



Lamoine Board of Appeals

606 Douglas Hwy
Lamoine, ME 04605
(207) – 667-2242
town@lamoine-me.gov

Minutes of June 23, 2008

Draft

Chairman Hancock “Griff” Fenton called the meeting to order at 7:00 PM

Present were: Appeals Board Members Nick Pappas, Reggie McDevitt, John Wuorinen, Jay Fowler, Jim Crotteau, Merle Bragdon, Griff Fenton; Secretary Stu Marckoon, Robert & Colene Sharkey, Selectmen Jo Cooper, Richard Fennelly, and Brett Jones.

Chairman Fenton said this is a continuation of the matter first considered two weeks ago.

Minutes of June 9, 2008 – Mr. Fowler moved to approve the minutes as presented. Mr. Crotteau 2nd. **Vote in favor was unanimous.**

**Robert Sharkey, on behalf of petitioners,
vs.
Lamoine Board of Selectmen**

Chairman Fenton said the last meeting requested advice from the Town Attorney. He said he called Tony Beardsley and was informed that Mr. Beardsley had not represented the town or the petitioners on this matter and that he felt he could render an opinion to the Board of Appeals. Chairman Fenton said that Mr. Beardsley said timeliness of his opinion should not be a problem. He said he signed a letter with the three questions posed at the previous meeting and received an answer on June 18, 2008.

Chairman Fenton read the letter from Mr. Beardsley as follows:

1. Does the Town Ordinance grant the Board of Appeal the power to hear administrative appeals?

A town ordinance does grant the Board of Appeals the power to hear administrative appeals but only if the ordinance or the Town Charter specifies that an appeal is to the Board of Appeals. Lamoine has no charter that I am aware of. The only ordinances where I could find reference to appeals going to the Board of Appeals were some of the ordinances in the Town of Lamoine Zoning Ordinances such as Building and Land Use Code, Shoreland Zoning and Subdivision Ordinances. Outside of the zoning ordinances, I found no reference to an appeal to your Board of Appeals from town ordinances.

2. May the Board of Appeals hear any administrative appeals except those set out in the town ordinances?

Again, in some circumstances, a Town Charter may provide for an appeals board to deal with certain issues. Lamoine has no charter. Historically, towns in Maine could not create an appeals board for any purpose other than zoning or tax assessment review.

After the Home Rule Ordinance Authority was enacted by the Maine Legislature, towns could establish other types of appeal boards for other purposes like site plan review, subdivision, and housing issues provided that there is an ordinance or charter provision allowing creation of a Board of Appeals consistent with 30-A M.R.S.A. § 2691.

There are a few other statutes that directly confer appellate authority to a municipal appeals board such as Building Code Appeals [30-A M.R.S.A. § 4103(5); Special Amusement Permits [28-A M.R.S.A. § 1054]; Farmland Registration [7 M.R.S.A. § 55]. Absent a specific statute authorizing the Board of Appeals to act, or through ordinances as mentioned above, the Town of Lamoine Board of Appeals lacks jurisdiction. I found no statute authorizing the Board of Appeals to hear or decide matters regarding the Selectmen's decision relating to a citizens petition.

3. Does 30-A M.R.S.A. § 2691 apply to the Town of Lamoine?

Yes. This is the statutory authority for a town to have a Board of Appeals as specified in my opinion to the prior two questions. 30-A M.R.S.A. § 2691 is printed and attached. I direct your attention to subsection 4 which states in part "No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or non-action may be appealed to the board." This is confirmed by the Maine Supreme Court which said that in an absence of a statute or local ordinance, expressly stating which decisions can be appealed to the board, the Board of Appeals has no jurisdiction to hear the appeal. *Fisher v. Dane*, 433 A2 366, 372 (Me 1981). There may be a separate right of the citizen to appeal to Superior Court under Rule 80 B of the Maine Rules of Civil Procedure.

Lastly, I and members of my law firm have not discussed this matter with the Selectmen or Mr. Sharkey and are not currently representing either Party on other cases. I see no conflict of interest.

I hope this letter addresses your concerns.

