



Halifax Planning Board

Meeting Minutes

March 19, 2020

Official

A meeting of the Halifax Planning Board was held on Thursday, March 19, 2020 in the Great Hall at the Halifax Town Hall, 499 Plymouth Street, Halifax, Mass.

Members Present: Gordon R. Andrews; Amy Troup and Ashley DiSesa on telephone. Karlis Skulte joins the meeting via telephone at 7:15pm. Mark Millias is absent. (Due to the COVID-19 crisis, members are allowed to call in to the meeting.)

The meeting was called into session at 6:35pm.

Andrews reads the agenda into record. **M/Troup, S/DiSesa** to accept agenda with all in favor.

Andrews reviews mail, notices and paperwork pertaining to this evening's meeting.

Appointment

6:30pm - Pasture Lane Update Discussion

No one is present and there has been no correspondence or updates. Board would like an email sent to Attorney Larry Mayo asking what the next steps should be regarding Pasture Lane.

Discussion

Andrews reads into record a letter of response from Charlie Seelig (03-19-2020) regarding his Open Meeting Law Complaint to the Planning Board. Troup requests that Seelig edit this letter with his home address as he does not reside at the Halifax Town Hall. Seelig is present and responds that the Planning Board can make that request but he can and will deny that request as he isn't making this complaint as a private citizen, he's making it as a Town Administrator. Troup responds that when a Planning Board member makes a complaint, they don't use the town address, they use their home address. Andrews responds to Troup that when he sends something as Chairman of the Planning Board, he uses the Town Hall's address and adds that same goes for sending something as a member of the Planning Board. Troup responds "okay." DiSesa asks if Seelig is looking for a response to his letter. Andrews answers that there was no formal timeframe or commitment requested for the Board to attend an Open Meeting Law workshop but a strong suggestion for the Board do so. DiSesa suggests that the Board look into an online class and electronically send something to Seelig or the Town Clerk to show this was completed. Troup adds that she doesn't think that before email addresses, which was a short amount of time, nothing was received by email and they would get things at the meeting and this prevents any issues. Troup states that Attorney Amy Kwezell said what the Planning Board was doing (not using email) was a safer way to do it. DiSesa adds that she would like Seelig to know she does not have a town email address yet. Seelig will talk to IT Cesar Calouro. Troup states that she attended an Open Meeting Law class at Hanover Town Hall last October. In response to DiSesa's suggestion, Seelig states that there's a webinar on Thursday, April 9, 2020 12:30pm - 2:00pm where one would need to pre-register on the Attorney General's website. Troup states that she will try but cannot make any promises to complete this specific webinar due to possible conflicting schedules and the COVID-19 situation. Andrews states that he will sign up.

Discussion

Abutters Mike and Bob DiBona (229 Franklin Street) are present to discuss 241 Franklin Street Solar Project's final approved site plan. They were present at Conservation last week where they were showed a stormwater management basin on the front piece of property which was removed from one of the drawings but was on the approved plans from Conservation. They would like to see the site plans from the Planning and Building Department to see if they match. Troup states that she viewed the Building Department's plan last week and her concern is that the site plan in the Building Department folder has to be updated and she would like to make sure there's a note on the deed and in the Building Department folder that the front lot is not to be subdivided or built upon. Mike DiBona states that they don't

understand how an applicant can get an approved site plan from the Planning Board and then make false statements to other Boards to get another property or site plan approved, as with Form A. Andrews responds that Form As come back to Planning. Troup states that is why she would like a deed restriction on the property so that it cannot be subdivided. The DiBonas review the plans. Those currently attending the meeting identify themselves: Charlie Seelig, Robert Gaynor (ZBA Chairman), Gordon R. Andrews (PB Chairman), Mike and Bob DiBona, Amy Troup and Ashley DiSesa (PB members) on the phone. Troup asks Andrews about Planning Board's ability to add a deed restriction for this property. Andrews responds that the Planning Board could have put a restriction on the site plan. Troup states that the Planning Board should be able to add something to go in the building file since the combined lots were put in front of the Board. Troup states that when she looked through the Building file, the combined (consolidated) lot plan is not there. Andrews reviews the consolidated lot plan. Andrews states that in order for this property to be divided, it would have to come back to the Planning Board. Troup would like a copy of the consolidated lot plan to go to the Building Department file with a letter that states what the intentions are as well as a copy for Zoning and Planning.

