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Administrative Appeal by Barbara Fifield and the Limerick Planning Board with regard to a conditional use permit issued to S.A. Mclean

February 2, 2016

Members present:

Kimberly Oliver Co-Chairman
Debra Stitson
Steven Mclean
Kathy Ward

Members Absent:

Michael Carroll Chairman

Public Present:

Frank Carroll Sr.
Kathy Colby
Steve Colby
Lisa Carroll
John Medici
Diane Medici
Aaron Carroll
Sean Carroll
Denise Benton
Barbara Fifield, (Appellant)
Steve Malmude
Dorothy Richard
William Jones
Joanne Andrews
Wendy Farrand
Andrew Ready
Mrs. Andrew Ready
Lisa LePage
Dean LePage
Dr. & Mrs. Hously
James Mclean
3 unknown

Kimberly Oliver Co-Chairman: Welcomed everyone to the February 2, 2016 Appeals Board Meeting. She noted that Michael Carroll, Chairman, was on vacation so they are short one member, however, with four members they did have a quorum. The board will hear an appeal between Barbara Fifield, and the Limerick Planning Board with regard to a conditional use permit given to S.A. Mclean. There were no meeting minutes to approve so the hearing commenced. She went over the procedure that would take place and called the meeting to order at 7:02 and explained the preliminary business that the board would need to do. A conditional use permit was given verbally through a Planning Board Meeting of which by 12, 23 the applicant had sent in an appeal. The Planning Board had done that on December 20. So the deadline requirement has been met and they determined that the application was sent in a timely manner. 2:07

She read a short clip of the appeal. This is from Barbara Fifield. "To the members of the Board of Appeals. This document is an addendum to the application for an Administrative Appeal dated 12-23-2015, concerning the issuance of a conditional use permit allowed by the Limerick Planning Board on 12-02-2015, for a used car equipment lot on route 5 Map 17 Lot 66. The Application, addendum and supporting information has been submitted to the Chairman of the Appeals Board on 12-23-2015. I respectfully request that all members review the board and the videos, before addressing this appeal". 2:53

She continued, the next item requirement to determine was did Barbara Fifield have jurisdiction because Barbara Fifield is not the landowner. She reads from the manual "To do that he or she has to indicate to the board which provisions of the ordinance of statute appear to give the board jurisdiction over the permit application or appeal. As far as the Board of Appeals, under the statutory appeals for jurisdiction, the section authorizes the board to grant special exception or conditional use permits in strict compliance with the ordinance, except where the Planning Board has been authorized", which is what it is in this town as an ordinance to act. "In that case the Board of Appeals is authorized to hear appeals for such decisions, unless an ordinance requires appeals to go directly to Superior Court". Which, it does not. And all members agreed they had jurisdiction.

Deborah Stitson asked if they would be voting tonight that she would recommend Steve Mclean recuse himself before any voting took place.

Kimberly Oliver stated that at this point it's not specific to him and was just determining if the board has jurisdiction to hear this conditional use permit appeal in general.

Kimberly Oliver In regards to conflict of interest or bias Steven Mclean was asked to recuse himself due to the fact that it is against him.

Steve Mclean explains that the appeal is not against him, he is a party to. In which Kimberly Oliver replies "yes, but you have a direct interest" to which Steve Mclean replies, "so I'm stepping down". 5:18

Kimberly Oliver stated that the next step is to see if the appellant, Barbara Fifield, has standing. If the board decides that the person has the authority to review the application and also must decide whether the applicant had the standing to apply or to appeal. She reads from the MMA manual " When a citizen can demonstrate that he or she has suffered or will suffer a direct and personal injury, as a result of a decision by the Planning Board or the CEO, that citizen has standing to file an appeal with the Board of Appeals if that board has jurisdiction", which was determined. To meet the direct and personal injury

test the person must show that his or her actual use or enjoyment of the property will be adversely affected by the proposed project, or must be able to show some other personal interest, which will be directly affected which is different from that suffered by the general public. 6:43

Kimberly Oliver asked Barbara Fifield if she was a direct abutter and Barbara Fifield answered that she across the street at an angle within approximately 250 feet.

Kimberly Oliver asked Deborah Stitson and Kathy Ward if they understood what was meant by having standing and they answer yes.

She read; the section "understanding". There are certain court cases close down to the end where it says "the court has held that particularized injury for abutting land owners can be satisfied by showing of the proximate location of the abutter's property together with the relatively minor adverse consequence if requested variance was granted".

