State of New Hampshire Supreme Court

NO. 96-815

2000 TERM

AUGUST SESSION

DANIEL EATON &a.

v.

TOWN OF STODDARD

RULE 7 APPEAL FROM FINAL DECISION OF SUPERIOR COURT

BRIEF OF INTERVENERS, REBECCA AND GARY OKE

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TABLE OF AUTHORITIES

STATEMENT OF FACTS AND STATEMENT OF THE CASE

On the property in Stoddard which is the subject of this appeal has stood a general store since before memory. Charlie Eaton, the plaintiff's father, bought it in 1951. Steven Gordon, *Eaton's General Store in Stoddard Is Closing After 29 Long, Busy Years*, KEENE SENTINEL, May __, 1980, *Appx. to Intrvnr's Br.* at 22. The store was run out of the only large building on the property, which also was the Eaton's house. *8/30/96 Super. Ct. Hrg.* at 4. In 1980, with Charlie Eaton retiring, the store went out of business. *Id.* Although the store closed, the Eatons continued using the front of their home for real estate sales. *8/30/96 Super. Ct. Hrg.* at 5; *3/11/96 ZBA Trn.* at 3.

In 1987, Charlie Eaton applied to the town for a building permit to "replace, repair & extend" what was a shed on the property into a four-bay garage. APPLICATION FOR BUILDING PERMIT, TOWN OF STODDARD (Aug. 17, 1987), *Appx. to Intrvnr's Br.* at 23. The application noted that the garage was not for commercial use. *Id.* The map appended to the permit application apparently showed the Eatons' house and a garage, but not a store. *8/30/96 Super. Ct. Hrg.* at 26. Under the town's zoning ordinance at the time, if the garage were commercial, it could not be extended without either a variance or a special exception; if it were non-commercial, the extension could be permitted by the town with no further procedure. Because the application was missing some necessary information, it was returned with no action. It is unclear from the record whether a permit was ever issued. *3/11/96 ZBA Trn.* at 4, 23, 27, 30, 31, 37. Nonetheless, in 1988 the Eatons razed the existing shed and built a large garage. *3/11/96 ZBA Trn.* at 19.

At about the same time, in January 1988 the interveners, Rebecca and Gary Oke, bought

the neighboring lot. The Okes' property included an operating general store, which the Okes intended to continue. Daniel Eaton, the plaintiff, was the real estate agent who sold the Okes their property. *8/30/96 Super. Ct. Hrg.* at 22. He told the Okes theirs would be the only store in town. *8/30/96 Super. Ct. Hrg.* at 22, 33. Because Stoddard is a small summer lake town with a winter population of just 641, Northeast Information Services, HANDBOOK OF NEW HAMPSHIRE ELECTED OFFICIALS 211 (1997), the representation was vital to the Okes. At that point, consistent with the Eatons' intent when they applied for a permit, the garage was listed on Stoddard's tax cards as residential and was thus clearly considered residential by the town.

In 1992, after being shut down for 12 years, Daniel Eaton reestablished his father's store on the property. But instead of basing it in the main building where it was originally, he opened it in what had been built as the garage. The Okes offered uncontested evidence that the property was considered residential by the town, but that the store was clearly a commercial use. In 1993 the Eatons got permission to erect a sign. *8/30/96 Super. Ct. Hrg.* at 27; *3/11/96 ZBA Trn.* at 4. They also got the store assessed at its commercial value. The tax cards show that the garage/store was residential in 1990, *8/30/96 Super. Ct. Hrg.* at 28-29, but changed to commercial use "due to conversion into a store," on July 14, 1993. *3/11/96 ZBA Trn.* at 5.

Concerned with these changes, in 1992 one Joan Zelasny complained to the Selectmen. The Selectmen responded by letter to her on July 8, 1992 that because there had "always been a business on that property," they found no violation of the zoning ordinance.

