

## Hudson Board of Selectmen

Minutes of November 5, 2020  
PUBLIC HEARING

1. Call to Order
2. Chairman Morin called the meeting to order at 6:00p.m.in the Hudson Community Center
3. Attendance

Board of Selectmen: David Morin, Roger Coutu, Kara Roy, Normand Martin  
Excused: Marilyn McGrath

Staff/Others: Town Administrator - Steve Malizia, Planning Board Alternate Member - Bill Cole, Jill Laffin, Executive Assistant

4. Pledge of Allegiance

After the Pledge of Allegiance Chairman Morin explained, this public hearing is being held per RSA 673:13 Consideration of Removal of Alternate Planning Board member. He went on to say at their October 21, 2020 the Planning Board discussed the applicant for the Hudson Logistics Center to have alternate Planning Board member, Bill Cole, recuse himself from the proceedings. When asked if he planned on recusing himself on the Hudson Logistics Center proposal that his currently in front of the Planning Board, Mr. Cole stated he would not be recusing himself from the proceedings. Attorney Amy Manzelli who represents Savehudsonnh.org, stated to the Planning Board that Mr. Cole was a former client in this matter and his wife is a current client in this matter. After receiving this information the Hudson Planning Board then approved a motion to request that the Board of Selectmen review the matter to see if it is appropriate for the removal of the Planning Board alternate member, Bill Cole, from his position on the Planning Board. The Board of Selectmen discussed this matter at their October 27, 2020 meeting and scheduled a public hearing for tonight under RSA 673:13 to consider whether the grounds exist to remove Mr. Cole as an alternate member of the Planning Board due to his refusal to recuse himself due to his refusal to recuse himself from the Planning Board procedures involving the Hudson Logistics Center.

Chairman Morin then recognized Selectman Martin. Selectman Martin said, thank you Mr. Chairman. At the Planning Board's October 21, 2020 meeting Chairman Malley stated that he received correspondence from the applicant of Hudson Logistics Center requesting Mr. William Cole recuse himself from deliberations in this matter. Chairman Malley gave Mr. Malley the opportunity to respond to the request. Mr. Cole read prepared remarks and I as a Selectmen, and ex-officio member then asked Mr. Cole if he intended to recuse himself to which Mr. Cole responded hell no. Chairman Malley told the Board the Town Planner, Brian Groth, received a phone call from Attorney Amy Manzelli telling him that Mr. Cole was a former client in this matter and that his family continues to be a client.

At this point Attorney Manzelli addressed the Board and confirmed that Mr. Cole was a former client in this matter and that Mr. Cole's wife is a current client. Mr. Van der Veen made a nonbinding motion asking Mr. Cole to recuse himself. The motion passed unanimously and Mr. Cole still refused to recuse himself. Mr. Ulery made a motion to have the Board of Selectmen hear the issue of removing Mr. Cole from the Planning Board and that's the facts as I know them.

Chairman Morin thanked Selectman Martin and then said, Mr. Cole would you like to address the Board? Mr. Cole came forward and sat at the microphone. He then went on to read a prepared statement which said: I want to thank the Board of Selectmen for this opportunity this evening. He took off his mask and continued with his statement saying Mr. Chairman, members of the Board of Selectmen, in the summer of 1982 our family moved to Hudson from the Washington D.C. area. Our sons attended local schools and grew up participating in the usual community activities. Scouting, sports, student government and the like. Activities that we all too often took for granted at the time as normal but no longer the case today.

Following my retirement from the United States Army in 1987, after 21 years of service, we decided to remain in Hudson and make it our home. My first formal introduction to the Town Government arena occurred in 1991 when I was appointed to the 15 member Hudson Town Council representing what was referred to at that time as District 1. In addition to being a member of the Town Council I served as the Council president until on or about July of 1992. In 1992 the Town voted to return to its previous Selectmen form of government. I was fortunate enough to be elected as one of the five members of the newly constituted Board of Selectmen, serving on the Board until 1993. In 2002 I was again elected to the Board of Selectmen, serving three consecutive terms as Board chairman until leaving office until 2006. During the mid-1990's I was instrumental of the creation of the Town sponsored Hudson Economic Development Corporation commonly referred to as HED Corp. serving as its first and only president. HED Corp's goal was to provide a one stop shopping experience for companies looking at Hudson as a possible business location. HED Corp linked up interested businesses with appropriate Town departments and local business related organizations in order to get questions answered quickly and correctly while also providing a comprehensive introduction to the Hudson Community as a whole. As I recall, HED Corps first success was the Southeastern Container Company. A company which today continues to be a vital component of the Hudson business environment. In conjunction with, and related to HED Corps efforts, I planned coordinated and conducted the first Hudson Economic Development Conference in 1995 or 96 as I recall. The Conference, held over a two day period at Alvrine High School brought together business leaders and residents from Hudson and surrounding communities along with representatives of various economic and development agencies from the State. In 2005 I coordinated the second Hudson Economic Development Conference, again held at Alvrine, and equally successful as the first.