Sincerely,



ANTHONY W. BEARDSLEY, ESQUIRE

Chairman Fenton said that in a nutshell, this takes care of the issue. He said he didn't think the Appeals Board has jurisdiction to address Mr. Sharkey's appeal. He said the petitioners could either utilize Superior Court or submit a petition to a Notary Public. Mr. Crotteau asked if the Board should vote on the matter of jurisdiction. Chairman Fenton said probably. He said it was good to have the questions about jurisdiction answered for future reference.

Mr. Wuorinen asked if it would contaminate any vote if he were to vote since he was not present at the previous meeting. Chairman Fenton said it might be appropriate to not be a voting member since Mr. Wuorinen was not present last time.

Chairman Fenton said Attorney Beardsley was forthright in his statements about a conflict of interest, and he appreciated the professionalism. Mr. McDevitt

asked if anyone had particular knowledge of how the notary route might work. Chairman Fenton said Mr. Beardsley did not mention anything about the process, but the case that Chairman Fenton mentioned in the previous meeting (LeMay vs. Town of Berwick) involved that process. He said folks might want to look at that case.

Mr. Sharkey asked if he could have copies of what the Board of Appeals members received in their packets. He asked if the previous information packet was what he had submitted. He said he would like a copy of the letter to the Town Attorney and the minutes of the previous meeting, and an electronic copy of this meeting. Stu said those would be made available as they were at the previous meeting.

Mr. Sharkey asked each Board member if they had any conversations about this matter outside of the meeting. Mr. Bragdon said he did not, Mr. Crotteau said he did not, Chairman Fenton said he called Selectman Tadema-Wielandt in regard to paying for the use of the Town Attorney and a legal question, and asked his brother (an attorney) a legal question; Mr. Fowler said he didn't speak with anyone about it, not even at the store; Mr. Pappas said he did not. Mr. Sharkey asked Mr. Marckoon if he had discussed the matter. Mr. Marckoon replied that he advised the Selectmen of the action taken in regard to the town attorney, and answered questions from those who might have asked what happened at the previous meeting. Chairman Fenton added that he spoke with Mr. Marckoon about signing the letter to the town attorney when it was ready. Mr. Sharkey said he was asking these questions because an attorney will ask them in Superior Court. He said he was not suggesting that anyone was not telling the truth.

Mr. Sharkey asked Mr. Wuorinen if he could vote. Mr. Wuorinen said he was not present at the previous meeting and asked earlier to recuse himself from voting. Mr. Sharkey said that was all the questions he had, and he thanked the Board for taking time to hear the case. Mr. Sharkey said the policy manual says the Appeals Board does not need Selectmen permission on the first consultation with the Town Attorney. Chairman Fenton said he spoke with Mr. Beardsley before the Selectmen's meeting and advised that he would wait for authorization to forward the questions to him.

Mr. Sharkey said he's trying to go through the proper steps before going to Superior Court. He said one of the steps is to do an appeal and another would be to ask the Selectmen for reconsideration of their decision. He said he didn't want to go to court and have them send him back to the Appeals Board and the Selectmen and go through the process again. He asked what the last day was to submit a reconsideration request. Chairman Fenton asked Mr. Marckoon how that would work. Mr. Marckoon said the Board has not ruled on the appeal yet, so there is no decision to reconsider. Chairman Fenton asked if Mr. Sharkey

was asking for reconsideration on whether the Board has jurisdiction. Mr. Sharkey said he thinks he could ask for reconsideration of that if he came up with evidence it was wrong. Mr. Marckoon said a decision of the Appeals Board would be made to Superior Court. Mr. Sharkey said not without a reconsideration of the findings request first. Mr. Marckoon said the Board has not made any findings.

Mr. Sharkey said the Board has already found that he doesn't have an appeal. Mr. Crotteau said that's not the case. He said the only thing before the board was whether the Board has authority. He said he doesn't know if there is an appeal there or not. He said the letter from Mr. Beardsley speaks for itself. He said normally one does not have to request reconsideration before filing an appeal to court. He said he's done a myriad of appeals, and doesn't think reconsideration requests are a necessary step. He said he didn't think the Board was going to change its decision on jurisdiction.

