

LIMERICK PLANNING BOARD – Approved 2-3-16

Minutes September 2, 2015

Dottie Richard, Aaron Carroll, Howard Burnham, Wendy Farrand and Andy Ivey were all present.

Andy opened the meeting at 7:00 PM and called for the continuation of Steve McLean's hearing. Mr. McLean deferred his hearing being first to allow Marsha Michler to go first with her proposal.

PUBLIC HEARING:

Marsha Michler's surveyor Mike LaLonde gave a history of the properties ownership since the Fox Ridge Subdivision was created. Ms. Michler wishes to add to her lot # 5 in the subdivision a 22.05 acre parcel so that she can build a house and barn on the later parcel.

Aaron asked where this new lot would get the road frontage.

Mike stated she is creating a right of way as shown on the plan which gives enough frontage to meet the requirements, right now the road to be used as a driveway to the new house and barn is a good gravel road that has been used in the past for access to the 22 acres.

Andy asked if Mike had talked with Norm Hutchins the code enforcement officer and he stated that he has discussed the project with Norm and he agrees with Norm that at this time a building permit cannot be given because it does not automatically connect to lot # 5. Mike continued stating that the applicant is willing to state on the plan that 22 acres will not be further subdivided.

A site walk and public hearing was set for October 7, 2015.

Andy stated that he is reopening the McLean public hearing and asked Mr. McLean to give a brief description of his proposal.

Steve gave the chairman a letter which in turn Andy read. The letter asked that Aaron Carroll recue himself stating that he felt Aaron displayed that he was biased he had displayed that he already decided he was against the project at the last meeting during the hearing and that the appearance of conflict was enough coupled with two relatives one of which being Frank Carroll II tried several times to shut down the hearing; these are facts that can be seen on the live TV broadcast tape.

Aaron stated for the record that he was not stepping down he does not have a bias however he wanted to see things done right and for the board to go to a site walk and not be shown where the tower would be situated was not right so unless the board votes for me to step down I will not step down, I do not have a bias.

The board declined to ask for Aaron to step down.

Andy stated that he has been looking through his notes on the previous meeting and he saw no indication of bias so unless another member of the board felt differently he would move forward.

Steve stated he had put in an application back in April and this use is permitted in this zone and all he is asking for is a conditional use permit, that's what I'm here for and some of the conditions in the ordinance are to be covered by the code officer when issuing a building permit, not the planning board. The map and lot are required by the planning board as far as setbacks that is the code officers concern.

Frank Carroll II stated that he has called the office several times since the last hearing was suspended and the secretary stated she had received no additional information; so he is asking the board if they have received new information.

Andy stated no but that the last hearing was suspended not because of lack of information but because the board was being bombarded by too many questions and it was getting very late.

Frank II again called for suspension of the hearing due to lack of information for the public to review and comment on.

Andy stated we are here tonight to get more new input from the public.

Frank II again stated the meeting should be adjourned.

Andy stated in order for us to get information we have to be able to get answers to questions.

Andy asked if anyone else had anything to say.

Denise Benton asked we're is the exact site on that property where the tower will go, the access roads were in question as far as she was concerned, proper road frontage, steepness, the condition of the road, she also had a question as to the height of the tower and the use of the tower.

The board members had extended conversation concerning the information provided to satisfy the ordinance.

Frank Carroll II repeated again the lack of information needed by the public and as far as the lack of information in the application, again he asked that the board not move forward. Frank II stated he needs to show us proof that he meets the conditions of the ordinance as well as the 16-conditions. Frank II again talking about due process and the fact that he has not addressed the tower ordinance prior to the public hearing, this should

be suspended until that information is available to us and you will be moving forward with an incomplete application.

Steve stated again that the board had accepted his application as written and if there was something else he should have had on the application it should not have been accepted, I answered the questions that are part of the 16-conditions and at the last meeting there was discussion about requiring other things but no one said before you come back you must have this or that, no one said a thing. Now there is discussion about the road and Norm not being able to issue a building permit, there is already a building up there and a building permit was issued for that some 15 years ago. Norm sent you a letter stating the location for the tower was acceptable, now if there's a question about that go down to the other room and get him and as far as being too steep, where does it say anything about that, all you asked for is a letter from the fire department which you got saying that it is accessible for the fire department, and as far as the height the ordinance states it can be up to 200 feet and as far as the need for it we are going to put a repeater 9 on that for the fire department, if it were going to be for phones that different. What I'm asking the board can I put a tower up there everything else comes in under the ordinance when the time comes.

