

Zoning Board of Appeals  
October 15th, 2018  
Casco Community Center

Members Present: Geof Hancock, Steve Linne & Trevor Tidd  
Members Absent: Terri Linnell & Pat Troy  
Staff Present: Alex Sirois, CEO & Sandy Fredricks, ZBA  
Administrative Assistant  
Public Present: See Attached.

Trevor calls the meeting of the Zoning Board of Appeals to order at 7:00 P.M.

Trevor reads the required information into the record and for those present as follows:

1. Please recognize all statements through the Chair.
2. Please introduce yourself before speaking.
3. This meeting is conducted in two parts, the Evidentiary wherein the applicant is heard and answers questions from the Board and the public may speak. The second part of the meeting is Deliberations wherein the Board discusses their views and then takes the vote.
4. Applicant may stay for the Decision but cannot in any way participate in this part of the meeting unless directly asked a question by the Board.
5. Applicant will receive a written Decision within 7 days of this meeting and has 45 days to appeal to Superior Court.
6. If approved, the applicant will receive a Certificate of Zoning Variance Approval with the Notice of Decision and has 90 days to record it in the Registry of Deeds. If you do not record it within the 90-day limit, the Decision is automatically void and you cannot appeal for one (1) year.
7. A permit secured by vote of the Zoning Board of Appeals under the provisions of this Ordinance shall expire if the work or change involved is not commenced within one (1) year of the date on which the appeal is granted, and if the work or change is not substantially completed within eighteen (18) months of the date on which such appeal is granted.

Trevor states we have Minutes of September 17th, 2018 to be approved.

Geof moves to approve the Minutes as written.  
Steve seconds.  
Any discussion? None.  
All in favor? 3 yes - 0 no - 0 abstain.

Trevor states the first item on the Agenda is an Administrative Appeal filed by Colleen Demirs, Trustee of Lake Shore Realty Trust regarding the issuance of a Permit to Mark Tomasino to allow cutting/removal of trees in the

shoreland zone. The Tomasino property is known as Map 23, Lot 17, commonly known as 9 Kane Holmes Lane. The permit issued by the CEO for cutting/removal of trees is on neighboring property known as Map 23, Lot 16 commonly known as 12 Kane Holmes Lane. Both parcels are located in an LRR Zone.

Trevor states the Board first has to determine if it has jurisdiction over the matter.

Geof states the issue is a Right-of-Way and underground ownership. Trevor states he believes the Board has jurisdiction; Steve agrees.

Trevor moves that the Board has jurisdiction to hear the appeal. Steve seconds.

Any discussion? None.

All in favor? 3 yes - 0 no- 0 abstain

#### EVIDENTIARY

David Goldman, Esq., attorney for Lake Shore Realty Trust and Demirs introduces himself to the Board and recaps that at the previous meeting the Board determined not to hear the appeal. This meeting is for reconsideration of the permit issued to Tomasinos to cut trees on the Demirs property. He goes on to state he understands the permit could easily be amended and everyone agrees the trees are on the Demirs property. He further states there is a 12' Right-of-way running down the property lines with 6' on each side but it encroaches about 1-1/2" or so which is relatively small from their perspective. They feel there is no reason Tomasinos should have been granted a permit. Additionally, a Right-of-way for all purposes doesn't mean they can automatically do what they want. David continues that the Demirs have been there many years and trees have been there long before either party was there.

Continuing, David states they are not clear how the trees can be impeding the Tomasinos access. The renovation of the Tomasino property has already removed several trees which acted as a visual screening to the Demirs's property; there is no proof of how the trees impeded their way. He further states the trees are substantially on the Demirs's property not in the Right-of-way and that means trespassing on the Demirs's property.

Steve states in looking at the Deeds it was joint tenancy not tenants in common. Does that, in your opinion, mean it is jointly owned or has it given the Right-of-way 6' to each. David replies it is 6' to each property, they don't have unlimited right to utilize it, only the right for what it was granted for which is access.

Trevor states the permit stated there was a diseased tree which could be a hazard or safety issue. David states that someone who is qualified should address that issue.

