



# TOWN OF HUDSON

## Conservation Commission



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William Collins, Chairman      Dave Morin, Selectmen Liaison  
12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-816-1291

### CONSERVATION COMMISSION MEETING AGENDA October 24, 2022

The Town of Hudson Conservation Commission will meet on **October 24, 2022** at 7:00 p.m. at the Hills Memorial Library, located at 18 Library Street, Hudson, NH.

- ✓ Call to Order
- ✓ Pledge of Allegiance
- ✓ Roll Call
- ✓ Alternates
- ✓ Public Input Related to Non-Agenda Items

#### I. New Business:

- a. Hudson Logistics Center Amended Site Plan & Conditional Use Plan SP# 12-22  
Lowell & Steele Road CU# 07-22 Map 239/Lot 001

**Meeting Format:** Applicant Presentation

Conservation Commission Members Questions and Comments

Determine Site Walk Date and Time

Adjourn Meeting

*Next Regular Meeting: Monday, November 14, 2022 at 7:00 p.m.*

William Collins

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William Collins, Chairman

## MEMORANDUM

To: Hudson New Hampshire Planning Board and Conservation Commission

From: Justin L. Pasay, Esq., Donahue, Tucker & Ciandella, PLLC  
John T. Smolak, Esq., Smolak & Vaughan, LLP, on behalf of Hillwood Enterprises, LP (“Hillwood” or the “Applicant”)

Re: NH RSA 673:14

Date: 12 September 2022

### **I. Introduction**

Hillwood is filing applications for amended Site Plan Review Approval and an amended Conditional Use Permit to accommodate a revised Hudson Logistics Center project which contemplates a single primary building warehouse distribution facility (the “Amended Project”) as opposed to the three-warehouse building distribution facility that was originally approved by the Planning Board for the underlying Green Meadow property in the spring of 2021 (the “Approved Project”).

By this Memorandum, Hillwood is informing the Planning Board and Conservation Commission of both the legal standard for member disqualification from the underlying proceedings in accordance with applicable law and specific objections regarding the participation in the Planning Board and/or Conservation Commission review process by certain individual members. It should be noted that Hillwood does not raise these issues with any goal of impugning or maligning any individual member, but rather, with the goal of complying with its statutory obligations to raise such issues “prior to or at the commencement of any required public hearing” and to preserve the rule of law as it applies to its land use applications. See RSA 673:14, II.

### **II. Legal Standard**

Planning Boards in New Hampshire act in a quasi-judicial manner when approving or denying a site plan application. CBDA Dev. v. Town of Thornton, 168 N.H. 715, 721 (2016). As such, RSA 673:14 prohibits Planning Board members who have a direct personal or pecuniary interest or who would be disqualified from acting as a juror in a trial of the same matter in any action at law, from participating in such decisions.<sup>1</sup> Planning Board members who are direct abutters to a project are automatically disqualified but so too are any members who are

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<sup>1</sup> While RSA 673:14 does not expressly contemplate Conservation Commission members and the law cited herein references Planning Board members, in this case, Hudson Conservation Commission members will be applying Hudson’s Wetland Ordinance and Conditional Use Permit Criteria to facts presented by Hillwood and will, ultimately, make a recommendation to the Planning Board as to how the Planning Board should act on the exact same analysis. As such, and consistent with the requirements contained within Hudson’s Code of Ethics, the RSA 673:14 disqualification analysis should apply with equal force to Conservation Commission members.

not indifferent or not “as impartial as the lot of humanity will admit[,]” regardless of whether that member is a direct abutter or not. N.H. Const. Pt. I, art. 35; RSA 500-A:12, II; Winslow v. Holderness Planning Bd., 125 N.H. 262, 267 (1984). See also Totty v. Grantham Planning Bd., 120 N.H. 388, 390 (1980) (noting that abutters are effectively “necessary parties,” and ruling that any planning board member who owns abutting land is disqualified from participating in that proceeding); Weeks Restaurant Corp. v. Dover, 119 N.H. 541 (1979) (reasoning that the owner of property “adjoining, across from, or in close proximity to, a proposed development is deemed to have a direct pecuniary interest in a zoning change” (emphasis added); Town of Hudson New Hampshire Planning Board Rules of Procedure, § VI(5).

While a non-Planning Board member cannot force the Planning Board to vote on a disqualification issue, the New Hampshire Supreme Court has held that an affected person has the right to raise an objection to the participation of a member who is prohibited under RSA 673:14. See Bayson Props. v. City of Lebanon, 150 N.H. 167, 170-71 (2003).

