



Lamoine Board of Appeals Minutes of September 12, 2005

Chairman Chris Tadema-Wielandt called the meeting to order at 7:02 PM.

Present were: Board of Appeals members John Wuorinen, Reginald McDevitt, Warren Craft, Griff Fenton, Chris Tadema-Wielandt, Jay Fowler; Administrative Assistant Stu Marckoon, Kathleen DeFusco, Gerald Ford, Planning Board members Cece Ohmart and Melody Havey; Teresa Rohner, Ronald Simons, Richard King and Tammy Brown.

Officers – Mr. Craft moved to select Mr. Tadema-Wielandt as chair of the Board until July 1, 2006. Mr. Fowler 2nd. **Vote in favor was 5-0, Tadema-Wielandt abstained.**

Mr. Fowler moved to select Mr. Craft as Vice-Chair of the Board until July 1, 2006. Mr. Fenton 2nd. **Vote in favor was 5-0, Craft abstained.**

Mr. Fenton moved to select Stu Marckoon as secretary to the Board until July 1, 2006. Mr. Fowler 2nd. **Vote in favor was 6-0.**

Minutes of February 23, 2005 – Stu noted that Mr. Wuorinen and Mr. Tadema-Wielandt had submitted corrections to the minutes earlier in the day and those changes were incorporated in the minutes before the board. Several members expressed thanks to Stu for the work on the minutes. Mr. Wuorinen moved to approve the minutes as presented. Mr. McDevitt 2nd. **Vote in favor was 4-0 (Craft, Fowler abstained).**

Schmidt Findings & Conclusions – Chairman Tadema-Wielandt asked if there were any comments. Stu noted that the chair had sent several changes to the wording earlier in the day. Two other minor corrections were noted. Mr. Wuorinen moved to approve the findings of facts and conclusions of law as corrected. Chairman Tadema-Wielandt 2nd. **Vote in favor was 5-0. The Board signed the approved document.**

Inquiry from M. Langlois re: Pettegrow – Chairman Tadema-Wielandt said the Board received a letter from Ed Bearor, saying the Pettegrow's could not attend and asked to postpone hearing the matter until a date in October. He asked if anyone else was in attendance regarding this matter and if anyone had any objection.

Mr. Fenton asked if the letter from Ms. Langlois is actually an enforcement question and should the Appeals Board discuss it. He asked what the standing the Board has in that matter. Chairman Tadema-Wielandt asked if the Planning Board issued the permits. Stu said the Planning Board did not take action on any permits. He said the Appeals Board upheld their decision to issue the permits. He said the findings and conclusions were addenda to the permits. Mr. Fenton said there were requirements for a letter from the fire department. Stu said that was received. Mr. Fenton said if it's an enforcement matter,

the Selectmen should follow up on it. He said it sounds like a time-line enforcement issue. He said he wasn't sure where the Board fits in.

Chairman Tadema-Wielandt asked if the Code Enforcement Officer had reported in on this. Stu said Dennis Ford had been down and said it looked like they were starting on some of the work, but it's not completed. Gerald Ford said Dennis Ford was attending a school today. Chairman Tadema-Wielandt said he would like the CEO present to find out what he knows.

Mr. Wuorinen asked if it were appropriate for the Board and the CEO to visit the lobster pound. Mr. Fenton said the Board is not responsible for any of this until the permits are issued. Chairman Tadema-Wielandt said there was no further appeal of the previous Board decision to issue permits. Mr. Fenton asked if a waiver has to be signed. He said if the Pettegrows agreed to do something, they must start by a certain date. Chairman Tadema-Wielandt said the Appeals Board decision was February 23, 2005. He said the appeals period had passed, and the Board ought to hear from Mr. Bearor and his clients to see if they intend to comply with the Appeals Board findings. He said the CEO should be present to tell the Board what he has found.

Discussion followed on what day the Board would meet again on the matter. Mr. Craft said someone should have followed this up. After discussion the board set the date as October 17, 2005 at 7:00 PM. Mr. Fenton said the Pettegrows agreed to the conditions and the appellate process was waived. Stu said it was a tacit waiver as the Appeals Board decision was not appealed to court. A short discussion followed. Chairman Tadema-Wielandt noted a letter from fire chief Smith was received by the Board.