Geof states that Demirs and Tomasino have Right-of-way in common and they both have rights to maintain it as a road. David states, yes, it is maintained for access, but you can't do whatever you want with it. He states the person who owns the property has the right to use it for any purpose you would use property in ownership; people have been accessing over that Right-of-way for generations.

Chris Neagle, Esq., states he is the attorney for Mark and Valerie Tomasino. He begins by stating he tried to send a Memo last Friday, however, it never reached the Planning Inbox. He then hands out copies of his Memo and gives the Board his background. He states he listened to the September 17<sup>th</sup> meeting and proceeds to tell the Board various information on Appeal procedures. Chris states the appeal should be denied because the address on the permit is not incorrect; Mark Tomasino owns 9 Kane Holmes Lane with mutual 6' easements on the boundaries with Lake Shore Realty Trust. The permit is perfectly fine because it is owned by Tomasinos; the permit was fine as written. He continues that the CEO doesn't want to amend the permit and he doesn't have to.

Chris next refers the Board to the survey provided and states you can see the heavy line down the middle of the property line. You can see the trees, including trunks for the most part are all on to the easement.

Trevor states some parts of the trees are in the easement. Steve states a 20" tree with 6" in the easement leaves 14" of tree not in the easement. Chris states Tomasinos have the right to clean out their access.

Steve asks Chris how he defines joint tenancy. Chris states it's when two people own it and one dies, it becomes the other owner's property. Chris states there is no common ownership. Steve states each owns to the property line.

Chris states the easement is to use someone's land for a specific purpose. Demirs owns the property but Tomasinos have the right to use it for access/roadway. He continues that despite what Mr. Goldman says about no impediment, if there is a tree halfway in the Right-of-way, it's only 12' wide and that is an impediment. He states that during the reconstruction of the property by Tomasino he has right to cut those trees, legally.

Chris states we are here to determine if the address on the permit is wrong. He continues the Code Enforcement Officer did nothing wrong and the address is correct. The trees are about 110'-120' from the water and have no impact on the Demirs' property. He further states the piece of land the Demirs' own is nowhere near Tomasino's home and it has a leach field in it; his house is nowhere near the trees and they have no impact on his view of anything. Chris states that the Demirs rent their

property most of the time. He states you can deny the appeal because the address is proper; it doesn't need to have another address on it. He further states that there are a bunch of other issues that are procedural and will not get into those. The issue they filed their appeal on is the wrong address on the permit and it is not.

Chris further states that you cannot reconsider your decision because you never made a decision; someone made a motion to hear it and that didn't pass; you never voted on anything; there's nothing to reconsider. He further states the Board should just use some common sense; the trees are located on the easement of 9 Kane Holmes Lane and that's what is on the permit; it is fine as it is.

Alex asks if someone made a motion to reconsider.

Steve moves to reconsider the Board's Decision of September 17<sup>th</sup>, 2018 for the Administrative Appeal filed by Lake Shore Realty Trust.

Geof seconds.

Any discussion? None.

All in favor? 3 yes - 0 no - 0 abstain

Alex states our Ordinance requires a 12' wide driveway for access to one or two dwellings. He continues that he checks that before issuing a Building Permit and from what the surveyor showed was that the driveway was not lined up with the 12' width. Additionally, Alex states that there is a replanting plan, erosion control and realignment of the driveway in connection with the Tomasino permit for reconstruction.

Trevor inquires if there is another property access through this Right-of-way. Alex states there is a third property there. He continues that relocating the improved gravel 12' wide driveway is within the easement. He continues there is one tree of the trees in question that is in the field extension of the septic system and the root system could be causing some issues. Trevor asks for clarification that the tree roots are going to the septic of the new house. Alex states that is incorrect, it is the existing Demirs property.

Alex continues that, as you may know, the Board of Selectmen have changed the rules for winter maintenance and we are getting a lot of tree cutting in the right-of-way applications. He further states he had intended to have both addresses and tax id numbers on the Permit, but that wasn't how it happened. Steve asks Alex how he handles tree cutting that isn't totally in the right-of-way. Alex states you can't cut half of a tree.

