

STATE OF MAINE

WALDO, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AP-03-01

SKS - WAL - 4/22/2003

JOHN FAULKINGHAM and  
PAMELA FAULKINGHAM,

Plaintiffs

DONALD L. GAFBRECHT  
LAW LIBRARY

v.

OCEANS EAST, LLC, *et al.*,

APR 29 2003

STATE OF MAINE  
DECISION ON MOTIONS  
WALDO  
SUPERIOR COURT

APR 22 2003

Defendants

RECEIVED AND FILED  
Joyce M. Page, Clerk

This matter comes before the court on defendants' motion to dismiss this M.R. Civ. P. 80B appeal and the plaintiffs' reciprocal motion for extension of time within which to file an appeal. The motions concern the timing of the plaintiffs' notice of appeal following a decision by the Belfast Zoning Board of Appeals ("ZBA").

### Background

The corporate defendants in this matter are attempting to develop a 38-unit development on property adjacent to the Faulkinghams. The developers had been successful at the Planning Board and on appeal to the ZBA. The ZBA conducted its deliberations and voted on its decision on December 19, 2002. However, the detailed written "Finding of Fact and Decision of Belfast Zoning Board of Appeals" was not signed and distributed until January 15, 2003. Counsel for the plaintiffs represents that this written decision was received in his office on January 23, 2003. The plaintiffs' Rule 80B appeal was filed with the court February 24, 2003, or 67 days after the initial ZBA decision on December 19<sup>th</sup>.

## Discussion

The parties agree that the controlling authority on the length of time to appeal in this case is found in 30-A M.R.S.A. § 2691. That statute provides, in pertinent parts:

(E) . . . all decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons for the basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision must be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.

(G) Any party may take an appeal, within 45 days of the date of the vote on the original decision, to the Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown.

Since the "date of the vote on the original decision" was December 19, 2002, the plaintiffs clearly missed the 45-day appeal period unless the court grants their motion to extend the time period for good cause. Unlike the statutes considered by the Law Court in *Vachon v. Town of Kennebunk*, 499 A.2d 140 (Me. 1995) and *Lewiston v. Maine State Employees Ass'n*, 636 A.2d 739 (Me. 1994), section 2691 specifically authorizes the court to extend the appeal period depending upon the circumstances. Also, unlike M.R. Civ. P. 6(b), the statute does not require that the motion for extension must be filed within the period originally prescribed. The remaining question is whether the plaintiffs have demonstrated "good cause for their request."

"Good cause" proves to be a somewhat flexible and illusive concept. In the present case the court finds "good cause" in the failure of the ZBA to issue its written notice of decision with findings and conclusions within the 7-day period required by the statute. Although the plaintiffs knew on December 19, 2002, that they had lost their appeal to the ZBA, the notice of decision of January 16, 2003, set forth in black and white the specific findings and rationale of the ZBA on each of the nine issues presented

by the plaintiffs. The failure by the ZBA to timely produce its written decision does not invalidate that decision or automatically extend the appeal period. However, in the limited facts of this case the court finds that the failure does constitute good cause and will grant the plaintiffs' motion to extend the time.

The entry will be:

Defendants' motion to dismiss is DENIED; the plaintiffs' motion to extend the time within which to file an appeal is GRANTED and it is ORDERED that the plaintiffs have filed a timely appeal.

Dated: April 18, 2003



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S. Kirk Studstrup  
Justice, Superior Court

Date Filed Feb. 24, 2003

Waldo

Docket No. AP-03-001

County

Action 80(B) Appeal

JOHN FAULKINGHAM and  
PAMELA FAULKINGHAM

OCEAN EAST, L.L.C., REALTY RESOURCES,  
L.L.C. and CITY OF BELFAST

vs.

Plaintiff's Attorney

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Bangor, Maine 04401  
942-2898

Defendant's Attorney

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Tel: 338-2702

Paul L. Gibbons, Esq. for Ocean East &  
P.O. Box 616 Realty Resources  
Camden, Maine 04843-0616  
236-3325

Date of  
Entry

02/24/03	Complaint under rule 80 B (a) dtd. Feb. 21, 2003, filed. Summary Sheet, filed.
02/24/03	Notice and Briefing Schedule to atty. Cuddy.
03/03/03	Answer of City of Belfast to Complaint dtd. Feb. 27, 2003, filed.
03/03/03	Copy of Briefing schedule to atty. Kelly.
03/07/03	Answer to Complaint and Objection to Order of Stay by Defts. Ocean East, L.L.C. and Realty Resources, L.L.C., filed.
03/07/03	Motion to Dismiss by Defts. Ocean East L.L.C. and Realty Resources, L.L.C. dtd. March 7, 2003, filed. Memorandum of Law in Support of Motion to Dismiss, filed. Proposed Order, filed.
03/07/03	Copy Briefing Schedule to atty. Gibbons.
03/11/03	Summons dtd. Feb. 24, 2003 showing service on Ocean East, LLC on March 5, 2003, filed. Summons dtd. Feb. 24, 2003 showing service on Realty Resources, LLL on Feb. 27, 2003, filed. Summons dtd. Feb. 24, 2003 showing service on City of Belfast on Feb. 28, 2003, filed.
03/18/03	Motion to Stay 80B Time Requirements and Incorporated Memo of Law dtd. March 17, 2003, filed. Request for Hearing, filed.
03/19/03	Objection to Request for Stay and Concurrence with Motion to Dismiss of Defendants Ocean East, LLC and Realty Resources, LLC, filed by Defendant, City of Belfast.
03/31/03	Defts., Ocean East, LLC and Realty Resources, LLC, Response to Motion to Stay dtd. March 28, 2003, filed.
03/31/03	Plffs' Memo in Opposition to Motion to Dismiss, filed. Plffs' Motion for Extension of Time within which to File an Appeal, filed. Memorandum in Support of Motion for Extension of Time, filed.