

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  
Kathy Ward  
David Coleman  
Brad Libby

Public Present:

Barbara Fifield-Appellant  
Dorothy Richard  
Wendy Farrand  
Joanne Andrews  
Denise Benton  
Andrew Ivey  
Brian Saulnier  
Jonathan Malmude  
Steven Malmude  
Sue Macintyre  
Jill Howe  
Cheryl Kontos  
Cheryl Lockwood  
Nanci Gammon  
Howard Burnham  
Liz Carroll  
Delores Carroll  
Robert Smythe  
Judy LePage  
Steve Foglio  
William Jones  
Ed Morgan  
Several other citizens

Michael Carroll called the meeting to order at 7:00 p.m. of the Limerick Zoning Board of Appeals. He asked everyone to stand and recite the Pledge of Allegiance. He stated that the first order of business was to elect officers for the Board of Appeals. He asked for nomination

for the Chairman, David Coleman nominated Michael Carroll, Kathy Ward second it and with no discussion realized all were in favor 5-0. He then asked for a nomination for Co-Chairman and he nominated David Coleman, Steven Mclean second it and with no discussion realized all were in favor. 5-0. Michael Carroll asked if there was a nomination for secretary, Steven Mclean stated Laura May, Michael Carroll reminded him that it had to be a member of the board. David Coleman nominated Kathy Ward, Michael Carroll second it and with no discussion realized all were in favor 5-0.

Michael Carroll stated that this meeting is to review an appeal filed by Barbara Fifield in regards to the Planning Boards decision to grant a conditional use permit to Steven A. Mclean for a seasonal use Snow Shoeing, Cross Country Skiing located at Sokokis Trail North Limerick tax map 17 lot 66. He continued by stating that all five members of the board were present and asked if anyone had any conflicts of interest and Steven Mclean stated that he did. Michael Carroll asked for a motion to recuse Steven Mclean and David Coleman moved the motion, Kathy Ward second it and with no discussion all remaining board members were in favor 4-0. Michael Carroll then asked if anyone else had any conflicts of interest or bias and finding none he proceeded with the next order of business the timeliness of appeal. He then stated that the applicant had 30 days from the vote of July 5, 2017 and he received the application on July 26, 2017 making it within the 30 days. He then asked for a motion to accept the timeliness of the appeal, David Coleman made a motion that the appeal was made in a timely manner, Kathy Ward second it with no discussion realized all were in favor. 4-0. Michael Carroll proceeded with jurisdiction stating that the Limerick zoning ordinance gives the Appeals Board jurisdiction to hear this appeal and asked for a motion. David Coleman moved that the Appeals Board has jurisdiction over this appeal, Kathy Ward second it, and with no discussion realized all were in favor 4-0. He proceeded with the standing and asked if the Applicant has the right to bring an appeal to the Board of Appeals. David Coleman made a motion that as an abutter she does have standing, Michael Carroll stated that he did have a copy of her deed proving that she does have standing, Kathy Ward second it and with no discussion realized all were in favor. 4-0. Michael Carroll proceeded to completion of the application and stated that the application was complete when he received it and the fee was paid. He then asked for a motion. David Coleman made a motion that a completed application had been met, Kathy Ward second it and with no discussion realized all were in favor 4-0.

Michael Carroll then stated that the public hearing would be opened and explained the procedure would be the applicant would speak in entirety and then the board would ask any questions they might have for the applicant. They would then hear presentation of the Planning Board and then the Appeals Board would ask questions they may have for the Planning Board. At that time there will be any rebuttals between applicant and Planning Board and then comments from the general public.

Michael Carroll stated that at this time he would like to read a correspondence that had just been given to him addressed to the Board of Appeals:

Dear Board Members,

I am writing to express my concerns over the proposed Cross Country Skiing, Snow Shoe Park on Route 5 on property owned by Steve, James and Julie Mclean, Map 17 Lot 66. I own property with my mother Kathleen T. Radley, Map 17 Lot 65. As an abutter to the Mclean property I am opposed the proposed lighting to the night skiing, snow shoeing. I also am concerned that some other use will evolve on the trails once the season is over. I am not opposed to the cross country snow shoeing, but am opposed to the lighting and any other potential sports usage. I am sorry that I am unable to attend the meeting, but distance and work are keeping me away. I hope you will consider my comments.

Sincerely Yours,  
Dawn B. Radley

Michael Carroll stated that he would like to read an excerpt from the zoning appeals ordinance before continuing.

In an administrative appeal the applicant has the burden of proof to demonstrate that the code enforcement officer or the Planning Board have acted contrary to the ordinance. The Board of Appeals shall hear an appeal for any decision of the Planning Board on an appellate basis and shall limit its review to the record developed before the Planning Board and shall not except any new evidence or testimony. The Board of Appeals may only reverse the decision of the Planning Board if it is determined that the Planning Board decision of the Planning Board was made based on an error law or mistake of fact.

Michael Carroll then asked Barbara Fifield, Appellant, to state her case. 12:07

Barbara Fifield: Thank you all for coming I really appreciate that. My name is Barbara Fifield and I own 11J on Map 17. As Michael stated I am the appellant in this hearing. I'm here for two reasons. The first reason is to challenge the decisions that were made by the Planning Board. The second is that I am here to protect my land and property values from depreciation. There were numerous errors of all sorts made during this process and I found that they fell into seven major areas of violation. I would like to go through those seven areas for you. The first is proof of standing. What does this mean and why is it important? Proof of standing is a situation of land ownership and is generally satisfied by a deed. It enables the board to determine whether the applicant has a legal interest in the property and therefore has a right to apply for a conditional use permit. During the hearing with the Planning Board I was in the audience and I requested that a deed be supplied by the applicant and that was not backed up by the Planning Board. The Planning Board said that they knew the applicant owns the land. It is a state requirement that this deed be supplied in the case of conditional use. Furthermore the Planning Board takes an oath to uphold both state and town laws and they should have backed up my request and gotten that from the applicant. Or the applicant should have come forward and provided the deed. There are some discrepancies in the application as well that might well have been resolved if there was a deed. One of the things is that on page two of the conditional use application. The applicant is asked to indicate any restrictive covenants that are in existence in his deed. If you look on page two of the applicant's submission you will see that the question about restrictive covenants is blank so it has not been completed. However, I did

get a copy of the deed and there is a restrictive covenant on that property. It reads as this, no road generally accessible to the public connecting Route 5 and Carroll Lane in whole or in part shall be constructed across any portion of the property conveyed here in. And this is the deed that was generated through the estate of Marie D. Carroll and signed by Francis Carroll and is the conveyance of the 53 acres. This restriction shall not be construed so as to restrict the construction of a road for the exclusive use of the grantee his successors and assigns between Route 5 and Carroll Lane so long as the road remains private and so long as the grantee, his accessors and assigns maintain a gate at the entrance to any road so constructed so as to preclude the use by general public. 17:12 That should have been placed on the application by the applicant. There also is another portion of land because the application is for 54.5 acres not for just 53 acres. So there should have been a deed also presented for that and any restrictive covenants noted on the application. So that is three violations right there relative to proof of standing. There are multiple landowners for this piece of property. I don't know about 1.5 acres, but certainly for the 53 acres. Usually when that occurs there should be an agent letter by the other land owners that give the right for the other landowner to represent their interest. At the hearing the applicant said I am doing this for my kids. So I said to myself is this his grandkids is this his adult kids. The adult children did not attend any of the meetings. Does this mean they are not in agreement with Dad? That is why an agent letter is important, because in both of these circumstances, proof of standing and not having an agent letter to allow other landowners to give permission to speak for them we can open up our town to a lawsuit. Because both of these items can be brought to court. And that is the danger of it and that is why it is very important that our Planning Board goes through these processes and get these documents. The third area that I noticed was in violation the abutter notification and communication. The abutters and the public were not notified of the time, date or place of the site walk. Now if you read the MMA manual for the Planning Board you will see that, that is not a conditional use requirement, however, given the scope of this project that involves 54.5 acres of land is approximately 3500 feet of frontage and 6060 average feet in depth, it effects 33 abutters that own 48 lots and has a value of millions of dollars. I think it would have been appropriate to include the public and the abutters in the site review. The other thing is the abutters list provided by the applicant left off 11 abutters. They were omitted from the list and these abutters than failed to get a personal letter of the public hearing. And I can tell you there were myself and one or two other people at the meetings for this hearing. Now I am bringing up conditional use 8 right now. Conditional use 8 in our ordinance says that the applicant must address exterior lighting. And it says specifically: has proposed exterior lighting which will not create hazards to motorists traveling on adjacent public streets is adequate to the safety of occupants, users of the site and will not damage the value or diminish the usability of adjacent properties. A Planning Board member made a motion to accept that conditional use 8 was met because there were no abutters. I was shocked. But that is what happened and it is on film if you want to watch it. My property and many other properties that are in this area are in full view of this proposed development. I consider the proposed lighting to be excessive, detrimental to my property and land values and interferes with the usability of my property. Through conditional use, an applicant cannot impact abutters in this way. There were multiple submissions made by the applicant. There was a site plan that was handed out by the applicant at the site review and discussed at the public hearing. That site plan had no buildings, no lights

