

Town of Randolph

Planning Board Minutes

April 4, 2019

Members Present: John Turner, Roberta Arbree, John Scarinza, Robert Ross, and Tim Mather

Members Excused: None

Public: Christine Fillmore, Esq., Lauren Bradley, and David Willcox

Call to order: The meeting was called to order at 7:02 pm by John Scarinza.

2018 Land Use Law Update

Christine Fillmore presented the Board with the 2018 Land Use Update. There were changes made to limits on small wind energy systems, and any changes made to the ordinance should say that the level be as low as allowed by the Site Evaluation Committee. Fillmore advised that “agritourism” is now allowed in any area that allows agriculture, and the definition of “agritourism” in any local ordinance shall be the same as in RSA 21:34-a. The law on termination of variances or special exceptions now also allows for the termination of any approved before August 19, 2013, as long as the town amends the ordinance to allow this and posts a public notice for 1 year with the termination date clearly stated on the notice. The ZBA must use a consistent voting method for variances, either voting separately on all five factors considered, or voting on all 5 factors in one vote. The law concerning the municipal regulation of seeds and fertilizer was discussed and Fillmore advised this does not include plants. Fillmore advised that the law concerning municipal ordinances affecting forestry activities requires that any impact to forestry be considered and any reasonably available steps be taken to minimize the effects. This law also prohibits any ordinances that only affect forestry adversely. The “3 votes to approve” for Zoning Boards of Adjustment was expanded to include 3 votes required to deny a variance. Fillmore advised that it is also a good policy to advise residents to come back when a greater number of members may be present at a meeting.

In Pending Legislation, Fillmore advised that HB247, updating the State Building Codes, was retained in the House. HB136, which increases the time for ZBA appeals from 30 to 45 days was passed by the House. HB143, which would prohibit one person from serving on more than one board if the decision of one would be appealable to the other was retained by the House. SB370 would allow city Planning Board members to hold other city positions. Fillmore advised that HB210, holding municipalities liable for attorney fees when they lose a lawsuit, failed. HB245, allowing the Planning Board to set period of time shorter than 21 days for an application to be filed before a meeting, passed the House. HB259, requiring the state or local building code to be cited in a notice of violation, passed the House. HB303 will require code enforcement officers to be certified by the ICC. This bill passed the House. HB311, allowing municipal

regulation of “sober living facilities” was retained in the House. HB 312, concerning Tiny Houses, passed the House but was amended by the Senate to form a study committee. Tiny houses can be either on a chassis or a permanent foundation, and would require they be permitted in areas that allow single family dwellings, and could be considered Accessory Dwelling Units if detached. SB39 would require abutting residential property owners that enjoy the benefit of the use of a private road to contribute to the cost of maintaining the road. SB53 would amend the RSA concerning the maintenance of highways to summer cottages to extend the non-maintenance period to November 15-April 30. This passed the Senate. SB69 is the latest bill to regulate AirBNB’s, and would allow the licensing of short-term rentals. Fillmore advised there are currently two cases in court, one from Portsmouth and one from Kearsarge, concerning AirBNB rentals. SB306 would create a housing appeals board as an alternative to court in a land use decision. Fillmore advised that the Right to Know Law Ombudsman bills would create a position for an ombudsman along with a citizen’s commission for an alternative dispute resolution for these cases. Both SB306 and the Right to Know Ombudsman Bills have been tabled, as they require an appropriation.

Court Opinions included the Appeal of Mary Allen, which applied the Fisher v. Dover doctrine that if reapplying for the same project, either the plans have to change or the rules must have changed for it to be reconsidered. In this case, both had occurred. In the case of Perreault v. Town of New Hampton, it was decided that in this case cumulative impact could be considered. In the case of Rochester City Council v. Rochester ZBA, the court decided that as long as the minutes show that the facts were discussed in reaching their conclusion, the specific findings of fact were not required in the decision. This case also noted that claims of bias must be raised immediately, and could not be entered as new evidence in the appeal. In the case of the Trustees of Dartmouth College v. Town of Hanover, the reasons for the denial were vague, listing that it was not harmonious and aesthetically pleasing, would have a negative impact on the abutters, and did not conform with the master plan. The court decided that the Board could not throw out uncontroverted expert evidence based on personal feelings. In the case of Dietz v. Town of Tuftonboro, it was decided that equitable waivers can be granted, as the municipal official had granted the permit, and the cost to correct would outweigh any public benefit.

Non-Precedential Decisions included Foley v. Town of Enfield, in which the court found that the ZBA’s decision to deny the variance was following the spirit of the ordinance to prevent overcrowding. This was a similar court decision concerning cumulative effects, as was decided in the Perreault case. The case of Working Stiff Partners, LLC v. City of Portsmouth is an AirBNB case where they were issued a zoning violation for short-term rental. The owners argued that it is unfair and they have a fundamental right to do what they want with their property. The owners also claim that it is an accessory use of the building, however the court stated there needs to be a primary use for an accessory use to be considered. This case has been appealed to the Supreme Court.

Fillmore also noted that there is a mistake in the new orange handbook on page 98. There should also be a section 2b, which was added last year. This section states that you are not

required to post minutes or notices of meetings on your website, but that if you do they need to be posted prominently and consistently.

Minutes of March 7, 2019 – On a motion from John Turner with a second from Roberta Arbree, members voted to accept the minutes with a spelling correction of “it” to “is”.

Adjournment: On a motion by John Turner, the Board voted unanimously to adjourn the meeting at 8:47 pm.

Respectfully submitted,

Shelli A. Fortin

April 5, 2019