

SUPREME JUDICIAL COURT OF MAINE

Uliano v. Board of Environmental Protection

2005 ME 88, 876 A.2d 16 · Decided July 7, 2005

SUMMARY

The Maine Supreme Judicial Court reviewed the denial of Anthony and Erin Uliano’s permit application to construct a private pier under the Natural Resources Protection Act. The court held that the Board of Environmental Protection improperly treated the practicable-alternatives standard as an independent permitting criterion and relied improperly on speculative cumulative impacts. It vacated the judgment and remanded for additional findings and a new analysis under the statutory standard concerning unreasonable interference with existing scenic and aesthetic uses.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Levy, J.; Alexander; Calkins; Clifford; Dana; Levy; Saufley
JURISDICTION	Maine
DECIDED	July 7, 2005
DISPOSITION	vacated
PROCEDURAL POSTURE	The Ulianos appealed the Board of Environmental Protection's denial of their Natural Resources Protection Act permit application. The Superior Court affirmed the Board's order, and the Ulianos appealed to the Supreme Judicial Court of Maine.
STANDARD OF REVIEW	The Supreme Judicial Court reviewed the administrative agency's decision directly, examining it for errors of law, unsustainable exercises of discretion, and findings unsupported by substantial evidence in the record.
PRECEDENTIAL VALUE	Published Maine Supreme Judicial Court opinion; precedential.
PARTIES	Anthony Uliano, Erin Uliano v. Board of Environmental Protection

TOPICS

- wetlands
- judicial review of agency action
- administrative law
- appellate procedure
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board improperly treated the Wetland Protection Rules' practicable-alternatives standard as an independent and determinative permitting criterion rather than as a factor in the statutory section 480-D(l) reasonableness analysis.
2. Whether the Board improperly relied on speculation that other piers might follow in making its cumulative-impact finding.
3. Whether the Board's findings concerning unreasonable interference with existing scenic and aesthetic uses were sufficiently specific to permit meaningful appellate review.
4. Whether the court should address the Ulianos' constitutional and common-law arguments concerning the permitting standards and the right to wharf out.

HOLDINGS

1. The practicable-alternatives provision is not an independent permitting criterion. It is a factor that the Board must balance as part of its analysis under 38 M.R.S.A. section 480-D(l) of whether the proposed project would unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
2. The Board may not base a cumulative-impact finding on speculation that other piers might be constructed in the future, and any cumulative-impact findings must be incorporated into the section 480-D(l) reasonableness analysis.
3. An agency denying a permit must state findings with sufficient specificity to identify the uses considered and explain why the proposed project would unreasonably interfere with those uses; conclusory summaries of the evidence and conclusions do not permit meaningful appellate review.
4. The court declined to address the Ulianos' arguments that the scenic-and-aesthetic-use standard was an unconstitutional delegation, that the practicable-alternatives and cumulative-impact standards were unconstitutionally vague or exceeded the Board's rulemaking authority, and that the order violated a common-law right to wharf out.

KEY QUOTATIONS

“The Board simply discussed the evidence in the record regarding practicable alternatives and concluded that the Ulianos did not meet their burden of proving that no practicable alternative to their pier exists.” (876 A.2d at 19)

“Therefore, the Board’s consideration of practicable alternatives to a proposed project is a factor that should be balanced in its section 480-D(l) analysis.” (876 A.2d at 20)

“These findings do not permit meaningful appellate review because they merely summarize the evidence considered and state the Board’s conclusion.” (876 A.2d at 23)

FACTUAL BACKGROUND

Anthony and Erin Uliano owned waterfront property in Salsbury Cove on Eastern Bay in Bar Harbor and sought a Natural Resources Protection Act permit to construct a 95-foot by 6-foot private recreational pier with a seasonal ramp and float. The proposed pier would be constructed in, on, or over coastal wetlands, requiring a permit. The Board denied the application after finding that a dinghy and mooring were a practicable alternative, that the pier and possible future piers would pose a substantial cumulative threat to scenic and aesthetic values, and that the pier would unreasonably interfere with existing scenic and aesthetic uses.

PROCEDURAL HISTORY

The Department of Environmental Protection initially approved the Ulianos' application to construct a private recreational pier. Abutters appealed to the Board, which reversed the Department's decision and denied the permit. The Superior Court affirmed under Maine Rule of Civil Procedure 80C. The Supreme Judicial Court vacated the Superior Court judgment and remanded for further proceedings by the Board.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The judgment was vacated and the matter remanded to the Superior Court for an order remanding to the Board of Environmental Protection. On remand, the Board must reconsider its practicable-alternatives findings, address cumulative impacts without relying on speculation, incorporate those findings into the section 480-D(l) analysis, reconsider the evidence, issue specific findings identifying the relevant scenic and aesthetic uses and explaining the alleged interference, and undertake a new section 480-D(l) analysis.

CASES CITED

- Hannum v. Board of Environmental Protection, 2003 ME 123, 832 A.2d 765
- Grant's Farm Assocs., Inc. v. Town of Kittery, 554 A.2d 799, 802 (Me. 1989)
- Kroeger v. Department of Environmental Protection, 2005 ME 50, 870 A.2d 566
- Christian Fellowship & Renewal Center v. Town of Limington, 2001 ME 16, 769 A.2d 834