I reference my involvement in HED Corp and the Economic Development conferences as a somewhat ironic segway into the reason for my being here this evening. That being allegations that I am somehow against business or development that serve the well-being and best interest of our community. Let me add, if I might, that over the course of the last 29 years as an elected or appointed official, or in any other capacity in which I have served our community, I have never taken any action that I did not believe to be in the best interest of Hudson. Now, with regard as to just why I was invited here this evening, my invitation from the Board of Selectmen, although referencing, I'm sure the applicable RSA, and highlighted with a smattering of terms such as inefficiency, neglect of duty, malfeasance in office, was at best somewhat sketchy. Providing no specifics or any indication of evidence against me. If I may then, with the Board's indulgence, be of assistance in this regard. It appears that the allegations against me stem from one or more of the following. First the supposed attorney-client relationship between BCM Environmental and land law attorney, Amy Manzelli and myself. I certainly admit to having signed a representation authorization document on 20 June of this year. My purpose for signing this document was quite simple. First and foremost, it was to support my family, my friends, my neighbors, and my fellow Hudson citizens. At the time I signed this document, I believed, and I still do, that the need for timely and accurate information from all sources and support of the entire community remains imperative. Such information was lacking back in June and continues to be the case even now. My hope back in June was that BCM's involvement would add an additional and viable means of collecting and distributing such information to everyone involved.

Between my signing of the representation authorization document on 20 June and 28 September, I had no contact whatsoever with BCM or Attorney Manzelli. On 28 September Attorney Manzelli

contacted me by phone to pass along her concerns with regard to a possible attorney-client relationship that might exist. Why this issue was not raised and brought to my attention during the three months prior to 28 September is something I am unable to speak to. I simply don't know. In response to Attorney Manzelli's phone call I sent her a termination of representation letter on 12 October. At that time I also requested a copy of the representation authorization document that I signed back on the 20<sup>th</sup> of June. At this time I would ask the members of the Board if you'd refer to the copy of the representation of authorization that I signed. Do you have it? To which the Board replied no. Mr. Cole then said if I may be allowed Mr. Chairman? And he handed out copies of this document. Mr. Cole then said, it's like a self-inflicted wound giving you the evidence. After each member of the Board had a copy Mr. Cole said this is the representation authorization document that I freely admit to having signed back on June 20<sup>th</sup>. I will simply ask the Board is there anything unusual about the document you have in front of you? Anything jump out at you? Please don't hesitate. The Town Administrator said, it was not signed by the Attorney, to which Chairman Morin agreed. Selectman Martin said, I won't hesitate, Mr. Chairman, what jumps out at me, I'm just going to answer your question, I'm not going to debate it, what jumps out at me is you signed it on June 20<sup>th</sup> and you were sitting on the Planning Board. Thank you. Mr. Cole replied to Selectman Martin saying, okay that's one possible answer. Is there another answer? Does anyone see another signature on that document except mine? Mr. Cole went on to say, I'm not a legal scholar but my understanding of contract law is it takes two parties to make a contract. I never received a signed copy from the Attorney Manzelli or her firm. I'm not quibble here, but that document does not indicate an attorney-client relationship. Questions comments from the Board? Chairman Morin replied, nope. All set to continue sir.

Mr. Cole went on to say the second basis for the allegations against me appears to stem from a reported financial conflict of interest on my part. As an aside, during the 38 years has called Hudson home, my financial dealings with the Town have been limited to paying my property taxes, automobile registrations, a monthly water bill and the voter approved stipend that I received during those periods when I served on the Board of Selectmen. Nothing else. With regard to the alleged conflict of interest, as I understand the prevailing narrative, because of the proximity of my property to the Green Meadows Golf Course, it is alleged that I have a direct financial interest in what does and does not happen at that property. A financial interest that is uniquely mine. Separate and totally unrelated to the financial interest of anyone else in Hudson. Based on this prevailing narrative, now would be an appropriate time for a deep breath and a reality check. The reality is quite simple. Any increase or decrease in property values in one part of Hudson will most assuredly impact and be reflected in property values throughout the entire Town. Also, any increase or decrease in the Town tax rate will equally impact and be felt, good or bad, by every tax payer in Hudson.

