LIMERICK PLANNING BOARD MINUTES – approved 9/20/23

August 16, 2023

Aaron opened the meeting with the flag salute. Aaron, Cheryl, Demetria, Brian and Jason were all present.

Aaron announced they were going into an executive session at 6:30 pm and read the posted notice.

**EXECUTIVE SESSION:** Pursuant to 1 MRSA Section 405 (6)(E) Meeting with attorney, legal issues

The board came out of executive session and resumed the regular meeting at 7:20 pm.

Nick Storer was present to get his Findings of Facts and the board will sign that after the meeting and he can pick it up the next day.

**MINUTES:**

Demetria motioned and Jason seconded the motion to approve the minutes for August 2, 2023.

 Vote 5-0 In Favor

**OLD BUSINESS:**

The video of this meeting is terrible. Every couple of minutes it stalls and then comes back on I will do my best to cover the discussed material.

Aaron announced that Shawn Girard was there tonight and asked him to the podium along with his attorney Brad Morin.

Aaron said he had some questions things that were troubling him, one of which is the stormwater run-off, also the revised SWPP plan. Aaron continued with concerns of vegetative buffers, soil types not being noted, and the grades that are 1 ½ ft. higher than the parking lot.

Shawn said Stillwater is recommending adding rip rap to the banking’s.

Aaron said he is concerned with untreated water running off onto others’ property.

Shawn said Stillwater says that doesn’t leave the property.

Aaron said that’s not what the engineering report says, the engineering report says the water leaves the property they say it is because the abutting property is forested.

I also want to consider us requiring some monitoring and we have the authority to make that recommendation. I am concerned about the stuff that you accept does not have the potential of ruining other people’s wells; your business has the potential for this.

Shawn said that the DEP has said nothing about that. If I decide to start up CIA 2 then I will need a stormwater permit and we have no intentions to go full bore on a salvage yard, then we want to come back and get full stormwater permits.

Attorney Morin suggested that Aaron continue with his concerns, and they will discuss them afterward.

Aaron said he has concerns about the automobile graveyard and the possible crushing of cars. Currently the sweat plan says 8 vehicles there may be 12 there now but the whole application has the potential for much more than that; if you say you’re going to drop that today that will get rid one of my concerns but the potential in the future is my concern. I would be happy with the 8-car limit if you’re going to have a full-blown graveyard there, I have a lot more concerns.

Shawn said the only reason that automobile junkyard graveyard is there is because the town has done away with that.

Aaron said another concern is the visual impact to neighboring property I continue with wanting a resolution on fencing and trees; I also have concerns about you constantly adding fill on the back of the property, changing things, grading, arranging things on the site with no best management practices.

Shawn said I’m not using best managements practices I haven’t filled in anything there in the last three years.

 Aaron said you mean three weeks we were there two months ago there was fresh load there you were filling in the back with no silt fencing or hay bales. I am also concerned about fire safety; I do understand you are addressing those.

Aaron continued by saying I would like to make a motion to have a third-party engineer come out and look at this site and make recommendations on things we can do to protect the stormwater runoff on other people’s property; as a water professional I see how these things affect the neighborhood and we can’t have the potential of causing trouble to our water.

Demetria stated that she does agree with the State of Maine, we should be environmentally conscious of what we are putting into the ground and how it impacts our community.

Shawn said I have about 12 or 14 vehicles there if I want to go to a full blown junkyard I would have to go to the DEP and get a Stormwater permit there are people in town that have 4 cars in there yard and are mechanics and they don’t have to do a stormwater, you’re not worried about what’s in their dooryard; there are transmission shops and mechanic shops in town and they don’t have to do this.

Aaron said they do not have to get conditional use permits for the most part; and the scale of your project and we also don’t know that the materials you are bringing in the waste that has been damaged by fire.

Attorney Morin stated that we are here on renewal and if there is not a substantial change then I would argue there is no grounds to argue for change and what he had is adequate and appropriate under the ordinance.

until the stormwater plan was a condition of approval so that stormwater plan did not get produced until I think June or July of 2022 so the board never saw that, and we should have said you have said you have 60, 90, or 120 days to produce a document so we can look it over. We kept asking for it then after your two-year period had lapsed, then you produced the document.

Attorney Morin said the Appeals Board ruled on those four conditions.

Aaron said the 2020 permit was conditioned on the SWPP plan being provided, it was not provided, then in the process there was Mr. Farrand’s appeal, and it was remanded back from the Court to the Appeals Board to decide. The Appeals Board did decide that we needed to act on those four conditions and at that time we asked for the SWPP plan that was in the 2020 conditional use permit it was at this point he provided it two-years and several months later that the board got that document.

