



Selectmen Meeting 2/8/2016

Approved Minutes of Selectmen Meeting

Present: Selectmen Bernie O’Grady, Charlie Moser and Louise Lavoie; Kathy Wile; Kevin Maxwell; Wolfgang Millbrandt, Marty Ruggiero and other members of the public.

Called to Order: Meeting called to order at 7:30 PM by Bernie O’Grady.

Approvals: It was agreed by all 3 selectmen that the signing of the payroll and accounts payable manifests would be completed at the end of the meeting.

Time was taken to read through the minutes of the Jan 26th selectmen meeting/budget hearing. Charlie moved, Louise seconded, to accept the minutes of the 1/26/16 Selectmen’s meeting as written. Three votes to accept as written.

New Business:

Driving Range Petition

Bernie began by saying he had misunderstood the scheduling, and apologized for any inconvenience to anyone. He then stated that the petition brought for the warrant on behalf of the Driving Range would not be appearing on the warrant for this year’s Annual Town Meeting due to time frames not having been properly met. Charlie referred to **RSA 675:4 I** *“Twenty-five or more voters may petition for an amendment to a zoning ordinance, historic district ordinance, or a building code. Petitioned amendments shall be voted only at the annual town or village district meeting. A petition to amend a zoning ordinance, historic district ordinance, or a building code shall be submitted to the board of selectmen or the village district commissioners during the period between 120 and 90 days prior to the annual town or district meeting. The petition shall be in correct warrant article form, as determined by the selectmen or village district commissioners, to amend the zoning ordinance, historic district ordinance, or building code. The selectmen or the village district commissioners shall submit the petitions to the planning board in a timely manner.”*

It was stated that when Nicole first asked about information regarding deadlines and procedures, they were not given full information. Charlie said that Town counsel advised them that the Town is not required to give more information than is requested; it is the obligation of those bringing the petition to ask any necessary questions and be familiar with the process required.

Charlie further said that the word “shall” within the RSA is crucial, and that it is mandatory to accept such a petition only within the window given. The process that gets followed for a zoning ordinance change is the petition gets submitted to the selectmen’s office, signatures are approved by the Supervisors of the Checklist, goes from the selectmen to a Planning Board hearing (posted with public notice) who then makes a decision to recommend for or against, then goes on the warrant to be voted on by ballot.

Louise said the Planning Board did work on two other ordinance changes this season; hearings were held in Dec and January for both, even though they were proposed by the Planning Board.

Question from the public – If it’s required to know the statutes to file a petition, why are town employees not required to know them? It was answered by Charlie that if a citizen wants to amend an

ordinance, it is on them to get the statue and be familiar with it. There is a whole chapter, RSA 675, that deals with zoning. Other types of petitions go later and have less process associated with them.

Question – why can't there just be a special meeting? Bernie answered that the petition as written can only be considered at the annual meeting.

Bernie said the select board could propose something and hold a special town meeting, but it was problematic for the town to propose as written. It is too broad, not well defined, and allows anyone in the GRAF zone to do the same things. Charlie added it is not worded to allow for exceptions, and as such does not fit into the zoning scheme of the Town.

It was asked by a member of the public if there was a way to do something for Marty? Bernie replied yes there could be. The petition as written bypasses all information regarding a site plan, and parking, public safety, bathroom facilities etc are not included. All of that would need to be addressed by the site planned submitted as part of the new proposal. The Planning Board or Selectmen could then propose it for a special town meeting. It would require work on the part of the Driving Range, needs more detail than as currently written, and would still require a hearing before going to a meeting vote. The Board of Selectmen could not support it as written. Louise offered that it would still have the same (time) process as other zoning proposals, and could be brought to the board at any time of year.

It was asked if that process is written somewhere? Charlie replied yes and no – steps are clear but the time frame can vary depending on how much revision is necessary to satisfy the Planning Board's requirements. The Selectmen cannot write it for them, but if someone came to them with a well drafted warrant they could work from that. Public input happens at the planning board hearing, and the special town meeting is a yes/no vote on the proposed exception only.

Karl Thorkildson identified himself, and asked that, if someone were to write it, could there be some back and forth? All 3 Selectmen agreed that was possible. As written it is a global permission – make it specific. An ordinance change is global, a variance is specific and goes through the Board of Adjustment. There are 5 specific criteria to meet, and it is technical.

Karl asked if it were possible to do that, and it was replied that they (the Driving Range) had done it and was denied by BOA the way it had been presented.

Board repeated it is legally impossible now for it to appear on the warrant in March, and that it would have to be re-drafted for a special meeting.

It was asked if any similar petitions were late and still appear on the warrant – answered there are no exceptions. Board tried to remember last time a similar ordinance was proposed – remembered the road frontage ordinance, and that had to go back to the planning board as well.

Marty Ruggiero said he was here with a petition in hand in November and was sent away. Nicole also came and was told the deadline was February as well. He has it in writing from his attorney. He said “We (he and the Town) can work together – just put it on the ballot, let the people speak. You (Selectmen) can do it without listening to the attorney.”

Bernie repeated we can have a special town meeting, but that according to town counsel there is a lot wrong with how it is written.

Marty – We can change it

Bernie – I agree that people should be able to vote.

Marty – The ball was dropped here by a town employee. Every town has different laws – I came with everything and was denied.

Charlie – If your attorney told you the window was 120-90 days before, but were not told that here – why did you go with that? It is your responsibility to reconcile difference of information.

Marty – There are funny laws here, let the people vote.

Bernie – Cannot happen at Annual Town Meeting.

