



Selectmen's Meeting
Town Office 6:00 P.M.
Wednesday, February 22, 2012

Draft Meeting Minutes

Call to Order / Pledge of Allegiance. Present were Selectmen Jed Brummer, Patricia Barry, Samuel Seppala; Town Administrator, Carlotta Pini; and members of the public.

Approval of:

Manifests: Accounts Payable & Payroll
Voter's Guide – no action taken

Citizen's Forum

1. **Paul Leblanc** submitted to the Board copies of his abatement application for his property at 460 Cathedral Road. He asked how to complete the question regarding the inventory. Carlotta Pini said it was not applicable. He expressed frustration with the Town Administrator and the Assessing Clerk. The Board took no action on his application.

General Business

1. **Peter Valade re: Settlement Offer, Appeal to the BTLA Decision re: Abatement Denial**
Mr. DuVernay said that Mr. Valade had filed for an abatement. The board denied it. He appealed to the BTLA. Dave provided a memo. The BTLA gave the parties until 2/20 to negotiate a settlement, but Dave told them we'd be late. Town counsel proposed a settlement of \$200,000. Mr. Valade agreed, provided he receives a telephone call from John Ryan answering some questions he has. Dave pointed out that two Supreme Court cases rejected arguments of methodology. He, Carlotta, and Town Counsel recommend the board accept offer. \$760 refund. Gary was able to persuade him to settle the case. Sam moved to settle for \$200,000 and requested Ryan call Valade. Pat seconded the motion. All voted in favor of the motion.
2. **Continued discussion of Hunt property.** Deborah Sawyer asked what the Board would be voting on in the non-public session. She said they were trying to figure out if this was an issue before the Selectmen or not. Jed said it was the Board's job to interpret the ordinance. They received a lot of information. They may or may not have enough. It comes under the accessory use criteria. The ordinances we have do not address every particular situation. The accessory use term is for all the other things that the ordinance does not specifically address. They understand people rent vacation homes. He questioned whether the rental of the castle exceeded what is just an accessory use of a residential property and explained that's what the Board would be weighing.

Attorney Hoppock asked why they were planning to discuss it in non-public. Jed said since the town was going to be brought into a lawsuit, it was appropriate to discuss the matter in a non-public session for litigation. Hoppock asked if litigation is pending. Jed said it was not, but it had been threatened.

Attorney Bentley said that he was there to speak on behalf of the Hunts. He said that he's assuming the issue of tourist home and bed and breakfast, which was the property owners' primary concern, is now off the radar screen. He noted that Attorney Kinyon had brought up the concept of accessory use, but in his opinion, there is nothing in the Town ordinance that gives the Board the right to regulate accessory use. The only mention of it is in a paragraph under general provisions dealing with agriculture. He pointed out that when you look in the definitions, you don't find it. Attorney Bentley also noted that another problem is with the statute, RSA 674:16

V. It is the statute the legislature passed which gives towns the authority to adopt a zoning ordinance. Town meeting may regulate accessory uses on private land. The reality is that the town of Rindge zoning ordinance does not give the Board the authority to do it. When zoning started, people were trying to figure out, 'how do we deal with stuff?' It's gone from the old type of town meetings where people would try to resolve these things to hand-to-hand combat. He noted there were three lawyers in the room that night and a bunch of property owners. He maintains the Town should stay out of it. He recommended an overall review of the zoning ordinance and if people want to do something to control rentals in town of Rindge, they can. The people should have a right to vote up or down. That's what democracy is about. Attorney Bentley said that the fact that a number of property owners are against the Hunts doesn't mean the Board should be forced into a circumstance where it's being forced to act. He said the Board doesn't have the tools available to cause the Hunts to cease their activity. He said he agrees with Selectmen Brummer's concerns. He acknowledged that the frequency probably brought them to the meeting that night. People like to party and there are fireworks and loud noises and drinking, but the bottom line is that the Board doesn't have authority or regulations in place to do what they're being asked to do.

Attorney Hoppock said Mr. Bentley is wrong. The Board has the authority, under the common law -- authority to regulate and control. Both words are there for a reason under common law. It's an accessory use when you have a permissive ordinance. He read from a book regarding the doctrine of permissive use. He noted the Hunt's property is a home in a residential agricultural zone of farms and single and two-family dwellings. You have to ask yourself, when looking at the doctrine—is the use to which the Hunts put their castle property incidental to or subordinate to the residential use? He contends the answer is 'no.' Attorney Hoppock said they submit that the uses that go on there far exceed the uses of a residential neighborhood. He said that another question is whether the use is incidental to a residential use. He noted that the Hunts have had ample opportunity to provide evidence that what neighbors said is not correct. Attorney Hoppock said the Board has the authority to issue a cease and desist, which is what he is asking them to do.

