



TOWN OF WARNER

P.O. Box 59, 5 East Main Street
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Fax: (603) 456-2297

**Zoning Board of Adjustment
Minutes of May 11, 2022**

Town Hall in the Lower Meeting Room

1. The Chair opened the ZBA meeting on at 7:03 PM.

A. ROLL CALL

Board Member	Present	Absent
Barbara Marty (Chair)	✓	
Harry Seidel (Vice Chair)	✓	
Jan Gugliotti (Alternate)	✓	
Beverley Howe		✓
Elizabeth Labbe	✓	
Lucinda McQueen	✓	

Also present: Janice Loz, Land Use Administrator

B. The Chair made note that Sam Bower will no longer be serving on the ZBA. He is serving as the Chair of the Select Board. He told the Chair he is quite fond of this board and may volunteer for membership again when he is no longer serving on the Select Board.

2. APPROVAL OF THE MINUTES OF April 13, 2022

Page 1: Harry referenced where he is speaking at the bottom of the page, "Harry also noticed instances where Chair Marty and other where it simply says..." he felt it should read "others".

Janice said there is a problem with editing the April 13 minutes reflecting changes made to the March meeting. She asked the board if they were okay with doing that.

Harry said he was fine with leaving it as is. Harry then inquired as to what they are supposed to be editing. The Chair said the first page and half is referencing edits of the prior meetings minutes.

Page 2: Harry made a comment on edits to the previous minutes. This comment references "Page 6" on the March minutes. The middle of that paragraph states, "Harry noted in the fourth paragraph after the motion failed text, the sentence seems to be a non-sequitur. He said there needs to be a paragraph inserted at that point." Harry said there is no decision made by the board on that comment. It gives the impression they forgot to finish the thought. He said whenever someone makes a suggestion, or something is said for clarity, we should try to close the circle on that thought with a comment. Harry said there was no decision made on whether to insert a paragraph. It should say, it was agreed to or that there was disagreement. He felt that it would be helpful to record the action that was taken.

UNAPPROVED MINUTES OF MAY 11, 2022

Janice said she understood Harry's point. She said the purpose of this portion of the minutes is to note everything that needs to be changed. When a motion is made to approve the minutes as amended, edits that are unopposed are approved as an edit to the minutes. The board doesn't approve every sentence, every section, they are approving the overall edits to the minutes. When Janice edits the minutes, she references this section and reviews her mark-ups while making edits. When she sees the notation to insert a paragraph, she will insert it. The edits are interpreted as direction on what needs to be changed. She inquired whether that explanation answered Harry question.

Harry said it did not. He felt for clarity a correction should offer as much as possible about that and we should discipline ourselves to finish the discussion and decide. It should simply be noted whether there is agreement or not. To have someone make a comment and just end it is just sort of murky. There is no clarity there. The Zoning Board is a judicial branch and we need to have as much clarity as possible. He finds when he reads through these minutes, and it doesn't matter who is speaking, often it will seem kind of fuzzy. I think in this case there if is no comment, it is assumed.

The Chair said she thinks it is assumed. When something is noted, either a deficiency or miswording or whatever, a correction to the minutes is made. Once it is stated and we approve the minutes as amended it is assumed that we are agreeing, if there is no further discussion and there are no objections then we are assuming that correction is in fact a correction. Harry said, okay.

Elizabeth said she does not have the minutes, so this is confusing because she can't reference what is being discussed. The Chair said maybe it would be good practice for all of us to have the prior month's minutes with us, if we want to be sure the corrections have been made.

Jan G. said, as a newcomer to the Board, if someone says something should be otherwise, it should be clear the consensus of the group was either "yes" he is right, or "no" he is wrong. If you did law research you would not want to have a hanging participle. Questions should be decided with a "yes" or "no".

Janice said if someone disagrees, they usually say something. The Chair said if someone disagreed with the correction that would also be noted, or the discussion would continue.

Page 3: Harry said in the middle of the page, where he said "otherwise", should read "however". Janice said she is careful to note exactly what Harry has said. Harry said he agreed it could stay.

Page 4: The Chair said we had decided to continue the discussion on the Rules of Procedure to the May meeting. She doesn't see anywhere in the minutes where that is referenced. Janice asked the Chair to figure out where she wants to be inserted and Janice will make the change. The Chair said she will email it to Janice.

Harry noted right before the Communications section the last word in the previous sentence should be "broader".

