

TOWN OF WARNER – ZONING BOARD OF ADJUSTMENT

Meeting Minutes

June 8, 2016

7:00 PM

Warner Town Hall, Lower Level

Members Present: Chairwoman Janice Loz, Vice Chair Rick Davies, Andy Bodnarik, Howard Kirchner, Gordon Nolen, Alternates, Beverley Howe, and Barb Marty.

Members Absent: Corey Giroux

Land Use Secretary: Lois Lord

1. OPEN MEETING

Chairwoman Loz opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll call was taken with 7 members present and one absent.

3. APPROVAL OF MEETING MINUTES

Chairwoman Loz brought forth the Meeting Minutes of May 11, 2016 for approval. Rick Davies asked in the meeting minutes that he not be referred to as Vice Chair when he is not in that role and asked that the word “conclusion” be changed to “consensus” in two places. Howard Kirchner noted a change.

A MOTION to approve the minutes as amended was made by Howard Kirchner. Chairwoman Loz stated that since Gordon Nolen was not at the May 11th meeting, he could abstain from voting on the minutes which is the usual procedure. Rick suggested revising the motion to approve as revised and seconded Howards motion. **A roll call vote was taken** with the results of 4-0-0 with Gordon abstaining.

4. UNFINISHED BUSINESS

Site Visit Procedure Document second reading - Chairwoman Loz asked for comments on the document.

Rick said he was going with the Rules of Procedure booklet version and that it is confusing to have two versions of the Site Visit Procedure Document, one being included in the Rules of Procedure and one being by itself.

Discussion continued on which document should be voted on, that they are both the same, that on many boards there is a separate “pull-out” document to vote on and that they had voted on both documents at the last meeting. Rick said he has read the Rules of Procedure and is good with it, with one comment.

Chairwoman Loz stated that the reason there are two agenda items for second reading is because last month we started looking at some other items in the Rules of Procedures in Miscellaneous and Communications. She asked Rick what he felt comfortable doing relative to the Site Visit Procedure document. Rick said he would like to vote on what is in the Rules of Procedures.

Howard said he understood Ricks point. Chairwoman Loz said her concern is that these are two agenda items on our agenda, we’ve been working on the Site Visit Procedure document for a year and she would like to do the second reading on it. Andy said if it helps, he read through both documents and they are identical.

Rick Davies made a **MOTION** to designate the Site Visit Procedure document and/or the Rules of Procedure document as being considered good for the second reading with no new comments. Andy offered an amendment and made a reference to the Rules of Procedure document by saying we are talking about Section XIV. Rick was in agreement. Andy seconded Rick’s motion. **A roll call vote was taken** on the motion with the results of 5-0-0.

Rules of Procedure XV additional rules of order second reading - Andy commented that we should talk about more than just Section XV and noted the following on Page 3.

6. Up to ~~three~~ **five** alternate members shall be appointed by the Selectmen to serve whenever a regular member of the Board is unable to fulfill their responsibilities. The Zoning Board shall submit the names of recommended candidates to the Selectmen for their concurrence and appointment.

Several board members said they thought this had already been changed and Lois Lord said she had forgotten to delete the strike-out.

Chairwoman Loz noted that in Section XV, Additional Rules of Order, they had underlined, bolded and added colons before each item to delineate it from the text. Janice said they had added verbiage changes regarding ex parte communications and Rick clarified those were added at an earlier meeting, not during the first reading which was at the last meeting.

The discussion continued that some things had been added by Corey per the boards agreement at the last meeting, that administration changes for underlines and colons had been made and that in Section II, Items 6 and 7, small changes had been made including adding a clarifying sentence to the end of number 7.

Rick Davies made a **MOTION** to declare the second reading as good on the Section II Items 6 & 7 and Section XV Items Q and R plus the administrative changes that were incorporated. Howard Kirchner seconded the motion. **A roll call vote was taken with the results of 5-0-0.**

Rick suggested that in future a date be put on the drafts so they can be referred to with that date.

5. NEW BUSINESS

Tagging RSA Books. - Chairman Loz asked Rick to speak on this and he said you could put anywhere from 5-6 tags to 56 tags in the RSA book the purpose being to be able to easily access vital information..

