

Re: Right to know request Meeting Minutes

From : Bruce Trivellini <molarsolutions@tds.net> Mon, Oct 17, 2016 04:10 PM
Subject : Re: Right to know request Meeting Minutes
To : Chris Trovato <Chris.Trovato@tds.net>
Cc : Kris Blomback - Pats Peak Ski Area <kris@patspeak.com>, Tia Hooper <tiamariamhooper@me.com>

My original question was emailed to the entire board please forward your response to the entire board at this time

I will respond to that email to the entire board

bruce

From: "Chris Trovato" <Chris.Trovato@tds.net>
To: "Bruce Trivellini" <molarsolutions@tds.net>
Sent: Monday, October 17, 2016 2:01:54 PM
Subject: RE: Right to know request Meeting Minutes

Bruce,

Your questions regarding the minutes are not in physical form other than referencing RSA and Selectmen's Policies.

RSA 91-A:1-a Definitions IV. *"Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form."*

RSA 91-A:2 II *"Minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception."*

Selectmen's Policies

Section II.4 Minutes and Record Keeping: Minutes of all committee meetings must be made available to the public within five business days of such meeting. All minutes, agendas and meeting notices are to be copied to the Selectmen's Office for proper posting and permanent record keeping.

I will gladly answer your questions based on past practice.

1. The minutes are sent via word format so that we can make grammatical or spelling changes prior to a Board meeting. The Selectmen meeting minutes are sent back to the recording secretary so they have the document presented to the Board at the meeting before approval.
2. If the "track changes" is turned on then yes the changes are tracked.

Christine Trovato, MPA

Town Administrator

Town of Henniker

18 Depot Hill Road

Henniker, NH 03242

(603) 428-3221X5

Website www.henniker.org | Email: townadministrator@henniker.org

-----Original Message-----

From: Bruce Trivellini [mailto:molarsolutions@tds.net]

Sent: Thursday, October 06, 2016 4:24 PM

To: Secretary <hennikeradmin@tds.net>

Cc: Kris Blomback - Pats Peak Ski Area <kris@patspeak.com>; Bfrench479@comcast.ne; dsosgood henniker <dsosgood.henniker@gmail.com>; onehenniker@gmail.com; tiamhooper@gmail.com; Chris.trovato@tds.net; secretary@henniker.org

Subject: Re: Right to know request Meeting Minutes

Why are the minutes sent to the town administrator from the recording secretary in word format?

My request was specific, does that word format track changes to the document? If no...why not?

It is incomprehensible to have an official document created that can be altered without tracking those changes.

Every change to those documents must be recorded. Where is the safe guard in place that insures that any changes to the document is recorded?

I hope that every one on this email thread realizes that a new policy regarding the creation of these documents, including tracking changes, needs to be formulated and put into place immediately. It insures the integrity of the document. Under the current system, after leaving the recording secretary, documents could be altered prior to the release to the board(except the recording secretary)and that is unacceptable.

Last question to the board members...in the past has any town employee ever made changes to documents sent by the recording secretary (in word format) prior to the board members review for final approval?

Dr. Bruce J Trivellini

----- Original Message -----

From: "Secretary" <hennikeradmin@tds.net>

To: "Bruce Trivellini" <molarsolutions@tds.net>, "Kris Blomback - Pats Peak Ski Area" <kris@patspeak.com>, Bfrench479@comcast.ne, "dsosgood henniker" <dsosgood.henniker@gmail.com>, onehenniker@gmail.com, tiamhooper@gmail.com

Cc: "Chris.trovato@tds.net" <chris.trovato@tds.net>, secretary@henniker.org

Sent: Thursday, October 6, 2016 2:30:59 PM

Subject: RE: Right to know request Meeting Minutes

Bruce,

I was not in the initial email regarding your Right to Know Request.

There is no policy regarding document creation.

We follow the State of NH Record Retention Schedule.

Minutes are emailed to the Town Administrator from the Recording Secretary in Word format. Minutes are posted on the town website as a .pdf.

We currently do not have an internal policy on emails, etc.

Best regards,

Cherry J. Palmisano

TOWN OF HENNIKER

Executive Secretary/Land Use Coordinator

18 Depot Hill Road

Henniker, NH 03242

(phone) 603-428-3221 ext. 1 (fax) 603-428-4366

-----Original Message-----

From: Bruce Trivellini [mailto:molarsolutions@tds.net]

Sent: Thursday, October 06, 2016 11:51 AM

To: Kris Blomback - Pats Peak Ski Area <kris@patspeak.com>; Bfrench479@comcast.ne; dsosgood henniker < dsosgood.henniker@gmail.com>; onehenniker@gmail.com; tiamhooper@gmail.com

Cc: Chris.trovato@tds.net; secretary@henniker.org

Subject: Re: Right to know request Meeting Minutes

Good morning everyone,

Below is the email I sent on September 30, 2016 with follow up on October 1st.