Harry made a motion to accept the minutes of amended. Elizabeth seconded the motion. Discussion: No comment was made opposing suggested edits. **Voice Vote Tally:** 5 – 0. The minutes were approved as amended by board members.

Janice commented that after the Planning Board minutes are transcribed, she formats them and forwards them to Andy Bodnarik. Andy makes the edits before they are inserted in the board packets. It saves editing time in the meetings. She asked if that was something the ZBA would like to try. Potentially, assigning a member of the Board to reviewing the minutes for grammatical errors. The Chair said they don't usually have a lot of edits. Janice said having someone else review it, is always a good thing. The Chair asked how the board felt about this request.

UNAPPROVED MINUTES OF MAY 11, 2022

Harry said he would rather not have someone else editing. Janice wanted to be clear that Andy only makes grammatical edits, he does not change the text of the minutes. The Chair said there are so few changes normally, to do it as a group in the meeting is fine.

3. NEW BUSINESS

A. Welcome New Alternate Member, Jan Gugliotti to the Zoning Board of Adjustment (ZBA)

The Chair welcomed Jan Gugliotti to the Zoning Board. Jan G. introduced herself. She is the co-owner of Blue Moon Blueberry farm. She has lived in Warner for 33 years and they have had the farm since 2000. She retired 2 years ago and has joined the communities Energy Board. She got a call from Sam Bower encouraging her to be a board member. She was very glad to attend and to contribute.

The Chair said she was there at a very auspicious time. Reviewing the Rules of Procedure is a good way to jump in with both feet. It is a good way to know what we do and to spell out for the public what we do.

Jan G. asked if she would be able to vote. The Chair said they are absent a member, this evening. The next move is to elevate Jan G. to a voting member. The Chair said Jan G. would be participating as a full member for this meeting. The Chair explained that as an Alternate, normally she could participate in the process up to the point when a motion is made. The Chair said the Rules of Procedure spells out the role of the Alternate.

4. OLD BUSINESS

A. Review of Rules of Procedure Document (ROP)

The Chair noted currently there were no participants on-line via Zoom, although, we do not take public comment when discussing the Rules of Procedure (ROP) document. She said Janice has submitted some notes relative to the document. Two in particular we will talk about, regional impact and the need to post to the newspaper. Those both have to do with the duty of the Land Use board. A lot of changes are grammatical or changing things around and re-numbering. The Chair said there are notes submitted individually from Elizabeth and Bev.

The Chair referenced Bev's comments, noting that she was absent from the meeting. She read Bev's comment referring to page 3 of the ROP and the use of the term "disqualification" instead of "recusal", they have two different connotations. She will hold Bev's comments and refer to them when they are relevant to the document. The Chair also encouraged Elizabeth to address her comments at the relevant time.

Janice commented that the town is moving away from the term Chairman and is moving toward Chair, as well as Select Board, instead of Board of Selectmen.

Purpose and Intent (Note: these headings indicate sections of the ROP document)

The Chair started on page 1, and the statement of Purpose and Intent, which she said was redundant. The Rules of Procedure is the purpose and intent of the document. She asked if the board objected to removing the stated Purpose and Intent from the document. Harry said he didn't object. There were no other comments made by the board.

Authority

The information in the Purpose and Intent section will be moved to the Authority section. The Chair said that is where it belongs. The form and functions of the ZBA are assigned in the ordinances of the Town of Warner. She asked if everyone was okay with that, and asked members to speak up and object when necessary. Harry agreed. No other comments were made by the board.

Regular and Alternate Members

On page 1, number 2, Regular and Alternate members, the Chair said, we were thinking of taking out the term "officers", because they either have members or alternates. Members are elected by the board to be Chair and Vice Chair.

The Chair said they had moved all the **RSA references** to the end of each paragraph. Although, in Elizabeth's notes she references two sentences ruled by different RSA's. Elizabeth said one sentence is referenced in RSA 42:1 and the other in RSA 42:2. The Chair suggested referencing both at the end of the completed paragraph. Elizabeth suggested referencing just RSA 42. The Chair concurred. Elizabeth said it is not a lengthy RSA, but it references who shall administer the oath and the appointments. The Chair said it is only two RSA's that are referenced, let's just put 42:1 and 42:2. Harry thought that was a good idea. No other comments were made by the board.

