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Administrative appeal filed by Barbara Fifield of the Code Enforcements decision in response to a complaint letter filed with the code enforcement officer dated December 10, 2015 and an addendum letter dated January 13, 2016 in regards to tax map 17 lot 66 on Sokokis Trail North owned by Steven Mclean and James and Julia Mclean.

Appeals Board Meeting Minutes

Thursday March 24, 2016

Members Present:

Michael Carroll, Chairman of the Board
Kimberly Oliver, Co-Chairman
David Coleman
Steven Mclean
Kathy Ward

Public Present:

Barbara Fifield (Appellant)
Dean LePage
Lisa LePage
Francis Carroll Sr.
Lisa Carroll
Delores Carroll
Ronald Phinney
Allan Chamberlain
Dorothy Richard
Andrew Ready
Mrs. Andrew Ready
James Carroll
Judith LePage
Joanne Andrews
William Jones
Steven Malmude
John Medici
James Mclean
One unknown Citizen

Michael Carroll began meeting with election of officers. Michael called for nominations for Chairman. Kimberly Oliver nominated Michael Carroll for Chairman it was seconded by David Coleman in unison with Steven Mclean. No discussion was realized and the board voted unanimously for Michael Carroll as Chairman.

Michael Carroll asked nominations for a Co-Chairman. Michael Carroll Nominated Kimberly Oliver and Kathy Ward seconded. No discussion was realized and the board voted unanimously for Kimberly Oliver as Co-Chairman.

Michael Carroll asked for nominations for a secretary, and stated that the secretary's duties are overseeing the minutes and all documents related to cases, not the actual taking and transcribing of the minutes. Steve Mclean nominated David Coleman, Kimberly Oliver seconded the nomination. No discussion was realized and vote unanimously for David Coleman as Secretary.

Michael Carroll opened the public hearing for review of application for an appeal filed by Barbara Fifield of the Code Enforcements decision in response to a complaint letter filed with the code enforcement officer dated December 10, 2015 and an addendum letter dated January 13, 2016 in regards to tax map 17 lot 66 on Sokokis Trail North owned by Steven Mclean and James and Julia Mclean.

Quorum: Chairman Carroll noted all members of the board present so a quorum was met.

Conflict of interest and bias: Chairman Carroll asked if anyone felt they had a conflict of interest or bias and Steve Mclean noted that he had a conflict of interest. Chairman Carroll stated that they would need to make a motion that Steven Mclean had a conflict of interest. Kimberly Oliver stated that he should recuse himself. Chairman Carroll stated that they would need to make a motion and Kimberly Oliver made a motion that they recuse Steven Mclean David Coleman seconded. No discussion was realized. All were in favor.

Chairman Carroll noted that he had an appearance of bias resulting from matters between his immediate family and Steven Mclean. He felt that he should be recused as well. David Coleman made a motion to recuse Michael Carroll, Kathy Ward seconded. No discussion was realized and three in favor of motion.

Kimberly Oliver assumed position as Co-Chairman. Kimberly Oliver stated the first thing on the agenda was to determine the timeliness of the appeal. She stated that the letter to the Board of Appeals was dated February 29, 2016 and the letter from the CEO was January 16, 2016. She further stated that this was within the 30 days. The Board decided there were no issues and the timeliness of the appeal was met.

Jurisdiction: Co-Chairman, Kimberly Oliver read the Maine state Statue Title 30-A M.R.S.A 4353 that the "Board of Appeals are allowed to hear an decide an administrative appeal, interpretation in appeals, and requests for variances filed in connection with decisions made under a zoning or shore land ordinance". She stated that this appeal is an interpretation appeal.

Michael Carroll was granted permission to speak as Chairman of the board to say on behalf of the Board of Appeals, he spoke with Susan Pilgrim from Maine Municipal Association, in regards to the type of appeal and clarification on jurisdiction to hear appeal. The opinion of Susan Pilgrim was that it was not an interpretation appeal and that under the state ordinance the Limerick Board of Appeals does have

jurisdiction to hear the appeal and if they did not hear the appeal and it went to court the judge would probably send it back. She suggested that it would be wise for the board to hear the appeal.

