

STATE OF MAINE
CUMBERLAND, ss.

CLERK OF SUPERIOR COURT
CUMBERLAND COUNTY
CLERK'S OFFICE
FEB 24 3 03 PM '00

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-99-69
NM-CUM-2)24)2000

JANET D. BRAND and
PETER B. BRAND,

Plaintiffs/Appellants

vs.

ORDER

DONALD L. GORHAM
LAW FIRM

TOWN OF BRUNSWICK,

FEB 29 2000

Defendant/Appellee

Before the court are the plaintiffs' motion to extend time for appeal, plaintiffs' motion to specify course of proceedings, and defendant's motion to dismiss.

As stated on the record at argument, the plaintiffs have not shown excusable neglect to justify filing their complaint beyond the statutory period. See 30-A 2691(3)(G) (1996); M.R. Civ. P. 6(b); Caron v. City of Auburn, 567 A.2d 66, 67 (Me. 1989) (showing of excusable neglect required when motion for enlargement filed after expiration of time for filing appeal).

With regard to the defendant's motion to dismiss, the court agrees that counts I and II of the complaint must be dismissed as filed in an untimely fashion. The court further agrees that count IX, in which the plaintiffs seek declaratory and injunctive relief with regard to the same issues raised in counts I and II, does not state an independent claim for relief. See Fitanides v. Perry, 537 A.2d 1139, 1141 (Me. 1988) (declaratory and injunctive relief available in 80B proceeding).

In counts III-VIII, the plaintiffs allege that the defendant's zoning ordinance does not comply with the Town Charter, the Shoreland Zoning Act, and other statutes and regulations; and that the zoning ordinance and the Shoreland Zoning Act are unconstitutional. The factual allegations appear to be the same for all counts. The relief sought is a declaration that the notice and order issued to plaintiff Janet Brand, the zoning ordinance, and the Shoreland Zoning Act are void together with damages. Plaintiffs' entire request for relief could have been reviewed and remedied through the process of direct review pursuant to M.R. Civ. P. 80B. See Colby v. York County Commissioners, 442 A.2d 544, 547-48 (Me. 1982).

The entry is

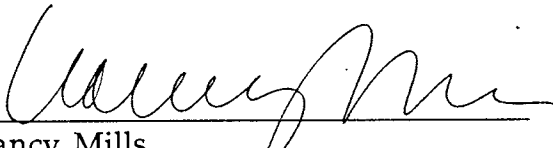
The Plaintiffs' Motion to Extend Time for Appeal is DENIED.

The Plaintiffs' Motion to Specify Course of Proceedings is MOOT.

The Defendant's Motion to Dismiss the Plaintiffs' Complaint is GRANTED. The Plaintiffs' Complaint is DISMISSED with prejudice.

The clerk is directed to incorporate this order into the docket by reference.

Dated: February 24, 2000



Nancy Mills
Justice, Superior Court

Date Filed 08-24-99 CUMBERLAND
County

Docket No. AP99-69

Action 80B APPEAL

JANET D. BRAND
PETER B. BRAND

DONALD L. GARBRECHT
LAW LIBRARY

FEB 29 2000

vs.

TOWN OF BRUNSWICK
STATE OF MAINE
THOMAS J. WAKEFIELD
JAMES CONNCELLAN
JOHN RICHARDSON
KENDALL AMES
NORMAN RATTEY
JOHN POUTREE

Plaintiff's Attorney

DOUGLAS HENDRICK, ESQ 625-4531
PO BOX 571, CORNISH ME 04020

Defendant's Attorney

PATRICK SCULLY ESQ (Rep. ~~AA11~~ but State of M
PO BOX 9729, PORTLAND MAINE 04104
774-1200