The next section was about members attendance, notifying the Chair and Land Use office as to absences and number of excused **absences**. Janice said her concern was if members notify the Chair as to absences that could potentially start an email chain. Usually, all communications are filtered through the Land Use office to avoid communications between members. The Chair referenced the OSI (Office of Strategic Initiative) which suggests only the Chair being notified of absences, not the Land Use office. She believes that is so the Chair can ensure a quorum. Janice said that has been the responsibility of the Land Use administrator. The Chair said the OSI notes it is the Chair's responsibility. Janice said it has always been the Land Use office for both Boards. The Chair said she hopes Janice doesn't mind, but, she also wants to know if somebody is not going to be present. Janice was concerned that sometimes the communication may not always get to the Land Use administrator. Janice said it is fine to have both, as long as the Land Use office is in the communication loop. Harry confirmed there will be no change to that section, it will read to notify the Chair and the Land Use office.

The Chair went onto number 4, they are removing appoint such **committees** as directed by the board. She said that is a Planning Board function and not a function of the ZBA.

Elizabeth asked if they could go back to the review of number 3. When Elizabeth first joined the board she met Barbara Annis. When they came in to take their oath, it was a big deal. Barbara stressed the importance of the moment. Elizabeth said the commitment to this board is serious. She thinks that unexcused **absences** for a professional board like this, is inexcusable and needs to be addressed immediately. She doesn't want anyone to be punished but, three unexcused absences in twelve months are wrong. At that point someone should remove themselves. Our cases can go to court, and they must stand up to scrutiny. The Chair said, they are a volunteer board and people have lives and things happen. The Chair said most of the members are good about notifying if they are going to be absent. Janice said members of the board will change. Potentially a good way to address Elizabeth's concern, is saying the expectation is that members will attend all meetings, but three unexcused absences is the threshold. The Chair said it says members including Alternates are required to attend all meetings of the board. Elizabeth suggested removing the ability to have unexcused absences. She felt unexcused absences should bring members up for immediate review. Jan G. suggested removing the possibility for three absences, and simply say unexcused absences will be reviewed.

UNAPPROVED MINUTES OF MAY 11, 2022

Janice referenced the recent newsletter from the NH Municipal Association and the Do's and Don'ts for boards. It stated the expectation is that members will attend 99% of the meetings, otherwise people shouldn't be joining a board. Jan G. clarified that an unexcused absence is when a member doesn't notify the Chair or the Land Use office about an absence prior to a meeting. Jan G. said that since money and property rights depend on a quorum of the board to hold a hearing, then attendance is important. She can see the value in having a private conversation with a member about their attendance. Jan G. said in terms of an emergency that is understandable.

Harry suggested changing the word "may" and replace it with "shall". Elizabeth said that would work for her. He said it is a little stronger. Elizabeth said it would fall on the volunteer Chair to take that person to task. She can understand that no one would want to do that. We are a volunteer board just trying to get people involved. The Chair said she has no problem telling members that we depend on them being in attendance.

Elizabeth discussed the next section in number 4. She said there is a Housing Committee coming up and she would like to be the ZBA representative to that **committee**. This section seems to discuss creating committees, not appointing someone to a committee. The Chair said we don't really serve on committees, in general. Because we are a quasi-judicial board so we have to try and avoid having strong opinions on something that may come before the board. So, if you are on a committee about Land Use and hear a case about a Land Use issue there could be a conflict. The Chair said members can sit on other committees and boards in town. Janice said members do not represent or speak for the ZBA outside of a meeting. You are only a Zoning Board member during the meetings. Unless the board has given authority to the Chair to speak to the Planning Board, for instance. A motion is made and approved giving the Chair authority to speak on behalf of the board. The Chair said the Planning Board and the Select Board will have a representative on other committees. Harry clarified that Elizabeth could be on that committee, but, not as a ZBA representative. Janice said she was on a committee once and was introduced as a ZBA member and someone spoke up and reminded the committee that I did not represent the Zoning Board, in any capacity outside of the meetings.

The Chair recommended they remove the committee appointment section and Harry agreed. Janice said the ZBA can appoint a subcommittee, but with five members there probably isn't any point to have a subcommittee.

The Chair said on item number 7, all **officers** was changed to the Chair and Vice Chair shall serve for one year and shall be eligible for re-election. Number 7 which is now number 8, states up to five alternate members shall be appointed by the Select Board. The section which reads "and to serve when any regular member is unable to fulfill their responsibilities" will be removed because that is discussed in another section.