Barbara Fifield asked if they were trying to determine if she met the standing to apply rule, and stated "My understanding of the standing to apply rule is that I have a legal interest in the property in question. I own the property, I have the deed. I was not listed as an abutter when the notices went out because the name in the town in the tax records is James Carroll. So the notice was sent to him. But I owned the property at the time, the tax records hadn't changed yet" because it had occurred in October after the April 1st date."

Kimberly Oliver wanted to know if Barbara Fifield was at the hearings. She answered that she was at one of them and at the site review. 10:43

Kimberly Oliver stated that to meet the direct and personal injury test, that Barbara Fifield, she reads from the manual "must show how her actual use or enjoyment of the property would be adversely affected by the purposed project or must be able show some other personal interest which will be directly affected, which is different from that suffered by the general public".

Barbara Fifield answered that proposed used car lot is directly in view of her house. When she looks out the windows it impairs her ability to enjoy her property. She stated that 60% of her house is glass, and this is in full view of her house and that she is up above and looking down in its entire area. She said that when she built her house there was no proposal, there was nothing there.

Kimberly Oliver asked Deborah Stitson and Kathy Ward if they felt it would meet this direct and personal injury test. Deborah Stitson stated that she felt the test is for a relatively minor adverse consequence. So at the minimum she thought that could be considered a relatively minor adverse consequence and Kathy Ward concurred.

Kimberly Oliver asked if they both agreed that she met the standings and they did agree.

Kimberly Oliver continued; she paid her fees and a completed application was submitted. All requirements for the appeal have been met. She laid out the sequence of presentations that will be presented to the board. There would be a presentation by the applicant and her attorney if she has one without interruption. She stated that Barbara Fifield would explain her case for her appeal. Then questions will go through the chair to the applicant either by board members or people who are directly affected by the project. ie, abutters, would be one example and request for more detailed information

all the evidence presented by the applicant and 3rd, presenters by abutters or others who will be directly affected by the project and their attorneys and witnesses. Then questions by the applicant and the board members through the chairperson to the people directly affected. Any rebuttal statements by any people who testified previously and then there would be a section for comments and questions by other interested people in the audience and asked Aaron Carroll if he would be representing the Planning Board. Chairman of the Planning Board Aaron Carroll replied that he didn't have anything unless the board had questions.14:50

Kimberly Oliver explained the board would need Barbara Fifield to state her case basically how she felt the Planning Board did not follow the ordinance and evidence to back that up. She then asked Barbara Fifield to state her case.

Barbara Fifield stated that she had some addendums to give to the board. She stated that she did not want the information on it to be revealed. She asked if she could then pass out copies of the ordinance so the citizen present could follow along, also the responses that came from the applications.

Aaron Carroll Planning Board Chairman requested as representative for the Planning Board that Steve Mclean would step down from the board to prevent the appearance of trying to sway the board.

Kimberly Oliver asked Barbara Fifield "You said you had a section you wanted me to keep private". (17:44-18:12 mics were shut off) "It will become public record".

Barbara Fifield in her own words.

Barbara Fifield addressed everyone present and stated her case. My name is Barbara Fifield, and I live opposite, across the street from lot 66 and we have already established that it's in my view. And I have a personal and community interest in this project. Most of my life savings have been invested in my home. The project being proposed would significantly impact my property and my home values. In my opinion, it's just my opinion. I believe this area in Limerick is one of the best amenities that the town has and owned and should be preserved. Furthermore, I would like to commend the Mclean family for implementing a tree farm in this area. It was the right thing to do and a way to improve the assets of the town. A used car lot in this area, however, would disturb the view of those up and coming Christmas trees. I along with others who filed this appeal feel that the requirements in the zoning ordinance were not met. Yet this project was verbally approved. The Planning Board is required by law to use these requirements to vet the project. So what does vet mean? It means to examine, investigate evaluate in a thorough and expert way. This is the role of the Planning Board. That they perform for the residents of this town of Limerick, but the public should help with this process too. And the public did try to help with this process. But for some reason beyond my and others understanding the 3 voting members did not listen to the public input, nor the comments offered by the other 2 members of the panel itself. The conditional use permit process does not have to be an adversarial one or a confrontational exchange. And the Planning Board should welcome the help from the public. And this is why, this book is 450 pages long and it is double sided, there's 900 pages of rules for the Planning Board to simulate and understand. And we can all help with that process. This is available to anyone it's called Maine Municipal Association Planning Board Manual. And I have great empathy for the Planning Board to do this job. So what went wrong with this process? I'm going to use the word we because there were other people that filed this appeal and signed it other than just myself. We contend that the Planning Board failed to vet this project from the very start and throughout the process itself. As a result, erroneous rulings were made. So I just made an accusation and now I'm going to prove this. And I'm going to prove it by reviewing 3 components of the application process. I'm going to look at the