Chairman Fenton said an appeal of a decision by the Board of Appeals goes to another venue. He said he doubted that the courts would make Mr. Sharkey come back to the Board of Appeals for reconsideration. Mr. Sharkey said he would like the board to vote not to accept his request for reconsideration. Mr. Crotteau said Mr. Sharkey could ask to reconsider and the board would do what it needs to do. Mr. Sharkey asked what the cutoff date for that was. Mr. Crotteau and Chairman Fenton said they did not know. Mr. Fowler said if the Board has no jurisdiction, it does not have anything to do with the Appeal anyway. Chairman Fenton said Mr. Sharkey may be providing new information to the Board.

Chairman Fenton said the letter from Mr. Beardsley made an interesting observation about town charters. He said charters provide rights to citizens that towns without charters don't have. He said one is a recall provision, and the other is the scope of the Board of Appeals power. Mr. Sharkey said Chairman Fenton was correct, and said that would be their next petition, to have a town charter.

Mr. Crotteau moved that the Board has no jurisdiction to hear the appeal of Mr. Sharkey. Chairman Fenton said that would be the petitioners. Mr. Fowler 2nd.
Vote in favor was 5-0.

Mr. Sharkey requested that someone research the time limit for reconsideration. Chairman Fenton said maybe he and Mr. Marckoon could research the ordinance. Mr. Marckoon asked what ordinance that would be. He said the lack of an ordinance was the reason the Board found it doesn't have jurisdiction.

Selectman Brett Jones said it was not up to the Appeals Board to do Mr. Sharkey's legal work. Chairman Fenton said he doesn't know how the reconsideration process works. Mr. Crotteau said the usual appeal would be a Rule 80-B appeal. He said he doesn't know the rules in regard to reconsideration and whether that might be something that appears in land use ordinances.

Mr. Sharkey asked Mr. Crotteau if he'd ever had asked for reconsideration in all the cases he's heard. Mr. Crotteau said he'd never asked for reconsideration in cases in which he'd represented petitioners in administrative appeals. Chairman Fenton said he would try to look into that if it's pertinent. Mr. Sharkey said he would submit a request for reconsideration within the time constraints which he doesn't know. Mr. Jones said he was uncomfortable with the Appeals Board providing legal advice, and that it's a potential pitfall. Mr. Sharkey said it was not legal advice. There was a brief exchange between Mr. Jones and Mr. Sharkey.

Mr. Sharkey said he wants to know what time frame is contained within the ordinance. Chairman Fenton this is an issue the Board has not dealt with. He said that generally speaking, the only time they would deal with a matter is if the Appeals Board is granted specific permission. He said he doesn't know if a request for reconsideration is referred to in an ordinance and the appeal is not within the jurisdiction of the Board. He said he didn't know if that would pertain to the Board. He said he didn't know what the town's responsibility is.

Mr. Crotteau said he doesn't want information coming from the Board telling Mr. Sharkey what he has the right to do. He said the decision from the Board came from advice from the Town's attorney and regards jurisdiction. He said the petitioner needs to make their own decision. He said if Chairman Fenton wants to help him find information on his own, that's OK. He said it's not part of the Board's job to do that. He said what was put before the Board is what they made a decision on.

Mr. Fowler said if there is no jurisdiction, there is no authority to do anything and no ordinance to give the Board any jurisdiction. Mr. Sharkey said if he goes to his attorney and gets good cause to disagree with the town attorney, then he thinks he has a right to have it reconsidered. He said he believes anyone could ask for reconsideration even if they are turned down on any time. Mr. Fowler said he didn't care – he could meet any time.

Mr. Sharkey said he believed Mr. Marckoon knows what he (Mr. Sharkey) is talking about but is reluctant to say anything. Mr. Marckoon said he wasn't asked anything. Mr. Sharkey asked what the time frame to submit reconsideration. Mr. Marckoon said his opinion was that there was no decision made by the board because it doesn't have jurisdiction so the next step is Superior Court. He said

there is no ordinance for the Appeals Board, only the land use ordinances that refer to a Board of Appeals – and the next step is court.

Mr. Fowler moved to adjourn. Mr. Crotteau 2nd. **Vote in favor was unanimous at 7:32 PM.**

Respectfully submitted,

Stuart Marckoon, Secretary