Appeal from Teresa Rohner

Chairman Tadema-Wielandt asked if any Board members had any conflicts on this matter. None indicated they did. He asked appellant Teresa Rohner what her concerns were.

Ms. Rohner said she did not request the appeal to discuss the property line dispute she was having with Ronald Simons. She said she was only present to set right what was permanently taken. She said she lost her privacy and her trees and all living things were destroyed when Mr. Simons put in his subdivision road, along with a pet cemetery. She said there is now a road less than 10-feet from the back door of her new home. She said she had a couple questions.

Chairman Tadema-Wielandt asked when Ms. Rohner was first aware there was to be a subdivision. Ms. Rohner said it was on her way home from work when her father called and said her back yard was torn down. She said she knows the line is close to her home. Chairman Tadema-Wielandt asked what day that was. Ms. Rohner said it was the day that MacQuinn started working on the land. Chairman Tadema-Wielandt asked if that was in August. Ms. Rohner said yes, the 2nd week in August. She said when she arrived home the road was in the corner of her house lot about 5-feet from her back steps.

Chairman Tadema-Wielandt asked if Ms. Rohner was present at the Planning Board hearing on the subdivision. Ms. Rohner said she was not notified of the meeting. She said she would have been there had she known. She said this is emotionally devastating.

Ronald Simons said according to the survey from Malcolm Harriman, the road is where it is supposed to be. He said they started work on the road and then stopped everything when Ms. Rohner came home and said they were on her land. He said they are getting the area re-surveyed. He said that survey would be done in about a week and a half. He said if they were wrong, they will fix everything. Ms. Rohner said she did not believe Mr. Simons, as it was difficult to believe someone who would put a road through her backyard.

Chairman Tadema-Wielandt said he was gratified that Mr. Simons has stopped work on the area in question. The Appeals Board looked over the Simons subdivision map, and discussed ownership of the area in question. Chairman Tadema-Wielandt said one question is how close the line is to the road. He said another question is whether approval of the subdivision is valid if the abutters were not notified. He asked Stu whether Ms. Rohner had been notified by certified mail. Stu said for some reason Ms. Rohner or her father did not get on the list.

Mr. Fowler asked when the trees were cut down. Ms. Rohner said it all happened in one day. Mr. Simons said they cut the trees on the back part of the subdivision a couple years ago. Mr. Fowler said a copy of the Steve Downey survey shows the trailer is set back 87-feet from the line. Ms. Rohner said the mortgage survey by Mr. Downey is not correct. A short discussion followed on the survey directions and distances. Mr. Fowler said if the property line isn't on the back portion of the property, then her trailer is in violation. Mr. Simons said he isn't sure but her trailer is too close to his line. He said they're waiting for a survey from Herrick and Salsbury. Ms. Rohner said Mr. Harriman had two different surveys. She said one was done in 1981 for Richard Zerrien Sr. and when he did the survey for Mr. Simons, he went onto Richard King's property which moved everything. Chairman Tadema-Wielandt said it's not the place of the board to resolve boundary disputes. Ms. Rohner agreed. Chairman Tadema-Wielandt said his main concern was that Ms. Rohner did not get notice of the hearing when the plan was approved by the Planning Board. He said he's at a loss as to what the Appeals Board can do. He said it appears to be a town mistake. He said Mr. Simons included the abutters on the subdivision application, but for some reason the owner of Ms. Rohner's lot was not notified.

Mr. Wuorinen said if one compared the subdivision plan to the Rohner plan, it doesn't check out. A short discussion followed. Chairman Tadema-Wielandt said that's for a surveyor to decide.

Mr. Fenton said the issue is the absence of the certified letter to the owner of Ms. Rohner's property. Mr. Simons asked if the hearing was advertised in the newspaper. Stu said it was. Ms. Rohner said she did not have time to read the paper. She said

someone has to take responsibility. She said her privacy was taken and it can't be given back. She said she had pictures of the trees. She said somebody is going to fix it, and she's not backing down. She said she was not notified of the hearing, and didn't have the opportunity to say that Mr. Simons could not put this 5-feet from her back door. She said the Appeals Board should schedule a site visit.

