

Charlton Planning Board February 13, 2019

As transcribed by software. Recording available on Planning Board Website.

Present: Chairperson Patricia Rydlak
Members: Ross Lemansky, Jean Vincent, Don Clay
Planning Board Alternate: John Smith
Staff: Administrative Assistant Jayne Garney

Not present: Member Alycia Dzik and Interim Planner William Scanlan

Patricia Rydlak: Being past seven o'clock, I am opening our meeting.

Patricia Rydlak: It is February 13th, 2019 and we're just here to discuss the emergency meeting that occurred on February 7, 2019 on the deadline on the response of the VGG site plan appeal. Therefore, we posted last minute for that one. We posted this one just to discuss that meeting.

Patricia Rydlak said she can't represent the board because she's not an attorney, according to the court clerk, so we will have to all sign individually and refile.

Don Clay asked if there is any need as that was a safety net so that we could prevent the default.

Patricia Rydlak said she hasn't discussed this with an attorney as we don't have an attorney working on this at all that represents us. We did get an official letter from the VGG attorneys that there is an extension. We don't even know that this is in our best interest.

Don Clay said he didn't feel comfortable with not having a lawyer or counsel to check in on.

Patricia Rydlak said if you don't feel comfortable we don't have to sign it. The initial vote was unanimous. We just never know what will get thrown at us.

Don Clay said I would assume that it's been extended to March 31st. That means that we don't necessarily have to file that right away. It would be good if we could talk to an attorney to find out at least where the board stands. And the obligations this board has moving forward. I guess we need to find out if between now and March 31st if we're going to get to talk to counsel

Don Clay said he wasn't a lawyer and I don't pretend to be. My understanding was the email went through and mark was on that also on that he.

Patricia Rydlak stated she called Mark and he wouldn't even discuss the site plan.

Patricia Rydlak stated that he was copied, but he was never approved as our attorney. He received the call from KP Law saying he is not our attorney. It's just awkward situation.

Patricia Rydlak stated that we could invite Attorney Pill to an executive session if that is necessary.

Patricia Rydlak stated that we could hold off on signing the answer, but remember we worked really hard for eight months and I don't think there's any board that ever had as many meetings as we had like in the last eight months. And I just don't want to lose everything because of a technicality.

Don Clay states that we responded just in case it didn't get any movement, it covered us, now it's

been extended.

Jean Vincent asked if we were going into executive session next meeting.

Patricia Rydlak stated that she would need to think about it. We need to discuss strategy with respect to litigation, but I don't think what we're going to discuss would have detrimental effect to litigation. I think it's just the legality of the paperwork and what needs to be done.

Jean Vincent stated that the other item she was going to discuss is the new Planner.

Don Clay agreed.

Don Clay stated that it's moving forward and the vacation time will be resolved thru Town policy to be fair.

The Board agreed we were getting off subject.

Jean Vincent stated that she was very comfortable with what we did. I think we could wait a week. We've got the letter saying that it's been extended, for them to rescind that we need notice too, maybe.

Robin Craver said she feels like a skunk at a garden party. There are a couple of important things I want to say. You talk about not knowing, I was giving you guys information that we were working with our attorney in the land court case to move everything over and that we were looking to get that fact across in that memo.

Jean Vincent stated that wasn't true, we were not informed and worried. What you say has no credibility, I'm sorry, I've heard words from you before.

Robin Craver stated that she doesn't think the board has ever done anything to level that you are saying. I mean the talk about them rescinding, that's just not going to happen. It's not going to happen. And the Chairman has been clear.

Jean Vincent stated that the Planning Board names are on the lawsuit, not the Select board.

Robin Craver said that what the Planning Board doesn't understand is that you have a certain authority, and that authority does not extend into cases against the Town - the Board of Selectmen is responsible for this. What your denial was about was regarding whether or not it's agricultural right now.

Ross Lemansky stated that's not accurate. It is use – we determined that light manufacturing is not the correct use.

Robin Craver: stated that it's the same thing. Jerry Russell is suing the town right now saying that it is not an agricultural use. And you've said it's not an agricultural use. We're already in court on that determination. It's going to be covered one way or the other. Now the board will decide how it wants to move forward.

Patricia Rydlak asked which Board?

