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HILLSBOROUGH ZONING BOARD
Meeting Minutes
January 12, 2015

Date Approved: January 29, 2015

Present:

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

Alternates: John Segedy, Russell Galpin

Absent:

Members from the Public: Denise DeForest, William Clohessy, Laura Buono, Alan Urquhart and John Dahood.

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

MINUTES:

November 10, 2014:

Chairman Racette said on that night Mr. Galpin had been appointed in place of Mr. Booth.

Chairman Racette said there are two sets of minutes, one written by Iris Campbell and the other is an amended version written by Mr. Segedy. He believes any member who wants to submit supplemental minutes should be able to do so. He added the supplemental minutes would then be attached to the minutes as an addendum.

Mr. Baker agreed.

Mr. Baker made a motion to approve the minutes of November 10, 2014 as submitted by Mrs. Campbell with the addition of Mr. Segedy's addendum. Mr. Bailey seconded the motion.

Mr. Segedy submitted his addendum which begins on page two at the bottom where it says "Mr. Baker requested" add addendum in front of that and include everything from there to the bottom of page three. He said everything which is underlined is what he added anything not underlined was in the original submitted minutes.

Mr. Baker modified his motion to approve Mrs. Campbell's minutes for the November 10, 2014 meeting with the addition of Mr. Segedy's addendum which begins on page two of four starting with "Mr. Baker requested" and ending on end of page three of four as an addendum to those minutes. Mr. Bailey seconded the motion.

Mr. Segedy wanted to add that within the addendum there was a section which referred to a letter Chairman Racette read from Attorney Stephen Buckley which needs to be attached as a separate addendum.

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Board voted all in favor.

November 24, 2014:

Chairman Racette said on that night Mr. Segedy had been appointed in place of Mr. McEwen. He appointed Mr. Segedy as a voting member for Mr. McEwen in regards to the minutes of that meeting.

Mr. Segedy recommended the following changes be made to the minutes: page two the attachment mentioned had not been submitted with the minutes; page two, paragraph one, line 4 – remove the word the in front of RSA; page 3, paragraph 1, line 2 – change the word were to have; page 3, paragraph 10, line 1 – insert that in front of the; page 3, paragraph 10 line 2 – insert it appears in front of Mr. Jasmine; page 5, paragraph 3, line 1 – add a colon after answered; page 5, paragraph 4, line 1 – change were to where; page 6, paragraph 2, line 2 – change is to it; page 6, paragraph 3 – place quotation marks around the words shall, must, may and optional; and page 6, paragraph 4, line 1 – change handles to handled.

Mr. Segedy made a motion to approve the minutes as amended.

Chairman Racette noted on page 3, paragraph 12, that the last sentence is incorrect and asked for it to be stricken.

Mr. Segedy made a motion to approve the minutes as amended by Chairman Racette and himself. Chairman Racette seconded the motion. The Board voted all in favor.

Request for Rehearing:

Chairman Racette said as this a public meeting and not a public hearing the Board will not be taking public comment. This is a meeting of the Board to determine if a rehearing should be granted or not.

Mr. Baker brought up the issue that according to Attorney Stephen Buckley a request for a rehearing can only be requested by the Board of Selectmen. He can't find any reference, in any Selectmen's meeting minutes, where this was discussed. He would like to ask Ms. Buono how this appeal could be brought without the Selectmen submitting it.

Mr. Segedy disagreed because he has a problem with allowing one side to speak without allowing the other side to also speak.

Mrs. Payson said she spoke to Attorney Buckley and he said if the Town Administrator was bringing the application forward at the will of the Selectmen then it was proper.

Chairman Racette said there is nothing on the application which states the Selectmen were involved with the filing of this application.

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Mr. Baker would like to allow Ms. Buono to speak in order to clarify her authority in filing this application.

Chairman Racette asked for a motion to allow some public comment but not let it turn into a public hearing and only as necessary.

Mr. Baker made a motion to allow Ms. Buono to speak in regards to establishing the authority to bring this application forward and only for that reason.

Mr. Segedy asked if he was appointed to the Board as he was on the night of the public hearing.

Chairman Racette agreed Mr. Segedy should be a part of this until it is resolved.

Chairman Racette seconded the motion. The Board voted in favor except for Mr. Segedy who voted no.

Ms. Buono explained that she had informed the Board of the decision and the need for a rehearing. Ms. Buono asked the Planning Director if the Select Board chairman had to sign the application or if she could as the agent for the Board of Selectmen and Mrs. Payson said she could.

Mr. Baker said his concern that Mr. Buckley's opinion is that the Selectmen are the only ones who can bring this appeal forward or give you the authority to act on their behalf but there is no evidence that shows they even discussed it.

Mr. Baker said it could become a legal issue so he would like to have something in writing from the Selectmen authorizing Ms. Buono to act on their behalf.

Chairman Racette said based on the information they have it doesn't appear that the Selectmen were involved with the filing of this request for rehearing.

Mr. Baker made a motion to continue this meeting until after the next scheduled meeting of the Board of Selectmen so the Board of Selectmen can discuss this and grant Ms. Buono the necessary authorization to bring this application forward. Chairman Racette seconded the motion. The Board voted all in favor.

Ms. Buono said if an after the fact authorization is not legal than the only recourse left is to go to court.

Mr. Baker made a motion that meeting be continued on the topic of the rehearing until Thursday, January 29 at 7:00 p.m. Mr. Segedy seconded the motion. The Board voted all in favor.

Ms. Buono asked Chairman Racette if he was going to go by the Jurors Standard when it comes to the motion for rehearing since the ZBA is a quasi judicial board.

Chairman Racette said he would do what is right.

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Ms. Buono said tonight that didn't happen.

Chairman Racette said anybody can object to someone voting then it comes to the Board and they take a non-binding vote and that vote is just advisory to the individual. He said the individual can still decide to sit on the Board. The risk to that is if the matter goes to court and a judge decides the individual was bias or had a conflict of interest then that judge can overturn the ZBA's decision solely on that which means all the work the ZBA has done is just out the window.

Ms. Buono said that person was appointed by the chairman.

Chairman Racette said by following our rules and procedures we alternate alternates. He said based on our rules and procedure, based on case law and based on RSA he is going to do the right thing.

Ms. Buono asked if there is a full board, then would the full board vote on of the motion for the rehearing hearing.

Chairman Racette said he would have to do some research on that.

Mr. Segedy said there are four members of the Board who have had cases with the Town, there is one member whose wife is a member of the Board of Selectmen and one member is in the construction field and has to deal with the building inspector. He said there are potential conflicts for everyone.

Ms. Buono said if there is a full board then there is no need for an alternate.

Chairman Racette said if a rehearing is granted it is just as if the first hearing didn't happen. He would like to have a rehearing because of mistakes made in the first hearing not just ZBA mistakes but Town mistakes too.

ADJOURNMENT:

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

Chairman Racette announced the meeting adjourned at 8:45 p.m.

Respectfully Submitted:

Iris Campbell
Land Use Assistant