

BRADLEY M. LOWN et al.

v.

TOWN OF KENNEBUNKPORT

Submitted On Briefs June 30, 2008

Decided August 12, 2008

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

MEMORANDUM OF DECISION

Bradley M. Lown, Sarah V. Lown, and Elizabeth A. Lown appeal from the denial of their motion for reconsideration of a judgment entered in the Superior Court (York County, *Brennan, J.*) affirming, pursuant to M.R. Civ. P. 80B, a decision of the Town of Kennebunkport Board of Appeals. In that decision, the Board concluded that the Lowns' construction of a pier on their property located in Cape Porpoise constituted a nonconforming use that was not permitted by applicable ordinances, and ordered the Lowns to remove the pier in accordance with a prior notice of violation from the Town's Code Enforcement Officer. Contrary to the Lowns' contention, competent evidence exists in the record to support the Board's findings that the Lowns had discontinued their use of the previously existing pier they purported to replace, and that the work done on the pier constituted new construction on a prohibited nonconforming use and was not a permitted repair. *See* Kennebunk, Me., Land Use Ordinance §§ 5.7(C)(4)(a), 8.6 (June 13, 2006); *Griswold v. Town of Denmark*, 2007 ME 93, ¶ 9, 927 A.2d 410, 414-15. The Board was not compelled to find otherwise. *See Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, ¶ 5, 712 A.2d 1061, 1063. Moreover, the contentions of the Lowns that the local ordinance is preempted by State and federal law, and that the ordinances prohibiting the construction of a pier

in the location of the Lowns' property are unconstitutional, are without merit. *See Warren v. Mun. Officers of the Town of Gorham*, 431 A.2d 624, 627-28 (Me. 1981).

The entry is:

Judgment affirmed.

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