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HILLSBOROUGH ZONING BOARD

Meeting Minutes

January 29, 2015

Date Approved: April 13, 2015

Present:

Members: Chairman Roger Racette, Larry Baker, James Bailey, Michael McEwen and Richard Booth

Alternates: John Segedy

Absent:

Members from the Public: Laura Buono

Chairman Racette called the meeting to order at 7:00 pm.

MINUTES:

January 12, 2015:

Mr. Booth made the following corrections: page 2, paragraph 10, first line changing “bring” to “bringing”, page 4, paragraph 9, second line added “of” between “because and “mistakes” and page 4, paragraph 10, first line changing “Race” to “Racette”.

Mr. Segedy made the following corrections: page 2, paragraph 11, first line remove the word “in” and page 4, paragraph 7, the last word should be “everyone” not “everything”.

Mr. Bailey made a motion to accept the minutes as corrected. Motion was seconded by Mr. Baker. The Board voted all in favor.

Request for Rehearing: continuation

Chairman Racette this was a continuation of the meeting regarding the Town’s request for a Rehearing of an Administrative Appeal submitted by Joseph Manning.

Mr. Booth made a motion to allow Mrs. Buono to speak as needed.

Mr. Segedy said if Mrs. Buono was to speak on behalf of the Board of Selectmen regarding the request for a rehearing then Mr. Manning should also have the opportunity to speak.

Mrs. Payson said the motion for a rehearing is between the Board of Selectmen and the ZBA. She added if the ZBA decides to hold a rehearing then it would be advertised and Mr. Manning would be notified.

As Mr. Booth’s motion was not seconded, he withdrew it.

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Chairman Racette said the Board's objective here tonight, in accordance with RSA 677:3, paragraph one, in the first sentence is says: "A motion for a rehearing can be made under RSA 677:2 shall set forth fully very ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." He said that for every item which was listed the Board needs to determine if it did something unreasonable or unlawful.

Chairman Racette, referring to the request for rehearing reasons, read point number one: "The applicant submitted their "Matter Being Appealed" as "Cease & Desist, dated 9/15/14, issued by Michael Jasmin, Building Inspector. Asked for assistance to resolve with Laura Buono and met with her to no avail – haven't heard back from her since 9/29/14". The Grounds for Appeal were "No building codes were violated and no specific codes were cited on the Cease & Desist. We have provided specific documentation time and again to support our case that there are no violations..". At the Hearing, Mr. Manning passed out new information and changed the grounds for appeal to being that the cease and desist was issued incorrectly. Once Mr. Manning began speaking, Chairman Racette asked if his claim was that the Cease and Desist Order wasn't handled properly to which Mr. Manning replied "yes". Again, the reason stated on the application for Administrative Appeal was because the applicant did not believe there was a reason for the Cease and Desist NOT whether or not the Cease and Desist was written and delivered correctly. The Town feels the ZBA should have continued the hearing or denied it based on the fact that the applicant had a change of reasoning for their appeal."

Chairman Racette read Mr. Manning's reason for requesting the Appeal to an Administrative Decision: "no building codes where violated, no specific codes where sited on the cease and desist. We have provided specific documentation time and again to support our case that there are no violations." He added that the cease and desist order referred to, was dated September 15 and it lists three reasons for the Cease and Desist: Improper site preparation; improper slab preparation and proceeding with work without proper inspections or permission to do so.

Chairman Racette said prior to the hearing he requested, from the building inspection, a list of codes being violated and was supplied with seven or eight International Building Codes which were being violated. He added Mr. Manning's position all along has been that he was in compliance with Chapter 600.

Mr. Segedy said Mr. Manning did say the Cease and Desist contained no reference to the specific codes which were being violated.

Chairman Racette said the bulk of the hearing was spent on discussing the specific codes which were being violated.

Mrs. Payson pointed out that the Cease and Desist was reviewed by council and was found to be legal and fine. She said there are accepted ways of writing them were specific codes don't have to be referenced. She said later in the hearing the Board agreed that Mr. Manning disobeyed the Cease and Desist by continuing to do work.

Mr. Segedy said only if the Cease and Desist was legal and that is the whole point because we ruled it wasn't.