Robin Craver answered the Select Board. What I also do need to tell you is because you don't have the authority and if you want I can give you a case law. You do not have to right. That alone. You

do not have the authority to have Pill file anything on behalf of the Planning Board. I would recommend that you withdraw that and trust that the extension is until the 31st. The Board of Selectmen does plan on doing exactly what it says which is, that they will deal with it after the 6th. So it understands where and how and exactly what you would need for assistance.

Patricia Rydlak: It makes me worry because I know that Curt is being sued and his decision is the opposite of ours. And you, have decided, as a board, I'm sorry, you and John had decided not the board, to defend Curt and not give us a lawyer while you're defending that case. And it seems even in the public eye - the appearance is terrible.

Robin Craver stated I hear that. But I don't think that that's actually the way it went. And it's not me and John. So if you remember the time frame. Mr. Russell went to court and sued. There was supposedly this friendly litigation which was the ban marijuana by general bylaw. That's how we'd be. We just needed to know, because the attorney general was going to decide, then Russell comes in and sues puts in a case against the Town saying that it can't go there. So as we have that in the Land Court with the same judge. It has nothing to do with Curt at this point. It's not separate. It's not Curt that's being sued right now. Curt is not being sued I heard that comment several times what is happening is that the Board of Selectmen is defending their vote, their host agreement their development agreement that they checked with the zoning enforcement when they made that decision they did not make that decision willy, nilly, they felt like they were on very firm ground.

Patricia Rydlak stated that this is off the agenda. We are here to just talk about this particular item, which is why we went an emergency meeting last week.

Robin Craver but that is also what I'm trying to explain to you. You had no emergency.

John Smith stated that the lawyer from VGG Stood up and said that he would do anything to defend his client. We were individually named, so we were individually served. We've asked to have counsel to consult and we haven't. We've been denied that. That's all we really want.

Robin Craver stated that I really don't think you've been denied.

Jean Vincent disagreed. The Board disagreed.

Robin Craver stated that John and I are not making these decisions. What we have said and have communicated and been consistent is that the Board of Selectmen needs to meet and talk about strategy and they need to meet with you and have a conversation.

Patricia Rydlak stated that we don't care about strategy. We made a decision. We worked for eight long months to make a decision and what we care about is that we have an attorney to represent us to defend our decision. We are an elected board. And your board voted to give us an attorney and then the attorney got taken away, fired. Your counsel called our attorney and said No you haven't been approved by the Board of Selectmen.

Robin Craver responded no actually what our attorney said is that the planning board does not have the approval of the Board of Selectmen to assist you in the site plan appeal.

Patricia Rydlak stated I have a video on my phone of the Selectmen Chair stating that "We do not get in the way of planning board business". And there's also a vote that we can have an attorney. It didn't say it's going to stop at the appeal or defending but I guess what we're talking about is a technicality here.

Jean Vincent stated I think when any attorney writes it down he writes decision with the understanding in his mind that it has to be defensible by him.

Robin Craver stated No because actually if you remember in your last 20 minutes when you were having a discussion Mark actually said to you if you approve this then the abutters will most likely appeal and you will probably step out and let the butters and the developer go at it and you let the court just you abide by whatever the court says.

Jean Vincent stated that we weren't comfortable with that.

Robin Craver: That has been, and I think Attorney Cosgrove agrees, the issue.

Don Clay asked if it was fair to the towns people that elected this board to represent them to push it back on them.

Ross Lemansky asked and not follow our Zoning Bylaws?

Robin Craver And that's why you're going to have the conversation with the board of Selectmen.

Don Clay said that these tensions can be eased and put things to somewhat of a level playing ground is if we had the ability to still consult with Mark about this, without him defending the site plan.

Don Clay: We are not being provided representation, and that is a bit uncomfortable.

Robin Craver : I know that the waiting is difficult. And the extension will not be rescinded.

Jean Vincent asked can you guarantee that to me?

Robin Craver replied yes I can. Once this has been put in place no judge is going to allow you to come back and argue that you are in default.

Patricia Rydlak: People win all the time on technicalities.

Don Clay stated that he'd like the ability to speak with counsel.

Robin Craver: I can't do that.

Jean Vincent: Then we are going to go ahead and file on our own.

Robin Craver stated that if you file that then we come on the front page of the paper that you are filing something that you don't have the authority to do.

