

Special Meeting Notice-Zoning Board of Appeals-Town of Winchester

Date: October 30 th, 2013 at 7:00pm

Location: Town Hall-338 Main Street, Winchester, Ct

Minutes

- 1- Call to order by memorandum of 10-29-13 as filed with the town clerk on said day.

Called to order at 7:13pm on 10-30-13

Membership present: Messrs: De Clement, Hunt, Pollock, Villa as seated members, Wilkes as an alternate member, being a quorum of said commission.

- 2- Discussion/possible action to select an acting chairman
Action: Motion by Hunt, Second by Wilkes "to appoint Villa as acting Chairman". Vote: Unanimous in favor.

Villa assumed the chair.

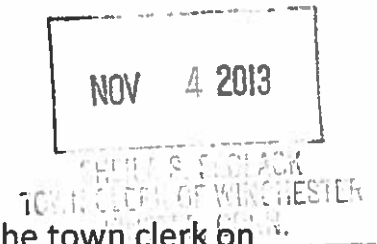
The acting chairman seated Wilkes as a full member without discussion.

- 3- Discussion/possible action to suspend the rules of order and by-laws.

Motion by Hunt, Second by Wilkes: "Suspend the rules and by-laws of the Zoning Board of Appeals". Vote: unanimous in favor.

- 4- Discussion/possible action to elect officers-Chairman-Vice-Chairman-Clerk

Motion by Wilkes, second by De Clement "to appoint Hunt as vice chairman of said commission". Vote: unanimous in favor.



Motion by Wilkes, second by Hunt, "to appoint Villa as chairman of the Zoning Board of Appeals". Vote: unanimous in favor.

Discussion ensued regarding a motion for election of a clerk of the commission. By consensus of this panel the subject was tabled to a future meeting of said commission.

- 5- Discussion/possible action regarding communication with the Town Manager and Town attorney.

Motion by Hunt, second by Wilkes, "Direct the Chairman to open lines of communication between the Town Manager, Town Attorney and the Planning and Zoning Commission and this panel". Vote: unanimous in favor.

- 6- Discussion/possible action regarding prior action of panel


Motion by Hunt, second by Wilkes to "Table said matter as premature prior to communication with town officers". Vote: unanimous in favor.

- 7- Adjournment

Motion by Wilkes, second by Hunt "to adjourn this special meeting of the Zoning Board of Appeals". Vote: unanimous in favor at 7:31pm.

These minutes are subject to review and amendment prior to approval at the 11-13 regular meeting of the Zoning Board of Appeals.

Respectfully submitted,


David C. Villa

11-4-13

EXHIBIT 3
ZONING BOARD OF APPEALS

#10072114
12/1999

TOWN OF WINCHESTER

WINSTED, CT 06098

BY-LAWS

Be it resolved by the members of the Zoning Board of Appeals of the Town of Winchester, that the following by-laws are hereby adopted and approved.

ARTICLE I - THE AGENCY

- SECTION 1. NAME OF AGENCY. This agency shall be known as the Zoning Board of Appeals
- SECTION 2. OFFICE OF THE AGENCY. The office of the Zoning Board of Appeals shall be the Town Hall of the Town of Winchester where all minutes and agenda will be filed and recorded in the office of the Town Clerk.
- SECTION 3. SEAL. The seal of the agency shall be the official seal of the Town of Winchester.

ARTICLE II - MEMBERS AND OFFICERS

- SECTION 1. MEMBERS. The members of the Zoning Board of Appeals shall be seated as set forth by Connecticut State Statute, the Charter of the Town of Winchester and the By-laws and ordinances of the Town.
- SECTION 2. OFFICERS. The officers of the Zoning Board of Appeals shall be a chairman, a vice-chairman, and a clerk, all of whom shall be regular members of the Board. All officers shall be elected, by regular members, at the regular meeting held during the month of December, for a term of one year, commencing the next January.
- SECTION 3. CHAIRMAN. The Chairman shall preside at all meetings of the Zoning Board of Appeals. The Chairman shall have the authority to appoint committees, call special meetings and perform other duties as prescribed in these By-Laws. He shall have the privilege of discussing all matters before the Zoning Board of Appeals and of voting thereon.
- SECTION 4. VICE-CHAIRMAN. The Vice-Chairman shall act for the Chairman in his absence and have the authority to perform the duties prescribed for that office.
- SECTION 5. CLERK. The Clerk shall announce each public hearing, record any action for use by the Town Clerk on the Land Records, receive all fees and deliver said records and fees to the office of the Town Clerk.
- SECTION 6. VACANCY. In the event of a resignation, the chairman shall notify the Board of Selectmen that a vacancy exists. A member's unexcused absence at three (3) consecutive meetings or four (4) meetings in the 12 month period of January through December shall cause the Chairman to request that the Board of Selectmen declare the seat vacant. In addition, after a Board members has missed his second consecutive meeting or his third meeting in the above-mentioned period, he will be notified by the Chairman that his position on the Board will be in jeopardy if he misses the next consecutive meeting or the fourth meeting in the above-mentioned period, without excuse.

