

In Massachusetts, Ignorance May Be Bliss in Challenging a Neighbor's Building Permit

March 6, 2014

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Property owners are often concerned about building projects proposed by their neighbors. If the neighbor needs zoning relief, like a special permit or variance, an abutting owner is entitled to receive statutory notice of any permitting authority hearings as well as notice of any permit granted with specific notice as to the relatively short time to appeal. The situation is more complicated where a neighbor's project is arguably "by right." In that situation, no notice of the issuance of a building permit is required by law and the 30-day period in which to challenge a building permit begins to run when the abutter has actual notice or constructive notice that a building permit has issued. Difficult questions are presented in the case of constructive notice. How is constructive notice shown? What factual circumstances create it? A recent Massachusetts case provides further insight into these questions and a cautionary tale for property owners who might consider challenging a neighbor's building permit.

In the case, [*Miles-Matthias v. Zoning Board of Appeals of Seekonk*](#), the Appeals Court reaffirmed and applied a line of cases holding that, once an abutter begins to monitor a neighbor's construction project, the abutter may become obligated to keep up to date on the permitting process or risk losing the right to contest the building permit.

In *Miles-Matthias*, the Appeals Court held that abutters were time barred from challenging a building permit relating to their neighbor's new driveway because they failed to contest the permit within 30 days of the date that the town granted it. The permit was granted on March 26, 2010. The abutters did not have actual knowledge that the permit had issued until April 14, 2010. The abutters filed their appeal within 30 days of the date they had actual notice. Nonetheless, the court held that the abutters had knowledge of the permitting efforts earlier which triggered an on-going duty of inquiry and diligence to determine when the permit would issue, that the 30 day limit had, therefore, run, and that the abutters had lost their chance to challenge the permit.

The Court emphasized that the abutters, like abutters in previous cases, were aware that their neighbor had applied for a building permit. The Court further noted that the abutters were generally aware of the neighbor's plans and had been in contact with the town building commissioner in February and March of 2010 on a "fairly regular basis." Because of this involvement, the abutters had an obligation to continue to monitor the situation and through reasonable diligence learn that the permit had issued.

In applying the constructive notice-duty of inquiry doctrine, the *Miles-Matthias* Court focused on the fact that the plaintiffs were aware that their neighbor had applied for the building permit they wished to contest. In at least one other case, general opposition to a neighbor's construction and the filing of complaints about other aspects of the construction was deemed sufficient to put an abutter on a duty of inquiry which resulted in constructive notice even when the record did not show that the abutter knew about the applications for the permits he wished to contest.

This means that once an abutter becomes involved in monitoring or attempting to influence his neighbor's construction, the abutter must stay informed on the building permit process or risk losing the opportunity to challenge the building permit when issued. The Court emphasized that whether an abutter knows or should have known about the permitting process and a permit's issuance is a very fact specific matter and varies from case to case depending upon the actions of the abutter. But the moral for abutters who are concerned about a neighbor's construction project is clear. Monitor at your own risk. Once an abutter is aware of and keeping tabs on a neighbor's construction, he can become obligated to exercise reasonable diligence to determine when a building permit issues and make sure that he brings any challenge to that permit within the requisite 30-day window.

In other words, when it comes to challenging a neighbor's building permit, a little knowledge can truly be a dangerous thing.

For additional information, please contact your usual Goulston & Storrs attorney, any of the attorneys in Goulston & Storrs' Real Estate Litigation group, or either of the following attorneys:

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