

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

Docket No. 2009-P-0827

PETER K. FREI
Plaintiff-Appellant
v.

TOWN CLERK OF HOLLAND et al.,
Defendants-Appellees

ON APPEAL FROM A JUDGMENT
OF THE HAMPDEN SUPERIOR COURT

APPELLANT'S PETITION FOR REHEARING

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March 29, 2010

To the Senior Justice of the panel
Kantrowitz, Green & Meade
Appeals Court of the Commonwealth
John Adams Courthouse
1 Pemberton Square
Boston, MA 02108-1705

Re: Petition for Rehearing Pursuant to
Mass R.A.P. Rule 27
Docket No: 2009-P-0827
Parties: Peter K. Frei v. Town Clerk,
Planning Board and Zoning Board of
Appeals of the Town of Holland.

To the Honorable R. Marc Kantrowitz, Senior
Justice of the presiding panel in the above
mentioned matter before the Appeals Court of
the Commonwealth.

This Court opined in its 1:28 ruling:

The plaintiff in 2008 sought
enforcement of the zoning laws against
structures and uses authorized by two
special permits issued in 2004 and
2006, respectively. Any challenge to

either special permit was required to have been filed within twenty days after its issuance. See G. L. c. 40A, § 17.

This Court misapprehends the nature of my course of action. G.L. c.40A, s.7 provides any person the right to challenge the legality of a structure in violation of zoning laws under the G.L. and local bylaws. The statute of limitation is not twenty days to file such a request; it is six years for structures that were built with the necessary permits, ten years if the structures were built without first obtaining permits. My action was therefore timely; see *Lord v. Zoning Bd. of Appeals of Somerset*:

The second paragraph of G.L. c. 40A, § 7, as amended through St.1987, c. 481, § 1,^{FN1} contains two separate limitations periods for actions brought to redress zoning violations: the first, six years, applicable to actions complaining of structural violations or use violations if "real property has been improved and used in accordance with the terms of the original building permit"; the second, ten years,

applicable to actions complaining of structural violations for which no permit was given.

Lord v. Zoning Bd. of Appeals of Somerset,
30 Mass. App. Ct. 226, 227 (1991).

This Court went on to state in its rule
1:28 ruling:

Moreover, the plaintiff did not file an appeal from the letters denying his request for enforcement within thirty days following such denials, as required by G. L. c. 40A, § 15.

Another misconception; **I clearly DID file these two documents and did so in a timely fashion. The two documents are included in the appendix to my brief¹. Both documents bear a timestamp applied by the town clerk of Holland.**

The two documents (one for each illegal house in question) are my two letters appealing

¹ If this Court's contention is that I failed to file the filing fee as the ZBA claims in its letter, see exhibit 12, p.045, I rebut this argument in my letter, see exhibit 13 pages 046-047. I paid the filing fee anyway, even so it is only required if a petitioner files an application for a Variance or Special Permit, see exhibit 2, page 079.

the building inspector's two letters denying me my requests to enforce the zoning laws. The allowed time to file these documents is 30 days. I filed the documents on the 14th day (March 31, 2008). The two letters are included in logical order as exhibit 10 (pages 041-042), and exhibit 11 (pages 043-044) in the appendix.

This Court's rule 1:28 memorandum and order is wanting logic on its face. Wrongs are alleged in regards to two different courses of actions; only one of which can apply. Either, I filed an appeal pursuant section 17, OR I filed an appeal pursuant section 8.

I did the latter one; I filed an appeal pursuant section 8, period.

Any reference to section 17 as an alleged defect in my pleadings proves just one thing: The writer of the rule 1:28 slip opinion never read my brief, complaint, pertinent sections of

the zoning act chapter 40A, and other documents included in the appendix to my brief.

Last but not least, this Court throws in case law which does not only miss the point, the cases have absolutely nothing to do with the case here at hand.. In *Bingham v. City Council of Fitchburg*, 52 Mass. App. Ct. 566, 569 (2001), a petitioner's section 17 appeal was deemed untimely as he missed the jurisdictional deadline by only 15 minutes.

Again, I did not file a section 17 appeal.

In *Iodice v. Newton*, 397 Mass. 329, 333-334 (1986), this honorable Court rejected a challenge of a zoning ordinance by declaratory judgment because the action fell outside the limiting period prescribed by G.L. c.40A, Section 17. **I don't challenge a zoning ordinance with my action.**

This Court commenced its rule 1:28 slip opinion with the statement:

We affirm the judgment of the Superior Court dismissing the plaintiff's complaint for the reason (among others) that the plaintiff's appeals to the defendant zoning board of appeals were untimely.

Instead of finding wrong in my brief addressing the Superior Court Judge's reason for dismissing my complaint, this Court came up with two other legally untenable reasons for denying all residents of Holland, including myself, justice.

Interestingly, this Court used "reason," the singular, not the plural. It is an indication that this Court misconceived the two issues as one and the same, even so appealing the building inspector's denial of my enforcing order has nothing to do with an appeal pursuant section 17.

To prevent a substantial miscarriage of justice, the ruling by this Court affirming the dismissal of my complaint needs to be changed

to an order vacating the Superior Court's judgment.

A dismissal would reward Earl Johnson, the most corrupt officials our community has ever seen, for his illegal scheme he set in motion more than 19 years ago, a scheme that culminated in the construction of two dwellings for his family on a back lot **without any frontage**, on a lot that belonged to the residents of Holland, on a lot that was town property and which he deeded over to his family without paying for it.

It is difficult not to be cynical when faced with the rule 1:28 decision by this Court.

I was informed by this Court at the time I filed this appeal of the following:

As a pro se party, you are bound by the same procedural rules and held to the same standards as a party who is represented by an attorney. See *International Fidelity Ins. Co. v.*

Wilson, 387 Mass. 841, 847 (1983), and cases cited.

As a pro se litigant, I have met all procedural rules. My brief is better than many that I read that were written by lawyers. I expect that in return this Court will give this case the attention it deserves and that this Court applies the laws as the Legislature intended and wrote them.

Please read my complaint and my brief and I promise you that you will not be disappointed.

The erroneous ruling in place is based in part on deceiving statements introduced by the Town's Super Lawyer Tani Sapirstein.

Sincerely

Peter K. Frei,

Appellant pro se.

Certificate of Compliance

I certify that this brief complies with the rules of court that pertain to the filing of briefs.

Peter K. Frei

Certificate of Service of Service

I, Peter K. Frei, certify that I served two copies of the foregoing Petition for Rehearing on this 29th day of March 2010, per first class mail, postage prepaid to the following recipient:

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