I have yet to receive a response regarding the production and custody of meeting minutes.

Is there a problem?

Dr. Bruce J. Trivellini

Kris,

Thank you for your response.

I look forward to the information regarding the handling and custody of meeting minute documents as well as the customary and incidental use opinion in writing from town counsel (not Mr. Fougere's) regarding the motocross track on Juniper Ridge.

May I remind you how the Supreme Court ruled in *Forster v. Henniker*:

Forster v. Town of Greenland, 151 N.H. 600, 606 (2004). "An owner of property seeking to engage in an accessory use need not apply for a special exception, so long as the accessory use is incidental to a permitted principal use." *Id.* Consistent with the common law, the Town's ordinance defines an accessory use as a "use subordinate and customarily incidental to the main . . . use on the same lot."

The definition of an accessory use in the ordinance involves several distinct elements. See *Becker v. Town of Hampton Falls*, 117 N.H. 437, 440 (1977) (discussing ordinance that defined accessory uses as those that are "customarily incidental and subordinate [te]" (quotation omitted)). "[I]ncidental" and "subordinate" incorporate the requirement that the accessory use be minor in relation to the primary use and that it bear a reasonable relationship to that use. *Id.*; see *Marchand v. Town of Hudson*, 147 N.H. 380, 383 (2001). "[C]ustomarily" imposes an additional requirement that the accessory use "has commonly, habitually and by long practice been established as reasonably associated with the primary . . . use" in the local area. *Becker*, 117 N.H. at 441 (referring to "local custom"); see *Town of Windham v. Alford*, 129 N.H. 24, 29 (1986). "While the strength or degree of the customary or habitual association does not lend itself to definition by formula, and while the combination need not occur in a majority of instances of the principal use, the uses must be associated with a frequency that is substantial enough to rise above rarity." *Alford*, 129 N.H. at 29 (citation omitted)

A landowner claiming the benefit of the accessory use doctrine bears the burden of proving that his use qualifies as an accessory use. See *id.* (discussing burden of proof in municipality's equity action against landowner); see also 2 E. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning* § 33:2, at 33-7 (2012).'

Thus the standard for accessory use set by the NH Supreme Court requires the home owner to prove that this use is "substantial enough to rise above rarity", in the local area. Considering the fact that no other motocross track of this nature exists in the Residential Village zoning district, I would say that it is pretty clear that the property owners have failed to prove the essential standard for such use set by the Supreme Court. I would expect Mr. Fougere to be instructed by the board, as authority of zoning violations (Chapter 133-51 to 54 indicates) (read here) to immediately send a cease and desist order to the property owner, in the same fashion the Select Board ordered Mr. Fougere to do so in May of 2012 regarding Mr. Forster.

Failure for the Select Board to act NOW in the precise manner as it did in Mr. Forster's 2012 case, would clearly demonstrate the Town's prejudice in Mr. Forster's case.

May I remind you that the salient point in Mr. Forster's ruling, proof of rarity , seems to have been forgotten by the Board in it's rush to claim victory over Mr. Forster, whenever the opposition to the board's actions regarding this case arises. Even when the town's legislative body votes to overturn

that Supreme Court standard, by approving two ordinance changes, town board's exercise their control by trying to invalidate the voters wishes.

Thank you,

Dr. Bruce J. Trivellini, DDS

----- Original Message -----

From: "Kris Blomback - Pats Peak Ski Area" <kris@patspeak.com>

To: "Bruce Trivellini" <molarsolutions@tds.net>

Cc: "Chris.trovato@tds.net" <chris.trovato@tds.net>, secretary@henniker.org

Sent: Friday, September 30, 2016 4:43:56 PM

Subject: Re: Right to know request Meeting Minutes

Bruce we have received your e-mail.

I am out of town and a couple of others are as well but I suspect the town hall is working on your request and you should hear from them shortly.

Cherry: Please cc me when this has email has been answered.

Thank you,

Kris

Sent from my iPad

On Sep 30, 2016, at 9:22 PM, Bruce Trivellini <molarsolutions@tds.net> wrote:

I originally sent this email earlier this week. Please confirm receipt of this email

Attached is a detailed Right to Know request for information regarding the creation, transfer and amending of minutes policy for the Town of Henniker.

Dr. Bruce Trivellini

The future is happening right now!

Optimize your dental healthcare experience with 3-D Dentistry

<MINUTE CREATION REQUEST.pdf>