

ELLSWORTH COMMONS, LP

v.

CITY OF ELLSWORTH

Submitted On Briefs January 22, 2009

Decided February 17, 2009

Panel: CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Ellsworth Commons appeals pursuant to 5 M.R.S. § 11008 (2008) and M.R. Civ. P. 80B from a judgment entered in Superior Court (Hancock County, *Hjelm, J.*) affirming the Ellsworth Planning Board's decision denying the Commons's application for a major subdivision.

We review the decision of the Board directly for errors of law, abuse of discretion, or findings of fact unsupported by substantial evidence in the record. *Lane Constr. Corp. v. Town of Washington*, 2008 ME 45, ¶ 11, 942 A.2d 1202, 1207. The burden of proof rests with the party seeking to overturn the Board's decision, and that party must prove that no competent evidence supports the Board's decision. *Id.*; *Thacker v. Konover Dev. Corp.*, 2003 ME 30, ¶ 8, 818 A.2d 1013, 1017. Inconsistent evidence will not render the Board's decision unsupported. *Bushey v. Town of China*, 645 A.2d 615, 619 (Me. 1994).

Contrary to the Commons's claim, the evidence does not show that certain Board members had a conflict of interest with or bias against its project, or that its application met all the requirements for a major subdivision. The evidence, as a whole, supports the Board's decision to deny the Commons's application.

The entry is:

Judgment affirmed.

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