

**WOODSTOCK PLANNING & ZONING COMMISSION
SPECIAL MEETING
THURSDAY, February 6, 2020, 7:30 PM
WOODSTOCK TOWN HALL, MEETING ROOM A**

MINUTES

I. MONTHLY MEETING AT 7:32 PM

a) Call to Order: Jeffrey Gordon called the meeting to order at 7:32 pm.

b) Roll Call:

Members Present: Jeffrey Gordon, Joseph Adiletta, Jeffrey Marcotte, Timothy Young, Mark Blackmer, Syd Blodgett

Alternates Present: Nancy Fraser, Dwight Ryniewicz

Absent: Gail Dickinson, Doug Porter, Frederick Rich, David Morse

Others Present: Tina Lajoie, Delia Fey, Atty. Rich Roberts, William Rewinski, Victor Peabody, Stuart Peaslee, Members of the Public

II. DESIGNATION OF ALTERNATES: Nancy Fraser and Dwight Ryniewicz were seated.

III. CHAIR'S REPORT: Chairman Gordon thanked the commissioners and staff for their ongoing work with the Planning & Zoning Commission. The next regular monthly meeting is on February 20th at 7:30 pm with a public hearing at 7:45 pm. Dr. Gordon asked members to confirm their attendance to ensure a quorum.

IV. ANNUAL LEGAL TRAINING SESSION WITH ATTORNEY RICHARD ROBERTS: Chairman Gordon introduced Atty. Roberts who was invited to speak to the legal and statutory items relative to Planning & Zoning. Questions were provided by various town boards to Atty. Roberts in advance. Dr. Gordon requested that additional questions during the meeting be generic, rather than specific to a certain pending application or public hearing.

Atty. Roberts shared the basics regarding the duties and responsibilities of members and spoke specifically to conflicts of interest, predisposition and bias, and steps to take should situations rise to the level when a member should recuse themselves. There are two statutes that apply to the PZC and ZBA, which are A11 and A21 and talk about what a conflict of interest is and what a member can and cannot do. With conflicts of interest, a member cannot appear on behalf of someone else before their own commission; a PZC member cannot present on behalf of a member(s) of the ZBA; and, a ZBA member cannot present on behalf of a member(s) on the PZC. A member can represent their own interest as a property owner, but they cannot participate in the hearing. A member can attend a meeting as a noncommission member to have their own application reviewed, and presumably leave once the hearing is closed so not to be perceived as influencing the process. Likewise, a member cannot participate in a hearing or deliberation in any matter in which they or their immediate family have a direct or indirect financial interest.

Atty. Roberts shared that direct financial interest is when a member can present the application but cannot participate in its deliberation or voting status. To avoid perception issues, if it is an application pertaining to the member's business or property, it might be best to have someone present on their behalf. An example of indirect financial interest would not be an issue as long as whatever financial benefit or detriment a member is feeling as a result of a particular application is shared with a substantial segment of the community. A member would be prohibited from participating in its deliberation and voting on the matter. Likewise, an application that indicates a dramatic increase in the member's property value, or a zoning change proposal that affects only the member's property, could be a situation where the indirect financial impact would be significant enough where there would be a conflict of interest.

An example of having a personal interest in an application is when a member has either a close family or business relationship with the applicant or property owner—one where a member's affinity with that person is such that it would prevent the member from being objective or when the facts are such that it could be perceived as the member not being objective. As a rule of thumb, a Commission member should always look at whether the situation will be perceived as a conflict of interest. Best practice is to disclose the situation for the record before the hearing begins that there may be a potential conflict of interest and recuse themselves.

An example of predisposition is when a commission member irrevocably made their decision relative to voting on an application. It could be perceived as the member having a disqualifying position on certain applications. An example of bias is usually when a protected class is involved. It is the responsibility of members to refrain from saying objectionable things. Should situations as this occur, it is important for the Chairperson to share with the public that the Commission does not tolerate such behavior.

Atty. Roberts shared information on communication among members outside of the public context. Emails to members regarding administrative and scheduling matters are acceptable; communications to members using "reply all" indicating a particular preference relating to an application are not acceptable. The Freedom of Information Act implies that someone is holding an illegal electronic meeting when this happens. He touched briefly on the do's and don'ts of social media. Members should be cautious about commenting on social media platforms regarding public business—currently or potentially before the commission. It could be argued that a member is predisposed.

Various other questions arose during the training session. One question was regarding whether a special permit granted to add a new business operation to an existing farm business void the tax exemption status of the farm. Atty. Roberts didn't think the special permit itself would stop any abatements or exemptions someone would otherwise be qualified for as long it continued to be a farm business or farm use that falls within the scope of the property tax statute. He believes they would be looked at independently. Most of the value-added activities that are closely associated with agriculture would continue to qualify for the exemption.

Atty. Roberts offered that Commission members should focus on land use items. An example he shared was should a dairy barn convert to a wedding venue, Commission members could share with the applicant(s) that it may potentially affect the tax abatement and offer that the applicant should research this before they convert the use. The applicant may run the risk that the tax abatement for farm buildings may not be available if the Assessor determines that it's not a farm use. Atty. Roberts reiterated that PZC should keep its jurisdiction to the land use items.

Atty. Roberts spoke about the role of the Zoning Enforcement Officer (ZEO). Should someone dispute a decision of the ZEO, it would go before the ZBA. For example, if a ZEO issues a permit and a neighbor complains, that is appealable to the ZBA. PZC appeals do not go before the ZBA. Less clear are those that take form of a letter or memorandum saying that the ZEO looked at X and they thought Y, or this is their interpretation. Atty. Roberts stated that it is important for the ZEO to characterize something as an actual decision, which needs to be final. There should be no contingencies and it should not be tentative. The ZEO should provide a clear and definite interpretation of the zoning regulations, and it should have a legal affect. If it doesn't trigger a consequence for the landowner, it is not a decision. Additional questions regarding this item arose, and Atty. Roberts stated that a definitive statement within the regulations is a decision. An opinion is not appealable and is not enforceable. Basically, he offered that if it is permitted, say it; if it is in violation, say it. Atty. Roberts recommended the ZEO be present at meetings for all appealable items, and minutes and an audio recording are necessary. Either the Commission or ZEO can enforce the regulations.

Atty. Roberts shared future case law and possible legislation. Tina Lajoie asked about the influx of Air B&B's. She stated that the current regulations do not specifically address this area. Atty. Roberts explained that because they are permissive, the ZEO will need to determine whether the Air B&B does not fit within the

definition of a single-family dwelling, which is permitted use. For now, he suggested the ZEO keep track of who is licensed and unlicensed and who is complying with their permit. Ms. Lajoie shared that Air B&B's don't fit under home occupation and there is no permit required in the current regulations. It was agreed that this will require further discussion.

A question was asked on whether the PZC can overrule a decision of the ZEO. Atty. Roberts felt it could be. However, he suggested from a practical standpoint that it is better to have conversations ahead of time on the direction of process rather than after the fact.

XII. ADJOURNMENT: Motion was made by Joseph Adiletta, and **Seconded** by Timothy Young, to adjourn. **The motion passed unanimously.** The meeting adjourned at 9:40 pm.

Respectfully submitted by Cynthia Brown, Recording Secretary. **DISCLAIMER:** These minutes have not yet been approved by the PZC. Please refer to next month's minutes for approval/amendments.