application contents itself, I'm going to look at the purposes of the zoning ordinance, and I'm going to review some of the actual conditional uses and then match them to the agents responses. So let's look at the application. The first thing that the Planning Board should have done is say, is it complete? And are its components that are there accurate and to the point? So in the application the very first thing that's on there is the name of the applicant. In this case the applicant is a corporation. The corporations name on this application is S.A. Mclean, Inc. This corporation is represented by the agent on the application, Steven Mclean. So the first requirement is the standing to apply rule just like I was asked if I qualified for the standing to apply rule, so does this applicant have to meet the requirement of the standing to apply rule. The Planning Board should have obtained documentation showing legal interest between the corporation and the land. And that has to be represented in the form of a lease a purchase option or a deed. And furthermore with the power to use the property on lot 66 stated in one of those document for the specified use. If this information is available it was never given to me as part of the application process when I got a copy. So I'm saying this did not exist. So the Planning Board did not vet the standing to apply rule. That means that the application process should never have proceeded until legal interest was established. And as far as I am concerned if you want to save a lot of time right now, this is the only thing that needs to be decided upon by the Appeals Board. Because this in itself, cancelled the entire project. If there is no standing to apply rule met, so I'm going to propose something to the appeals board. If you'd like me to continue, I can, or you can rule on what I'm asking you too, and we can end this meeting. Because that in itself should be enough to reverse this process. Reverse that decision. **26:32**

Kimberly Oliver stated that it would be Barbara Fifields choice if she wanted to stop here, but would have to give the Planning Board opportunity to state their side.

Barbara Fifield replied that the Board of Appeals had a copy of the application.

Kimberly Oliver then replied back that they have copy of what Barbara Fifield had given to the Appeals Board, but didn't have anything from the Planning Board.

Barbara Fifield said that she would continue. She continued to state her case that the application was incomplete. The corporate state registration was not submitted, it was asked for on the application. The DOT driveway permits were not submitted. And on the 12/2 Planning Board meeting, the agent said, no one asked me. But it asked for it in the application itself. Most importantly and this was pointed out throughout the whole process, was, there was no scaled drawing. Now in all fairness the application didn't require it. But, the Planning Board for this type of project should have required one. So what happened next when there was no scaled drawing? The agent muddied the waters by submitting four different site sizes either verbally or in writing through this process. On the site review on 11/18 the agent says that the lot size that he was going to be putting these cars on would be 50 feet by 100 feet. So that is 5000 square feet. Four hours later the agent submitted a hand drawing that was 180 by 180. That's about 33 thousand square feet. Now on December 2nd and maybe Aaron Carroll can verify this. I thought he said he read the number 100 by 130 off of some document that he had in front of him. The fourth time the application says an acre and a half, which is about 65,000 square feet. What is the scope of this? The scope is 12 cars to 32 cars, 80 cars to 150 cars, at 20 by 20 space. Why did the Planning Board allowed these changes without a new application being generated. She stated that Frank Carroll Jr. noted right in that first meeting that this was missing. And he also submitted a letter, on December 2nd telling them what needed to be done. The letter was read, there were absolutely no comments by the Planning Board, not one about that letter when that letter was read. I wasn't at the December 2nd meeting, but had watched all 3 and a half hours of it on tape and that's what

