

<p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ray DeLeo: Yes</p>	
<p>Item 3 - Administrative Interpretation: Saco Avenue Rentals, LLC Co-Owner of 155 Saco Avenue MBL: 207-2-12 in the GB-1 Zone. David R. Ordway Esq. Agent/Applicant for units 1C, 2B and 2C at 155 Saco Avenue. The appeal is for a Construction Permit issued for a Commercial Building to a build a 10,000sf structure. (Tabled from 09-29-14 meeting)</p> <p>Attorney for Saco Ave Rentals has changed from David R. Ordway Esq. to Sarah McDaniel representing Scott Narowetz and Marina Narowetz.</p> <p>Mr. King Weinstein, KRE Realty owns the half of the property with Saco Avenue Rentals, LLC.</p> <p>Summary: Saco Ave Rentals asserts that they were not notified in time of the appeal period that they had the option to appeal due to the Town of Old Orchard Beach telling them that an appeal wasn't possible. The original building permit was applied for in January 2014 and was actually paid for June 20th, 2014. The appeal would have needed to be filed within 30 days of this date which is July 20th, 2014. In a conversation with the Town of Old Orchard Beach's legal representative, Mr. Philip Saucier, on August 2nd, Mr. & Mrs. Narowetz were told that they did have a right to appeal but that it had expired. The paperwork for an appeal was filed August 5th with the Code Enforcement Officer and Zoning Board of Appeals.</p> <p>State Ordinance regarding appeals Time Limits:</p> <p>If an ordinance or statute does not provide a time limit within which an appeal to the board of appeals must be filed, the court has held that a period of 60 days constitutes a reasonable appeal period. <i>Keating v. Zoning Board of Appeals of City of Saco</i>, 325 A.2d 521 (Me. 1974); <i>Gagne v. Cianbro Corp.</i>, 431 A.2d 1313 (Me.1981). Effective October 9, 1991 an appeal to the Superior Court from a decision of the appeals board must be filed within 45 days of the date of the board's original decision on an application (not the date of a decision to reconsider an earlier decision, where there has been a request to consider). 30-A M.R.S.A. § 2691. This means within 45 days of the meeting at which the board actually voted on the application, even though the applicant may not have received written notice of the decision. <i>Vachon v. Town of Kennebunk</i>, 499 A.2d 140 (Me. 1985). It is possible that a court might allow these time periods to be extended under Rule 80B if the person filing the appeal can show good cause, but probably unlikely where a time period has been established by</p>	<p>ITEM 3</p>

statute. *Reed v. Halprin*, 393 A.2d 160 (Me. 1978).

Sarah McDaniel: The first question is of the timeliness of the appeal. The correct procedure would have been a site plan review from the Planning Board last Fall in December 2013 which would have triggered the town to notify abutters of this building permit. Then Saco Ave Rentals would have had time to file the appeal. When they noticed building starting in June they went to the town and asked if they could appeal. They claim they were told that the appeal period had passed at that time. (This is under dispute further in the notes) Later when the Town's representative notified Saco Ave Rentals of the results of their inquiry into an appeal, the lawyer Philip Saucier told them there was an appeal period 30 days after June 20th but that it had ended. The following Monday Saco Ave Rentals claims they submitted appeal paperwork.

Dan DeLeo: Who was responsible for the late payment?

Dan Feeney: When we take applications it is not unusual to approve permits but not issue them until a filing fee is paid. The clock on appeals starts when it is paid for or when they pick up that permit.

Dan DeLeo: What is the length of time they have with that permit?

Dan Feeney: They have 6 months to start construction on a project and then 18 months to finish it. The building permit is good for 2 years. Once they have gone through the initial application process the permit is put in an open status or "To-Be-Issued" until it is picked up and paid for.

Ronald Regis: Did we check that he had the Right, Title and Interest?

Dan Feeney: He does have Right, Title and Interest. He did have that and his project was originally approved by the Planning Board in 1988. I took this to the planning department and It's old but it's already approved.

Ronald Regis: Here I have the Assessor's Board Document which says that the original owner Mr. Weinstein denied rights to the land to avoid taxes which put it in common status or in other words each owner would be responsible for 50% of the taxes.

Dan Feeney: Except that we do not look at the HOA bylaws for right and title. At this point we do not get involved in the private contracts between owners and the HOA. So, we can't decide who owns it. We only need to show a reasonable Right, Title and Interest to that property and not even a complete one.