Number 9, was moved here from the Quorum section. The Chair said here I am changing "**disqualifies**" to "**recuses**". The Chair referenced Bev's notes on this section. The Chair said if someone is disqualified it has almost a legal sense that someone has done something wrong. When someone refuses to recuse themselves, they can then be disqualified. If it is found that their lack of recusal created a conflict. The Chair said recusal is a voluntary act, it can be voted on by the board, but, it doesn't have the same feeling of being illegal. That was Bev's point, she spoke with the Chair about this. Bev felt that disqualification sounds like you did something wrong, whereas a recusal is when you know you have a conflict of interest. The Chair gave examples of situations that may arise for a recusal, being an abutter, involved in monetary exchange with the applicant, etc. Jan G. said that recusal has a more Latin, or legal sound to it, which is better. Janice said it is the term used regularly in Land Use.

The Chair said there are two instances where the word recuse/s/al would be substituted. She read the text of number 9 with the substitution to the board.

Staff

The Chair went on to Page 2, the staff section. The staff administers the office of the Zoning Board of Adjustment. The Chair referenced Janice's concern that the Land Use office serves the Planning Board, as well. The Chair said this is a zoning document, so we are only concerned with what that office is doing for this board. Janice said the description is inaccurate because the term Land Use means Planning Board (PB) and ZBA. She said the Planning Board has this same paragraph in their ROP and it says serves the PB and the ZBA. She thought it would be consistent to have it the same in the ZBA's ROP. The Chair said we will have some inconsistencies with this document in comparison with the Planning Board. Janice felt it was important the ZBA and new members are aware this position serves two boards. The Chair said that is noted and they will circle back to this conversation.

Meetings

The Chair said the board packets reference was moved from under the staff section to the meetings section, because it has more relevance to the order of business. She asked if everyone was okay with that, Harry said he was. No other comments were made by the board.

The only change they did in number 1 was move the sentence about excluding Sunday's and legal holidays to the end, so the sentence flows better.

The next change references the board packet being available to members by Thursday prior to the meeting. Then number 3, removes "all votes" would now read "votes" and "any matter" has been replaced with "matter" and the word "duly" has been removed.

Jan G. asked how a tie vote, would be possible. The Chair said there are not always five people present, there are circumstance when there are four members present.

The next section the Chair addressed was the Continuance of a Public Hearing. Instead of "on noticed matters" a public hearing may be continued pending the submission of additional material or information, the correction of noted deficiencies or because of the late hour. A motion to continue an application hearing or meeting shall include a date, time and location of the continued meeting.

Decisions on Applications

Elizabeth had something to contribute on the Decisions on Applications section. She got her suggestions from a generic Rules of Procedure document. The Chair and Elizabeth had a conversation about this section and the best way to make changes. The Chair read the change, "the decision shall state the name of the applicant, map, lot, zoning designation, type of application, case number." Elizabeth said that is all stated in the RSA. The Chair asked for input from other Board members. Harry said we simplified it, he doesn't have a problem with a part one and two. Elizabeth wanted to combine the two parts. Harry said the first part is really about the application and the second part is about the decision. The first part is discussing what happens when an application is made and what the board will do. The second part is about the decision, the judicial decision how that is handled and where it is copied. The part that talks about the nature of the application and the part that talks about the decision should be separate. Harry said he hears what Elizabeth is saying, agreeing it is a lot of words.

The Chair said we wrote "the Board shall act on all cases within 30 days" and this says the Board shall decide all cases within 30 days of the close of the public hearing. Which the Chair said is more accurate, because the decision on the application comes after the close of the public hearing, not within 30 days of receiving the application. She would be good with making that change. Janice clarified this is referencing deciding on an application after the public hearing has been closed.

Jan G. and the Chair felt that the current wording is misleading. The wording that Elizabeth brought forward is better. Janice suggested the wording "act upon the application within 30 days of receipt"

UNAPPROVED MINUTES OF MAY 11, 2022

should be in there somewhere. The Chair said yes, but not under the Decision section. Janice suggested changing the section to Decisions/Applications. Harry said, we say that the board will act upon applications within 30 days. The Chair said that is different than saying the board will decide cases within 30 days of the close of the public hearing. The Chair referred Harry to Elizabeth's notes. Jan G. said they are defining a process, there is an application, then you take a look at it within 30 days. Then there is the hearing process, which is missing in the text, then the decision process. Jan G. suggested calling the whole thing the adjudication process. Harry said he had no problem with taking Elizabeth's suggested text and inserting it. He said it is well stated and clear. The Chair said, we still need to have some place in the ROP where we state the board will act on applications received in the Land Use office within 30 days. Harry said it says the board will decide all cases within 30 days of the close of the public hearing. The Chair said we do have a section called "Applications" which appears after the "Order of Business" section. That sentence could be moved to that section.

