

Zoning Board of Adjustment
Wednesday, October 19, 2022
Town Hall
7 pm

Present: Chair Jan Leclerc, Vice-Chair Judy Trow, Clerk Tom Murray, Tom Winmill. Alternates: Don Sellarole, Shane O'Keefe and Myra Mansouri. Absent: Board member Pauline Barnes and also alternates Carolyn Vose and David Edkins. Mr. O'Keefe was asked to sit in for Ms. Barnes and he agreed.

Minutes: Written by Marilou Blaine. **This meeting was recorded. These minutes are unapproved and will be reviewed at the November 2022 meeting for corrections, additions and/or omissions.**

Call to order: Ms. Leclerc called the meeting to order at 7:03 pm.

Minutes of September 2022: Mr. O'Keefe referred to page 3, second to last paragraph. "Mr. Edkins said he's never seen an actual map of the property. The secretary had one in the file and it was circulated among members but Mr. Edkins still asked to clarify where the zone line lies. The zone line was the property line between the end of the property where the buildings are located and adjacent to the property. Also, if you add up 250 feet from Main Street, you could determine it was where the property lines meet." Mr. O'Keefe agreed there was a map but there was no way to know where the two zoning districts were on the map that was provided and it never was established, he said. Ms. Trow made a motion to approve the minutes as amended. Mr. Murray seconded the motion and the motion carried.

New Business:

Review of nonpublic meeting minutes. Should they be made public?

Mr. Winmill suggested that this item be put on the agenda.

Mr. O'Keefe said once the reason for these minutes to be sealed is over with, the sealed minutes should be made public. The main reason to seal minutes on a nonpublic meeting is to protect someone's reputation. He continued that once a case has been adjudicated, you should make those nonpublic minutes public. The Select Board doesn't do it, but maybe they should for the sake of transparency and the public good. It's good to do that. Ms. Trow added you have to keep in mind the period of time in which the nonpublic hearing should be sealed. Mr. O'Keefe agreed.

Ms. Galloway-Leclerc asked the board if they would like to review some of the minutes of the nonpublic sessions to see if they should be made public. Mr. Winmill asked how far back would you go? Ms. Trow had made a list of nonpublic sessions going back to 2015. She found 21 nonpublic session minutes, which would be an average of about 3 per year. Other members of the board also thought it might be a good idea. Nonpublic minutes would be circulated, with maybe a couple looked at over several meetings. The secretary thought instead of just handing out sealed nonpublic minutes that the chair should look over each of the nonpublic minutes in case there was one or two that should remain sealed because it may be covered by one of the three reasons for sealing minutes.

The Municipal Association said minutes should be sealed only for three reasons.

1. Divulging information about the person would adversely affect a person's reputation.
2. It would render the proposed action of the board ineffective.
3. The information pertains to preparation or carrying out of actions regarding terrorism.

Ms. Galloway-Leclerc said the board could review them over a period of several meetings. Board members could not take them home but could review them at a meeting. The secretary was concerned about one or two sealed minutes that were sealed because of one of the reasons above. Ms. Leclerc said she would check with the NH Municipal Association about the matter.

Mr. O'Keefe said he didn't know if the chair has any more authority than anyone else on the board so everyone should review them. However, he added, the board could authorize the chair to look them over first. If there's only one, she could streamline the process by putting together the easy ones and the more difficult ones. Mr. Sellarole made a motion that the chair get to review the sealed minutes before showing them to the rest of the board. Ms. Trow seconded the motion. The board voted to approve the motion with Mr. Winmill voting no on the motion. Mr. Winmill suggested the chair refresh her memory by looking up the rules regarding sealed minutes.

Access to counsel by the entire board

This topic on the agenda also came from Mr. Winmill.

Mr. Winmill said that the reason he brought this up is that it would be his guess that one or more members of the board had received information from counsel outside of that one time when he came to visit the board about the procedure for an appeal to the board. So in light of those circumstances Mr. Winmill thought it would be better for the education of the members of the board that advice be available to everyone at the same time. Counsel's relationship is to the whole board not to an individual because of being an officer or having title. If counsel has a personal relationship with one of the members of the board, Mr. Winmill questioned that. Maybe the board should review the retainer letter between the board and Mr. Hockensmith, Mr. Winmill suggested. Mr. Winmill continued that counsel is providing advice that is not made to the rest of the board. Legal counsel is so important and he would like to share in that benefit and partake of that advice.

