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**Board of Appeals Meeting June 30, 2016 to review minutes from the February 2<sup>nd</sup>, February 9<sup>th</sup> and March 24<sup>th</sup> meeting minutes and to review the proposed amendments to the Zoning Board of Appeals ordinance.**

Members present:

Kimberly Oliver Co-Chairman  
Steven Mclean  
Kathy Ward

Members absent:

Michael Carroll- Chairman  
David Coleman

Kimberly Oliver Co-Chairman welcomed everyone to the meeting to review minutes and review the amendments to the zoning ordinance. She stated that they had a quorum with 3 members and two absent. First to review were the February 2<sup>nd</sup>, 2016 minutes for an administrative appeal granting a conditional use permit by Barbara Fifield. Kathy Ward made a motion to accept minutes as written and Kimberly Oliver noted page 11 had some corrections to be made. Steve Mclean commented that the statement made by Kimberly Oliver February 2<sup>nd</sup> meeting, I don't know why he wants another business he already has one on route 11, was bias. She pointed out that the minutes did reflect that it was her personal opinion. They proceeded to vote on the motion to accept the minutes of February 2<sup>nd</sup>, 2016. All were in favor.

Kimberly Oliver continued with the minutes from the February 9<sup>th</sup>, 2016 for the continuation of the appeal from February 2<sup>nd</sup>. Kathy Ward made a motion to accept minutes as written, Steve Mclean seconded it all were in favor.

Kimberly Oliver continued with the minutes for March 24<sup>th</sup>, 2016 for an administrative appeal by Barbara Fifield of the Code Enforcement Officer. Kimberly Oliver noted a typo on page 9. It was Dave Coleman who asked Ron Phinney, not Dave Cole. Steve Mclean commented that he thought the statement made by James Carroll, that it is almost like somebody took away his lollipop and he is acting like a kid, should be included. Kathy Ward stated that she did hear him say that.7:09 Kathy Ward made a motion to accept the ~~minuets~~ minutes of March 24<sup>th</sup> as written with the correction of David Coleman's name. Kimberly Oliver seconded it and all were in favor.

Kimberly Oliver stated that the next item on the agenda was to review the amendments of updates and changes that were recommended for the zoning ordinance that Michael Carroll sent to all the members of the board. She asked the board if they would like to go through the whole thing for additional comments or would they be ready to vote. Steve Mclean stated that he felt

they should wait until they had a full board. Kimberly Oliver read a statement on David Coleman's behalf to read and record as the amendment was discussed and read as follows;

Greetings constituents and fellow board members,

The legislative body of this town IS its citizens. The Limerick Zoning Ordinance is an edict from the voters and it is the criteria a reviewing and permitting authority uses to make its decision. It provides for permissible and permitted (with a permit) uses. The Limerick Board of Selectmen and the Limerick Planning Board are elected by the same governing body to represent them. They are elected to be the executives of that ordinance. The Code Enforcement Officer has duties incumbent upon them by both the Town of Limerick, the Limerick Zoning Ordinance, and by the State of Maine. The Limerick Zoning Board of Appeals is an appointed board and does not have jurisdiction to issue permits. It (ZBA) hears appeals. In order to provide for an appeal, this board (ZBA) does not review applications for projects, or issue permits for the same. Instead, it provides a step within due process, to offer an appeal of decisions when the permit issuing authority and an applicant do not agree. I believe having the Appeals Board act in "De Novo" is a dangerous precedent. In some cases, it will not provide for an appeal of a decision, but ensure two different decisions are made without recourse for either party. It simply ends up in Superior Court. It allows a review authority to deny or ignore a permit and put the responsibilities on the Appeals Board, to apply the terms and conditions of the ordinance. A responsibility NOT given to the ZBA, but to the BOS, LPB and CEO. The Appeals Board is the last step for reconciliation before Superior Court. The Appeals Board does not have the jurisdiction to issue a permit, so how, or why, should it be given the responsibility to review and decide to issue a permit. We have remanded decisions and I believe that is putting the responsibility where it belongs, as decided by the voters of Limerick. I support the amendment as presented. I welcome further discussion of the amendment. I apologize I could not be present to debate it. I hope that we take time to deliberate over what the effects, with and without this amendment, would have on the business conducted by all the elected and appointed officials of this town and its applicants and citizens.