Attorney Morin said I know you do not agree with the Appeals Board decision but after it went up to the Board of Appeals it was approved at the appeals board level.

Aaron said your still missing that point we got to the point where we were missing that document we asked for some other documents and then we said we really don’t have enough information to move forward and at that point we sent a letter that we didn’t have enough information we are denying his permit and then he appealed it and then the Appeals Board said there is enough information, at that point in September, they said we think you have enough information.

Attorney Moring said yes and my point I think the town has to follow that decision, so unless there is something new you have to follow that decision.

Demetria said so as law you think we must be held to this or is it your opinion because you want it that we should be held to this. Demetria sked Attorney Morin, you said it must be held this way or you would like it to be held this way.

Attorney Morin answered, what I am saying is that everything that came before the planning board and the board of appeals that operation of law, was sufficient to make the ordinance a valid permit; now we are talking about the renewal and my position is that there is a valid permit, and the board cannot tear that up and start over.

Aaron asked the board’s attorney Zack Brandwein if he would go to the podium and discuss this question.

Attorney Brandwein said so if this is a license renewal and there are no changes and you were only able to consider what was previously before you and there are no conditions or changes in facts, but on a renewal application there is a reason why these come up for renewal so that the planning board can make a determination that the conditions are appropriately met in the moment at the time of renewal, you are allowed to hold a public hearing to hear additional evidence to determine if there are any change of facts. If you hear of any change of facts or issues that you call into question whether the applicant or the license is still in compliance with approval or the ordinance itself, then you are entitled to make a different decision, you have to have that public hearing process in order to have something to hang your hat on, to hear evidence, your entitled to go through that process.

Aaron stated we did have a public hearing; we did have a site walk on the property so some of these issues came up as a part of those actions.

Cheryl said technically he had the permit, what is the difference of having the whole kit and kaboodle in having a permit and a renewal do you go through all of that or just the changes?

You would though all of it lets take you have 16-conditions of approval in your conditional use section of your ordinance, let’s say there is no change for conditions one through five then you have to stand on what’s decided, one conditions six through ten you heard testimony or have seen evidence, you have seen things during the site walk that call into question the compliance with these conditions, then that’s a different issue and you have to make a factual decision.

Cheryl, so it’s facts not that’s it’s feelings, it’s whether the facts have changed.

Attorney Brandwein said, essentially yes. The license comes up for renewal because the drafters of the ordinance felt it was important that the applicant come back before the planning board and ensure the board that none of the facts on the ground have changed, the process also allows the board to do a site walk, to hear testimony from abutters, to hear testimony from people in the neighborhood. If questions or testimony calls the conditions in questions, then the board can go back and revisit the condition and make a determination based on what you have heard.

Demetria said some latest information or expertise that you may not know about, but things you may want to be a part of the application.

Attorney Brandwein said yes, and you must tie it in to a specific condition of the ordinance information about new evidence on that condition. The applicant must prove all the conditions of the application, and if there is nothing new then that condition will stand; if you hear new evidence you have to use that evidence either for or against the applicant. The applicant can produce new evidence that supports that he has provided evidence. If after all the evidence you have doubts that the evidence is still not sufficient you can give the applicant and opportunity to come back before you, you can say look I don’t think that this has been satisfied we want to give you a chance to come back and address these issues.

Brian said so the SWPP plan is dated July 2022, in our meeting June 7, 2023 we have testimony from an abutter that says in October of 2022 that a large parking area was constructed that was not part of the original plan and at our own site walk in June we saw that a significant area at the back of the property had fill added changing the slops does this not give us cause to reevaluate the stormwater plan that was developed before modification were made to the property.

Cheryl asked if he had the July 2023 update and Brian said yes, I do.

Aaron said I feel it is absolutely our right and responsibility to do so and I am hoping that’s what you’re going to say.

Attorney Brandwein said if an applicant has come before you on a renewal and they have submitted to you information that was previously heard and nothing on the ground has changed then there are no facts there that say any changes but then the applicant comes before you and there are changes, the site is different, then the applicant has exceeded the license then the information may not be sufficient that is for you all to decide.

 Brian said I would like to address the engineering report we have evidence that contradicts the fact that there is evidence is no surface water bodies, yet on the site walk I asked a representative of the applicant who was there about surface water bodies and they indicated there was a stream.

Shawn said something while sitting from the audience.

Brain said, so at our site walk, he repeated, I asked your representative about surface water bodies near the property and was told as your facing the property on the left was a stream.

Shawn again could not be heard.

Brian said, not on the property but nearby the property. And to Aarons point I wonder about surface water running off the property onto other properties, that to me says we should reevaluate the condition.

Cheryl said but the July 12, 2023, report from Stillwater says there are no problems, she went on to read some of the report.