The third supposed rational upon which allegations have been based would have us believe that I have prejudged the Hudson Logistics Center proposal. That I have in fact made up my mind. An interesting claim, but a claim with one inescapable flaw. From my perspective and a perspective I suspect of others, Hillwood has yet to submit a coherent, cohesive and fact based proposal for the Town's serious consideration. Rather, what the Town has received is a series of constantly changing engineering drawings, impact statements lacking any serious scholarship, gratuitous job and revenue statistics and the recent introduction of the term mitigation into the conversation. This focus on mitigation is of special interest. Since the Town has repeatedly been assured that any impacts, if they exist at all, will be minimal. What we don't have yet are answers to the scores of questions and issues that had been raised and Town staffing consultants over the last six months. Once again Mr. Chairman, if I might. Mr. Cole handed out a document to the Board. As he was handing it out he said, I just jotted down, off the top of my head, 40 issues that have not been addressed and are required to be resolved if Hillwoods proposal is gonna go forward. That's not a complete list and I assure you each one of those topics have various sub elements related to it. Mr. Cole said, I'll pause if there are any questions or comments from the Board. Chairman Morin said, nope. All set sir. You may continue. Mr. Cole went on to say given the continued absence of any concrete information, I absolutely reject any suggestion that I have prejudged Hillwood. That said, I freely admit to and offer the following personal opinion. An opinion I feel certain will resonate with any and all clear thinking rational individuals. Removing approximately 350 plus acres of rolling grass and woodlands. Replacing it with millions of square feet of steel and concrete, displacing and

or destroying the current native wildlife and potentially introducing unknown levels of air, water, and other forms of pollution into residential and urban environments is not in the best interest of the Hudson community. Or any community for that matter.

In closing Mr. Chairman, with the resignations of George Hall and Charlie Brackett from the Planning Board back on the 20<sup>th</sup> of October, the Town managed to inexplicably lose and deprive itself of the expertise and experience, not to mention integrity, of Hudson's two most knowledgeable individuals on the subjects of and issues related to both planning and zoning. With regards to this evenings proceedings, I certainly don't put myself in the same category of either Mr. Hall or Mr. Brackett. What happens to me here tonight is in the final analysis, of little personal consequence. What is of consequence though, is embodied by the residents attending here this evening, those watching on TV and the thousands of citizens who this past Tuesday, exercised their constitutional right in the voting booth. I strongly suggest that the Board of Selectmen recognize and take appropriate steps to reverse the increasingly disturbing trend, possibly on the part of some public officials of viewing the honest and sincere concerns as secondary or merely an inconvenience to doing the bidding for and reacting to demands of outside interest. To do anything less would be a serious misjudgment by the Board. Mr. Cole closed by saying that completes my remarks, Mr. Chairman, I appreciate the opportunity.

Chairman Morin then said, if you took an agenda upon entering, you will see that the Town of Hudson public input at the Board of Selectmen meeting procedure is attached. Please take a moment to review this. Please not the following from the said document:

- Any person wishing to speak during public input must state their name, and address for the record and state the issue they wish to be heard on.
- Persons should try to speak directly to the issue, as briefly - and fully - as possible.
- Persons should try to be specific about what they want acted upon - if that is the case - by the Board.
- The Chairman of the Board conducts the public input.
- The Chairman indicates how much time will be allowed for public input.
- The Chairman will call on those wishing to be heard.
- No discussion on individual personalities (good or bad) is permissible in public session.
- Any person whose conduct is in violation of the rules set forth in the Public Input at Board of Selectmen's Meetings Policy and Procedure will be ordered to cease and desist such behavior. Should their behavior continue after due warning, they will be removed from the meeting room.

After reading the rules of public input, Chairman Morin opened the public hearing for RSA 673:13 Consideration of removal of alternate Planning Board member Bill Cole, as recommended by the Planning Board by unanimous vote at their 10/21/20 meeting. The Public Hearing was opened at 6:24p.m. Chairman Morin invited residents in the audience who wish to speak to come forward to the microphone.

Resident Dean Sokoty, 11 Fairway Drive approached the microphone and said, I'd like to thank the Board of Selectmen, the Planning Board, and the Conservation Committee for the time that they've put into this. I know you're working weekends, long hours, to support our Town and I

appreciate that. I know all residents do. I want to voice my support. I'm here specially to voice my support for Bill Cole who has looked out for the interests of the Town and its residents, always. Before himself, as long as I've known him for the last 34 years.

