

HUDSON, NH BOARD OF SELECTMEN

Minutes of the October 5, 2021 Meeting with the Planning Board

1. CALL TO ORDER - by Chairman McGrath the meeting of October 5, 2021 at 7:00 p.m. in the Selectmen Meeting Room at Town Hall

2. PLEDGE OF ALLEGIANCE led by Planning Board Vice Chairman Ed Van der Veen

3. ATTENDANCE

Board of Selectmen: Marilyn McGrath, David Morin, Kara Roy, Brett Gagnon, Bob Guessferd

Planning Board Members: Chairman - Tim Malley, Ed Van der Veen, Bill Collins, Elliott Veloso, Dillon Dumont, Jordan Ulery, Victor Oates, Michael Lawlor

Absent: Leo Fauvel

Staff Others: Steve Malizia - Town Administrator; Dave Lefevre - Town Attorney; Brian Groth - Town Planner; Lisa Nute - IT Director; Jill Laffin - Executive Assistant

4. NEW BUSINESS

- A. Discussion and Planning for the Transition from an Appointed Planning Board to an Elected Planning Board

The Chairman recognized the Town Administrator who said as I understand it the Planning Board has requested a joint workshop with the Board of Selectmen to actually discuss the transition as you said from an appointed planning board to an elected planning board. That was approved by the voters at this past Town Meeting and I believe it will go into effect this upcoming March. Attorney Lefevre is here to answer questions but there are questions and just to make it visible to the public we'll discuss the transition from the appointed to elected planning board and any questions that come out with that. With that, if Mr. Malley has anything he'd like to say....

Tim Malley, Chairman of the Planning Board was recognized and said pretty much when I originally requested this joint meeting I had a lot more questions. But after digging through the RSA's I think I've answered most of my questions. But I also felt it was a good idea to have it here with the Attorney that way if any other Planning Board members had questions along the way and then televised so that the people of Hudson would see how this transaction happened and it's not going to happen in one election. It's going to be a looks like it could be a five or six year, before the final piece of that puzzle. Chairman McGrath added then it's apt to go back to the way it is now at some point. Chairman Malley added, if the voters choose to, yes.

Chairman Malley went on to say everybody got the document. This was in your packets. Pretty much when it comes to the transition it starts on page 8 of your packets. I'm sure if I state any of this wrong Attorney Lefevre will correct me. But pretty much there's six members of the Planning Board that are currently appointed. Over the next three election cycles, two member vacancies will be filled by the election. Any appointed Planning Board member, like I'm going to use myself as an example, I am going to be one of the last appointed full members of the Planning Board. If I resign or leave the Planning Board for some reason the Board of Selectmen, up until my term expires, would be the appointing authority. So we're gonna kind of be walking through this. Elections and the Board of Selectmen are still going to have appointing authority over the Planning Board. Selectman Roy spoke

up saying, but if I understand it, if you're elected, then the Planning Board replaces. Chairman Malley replied, correct. I was just on the appointed members so far. Chairman Malley went on to say, so until all those members become elected then the appointed seats will revert back to you. If an elected member resigns, then that would go to the Planning Board. So it could get a little confusing there for a little while.

Chairman Malley went on to say the alternates will be appointed by this Board, up until all members of the Planning Board are elected. Then it will go to a staggering, their terms as they stagger along, will get filled by the Planning Board themselves. The Town Administrator added, just to verify that so anybody who's in an alternate position doesn't run for office, gets appointed by, when we fully transition, by the elected Planning Board. Does that sound correct? Town Attorney, Dave Lefevre responded, it's a little bit different with the alternates because as long as there's anybody on the Planning Board, who's still appointed, the Selectmen appoint the alternates. At the point in time where all of the Planning Board members are elected, at that time the Planning Board appoints its alternates. I'm assuming that's just a rule of convenience because it's alternates. There's a statute that says that. Interestingly enough there's a variety of statutes that cover all of this. Chairman McGrath added, I've read them all. Dry reading. Attorney Lefevre replied, depends who you ask. I like when I read a statute and there's an answer. It's nice for me. Chairman Malley continued on saying, I do believe if the Board of Selectmen wanted to just get out of the appointment to the Planning Board, they could designate an authority, which could be the Planning Board themselves. Right? Attorney Lefevre replied, they could probably do that. Do you remember which statute you were looking at? Chairman Malley replied 673.12, it's on page 8. Attorney Lefevre then said, it says by the original appointing authority or designating authority. I don't know that I read that as saying by the original appointing authority or the original appointing authority's designee. I could double check that if it comes up quite frankly but I think the easy answer is that the Selectmen will be appointing alternates in the short term until we have a complete elected membership of the Planning Board at which point that responsibility or authority goes to the Planning Board.