M/Troup, S/DiSesa to make sure that copies of the Consolidated Site Plan for 241 Franklin Street Solar Project be given to Zoning, Planning, Board of Health and Building Department for their updated records with attached Planning Board note stating that 2009 Decision is no longer applicable as the two lots have been combined for the Solar Farm and cannot be subdivided with an easement with all in favor.

Mike DiBona asks if they can be notified if this subject (241 Franklin St) comes up again during meetings when it's not a public hearing. Seelig responds that DiBona can send a letter to the Planning Board requesting to be notified of this, however if for any reason a notification is not sent (when it is not a public hearing), there is no legal standing if someone forgets to send a note, but the staff will try its best. The DiBonas depart.

Appointment

6:45pm - Adam Mitchell - Site Plan Review - 894 Plymouth Street

No one is present for this appointment. The Board would like to contact them to see if they'd like to be added to the next meeting on April 2, 2020 at 6:45pm.

Discussion

Andrews states that the Comprehensive Permit "Country Club Estates" 40B Project public hearing at the Zoning Board's special meeting on Wednesday, March 18, 2020 was postponed to May.

Troup would like discussion item "Zoning By-Law 167-22 and Zoning Board Decision regarding Petition #915 - Amanda's Estates" to be added to the next meeting on April 2, 2020 for discussion as there is no quorum to discuss this subject as Andrews would need to recuse himself. Gaynor confirms that this subject will not be discussed.

Correspondence

Andrews reviews mail out loud. He reads into record the Zoning Board Decision Letter for Petition #915 - Amanda's Estates. Members would like copies of this letter.

Member Karlis Skulte joins meeting via telephone at 7:15pm.

Andrews: "You guys are going to have to excuse me for a minute." As seen on the video, Andrews leaves the meeting table.

Discussion

As Skulte is now present, DiSesa asks Troup if they can discuss Zoning By-Law 167-22 and Zoning Board Decision regarding Petition #915 - Amanda's Estates. Troup answers "we can." Troup states she did some research and found that the Planning Board can appeal another Board's decision. Troup states that the information they received that this could not be done was inaccurate. DiSesa asks Troup what she means by inaccurate. Troup states that the Board was told because of a Marshfield v. Pembroke decision that a Board could not appeal another board's decision but Troup states this is not correct. Andrews rejoins the meeting (he was absent for two minutes and 16 seconds). Charlie states to the Board that Andrews has returned. Andrews recuses himself and states he will take notes (the secretary is not present).

Skulte will act as Chairman for this discussion. Troup states again that the Planning Board can appeal the Zoning Board's decision and asks if the other members would like to do something about this. DiSesa is confused as she states that when she asked Attorney Kwezell at the last meeting if anything could be done, Kwezell said no. DiSesa asks what the options are. Troup answers that the Planning Board can appeal the Zoning Board's 2/20/2020 decision regarding Petition #915 as they did not follow Bylaw Section 167-22. Skulte states that the Zoning Board didn't necessarily disregard Kwezell's advice, they just took a different point of view. Troup states the Zoning Board did not have the right to go against 167-22. Skulte responds that the ZBA felt they did have the right under a different code and didn't take any formal action against 167-22. Troup calls that "ignoring the law."

Skulte's point of view is that he is not interested in appealing a position taken by another board where they have the ability to interpret things a certain way and that if there are other parties that are interested in appealing the decision, they have the right to do so. He doesn't feel the Town needs to spend any more money appealing this decision. DiSesa is reviewing her notes from last meeting. She understood things as the decision should never have gone to the Zoning Board since the Planning Board did not have a unanimous vote with site plan approval, so the Planning Board just has to let things go. Skulte responds that that isn't really a correct interpretation. Skulte explains his interpretation of Kwezell's opinion and point of view versus what actually happened with Zoning. Troup doesn't understand why Kwezell would have brought it up to the ZBA if it weren't applicable to their meeting. Skulte responds that this was Kwezell's legal opinion as requested, however the ZBA viewed this as a modification to a previous application. Skulte doesn't really understand what provision the appeal would fall under for Troup. Troup responds 167-22. Skulte doesn't really know what kind of scope Troup would have to appeal and suggests that maybe they would have to wait for something else to happen and then acknowledge or appeal a latter decision. If it gets to building permit issuances, that might be the time to appeal. Troup disagrees. Skulte and Troup deliberate further. Troup feels this is taking power away from the Planning Board and the town if nothing is done. There is further deliberation between members on each member's interpretation. Troup states her opinion that because ZBA didn't follow the legal advice of their counsel, they're not following the bylaws. Troup confirms with DiSesa that she wants to appeal the ZBA's decision because her opinion is the ZBA didn't follow the bylaws and took the Planning Board's rights away. Troup would like to uphold the bylaws of and for the Town.