ARTICLE III - MEETINGS

- SECTION 1. REGULAR MEETINGS. The regular meeting of the Zoning Board of Appeals shall be held at the Town Hall of the Town of Winchester, on the fourth Tuesday of each month, unless otherwise noticed. When such date shall be a legal holiday, said meeting shall be held on the date voted upon by the members.
- SECTION 2. SPECIAL MEETINGS. The Chairman of the Zoning Board of Appeals may, when he deems expedient, call a special meeting of the Zoning Board of Appeals for the purpose of transacting any business designated in the call. The call for a special meeting shall be at least twenty four (24) hours prior to the meeting time. Such meetings shall be held at the same time and place as established for regular meetings.
- SECTION 3. QUORUM FOR REGULAR OR SPECIAL MEETING. A majority of the total membership of the Zoning Board of Appeals, including alternates, shall constitute a quorum for the purpose of conducting business. When a quorum is present, action may be taken by an affirmative vote of the majority of those present. An abstention shall be deemed a negative vote for the purpose of determining majority.
- SECTION 4. QUORUM FOR PUBLIC HEARING ACTION. When voting on a variance application the Board may act only if there are five (5) members present and voting, unless the applicant has been advised that four (4) affirmative votes are necessary for acceptance and the applicant has chosen to be heard. If the applicant does not so choose, the hearing and action on the hearing will be postponed without prejudice.
- SECTION 5. ORDER OF BUSINESS. At all regular meetings of the Zoning Board of Appeals the following shall be the order of business:
1. Roll Call
 2. Public Hearings on all variance applications.
 3. Action on each variance application
 4. Action of each variance application
 5. Correspondence
 6. Approval of bills presented, if any
 7. Old Business
 8. New Business
 9. Discussion with Zoning Enforcement Officer
 10. Adjournment

The inclusion of this agenda in the by-laws does not eliminate the need to post this agenda or an amended agenda, at least twenty-four (24) hours in advance of any meeting, in the office of the Town Clerk.

ARTICLE IV - AMENDMENTS

- SECTION 1. AMENDMENTS. The By-laws of the Zoning Board of Appeals shall be amended from time to time but only with the approval of a two third (2/3) majority vote of the entire Board at a regular meeting or special meeting, except that no such amendment shall be adopted unless at least seven (7) days written notice thereof has been given to all members of the Board.

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TOWN OF WINCHESTER

WINSTED, CT 06098

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 2. Public Hearings on all variance applications
 3. Public Hearings on all special permission applications
 4. Action on each variance application
 5. Action on each special permission applications
 6. Approval of minutes of previous meeting
 7. Communications
 8. Old Business
 9. New business
 10. Adjournment

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EXHIBIT 2

We, the undersigned members of the Zoning Board of Appeals, as evidenced by our signatures upon herein, hereby gives notice, that we shall constitute a quorum and meet, as to discuss, business before said Commission, in the form of a Special Meeting of said Commission on the 30th day of October, 2013 within the Winchester Town Hall at 7:00pm. Said business of the Commission shall be comprised of the agenda notice attached to this notice and shall not be comprised of any application for zoning variance from any source.

The membership of said Commission, now subscribed below comprise, not less than a 60% of the lawful membership as identified in the attached Commission membership list, as attached and supplied by the Town of Winchester.

