

Town of Islesboro
Board of Appeals
Organizational Meeting
January 30, 2025, 5:00 PM
Town Office Meeting Room

APPROVED

2/20/25

MINUTES

Members Present: Patrick O'Bannon, Susan West, and Peter Willcox

Members Absent: Tom Tutor, Jon Kerr, and Dylan Purington.

Others Present: Town Manager Janet Anderson, CEO David Dyer, Attorney Patrick Lyons (via telephone)

1. Call the Meeting to Order – Establishment of Quorum
 - Chair Patrick O'Bannon called the meeting to order at 5:05 PM, and a quorum was established with three full members present.
2. Review and vote on "Remote Meeting & Participation Policy"
 - Members of the Board received a copy of the policy.
 - S. West asked about roll-call voting. This needs to happen when members are on Zoom.

MOTION BY S. West, seconded by P. Willcox, to approve the Remote Meeting & Participation Policy. No discussion. Motion passed, 3 yes, 0 no.

3. Discuss Upcoming Meeting Schedule
 - P. O'Bannon stated that we have multiple appeals that have been filed on a Planning Board decision. Today was the deadline. The appeal applications will be logged in.
 - We will send a letter to the applicant, appellants, abutters, Select Board, and Planning Board. We will look at the Ordinances and see who else needs to be included, to let folks know that there is an appeal and that the Board of Appeals is reviewing the information that was provided to the Planning Board in order to allow them to make the decision, and that we will be contacting people as to when we think we will have our Public Hearing.
 - It is complicated, and it will take us a while to get through the meeting minutes from the Planning Board and look at the various documents that were submitted to the Planning Board.
 - P. O'Bannon's inclination is to call a meeting of the Board of Appeals in the next few weeks once the appeals have been copied and distributed to members. At the meeting, we can discuss what we think is a reasonable schedule for everyone to get a handle on the data and to have a hearing. We need to be well informed.
 - The purpose of the meeting will be to talk about procedures, schedules, and policies as we move forward.
 - S. West asked about looking at the documents, whether it needs to be done in a meeting or if members can come to the office individually. P. O'Bannon answered that we're able to come in individually and look at the public record of the Planning Board. Some of that material is online, such as the meeting minutes and the Zoom video recording of the meetings. There are some attachments in the meeting minutes.
4. Patrick Lyons, counsel
 - Attorney Patrick Lyons introduced himself and stated that he is serving as counsel for the Board of Appeals for this appeal.

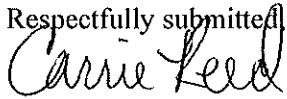
- The applicant is an attorney, and the opponents of the project may have at least one attorney. It's the appellants' burden to prove to the Board of Appeals that the Planning Board got something wrong. It's also on the applicant to try to argue that they didn't.
- The Board may start looking at materials that are public information. However, members shouldn't be discussing the merits of any of the appeals with anyone else. They shouldn't be discussed until we have the public hearing and are deliberating once we've heard the arguments from the parties.
- At the next meeting, Patrick will advise the Board to set a schedule for when materials will be submitted. Basically, this will be set up like a court. This is usually the best practice. It avoids any kind of arguments that we didn't do everything correctly from a procedural or due-process standpoint. With a schedule, we can also anticipate when things are filed and make sure we have plenty of lead time to review all the materials prior to the actual public hearing, when the Board will make a decision.
- Patrick will create a digital data room, such as Dropbox or ShareFile, where we'll upload all of the record. Everything that's considered part of the record will be in that file, and we can get further materials as needed.
- In this type of appeal, with an appellate review of a Planning Board, there's no new evidence allowed. We will only review what the Planning Board reviewed and determine whether or not they got it right or wrong.
- We'll know the whole universe of evidence and make sure the parties all agree that this is the universe of the evidence. Their briefs, or written arguments, if they want to submit them, will be based on that universe of evidence.
- Until we have the public hearing where we will address the merits of this appeal, members can review any materials that are relevant, but can't discuss them with anyone under the Freedom of Access law. All deliberations and considerations need to be done in an open meeting. What matters is that the Board of Appeals follows proper process and then issue a decision.
- Because that decision can then be appealed to the Maine courts, we don't want to have some kind of procedural flaw. They will remand it back down to this Board and tell us to do it right. We want to make sure there are no grounds for procedural considerations.
- Patrick O'Bannon clarified that when we talk about a schedule for materials to be submitted, we're referring to whatever brief or argument they want to make. There is no new evidence to be submitted.
- At the hearing, we'll allow a certain amount of time for each party to give an oral argument based on what they've submitted. We can ask questions. After that, we'll close the public hearing and no one else can speak, except for the Board members to each other and to Patrick Lyons, then work through a decision.
- Peter Willcox asked for clarification. Is our decision only based on what gets presented at the Public Hearing? Or can the Planning Board minutes inform that decision? Patrick Lyons stated that the decision can be based on the entire record. It's on the appellants and applicant to make our job easier. If they are doing a good job, a lot of the record will not be relevant. In the Planning Board meeting minutes, there will be all kinds of standards that are not at issue. There's a limited range of arguments that apply to certain standards. We can wait until the parties submit their briefs, and those can become the guideposts to what the relevant issues are when going into the record.
- With a Planning Board application, one of the standards is called, "Right, Title, or Interest." The applicant has to show that he has the right to do it, either through a deed or contract or easement. Whatever was submitted as part of the application, or if the abutters or anyone else submitted materials, that's the universe of materials that the Board can base its decision on.
- Patrick O'Bannon asked, since there are two appellants, do we do this all as one appeal because it's one application? Patrick Lyons confirmed that he would do it that way. We

will set up a process where each appellant gets the opportunity to file written materials. At the hearing, appellants will have a chance to present their arguments orally, and the applicant will be able to respond, addressing all the arguments raised by both appellants.

5. Adjourn

MOTION BY S. West, seconded by P. Willcox, to adjourn meeting at 5:25 PM. No discussion. Motion passed, 3 yes, 0 no.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie Reed".

Carrie Reed