Mr. Fowler said the survey has to be straightened out. Ms. Rohner said Mr. Downey conducted a survey and he has a plan, but she had not received it yet. She said not all surveys are recorded. Chairman Tadema-Wielandt said the only thing the Appeals Board could discuss is whether this ought to go back to the Planning Board so Ms. Rohner could say to them what she has said to the Appeals Board.

Ms. Rohner asked if the Planning Board did a site visit. Mr. Simons said they did. Chairman Tadema-Wielandt said a site visit might not be required. Cece Ohmart said they are required. Melody Havey said she's not sure what happened two years ago when this was approved.

Ms. Rohner asked if roadways were part of the decision. Chairman Tadema-Wielandt said the plan that was approved shows the road way. Ms. Rohner said it's not clear from the plan how the road intrudes into her residence. Chairman Tadema-Wielandt said the plan has bearings and distances on it along with the width of the right of way. Ms. Rohner asked if one knows by looking at the map what the distances are. Chairman Tadema-Wielandt said the only evidence at the hearing was Mr. Harriman's plan which shows the distances. He said the Harriman plan doesn't show a distance from the edge of the road right-of-way to her home, but it appears the home is closer to the back lot line than to the side line. He said he drove by the area on his way home this evening, and what the plan shows does not reflect what is really there. Mr. Fowler said the septic system is affected. Ms. Rohner agreed. Mr. Simons said the septic system is on his property, under the road.

Chairman Tadema-Wielandt said that's not for the board to decide. Ms. Rohner asked why Mr. Simons brought that up and asked the Appeals Board to have Mr. Simons "shut up". Mr. Fenton said the Site Plan Review Ordinance requires that certified mail be sent at the expense of the applicant to notify all abutters about the hearing. It was noted this did not fall under Site Plan Review.

Mr. Fowler asked if this piece of land was sold to Reggie Mann. Mr. Simons said the land was originally a separate lot owned by Debbie Zerrien and was 200 x 200. He said a 75-foot section was sold to Mr. Mann at a later date. A short discussion on the lot's history followed.

Tammy Brown said she was a friend of Ms. Rohner. Ms. Brown asked what happened to the pine tree. Mr. Simons said MacQuinns hauled it away.

Chairman Tadema-Wielandt said if the new survey comes back and shows the road is too close to the Rohner line, would that affect the ability to create the subdivision. He said

he saw a grouping of septic systems. Mr. Simons said they would just move the road. He said they have soil tested some lots. Ms. Rohner said she had a concern about the numerous stakes on and off her property. She asked if it was normal to put in stakes at the last minute. Mr. Fowler said it was not unusual, and if MacQuinn was likely to start the work on a certain day, that would be the day the area is staked out. He said the stakes generally are not put out earlier because they can get knocked over or destroyed.

Ms. Rohner asked if when the Planning Board does a site visit, she would think the stakes should be there. Mr. Fowler said the Planning Board should have been able to see where the property line stakes were. Mr. Fenton read a section of the Building and Land Use Ordinance as follows:

- b. *Within 30 days of consideration of the completed pre-application form, the Board shall conduct the on-site inspection, and inform the applicant of any specific points to be covered in the Plan not required by Part E below.*

Mr. Fenton referred to section 12 D 4 (c) in regard to the notification requirements.

Mr. Tadema-Wielandt said there is no point in discussing the surveys. He said the Board needs to resolve what is going to happen in the future. He said Mr. Simons is not continuing to build the access road.

Mr. Wuorinen asked if it would be appropriate to refer the matter back to the Planning Board. Mr. Fowler said the Appeals Board has to find out whether Mr. Simons has a legal subdivision or not. Mr. Fenton asked if this issue should go back to the Selectmen. Ms. Rohner asked if they would refer her back to the Appeals Board. A short discussion followed.

