

Review a request by Barbara Fifield to reconsider the administrative appeal decision made by the Limerick Zoning Board of Appeals dated September 12, 2017 in regards to a conditional use permit granted to Stephen A McLean for a Seasonal Use Snowshoeing, Cross Country Skiing located at Sokokis Trail North Limerick Tax Map 17 Lot 66 by the Limerick Planning Board.

Members Present:

Michael Carroll: Chairman
Steven Mclean: recused
Kathy Ward
David Coleman
Brad Libby

Public Present:

Barbara Fifield: Appellant
Denise Benton
Joanne Andrews
Dottie Richard
Wendy Farrand
Cheryl Kontos
Bill Jones

Michael Carroll opened the meeting stating it was a meeting of the Limerick Board of Appeals and asked everyone present to recite the Pledge of Allegiance.

Michael Carroll stated that the meeting was to review a request by Barbara Fifield to reconsider an administrative appeal decision made by the Limerick Zoning Board of Appeals dated September 12, 2017 in regards to a conditional use permit granted to Stephen A McLean for a Seasonal Use Snowshoeing, Cross Country Skiing located at Sokokis Trail North Limerick Tax Map 17 Lot 66 by the Limerick Planning Board and asked for a motion.

David Coleman made a motion to discuss reconsideration. It was not seconded at this point and David Coleman stated that for the purpose of discussion he would make a motion to reconsider. Michael Carroll asked for a second and Brad Libby second it. Michael Carroll asked for discussion. David Coleman asked if there was any new information because with the information he had he could not see anything new that was part of the Planning Board record that had not been discussed.

Kathy Ward questioned if they could hear anything new. David Coleman answered other than what was part of the Planning Board record.

Michael Carroll stated that his issue was they held a public hearing on August 24th, that was a chance for the applicant to present their case, and the Planning Board had a chance to rebut. At that time both sides had the chance to rebut each other and then the public had a chance to speak on the information presented. He continued the public meeting was closed at that time. On August 30th, there was an envelope delivered to his office that read: **Michael Carroll proof documents for the AB.** He went on to say that once a public hearing is closed they could accept new information; testimony or evidence and that is the how the board proceeded. He stated that he emailed everybody about the proof documents and spoke to the Town Attorney regarding the documents. He stated that he was advised not the 12th that it was given to the board after the public hearing and they to accept new evidence, testimony after the public hearing was closed. There were no motions to accept it at the September 12th meeting, and if there had been a motion to accept it the board would have to hold a second public hearing at a later date to allow the Planning Board and the public to review the information. He continued that he received an email asking about the reconsideration. David Coleman stated it was on the 20th. Michael Carroll stated that he had also received an email from Laura May on October 5th.

Brad Libby asked the board to please bear with him and stated that they had deliberated and made a decision at the last meeting and are now being asked to reconsider that decision. He continued that the board was not allowed to look at any information that was not available at that time, and the board will not be hearing any new testimony. He asked if he understood this correctly. Michael Carroll confirmed that the board would not be hearing any new testimony at this meeting. Brad Libby asked if they ever would and Michael Carroll answered, only if the board decides to reconsider. He then stated that even then they would have to decide if they would reconsider the decision they made or if they would allow new testimony to be presented at a later date. Brad Libby went on to say that by proceeding with this meeting they would essentially be opening themselves up to disregarding the public hearing and the testimony that the board heard at the August 24th meeting and would be starting all over again. Michael Carroll answered no they would not disregard the testimony already presented, it is still a part of the record. David Coleman spoke up stating that it would still be an administrative appeal and would still have to review the Planning Board record. Michael Carroll added that the board would have to review any new evidence presented. Brad Libby continued it would have to be new testimony and new information. Michael Carroll explained there is a fine line between reconsideration and a second appeal and the board is not allowed

to give a second appeal. Kathy Ward asked if it wouldn't be a second appeal if the board were to hear new information and notify all abutters and the public. Michael Carroll answered, yes; they would have to notify everyone again, advertise and that is what was done for this meeting. Kathy Ward if every person was notified or just an advertisement and Michael Carroll answered that the abutters were notified as well. She continued to question if they would need to notify the public and everything and it would make it a second appeal. Michael Carroll answered yes if there was any new testimony and all the new information would have to be submitted to the Planning Board. Kathy Ward stated that the board could not hold a second appeal. Michael Carroll answered, no; the board is not supposed to have a second appeal and that is an opinion that each board member had to decide. Michael Carroll stated that in the past the board had a public hearing 14:13 and thought it was on the propane tanks, and the lawyer was at that hearing and was not prepared, she did not have the evidence she needed and said she would get it and bring it back to another meeting and that is why the board was there that night to hear the evidence and the board did not allow that at that time, so he felt that the board had set a precedence. He continued that when you have a public hearing that is the applicants chance to present their case. On the 24th the board allowed everyone to speak that wished to speak and then the board closed the public hearing.

Brad Libby asked how long a process the board was looking at. He was concerned about fairness to all parties involved. Michael Carroll answered that the board has to act within 45 days of their decision. If the applicant wants to go to court, she has 45 days from the board's original decision to file so the board must act before the 27th of this month. (October) Brad Libby then asked if the board does act and it comes back and the board does reconsider and reach the same decision as before, does that shorten the window of the party requesting the appeal to be able to go to court. Michael Carroll reiterated that they would have to file 45 days from the board's original decision no matter what the board decides. That is why the board must make their decision before the 45th day. He stated that he was aware that Brad Libby would be away soon. He looked at dates and the board did not have a lot of opportunity and it is up to the board to decide. Brad Libby then asked if the board has an indication what new evidence might be presented that would make cause the board to change their decision. He stated that the board would not find that out until they went further. Michael Carroll answered if they decide to go further. He then restated that they had a public hearing and that was the chance for everyone to completely speak. It states in the ordinance that the burden of proof is upon the applicant. Brad Libby stated that he did understand that.

David Coleman stated that the board has the Planning Board record and the minutes. Michael Carroll stated again that it is not the board's job to research and to prove either side's case. It is the board's job to sit impartially and listen to the evidence presented. He continued that they have the minutes and had them that night, although one was a draft, but at that time the town attorney said the draft minutes would be ok if the board needed to use them.

Brad Libby stated that his questions had been answered satisfactorily.

Michael Carroll asked if there were any other questions or discussion and with none he called for a vote. He then restated the motion; to reconsider the decision of the Appeals Board. All were opposed, 4-0.

Michael Carroll stated that there is more business to attend to, but that would create more minutes so he suggested he would like to set a date some time in November, however, he did not have a date at this time. He asked if it was ok with the board and they felt November would be good. He also mentioned that he would like to review the new application for an Administrative Appeal. They also have some minutes from previous meetings that would need approval. And then the current minutes would also need approval.

Brad Libby asked about copies of the minutes of the meetings before he was a board member and Michael Carroll answered that he did not have to vote on those. Kathy Ward stated that she could not vote on the Silvia Gray minutes because she was recused. Michael Carroll stated that it would be Steven Mclean, David Coleman and himself that would be voting on those minutes.

With no other business realized Michael Carroll asked for a motion to adjourn. David Coleman made a motion to adjourn, Kathy Ward second it and with no discussion realized all were in favor 4-0; meeting was adjourned.

Respectfully Submitted,

Laura L. May