On April 11, 1994, the Okes filed a formal complaint with the Selectmen about the Eaton's conducting a non-permitted commercial use in what had been built as a garage. Two days later, the Selectmen convened a meeting and immediately went into executive session to

"discuss procedures for meeting with Daniel Eaton" about the matter. Even before convening the meeting, they had extended an invitation to Daniel Eaton to attend. There is no indication of any effort to inform the Okes about the meeting, and they had no knowledge of it. Mr. Eaton answered the Selectmen's questions to their apparent satisfaction.

The minutes of the Selectmen's next meeting indicate they "reaffirm[ed] the letter" sent in response to Joan Zelasny's complaint. SELECTMEN'S MEETING (April 18, 1994), *Appx. to Pl's Br.* at 23. There is no indication of any effort to inform the Okes about the "conclusion" to their complaint, and they had no knowledge of it. Beyond the minutes, the Town made no record of its decision, and apparently did not make any effort to formally answer the complaint. The town conceded that it took no action on the Okes' complaint, *8/30/96 Super. Ct. Hrg.* at 10, and also conceded that it did not notify the Okes of its apparent non-decision. *8/30/96 Super. Ct. Hrg.* at 32.

The Okes grew increasingly frustrated at what they perceived as inaction by the Selectmen. After making several attempts to get a resolution, *3/11/96 ZBA Trn.* at 28; *8/30/96 Super. Ct. Hrg.* at 11, in 1995 they hired an attorney, Leigh Bosse. *8/30/96 Super. Ct. Hrg.* at 21. A letter from the town's attorney to Attorney Bosse's inquiry in December 1995 was the Okes' first written notice that their complaint had been denied. *See 8/30/96 Super. Ct. Hrg.* at 29. On December 28, 1995 Attorney Bosse filed an appeal with the Stoddard Zoning Board of Adjustment (ZBA) on the Okes' behalf.

On March 11, 1996, the ZBA held a hearing during which it heard testimony from several townspeople. In addition to Rebecca Oke, three other people testified: Mr. Macy, Ms. Liota, and Ms. Vebert. All of them said that there was no store on the Eaton's property for many years, that

the shed/garage had not been previously used for commercial purposes, and that the only thing that was kept in the old shed was the Eatons' old Model T. *3/11/96 ZBA Trn*. at 11-13. Photos of the Eatons' land were introduced, and they showed that there may not have even been a shed as long ago as 1975. *3/11/96 ZBA Trn*. at 17-18; *8/30/96 Super. Ct. Hrg*. at 24. Only Daniel Eaton testified to the contrary. He was unable to produce any documentary evidence that the store had been operated during the 12 years in question, or that it had been continually operated so as to preserve its grandfathered non-conforming use status.[1] *3/11/96 ZBA Trn*. at 13-16.

After deliberations, which are transcribed, the ZBA concluded that the Okes' appeal was timely, that it was not clear the Selectmen had actually rendered a decision, and that proper channels were not followed. LETTER FROM STODDARD ZBA TO DANIEL EATON (Mar. 11, 1996), *Appx. to Pl's Br*. at 25. Accordingly, the ZBA overturned the Selectmen's decision and recommended that they should have directed the Eatons to apply for a variance. *Id.*

The Eatons filed a motion for reconsideration, and after further deliberations on April 8, 1996, which are also transcribed, the ZBA denied the motion.

The Eatons then filed a Petition for Appeal in the Cheshire County Superior Court alleging that the Okes's appeal to the ZBA was not timely and that the ZBA's findings were not sufficiently detailed.

After reviewing the record, including tapes from the two ZBA hearings,[2] the Cheshire

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[1]Pursuant to the Stoddard zoning ordinance, a non-conforming use that is discontinued for more than a year loses its grandfathered status. COMMUNITY PLANNING ORDINANCE FOR THE TOWN OF STODDARD, NEW HAMPSHIRE, Art. V, *Appx. to Pl's Br*. at 31.

[2]The tapes were transcribed for this court; the Superior Court had the tapes only.