Robert Crawford: I wrote a letter in 2011 regarding this property and on a separate issue I stated an option that Mr. Weinstein was still the majority owner and therefore has the right to apply for a building permit. In any case, it

is not for the layperson council to decide who the real owner is. Persons coming forward who can show right and title are able to apply and we are only able to rely on that proof. As far as the approval goes one would expect a certain timeliness, but the town has a history of being lenient in this regard.

Ronald Regis: (reads letter excerpt) The "Shade Area" is 50/50 ownership, then shouldn't the other party be contacted to give approval?

David Boudreau: So did the building permit get issued properly or should it have never been issued? If there's a six month limit to the building permit, would it run out in December?

Dan Feeney: I think when there is a dispute it stops the clock on the permit.

Robert Crawford: For the Town's purposes the only proof needed for Right, Title and Interest is a Purchase and Sale agreement. Therefore the town had the required information to issue the building permit. The appeal was not timely and there seems to be no special circumstances or good cause exception in the ordinance. Therefore the board cannot grant an extension or exception to this ordinance as they are only an administrative board not a judicial authority. Because the ordinance is a law and not a policy it cannot be overruled by this board.

David Bourdeau: But who gets notified? How would they have known their option to appeal was only for 30 days?

Sarah McDaniel: The documents were signed January 2014. There was nothing on the ground and no notice to abutters when it was first signed. Then in June, when things happened on the ground, they went to the office. They were told no appeal was possible, but the appeal window was open as indicated by the Town Attorney. I have two reasons that I think you should hear both questions today. It is not usual for a town to make such a mistake as this. If we take this to the court and the court sees these facts and finds that it should have been heard then we'll have to come back and do this again. We are all here today so it makes sense to deal with it in the interest of efficiency. In fact, if the deed is what we are going off of for Right, Title and Interest than KRE Realty isn't the owner. Mr. Weinstein conveyed the property in 1997 to New Heritage Builders Inc.

Ray DeLeo: When was the time frame for appeals missed? When was it that they needed to file an appeal?

Dan Feeney: June 20th to July 20th would have been the time frame for the appeal.

Ray DeLeo: And when did they file?

Dan Feeney: August 5th.

Ray DeLeo: (to Mr. Narowetz) Don't you think you should have had a lawyer?

Mr. Narowetz: We were told we could not appeal. Aug. 1st is when we found out we could appeal.

Owen Stoddard: Did the town actually say that?

Dan Feeney: I didn't say that. I was fully aware of the time frame, 30 days that has been my standard forever. I wasn't at that meeting because I wasn't there.

Owen Stoddard: If the town told them something like that, then it would have something to do with what we decide?

Dan Feeney: I was asked several times, 'when do you consider it a permit?' and I said it's not a permit until it's paid for. That was said all along in every conversation with Mr. Narowetz.

Sarah McDaniel: We do have a witness:

Ronald Regis: To me the timeline is immaterial? They were asking for information in that three week period. They were waiting for...

Dan Feeney: A person has 30 days to appeal. Dr. Narowetz, Jeffery Hinderliter and I (Dan Feeney) met before it was brought upstairs to the Town Manager. I don't know why the applicant has omitted that meeting.

David Boudreau: So the permit was issued to someone who is not the owner?

Dan Feeney: No

David Boudreau: Well, the permit was issued to KR Realty and that's not who owns it?

Dan Feeney: They are the same entity.

David Boudreau: It says KRE Realty Inc. which is not the same entity. How did we go about finding ownership?

Dan Feeney: We look the lot number up in our database and the owner is registered with the assessor's office and whoever shows up in that database is the owner.

David Boudreau: Ownership should be what's reflected on the deed?

Robert Crawford: Technically the owner is the person who is on the deed.

Ray DeLeo: So, who was paying the taxes?

Dan Feeney: I don't know.

Ray DeLeo: Was it Weinstein?

Dan Feeney: Well New Heritage Realtors can pull a permit for KR Real Estate. It makes no difference. Mr. Weinstein has a building arm to his corporation and he can use that to build.

David Boudreau: The issue is that ownership comes up in our system. I hope our system is correct and up-to-date.

Dan Feeney: If you want to get technical about it David Ordway is the attorney on this appeal form. No one has changed that, except by letter, correct?

Sarah McDaniel: That's exactly what I did. That's what happens when you change attorneys. Two points if I may, I would submit that it is the land owner's responsibility to fill out that application correctly and provide a deed at the same time. I would love to allow Brendan to speak.

