

**ATKINSON PLANNING BOARD MEETING
MINUTES
WEDNESDAY, MAY 3, 2023**

Members:

Sue Killam, Chair (present)
Vice Chair Turell (present)
Ted Stewart (present)

Paul Wainwright, (present)

John Ottow (not present)
(Master Plan Team)
Heidi Mahoney (not present)
Bill Baldwin– Selectman Ex Officio (not present)
Hannah Rizzo, Alternate (present)

Others Present

Julie LaBranche, Planner (present)
Karen Wemmelmann, Recorder (present)
Sue Coppeta, Planning & Zoning Administrator
(not present)
Ken Grant

Call to Order:

Chair Killam called the workshop meeting to order at 7:40 PM. Chair Killam introduced the new alternate, Hannah Rizzo. Chair Killam, Vice Chair Turell, Member Stewart, Member Wainwright and Alternate Rizzo are present and voting.

Public Hearings: NONE

Nomination for Appointment to Rockingham Planning Commission.

It is a four year term. The Town has two seats on the Commission. Vice Chair Turell has been a long term member of the Commission. Mr. Grant has submitted an application. The Planning Board makes the nomination and it goes to the Board of Selectmen for the final decision. The Board thanked Mr. Grant for volunteering.

Vice Chair Turell made a motion to appoint Mr. Ken Grant to represent Atkinson on the Rockingham Planning Commission. Member Wainwright seconded the motion. All members present voting. Vote: 5/0/0. Unanimous.

Mr. Grant remarked that the Rockingham Planning Commission has grown and now there is very little discussed specific to Atkinson. Salem and Plaistow are no longer members.

Minutes: April 19, 2023

The motion on the process of becoming an alternate was changed to read as follows:

Member Ottow made a motion to state that the process for becoming an alternate member should be initiated by a candidate filling out the Application for Committee Appointment form. The Chair will have the candidate's name put on the agenda for discussion at the following meeting. A motion may be made to appoint that person as an alternate member of the Planning Board. Member Wainwright seconded the motion. Vote: 3/1/0. Three in favor, one opposed. The motion passes.

Chair Killam read an email from Member Ottow regarding appointment of alternates. In the email he informed her that he read through the material provided by the Planning Administrator. He commented that Ms. Coppeta's editing of the Planning Board Rules and Procedures Section 2, No. 3 was different from the motion passed at the last Planning Board meeting. The motion read, "the elected Planning Board may appoint up to five alternate members to serve three year terms."

"RSA 673:6 states that individuals interested in becoming a planning board alternate should complete an application for committee appointment. Completed applications will be scheduled on the planning board agenda for discussion and decision." This is a paraphrase by Ms. Coppeta that she was inserting into the procedures.

Member Ottow is implying that the motion should be the procedure.

Chair Killam does not feel the motion and Atkinson procedures say anything different. Vice Chair Turell agrees. Chair Killam pointed out that Atkinson Planning Board procedures state: "individuals interested in becoming a planning board alternate should complete an application for committee appointment. Completed applications will be scheduled on the planning board agenda for discussion and decision."

Member Wainwright stated that with his editing, taking out the "can be" and replacing it with "should be" the motion and new procedure agree. Chair Killam thinks that not much needs to be adjusted. Vice Chair Turell agrees. The email and discussion have been read into the proceedings.

Vice Chair Turell made a motion to approve the minutes of the April 19, 2023 meeting of the Atkinson Planning Board as amended. Member Wainwright seconded the motion. All members voting and in favor. Vote: 5/0/0. The motion passes.

Chair Killam explained to Alternate Rizzo that she is allowed to vote on the minutes although she was not present at the April 19, 2023 meeting.

New/Old Business:

Update of Planning Board Rules & Procedures

Chair Killam informed the Board that the information she gave at the last meeting referring to an article by one of the attorneys at NHMA became outdated. Ms. Coppeta has researched the information. RSA 673:6 has since been amended. NH RSA 673:6 (V) now states:

"An alternate member of a local land use board may participate in meetings of the board as a nonvoting member pursuant to rules adopted under RSA 676:1."