I had observed. So in addition to having unspecified lot size, we also did not know it's location on that 53 acres. The next thing that happened was that 3 different land uses were defined. On the application it said that it is for a used car and equipment sales. It doesn't say what kind of equipment. That's what was applied for. At the site visit it became used car used equipment and then on December 2nd at the approval level, with the Planning Board it changed to used car, new car. When I was watching the film Aaron said, "somebody crossed out equipment and put new car in". Also, on 12/2 no evidence was allowed by the public to be added at that meeting. Yet the Planning Boards themselves introduced 2 significant pieces of information. The change in the lot size and the use of the land. The land specification is necessary to evaluate the projects impact on the community and drive any state requirements that would have to be met. New car could be significantly different then used car. There were dates left off on the application forms on several pages. The actual piece of paper that was submitted that had the responses by the agent to all the conditional use requirements was not signed and was not dated. The Planning Board should have asked the agent to reapply with corrected information. And no public hearing should have been scheduled until a revised application was submitted and thoroughly vetted. There are 3 things that I am going to talk about. The purposes of the zoning ordinance and how it fits into this approval process. The conditional use purposes that need to be vetted as part of this process. And the actual conditional use and compare it to the agent's response. The first thing we want to look at is the preamble to the zoning ordinance. There are a number of purposes here, but these 3 are the most pertinent. The purpose of the zoning ordinance is to preserve the amenities now attached to the town. And also the promotion of good civic designs and arrangements. These 2 purposes must (sound lost) because they are the high level requirements in the zoning ordinance by the Planning Board. They were never discussed nor reviewed by the Planning Board. Now let's look at the conditional use purposes, Section A article 7. The conditional use permit is design for those uses that provide a service to the community, benefit for the town's general welfare. Let's look at the service to community, stating that there are 3 used car lots in this town plus individuals selling their own cars. This is a small population. Market would be further fragmented to the detriment to those who are already there. This likewise was not considered by the Planning Board, for the benefit for the town's general welfare. I did not hear that there would be any added employment, no value added here. This is for the benefit of one individual. This was not considered by the Planning Board. Then the Planning Board had a discussion that said, well, A is just like B1. A: Service to the community, benefit of the town's general welfare. Now I'm going to read B1; will meet the definition and specific requirements set forth in this ordinance for the specific use. I contend that these are 2 completely different sets of words and they have a completely different meaning. What number one means is; not only does the 2 through sixteen have to be met altogether, but there are other requirements throughout the ordinance that this project also needs to meet. Things like the specifics on buffering, and some of these other components that are throughout the ordinance that pertain to this use. So I feel that the Planning Board did not even interpret this section of the zoning ordinance properly. Let's look at B. The Planning Board may approve an application for a conditional use permit if the applicant demonstrates. Demonstrate means to prove. So the applicant as represented by the agent must prove every single component here. Let's look at a few more. 37:32

Kimberly Oliver asked Barbara Fifield if she would speak to only the ones that she felt he had not met.

Let's just go through a couple and see how it plays out. Let's look at number 2. The applicant must show that this project will not have a significant detrimental effect on the use and peaceful enjoyment of adjacent or nearby properties as a result of a whole bunch of stuff. I just highlighted light and glare because we know what his lighting is, supposedly. Let's look at number 2 and the response that came from the agent representing the applicant. Number 2, will not have a significant detrimental effect.

That's an opinion that is not proof. The light and glare that that I highlighted, relates to his proposal to put a John Marie size light on the street to light up the whole area of this car lot. Number 3, will not have a significant adverse effect on the property values. I had approached a real estate broker because a used car lot and a light at night, would detrimentally affect my property values. I will not tell you who the agent was or the amount but it was a big number. It is not up to me to prove this. The applicant must demonstrate that it will not have a significant adverse effect. In order for me to prove this I would need to have an appraisal and that would cost a lot of money. Number 3, his response was will not have a significant adverse effect, because he owns property all around the site. He doesn't own all property. Twenty nine pieces of property surround that sight involving 20 different people. Will not result in hazards; entrance already in existence. What does this entrance have to do with hazards of the road? You must have a proper means of ingress and egress. That was never defined. There was no scaled plan showing that. Number 8 refers to exterior lighting, actually that does relate closely to number 2 it's a little bit different because it says damage the value and diminish the usability of the property. I am a star gazer and I'm out there every night and it would diminish my usability. But he has to prove that it doesn't. Number 9, makes provisions for buffers and on site landscaping. The Planning Board waived his requirement to put in buffers, or fences. He said in response to that. We own property around site area. So does that mean he doesn't need the buffers? However, the Planning Board cannot take away a requirement in this zoning ordinance. There's another whole section in this ordinance talks about the trees have to be 15 feet tall. There would need to be a certain depth of a buffer and it goes on and on and the Planning Board said that he didn't need a buffer. The responses for the conditional use requirements by the agent are on a piece of paper and they are simply reiterations of the requirement itself, they do not prove anything. They do not demonstrate. 44:28

Kimberly Oliver asked Aaron Carroll to give a rebuttal to Barbara Fifield's account of why she felt the Planning Board did not follow process. Aaron Carroll stated that he really didn't have a rebuttal and suggested that maybe Wendy Farrand would have something to say.