Jean Vincent Oh I think I'm very much in my grounds of authority when my name's on something.

Robin Craver: Feel that. But you cannot do it on behalf of the town.

Jean Vincent: I'm not doing only half the town I am doing you have behalf of Jean Vincent, defendant as members of the planning board.

Robin Craver: What you would you be submitting, because I haven't seen it.

Jean Vincent: handed the filing to Robin, stating that's the latest one.

Don Clay asked - So it's just to have council is a no deal?

Don Clay: That's not to represent us because that's not what we're asking for right now but to consult with to find out what the legalities are, what the options are. I'm not a lawyer. You are not a lawyer.

Robin Craver I think you're going to have that conversation with the Board of Selectmen once they are aware.

Patricia Rydlak But we don't need the Board of Selectmen because the Town Administrator and the Chair makes that decision.

Robin Craver stated that you are making an answer for the Town of Charlton

Ross Lemansky: stated no actually we are making an answer for the town of Charlton say town Planning Board not the town Charlton.

Robin Craver: Then you go do what you want. I'm just telling you right now that you do not the authority.

Ross Lemansky stated let's move on.

Robin Craver: I haven't heard that yet. Who attended the board.

Patricia Rydlak answered everyone.

Robin Craver stated let's see if there's anything else that I wanted to mention to you when I was listening.

Don Clay asked when the select board meet and when can we meet with them

Robin Craver stated that the Board of Selectmen has said that they just want to wait until after your hearing.

Patricia Rydlak: VGG actually is the big decision maker here and they want to see if we deny or approve the Definitive Subdivision so they know how to tell the town of Charlton and what to do to make this project happen.

Robin Craver stated that's not quite fair to the Board of Selectmen.

Don Clay: stated that Just because there is the appearance of impropriety doesn't mean that there is impropriety.

Patricia Rydlak stated that Just because just because it walks like a duck and talks like a duck doesn't mean that it's a duck. I get it. I know we shouldn't assume anything.

Don Clay But I'm here and I would still feel comfortable if we could speak right attorney.

Robin Craver: You can

Jean Vincent: when? Its March, do we get one in May?

Robin Craver: You can speak to Mark right now for your Subdivision plan.

Patricia Rydlak. Yes, but not the Site Plan.

Robin Craver: Right, because again the board wants to take a look at strategy now. Right now There's nothing to do because the suit is being moved from Superior Court to Land Court. So there's kind of a sit and wait while that happens and this is really hard to just sit there especially for you guys.

John Smith: The only reason we got the letter is that we rattled some cages.

Robin Craver: Mark was copied.

Patricia Rydlak. It's mark's voicemail. "Hey Patsy thanks for your e-mail. Crazy. Jonathan Silverstein called me of the clear blue and reminded me that I cannot be your attorney." I just wanted to say that out loud. So your lawyer who negotiated the host agreement called our lawyer. You cannot represent them even though you wrote us a great decision complemented by many attorneys.

Robin Craver: But Patsy, that's not what he said, he said that he didn't have authority, you board keeps saying planning board. But the suit is against the town.

Don Clay: I'm asking him to advise us. I think it's an advisory position. It's not a representation. It's just an advisory position. I don't see the harm in that.

Jean Vincent: If you cant get us a lawyer and pull that string, I'm all for signing this other letter and filing it the correct way so that we don't lose on a technicality. I have to protect what I feel I have to protect. That's just my feeling. I don't know how anybody else feels.

Patricia Rydlak We don't have a lawyer that tells us we don't have to do anything at this point

Robin Craver But you have the town administrator sitting here telling you that you do not have to do it.

Jean Vincent: Yeah not so much

Patricia Rydlak: you are not an attorney

Patricia Rydlak So in the in the memo that you sent me, you said you spoke to an attorney that Jean spoke to. And that whole thing, because I was kind of standing behind when that discussion was happening and your interpretation of that conversation was all skewed. So I'm not sure if you know what you what you bring back from an attorney is twisted or not. If you're saying your attorney is telling you that, I don't honestly know if you kind of tweak it a little bit before it comes to our board.

Patricia Rydlak: This is why we need our own attorney.

