

NOTICE OF DECISION OF DAMARISCOTTA BOARD OF APPEALS

In the Matter of Anna Jansen, Our Town Damariscotta et. al., Appellants, regarding the Planning Board Decision of February 5, 2018 to approve the Application of Damariscotta Main Street, LLC for a Project at Map 001 Lot 056-001 – 435 Main Street, Damariscotta, Maine, 04543.

Date of Hearing: Tuesday, March 27, 2018, 2:00 p.m.

Findings and Conclusions: The Damariscotta Board of Appeals met at the Town Hall to hear the parties as represented by their attorneys. Peter W. Drum and Jonathan Hull of Damariscotta represented Appellants. Gary D. Vogel of Drummond Woodsum, Attorneys at Law, Portland, Maine, represented Respondent "435 Main Street". Attorney Amanda A. Meader of Ellis & Meader, Attorneys at Law, Augusta, Maine, provided legal counsel to the Board of Appeals. The Board of Appeals consisted of Messrs. Rockwood (Chair), Betke, Cosgrove, Schling and Sewall. Alternate member Harrington was in attendance.

After hearing argument from all parties, reviewing the record, including minutes of the Planning Board and briefs provided by counsel for Appellant and Respondent, the Board of Appeals voted as follows:

Timeliness: On the issue of the timeliness of the appeal, the Board of Appeals accepted the legal analysis provided by counsel for the Board of Appeals, Attorney Meader, that the date of decision was not at the oral vote at the December 4, 2017 Planning Board meeting or at the Planning Board's January 8, 2018 meeting at which the Planning Board inadvertently approved an inaccurate version of their December 4, 2017 oral decision. Rather, the operative date of decision was the signing of the official written Notice of Decision on February 5, 2018 after the final revisions and vote of the Planning Board on that date. *Gorham v. Androscoggin County*, 2011 ME 63. It was noted during the hearing that at the January 8, 2018 Planning Board meeting, Chairman Eaton stated that the appeal period begins when the Notice of Decision is signed. On a motion by Rockwood, seconded by Betke, the finding of timeliness was by a unanimous vote of 5-0 of the Board of Appeals.

Standing: On the issue of the standing of the Appellants to bring this appeal, after hearing arguments, the Board of Appeals broke the issue of standing into two questions: (1.) Did Anna Jansen or Our Town (an unorganized coalition) or its members "participate" in the Planning Board process sufficiently to satisfy the threshold participation requirement; and (2.) Did any of the Appellants suffer particularized injury sufficient to have legal standing.

The arguments turned on whether Anna Jansen or others were abutters, and whether or not statements in the eight different sets of minutes of the Planning Board, and submission of a letter to the January 8, 2018 Planning Board Meeting by Attorney Peter Drum on behalf of “Our Town” individually or together constituted sufficient participation in the process to meet the first element of standing required.

To have standing to appeal, a party must have actually participated in the hearing below. Further, the party must have a particularized injury that is distinct from the harm suffered by the general public. *See, for example, Brooks v. Cumberland Farms, Inc.*, 1997 ME 203. Appellants failed to show that Anna Jansen participated in person or through counsel at any time during the Planning Board’s review of the 435 Main Street application. Appellants’ counsel confirmed that Ms. Jansen had been out of the country through most of the Planning Board’s proceedings and had not attended any of the Planning Board’s meetings or hearings.

Appellants’ counsel next argued that another individual, Katherine Blount, is also an abutter to the project and attended Planning Board meetings regarding 435 Main Street’s application on July 10, 2017 and August 7, 2017. Counsel for Appellants were unable to demonstrate that Ms. Blount spoke or submitted written objections during either meeting. The Board found that Ms. Blount could not demonstrate “actual participation” sufficient to establish the first prong of the standing test. *Nergaard v. Town of Westport Island*, 2009 ME 56.

There was also discussion of whether “Our Town” has the right to sue or be sued as an unorganized association. Attorney Meader, counsel for the Board of Appeals, advised the Board that the answer to this question is no, absent specific statutory authorization. Meader further advised that an unincorporated association could be substituted with a real party in interest. However, none of the individuals who spoke during the Planning Board hearings and meetings meet the definition of “standing” sufficient to substitute them as a real party in interest, since these individuals would need to be abutters or aggrieved parties with an injury distinct from that of the general public. *Tisdale v. Rawson*, 2003 ME 68. Even if Ms. Blount could establish a particularized injury distinct from that of the general public, counsel for Appellants were unable to provide the Board with evidence that Ms. Blount raised these concerns to the Planning Board.

A majority of the members of the Board of Appeals were concerned that the appeal process might be abused to delay commercial development, and that people concerned should participate earlier and more actively to be able to bring an appeal. Stated differently, counsel for Appellants failed to prove that individual members of “Our Town” suffered injury distinct from that of the general public due to the issuance of parking waivers (the focus of objection to the Planning Board’s approval of the project.)

On a motion by Rockwood, seconded by Betke, to accept that there was sufficient participation to meet the first prong of the requirement for legal standing, the motion failed by a vote of 2-3. At the suggestion of Attorney Hull, the motion was rephrased to

state that the standing to bring an appeal by Anna Jansen and Our Town was rejected by a vote of 3-2.

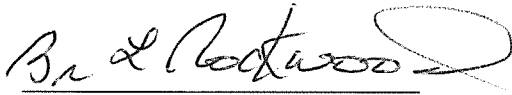
Decision:

There being no standing to bring the appeal, the merits of the appeal were not reached and the Board of Appeals adjourned at 3:45 p.m. The Appeal of Anna Jansen and “Our Town” is therefore denied.

Appeal Rights:

Any party may request a reconsideration by the Board of Appeals within 30 days of this decision. Any party may take an appeal, within 45 days of the March 27, 2018 date of the vote on the decision, to the Superior Court in accordance with Title 30-A, Section 2691 of the Maine Revised Statutes and the Maine Rules of Civil Procedure, Rule 80B.

Dated this 30th day of March, 2018

A handwritten signature in cursive script, appearing to read "Bruce L. Rockwood", written over a horizontal line.

Bruce L. Rockwood
Damariscotta Board of Appeals Chair

