

**Board of Appeals Meeting
July 20, 2015 – 7:00 PM
Town Office Conference Room**

MINUTES

CALL TO ORDER

Chairman Richard Carlson called the meeting to order at 7:00 pm with members Mark Hyland, and Gerard Bowes present. Member Erland Torrey is absent with notification.

Public Attendance: Code Enforcement Officer Nick Adams, Recording Secretary Alex Sirois, Elizabeth Boepple, Barry and Karyn Kurland, Andy Hyland, and Jason Jandreau.

BOARD REORGANIZATION

Mark Hyland and the rest of the board thank Joseph Radziszewski for his many years of service. Positions to be filled are chair, vice chair, and secretary. Chairman Richard Carlson has served as chair for two years, and due to the town charter he is not eligible for a third year.

- Member Gerard Bowes nominates Member Mark Hyland for the position of chairman, seconded by Chairman Richard Carlson. No discussion.
Vote: YES – 3 NO – 0
- Member Richard Carlson nominates Member Gerard Bowes for the position of Vice Chairman, seconded by Chairman Mark Hyland. No discussion.
Vote: YES – 3 NO – 0
- Chairman Mark Hyland nominates Member Richard Carlson for the position of secretary, seconded by Vice Chairman Gerard Bowes. No discussion.
Vote: YES – 3 NO – 0

MINUTES

May 4, 2015

- Member Richard Carlson makes a motion to approve the minutes for May 4, 2015 as presented, seconded by Vice Chairman Gerard Bowes. No discussion.
Vote: YES – 3 NO – 0

COMMUNICATIONS

Copy of Decision Letter to Poland Country Estates
Communication from Natalie Burns

OLD BUSINESS

None

NEW BUSINESS

Barry & Karyn Kurland, Administrative Appeal – Map 24, Lot 2

- Appellants Barry and Karyn Kurland, and Code Enforcement Officer Nick Adams are present.
- **Standing:** Vice Chairman Gerard Bowes makes a motion that the appellants have standing, seconded by Member Richard Carlson. No discussion.
Vote: YES – 3 NO – 0

- **Jurisdiction:** Vice Chairman Gerard Bowes makes a motion that the Zoning Board of Appeals has jurisdiction to hear the appeal due to section 304.2 of the Comprehensive Land Use Code (CLUC), seconded by Member Richard Carlson. No discussion.

Vote: YES – 3 NO – 0

- **Chairman Mark Hyland** notes that while the representative for the Kurland's and himself share a last name they are not related, and there is no conflict of interest.
- **Appellant:** Andy Hyland of Port City Architecture is representing Barry and Karyn Kurland. He reminds the board that they were before them in 2013 seeking a variance to the zone's height requirements. Since then the Kurland's have spent a significant amount of time and money improving the property which includes a \$50,000 drainage plan to improve the quality of the lake.
- A screen porch has existed on the property in the same location roughly seventeen feet (17') from the water since the 1960's. During the renovation project the Kurland's asked their contractor, Jason Jandreau, to contact Poland's Code Enforcement Office to inquire about rebuilding the structure. Mr. Jandreau discussed the project in length with Code Enforcement Officer Nick Adams, and it was his belief that he did not need a permit for what the Kurland's were trying to achieve. There was a significant amount of rot in the timbers and roof section, and the work being done by Mr. Jandreau would be considered repair and maintenance. He completed the work, and then following a complaint to the Code Enforcement Office he was asked to complete an after the fact building permit application, which was denied.
 - Chairman Mark Hyland does not believe destroying and replacing an entire structure could be considered repair and maintenance.
- According to the comprehensive land use code (CLUC) in the town of Poland, non conforming structures are allowed to be repaired and maintained as long as the non conformity is not increased. The Code Enforcement Officer's argument states that according to section 504.3c of the CLUC, once a structure is damaged by more than fifty percent (50%) of the structures fair market value it must be moved to the greatest practical extent from the water.
 - The Appellants maintain that this section of the ordinance does not apply to repair and maintain.
 - The Appellants hired a real estate professional to look at the structure and their valuation was \$35,000. This number is for the structure only, not the land. Mr. Hyland explains how the structures location on a lot can significantly increase or decrease its fair market value, without including the value of the land in the number.
 - Elizabeth Boepple, legal counsel for the Kurlands, reminds the board that there is a slab supporting the structure, so it is essentially two elements: a floor system and a roof system.
 - The roof system was changed from a shed roof to a gable roof. Mr. Jandreau believes the volume of the structure did not increase even though the roof style changed. The floor was not replaced. The height of the structure has not changed, even though the roof pitch has increased.
 - Chairman Mark Hyland briefly explains why the ordinance has the fifty percent (50%) of replacement restriction. The intent would be to limit the life of non conforming structures, instead of allowing them to be continually rebuilt over time. Once a structure falls into disrepair it would need to either be demolished or moved to a more conforming location.
 - CEO Nick Adams believes that the roof and supports make up more than fifty percent (50%) of the structure.
- **Code Enforcement Officer:** CEO Nick Adams did speak with Mr. Jandreau prior to the start of the project, and informed him regular repair and maintenance would be allowed. He also believes that he did mention any further construction would likely require them to move the structure to the greatest practical extent from the water.

