

Gilsum Selectboard Meeting

Monday, March 1, 2021
6:00 p.m.

Tim May, Mark Farkas, Sally Struble

Present: Tim May, Mark Farkas, Sally Struble

Minutes taken by: Sally B. Struble

Call to order at 6:02 p.m. Mr. May made a motion to open the meeting; Seconded by Mr. Farkas; all in favor.

2/22/21 Selectboard meeting minutes: Mr. May made a motion to accept the minutes; seconded by Mr. Farkas; all in favor.

Town Officials:

Highway Department

Harlen Maguire stated that he got in touch with the Billy Johnson, who had gone down and looked at the burn pile. He stated that the material in the burn pile has to be separated. Mr. Maguire stated that there are about four years' worth of material in the pile.

Mr. Maguire stated that the Ford truck is going to Roundtree in Swanzey to have it looked at. The situation of not being able to get it out of park is getting worse. They will clear the memory and start over.

Planning Board

Mr. May stated that he spoke to Stephen Buckley at the NHMA on Friday. Mr. Buckley reduced his feedback to an email, which Mr. May summarized (see Attachment A). Mr. May stated that Mr. Buckley advised that the zoning designation issue needs to go before the Zoning Board of Adjustment.

Ms. Struble stated that she contacted the NHMA as well and they responded with a legal opinion (see Attachment B).

Mr. May stated that when he spoke to Avitar last week, they said they will do an audit. Mr. May will email Chad at Avitar to find out how long it will take to get done, and will let the Selectboard know once Mr. May hears back from him.

Old Business:

Emergency Operations Plan

Mr. May stated that there is nothing the Selectboard needs to do at the moment. He recommended that by the end of March, the next Selectboard should look into it. He stated he would give them a call and ask when they expect to start.

Health Insurance Refund

Ms. Struble stated that she looked into how much the insurance refund was in 2020. Jane Ballou looked it up. The refund was \$3,057.68. Ms. Struble stated that the Town Clerk told her that it shows up in the budget in Form MS-737, Page 10, under "Other."

New Business:

Sign Permit Application: Alstead Community Crafts submitted an application for a sign permit. The applicant states that the sign will be placed on the building which houses their business. After discussion, Mr. May made a motion to issue the sign permit; seconded by Mr. Farkas. Mr. May and Mr. Farkas in favor; Ms. Struble abstained.

Election Preparation

Election, March 9, 2021. Members of the Selectboard will meet at the school at 11:00 a.m. on March 9, 2021.

Town Meeting, March 10, 2021. Members of the Selectboard will meet at the school at 5:30 p.m. People will need to bring a picture ID in order to vote. The meeting will need to have two sections of seating, one for people with identification and one for people without identification.

Public Comment:

Vicki Ayer stated that there is a clerical error in the Town Annual Report, in Form MS-737, page 10 of 12. The Selectboard discussed the discrepancy. Mr. May stated that he will discuss the matter with the Town Clerk.

Betsy Cushing asked about the letter from Gary Kinyon. Ms. Struble clarified that Mr. Kinyon will be responding to Ms. Ayer in writing regarding her request for a written legal opinion obtained by the Selectboard.

Adjourn

Mr. May made a motion to adjourn the meeting at 7:35 p.m.; seconded by Mr. Farkas; all in favor.

These minutes accepted on: _____
corrections noted herein.

Mark A. Farkas, Selectman

NET in Attendance

Bart Cushing, Selectman

ABSTAIN, not a select board member

Vicki Ayer, Selectman

3/15/21
BLC

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Attachment A

Gilsum: tax cards

From: Legal Inquiries <legalinquiries@nhmunicipal.org>

Date: 03/01/2021 12:19

To: "may.tim@myfairpoint.net" <may.tim@myfairpoint.net>

Good Morning Tim:

Whether a property is in the Highway District will be defined by the zoning ordinance. Gilsum's Highway District "encompasses all land on both sides of Route 10 that has frontage and access from Route 10, measured inward from the Highway right-of-way to a distance of 1,000 feet, excluding the Village Residential District." Gilsum Zoning Ordinance, Article III, D, 5. If after this definition was put in place, at or about 2006, the location of Route 10 was substantially altered, this would probably put in question whether property that was formerly within the Highway District is no longer in the District. This issue would have to be resolved by the Zoning Board of Adjustment by way of an administrative appeal.

Stephen C. Buckley**Legal Services Counsel****NH Municipal Association**

25 Triangle Park Drive

Concord, NH 03301

Tel: (603) 224-7447

Email: legalinquiries@nhmunicipal.org**From:** Tim May <may.tim@myfairpoint.net>**Sent:** Wednesday, February 24, 2021 4:23 PM**To:** Legal Inquiries <legalinquiries@nhmunicipal.org>**Cc:** sbstruble@comcast.net; farkasmark04@gmail.com**Subject:** tax cards

Hi I'm Gilsum selectmen Tim May and the chair.