Aaron stated that he feels that the board cannot move forward, there is information needed for the communication tower ordinance that hasn't been answered and there is no information as to where or what kind of structure is going to be on that site. As far as other towers that have been approved a balloon flight has been required and we haven't even got to that so far; as far as the communications ordinance has there been any information as to co-location if we have a spot on another tower in town that can be used.

Steve stated as far as the tower I explained it is for channel 9 it's not for cell tower service.

There was back and forth between Steve and Aaron as to the differences between a cell tower and a fire tower.

Howard asked Steve if he has any pending contracts with cell tower companies.

Steve stated no it isn't for a cell tower it's a communications tower and he feels the ordinance is vague and all the stuff that went on before with these other towers came before the ordinance.

Howard, I'm not trying to put words in your mouth here but according to this you want to put in a radio tower and what you're asking us is can I build a tower in this location.

Steve stated those other towers were being put in by cell tower companies.

Howard asked again, and you're not building a cell tower.

Steve stated no.

Howard stated so this cell tower ordinance doesn't really apply, it may apply somewhat but you just want to know if you can't build it then that's the way it is, but you don't want to do all this engineering and not have it approved.

Steve proceeded to give the board a sketch plan even though he said that the application doesn't ask for a sketch plan.

Aaron looked at the plan and said this isn't engineered, it's just a dot on a map at a 1 to 10,000 scale.

Andy stated I get this, this is flawed.

Steve Malmude stated that it seems to him that the board is being pressured to exercise certain actions based on a precedent that doesn't apply to this tower. It also occurs to me that this is the question of where your jurisdiction ends and the jurisdiction of the CEO begins; your jurisdiction is spelled out in the ordinance and beyond that when it comes to engineering and other things it becomes under the jurisdiction of the CEO. There are many, many, hoops that have to be jumped through before this tower can go up and what's been going on in this hearing and the last hearing is obstruction. Steve continued by asking about the recusal of Aaron, or didn't you have to vote, what happened.

Andy stated there was no motion made, there had to be a motion to call for a vote and there was no motion to vote.

Denise stated she didn't think it right to give a permit and then say then come back and we'll give you the permit, if your so unsure about this ordinance maybe a moratorium should be put on so you can work on it and get it to where you want to be and she again had questions about the roads and how can the assistant chief sign the form if the fire department wants this tower, this is a violation of the code of ethics policy if the fire department wants to use this for a tower an outside party should sign this.

Andy had to call for order and if the audience wants to speak you have to go to the podium if you don't want to follow the rules you may leave, we are trying to do the best we can here. And I'm not going to put up with this.

Shawn Carroll stated he could care less if a tower is built or not, he has a couple of questions concerning a project that they (JP Carroll) had last year and the fire department stated, the applicants sons' that is, that they wouldn't even talk to us if we didn't have professional drawings and nowhere did it say we had to have professional drawings, we had drawings for our tanks that were accepted by the CEO, we were laughed at and told go get professional drawings or we won't talk to you. Shawn went on for a lengthy discussion and ask for an explanation from the fire department as to what is the difference between their project and this one. Absent information that the public is asking for I would recommend not approving this project.

Frank Carroll II stated again what they, the public is asking for, yes if he can answer the 16 conditions and can go down through the tower ordinance and address all of these then he can have his permit and we wouldn't be wasting our time this time or last time, he then started reading parts of the tower ordinance. Frank continued by stating that his tower could be used by the town free, it was a condition of the tower approval there is space on his tower, the applicant must supply the answers to the questions in the tower ordinance to the public prior to the public hearing, he has answered the 16-conditions but not the questions in the tower ordinance and he has to supply the information to us and we the people have a right to the public hearing.

Tony Carroll stated he has gone through having two towers on his land and had to have performance standards, had to have bonds in case the tower had to come down, one of many things, I would like to ask the board to require a balloon be flown because I would like to see what the tower was going to look like from my property, I probably look up on that hill more than anybody and want to know what it's going to look like. Howard knew what the tower was going to look like on Frank's tower.

Howard stated I never saw any balloon.

Tony stated well I saw the balloon; another thing is we have an airport that has planes fly out of there and I think the height should be known and how it's going to affect that and the fire department should know how the height of the tower is going to affect the frequency. Before we litter the sky with towers maybe we should have a need and that's the questions that I have.

The board talked among themselves with differing views on what was needed to continue.

Aaron stated I think we should close the public hearing, go into the meeting and say that we don't have enough information to continue with the 16 conditions and table it.

Brian Saulnier stated that at the last meeting the chairman stated that you have great latitude to use in getting things done, I suggest you use this latitude and get something done.

