

September 12, 2017

Appeals Board Meeting

Continuation for Appeal by Barbara Fifield against the Town of Limerick Planning Board to issue a conditional use permit to Steven Mclean for a Cross Country Ski and Snow Shoeing located at Sokokis Trail North Map 17 Lot 66

Members Present:

Michael Carroll- Chairman
Steven Mclean-Recused
Kathy Ward
David Coleman
Brad Libby

Public Present:

Barbara Fifield-Appellant
Dorothy Richard
Wendy Farrand
Joanne Andrews
Denise Benton
Deborah Furlong
Brian Saulnier
Steven Malmude
Cheryl Kontos
Nanci Gammon
Ed Morgan

Michael Carroll greeted those present stating that it was a meeting of Limerick Zoning board of Appeals, Tuesday September 12th and asked all present to rise and recite the Pledge of Alliance. He continued that this public meeting is a deliberate and act upon the appeal application of Barbara Fifield. He recapped that the public hearing was closed at the last meeting on August 24th. He stated that no new evidence or testimony would be taken this was not a public hearing it was a deliberation amongst the board members. He proceeded with finding the finding of facts. He felt that they should go through one by one of the 12 different talking points and discuss each of the topics that the applicant had addressed in her appeal application and all members were in agreement. He read the first talking point; **the applicant did not provide proof of standing nor was this requested by the Planning Board.** Michael stated that he had spoken with the town attorney regarding this along with other issues, and her response was that it does not state in the ordinance that the applicant must submit a copy of the deed, it should, but it doesn't and according to Steve Mclean or maybe Dottie the application asked for a book and page of the deed and that is what he provided. David Coleman spoke stating that in

the past, having been on the Planning Board, they did not always require a deed to be submitted and the deeds typically would come into play with a sub-division and not a conditional use. In the past they would verify that the applicant paid taxes on the parcel of land and that they are in fact the owner based on the accessor's records. He felt it was pretty clear the ownership of the property and the right to do something with it. Michael Carroll continued that the town attorney did say that the Planning Board might want to re-think that in their procedures and require a deed. It is not there at this time and it is the Appeals Boards objective to decide how the Planning Board acted contrary to the ordinance. Kathy Ward stated that other people were required to submit a deed on a conditional use. She felt in needs to be one or the other and not mix it up according to who it is. Michael still argued that it does not state that in the ordinance, he did understand what she was saying and did not disagree, but it needs to be stated in the ordinance. David Coleman thought that it was a best effort on the part of the Planning Board. Brad Libby stated that he believes that the Planning Board can ask for anything reasonable that they would want and it is up to the applicant at that point to either provide it or not and their decision of that applicant to provide or not should be based on what the ordinance actually states. He did agree that the ordinance should require a copy of the deed, but at this time does not. At this point Michael Carroll addressed a member of the audience, who wanted to speak, that this is not a public hearing. Barbara Fifield, from the audience asked if the board was going to rule on all of her findings because she thought it was state law. Michael Carroll stated that the board will decide if she could speak or not and at that time he asked the board what their feeling was. She asked if she could speak and Michael Carroll stated that he was going to say one thing and continued that the public hearing was August 24th and that was the time that she could present her case, now is not the time to present the case. She had her chance. David Coleman spoke up and said they were certainly going to review all of the items. He wanted clarification if they needed to make findings. Michael stated that he thought they could do it at the end and on each one of the items individually. He explained that they were talking points. David Coleman stated that he felt it was important that they go through all of them and discuss them. He also felt collectively they could make a decision. At this point Michael stated that Barbara asked to be heard and it had to be a vote of the board. He stated that personally he was against it. David Coleman made a motion to allow Barbara Fifield to speak, Michael asked for a second, Kathy Ward second it. Michael asked if there was any discussion and Brad Libby stated that any testimony that she might provide should be limited. Michael stated that right now the board should not be accepting any new testimony. Kathy Ward stated that maybe she just wants to clarify something. Brad Libby stated that he agreed with what Kathy said, and as long as what they would be getting is maybe a clarification of a particular point. He felt it was in order for them to hear a clarification, if that is in fact what she wishes to do. Michael clarified that she was asking the board to speak, the board was not asking her for clarification. Brad Libby answered not particularly, no not at this moment. Michael stated that they would be accepting new testimony. Brad Libby stated that he guess that would be the case. Michael stated that at any time the board would like to ask someone for clarification the board has the right to ask anyone a question though the chair. Kathy Ward asked if he thought that Barbara Fifield might have something to clarify without it being new. Michael asked Kathy if she had something she needed clarification on. Kathy answered that she did not know. Right now she did not.

