| STATE OF MAINE CUMBERLAND, ss. | BUSINESS & CONSUMER DOCKET DOCKET NO. BCD-AP-2018-05 |
|---|---|
| FRIENDS OF LAMOINE, et al., Plaintiffs, |))) |
| v. TOWN OF LAMOINE, | ORDER TO SUPPLEMENT THE RECORD |
| Defendant. |))) |
| HAROLD MACQUINN, INC., |))) |

)

Party in Interest.

This appeal from a municipal planning board's final action has been brought by Plaintiffs Friends of Lamoine and Jeffrey Dow, trustee of the Tweedie Trust (collectively "Friends") pursuant to M.R. Civ. P. 80B. Party-in-Interest Harold MacQuinn, Inc. ("MacQuinn") opposes the appeal. The appeal turns on interpretation of the Town of Lamoine's 2011 Site Plan Review Ordinance ("SPRO"). As part of the administrative record, Friends submitted what it purports to be the 2011 SPRO (Exh. O-4). MacQuinn argues that what Friends submitted as the 2011 SPRO is really a duplicate of the 2013 SPRO, and that pursuant to M.R. Civ. P. 80B(e) the failure of Friends to submit the 2011 SPRO is fatal to its appeal.

It is true that according to Rule 80B(e), the plaintiff must include as part of the record the full text of the applicable ordinance. This is not a case, however, where the plaintiff failed to include the applicable ordinance, and instead asked the Court to take judicial notice of the ordinance—which the Court cannot do. *Mills v. Town of Eliot*, 2008 ME 134, ¶ 23, 955 A.2d

258. Here, Friends submitted what it apparently thought was the 2011 SPRO, but which

(perhaps due to clerical error) is possibly a duplicate of the 2013 SPRO. The Law Court

expects the trial courts to decide Rule 80B cases based on an accurate record, and not clerical

error. See Penkul v. Town of Lebanon, 2016 ME 16, ¶ 17 n.9, 136 A.3d 88 (trial court is

authorized to resolve disputes about the contents of the administrative record); Time

Enough v. Town of Standish, 670 A.2d 918, 920 (Me. 1996) (remand to the trial court to give

plaintiff the opportunity to supplement the record).

Accordingly, if Exh. 0-4 is not the 2011 SPRO, Friends has until Thursday, March 28,

2019, to supplement the record with a true and accurate copy of the 2011 SPRO. If a new

exhibit is submitted, the exhibit shall be designated Exh. 0-7. MacQuinn shall have seven

calendar days from the date Friends submits Exh. 0-7 to object on the grounds that the

document submitted is not the 2011 SPRO, or for any other reason. Friends shall have three

business days to reply to any objection.

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: March 21, 2019

Michael A. Duddy

Judge, Business and Consumer Docket

2