Andy stated we do have great latitude but we need to satisfy these things before we move forward, it's a process.

Steve Malmude asked if the board has determined if the tower ordinance applies to this tower.

Andy stated any communications tower, whether cell or other applies.

Steve Malmude asked when was this ordinance passed, was it before or after Franks.

Andy stated after.

Steve Malmude asked if the board thinks that a precedence was set after the first tower was put in.

Wendy stated, I don't think so, that was a cell tower and this is a radio tower, I don't think they are the same, I don't think this tower should be as stringent for this tower.

Steve Malmude stated that do they think the code officer had great latitude as does the planning board.

Andy stated that he has to follow the same rules as we do.

Steve Malmude stated how do you feel about the CEO not having a crack at it if you kill it, aren't you taking the CEO's function away, the CEO I understand is hired as a more technical person than you are.

Wendy stated I think I could be wrong but the problem here is the people don't feel they were given enough information.

Andy stated that Mr. Malmude had said he hasn't read the tower ordinance and Andy said he should read it.

Steve Malmude asked well who applies the tower ordinance, you (the board) or the CEO.

Andy stated we do.

Dottie stated she feels the CEO does.

Aaron stated we have to adhere to all town ordinances before we even start the 16-conditions.

Dottie asked where it says that all conditions have to be met before the 16-conditions in the ordinance.

Aaron read Article VII B-1.

Ilene Bryant stated that she feels the board should think before putting this taxpayer through all this, he applied in April and now he's being labeled at fault because you people didn't have your act together you didn't tell him what was needed.

Aaron stated that first of all this tower ordinance was passed and in this book it is not the boards responsibility to provide all this information, it is the applicants job to read this book and provide this board with a complete application, it took a week to get the answers to the 16-conditions. I'm not sure this board actually voted to accept this application.

Ilene Bryant stated that the problem seems to be that nobody asked him that he needed this site plan or anything else that you're asking for.

Wendy stated that the problem was that it wasn't a normal site walk, nobody talked.

Ilene Bryant asked if it were normal to have a site plan, it seems that your application should state what is needed including a site plan.

Shawn Carroll said he can't get his head around the fact that if the information is not correct then deny the application, it's not the end of the world, it won't squelch the project, apparently the applicant needs to have a formal letter with what is needed and have him come back with a new application, if it doesn't meet what the people want then deny it so the people can ask collectively questions.

Steve McLean said we can go round and round, I didn't realize I needed to answer the questions in writing until the secretary wrote me a letter and told me I had to, so I did.

Frank Carroll II stated again what the people needed and he needs to prove he has a better site than mine, he has to do overlay mapping, and frequencies, he has to prove he has a better site, this has to all be met before we can move forward. We asked him for all this stuff at the last meeting and he's done nothing, actually we also need another site walk. Stop beating the same dead horse.

The applicant asked the secretary if she can check the minutes of the last meeting to see if there was anything that the board did ask him for.

Mr. Melanson stood up and had an observation and wondered why the board had not required Steve to provide the information that the public had asked for; he stated it's up to us as citizens to ask the questions and if the board can't answer them they need to find out the answers. Mr. Melanson continued by stating that at the last meeting I remember distinctly that Steve asked the board what is it you want and there was no response.

Aaron stated that he has been writing down all the things and he has scored them 1, 2 but basically what happens is we don't have enough information to conduct a proper public hearing or a proper site walk to start the process I feel we need a sketch plan we need an engineered plan and we need the communication ordinance questions answered those conditions need to be answered and we need to have another site walk so the people have the opportunity to speak for or against, after that the board may go into asking the 16-conditions at that time the board still has the option to ask for a waiver to meet conditions that may not be necessary for this application. Again in order for this meeting to progress we need to have a sketch plan, a tower plan engineered and the communication tower ordinance needs to be answered and we should schedule another site walk and public hearing, that's my recommendation.

No board member replied to Aaron's recommendation.

Mike Lalonde asked if he was going to put up a ham radio operator would he have to go through this ordinance, is there a difference between that and opening it up for other company services.

Andy stated it's all lumped into one.

Mike stated I haven't read the tower ordinance but I do know that what is required has to be in the book, that way people are treated fairly, is this some latitude that the planning board has but if it is required in the book they have to do it, if it's not in the book the planning board can't require them to do it, they can ask them to do it.

Aaron stated no we can make other conditions, we have that authority, for example if we are discussing the question about scenic vistas we can require a balloon test.