Brian said that is my point, information that was given to us during the site walk contradicts the engineers report. I would like to go back to Aaron’s original point to have a separate engineer evaluate this given the changes to the slope and taking into consideration nearby surface water bodies.

Aaron said so in our ordinance we can ask that the applicant bear this cost by asking an expert in this field to come out and give us an opinion.

Shawn spoke again.

Aaron said yes, your expert we are asking for a, he was interrupted and continued talking to Shawn we have the authority to ask for that and we have the authority to have you pay for that and if this board decides it then I guess we are at a stalemate. Aaron continued saying he wants to ask Zack a question. There is a thing in town that every conditional use has to be the same, am I wrong in assuming that every conditional use is something different and they don’t have to be carbon copies of the next.

Attorney Brandwein said each application that comes before you have to be considered by its own merits and no two applications will ever be the same.

Attorney Morin said that he and Attorney Brandwein are talking about the same things, changes, I think that is where the focus is, with regards to hiring a third part engineer, I would suggest a very specific questions that we can al least send to Stillwater, can we address that before we have to take such an expensive step. If there are sufficient deficiencies or questions to be asked if you just email them to us, we will get them over to the guys at Stillwater and get some answers.

Shawn said there’s no reason why Stillwater can’t do this stuff other than the board doesn’t like his answers.

Brian said I want to make it perfectly clear I’m not exactly disagreeing with you he says there are no surface water bodies on the property, and I agree with him, my concern is the nearby water bodies, there is a stream not on your property but nearby that is not on your property, close to your property.

Shawn said what is on someone else’s property is not my concern.

Brian said my concern is that your stormwater plan was created before there were modifications to your property, my concerns would not be a problem if I knew Stillwater had factored those things into it.

Shawn said that he comes every 15th of each month and looks things over, he continued by going over where the dirt at the back of the property came from and stated they have an intention of filling it in back there and DEP has no problem with it.

Aaron stated that any change in your Stillwater plan says any changes in your plan, any change in grading needs to be approved and any changes becomes a modification of the plan.

Demetria said that any changes to your property you must be mindful of your abutters, so what we want to know is what is going to be in store for your abutters if you are not mindful of abutters.

Aaron said another concern is that they did not consider the soil types at all or the shallowness of bedrock.

Shawn stated he has all that information.

Aaron said I haven’t seen any of that.

Aaron continued I would like to make a motion based upon number six, will not result in a significant flood hazards or flood damage, drainage problems, ground or surface water contamination, or soil erosion, and condition number 13, makes adequate provisions to handle storm water run-off and other drainage problems on the site; that we hire a third party engineer, soil scientist or an outside expert to advise the board on guidance on conditions that we might add to protect the groundwater or surface water that may be going off the site. Demetria seconded the motion.

Brian said my concern is with the limited scope of the work from Stillwater, I think that properties out from

his property should be evaluated given the slope on the property I wouldn’t be opposed to having Stillwater.

come and address these concerns about stormwater and types of soil,

Demetria asked in this type of evaluation would there be parameters where you have a package where you could ask additional questions.

There was a brief discussion on is there more information given Shawn from Stillwater.

Shawn said you get what I get, he continued with a discussion and comparison between his Route 5 CIA Salvage and this conditional use and the fact that a board member has a family member that abuts this property.

Aaron stated yes, his uncle is an abutter, I don’t have any financial interest in this, I would protect anybody’s property that abuts any conditional use.

Shawn continued with accusations, saying that this is being treated different than his CIA Salvage on Route 5.

Aaron pointed out there are differences between the two this property is on an exceedingly small lot, it is shallow to bedrock,

Shawn continued to argue.

Aaron said, “Well maybe we do need another opinion, maybe Stillwater is one hundred percent correct there is no chance ever of contamination, give him the permit.

Attorney Morin said the board needs to be more specific in what they are asking, that is why I suggested that a list of questions be sent to Stillwater to answer, some specific criteria for them to answer.

Aaron said you know I do not understand why Dollar General and Duncan Donuts needs to have retention ponds to make sure that their water is clean before it leaves their property and yet here it says it’s Ok because the neighbor has trees, this just does not sit well with me.

Shawn said when I get to that point, I will have to do it.

Demetria said Shawn you are operating a business, even if we are playing if and when’s Duncan Donuts, Dollar General they do not have a junkyard or auto graveyard.

The discussion continued about when and if for some time.

Aaron said let’s go back Shawn you remember when I asked you Shawn tell us what you want to do here, are you going to have 50 cars, 75 cars, that’s the point here you won’t say I am going to have no more than 10 cars I just want to bring in this wood because I like t build buildings, with recycled lumber and I have a few other things that I want to be able to store. If that is what you say to us it makes our job easier because we can say OK, there is not much contamination there. But, if you say yes, I want to have an automobile salvage yard, yes, I want to do crushing there, no I will not tell you how many cars I am going to have.