It is both proper and necessary for a person who believes a Planning Board member should be disqualified to raise that issue before the Planning Board. At that point, it becomes the Planning Board members’ responsibility to determine whether they want to move for a vote regarding disqualification or to take other actions to prevent a member prohibited under RSA 673:14 from participating in the hearing on the application. Failure to recuse oneself when recusal is proper is grounds for the Superior Court to subsequently invalidate a Planning Board’s decision. See Winslow v. Holderness Planning Bd., 125 N.H. 262, 268 (1984) (reasoning that “mere participation by one disqualified member was sufficient to invalidate [the planning board’s] decision because it was impossible to estimate the influence one member might have on his associates”).

The Town of Hudson’s Code of Ethics<sup>2</sup> is consistent with the requirements of RSA 673:14. Generally, it is a violation of the Town’s Code of Ethics for the member of any board, committee or commission, permanent or special, established by the Selectmen or New Hampshire law, to discuss, deliberate, approve or vote upon any matter in which he or she or any member of his or her family has an interest known to said member, or to enter into a discussion or deliberation without first, publicly and for the record stating all dealings, interests, relationships and possible conflicts that may exist between said member and his or her family and the issue under deliberation. See Hudson Town Code, §53-4; Planning Board Rules of Procedure, §VI(5).

### III. Analysis

Any Planning Board or Conservation Commission member who cannot fulfill their legal obligation to uphold the juror standard and be as impartial as the lot of humanity will admit, by virtue of their personal feelings, their prior affiliations, associations or public comments, or, in this specific case, their previous opposition to Hillwood and the Hudson Logistics Center and Approved Project, should recuse themselves from participating as members in the underlying proceedings as a matter of fundamental fairness and maintaining the rule of New Hampshire and local law.

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<sup>2</sup> See Town Code, Chapter 53.

Below we list specific Planning Board and Conservation Commission members whose participation in the review of Hillwood's Amended Project we object to by virtue of circumstances and/or public comments made by said members which appear to undermine impartiality and potentially compromise the underlying proceedings. Again, Hillwood registers its position with respect to these Board members not to malign or disparage, but instead to meet Hillwood's legal obligation to provide notice of Hillwood's position at the earliest possible time, and to avoid waiver of the issue.

1. **James Crowley (Planning Board Member):** On information and belief, Mr. Crowley owns property in the residential subdivision to the immediate south of the Approved Project. Further, Mr. Crowley actively opposed the Approved Project as a citizen and was a named Plaintiff in the Site Plan Review Approval, Conditional Use Permit Approval and Sewer Allocation Appeals filed by opposition to the Approved Project in 2021. On these bases, Mr. Crowley cannot satisfy the juror standard and is not as impartial as the lot of humanity will admit. As such, it would be appropriate for Mr. Crowley to recuse himself from participation as a Planning Board Member in the underlying proceedings.
2. **George Hall (Alternate Planning Board Member):** On information and belief, Mr. Hall owns property within the residential subdivision to the immediate south of the Approved Project. Mr. Hall was an Alternate Planning Board Member during the initial hearings of Hillwood's original project until such time that the Property owner and Hillwood objected to Mr. Hall's participation and Mr. Hall subsequently resigned from the Planning Board. Mr. Hall sought reappointment to the Planning Board in June of 2022 and on 14 June, was reappointed as an Alternate Member. Mr. Hall should recuse himself in this matter for the same reasons he was bound to recuse himself in the first matter, as detailed in the Property owner and Hillwood's filings at that time, which are incorporated herein by reference.

Among other things, Hillwood must prove to the Planning Board that the Amended Project will not cause a significant diminution in value of surrounding properties. See Site Plan Regulations, § 275-6(A). Hillwood's analyses, conclusions and presentations on this subject matter were particularly controversial during the permitting of the Approved Project and there was significant opposition to same voiced by several of Mr. Hall's neighbors within the Greenmeadow Subdivision. This opposition led, in part, to the filing of an appeal of Hillwood's Site Plan Review Application Approval which advanced, as the first of seven delineated arguments, that Hillwood failed to prove that the Approved Project would not significantly diminish surrounding property values. Of note, 13 of the 17 named plaintiffs in that appeal (who were also the same named plaintiffs in the Conditional Use Permit and Sewer Allocation Approval Appeals) own property and live within Greenmeadow Subdivision. Further, the Planning Board will have to analyze, assess, and review impact analyses provided by Hillwood and, where necessary, require mitigation of the alleged impacts on Greenmeadow Subdivision, which may directly affect Mr. Hall.