Wendy Farrand states that she sympathizes with Barbara Fifield, but that as Planning Board members they took an oath to uphold the constitution of the United States and Maine constitution and that she takes that very seriously. And that all municipal employees and volunteers are protected by the Maine Torts Claims Act which protects from liability. She explains that the only thing that is not covered by the Maine Torts Claims Act is violating someone's civil right or civil liberties. She commented that prior to this conditional use permit process that she went through several conditional use permit processes and watched hours of videos to understand and to do what was right. She said that she had examples that she could turn over to the board and also a copy of scenic vistas according to Maine Municipal saying that anything in an ordinance that refers to scenic vistas becomes unconstitutional because it is subjective which violates a person's constitutional rights. What we may feel is beautiful isn't always what is prescribed by the law and she did not want to violate anyone's civil rights. 48:22

Kimberly Oliver stated that what the board will have to look at whether or not there were areas in this conditional use permit that might need to be revisited. Because of the concerns that were brought up, such as, egress, the buffers, lighting issues. She asked Wendy Farrand if she agreed or disagreed with anything in particular of what Barbara Fifield said. Wendy Farrand answered that she believed that the conditional use and application should be revised to have stricter guidelines, but they have not had a chance to work on it. However, at the same time not violate any one's rights and that everyone needs to be held by the same standards while still treating every one with respect.

Barbara Fifield asked why the board didn't vet this standing to apply rule. Do they not have that in their procedures, stating that would have turned project away.

Wendy Farrand said that she thought it was a fair question and when Aaron's mom came up for hers and she remembered her saying "well I don't know I might change it, I just want it to be in this style and I don't know how many windows". So she felt that's fine that we want to make things better in this town. So if that was done for her why not for other people. 52:34

Aaron Carroll stated that the Planning Board has not generally addressed standing. There were 2 different names that are on the application, the company name and the individual's name. He admitted that neither he nor the board caught that. There was no direct correlation how this company name had any right to use that property. He also stated that they did not discuss that and it is obviously something that should have been addressed. The second point that was brought up is the corporation licensed in Maine? The applications said yes and if yes attach a copy of the State of Maine registration. That was never provided to the board nor was it included with the application. The third thing was the size of the project. He could not recall the different sizes but did recall that this application says it is 1 ½ acres in which to be developed and the addendum that was accepted at the Planning Board meeting was a hand drawn sketch. This was just prior to the public hearing. And that says 180 x 100. Aaron holds up a copy of the sketch that was provided to the board. The scope of the project was moving back and forth. The other question was whether or not the applicant, part B1, that he believed was referring to when they were looking at the land use chart whether it was permitted or not a permitted use.

Kimberly Oliver wanted to know if it ended up with used cars, equipment sales, and new cars. Aaron Carroll states that he believes it was ended up with just used cars, new cars.

John Medici asked if the criteria that was used to approve this was not wanting the civil rights to be violated under what circumstance would the board not approve a permit. If it's been approved before, using those criteria then would it be automatically approved again?

Wendy Farrand stated that every conditional use application that she looked at was always approved, and was unable to find one that was not approved. Wendy Farrand admits that the application and conditional uses need to be updated.58:58

Wendy Farrand gave the minutes of the Planning Board's meeting that approved the conditional use permit to Kimberly Oliver stating that she handed it to her because it is allowed in Farm and Forest district.

Kathy Ward stated that looking around the room that most of the people in attendance she assumed that most of them were probably opposed to the project and wanted to know if that was taken into consideration. Aaron Carroll answered "Very little". Kathy Ward wanted to know why. Arron Carroll said that he could not answer that and that he is the chairman and ran the meeting and was not a voting member at that time and said that he asked the board to consider those things but they board chose not to.

Wendy Farrand answered that question by reading from the Maine Municipal Association Planning Board manual that states the "Board should not base its decision on the amount of public opposition or support displayed for the project. Nor should its decision be based on member's general opinion that

the project would be good or bad for the community". If that were the case the more people you bring to the hearing against or in favor of a project it could influence the decision.

Kathy Ward said she recalls a business that was put in years ago to where her parents lived and they took into consideration what everyone in the neighborhood felt about that business.