The Chair clarified that under section 5 where it says "decisions on applications", the first sentence will be removed, where it states the board shall act upon applications within 30 days. She explained that is not really a decision, it belongs under the applications section. Then starting with Elizabeth's suggested wording which says, "the board shall decide all cases within 30 days of the close of the public hearing and shall approve, approve with conditions, or deny the appeal". The Chair said that gives the timing for the decision, not the timing for the hearing. Her only concern is that we discussed the application under the section that deals with decisions.

Harry wondered if they were keeping part two of that section. The Chair read part two, "notice of decision will be posted in the Warner Town Hall within 5 business days. Decisions are signed by the Chair." She read Elizabeth's suggested text, "notice of decision will be made available for public inspection within 5 business days as required by RSA 767:3 and will be sent to the applicant by certified mail. If the appeal is denied the notice shall include the reason. Notice shall also be given to the Planning Board, the Select Board, the Town Clerk, the Property Tax Assessor, and other Town officials as determined by the Board." Harry said, that is fine, he would suggest that they take Elizabeth's paragraph and substitute it for what is currently there. The only issue is we have lost the statement that the ZBA will act on an application within 30 days. The Chair said we are moving that sentence to the applications section 12. Harry clarified we are just calling this section "Decisions". The Chair said "Decisions on Applications". Harry said he was good with that. No other comments were made by the board.

Records

The Chair read the changes proposed by her and Harry. She referenced the **minutes** of all meetings shall be open to the public inspection within 144 hours, six days of the meeting. We should add minutes will be added to the Town web site when approved. We decided at the previous board meeting we are not going to post to the web site unapproved minutes, although, they will be available in the Land Use office. Harry said that was good. No other comments were made by the board.

The Chair read the audio recordings section. She then discussed "final written **decisions**" which will be on file and available for public inspection within 5 business days after the decision has been made. That is also discussed in Elizabeth's suggestions of adding to the "Decisions" section, instead of putting it under "Records". Elizabeth said when she researched this it was in two places as well, which is not necessarily a bad thing. She believes it could be stated that the original decision should be filed. Janice concurred the decisions are filed in the corresponding property file. Janice said whether they want to include that information in the ROP is up to the board. Janice said it is in her job description, actually most of the ROP's lays out part of her job description. The

Chair said part of the “Records” section is a reference to the final written decision being kept on file.

Joint Meetings and Hearings

The Chair addressed the section on “Joint Hearings”, which had some grammar changes. Elizabeth stated that she didn’t believe the Board could sit with other boards that are not Land Use boards. Her research found very specific references to that. Elizabeth said the Planning, Zoning and Select Boards are the Land Use Boards. Janice said the term Land Use is very specific to Planning and Zoning Boards. Janice said the Select Board is not a Land Use board, although, they have an ex-officio Select Board member on the Planning Board, which is how they tie that loop together. Janice said the board can seek the opinion of, for instance, the Conservation Commission or the Fire Department. The Chair referenced the OSI, and read RSA 676:2, “provides the Board of Adjustment may hold joint meetings or hearings with other Land Use Boards, including the Planning Board, the Historic District Commission, the Building Code officer, the Board of Appeals and the Inspector of Buildings. Each Board shall have the discretion as to whether to hold a joint meeting with other Land Use boards.” Janice said in Warner it is just Planning and Zoning. Harry said then we should just use the term Land Use boards. The Chair said if we end up having an Historic District then we are covered. The Chair reiterated that the term Land Use boards would be inserted. Harry said he was okay with that. No other comments were made by the board.

Quorum

The Chair discussed that a quorum requirement was changing to three members, which is referenced in an RSA. Janice said you can have four, they had four before, although she agrees three is a better option. She continued to say the only problem with that is you need three concurring votes for a motion to pass. Which is tricky if you only have three members present. The Chair said that is why it is always best to have a full board.

Also added was “if there are less than five members present the Chair may give the option to the applicant whether to proceed with the hearing. Should the applicant choose to proceed with less than five members that shall not solely constitute grounds for a rehearing should the application fail.” Then the Chair read number 3, “if the applicant chooses to postpone due to less than a full board being present the board shall before adjourning announce the time, date, and location of the continued hearing, otherwise, the board shall provide new notice to all parties.” The Chair said if we can’t give a date for a new hearing the town has to absorb the cost of re-noticing the hearing. Jan G. said shouldn’t that read “date and location of the continued hearing.” Jan G. continued to say, if that doesn’t happen or is not possible the board should provide . . . otherwise it sounds like an either they object, or you are going to the latter. The Chair interjected it sounds like an either or situation. So, we will put a period after the word “hearing” then “otherwise” begins a new sentence. Harry and the Chair noted that was a good catch. No other comments were made by the board.