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Chairman Racette said the point is that Mr. Jasmine didn't ask for a continuance to address the issues. He said the Board has included in its Rules and Procedures the right to continue a hearing if it sees fit but just because new evidence is discovered during the hearing doesn't mean the Board has to continue the hearing. He added that either party involved has the right to ask for a continuance in order to examine any new information presented during a hearing.

Chairman Racette faults himself for not asking for the opinion of the Board on whether or not to continue the hearing when Mr. Manning presented his packet of information.

Mr. Booth said if anyone should have been blindsided by Mr. Manning it should have been the Board because the original application was based on the building inspector telling him he had violated some building codes but when he came to the hearing he started talking about how in his opinion the Cease and Desist Order was done illegally or improperly.

Mr. Segedy said one of the reasons was because it didn't specifically cite the codes which were being violated.

Mr. Segedy said Mr. Jasmine has the authority to issue a Cease and Desist Order but the wording of the order was not done correctly.

Mr. Baker asked if the Board was going to do motions and votes on each point stated in the Town's request for a rehearing or are we going to discuss and vote on the request as a whole.

Chairman Racette said at the end of the meeting the Board would be voting on one motion to either grant or deny the rehearing.

Chairman Racette read the second point: "The "applicant" or person who was issued the Cease and Desist brought new information to the hearing. Under the ZBA rules and procedures 6.1 (d) it states "All materials relevant to the application before the Board should be received at least 7 days before the date of the meeting. Materials received less than 7 days before the meeting or at the meeting may result in a continuance at the discretion of the Board". There was no discussion among the Board with regard to the new information, it was simply allowed. The hearing proceeded and the ZBA basically took the word of the applicant with regard to his interpretation of the information which has since proven to not be true. Had the ZBA continued the hearing and allowed the Town to review the information submitted by the applicant that evening, the Town would have been able to refute Mr. Manning's statements."

Chairman Racette said that has been covered already, it was not up to the Board to continue the hearing. He said if Mr. Jasmine needed time to review the information submitted he should have asked for a continuance.

Mrs. Payson said the packet has since been reviewed and some information contained in it was not true.

Mr. Bailey said we shouldn't get into specifics of the case. He said we should just review all these points and vote for a rehearing or not.

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Mr. Baker agreed and added whether or not the information was factual has no bearing on the issue of approving a rehearing.

Chairman Racette read point number three: "Various statements that Mr. Manning made while he was walking the Zoning Board through RSA 676:17-a where incorrect and untruthful. Had the Town been able to absorb the information that Mr. Manning handed in that evening by way of a continuation, we would have been prepared to refute those statements. Instead, the Town had supplied information dealing with the original matter being appealed."

Chairman Racette said this was much of the same, faulting the ZBA for not continuing the hearing.

Chairman Racette read point number four: "Even though Chairman Racette had been counseled by the Planning Director with regard to the fact that one of the alternates had past zoning violations brought against him by the Town of Hillsborough. Because of that, the Director stated that he should not be allowed to sit on this case however the alternate was appointed by the Chairman to sit and vote on this case. It is the opinion of the Town that this alternate should have been disqualified under RSA 673:14 however; the Chairman did not bring the Director's concern up to the Board for a discussion and vote as noted within the ZBA Rules and Procedures 5.3."

Mr. Baker said his opinion on this matter is that unless the person in question has something to gain by the decision then this point is irrelevant.

Chairman Racette said he did have a discussion with Mrs. Payson but doesn't remember it being detailed regarding Mr. Segedy's past violations.

Mr. Segedy corrected the Chairman by stating "alleged" violations as nothing was proven.

Mrs. Payson said she had tried to keep it general because there is someone who comes to meetings and openly states that zoning is only good for harassing people. She feels that this person doesn't sound unbiased.

Mr. Segedy said his philosophy about zoning is irrelevant to whether or not he can enforce the rules.

Chairman Racette said the ZBA submits the name of a prospective member to the Selectmen whose ultimate duty is to appoint members.

Chairman Racette said this issue should have been brought up at the hearing and the Board would have reviewed it. He feels it is not a point which can be raised as a reason for an appeal or reconsideration.

