



# Lamoine Board of Appeals

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## Minutes – July 24, 2020

Board Chair Griff Fenton called the meeting to order at 7:37 PM

The meeting was held via Zoom meetings with non-board participants, and at the town hall. At the Lamoine Town Hall were Appeals Board members Griff Fenton, Jay Fowler, Brett Jones, Michael Jordan, Jon VanAmringe; Code Enforcement Officer Rebecca Albright, Attorney James Collier, and Administrative Assistant Stu Marckoon.

Present via Zoom Meetings were: Alan Moldawer, Jeannine Lawser, Carol Mason, Joel Ackerman, David Goodrich, Douglas Stewart, Jonatha Brown, Kathleen Rybarz, Appeals Board Member Larissa Thomas, Laura Lyell, Lorna Goodrich, Lynda Miller, Mark Harris, Margaret Stewart, Thomas True and Carol Korty.

**Minutes – March 4, 2020** – It was moved and 2<sup>nd</sup> to adopt the minutes of March 4, 2020 as written. **Vote in favor was unanimous.**

### **MOLDAWER VS. CODE ENFORCEMENT OFFICER**

Chairman Fenton recused himself from the panel considering this matter. Vice Chair VanAmringe took control of the meeting and asked if there was any objection to Mr. Fenton's recusal. Mr. Jordan said if Mr. Fenton had read all the materials, he could serve, but he has no problem with recusal. Mr. VanAmringe said the voting members then, would include Mr. Jones.

Mr. VanAmringe said he would enlist the assistance of attorney James Collier, starting with the determination of the applicant's standing. Mr. Collier asked if the board could state the proper notification was made. Mr. VanAmringe said notice was properly made and posted and the fees were paid.

Mr. VanAmringe said the appeal was filed in a timely manner. He asked if any sitting members of the Appeals Board had any conflict. None was indicated. Mr. VanAmringe said there is a quorum and said this would be an administrative hearing and asked about the rules of procedure for such a hearing.

Mr. Moldawer said he was advised that this would be a meeting of the Board of Appeals and not a public hearing. Mr. Collier said he doesn't understand the question. He said he assumes that all meetings are public hearings. He said this is not a de novo case, so the Board will not be hearing testimony. He said he would try to not be a distraction to Mr., Moldawer, the Code Enforcement Officer or Mr. True. He said this is a public meeting of the Board of Appeals and the Board can make decisions. Mr. Moldawer said he was told that this was a meeting and not a hearing. Mr. Collier remarked that Mr. Moldawer was present. Mr. Jones said a hearing would have a date set to hear the meat and bones of the case. A discussion followed in the distinction between a public meeting and a public hearing. Mr. VanAmringe said it was the intent of the Board of Appeals to meet to discuss whether it is appropriate to proceed with the case. Mr. Collier advised that after doing so, the board can make a decision. Mr. Moldawer said if

it's a public hearing, the public has the right to attend and to speak. He said he expected the matter to be set for a hearing in the future. Mr. Collier said he disagreed. Mr. Jones said he would like to proceed in the usual order. Mr. VanAmringe said it was not the intent to solicit comment from the general public. He said the Board has determined this will be an administrative hearing. He said the significant matter before the Board is whether the matter should be before the board and if this matter is appealable. Mr. Jordan said he agreed. Mr. VanAmringe said he would defer to counsel.

Mr. Collier read from section 8 of the Building and Land Use Ordinance and said the board determined this would be an appellate matter. He said Mr. Moldawer was adjudged to have standing in the previous iteration of the case. He said the Code Enforcement Officer was the appellee and has standing, and Mr. True has standing, as this is his house. He said the Appeals Board has jurisdiction in this matter and is the appropriate agency to hear the case. He noted that at the last go-round, the board decided to uphold Mr. Moldawer's appeal and remanded the case to the Code Enforcement Officer for reconsideration. He referred to a memorandum written in March 2019.