Chairman Malley went on to say if you go to page 10, number four, this I actually took from maybe Windham's planning board but so we didn't run into the situation on December 31st people who were currently appointed had to be reappointed or you can appoint someone else. So they had the terminology in there that under the terms of office, shall commence after the Board members or alternates are sworn in. the term continues until the successor is appointed or elected and sworn in. I took that from them, put it in there to give you guys the opportunity so you didn't have to go through that whole December 31st reappointing people to the March election. Selectman Roy said that was actually a question I had is if we had to formally extend everybody to March, right? Attorney Lefevre then said there's a statute, its 673:5 III and it talks about the terms of appointed members and you're appointed for a term, three years typically, but then you get to hold over until your successor is qualified. So I would say that because we're in this transition period, and I looked and saw that all the appointed member's terms, they're appointed and end in December it looks like. So my suggestion would simply be they can either just hold over until the election and then when that person gets elected and sworn in then they can just trade out or if the Selectmen wanted to you could maybe reappoint them for just a short period of time. Three months or something but I don't even think that's necessary. The idea, the purpose to the rule, is to make sure there's somebody always holding that position because it happens probably more frequently than we all know that people get appointed to a term, the term expires. The idea, I mean, the purpose of the rule is, is to make sure that there's somebody always holding that position because it happens probably more frequently than we all know that people get appointed to a term, the term expires, nobody's paying attention internally administratively, and that person may continue to act on applications and things like that. And that's OK. It's just they continue to hold over. The Town Administrator asked, that doesn't invalidate any application, let's say somebody there and they weren't technically sworn in until March. That doesn't do anything in a court of Law? Attorney Lefevre responded, as long as they were originally sworn in properly. They're fine. So I think that answers that question. That was that was a question that that someone had asked me earlier and I looked it up.

Chairman Malley then said I think that's pretty much the transition. I mean, it's just going to be, so we're in 2021 so technically the last appointed alternate from the Board of Selectmen will be in 2026. The Town Administrator asked, wouldn't it be 2023, I thought there were only three alternates? Chairman Malley replied well, if this Board appoints them in twenty three for a three year term. The Town Administrator replied, oh, yes. The regular members, though, should be expiring by '23. Chairman Malley replied Correct. Selectman Roy asked '23 or '24? Attorney Lefevre replied '24. By '24 all the Planning Board will be elected. But because of the selections appointment of the alternates, there could still be the latest appointed Alternate might still be appointed by the selectmen for another two, two or three years. The Town Administrator added and the Selectmen would get to appoint, their member, their ex-officio. Attorney Lefevre replied yes, nothing changes there. The Town Administrator then added that's the seventh member of the Planning Board Chairman Malley added and they pick their own alternate and say the same as it's done. Attorney Lefevre agreed and said there won't be any change as far as how you don't know anything. And I mean, for what it's worth, I had seen this draft, these changes to the bylaws, like maybe two weeks ago and I went through them and, you know, just sort of double checked it and everything looks fine to me. I don't know if the plan. I mean, I'm assuming the Planning Board is probably still has to adopt them? Chairman Malley replied Right. Yeah, we still have to have our Discussion on them. Attorney Lefevre added and I made a few changes, just Minor stuff. But these bylaws are ready to go if the Planning Board wants to adopt it.

Chairman Malley then said so I guess at this point, I just wanted to have it open so if you guys had questions or any of the members of the Planning Board wanted to ask the question. Planning Board member, Bill Collins came forward and asked and member planning board member with transitioning to an elected position on the Planning Board, how are members going to be monitored you know, that are not maybe acting in the best interest of the community and maybe for themselves. I mean, right now there's stopgaps put in place to handle, you know, nefarious movements on member's parts that are overseen by the Selectmen. But as an elected planning board member, you are no longer going to have that ability, I believe, to oversee it. Selectman Roy asked is there removal authority, I guess? Attorney Lefevre replied so interestingly enough, there's a statute on it and the Board of Selectmen it says, its RSA 673:13. And the first paragraph, Roman one says that the Board of Selectmen have the authority to remove the appointed members. And then Roman two says the Board of Selectmen may, for the same cause, remove an elected member. I will tell you all that I was very surprised to see that, that the Board of Selectmen has the ability to remove an elected member of the Planning Board, but that's what the statute says. Obviously, that has to be for cause and which is inefficiency, neglect of duty, malfeasance in office, which is which is a high standard. But that's there. And I would also add just to the general concern that as elected officials, they all have to take an oath of office and they all have to do their duties with the same level of diligence as all elected officials.

