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CORNWALL PLANNING COMMISSION (CPC)

Special Meeting
Cornwall Town Hall
June 30, 2015

MEMBERS PRESENT: Dave Anderson, Jamie McKenna, Sarah Pelkey, Bobbie Carnwath, Holly Noordsy, Jean Terwilliger, Jim Duclos

ALSO PRESENT: Jim Carroll, Town Attorney; Select Board: Ben Wood, Magna Dodge; David Dodge, Lemon Fair Insect Control District; Sue Johnson, Town Clerk/Town Treasurer

The meeting was called to order at 7:00 pm

Quorum - *established*.

AGENDA – Jim D. MOVED/Dave A. SECONDED a motion to approve the agenda as distributed. MOTION PASSED - 7 in favor, 0 opposed.

Tonight's special meeting has been convened to hear a presentation from Town Attorney Jim Carroll on Quasi-Judicial Hearings Procedures and Vermont's Open Meeting Law.

Attorney Carroll compiled a reference manual, *Town of Cornwall, Quasi-Judicial Hearing Procedures, June 30, 2015* for the CPC and other Town officials, and distributed it tonight. The manual includes educational materials on the essentials of local land use planning and regulation in Vermont, enabling Vermont Statutes (Title 1 and Title 24), and examples of decisions.

Attorney Carroll said that projects being considered by Vermont towns today are more complex than ever before, and are often being represented by legal counsel. It is important that decisions be made that stand the test of appeals.

All authority of the Towns in Vermont comes from the State, not the other way around, Carroll said. The Select Board, Planning Commission, Zoning Administrator, and Zoning Board of Adjustment (or Development Review Board) each have different roles and responsibilities in planning and regulating how land is used in the Town.

Currently the responsibilities of the Planning Commission in Cornwall include both the planning and the quasi-judicial functions. Towns that spend an inordinate amount of time in regulatory review, have difficulty finding the time for their primary role of planning.

Cornwall could choose to adopt a Development Review Board (DRB) instead of having a Zoning Board of Adjustment. Many towns in Vermont have done so. Usually the impetus comes from the Planning Commission. The Select Board has the authority to pass a resolution to adopt a DRB. Citizens could serve on both the Planning Commission and the DRB, but too much overlap would defeat the purpose. Usually the DRB is a 5 or 7 member board, whose responsibility is regulatory review. If the Town adapts a DRB, it could restrict Environmental Court review to a record review, but that would need to be done strictly according to the law, is complicated and most towns with a DRB choose not to.

Attorney Carroll explained the difference between a deliberative session and an executive session. A deliberative session is not a public meeting. After all evidence is heard and a hearing is closed, the board will convene a deliberative session for all the members to discuss a specific topic, and must talk about only the facts that have been heard in hearings, to make a decision. If the board cannot make a decision without hearing more evidence, it could stop the deliberative process by making an order to re-open the hearing. If the hearing is re-opened, it would need to be duly warned again. The decision is public, and must be in writing. As soon as the majority of the board signs the decision, it has been officially made. The decision then must be presented at a public meeting.

A municipal board can go into executive session during a public meeting, by majority vote, and after stating one of the specific reasons to go into executive session allowed under Vermont's Open Meeting laws. No decision may be made during an executive session. After coming out of executive session and back into the public meeting, a decision may be made. If no decision is to be made, or no action is to be taken as a result of executive session discussions, the minutes should state that. Attorney Carroll also informed the board that everything that was said in executive session can be obtained, if a lawsuit is filed. Executive session discussions are not protected by "evidentiary privilege."

Constitutional law covers due process during meetings. The Chair or Co-chairs are in charge of the conduct of the hearing, and have the authority to open and close the hearing. Individuals testifying at hearings should do so under oath. Carroll advised that testimony should be recorded, not just minutes taken. The Select Board should establish a policy on how long electronic recordings should be kept (for example, 6 years, the statute of limitations). Exhibits (including the application) should be assigned a number (or letter), date, and person who introduced. Each exhibit should then be accepted as evidence or not by the board.

Board members should recuse themselves if they have a financial stake in the matter, or if relatives (down to cousins) have a financial stake, if they have a personal bias, or if they have publically been for or against the project being considered. Members who have recused themselves in a particular hearing should go and sit with the public during that hearing.

All present agreed that this presentation was very informative and helpful and thanked Attorney Carroll for his clear and valuable presentation.

Jim D. MOVED/ Dave A. SECONDED a motion to adjourn the meeting.
MOTION PASSED – 7 in favor, 0 opposed.

The meeting was adjourned at 9:30 pm.

Respectfully submitted, Sharon Tierra, Clerk of the CPC