

TOWN OF WARNER – ZONING BOARD OF ADJUSTMENT

Approved Meeting Minutes

April 13, 2016 7:00 PM

Warner Town Hall, Lower Level

Members Present: Chairwoman Janice Loz, Rick Davies, Gordon Nolen, Andy Bodnarik, Alternates Howard Kirchner, Corey Giroux, Beverley Howe

Land Use Secretary: Lois Lord

1. OPEN MEETING

Chairwoman Loz opened the meeting at 7:00 p.m.

2. ROLL CALL

Roll call was taken with 7 members present.

3. APPROVAL OF MEETING MINUTES

Chairwoman Loz brought forth the Meeting Minutes of March 16, 2016 for approval. Andy Bodnarik noted a typo and Howard pointed out that his last name was spelled incorrectly. Corey had a question on some wording which was discussed and changed. A MOTION to approve the minutes as edited was made by Rick Davies, seconded by Gordon Nolen. A voice vote was taken with a unanimous yes.

Chairwoman Loz stated that Howard would be a voting member at tonight's meeting.

Beverley Howe asked why she had been contacted about being a full board member. Chairwoman Loz asked the Land Use Secretary to explain what happened. Lois stated that upon being prompted by Mary Whalen in the Selectmen's office for recommendations to the Board of Selectmen for appointments and reappointments, she had discussed it with Janice who asked Lois who the alternate with the most seniority was to fill the full board seat left by Kimberley leaving.

Lois stated she looked at the list of board members that is on the town website and what year each alternates appointment would be up. She erroneously assumed Beverley had been on the longest because her appointment is up this year, and was not aware that Howard was on his second term. Lois relayed to Janice that Beverley had the most longevity which is what Chairwoman Loz used in her recommendation to the Board of Selectmen.

Beverley said one of the Selectmen had congratulated her and that it was strange. Lois apologized for her error which led to the confusion. Chairwoman Loz stated she had asked Selectman Clyde Carson about it and he had told her they would not appoint anyone until after the Planning Board and the Zoning Board had voted in the new Chair and Vice Chairs for this year.

It was confirmed that Beverley's term is up and she would need to be reappointed. Howard said the way it was done in his case was that he was appointed to fill the seat of an alternate who did not fill out their entire term and so Howard initially was appointed for the final year of that alternates term.

The board discussed what year Howard was first appointed, whether or not the Board of Selectmen had appointed Beverley as full board member at their last meeting and that the situation could be explained to the Board of Selectmen for them to make their decision.

Gordon Nolen questioned if everything should be put on hold until the Board of Selectmen are consulted. It was confirmed the Board of Selectmen had met the day before. Beverley asked how many people are supposed to be on the board as voting members and was told that number is five with up to five alternates.

Rick Davies noted he had gotten a posting from the town Website this morning with a listing of new officials and the Planning Board changes were on there but the Zoning Board changes were not which is circumstantial evidence. He said earlier Janice had mentioned that the Board of Selectmen wanted the Zoning Board to elect chairs before they appointed anyone and that he thought that was backwards which several people agreed with.

There was discussion that perhaps the Zoning Board should postpone electing a new Chair or Vice Chair until the situation is straightened out and that one option would be to elect a temporary Chair until next month. Andy pointed out that one reason for tonight's meeting is to elect a new Chair and Vice Chair and that it is on the

agenda. Chairwoman Loz said she would get an answer on this and would go the next Selectmen's meeting to talk to them.

Rick asked if this discussion would be under number 5 on the agenda, *Zoning Board Appointments by Board of Selectmen*. It was agreed that it would be. Chairwoman Loz stated that under this topic on the agenda she wanted to mention an application that had been received for an alternate seat on the Zoning Board of Adjustment and noted that the person applying had presented some information at the recent Biagotti Special Exception rehearing.

Rick Davies asked to speak and said that he had come up with criteria to recommend who would be next in line to go from alternate to full board. The criteria was attendance to meetings, training, understanding of the RSA book, Zoning Ordinance and knowledge of what the Boards charge is. He said it should be the overall effort of the person in all these areas.

Andy said that because the board is currently down a full member, would it be appropriate to ask the Selectmen to appoint someone to the board as soon as possible? This is the confusion we're having as far as a requirement in our rules and procedure that says we're supposed to be voting on a Chair and a Vice Chair at the April meeting. We had the problem last year where we didn't have an April meeting.