Disqualification

The Chair moved on to the disqualification matter. The Chair said Bev has a problem with the word “disqualification”. Although, the Chair noted it is used in the RSA. The Chair said the terms are used interchangeably. Although, cognitively “disqualification” and “recused” have two very different meanings. She read the statute 673:14, Disqualification of Members . . . “no member of the ZBA, Building Code appeals, etc., shall participate in deciding or shall sit upon the hearing of any question of which the board is to decide in the judicial capacity if the member has a direct, personal or pecuniary interest in the outcome of, which differs from the interest of other citizens.” She said that is basically what the recusal is, if you are an abutter, if you have any special interests, or are related to the applicant. Harry asked what was Bev’s problem with this section. The Chair said she doesn’t like term disqualification, when really the only thing we talk about is recusal. We don’t

UNAPPROVED MINUTES OF MAY 11, 2022

disqualify members. We ask members to recuse themselves, we can vote on having members recusing themselves if they don't do it voluntarily. But, the ordinances use the word "disqualification" said the Chair. She said it should be left the way it is, because they reference the RSA, which has the heading disqualification.

The Chair asked for opinions from the board. Elizabeth thought they should keep the word disqualification because it is in the RSA and written that way. Janice asked if they wanted to use the title disqualification / recusal for this section. The Chair said it is spelled out in the body of the text. Janice said there was another section where they put recusal in and this section where it says disqualification, it can get confusing. Elizabeth said disqualification is something pretty specific. Harry said they are pretty much the same. Harry said someone chooses to recuse. Otherwise, they may be deemed disqualified by external factors. The Chair said the way it is used in two different sections with different terms is fine. Harry asked if they title this section Recusal / Disqualification then use the term recusal in the body of the text. Jan G. said when there is uncertainty whether a member should be disqualified then it is called disqualified. The Chair concurred.

Jan G. questioned whether in a previous section the term "abutter", when listing reasons for recusal is redundant. The Chair said you would take it out in number one and leave it in section two. Jan G. concurred. She said section one is a recusal section and section two is a disqualification section. The Chair said the section will be titled Disqualification / Recusal. Then instead of having the information about the abutter redundant take out the last sentence in one, referring to abutter status. Harry said do we want to change the wording in number one to a member of the board finding it necessary to "recuse" themselves. The Chair concurred. Harry said the next line, "the recusal shall be announced by either the Chair or the member recusing themselves". The Chair concurred.

The Chair read section two, "when there is uncertainty whether a member should be disqualified to act on a particular application, that member or another member may request the board to vote on the question of disqualification. Any such request shall be made before the public hearing begins unless the information upon the request is based is not disclosed before the board commencement of the public hearing. The vote shall be advisory and non-binding a potential conflict of interest ..." Harry concurred that sounded good. No other comments were made by the board.

Order of Business

The Chair addressed Janice's concern of the **minutes** being moved from the beginning of the meeting to after the review of applications. Janice asked if the board wants to close the business of the previous meeting's minutes before you start new business. The Chair said the OSI does note the order with the minutes first, then they said, "although this is the usual order of business the board may wish to hold the hearing immediately after the roll call in order to accommodate the public. Janice said often that is when a hearing is a continuance of a previous meeting. Janice said the new order is fine, she just wanted to make you aware that it might be confusing and that concluding minutes of a previous meeting might be good to do right away.

The Chair said when we have an application, sometimes lawyers are present and people who are paying to be there. So, it is nice if we can move the minutes to after a hearing. The process can be lengthy, and it may be nice to give a preference to the people who are here and have business to conduct. Janice said you don't legally owe that to an applicant, but it is a nice sentiment. Janice said the board should be mindful that previous meeting minutes might have a bearing on the current meeting. It might be good to have the record correct before continuing with a new meeting. Harry said that is a good point and if there was a situation like that, we could make an adjustment to the order of the minutes. Harry said generally it make sense to have a policy of pushing the

UNAPPROVED MINUTES OF MAY 11, 2022

minutes to the back, because people are paying for their time. The Chair said usually the substance of the minutes isn't going to affect the current hearing. The Chair concurred with Harry that when it does we can change the order. The order of business is up to the Chair. Harry said if you or Janice notice the need to adjust the order, an adjustment can be made.