Sam Seppala asked how many times the property is rented out. Attorney Hoppock said they only know by the level of activity observed and they have presented evidence of a Super Bowl party and other incidents. Sam said part of the Board's determination is based on how many times it is rented. Clearly, if he were renting individual rooms it would be a B & B or a tourist home. Mr. Pyke suggested asking Mr. Hunt. Mr. Hoppock said there are always cars there. Sam said he took a drive out there over the weekend. He did not meet one vehicle on Sunridge Road or any of the roads around there. He drove around the castle and saw 5-6 cars, 2 people on the back deck and 4 people near the lake. Attorney Hoppock questioned whether it was representative of the normal activity. He said it's reached the point where people can't stand it anymore. Maryann Harper said they don't have access to Mr. Hunt's records. They did provide the 31 reviews by the guests, which cover every month of the year besides March and May. Jed said in 2011, there were 7 dates. Maryann said there is no way to know how many write reviews and how many don't. She said it's available year round. She believes it's been rented all this year.

One neighbor said there is a calendar online so you can see what is available. You can see every day of the month is booked. Attorney Hoppock produced a copy of it.

Jed said they understand the Hunts have reached out to the neighbors. Attorney Hoppock said he sent them a proposal yesterday and got a response from Attorney Bentley that it wasn't worth responding. John Hunt said the calendar reflects them blocking off weeks when they are there. He said they could count the number of contracts on an annual basis, but he estimated it was about 20. He noted that one could be a tenant at will. He questioned whether the board would try to say how many times a person could rent their house a year. Lynda Hunt said that the calendar turns red as each day goes by, whether rented or not.

Gary Kinyon, Town Counsel, asked Mr. Hunt and/or Attorney Bentley about the rooms and meals tax paid. John Hunt explained that anyone who rents for less than six months and a day has to collect room and meals tax. Week-by-week or month-by-month rentals must collect rooms and meals tax. Gary said it's based on the rooms. John agreed. Gary asked if they had a signed contract and whether they treat the renters like tenants or transients. John said they are called "guests."

Attorney Bentley said he is happy to share the settlement proposal and his response. He did not tell Attorney Hoppock to get lost. Attorney Bentley said it was 16 numbered items and it did not make sense to make a paragraph-by-paragraph response because the tension was high already and he didn't want to make it worse.

Lisa Pyke, who lives in the first house on road, said that 13 years ago when they bought in they did so because it was a private neighborhood. It was quiet and friendly. That's all gone now. There is someone in the castle every weekend. Her house is all windows. They see everything. The Hunts are running a business, and they are unhappy as neighbors. If that was the case, they wouldn't have bought there. It was a great place to raise kids. Two have left, but they still have a 13-year-old.

Maryann wanted to address why it's different. Sunridge is not a bunch of lots of record. It is a planned unit development. She supplied a copy of the Planning Board approval and explained that when people buy into a neighborhood like that, they have an expectation. There is nothing in the subdivision approval that allows for a business. She questioned whether the Planning Board's conditions of approval meant nothing.

Jed said that when the Town doesn't have specific ordinances, the Board needs to look at both sides. They'll take it all into consideration.

John Hunt said that there is no doubt that when they bought into Sunridge they bought into the vision he had of creating a community. He owns the road. The neighbors refused to own the road. The Hunts own the beach, the fields, the trails, the disc golf course (John said that they want him to ban it), the Boy Scout beach (which he said they want him to ban, but the neighbors vehemently objected to that). John submitted a copy of the letter that said "there shall be no camping..." John said they would work with them, as much as they have poisoned the water. A neighbor said John breaks every promise he makes.

Dave DuVernay made a point of order, noting comments should be addressed to the Board. John said he would be more than willing to get out of rental business if the neighbors would be willing to pay for it. If they want a private beach, they should pay for it. Lynda read aloud, "fair and reasonable fee for the privilege to use beach."