Mike, as long as it is required you can make them do it, but if the public says this guy needs to jump through a hundred hoops but if it for my friend just let him do, the process has to be that everyone is treated fairly.

There was additional conversation between Mike and Aaron.

Andy asked, so as a board how do we want to proceed, I can't make a motion.

Mike stated that it seems to me the board needs to go through what you need to and then make a decision if there is any leeway because what Steve want to do is a private radio tower for the fire department and not a big cell tower like the one in Limington.

Denise Benton reminded people that the fire department is not private it is Limerick Volunteer Fire Department Inc., it is not private.

Howard stated that maybe we should close this hearing and go through the conditions and then if there is more information required he will have to come back with that information.

Aaron stated that as soon as we get to number 1, we have to stop because we don't have the information, so the application could be denied at that point.

Andy suggested that the board vote to recess the public hearing and continue with the meeting and tell Steve what he needs to do, and when we recess it not set a date just recess pending a date and when we reopen the public hearing it will be just like another public hearing.

Steve Malmude stated that nowhere in this ordinance does it say that you have to see that the ordinance is followed, this ordinance is the law there is no question about it, and it's the law.

Howard stated that once we set the conditions the CEO makes sure this is followed.

There was continued lengthy discussions about the requirements in the ordinance and who is responsible for seeing that the tower ordinance is followed.

Steve continued by stating that the ordinance is not there to prevent a conditional use, it is there to facilitate a conditional use and further the production and construction not stop it, you can specify that this ordinance is followed.

Howard motioned and Aaron seconded the motion to recess the meeting until another date is determined.

Andy stated all those in favor of tabling it until more information is provided.

Vote 5-0 In Favor

Andy recessed the public hearing until another date can be determined.

Andy stated shall we tell him what we want, if we don't tell him we want another site walk and a balloon test.

Wendy stated that she feels that a balloon test must be expensive and when a test was done did it do anything for anybody.

Aaron stated I remember going up and seeing where it was going to be, I remember when my family had one I went up on 160, I went up on Main Street and all around to see it.

There was back and forth between board members as to the value of a test and Andy had to remind the audience that the board was not taking information from the public right now.

Andy stated that the board had set a precedence and Wendy disagreed stating that the ordinance was created after the other towers were already in and it doesn't say anywhere in the ordinance requiring a test, that's my opinion, I feel it was a waste of money, it did nothing for anybody and I feel it's unwarranted.

Aaron stated again I would like to see three things answered, a sketch plan, the tower ordinance answers and the engineered plan of the tower.

The back and forth continued.

Andy stated he agrees with the three things Aaron wants and I have added the frequency study, access road grade, site walk which I think should be answered and I want to go down through all of them and vote.

Howard stated he had a problem with having another site walk.

Andy called for individual votes for what information should be asked of Steve concerning the cell tower.

Balloon test	3 votes for 2 against
Sketch plan under 500' scale/distance to boundary	5 votes for 0 against
Engineered tower plan	3 votes for 2 against
Site walk	5 votes for 0 against
Frequency plan	0 votes for 5 against
Access road grade	Tabled for more information
Andy stated that we will schedule a new public hearing 2 weeks after we receive the Information.	
Information 2 weeks in advance of meeting	5 votes for 0 against

Andy stated that we will schedule a new public hearing 2 weeks after we receive the information.

The secretary shall send this information to the applicant.

Aaron stated that it has not been addressed that this tower will be in the flight path from the airport, they always fly over my house after flying over that mountain. I think this conversation need to be had.

Aaron stated just to be clear this is not the only information we can require, this is what we're requiring to this point there may be other conditions.

CORRESPONDANCE:

Information for Norm Hutchins code officer pertaining to a 1968 parking ordinance on Main Street, this is available in the office.

MINUTES: June and July minutes were tabled the board didn't review them.

Aaron stated there were a couple of the minutes where his comments were in a negative connotation and he hasn't had a chance to look on line to see if this was exactly what I said so I have a problem with these minutes.

OLD BUSINESS:

Next meeting September 16th.

NEWBUSINESS:

October 7th and 21st were set for the October meetings.

ADJOURNMENT:

Aaron motioned and Howard seconded the motion to adjourn the meeting all were in favor.

ITEMS PENDING:

1. Back Lot Ordinance
2. Rte. 5 Changes to zone.
3. Changes to Land Use Chart – In progress
4. Changes to 16- Conditions – In progress
5. Private Driveways
6. Roads and Road Frontage
7. Marsha Michler – subdivision revision
8. Carroll Zoning Violation

Respectfully Submitted,

Joanne L. Andrews, Secretary