and very limited parking on Route 5. Subsequent to the public hearing, a replacement of that site plan was given to the Planning Board and a whole new conditional use responses after the public hearing. I do not consider that to be appropriate procedure. At that point the Planning Board should have stopped the proceeding, ask the applicant to complete a new application and schedule another public hearing. What we did find out though in the second site plan that was submitted that the site plan included a lighting array consisting of 55, six inch solar lights atop 11 foot polls. A 12 x12 ticket booth, and 20 additional parking spaces. At this point the abutters and the public were not aware of any of these changes. Even though this new data had been submitted by applicant the chair of the board at that time said that the public hearing was over and further testimony could not be made by the public.24:06 This type of action by the Planning Board is at very least questionable and possibly illegal. The conditional use requirements. Essentially the applicant ignored the requirements in the Limericks ordinance and the Planning Board accepted the responses as being adequate. For example, the Planning Board did not require written evidence of how each conditional use requirement would be met. Even though our ordinance states on page 31 that the applicant demonstrate that the purposed use will meet the requirements. The application form itself, goes on to request written response concerning each conditional use on a separate sheet of paper and the applicant is to indicate how you intend to satisfy the condition. If you examine these 16 conditional use responses that were submitted by the applicant, actually there are two sets they are essential very close to each other. They are nothing more than reiterations of the conditional use statement itself. I think I had an example: Conditional use 3, the conditional use says this; Will not have a significant adverse effect on adjacent or nearby property values. The applicant stated in his written submission; will not have a significant adverse effect seasonal, low impact. That was his response to that conditional use. I ask you is this low impact, 55 lights 6 inches in size on 11 foot poles? I don't think so. These lights will be visible throughout the neighborhood and beyond to Limington. Solar lights run all evening when the daytime is sunny as evidence by the applicants Christmas lights currently on this property. The purposed lights will function in the entire 54.5 acre property every evening following every sunny day year round whether or not the ski area is opened for business. The reason is that the Planning Board placed absolutely no restrictions on the use of these lights. Not hours of operation, whether they had to be taken down off season or anything. So this lighting plan basically is an irritant in my opinion and deliberately antagonistic to neighbors and is depreciating their property and land values. The other issue, there is in one of the other conditional requirements, it talks about noise. The Planning Board did not address trail grooming nor did the applicant provide this data. I talked with some people in Lyman, at their cross country ski area and they told me that there was different types of equipment. Some of it is polluting and some of it isn't, so that is another issue. And grooming also can be very noisy. You can just go through all the conditional uses. Denise is going to talk a little bit more about all the other conditional uses that are on here in a few minutes.28:24 One of my concerns deals it business developments on Route 5 North and South. In 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 to 1 margin. So the town said we don't want to have a business corridor along those areas. This warrant is still in effect. The proposed and improved development of four businesses which is what has happened right now in this area right now which is about 1000 feet apart in a scenic area of Limerick, violates this

warrant. Clearly the residents of Limerick do not want the businesses clustered together along this section of Route 5. This issue was raised by one of the Planning Board members during the hearings. With the approval of a ski area there would be four businesses as I said within 1000 feet. And although the land use chart allows development in residential farming and forestry, it does not nullify the warrant of 2008. When the Planning Board member brought this issue up in the hearing as consolidating development in too close an area another Planning Board member sent a letter to Natalie Burns, who is our attorney, and asked her to rule on this issue of multiple conditional uses in proximity. I read that submission to her, but she was not given the fact that a warrant existed to prevent this development in the business corridor on Route 5. So her response did not deal with that. As far as I'm concerned is her response is inadequate and erroneous because she was not given all the data that involved the situation. Invalid voting, conditional use one and conditional use seven, initially those requirements did not pass the vote in the Planning Board meeting. The vote was two for each of these and one against and that was declared by the Chair. A majority of the board is required to approve any motion and that rule is stated in our Planning Board by-law. Which means we need three positive votes to approve the response from the applicant and say that it satisfies our ordinance requirements. So this was a two to one, but what happened was near the end of the meeting the negative vote was changed to a positive vote. So that made it unanimous that those three votes were approving conditional use one and seven. However, that is a violation of Roberts Rule of Law or Rules of Order. The Planning Board by-laws state that the board shall be conducted with pertinent parts of Roberts Rules of Order and voting certainly is one of those pertinent parts. A voting member has a right to change his vote up to the time the vote is announced since the change in vote occurred at the end of the meeting after the vote was announced by the Chair the change in vote should not have been accepted and therefore this project should not have been approved. Under Roberts Rule in the case of a change in vote after announcement by the Chair only the assembly present, that is you people, you have the right then to vote one way or another whether the Planning Board can accept a change in vote after it announced. And that did not occur. What does it mean? It means the project was not approved. Simple as that. Yet the Chair announced that the project was approved. That this conditional use was approved. I have some other words here, but I don't think I am going to say them because I'm going to turn things over to Denise now.

Michael Carroll stated that she was not going to turn things over because the Appeals Board members had some question to ask Barbara Fifield and Denise is not the applicant and when Barbara Fifield is done with the board then the Planning Board has a chance to speak. He clarified further that she, Denise, is not on the application, but will have a chance later in the meeting to speak. He then asked Barbara Fifield if she was done and she answered that she was at this time.

Michael Carroll asked if any of the board members had any questions for the applicant and Brad Libby stated that he did have questions.

Brad Libby asked Barbara Fifield if she ever found out who own that land. Barbara Fifield if he meant the one and a half acers and Brad Libby answered no, that Barbara Fifield had

mentioned that there were several property owners and then asked her if she ever saw a deed with the property owners listed on it. Barbara Fifield asked for clarity of which lot he was referring to and he answered her the 53 acres. She answered that the deed she has is made out to James Mclean, Julianne Mclean and Steven Mclean and that she got that it had not been submitted to the Planning Board. She also stated that the other 1 and ½ acres she has no idea. Brad Libby then asked if the 1 and ½ acres was part of this whole project. She answered that his application list 54.5 acres, his original lot was 53 acres. He said at the public hearing he said he had purchased another 1 and ½ acres, but a deed was not submitted on that either.[35:15](#)

Michael Carroll stated that he had some questions. He asked in the Planning Board record was the deed restriction brought up? Was it in any of the records and Barbara Fifield answered that it was never mentioned and she found it when she read a little closer on the application that the restrictive covenants were not completed. Michael Carroll continued, what about the agent for the land owner and Barbara Fifield said no that was never mentioned by the Planning Board. He then asked about her the abutters list that she had mentioned earlier, and that she admitted at one point that it is not a requirement of the ordinance and she stated that she believes that is a state law, but she was not sure about that. And that there is an abutter's list in his application. Michael Carroll then asked Barbara Fifield where in the ordinance it is required that the applicant submit an abutters list. She stated that she did not know and that has always been a part of a conditional use. She reiterated that she believes it is state law. David Coleman stated that it is for subdivisions but not for conditional uses according to Limerick. Barbara Fifield continued that every conditional use she had ever seen there was an abutters list and they are required to send out a notice. Michael Carroll stated that he understood that, however the ordinance and the by-laws tell the Planning Board what to do, and it is no different than the Board of Appeals, we require an abutters list to send out but it is not in our ordinance or by-laws anywhere. He continued that it is done because that is what the Appeals Board feel that they should do, but it is not a requirement. Barbara Fifield stated that the Planning Board by-laws are very general and she does not believe it is in the ordinance. Michael Carroll stated that when conditional use number 8, Barbara Fifield had stated that a Planning Board member made a motion to accept it on the basis that there were no abutters and she answered yes. She continued that a Planning Board member, and she was not using names, and stated they could watch the film and could see who said it. Michael Carroll stated that to start with it is the appellant's job to bring the proof not the Appeals Boards job to watch the film. She stated that she was giving them the proof I said a Planning Board member said this and Michael Carroll stated that is a statement from her and asked where was her proof. Barbara Fifield answered that the proof is on the tape. He then stated that she did not have the tape or the minutes. Barbara Fifield said no they did not have any minutes for this. There is no facts or findings or anything yet as far as she was aware.

