
From: Crowley, James
Sent: Friday, April 14, 2023 6:02 PM
To: Groth, Brian
Cc: Malley, Tim
Subject: ROP Motions and Votes

Brian

RE: ROP Motions and Votes

This is my initial suggestion to amend the Town of Hudson New Hampshire Planning Board Rules of Procedure (ROP) VII.5 Motions and Votes section for the 06-14-2023 packet materials for future Planning Board consideration. Please respond to where you find credible substance or flaws in my opinions and the amendment. I would like your review comments prior to the 14 day cutoff if you have concerns on the language or additional supporting discussion language points. I want the amendment and supporting reasons to be included in the PB packet materials for this proposed amendment.

Amendment to VII.5 Motions and Votes (new additional content that doesn't currently exist)

Add VII.5.c.iii - A majority vote to continue a public hearing to a future date certain shall also deem that the threshold for substantial changes (see VII.4.e) has been met. The Planning Board will resume future review of the application as before according to the Rules of Procedure without prejudice to inclusion of public input.

Reason for proposed amendment

I desire the Planning Board to reconsider and amend the Rules of Procedure with addition of VII.5.c.iii. I acknowledge and appreciate the tremendous amount of effort previously made to upgrade the ROP but an unnecessary flaw in closure of public input should be remedied. The PB needs a more balanced ROP mythology for all parties involved in a formal application review. If a decision vote or termination of applicant testimony and supporting materials cannot be reached in the same meeting as a closure of public input then a built-in reset in the ROP is needed. Therefore, I make the amendment recommendation for the following reasons:

The current ROP can force the Chair to make unnecessary controversial decisions

It is entirely possible a public hearing (see VII.4) can be conducted past closure of public input without issuance of a decision on the formal application approval or denial. The ROP doesn't specify that the sequence of other business such as waivers, site walks, additional applicant testimony, materials generated by the Town, applicant submitted professional reports, and peer reviews by third parties even has to be completed or exist prior to closure of public testimony. When meeting time allows after initial applicant testimony and PB questioning the Chair is forced to decide whether to open the meeting to public input or not. The Chair has to choose between two alternatives that each have negative flaws. The alternatives are: suppress opening public input as long as possible or give the public a voice as early as possible. If the Chair opens the meeting for public input the Chair understands per the current ROP there is still unfinished phases of procedure left to get to the issuance of a decision by the PB but future public input will be closed and not allowed. If after the initial presentation by the applicant and questioning of them by the PB if meeting time permits should the Chair ask for public input? If the Chair doesn't the PB essentially sanctions suppression of immediate and timely input from the public to the applicant's current phase of testimony. The Chair then is forced into a no win judgmental situation by the current ROP language. I do not believe this was the intent of what (see VII.4.e) was expected to remedy.

Scheduling of a Site Walk

I picked this subject out for early examination because its timing and the possible effect of it is easy to understand if public input is closed prior to it. The PB should consider the following while reviewing the proposed ROP amendment. If the PB opens and closes public input before conducting a PB initiated site walk, the public can not technically comment on what they observed during it. Is that even considered a fair way of conducting future PB meetings? How can the public trust the process when there are obvious known faults like the above allowed and can happen per current ROP? This situation can happen and currently no built-in procedural relief alternative language in the ROP seems to exist if it does.

PB actions do not always correspond to their own ROP.

When the Chair closes public input the ROP makes no exceptions for verbal and / or written point of view unless "substantial changes" are declared (see VII.4.e). Also, per the ROP (see VII.4.d.vii) written materials, correspondence must be submitted 7 days prior to the scheduled meeting. If so they are included in the PB packet. However, the ROP seems to be violated when if NO PB Member or Alternate objects even when public input is closed in a prior meeting and written public input is included in a succeeding public meeting package. It appears the only possible ROP exception is when the public guesses that public input will be closed at the coming PB meeting and submits and dates their written response guess as to what will be pertinent within the narrow cutoff window to have it appear in a future after the fact public closure PB packet. Does that even come close to being like a reasonable, fair or unbiased procedure? This indicates also the PB doesn't abide by its own ROP or finds them to draconian when public correspondence is dated after the public closure ruling in a public meeting and still allow it. No matter the date on the submitted written materials, correspondence, if it were not included this could be a legal due process problem because the current ROP requires "significant changes" to be made to the proposed application and a PB majority vote first to affirm it. Now let us look at it from the Applicants view point if you believe the previous conclusion is extreme. Say the succeeding PB

package includes public input after the Chair closes the public input in a previous meeting. Can the Applicant object and even bring a lawsuit against the Town since the PB doesn't even follow its own ROP? The Applicant's application doesn't even have to be denied because it could be argued the additional forbidden public input prejudices the PB in some manner and the Conditions of Approval are more restrictive than they would have been. So the choice the PB faces with the current ROP language is do they want to be possibly sued for suppression of due process or for allowing prohibited input which could possibly be a cause to taint their final decision. The ROP seems to only really work without possible Judaification when the PB reaches an application final review decision in the same meeting when closure of public input occurs. Why risk this if the ROP can be amended for occasions when an application final review decision is determined in a future meeting and procedurally doesn't exclude any public input during the same meeting?

