

BERNARD MADDEN et al.

v.

TOWN OF FRANKFORT

Argued January 14, 2014
Decided February 4, 2014

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

MEMORANDUM OF DECISION

Bernard Madden, Kermit Allen, and Wayne Allen (collectively Madden) appeal from a final judgment of the Superior Court (Waldo County, *R. Murray, J.*) entered on orders: denying Madden's motion for partial summary judgment as to the second count of Madden's amended complaint, which alleges that the Town of Frankfort Wind Energy Facility Ordinance (the Ordinance) is an illegally promulgated zoning ordinance; granting a summary judgment to the Town on, and thus dismissing, that count of Madden's complaint; and granting the Town's motion to dismiss two other counts of the complaint.¹

Contrary to Madden's contention, the court did not err in concluding that, on this record, the Ordinance is not a zoning ordinance, and therefore, is not an illegally promulgated zoning ordinance. *See* 30-A M.R.S. § 4301(15-A) (2013); *Town of Vassalboro v. Barnett*, 2011 ME 21, ¶ 6, 13 A.3d 784 (stating that we review the interpretation of statutes and ordinances de novo); *LaBay v. Town of*

¹ The court granted Madden's unopposed motion to dismiss the remaining counts of Madden's amended complaint and to enter final judgment on these orders, allowing this action to become ripe for appeal.

Paris, 659 A.2d 263, 264-66 (Me. 1995); *see also* 30-A M.R.S. §§ 3001, 4301(8) (2013); *Bragdon v. Town of Vassalboro*, 2001 ME 137, ¶ 8, 780 A.2d 299 (“Zoning involves the particularistic division of the city into zones for the purpose of applying different proscriptions and . . . regulations in the different zones. Municipal ordinances that regulate in a general and uniform city- or town-wide manner, such as a building code, do not qualify as zoning.”) (citations omitted); *Benjamin v. Houle*, 431 A.2d 48, 49-50 (Me. 1981); *Town of Boothbay v. Nat’l Adver. Co.*, 347 A.2d 419, 423 (Me. 1975).

Additionally, the court did not err in dismissing Madden’s claim that the Wind Ordinance Review Committee’s actions in drafting the Ordinance violated Madden’s due process rights under the Maine Constitution. *See* M.R. Civ. P. 12(b)(6); *Crispin v. Town of Scarborough*, 1999 ME 112, ¶ 18, 736 A.2d 241 (stating that there is generally no entitlement to constitutional due process protections when property rights are alleged to be adversely affected by the legislative acts of government); *America v. Sunspray Condo. Ass’n*, 2013 ME 19, ¶ 13, 61 A.3d 1249 (stating the standard of review); *see also New Orleans Water Works Co. v. New Orleans*, 164 U.S. 471, 481 (1896) (stating that the passage of ordinances by municipal assemblies are legislative acts); *Nat’l Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 746 (1st Cir. 1995). Finally, the court did not err in dismissing Madden’s claim seeking review pursuant to M.R. Civ. P. 80B. *See* M.R. Civ. P. 80B; *F.S. Plummer Co., Inc. v. Town of Cape Elizabeth*, 612 A.2d 856, 859 (Me. 1992).

The entry is:

Judgment affirmed.

On the briefs:

David P. Silk, Esq., and Benjamin M. Leoni, Esq., Curtis Thaxter LLC, Portland, for appellants Bernard Madden, Kermit Allen, and Wayne Allen

Mark V. Franco, Esq., Thompson & Bowie, LLP, Portland, for appellee Town of Frankfort

At oral argument:

Benjamin M. Leoni, Esq. for appellants Bernard Madden,
Kermit Allen, and Wayne Allen

Mark V. Franco, Esq., for appellee Town of Frankfort

Waldo County Superior Court docket number AP-2012-1
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