

BEFORE THE TOWN OF LAMOINE BOARD OF APPEALS

In Re: Moldawer v. Code Enforcement Officer

To: Chair and Board of Appeals
From: Alan Moldawer, Appellant
Date: September 28, 2020

SUBMITTAL OF ADMINISTRATIVE RECORD

Appellant, Alan Moldawer, hereby respectfully submits to the Board of Appeals of the Town of Lamoine the attached Administrative Record in this appeal, as it was represented to be and provided to the parties by the Code Enforcement Officer. Appellant respectfully reserves the right to object to the contents of the Administrative Record and/or its completeness, as more fully set forth below.

Preliminary Statement

1. Appellant is submitting herewith a copy of what the CEO represents is the complete Administrative Record that was before her as of November 30, 2019, in addition to what already comprised the administrative record as of October 29, 2019. Appellant is doing so at the urging of counsel for the Board, James Collier, who advised that it is the practice in this County and State for the Appellant to assemble and transmit the administrative record to the Board.

2. What the CEO has provided to the parties by email followed a September 16 Zoom/conference call among the CEO, James Collier, Jon Pottle, and the Appellant in which the CEO described all that was in her file or that she considered to be part of the Administrative Record. Appellant has not been able to make an independent examination of the CEO's files and is relying entirely upon the CEO's representations to the parties as to what constitutes the Administrative Record as of the date of her November 30, 2019 redetermination.

3. The documents emailed to the parties by the CEO following the September 16 conference call came out of order and some of the emails among the Board members within the chain of emails were cut off. Stu Marckoon made new copies of the emails and sent them to the parties. Thus, attached are copies of what the CEO provided, just as they were received from her, and a copy of the emails Stu Marckoon was kind enough to recopy and send to the parties.

4. To be clear, the attached copies of what the CEO contends is her Administrative Record are supplementary to the existing administrative record before the Board as of October

19, 2019, subject to any objections of the parties as to the relevance or completeness of the attached.

Appellant's Objections to the Administrative Record

5. Appellant is as anxious as anyone for this long process to come to a conclusion. Simple compliance by the CEO with the plain meaning of the BLUO or the Board's subsequent rulings of October 29, 2019, would have accomplished that objective long before now. Consequently, Appellant hesitates to raise any issues that might appear to be dilatory in effect, but there are important due process questions that have come to light. Exchanging emails among the Board members regarding the intent or meaning of the rulings made by the Board at the October 29, 2019 public hearing, and copying the CEO but not the Appellant, was fundamentally improper because it likely violated Maine's Open Meetings law (M.R.S. Title 1, Section 403) and amounted to *ex parte* communications between the CEO and the Board. *The CEO, upon receipt of those emails, surreptitiously forwarded copies to the Trues but not the Appellant* (see last email copied by Stu Marckoon).

6. Appellant attributes no improper motive to anyone among the Board, and Appellant continues to have the highest respect for the work of the Board and the individuals serving on it. However, to the extent that the Board continued to meet following the October 29 hearing, albeit by email, and copied the CEO only in those exchanges raises questions of fundamental unfairness to the Appellant, at least to the extent that anything said in that "meeting" influenced the CEO to act (or not) as she subsequently did. The bias that the CEO has shown in the performance of her duties from the start, both in ignoring the BLUO and in her dogged refusal to respect the Board of Appeals' rulings, was further evidenced by her sending Mr. True the emails among the Board members. Respectfully, those emails should be excluded from the Administrative Record.

7. In addition, there appears to have been at least one attachment to an October 31, 2019 email sent from Stu Marckoon to the Board and CEO only, entitled "Draftfindings102919.pdf" of the Board. The document icon appears as an attachment which the CEO represents, at least by implication, is part of the Administrative Record. It appears she has seen it (and likely the Trues), but no copy of it has been made available to the Appellant to this day. It is unclear if the CEO was influenced by what was in that document, but it is again fundamentally unfair that it was not shared with the Appellant, let alone known to the Appellant

to exist. To the extent the CEO indicates that it was not seen or relied upon by her in making her redetermination of no violation, it should not be part of the Administrative Record. ¹

8. Lastly, the Minutes of the Selectboard Meeting of November 21 are attached as part of what the CEO and counsel for the Trues believe is relevant and material to the CEO's redetermination of no violation. Appellant respectfully objects to those Minutes because they are not relevant or material in any way to the pending appeal, as nothing was decided in that meeting by the Selectmen that was (or should have been) relevant to the CEO's decision to ignore the Board of Appeals ruling.

Administrative Record

9. Submitted herewith are copies of the following documents provided to the parties by the CEO (and Stu Marckoon) which the CEO represents comprise the Administrative Record for purposes of this appeal:

- 1) Prior or existing administrative record before the Board as of October 29, 2019
- 2) Six (6) emails captioned "Findings, Conclusions – Moldawer v CEO" among Board of Appeals members, CEO and Stu Marckoon" (and forwarded by CEO to Mr. True), dated October 31, 2019
- 3) Board of Selectmen "Minutes of Meeting November 21, 2019"
- 4) Lamoine Board of Appeals (BOA) Minutes of October 29, 2019
- 5) CEO's "Notice of Reconsideration for the Appeals Board of Lamoine, Maine," dated 11/30/19.

Respectfully submitted,



Alan Moldawer
Appellant
15 Brown Lane
Lamoine, Maine 04605

A copy of this Submittal of Administrative Record has been emailed to Jon Pottle, Esq., this 28th day of September 2020.

¹ Mr. Marckoon has erroneously referred to the Board of Appeals rulings in this case as a mere "suggestion" to the CEO.