Don Clay: That's all I'm looking for. If we could get that answer by next Wednesday we could talk to Mark and get it from our by that he's looked over the paperwork. He agrees it's the right plan and that we are covered. We can put this off to Wednesday. You guys the select board meets on Tuesday and I think we could we could get a decision from this one could you at least allow Mark

has an advisory to the Planning Board not to represent us but as an adviser to the Planning Board would be fair.

Patricia Rydlak: I mean that's really kind of taking him on as an attorney.

Don Clay But to counsel and advise the planning board on the legalities of what's happening.

Robin Craver: The Board of Selectmen is going to discuss this with you

Don Clay asked On Tuesday before our next meeting?

Robin Craver replied No.

Patricia Rydlak: They won't do it because they want to see if we approve or deny the subdivision.

Don Clay said that should have no bearing.

Robin Craver: As I said there is a suit, this keeps falling on deaf ears there's two suits. You're aware that one of the suits is exactly what the issue is here. All of it is getting consolidated.

Don Clay: Would it be in the best interest of the town to speak with Mr. Russell. Have him drop his suit. Speak with VGG have them drop their suit against the town for the vote. And just do the math.

Patricia Rydlak: What if we just had it. We would have the answer.

Don Clay: That's true. But if there wasn't a suit to determine and we just moved forward with the ballot vote that seems fair.

Patricia Rydlak: We should move forward with the ballot without anyways just and then. Then wait for the. suit

Don Clay: Well then we can decide whether that was fair or not. But if both if both parties drop their suits and allow this one to move forward that's the cleanest thing for the town.

Robin Craver well that's the strategy is one that the Board of Selectmen would like to have the conversation once it knows who's appealing on which side and where and how your going to vote on March 6th.

Robin Craver: Yeah, Depends depending on whichever way you vote.

Patricia Rydlak: Mark will be able to advise us and then write the decision. Then again he probably won't be able to represent us if we deny and if we approve we won't need representation.

Robin Craver: You will still need representation because my guess is that the abutters are going to appeal. It will continue and that's the part of the BOS needs to discuss.

Patricia Rydlak: But then we'll get it but then we'll get a lawyer for the for the abutter's appeal but we still won't get a lawyer for the planning board.

Don Clay: I don't see the site plan and the subdivision plan being related. They're related, Yes, but they are two different things in this. They're equal one town in the same is no.

Robin Craver: Two of the suits are pretty much the same thing - asking the same.

Patricia Rydlak: The planning board is an independent board. I mean honestly I pay taxes so I don't want our town to lose anything, but I want, we want an attorney to defend our decision. We are an elected board.

Don Clay: I'm not even going that far under the decision. All I'm looking for somebody to consult with.

Patricia Rydlak: I think those aren't two different things at this point.

Robin Craver: There's case law, the defending suits where you do something wrong, the case gets thrown out. If you go forward and don't do that and wait and you work with the board.

John Smith: Well all we're doing is just a placeholder. Just so we are safe.

Robin Craver: Well just it's not a legal place holder and you don't authority to do that.

Robin Craver: you don't want to do that because then what you're going to do is give up your rights to be represented by town council. But if it turns in to being something that you were in acting and you had you were doing this job and you were at this table then the insurance is an issue,

Don Clay: You're not a lawyer.

John Smith: I'm not diminishing your expertise or anything. You are just not a lawyer.

Robin Craver: I understand that, when it's time

Jean Vincent: Anyone happen to notice Mark's name is on here. Why was Mark copied on the extension if he's not our attorney.

Patricia Rydlak: Because when it all blows up so they can say- oh yes look he's copied on everything right.

Robin Craver: No I don't think

Don Clay: The board meets on Tuesday. All they have to do is say yes you can contact Mark. Mark has the right to talk to you about the legality of the paperwork that's been filed.

Robin Craver: So I don't really see that happening at this point. So I guess what I would like to be on record saying is that we're not and I'm hopeful. I also want to go on record stating that there is a problem with Attorney Pill. I have a concern. My concern is that Pill has been assisting the residents and that is a huge conflict. He has been assisting residents, giving them information. That is a huge conflict as a whole.

Patricia Rydlak: He's not representing us yet. He's giving us free advice. That's it.