We overlapped in the US Army. I was a mere second lieutenant, he was lieutenant colonel and he was a legend. A true patriot. With the highest of standards and he always exercised what was best for the troops and the best for the country. You can see it here today. He's objective, he's tough, and he sets very high standards. He's provocative and probing in his questions and he's incredibly constructive to this process that's been taking place with the Planning Board. His critical and rigorous questioning gives residents faith that they Towns interests are being considered. As such it would be absurd to remove Mr. Cole from his position. At this moment the Town is facing a crisis of confidence because of this process. The Planning Board and Conservation Committee have seen record numbers of resignations. Two from the Planning Board and one from the Conservation Committee. There's claims of bias. I place the responsibility of its failure though, squarely at the actions of Hillwood. Mr. Cole is the one that's helping to right the process.

I just want to briefly talk about the actions the applicant has taken and what the perception is of the residents for full color, right. It's a little bit unvarnished, it's not personal, and it's just what's happening. Hillwood claimed in May that they had the aspirational goal of starting construction September 2020. The lifestyle center proposal took two years. What's the perspective of the residents? This left many residents believing the process was rigged or an inside job that the Planning Board was a rubber stamp or more likely that the applicant was simply naive in making that type of statement or projection. Then there was the discount debacle. The Town residents first in person exposure to Hillwood was them asking to reduce the amount of the application fee. Then to pay in three installments. What was the perceptiveness of the residents? The residents felt like are they financially viable? Are they capable to even undertake this project? There was questioning like why would the Planning Board even accept that? Then there was a description of the project. We had a meeting we went through it. It was very difficult to understand, it's confusing, it was vague. They may have had a short time in preparation. But this again left residents wondering if the developer actually understood the project they proposed. Many residents also questioned why the Planning Board did not demand that they come back and just do a redo. Just so that everyone could fully understand what was happening.

Mr. Sokoty went on to say, property values, when the applicant tried hard to suggest the property values would not be diminished, where warehouses would replace golf courses, their consultants struggled to stand by their claims and were questioned intensely during a peer review, for having incomplete data or poor comparable. Again, it left the Town wondering if the process was simply a check the box exercise. Then there was the Governors letter. Then the Governor weighed in. erroneously stating that the project was approved by the NH Dept. of Transportation. Again, it left the residents wondering, was there lobbying? What's going on with the process? Then there was the start of intimidation. Am I allowed to mention a name? Then we had Mr. Jay Leonard, Friel's personal lawyer, back to intimidate residents by asking Mr. Hall and Mr. Cole to recuse themselves on the basis that they lived amongst the people who have spoken out against the project. And right out of a spy novel, he included an aerial map showing the locations of approximately 55 opposing residents live. Within Hudson it's referred to as the bullseye map. And for the record, it's not even correct. This left residents feeling absolutely disgusted, appalled, that it was creepy, it was targeting, it was below the pale. I think what really stung residents was the fact that no one, there was aggressive questioning of Mr. Leonard, but no one said stop, leave this room right now, it's evident what you're trying to do. You're trying to intimidate our residents and that's unacceptable.

So let me finish my point. The Planning Board needs the conviction and critical questioning that Mr. Cole has demonstrated. If he does not serve on the Board, residents will be left thinking that the process is already decided and frankly, it's actually good for the applicant to go through the rigors of a very difficult process with a huge, it's the largest project in New Hampshire. That's all I have. Thank you for your time.

Resident Jim Dobbins, 4 Eagle Drive was recognized by the Chairman. Mr. Dobbins stated off saying, I've been a resident of this Town for almost 40 years. I'm here in support of Bill Cole. I've known Bill Cole for over 30 years. Character, integrity, trustworthy, honest and ethical. That's Bill Cole. He's served unselfishly, his Town for years and his country for years and I still think he serves his country. To think Bill Cole would be in this for his own interest is wrong. Dead wrong. He has the best interest of this Town and its residents at heart. Removal of Bill Cole will clearly set a president that this Town will forever regret. Thank you.