Rick went over the pages that he suggested be tagged which were as follows:

Page 355, RSA 673:1 IV & V

Page 357, RSA 673:3

Page 359, RSA 673:5

Page 360, RSA 673:6

Page 361, RSA 673:9 & 673:11

Page 362-363, RSA 673:12, 673:13, 673:14

Page 396, RSA 674:33

Page 402, RSA 674:33-a, RSA 674:34

Page 463, RSA 677:1

Rick noted that all of these things are spelled out in detail in the OEP Handbook. Andy said he had marked RSA 91:A on page 88 which is important as it regards access to governmental records and meetings. The discussion continued on RSA 91:A, nonpublic meetings and the Zoning Board of Adjustment, whether documents passed out at a public meeting automatically become public documents, and that there are different ways that documents are subject to discovery. Andy said that if you are at a nonpublic session working with legal counsel, documents can be passed around and discussed and then there is no questions as to if that is privileged information. He also said you really need to justify why you are going into a nonpublic session.

Andy also mentioned Page 349, Title LXIV Planning and Zoning, Page 352 which has the definition of a Local Land Use Board, Page 354 with a list of all 673 RSAs for Local Land Use Boards, Page 375 which has the Notes to Decisions analysis for zoning, and page 379 RSA 674:19. Andy noted page 401 is relative to deciding if something needs a special exception or a variance.

The board discussed the OEP handbook and Andy noted there is a lot of good information in the back on forms. Chairwoman Loz asked if everyone had online access to the OEP Handbook. It was suggested that Lois make copies of it for everyone for the next meeting.

6. COMMUNICATION AND MISCELLANEOUS

The Zoning Board of Adjustment discussed the recent OEP Conference held on June 4th. Chairwoman Loz noted Warner was the number 4 town having the most attendees with 7 attending the conference. Rick stated Ben Frost, Chair of the Planning Board presented the Land Use Law Review which was a double session. Ben went into great detail about the accessory dwelling unit which Warner already has in their ordinance. He also mentioned the ZBA having power to modify appeals which will be in the books and regards modifying the way it's presented. Rick said this particular one is relative to the deadline for an enforcement officer, i.e. Town Administrator to make an administrative appeal within 20 days and there was a problem in Derry with that. They said the ZBA should have it in their rules of procedure which we do not but it is on the forms. It might be something to talk about at some other time.

The board continued to discuss deadlines relative to calendar days which they had discussed at the OEP Conference. In the Warner Zoning Board of Adjustment rules it talks about when the last day to submit falls on a holiday. Andy said at the conference he asked about the postmark and the fact that the Warner Town Hall is closed on Fridays. Andy said they were told that if the postmark is two days before the deadline that's one thing but if it's postmarked the day of and you didn't get delivery, it's late.

Chairwoman Loz said it's almost like it has to be postmarked at least two days before the date or received at the Land Use Office and stamped on or before the day. Andy made the point that if the day falls on a Friday, it needs to be in on Thursday.

Rick said there was a legal decision on a Zoning Board of Adjustment hearing and appeal of a decision of the Planning Board which should go right to the court from the Planning Board, on how they interpret the ordinance. Any interpretation of the ordinance by the Planning Board can be appealed to the Zoning Board of Adjustment but regulations cannot be appealed.

Rick continued the other thing was sequential appeals. Someone comes in and gets a decision; a couple years later with a different board they try the same thing. There is a better definition coming out of what constitutes a more substantial change from what was asked for before.

Andy said the date issue came up relative to there being a change to the law that effected your application which would be a substantial item you could bring in under the new law.

Chairwoman Loz stated the other things she noted at the conference were; when we are going through a case and are going to do a motion, don't go through the different criteria. If you go through each one with all the board members and everybody says yea or nay you get on a slippery slope. If you mention one criterion, for example house valuation being effected and three board members say yea and two say no and on the next criteria two say yea and three say no then you have a whole bunch of possibilities all at once. It would be best to make a motion based on what criteria you see determining the motion that you're writing.

Barb agreed saying the motion should include the criteria individually stated but you are voting on it as one thing. Andy said you could wind up with a situation where you don't get agreement. Howard added, you should discuss each point but vote on it as one thing.

Rick said in the OEP handbook, the forms in the back suggest as you make a decision that you write out what the known facts are and the reasons why. If you deny you definitely have to state the reasons. He continued, he finds it relates to the abutters, the applicant and the towns people if they know you're thinking through instead of doing a thumbs up or thumbs down. The discussion continued on this topic and the worksheets and forms that are in the OEP handbook.

Chairwoman Loz said the other thing mentioned is if you are in a public hearing and you close it for the board to deliberate, you may not want to close the public hearing because you may want to ask questions of the applicant. What they suggested you do is to recess the public hearing, go into deliberations and that way you can go back and answer questions. The Zoning Board of Adjustment discussed this, various ways it could be done and the use of the term recess versus continue.

7. ADJOURN

MOTION to adjourn was made by Rick Davies, seconded by Gordon Nolen. A voice vote was taken with all in favor. The meeting was adjourned at 8:27 p.m.