The current ROP has built in bias

The ROP has language to terminate public input but allows the Applicant to continue testimony after occurrence of public input closure. For the PB to make an informed decision it is an iterative process that the current ROP doesn't allow or suppresses when public hearings are extended to another date certain after closure of public input. Ideally the current ROP allows the PB to ask the Applicant to respond to public input immediately during or after closure of public input. The problem arises when the Applicant responds at a future meeting but no counter point public input is permitted. Can the PB view that as balanced and a procedurally correct way to conduct a public meeting? How can the public be asked to put faith and trust in the process when it has known and obvious faults in it? The 7 day prior rule (see VII.4.d.vii) indirectly causes even more bias limiting public written input. At the initial public meeting the PB package material is submitted for public review at and sometimes for technical reasons after the 7 day cutoff. The same can happen for all succeeding meetings. So there is a built-in lag between a possible detailed public written response in examination of available public documents and the Applicant testimony on it. Please note language in current Agenda notice seems to remedy this somewhat "Comments may be submitted in writing until 10:00 a.m. on the Tuesday prior to the day of the meeting" but is not supported by current ROP criteria. Allowed verbal testimony by the current ROP (**see VII.4.d**) seems to assume the public is highly organized and each individual will use their time to concisely cover a view point not previously presented. In actuality the ROP is biased towards assuming the public is unorganized and generally presents repetitive time consuming verbal testimony and the ROP tries to remedy that. That is a built-in time limiting bias that suppresses the public input even when they are highly motivated and possibly somewhat organized. Now contrast that to almost unlimited time allowed to presentation and testimony by the Applicant who is highly organized and supported by a cadre of trained professionals. Where is the balance and equal voice given to any Hudson resident that wants their particular view point to be heard? If public input is closed in the initial or a future meeting then the built-in lag for written correspondence is further exasperated if the PB completely enforces their own ROP. Proposed amendment VIII.5.c.iii would supply some balance.

Application review is an Iterative process

Logically the iterative process has to end at some point in the application decision process. That point would have to be when the PB enters the final decision voting phase and input to all parties including the applicant is closed. To the greatest extent at that point the PB has determined there is adequate substantial information to make an informed decision. "Conditions precedent" would be mostly fulfilled before the PB makes the final

decision vote. General procedure seems to acknowledge the application may require minor revisions, permits or approvals may be lacking from other boards or agencies. The RSAs do make specific exception for outstanding State and Federal permits. This PB member, however, does not agree that a necessary but unissued ZBA case ruling on a variance falls into the spirit of the RSA intent on what is allowable for outstanding approvals before the PB votes on issuance of their own application decision. Say the ZBA issues stipulations that might invoke VII.5.d. Only a prevailing side PB member can request the reconsideration. I pity any PB member who voted to deny an application to prevent such a possible scenario, they have no voice to rectify what they tried to prevent. However, that is another issue which is not part of this proposed amendment concerning closure of public input. The RSAs are intended to provide procedures for application review by the PB to supply orderly, fair and reasonable treatment of all parties. Possible judicial action is mentioned in the RSAs when serious impairment of opportunity for notice and **participation** occur. Emphasis on the word participation was added by me. By amending the Hudson ROP when future public meetings are held on an application after an initial public input closure, possible judicial action would be greatly reduced. Again how can the PB promote public input by a ROP that limits it when public meetings occur after it is suppressed?

Substantial change vs Additional materials

The procedure for public meetings for Substantial change for the Applicant and public seems to be balanced on the surface. Each requires a majority vote which can be a voting on a new application acceptance for the Applicant or acknowledgement that the level of change meets a threshold to reopen public input if deliberations are to continue on the original application acceptance. The ROP language seems to function well when a Substantial change occurs. However, it can be debated by all concerned parties what criteria should apply in determining what a substantial change actually incorporates.