As long as the Board rules say so, the above applies. The Board has been proceeding correctly in terms of what it has been trying to accomplish, but the procedures have not been stated in the rules. It makes sense for alternates who get called on frequently to sit at the table, participating, learning and getting deep into the subject matter, even if they are not a

voting member. This is a seven person board, one being the select person. When the select person is not present, then it is a six member board. Up to six people can vote, not just a quorum of four. Any time an alternate is the fourth, fifth or sixth member, they are allowed to vote.

Member Wainwright feels that in Item 7 “participation of alternates not designated temporary member authority” ...some information needs to be shown. He proposes using the wording in RSA 673:6 (V).

Vice Chair Turell stated that Item 3, last sentence states “completed applications should be scheduled of the planning board agenda.’ It should be on.

Ms. LaBranche stated that going back to Item 7, repeating the text of RSA 673:6 (V), it still needs to state what the alternate participation is.

Member Stewart suggested it say “participation of alternates is allowed according to the RSA. Chair Killam explained that the RSA leaves it up to the local board.

Chair Killam explained that alternates have always been allowed to sit at the table and participate in the discussion but not allowed to make motions or participate in vote unless they have been designated to do so. Sometimes it is necessary to sort out who is the designated alternate.

Ms. LaBranche stated the first part of the sentence is good but would like to add “through meetings of the board as a nonvoting and not participating in deliberations or making of motions, unless they are seated or designated as a voting member.” This means they cannot say anything in deliberation. Vice Chair Turell and Chair Killam disagreed.

Ms. LaBranche suggested that the Board change its process a little bit. When it is working toward formulating motions and coming to conclusions as to the body of evidence for a decision, the public hearing be closed so that the applicant and the public cannot speak and it is just the Board deliberating and making the decision. An alternate would not be able to be part of that because it is almost like motion making. Vice Chair Turell agreed.

Ms. LaBranche stated that there should be a delineation of the different phases the Planning Board goes through. When the Board goes into deliberation, it is putting together the findings of fact on which the decision will be based.

Chair Killam asked if the deliberation would take place after the motion has been made. Vice Chair Turell stated that it is forming the motion. Ms. LaBranche stated that the Board would not be accepting any comment from the public or communication with the applicant. The Board would be summarizing everything discussed relevant to the case.

Member Stewart disagrees, the Board has had good alternate input, and treating a sitting alternate like a member of the audience once the public hearing is closed and not allowing

them to speak seems unfair and a waste of talent. He can understand the legalities and it would make things simpler if the Board were to be sued.

Vice Chair Turell stated that in order to get all the facts, the Board should have all the input from all the Board members present.

Chair Killam stated she feels that the Board is fact finding and using input from the applicant and sometimes other attendees right up to the time the Board is ready to make a motion. She understands from watching many Zoning Board meetings that when they stop taking input it is when they feel they are ready to make a decision. She does not see the Board getting to that point without a lot of input, especially major projects like subdivision hearings or development of zoning. The Board is constantly pulling from people in the room.

Member Wainwright stated that development of zoning is different, it is legislative, not judicial, it is not a decision on a multimillion dollar project. From what he has read, when zoning is being changed, the Board would want as much input as possible. Chair Killam stated she wants as much input as possible even if it is an application for a two lot subdivision.

Ms. LaBranche stated that is what the public comment phase is all about, letting everyone speak and then move into the phase of trying to make a decision. The Board should stop the input, gather its facts. Ms. LaBranche is concerned that there may be undue influence in the decision making process by for example, an alternate, who cannot vote, cannot make a motion and cannot formulate conditions of approval.

Chair Killam stated she has a problem with shutting off discussion from everybody. Ms. LaBranche stated that the Board does not have to shut off discussion until it is ready.

Vice Chair Turell stated he does not have a problem with shutting off discussion. Chair Killam agreed, when the Board is ready and that if anything, the Board discusses issues for too long and allows people to talk too long but that is how she feels good about the decisions the Board makes because she knows everyone in the room has been heard in front of the Board.

Vice Chair Turell agreed and stated that by the time there might be a problem the voting members know who they are, the Board has always designated who the voting members will be.