Brad Libby stated that she had mentioned and he had read Natalie's response about clustering businesses and that Barbara Fifield stated that Natalie was not aware of the ordinance had failed, so that the old ordinance being in place, and he asked her if he was stating that correctly. He continued that a warrant article was put out to put a business zone border to border and it

failed so the original ordinance still stands. Barbara Fifield stated that it failed to say to develop. The failure was not to develop a business district in 2008. Michael Carroll stated that he believed it was not to establish a business district. He and David Coleman stated that it was a change in zoning that did not pass. Michael Carroll stated that while we are on that question was that brought up in the record of the Planning Board. Barbara Fifield admitted that it was not brought up, but was argued by one of the Planning Board members that on the position that he didn't feel the intent of a conditional use was to cluster, that these were to be off zone. She continued that we are talking about putting some businesses in residential forestry and farming and that was his view. Michael Carroll questioned again that this was not brought up at the Planning Board meeting. Barbara Fifield answered no and in fact she spoke with that person subsequent to that time period and he was not aware that was even in effect. She stated that she thinks a lot of people are not aware that this is in effect. Brad Libby asked because she was not aware of that set of conditions, Barbara Fifield ask, she being Natalie, Brad confirmed this and continued that because she was not aware of that and she sent out an opinion and asked if she had since been notified and if so wanted to know what her opinion was at that time. Michael Carroll asked Brad Libby what was in place, and Brad Libby responded cluster businesses shouldn't be and Michael Carroll stated that Limerick's ordinance does not say that. He began to try to clarify and at this point David Coleman clarified that this was a warrant article on the ballot at a special town meeting and it was a pass or fail warrant article and once that article failed the zoning ordinance and the establishment of district remained the same. David Coleman continued that if it had passed the establishment of districts would have changed and the map would have changed. He continued the fact that the warrant article failed it just means that it goes back to the original zoning. Kathy Ward stated that the way it is written it is just saying the title failed. David Coleman explained that they word the vote so you know what you are voting for and this is what you are voting for (he pointed at the article) to change article 4 and article 4 did not change. It was voted down. Kathy Ward stated that is not the one that failed (pointing out the article) this is the one that failed. David Coleman stated that it reads, copies on file at the clerk's office and this would have explained what that was. The business district failed. He explained the way it was worded and would have been depicted on the map it would have been a swath all the way down Route 5 from town to town. From Cornish to Waterboro. It did not pass so the current business district stands today.

Michael Carroll then asked how the lighting that she had spoken of make the planning Board act contrary to the ordinance. She did not hear him so he rephrased his question and stated that she had talked about the solar lights and was curious to how that makes the Planning Board act contrary to the ordinance. Barbara Fifield answered that because it is in the conditional use on number 2, will not have a significant detrimental effect on the use and peaceful enjoyment of adjacent and nearby properties, by result of noise, vibrations, fumes, odor, dust, light, glare and other cause. Plus will not have an adverse effect on adjacent or nearby property value, use number 3. She stated there was another one in that and is all part of the conditional use requirements. Brad Libby asked if the Planning Board in their deliberation ask about lighting. Barbara Fifield responded that they did not and what had happened was when the applicant submitted the sight plan the Planning Board looked at it and

asked what the dots on the plan were and that is when everyone found out that it was the 55 lights. He then stated that the Planning Board at some point did find out about the lighting. Barbara Fifield answered that they did find out about it but didn't deliberate or talk about it. It was just accepted.45:39 With no other questions at this time Michael Carroll thanked Barbara Fifield.

Michael Carroll called Dottie Richard, Planning Board Vice-Chairman, to the podium to present the Planning Boards side.

Dottie Richard stated that she has addressed each question that Barbara Fifield had. She began reading what Barbara Fifield had outlined with no. 1; the applicant did not provide proof of standing nor was this requested by the Planning Board. Dottie Richard's response was, on February 1, 2017 at minute 1:10 of the Planning Board meeting the board accepted the book and page from Mr. Mclean. Michael Carroll asked Dottie Richard if she had copies of her responses for the Board of Appeals and she answered that she did and proceeded to pass them out to each member of the Board.

She continued with no. 2; the applicant did not provide proof of other land owners. Dottie Richards' response: The MMA Manual page 13 under Standing to Apply, where property is jointly owned, all owners need not be parties to the application in order for the standing test to be met.

She went on to no. 3; the abutters and public were not notified of time, date, and place of the site walk. Dottie Richards's response, the MMA Manual page 8 under site walk. Site walk meetings may be called by the Chairman or the majority of the board for the purpose of allowing the board and interested public to inspect the site of a pending proposal, site walks are encouraged for all applications before the board. The Vice-Chairman is responsible for minutes to ensure the full fair board disclosure actions to all members of the public. No formal motion shall be made, no votes taken at a site walk. Whenever possible the time and place shall be set following adjournment of the meeting. Public notice shall be given of all site walks. It's not required to notify abutter's of site walks. Dottie Richard stated that public notice was placed in the weekly Shopping Guide on March 8, 2017.

No 4; the abutter's were not notified. MMA Manual page 24, Scheduling a meeting notice requirement agenda. Notice of the meeting time and place should be given to the applicant and to any other people such as abutters whom the board may be required to by the relevant statute, ordinance or by-laws of the board. She then stated that there is nothing in the Planning Board by-laws or ordinance that require the Planning Board to notify abutters only in the application. It needs to be in the ordinance to be required.

No. 5; the original application was submitted to the Planning Boards secretary. The Planning Board public hearing was held on March 15, 2017. Changes to the application included a replacement of all conditional use responses 3-29-17 and a new site plan dated 6-19-17, 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 the Public Hearing was over and further testimony could not be made by the public. The Planning Board should not have accepted a revised application data without another public hearing. Dottie Richard's responded that the information was requested by the board during the review process. There

is no public input during the review process. Minute 52:42 on June 7<sup>th</sup> Sean asked for a more detailed description. It was provided to us at the next meeting.

No 6; the original site plan handed out at the site review had no buildings, no lights and no designated ingress and egress locations for skiers. The modified site plan dated 6-19 includes a lighting array consisting of 55, 6 inch solar lights upon 11 foot poles. Parking spaces and a ticket booth. The public was not aware of this change. Dottie Richards response; the information submitted was requested by the board during the review process. There is no public input during the review process. Again at minute 52:40 on June 7, Sean asked for a more detailed description.

No. 7; the Planning Board member made a motion to accept condition no. 8 on the basis that there were no abutters. Dottie Richard stated that she had the Code Enforcement Officer, Michael Gilpatrick, look at it and he said it was about 20 feet below grade. If these are 11 foot lights so it might be level with the street only at one point the rest are below grade. She continued that the solar lights are not street lights. They will be a downward light to light the roads that are all below street level. 55 low impact solar lights spread over 50 acres will not have that kind of an impact.

