

Baldwin Board of Appeals

15 November 2016 meeting minutes

Members present: Al St. Saviour (chair), John Doyle (vice chair), Laurie Downey (secretary), Jon Bishop, Ron Parker and Dan Pierce (alternate)

Guest: Robert Hark, attorney

Meeting called to order at 7 pm.

Motion to approve minutes from 10/21/16 meeting, 5 Yes, 0 No.

Robert Hark was introduced as the new attorney for the Baldwin ZBA. Background - he has been practicing law since 1972, with many years doing municipal law for central Maine towns, including 9 years as Lewiston attorney. Colleague of David Loury. He emphasized that his task is to give us advice, not to function as a member of the Board.

Agenda is to discuss procedure, bylaws and to pick dates for meetings.

Bylaws

Do we need to adopt bylaws, in addition to Article 7?

Robert Hark (RH) said that ordinance is primary, bylaws flesh out procedure. A copy of York bylaws was provided as an example. Try to keep each consistent with the other. Problems can come up when they do not agree, advised us to keep it minimal. Suggested we should tape meetings. Minutes can be minimal, but should include findings of fact, and consideration of law.

John D. offered that Art. 7 does not define how to fill vacancies in the Board.

RH: We don't need to define the tasks of officers in bylaws; State law determines that. State law determines a lot of procedure, like public notices. Most important: structure hearings properly, and observe Freedom of Information Act. Don't worry so much about bylaws.

We agreed that rather than adopt new bylaws, we will follow LUO Article 7.

Is anything important missing from Art. 7? RH will look over, and make recommendations. We might consider adding structure for hearing from York bylaws.

Regular meetings

Should the Board have regular meetings even without appeals?

Agreed that two meetings per year would help keep Board "alive". Al S. proposed May and October meetings, second Wed. of the month. Approved 5 Yes 0 No.

Review of procedures

Al suggested we review the procedures of a hearing first, as we have two hearing upcoming. We were provided with copies of p. 143 from the Maine Municipal Association guidebook; item numbers following refer to that page. Text following each item is advice from RH.

#3 - *The Chair gives a statement of the case and reads all correspondence and reports received.*

Instead of reading each item, Chair just names item and ask that it be put into the record.

#4 - *The Board determines whether it has jurisdiction over the appeal.*

99% of cases will be clearly in our jurisdiction - administrative appeals, variances, and appeals to Planning Board decisions.

#5 - *The Board decides whether the applicant has the right to appear before the Board.*

This goes to standing. Does the applicant own the property, or represent the owner?

#6 - *The appellant or his or her representative and witnesses are given the opportunity to present his or her case without interruption.*

#7 - *The Board and interested parties may ask questions of the appellant through the Chair.*

Just make the process orderly so the recording will be clear.

#8 - *The interested parties are given the opportunity to present their case. The Board may call it's own witnesses, such as the Code Enforcement Officer.*

Give interested parties a chance to speak first, if they have a connection to the appellant or will be directly impacted by decision. Allow all to speak. Try to move things along if people start to repeat points previously made. All questions need to be asked through the Chair, who controls the meeting.

#13 - *The hearing is closed after all parties have been heard.*

Hearing needs to be closed in a clear, formal way, as an indication that no more evidence is being taken.

Useful at the beginning to for the Chair state basic procedure of hearing. Often helpful to make a statement like: "We are here to look at ordinance and facts, and to make a decision on that basis."

RH will send "script" for hearing, and motions for granting or denying appeal.

After Board makes decision, losing party can ask for findings of fact and conclusions of law. Transcript of hearing can suffice. If appeal goes to Superior Court, their standard of review is that if "reasonable minds" could have read the evidence either way, then the Board's decision will stand; in other words they will not substitute their own judgment for the Board's unless the evidence clearly points in the opposite direction. Courts know we are not lawyers. But is something is unclear in the decision, they will remand. But if you've given a fair hearing and haven't excluded evidence, you'll be upheld. Crucial to let ALL evidence in.

Legal expense of going to Superior Court to appeal ZBA discourages many appellants from taking that step.

What is "de novo" and when is it used?

When there is an appeal of a Planning Board decision, you must go from the existing PB record - you are not creating a new one. With an administrative appeal, e.g. of CEO action, there is no record, so you are hearing it "de novo" and creating a new record.

Some towns don't allow ZBA to hear Planning Board appeals, but Baldwin does.

Freedom of Access Act (FOA)

This law defines all we do as a public body. ALL deliberations should be public. Exceptions for trying to schedule meetings, set dates for hearings, etc. Cannot meet without public notice. Can two Board members talk about Appeals Board business outside of a meeting? Law isn't clear, but doing so violates the spirit of the law. Better to have all discussion in public meeting. Avoid discussions and emails with people about cases. Theoretically everything should be in the public domain, so there is a record that is accessible.

Site walks can be troublesome because there is no public record of discussion and presentation of information. Try to keep chit chat to a minimum, and ask questions through the Chair so all members present see and hear the same thing, e.g. "Mr Chair, please have everyone look at the dead tree on the left." Then the subject can be raised in the hearing.

Upcoming hearing dates:

Dates proposed for upcoming hearings:

Maietta: Tuesday December 13, 7 pm (approved)

Natures' Wilderness: Wed. Nov 30 or Thursday Dec 1, Laurie will email final date.

Other

Are our present forms for making an appeal acceptable? RH - yes.

Laurie D. asked if she needs to disclose status as Saco River Corridor Commissioner for the Maietta hearing, since the SRCC had to grant a permit to Maietta. RH said this does not represent conflict of interest, but always good idea to disclose, and give appellant a chance to object. Raise the question, and ask: should I disqualify myself?

Al S. - Maietta attorney could not be at site walk and wanted a postponement. Given the concern for snow and lateness of season, it was decided by Chair to keep the Nov 19 date.

Some members will be attending MMA seminar Dec. 8.

Meeting was adjourned at 8:50 pm.

*Submitted by Laurie Downey
Appeals Board secretary*