Trevor asks how Alex determines the 12' gravel driveway. Alex states he measures the gravel way. He continues that Tomasino needs a 12' wide driveway for a Certificate of Occupancy. He continues to explain if someone is down in an area they have to

have their driveway upgraded to 12'. Trevor asks if it is grandfathered, can it be less than 12'. Alex states not if it's a new structure.

Trevor asks Tim Demirs why the trees are so important to him. Tim states they bought in 1997 and used that gravel driveway since; there were trees on both sides; never cut the trees. He states he likes to preserve the trees and to preserve the lake. Tim shows the Board photos of the property before Tomasino began reconstruction and current photos. The Board and Tim discuss the trees and photos. Tim states the easement states they have the right to travel over each other's land to gain access to their properties. He continues that it is a shame what's happened over there; he doesn't know how you go from 6 trees and clear cut to like this.

Steve asks Alex if he issued a permit to cut the trees on Tomasino's lot. Alex states he did, because there was a prior dwelling and they are relocating it further from the water. Alex looks at the pictures with the Board. Steve states they didn't meet the point system. Alex states if you are replacing a non-conforming structure, you don't have to meet the point system. He continues that they have submitted a replanting plan.

Trevor asks if Mark can answer some questions. He states the trees are very important to your neighbor; why is it so important to you to remove the trees. Mark states one of the trees has a hole in it and if it falls, it will fall on his house. Mark states they have plans to replant on the property. Trevor inquires if that is the first one in the easement. Mark states he is not sure if this was the one or not.

Chris states he would like to address a couple points of order; if you are going to file an appeal, you have to tell what you are appealing and the only thing being appealed is the address on the permit; they didn't appeal the building permit for the structure or cutting those trees; they didn't appeal on issue of Tomasino not having right to cut the trees. He continues that as for moving the roadway further onto the Tomasino property, they can't use it because of only being 6' over Tomasinos property and he respectfully disagrees with Alex that he needs to put 12 Kane Holmes Lane on the permit although he is impressed with Alex. He goes on that this is just an appeal on an address and the Demirs want to discuss issues that weren't on the Appeal.

David reads the following from the application: "Appeal of permit granted to Mark Tomasino, owner of Lot 17 on Map 23 (9 Kane Holmes Lane) to remove trees located on neighboring Lot 16 on Map 23 (12 Kane Holmes Lane), not on Tomasino property." He continues, it is not about an address, it's about the cutting of the trees not on the permit holder's property. He states regarding the issue about whether the ordinance requires 12'

width, it does currently, but this pre-dates the ordinance; certainly as to the Demirs' property, it is grandfathered; it has been this way since about the 1950s. He further states that the trees were not put in place to impede the right-of-way. Continuing, he states, the Tomasino's new structure creates issue as to the 12' width being applicable and is certainly not a problem to be resolved by forcing the Demirs trees to come down.

Chris states the question is, does Tomasino have the right to cut the trees; clearly, he does; Maine law states he does. He continues that the issue was raised whether they were there for a long time could they be cut; Court ruled they have the right to cut them. David states the case Chris referred to is that a right-of-way was abandoned. You can take position that he does have the right to cut it down if the Judge states it.

Trevor ask the Board if they are ready to close Evidentiary.

Geof moves to close Evidentiary.

Steve seconds.

All in favor? 3 yes - 0 no - 0 abstain

Trevor opens Deliberations.

### DELIBERATIONS

Geof states everything that's laid out here, easement is here for him, the line is the line; he feels that he has the right to cut the trees, at least the ordinance says he does.

Steve states he has heartburn with it. He continues, first, the easement, it is his position that the easement is entirely his, it is 50-50 to each property. The trees are not fully in the easement, so I think you are treading on the other person's rights. Geof states we can't determine ownership, so if he has the right to maintain it, he can do it. Steve states they can't unilaterally do it; that's why road associations work together.

Trevor states the idea of cutting a tree that is partially on someone else's property is difficult. If the trees are planted on the line, that's why they plant on the property line.

