

LEBANON MAINE BOARD OF APPEALS
CARBONE ADMINISTRATIVE APPEAL
MONDAY, February 8, 2021

Deborah
3/8/2021

Deborah ✓
Don ✓
Kathy ✓
Approved
3/8/21

Members Present

Deborah Wilson – Chairman
Dede Bruce – Co-Chairman
Don Leuchs - remotely
Kathleen Perry – Alternate

Others Present

Jenn Griffin
Dave Salvatore, CEO
Brian Barrington, Carbone Attorney
Carmen Carbone
Michael Pedro
Cindy Pedro
Melissa LaPointe

Pledge of Allegiance

Board Chair Wilson opened the meeting at 6:00 PM. There are three (3) members present and one member participating remotely, which does constitute a quorum. Chair notified the room that Appeal Board Member Don Leuchs will be attending meeting remotely. Chair also notified room that Alternate Appeal Board member, Kathy Perry, will be participating and voting as a full member to make quorum.

Chair asked Attorney Brian Barrington to present Carmen Carbone's case. It was presented that through a superior court case heard, part of settlement of this case is to confirm, through the town of Lebanon, that Savannah Way is not a lot. The definition of a lot is for the purpose of development, sale and occupancy. Chair was unsure why they were coming here tonight as they have the court order. Attorney Barrington just wants us to document in writing, through the CEO, that the road can't be used as part of a measurement of a lot which it can't be.

Michael Pedro, another resident of Savannah Road and abutter to Carmen Pedro, wanted to speak but Chair asked him to wait his turn. Chair asked Board Members if they had any questions for Attorney Barrington. Chair then asked the room if they had any questions for Attorney Barrington. Mr. Pedro said Attorney Barrington used his name in an untruth and put it in writing that he had bought a lot off from Mr. LaFreniere in 2015 and that it became lots and parcel. He had no intention of having it become lot and parcel. He had PERK test done to see if it could be buildable. Chair asked if Mr. Pedro was talking about extension at end of Savannah Lane that veers to left – the turnaround at end of road. Attorney Barrington brought out road plans. Mr. Pedro stated he and Mr. Carbone both bought additional properties, his before Carmen. Mr. Pedro had to wait five years to sub divide. Mr. Carbone got building permit before he did even though land was

purchased after his purchase. Savannah lane goes with land Mr. Carbone bought. Now he wants to break it off. Mr. Pedro stated there is no court order. Never went to court. It's a settlement agreement. Part of the Settlement Agreement states the town of Lebanon's CEO has to sign off that Savannah Lane is not a lot in the subdivision and can be transferred to the Defendants (Michael & Cindy Pedro). Two previous CEO's would not sign off on this settlement and the current CEO will not sign off. Mr. Pedro stated that the settlement was null and void as of last November. He is refusing to agree with it. The only way it becomes legal is if CEO signs off on it. Mr. Carbone's paperwork submitted for this appeal presented document as court order. It has a docket number and York County Superior Court on the first page of settlement. Agreement was signed by parties. Attorney Barrington said Court had mandatory mediation that has clause that issue will go back to arbitration if consensus can't be made. To close mediation CEO has to sign off that Savannah Lane is not parcel of land that can be considered when subdividing property. Savannah Lane is private road. Mrs. Pedro interjected about this being personal. She spoke about issues between Mr. Pedro and Mr. Carbone. She gave history of relationship between the two of them. She and Mr. Pedro have lived on Savannah Lane for over 15 years. She spoke of no issues with previous owner of road who maintained road. She feels appeal is ridiculous and has cost both families a lot of money. Everyone got along before Mr. Carbone bought road and realized Mr. Pedro was building houses on Scarlett Way with permits. It was then Mr. Carbone sued Mr. Pedro because access through these lots being sold should have been off Center Road. She said they did nothing deliberately. Chair asked group to focus back on issue at hand before Board. Chair wants to address what Mr. Carbone has paid to have heard at this appeal which is whether or not Savannah Lane is considered a lot when it comes to subdivisions. Board member Don Leuchs called in. He thought meeting started at 6:30 and has not heard previous conversation. Chair asked him to identify himself. He did receive paperwork pertinent to this appeal. Chair asked if he understood what issue before board was and he responded yes. Chair asked him to identify himself when asking or answering question. Chair asked about lots and if they have been divided up. She asked about modular being build with garage. Carbone said there is no garage. CEO said Carbone has permit to build garage and footings have been poured. Savannah Lane is privately owned but all landowners on it have right of way. Right of way called easement. Chair asked CEO if road is broken off from lot to sell, is that road considered a subdivision by breaking off that lot. CEO said not for him to answer. Court needs to answer this. Don interjected that what is being asked of CEO to determine is state law. If one abutter is selling lot to another abutter, it is not considered a lot and he is not sure why judge put us in this situation to decide what is already state law. The issue now is that the agreement is null and void and the land won't be sold to an abutter. Mediator thought they might resolve this here first. Attorney Barrington said no judge involvement now. A court document is a document generated by the proper litigation of a matter. Mediation is required when a superior court rule. Agreement from this court ordered mediation has in the terms of the agreement that we need verification and sign off from the town that the road is not a lot for the purpose of sub division. Attorney Barrington stated the CEO has the statutory duty to enforce the laws in the town of Lebanon. He also stated that just because Mr. Pedro states it is null and void doesn't mean it is. If agreement can't be reached then it would go back to arbitration. Part of this agreement

