

BASIL L. KELLIS et al.

v.

TOWN OF WELLS et al.

Argued May 9, 2012

Decided May 31, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,
GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Basil L. Kellis and his sons, Michael and Mark Kellis, appeal from the judgment of the Superior Court (York County, *Fritzsche, J.*) affirming the Town of Wells Planning Board's interpretation of Wells, Me., Subdivision of Land Ordinance § 202-12(B) (Apr. 16, 2004). The Kellis argue that the Planning Board misinterpreted the subdivision ordinance at issue when it required Berryman Holdings, LLC, to make a payment in lieu of reserving open space on land that Berryman planned to subdivide. Contrary to the Kellis' contention, the Planning Board did not misinterpret the ordinance. As the Superior Court noted, "[t]he Board dealt with an ambiguous and difficult ordinance that would benefit from redrafting." Although the language in section 202-12(B)(1) seemingly conflicts as applied to the Berryman subdivision project, section 202-12(B)(4) clarifies under what circumstances the Planning Board may require a payment in lieu of actual reservation of space. *See Davis v. SBA Towers II, LLC*, 2009 ME 82, ¶ 22, 979 A.2d 86 (holding that ordinance provisions should not be interpreted as conflicting "when there is an alternative, reasonable interpretation that yields harmony").

Additionally, the Kellis family contend that the Planning Board misinterpreted section 202-12(B)(4) regarding how much Berryman was required to pay in lieu of reserving open space. We similarly reject the Kellis family interpretation of section 202-12(B)(4) for calculating payments and affirm the interpretation of the Planning Board. *See Stewart v. Town of Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27 (“We review the Board’s decision for an abuse of discretion, error of law, or findings unsupported by substantial evidence in the record.” (quotation marks omitted)); *Wells v. Portland Yacht Club*, 2001 ME 20, ¶ 8, 771 A.2d 371 (“[W]e construe a statute to avoid absurd, illogical, or inconsistent results.” (quotation marks omitted)).

The entry is:

Judgment affirmed.

On the briefs:

William H. Dale, Esq., and Mark A. Bower, Esq., Jensen Baird Gardner & Henry, Portland, for appellants Basil L. Kellis, Michael Kellis, and Mark Kellis

Leah B. Rachin, Esq., Bergen & Parkinson, LLC, Kennebunk, for appellee Town of Wells

David P. Silk, Esq., Curtis Thaxter Stevens Broder & Micoleau, LLC, Portland, for appellees Berryman Holdings, LLC, and Mark Haseltine

At oral argument:

William H. Dale, Esq., for appellants Basil L. Kellis, Michael Kellis, and Mark Kellis

David P. Silk, Esq., for appellees Berryman Holdings, LLC, and Mark Haseltine

Leah B. Rachin, Esq., for appellee Town of Wells