Chairman Tadema-Wielandt said the plan is dated February 2003. He asked when the permit was issued. Mr. Simons said he got an extension because it had to be started within 2-years. Chairman Tadema-Wielandt said the plan was approved on November 4, 2003. Mr. Craft asked if the surveyor marks would be placed by then. Chairman Tadema-Wielandt said he didn't know, but the plans states that rebar would be set. Mr. Fenton said the Building and Land Use Ordinance gives one year to start and two years to complete. Mr. Simons said the work was started within one year, and he did get an extension. Chairman Tadema-Wielandt said there should be a copy of the extension in the file. Stu said it was noted in the Planning Board minutes only. He said the permit is the signed subdivision plan. Chairman Tadema-Wielandt said the permit posted on the site is illegible. Planning Board Member Melody Havey said the Planning Board approved the extension one or two months ago. She said they sat on faith that the Planning Board had originally properly approved the plan. Chairman Tadema-Wielandt asked if any notice was given on the application for extension. Stu said there was none other than the posting of the Planning Board agenda. Ms. Havey said the ordinance does not require additional notice. Mr. Fowler said the only thing bothers him was whether the subdivision is legal without proper notification.

Chairman Tadema-Wielandt asked when Ms. Rohner took title to the land. Ms. Rohner replied probably around May 2003. She supplied a copy of her deed to the Chairman, who looked it over.

Mr. Fowler asked Richard King if the line moved over when Mr. Harriman did the survey. Mr. King said Mr. Harriman surveyed his subdivision as well. Mr. King said his understanding from day one was that the property line followed a fence line. He said he knew when he helped excavate for the trailer on Ms. Rohner's land that the stakes were placed 25-feet from the property line for the trailer. He said he was shown where the lines were and they had lines to go by. He said he always felt the septic was on Ms. Rohner's father's land. He said the Debbie Zerrien trailer left and Ms. Rohner and her father moved their trailer in, and he was told where the 25-foot setback mark was. Mr. Simons said Debbie Zerrien's trailer was not on this lot, but was on the other lot. Ms. Rohner said she had pictures that showed where it was.

Mr. Craft asked if the mortgage survey was properly staked out. Ms. Rohner said they did not have to. Chairman Tadema-Wielandt said that plan is not a survey. A short discussion followed on bank requirements.

Chairman Tadema-Wielandt said the application was filed with the town, it looks as if the Planning Board heard the subdivision application on July 1, 2003, which is prior to the deed being recorded. Stu said there is no question the town screwed up in regard to the notification. Mr. Fenton read the public hearing requirement from the Building and Land Use Ordinance Section 12 D 4 (c) as follows:

The Board shall hold a public hearing on the application within 30 days of the date on which it receives the completed application. The Board shall notify by registered letter all owners of abutting properties listed in the application or Plan as to the date, time, and place of such review. Applicants are strongly encouraged to contact resident abutting landowners personally before this review. The notice required by this paragraph is in addition to all other notices required by law, and failure to give such notice shall not affect the validity of any Board action.

Ms. Rohner said she has done a lot of research and was told by the Code Enforcement Officer that Mr. Simons had asked him about the road being so close to her house. She said the CEO told Mr. Simons that he would not do anything without speaking to the abutter. She said had Mr. Simons done that, we wouldn't be here today. Mr. Fenton read further from the Building and Land Use Ordinance. A short discussion followed on survey requirements.

Chairman Tadema-Wielandt asked when the new survey would be done. Mr. Simons said Mr. Salisbury said it would take about 3-weeks to get to, and that was about a week-and-a-half ago. Chairman Tadema-Wielandt asked what Herrick and Salisbury was going to do. Mr. Simons said they were going to survey all the lines and make sure Ms. Rohner's lot is where she says or where Mr. Harriman says. A short discussion followed

on prior surveys by Malcolm Harriman. Mr. Simons said if it comes out Ms. Rohner's way, he would fix it.

Mr. Craft asked which survey is correct. Chairman Tadema-Wielandt said the board cannot determine that. He said Mr. Simons was not working on the area in dispute. He asked Mr. Simons to get a copy of the Herrick and Salsbury survey to the Appeals Board.