Brendan: We were misled, we were told we could not appeal the permit and then it went to the attorney for 3 weeks. The Town Manager was on vacation and everything was delayed. We met with Jeffrey Hinderliter and he said appeal, appeal, appeal. After the facts, we were told that they met with the attorney and it started June 20th but you are past still. So, good luck with that.

Owen Stoddard: It seems like a 'he said, she said' issue as to the timeliness of the appeal. I'm sure the meeting happened. Just trying to be reasonable, I don't know why we wouldn't hear it.

Ray DeLeo asks Mr. Weinstein to come forward.

Mr. King Weinstein representing KRE Realty: He was told everything and I don't know why he's pretending to be a dunce. It's like a marriage and for 20 years everything was fine. In this case I have 52% ownership of 155 Saco Avenue and they have 48%. Subsequently they were buying it and had an attorney representing them. I told them I was building this building 3 times. I dropped off site plans for them twice to their office. They were 100% knowledgeable of this plan to build a building. Clearly you would know to appeal in 30 days. I would like to cite a case in Sebago where the building inspector made a mistake. He gave an approval for a variance that was 10 feet and it needed to be 20. The neighbors were not aware of it, I think they were in Massachusetts, there was no notification when in fact none was required. Then they called the office who said there was no permit issued when in fact there was. And he appealed it up to the Supreme Court and he lost. They said that the 30 days was the 30 days. In this case they knew it. They just didn't take care of it and the reason for that is, they're not against this building. It's just that they want

money to do it. They either want to buy my condos or buy me out and pay them money. The town is absolutely right. It's been through public hearing and permitting, they were knowledgeable about it, I told them about it on three different occasions. They are just trying to appeal this. Eventually we will work something out between us.

Sarah McDaniel: Mr. Narowetz might want to respond to that, keep it just to the facts.

Mr. Narowetz: Mr. Weinstein did tell my wife that he was going to build something. But but did not tell us he had applied for a building permit or that it was approved.

Ronald Regis: A resident in a residential situation like this might not know what was going to happen but an HOA would have to know. They would have to approve a whole new building.

Ray DeLeo: We can't get into HOA procedures or how they conduct their business. We can only talk about the permit.

Robert Crawford: Whether it is timely or if you find it to be timely is the first question and then you can continue to the merits of the appeal. The actual appeal filing was past 30 days and my opinion is that the ordinance does not allow for it to be extended.

Owen Stoddard: If a mistake was made with the town then aren't we culpable?

Robert Crawford: Your job is to review the application and follow the law or town ordinances as administrators not judiciary authorities.

David Boudreau: Is there any language in the ordinance to allow for an extension?

Robert Crawford reads ordinance: Sec. 78-111 Appeals only from decision of Code Enforcement Officer.

Administrative appeals from orders, decisions or determinations of the code enforcement officer shall be filed in the office of the code enforcement officer on forms authorized by the board of appeals no later than 30 days after the date of the written order, decision or determination from which the appeal is taken....

Sarah McDaniel: In the Ordinance Sec. 78-212 (pasted in the noted below)

Sec. 78-212. - Applicability.

(a)

Jurisdictional activities. The requirements of this article shall apply to the following activities:

(1)

The construction or expansion of any nonresidential structure or building or the establishment of new nonresidential uses even where no buildings or structures are proposed.

(2)

The conversion of an existing building or use, in whole or in part, from a residential to a nonresidential use.

(3)

The construction, modification, expansion, or conversion of any building that currently contains or is proposed to contain three or more residential dwelling units.

(4)

Construction or expansion of all off-street parking and loading facilities involving 500 square feet or more of area, and driveway entrances to nonresidential and residential uses containing three or more residential units.

(5)

Earth-moving activities, including deposition, excavation, and site grading involving 100 cubic yards or more of material which is not associated with an approved building construction project.

(6)

The installation or modification of signage in excess of 20 square feet in area.

(b)

Exemptions. This article shall not apply to the construction or modification of single- or two-family dwellings, temporary structures, stock signage associated with manufactured amusement rides and games located in the amusement overlay district (AO) and any municipal use constructed or operated by the town. This article shall also not apply to the construction of structures and additions to structures with 240 square feet or less of floor area that do not increase the need for additional off-street parking as required by **Error! Hyperlink reference not valid.** of this article.