Michael stated then the answer is no. With no other discussion Michael stated that at this time we have a motion to allow Barbara Fifield to speak to us. He then asked all those in favor. Brad Libby was in favor, he then asked all those opposed and the remainder of the board were opposed. 3-1 opposed. Michael stated the motion is denied.

Michael Carroll proceeded to read no. 2; the **applicant did not provide proof of other land owner's permission to apply**. He stated that he spoke about this matter as well with the town attorney. If the property is owned by multiple owners only one owner needs to apply. All three owners do not need to apply and he does not need any permission from the other owners. Kathy Ward asked if the other owners don't agree then that is their problem. Michael confirmed that is what the town attorney said. David Coleman stated that he believed there was legal precedence provided in the last meeting. Michael read the response from the Planning Board from the MMA manual; all owners need not be party to the application in order for the standing test to be met. Michael then asked if anyone had any discussion or questions and with no further discussion or questions he read no. 3; **the abutters and the public were not notified of the time, date and place of the site-walk**. David Coleman stated that the site-walk was advertised in three places in the public and asked Joanne Andrews (Planning Board Secretary) if this was correct and she answered that it was. Michael Carroll stated that he knew it was advertised in the Shopping Guide. The response from the Planning Board stated that. It also talked about the MMA manual. He continued that the ordinance does not talk about notifying the abutters or doesn't even talk about public notice. David Coleman stated that MMA's requirement is that it is posted in three public places. He stated that they had also placed an ad and then the mailings, but the mailings are not required. They are a policy, but not necessarily the ordinance. Michael then asked if anyone had any questions or comments and with none he continued to no. 4; **abutters Larrabee and Welch who are in 250 feet of Map 17 Lot 66, their names are not on the abutters list in the application and they were not notified of the proposed ski site. Some of the abutters on the list in the application did not receive letters**. David Coleman stated that he would just refer again to no. 3 and say that the requirement is that it is publicly posted in three spots, there was an ad in the paper. He also stated that as far as the mailings go, at this point he asked Michael if he could ask Joanne Andrews, who does the mailings the applicant or the secretary. Joanne Andrews answered that it is the Planning Board. Michael Carroll stated that the town attorney said that the Appeals Board meeting had been properly advertised and if these people had a complaint about not be notified of that they should have here talking to the Appeals Board and none of them got up to spoke that Michael could recall. Michael asked if there were any questions on no 4 and with no questions he continued with no. 5; **the original application was submitted to the Planning Board secretary on 1-16-17, Planning Board public hearing was held on 3-15-17. Changes to the application including the replacement of all conditional use responses 3-29-17 containing a new site plan dated 6-19-17 were delivered by the applicant to the Planning Board subsequent to the public hearing. Even though new data was submitted by the applicant the vice-chair said that the public hearing was over and further testimony could not be made by the public. The Planning Board should not have accepted revised data without another public hearing**. David Coleman stated that it was just his opinion, but typically when the Planning Board starts the process they accept the application based on what they want for submissions