Ms. Rohner asked Mr. Simons how he planned to rectify what has happened. She said she was not notified and that's the town's fault. Chairman Tadema-Wielandt said if the Herrick and Salsbury plan confirms the Harriman plan, there is nothing to be done. Ms. Rohner said she has a survey that was done less than a month ago and it cost \$1,200. She said she has it, but doesn't have it here.

Chairman Tadema-Wielandt asked what Ms. Rohner would like the Appeals Board to do. She said it needs to be fixed, the trees replanted. She said she has no problem with the subdivision but there is a need to block headlights and the road dust. She said she wants a fence put up on Mr. Simons' property line to give her privacy. She said she just wants it fixed.

Mr. Fowler said Ms. Rohner has to find out where the property line is first. Ms. Rohner said she knows where it is. Mr. Fowler said the town can't do anything until they know where the line is. Ms. Rohner said she'd be in court for 10-years over this and she's not going to live that way. Mr. Fowler said if the property line is where the Harriman survey says it is, then Ms. Rohner's trailer might be in the wrong location. Ms. Rohner left the meeting saying she has to get a lawyer.

Tammy Brown said she had a lawyer, channel 5 and the Ellsworth American look this over. She said they told her the town is responsible. She said it isn't legal or ethical and there is a big community gap here and it's not right. She said to be prepared for the news and the TV to see the Board.

Mr. Wuorinen suggested this be sent back to the Planning Board and send letters to the abutters so they can take a look at the survey. He asked what the Appeals Board could do. Chairman Tadema-Wielandt said to look at the other side. He said Mr. Simons has been under the impression for two years that he had a valid subdivision, and he relied on the Planning Board decision. He asked if it was fair to halt Mr. Simons' progress on that. Mr. Wuorinen said when a plan shows a road going very close to the back door of an abutting property, the contractor or developer ought to have the savvy to say it needs to be reassessed because it's not right. Chairman Tadema-Wielandt said the Planning Board had to rely on the plan submitted. Mr. Wuorinen said the Appeals Board could remand this to the Planning Board and have them look at the situation that actually exists with Mr. Simons and Ms. Rohner and decide what happens based on that.

Mr. Fenton said he agreed with Mr. Wuorinen and said that Ms. Rohner or her father were not notified. Chairman Tadema-Wielandt referred to the section of the Building and

Land Use Ordinance Mr. Fenton referred to earlier. Mr. Fenton read again as follows from Section 12 D 4 (c):

The notice required by this paragraph is in addition to all other notices required by law, and failure to give such notice shall not affect the validity of any Board action.

Mr. Fenton said that speaks to the developer being encouraged to contact the abutting landowner. He said because the owners did not get notification, the Planning Board should take a look at the issue and see what corrective action could be taken. Mr. Fowler said the property line has to be settled. Mr. Fenton said if the property owner had notification and had attended, this item would have been brought up prior to the issuance of the permit, so lack of notification has caused the problem. He said it should go back to the Planning Board to remedy the situation legally. Mr. Fowler said he wasn't sure why Ms. Rohner was upset with the Appeals Board.

Ms. Havey said if the Appeals Board bounces this back to the Planning Board, they're not going to be able to do anything. She said the Appeals Board needs to take action. She said the Planning Board has no right to hear an appeal. She said the Planning Board would have to send it back to the Appeals Board. Mr. Craft said it all should be wrapped up and given to the lawyers. Ms. Havey said it should not go back to the Planning Board because the Planning Board doesn't have authority to undo a permit. Mr. Wuorinen said he doesn't understand what happens when the Appeals Board finds a permit is issued in error. Ms. Havey said the Appeals Board needs to find some basis. She said Ms. Rohner has asked for a stop work order. She asked if anyone knew what authority the Appeals Board might have in this regard. She asked again not to send it back to the Planning Board.