Troup moves to appeal the decision made on February 20, 2020 by the ZBA based on the ZBA not following Bylaw 167-22 which was defined by Town Counsel in January 2020 and other February meeting(s). Skulte would like to know if the Planning Board has rights to appeal the decision by another Board. Skulte does not support appealing another Board's decision as his opinion is that it sets a precedent for Boards to constantly appeal each other's decisions and doesn't want it to become a pattern just because Troup doesn't like the ZBA's decision, but adds that he would like some basis for future reference from Town Counsel of what the Planning Board's rights are to appeal another Board's decision and how it impacts the Planning Board. DiSesa agrees that they should keep all the Boards kosher, but she thinks at any time when a Board's rights are taken away, a bylaw has been violated or they feel mistreated by another Board they should be able to say "this isn't right," because according to this bylaw, this isn't right, otherwise where do the checks and balances stop, and how many times do they let something fly by another Board because people are more concerned about keeping it real and keeping others happy rather than what's really going on. If this is just coming down to the Planning Board's rights have been violated, DiSesa states maybe she does agree with the appeal to make sure this isn't happening all the time. Skulte responds that people always have the right to appeal. Skulte states that the checks and balances are the voting and electing process and individuals, as private citizens, can attend and speak at the Board's meetings.

M/Troup, S/DiSesa to appeal the decision made on February 20, 2020 by the ZBA based on the ZBA not following Bylaw 167-22 which was defined by Town Counsel in January 2020 and other February meeting(s) with two (2) in favor (Troup and DiSesa) and one (1) opposed (Skulte). Motion passes 2-1 with majority.

Skulte would like to defer this to Town Counsel to confirm that the Planning Board has any formal standing (to appeal the ZBA's decision). He realizes that because the motion is based on votes taken, it should be followed through but only if the Board has the standing to do so. If the attorney's opinion is that this appeal would not pass the "test" (i.e. Planning Board has no standing), he would ask that the Board reconsider and not spend the town's money if it's a formality that is going to get squashed because it was done improperly. DiSesa agrees. Troup requests that they use former Town

Counsel (Larry Mayo) as to keep it separate from the ZBA attorney (Amy Kwezell) that was advising the ZBA. Skulte asks Troup why she wants to change attorneys as Kwezell supports what Troup is ultimately saying. Troup responds that she wants a different attorney for the fairness of it as Kwezell didn't think the Planning Board had the right to appeal; Troup would like a second opinion. Seelig confirms with Skulte that Attorney Mayo doesn't specialize in this matter but he's sure Mayo is familiar with the ins and outs as he has other clients with Land Use matters. Andrews states that Larry Mayo handles other towns land use issues. Skulte states that he is okay getting a second opinion from Mayo (or one of his colleagues) and would like to know who the party is that would represent the Town if they were to move forward with an appeal.

M/DiSesa, S/Troup to move forward with the 2-1 vote to appeal the ZBA decision as long as, after a second opinion from Town Counsel (Larry Mayo) confirms that the Planning Board has the grounds to do so and if not, they will halt the appeal with all in favor.

Gordon R. Andrews resumes his position as Chairman at 7:42pm.

Discussion

Andrews updates Skulte of the business on the agenda. As for 241 Franklin Street, DiSesa states that she met and talked with Building Inspector Rob Piccirilli last week. They reviewed the plans for 241 Franklin Street where Piccirilli pointed out the water retention basin that is on the approved plans in the Building Department. Piccirilli told DiSesa that he doesn't get to pick the order of the way the project goes but he makes sure that when the project is done, the water retention is there. He pointed out that it is there, but it could be the very end of the project. DiSesa states this makes sense. Andrews states to DiSesa that the DiBonas told the Board earlier the water retention had been started.

Meeting Minutes:

Meeting Minutes are not approved as Andrews states that not everyone has the minutes in front of them. (Note: The minutes were emailed to every member on the Board by the secretary before the meeting.)

Adjourn:

M/Troup, S/Skulte to adjourn with all in favor at 8:02pm.

Respectfully submitted,

Gordon R. Andrews, Chairman

Date Approved: 5/21/20