then they can continue to request information. He continued that the ordinance requires that they hold a public hearing, but it doesn't state when. Whether it is at the beginning of the process or at the end. He felt that the fact that the board was deliberating and asking more questions and asking for items and the applicant provided them subsequent to the hearing just means that he was complying with the requests of the Planning Board. He felt that the Planning Board was deliberate and the applicant was accommodating. He stated that you can't have a public hearing every time something changes and he could not see where the Planning Board acted inappropriately. Michael stated that he had spoken with the town attorney regarding this as well and he has expressed this in the past, and he does not agree with it, but she said that Planning Boards in different towns do things like Limerick does and there are Planning Boards that hold the public hearing later in the application, but there are still times when information is brought in after the public hearing even on those applications for conditional uses. David Coleman stated that he would use the parking lot as an example. It was proposed in the beginning and revised through the process. It was continually discussed so if you keep having hearing for that process, there has to be a reasonable limit. Michael stated that this is common practice and is the way the Planning Board has done business for a while that he knew of. He admitted that he did not follow everything they do, but this is the way they do things. Brad Libby stated that he agreed, however, he didn't feel that the Planning Board did anything wrong, but felt they certainly could have and in the future should do it differently. He wouldn't suggest that a public hearing be held every time a change was made, but at some point in time a public hearing should be held once all changes have been made and everything finalized. Again, he states further, according to the rules the Planning Board has to work with, he didn't believe they did anything wrong. Michael stated that he did not disagree with Brad, but he did agree they should hold a public hearing later in the process. Brad Libby added, at least another public hearing. With no other questions or comments he proceeded to no. 6; **20:21 the original site plan handed out at the site review had no building, no lights and no designated ingress or egress indication for skiers. A modified site plan date 16-19-17 included a lighting array consisting of 55 6 inch solar lights atop 11 foot poles, parking spaces and a ticket booth. The public was not aware of this change.** Michael Carroll read the Planning Boards response; **the information that was requested by the board during the review process, there is no public input during the review process at min. 52:40 on June 7th Sean asked for a more detailed description.**

Brad Libby stated once again he thought the Planning Board did exercise due diligence in looking at the lighting, parking spaces and ticket booth. It states that the public was not aware of this change and he said that he begged to differ. He had his ear bent about it before he was a member of this board in several places in the town. Whether there was any conversation by the Planning Board members about it privately, he stated he did not know. He continued they may not have made the right decision on it, but they did deliberate on it. Michael Carroll asked if there were any more comments or questions on no. 6. David Coleman stated that the application began in January and is still being deliberated 6 months later, he felt having another hearing and adding another 30 days on to that process is laborious. They reviewed it, they have jurisdiction to review it and they know what the public sentiment is. Particularly on this parcel. Brad Libby stated that he also would like to point out some of the rules may not have changed but certainly open to some clarification. And to some degree whether the public particularly

likes a project or not is not one of the things that the Planning Board is supposed to exercise a lot of discretion in. He continued if it is allowed it is allowed and if the applicant meets those conditions or the Planning Board believes they've met the conditions, they don't have much choice but to follow through with it. Even though there are conditional conditions they might impose at some point. With no other comments on no. 6 Michael Carroll continued to no.7; **a Planning Board member made a motion to accept condition use no 8 on the basis that there were no abutters. There are 22 abutters on 30 separate lots comprising of 104 acres with property and land values accessed at 2.3 million. My property as well as other properties in this area are in full view of this propose development. I consider the proposed lighting to be excessive and detrimental to my property in land values and interferes with the usability of my property. Solar lights run all evening when daytime is sunny and is evidence by the applicants Christmas lights currently on this property. Some ski areas have moonlight ski events with no artificial lighting. The lighting plan is an irritant and is deliberately antagonistic to neighbors.** Michael Carroll states that it is kind of the same thing as no. 6. The Planning Board has 16 conditions and if they feel the applicant has met a certain condition, doesn't necessarily mean that everyone is going to like that answer to the condition. Brad Libby agreed. Kathy Ward asked is there any kind of rule on lighting in that area. Michael Carroll answered that there are no performance standards for certain lumens. Kathy Ward stated that she knew in the business zone signs can only be certain sizes and things like that. David Coleman stated that there are only a few references in the whole zoning ordinance that says anything about light is that it doesn't aim towards the road. Kathy Ward stated that is understandable. She then stated that she likes solar lights herself and 55 on 55 acres is not a whole lot of light. Brad Libby stated that it is if they are shining in your bedroom windows. Kathy Ward reminded Brad that these are solar lights and he stated it doesn't matter they are still lights, LEDs, but he felt the point that the board is missing or possibly missing is that it is not up to this board to whether those lights are acceptable or not. It was up to the Planning Board to decide that and they did. He added whether they did it in error, whether they should have or shouldn't have isn't up to this board to decide. The fact that they deliberated on it is sufficient I guess. David Coleman stated that there is reference here as well that the CEO is involved in terms of enforcing it. Michael Carroll stated that this board needs to prove that the Planning Board acted contrary to the ordinance and allowing those lights on the property, he was not sure if this was acting contrary to the ordinance. With no other questions or comments Michael Carroll proceeded with no. 8; **conditional use no 1 and conditional use no 7 requirements did not pass the vote was 2-1 against as declared by the vice-chair. The majority of the board is required to prove as stated in the Planning Board by-laws. Near the end of the meeting the two were changed from against to for. This is a violation of Roberts Rules of Order. Article 8, vote Section 46. The Planning Board by-laws state that the board shall be conducted in accordance with pertinent parts of Roberts Rule of Order. Roberts Rules state a member has the right to change the vote up to the time the vote is finally announced. Since the change in vote occurred after the vote was announced by the vice-chair, the change in vote should not have been accepted and the and therefore the project should not have been approved.**