Philip Allen

Michael DeClement

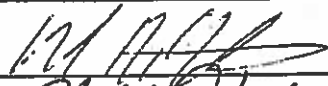

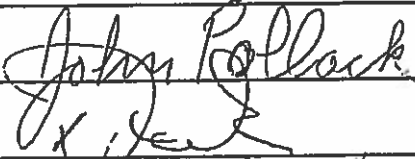
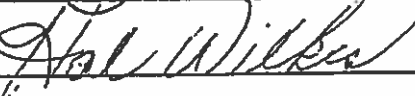
Neil Hunt

John Massicote

John Pollock

David Villa

Hal Wilkes

Clerk date stamp applied upon this notice

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PLEASE REPLY TO CANAAN OFFICE

November 20, 2013

Marc Melanson
Town of Winchester
338 Main Street
Winsted, CT 06098

Re: Zoning Board of Appeals

Dear Marc:

You have asked me to review the actions of the Zoning Board of Appeals (ZBA) at their meeting of October 30, 2013. You have supplied the following documents to me, all of which I have attached to this memo:

1. The ZBA Agenda of October 30, 2013, Exhibit 1;
2. The call of the meeting, Exhibit 2;
3. The minutes of the meeting, Exhibit 3; and
4. The ZBA Bylaws, Exhibit 4.

You have provided me with the facts enumerated below. I have not independently verified them.

Immediately prior to the meeting the ZBA consisted of seven members: Philip Allen, Michael DeClement, Neil Hunt, John Massicotte, John Pollock, David Villa, and Hal Wilkes. The prior Chairman, Richard Nalette's term had expired and he was not reappointed. John Massicotte was the Vice-Chairman.

Sometime prior to the meeting a note was circulated to the members that purported to give notice of a Special Meeting of the ZBA (Exhibit 2). The note was not signed by Philip Allen or John Massicotte. Mr. Massicotte maintains he did not receive notice of the meeting. The minutes indicate the Board voted to appoint David Villa as "Acting Chairman", "suspend the rules and

Bylaws of the ZBA", and proceeded to elect a new Chairman and Vice Chairman of the ZBA.

The above actions by the ZBA are void as they are in conflict with the existing Bylaws of the ZBA.

The ZBA provides that only the Chairman may call a Special Meeting. Article 3 Section 2. The Vice Chairman may act for the Chairman in his absence and assumes the duties of the Chairman. Article 2 Section 4. The ZBA had no Chairman due to Mr. Nalette's term having expired. The duties therefore fell to the Vice Chairman, John Massicotte. Mr. Massicotte is the person with the power to call a special meeting. He indicates he made no such request and in fact, had no notice of the meeting.

In addition, the Bylaws call for the election of officers in December and this vote must be conducted at a regular meeting. Article 2 Section 2. The October 30, 2013, special meeting violated both these requirements.

The above defects are not cured by the Board's voting to suspend its rules.

Importing the formalities of Roberts Rules of Order to a local land use board should be discouraged. All Town Boards need to follow their Bylaws and not attempt to suspend them without at least seeking legal advice if unusual circumstances arise. Even so, Roberts Rules do not allow for the suspension of bylaws unless the bylaws contain a provision allowing for such a suspension. The ZBA bylaws do not contain such a provision. A suspension of rules is applied to rules of order not to bylaws:

RULES THAT CAN BE SUSPENDED. Rules contained in the bylaws (or constitution) cannot be suspended - no matter how large the vote in favor of doing so or how inconvenient the rule in question may be - unless the particular rule provides for its own suspension or unless the rule properly is the nature of a rule of order. . . . Rules protecting absentees or a basic right of the individual member cannot be suspended even by a general consent of a unanimous vote.
Roberts Rules Revised Section 25.

You have also asked how to handle past actions by the ZBA given the fact Mr. Nalette unknowingly participated in votes after his term expired. The Town Manager and Board of Selectmen have not

authorized me to devote the time and resources needed to determine the circumstances of all past votes of the ZBA. Therefore, I would advise the Board to honor all past approvals. Any other issues will be dealt with as they come up on a case-by-case basis.

In summary, I would recommend that you do the following:

1. Mr. Massicote as Vice Chairman should assume the duties of Chairman. At the first regular meeting in December, the regular members of the Board shall choose officers who will assume their duties on January 1, 2014.
2. No suspension of the Bylaws should be considered by any Board without first seeking a legal opinion.
3. All past approvals should be honored by the current Board. Any other issues that may arise should be referred to me for investigation.
4. The ZBA should amend Section 4 of its Bylaws so that a quorum for a regular meeting is fixed at 3 members. The current bylaws include alternates in the quorum calculation, needlessly inflating the numbers needed to have a quorum for a regular meeting.

I understand that the next meeting of the ZBA is Tuesday, November 26, 2013. These recommendations should be implemented at that time. Should you have any questions, please call me.

Sincerely yours,



Kevin P. Nelligan

KFN:ch

cc: Dale Martin
Board of Selectmen
Zoning Board of Appeals