County Superior Court (*Mangones*, J.) found that:

> "the Selectmen essentially invited Daniel Eaton in for a discussion, and closed the matter without any action being taken or without any formal hearing or resolution of the issues being made. Thus, the acts complained of by the Okes were matters of alleged inaction on the part of an official."

COURT ORDER, *Notice of Appeal* at 35-36. The court then held that the Okes' "appeal to the Town of Stoddard Zoning Board of Adjustment had been timely made is supported by the evidence." COURT ORDER, *Notice of Appeal* at 37. It also held that "the doctrine of laches or other equitable considerations would not vitiate the timeliness of the appeal." *Id.*

Regarding whether the ZBA's written reasons were sufficient, the court held that because no party requested findings, there was no error in not making them. The court also held that the findings, although brief, were not "insufficiently phrased or vague so as to require remand." COURT ORDER, *Notice of Appeal* at 38. The court noted that read in conjunction with the record of the ZBA's deliberations, the grounds for the ZBA's decisions were clear enough for judicial review. COURT ORDER, *Notice of Appeal* at 39.

The Superior Court also reached merits of whether the Eaton's store was a grandfathered nonconforming use. It found that the ZBA had sufficient evidence to determine that the use had lapsed due to its lengthy interruption. That issue, however, is not before this court.

The Eaton's filed this appeal from the Superior Court.

SUMMARY OF ARGUMENT

The Okes first argue that this court must defer to the rulings of the Superior Court and of the ZBA before it, which were based on competent and sufficient evidence and contain no errors of law.

The Okes then argue that they appealed to the ZBA within a reasonable time and there are no equitable considerations leading to any other conclusion.

The Okes next argue that they had no reason to file a complaint upon buying their land in 1988, and in fact complained shortly after they had knowledge of the Eaton's unlawful use.

Finally, the Okes argue that because the statute requiring written findings does not apply to this case, and because no party requested them, even if there were no findings it would not be error. Nonetheless, the ZBA's written findings are sufficient for judicial review.

ARGUMENT

I. This Court Must Defer to the Findings of the Superior Court and of the ZBA

Both the Superior Court and the Supreme Court must give great deference to the findings of the ZBA.

> "When construing zoning appeals, the superior court must treat all findings of the ZBA as *prima facie* lawful. The order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that said order or decision is unreasonable. We will not overturn the superior court's decision unless it is unsupported by the evidence or legally erroneous."

Dube v. Town of Hudson, 140 N.H. 135, 137 (1995) (citing nearly *verbatim* RSA 677:4) (internal quotations and citations omitted). The party appealing to the ZBA and to the Superior Court has the burden of showing that the Superior Court and the ZBA did not have sufficient bases for their decisions. RSA 677:6; *Hussey v. Town of Barrington*, 135 N.H. 227, 231 (1992). The Supreme Court's role is to review the Superior Court's findings only, not the underlying ruling of the ZBA. *Hussey v. Barrington*, 135 N.H. at 227.

The Superior Court found that the Okes' appeal was timely and that the ZBA's statement of reasons was adequate. It had ample evidence on both issues, and made no errors of law. Thus, this court must let stand the lower court's ruling.

Although the merits of the case are not before this Court, the ZBA and the Superior Court also had ample evidence that the Eatons' store was not a grandfathered non-conforming use. The Keene Sentinel reported in 1988 that the "Eaton's General Store in Stoddard is Closing After 29 Long, Busy Years." *Appx. to Intrvnr's Br.* at 22. All the testimony at the ZBA hearing, except Daniel Eatons, was that the store was closed for many years. The tax records are indisputable.

They show that the shed/garage was a residential use in the period after it went out of business; but a commercial use when it reopened in 1992 twelve years later.

II. The Okes Appealed to the ZBA Within a Reasonable Time

A. The Okes Took Reasonable Action Within a Reasonable Time

New Hampshire law provides that appeals to a town's ZBA may be taken "within a reasonable time, as provided by the rules of the board." RSA 676:5, I. When the board has rules, this Court has mandated that the appeal must be taken within the time limits. *Daniel v. B & J Realty and Town of Henniker*, 134 N.H. 174 (1991); *Dumais v. Somersworth*, 101 N.H. 111 (1957). When the board has no rules, the appeal must be taken within the statutory "reasonable time." How long that is has never been determined by this Court.