Presentation of any additional materials or testimony after closure of public input is where the current ROP has an observable deficiency. This needs to be corrected for all applications being reviewed by the PB. The current ROP makes no allowances for public input after its closure for additional application materials presented by the Applicant, additional Applicant testimony, written Town Department reviews, Peer reviews by third party professionals, site walks, etc. The proposed ROP amendment would allow this iterative process to continue at succeeding public meetings if public input was previously ruled closed. The RSAs and ROP are intended to give an orderly process to meetings. How can the PB even consider this a balanced approach to findings of fact and making an informed decision if the public input is suppressed by the current ROP language? This runs counter to the PB trying to encourage public input and demonstrate that they consider it has high content value. How is due process protected when extenuating circumstances such as the above occur in meetings after the public input is declared closed? In my opinion amendment VII.5.c.iii would address the bulk of these situations where reopening of public input is needed to balance the application review process between all parties.

For relief the public is required to pursue one or both of the following routes:

First method: Approach the BOS and request that they need to intervene with the PB. The PB has closed future public input and will not vote to reopen it until a threshold of significant changes is met. However, review of the application continues with applicant testimony and materials, reports, etc. that can be

presented at a subsequent PB meeting after further public input was suppressed. The public has to approach the BOS to be allowed to state publically their remaining to date concerns that the PB ROP would not allow. The BOS has intervened in the past for other reasons when the public was aggrieved and it is not a good reflection on the PB that the current ROP necessitates a public request for intervention again.

Second method: If the first method fails to obtain satisfactory results then the public has to seek relief through a judicial process. This method would be detrimental to the Applicant, Town and to public opinion concerning why such extreme measures are required to conduct fair and equitable land use application reviews in Hudson. The question can also be raised do other NH municipalities have similar legal issues or is this specific to Hudson?

Other legal questions pertaining to PB members and alternates after closure of public input

The PB needs Town Attorney guidance on how to handle direct contact from the public after public input is closed but the application still has a pending date certain public meeting. The current ROP has a method for closure of public input at a public hearing. What about if a less than majority gathering of PB is directly contacted by the public? Say a member of the public approaches a PB member or alternate in a grocery store to state how the PB hasn't discussed a particular issue with an application still open to review. As an elected or appointed public servant the PB person is essentially obligated to listen in noncommittal silence. However, let us assume the public person makes a credible and valid point even though public input is closed. What should or can be done? Again the final Decision vote on the application has not been rendered by the PB. Is a PB Member or Alternate obligated to disclose that it originally came from the public after closure of public input but the PB person feels it is something of importance that the Applicant should address? Can VII.4.f "Members through the Chair, may request any party to the case to speak another time" apply to the general public when public input was previously closed? This is something the PB should think about when considering how to vote on the proposed VII.5.c.iii amendment..

To all PB members: The reason I'm so long winded on this proposed amendment is I'm very passionate about allowance of Public Input in all PB meetings. I understand this proposed amendment if approved by majority PB vote is not retroactive. I hope to achieve a well vetted workable solution to what I consider to be a deficiency in the current ROP. My goal is to increase the respect by Applicants and the public for how the PB conducts their legislative functions. Complete agreement by all on PB decisions may not be realistically possible but efforts to increasing respect and adherence to the PB process should always remain a high priority.

Respectfully submitted

Planning Board Member

James Crowley

From: Crowley, James
Sent: Saturday, April 15, 2023 9:52 PM
To: Groth, Brian
Cc: Malley, Tim
Subject: ROP VI.12 Remarks by the Planning Board

Brian

RE: ROP VI.12 Remarks by the Planning Board

This is my initial suggestion to amend the Town of Hudson New Hampshire Planning Board Rules of Procedure (ROP) VI Meetings by addition of **12) Remarks by the Planning Board** for agenda Other Business expanded criteria. This would be for the 06-14-2023 packet materials for future Planning Board consideration. I would like your review comments prior to the 14 day cutoff if you have concerns on the language or additional supporting discussion language points. After your review and possible revisions I would make because of it I want to submit a finalized amendment and supporting reasons to be included in the PB packet materials for this proposed amendment for full Planning Board consideration to adopt.

Draft/Proposed Amendment to VI Meetings (new additional content that doesn't currently exist)

Remarks by the Planning Board: The Planning Board shall strive at least once a month to schedule on the agenda a general sharing of discussion(s) of interest and to set if necessary a date certain for continuance as a specified Workshop meeting.