Currently Ms. Galloway-Leclerc said she contacts counsel after the board authorizes her to do so. That question, she said, was put to Mr. Hockensmith at the August meeting and he said he preferred to deal with the chair. Ms. Mansouri said when she was chair and someone wanted to contact legal counsel she went to the Select Board and was told she was the only person allowed to contact Mr. Hockensmith when it came to a probable legal matter. The board must also consider the monetary cost of these contacts and the town cannot afford to have every board member of every board contacting legal counsel. Also, Ms. Galloway-Leclerc said when she does contact counsel she emails him and shares his response with the rest of the board.

"I would like to see the retainer letter," Mr. Winmill said. Ms. Mansouri said he would have to speak to the Select Board. He would like to know the relationship Mr. Hockensmith, whatever it is, has to the town of Walpole. The board is receiving advice from counsel and he would like to know the dynamics of that relationship.

Mr. Murray asked if when Ms. Galloway-Leclerc reaches out to Southwest Regional Planning Commission does that merit the same mentality as what you're suggesting. Mr. Winmill said no. Mr. O'Keefe said you can always approach the Select Board about the matter. Mr. Winmill said it would be interesting to know how our Select Board chooses our counsel. His advice to the board should be to all the board members. He could call us back when we are having a meeting. Ms. Galloway-Leclerc said she could always invite him to come to a meeting.

Mr. Winmill said that if he sends an email, he wants to be on the receiving end of that email to be apprised of any activity or any advice that this board receives. As a member of the Zoning Board of

Adjustment he wants to know what Mr. Hockensmith is advising. He doesn't have to come in person but he would like an email. It's the same benefit the chair is getting. He would like to know the conversation.

Ms. Trow said what she hears being said might be interpreted differently than what you hear or understand a person saying. If he were available to all of us, the board might get a clearer picture.

Mr. Winmill said that recently he had attended a Right To Know seminar on that law and by the way all discussions with counsel are excluded from the Right to Know law. He would find it beneficial if he could access counsel, ask questions and be in the loop when counsel is being asked specific questions.

Ms. Galloway-Leclerc said she thought the board should follow what Mr. Hockensmith said he wanted – that he preferred to deal with one person, the chair. You have that option to tell me what you want to know and she can relay the question to Mr. Hockensmith and find out the answer for you. If everyone could meet with Mr. Hockensmith whenever they wished, the cost would be extraordinary. Mr. Winmill suggested that all board members would receive the email that Mr. Hockensmith sends to the chair and at the same time she receives it. Ms. Galloway-Leclerc said she would be concerned about that email being made public. But, Mr. Winmill said, he thought she contacted him by email. Ms. Galloway-Leclerc said she does contact him by email but feels uncomfortable about it being sent from counsel to everyone on the board. It may be something that should be discussed in nonpublic session. This back and forth continued. Mr. O'Keefe said it is very common that everyone get a copy of Mr. Hockensmith's email advice and then it's collected. He said someone could get hacked or you discard it and then it goes to the recycling center and all of sudden it's on top of the recycling pile and everybody is reading it. Stuff happens.

The question that millions of emails are going out every day from the biggest legal firms in the world and you're worried about this is incredible, Mr. Winmill said. He thought worrying about someone's computer getting hacked is not the reason to get not get information. Hockensmith could cc on emails, cc meaning copy. Ms. Galloway-Leclerc said she would contact the Municipal Association about the best practice in this matter.

Ms. Mansouri said she would email Mr. Hockensmith and Hockensmith sometimes wouldn't get an answer back for two or three weeks and that might be just before a meeting.

Riggins Rules

Riggins Rules are a list of 28 suggestions of rules boards could use to run a harmonious meeting without anyone getting out of control. While it may not be a problem tonight, the ZBA board could adopt couple of rules in the future so meetings run smoothly. There being no suggestions, Ms. Galloway-Leclerc said she may take this up again.

Two examples of a Riggins rule are:

No. 6. Do your homework. Spend any amount of time necessary to become thoroughly familiar with each matter which is to come before you. It is grossly unfair to the applicant and to the town for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. And you will make some horrible and disturbing decisions.

No. 11. Don't interrupt a presentation until the question period, except for a short and necessary clarifying remark or query. Most applicants have arranged their remarks in a logical sequence and the thing about which you are concerned will probably be covered if you force yourself to be quiet for a few minutes.

Review minutes of nonpublic August meeting.

There were two corrections. Mr. Murray said on page 2 the word "into" was repeated twice in the third paragraph. Ms. Mansouri said on page 3 at the end of the first paragraph, remove the word "are." Ms. Trow made a motion that the minutes be approved as amended. Mr. Murray seconded the motion and the motion carried.