Rick Davies talked about tonight's confusion and his concern that if Beverley has been appointed as a full board member she should be voting for the Chair and Vice Chair tonight. Chairwoman Loz stated if she is, she hasn't been sworn in yet. Rick said that legally, a term continues unless someone is appointed to take a members place which is how the RSAs are set up.

The board discussed elevating Beverley to a voting member tonight instead of Howard with the point being made that Chairwoman Loz has not been told that Beverley has been appointed a full member.

4. ELECTION OF 2016 OFFICERS

Chairwoman Loz spoke on her wish to be Chair again this year and stated she believes she works hard to facilitate the meetings, knows how to bring the information that members have forward to the advantage of the board, is good with the public and explaining things in laymens terms and tends to be fair and equitable.

Howard Kirchner nominated Janice Loz as Chair for the year. Corey Giroux nominated Rick Davies but Rick made the point that Corey cannot nominate as he is not a full board member. Howard asked if a second is needed for a nomination and Rick said that's not in the Rules of Procedure and Roberts Rules don't require a second. Janice said she believes it would be best to have only full board members nominate and is how they have always done it.

There were no further nominations for Chair. A roll call vote was taken to elect Janice Loz as Chair with the result of 5-0-0.

Nominations for Vice Chair were requested and Janice nominated Rick Davies who said he would accept it. There were no other nominations. A roll call vote was taken to elect Rick Davies as Vice Chair with the result of 5-0-0.

5. UNFINISHED BUSINESS

First Reading of Site visit Procedure Document – Revision date of 3/16/16.

The Board reviewed the document with the most recent revision and several wording changes were suggested. A lengthy discussion was held on the following paragraph:

A. C. Applicant Refuses Permission. An applicant may refuse to grant permission for a site visit. The applicant may be concerned about liability issues or maybe determine to protect his privacy. The Board can utilize other sources of information if they cannot physically view the site ~~such as~~ including but not limited to: aerial photos, surveys, photographs, slides or video tapes available from public sources or provided by the applicant. All printed collateral material and media shall be submitted at a public meeting as part of the public record.

Andy said there may be other information provided and we don't want to limit what we can look at, for instance if someone brought in an aerial photograph. I think we're trying to say, if we can't physically view the site, we're not limited from other types of information. Corey suggested a middle ground that says if we do bring something in from the outside and use it at the meeting to educate ourselves about the site; it's up to

us to put it in the records. We're not trying to make the case for the applicant, they make their own based on what they present but if we rely on something it should be part of the record so they can review it later.

Corey made the point that if we're going to use it at a meeting, we need to get it to the Land Use Office Secretary who can make copies and disseminate it. Chairwoman Loz said she does a google map of every application we have but keeps it for her own information purposes. But if it is shared, it needs to be available to the board, the applicant and the public.

Andy noted the term *public sources* used in the document and that he thinks that source could be someone coming to the meeting to present something, it doesn't necessarily mean a board member. We have seen members of the public showing documents at a meeting which would be added to the public record.

Corey said he wondered if there is any limitation for using printed material and was told there is none. He suggested perhaps this did not need to even be in the document if that is the case and that less may be more. Chairwoman Loz said she believes the reason it was included is that these are Rules and Procedures for Zoning Board members to look at, especially new members and she had seen it in the Rules and Procedures for other towns in the state.

Andy said the important sentence is the last one which basically says that our Rules of Procedure are going to require any collateral material or media be submitted at a public meeting as part of the record. The board discussed getting rid of everything in the paragraph except the first and last sentence.

Rick stated that anything the applicant submits has to be submitted fifteen days prior to the meeting so there is time for abutters to observe. During the process if something is brought up, he has heard it handled many ways, one way being the board requiring fifteen more days to review any new information the applicant has brought up.

The board discussed the fact that the applicant does have strict deadlines, the board does not, and the public can submit the night of the meeting. Chairwoman Loz said this paragraph may not fit under *C. Applicant Refuses Permission* any longer but is important and still needs to be included somewhere.

Further rewording of the paragraph was suggested with the following arrived at:

C. Applicant Refuses Permission. An applicant may refuse to grant permission for a site visit. In lieu of a site visit the Board may consider all sources of information including but not limited to printed material and/or other media as part of the public record.

