

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0217, Town of Amherst v. Normand E. Hebert, Trustee of the HJC Realty Trust, the court on March 22, 2012, issued the following order:

Having considered the parties' briefs and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The respondent, Normand E. Hebert, trustee of the HJC Realty Trust, appeals the trial court's order granting the petition for injunctive relief, civil penalties and attorney's fees filed against him by the petitioner, Town of Amherst (Town). We affirm.

The respondent first argues that because filing a Water Resource Management Plan is optional under the ordinance, the Town has no authority to mandate that he file one. The interpretation of a zoning ordinance is a question of law, which we review de novo. Pike Indus. v. Woodward, 160 N.H. 259, 262 (2010). Because the traditional rules of statutory construction govern our review, we construe the words and phrases of an ordinance according to the common and approved usage of the language. Id. When the language of an ordinance is plain and unambiguous, we need not look beyond the ordinance itself for further indications of legislative intent. Id.

Section 4-11-B of the ordinance provides, inter alia, that "[a] naturally vegetated buffer of one hundred (100) feet shall be maintained from the edge of any Public Water Protection Wetland." Section 4-11-D of the ordinance provides that while the "use restrictions and setbacks" set forth in Section 4-11-A and Section 4-11-B "are important measures to protect wetlands, ground water, surface water, and important wildlife resources," in lieu of these requirements, a landowner may elect instead to develop, implement and maintain a "site specific Water Resource Management Plan[]." Such a plan may be a "modification of or an alternative to" the requirements set forth in Sections 4-11-A and 4-11-B.

Thus, the ordinance gave the respondent two choices. He could either: (1) fully comply with all of the mandates in Sections 4-11-A and 4-11-B of the ordinance; or (2) file a Water Resource Management Plan in accordance with Section 4-11-D of the ordinance. Because the respondent disturbed the 100-foot buffer, and, thus, failed to comply fully with the requirements of Section 4-11-B of the ordinance, his only option was to file a Water Resource Management Plan. Under these circumstances, we agree with the trial court that the ordinance authorized the Town to require the respondent to file such a plan.

The respondent next contends that because he did not choose the Water Resource Management Plan alternative, he had only to comply with Section 4-11-A and Section 4-11-B, which include a mandate that he farm according to the manual on best practices. This argument is unavailing as the respondent did not comply with Section 4-11-B in full. While he may have farmed according to the manual for best practices, he did not maintain a 100-foot buffer.

The respondent next asserts that the Water Resource Management Plan requirement unlawfully impedes agriculture. We are not persuaded that this is the case.

The respondent next argues that the wetland conservation district is unconstitutional and violates various statutory requirements because the wetlands are not mapped. We decline to address these arguments because the respondent has failed to demonstrate that he preserved them for our review. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004); see also State v. Dellorfan, 128 N.H. 628, 633 (1986).

We have reviewed the respondent's remaining arguments and conclude that they warrant no extended consideration. See Vogel v. Vogel, 137 N.H. 321, 322 (1993). All issues that the respondent raised in his notice of appeal, but did not brief, are deemed waived. See In re Estate of King, 149 N.H. 226, 230 (2003).

Affirmed.

Dalianis, C.J., and Hicks, Conboy and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**

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