(c)

Permit required. No land, building, or structure shall be used or occupied and no building permit, sign permit, or certificate of occupancy shall be issued for any development within the scope of this article unless and until a final plan of the proposed development has been approved in accordance with the procedures set forth in this article.

(Ord. of 9-18-2001, § 12.2; Ord. of 4-21-2009(4))

Ray DeLeo: In your dealings back and forth and going through these negotiations wouldn't you have to recognize Mr. Weinstein as the owner? Isn't it too late to now negate him as the proper owner?

Sarah McDaniel: The paperwork is incorrect since KRE Realty is not the correct owner.

David Boudreau: So, is it that you don't want the building to be built? Or what is the reason for the appeal?

Ray DeLeo: So if the permit had gone through perfectly and it was all fine, would it have gone to the Planning Committee?

Dan Feeney: It would not have because the Planning Committee had already approved this building as part of the original plan in 1988. It just wasn't built until now.

Ronald Regis reads Sec. 78-92 **Administrative Appeals**

(a) The board of appeals shall have the power and duty to hear and decide appeals where it is alleged there is an error in any order, decision or determination made by the code enforcement officer in writing. The board may affirm or reverse in whole or in part or may modify the code enforcement officer's order, decision or determination. The affirmative votes of three members of the board are required to grant an administrative appeal.

(b) An administrative appeal may only be granted by a majority vote of the entire board. (Ord. of 9-18-2001, § 14.3.1)

Owen Stoddard sets forth a motion to the chair to extended the appeals deadline and hear the appeal of Mr. & Mrs. Narowitz and David Boudreau seconded it.

Ray DeLeo: I don't think we can make that determination because the issue is we aren't allowed to go against the ordinance.

David Boudreau: If everything had happened correctly and the 30 days were open for appeal and we were here hearing it, would there be any grounds for appeal anyway? Is there anything there for us to appeal?

Robert Crawford: What you would be looking at is Dan's decision. Does it meet this standard? As Dan indicated it's not unusual for other parties to get a building permit.

David Boudreau: If everything was done properly and it came back to us, what would be different? What would be in front of us?

Robert Crawford: You would have to allow testimony and answer questions raised here about what Dan was presented with. Whether in his view the permit was correct or not to issue to this party?

Ray DeLeo: So it's almost like the cart before the horse? Theoretically; what would happen if what we said was the appeal is valid and then came back and said that what Dan did was correct?

Robert Crawford: In the normal course you have to deal with the jurisdictional issues first and then the substantive.

Dan Feeney: In this letter from Sarah, it's sent to Philip Saucier, Daniel Feeney, Jeffrey Hinderliter, Larry Meade and KRE Realty. That right there shows that he's the principal owner.

King Weinstien: I think that's a very good point. Let's say we settle whatever things we have between us, I go back with the exact same application, the exact same plan, lighting, utility, parking, we put a bond up, we were registered with York County Registry of Deeds, and you would be in the same place.

David Boudreau: So if he doesn't do anything by December 20th, what happens? Does the permit go away? Does he have to re-apply?

King Weinstein: I just want to say that he did know about it in January. I didn't just say I am going to build it I brought detail plans for parking, building blueprints, elevations. There was no issue. If they wanted anything changed it was going to be then. And they had no issue with it. And I believe Dan said that if they wanted to appeal it, it was going to be a 30 day period also. He's the code office who is the one that would tell you. Although I don't think it makes a difference when you buy and sell property you know.

Sarah McDaniel: If the permit was done exactly correctly then we wouldn't be before you because we wouldn't have a basis to appeal. I would ask you give both of those decisions here. If you only make one of those decisions not both of them the court could kick that back to you. I would ask that you look at both issues. If you say yes there is an extension to appeal and then yes the permit was issued incorrectly then we could go back issue that paperwork correctly.

Dan Feeney: During the process did Mr. & Mrs. Narowitz look at the ordinances on-site. Did they use that to look up what was required of them? Did Brendan look at them on-time?

Sarah McDaniel: Either way the piece of paper said January so the time limit was thirty days and they would've still not known because the paperwork was done incorrectly.

Robert Crawford: I know you've been asked to rule on the second issue about the Right, Title and Interest. In my view if you go ahead and decide that you are going to hear the appeal, you shouldn't do that.

King Weinstein: You might want to consider tabling for 90 days because they were offering up to this afternoon.

Ray DeLeo: If we make a decision for this it gives one person more than the other. If we do nothing than you will both be where we are now and you'll have to negotiate. But by us making a decision it gives credit to one over the other.