Mr. Simons asked what would happen if he moved the road to the line Ms. Rohner says is hers and plants trees as Ms. Rohner has requested. He asked if that would settle that. He said he told her he would. Chairman Tadema-Wielandt said Mr. Simons would have to satisfy Ms. Rohner on that. Ms. Havey said if the road is moved, then the subdivision is not being built in accordance with the approved plan. Mr. Simons said that would have to go back to the Planning Board.

Mr. King asked if Ms. Rohner's line is wrong, that would be a problem. A short discussion followed on where the property lines might be. Chairman Tadema-Wielandt said it appears the representation of Ms. Rohner's lot is not accurate. Mr. King said there might have to be a line agreement. Chairman Tadema-Wielandt said the hardest part of this whole thing will be satisfying Ms. Rohner. A short discussion followed.

Mr. Fowler said changing the line and falsifying the plans is not right. Chairman Tadema-Wielandt said it appears Mr. Simons is just trying to solve this in the most expeditious way. Mr. Fowler said he's curious to see where the line really is. Chairman Tadema-Wielandt said if the approved subdivision lines are correct, then Ms. Rohner might have a problem. Mr. King said he was surprised that MacQuinn didn't stop and

say there was a problem. Mr. Simons said MacQuinn did tell him the road would be fairly close to the trailer, but that's where Mr. Harriman put the line.

Chairman Tadema-Wielandt said if Mr. Simons could come to some sort of accommodation with Ms. Rohner that would be wonderful. He said it would be helpful to Ms. Rohner to have counsel representing her. He said the Appeals Board ought to put this off until October 17th if Mr. Simons would represent to the Appeals Board he would do no further work. Mr. Simons said they have, but they are still working on the back. He said they won't do anything more on the road where the Rohner trailer is until this is straightened out. A short discussion followed on when the Board could meet in October. Chairman Tadema-Wielandt asked if Mr. Simons would have his survey by the 24th. Mr. Simons said yes.

Mr. Wuorinen asked why the Appeals Board doesn't have grounds to send this back to the Planning Board. Chairman Tadema-Wielandt said the Appeals Board might. Mr. Wuorinen said the town was responsible for notifying abutters. He said by the time the Planning Board could meet there will be a survey. He said it's clear from the ordinance the town is responsible for notifying abutters. Ms. Havey said the ordinance does not say what the consequences are. She urged the Appeals Board to contact an attorney before remanding this to the Planning Board. Mr. Wuorinen asked what alternative there might be. Mr. Fenton said if there were legal guidance, it might reveal whether there are any avenues open. Mr. Wuorinen said the only guidance would be to find the town erred. Ms. Havey said if the Planning Board can't do anything about it, what does that say to Ms. Rohner. A short discussion followed between Ms. Havey and Mr. Craft about what has happened. A short discussion followed about double checking abutter notification at the Planning Board level.

Mr. Fowler said the Appeals Board need to find out legally what the Appeals Board should be doing. Ms. Havey said the Appeals Board should find out what the case law is. She said it would be nice to get the matter on a subsequent Planning Board agenda. Mr. Fenton asked if Maine Municipal Association or the Town Attorney could get an opinion before October 7th. A short discussion followed on the schedule and which entity to ask. Stu suggested asking Maine Municipal Association and clarified the questions which the Board wished to ask

A lengthy discussion followed on when to hold the next meeting. It was decided it would be on September 20th for the Rohner issue. Mr. Craft said he had a conflict on that date, but would try to make it.

Mr. Wuorinen moved to continue the Rohner matter until September 20th at the town hall at 7:00 PM. Mr. Fenton 2nd. **Vote in favor was 6-0.** Stu said he would send an agenda to both Ms. Rohner and Mr. Simons. He asked if he should write to Ms. Rohner to have her bring her survey. The Appeals Board instructed Stu to just send the agenda. The board also agreed to keep October 17th for the Pettegrow matter.

There being no further business to conduct, Chairman Tadema-Wielandt moved to adjourn the meeting, Mr. Wuorinen 2nd and the Board voted by assent to do so at 8:55 PM.

Respectfully submitted,

Stu Marckoon, Secretary
Lamoine Board of Appeals
Approved October 17, 2005