No 8; Condition 1 and 7 did not pass. Dottie Richards's response was that the by-laws do state that pertinent parts of Roberts Rules of Order, but it is not specific. The decision to reconsider the votes were based on an 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 yourselves. 51:50

No. 9 The applicant ignored the requirements of Limerick's ordinance and the Planning Board accepted the responses. Dottie Richard responded that the land is already groomed for trees. The questions were adequately answered. Whatever questions needed more substance were answered at the time of the review which is an accepted process by the Planning Board and has been done by almost every applicant. If the street light at the overlook is not seen in Limington I seriously doubt that the solar lights that are well below street level be seen. In 2008 a warrant to implement a highway business district along Route 5 and Route 11 corridor from the town line was defeated. This information was not brought up during the public hearing or during the review process and can't be discussed now. 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. She continued, Mr. Mclean provided two DOT permits for this property and the permit states between two pillars not between two poles. He does have them marked on his plot plan that were part of the July 5<sup>th</sup> minutes. 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 Limerick highway department has no jurisdiction over private roads. She finished by stating that the Planning Board tries to treat everybody fairly and equally. The Planning Board did not do anything different for Mr. Mclean than for any other applicant that comes before the board.

Michael Carroll asked the Appeals Board members if they had any questions for Dottie Richard. Brad Libby read Dottie Richards's response that the Limerick highway department has no jurisdiction over private roads. He asked if the roads that are being discussed are the roads that

are going to be used by the public for egress etc. Dottie Richards answered that what was going to be used are driveways to get to the parking area and the roads that are through the trail are just the trail. He had a second question as well and admitted that he had not seen Mr. Mclean's deed, but that Barbara Fifield had mentioned that there was a deed restriction and it indicated roads going from Route 5 to Carroll Lane were to be gated and not to be used by the public. He wondered if he had heard that correctly and David Coleman spoke, and noted that he was the chair at that time of the sub-divisions creation, and he stated that the original sub-division, when it was approved, the purpose of that covenant was to keep from connecting Carroll Lane from Route 5 over the property. Brad Libby stated that he was just looking at a map and did not know if it does or it doesn't, but it sure looks like it does. Dottie Richard replied that there are gates. Michael Carroll asked, if there was anywhere in the ordinance or by-laws giving the Planning Board the right to restrict or enforce deed restrictions. Dottie Richard's answered not that she was aware of.

Michael Carroll stated that Dottie Richard's had mention that in the MMA Manual property that was jointly owned need not be parties to the application. He then asked her if she had a copy of that so that the board could review it. She answered that she did not she just cut out that excerpt. She noted that the Appeals Board manual would be similar, but the pages would be different. Michael Carroll stated that he just wanted to clarify one other thing. He continued that during the review process Dottie Richard had mentioned that information and more detailed description was asked by one of the members. He wanted to know if that was common practice and Dottie Richard answered that it was. He continued that after the public hearing as the Planning Board is going through each condition in the past have asked for more information from other applicants not just this applicant. Dottie Richard answered that they have. Brad Libby stated that he had a backup question regarding the same. He stated that he is not positive how this generally works, but asked to follow his line of thought. He continued by stating the Planning Board had a public hearing initially based on a reasonable amount of information and public input was requested and received at that time, that meeting was closed and then many changes, or a lot more information was brought in and a decision was made without any further public input. Dottie Richard's answered that once a public hearing is closed it is closed and there is no more public input at that point. He questioned that the board could have but did not have another public hearing. Dottie Richard stated that they had asked for more information and received more information. Mr. Mclean made another map when Sean Carroll asked him for more information. She explained that he was not going to put in lights and Sean Carroll asked about lighting and he decided to put in lighting. Instead of coming back for an amended conditional use down the line, he put in the lighting and the ticket booth. Michael Carroll asked if that was common practice on the Planning Board. Dottie Richard's answered that they had done that before for other applicants. He questioned further that they had received other information from other applicants not just this applicant and the Planning Board did not have another public hearing. Dottie Richard's stated that was correct. Michael Carroll then asked if the Planning Board normally look at state driveway permits in their review process. Dottie Richard's answered that this is the first time the Planning Board has received state permits, so she did not feel she could answer that. He then asked her if the Planning Board had ever requested Limerick's road commissioner to ever look at roads like this on other applications that she was aware of. She answered that not when they were state

roads. She continued that the road commissioner has to give when it is a town road, but would have to get one from the DOT for state roads. Michael Carroll stated that he understood that, but what about the roads on the site has the Planning Board ever required the road commissioner to look at roads on a site before that she was aware of. She could not think of another incident that would have been a road like that. 1:00:57 Brad Libby asked Dottie Richard if she would consider the roads that are on the map would be the roads that would be used by the cross country skiers. Dottie Richards answered that she believed Mr. Mclean was calling them trails and Brad Libby stated that was his question. He continued that the Board of Appeals was referring them to roads and actually essentially trails. Dottie Richard stated that they were given an E911 for emergencies. Brad Libby stated that they would not be designed for vehicular traffic and asked if he was correct and Dottie answered that is correct. Michael Carroll asked if Dottie Richard recalled in the Planning Board meetings or the records if the road commissioner was ever asked to go look at the roads and she answered that it was not. Michael Carroll asked if it had been brought up at the Planning Board meetings regarding no. 11 of Barbara Fifiel's application, there was no correlation between the state highway permits and the actual site plan. The site plan contains no scale, the two driveways are not identified. One permits states between the two polls. There are no polls included on the site plan. He asked Dottie Richard if that was brought up or questioned. She answered that there are two driveways off of Route 5 that are on the map. David Coleman asked for affirmation if the permits were included with the application and Dottie Richard answered yes. Michael Carroll asked if anyone else had any questions. With no other questions, Michael Carroll asked Barbara Fifiel if she wished to rebut any of the statements that were made by Dottie Richard.

Barbara Fifiel stated that she really did not know what to say because it was too fast for her to assimilate the whole thing in terms of the data. She felt that if she had a chance to see Dottie Richard's material in writing and evaluate it like she had with hers, (Barbara Fifiel's), she could find a lot of things wrong with it. She continued that it is the common practice for the Planning Board to receive changed data, particularly by this applicant, consistently over the four conditional uses that the Planning Board have reviewed in the past and allowed him to make changes to it after the public hearing. It was her contention, and she admitted that she could not prove this at this time and say here is the law, that allows that kind of thing to happen. She feels it is fundamentally wrong. She continued that you cannot expect that the abutters will continue to keep up this kind of process as it changes over time like that. From week to week or two weeks apart and have any kind of ability to have input. She continued that as far as the highway or road thing goes, as far as she could see, the permit, the particular form, (she holds up a form), is the one she believed that Dottie Richard's was referring to, which has state or local road. However she continued that this was completed by the applicant and he is stating that it is not applicable and she was stating that it is applicable. There is going to be a public part of this road to get into that site and that road has to be up to local standards. And Mr. Mclean completed this. This should have been brought to the road commissioner to decide that.

Michael Carroll asked, where in the conditional use ordinance article # 7, where does it say that those roads need to be brought up to town standard? Barbara Fifiel stated that any road that has public access to it would have to be town standards. She stated that it doesn't say it in the

conditional uses and that is part of code. She continued that there had to be a safe ingress and egress. There has to be road clearances and that is usually done by the state highway people. She did not say anything about that because she did not know what those clearances are. She continued that she would say one thing about the lights, and that they are below grade, however, I'm up on a hill and so are a lot of other people around that property. So those lights will be visible to a lot of the abutters. Particularly Delores and Lisa's property that are at the top of the hill. They'll see that whole area more than I will on mine. So we are up looking down and I believe there are other abutter's who have that same similar kind of condition. There is also clearing in the winter, there's no leaves on the trees, so they are going to be visible. Michael Carroll stated that he did not disagree with Barbara Fifield, but that she would need to show the Board of Appeals that the Planning Board acted contrary to the ordinance and would need to prove it. He continued that he was not saying that she did not prove it, but that is what the board would need. And the Board of Appeals had to stick to the Planning Boards record. He admitted that he may not have stated that enough and should have read it again, but he wanted to make sure that is understood. He clarified that the Board of Appeals could only look at what the Planning Board record says. Barbara Fifield stated that she had not deviated from the Planning Boards record. She continued that everything she put in here was the record of that hearing. With no other questions at this time Michael Carroll asked Dottie Richard if she would like to rebut anything and she answered no.

Michael Carroll asked Steven Mclean who is the interested party to speak on his conditional use.

