

JAMES CULLEN et al.

v.

TOWN OF ELIOT et al.

Submitted on Briefs January 28, 2010

Decided February 16, 2010

Panel: ALEXANDER, SILVER, MEAD, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

James Cullen, William Cullen, and Anthony Bullis (collectively, the landowners) appeal from a judgment entered in the Superior Court (York County, *Fritzsche, J.*), affirming a decision of the Eliot Board of Appeals, which affirmed the decision of Eliot's Zoning Code Enforcement Officer. On remand following our decision in *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258, the CEO found that William Cullen and Anthony Bullis (collectively, the subdividers) had acted with the intent to avoid the regulatory consequences of creating a subdivision.

Contrary to the landowners' contentions, the CEO did not abuse his discretion in (1) applying this Court's instructions on how the CEO could make the necessary factual findings, *see id.* ¶ 20 & n.6, 955 A.2d at 265; and (2) finding that the subdividers had intended "to avoid the regulatory consequences of creating a subdivision" rather than finding that they acted to avoid the objectives of the subdivision statutes, *see Tinsman v. Town of Falmouth*, 2004 ME 2, ¶¶ 9-12, 840 A.2d 100, 103-04. Also, contrary to the landowners' contentions, there was substantial evidence in the record supporting the CEO's finding that the subdividers acted with the intent to avoid the regulatory consequences of creating a subdivision. *See Toomey v. Town of Frye Island*, 2008 ME 44, ¶ 12, 943 A.2d 563, 566 ("That inconsistent conclusions can be drawn from evidence does not mean

that a finding is not supported by substantial evidence.”); *Tinsman*, 2004 ME 2, ¶¶ 1-7, 10-12, 840 A.2d at 101-04.

We also decline the landowners’ request to reconsider our decision in *Mills* that, in this case, the CEO is the fact-finder for appellate review purposes, because the request was not properly asserted via a motion for reconsideration. *See* M.R. App. P. 14(b).

The entry is:

Judgment affirmed.

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