Reasons for proposed amendment

- I suggest the amendment be added to VI Meetings by addition of **12) Remarks by the Planning Board**.
- The intended placement on a Planning Board agenda of **Remarks by the Planning Board** would be a subsection of item VI.7.IX Other Business and criteria for scheduling any future Workshop would be covered by VI.1.b Meetings-Workshop Meetings.
- Problem: The Planning Board cannot add or discuss items that don't meet notice requirements for published agenda. The agenda has to meet RSA and Planning Board Rules of Procedure criteria for correct notification period prior to a Planning Board meeting.

- Problem: Currently the Planning Board has no formal method of free flow of communicating and sharing of ideas identified in the Planning Board Rules of Procedure (ROP) when a quorum or larger of the Planning Board are gathered.
- Other Business / Remarks by the Selectmen is a standard meeting agenda item for that Board and a similar periodic public notification and transparency would be beneficial to encourage and facilitate similar Planning Board group discussion exchanges.
- **Other Business Remarks by the Planning Board** encourages a more efficient use of valuable staff coordination and planning board time to communicate on general subjects pertinent to the total Planning Board. Transparency of discussions would not be a problem also because it would be done in a scheduled public meeting.
- **Other Business Remarks by the Planning Board** can be deferred by majority vote to an agenda where time and meaningful discussion allow for addressing it.
- **Other Business Remarks by the Planning Board** agenda item doesn't require: Abutter notification, have RSA time for decision requirements and occurs at end of meeting agenda just prior to adjournment.
- The Planning Board Chair and Town Planner still have control of setting the actual Board agenda. Note: "Remarks by the Planning Board: The Planning Board **shall strive** at least once a month to schedule on the agenda".

Hope the amendment ends up with positive support. I think it would benefit the Planning Board in general. If nothing else the amendment would allow quick assessment during meetings of whether the Planning Board wants to pursue any presented ideas.

Jim

Author: Victor J. Oates

Policy Title: Public Input Option at the Start of Meetings

Purpose: The purpose of this policy is to provide an additional public input option at the start of meetings that allows residents to give feedback on any matter that is not on the agenda. As agenda items will have separate public input during the meeting, this policy is designed to ensure that residents can provide feedback on any other matter of importance.

Policy Statement: We recognize the importance of hearing from the public and believe that providing an opportunity for residents to provide feedback on any matter not on the agenda is essential to ensure that their voices are heard. Therefore, we will implement the following policy: At the start of each meeting, a public input option will be provided for residents to provide feedback on any matter not on the agenda. Residents will have a maximum of three minutes to offer their input.

Procedures:

1. The public input option will be added to the start of the meeting agenda.
2. Residents wishing to provide input must sign up by contacting the city clerk's office.
3. A maximum of 15 minutes will be allowed to provide input during each meeting.
4. A timer will be used to ensure that residents stay within the maximum time limit.
5. The Planning Board chair will briefly introduce and explain the rules for public input before each resident provides feedback.
6. The Planning Board will refrain from discussing or debating during public input.
7. The Planning Board may ask clarifying questions of the resident but will wait to respond to or discuss the feedback during the meeting.
8. The Planning Board may refer the feedback to the appropriate staff for further consideration.
9. The Planning Board may choose to address the feedback during a future meeting.

Implementation: This policy will be added to the bylaws if approved, implemented immediately, and included in all future meeting agendas.

Evaluation: The Planning Board will evaluate the effectiveness of this policy after six months and may make adjustments as needed.

Author: Victor J. Oates

Proposal Title: Written Justification of Votes by Board Members for Transparency and Accountability

Purpose: To promote transparency and accountability in the decision-making process of the Hudson NH Planning Board, this proposal mandates that board members must provide a written justification for their votes on matters discussed in board meetings. This will help board members, stakeholders, and residents understand the decision-making process and promote trust in the board's actions.

Proposal Details:

1. **Justification of Votes:** Board members shall be required to provide a written reason for their votes within one week of the board meeting where the vote took place. The written explanation shall explain the rationale behind the vote and the factors influencing their decision.
2. **Record Keeping:** The Hudson NH Planning Board shall maintain accurate records of the written justifications provided by board members for their votes during board meetings. The records shall be included in the subsequent meeting packet and accessible to the public upon request.
3. **Implementation:** This proposal shall take effect immediately upon approval by the Hudson NH Planning Board.

Conclusion:

The proposal for board members to provide a written justification for their votes within one week of the board meeting is a significant step towards ensuring transparency and accountability in the decision-making process of the Hudson NH Planning Board. In addition, it will help to build trust among board members, stakeholders, and residents, promote ethical behavior, and ensure compliance with legal requirements.