Resident Shawn Jasper, 83 Old Derry Road was recognized and said I don't have any interest in this process. I don't have an opinion whether this is a good plan or not because I haven't viewed the specified of the plan. But what I've always cared about, through my 41 year, nearly 41 year career as a Town and State official, is that we follow the law. Because if don't follow the law then we don't have anything. And so we can go back to 2007 and look at the record from there forward, I'm sure you have all the minutes, I don't need to go through that. But for everyone else, because I'm also sure that you've looked at 673:14 Disqualification of a member. And what we heard missed an important part. We heard about the financial reasons, the personal reasons, but we didn't hear that or if a member would be disqualified for any cause to act as a juror upon said trial of the same manner in any action at law. That is what is key here today in my opinion. So we go to section 500A:12 of the RSA's and look at the questions. Any one of which would disqualify a juror and have him or her be set aside. Has advised or assisted either party. Now, I'm not sure here, we're all aware of savehudson.org which is opposed to this. So a question that should be asked, has Mr. Cole met with that group and advised them in any way. If he has, that would disqualify him. Is prejudice to any degree regarding the case? You just heard Mr. Cole's own words tonight. As an impartial juror, as a member of the Planning Board, he has to go by the planning and zoning rules and regulations. Those are the only things that he can use to decide whether or not a plat before the Planning Board should be approved or disapproved. But we heard him say that it's not right to displace the wildlife, to take 400 acres of green and open space and do this to it. Now, on a personal level, I agree with him. As the Commissioner of Agriculture that is one of the things that hurts me very deeply when I see this type of development take place. But what we traditionally do in the State of New Hampshire is we ban together whether it's conservation commissions, whether it's land trusts, or the state or the town and we purchase the land that we are concerned about. We don't tell the owner of land that he can't get the best financial use out of his property. That's not what we do here. We just don't say hey, you've got that land, it's beautiful, and you can't do whatever you want that is legal under the zoning of our town. So you can't do that.

I mention 2007 because 2007 was 13 years ago. There has been a 13 year period where there has been the opportunity for us to attempt to buy the development rights to that property. I haven't seen a warrant article to do that. I haven't seen an effort to do that. So that's been our failure. It's not the failure of the owners of the property. So I think just based on the comments you heard here tonight, nothing else, Mr. Cole is disqualified to serve on the Planning Board for this particular case. So he's prejudiced to a degree. We've heard that prejudice. Employs any of the counsel appearing. We heard him tonight say that he signed an agreement. Now he fell back on the fact that the attorney didn't sign it. I have hired, and my family have hired, a dozen or more lawyers over the years. Never once have we had a signed contract with an attorney. That is not a requirement in the State of New Hampshire. He put something forward saying I want you which would be a protection for the attorney perhaps, but there's no requirement that the attorney do anything more than to verbally agree to represent. I think we know that during the period of time that this plat came before the Planning Board Mr. Cole's intent was to hire that, whether he paid anything or not, the intent was there. That disqualifies him, absolutely, because that was his intent and that's a jury disqualification. That relationship whether it was ever carried through or not, that was he's disqualified. So if it appears that any jury is not indifferent, he should be set aside for the trial, which is what the Planning Board attempted to do, voted unanimously to do, and he refused to do. You are left with no choice in my opinion, but to follow through on this RSA and for each of you make your own determination as to whether he met the jury qualifications.

We heard about the fact that the plan wasn't perfect. I served as the selectmen's representative to the Planning Board. There has rarely, in the history of this Town, been a plat that's come before the Planning Board in a perfect state to begin with. They come in, the Planning Board asks questions, raises concerns relative to how it meets the criteria of the Town's zoning and planning regulations and they go back and forth. So the fact that something comes in that's a mess is not a reason to become prejudice against it. So I've had my say. I appreciate the opportunity to have been heard. I wish you good luck.

Thomas J. Leonard approached the microphone. He explained I am a lawyer at 29 Factory Street in Nashua NH. I'm here representing Green Meadow Golf Course Inc. and the Friel family as the owners of the property which is the subject before the Planning Board where this all came from. Mr. Chairman, with your approval I have two letters. One, I'd like to deliver, a letter from Hillwood. I have copies for everyone. It's from Justin Pasay, the attorney for Hillwood. I also have a letter that I have written to you, this Board and I have copies of that for you to follow along.

Dear Chairman Morin:

This office represents Green Meadow Golf Club, Inc. and the Friel family as owners of property located at Steele Road, Hudson, NH (the "Property"). The Property is under contract for sale and development with Hillwood Enterprises, LP ("Hillwood"). Hillwood seeks to redevelop the Property as the Hudson Logistics Center. On behalf of the owner of the Property, I filed a formal request that Mr. William Cole disqualify himself as a participating member of the Planning Board charged with reviewing the Hudson Logistics Center project (the "Project"). Between the time of my objection and the Planning Board's October 21, 2020 meeting, Planning Board Alternate Member George Hall, who also resides in the Green Meadow Subdivision, submitted his resignation from the Planning Board to the Board of Selectmen, and we understand the Board voted to accept Mr. Hall's resignation. Following my objection, the Planning Board conducted a straw poll of its members at its October 21, 2020 meeting. The Planning Board unanimously recommended that Mr. Cole step down and recuse himself from the Planning Board review of the Project. In response, Mr. Cole refused, and the Planning Board took a second vote which unanimously recommended that the Board of Selectmen address the matter. The purpose of this letter is to provide supplemental information and comment from Green Meadow Golf Club, Inc. as the owner of the Property objecting to participation by Mr. William Cole.

