

DAVID NEWSON

v.

TOWN OF KITTERY et al.

Argued May 6, 2025
Decided May 13, 2025

Panel: STANFILL, C.J., and MEAD, HORTON, CONNORS, LAWRENCE, DOUGLAS,
and LIPEZ, JJ.

MEMORANDUM OF DECISION

David Newson appeals from the judgment of the Superior Court (York County, *Mulhern, J.*) entered pursuant to M.R. Civ. P. 80B affirming the decision of the Kittery Planning Board to grant a zoning boundary line extension to IDC 5, LLC and to approve IDC 5's application to operate a marijuana dispensary on a lot located at 181-185 State Road. Newson argues that the Planning Board's procedure denied him procedural due process. We disagree. But even if there was a violation of procedural due process, Newson bears the burden of demonstrating that he was prejudiced by the alleged violation. *See Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 11, 179 A.3d 920 (stating that the party seeking to vacate the Planning Board's decision bears the burden of persuasion on appeal); *Fitanides v. Saco*, 2015 ME 32, ¶ 22, 113 A.3d 1088 ("Although we conclude that the City Planner's email to the ZBA was wholly inappropriate, we must review the record to determine if it caused prejudice to Fitanides."); *Wolfram v. Town of N. Haven*, 2017 ME 114, ¶ 20, 163 A.3d 835 ("Procedural errors are harmless and will not be grounds to vacate a decision unless they are inconsistent with substantial justice and result in prejudice."). At no point in this case, before either the Planning Board, the Superior Court, or us, did

Newson argue that the Planning Board's decision prejudiced him. Moreover, we cannot find any indication in the record of how he may have been prejudiced, and we affirm the judgment. *See Anderson v. New England Herald Dev. Grp.*, 525 A.2d 1045, 1046 (Me. 1987) ("Protective as we are of the constitutional right to due process, which ensures fairness in the government's dealings with citizens, we simply cannot find any possible support for plaintiffs' appeal.").

The entry is:

Judgment affirmed.

Zachary B. Brandwein, Esq. (orally), and Joseph E. Long, Esq., Dentons Bingham Greenebaum LLP, Portland, for appellant David Newson

Gordon R. Smith, Esq. (orally), Verrill Dana, LLP, Portland, for appellee IDC 5 LLC

Stephen E.F. Langsdorf, Esq. and Cameron Ferrante, Esq. (orally), Preti, Flaherty, Beliveau & Pachios, LLP, Augusta, for appellee Town of Kittery