The Planning Boards response; **the by-laws do state pertinent parts of Robert's Rules of Order, but is not specific. The decision to reconsider the vote was based on the opinion from the**

town attorney. The question to the attorney was based on condition no 1. If you feel that we should not have reconsidered both, I would suggest you check with the attorney.

Michael Carroll stated that he did check with the attorney and she said they did have the right to reconsider their vote. David Coleman stated that it is a finer point. The purpose of that Roberts Rule of Order is once a vote is made and someone decides to change their vote individually, it would change the entire spirit or nature of the permit. He continued to say, where all three of them worked together to reverse that decision, the Planning Board has 30 days to reconsider any decision they make. If they make it the same night or they make it 30 days later, they have the right to reconsider. He emphasized that they all voted together it was not one change, changing the majority. With no other comments or questions on no. 8 Michael Carroll proceeded to no. 9; **the applicant ignored the requirements to Limerick's ordinance and the Planning Board accepted the responses. For example: the Planning Board did not require written evidence of how each conditional use requirement would be met, the ordinance stated on page 31 that the applicant can demonstrate that the proposed use will meet the requirements. The application for conditional use requests written responses to the conditional uses on a separate sheet of paper, which indicates how the applicant intended to satisfy each condition. All 16 conditional use responses from the applicant in writing do not contain information to satisfy each condition, but rather restate the conditional use requirement were answered by N/A.** Michael stated that he would assume that means Not Applicable; **For example: as a response to conditional use no 3 the applicant states, this will not have a significant adverse effect, seasonal, low impact. I ask you, are 55 6 inch solar lights on 11 foot poles low impact. These lights will be visible throughout the neighborhood and beyond to Limington. The Planning Board failed to impose hours of operation or place controls on the proposal of lighting. Additionally the Planning Board did not address trail grooming nor did the applicant provide this data. Grooming is noisy and can be polluting depending on the equipment used. The Planning Boards response; the land is already groomed for Christmas trees. The questions were adequately answered. Whatever questions needed more substance were answered at the time of review, which is an accepted process by the Planning Board. It has been done by almost every applicant. If the street light by the overlook is not seen in Limington, I seriously doubt that the solar lights that are well below street level will not be seen. 55 low impact solar lights spread over approximately 66 acres.**