Chairman Racette read point number five: "There was no motion made at the conclusion of the hearing. The Chairman simply posed a question to the Board as to whether the Cease and Desist order was handled lawfully and correctly. As stated under item #1, the original application was

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not about the content of the Cease & Desist or whether it was written correctly. The appeal was filed because the applicant claims that no violations exist.”

Chairman Racette said that is the content of the Cease and Desist Order the violations.

Chairman Racette said the point is that he didn't pose the question in the form of a motion and was that unreasonable.

Mr. Booth asked was it just an oversight.

Chairman Racette said he doesn't know if it has to be a motion. He said that only affirmative votes are needed to make a decision.

Mr. Bailey said the whole discussion that night was on whether the Cease and Desist order was written in compliance with the RSA and Mr. Jasmine admitted that errors were made in that regard.

Chairman Racette read point number six: “The decision rendered by the Zoning Board of Adjustment did nothing to address the violations (or the applicants claim that there are no violations) which were the reason for the Cease & Desist Order.”

Chairman Racette said the bulk of the meeting was spent on addressing the violations or the lack of citing them.

Mr. Bailey said the Board didn't indicate that evening that there were no violations. He said his opinion is there were violations but the process was flawed. He added that is how he came up with his decision on the process was flawed.

Chairman Racette asked him if he thought there were violations on the part of Mr. Manning.

Mr. Bailey answered yes, because he was wrong in not complying with the Cease and Desist and he was wrong in not getting the proper inspections. He added Mr. Jasmine didn't follow the procedure set in the RSA. He feels that is where the Board needs to make its decision to make sure the RSAs are followed to the letter. He read the RSAs and Mr. Jasmine didn't follow them correctly. He said the Board's decision was not based on whether or not there were violations it was based on whether the process to deal with the violations was followed.

Chairman Racette agreed and said that is the position the Board took. He then read from the Board's Notice of Decision: “Based on testimony and materials submitted, and by the affirmative vote of four ZBA members, it was evident to the ZBA that the issuance of the “Cease and Desist” order was not in accordance with RSA 676:17-a, and therefore, unlawful.”

Mr. Baker asked if the decision addressed the original reason for the administrative appeal.

Mr. Bailey said no.

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Mr. Booth said agreed.

Mr. Baker said that is exactly the point. He read from Mr. Manning's original Administrative Appeal application; "Grounds for appeal: No building codes were violated and no specific codes were cited on the Cease and Desist."

Mr. Segedy said that says there was a defect in the Cease and Desist.

Chairman Racette read from RSA 676:17-a.I (a): "The order shall state, in writing: The precise regulation, provision, specification or condition which is being violated." He thinks that is Mr. Manning's argument was they weren't.

Mr. Bailey said Mr. Jasmine agreed he had not followed all the procedures in that RSA.

Chairman Racette said the ZBA can rule on a procedural mistake.

Mr. Bailey said if Attorney Stephen Buckley, with the N.H. Municipal Association, said the Cease and Desist was okay as written and Mr. Jasmine doesn't have to follow the RSA then why does the RSA exist.

Chairman Racette said Attorney Buckley said it would be needed if the Town was going to take the matter to court. He added the Cease and Desist needs to include what codes are being violated because the home owner has a right to know that. He said if you ignore the RSA then there is nothing to protect the property owner.

Chairman Racette asked for a motion.

Mr. Segedy asked if he would be voting on this matter as a sitting member of the Board.

Chairman Racette answered no because the entire Board is sitting tonight.

Mr. Baker made the motion to grant the Town's request for a rehearing in this case. He believes there are points which have been brought up which are valid and those should be looked at, including additional information which was brought to the original hearing. The motion received no second.

Mr. Bailey made a motion to deny the Town's request for a rehearing. He felt that the Board made a correct decision based on the information which was presented that night and the building inspector had every opportunity to request a continuance if he wasn't able to respond to the information. Chairman Racette seconded the motion. The Board voted all in favor except for Mr. Baker who voted no.

Chairman Racette said the motion passes and the request for a rehearing is denied.

ADJOURNMENT:

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Chairman Racette made a motion to adjourn. Mr. Baker seconded the motion. The Board voted all in favor.

Chairman Racette announced the meeting adjourned at 8:00 p.m.

Respectfully Submitted:

Iris Campbell
Land Use Assistant