Mr. Collier said the Board has a fundamental choice. He said the Board in its previous ruling did not say that the Code Enforcement officer must do this. He said the Board told her that how she measured was wrong and asked her to reconsider. He said the Board has a couple of options. He said it has jurisdiction to direct the CEO to remeasure pursuant to the earlier methodology. He said the Board can uphold and remand with specific instruction to remeasure. He said if she will do it, there is some value to that as it's an actual result. He said such a decision is allowed. He said the 2<sup>nd</sup> option is that if the Board doesn't feel that the CEO will do anything different, it would not have jurisdiction and this would have to go to court. He said the matter can't keep coming back to the Board. He said the board should hear from the parties and then decide whether it has jurisdiction.

Mr. VanAmringe asked Mr. Moldawer and the CEO to speak to the matter. Mr. Collier said the Board should first confirm who has standing and that the application is complete. Mr. VanAmringe said the appeal is properly before the board and people have standing. Mr. Jordan moved to find that the Appeals Board has jurisdiction on this matter. Mr. Jones 2<sup>nd</sup>.

Mr. VanAmringe said he thought the board should hear from the parties involved. Mr. Jones said the parties would be better served if the hearing were in person at the school. He said the only people who should speak are those involved in the matter. Mr. VanAmringe said that's a wonderful idea, but he has no idea what is going to happen with the pandemic. He said people should not be exposed, and this zoom meeting is the alternative available. He said he would like to hear the opinions from the parties involved. Mr. Collier said there is no reason not to hear from the parties in regard to jurisdiction.

Mr. Moldawer thanked the board for reducing the risk. He said the matter does not have to be decided now. He said the issue is whether the Board should exist if the CEO ignores the Board. He said if that's the case, the board must hear the case under

“Raposa”. He said he filed a complaint, and if the CEO had done her job properly we wouldn’t be here today. He said if the CEO continues to disregard, that is contempt, and the Board has jurisdiction.

Mr. VanAmringe said he was aware of the Maine Municipal Association opinion and this is a matter of contention.

CEO Albright said she does respect the Board and does not appreciate being told that she doesn’t. She said this is a simple language problem. She said she reviewed the motions contained in the minutes of the previous decision. She said the motions were a statement and not a call to action. She said if the Appeals Board wanted her to measure, it should clearly state that. She said if the Board wants her to do so, she will, but the Board has to say so.

CEO Albright said the Maine Uniform Building & Energy Code (MUBEC) applies, but the town does not perform MUBEC inspections.

Mr. Jones said the question is whether the Board has jurisdiction. Mr. Moldawer said he objected because the CEO’s argument is not on the issue of jurisdiction. Mr. Collier said parties can object to straying from the issue, but those addressing the board should be able to talk without interruption. He asked the CEO if the Board sends it back to her and tells her to measure, would she? CEO Albright said she doesn’t have the equipment. Mr. Collier asked if that was a “no”? CEO Albright said she would need equipment that she does not possess. Mr. Collier said the CEO could take that up with the Board of Selectmen. He said it sounds like the CEO wants more direct language from the Board of Appeals. He said he has two motions written.

CEO Albright said MUBEC has a different definition of building height than the town’s Building and Land Use Ordinance, and the MUBEC definition is from the final grade.

Thomas True said the CEO and the Appeals Board are limited in their power by ordinance. He said there was a 15 day window to file an appeal. He said it was not the Board of Appeals’ job to tell the CEO how to do the job. He said Mr. Moldawer should have had 15-days to appeal. He said the CEO doesn’t have the necessary equipment and a surveyor would have to be hired. He said the town issued a permit and they built what they told the town they would build according to that permit application.

Mr. Collier said the timing was that the Code Enforcement Officer made a determination on a specific date, and it’s that action that is being appealed. He said this is not a reconsideration. He said Mr. Moldawer filed an appeal within the prescribed time of that action.

Mr. Moldawer said Mr. Collier was correct. He said the appeal was of the redetermination. He said the language from the Appeals Board was not a suggestion; it was a reversal of the original height determination. He said the CEO was politely asked to re-do the height measurement and she disagreed with the board. She said the Board could state more clearly what the CEO should do. He said it’s not difficult math to remeasure to the original grade and the Board could ask that it be properly done.

CEO Albright said there are two definitions of building height contained in the Building and Land Use Ordinance that conflict – one is contained in the MUBEC reference, and the other in the definition section. She said she is willing to accommodate a remeasurement if so directed.

Mr. Moldawer said that was not correct. Mr. True said that they relied on the CEO's August 2018 decision regarding height and built according to that plan.