Steve Mclean started by introducing himself as the property owner. He stated he would like to object several statements that have been made so far they are contrary to what the Planning Board minutes say, and we are charged here to go by Planning Board minutes and what the Planning Board heard. He continued that the board had several replies so far that this was not brought up to the Planning Board and all of that information has to be omitted. He continued by stating there is a couple of things that were talked about, and he stated that Brad had brought up, and that they were trails that were going through there. He stated that if they were going to have the road commissioner go and look through the Christmas Tree Lane where the parking area is, then the road commissioner would have to go to Lake Arrowhead, Pickerel Pond, and Sokokis Lake and approve all of those camp roads. He stated that it doesn't happen, the road commissioner does town roads if we were going to try to bring one of those up to town specs and give it to the town, which is when it has to be approved. He continued that his deed restriction says there never can be a public road connecting Carroll Lane to Route 5. He explained when Frank Carroll was developing that whole area before he, Steve Mclean, bought it, the Planning Board put that restriction because several people in town thought that he, Frank Carroll, was going to make a by-pass. That is where that had originated. He stated that he did not have that. Brad Libby stated that he did recognize that now. Steve Mclean continued that also on the plan the Appeals Board was concerned about the lot that he had bought from Frank Carroll two years ago that has nothing to do with the diagram that the board has. That it not on it and is not part of this at all. He stated if he was off an acre, so be it. There is a tax map and a whole print out of it. He continued that it started out as 70 acres and the DEP let him keep a couple of more lots, so it got broken down, and if it is 52 or 53 it doesn't

matter. He stated that the Board of Appeals has the tax map and went on to say that the Planning Board asked for the book and page of the deed and he gave them the book and page. He stated that everyone is in agreement that a lot of things need to be rewritten, but the Planning Board can only ask for what is there. He stated that he gave them the book and page and that should suffice. He continued that another question that had come up was the other owners, James and Julie Mcleans, permission. He stated that the state law is very explicit, and with his name on the deed he could apply for the conditional use and as far as the state is concerned if James or Julie did not want to do this then they could take it up with him, or sue him or whatever, it has nothing to do with the town at all. He wanted to clarify one other thing, and expressed that it is not new business. He stated that he was asked several times, and it is in the Planning Board minutes, if he was going to have a ticket booth. He stated that the kids just want to try to do this, and he was trying to make this simple. He stated that he said he did not know, and he was told that he should have a business plan and if this was going to be done at night that there should be a ticket booth. So he went back and he added a ticket booth. He reiterated that he was asked by the Planning Board to give them some more information instead of coming back in a year saying this is what we want to do now. He stated that he and Sean Carroll disagree on a lot of things but he was right on that and he agreed with him. They agreed that it should all be done at once and that is where that came up. He then address the lights stating that they were little 6 inch solar lights that will be pointing down and have 0 effect. They will just be a guide to go along those trails. He stated that if that is a big hang-up then they scuttle it. He stated that he was asked to provide an engineered plan of that and he did provide that. He then addressed the question regarding the abutters. He stated that his statement at the Planning Board meeting was there were no houses within 3 to 4 hundred feet of these trails. That is a true fact. He invited the Appeals Board to go and look at it for themselves. He again stated that there are no house surrounding this area and the trails are all in there with 15000 Christmas Trees. He continued that he could make it a subdivision and have houses in there.

Michael Carroll stated that before they open in up to the general public he wanted to read again. The Board of Appeals shall hear an appeal for any decision of the Planning Board on an appellate basis and shall limit its review to the record developed before the Planning Board and shall not except any new evidence or testimony. He stated he just wanted to clear on that.1:15:41 He then asked if anyone from the general public would like to speak. Michael Carroll recognized Denise Benton. Denise Benton introduced herself and stated that she is a US citizen and a resident of Limerick and a property tax owner. She asked permission to submit a letter from a party that was unable to attend the meeting tonight and Michael Carroll accepted the letter. She stated that her mom, Barbara Carroll asked her to speak and stated that she owns two lots approximately one lot away from the scenic overlook and are set up to be house lots that she would someday like to sell. She feels this would be detrimental to the possibility of her selling those as house lots with 55 lights and people going through her back yard that could potentially be 24 hours a day since there are no hours of operation set. She continued that she has another sibling, Donna Welch, who could not be here at this meeting and was neglected from the original abutters list, but is an abutter. She is also concerned of the cars parking down on Carroll Lane and hoofing it in at who knows what hour day or night. She

stated that herself personally she is not opposed to the cross country skiing or snow shoeing. She believes that could be potentially a great thing. She doesn't know of any business that has a lighted course for many reasons. She didn't see the necessity and felt that if that could be a compromise then maybe this could all work for everyone involved. She continued that people would have come forward had they had known about this during the Planning Board process or had they known that this lighting issue was happening. It was never discussed until far into the project when the public hearing was closed which she thought was a huge disadvantage to abutters. She continued stating under number 2 noise, it was never was discussed about hours of operation, so how would you know what the noise was going to be. She stated that she thought they could all agree that 6-7:30 in the morning is pretty noisy with traffic, quiets down there during the day because everybody is at work, a little busier at night, maybe 4-6, but after that she felt people deserved to have quiet and peaceful enjoyment. There were no seasonal months of operation given. What could it potentially turn into next? There is nothing to be enforced by the Code Enforcement Officer. She continued, does anyone really want people cross country skiing in their back yards or 10, 11, 12 or a grooming machine. Nothing was even discussed about that. He said it would be seasonal, but what months. She went on stating that no. 4: hazards to pedestrian or vehicular traffic. Looking at the evidence that was given on the Maine Department of Transportation entrance and that is all that is an entrance permit. It states at the bottom of the permit: entrance width and excluding radius will be 30 feet. The slope of the entrance will be constructed of the first 20 feet of the highway pavement slopes no more than 5% below the elevation of the highway. She stated that you would not have to be an engineer to look at that right now and that doesn't happen and one of the reasons they want that to happen is so that there safety for people exiting the property and for traffic on Route 5 to be able to see that someone is coming up to the highway and there is no visibility. She went on to say as far as the town road permit, it says right on it that DOT permits are necessary if property is located on a state highway and it doesn't say that this should be omitted. Michael Carroll asked where it says this and Denise Benton said it on the Limerick Planning Board site inspection report. Right underneath it says DOT driveway permits are necessary if property is located on a state highway. It doesn't say that this form is not applicable. The applicant put on it that it is not applicable. She stated that he does have a state permit for the entrance, but if you read the two ss at the bottom under conditions of approval have not been addressed. The entrance width is supposed to be 30 feet. First 20 feet is supposed to have no more than a 5% slope. That was totally omitted I believe although she had not seen the minutes and didn't think they were finished. As far as the roads on the property, they are paper roads. E911 numbers were put on them and on a lot of the applications it says for devolvement. She continued, Christmas Tree Lane is registered in the E911 system and asked how it is that roadway down to the parking lot should not be required to be develop for safe passage of customers to be going in and out so as to prevent no hazards to pedestrians and vehicular traffic or significant traffic congestion. She stated that those roads that were talked about a permit and looking at the tax map it says on the bottom, these new roads are not approved for any building activities and are for emergency use only and lists all of the roads on this property as well as the property across the street. Michael Carroll then asked if all of this was brought up at the Planning Board meetings, because if it was not, although he appreciated what was being said, Denise Benton answered that she believe they had all been discussed. The E911

addressing of these roads were discussed. Michael Carroll continued that she needed to prove it. Denise Benton stated that she was not privileged to minutes and Michael Carroll stated that minutes are public information everyone is privileged to them and she answered not if they are not available the public because the secretary has not done them. She then asked Michael Carroll if he got minutes and he answered that he had. Michael Carroll stated that he did not disagree with her but it had to be in the ordinance. She stated that she was quite sure the ordinance states building permits cannot be issued for substandard roads. Michael Carroll then stated that it is not part of the conditional use and that is what applies is the conditional use. Denise Benton continued that the Planning Board did not even walk this all of this property and wasn't sure if they even knew there were gates or there are not gates down there where they are supposed to be. She went on to say that there was talk at the Planning Board meeting of traffic onto Osh Kosh which would cross over a piece of property that she owns. They had been told at one point that those roads could not be used for fire lanes. Her road had to be signed off by the road commissioner along with other roads up in there that have permits issued for buildings. If he is going to have a ticket booth that road signed off as well. That was all she had at this point stating that the Planning Board really need to revamp how they accept things and when drastic changes are made and have closed the public hearing it is really a disservice to the public. Michael Carroll stated he did not disagree and hopes they are listening to everything and Denise Benton stated that she hopes so too and just because you know someone and you know they own the property it doesn't mean you don't get a deed, because a deed goes in the file. 30 years from now, when someone looks back on this file and there is no deed they are going to like, why is there no deed. It is pertinent information for these projects and should be part of the file. She ended with Planning Board, please do your job.1:26:23