Michael Carroll stated that the board had covered some of this earlier and the Planning Board has the right to go back and get more information as they review the application. David Coleman stated that the application is not the ordinance. It is information that the board requires or requests and if they vote that it is adequate and vote to accept, then they have either reviewed it to their own satisfaction or don't feel that there is anything to add to it. He continued that they reviewed the application and voted to accept. Kathy Ward stated that she would like to see the application have to be complete though with no empty spaces. Writing something in there for why you didn't have to fill in a space in and she felt none of it should be left blank. David Coleman stated that he has looked at a lot of them in his time and some of them are scant and some of them are full. Kathy Ward stated that even if it were to say N/A, why is it not applicable. David Coleman stated that he agreed. Kathy Ward stated that it is not

that way right now, but she herself would like to see that. Brad Libby agreed as well. He continued that the Appeals Boards review of this is not necessarily whether the Planning Board made a good decision or a bad one. Whether they should have done differently or not, the Appeals Board is only allowed to consider whether they considered it or not. He stated that he could see that they had and didn't necessarily agree with what they came up with, they did look at it. David Coleman stated that it stated the written evidence, but at the end of it they have added a proviso from the lawyer that says; **the information contained in the applications supporting document including supplemental revised plans or representation submitted and affirmed by the applicant. Conditions of approval imposed by the board and any variations to the plan proposal supporting documentation representation except any changes by the code enforcement.** David Coleman then stated that they are basically saying anything that was said is part of the public record as well is whatever is written. If they discussed it, it is to be done regardless of whether it is written on paper. He felt this is covered with that. Kathy Ward stated it is covered that way, however, when it comes to the Appeals Board it would be much better if the information was written. She continued that apparently more than one will be coming to this board. David Coleman they stated that, as the chair of the Planning Board, he had applications that had nothing written on them. He further stated that he did send them back to the applicant and asked for them to fill them in more. With no more questions or comments Michael Carroll proceeded to no. 10; **2008 a warrant to implement a highway business district along Route 5 and Route 11 corridors from town line to town line was defeated by a 3 to1 margin. This warrant is still in effect. The proposed and improved development of four businesses in this scenic area in Limerick, violates this warrant. Clearly the residents of Limerick do not want numerous businesses clustered together along this section of Route 5.** Michael Carroll stated that, no. 1, he did not believe that this was in the Planning Board record at all and no. 2 the business district was defeated. He was unsure of how that would make the warrant still in effect. It was not passed and David Coleman agreed that it was warrant article that the changes were not made and he agreed that it is not part of the Planning Board records. Michael Carroll continued that it was not brought up during the review process. Kathy Ward stated that he did not apply for a business district, he applied for a conditional use. Brad Libby stated that again given the ordinance this does not apply. With no other comments or questions Michael Carroll proceeded to no. 11; **there is no correlation between the state highway permits and the actual site plan. The site plan contains no scale and the two driveways are not identified. One permit states between two poles. There are no poles included in the site plan.** Michael Carroll stated that again he did not see any evidence discussed in the Planning Board record. There was nothing presented to the board. The Planning Boards response; **Mr. Mclean provided two valid DOT driveway permits for this property. The permit states that two pillars, not between poles.** David Coleman stated that there are also GPS coordinates on those permits. If there is a violation, then the state has the jurisdiction over that and Michael Carroll agreed. David Coleman stated that under section 10 they did review that entrances did exist in multiple locations. He also stated that he didn't see in the minutes where there was any discussion of permit. With no other comments or questions on no. 11 Michael Carroll proceeded to no. 12; **The Limerick highway department form was annotated by the applicant as N/A. The road commissioner for Limerick was not asked to inspect the roads that drivers would use to access the parking area and ticket booths**