Shawn said, if I say today, I only want 30 cars there today, I am not selling them they are personal cars, I want to keep my junkyard license, and if I have a full-blown junkyard then I will come back to the board is that what you’re looking for. I do not want to give up my rights for having a junkyard because if I sell over there on Route 5, I want to continue over there and I want to have more than 4 cars.

Demetria asked when we were on the site walk Kelley said the reason those containers were there was because they were for sale.

Shawn said no he traded for lumber, the trailers that are there are all registered and they have all my own stuff in them. If the board wants me to have thirty cars and I don’t have to give up my junkyard license, then I’m OK with that.

Aaron said, Shawn this is the first time we have ever had this conversation where you said what you were going to do.

Shawn but I don’t believe that the ordinance should be that way.

Aaron said but it is, and the voters voted it that way so here we are.

Aaron said, Shawn, I told you months, no years ago, that if what you wanted was what is there that we could make it work but us not knowing what the potential is makes it very hard and agonizing. So, I would like to make a motion to have Stillwater come here and discuss these things with us, I would like to see where they see the water going, obviously it’s going off the site, it’s not going through a vegetative area on your property the plan says it is going to a wooded area off site. I have concerns about the soil types. Grading questions how can you grade that to make sure it stays on your property?

Brian said I would like to tie this into something that is measurable it does state in the stormwater plan that this plan would have to be updated within 30-days if a change in operation or maintenance if there is a change in potential discharge of pollutants. I think we can agree with testimony from an abutter that changes have been made to the property that does impact the flow of surface water and stormwater and we believe this plan needs to be updated.

Shawn asked what changes to the plan.

Brian said the fill out back and the additional parking to the left of the driveway that was not part of the original plan that is what is stated from our meeting minutes in June.

Aaron said there have certainly been things done since the original permit, there have been lots of things done.

Shawn said why I don’t do this you guys get your questions together and I will send them to Stillwater, or you can send them and then we will get them to do what they want to do and ask him here and he will be able to answer those questions. Shawn continued after Aaron again went through some of the questions the board had been asking about and he again said that the board is only doing this to him.

Demetria said they are being mindful of the community and the potential impact for the surrounding community it’s not only for you, it is because the voters have said for us to be mindful of the community.

Shawn continues to say that CIA is the only one that is being singled out not the other businesses, this conversation is ongoing with no new information and rehashes the old dialogue.

Jason said changing the subject, I have a question about what the board should do with the violations that were in the notice and the violations noted by the DEP.

Aaron asked Shawn, would you be willing to put down on paper what you specifically want to store on the property for the next two years or the duration of this permit, what you intend to store on this property.

Shawn said I can put that on paper.

Aaron said, something like I intend to store used building materials, a few antique vehicles, I intend to not have more than a certain number of cars,

Shawn said I can do that, now we have to have some questions for Stillwater.

Aaron said I went by yesterday and you were constructing a fence and I thought it looked much better, I think you’re making progress.

Brian said in the interest in time can we deal with the pending motion and then vote on what we have agreed to after that.

Aaron said yes, I withdrawn my motion and Demetria withdrew her second.

Brian motioned and Cheryl seconded the motion that we pull together a list of questions to provide to Stillwater and that we set a date and ask them if they will attend a meeting so we can ask questions and that Stillwater updates the plan.

Aaron said we should all write down some questions and I don’t want to do this through email I don’t want people to say we are having a meeting through email. If you have questions (directed to the board) that you want me to add to the list email them to me and they decided to submit them to the secretary and then they will have them sent to Shawn.

Aaron said all those in favor of the motion. Vote all in favor of the motion.

Aaron addressed Attorney Brandwein and said the board appreciated him coming and that it gave them a lot of useful information and we were all on the same page. We also may ask you to look at our conditions and how we can strengthen them.

Aaron asked the code officer if he had questions; Aaron Merrill Farrand to give a brief statement as the public hearing had already been scheduled.

Merrill stated that his greatest concern is still that the 2020 permit has multiple violations with few of those improving and at the same time more serious violations are occurring.

Aaron said it is their job to make conditions that the code officer can uphold, and this is the first time he has seen a list from Stan and went over a few things that Zack had told him that would speed up the permit process.

**ANNOUNCEMENT:**

The next meeting will be on the 6th of September and at that meeting it will be decided about having a meeting on the 20th.

**ADJOURNMENT:**

Aaron motioned and Cheryl seconded the motion to adjourn the meeting at 9:14 pm.

 Vote 5-0 In Favor.

Respectfully submitted:

Joanne Andrews

Planning Board Secretary.