

LEONARD A. PIERCE et al., TRUSTEES of 10 BEACH PLUM LANE  
and 12 BEACH PLUM LANE TRUSTS

v.

TOWN OF OGUNQUIT

Argued September 11, 2018  
Decided September 20, 2018

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and  
HUMPHREY, JJ.

MEMORANDUM OF DECISION

Leonard A. Pierce and Patrick N. Caron, Trustees of 10 Beach Plum Lane and 12 Beach Plum Lane Trusts (collectively, the property owners) appeal from a judgment of the Superior Court (York County, *O'Neil, J.*) affirming the Town of Ogunquit Planning Board's decision denying their application for site plan approval to construct a 266-foot-long dock-and-float system across a salt marsh on the Ogunquit River. *See* M.R. Civ. P. 80B; Ogunquit, Me., Zoning Ordinance art. 6.5(B) (Nov. 8, 2016). We affirm the judgment.

Contrary to the property owners' contention, the applicable land use ordinances authorize the Board to independently consider the environmental impact of the proposed project. *See* 38 M.R.S. §§ 435, 438-A (2017); Ogunquit, Me., Zoning Ordinance art. 1.1, 6.6(C)(3), 9.15(C)(2), 9.15(C)(3) (Nov. 8, 2016). Moreover, the Board did not err in its identification of the relevant "area" in applying the ordinance to the proposed development. Ogunquit, Me., Zoning Ordinance art. 9.15(C)(4) (Nov. 8, 2016); *see also Olson v. Town of Yarmouth,*

2018 ME 27, ¶¶ 11, 16, 179 A.3d 920; *Lentine v. St. George*, 599 A.2d 76, 79-80 (Me. 1991).

The property owners also assert that the Board's findings are unsupported by the evidence. Because the property owners bore the burden of proof during the municipal proceeding, they must demonstrate on appeal "that the evidence compels a contrary conclusion." See *Veilleux v. City of Augusta*, 684 A.2d 413, 415 (Me. 1996). The Board was not compelled to find in the property owners' favor given the record evidence—which included testimony, the Board members' own observations during the site walk, and several studies and reports provided during one of the public hearings—that supports the Board's determination that the dimensions of the proposed project are not "consistent with existing conditions, use, and the character of the area." Ogunquit, Me., Zoning Ordinance art. 9.15(C)(4); see also *Olson*, 2018 ME 27, ¶¶ 11, 22, 179 A.3d 920.

Finally, the property owners were not denied due process on the basis of bias and procedural unfairness. *Wolfram v. Town of N. Haven*, 2017 ME 114, ¶ 20, 163 A.3d 835. A Board member's attempt to seek guidance about the interpretation of an ordinance was permitted by statute, 5 M.R.S. § 9055(2) (2017), and, in any event, did not influence the Board's decision, see *Wolfram*, 2017 ME 114, ¶ 21, 163 A.3d 835. Beyond that, although it was improper for the Board member to conduct outside research, see 5 M.R.S. § 9059(4) (2017), any impropriety was harmless because the information at issue was cumulative of other material properly presented to the Board, see *Zegel v. Bd. of Soc. Worker Licensure*, 2004 ME 31, ¶ 17, 843 A.2d 18.

The entry is:

Judgment affirmed.

---

Sandra L. Guay, Esq. (orally), Woodman Edmands Danylik & Austin, P.A., Biddeford, for appellants Leonard A. Pierce and Patrick N. Caron, Trustees of 10 Beach Plum Lane and 12 Beach Plum Lane Trusts

Natalie L. Burns, Esq. (orally), Jensen Baird Gardner & Henry, Portland, for appellee Town of Ogunquit

York County Superior Court docket number AP-2017-11  
FOR CLERK REFERENCE ONLY