

**Town of Milford  
Zoning Board of Adjustment Minutes  
April 5, 2012**

**OTHER BUSINESS:**

K. Johnson stated the next item on the agenda is the first reading of the Revisions to the Rules of Procedure.

F. Seagroves questioned whether it was the first or second reading.

K. Johnson said it is the first reading because the Board did a first reading of one set but there were additional changes that would have generated a second reading of the first set of changes and first reading of the second set of changes, so the Board combined them. Then it got delayed.

K. Johnson asked if everyone had reviewed the revisions.

All members responded that they have reviewed them.

K. Johnson asked if anyone other than himself had comments.

F. Seagroves referenced IX.B (page 3) regarding "legal holiday." What is considered a legal holiday?

K. Johnson said RSA 21:35 uses the terms "Saturday, Sunday or legal holiday", so whatever the RSA considers a legal holiday.

Z. Tripp referenced the date of October 10, 2010 in Section XI Public Hearings and asked if that shouldn't be kept generic so it wouldn't need to be changed every time?

K. Johnson said one of his comments was to change that to the word "current" because there is a new edition every December .

K. Johnson said he had some changes that are minor grammatical. On page 1, Section II, "Title, and Adoption", the comma is not needed. On page 3, Section XI "Public Hearing/Meeting" should say "hearings and meetings" to match the RSA. On page 4 he proposed deleting "or designee" in all locations because in the Rules of Procedure it specifies that either the Chairman or Vice Chairman will chair the Board; if neither is available the Board will elect a temporary Chairman. So at all times a Chairman is running the meeting and, therefore, should be referred to as such.

L. Horning asked why the language is in there.

K. Johnson said because he put it there. But now he's decided he wants it out. He thinks it's unnecessary. When a Board meets there is always a Chairman; there has to be a Chairman of the Board; therefore, there is no need for a designee.

F. Seagroves said it states if there is no Chairman or Vice Chairman they will designate a temporary Chairman.

K. Johnson said right. But there is still a Chairman - a Chairman pro tem.

K. Johnson suggested in Item #7, "Chairman shall open the meeting to public comment" changing "meeting" to "hearing." Every time the Board gets together it is a meeting. But not every meeting is a hearing. Only during hearings does the Board take testimony; they do not take testimony during meetings. At present, they are having a meeting.

L. Horning said that is correct.

K. Johnson said that is a clarification that needs to be made.

L. Horning asked whether in Section XI, # 13, is he going to remove the word "designee?"

K. Johnson said yes, and on all locations of "or designee."

K. Johnson said the next one is one they will probably want to discuss again. It is specific to discussions of the current Board. Page 4, Section XII Paragraph A: "Subject to Section XI (10) {strike the (a)}, the board shall normally decide all cases on the night of the public hearing and shall approve, approve with conditions, or deny the request. " The change he is submitting, is that the Board shall either" approve or approve with conditions." Because the law clearly specifies that three votes are required to pass an

application, and if that application does not receive three votes to pass it is automatically denied. He thinks that should be made clear in the rules of procedures. And the Board does not need to go through the procedure of asking for a motion, seconding the motion and saying the motion is denied. Because the fact that it has not been approved is a denial.

Z. Tripp asked a question.

K. Johnson said they are making the application which states they must have three votes to approve. If it does not receive three votes it is not approved.

F. Seagroves and S. Winder asked whether that is in the Handbook.

K. Johnson said it is an RSA, not in the handbook. What he wants to do is delete the requirement to specifically vote on denials. It is unnecessary.

Other Board members said there was no problem, but L. Horning said she is conflicted about it.

K. Johnson said the State RSAs require the Zoning Board have rules of procedure which the public can review.

L. Horning said she thinks the whole voting process of denial is –she understands it can be repetitive because they can approve it, approve with conditions or not approve it – but feels sometimes it is clarification for the people.

F. Seagroves said what is needed is when the Chair asks how you vote, you say no.

Z. Tripp asked whether they need to make a motion to approve.

L. Horning said they do have to make a motion to approve or make a motion to deny.

K. Johnson said they don't have to make a motion to deny. No one moves to approve it.

F. Seagroves said they (Board members ) have to say no.

K. Johnson said no. They simply note in the record that there was no motion to approve. Therefore, you cannot have three votes to approve it as required by state law. Therefore you are denied.

F. Seagroves said if it goes to court then somebody is going to say “well, how did he really think about this?”

K. Johnson said you will have already stated that when the Board goes over the conditions. That is a matter of public record – “does this variance meet the spirit? No.” That is part of the process. And that is part of the public record where the Board goes down those criteria, i.e. “Can this be granted without diminishing abutting property value?” and you say “no.” Then you are bound to vote no to approval. You can't say you didn't meet conditions and then vote to approve.

L. Horning said she understands. The Board members all know that. She's concerned it will create confusion for the public.

K. Johnson said just put a statement in here that any application is not approved is automatically denied. That's what the RSA says. He's just trying to bring all rules of procedure in line with State statutes.