To clarify her understanding, Kimberly Oliver stated that the Code Enforcement Officer had a request and was interpreting the zoning ordinance and the issue the appellant has with the Code Enforcement's interpretation. So she regarded it as an interpretation appeal. 7.39

David Coleman motioned that based on the information that was presented that the Appeals Board has jurisdiction to hear the appeal and Kathy Ward second it, all were in favor. 3-0

Kimberly Oliver states that they would need to determine that the applicant, Barbara Fifield, has the right to appeal. The applicant provided the deed to her property which is across the street to the lot in question. She asks the board if they believe this would be enough evidence for standing. David Coleman states that based on the dealings that the applicant had with the CEO and the property that he believes the applicant does have standing and can appeal. Kathy Ward seconded it. All were in favor 3-0.

Kimberly Oliver continues that the application was complete and confirmed that she did pay the fee. She then proceeded to explain the process they would follow to hear the appeal. The first step is the applicant will state her case and then they would hear from the CEO. She notes that Norman Hutchins, the CEO that gave the permit, was not in attendance, but that the new CEO, Ronald Phinney, would be representing Norman Hutchins based on the information that he has regarding the issue. She stated that they may give some time to the audience to speak. She then asked Barbara Fifield to state her case.

Barbara Fifield states her case: My name is Barbara Fifield and I live on lot 11 J, which is diagonally across from lot 66.

1. I disagree with all of the CEO's rulings and his means of driving his conclusions.
2. He failed to perform a site review as I requested on multiple occasions. How can you possibly ascertain the impact of a flashing red strobe light directly into your home without being inside and looking at it?
3. Several of his decisions were based on erroneous data and hearsay and he misled me on numerous occasions.
4. He failed to apply the zoning ordinance Article 3-C and other sections in his decision making. He did not respond to my verbal or written request in a timely manner. In many cases he offered no evidence to support his statements and assertions.

In December of 2015 I sent letters to all of the landowners on lot 66 and asked them to turn the lights off. They all responded that they had received the letters, but received no response from the landowners. They did not turn the lights off on the flagpole. Subsequently, I sent four letters to the CEO; I met with him on two occasions and filed complaints with the Selectmen because every time I would try to talk to Mr. Hutchins, the CEO, regarding this issue he was not available in his office or said he had other things to do.

On February 3rd I finally received a ruling letter from him. This letter was dated January 21st and I received it two weeks later because he sent it to the wrong address. He had my address. I have a PO Box and it was on the occupancy permit and we had even conversed about this. He asked me if I was going to get a mailbox on route 5 and I said no I'm getting a Post Office Box. So I don't know why he decided to send that to my street address. The first thing in his letter, he started to establish ownership of the land and you will see later it is also ownership of the equipment on the land.

