

Public Hearing
Monday, August 1, 2016
Temporary Outdoor Event Ordinance

These minutes were recorded by Ellen White, Town Administrator.

Call to Order:

Chairman Riley called the public hearing to order at 5:00 PM.

Riley introduced the Selectmen present: Frank Riley, Bob Freeman and Richard Morgan, and also introduced Town Attorney Rick Sager. Riley then requested that anyone from the audience wishing to speak on the Temporary Outdoor Event Ordinance, please announce their name.

Riley stated the purpose of the public hearing is to review the proposed changes to the Outdoor Event Ordinance. He stated that the purpose of the ordinance is not to override any zoning or other ordinances already in place.

Riley then offered public comment on the Temporary Outdoor Event Ordinance to be reviewed page by page.

Public Comment:

Jim Rines commended the Board for reviewing the Ordinance and acknowledged the thought and effort put into the document. Rines stated that he reviewed the draft Ordinance and also took into account the press coverage on the topic. Rines distributed a copy of the Ordinance with his comments provided noting a few suggestions and grammatical errors. Rines reviewed his comments from page one stating that section 1.03 is not necessary and can be construed as arbitrary and capricious if the criteria has already been set in other sections of the document. He then went on to review several other comments he had using his experience from filling out various applications over the years from several towns and expressed the need for clarification and consistency.

Jim Fitzpatrick spoke on behalf of the Rotary questioning why the Board was making it more difficult for the non-profits including the imposition of a fee to hold an outdoor event. Morgan responded that the purpose for the update is not to make it more difficult for non-profits, they would follow the same process they have in the past. Riley responded that the fee is part of the RSA language and is not required. Fitzpatrick questioned the need for the update stating the proposed update has a lot more wording and requirements that the previous ordinance did not contain.

Bob Gillette stated that he shares the comments made by Jim Rines. He further stated that he reviewed the Town of Wolfeboro's process for outdoor events and was surprised with the Planning Board's involvement. Riley stated that a business wishing to host an outdoor event should seek approval through Site Plan Review and would not need to request permission through the Temporary Outdoor Event Application process once approved. Gillette stated that the Planning Board only has authority when there is a clear change in use. Discussion took place on the instance when a business expands onto another property that is in a different zoning district.

Denise Dawson stated that the ordinance opens the Town up to litigation that it can't afford.

Attorney Sager explained the reason behind the language in section 1.03 stating that the Selectmen are not obligated to provide a license for any event but can if they so choose. He further stated that he added the language into the document to allow the Selectmen the authority to deny or approve without explanation. Sager stated that the language came from an employment law contract. Morgan questioned if the language will protect the Town or put them at a disadvantage. Sager responded that he will consult with other municipal attorneys to determine whether it is necessary.

Greg Howard concurred with Jim Rines comments and reviewed additional comments. He questioned why the restriction was imposed on businesses only allowing one event per year for a duration of up to three days. Morgan responded that a business can seek a minor site plan review for events that will be regularly held and would not be required to apply under the temporary outdoor event process. Gillette commented that a business can seek an amendment to their site plan review which is an even simpler process. Howard reiterated concern for the language in section 1.03. Howard also questioned what deems a complaint legitimate under section 2.03. Discussion ensued on the difference between events to be held under the temporary event ordinance and a change in use of business requiring site plan review.

Gillette stated that creating a balance of interest between the business and neighbors is one of the challenges Wolfeboro finds but they do so by setting decibel levels and time frames for events to be held.

Joe Deighan questioned the issue with the events applied for by Hobbs Tavern last year. Morgan responded that last year, a series of thirty events was originally applied for which created the opposition received from the neighborhood. This year, two events were applied for with intention for additional if approved, as stated by their attorney. Ash Fischbein stated that last year's application was recommended by the previous Zoning Enforcement Officer but they never intended to have thirty events. Deighan spoke on special events including the process as handled by the City of Portsmouth. He further recommended the Board review the special events publication put out by the NH Municipal Association and reviewed the section pertinent to his discussion. Additional discussion took place on continuous use, on a regular basis and the interpretation of allowed and disallowed uses under the Zoning Ordinance.