On behalf of the owner of the Property, our goal has been to assure and protect fairness in the process. For your information and for the record, I have included a copy of a letter previously filed with the Planning Board including an exhibit which was part of the letter. The exhibit shows the neighborhood known as Green Meadow subdivision. The home at which Mr. Cole resides is shown, and the red dots are the addresses of people who have taken a position against the project, claiming a direct and personal impact from the Project. I have also enclosed for your information and for the record, a copy of a Memorandum of Law which we provided to the Hudson Planning Board at the request of the members. The enclosed information and testimony with the Planning Board provide a good summary of our position on the matter.

Since initiating our request, at the most recent public hearing before the Hudson Planning Board (October 21, 2020), we learned, for the first time, that in addition to the facts including in my letter and our Memorandum of Law, Mr. William Cole had previously engaged Attorney Amy Manzelli to represent him in opposing the Hudson Logistics Center. While Attorney Manzelli stated that she is no longer engaged by Mr. Cole, it is apparent from her comments that Mr. Cole (with assistance from Attorney Manzelli) was actively opposing the project while he was an active alternate member of the Planning Board participating in hearings. Neither Mr. Cole nor Attorney Manzelli disclosed the relationship prior to October 21, 2020. No further details were revealed except that Attorney Manzelli confirmed that Mr. Cole's spouse has continued as a client of Attorney Manzelli engaged to oppose to the Project, apparently in order to protect her interests as owner of the family home located at 12 Fairway Drive, Hudson. The tax assessor

sheet indicates that Mr. Cole and his spouse are joint owners of the property at 12 Fairway Drive.

The new disclosure confirms the objections of Green Meadow Golf Club, Inc., as owner of the Property. It also raises the question as to whether there are other matters that Mr. Cole should have disclosed. *see* RSA 500-A:12. and RSA 673:14 II. Under the law, Planning Board members act in a quasi-judicial capacity when reviewing applications before the Planning Board. Effectively, they are 'judge and jury'. The New Hampshire Constitution, RSA 673:14, and RSA 500-A:12 establish the standards and prohibit any Planning Board member sitting in a judicial capacity from participating in the review of a matter if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens. Further, Planning Board members must be "indifferent" and must be "as impartial as the lot of humanity will admit." New Hampshire jurisprudence frames the rule of law in this context to ensure that a fair and equitable process is preserved for all applicants who appear before municipal Planning Boards.

Mr. Cole does not meet the standard of indifference and impartiality required of members acting in their quasi-judicial capacities. He has a direct personal and pecuniary interest in the outcome. He and his wife own the property at 12 Fairway Drive. As a property owner within the neighborhood, Mr. Cole cannot be indifferent in his assessment of the impacts of the Project on his property or the neighbor's property, nor can he be indifferent in his review of remedial actions proposed by Hillwood to mitigate those impacts. Mr. Cole apparently made up his mind to oppose the Project before the public hearings etc. Further, Mr. Cole and his wife engaged the opposing party's attorney to protect their interests and to oppose the Project. In simple and direct terms, he would be 'disqualified for any cause to act as a juror upon a trial of the same matter' *See* RSA 674:14 I.

Under the law, Mr. Cole is legally required to step down and disqualify himself in the Planning Board review process associated with Hudson Logistics Center and the Property. In our view, the Planning Board has made the correct assessment of the law and has taken appropriate action to protect fairness in the review process. Green Meadow Golf Club, Inc. and the Friel family urge the Hudson Board of Selectman to support the Planning Board's actions and to take the necessary steps to assure that Mr. Cole does not sit in judgment of the Hudson Logistics Center proposed at the Property.

Very Truly Yours,  
Thomas J. Leonard  
Enc.