It was agreed by Board members that this could not be considered a first reading of the document as significant changes had been made.

Rick Davies had a revision for the Rules of Procedures in Section II Officers number seven regarding Alternates being involved in discussion. Rick wanted the wording to clarify the fact that Alternates cannot offer input during deliberations when a motion is on the floor. The board continued to this discussion this, suggesting changes to the wording and arrived at a final revision as follows:

Alternates shall not be allowed to make or second motions and shall not participate in any way during the deliberations by the board after a motion has been made and seconded.

6. COMMUNICATIONS AND MISCELLANEOUS

Chairwoman Loz stated she wanted to bring forth another item for discussion, relative to Rules and Procedures and would like the board's thoughts on whether they should add something on ex parte communications for Zoning Board of Adjustment members. Janice said it's important for board members to remain neutral on subjects and to not have communications regarding applications under consideration or future cases, with persons whom are interested in or affected by those cases. She said she would also like to see something added regarding electronic devices being used by board members during a meeting.

Howard said that is what is called a gag rule. Rick Davies noted that the Zoning Board of Adjustment is considered quasi-judicial and the same rules apply to board members that would apply to a jury. Beverley asked if that would be during a meeting or outside of one and mentioned Chairwoman Loz, on the Biagotti Special Exception, gave her opinion on whether it was a good idea or not. Janice stated she gave her opinion after all the evidence had been reviewed and discussion and deliberation had been done. She said what she is

talking about is making sure we don't have discussions with the public at large and with applicants or abutters or anyone else with an interest that in any way could skew our judgement.

Rick mentioned a Right To Know seminar that the NH Municipal Association is having soon. If you talk to someone outside of a meeting and then each of you talks to someone else, all of a sudden there are four people involved which is a quorum and therefore a meeting, in theory. It's good ethical procedure to remain impartial.

Andy asked where it might go in the Rules and Procedures. The board discussed this with various suggestions as to what section it should go under. Rick noted he gets approached off and on by someone who will say they want to talk to him about a case and he will respond that he can't and refer them to the Land Use Office.

The board decided that the best section for this to be added to is Section XV Additional Rules of Order as item R. Corey and Andy suggested wording as follows: *The board shall not participate in ex parte communications regarding an application before the Board.* All board members were in agreement.

The board then discussed adding a rule regarding electronic devices. Rick noted there is one in the Planning Board Rules of Procedure under Section VII J which reads: *Board members may use electronics devices during meetings only for purposes sanctioned by the board.*

Chairwoman Loz said that technically a board member could be texting someone in the audience. Andy asked about the electronic device we use to record minutes during a meeting. Chairwoman Loz said that is board sanctioned.

Corey asked under what circumstances would the board need to use an electronic device? Janice said we have used it in the past to access the town website for information. Rick said we might not do it during a public hearing but during a regular meeting. Andy noted that the words *audio recordings* are in the Rules of Procedures under the records section. Rick said that is regarding how long recordings of meetings should be kept.

The board decided to add the electronic device wording as Item S under Additional Rules of Order.

Land Use Files – Chairwoman Loz said that Lois wanted to talk about Maps and Lots. Lois stated in the Land Use Office, Planning Board files are by Map and Lot number of each property and the Zoning Board files are by the applicant's last name. Lois said she would like to file them all by Map and Lot number because it's easier to find information and do research. The Planning Board discussed this at their last meeting and she wanted to run it by the Zoning Board tonight to get some feedback. Lois stated one of the Planning Boards ideas was to have both their files and the Zoning files in the same drawers, with different colored folders for each. That way all of the information regarding one piece of property would be in one area.

Rick suggested contacting some other entity to see what works the best. Lois said she didn't think that legally there is any reason we can't do it that way. Corey said New London does it that way, if you go to search a parcel all of the records regarding that parcel are in one area. Howard says if it makes the job easy and clarifies things it should be done. Rick made the point that it would make the Planning Board and Building Department jobs easier. The board was in agreement that the Land Use Office could go forward with this project.

Rick reminded board members that the OEP Conference is coming up June 4th and there is always something new to learn there. He asked Lois to send the link to the Right To Know webinar that he mentioned earlier.

7. ADJOURN

MOTION to adjourn was made by Rick Davies, seconded by Howard Kirchner. A voice vote was taken with all in favor. Meeting was adjourned at 8:35 p.m.