Paul Eldridge agreed with the opposition voiced on section 1.03 and discussed the present contradiction with concerts taking place at the Main Street Gazebo on Sundays. He questioned if the Board will continue to allow the concerts if contested by the neighbors. Eldridge further discussed noise violations and groups infringing upon others rights. Discussion also took place on the budget for economic development in comparison to what is raised for other Town departments. Eldridge stated that there must be reason to make the Town a more desirable place for people and businesses to relocate and help offset the taxes.

Donna Gridley suggested the Board utilize general guidelines or a scale to better define what is being required under the ordinance. She stated that there needs to be a better way to grow business and keep the neighbor's acceptance.

Morgan discussed the discretion exercised by the Board of Selectmen on a regular basis.

Matt Bailey stated that section 1.03 is nullified by section 2.02 stating that the Board shall issue a license if all requirements are met. Discussion took place on the loophole within the existing ordinance that allowed a business a new use not allowed through the Zoning Ordinance. Morgan stated that the updates are being made to the ordinance to close the loophole in an effort to not circumvent the existing ordinances and regulations.

Matt Trahan questioned if it was common for applicants to be deferred to the Planning Board for Site Plan Review. Riley and Morgan both stated that there has never been a business to apply for an event like this before. Trahan questioned whether the Board approached the Planning Board to see how the process would work moving forward. He further recommended getting all the Boards that would be involve together so they can better understand the process. Morgan responded that the revisions make it clearer. He added that the Board advocated to all for trial and error by allowing the one event to see if it is successful and if so, apply for site plan review.

Rines reviewed the process in which Hobbs appealed the Selectmen's decision to last year's application. He stated that the denial of the outdoor event permit could not be based on the Zoning Ordinance and should have no bearing. Rines stated that any other event permitted has not been allowed by determining whether it is allowable in its zone but rather permitted because it meets the requirements of the ordinance and added that if the Board will require compliance with the Zoning Ordinance, the document should state that.

Howard expressed concern for adopting an ordinance that will be in place several years from now that will affect future business use. Riley responded that it can be revised by a future Board. Following discussion using hypothetical instances, Howard requested the Board thoroughly review the proposed ordinance prior to voting to adopt it.

Eldridge discussed financial gain for the Town by sacrificing peace of the neighborhood. He further discussed who should have the authority to determine appropriate levels of tolerance.

Morgan reviewed the process by which Hobbs should get approval to have the concert events on the 3 Covered Bridge Road property.

Fischbein reviewed article 35.2-a and 35.2-j from the Zoning Ordinance while reviewing several previously approved events that would be denied through the proposed ordinance. He compared events such as the vintage snowmobile races at Sunny Villa that would no longer be permissible and would have to seek site plan review. He further stated that 60-70 applications were approved with the same issues but were also applied for on the day of or as late as two weeks prior to the commencement of the event. He referred to the revised ordinance as arbitrary and ambiguous. Examples of non-permitted uses followed.

Attorney Sager acknowledged there are typo issues that will be corrected and added that a lot of the content is the same but in a different format.

Bailey questioned what is actually being changed in the ordinance. Sager reviewed the updates that have been made to the document. Bailey stated that rather than narrowing the scope to deter the loopholes, the Board appears to be broadening it to cover all aspects.

Fitzpatrick questioned why the ordinance was written to apply primarily to non-profit entities. He also questioned what effect the ordinance will have on the Rotary and Ossipee Old Home Week events. Morgan stated that it will not impact the events from occurring and further confirmed that there would be no fee assessed for a non-profit to receive a license.

Deighan suggested the Town seek input from an event planner or professional to assist with determining the requirements of the ordinance.