At this time Michael Carroll Recognized Andrew Ivey. Andrew Ivey introduced himself and stated that he is a resident of Limerick. He stated he would like to make a couple of points. He started by saying he had been on the Planning Board for several years and handled multiple conditional use permit the first thing he wanted to talk about was the burden of proof that is on the applicant, which Michael Carroll had mentioned several times. He continued that the burden of proof is on the applicant. He stated that many applicants, when going through the 16 conditions, he kept hearing, as far as I know multiple, multiple times. He also stated that often times when information was asked for the information was not given. He went on to say that there were times that he would research the information so that he would be prepared. He stated that any information that the applicant did not provide and the Board of Appeals had to research on their own needed to be taken out of this decision because it was not delivered as burden of proof. He expanded on this saying that if the board research, fire lanes, definitions for instance, that this was not burden of proof that was provided by the applicant. His second comment was that whenever a conditional use permit is done the most popular answer given when reviewing a condition by a board member is I moved that this condition is met with the information provided by the applicant. He stated that it is technical and can be done a million different ways but this is the typical way it is done. His next comment was in regards to the public hearings. He stated that the public hearings are for the public to have their input. He continued that once the public hearing is closed it can be reopened if the board decides to do that at that time, but not at a later date. Only at the same meeting if some new information is

brought forward. He wanted it to be clear that the citizens are by-standers at that time. They can ask for something, but cannot demand that be part of the condition. That is why the Planning Board has been elected to handle it. He went on to say that he could stand here and jump up and down asking for the board to do a million different conditional uses, but it is up to the board to take that information and use what they see fit in that pertinent application. He then stated he had a question for Barbara Fifield. He asked if she accepted this application when it was presented, when the board began to review the process for this permit. He felt that it was very important, because if she had accepted it as complete at that point. He stated that her being an abutter would have scrutinized it more than anyone would. He thanked the board.

Michael Carroll asked Barbara Fifield if she would like to rebut this and she stated that she would.

Barbara Fifield began that the board does not review material. She apologized and said not at the meetings anyway. She explained that she had recused herself as soon as the process began. She stated that she did not even have the application at the initial part of the hearing, she received the paperwork afterwards. She went on to say that as a Planning Board member that often times she would not even know what the agenda is because they may not get it until about 5 minutes before the meeting. So to answer Andrew Ivey's question she stated no. Michael Carroll stated that he had a question for Dottie Richard at this time and asked her to come to the podium. He then asked Dottie Richards if it was in the Planning Board minutes to accept the application. She answered yes that she believe it is in the minutes.

Michael Carroll stated at this time he would like to read a letter that Denise Benton had given him from an abutter.

He read:

**Limerick Board of Appeals,**

**I am unable to attend the Board of Appeals hearing for the Cross Country Ski business so I am writing this letter to you in order to be heard. My issue for this matter is the failure for the applicant's failure to properly complete the initial application and further altering the application answers in March. The applicant was granted a conditional use permit by the Planning Board, months later he handed the Planning Board a piece of paper with a vague map containing dots on it. When asked what the dots were, he responded that they were 55, foot pole lights with 6 inch solar lights on top of them. This map was not included in the initial, incomplete application. The Planning Boards policy is to deny any incomplete applications and yet somehow this incomplete application was not only heard but approved without any conditions. The applicant applied for a conditional use permit. The Town of Limerick expects the conditional use applicant to fully complete the application, notify all the abutters of the application, and fully complete a site-walk. As already stated the applicant has never completed the full application. There were blank spaces throughout the**

application. Because of the incomplete application these questions have arisen. Was a deed provided for the property? The deed would show potential restrictions on the property. Did the applicant meet all conditions that were on the state entrance permit? What is the 20 foot grade to the entrance? Is it not a conflict of interest for the applicant's son, the Fire Chief, to fill out the form? What is the town's policy? What is the exact acreage of the proposed application? All the abutter's were not notified appropriately of the applicant's intentions, especially in regards to the 55 light poles. How can the applicant add on the installation of the 55 light poles when it is not a part of the initial application? Why didn't this raise any questions? For example, questions include, what are the hours of operation? What types of poles are you using? How are you preventing negative impact on surrounding properties? Failure to complete a through site-walk. Is the grade of the entrance road appropriate? Did you access parking? Did you visibly inspect the trails? Did you look at the sites for the light poles? Because of the applicant's failure to properly address these questions, I do not believe the Planning Board met their obligations to the citizens of the Town of Limerick by approving a conditional use for this case. I want the Planning Board to have the application reviewed. If there are any blank spaces, return it to the applicant. I expect them to get all of the appropriate information requested, such as deeds, approval by all of the owners of the property for this conditional use permit. And an appropriate person from our Fire Department to access and sign our applicants form. Conditions of state entrances to be completed. Abutter's to be notified by certified mail and all the information to be submitted at the same time. I believe that if this information is not done, then the Planning Board cannot make an educated decision for the citizens of the Town of Limerick and that this is an incomplete application. In regards to the 55 lights proposed as an addition to the initial application, I encourage you to think back to any cross country ski trail you visited. When thinking of this myself I can never recall the time when a ski trail has ever had the need for 55 light poles across the terrain. The applicant may argue that lights are needed for nighttime skiing, yet many times I have used a greater light to go nighttime cross country skiing and that is called the moonlight. The lights are not only unnecessary, but detrimental to surrounding areas, including the scenic overlook.

Sincerely,

**Deborah Furlong.**

Michael Carroll asked if anyone else would like to speak and recognized Sue Macintyre.

Sue Macintyre stated that she is a resident of the Town of Limerick and has been for a few years. She continued that she is just a by-stander and looking at this she was wondering if this person met the conditional uses or not. Michael Carroll answered that is a question for the Planning Board. They granted the conditional use permit. She continued that there are definitions when looking at the zoning ordinance. Michael Carroll answered that the Board of Appeals do not, because they are not the ones to handle the conditional use process. She then stated that if anyone wants to apply for a conditional use and do everything that is there, and you give us that permit, is the Appeals Board now saying that for some reason someone can

come back and because someone doesn't like it they can come back and say, she then said, how far do you go with this. Michael Carroll stated that it is not the job of Appeals Board to change conditions or any of that. He continued that it is the job of the Appeals Board to make sure that the Planning Board applied the ordinance correctly. In other words the applicant needs to prove to the Appeals Board that the Planning Board, at this point Sue Macintyre interrupted and asked if the permit was given and Michael Carroll answered that it was. She continued stating then that person met all the conditional uses. Michael Carroll answered, according to the Planning Board. Sue Macintyre continued by stating anyone of us here can come to you and apply for a conditional permit, you can give it and then change your mind. Again, Michael Carroll explained that they are not the Planning Board that they are the Board of Appeals. He continued that a person would apply to the Planning Board to get a conditional use and then someone would have to be an aggrieved party, meaning the party would have something that would bother them for example in this case the lighting that is different from the general public. He explained that where he lives he would not see that lighting so he cannot be an aggrieved party. Barbara Fifield can be because she is an abutter. Sue Macintyre stated that her understanding is these lights are going to be beaming down not up. Michael Carroll stated that he could not answer that and she thought she recalled that someone had stated that. Michael Carroll stated that someone had mentioned it earlier. She continued that if a person is out there and everyone has a cabin out there and they all have lights on. She went on to say that cross country skiing is one of the quietest outdoor activities there is comparatively speaking to snowmobiling. She spoke of the snowmobilers that go by her place and she has no problem with that. She feels that this town has an allergy against businesses. She stated that she watched a selectmen's meeting where the selectmen were discussing finishing a developer's road with the town's money. At this point Michael Carroll stated that this was getting off subject and discussion has to be related to this application. She added that she heard someone made a comment that they did not want this to become another North Conway. She pointed out the revenue that Cornish is pulling in with the businesses there. She summed up by saying it is a state road and if it meets the DOT rules she does not understand what the problem is.