F. Seagroves said if the vote is taken and nobody approves it, then it is denied.

S. Winder said it would be more confusing to say do we have a motion to deny and then vote to deny.

L. Horning said that's generally the consensus and there has not been confusion with that.

K. Johnson and Z. Tripp said there have been instances.

Z. Tripp said they should word it here so that it is very clear.

L. Horning said it will cause confusion if there is no voting on it. That's her perspective. She feels it will create more confusion this way than if they vote on a denial. Because it's pretty standard procedure no matter where you go. She is concerned about that.

K. Johnson asked if her concern would be addressed with a statement that says if the application is not approved, then the application has been denied.

L. Horning said if you are going to make that statement.

K. Johnson said absolutely.

L. Horning said she's not necessarily saying clarifying the application has been denied on camera, as long as someone is clarifying that the application is denied. If K. Johnson says it at the hearing so then

people understand this is the conclusion of the matter. To her, that's an open ended statement, so she would like to see some kind of concluding statement.

K. Johnson said absolutely. It is part of the process where you have to explain to the applicant he was either approved or denied. If approved, everybody else has 30 days to appeal. If denied, the applicant has 30 days to appeal.

L. Horning said she understands that and the Board knows that because they are subjected to it. But we have some people who come in who may not know.

S. Winder said they've never seen us before.

L. Horning said they've never seen us before, they are intimidated. We are sitting here. There is some fear. Maybe they don't know or they're not entirely aware of the ordinance. She feels it is a matter of courtesy to the applicant that we give them a sense of closure. That's all she is saying.

K. Johnson said that what he is saying is that it is a legal requirement that the Board tell the applicant "you have been approved" or "you have not been approved and there is a 30 day appeal period."

By law, he must state that at the end of every hearing.

L. Horning said right, she would be more comfortable if we just restructure the language. She would rather not have it entirely eliminated.

K. Johnson said one more housekeeping item is in Paragraph 12, Line D, "code enforcement officer" should be in upper case. On page 5, under "Joint Meetings and Hearings: in the text, paragraph A where it says "the Zoning Board of Adjustment may hold joint meetings or hearings". Probably the best solution would be to change each instance to "meeting or hearing".

In Section IV, Section B there is a funny symbol before "RSA" and in Section C before "in accordance with."

K. Johnson said on page 6, under 17, Waivers "Any portion of these rules of procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant" he would like to have added "or the Board".

L. Horning said that is a good point.

K. Johnson continued "and waiver would not be contrary to the spirit and intent of the rules."

S. Winder agreed.

Z. Tripp asked if the Board votes on waivers.

K. Johnson said he doesn't know.

K Johnson said there is no procedure in there for waiving these procedures.

L. Horning said she thinks voting as Zack brought up would be an adequate procedure.

K. Johnson said that would be where, for instance, Laura might propose to waive the requirement for Paragraph 10B 2 for this hearing and we'd all say yes.

F. Seagroves said going back to XII, Decisions, about the Board "shall normally discuss all cases on the night of the public hearing and shall approve or "He doesn't see anything in there addressing if they suddenly run past 11 pm or 12 pm.

K. Johnson said it is in there in Section XI -10c. "The Board has the option to end the public hearing at 11:00 pm and the current case will be continued to the next meeting." Where it says "next meeting" he would like to change to read to the "next regularly scheduled meeting."

L. Horning agreed.

K. Johnson said that clarifies whether they have a whole special meeting.

K. Johnson asked the Board if he should submit the discussed changes to Shirley and then if the Board all agree to those changes then it would be the second reading.

All Board members agreed.

## **Election of Officers:**

K. Johnson said he is happy to continue as Chair if the Board desires. He is also happy to turn it over to anyone else who would like the experience.

K. Johnson opened nominations for Chairman for the next Board year.

L. Horning nominated K. Johnson as Chair.

S. Winder seconded.

K. Johnson asked for any other nominations. There were none.

K. Johnson requested a motion to cease nominations.

Z. Tripp made a motion to cease nominations.

F. Seagroves seconded.

All voted in favor of ceasing nominations.

K. Johnson called for a vote for election as Chairman

All voted in favor. Kevin Johnson was elected as Chairman

K. Johnson opened nominations for Vice Chairman

Z. Tripp made a motion to nominate Fletcher Seagroves for Vice Chairman.

L. Horning seconded.

K. Johnson asked for motion to cease nominations.

L. Horning made motion to cease nominations.

K. Johnson asked for any other nominations. There were none.

Z. Tripp seconded.

All voted in favor of closing nominations for Vice Chair.

All voted in favor of electing F. Seagroves as Vice Chairman.

F. Seagroves was elected Vice Chairman.

K. Johnson asked if there were any other issues . There being none, the Board proceed to approval of minutes of previous meetings.

**THE MINUTES FROM APR 5, 2012 WERE APPROVED ON AUG 16, 2012**