Tim Otterbach acknowledged the underlying issue with the update is the language added to the ordinance and suggested a revised version of the proposed ordinance be brought back for public comment. He suggested that human and financial resources be factored into the thought process to see how it can accommodate the development of the Town by attracting business and not deterring it. He also suggested a version be presented with highlighted and bold all changes so the public can see what has been changed or updated from the original document.

Riley reminded all that the Household Hazardous Waste Collection is taking place this Saturday from 8:30 AM – 12:00 PM.

Riley stated that Town growth and business should not be managed through ordinances but rather through the Master Plan and Planning Board regulations. The mixture of this ordinance with the Zoning Ordinance should not exist.

Cole Perry questioned sections 7.01 and 7.02 in the ordinance. Sager responded that the section reviews the State RSA's and are not available for change. Perry discussed the time frames and deposit requirements of which performers require to host an event, and the impact the required application deadlines may have on an entity holding the event.

Rines commented that the zone in which an event is to be held should have no bearing on the temporary event. Morgan added that the intent is to not have the ordinance circumvent any other town regulation.

Discussion took place on the denials of applications submitted by Hobbs for concert events at the 3 Covered Bridge property. Deighan questioned the process by which various department heads have to sign off on the event. Morgan explained that even though the department heads review and sign off on the application, the onus is still on the Board of Selectmen to ensure that health and safety requirements are being met.

Lynette Nason stated that the language in section 1.03 gives the Board the ability to make an umbrella decision where someone will pay a price. She further stated her belief for the change being a result of the Board being challenged. Additional discussion took place on the rights of the people.

Following comments being made in the audience, Morgan responded that the Board is taking the public comments, will be making additional revisions and will host another public hearing prior to the adoption of the amended ordinance.

Gillette questioned whether zoning will be taken into consideration under the revised ordinance. Morgan responded that it will not; if the event is to occur more than on a temporary basis, site plan review should be sought. Fischbein questioned whether the Planning Board has the authority to regulate a Selectmen's Ordinance. The answer was no. Fischbein who is responsible for enforcing violations of non-permitted uses. Morgan responded that the Zoning Enforcement Officer is responsible for policing zoning violations. Further discussion took place on the effect on the proposed ordinance change on existing events and future events.

Deighan request point of clarification on the topic. Deighan questioned the reason why the applications are continuing to be denied. Morgan responded that the Board has approved the most recent application submitted for one concert. Deighan stated that the zoning should have no bearing on the temporary events applied for. Further discussion took place on defining what a temporary event consists of including how long the events are to take place and how often.

Howard stated there to be a lot of confusion and asked for clarification in the application process using the car shows held at the Yankee Smokehouse as an example. Morgan responded that if the event is allowable under the current site plan, no temporary outdoor event application would be required. The temporary outdoor event application process would apply to one-time events.

Riley stated that the Board will be taking the comments under advisement and revisions will be made. Joseph Gaudette suggested the Board address the first amendment issues in the document.

Marion Rines spoke on the concert events to be held at Hobbs stating that the business has made a huge investment and the neighbors may enjoy the concerts.

Nason questioned who will be working on the revisions. Riley responded that it will be the Board, Town Administrator and Town Attorney.

Nason questioned the concert held last night in the Main Street Gazebo. Morgan clarified that the concerts held in the Main Street Park are on town property and held by the Town which is not required to file an application. Paul Eldridge asked if the neighbors have a say. Riley responded that if opposition to the concerts is received, they would be relocated to another location. Additional discussion took place on noise ordinances.

Morgan confirmed with Attorney Sager that revisions are to be made and to anticipate the next hearing to take place in 3-4 weeks.

Adjournment:

Being no further input, Riley made a motion to adjourn. Freeman seconded. A unanimous vote was taken.

Adjourned at 7:14 PM.

Franklin R. Riley, Chairman

Robert C. Freeman

Richard H. Morgan