Mr. Jordan said after the previous meeting, he favored finding that the Board did not have jurisdiction, but he now favors finding that the Board does have jurisdiction in this matter and the board could clear up the language for the CEO. The vote in favor of finding that the Appeals Board has jurisdiction in this matter **passed 5-0**.

Mr. Collier laid out the process for the board to follow, saying it could make a decision. He said it would be appropriate to dive into testimony. Mr. VanAmringe said he's heard plenty and believe the board could proceed right now. Mr. Jones said he would prefer to set a date to have a hearing. Mr. Jordan said that at the previous meeting the board was at the point of deciding whether there was jurisdiction, so the next step would be to determine standing.

Mr. Jordan said he would like to vote on standing, and moved to find that Mr. Moldawer, Mr. True and the CEO have standing. Mr. Jones 2<sup>nd</sup>. **Vote in favor was 5-0**.

Mr. Jordan moved to find that the appeal application is complete. Mr. Jones 2<sup>nd</sup>. **Vote in favor was 5-0**.

Mr. Collier suggested that when the case is heard that the appellant (Mr. Moldawer) make his presentation, the CEO make her presentation, and then interested parties (Mr. True) can offer rebuttal and the Board can move on. Mr. Jones moved to continue following the normal procedural order as laid out by Mr. Collier. Mrs. Thomas 2<sup>nd</sup>. Mr. Jordan said the Board needs to set a date certain. **Vote in favor was 5-0**.

Discussion followed regarding setting a date and place for the hearing, as well as the format for hearing and attendance. Mr. Jordan moved to set the date and details in consultation with the appellant and other parties of interest. Mrs. Thomas 2<sup>nd</sup>. Discussion followed regarding public comments and whether the matter is a public hearing where members of the public without standing can speak or a meeting open to the public where only the parties with standing can speak. **Vote in favor was 5-0**.

**TRUE VS. CODE ENFORCEMENT OFFICER** – Mr. Fenton resumed chairmanship of the meeting. He said they received correspondence earlier in the evening that Mr. True was withdrawing his appeal and asked Mr. True if that was correct. Mr. True confirmed that he is withdrawing his appeal.

**LAWSER VS. CODE ENFORCEMENT OFFICER** – Mr. Jordan said he would recuse himself from the Board for this matter as the Appellant is his sister.

Mr. Collier said he didn't think the application answering the CEO's violation notice is complete.

Mr. Fenton said that Mr. Jones will be a voting member on this matter. He asked any others had a conflict. None said they did.

Mr. Fenton said timely notice was given; the Notice of Violation was issued on June 23, 2020 and the appeal was received on June 26, 2020.

Mr. Fenton summarized the matter, saying that a deck was build and a citizen made a complaint, and a notice of violation was issued. Mr. Jordan said there are two appeals and the complaint is not valid. Mr. Fenton said there is one appeal. Mr. Collier said he would like to clarify whether there is a policy that once a member steps down from a matter, is that member allowed to represent a party. Mr. Fenton said no, anything from that member would be extraneous. He said that if there is no objection, the Board would have jurisdiction. There was no objection.

Mr. Fenton asked about standing. Mr. Jones asked who the appellant was. Mr. Collier said it was Jeannine Lawser, and the Appellee is the CEO. Mr. Fenton asked if the appellant pad the appeal fee. Mr. Marckoon confirmed that she did.

Mr. Collier asked what type of review this would be. Mr. Fenton asked if it would be an administrative review. Mr. Jones asked how to make this a de novo hearing. Mr. Collier said in section 8b of the Building and Land Use Ordinance, appeals are administrative, except for Variance requests. Mr. Fenton said that means it will be an administrative hearing. Mr. VanAmringe said that should still allow the Board to hear some specificity of the case. Mr. Collier said that bleeds over into the completeness issue. He said it's the responsibility of the appellant to provide the board with all pertinent information. He said the record is scant. He said there is a lot of information that Mrs. Lawser must provide, including the size of the structure and the ordinance in question. Mr. Fenton said the board often asks the appellant to bring forth the facts at a future hearing.

Mrs. Lawser said the concern is the person who made the complaint has no standing with her property and for that reason, the CEO's Notice of violation should be thrown out. Mr. Collier said he disagreed and said the CEO has unlimited authority to issue a violation notice. He said the CEO's job is to inspect.