Robin Craver: But he is not representing anybody that is still representing two parts. So maybe you can understand it this way. If a husband and wife are going to get a divorce and a wife and there's five attorneys in the town and the wife goes in every one of the attorneys and interviews with them to see if she wants one when he goes to find an attorney none of those five attorneys can sit with him and listen to him because he has already been approached and listened to the other side with me

so far. OK. So pill actually interviewed with the planning board, you didn't choose him till next went so we didn't know his guilt.

Patricia Rydlak: Wait, wait. Just so you know, he was not hired because you and VGG wouldn't let us hire him.

Robin Craver: He was not hired for whatever purposes. Then he again came back to you to say he would do that.

Patricia Rydlak: I have a question about that. So when you guys had KP negotiate the host agreement, help Curt change his opinion from it wasn't allowed to it was allowed. They helped the on the whole thing. And then you guys offered to have KP also be our attorney during the site plan for the process.

Wouldn't that also be a conflict?

We didn't choose them because obviously they helped do the host agreement, they could have pushed us a certain way. That's why we didn't choose them. We wanted an independent attorney. So isn't that kind of the same thing?

Robin Craver: No because these attorneys are supposed to be objective just as the Planning Board is supposed to be objective.

Patricia Rydlak: No, an attorney is not - I want to hire you and I want to hire you and I want to do this. Your goal is to make this happen. Do everything you need to do to make this happen. Do it within the legal rights. That's what your attorney does.

Well, in fact, Mark did do that. We didn't have a goal. I said Mark I need you to make sure that we stay in the legal guidelines and you're there to answer the abutters and our questions. So until the very, very end he had no clue what we were going to vote on. We didn't have any clue we went for months and months and months. So, look It was a whole different situation versus. And again, I shouldn't assume but just in appearance - KP was told to do everything you need to do to get it done. And if they advised to us, I could see them kind of pushing to have us approve the project.

Robin Craver: That's your assumption. I'm not so sure of that but certainly you made a good case. You were outside in the front of this building and said Who do you want. And you named him. I called him the next morning and I asked him to take care of it.

Patricia Rydlak: Bill called him and he didn't call us back. Mark said he deleted Bill's message, he was too busy. We called multiple attorneys and nobody responded except for Pill.

Robin Craver: The board felt differently.

Patricia Rydlak: No not the board. Goldstein decided, You said hey Jeffrey, they want this attorney and he said absolutely not. VGG decided, not the Board. So VGG also determined who our attorney wasn't going to be. We chose. We asked Mark and then mark only did it because Cosgrove called him and said please do it.

Robin Craver: No Cosgrove didn't call him, I called him.

Patricia Rydlak: Which sounds even worse.

Ross Lemansky: could we move on from this.

Robin Craver: I was trying to give you information that did not come down here to try and explain what the board of selectmen is trying to do. I'd like to hear it from a board that's all on that.

Ross Lemansky: It's not that tough, we have been asking for weeks

Patricia Rydlak: What if the project gets extended do we not get an attorney until after?

Jean Vincent: And that could be after March 30 first and then we don't have any and.

Robin Craver: I really don't think the Board of Selectmen is playing games.

Patricia Rydlak I don't think it's the whole board playing games, it's you.

Patricia Rydlak: What if it comes down to the point where they either need an extension or they get a denial and they have to extend do we still get an attorney on March 6.

Don Clay: No we haven't been promised an attorney. The discussion will happen after March 6th.

Patricia Rydlak: Oh, I'm sorry, thanks for clearing that up

Jean Vincent: OK. My feeling and I mentioned that before is this board of selectmen is having a meeting on the 19th which is a day before our meeting. If they will not let us talk to Mark in regards to this item not the subdivision in regard to this item either you know to file the answer or the correct way and leave it the way it goes or whatever then that we go ahead and file the new one just to protect ourselves.

Jean Vincent: I mean we can't talk to an attorney on a motion I make that a motion yes.

Member Jean Vincent made a motion that at the February 19, 2019 Selectmen's Meeting, if the Planning Board does not know their legal rights to get authorization hiring Attorney Mark Bobrowski, the Planning Board will file the response to the appeal. This is needed to protect the Planning Board. Member Don Clay seconded the motion. All Members were in favor.

Patricia Rydlak: Any further discussion.

Ross Lemansky: Nope. I think it's all been laid on paper.

Jean Vincent made a motion to adjourn @ 7:52 p.m. Member Ross Lemansky seconded the motion. All members were in favor.