states (#7) that the agreement is subject to the town of Lebanon's CEO agreement that Savannah Lane is not a lot in the subdivision and can be transferred to the Defendants (Michael Pedro). Mr. Pedro also stated that the agreement also states there should be no harassment. He has Mr. Carbone on film harassing him. Mr. Pedro says it will go to court. Chair again asked to stay on the issue before this board. CEO spoke about what he is being asked to sign off on. He spoke about e-mails from Attorney Barrington asking his opinion on this issue and nothing about signing off on anything. CEO procedural manual says he can't give his opinion. Right of way disputes are a civil matter between property owners. CEO says Mr. Carbone wants this decision made so he can sell this land. Mr. Carbone told CEO he wasn't selling land but wanted building permits for house and garage. Chair said she feels she knows where she stands with this. Attorney Barrington was asked if he was finished submitting his case. He said they are asking for a specific determination on the question before this board. Nothing to do with right of way. Don spoke of getting more confused. Transfer of property from abutter to abutter is nothing the board or the town of Lebanon should be involved in. State laws determine this. Don also stated CEO should not be involved in this. CEO said he is all set and has nothing further to offer. Mr. Pedro said Mr. Carbone doesn't want to sell pieces of road to home owners because an Association would have to be started. Mr. Pedro has legal right to very end of it. Why should owners have to pay Mr. Carmen to maintain road? Chair asked if Mr. Carbone took care of road by himself including plowing and maintenance. He said yes and Mr. Pedro said that was a lie. Don interrupted said maintenance of road has nothing to do with appeals board. Property deed says it's a right of way not a lot. Mr. Carbone faces a \$1,000 a day fine until this issue is resolved. Mr. Pedro spoke about turn around. Garage being built inside turnaround. Chair asked CEO if turnaround is incorporated into Savannah Lane legally. CEO didn't know that answer. If it is then the garage is feet from the road rather than the over 50 feet Carbone said it would be in the plans. This was brought to CEO's attention this past week. Would turnaround issue have gone to Planning Board? Town brought Mr. LaFreniere to court and he was court ordered to fix road. Part of that court order was Mr. LaFreniere had to put in turnaround at the end of the road for emergency vehicles. Then Mr. Pedro got letter from town that the road failed. Chair said if abutters felt if there were issues with house being built in turnaround, then they can come before Appeals Board and have issue heard. Chair spoke about issues between Mr. LaFreniere, Mr. Pedro and Mr. Carbone and that's a constant back and forth. Transfers back and forth and in the transfer the legality of the transfers and road are lost. In one court paper judge said lets just leave road and call it a day and from here on let's do things legally. Chair felt board takes one side tonight in a week something else will come up and have to be dealt with. Chair asked Don his feelings on the issue. He thinks go back to basics. Application asks for us to do two things. Not to mediate land owner disputes or to intervene in purchase and sale of these properties. Don asked what we were doing here? Why are we wasting our time? Chair said question before Board is Savannah Lane a purchasable lot on its own without being considered a subdivision? Mr. Pedro said state laws say any subdivision separating land is legal unless it is to avoid subdivision rules and regulations. Mr. Carbone owns lands on both sides of the road. Co-Chair Deuce said then don't sell the road. Co-Chair asked how many lots Mr. Carbone planned on dividing land into? Mr. Carbone said he wasn't selling lots but his attorney previously said he was. Chair read

subdivision laws. Chair asked Don if this should be remanded to Planning Board. Don said info in our package states land would be transferred to an abutter but Chair said that would no longer be the case because Pedro is no longer purchasing land. It could be sold to anyone. If not sold to an abutter does that create a separate lot and have to go to planning board for subdivision. Don spoke about how every lot is not a building lot. If I have a wood lot with no road frontage and no developing potential does that constitute a subdivision if I sell it to a neighbor. Chair said no but if you sell it to someone who is not an abutter then it's a subdivision. Whether or not the land is buildable makes no difference. A subdivision can be dividing a building into three apartments. Chair mentioned attorney stated he wants to avoid going to Planning Board. Attorney Barrington stated legislature wrote the law. CEO then asked why they were here. Mr. Carbone doesn't want to be fined \$1,000 a day for doing illegal subdivision. Planning Board and CEO could come after them. At this time Chair closed public hearing part. Motion to close public hearing from Co-Chair and seconded by Kathy. All voted yes. Chair asked appeal participants to refrain from further comments or participation unless asked direct question. Chair's thoughts are she is worried to set a precedence where someone can break off a piece of property and avoid Planning Board. This piece of property has been through so many Planning Board nightmares and court proceedings. Chair doesn't feel our Board has the right to say whether or not it is a lot. Don feels this should go before Planning Board. Information received in package is about buying right of way. Don feels application is null and void. If Mr. Pedro wasn't there tonight the board wouldn't know the property wasn't being sold to him. We would look at court document and which isn't a court document, and think the land was being sold to an abutter. Attorney Barrington presented the document as a court document. We would think land was being sold to abutter and not subject to subdivision rules. Kathy said CEO is being asked sign off on something he has no authority to do so. Where did document come from? Who decided that the CEO could make that decision? Was that a knowledgeable decision? Don feels we should table this or pass it along to Planning Board. The application has misinformation in it which means we can't make correct decision. Chair expressed she wants to deny administrative appeal on the basis that it isn't CEO's decision to make. She doesn't feel appeal was correctly presented and Board wasn't given all information necessary. Chair feels this should be the Planning Board issue and even if this goes to court, issue will probably be remanded back to planning board. Chair made motion to deny administrative appeal of Carmen Carbone regarding Savannah Lane on the basis that state law clearly defines any division of more than two lots is a sub division. Co-Chair seconded motion. All four voted in favor of motion. This matter is closed. We will not be asking CEO to make this decision. Co-Chair made motion to adjourn meeting. Kathy seconded. All voted to adjourn meeting.