Marty – Either get it in or the Range in closing anyway – they need the music to open at all. Nicole needs to do it, she does not make money but does it to help people.

Charlie – We are not saying it is a bad thing.

Bernie – If it goes on the warrant as is and is approved, it can still be challenged.

Marty – Who would challenge it?

Bernie – The Board cannot accept this petition, it can only be done at a Special Town Meeting and it would have to go through the appropriate time frames and process.

Marty – show me what says no it cannot?

Charlie – The word “shall” within the ordinance.

Marty – Special or annual meeting – it’s your (selectmen’s) choice to do it or not.

Bernie – The wording needs to be changed, the town is responsible for public safety and the best interests of the town as a whole. In order to move forward, it should be re-written and they (the Board) will listen.

Karl – Can you give specific areas of need for language improvements? Can you give input to someone doing it?

Charlie – The way it is written it is not a special exception – craft it as use by special exception, not global right. The Zoning Board application starts the process to satisfy that necessary conditions are met.

Karl – Can you clarify what would make it more acceptable? What issues or improvements should be made?

Charlie – The town cannot give a written list, or write it for anyone, but think of it as a special exception

Karl – What is that?

Charlie – Other than living on your property or conducting a business other than a home office, one must go through the Zoning Board for special uses of the property. The process allows for abutter input, address their concerns and give recommendations to the Planning Board for the site plan to address those issues..

Bernie – The site plan is central and necessary to ensure that all required facilities are in place – for example, all parking needs to be on site, and the site plan would show where that would be and how it would be managed.

Charlie – To clarify, changing an ordinance removes all control by the town – it is easiest to change just a section.

Karl – So propose an amendment to make this an allowable exception?

Charlie – Yes, that is the direction. Any decision still needs to go through the Zoning Board to grant the exception. As the article is written, it goes against the purpose of zoning.

Bernie summarized the conversation by saying that tonight the Board is saying it (the article) cannot appear on the March 8th Warrant, and cannot appear at a special town meeting as it is written.

Louise reiterated it will take time to re-craft a proposal and have it move back and forth; it still needs to be submitted 120-90 days before a meeting date for it to go through zoning and planning boards.

Marty – Is there a way to accelerate that process given that they were given incorrect information by the Town?

Charlie- Yes mistakes were made on both sides but the process can't be short-cut; everyone must be comfortable with the proposed wording. If the article passes review by the Selectmen, it goes to the Zoning Board. You can be ready with complete site plans and special exception request to satisfy the conditions needed by them.

Marty – You will have it by the end of the week. What do you want? We cannot wait another year, they either get it now or we close it's that simple.

Charlie – Get a proposal to the Board in writing, and they will consider it. Make it a use allowed by special exception, and which section to amend.

Marty – We want to put it on the ballot, not concerned if it's a personal issue but he will do what is wanted. If there has to be a special town meeting just to vote then he understands it needs to go through the boards as well. I am only asking that it get done as a special exception, I want the town to be happy with us. There is too much small town politics, behind closed door agreements.

Bernie – Recommended he have someone do it for him

Charlie – No one intentionally gave false information, and he is sorry it happened.

Marty – I appreciate the Board holding a meeting for us. I dislike people sneaking behind my back

Louise said she is glad to have the open communication as opposed to rumors that the Board had an agenda . The Board is bound by the RSA's and the decision of what to do and how to go forward comes from there.

Marty said he felt that people are pulling strings from other directions, and that isn't good. It's a good town, he wants to get along and go forward.

Charlie added that he and the Board look forward to getting something to work with.

Bernie noted that the exceptions listed in the ordinance are limited, and their purpose (live outdoor music theatre) would need to be added as an exception (to Article 8 sec A c) . Public safety is crucial, and they could start on their site plan now. Information for that is available via the Town website. Once they get a proposed amendment, then it will go through the processes for both boards.

Marty noted that every business is a special exception.

Bernie asked if there were any other questions or comments. Louise added a suggestion that he work with a good land attorney for site plans, etc. Marty replied he has a good idea of what needs to be done, and still has the basics from the last variance request.

Final advice from the Board – keep it simple!

Many members of the public left with Marty.

Other new business: The Board members reviewed a document prepared by Charlie according to advice of Atty. Drescher re: a complaint made by a Valley Rd resident. Bernie asked if there had been any Board contact with the complainant, Charlie responded yes and the complainant all but admitted it was a business.

Bernie asked if it was necessary to go through all of this (everything in the document). Charlie said the Attorney advised this because it is then more enforceable, is ready to get an injunction without further work on it. It would go through Superior Court, as District Court cannot issue an injunction. Charlie said he was satisfied the person was doing it as a business and did not own the vehicles as he had said he was doing it for extra money.

Charlie asked if Board needed more time? Bernie thought not, as the key is if it is being done as a business and they are not permitted for that.

A similar issue last year has been kept to a minimum, the current situation is worse.

Letter was signed by all selectmen, Kathy was asked to draft a brief cover letter on Selectmen letterhead to be done tomorrow (Weds) stating "Enclosed please find a cease and desist order..." Send original, keep copy of all, the cover letter does not need to be reviewed by Selectmen.

The Board completed the signing of the check and payroll manifests.
Louise distributed copies of the newest Planning and Zoning books to Charlie and Bernie.

No old business or public comment.

Adjourn:

Bernie made a motion to adjourn the meeting, seconded by Charlie. Three votes to adjourn the meeting at 9:13 PM.

Next Meeting will be held on Tuesday, February 23 at 7:30 PM at the Mann House.