

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & COUNSUMER DOCKET
DOCKET NO. BCD-AP-2018-05

FRIENDS OF LAMOINE, et al.,)
)
Plaintiffs,)
)
v.)
)
TOWN OF LAMOINE,)
)
Defendant.)
_____)
)
HAROLD MACQUINN, INC.,)
)
Party in Interest.)

ORDER DENYING PARTY IN INTEREST
HAROLD MACQUINN, INC.’S MOTION
TO DISMISS

Party in Interest Harold MacQuinn, Inc. (“MacQuinn”) has for some time been seeking to expand its gravel extraction operations at a pit in the Town of Lamoine (the “Town”). In 2018, the Town finally granted MacQuinn the necessary approvals. In response, Plaintiffs brought this Rule 80B Complaint, challenging the propriety of the Town’s actions. Seeking a quick end to the challenge mounted by Plaintiffs, MacQuinn brought a Motion to Dismiss for lack of jurisdiction. On October 9, 2018, in Ellsworth, Maine, the Court heard oral argument on MacQuinn’s Motion. Participating in the oral argument were John Steed, Esq. and Maxwell G. Coolidge, Esq. for Plaintiffs and Edmond Bearor, Esq., for MacQuinn. For the reasons discussed below, the Court denies MacQuinn’s Motion to Dismiss.¹

BACKGROUND

In February 2017, MacQuinn applied to the Town Planning Board for a gravel permit

¹ MacQuinn brings this motion to dismiss for lack of jurisdiction over the subject matter of this appeal. See M.R. Civ. P. 12(b)(1). In considering a motion to dismiss for lack of jurisdiction, courts may look beyond the facts alleged in the complaint and consider materials outside the pleadings. *Gutierrez v. Gutierrez*, 2007 ME 59, ¶ 10, 921 A.2d 153.

and site plan approval; sometime thereafter, the Planning Board denied both applications. (Pl's Compl. ¶¶ 13-16.) MacQuinn timely appealed the denials to the Town's Municipal Board of Appeals (the "BOA"). (Pl's Compl. ¶ 17.) On May 8-9, 2018, the BOA voted to reverse the Planning Board's denial of the gravel permit, finding that MacQuinn met the requirements of the Gravel Ordinance. (Pl's Compl. ¶ 19; Mot. Dismiss Exs. A-B.) The BOA remanded the matter to the Planning Board to issue the gravel permit. On May 22, 2018, the BOA voted to reverse the Planning Board's site plan denial, finding that the Planning Board had misinterpreted the Town's Site Plan Review Ordinance ("SPRO"). (Pl's Compl. ¶ 20; Mot. Dismiss Ex. C.) The BOA remanded the matter to the Planning Board to grant the site plan application.² On remand, the Planning Board granted the gravel permit and on July 9, 2018, voted to approve MacQuinn's site plan application. (Pl's Compl. ¶ 21.) Plaintiffs filed their Complaint on August 8, 2018.

STANDARD OF REVIEW

The court reviews a motion to dismiss under M.R. Civ. P. 12(b)(1) without making any inferences in favor of the plaintiff. *Persson v. Dep't of Human Servs.*, 2001 ME 124, ¶ 8, 775 A.2d 363. "When a court's jurisdiction is challenged, the plaintiff bears the initial burden of establishing that jurisdiction is proper." *Commerce Bank & Trust Co. v. Dworman*, 2014 ME 142, ¶ 8, 861 A.2d 882.

ANALYSIS

The usual rule is that an appellant must wait for final municipal approval before taking an appeal. *Rockland Plaza Realty Corp.*, 2001 ME 81, ¶ 6, 772 A.2d 256. An order

² The BOA later memorialized its votes in written decisions, but it is the date of the vote that is relevant to calculating the appeal period, not the date that a written decision is issued. 30-A M.R.S. §§ 2691, 4482-A, 4482-B; see *Beckford v. Town of Clifton*, 2014 ME 156, ¶¶ 11-13, 107 A.3d 1124.

remanding a matter to a municipal decision-maker for further proceedings is not a final judgment. *Town of Minot v. Starbird*, 2012 ME 25, ¶ 7, 39 A.3d 897. Accordingly, in this case the Planning Board's vote on July 9, 2018 constitutes the final municipal approval, not the earlier BOA decisions.

Rule 80B of the Maine Rules of Civil Procedure provides: "The time within which review may be sought shall be as provided by statute" In this case, since the final municipal administrative review of the project was by the Planning Board, and not the BOA, the time for appeal is governed by 30-A M.R.S. § 4482-A. 30-A M.R.S. § 2691(3)(H). Under Section 4482-A, the appeal period is thirty days. Thus, the appeal period started to run the day after the Planning Board's July 9, 2018 vote approving MacQuinn's site plan application, and closed thirty days thereafter, on August 9, 2018. Plaintiffs' Complaint is dated August 7, 2018 and was received on August 8, 2018. Using either date, Plaintiff's appeal is timely. Hence, this Court has jurisdiction to consider the appeal on its merits.

MacQuinn, however, argues that the Law Court's *Rockland Plaza* decision leads to a different result. In *Rockland Plaza*, the Court explains that when "all the substantive decisions on which final approval of the site plan would be based have already been made and all that remains for the Planning [Board] to do is the ministerial act of issuing an order of final approval of the plan" the Superior Court can accept a premature appeal. 2001 ME 81, ¶ 6, 772 A.2d 256. Relying on that language, MacQuinn asserts the Planning Board's action on remand was ministerial; that the BOA's May 22, 2018 vote was the last substantive municipal decision; and thus the appeal period should be measured from May 22, 2018. Pursuant to 30-A M.R.S. § 2691(3)(H), which applies when the appeal is from a final decision of a municipal board of appeals, the appeal period is 45 days. Measured from the BOA's May

22, 2018 vote, MacQuinn argues the appeal period closed on July 6, 2018, Plaintiffs' Complaint is untimely, and this Court has no jurisdiction.

MacQuinn's reliance on *Rockland Plaza* is misplaced. The issue in *Rockland Plaza* was whether the appeal was interlocutory, not whether the appeal was brought too late. The *Rockland Plaza* Court explained that when the final municipal act is ministerial, and only legal questions are implicated, the Court will accept a premature appeal as an exception to the general rule. *Id.* *Rockland Plaza* does not create a new rule governing what constitutes the final municipal act; to the contrary, *Rockland Plaza* recognizes a ministerial act as final for appeal purposes even though all substantive decisions have already been made and the final municipal act is merely the issuing of an order of final approval on remand. 2001 ME 81, ¶ 6, 772 A.2d 256. Indeed, the Law Court has cautioned against taking premature appeals—it is only when an exception applies that an otherwise interlocutory appeal will be considered. *See Bryant v. Town of Camden*, 2016 ME 27, ¶¶ 11-12, 132 A.3d 1183; *Town of Minot*, 2012 ME 25, ¶ 7, 39 A.3d 897; *Rockland Plaza Realty Corp*, 2001 ME 81, ¶ 6, 772 A.2d 256.

For all the foregoing reasons, MacQuinn's motion to dismiss is denied.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

So Ordered.

Dated: October 22, 2018

_____/s
Michael A. Duddy
Judge, Business and Consumer Docket