The law both requires and allows citizens to have an expectation of regularity in governmental procedure. *Appeal of Lathrop*, 122 N.H. 262, 265 (1982). Among the things citizens must expect are that their complaints get resolved, *see DiPetro v. City of Nashua*, 109 N.H. 174 (1968); RSA 541-A, that decision-making bodies objectively hear both sides of a dispute, *Petition of Grimm*, 138 N.H. 42 (1993) (agency members must hear testimony); *Appeal of Lathrop*, 122 N.H. at 262 (due process violated when administrative agency failed to take opposing view into consideration); *DiPeitro v. Lavigne*, 98 N.H. 294 (1953) (opportunity to be heard is an essential of due process in adjudicative proceeding), and that citizens get notice of proceedings concerning them, *Sununu v. Clamshell Alliance*, 122 N.H. 668 (1982) (notice is due process right); *DiPeitro v. Lavigne*, 98 N.H. at 294 (notice is an essential of due process in adjudicative proceeding).

The Okes legitimately and reasonably expected the town to make a formal decision based on their formal complaint. But they weren't ever given notice of a resolution. There was no letter or any notification that a decision had been reached. As far as the Okes were aware, the

Selectmen had simply failed to act.

The Okes took reasonable action within a reasonable time. After the town failed to act, they hired a lawyer. The attorney took the time to conduct the necessary research into town records and meeting minutes. In his diligence, Attorney Leigh Bosse discovered several things: that the Selectmen had held a private conference with Daniel Eaton and had heard just his side of the story, that the Selectmen considered their action to "reaffirm" a three year old letter to an unrelated party a resolution of the Okes' complaint, and that the Selectmen had made no effort to notify the Okes of the supposed resolution. As speedily as possible Attorney Bosse appealed to the ZBA on the Okes' behalf.

B. Laches Do Not Apply in this Case

The plaintiffs suggest that the matter turns on the law of laches. Laches is inapplicable because of the existence of a statutory time period. *See Appeal of Plantier*, 126 N.H. 500, 505 (1985) ("Where there are no statutory time limitations applicable to particular administrative proceedings . . . the question of whether or not there is a bar by time may turn on the question of laches.") (internal quotation omitted). But the equitable considerations contained in the doctrine may be helpful in determining what is a "reasonable time."

Laches is a fluid concept based on the particular facts of each case. *Jenot v. White Mt. Acceptance Corp.*, 124 N.H. 701 (1984). It is a question for the trier of fact, and this court does not disturb the trier's findings unless they are unsupported by the evidence or erroneous as a matter of law. *N.H. Donuts, Inc. v. Skipitaris*, 129 N.H. 774, 783 (1987); *Jenot v. White Mt.*, 124 N.H. at 710; *North Bay Council, Inc. v. Grinnell*, 123 N.H. 321, 325 (1983).

"Mere lapse of time alone is not enough to establish laches." *Jenot v. White Mt.*, 124 N.H.

at 710 (delay of nearly ten years in foreclosing mortgage and enforcing promissory note found not unreasonable).

> "Laches, unlike limitation, is not a mere matter of time, but is principally a question of the inequity of permitting the claim to be enforced – an inequity founded on some change in the conditions or relations of the property or the parties involved. Because it is an equitable doctrine, laches will constitute a bar to suit only if the delay was unreasonable and prejudicial. In determining whether the doctrine should apply to bar a suit, the court should consider the knowledge of the plaintiffs, the conduct of the defendants, the interests to be vindicated, and the resulting prejudice."

