

session. The minutes of that meeting state that in the absence of an Appeals Board, Global's appeal would need to be filed in Superior Court.

5. At the July 22, 2014 Selectboard meeting, however, the Selectmen announced that they would hold a special town meeting in order to pass an Appeals Board Ordinance, and would then appoint an Appeals Board to handle Global's appeal.
6. The special town meeting was held on August 19, 2014 and the Appeals Board Ordinance was passed.
7. By October 21, 2014, the Selectmen had recruited five individuals to serve on the Appeals Board and they were sworn in on that date. The Selectmen chose Thomas Carey as Chairman.
8. On January 13, 2015, the Appeals Board held a public hearing on Global's appeal and, ostensibly conducting a *de novo* review, overturned the Planning Board's denial of the permit and granted the setback waiver and permit to Global. There were, however, appellate aspects to the public hearing.
9. On January 21, 2015, Robert Weingarten, a Vienna resident, filed a Request for Reconsideration of the January 13, 2015 decision, with Thomas Carey, Chair of the Appeals Board. Mr. Weingarten also submitted written testimony to the Board within 7 days of the decision, per the Appeals Board Ordinance which permits such submissions.
10. The Appeals Board issued its final written decision on February 9, 2015, almost four weeks after the oral decision was made at the January 13, 2015 meeting of the Appeals Board, despite the fact that the recently approved Appeals Board Ordinance states that a written decision shall be issued within seven days of the Board's decision. In the written decision, the Appeals Board Chair, Thomas Carey, denied Mr. Weingarten's Request for Reconsideration on the basis of standing, without having discussed and voted on the issue at an Appeals Board meeting. This was done despite the fact that the Ordinance states that “[a] vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision.” (Emphasis added).

11. Petitioners are aggrieved by the decision of the Vienna Appeals Board and hereby appeal.
12. Defendant, Town of Vienna, is a municipality existing according to the laws of the State of Maine, located in Kennebec County, and whose Appeals Board made the decision concerning the cell phone tower permit that is the subject of this Rule 80B Petition.
13. Petitioners appeal the January 13, 2015 decision of the Appeals Board and contend that the Appeals Board made errors of fact and of law, to wit:
 - A. Despite the fact that the Wireless Ordinance states that “[t]he setback *may* be reduced by the Planning Board upon a showing by the applicant that: i. The facility is designed to collapse in a manner that will not harm other property,” the Appeals Board was directed by counsel that they were *required* to grant a setback waiver, given the safety information submitted by Global.
 - B. Global filed its appeal on May 20, 2014. On that date the Town had no Appeals Board Ordinance, and no charter authorization for an Appeals Board. Global was therefore required to direct its appeal to the Superior Court under M.R.Civ.P. 80(B). The after-the-fact passage of an Appeals Board Ordinance and the recruitment of Board members, who then conducted a review of a matter that a Superior Court justice should have been hearing, was a perversion of legal process.
 - C. The Appeals Board failed to issue its written decision within seven days as required by the Appeals Board Ordinance and by 30-A M.R.S.A. §2691 (3)(E).
 - D. The Appeals Board Chair's failure to allow the entire Board to consider and vote on Mr. Weingarten's Request for Reconsideration was a violation of the Appeals Board Ordinance and of 30-A M.R.S.A. §2691(3)(F). Likewise, the Appeals Board Ordinance is contradictory in that it allows submission of written testimony within 7 days of the public hearing, while treating the oral decision following the public hearing as the final decision, made with no consideration of any written testimony that might be submitted post-hearing.
 - E. The Appeals Board erred in its own process, when it held what can only be considered as a hybrid review hearing, part appellate and part *de novo*.

WHEREFORE, Petitioners Jonathan Lawless, Ed Lawless, Kathy Lawless and Jesse Lawless respectfully request that this court find that the Vienna Appeals Board erred in granting setback waivers and the permit to construct a cell phone tower to Global Tower Assets, LLC and Northeast Wireless Networks, LLC, and void the permit, along with any other relief that this Court deems suitable. Respectfully submitted,

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Dated: February 24, 2015