

STATE OF MAINE
Knox, SS.

SUPERIOR COURT
Docket No. CV-2021-0002
AP-2021-0002

Friends of Rockport,
John Priestley,
Mark Schwarzmann,
and Clare Tully,
Plaintiffs,

v.

Town of Rockport,
Defendant,

and

20 Central Street LLC,
Party-in-Interest.

John Priestley, David Barry
David Kantor,
Mark Schwarzmann,
and Winston Whitney,
Plaintiffs

v.

Town of Rockport,
Defendant,

and

20 Central Street, LLC,
Party-in-Interest.

Further Order and Judgment

Introduction

By order dated December 1, 2021, the court stated its analysis and decision concerning the disputes underlying these two related cases. In order to hear from the parties concerning the precise form final relief should take among the interlocking claims, the court scheduled a hearing for Wednesday, December 15.

Before that hearing was held, counsel for Plaintiffs filed a letter that constituted in substance a motion for post-judgment relief. Party-in-Interest 20 Central filed a pleading explicitly styled as such a motion. Because no final judgment has been entered, neither motion is yet ripe for consideration. A further schedule for submission and response appears below.

At the hearing, the parties raised one issue related to offsite parking they believe was omitted from the court's decision. A review of that issue appears immediately below.

Offsite Parking

In its decision of December 1, the court stated that the need for landscaping at the offsite lot 20 Central intends to use had been resolved by agreement. Counsel disputed this conclusion at the hearing on December 15.

The parties argued this issue in the memoranda they submitted before issuance of the decision. At oral argument, counsel for Plaintiffs stated that the Code Enforcement Officer had addressed the issue by adding a provision to the building permit. That provision appears in the section entitled "Notes" that follows the list of permit requirements:

6) This approval includes the off site [sic] parking at Pascal & Commercial Street to be utilized as presented with parking plan and landscaping submitted to the Planning office before a certificate of Occupancy is requested[.]

Given this requirement, it is not clear to the court precisely what further relief Plaintiffs actually seek in AP-2021-002. Because the judgments in these joined actions require remand to the Planning Board and Code Enforcement Officer, and because the subject of parking falls broadly within the scope of the remand orders, these officials will have the opportunity to review all elements of offsite parking in the context of their further deliberations.

Judgment in AP-2021-002

Plaintiffs' Appeal is GRANTED. The matter shall be remanded to the Planning Board for reconsideration of 20 Central's site plan application with respect to adequacy of parking and compliance with standards for architectural harmony. The Planning Board will have to review the parking elements of 20 Central's application in conjunction with the court's judgment in Count I of CV-2021-002.

Judgment in CV-2021-002

Count I: The court declares as a matter of law that amendments to the Town Charter designated as Petition A and Petition B apply to 20 Central's hotel project.

Count II: The court declines to enter an injunction prohibiting the Town from permitting further work on 20 Central's hotel project pending reconsideration of the site plan by the Planning Board and reconsideration of the building permit by the Code Enforcement Officer. The parties and the Party-in-Interest are expected to comply with all substantive elements of this judgment.¹

Count III: The court reverses the approval of 20 Central's building permit by the Code Enforcement Officer and its approval *de novo* by the Zoning Board of Appeals and vacates the building permit. The application is remanded to the Code Enforcement Officer for action following further review by the Planning Board in response to the judgment in Count I above and that in AP-2021-002.

Deadlines for Further Pleadings

Plaintiffs' letter and 20 Central's submission have both been docketed as post-judgment motions. In order to expedite resolution of the issues they present and any others the parties might wish to advance, the court sets the following deadlines:

1. All parties are to file further post-judgment motions, or supplement those now docketed, no later than January 17, 2021.
2. Responses to all such motions shall be filed no later than January 31, 2021.
3. Reply memoranda must be filed no later than February 7, 2021.

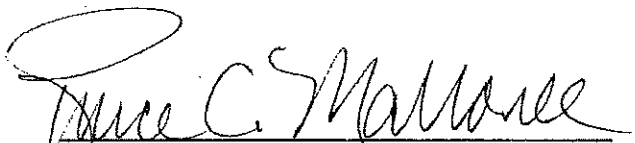
¹ In light of the court's entry of declaratory judgment in Count I and the relief granted pursuant to rule 80B, the court sees no need to grant injunctive relief. To the extent Plaintiffs seek to enjoin the actions of the Town, the court notes "the strong policy of judicial restraint in mandating the activities of a coordinate branch of government." *Littlefield v. Town of Lyman*, 447 A.2d 1231, 1235 (Me. 1982). "In declaring unsettled questions of law, [the Law Court has] frequently decline[d] as a matter of comity to summarily enjoin a coordinate branch of government." *Great N. Paper, Inc. v. Penobscot Nation*, 2001 ME 68, ¶ 64 n.21, 770 A.2d 574. Instead, the court generally "operate[s] on the assumption that responsible governmental officials will comply with the law once it is declared." *Id.* The proceedings before the court have not demonstrated any unwillingness on the part of the Town or 20 Central to accept a judicial determination in the form of declaratory relief or to comply with any other aspect of the court's judgment. If that changes, Plaintiffs may return to the court and request further relief. See, e.g., 14 M.R.S. § 5960 ("Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.").

4. The motions will then be decided without further argument unless a party explicitly requests it and states the reason why oral argument would not be redundant of written submissions.

So ORDERED.

These JUDGMENTS and this ORDER shall be incorporated on the docket by reference.

Dated: January 3, 2022


The Hon. Bruce C. Mallonee
Justice, Maine Superior Court