12:47

He states in his letter dated January 21st, that the land belongs to James Mclean and the tree farm. He told me to speak with James, but I had already sent a letter the month before telling him that I had already conversed with James in December when he was selling Christmas trees on lot 66. I asked him to turn the lights off on the flag pole. He said to me, this is my father's doing's and you will have to take that up with him. Now on January 21st I get a letter telling me to talk to James about this issue when I had already told him that I had done so. The CEO, in his ruling letter, the flag pole might be Steve's, but it is on the property of James Mclean and the actual property owner is the one to deal with because he gave his father permission to put the flag there. He states that this is a civil suit between two parties. I call all of this information erroneous. The CEO did not supply a copy of the deed. I had to obtain one from the York County Registry and it says that Steven, James and Juliann Mclean, not James and the tree farm are the owner of this property. I want to bring up an issue that is fundamental to this situation. I want to look at Article 3-C page 8 of the zoning ordinance. It is filled with uses and resulting impacts that are prohibited in our community. Since it is under the General Provision section of the ordinance, I believe that this particular article has broad implication and is applicable to many types of situations. Because this is very complex I separated it into three components. Any uses that may be obnoxious or injurious by reason of production or emission of odor, dust, smoke refuse matter, fumes, noise, vibrations or similar conditions. It is that last clause that I contend falls into the constraints of this light and glare that's on the flag pole. The second part says any uses that may be dangerous to the comfort, peace, enjoyment, health or safety of the community. I use the word community to assume that it implies to me individually and the community as a group. I'm going to define dangerous; being able of likely to do harm. The 3rd part; any uses that may be lending to its disturbance or annoyance are prohibited. I then put it back together and I paraphrased it. This is what I think that this article says. Article 3-C prohibits uses that may be irritating to the senses. Uses that is likely to do harm in such ways to as affect ones comfort, peace, enjoyment, health or safety or uses that lend to disturbance or annoyance. This article covers many types of issues that may occur in the environment. The first issue that I asked the CEO to rule on and that is the red strobe light and white light on the flagpole. The CEO stated to me verbally that the white light illuminates the flag and the red strobe light is required by the FAA. If he had made a sight visit and researched the FAA requirements he would have known that neither of these statements is true. If he didn't research this subject, then where did this information come from? I would say that this is an example of erroneous information. I told him that the white light does not illuminate the flag. The reason I told him that was because I can see it from my house. If he had made a sight visit he would have seen this also. I also researched the aviation circular on the FAA website to determine if requirements were needed for the red

strobe light that is flashing on top of the flag pole. There is nothing that is needed and this information has been submitted to the Appeals Board. The CEO stated that our ordinance does not contain anything on lighting. He contends that article 3-C does not apply to lighting. I am challenging that view on the grounds that I contend that light is an emission and is artificially produced in this situation and is obnoxious and annoying. The location of those lights on the pole relative to the design and location of my home, and should be considered as a similar condition, because they are offensive to the senses as are dust, fumes, odor etc. My home was built before this flagpole went up. I would never have built there if it had been present. The glare from this light affects the peace and enjoyment of my property and causes me discomfort. In order to look at the sunrise or the moon rise I have to cover up that light with my hand. Who would buy this property if I had to sell it? This light has a depreciative effect on my property land value, therefore injurious to my financial state. Home occupancy in the ordinance addresses light and glare on page 7 number 7 and conditional use permitting section on page 31 B-2. Both of these sections list light and glare along with the other things that are listed in article 3-C. In order to be consistent with these sections I would say that article 3-C is also meant under the similar conditions phrase to include light and glare. 22:44

The second issue I asked the CEO to review was the equipment on lot 66. Again the letter from the CEO tries to establish ownership. He states that the equipment for sale belongs to James and the tree farm. The CEO did not provide evidence of ownership or substantiate his comment. Would this statement be hearsay and in other situations false information from the CEO? I checked with Tawny Mann in the CEO office and Judy LePage. There was no information showing a bill of sale or registration for any equipment on lot 66. Where is the evidence and facts that the equipment is owned by James Mclean and the tree farm? The CEO stated that the tree farm is allowed to have whatever is needed to care for it. What kind of argument is this? This statement is inadequate or inappropriate to address my complaint. It is the storage and location of this equipment. The question is not whether the equipment is needed to maintain the tree farm; the question is that it is in a scenic area on route 5.

My opinion is this; This lot is an irrational location to maintain the trees. There are no trees on the clearing 100 x 50 on route 5. This equipment would have to be moved in order to perform maintenance which would be more costly and time consuming to operating rather than locating the equipment where the trees are. The first three pieces of equipment were put on after I built my home and have not moved since they were placed there, July or August of 2015. I'm there every day. This is in my face every day. Lot 66 has 53 acres and lots of roads to locate this equipment that would be a more logical choice. I also contend that this is a junkyard in the making. There was nothing initially there then three large pieces of equipment were added and then a trailered sign with 48 square feet was added. One week after I filed this appeal three more pieces of equipment were placed on the property. It was not in my submission because it happened after I made my submission to the Appeals Board. This area is now an eye sore for myself and for those who drive by. The commuters and citizens have asked me, "why is this stuff here" and say it is a blight to the landscape. The CEO should have asked why this equipment is being stored there if it is not being used