After most of the board had read the nonpublic minutes, Ms. Galloway-Leclerc said she thought the board should approve the minutes and not seal them. Mr. Winmill said he thought the minutes should be sealed.

Mr. Winmill said he took a Right to Know seminar last week. And from that he took away that advice from counsel should be confidential. Legal advice should never be made public. Ms. Trow said she had the same feeling. Sometimes you find yourself grappling about some issue and he (Mr. Hockensmith) made it clear to me that people have to make up their own minds about participating in the process.

Mr. O'Keefe said Mr. Hockensmith is talking about process and not the particulars of any case. It's for the public good. Mr. Winmill said you might say these nonpublic minutes advised the board on the process but it's still counsel giving advice to the board.

Eventually the board voted to approve the nonpublic minutes as corrected. They will wait another month before voting on sealing them.

Gravel pits: Ms. Galloway-Leclerc and Ms. Vose inspected the Cold River Materials gravel pit on September 12, 2022. Their comment was "no issue noted." Mr. Murray and Mr. Sellarole inspected Tim Graves' gravel pit on Wentworth Road Oct. 12 and they noted that gravel pits need retention ponds and Mr. Graves' pit meets the state requirements. Ms. Judy Trow and Pauline Barnes visited the Old Drewsville Road gravel pit on September 6th and Ms. Trow noted that on Item No. 6 there was a slope that exceeded a 1:1 grade. They noted that John Hodgkins and Josh Perry agreed to correct the problem immediately. Ms. Trow returned later and the problem had been corrected.

Procedure for submitting applications

Following is the email correspondence between Ms. Galloway-Leclerc and the NH Municipal Association.

Hello,

Our select board has recently hired a person to be the "zoning coordinator" for the town to answer zoning questions and offer help to people in filling out the correct applications. This was done so that the ZBA could bow out of this role and only hear about people's projects after an application has been submitted to us. As part of this new policy we have been updating our application forms to remove the parts that advise people to contact the ZBA chair if they have questions.

The current applications advise people to submit their completed applications to the ZBA secretary or to the town offices for transmission to the ZBA, but in the more than twenty five years that I have served on the board only one applicant ever did this, and they applied for a variance when they needed an expansion of a non-conforming use. Every other applicant came to a ZBA meeting, usually with a lot of questions. Now we have the zoning coordinator to answer questions if he is consulted,

and that should help with the application process, but we would like to have people submit their completed applications to the ZBA at our monthly meeting rather than to the secretary or at the town hall. Then we can see whether the application is complete, vote to accept it and set a hearing for the following month, and the 90-day time limit would start that day.

Would it be acceptable to require that people submit their applications to the ZBA at a meeting and not give them the option of submitting it at the town hall or by email to the secretary? We'd like to be able to say, for example, "You forgot to sign the application," and have them fix that immediately with no delay in setting the hearing. Our secretary takes the minutes, but she does not determine if applications are correct or complete, and the personnel at the town hall are not able to make those determinations either.

Sincerely,

Jan Galloway-Leclerc
Walpole ZBA

Hello Jan,

I think the answer to this question is dictated by the first paragraph in RSA 676:5. That paragraph states: Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

The two key points here are 1. Appeals must be taken within a reasonable amount of time and, 2. Notice of appeal must be provided to the ZBA as well the officer who "aggrieved" them. The rest of the process would be dictated by the board's rules of procedure. I think if your ZBA properly amends their rules of procedure to require that applications be submitted directly to the board at a meeting, and the ZBA in fact holds enough public meetings so that there isn't an unreasonable delay in someone's ability to file they would be in compliance with the statute.

Jonathan E. Cowal, Esq.
Municipal Services Counsel
NH Municipal Association
25 Triangle Park Drive
Concord NH 03301
Tel: (603) 224-7447

Email: legalinquiries@nhmunicipal.org
<https://www.nhmunicipal.org/federal-funding-and-resources>
<https://www.nhmunicipal.org/nhmas-81st-annual-conference-and-exhibition>

In order to adopt this amendment about how to submit an application, the board must add the amendment to the regular procedures section mentioned in the bylaws. The bylaws say "These bylaws may be amended by majority vote of the members provided that the amendment is discussed at two successive meetings, which in our case would be the meetings for November 2022 and December 2022."

Handout: The Board received a copy of the October 16, 2022, The Keene Sentinel article that updated the NH House decision on the short-term rentals bill.

6.

The meeting adjourned at 8:20 pm.

Respectfully submitted,
Marilou Blaine
ZBA Secretary

cc: ZBA, WPB, Town Offices, The Walpolean.

Posted: Inside Town Offices, on the bulletin board outside the post office, www.walpolenh.us.

6.