Denise Benton wanted to clarify that this location is a residential farm and forest district. This is not permitted in this district without a conditional use permit. Part of the conditional use permit is that conditions are added to make it kind of co-habitate within the area. Conditions such as hours of operation, which really aren't abnormal with most businesses. Conditions such as parking spaces. How many parking spaces are needed? These are the things that come under the conditional use when it is not in the proper district. Denise Benton asked Sue Macintyre if she understood.

Steve Malmude stated that he has been a resident of Limerick, not full time, for 40 years and what makes him sad is to see people like the abutters who might really enjoy using these ski trails. He continued that he is afraid after the performance of the abutters and their vigorous opposition they really won't be able to use it because they will be afraid to lose face. He personally will use it for snow shoeing and felt it would be a wonderful addition to this town. He hopes that it goes through and is a bit success. He hopes that a lot of people use it just like

the disc golf. He stated that he was surprised that no one even considered in the Planning Board hearing or this hearing the potential value of this business. He felt it is the kind of business this community needs.

Michael Carroll recognized Cheryl Kontos and she began by stating that it is a conditional use permit that was granted to Mr. Mclean to open this cross country skiing and snow shoeing. She is not sure what the frequency is but, conditional use permits have to come back up for review. Many people rebutted that this had been changed. She continued that she felt this business would be a plus for this community that would draw people to the town and campers that could bring their families to. She did not feel that it is a bad thing. She addressed the lighting stating that the way it was explained it is solar and that these could be shut off. She didn't feel that he would refuse to shut them off at a specific time if he were asked to. She felt that there would be other areas that could be drawn in and someone could open up a little snack shop bringing more people into the town. She commented on the empty buildings on Main Street. This town needs the revenue. She is in favor of it.

Michael Carroll recognized Peter Larrabe and he stated that he and his wife owned two lots up above and have owned them for five or six years and he lives in Limington so he guesses he is an insider outsider. He does own property here in Limerick that could potentially be impacted, although he did not feel it was going to be negative. He felt that if the lights were reigned in a bit and is controlled and he stated that he sees lights all over the place with street lights and lights around the lakes and it does not distract him at all. He would rather it did not look like a parking lot like on Brighton Avenue where he computes daily. He felt they may have the potential to be that and was not sure if they could be shut off or limited so the impact could serve Mr. Mcleans needs and also respects the needs and desires of the abutters. He doesn't pretend as a land owner to effect and control what happens on Mr. Mcleans land and did not feel that is appropriate. He did agree that the town needs business, people and money. He would like to see it happen. He loves cross country skiing and stated that he used to break his own trails, but is too old to do that now and if he tastefully maintains that with respect to everybody around, he felt it will be a positive for the town. These are some of the things that he is concerned about, but does feel that people should be able to do what they wish with their own land. This has a lot of historical basis. He didn't feel as an abutter that he should be able to dictate or control what someone else can do on their property. [1:47:50](#)

Michael Carroll recognized Wendy Farrand, member of the Planning Board. Wendy Farrand stated that she was the one who said there were no abutters and she clarified that what she meant was there were no close abutters that would be impacted by the lights. She understands that everybody has abutters. She wanted to express that a Planning Board of lay people are volunteers and learn as they go, as other people do that serve on boards. She stated that when she was Dave Coleman and Andrew Ivey they went from accepting applications with basically zero information other than answering the questions in the past to tightening up things as they go along. She mentioned the application just prior is not as strict as the application that came after with regards to questions from the board. She felt that this could be identified as a growing process. She went on to say that the board is working to be

better and to treat everyone equally as we grow as a town and as a Planning Board. She felt that to say to the Planning Board do your job, when the Planning Board is trying really hard to do their job and especially with respect to people's rights and the right to be treated fairly, just like anybody else.

Michael Carroll asked Wendy Farrand if the ordinance tells them when to hold a public hearing in the process. She answered that she believes, in the ordinance, the only time they really need to hold a site-walk is for a sub-division. She stated that they had to post it, but was not really sure if it even had to be in the paper, however, they do put it in the paper. Michael Carroll asked again specifically if the ordinance states when a public hearing must be held. She answered that the Planning Board usually set the public hearing when they accept the application. He asked if that was normal procedure and she answered yes they automatically just set it. Wendy Farrand further stated to answer the question with regards to getting a conditional use permit, and having someone stop you from doing that, it does state in the manual that the Planning Board is really not supposed to fall to the public's pressure. The Planning Board is supposed to do what is required to follow the ordinance and by-laws to the best of their ability. The public is not supposed to take up arms to prevent someone from getting a conditional use permit. She stated that a lot of people think the Planning Board should be less strict in regards to conditional use permits. She felt there is a fine balance and as a Planning Board that tries to do the best they can to find that balance along with treating everyone concerned fairly. She also felt that going to the workshops for the Planning Board is one way and that these workshops really stress do not taint the process and try to respect every individual's rights.

David Coleman answered Michael Carroll's question regarding the public hearing by reading from the zoning ordinance under conditional use permits, article C which states;

**A public hearing shall be held by the Planning Board following an application for a Conditional Use Permit.** He followed by stating it doesn't say an accepted application or give a time. He continued that historically as Chair or Vice-Chair they would try to do the public hearing after the site-walk, and collecting everything and approving and accepting the application. He did agree with others that spoke that it is a growing process. The Planning Board asks for things and receives them. The board takes what the public say at the public hearing and they ask about a plot plan and you provide the plot plan. He stressed that to go back and have a public hearing each time you receive these items it will get pretty cumbersome.

Michael Carroll recognized Steve Mclean. Steven Mclean did want to remind the Appeals Board that anything that was not brought up at the Planning Board, almost everything that was brought up by Denise Benton was not brought up at the Planning Board. He continued that someone had mentioned if Barbara Fifield was seated at the board and if the Appeals Board looked at the minutes that were provided, February 1<sup>st</sup> meeting. He reads the minutes; **Aaron asked if everybody had looked it over, Barbara stated that she had looked it over, and she went on and said I will also bring up something that other people have mentioned to me, the land has become multiple uses. It appears the same lot that is being used for cross country skiing and snow shoeing place, used car lot and obviously a tree farm. I don't know if that is**

**allowed.** He continued that they went on and accepted that application. He continued to read; **the board discussed the time for the site-walk which was 4:00 o'clock and the public hearing was at 7:00 o'clock on March 15<sup>th</sup>.** He stated those are the minutes to that meeting.

Michael Carroll recognized Barbara Fifield and she stated that she disputes the part that she had looked it over. She stated that she was not allowed to look it over, she was recused.

Michael Carroll recognized Cheryl Lockwood and she stated that her folks bought a camp on Sokokis Lake in 1955 and had been here for a long time and thinks that she and Steve grew up in the same error. She believes that James and Julie and her son are very good friends. She felt there was room for compromise. She asked Steve Mclean to come and sit on her beach and assure her that his plans are not going to cause extra light, extra noise that they are not use to. She reiterated that she feels there is room for compromise.

Steven Mclean asked to address Cheryl Lockwood's comments. He stated that the 50 acre parcel can be seen from Route 5. Other than Route 5 this development cannot be seen, there are 15000 Christmas trees with a mangle of trails going through to maintain the Christmas trees. He continued that none of the trails go within 200 feet of Carroll Lane, there are no trails on Carroll Lane. That is as close to the lake as you can get. He explained that the vegetation and regular trees are still there and he invited her to walk through. He continued that they are beautiful walking trails and there is no way that the lights would be seen by her. He stated that he was not going to bring his light tower over and light the whole place up. He continued that it is in the minutes and he did not divert from the minutes. He was asked about the lights and he had told the board that he did not need any lights for the 2000 or 3000 foot stretch because the town light from the lookout provides lighting there.