for the maintenance of the tree farm. This existence of what I call a junkyard is going to depreciate my land and property. I consulted with a Real Estate Broker and got an impact of financial analysis. If it is allowed to remain, my property and land values will go down. An impartial CEO would have analyzed the situation for what it is and required relocation to another area on the 53 acres, so it is not so visible by the neighbors. The CEO could have said they need to implement a buffer zone.

The 3rd issue I talked to him about was the trailered sign which was placed on this lot after my construction began in July of 2015 and has been onsite for 270 days. In a verbal discussion I had with the CEO he told me that this was the jurisdiction of the state. I called the name he gave me several times in a three week period and my call was never returned. I then called the Scarborough office and they check out the sign in late January, and said that the local ordinance would apply to the sign unless the sign was lit on both sides. Therefore, this was misdirection by the CEO towards me in relative to this sign. In the zoning ordinance a trailered sign is allowed for 120 days with a permit. I spoke with Tawny Mann and she checked the files. I also requested from the active CEO, Mr. Phinney, for a search of the files. No permits were ever issued for this trailer, but the CEO allowed this trailered sign to be on site for 207 days without a permit. Since the trailer was never permitted it should not be allowed to be on lot 66 and should be removed. Like the equipment on lot 66, it is an eye sore in a scenic area and a blithe on the landscape. (she shows the Appeals Board pictures of the trailered sign.) One week after I filed the appeal the American Flag was removed from the flagpole and was replaced with a black flag and skull and crossbones. This black flag conveys an intimidating and threatening message. This was not submitted because it happened after I filed the appeal. It is in violation of article 3-C. It causes anxiety, stress, and anger and is a use that may be lending to the communities disturbance and annoyance. It is also a use that may be likely to harm the comfort, peace and enjoyment of the community. Numerous people in Limerick in the bordering towns have complained to me about this flag. I contend that this action is some kind of scare tactic by one or more of the landowners. This is not applicable to the CEO, but it is an issue that maybe our acting CEO can look into. (She shows a picture of what the flag look like) I feel like I am in the Twilight Zone. I should not be here before this board today. This issue is affecting me. I should be hanging out with my grandchildren or at home painting. I apologize to the Appeals Board for having dragged you into this fracas. I am normally very tolerant person; however, I will not stand for injustice. By failing to assess this situation as it is using hearsay misdirection and then choosing to ignore the rights established by article 3-C of the zoning ordinance the CEO has committed an injustice to myself, the Limerick community and the outlying towns that utilize this scenic area of Route 5.33:21

The board had no questions at this time for Barbara Fifield.

Kimberly Oliver asked Ronald Phinney, the CEO, if he could speak to his opinion on how the previous CEO, Norman Hutchins, had ruled as he did.

Ronald Phinney said that he had visited Barbara Fifields home at night so that he could see this light and was surprised that he rode up and down the road and he had missed it. He expected to see a big red flashing light. He could only see a little red. He said that if you look out her front window

you would look directly at it. He didn't feel that it would annoy him, but could see that some people could be annoyed by this. The white light could hardly be seen. He didn't feel that he could speak to every item that she presented. Her interpretation of article 3-C sounded like something that a Supreme Court decision would reveal in the ordinance that is not easily seen. He continued that if it were annoying him he would probably have the same understanding of the ordinance.

Kimberly Oliver asked Ronald Phinney if he thought that the light would be considered a hazard for driver's driving on that route. He answered that he did not believe it would be hazardous. He stated that if someone was driving down the road they would have to look carefully in order to see it. The light does not illuminate like a like a light in a parking lot would do. It is a light that would be used for navigation for an airplane and illuminates horizontally not vertically.