The Chair went on to the next item in the order of business relative to **elevating alternates** for absence, recusal of regular members. Jan G. and Harry felt the recusal / disqualification of members needs to be consistent throughout the document. The Chair said it should be for "absent" and "recused or disqualified" members.

The Chair read the next item. Each application that is submitted, a considering factor is to "accept or deny the application for completeness." She has added "and consider for **regional impact.**" She said regional impact is what should be considered when the application is received. She introduced a handout for local Land Use boards for considering regional impact. They say the statutes require the Land Use boards to make an initial determination on whether an application before the board is a development of regional impact. Then on the third page, it says when the Land Use board receives an application for development it is required to review it promptly to determine whether the development if approved reasonably could be construed to have a potential for regional impact. When it is a close call the board is required to find the development does indeed have the potential for regional impact. Doubt concerning regional impact should be resolved in the determination that the development has a potential for regional impact. Then it talks about the Planning Board and a subdivision plan, but, the last sentence says the same applies to the ZBA before hearing a variance, appeal or special exception request. The ZBA should first decide whether the matter involves a regional impact development. The Chair said it sounds like that determination is made when the application is received.

The Chair said in one case when we had a development on a town line. The Land Use office sent the notice to the abutting town. That town did come to the meeting via Zoom and provided testimony. She is not sure if it belongs here where they accept the application for completeness, or if the consideration for regional impact has to happen when the application comes in. Janice said you are tying yourself down when deciding regional impact during the accepting the application for completeness phase. The board may need to parse out whether there seems to be an argument for regional impact during the hearing process. Do you want to pigeon hole yourself into making a decision before accepting the application. Jan G. should you give it a "sniff test" when it is first received and then go into depth when you are actually having a hearing. Harry said we don't do "sniff tests" that may happen more on the Planning Board. Harry said he understands the point of how can we make that determination before the meeting.

The Chair said it does say what constitutes regional impact. Harry said the regional impact determination comes from the Planning Board. We might be caught up in a meeting where it is a joint meeting. The Planning Board may notify us if there are zoning issues that apply to the ZBA. The Chair said that didn't actually happen on the case that was on the border of the other town. The Chair said the Land Use office made the decision to send the notice to the other town. Janice concurred she noticed an abutting town. Harry said, an application comes into Janice on supposedly January 1st, that would be potentially a month before we meet. Janice said applications have to be in 15 days prior to a meeting. That is the deadline for the ZBA, 10 days prior an abutter's notice is given. Harry said then Janice contacts us and says this looks to be of regional impact. Janice said she does not make that decision. Harry said they would have to meet to determine the impact. The Chair said the proximity to the neighboring community is a given, when you look at a map you know where it is. Harry agreed.

Janice said it is complicated. The first issue is what is regional impact and what does the board define as regional impact. The Planning Board is coming up with how they define regional impact

UNAPPROVED MINUTES OF MAY 11, 2022

and trying to put that into their ROP. That might be something the ZBA may want to address in the future. The second is the ZBA did have a case, that came before the board and regional impact was not considered. It wasn't an abutting property. The case went to court and was kicked back to the ZBA and we had to notice the other town. The judge believed we should have considered regional impact. We had to rehear the case. Jan G. said according to the document she has proximity is only one of the considerations in determining regional impact.

Harry said we don't decide regional impact. We do variances, special exceptions and appeals. The Chair said, yes, but if we are considering a special exception or a variance for something on a town border then that has a potential for regional impact. Janice said it was the gun range and whether or not the business impacted Hopkinton. Harry said the Planning Board writes the ordinance and they will write a criteria for regional impact it isn't something we have to decide. The Chair and Jan G. said according to RSA 36:55 the ZBA does consider it.

Harry said we should have a meeting, make a determination then continue the meeting to notify for regional impact. Janice said, yes, once you determine there is regional impact you stop the meeting and notice the other town. She can see the benefit of putting it up alongside the acceptance of the application for completeness, because that would be a good stopping point to notice another town before continuing. Although, there could be times when the application on its face value does not appear to have regional implications. Once testimony and public comment is heard it may be apparent that it does. Maybe it effects a fire station in another town, or the Warner River, there could be a multitude of reasons. The Chair said something we may not know like proximity to aquifers, which is something we don't know by looking at an application. She believes we need to at least look at an application and say we don't believe something has regional impact as due diligence. She suggested maybe that is something that should be added to the application. Harry said, regional impact alongside the accept of denial of the application should be together in the order of business. The board consensus was in agreement.

