³ The thirteen meetings took place on April 20, 2022, May 18, 2022, December 7, 2022, January 4, 2024, April 19, 2023, May 3, 2023, June 7, 2023, November 1, 2023, November 15, 2024, February 21, 2024, March 6, 2024, July 17, 2024, and August 7, 2024.

Dated at Portland, Maine, this 9th day of December 2025.

Respectfully submitted,



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