Allen Chamberlain stated that he lives on top of a hill and looks down and sees all kinds of lights from all different locations. He said that he sees Frank Carroll's pit every day when he starts up his tar plant he sees the smoke. He sees the flashing light in question from his place, very faintly. He sees the light that Frank Carroll has on the overlook much clearer than the light in question. He stated that when living in the country you are going to see many things that you don't like to look at. He addressed the certified letter that was sent to Barbara Fifield and commented that it takes a couple of weeks for a certified letter to be delivered and that it must have been returned to the CEO as undeliverable. He didn't believe that that was Norman Hutchins fault that the address was incorrect and that he used the address that was available to him. He next addressed the equipment that was on the landowners land and stated that he would park it where it would be easily accessed for him to service it or use it and reminded Barbara Fifield that she is in the Farm and Forest district and the tree farm is applicable. He states that he has never noticed the skull and crossbones and that he travels that route a lot. 41:26

James Carroll stated that he lives right above the blinking light and feels that it is annoying and realizes that it may not annoying to everyone especially those who can't see it or live enough distance away that it is not that visible. He states that the Board of Appeals must determine if the CDO acted appropriately in making his decision regarding this matter and not on the light itself. He said that Mr. Mclean has been asked several times what the purpose of this light is and has never given a legitimate explanation as to why the lights are there. He continued to say that Mr. McLean's answer that it was required by the FAA was bogus and this point has been proven. He feels that this is just a deliberated attempt to do it just because it is their land and they can.

Frank Carroll Sr. wanted to remind everyone that the scenic view law was given to the Town of Limerick by the Carroll family. He stated that the light that is across the street was put up and glared on the traffic coming down the road and CMP adjusted it with the result that was favorable. He commented that the easement that Steve Mclean has for that property was conveyed by a number of people and did not cost anyone any money and that it was done to be neighborly. He stated that it was for a trade for a buffer strip.

Steven Malmude stated that although he sympathized with Barbara Fifield, however people in Maine expect to have the freedom of using their property as they choose. He feels that practical consideration should be viewed as more important than questions of taste, which in his opinion this is the case in this matter. He feels that Mrs. Fifield will grow to appreciate the beauty of Maine even with the lights in her window.

Dean LePage commented on the Steven Malmude's wanting to know what the practicality of the light is other than being an annoyance. He feels that neighbor pitting against neighbor is not a welcoming sight.

Steve Mclean asked the Board of Appeals what ordinance are they in violation of. Kimberly Oliver reminded him that this is an interpretation appeal and that they did have jurisdiction to hear this appeal. He continues to explain that the lights that were put up were put up there after the chairman of the Planning Board, Aaron Carroll, stated that his family had an airport and that the planes fly over this area. Therefore, Steven Mclean could not have a cell tower on this lot and it was at this time that he put the lights up. The light that shines on the flag shines directly down with an LED which shines down so this could not be illuminating outward. He then explains the trailered sign that Barbara Fifield included in her appeal was on the other side of town and there were complaints of it being in that location. The state investigated it and the town's attorney ruled that the Town of Limerick's sign ordinance should be removed from the town's ordinance. He goes on to say that if you research in the proper areas you can find the information that you need and reminds the Board of Appeals that Norman Hutchins is not here to answer anything for himself. He handed the Board of Appeals a copy of the permit that he received for his trailered signs. He stated that the state checked the sign two weeks prior to this meeting and found that it was out of their jurisdiction. The sign has no lights so it has not been lit up and the motor has not run for 15 years. The permit states that the sign could only sit with written messages for 120 days. The messages that were on the sign were only on it for short periods of time and were not offensive to anyone. He explained that the permit was in his file for S.A. Mclean on 622 Elm Street, not the file for lot 66.53:12 He stated that the equipment that is on his land is used to maintain his Christmas Tree Farm and has been located on this property since the inception of the farm which was around 2008. There is also some equipment on the other side of Carroll Lane that he uses as well. According to the zoning ordinance farm equipment is allowed in this district. There are two loaders on the lot that are for sale and they belong to James and Michael Mclean, not S.A. Mclean. He continues that if all his equipment needs to be registered that everyone else in town that owns equipment needs to be registered as well.