Chairman Morin asked if anyone else would like to come up to speak. At this point resident Paige Schaller, 213 Fox Hollow Drive approached the microphone. Ms. Schaller said you'll notice I do not live in the Green Meadow sub division. I have a lot of concerns over the project. But one of the concerns I do have is how the dismissal of Mr. Cole is being handled. Attorney Leonard stated, when he first made the address to the Planning Board that it had just come to the Friel Families attention that Mr. Cole was sitting on the Planning Board. But at the same time he said that he knew back when the WS development was on the table that Mr. Cole and Mr. Hall lived in that neighborhood and at that time were also on the Planning Board. So why did it take from May until October for him to figure out that Mr. Cole was on the Planning Board. Instead what's happening now is people are now leaving the Conservation Commission, we have big overturn on the Planning Board while we're in the middle of a very long application process. As a resident of this Town I'm concerned when we're adding new people in or taking people out are we still getting the same amount of scrutiny put on it as would have originally been put on. This is an enormous project. Whether I'm for it or against it, I want everything to be done, everyone to be looking at it with the right eyes to make sure that this is the right thing for the Town. Because once it's approved or not approved we can't turn back. This is a lot of land. I'm not against the Friel's selling their property. I'm just concerned about the project and how things are being



handled and I want to make sure that everybody is in the know from the beginning to the end. Thank you.

Chairman Morin asked if anyone else would like to speak. Seeing no one he closed the public hearing at 6:49pm. Chairman Morin then asked Mr. Cole if he had any final comments. Mr. Cole replied saying no. Chairman Morin went on to say, at this time the Board will go into deliberations. We will take no more comments from the audience.

Selectman Martin was recognized and said I personally want to point out I don't see, I sat on the Zoning Board for nearly 14 years and I've had attorney's, developers, licensed practicing engineers come to the Board to present the persons case with this type of picture. Granted, now I'll point out one thing, they never superimposed names on it like they are here, but attorneys will use things like this because it's free and available to the public, not just the attorneys and people sitting at this table. Everybody can get this type of information online and do this exact same thing. I don't see, I understand your concern, it's a bullseye for you. I understand that. Maybe I would think the same thing if it happened to me. But it's a little different for me because I served on the Zoning Board before becoming a selectman. So attorneys and all those people I mentioned generally use this type of document to tell us this ones an abutter and this one and so on and so forth. For me I don't even look at them because sometimes attorneys give too much information that's not relevant to the case sometimes.

Selectman Martin went on to say I just want to also say that during the public hearing we were given, well, before the public hearing we were given by Mr. Cole his signed document of a contract from BCM Environmental and I generally don't, I've never done a contract with an attorney, so I don't know if they sign and return papers but the intent, in my opinion, nobody told me, reading this document, in the middle of it says advise about opposing proposed distribution center. And he signed it. He signed it while serving as an alternate member on the Planning Board. I'm not here saying it's, it was bad judgment to say this. To do this. When you're sitting over there deciding a case. To be represented by the attorney of the rest of his neighbors. And the juror standard, yes, I feel, I read this while I was listening and I was going to read from it but I don't have to because another person in the public read 673:14, well didn't read it but he explained it. If that member had a direct personal or pecuniary interest in the outcome which defers from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. And based on that and reading section 500A:2, RSA, and looking at all A-G of the juror standard, he's disqualified. It's only my opinion. So therefore it would be prudent upon me to remove him. I'm removing him because of these laws. I don't have no personal beef with Bill Cole. Okay. I'm removing him because of the laws. Thank you.

Chairman Morin recognized Selectman Roy who said, so it's clear to me that there's a conflict here. And a conflict that disturbingly was created after he was appointed to the Planning Board. By just having a discussion about the representation authorization he created an attorney-client privilege and then as quite a few people have said, including Selectman Martin, he intended to employ Ms. Manzelli as his attorney to oppose this matter. He did that after he was appointed. I believe that he had an affirmative duty to let the Planning Board know that he had a conflict and recuse himself and he just refused to do that. I think it's important in all of this that we have as much transparency as possible in the government and Mr. Cole simply did not do that. So I don't see where we have a lot of wiggle room in this area. He has a conflict and I think he has to be removed. That's all I have Mr. Chairman.

Chairman Morin recognized Selectman Coutu who said, thank you Mr. Chairman. I want to clarify one thing that was stated by one of the previous speakers. Relative to representation on the Planning Board that a result of having two members resign, one was an alternate and one was a full voting member, and if we were to proceed with the action we're reviewing this evening that it sets up the Planning Board with having to place a person into fill the seat of Mr. Brackett who was a full voting member. Now that that's out there I want to clarify that' an alternate member to the Planning Board who was also a member of the Conservation Commission, thus holding tow

land board seats, could not serve as a voting member to the Planning Board. He attends the meetings, he serves as an alternate, he deliberates, and he has resigned from the Conservation Commission in order to continue and wanted to be a full voting member of the Planning Board. That person has been involved in this projects deliberations right from the outset. So in terms of having it well scrutinized we have seven voting and active members who are scrutinizing and will give both the developer, Hillwood and the objectors of the project, equal, fair and absolute justice in the deliberation process when we conclude all of the hearings with the proposal. Again, there's still a lot of work to be done. It's not going to happen today. It's not going to happen tomorrow. There's a lot of work to be done. So I, as a representative of the people, have no concerns about the scrutinization of the plan and whether or not it will be fair.

