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August 7, 2019

Town of Naples Board of Appeals
15 Village Green Lane
Naples, ME 04055

Subject: Appeal of Notice of Violation
Gary's Olde Towne Tavern Electronic Sign

Dear Board Members:

I am writing on behalf of my client, Gary Skellett regarding a Notice of Violation dated July 9, 2019 pertaining to the electronic sign for Gary's Olde Towne Tavern. As set forth in more detail below, the electronic sign is grandfathered and therefore the Notice of Violation was issued in error.

Background Facts

In November 2018, Gary Skellett received a permit to install an electronic sign at Gary's Olde Towne Tavern. At the time the permit was issued there were no limitations on hours of operation of electronic signs. The Tavern is open daily until 1:00 am. Gary expended approximately \$20,000 to purchase an electronic sign, which was installed in December of 2018. At the April 2019 Town Meeting, the Land Use Ordinance was amended to require all electronic signs in the Village District to be shut off by 10:00 pm, which is three hours before the Tavern closes. The Tavern is located on the outer edge of the Village District. Because the sign permit was issued prior to the ordinance amendment, the sign at the Tavern remained illuminated until closing. On July 9, 2019, the Code Enforcement Officer issued a Notice of Violation requiring the electronic sign at the Tavern to be shut off by 10:00 pm.

Legal Argument

Section 707B of the Land Use Code states as follows: "except as set forth in Section 707E below, preexisting nonconforming signs may be maintained in their preexisting size, configuration, design, and location." Section 707E states that "any sign existing as of the date of enactment of this ordinance is grandfathered in its existing configuration and therefore not subject to the provisions of this ordinance until such

August 7, 2019

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time as the primary use of the parcel changes or there is a change of ownership at which time the sign(s) must be replaced pursuant to a valid permit issued in conformance with the maximum size and all other requirements of this ordinance. All grandfathered signs must meet the lighting standards in Section 2.11.” Section 712 also explicitly states that grandfathered electronic signs are permitted in the Village District. Because the electronic sign pre-existed the ordinance amendment, it may be maintained in its preexisting size, configuration, design and location. The configuration and design of the sign include illumination until the business closes.

Although there is no section 2.11 in the sign section of the ordinance, Section 712 does include some requirements for illumination such as no more than 0.3 candles above ambient light. Hours of operation of an electronic sign is not a “lighting standard,” but rather an operational standard and therefore need not be met by grandfathered signs. Had the 10:00 shut-off requirement applied at the time my client applied for an electronic sign permit, he likely would not have made such a large investment in a sign that would have to be turned off three hours before closing. As such, the sign is grandfathered and can remain lit until closing at 1:00 am.

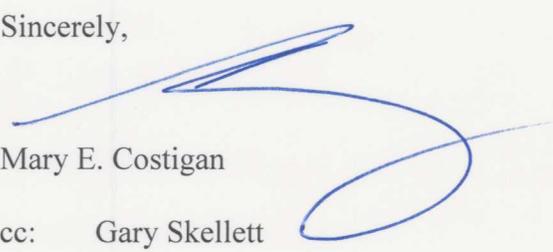
For the above stated reasons we respectfully request that the Notice of Violation be overturned and this appeal granted.

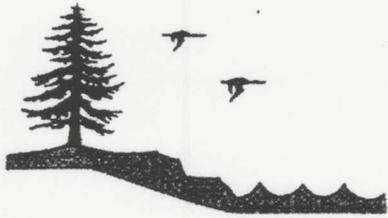
Thank you for your time and attention to this matter. Please contact me should you have any questions.

Sincerely,

Mary E. Costigan

cc: Gary Skellett





TOWN OF NAPLES BOARD OF APPEALS APPLICATION

P.O. Box 1757, Naples, Maine 04055
Phone: (207) 693-6364 / Fax: (207) 693-3667
www.townofnaples.org

Date: August 7, 2019

Owner/Applicant Name: Gary Skellett / Mary Coshigan - Attorney for Gary Skellett

Mailing Address: 678 Roosevelt Trail

Telephone: _____ Email: gskellett@yahoo.com

Property Owner: Gary Skellett

Property Location: 678 Roosevelt Trail Map & Lot: U02/25

Zoning District: Village

The undersigned applies for the following:

1. ADMINISTRATIVE APPEAL. Applicant requests relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board. The undersigned believes that:

- An error was made in the denial of the permit;
- Denial of the permit was based on the misinterpretation of the ordinance;
- The permit was not approved or denied within a reasonable amount of time;
- Other: Notice of violation was issued in error

Please include 7 copies of this application along with an in depth letter explaining the reason why you are applying for an administrative appeal.

I have read, understand and agree to the above instructions and conditions. I authorize any Board Member or other Town Officials to enter onto the site. I certify that the information contained in this application and its supplement is true and correct.

Signature: _____ Date: 8-7-19

Application Fee: \$50.00 Advertising Fee: \$50.00 Mailing Fee: \$7.00 per abutter

Applicant's total: \$ _____

JUL 12 2019



Town of Naples

Town Hall
15 Village Green Lane
P.O. Box 1757 • Naples, Maine 04055
(207) 693-6364

NOTICE OF VIOLATION

Date: July 9, 2019

To: Gary Skellett
Checkpoint 70, Inc.
678 Roosevelt Trail
Naples, Maine 04055

PROPERTY LOCATION:

Map: U02
Lot: 25
678 Roosevelt Trail , Naples, Maine 04055

Your property has been inspected by the Code Enforcement Officer and a determination has been made that you are in violation of Section 712(g) of the Town of Naples Land Use Ordinance for the following reasons:

All electronic signs must be shut off no later than 10:00 p.m. and may be turned on no earlier than 7:00 a.m. The electronic sign has been on later than 10:00 p.m. and earlier than 7:00 a.m.

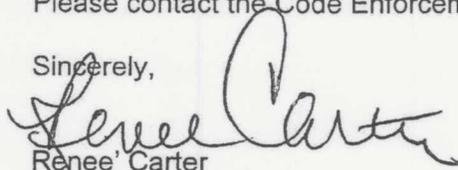
Corrective measures must be taken as follows:

You have 7 days from receipt of this letter to contact my office to resolve these violations. Any person who continues to violate any provision of the Ordinance after receiving notice of such violation shall be guilty of a civil violation subject to a fine of up to \$2,500 for each violation. **EACH DAY** such a violation is continued is a separate offense pursuant to 30-A M.R.S.A, Section 4452.

A Stop Order is hereby issued and you will be subject to a fine in accordance with the provisions of the specific Ordinance indicated above.

Please contact the Code Enforcement Officer to seek remediation of the above violations.

Sincerely,


Renee Carter
Code Enforcement Officer

cc: John Hawley, Town Manager