



Selectmen Meeting 7/26/2016

Approved Minutes

Present: Selectmen Bernie O’Grady, Charlie Moser and Louise Lavoie; Kathy Wile, members of the public.

Called to Order: Meeting called to order at 7:35 PM by Louise Lavoie.

Approvals:

- It was noted that the accounts payable and payroll manifests were signed.
- Minutes of the July 12, 2016 meeting were reviewed, Charlie moved to approve the minutes as written, seconded by Bernie. 3 votes to approve as written.

New Business:

- Health Trust COBRA Administrative Services Agreement had been returned due to inconsistency in signatures. Louise asked when it was needed back to HealthTrust – Kathy replied as soon as they can have it. The actual agreement had been left at the Town Office, so it was suggested that it be amended by having Bernie sign the page that had been differently signed, on behalf of the BOS.
- There was an application for a Veteran’s Credit to be signed. Selectmen had not been clear as to whether more than one exemption was being applied for. It was explained the applicant had been contacted and made it clear only the veteran credit was being asked for. As that application was also at the Town Office, and not time sensitive, it will be signed at the next meeting. Recess was taken at 7:38, and Charlie went to get the folder. Meeting resumed at 7:45.
- Bernie re-signed the COBRA agreement as discussed. Veteran’s Credit application was signed by all selectmen.
- It was noted that there were 11 minutes until the hearing could begin, so a recess was called at 7:49 until the 8:00 hearing.

The meeting was called back to order at 8:00 by Louise. On the agenda is a request for a rehearing of the vote taken at Special Town Meeting on June 7, 2016. The BOS received the application on June 28, 2016 for an appeal based on RSA 677:2. Under RSA 677:3, the BOS can either deny the appeal, or grant a rehearing. If denied, the applicants are entitled to file an appeal of that decision within 30 to NH Superior Court to hear the case. If granted, the amendment process begins again at the Planning Board.

The Selectmen will hear tonight only from a representative for the appealing parties, who can speak solely on specifics contained in the application. Written comments submitted by the public were placed on file.

Attorney Pete Nicosia introduced himself as representing the applicants. He will have a written hearing memorandum to summarize his comments. He continued by saying the applicants are residents and abutters of Marty’s, who are asking that the selectmen revisit the vote on the zoning amendment passed at the June 7, 2016 Town Meeting. The amendment started as a business and site specific request which was denied by the ZBA, became a citizens

petition which was untimely submitted, and became an amendment proposed by the BOS passed at a special town meeting. The issues raised by the applicants include:

1. Voters were confused at the time of the vote. It was advocated as a vote to save a business, but public was not informed as to the fact that it applied to the entire GRAF district and any business that meets dimensional requirements.
2. The bylaw as written is not specific and therefore legally problematic. It is too broad with little restriction even within the range of dates and end hours given.
3. The word entertainment is not defined within the ordinance or bylaws. It is meant for outdoor concerts in this case, but can as easily apply to things such as sports events, motorsports, even adult entertainment, which happened in another town and cost years of litigation.
4. Another issue is the manner in which exceptions are granted and controlled by ZBA. Under bylaws there are only general considerations for ZBA to follow in granting exceptions. Special concerns such as start time, site considerations, noise limitations, lighting limitations, occupancy load, electrical and staging concerns, parking, public safety, sanitary, traffic, and crowd control are poorly if at all defined. What's been done is to create a generic category of entertainment, identified a general district, and rely on the exclusive authority of the ZBA under general findings to deal with these issues.

The Town's ordinances in other areas, such as Accessory Dwelling Units, are very fully developed. The applicants are asking that this ordinance go back to the drawing board so the original objective can be achieved with more specific definitions in place to protect the town.

This ordinance is unconstitutionally vague. It is legally problematic in both its literal language and the implications/unintentional consequences when the intention can be achieved by less intrusive measures. These points were not made in the PB hearing or BOS meetings. Other municipalities have similar but better crafted ordinances, there is no need to rush forward with this one.

Atty. Nicosia asked to present a written hearing memorandum, listing his points and tying them to RSA's and case law. Board responded they are not accepting new information at this time. Atty. Nicosia responded it included only the points he had made verbally, at which point it was accepted.

Before closing the hearing, Louise addressed the applicants' request that the BOS recuse themselves from making a decision on the application, by virtue of the fact that the amendment had been sponsored by the selectmen. They as a board had been told by town counsel that there was no need for them to do so. Charlie, Louise and Bernie said individually they did not feel a need to recuse themselves from making this decision.

The input portion of the hearing closed at 8:21 PM.

Charlie moved, Bernie seconded to deny the rehearing. 3 votes to deny the rehearing.

Charlie commented the applicants did not have enough faith in the strength of the zoning process. The Planning Board hearing had included suggestion that changes be made to further define entertainment, but it was voted down at that time. There are a large number of requirements to be met to be granted an exception; an exception is not a matter of right, and these requirements deal with the concerns of specificity (or lack of it) within the ordinance. He further does not see that there were any procedural irregularities.

Louise commented about the constitutional issues raised by the application, that only a judge can decide the constitutional merit of an appeal on that basis.

Bernie added that exceptions are decided by the BOA, and that they can and should set restrictions for each exception. He further added that it was not the place of selectmen to judge the level of confusion of any voter.

Final comment was that while Marty's had sent a flyer, there was also a postcard sent to voters in opposition, and that there had been a large voter turnout.

There was a request to reaffirm the vote. Charlie moved, Bernie seconded to deny the rehearing. Vote was 3 votes to deny.

Atty. Nicosia requested the BOS to vote to stay this amendment pending outcome of any appeal. He further clarified his request by asking for a vote that the statute will not be used pending appeal. He was answered that RSA (677:4) already addresses the fact that nothing can be considered pending the appeal period.

Atty. McMartin, representing the Ruggiero's, asked to speak, and was allowed. He asked to clarify that any appeal goes to a court and not the BOS, and was told that this is also clear in the RSA. The BOS will take no further action on the request.

The hearing concluded at 8:34 PM.

Adjourned:

There being no other business scheduled for the night, Louise moved to adjourn, seconded by Bernie, unanimous vote to adjourn at 8:35 PM.

Next regularly scheduled meeting is scheduled for Tuesday August 9, 2016 at 7:30 PM at the Mann House.

Respectfully Submitted,
Kathy Wile