Selectman Coutu went on to say, the other thing I want to bring to everyone's attention if it has not been made clear, it certainly hasn't been stated in the manner in which I'm going to state it, but Mr. Cole chose to bring us to this table for this hearing. He had an opportunity, even as a resident of that neighborhood, to recuse himself. We didn't ask him to resign from the Planning Board. We asked him to recuse himself because it's all about transparency. If this were someone who had some affiliation with the Hillwood Development Corp. the opponents would be up in arms that that person was sitting on this Board. Whether it be an alternate or a full member. The shoe is on the other foot. There was a person who resides in the vicinity, who will be directly impacted as all of you will by the decision that is going to be made by the Planning Board. He had an opportunity to recuse himself and remain a member of the Planning Board. Again I repeat, he chose not to do so. Attorney Manzelli, aside from calling the Town Planner to inform him that she had represented Mr. Cole, and felt it necessary at that time to divulge that. In my opinion she should have divulged it immediately upon her first appearance here. She then presented herself before the Planning Board and stated the same thing. That she was representing him. From my perspective she did that, a little late again, because she knew there was a conflict. She couldn't tell him what to do, but she may or may not have advised him. Mr. Cole's actions with regard to his refusing to recuse himself, which would have still given him his citizens' rights to sit in the audience and participate in the discussion when we had open and public forms. His refusal to recuse himself and the actions take thereafter by the Planning Board to send a letter to the Board of Selectmen, and still to this day refusing to recuse himself, can only tell me that he had no intention to continue serving on the Planning Board after this project case was heard and a decision made. His personal interest in this project was the reason why he applied to serve on the Planning Board. You've heard all of the other reason why, eloquently, why we as a Board, should move to remove Mr. Cole. He's in direct violation of statutes, RSA's, which are state law. As a member of the Board of Selectmen, and my fellow Board members and all of the members of the Planning Board, we swear an oath. And that oath binds us to uphold the laws and constitution of the State of New Hampshire and the laws of the State of New Hampshire. And because of that I will be voting, if a motion is made, to remove Mr. Cole. It's the right thing. It's legal. It's binding. And I thank you Mr. Chairman.

Chairman Morin then said as the rest of my fellow Board members have stated, they pretty much hit on all the topics I was going to hit on. We have a piece of paper right in front of us that says representation authorization. Mr. Cole signed it and it says "advise about opposing proposed distribution center". I also served as a liaison to the Planning Board and I have seen people recuse themselves for much less than what we are dealing with tonight because they were concerned. The attorney made a public statement that she is representing Mr. Cole. There is nothing we can go back on. It meets all the RSA's and all the requirements that he is not meeting. He should have recused himself and told us about this at the beginning. He came in front of the Board of Selectmen. He could have told us that night before we appointed him to the Board. He chose not to. So at this time is there a member that would like to make a motion? Selectman Roy made a motion to remove William Cole as an alternate member of the Planning Board per RSA 673:13. In support of the motion, Mr. Cole and his wife are current and or former members of Save Hudson New Hampshire, the group organized in opposition to the pending Planning Board application involving the Hudson Logistics Center. Attorney Manzelli, the lawyer for Save Hudson New Hampshire confirmed that Mr. Cole was a former client, and his wife a current

client, in opposition to the Hudson Logistics Center. Mr. Cole cannot both serve as an alternate member of the Planning Board and be a party or married to a party in opposition to a case before the Planning Board at the same time. Additionally, Mr. Cole articulated a clear prejudgment of the matter this evening without hearing the entire case. Mr. Cole's refusal to recuse himself from the Planning Board under the circumstances amounts to inefficiency, neglect of duty or malfeasance in office under RSA 673:13 and is grounds for removal. This was seconded by Selectman Coutu. A roll call vote was taken. Carried 4-0.

Chairman Morin adjourned the meeting at 7:06pm

Recorded by HCTV and transcribed by Jill Laffin, Executive Assistant

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David S. Morin, Chairman

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Kara Roy, Vice-Chairman

Excused absence

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Marilyn E. McGrath, Selectman

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Roger E. Coutu, Selectman

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Normand G. Martin, Selectman