Healey v. Town of New Durham, 140 N.H. 232, 241 (1995) (internal quotations and citations omitted). "Where the delay was caused or contributed to by the conduct of the party claiming laches, it is excusable and is not to be attributed to the complainant." *N.H. Donuts v. Skipitaris*, 129 N.H. at 783. If there is any fault by the party asserting laches, equity does not allow it to apply. *Healey v. Town of New Durham*, 140 N.H. at 232. When a party does not know the facts leading to its claim, laches does not apply. *North Bay v. Grinnell*, 123 N.H. at 325. Finally, the party asserting laches must show that there is "prejudice caused by the delay." *Appeal of Plantier*, 126 N.H. at 508.

In the present case, both the ZBA and the Superior Court determined that laches did not apply. As those bodies were the triers of fact, this court must defer.

The Eatons were obviously aware that the Okes' complaint had been filed – Daniel Eaton was the only person called by the Selectmen to talk to them regarding the Okes' complaint. The Eatons were also aware that no final decision had been rendered because no decision was issued or sent to them. On the other hand, the Okes were never made aware of the facts necessary to know that their appeal clock was ticking. They were unaware of the hearing on their compliant

and were given no notice of its supposed resolution. Thus, pursuing an appeal just 20 months after first filing the complaint was reasonable and could not and did not in any way surprise the Eatons.

If the Eatons relied upon their own assumption that the Selectmen's failure to act constituted a decision for them, the assumption was is in error, and they must bear whatever that assumption cost. Any prejudice suffered by the Eatons was not caused by the Okes. If there were any prejudice, it flowed from the Selectmen's inaction and Eaton's own assumptions. While the Eatons may have a cause of action against the town based on reliance, that in no way impinges upon the Okes' ability to maintain an appeal to the ZBA.

In addition, laches is an equitable doctrine. It would be inequitable for a town to at best vaguely resolve a citizen dispute, and not even notify the complainant of the supposed resolution, and then be allowed to stand behind a claim that the citizen was untimely in appealing the inaction.

III. The Okes Had No Reason to File a Complaint Seven Years Ago

The Eatons argue in their brief that the Okes should have brought their complaint in 1988 when they bought their property, and that it violates the doctrine of laches for the town to hear their 1994 complaint. However, the Okes could not have raised the issue in 1988.

First, when they bought the property – with Daniel Eaton as the selling agent – the Okes were given a representation that theirs would be the only general store in town. They simply would not have bought the property had the Eatons been operating a largely identical establishment next door.

Second, the Eatons did not open their store until 1992. When the Okes bought their land, there was no store next door. Town tax records at the time of the Okes' purchase show the Eaton's garage listed as residential property, consistent with the Eatons' representation to the town. Although the Eatons claim that Gary Oke bought fireworks from the shed-before-it-was-a-garage-before-it-was-a-store, the first clear notice in the record that the Okes knew the Eatons were operating a store was in July 1993 when the Eatons put up a sign. Joan Zelasny complained earlier, but she was the town treasurer and former Selectmen who participated in drafting the zoning ordinance and was well attuned to its provisions. The Okes made their complaint in April 1994, just a few months after they had knowledge of the Eaton's store, and before the summer busy season.

Third, it is not the job of one's neighbors to ensure compliance with zoning regulations. In large part zoning, like income taxes, relies on self-reporting. The Eatons needed a permit to build their garage. The needed either a special exception or a variance to conduct a business in the structure that was originally built as a residential use. The fact that the Eatons store

constitutes an illegal use is a situation created by the Eatons, not the Okes. A claim by the Eatons that the Okes cannot complain about an illegal use in 1994 does not detract from the Eatons creation of the illegal use.

Fourth, the Eatons claim that they relied on the fact that the Okes (or any neighbor) did not complain at an early stage, and that therefore they invested money in their store and its inventory. Reliance, which is an equitable doctrine however, is not a valid concern where the agency issuing a permit was in excess of its authority or where the use is illegal. *Dumais v. Somersworth*, 101 N.H. at 111.

Finally, it is not equitable to apply laches to the Okes complaint, even if late. The Okes' complaint merely pointed out an illegal use, a situation created by the Eatons. Regardless of when it was discovered or reported, the Eaton's violation of the zoning ordinance should not be countenanced by laches, an equitable doctrine.