Janice said you could potentially accept an application for completeness, then the board could say they haven't yet determined regional impact. Giving you time to continue the process to gather more information. Harry and the Chair agreed it was important to have it in the ROP that it is going to be considered in the beginning of the application process. No other comments were made by the board.

The Chair moved on to the "**hold public hearing**" section, the next four items were removed from the order of business because they appear in the section on Public Hearings. No other comments were made by the board.

Applications

The next section reviewed was "Applications." The only change in this section was the Land Use office will review the application for completeness. The Chair said if someone turns in an application, and it is incomplete that does not start the 15-day time limit for a hearing. Harry said they may submit an application for a variance for instance, but it may be the wrong type of application. Janice said you don't determine whether an application is complete until you have a hearing. The Chair said you are determining whether all five questions have been answered or the fees have been paid. Janice said she thought they were just parsing words, but she thought there may be more to determining if an application is complete. The Chair said putting the word completed there is just to let the applicant know if they submit an application that is not complete...Janice said they can submit an application that is not complete. Janice said if they didn't give enough money, for the abutter's notifications, she will ask for it to be received before the meeting. The Chair said if it becomes a problem then this change can go away. The Chair said if it gets to as far as a hearing and we determine it to be incomplete it gets kicked back. The Chair

said if you think completed is a problem it can be removed. Janice said it may cause problems, we would like to be a little more accommodating to the applicant if we can. Janice thanked the Chair.

Public Notice

The Chair went onto the “Public Notice” section. Janice asked if they are inserting the word “Hearing” into “Public Hearing Notice” section. The Chair said we really only notice Public Hearings. The Chair said the RSA says Public Hearing Notice. Janice said there are many different kinds of notices, there are meeting notices, agenda’s, abutter notices. The Chair said so anything that goes out of the office is a notice. Janice said if you want to leave it as is, that is fine. Janice said different notices have different deadlines. Harry said this RSA is specifically dealing with Public Hearings, with a deadline of 5 days.

The Chair brought up Janice’s concern with the **newspaper notice**. Janice said the town of Warner is noticing in three places, online, in the town hall and at the post office, no longer in the newspaper. The Chair said the Town of Warner cannot go against the RSA which says it has to be posted in a newspaper. The Chair said Janice referenced 675:7, which is actually an enactment of adoption procedures. Janice read RSA 675:7, “reads in part...notice shall be given to the time and place of each hearing under RSA 675:2-4...at least 10 calendar days before a hearing. Notice required under this section shall not include the day of the notice...notice of each public hearing shall be published in the paper of general circulation in the municipality and shall be posted at least in two public places. B. In lieu of publication in a paper of general circulation pursuant to subparagraph A., notice may be posted on the municipality’s internet website, if such exists. Appear prominently on the page...or the home page.”

The Chair said, but 675 is referring to enactment and adoption of procedures. In that case, that information is correct. The Chair said under 676:7, public hearing notice is different. RSA 676 refers to public notice for a Zoning hearing. That section does not give an out from publishing on a website. Janice said she would verify that information. The Chair said Christine Fillmore, in her recent presentation in the last Land Use training session reiterated that notice had to be in a newspaper. Janice said we don’t do that anymore. The Chair said she thinks we have been in violation and that needs to change. The Chair said she would put a question mark on that section until after Janice gets a chance to verify that information. Janice said it was becoming cost prohibitive, between \$200 and \$300 a posting in the Concord Monitor.

Harry commented that he wouldn’t want to rely on and have a policy where we notice of public hearings on the Town website. The website is not always easy for everyone to get to and then to find their way through it. People are used to the newspaper, and they can view the whole page where the notices are. He said they can see it in the newspaper, not everyone is looking at the website, he thinks that is why they have it in the RSA’s that way.

Edits continued to next ZBA meeting

The Chair said it is 9:00 PM and they have been going through this document for a while. Harry said it is going really well. The Chair asked if members wanted to break now and continue this at the next meeting. Janice concurred. Elizabeth said she has a couple of things to dive into that are lengthy. The review of the ROP will continue at the next meeting. No other comments were made by the board.

5. COMMUNICATIONS

None.

6. ADJOURN (Motion, Second, Vote)

UNAPPROVED MINUTES OF MAY 11, 2022

Harry made a motion to adjourn. The Chair took a **Voice Vote Tally: 5 – 0.** The meeting was adjourned at 9:01 PM.

Respectfully submitted by:

Janice Loz