Lyle R Duell
Deborah R Wilson

Lebanon Maine Board of Appeals
Workshop Minutes
Monday, February 11, 2019 @ 6:00 pm

Members Present

D. Wilson - Chair
L. Duell
M. Parker - Alternate

Others Present

Paul Philbrick – Selectboard Chair

Workshop opened at 6:35 pm.

Pledge of Allegiance

Chair Wilson opened the meeting stating that the reason for this meeting was twofold. The subject of training for the appeals board members has been brought up on several occasions at meetings as well as through emails. The Board feels that it is difficult to make the correct decisions without the proper training.

Chair Wilson inquired as to what the current balance for the training line item in the appeals board budget. Jenn emailed the treasurer. The amount of $700.00 was given, when in actuality, there was only $ 200.00 left in the budget. The question of what the appeals board has for a training budget was brought up.

Chair Wilson mentioned that both she and member Leuchs attended the Maine Municipal Association workshop for Appeals Boards and Planning Boards in August of 2018. The cost was $55.00 each which used $110.00 of their training budget. However, Chair Wilson felt that the workshop was geared towards Planning Boards and was not beneficial for what they were looking for.

The questions that Chair Wilson and Member Leuchs did ask interested the presenters, however they did not have any information to offer. They questioned how they came across the various situations and how and the decisions that were made. It was reiterated several times that it is the Board that makes the decisions. Each Board is different so it difficult to direct what they should do.

It was recommended that they should seek training with the Town Attorney, however, it is not feasible with the minimal budget that they have. Chair Wilson has met with the Town Attorney not that long ago. The price of the scheduling of another meeting between the Town Attorney and Appeals Board was discussed.

During the meeting with The Town Attorney, Chair Wilson inquired what rights she had as the Chair to stop a member from yelling/screaming during meetings. The Chair does have the authority to keep the meeting on track and in an orderly fashion.

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Chair Wilson mentioned that an additional $400.00 has been requested for their budget for the fiscal year 2109-2020.

Member Parker asked if perhaps another attorney would not be as expensive as the Town attorney. Chair Wilson felt that may not be a good idea for our attorney has the Towns best interest will protect the Town. However, Appeals is separate from the Town. Member Parker inquired that perhaps a paralegal could research the information that the board needs.

Chair Wilson explained that she does not have the authority to call someone for training, it is not allowed.

Member Duell feels that there are many variables to these cases and everyone has their own opinions. There is no authority in the law in regard to variable situation and interpretations.

Member Duel1 feels that they should not be overly concerned in trying to interpret the law. Their emphasis should be based on good decisions both legal and ethical.

Chair Wilson mentioned that when she read the Town of Lebanon Appeals Ordinance and the Maine Municipal Association guidelines, the authority lies with the Town, not a State agency.

Member Duell offered that information can be interpreted in different ways depending on the individual. The decision should be legal, ethical and humane. When reading the regulations, the concept of being humane is not included. There is not a black and white description.

Chair Wilson stated that she has been instructed to deny variance applications. She feels that the questions that are to be asked there is no need to have a board of six (6) members just to tell an applicant no. If applications will be denied why bother having the applicant come before the appeals board to begin with? Why not just send them to a judge to make a decision. The issue with the hardship criteria is that the applicant needs to meet the four (4) standards per the State.

Member Parker mentioned that a resident comes before the appeals board for our interpretation of the four (4) hardship guidelines.

Chair Wilson added that it would be a different story if the abutters to the property had an issue and voiced their concern at the Public Hearing.

Member Duell mentioned that the last variance appeal that the board reviewed, the State was soft on their input, they stated that they did not have an issue with approving the variance for it was not going to inconvenience anyone.

If an appeal is subject to have a State agency review, who are the contacts. Won't they talk to you as the Chair of the Board?

Chair Wilson replied apparently not. In the past I would call Mike Morse from the Department of Environmental Protection after the fact. Mike Morse's determination would be a

page or two and would not just mimic the state law. The Department of Maine Wildlife Inland Fisheries had no interest in the appeal.

Member Duell added that the State seems to be less rigid than Town ordinances. Member Duell also added that the State wishes that the Towns would not refer the cases to the State. The Federal Government is very harsh, the State is much easier.

Chair Wilson stated that if a Judge overturns a decision by the Board she is fine with it. If someone does not agree with the decision, they can always ask for a reconsideration at court as long as they were attended the meeting.