Geof asks Alex if it is partially in a right-of-way, how do you deal with it. Alex states if it is partially in the right-of-way, if it's a bad tree, it should be cut. Steve asks when that happens do both parties agree. Alex states yes, usually.

Geof states he feels that this is at either end of being beyond the Board. Steve states that as far as the address, he doesn't think we should issue permits to cut trees on another property address. Geof asks what if it is on the right-of-way. Steve

states everyone grants the same easement. He continues, basically the permit was issued to cut on someone else's property.

Trevor states this is probably going to go on beyond us. If we grant this and the trees are cut, this can't be heard by the next level and he is more inclined that the trees should remain in place.

Steve moves findings of fact as follows:

1. We heard from both sides what it comes down to is was the permit issued properly with the Demirs' property as the address on the permit to cut 3 trees that aren't fully in the right-of-way, but partially in the right-of-way.
2. We have established that there is a 12' wide easement in the Deeds of both parties and both parties agree to that.
3. The trees are partially on the Demirs property.

Steve moves to approve the Administrative Appeal filed by the Demirs to stay the permit to allow the trees to be cut by the Tomasinos on the Demirs side of the easement.

Trevor seconds.

Any discussion? Yes.

Geof has a question; if this doesn't go through does this change the overall, because it would not necessarily be 12' wide, does it change anything on the rest of the building permit or keep them from moving forward with the new construction. Alex states it could but it's up to them they can put a 12' wide driveway in there. Steve asks if they could come back to ZBA or Planning Board to get a variance. Alex states the Board can't grant a variance because it isn't a dimensional standard, it's more of a performance standard. Geof states so if we keep them from improving the right-of-way which is kind of part and parcel with the new construction, are we hindering their ability to do the new construction. Steve states he thinks temporarily, they can establish a 12' driveway and let this continue on how it's going to continue on and if one side wins, they can move the driveway. Alex states one of the things you will hear is that the new house is substantially larger than the old house so bigger house, bigger fire so we need more firetrucks in there, hence the reason for requiring 12'.

All in favor of the motion? 3 yes - 0 no - 0 abstain

Trevor states the next item on the agenda is Colleen Demirs, Trustee of Lake Shore Realty Trust has filed an application for an Administrative Appeal regarding email from Alex Sirois, Code Enforcement Officer of the Town of Casco dated August 1, 2018. The email is in regard to property in a Shoreland Zone (LRR District).

Trevor asks if the Board has jurisdiction. He states we don't have jurisdiction over an email, it's not for issuance of any permits and per meeting with the attorney, it was advisory.

Steve states there was nothing issued by the Code Enforcement Officer and therefore we don't have jurisdiction. Steve further states it should have been appealed when the original building permit was issued.

Geof states he doesn't feel the Board has jurisdiction.

Tim Demirs states he came up last Fall and noticed the grades were raised; called CEO and didn't hear for a month; called again in June and he promised he would go. Tim continued that he is having a problem with runoff onto his property and underground electric was put in and they wrote the email to get a reply.

David states the appeal is of the CEO's actions. He was asked to take action and he didn't. Alex states he didn't agree with what the issue is. It is not to the point where I would issue a Notice of Violation and he never received a Complaint Form.

Steve states from a jurisdiction standpoint, you have more of an issue with his boss than the Board. There is no ordinance issue for us to act on.

Tim states he does have an ordinance issue by not addressing those Shoreland issues. The Board again informs him to go through the Town Manager. Steve states if you feel he has violated the Shoreland Zoning, contact DEP.

Chris states he appreciates what the Board has done and suggests that the issues were all part of the original Building Permit issued quite some time ago which was not appealed. Your CEO found no issues and no need to issue a Notice of Violation. Tomasinos have not touched the Demirs property.

Alex states he has a pretty serious issue with this email; there wasn't even a complaint in the email; he asked questions which I answered. (See attached).

Steve moves this Board does not have jurisdiction.

Geof seconds.

All in favor? 3 yes – 0 no -0 abstain

Geof moves to adjourn.

Steve seconds.

All in favor? 3 yes – 0 no – 0 abstain.