The issue is not, as Mr. Hall suggested during his testimony before the Board of Selectmen on 14 June 2022 as he sought reappointment to the Planning Board, that he is disqualified simply because he owns property within the Greenmeadow Subdivision. The issue is that by virtue of the specific Site Plan Review criteria that will be applicable to the Amended Project, the adamant opposition of the Approved Project by several of Mr. Hall's neighbors as part of the "SaveHudson.org" organization and individually, and the nature of the Site Plan Review Appeal of the Approved Project, Mr. Hall cannot satisfy the juror standard and is not as impartial as the lot of humanity will admit. As such, it would be appropriate for Mr. Hall to recuse himself from participation as an Alternate Planning Board Member in the underlying proceedings.

- 3. Victor Oates (Alternate Planning Board Member):** Mr. Oates was appointed to the Planning Board in December of 2020, approximately eight months after Hillwood's local Planning Board Review Process began for the Approved Process. Mr. Oates participated in the review of the Approved Project from February 2021 until its conclusion in May of 2021.

Mr. Oates should recuse himself from participation in the underlying proceedings based on statements he has made in public forums which indicate Mr. Oates cannot satisfy the juror standard and is not as impartial as the lot of humanity will admit when it comes to Hillwood and development of the underlying Property for a warehouse distribution center. More specifically, at the February 2022 Candidate's Night where Mr. Oates made statements in furtherance of his candidacy for a full Planning Board Member position, Mr. Oates maintained that he was motivated to volunteer for the Planning Board after watching Hillwood's presentations to the Planning Board in 2020 and noted that he "needed to better understand what was going on from the inside because I was upset."<sup>3</sup> Mr. Oates also stated that the Town's lack of "vision" and "direction", as evidenced by its failure to adopt an updated Master Plan in approximately 15 years was "why we have Hillwood."<sup>4</sup> At the same meeting, and in response to a question about how he would vote on a Planning Board project which meets all the criteria but may not be in the best overall interest of the community, Mr. Oates stated that he would "probably vote against it" because the Town has not done the due diligence it needs to do to know what type of development it needs, suggesting further that the Town should not be building "massive warehouses" if the Town doesn't know that it needs "massive warehouses."<sup>5</sup> When asked the same question four months later by Selectman Morin at the 14 June 2022 Board of Selectmen Meeting when Mr. Oates was seeking re-appointment to the Planning Board, Mr. Oates amended his response to this question and stated that if an application "meets the law you have to pass it ... you have to vote in favor of it."<sup>6</sup> When challenged by Selectmen Morin on the inconsistency of the two statements, Mr. Oates stated that "that was the past" and stated generally that people cannot be set in their ways and that he has grown.<sup>7</sup> Finally, in social media posts surrounding his candidacy for Planning Board

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<sup>3</sup> See Candidate's Night video: <http://www.hudsonctv.com/CablecastPublicSite/show/10062?site=3> at 00:36:00.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 01:36:50.

<sup>6</sup> See Board of Selectmen video: <http://www.hudsonctv.com/CablecastPublicSite/show/10237?site=3> at 03:02:30.

<sup>7</sup> *Id.*

Member, Mr. Oates implied that Town Officials have “ruin[ed]” the Town with “giant warehouses.”

Under the circumstances, and in light of Mr. Oates’ public comments about and characterization of Hillwood and the effect Hillwood’s Approved Project will have on the Town, as well as Mr. Oates’ equivocation regarding how he would vote if an application meets all criteria but is not in the community’s best interest in Mr. Oates’ opinion, Mr. Oates cannot satisfy the juror standard and is not as impartial as the lot of humanity will admit. As such, it would be appropriate for Mr. Oates to recuse himself from participation as an Alternate Planning Board Member in the underlying proceedings.

4. **Bill Kallgren (Conservation Commission Member):** Mr. Kallgren was appointed to the Conservation Commission in February of 2021. Mr. Kallgren opposed the Approved Project in writings to the Town via testimony before the Planning Board. By this writing, Hillwood registers its agreement with statements Mr. Kallgren made to Brian Groth in an email dated 17 March 2021 in which Mr. Kallgren referenced his appointment to the Conservation Commission and stated that he would recuse himself from further participation in the Hillwood proposal.

#### **IV. Conclusion**

To the extent that any of the specifically identified Planning Board or Conservation Commission Members, or any other member with a disqualifying interest, declines to recuse themselves from the underlying proceedings, Hillwood respectfully request that the remainder of the Board/Commission conduct an advisory vote to provide guidance to the member on the issue of recusal.