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JAMES B. LAMPKE, ESQ.

May 3, 2011

Town of Chilmark  
Zoning Board of Appeals and Charles Hodgkinson, ZBA Aide  
401 Middle Road  
P.O. Box 119  
Chilmark, MA 02535

Re: Richardson (formerly Carlin)  
Vs: Board of Appeals of Chilmark, et al  
No: Misc. Action No. 305100 (Land Court)

*5/4/11*  
*Triv*  
*Carlin vs. ZBA*  
*Chen*

Dear Board Members and Mr. Hodgkinson:

I recently advised you that the Land Court ruled against the challenges to your decision in the above matter and upheld your decision.

That decision by the Chief Justice of the Land Court was primarily based on the fact that Ms. Carlin had notice of the issuance of the Building Permit and did not timely appeal it. Rather, she sought enforcement and other relief. Under the principle set forth in the key case of Gallivan v. Zoning Board of Wellesley, 71 Mass. App. Ct. 850 (2008), a person with such knowledge who objects to the issuance of the building permit must appeal and can not, as was often done, seek enforcement action after the period of time to appeal the issuance of the building permit. The key in such matters is that the appealing party had knowledge of the issuance of the building permit.

Although the defendants in the present matter raised other issues as well, based on the lack of appeal of the building permit the Land Court ruled against the plaintiff.

The Plaintiff has now filed a Notice of Appeal of the decision.

Procedurally, this means that the matter will proceed from the Land Court to the Appeals Court. Generally, the parties will be submitting briefs and the Appeals Court may act on the matter based on the briefs or may schedule a hearing before making a decision. A party may seek further review from the Supreme Judicial Court, but only a small per cent of those cases are accepted by the SJC.

As in the Land Court proceedings, the burden is on the party who received the favorable decision from your Board to be primarily responsible (at their expense) for defending the decision. That means Fools High Tide, LLC, which succeeded to Mr. Cohen's interest when it bought the property, will be doing the bulk of the work. I will remain available to monitor the matter and assist in the defense of your decision. Often times in such cases I would join in with or file an adoption of the co-defendant's brief rather than do a separate brief. This saves the Town on legal expenses/

I will keep you advised of any developments. If in the meantime you have any questions or comments, please do not hesitate to contact me.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

  
JAMES B. LAMPKE  
SPECIAL COUNSEL

JBL/

Cc: Timothy R. Carroll, Executive Secretary  
BY FAX.