- Barry Kurland asks Code Enforcement Officer Nick Adams if he told Mr. Jandreau to get a permit for the structure before the project had started, and he did not. A permit to do any repair or maintenance to the structure would not be required as long as they did not go over fifty percent (50%) of the fair market value.
- The assessed value of the structure is \$6,200, with the quality being at sixty-six percent (66%). It is Mr. Adams opinion that this particular case is not repair or maintenance it is reconstruction.
 - Mr. Hyland interjects that the project was only estimated to cost \$4,400 which would put them below fifty percent (50%) of the assessor's valuation.
 - Vice Chairman Gerard Bowes is curious if anyone has ever done a phosphorus study on this parcel.
 - CEO Nick Adams informs him that a study was done when the Kurlands went before the Board of Appeals with plans for the remodel to the existing dwelling.
 - Raymond Potter of 33 Rockwood Lane asks Mr. Adams if they put the structure on wheels and moved it away from the water in the winter would that solve the problem, and it would not because it would still be considered a structure that needs to meet the setback requirements.
 - Karyn Kurland asks Mr. Adams if the CLUC clearly defines fair market value. It is defined as the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- **Public Statement:** Raymond Potter, abutter to the Kurland's has lived at the property next door for forty-seven (47) years. He confirms that the previous owner let the structure fall into its poor state over time.
- **Vice Chairman Gerard Bowes makes a motion to close the public hearing portion of the meeting at 8:29 pm, seconded by Member Richard Carlson.** No discussion.
 Vote: YES – 3 NO – 0
- **Board Deliberation:** It is the board's opinion that Mr. Adams has indeed acted correctly in this situation and that more than fifty percent (50%) of the structure was removed and replaced. The Planning Board will need to determine the greatest practical extent that the structure will need to be moved.
 - Member Richard Carlson asks the rest of the board if they will use the assessed value as the fair market value.
 - Chairman Mark Hyland believes that while assessed value and fair market value is in most cases very different, they have no information from the assessor stating what the fair market value would be so they should use the assessed value.
- **Member Richard Carlson makes a motion to approve the administrative appeal of Barry and Karyn Kurland, seconded by Member Gerard Bowes.** No discussion.
 Vote: YES – 0 NO – 3 **APPEAL IS DENIED**
- **Findings of Fact:**
 - The appellants and owners of the property are Barry and Karyn Kurland.
 - The property is located at 53 Rockwood Lane Poland, Maine. It is identified as Assessor's Map #24, Lot #2, and contains 1.82 acres.
 - The appellants have demonstrated standing as the owners of the property by the presentation of a warranty deed.
 - An application for an administrative appeal was dated June 26, 2015, and public hearing was held on July 20, 2015.
 - Relevant sections of the ordinance are:
 - **Ch. 5, § 504.2.B. Repair and Maintenance**
 - **Ch. 5, § 504.3.C. Reconstruction or Replacement**
 - **Chapter 14 Definitions**

- **Repair:** To take necessary action to fix normal damage or storm damage.
- **Market Value:** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- A permit was applied for, and then denied by the Code Enforcement Officer on May 20, 2015. A notice of violation/stop work order was then issued by the Code Enforcement Officer on May 21, 2015.
- A contractor demolished the roof and four (4) walls of an existing twelve foot (12') by sixteen foot (16') screen patio approximately seventeen feet (17') from the normal high water line. The floor system was preserved. This was confirmed by both the appellants and the Code Enforcement Officer.
- The structure was reconstructed on the existing floor, to include a new roof style, and size.
- The Board has determined that more than fifty percent (50%) of the structure was removed and replaced.
- **Conclusion:** In conclusion, the Board of Appeals has decided that the appellant did not repair and maintain the existing structure; instead they replaced it with a new structure. The change in the roof has increased the structures non-conformity. The Board agrees with the Code Enforcement Officer, that more than fifty percent (50%) of the structure from a fair market value standpoint was destroyed and replaced. This decision is based upon the fact that the roof and walls were removed, leaving only the floor.
- **Decision:** Based on the above findings of fact and conclusions, the Town of Poland Board of Appeals voted to deny the application for an administrative appeal. This decision can be appealed in the Superior Court within 45 days.
- **Vice Chairman Gerard Bowes makes a motion to accept the written finding of facts for an administrative appeal by Barry and Karyn Kurland, seconded by Member Richard Carlson. No discussion.**

Vote: YES – 3 NO – 0

OTHER BUSINESS

None

ADJOURNMENT

Member Richard Carlson makes a motion to adjourn at 9:00 pm, seconded by Vice Chairman Gerard Bowes. No discussion.

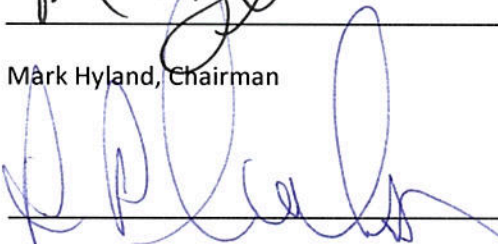
Vote: YES – 3 NO – 0

Recorded by Alex Sirois

Approved on:



Mark Hyland, Chairman



Richard Carlson, Member



Gerard Bowes, Vice Chairman

A B S E N T



Erland Torrey, Member