Frank Carroll Sr. resents some of the things that were said about getting things done without doing anything. He stated that they had been through several major projects with state as well as town requirements and have always complied with the rules and conditions of both state and town. He also stated that the Limerick zoning book may have issues, but it is for the protection of our town and its people and must be complied with. Referring to the light that is on the property in question, he felt agitated people and was far fetch to say it was for a flight path. He feels that everyone needs to comply and there should be a plan for the used car project and the abutters should be taken into consideration. If the car dealership is allowed it should be allowed with strict rules according to our zonings conditional use requirements.

Aaron Carroll stated that conditions change by the applications and that not every application is going to be the same even though they may have all been approved they did not all have the same conditions. There are different factors that affect the conditions. The board needs to realize that every conditional use is not going to be a carbon copy or would just be turned over to CEO.

Deborah Stitson asked how many abutter notices were sent out and Joanne Andrews, Planning Board Secretary, replied that 28 notices were sent out.69:40

Barbara Fifield wanted to point out that according to the Maine Municipal Manual for Planning Boards there are state requirements, that as a Planning Board they cannot change the requirements in the zoning ordinance. The process of the conditional use is very restrictive because you are putting a business in a residential farming and forestry district. In the Manual it states that every single requirement in the zoning ordinance must be satisfied by the applicant.

Steve Mclean points out that according to our zoning ordinance, used cars is permitted in this area. He is not trying to do something that is not permitted.

Aaron Carroll replies that is not a correct statement.

Kimberly Oliver reads from the ordinance that used cars in farm and forest is a C2 in the land use chart and a C2 requires a permit from the Selectmen and a conditional use permit. Steve Mclean argues that it is permitted with a conditional use permit. Aaron Carroll replies that it is permitted with a conditional use permit when the conditions have been met.

Steve Malmude reiterated Wendy Farrands comments that they felt any other way would be violating the applicants civil rights and the other considerations that had been discussed. And that a vote against the civil rights is not protected by the Maine Torts Claims Act. So it was also to protect her. He felt that the Appeals Board decision should be to decide what would be more vulnerable in a higher court. Civil rights should be considered, so as not to expose the town to an attack because of a bad decision by the Appeals Board.

Kimberly Oliver states that before there were conditional use permits ~~went were~~ used ~~that~~ many projects ~~when~~ went through the Board of Appeals and not every one of them were passed. She continues on to say that some were given and then taken away because they did not meet conditions or conditions were not adhered to. She didn't really feel that would violate someone's civil rights.

Aaron Carroll stated that the Planning Board considers the civil rights of both the applicant and the abutters and the town's people. He rejected the notion that the board voted to preserve only the civil rights of the applicant.

Dean LePage stated that several years ago that the Planning Board painstakingly drafted the conditional use permit and the zones of the Town of Limerick. Numerous information sessions and public hearings were held. After it was vetted and all questions were asked and answered, the voters of the Town of Limerick voted to accept this. What is the purpose of the Planning Board reviewing the questions and carte blanche approve? This request cannot be compared to every single request that has been granted carte blanche. There were numerous citizens in opposition to this. Mrs. Fifield has already proven that the application was incomplete and that the conditions were ignored by the Planning Board. Detrimental affect has different meanings to different people. The citizens explained what their concerns were. This Planning Board has completely ignored the majority of the conditions and it should not have been approved. 78:24

Sean Carroll states that what he heard tonight was mea culpa. We really didn't vet it. The concerns of the abutters and citizens weren't taken into consideration. There was an interim member of the Planning Board who was not allowed to participate because he hadn't been privy to previous issues. So he, rightfully, abstained. The chairman abstained, but both were seasoned members of the Planning Board who clearly had issues with the way the meeting was going and the articles were being pushed through. And clearly had issues with how the voting members came to that conclusion. This was troubling to the audience who wanted to state their opinion and they were basically shut out. As new evidence was presented and the people in the audience wanted to comment they were shut out. The people were not at issue with the project itself as much as the process of what was going on. It was not a question of civil or constitutional rights it was the process that was taken and the duty the Planning Board has to adhere to the zoning ordinance. Permitted use and conditional use are 2 different stories. He felt that the application was ramrodded through.

Dorothy Richard replies that they, the Planning Board, based all of their decisions on the Maine Municipal Manual. She has the feeling that when the 16 conditions were done that Maine Municipal was not consulted. "The manual states that decisions should not be based on opposition or support or whether the project would be good or bad for the community". It also states "that it is not legally permissible to include a review standard in the ordinance which requires a board to find that a project will be compatible with the neighborhood or would be harmonious with the surrounding environment". "A standard that requires a board or official to determine whether the development will conserve natural beauty has also been declared unconstitutional". So there are a number of the conditions that are in violation of Maine Municipal Association. There are too many gray areas, in our application, in our ordinances, in the number of things that we have. There are many areas that need serious attention. She recommends it be reviewed and revised by the professionals at Southern Maine Regional Planning.