I just want to be clear that Avitar did not change any zoning. They changed the tax card to match our zoning ordinance. Our town clerk had brought up at a meeting that Avitar had found several properties that were missed labeled. Some members on the planning board feel that the zone was changed. I did not think a town vote was needed to correct the tax card. We had several properties that were never labeled on the tax card after the new rt10 was put in.

The highway district says the intent is to keep traffic off town roads.(in short) So if your address is spring st and you have no visible access to rt10 from your property. I wouldn't call that highway district. But what do I know that's me! So I felt the properties don't meet the requirements of highway and should be rural residential as to avitar.

So my question!

Do you need a town vote to (in my eyes) correct the cards to match our voted in zoning laws?

Would you say that if your address is not on the state highway but on a town rd. and you have no visible access to the highway. Can you be considered highway?

As for the audit. I wouldn't feel good having the planning board doing it. Too much controversy going on.

Can we Just have Avitar do the audit they are looking for? Or even an outsider to do?

Would you have any suggestions on how we have this investigated so all know it's done fairly?

Thank you

Tim

March 1, 2021 BOS Meeting Minutes

Attachment B

Legal Inquiries <legalinquiries@nhmunicipal.org>

2/24/2021 11:47 AM

Gilsum: Legal Opinion

To sbstruble@comcast.net <sbstruble@comcast.net>

Good Morning Sally:

The tax assessment records of the town do not and cannot modify zoning designations imposed by your zoning ordinance. How it came to pass that Avitar has been entering new and different zoning classifications for properties inconsistent with the zoning ordinance is somewhat incomprehensible.

Under RSA 674:16, I (c) a zoning ordinance adopted by town meeting can regulate and restrict for “the location and use of buildings, structures and land used for business, industrial, residential, or other purposes.” “The fixing of zoning lines is a matter of legislative discretion and necessarily results in a different classification of uses on either side of the line. This does not render limitations on use of property near the boundary line in a more restricted district unreasonable or invalid. Although a line may seem arbitrary to the resident on the restrictive side, the presumption of an ordinance's validity is entitled to prevail.” *Windham v. Alford*, 129 N.H. 24, 26 (1986). Gilsum’s Zoning Ordinance very specifically designates land as either being in the Village District (Article III, A, 6), the Rural Residential District (Article III, B,5), the Industrial/Commercial District (Article III, C, 5) or the Highway District (Article III, D, 5).

In answer to your first question, zoning classifications for individual parcels of land cannot be modified by your contract assessor, Avitar. Zoning classifications can only be modified by a zoning amendment adopted by the town meeting. Avitar could conform the tax assessment records to make sure those records are consistent with the zoning ordinance.

Under the provisions of RSA 674:1, I (b) the planning board may undertake “any investigations, maps and reports, and recommendations which relate to the planning and development of the municipality.” Without knowing anything further about the background of the so-called Spring Street property uses issue, I can generally say it is appropriate for the Planning Board to determine if zoning classifications established by vote of town meeting are being honored by the tax assessment process. Ultimately, the management of the tax assessment process is delegated to the select board, as it is the select board that manages the appraisal, RSA 75:1, and assessment of taxes, RSA 76:5. The correction of any errors in the tax assessment records would be the duty of the select board.

Stephen C. Buckley
Legal Services Counsel
NH Municipal Association

25 Triangle Park Drive
Concord, NH 03301
Tel: (603) 224-7447
Email: legalinquiries@nhmunicipal.org

From: SALLY STRUBLE <sbstruble@comcast.net>
Sent: Tuesday, February 23, 2021 9:41 AM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: Legal Opinion

Hello,

I am writing on behalf of the Gilsum Board of Selectmen, of which I am a member. The Selectboard received the attached request from the Gilsum Planning Board Chair, Craig

Roach, which was emailed to the Town Clerk on February 20, 2021.

As background, the Planning Board has been looking into complaints about a bait shop that opened on Spring Street in Gilsum. The property on which the bait shop is located abuts Route 10 as well as Spring Street. It came to the Planning Board's attention that the tax card for the bait shop property had been changed from highway use to rural residential. The Planning Board then asked for the tax cards for all properties on Spring Street from 1995 to 2020 and discovered that other properties on the street also had had changes made to their tax cards. These changes did not go before the town for a vote.

The Planning Board is now asking the Selectboard to authorize Avitar Associates to audit "changes in zoning designation on any properties in the entire Town from 1995-Present, and, also authorize Chair, per citing RSA 674:1(b) to discuss with Avitar Associates the finds [sic] as part of the Gilsum Planning Board Investigation."

The Selectboard has several questions:

1. Does RSA 674:16 apply to this set of facts? Should any changes to the zoning designations on particular tax cards have gone before the town for a vote?
2. What are the Planning Board's investigatory powers in this case? Does the Planning Board have the authority to pursue an investigation, or is it the Selectboard that has the power to do that, if necessary?
3. What other statutes apply to this case, and how so?

Thank you for your attention to this matter. The Selectboard looks forward to your response.

Sally B. Struble
Member, Gilsum Selectboard