

STATE OF MAINE
LINCOLN, SS.

SUPERIO COURT
CIVIL ACTION
Docket No. AP-2014-04

MICHAEL R. KASTELEIN)
And KATE KASTELEIN,)
Plaintiff,)

v.)

EDGECOMB PLANNING)
BOARD and THE TOWN)
OF EDGECOMB,)
Defendant.)

ORDER ON PENDING MOTIONS

Pending before the court are various motions that the court must address. First, the Defendants’ Motion for Reconsideration is GRANTED. Counsel for the Defendants accepted service on October 28, 2014. Therefore, the Defendants’ opposition to the Plaintiff’s Motion for Enlargement of Time to File Rule 80B Complaint filed on November 14, 2014 was timely filed and the Order granted by the court on November 13, 2014 was premature.

Next the court must address the substance of the Plaintiffs’ Motion for Enlargement of Time to File Rule 80B Complaint. As a preliminary matter, this court finds that the “excusable neglect” standard discussed by the Law Court in Lane v. Williams, 521 A.2d 706 (Me. 1987), applies to the Plaintiffs’ motion and not the “good cause” standard established in later cases where the moving party was not provided notice of the action to be appealed. See Viles vs. Town of Embden, 2006 ME 107, 905 A.2d 298; Brackett vs. Town of Rangely, 2003 ME 109, 831 A.2d 422. In this case, the Plaintiffs were aware of the Planning Board’s decision when it was made. Therefore, they must establish “excusable neglect” for their failure to file a timely appeal.

The Plaintiffs explanation for their failure to file a timely appeal is that they relied upon an appeal form on the Town’s website that indicated that the Board of Appeals heard appeals from the Planning Board. The Plaintiffs completed and filed the form and were later informed that the Town ordinance was amended in 2008 to limit the jurisdiction of the Board of Appeals to decisions of the Code Enforcement Officer. While the Plaintiffs were attempting to appeal to the Board of Appeals, the deadline to appeal the Planning Board’s decision to the Superior Court expired. The Plaintiffs argue that these circumstances amount to “excusable neglect” because they reasonably relied upon an appeal form on the Town’s website and took the steps they believed necessary, due to that form, to bring a timely appeal.

In response, the Defendants argue that it was not reasonable for the Plaintiffs to rely on the appeal form because it contains only general language and does not contain

specific language about the exact nature of each appeal. In addition, the Defendants point out that the actual ordinance establishing the jurisdiction of the Board of Appeals and the proper method of appeal of Planning Board decisions is clear and was available to the Plaintiffs on the same website where they found the appeal form.

The circumstances described above do not constitute one of the "extraordinary instances where injustice would result." Lane, 521 A.2d at 707. The ordinance was readily available to the Plaintiffs and their failure to read it does not constitute "excusable neglect." No injustice will result from holding the Plaintiffs responsible for their failure to read the ordinance and to bring a timely appeal.

The Plaintiffs' Motion to Enlarge Time to File 80B Complaint is DENIED and this matter is dismissed.

The Plaintiffs' Motion for Leave to Amend Rule 80B Complaint is MOOT.

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to Rule 79(a), Maine Rules of Civil Procedure.

Dated: May 18, 2015


JUSTICE, MAINE SUPERIOR COURT

Date Filed: 10/24/14
Action: 80B Appeal

Lincoln County

Docket No. AP-14-4

Michael R. Kastelein vs.
Kate Kastelein

**Edgecomb Planning Board and
Town of Edgecomb**

Plaintiff's Attorney
Tamlyn M. Frederick, Esq
Birney & Frederick, LLC
50 Exchange Street Suite 400
Portland, Maine 04101

Defendant's Attorney
William Dale, Esq 408
Natalie Burns, Esq
Jensen Baird Gardner & Henry
PO Box 4510
Portland, Maine 04112