Member Duell added that after some research, the suggestion from the State was to don't discourage members or they will not be boards. This should serve as a warning to the Town.

Chair Wilson stated that having a monthly meeting is important in revising the Appeals Board Ordinance to remove and or change items that do not pertain to our board. An example of this is that the Ordinance mentions having a stenographer. The board does not have to ask for help in writing a new one. The Appeals Board Ordinance has been incorporated into the proposed Land Use Ordinance to be placed on the Town ballot. Questions that the board may have can be petitioned to the State for changes.

Member Duell stated that he feels that the wording for the required hardships that applicant must meet is troubling. There has not been any trouble as of yet with the Appeals board decisions but there may be if and when a judge overturns one.

Chair Wilson offered that no one of authority has implied that the board is making poor decisions with the exception of this office.

Member Duell mentioned that if the law is enforced to the letter, that people will just disobey the law and turn against it especially if there are too many laws.

Member Parker a judge is doing what they are meant to do, they look at the information presented and they judge it. As long as the judge makes the decision that's the law. The decision should be made with sensibility, mercy and grace.

The board no one is trying to rewrite the law, people interpret and determine the law in their own ways. The members should have a voice with the Selectboard to request additional money for training.

The board is to look at the application with the mindset in denying the request. The applicant must prove that the variance is indeed needed.

Member Duell added that the applicants are doing a poor job of presenting their case and gathering the information to do so. An example would be the variance for the gentleman with the generator. The Board helped him out to prove as to why the variance should be granted.

Chair Wilson stated that as a board that should not have happened and from this point forward the board needs to stand back and allow the applicant to prove their request on their own.

Member Duell added that the applicant is aware that a variance is difficult to obtain and that perhaps they may want to hire an attorney. Member Duell asked Selectboard Chair Philbrick if the Selectboard can guide the Code Enforcement Officer to do this.

Chair Wilson added that it is the Code Enforcement Officers job to inform the applicant of the guidelines and not make determinations. The Code Enforcement Officer needs to be nice, if he is upset, he does not interact well. It is not the job of the Code Enforcement Officer to determine if it is relevant or not. If an applicant asks a question, then he needs to answer it. If the applicant asks what they should bring, we should have a checklist for THEM to ensure that they will have all the information that they will need to present and prove their case during the Public Hearing. The Application should also state that it is difficult to be approved for a variance. Anything that has to do with the proposed variance should be included in the information that is submitted to the board for review. This would include receipts, specifications if applicable, deeds, etc.

A copy of the Appeals Board checklist for the items that we require was given to the members to review for input.

Member Parker asked how the neighbors are contacted to inform them of the Public Hearing.

Chair Wilson explained that the application is submitted to the secretary and then she is contacted to come to the office and review the application to determine if it is complete. There is a checklist for the secretary to follow the process which includes mailing the abutter notification letters, creating and contacting the Public Hearing Notice for the newspaper, creating and posting the agenda, etc. If not complete, the applicant will be notified of the information that still need to be submitted. Once of the items that needs to be submitted with the application is a list of abutters with their address and map lot number so that a certified letter informing them of the Public Hearing can be sent. However, there is not a checklist for the applicant to actually go through and check each item off that they will need for the Public Hearing.

Why can't the Code Enforcement Officer state if the denial would cause a lack of reasonable return.

Member Duell reiterated the fact that an attorney should be present at the Public hearing.

Member Parker mentioned that a past applicant was very kind and composed during the Public Hearing. He was accommodating with the follow through.

Chair Wilson remarked that it does not matter if the applicant is a good person or not. You can have all of the training but that won't help either the board or the applicant to understand the "language." The applicant pays an application fee of $150.00 with no guidance of what the board is looking for. Perhaps a note both on the application as well on the Town website that more

information can be found on the State of Maine website would be helpful to the applicant. An electronic checklist could also be added to the Town website for the applicant to print and fill out. A description of how to correctly come about measurements should also be included.

Both Members Duell and Parker feel that a surveyor and or a lawyer would be the safe way to go about this.

Member Duell asked Selectboard Chair Philbrick how the Town can warn applicants how hard it is to obtain a variance approval. Selectboard Chair Philbrick replied that the record of passing variances speaks louder than words. Member Duell also mentioned that he feels that the Planning Board is harsh with their decisions.