Sincerely,  
David R. Coleman  
Limerick Board of Appeals

11:46

Kathy Ward commented that she felt he was 100% correct and that if they were going to review a whole permit they should also be issuing the permits. Kimberly Oliver stated that is not the job of the Appeals Board to be the secondary Code Enforcement Officer or the Secondary Planning Board. She agrees that the Appeals Board is the last step before an applicant goes to Superior Court. It allows the ability to look at a particular issue where the Planning Board or Code Enforcement Officer and applicant are not in agreement and help with a solution, and if there is no resolution it must be taken to Superior Court. The Appeals Board is not appointed to be a new Planning Board.

Kathy Ward recommended meeting with the Planning Board due to the fact that Southern Maine Regional Planning is looking at the Limerick Zoning Ordinance to recommend any applicable changes that will clarify the Zoning Ordinance. Steve Mclean stated that it must be included in the Appeals Board Ordinance that the Appeals Board would not hear De 'Novo appeals and that the applicant's next step

would be to appeal to Superior Court. He stated that Appeals Board is supposed to be hearing variances and issues from the CEO.

Kimberly Oliver read the change that Michael Carroll recommended. Our jurisdiction, as the new ordinance would read is; The Board of Appeals would hear a decide appeals that is an appellant review, where it is alleged that there is an error in an administrative decision, order or requirement or determination made by the CEO or the Planning Board under the following ordinances: The Zoning Ordinance, The Planning Board, the Shoreland Zoning, flood plan, sludge, building code, growth ordinance and the communication tower ordinance. The Board of Appeals is authorized to hear variances and specific cases, but only within limitations set forth in this ordinance and are authorize to hear the following; a permit for a non-conforming temporary use for an initial period of not more than two years permits may be renew by the Board of Appeals for excessive periods of not more than one year each. Permits in commercial district, manufacturing, which is incidental to a retail business where articles are sold at retail on the premise and where not more than five operators are employed in such manufacturing. Permit in a commercial district, trailer, camps or mobile home, subdivisions, provided that no trailer or mobile home shall be located on a lot smaller than 2000 square feet in an area the regulations adopted by the Selectmen as outlined in state plumbing code.

Steve Mclean asked why we are hearing some permits and not others. Are we going to get out of all permits altogether? He felt that they should wait for a full board before discussing the changes to the ordinance. 17:08

Kimberly Oliver reads that the Board of Appeals is authorized to hear variances, specific cases, but only within the delimitations set forth within this ordinance. Steve Mclean commented that they would still be giving permits. Kimberly Oliver realized that there was a difference within the typeset changed and that is what made it to a 2 and a 3. It originally had something, but the permits were only supposed to be to hear a variance specific to the permits outlined. This was the way it was originally written. Not that it is two separate things. The Appeals Board would only hear variances not issuing permits.

Steve Mclean stated that if the Appeals Board heard a variance it would go back to the CEO or the Planning Board and get a permit.

Kathy Ward stated that because the documents they were provided, had printed out incorrectly they could not use them. After looking at and reviewing the documents provided, Kimberly Oliver agreed that they should hold off on discussion for the ordinance and that more clarification is needed. Steve Mclean was in agreement and felt that all members should be present before this is discussed. He continued that because of the current appeals that were put before the board, with the amendments proposed, the appellant next step would be to go to Superior Court. As it is now, an application could be remanded back to the Planning Board and then be appealed again to the Appeals Board.

Kimberly Oliver stated that they have an appeal for Wednesday, July 13<sup>th</sup>, 2016 at 7:00 p.m. They scheduled a meeting for August 4<sup>th</sup>, 2016 for an appeal. They scheduled a meeting for August 18<sup>th</sup>, 2016 to discuss the amendments to the ordinance.

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