Chairman McGrath then said so I'm going to have some information available. I don't know if it's next week, but I'm going to make sure that it gets sent to the Planning Board members, Conservation Commission members, any elected board, any appointed board, land use board so that they know exactly what a conflict of interest is and because there's been some questions about that. We interviewed a couple of candidates at our last meeting and one of them in particular didn't seem to understand what a conflict of interest truly was. So I've got some information that I'm going to be passing out, and I'm going to make sure that all the land use members get copies of it.

Attorney Lefevre then said I'll just throw this in there because there's also a statute on this, which is a training. I mean, when you have somebody who gets elected, there's the possibility that somebody gets elected that really doesn't have a whole lot of familiarity with land use, right to know law, you know, all the sort of typical municipal law issues that a lot of us take for granted. And there's a statute that contemplates training, usually by the office, the Office of Energy and Planning. But you know, the Municipal Association has training and all that sort of thing. So that might be something just to keep on everyone's radar to have, you know, I don't know that it can be compulsory, but it would be a good idea. Chairman McGrath added and that's offered, I think, every year by the Municipal

Association. And the Town offers that to all of the land use members, whether or not they take advantage of it. I don't, I don't know. But Brian?

Town Planner Brian Groth was recognized and said it's a question for you, Dave. Chairman McGrath then said oh I thought you were going to answer that question. Mr. Groth replied, I have a half answer. To which Chairman McGrath replied okay. Mr. Groth went on to say so half of the answer is I asked the state about this. There was legislation a year or two ago that attempted to mandate training for planning board members. It did not pass. So I think what we reviewed, we found that we could strongly recommend it, but not require it. Attorney Lefevre added and I think that's right. When you look at the statute, it says, may, and not shall. So it is discretionary, but my experience, most people who you know, if you have somebody that's running for an elected position and gets elected, I'm going to assume that they would be interested in taking some training to, you know...Chairman McGrath said you can't assume that. Attorney Lefevre said well, I have faith. Chairman McGrath then said I've been there when it hasn't been taken advantage of. Selectman Roy was recognized and said I know in the past, I think pre-COVID we invited NHMA to come here and do some of the training, the right to know. The Town Administrator said we've actually done it here. We've done it more than it might. Selectman Roy replied it might be something that worthwhile to look at. The Town Administrator added that's been a range. It's a small range. I mean, this is more kind of very more specific. There's also the law lecture series, I think that they used to do. Attorney Lefevre replied I don't know if they still do that. There was the fall lecture series, but annually they have their, it's a one or two or maybe even more day seminar that's broken up into blocks. And so, you know, they'll have land use seminars that are really meant for, you know, new people. And it's a good thing. And I'm sure they send around flyers and let everybody know what's on their, you know, schedule for the meeting. It comes up in the wintertime usually. Chairman McGrath replied Yeah, I think in the fall. The Town Administrator added the NHMA conference, it's in November. Two days and most of the material is online if you can't make it. Attorney Lefevre said there also are publications. I think that OEP puts out one for planning boards and zoning boards. So there's also there's a lot of content available for people that want to look at it. Question.

Planning Board Vice-Chairman was recognized and said Ed van der Veen I so the Board of Selectmen removal of an elected board member, should that be that process, be outlined in the rules of procedure Just so that...Attorney Lefevre said it might be in there? Did you put it in there? Chairman Malley said it's in there. Attorney Lefevre said I think there's a lot of the changes that are in the bylaws are really just a reiteration or recitation of the statute into the bylaws, just as a quick reference for people. But I thought it was in there. Selectman Roy said, it's Page 11.

Selectman Gagnon was recognized and said just a note I'm searching here as we talk, and there actually is a 2020 release of the Planning Board in New Hampshire handbook for local officials. It's quite long, but every time I search something, questions you bring up are all in here, so it may be a good reference to use. Additionally, to your ordinances or to your bylaws to have a look at, I can send it to if you'd like. The Town Planner responded saying that's part of our onboarding package, so every new member gets that.