IV. The ZBA's Findings Were Sufficient, and If Not the ZBA's Error Was Harmless

The Eatons allege that the ZBA's written reasons for its ruling were insufficient. The statute provides that:

> "The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval."

RSA 676:3, I.

A. The Requirement of Written Reasons Does Not Apply in this Case

This statute does not apply in this case for two reasons. First, by its terms, it applies to an application for "a local permit." This case does not concern the application for a permit. The Okes were not "applicants," but were appellants from the Selectmen's inaction having nothing to do with a permit.

Second, also by its terms, the board is required to state written reasons only when "the application is not approved." Here, the Okes filed an appeal of the Selectmen's decision to the ZBA. Their appeal resulted in a reversal of the Selectmen's decision. The Okes won. Thus, to the extent that their complaint can be considered an "application," it was approved, and the statute does not apply.

B. No Party Requested Written Findings

The ZBA is required to issue written findings only when it receives a request for them. "[T]he failure to disclose specific findings is not error where . . . no request for such findings is made." *Grey Rocks Land Trust v. Town of Hebron*, 136 N.H. 239, 243 (1992). "Although the disclosure of specific findings by a board often facilitates judicial review, the failure to disclose

specific findings is not error where, as here, no request for such findings is made." *Barrington East Owners' Assoc. v. Town of Barrington*, 121 N.H. 627, 630 (1981). *See Pappas v. City of Manchester*, 117 N.H. 622, 625 (1977).

In this case, no party requested findings. The town's attorney did suggest that the ZBA make findings. *3/11/96 ZBA Trn*. at 36. The Eatons in their brief try to bootstrap this advice of counsel into a request. However, the ZBA was in its role as a quasi-judicial body. The ZBA's own attorney was advising the administrative decision-maker, not representing the town as a separate party. The town was not a party until it was sued, as a town, by the Eatons in the Superior Court. Counsel's advice cannot be construed as a request.

Because no party requested written findings, there was no error in the ZBA's alleged failure to make them.

C. The Purpose of Findings Is to Aid Judicial Review of the Merits, Which Have Not Been Appealed to this Court

The purpose of the requirement that the ZBA make findings is so that the court can review the issues about which the findings were made. *Grey Rocks v. Hebron*, 136 N.H. at 243. *Alcorn v. Rochester Zoning Bd. of Adjustment*, 114 N.H. 491 (1974) (court needed findings to determine whether the ZBA adequately ruled on statutory requirements for variance). In this case, however, the merits have not been appealed. Instead, the Eaton's have merely made a naked allegation of error. They have not asked for review of the underlying issue for which the claimed error is arguably relevant. Thus, to the extent that the ZBA erred, the error produced no prejudice and was harmless.

D. The ZBA Made Sufficient Findings

This court has ruled that the ZBA's statement of reasons may be somewhat clipped and vague, so long as they are capable of review. *See Alcorn v. Rochester,* 114 N.H. at 491. Moreover, when the statement of reasons is allegedly insufficient, the Court will go beyond the bare ruling and will look into the record and minutes to determine the ZBA's reasoning. *Grey Rocks v. Hebron*, 136 N.H. at 243. *See Appeal of City of Nashua*, 138 N.H. 261 (1994) (Board of Tax and Land Appeals, under RSA 541-A:35, made sufficient findings).

In this case, the Superior Court ruled that it

> "does not find that the decision issued by the Town of Stoddard Zoning Board of Adjustment was insufficiently phrased or vague so as to require remand. There is a lengthy tape recording including a recording of the deliberations of the ZBA.[3] The ZBA had noted the grounds for its decision. The issues before the Board were the timeliness of the Oke appeal and, if timely, whether the Selectmen should have enforced the zoning ordinance by requiring the Eatons to seek a variance.
>
> The Court would find that the determinations of the ZBA, while perhaps not as precise as possible, are capable of judicial review without confusion."

COURT ORDER, *Notice of Appeal* at 38-39.

