

Appeals Board Meeting Minutes May 4, 2023

Members present: Chairman Peter Leavitt, Patrick Hanna, Gemma Baldinelli, Maryjo Hanna, Jon Bartlett.

Meeting minutes: Kelly Willey

Attendees: Stephen Wagner, Joshua Tuller, Joseph Powers, Kathryn Tickle, Andrew Gatchell, Chris Baldinelli, Keith Emery, Mark Blier, Frank Pulsoni, David Field, Cliff Thomas, Henry Huntley, Aga Dixon.

Public Hearing: Steven Wagner (attorney for the appeals board) spoke, advised the appeals board has the right to reconsider their vote. If they decide to reconsider, they can then hold a public hearing which will allow the appealing party to restate their case or present any new information. Otherwise the original decision stands. Peter Leavitt suggested that the Board of Selectmen speak to advise why they are requesting a reconsideration of the original decision made on March 30, 2023. Aga Dixon (town attorney) spoke to advise the town ordinance allows the board to resolve conflicts regarding interpretation of the language in the ordinance and that the court system agrees that this is where the board's responsibility ends. The real question is not whether or not the road should be brought up to standard, rather what is fair to the residents. Attorney Dixon feels that the board originally voted the way that they did because of what would be fair to the residents, better known as 'equitable remedy'. In the end, if their original decision stands, the town will be forced to file two different lawsuits, which will be redundant and costly. Attorney Dixon's goal is to get all of the residents in front of a judge at the same time and strike a settlement so the issue can be fairly and quickly resolved. Peter Leavitt asked why the board wasn't informed of that in the first hearing. Attorney Dixon advised that wasn't what she was originally there to do; that the original question was whether or not the current CEO made an error in sending the notice of violation. Joshua Tuller spoke and re-stated his case that the prior CEO advised the road needed to be 15' and the cost is over \$300,000 to bring the road up to the standards being asked by the town. He doesn't want the decision reconsidered.

Gemma Baldinelli asked if there was a maintenance agreement in place. Joshua Tuller advised at the time of the subdivision approval there was no mention of having to change the road or incur the cost to do so; it was just for maintaining the road. Peter Leavitt made a motion to vote whether to reconsider the original decision. The vote was 2 in favor, 2 abstained. The original vote stands and they will not reconsider their vote.

Gemma Baldinelli wanted to reopen the public hearing to discuss further. Attorney Wagner suggested the board modify their decision on the grounds that the CEO did not err, and the case would end in settlement discussions in court.

Mark Blier spoke and advised the end goal is to make the road safe. He agrees that there were errors made by the prior CEO. The selectmen would like a resolution that satisfies the residents and the town, while also following the zoning ordinance.

Catherine Tickle (Tickle Way resident) advised there are many roads in town that do not meet the standards that they are being asked to meet and is asking why only her road is being requested to be brought up to these standards. Mark Blier said many of the roads were grandfathered and any roads since then are up to standards.

Attorney Dixon reminded the board that they can't waive zoning, only the court can.

Maryjo Hanna asked if the road was acceptable prior to the 4th house being built. CEO McKenna said at the 3rd house triggers it; McAllister was the 3rd house and the road should have been brought up to standard before permits were issued. Maryjo asked why the 3rd house – CEO McKenna explained more houses equals more vehicles using the road.

Joseph Powers (abutter) asked why the road wasn't brought up to standards originally. Mark Blier said this is because of the way the lots were split, some sold and some given.

Maryjo Hanna asked if we still had the prior CEO would this be an issue? Attorney Dixon advised yes, because the issue is that an emergency vehicle is unable to maneuver adequately should there be an emergency. Mark Blier also stated that permits were issued by prior CEO, current CEO issued the occupancy permits and it was found the the road wasn't done. The fire chief visited the road and deemed it unsafe for emergency personnel.

Joshua Tuller understands what the road condition is. The road is 15' wide. The town had a responsibility when the 3rd house went in and the town did not act. He is the 4th house. They were asked by the board of selectmen to put a plan together. They put a plan together and submitted it to the selectmen and never heard anything back.

Keith Emery (town resident) advised if there are 3 or more units on the road, the ordinance says the road has to be 20' wide with 2' shoulders. Previous CEO said it only needed to be 15' but he wasn't authorized to override the ordinance. His opinion is it shouldn't be up to the town to pay to bring the road up to standard.

Before voting whether or not to reconsider, Peter Leavitt asked Joshua Tuller if he wanted to speak. Joshua Tuller advised the town messed up and asked if there was anything like an emergency order.

Peter Leavitt and Attorney Wagner suggest they vote to reconsider, deny the appeal or modify their decision.

A motion was made by Peter Leavitt to vote; it was a 4-0 vote in favor of reversing the board's original decision.

Joseph Powers asked that happens next? Attorney Dixon said they will file an appeal to the court.

The public hearing portion of the meeting was closed.

Approval of minutes: Gemma Baldinelli made a motion to approve the minutes dated April 20, 2023; all were in favor.

Approval of Bills: Portland Press Herald invoice totaling \$131.53; all in favor of issuing payment.

Correspondence: Maine City & Town magazine

Other Business: none

Peter Leavitt made a motion to adjourn the meeting, Jon Bartlett seconded the motion; all were in favor and meeting was adjourned at 8:22pm.

Signed BY , Chairman Dated 9-14-23