Mr. Van der Veen just replied one just refers to appointed board members. Doesn't say anything about elected. You have to go two. That's where two gives you the authority for removal of an elected. Mr. Van der Veen replied Ok. All right. Now I got it. Thank you.

Chairman McGrath then said anyone else have any questions or comments or. It's going to be a short meeting. So if we're done with the election of planning board members and that discussion, I want to move on to one other thing that I'm concerned about, and that's the Planning Board taking care of zoning changes. Have you started working on any zoning changes for the upcoming election?

Chairman Malley replied we have a couple in the pipeline that are going to be brought before the Planning Board the 27th is it? We haven't set the agenda yet. Chairman McGrath then said okay, because I've had conversations with Mr. Buttrick and he's got some items. He's got three items that

he really wants to get on the on the ballot in March. And if you don't start working on them, I'm aiming this at Brian. You don't start working on them, then they're not going to get taken care of because you need to have public hearings and. Chairman Malley said our last two Planning Board meetings we've actually sent out an asked the members if there was any zoning ordinances that they wanted to work on Also forward to forward to Brian. Chairman McGrath responded saying he's got I think he's got three and it's related to the zoning ordinance in existence and he's got some problems or some issues with, I don't know what they are, but he wants to, you know, he's trying to get it cleaned up so that when he has to do enforcement with it, it makes it easier for him. Chairman Malley replied saying I look forward to him forwarding them to me. Chairman McGrath asked what's that? Chairman Malley again said, I said, I look forward to him, forwarding them to me. Chairman McGrath said Yeah, I've talked to him the other day, so I think he's been having conversations with Brian. So, OK, so that's all I have.

Chairman Malley then said sorry to drag everybody out, but I figured it was better to have this discussion in in public. Selectman Roy replied saying this is important. Selectman Morin said I just want to thank you for making our meeting short by taking care of all this before the meeting.

I'll probably leave you with one tidbit. When I was first appointed to the planning board, I was appointed for a five year term. Then they changed it to three. Chairman Malley said that's a long term. Chairman McGrath said It is a long term. Ok, so I guess we can adjourn this part of the meeting. Chairman Malley said they've got nothing so I guess we did our job as well. Chairman McGrath said okay, thank you. Thank you. Thanks. It's nice to see all of you. Chairman Malley asked Chairman McGrath when are you coming back? To which Chairman McGrath replied, when I can walk. That's getting closer every day. Attorney Lefevre asked if he was all set to go to which Chairman McGrath replied, yes you're all set Dave.

Selectman Roy asked Chairman McGrath, the conflict of interest information, what source is that from? To which Chairman McGrath replied it's from the RSA's and it's from a court case. Selectman Roy asked what's the court case? Chairman McGrath replied I don't know if off the top of my head. Selectman Roy then asked are you going to send it to us also? To which Chairman McGrath replied absolutely because I don't think some of the members understand that. Selectman Roy replied saying I would agree with that statement. I don't think that some of the members understand.

The Town Administrator said would you like me to read the motion to get everybody to make their way to the door? The Chairman said we'll let them clear out and then...

The Town Administrator said the Chairman will now entertain a motion to go into nonpublic under RSA 91-A:3 II (b) The hiring of any person as a public employee.

5. Nonpublic Session

Motion by Selectman Roy at 7:25 p.m., seconded by Selectman Guessferd to go into non-public session under RSA 91-A: 3 II (b) the hiring of any person as a public employee. A roll call vote was taken. Carried 5-0.

Chairman McGrath entered Nonpublic Session at 7:25 p.m. thus ending the televised portion of the meeting. Any votes taken upon entering open session will be listed on the Board's next agenda. The public is asked to leave the room.

Chairman McGrath entered open session at 7:47 p.m.

Motions made after nonpublic session

1) Selectman Roy made a motion, seconded by Selectman Morin to hire Doug Bosteels for the position of IT Technician at the rate of \$39.61 an hour, effective October 6, 2021. Carried 5-0.

6. ADJOURNMENT

Motion to adjourn at 7:48 p.m. by Selectman Gagnon seconded by Selectman Guessferd. Carried 5-0.

Recorded by HCTV and transcribed by Jill Laffin, Executive Assistant.

Marilyn E. McGrath, Chairman

Bob Guessferd, Vice Chairman

David Morin, Selectman

Kara Roy, Selectman

Brett Gagnon, Selectmen

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