Ronald Phinney stated that he had looked in the file for lot 66 for the permit and it was not there and he does not know where it went and Steven Mclean corrected him that it is in the file for S. A. Mclean 622 Elm Street and Ronald admitted that he did not look in that file. He also stated that as long as the sign does not have a message it is his understanding that it is not considered a sign. That the definition of a sign is that it must convey a message. At this point it is just a white box on the top of wheels and along with the equipment it is not in any violation of the ordinance. This was confirmed by MMA. He admits that while it may not be appealing to those around the lot it is not

considered a junk yard. Steven Mclean has assured Ronald Phinney that all of the equipment is operational.

David ~~Cole~~ Coleman asked Ronald Phinney that in opinion as CEO that general provision C applies to the lighting. Ronald Phinney answered that he can see where it would seem that it does, but in his opinion it is a stretch. David Coleman asked that if the Appeals Board were to remand this back to the CEO would outcome be the same. Ronald Phinney states that in his opinion this article is the result of a poorly written ordinance. In his opinion the ordinance would need some revisions to include more clarification and something more measurable regarding signs and others things that could be defined as a violation.

James Carroll restated that the Appeals Boards job was to determine that the actions of the former CEO were appropriate in making the decision that he made and not the light is appropriate. He also addressed a comment made by Steven Mclean regarding the airport that was reported to be in town, that he determined that the town needed this light near towers and he felt that it was just retaliation.

Kimberly Oliver closed the public hearing at 8:01 p.m. After hearing all the information that was given the Board of Appeals would determine whether the CEO interpreted the zoning ordinance erroneously. 60:50 If so what is the evidence to prove this? She states that there are three things to consider. The light, the sign and the equipment and she begins with the equipment stating that they cannot tell people that they cannot keep equipment on their property and David Coleman agrees stating that he does not believe the Appeals Boards has that jurisdiction. They were all in agreement that the CEO did not act inappropriately regarding the equipment.

Kimberly Oliver reads the letter that the CEO wrote regarding the equipment that is used for agricultural work under the Department of Agriculture and the state of Maine allows anyone person to sell up to five automobiles or equipment within a twelve month period.

David Coleman reads the ordinance regarding the sign and notes that there was a permit given for the sign. Kimberly Oliver, David Coleman and Kathy Ward were in agreement that there was nothing inappropriate in the CEO's decision regarding the sign.

David Coleman states that article 3-C is too broad and could be interpreted differently to each person that reads it. Kimberly Oliver states that where is the line drawn to say who can have a light and who cannot. Kathy Ward states that she did not think she could deal with a blinking light and that it annoys her.

David Coleman made a motion that the CEO acted in the best interest of the town in his interpretation of the existing ordinance and Kathy Ward seconded it. All were in favor 3-0

Kimberly Oliver said they she would send the findings of facts to David Coleman and Kathy Ward. She ended the Appeals portion of the meeting and Michael Carroll and Steve Mclean joined the board to continue with new business.

Michael Carroll stated that they would need to discuss the minutes of February 2nd and 9th. He noted some discrepancy's in the minutes. He suggested that they review the minutes a little more in depth and return on April 7th with comments and adjust the minutes as needed. Steve Mclean makes the motion and Kimberly Oliver seconded it after no discussion was realized all were in favor 4-0 with 1 abstention.

Kimberly Oliver asked if the minutes could be more condensed and include only the important information and the motions. Michael Carroll agreed and Steven Mclean pointed out that he attended and workshop and learned that Appeals Board minutes should be meticulously done because this is the last step for an appellant before taking an appeal to court.

Michael Carroll states that, at the next meeting, he would like to go over a draft of a Board of Appeals ordinance to replace the outdated one that is now in place.

Kimberly Oliver made a motion to adjourn the meeting it was seconded all were in favor.