

RICHARD CAYER et al.

v.

TOWN OF MADAWASKA

Submitted on Briefs September 25, 2019

Decided March 10, 2020

Panel: SAUFLEY, C.J., and MEAD, GORMAN, JABAR, and HUMPHREY, JJ.*

MEMORANDUM OF DECISION

Richard and Ann Cayer appeal from a summary judgment entered by the Superior Court (Aroostook County, *Stewart, J.*) in favor of the Town of Madawaska on the Cayers' complaint seeking declarations that the building permits issued to them in 2008, 2012, and 2013 remain valid and that a notice of violation and stop work order issued by the Town's code enforcement officer (CEO) is "null and void."¹ *See* 14 M.R.S. §§ 5951-5963 (2018); M.R. Civ. P. 56, 57. The court concluded that the Cayers' permits expired by operation of section 16(F)² of the Town's Shoreland Zoning Ordinance (SZO), *see*

* Although Justices Alexander and Hjelm participated in the appeal, they retired before this opinion was certified.

¹ The Town's CEO issued a "notice of violation and stop work order" to the Cayers for alleged violations of the SZO. The Town's subsequent Rule 80K land use complaint was later dismissed with prejudice. *See* M.R. Civ. P. 80K.

² Section 16(F) states that "[p]ermits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project." *See* Madawaska, Me., Shoreland Zoning Ordinance § 16(F).

Madawaska, Me., Shoreland Zoning Ordinance § 16(F) (June 16, 2009), and that the Cayers were not entitled to relief based on equitable estoppel.

Contrary to the Cayers' contention, they did not acquire vested rights in the permits issued to them in 2012 and 2013 because the summary judgment record demonstrates that the Town did not revise the SZO or enact a new ordinance after the permits were issued that altered or restricted the Cayers' right to do the work authorized by the permits.³ *See Sahl v. Town of York*, 2000 ME 180, ¶¶ 12-13, 760 A.2d 266. Thus, the permits expired pursuant to section 16(F) of the SZO, the last permit issued having expired no later than April 8, 2015—two years after it was issued. *See Madawaska, Me., Shoreland Zoning Ordinance § 16(F)*.

Further, contrary to the Cayers' contention that their permits cannot be "revoked or terminated" until the Town's alleged violations "are proven through proper legal proceedings with due process," the Town and its CEO had the authority to enforce the provisions of the SZO against alleged violations, *see Madawaska, Me., Shoreland Zoning Ordinance § 16(I)*, and the Cayers made no effort to protect their permits through available judicial process prior to the expiration date imposed by the SZO, *see Dyer v. Town of Cumberland*, 632 A.2d 145, 147 (Me. 1993) (stating that "litigation does not toll the expiration date specified in an ordinance for building permits. A party must seek a stay or an extension of his permit from the town to protect his interests"); *Madawaska, Me., Shoreland Zoning Ordinance § 16(F)*; *see also Laverty v. Town of Brunswick*, 595 A.2d 444, 447 (Me. 1991); *Cobbossee Dev. Group v. Town of Winthrop*, 585

A "substantial start" is defined as the "completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost." *Id.* § 17.

³ Vested rights may "occur when a municipality applies a new ordinance to an existing permit" and there has been "actual physical commencement of some significant and visible construction . . . undertaken in good faith . . . with the intention to continue with construction and to carry it through to completion." *Sahl v. Town of York*, 2000 ME 180, ¶¶ 12-13, 760 A.2d 266 (quotation marks omitted); *see Peterson v. Town of Rangeley*, 1998 ME 192, ¶ 12 n.3, 715 A.2d 930 (stating that when "the law in effect has not changed . . . the vested rights principle is therefore not applicable"); Manahan et al., *A Practical Guide to Land Use in Maine* § 2.3.4(b) at 2-34 (1st ed. 2016).

Although the Town did enact a new shoreland zoning ordinance after the Cayers were issued their 2008 permit, *see Madawaska, Me., Shoreland Zoning Ordinance § 4*, the summary judgment record shows that the Cayers did not perform any construction, much less any "significant and visible construction" under the authority of that permit. *Sahl*, 2000 ME 180, ¶¶ 12-13, 760 A.2d 266.

A.2d 190, 194 (Me. 1991). As such, the court did not err in applying the unambiguous language of section 16(F) and the Cayers are not entitled a “litigation credit,” *Laverty*, 595 A.2d at 447, on the time limits imposed on their permits by the SZO.⁴

The entry is:

Judgment affirmed.

Luke M. Rossignol, Esq., Bemis & Rossignol, LLC, Presque Isle, for appellants
Richard and Ann Cayer

Edmond J. Bearor, Esq., Joshua A. Randlett, Esq., and Jonathan P. Hunter, Esq.,
Rudman Winchell, Bangor, for appellee Town of Madawaska

Aroostook County Superior Court docket number CV-2017-12
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⁴ Because the record does not show any misrepresentations made by the CEO or the Town, we find the Cayers’ equitable estoppel argument unpersuasive and we do not address it further. *See State v. Brown*, 2014 ME 79, ¶¶ 14-17, 95 A.3d 82; *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶¶ 34-36, 856 A.2d 1183.