on Map 17 Lot 66. The applicant submitted state approval for drive ways only. The Planning Board response; **The Limerick highway department has no jurisdiction over private roads.** Michael Carroll stated that he had made a note and asked if it had ever been required by the Planning Board and the response was no. He continued that he could not find where it was in the record of the Planning Board that it was discussed and it was not presented at the meeting either. David Coleman stated that in his note he had it was not part of the record and that Limerick doesn't have jurisdiction over Route 5 either. Brad Libby stated they may not have jurisdiction over Route 5, but felt they did have jurisdiction over any small roads that come off of Route 5, however, a road or a driveway, he was not sure what he has. If it is a driveway and uses those driveway openings to access his property, he wasn't sure if he would have to call them roads. David Coleman stated that he has a private road on his property, Kathy Ward chimed in that she has a private road as well and never had Bob (the road commissioner) come down and tell me what I could and couldn't do. David Coleman stated that other than its access to a town road, it would require a permit. Michael Carroll stated that according to the conditional use ordinance it doesn't ask that the road commissioner be required to go out and review them. Brad Libby stated that he did note that the fire department was asked to look at egress for emergency vehicles and that was certainly approved. Michael Carroll asked if there were any more comments or questions on no. 12. He then asked if there was any discussion on the finds of facts and Brad Libby stated that he was a little stuck on no. 8; the reconsidering the votes on conditions 1 and 7, he thought he had seen it in a set of minutes that the Planning Board did reconsider them, but did they do it the right way. David Coleman answered that the process is to review all 16 conditions and then approve or disapprove the permit. He states that it say the Planning Board may approve an application for a conditional use permit if the applicant demonstrates that the proposed use, and then the board goes through the 16 conditions. He continued, that presumably the board would have to make positive findings on each one of those 16 conditions and then call vote to approve or disapprove the permit. They reconsidered the two conditions before making the decision to approve or disapprove. He stated that his point was in Roberts Rules of Order if someone changes their vote individually and that changes that vote that is an issue, but where all three of the board members reviewed and reconsidered the both of those items collectively, he did not believe there was a problem. He continued that this is where the lawyer states it was a vote. The board has the right to reconsider any decision that is made for 30 days. Whether it is decided at that moment or anytime within that 30 days. Kathy Ward stated that Planning Board doesn't do it with just a majority of the board voting, they do it with the majority of the voters. David Coleman stated that it is the majority of the quorum. Michael Carroll stated that he believes the Planning Board is different. David Coleman stated that if the Appeals Board has a majority of those in attendance and Michael Carroll stated that the Appeals Board is a majority of a quorum of three, a two to one vote is still a majority of the quorum. He thought the Planning Board was a majority of the board. So it would have to be 3-0. David Coleman stated that all three had voted at the same time.

Michael Carroll stated that they had reviewed all 12 talking points. He then asked if any one of the board members, in their opinion, could find where the Planning Board had acted contrary to the ordinance. Michael Carroll asked for a motion and David Coleman made a motion that

the Appeals Board deny the appeal, based on the information presented by the aggrieved party and the Planning Board. Kathy Ward second it. Michael asked if there was any discussion and Kathy Ward asked if any of these 16 conditions if only two had been in favor, could they still have approved the whole application. Michael Carroll asked if what she meant was if they voted 2 to 1 if they could reconsider the votes. Kathy Ward stated that is not what it is stated in the minutes. The minutes state that two in favor and one abstained on no. 7. Brad Libby stated that they revisited no. one and no. seven later on and reconsidered both of them. David Coleman stated that it could be found on page 6 and Kathy Ward apologized. Michael Carroll asked if there was any discussion on the motion and with no discussion realized they voted in favor of the motion, 4 to 0. Michael Carroll told the appellant that she would receive the written decision within 10 days.

Kathy Ward asked if they had some minutes that needed approval. Michael Carroll answered that they did have and asked if the board had gone over the minutes. Brad Libby stated that he had not seen them and Michael told him that he was not on the board the board at that time. Kathy Ward stated that she had to recuse herself from that meeting. David Coleman stated they have had these minutes for a while and Kathy Ward stated they had not met in a while. Michael Carroll then stated that to be honest he had not had a chance to review these minutes and he would like to do it at a later meeting. The mutual feeling of the members was they would like to review them again before voting to approve them. Michael Carroll asked if there was any old or new business and with nothing else to discuss he asked for a motion to adjourn. David Coleman made a motion to adjourn, Kathy Ward second it and with no discussion realize all were in favor 4-0.

Respectfully submitted,

Laura L. May