Mr. Jones said the town has had a policy of filing a written complaint and he was curious if that was followed. Mr. Collier said no, that's an administrative policy and while it's not in ordinance, it's a good policy. He said whoever made the complaint is not relevant and it's not an issue.

Mr. Fenton said the CEO is supposed to enforce the ordinances and how she receives complaints is irrelevant. He said on the matter of completeness, Mrs. Lawser needs to supply the Board of Appeals with documents to defend her written statements. Mrs. Lawser said she was in the process of gathering information and she would like to meet with the Board in person instead of over a cell phone. Mr. Fenton said the Board is just going through the prelims now. Mr. Collier said it would be helpful to have the appellant

materials sent ahead of time so that the Board could look it over. Mr. Fenton said a week ahead of time would be adequate. He said that maybe the board would have to meet at the school, or perhaps the meeting could be at the town hall.

Mrs. Lawser said the complainant has no standing. Mr. Fenton said Mrs. Lawser and the CEO have standing. He said if Mrs. Lawser's brother wants to represent her before the Appeals Board, that would be acceptable, but not tonight.

Mrs. Thomas said it would be helpful to be specific what the Board would request Mrs. Lawser to provide before the meeting. Mr. Fenton said the Board would decide based on what it has. He said they're not trying to hoodwink anyone. Mr. VanAmringe said the Board can't just give a list to the appellant of what to present. He said the board can't make the case for the appellant.

Mrs. Lawser said it seems like she has to prove herself innocent instead of the board proving her guilty. She said she hopes the board will give her a few weeks to prepare. Mr. Fenton said the Board would schedule the meeting with plenty of notice to submit the paperwork a week ahead of schedule.

Mr. Collier said he had a small list of items that might be helpful:

1. The original permit
2. Photos that the appellant would like to introduce
3. Plans, surveys, and sketches to see exactly on the ground where the structure is located
4. The ordinance in effect on the date the original structure was permitted
5. A timeline that shows when things were moved, a permit was obtained, and how the deck got to be where it is now, and the last item on the timeline is the date that the notice of violation was issued and when the appeal was filed.

Mr. Jones asked if one has an older home has a porch that existed before permits were required, what does one do? Mr. Collier said an ordinance cannot "take property and explained grandfathering. Discussion followed regarding non-conforming structures, and replacing things and the goal of making the structure less non-conforming. He said he had looked through the ordinance regarding for Lamoine regarding non-conformity and replacement.

Mrs. Thomas asked if the Board could get a copy of the ordinance that was in effect at the time. Mr. Fenton said the clerk could provide that. Mr. Collier suggested getting a full, attested copy of the ordinance, not just a partial ordinance.

Mr. Fenton said the Board needs to set a date. Mr. Collier suggested that the Board find the submission from the Appellant incomplete. Mr. Jones so moved and to request the appellant provide more information for the next meeting on this matter. Mr. Fowler 2<sup>nd</sup>.  
**Vote in favor was 5-0.**

Mr. Fenton said they will set a date and consult with Mrs. Lawser via e-mail when doing so. Mr. VanAmringe said he would like to see the distance from the road of the structure. Mr. Collier said the CEO made a decision and the appellant can provide

whatever information she wants. He said the Board is not doing fact finding tonight. He said the Appellant might want to provide a sketch. He said if the EO made a determination, the appellant might want to find out about that. A brief discussion followed on measurements and fact-finding. Mr. Jones moved to continue the matter to a date to be determined in consultation with the appellant. Mr. VanAmringe 2<sup>nd</sup>. **Vote in favor was 5-0.**

**Other Business** – Carol Korty said the town is still waiting to hear from Superior Court on the MacQuinn decision and asked if it would be on the agenda. There was a brief discussion about how notification from the courts come through the town attorney.

Mr. Collier said the Board needs to be clear on whether if a member recuses them self from a matter can they talk in regard to the case. He asked if there is a policy. Mr. Fenton said the normal custom is for the member to keep out of the case, but there is no written policy.

There being no further business, the meeting adjourned at 8:38 PM.

Respectfully submitted,

Stu Marckoon, Secretary pro-tem