Attorney Hoppock said the Hunts claim to own everything in Sunridge, but they don't. John Hunt read aloud, "the fee should be based on the investment..." and noted that the dam had to be taken out. The water was gone for four years. The Hunts had to pay \$1.3 million, and they're saddled with the debt. No one wants to pay it. They think they own everything. They have to pay taxes that are astronomical. They haven't even been there to use it. They have to rent their house to pay their bills. Attorney Hoppock said he thinks it's irresponsible to respond to a settlement letter in a public forum. Mr. Hunt says he owns the road. Attorney Hoppock reiterated that the Board has authority under common law doctrine and asked the board to issue a cease and desist.

Dick Call asked how many times the Rindge police, rescue and fire have been called.

Someone said three times. Mr. Graf said it's the overall impact. In respect to police, they're not going to call everytime someone speeds. A neighbor said in response to Mr. Seppala's comment, that she and her husband were out walking over the weekend. If he'd come 20 minutes earlier, he would have seen a cavalcade of 20 cars.

Mark Beal and Sara Dengler, residents of Sunridge, said they were not represented by Attorney Hoppock, but they share all of the concerns of the neighbors and their representations are generally accurate. Mark said it seems it's not going to end here, but will go to ZBA, even though he is aware of gestures made on both sides to settle, which he thinks is a good sign. If the Hunts are compelled to appear before the ZBA and come up with some sort of formula for an exception, they're willing to work with it.

Lynda said she would like to work with the neighbors but doesn't want to work through a lawyer, because it's crass and cold. They sent their proposal and thought it was good. Attorney Bentley said that he heard someone say he'd called the home a tourist home, but he denies that. He said that if you look at the statute, Attorney

Hoppock said they were the legislative body. He deferred to attorney Kinyon to advise the Board on that matter.

Bill Harper said he's been involved with Sunridge since 1981. They worked together developing the property. West Rindge Builders built the homes. He and Maryann have lived there 25 years. This was never on the radar screen. The Hunts have made many promises but haven't kept any of them. When they first started talking about it, they let them know through Attorney Silas Little they didn't like what was happening. When the neighbors brought forward concerns, the Hunts dismissed them. This is a business going on in a planned unit subdivision, which is "over the top." They started with reasonable use of property like other lake property. They don't really want to negotiate. They were dismissed. His take is this is a hospitality business in a planned unit residential subdivision.

John said for the record the castle is not in the PUD. Bill said he was wrong. John explained it was the Thomas lot and another lot. Gary Kinyon said that the status of the property relative to any private restrictions isn't relevant. The zoning is relevant.

A neighbor said it's a resort. Maryann said in 1994 when the castle lot was created, it said the 1982 condition was applied to this too.

The public hearing on the Hunt matter was closed. Attorney Kinyon recommended the Board vote to enter nonpublic session and cite the provision, claims of litigation threatened in writing under RSA 91-A:3 II e. He suggested they also cite the writing where litigation was threatened. Carlotta noted it was attorney Hoppock's first letter dated January 26, 2012. Jed moved to go into non-public for litigation that has been threatened, citing letter of Attorney Hoppock dated 1/11/12. Pat seconded. Jed, Pat, and Sam voted in favor of the motion. Jed said the Board would be making an administrative decision that night in a non-public discussion.

The board reconvened its public session at 8:08 p.m. Pat moved the Board find that the primary and principal use of the property is residential. (Further, that) the Board finds that the following accessory uses are permitted at both the Hunt castle and the Holloway house: rentals of the premises that occur no more frequently than once a week and rentals for a term of more than one week. Unacceptable accessory uses that are not customarily associated with a residential use and are not permitted are rentals for events such as banquets, weddings, and receptions and rentals of the premises more frequently than once per week. We do not find that the use constitutes a "tourist home" or a "bed and breakfast" as defined in our ordinance. Jed seconded, and the Board voted unanimously in favor of the motion.

Pat moved the Board temporarily hold in abeyance any action on a cease and desist order. Sam seconded, and the Board voted unanimously in favor of the motion. John Hunt questioned as long as he has a contract once a week. He said they could live with that. 'No events' was clarified. Maryann Harper (by phone) asked for clarification about renting every week of the year. Jed said the Board felt it would hold true with anyone else who wanted to rent a house in a residential area. Pat elaborated no more frequent than once a week. Maryanne asked who would monitor it. Pat said that's not what the Board had been tasked with. Maryann asked if an alumnae retreat was okay. Gary said they'd have to deal with issues as they come up. John said they'd never have more than 30 people renting house. Gary said that's not what vote was. Maryann said she was a little dismayed that it was still being discussed. Pat said a decision has been made. This was for sharing the decision with the public.

Town Administrator's Report / Informational Items

- 1. Ongoing Business** – no action taken

Adjournment