

STATE OF MAINE
AROOSTOOK, SS.

DISTRICT COURT
MADAWASKA DIVISION
CIVIL ACTION
DOCKET NO. FORDC-CV-07-68

TOWN OF MADAWASKA,

Plaintiff

v.

ROGER COLLIN, DWAYNE COLLIN,
DOUGLAS M. COLLIN and DEAN R.
COLLIN,

Defendants

CONSENT ORDER AND JUDGMENT

Plaintiff, the Town of Madawaska (hereinafter "Madawaska") and Defendants (hereinafter collectively "the Collins"), have agreed to resolve the above captioned matter by entry of the following stipulated facts and consented to order, with judgment to be entered against the Collins pursuant to the terms set forth herein. The parties stipulate and agree to the following facts, and based upon that stipulation the Court makes the following findings:

STIPULATED FACTS

1. Madawaska is a duly organized and existing municipal corporation located in Aroostook County, Maine.
2. Defendants, the Collins, are all residents of the Town of Madawaska, Aroostook County, Maine.
3. Roger Collin is a former owner of property located at 57 Chapel Road, Lot 274, Madawaska, Maine, also known as Tax Map 34, Lot 18 (hereinafter the "Premises"). Roger Collin owns a life estate in the Premises and was the applicant and representative of the Collins with respect to the applications and construction that are the subject matter of this land use complaint.
4. Defendants Dwayne Collin, Douglas Collin and Dean Collin are the sons of Roger Collin, and joint tenant owners of the Premises.
5. The Madawaska Land Use Ordinance (hereinafter the "LUO"), and the Madawaska Shoreland Zoning Ordinance (hereinafter the "SZO"), are both duly adopted Ordinances of the Town of Madawaska.
6. On or about September 20, 2004, Roger Collin filed a land use permit application seeking approval to construct an addition to the existing camp on the Premises. The proposed addition was 7.5 feet long, 36 feet wide, and 7.5 feet high.

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7. The Premises are located within the Rural Farm District and Shoreland Zoning Overlay District of the Madawaska LUO. Because the Premises are within 250 feet of the normal high water line of Long Lake, the Premises are also governed by the Madawaska SZO, falling within the Limited Residential District of the Shoreland Zone.

8. The addition was to be built on the road side of the existing camp. The required setback from the road at the time of the application was 50 feet from the road for all structures.

9. The proposed addition would bring the structure to between 13 and 15 feet from the road, therefore, Collins applied for a variance.

10. Because the building was within 100 feet of the normal high water line, the Madawaska SZO limits any expansion of floor area or total volume to a 30% increase of the structure that existed as of January 1, 1989.

11. On November 8, 2004 the Madawaska Zoning Board of Appeals granted the Collins the requested variances from the road setback to construct the addition.

12. The Collins constructed the addition after receiving a permit dated November 9, 2004 from the Madawaska Code Enforcement Officer.

13. The Collins's abutter, Richard Cayer, appealed the decision of the ZBA to the Aroostook County Superior Court.

14. The Aroostook County Superior Court granted Cayer's appeal, reversed the decision of the Zoning Board of Appeals granting the variance and remanded the matter for a new hearing on Collins requested variance.

LAND USE VIOLATIONS

15. The addition built by Collins after November 8, 2004 was in violation of the LUO once the variance was reversed because of the failure to meet the road setback requirements.

16. As of September 12, 2006, the required setback from the road for structures within the Rural Farm District was amended to 15 feet for lots with an average depth of less than 75 feet, such as the Collins lot.

17. As a result of the amendments to the LUO in September 2006, a portion of the addition conforms to the 15 foot setback requirement although part of the addition violates the setback by approximately 2 feet.

18. On June 12, 2007 the Town adopted a Shoreland Zoning Overlay District as part of the LUO, creating a 15 foot road setback which also applies to the Premises. There remains a 2 foot setback violation under the LUO for the addition. This Order will resolve all issues between the parties with respect to that violation.

SHORELAND ZONING VIOLATIONS

19. At the time of the requested expansion in September 2004, the Collins property was subject to the 30% limitation on the expansion of floor area and volume of the structure at any time after January 1, 1989 pursuant to the Madawaska Shoreland Zoning Ordinance.

20. At the time of the application for the addition, the Collins were entitled to a square foot expansion of 286.7 square feet. The addition constructed was 7.5 feet x 36 feet, for a total expansion of 270 square feet, which was within the 30% expansion.

21. The volume of the addition was 1,979.91 cubic feet. At the time of the application for the expansion the maximum volume expansion allowed under the Shoreland Zoning Ordinance was 1,649.25 cubic feet, therefore, the expansion exceeded the permissible 30% expansion in the Shoreland Zoning Ordinance by approximately 330 cubic feet.

22. After the construction of the addition, in order to bring the Premises into compliance with the expansion limitations of the Shoreland Zoning Ordinance, Collins removed a storage shed attached to the camp. The removal of the storage shed reduced the square footage occupied by the camp by 58.4 square feet and reduced the volume by 446.76 cubic feet, bringing the property into compliance with the Madawaska SZO and the Maine Shoreland Zoning Statute.

23. From the time of the construction of the expansion until the time the shed was removed in approximately August 2006, the Collins property was in violation of the Madawaska SZO for expansion beyond the limits allowed by the Ordinance. Based upon the above findings, the property is no longer in violation of the SZO or the Maine Shoreland Zoning Statute.

ORDER

Based upon the foregoing findings, it is hereby ORDERED as follows:

A. The violations of the LUO and SZO are subject to the penalty provisions of 30-A M.R.S.A. §4452. Pursuant to the LUO and statute the Court may assess fines for each day the violation exists, and may award the Town its attorney's fees. This Order and Judgment resolves all violations of the LUO or SZO currently in existence on the Premises.

B. To the extent the structure encroaches upon the road setback, the Collins may not increase the size of the structure so that it further encroaches into the road setback unless the construction is subject to a valid permit from the Town or other appropriate authority.

C. Collins may not further increase the square footage or volume of the structure on the premises without permits issued pursuant to the SZO then in effect.

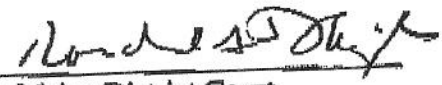
D. The Collins are ORDERED to pay a fine of \$1,500 for all violations that existed on this property from November 9, 2004 up through the present. This amount was paid to the Town in July 2006 pursuant to a prior Consent Agreement pertaining to the Premises.

E. The Court ORDERS that the Defendants pay attorney's fees and costs incurred by the Town of Madawaska in this matter in the amount of \$3500.00. The Collins have agreed to pay this amount within 6 months of entry of this order.

F. The Court further ORDERS that the Collins are assessed an additional fine of \$1,500, which fine will be suspended so long as there are no new violations of the Madawaska LUO or SZO on the Premises within five (5) years of the date this Judgment is entered. In the event the Town of Madawaska brings another action for enforcement of the LUO or SZO relating to new violations on the Premises within five years, the Town will be entitled to collect the suspended \$1,500 fine in addition to any other applicable penalties.

The Clerk is instructed to reference this Order on the docket pursuant to M.R.Civ.P. 79(a).

Dated at Madawaska, Maine this 17th day of December 2007.



Judge, Maine District Court


SEEN AND AGREED TO:

Dated: December 6, 2007



Michael A. Hodgins, Esq.
Attorney for Plaintiff
Town of Madawaska

Dated: DECEMBER 10, 2007



Richard D. Solman, Esq.
Attorney for Defendants