John Medici replies that someone has to enforce this ordinance. There is nothing defining here that a CEO could enforce this project.

Dr. Hously spoke saying that he went to the site walk and was given very vague information. Mr. Mclean roughly sketch something the night of the public hearing and after that it all got changed 2 more times. His only comment is that it is incredibly slip shot. He suggested starting over with the process.

Kimberly Oliver commented on Maine Municipal Association is basically a bunch of lawyers up there for the state they have really good advice. There books are guidelines. The only bible is state law. maine.gov, go on their site and those are rules. They supersede the town. She states that what Dorothy Richard read is a general rule. That said, Maine Municipal is a really good organization, the town has used them as an advisory board. Each town is unique and each town has their own ordinances which make them separate from everybody else. Our ordinances are our bibles for this town specifically. If the state has a more restrictive law then we must follow state law.

Steve Mclean states that he wants to put the sketch to rest. There are no requirements for a sketch. And at the site walk, Aaron Carroll said, "let's walk this out and make a sketch and turn it in when you come to the meeting". He said to change the ordinance so it is required. Kimberly Oliver says that is not true. She asked Aaron to respond to this. Aaron Carroll responded that, no, it is not part of the application or the 16 conditions. The board has the right to ask for a sketch. This board chose not to. And I did say, 'well at least give us a sketch so that we have some idea how a Code Enforcement Officer would find it".

Denise Benton had a suggestion any committee that receives documentation always date it and document who gave it to you. Because some of the documents do not seem clear as to when it was received. 88:49

Barbara Fifield stated that the Planning Board should be looking at the project to determine what in totality this is about. She confirmed that in the application there are no requests for diagrams, but felt that logic should prevail. She also stated that how can it be enforced if you don't know where it is going to be or the size. And how can the public understand the impact of this project with all of the variables without a drawing or more detailed specifications. She reiterates that these requirements should have been insisted on by the Planning Board.

Sean Carroll replies that the chairman, Aaron Carroll did ask for 2 scaled drawings and the applicant's response was that it was not required. The Planning Board failed to require the sketches.

Kimberly Oliver asked the board if they feel that the applicant met the burden of proof and closed the Public Hearing at 8:32 p.m. The Board of Appeals felt there was sufficient evidence to rule on the appeal and she opened discussion for the Appeals Board members. She asked the board members if they still felt they had the authority to hear the appeal and to make a decision. They both answered that they did. She asked the board if the applicant was correct in her assertion that the Planning Board did not meet the requirements of a conditional use permit. Kimberly Oliver felt that there were many areas that the Planning Board failed to do their job and felt the main issue that the Planning Board made was not considering the abutters concerns when granting the permit. Kimberly Oliver felt that the Planning Board had more latitude than they utilized with the conditions. She did not see that with the minutes that Joanne Andrews, the Planning Board Secretary, had given to the Appeals Board. Joanne Andrews stated that those minutes had not been approved yet.

Deborah Stitson had concerns with the application itself being incomplete and the Planning Board still continued with the process. Kathy Ward agreed with this as well.

Kimberly Oliver said that the Planning Board could have accepted it with certain conditions needs to be met. She did not see that they had done this.

Deborah Stitson had an issue with the application concerning lot size, sketch size and actual acreage of property. Nowhere was this determined definitively.

Kathy Ward was concerned about the buffer, because she recalls CIA needing to provide a major buffer. Deborah Stitson states that was the reasoning for her question of how many abutters were notified. If there were 28 abutters, there would need to be buffers.

Deborah Stitson asked if they should go through the list and Kimberly Oliver stated that if they were going to send this back to the Planning Board she felt they would need to be specific with what areas needed to be addressed. She continued to say that the application regarding standing would definitely need to be repeated. The reason for this is there are names for the owners of the property but the application was filed as a business. This is a conflict there and the Aaron Carroll had also stated that he missed this. She reiterated that it is not a complete application. Deborah Stitson stated that the attachment for the corporation was not included with the application.