The March 11th, 2019 Public Hearing for the ADA variance should be an easy one. This allow time for the board to discuss the current by-laws among themselves. The basics need to be reviewed prior to proposing any changes.

Member Duell mentioned that he will speak with his lawyer to see if they could offer any suggestions or guidance.

In the meantime, the current set can be reviewed and compared to the York Appeals Board bylaws. Members are encouraged to mark the copies that were given with questions and or suggestions to discuss at the next meeting. If there are any changes that the board would like to proposed, the information needs to be submitted no later than April 11th in order to be considered for the June election. Once the Selectboard agrees on the proposed Land Use Ordinance, it will go before the people at the public hearing.

Chair Wilson is confused as to if the Appeals Board Ordinance will be the same or changed in the proposed Land Use Ordinance.

Selectboard Chair Philbrick explained that it is the same Appeals Board Ordinance. The intention of the proposed Land use Ordinance is to incorporate all of the Town Ordinances into one document.

Chair Wilson reminded the Board members that there is a Site Review and Public Hearing scheduled for Monday, March 11th, 2019. The Site Review will be held at 4:00 pm and the Public Hearing is scheduled for 6:00pm. Once the Public Hearing is completed, the Board can discuss the possible changes to the bylaws and applications.

Selectboard Chair Philbrick asked if he could address the board with a concern for the March 11th, 2019 Public Hearing. It was agreed that he may address that board. Selectboard Chair Philbrick offered that as the meeting opens after attendance has been taken, Member Parker should be asked into the group BRFORE the Public Hearing. This is to ensure that his being asked to join as a voting member at this meeting is not portrayed as biased.

In regard to training, Selectboard Chair Philbrick suggested that for a meeting for training, that perhaps the Planning Board as well as the Code Enforcement Officer also be invited in order to share the costs of the training.

Chair Wilson stated that when the Planning Board had Mike Morse from the Department of Environmental Protection a few years back, that she was told as it was, there would be too many in attendance as it was specifically going to be addressing Planning Board issues. If the Planning Board would like to come, then they would need to understand that this particular training session will be geared towards the Appeals Board.

Selectboard Chair Philbrick suggested that perhaps the Chairs from both the Appeals Board and the Planning Board along with the Code Enforcement Officer meet and create a list of specific items that they would like to have clarified.

Chair Wilson was receptive to the suggestion, but explained that her last experience was not good.

Selectboard Chair Philbrick added that is why an agenda created beforehand for the presenter would be helpful for all involved and will keep the training on task.

Selectboard Chair Philbrick stated that the best people to draft an updated application for the Appeals Board is the Appeals Board. You know what you are looking for. When you are ready, present the proposed changes to the Selectboard.

Member Duell offered to check with his attorney for suggestions and or guidance. He also feels that if the applicant has a serious issue that they should bring a lawyer to the Public Hearing especially since they are paying a $150.00 application fee.

Selectboard Chair Philbrick mentioned that the cost of the application is being revisited as to if it will be required in the future.

Member Duell reiterated his opinion that he feels if the applicant is requesting a variance for a serious matter which may be difficult, the applicant should retain an attorney.

Member Duell asked Selectboard Chair Philbrick if he felt that the Selectboard really is serving the people wanting to make things easier or do they tend to make things very legalistic and block the rights of the people.

Selectboard Chair Philbrick stated that he would not want to force his opinion into his thoughts.

Chair Wilson stated that she does not want to restrict the Board from speaking, she wants to let everyone to know that if they would like to speak on something to let her know.

Member Duell asked if a citizen can meet with the Selectboard. Selectboard Chair Philbrick replied that yes, citizens may speak with the Selectboard individually in an executive session if the matter is one of the categories that executive sessions can be called.

Chair Wilson reiterated that yes, only certain items can go into executive session. If there were a Selectboard member in the office, you can come in and speak with them, however, no decisions could be made. The concern/question would then be presented to the rest of the Selectboard and it would be determined if the discussion should be in executive session or to be heard publically at a Selectboard meeting.

Chair Wilson mentioned that the Board may send e-mails as long as all members are included, or the e-mail can be sent to Jenn to be e-mailed all of the members.

Chair Wilson reiterated that members could not however, discuss any portion of an appeals case prior to the Site Review/Public Hearing to alleviate preconceived notions.

Motion to close the meeting by Chair Wilson. Seconded by Alternate Member Parker. All in Favor. **Motion Carried.** Meeting closed at 8:04 pm.