This court should defer to the Superior Court's ruling on this issue. The merits, which were not appealed to this court, were before the Superior Court. The Superior Court found that it had a sufficient statement of the ZBA's findings for its review of the merits. Here, where this court cannot reach the merits, the sufficiency of the ZBA's findings are even less important, and their lack of precision is no bar to review.

Nonetheless, the findings are sufficient. Standing alone, but especially when read in conjunction with the record of the ZBA's deliberations, what they mean is no mystery.

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[3]The tapes have now been transcribed and are on record with the Supreme Court.

Because the ZBA meeting was not presided over by a judge, the transcript does not read as easily as a transcript of a court hearing. The speakers are largely unidentified, and people apparently spoke simultaneously. Thus, it is helpful to read the ZBA's entire deliberations, which run from page 20 to page 46 in the transcript of the March 11, 1996 public meeting of the ZBA. However, one passage can be excerpted.

> "MS. HOWARD: . . . I can't see any proof that there ever was any permission even requested, that it was just assumed that enough commercial activity had gone on there to justify a continuance of more commercial activity, except it kind of expanded into other areas of retail. But it was – it just kind of flowed from point one to point two, but there was no documentation of a change of use in the material that I see, and the selectmen just kind of went along with business as – you know, it always . . .
>
> MR. SPEAKER[4]: They dropped the ball.
>
> MS. HOWARD: They kind of – I think there wasn't a real delineation between anything. What do you think, Gary? Do you think I'm wrong or . . .
>
> MR. SPEAKER: You know, I just have some questions on the process again.
>
> MS. HOWARD: It's the process that . . .
>
> MR. SPEAKER: Aren't the selectmen required to take a vote in an administrative decision and they do, or can they just . . .
>
> MR. SPEAKER: What are the requirements?
>
> MR. SPEAKER: There aren't any. I mean I'm not here to say that the selectmen acted either properly or improperly. They could have handled this whole thing better, let's put it that way. In 1992, when Joan [Zelasny] wrote the letter, they took it up and acted, and took a vote, if I recall.
>
> MS. HOWARD: In their – in their minutes –
>
> MR. SPEAKER: The minutes.

[4]It is believed that "MR. SPEAKER" refers not to the chairperson of the ZBA but to more than one male members of the board.

> MS. HOWARD: – they made a decision.
>
> MR. SPEAKER: Yeah, they made a decision. The next time around, they called Danny [Eaton] in and they discussed it informally and then they – I don't know what they did, but they didn't get a clear-cut vote in their minutes."

3/11/96 ZBA Trn. at 31-32.

Members of the ZBA agreed that the Selectmen acted improperly, *id.* at 41, and perhaps unethically. *Id.* at 34. The ZBA also agreed that to the extent a decision was made, the Selectmen were vague and unclear. *Id.* at 37, 41. The ZBA found that a two year [sic] delay in appealing in light of such error was not too long. *Id.* at 28.

Thus, the Selectmen's findings were adequate, and this Court should let stand the ZBA's and the Superior Court's rulings.

CONCLUSION

Based on the foregoing, Rebecca and Gary Oke request that the ruling of the Superior Court be summarily upheld.

Respectfully submitted,

Rebecca & Gary Oke,
By their Attorney,

Law Office of Joshua L. Gordon

Dated: August 20, 2000

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Counsel for Rebecca and Gary Oke requests that Attorney Joshua L. Gordon be allowed 15 minutes for oral argument.

I hereby certify that on August 20, 2000, a copy of the foregoing will be forwarded to Kendall W. Lane, Esq; Homer S. Bradley, Esq.; and Leigh D. Bosse, Esq.

Dated: August 20, 2000

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APPENDIX

1. Steven Gordon, *Eaton's General Store in Stoddard Is Closing After 29 Long, Busy Years*, KEENE SENTINEL, May __, 1980 . . . . . *22*

2. APPLICATION FOR BUILDING PERMIT, TOWN OF STODDARD (Aug. 17, 1987) *23*