Aaron Carroll commented on the buffer for used cars are somewhat flexible with the road side of the project due to the fact they could be seen from the road. He stated that they did discuss buffers on the side for used car lots. And there have been instances that they would require something along the road side as well. He used the car lot on Sokokis Trail South as an example stating that he has a fence along the road side. He states that was more to keep traffic from pulling off in front of his cars.99:41

Kimberly Oliver discusses the adequate disposal of waste water and feels that is more for a machine shop and not for a used car lot. Kathy Ward states that you can also have leaks for used vehicles and Kimberly Oliver replies that all vehicles can leak. Kathy Ward feels that because there are several cars that this may be a concern. They agree that it can be very subjective.

Deborah Stitson commented that B3 should be addressed and Kimberly Oliver replied that she felt 16 more than anything should be addressed.

Kathy Ward asked Aaron Carroll if there were a few conditions added on. Aaron replied that the hours of operation were added on. Kimberly Oliver recalled the lights be turned off after 9:00 p.m.

Kimberly Oliver stated that the business areas are very limited and the reason the conditional use permits were implemented was so that businesses could be started in a Farm and Forestry district. That may be the only way that some people could have a business. She notes that her machine shop was started in the Farm and Forest district. She stated that one of the reasons for a conditional use permit is because you have no other space for a business. She personally has an issue with the fact that Mr. Mclean already has a business on route 11 where he sells used vehicles. She does not understand why he would need to have another spot. She states that is her personal opinion. She feels it is stretching the use of a conditional use. She states that when you have a conditional use that you are a guest in Farm and Forest district where it is already allowed and the abutters cannot be ignored. She feels that

from the evidence she heard that that the abutters were not considered. Deborah Stitson agrees with Kimberly Oliver that with a conditional use permit, it needs to fit in the spot they are going into. 105:48

Aaron stated that he was unaware that the minutes from the Planning Board meeting that the conditional use permit was verbally granted had been submitted to the Appeals Board as facts for this meeting. He is not comfortable with using those minutes at this point since they are unofficial. He wanted to know what they were basing their opinion on as to whether or not the Planning Board did or did not follow the requirements. He stated that the board should have the finding of facts before they make their decision. He asked that they would postpone the meeting to get the finding of facts and official minutes once they have been approved so that when it is passed back to the Planning Board they have a clear understanding of what it is they are being asked to correct.

Kimberly Oliver asked the Planning Board secretary, Joanne Andrews, if she knew when the findings of facts will be finished. Joanne Andrews states that the board has been besieged with numerous projects before this and with 5.5 hours a week there is not nearly enough time. Aaron Carroll stated that he has asked for the minutes on 3 separate occasions and asked that they would be here in time for this meeting. Kimberly Oliver admits that it would be difficult to say that certain things were not met without having the findings of facts. Kathy Ward reminds them that the application is still incomplete. Kimberly Oliver states that they could just send it back to be reviewed and repeated. Deborah Stitson states that they may not address all the other issues and Barbara Fifield would have to file another appeal and she feels they would be better off to postpone until they receive the findings of facts.

Joanne Andrews believes that she can get the findings of facts done for the next Planning Board meeting on February 3, 2016.

Sean Carroll asked why they had to have the findings of facts. He wanted to know why they would not just reject the Planning Boards decision to grant the conditional use permit and send it back to the drawing board. Kimberly Oliver responded that because the findings of facts are what the Planning Board actually voted on. What they have now is just typed notes of what they believed it was. The Appeals Board had to show where the Planning Board did not follow the ordinance. They can't just send the whole thing back. By looking at the finding of facts they can determine where they did not follow the ordinance and when it goes back to the Planning Board for review they can be specific which sections need review. Sean Carroll stated there were more points that Barbara Fifield could have brought up and did not so he asked if the Appeals Board could watch the tape. Kimberly Oliver answers that the findings of facts is a written document that will be in the file and it is what the CEO will use to enforce.

Dean LePage was concerned with the Planning Board having an appropriate amount of time to review and approve the minutes and findings of facts with everything else they are inundated with.

Barbara Fifield wanted clarification on the process. She stated that she gave the Appeals Board a 2 page document with the responses from the agent and nine areas that need to be look at and read and that would need to be matched up with the particular conditions and should be part of the decision making as to whether or not he demonstrated that they were met. Kimberly Oliver assures her that she will be reviewing all the evidence that she has and that is what the finding of facts should be.

Deborah Stitson made a motion to recess and meet again on February 9, 2016, Kathy Ward second it. All were in favor the meeting adjourned. 124:34