Michael Carroll recognized Nanci Gammon and she stated that basically it comes back to the application being incomplete. She recalled the Planning Board said they are growing and learning, but it is kind of a basic thing that the application would be complete and a deed would be provided. These are basic rules and regulations and she questioned that he didn't have to provide a deed. She felt it didn't make any sense.

Michael Carroll recognized Barbara Fifield. She stated that she primarily brought this case because of the errors made by the Planning Board. She had stated at the Planning Board meeting that she thought this was a good place to have this cross country ski area. She explained that her objective was to get the Planning Board to work properly under the law and this was the primary reason why I brought this case here. She stated that this project was never approved because Roberts Rule of Law said that the last two changes in vote were invalid. This should not be going forward.

Michael Carroll explained that if the board votes to grant her application for appeal, it will state what the board found and then it goes back to the Planning Board to be corrected. So he still has the opportunity to get his conditional use permit. He just wanted everyone to know how

the process works and if the appeal is granted it does not mean the project will not go through. It just means that it goes back to the Planning Board to correct errors that were found.

Michael Carroll recognized Dottie Richard who stated that even though conditional use one and eight were voted down before the board took the final vote, Sean wanted to change his vote before everything was in the affirmative and it was before the final vote was taken and that is the vote that counted. Michael Carroll asked for clarification how this process went. He stated that the board took a vote on those two conditions and it was two to one, this was the way he understood it and Dottie Richard said that was correct. Dottie Richard explained that as they went through the process and were at condition 16, and before the final vote to deny the use, Sean Carroll asked to reconsider his vote for number one and number eight and voted for it, which gave the board approval on all 16 conditions and the final vote was taken.

Kathy Ward asked Dottie Richard if the conditional use is granted and several years down the road the applicant is doing something contrary to the conditional use, does the Planning Board at this point have the authority to pull the conditional use permit. She and Michael Carroll answered that the code officer would have that authority. Kathy Ward stated that it could be pulled, then, if he went off and did something totally different and Dottie Richard answered yes. Michael Carroll explained that according to this conditional use he cannot do anything other than cross country skiing and snow shoeing.

Barbara Fifield wanted to speak to what Dottie Richard had said, stating that it was her understanding and recall was what happened was vote one was taken on conditional use one, and it was two to one, after some time later vote number eight was also two to one. Both of those votes were announced by the chair, then at the very end of the meeting, she believed, again under duress, that Planning Board member said, **I'm changing my vote**. Then it was announced that it was three to zero, three to zero. That is what is against Roberts Rules of Law, you cannot change that vote at that point because it was already announced.

Michael Carroll recognized Steven Malmude who asked Barbara Fifield what she meant by her comment that board member, under duress, wanted to change his vote. Barbara Fifield addressed this question by stating that there has been duress on the board amongst, she felt, two of the members for a considerable amount of time. There have been differences of opinion as to how to vote, what is a proper vote and she felt there is some verbal confrontation in some cases that have gone on. Some of that confrontation has been, she felt, out of order. It was directed to the individual that she said was under duress. That was all she would speak about it. Steven Malmude was going to continue and Michael Carroll stated that they were not going to carry this much further and Steven Malmude sat down.

Michael Carroll recognized Howard Burnham who stated that he had a concern, he started this process back in, he believed, in February and felt that enough questions have been asked up to now, and he has his permit. He is concerned that this is hurting businesses in this town and felt that people will not want to come into this town and put in a business if they have to go through an appeal process. He commented that his business is going good and that they

promote it out of town. Michael Carroll stated that Howard Burnham has a snow shoeing permit and Howard Burnham answered that he did have, but he is not doing it. He continued that he is concerned whether it be the boards or the town in general how this town is be promoted and he felt that the videotaping is not doing the town any good. He stated that he came to this meeting after hearing another person talk about the businesses in this town. He felt the boards need to tweak how they are handling things and be more friendly to bring more business into this town. Michael Carroll stated that he understood what Howard Burnham was saying, but the Board of Appeals does have a process that they must abide by. If someone comes to the board with an appeal and meet all the requirements, they must take the application and follow the process. Howard Burnham stated he understood this, but there are a lot of groups in town that are fighting and it is hurting the town.

Michael Carroll recognized Denise Benton who stated that she believed that Howard Burnham's business has specific hours of operation. These are some of the simple things that they are asking for and she didn't feel it was too much for someone coming in for a business to submit hours of operation. She did not feel this should be a problem.

Michael Carroll recognized Andrew Ivey. He stated that the only thing the Planning Board can go by is the 16 conditions of use. If no one during the public hearing asked about business hours, lighting, parking, he then realize that lighting and parking or in the 16 conditions, but went on to say that anything that does not fall within the 16 conditions of use the can't go back afterward and decide to put in operation of hours. He continued that once the conditional use is approved by the board you can go back, but can try to appeal within 30 days, but when the 30 days is up you cannot go back and try to rewrite the conditional use permit. People need to know the way things work and the board has a specific step process, 1 through 16. They go through the 1, 2, 3 and goes to the public for public input then the board decides what they want to do with that. He also stated that if it is not in the minutes, and the secretary is very good about minutes and keeping details in there. If hours of operation were not addressed by anyone in the public hearing then the board cannot set hours of operation.

Michael Carroll recognized Steven Mclean and he wanted to clarify that the application asked for the book and page of a deed not an actual deed. He asked if deed should be put on it stated that is fine, but it asked for book and page and he provided that. He also wanted to address the vote to reconsider a condition. He stated that the town's attorney told the Planning Board when they get to the 16<sup>th</sup> condition, they can reconsider the previous vote if there has not been a final vote. He emphasized that is the ruling from the town's attorney. This is what happened, the board went through the 16 conditions and then reconsidered condition one and eight upon the advice of the town's attorney. He did not believe there was an illegal vote. The town's attorney was asked how to process this and that was what was done.

Michael Carroll recognized Robert Smythe who stated that he did not know much about politics in general, but wanted to comment because each person has individual answers, likes and dislikes. One person wants it one way another wants it another way making it difficult to make a final decision. He then asked what is really important and look at our town, is it growing and

how does it affect all of the participants in the town. The common good must be at stake and look at what is good for our town in general. If it something minor, yes the abutters have a right to have some input, but if it doesn't affect them seriously, look at the overall effect and the good of everybody in the town, not just a few. He felt he would like to share this.

Michael Carroll recognized Sue Macintyre and she commented on what Robert Smythe had to say stating that it was well said and that it is about everyone in the town of Limerick. Everyone works hard and have work hard of our lives and paid our fair share of taxes and it is nice to know that the town is looking out for everyone. One of the ways to do that is to encourage business and revenue. She restated what she had said earlier that her observation has been for the past 14 years that there seems to be an allergy towards businesses in this town. She doesn't know why, but asks herself why. She commented on how Cornish is flourishing and keeps asking herself what is the problem. She asked to please take what Robert Smythe said into consideration and look at businesses.

Michael Carroll asked if anyone else would like to speak and with no one else wishing to speak he stated that before the board closes the public hearing he had some questions for the town attorney that he felt the need to address. He asked the board if any of them had any questions for the town attorney that they would like addressed. He continued that they had several approved minutes of the Planning Board, but the most important one for the conditional use had not been approved. David Coleman stated that he would like to see that vote and the findings of facts. Michael continued that he had anticipated this would probably happen so he asked Tawny, (the Selectmen's Secretary) to reserve a second date, September 12<sup>th</sup> 7:00 p.m. meeting room at the Municipal Building, for an additional meeting to continue this process knowing that there would be some questions. He then asked Dottie Richard if they would get the minutes approved at their next Planning Board meeting on September 6<sup>th</sup> and when they have been completed to send them to him so he can send a copy to each Planning Board member. David Coleman made a motion to close the public hearing at this time, Kathy Ward second it and with no discussion realized all were in favor 4-0. David Coleman then made a motion to continue this meeting on September 12<sup>th</sup> at 7:00 p.m. at the Municipal Building, Kathy Ward second it and with no discussion realized all were in favor 4-0. Michael Carroll announced that a continuation of this meeting is set for September 12<sup>th</sup> at 7:00 p.m. at the Municipal Building. He stated there may be more questions and especially for Barbara Fifield.

Respectfully Submitted,

Laura L. May