Member Stewart has a hard time envisioning an alternate that the Board picks being in a position to have undue influence before he makes a vote. As long as they know they can't vote, he can't see how taking part in the discussion would hurt anything.

Ms. LaBranche stated that the Board should be careful when it is in the process of developing the motion. An alternate should not take part in crafting the language for the motion. There has to be a division somewhere.

Member Stewart stated that at present, the only time alternates cannot take part is when the vote is made and he is comfortable with that. As far as wording, spell check and other details, he is comfortable with assistance from nonvoting members. Vice Chair Turell agreed.

Chair Killam said something she never thought about before is closing the public hearing and not taking additional input. This Board has never done it that way before, she feels it continues to get valuable input up until the time the motion is made.

Ms. LaBranche agreed that the Board should not close the public hearing until it has gotten to that point. Chair Killam clarified that what Ms. LaBranche is suggesting is having a formal step of closing the public hearing and she does not have a problem with adding that to the process and be more careful about the timing.

Vice Chair Turell stated that he does not remember new pertinent information being given after the public hearing is done. Chair Killam stated that she has never closed the public hearing. Vice Chair Turell, stated that when public information is done, the public hearing is closed, it is a required step. Member Stewart stated that Chair Killam has closed the public hearing. Chair Killam stated that she does not have a problem with the language being inserted as long as no one is being excluded before getting to that point.

Ms. LaBranche stated that it is a step which in most cases does not make a difference, it is just a formality. A public hearing cannot be reopened once it has been closed. The time when it is most beneficial to cut off discussion is when the Board is anticipating it will deny an application. That way all discussion is behind them and no one can influence the decision. It is also helpful when some punitive conditions are going to be added to an approval, an applicant may want to negotiate. That is not a good situation.

Chair Killam stated that this Board works well together and with applicants. They stay at it until all issues are resolved and are not trying to deny applications. Applicants come in to get the application right and this Board has the experience to get them there.

Vice Chair Turell stated that usually when a denial is anticipated, the applicant is allowed to withdraw without prejudice so they can come back later if they want to.

Ms. LaBranche has had the experience in two other towns. If they need to, closing the public hearing or going into nonpublic session is a chance for the Board to go and talk and figure things out. There have been applicants who will take a denial.

Chair Killam stated that this Board has not had this experience, applicants trust this Board to be fair, they will get a wide airing, and will not apply personal agendas and anything not in line with the law. Ms. LaBranche agreed that this Board has been good at leveraging continuation of hearings. Chair Killam has always spelled out choices, accept, deny or withdraw.

Member Wainwright suggested Chair Killam and Ms. Coppeta work together on the wording for Item 7 and he will help them. Then, they can have something for the next meeting. That will

start the 14 day clock as stated in Section X of Atkinson Rules of Procedure. Ms. LaBranche stated she would send in some wording, too.

Alternate Rizzo asked what alternates can do. Chair Killam explained that in a hearing situation, the voting members will be designated. If an alternate is designated, they have full participation. If not, they have limited participation, they do not vote or make motions.

Member Stewart remarked that an application can take several meetings. Having an alternate be part of the discussion even if they can't vote at that meeting, it makes them aware of the facts if they are designated to vote at a later date. Also, when a Board member votes, it is their opinion based on RSAs. Not all votes are unanimous. The alternate's opinion and judgment matter. He has voted for things to be approved that he hated but they follow the letter of the law, so they have to be approved.

Chair Killam stated that at times a member has voted just to make a point. These are difficult moments, because the Board has to be able to stand behind its decisions. If a decision comes back as being improper, illegal or unfair and the Board gets sued, then the Board has to be able to substantiate its findings of fact. Findings of fact are something that are being done at the ZBA meetings and they have to hold up in court. Member Stewart remarked that he has seen it happen. If the letter of the law is followed, then there will not be a problem.

Chair Killam requested discussion on the role of alternates be continued to the next meeting.

Housing Needs Assessment: Julie LaBranche

Chair Killam gave Ms. LaBranche completed surveys. Ms. LaBranche informed the Board that she has 38 completed surveys on line and she will send out reminders in the next few days. There were 47 completed surveys at the Master Plan Forum.

Review of Building Code Ordinance: Julie LaBranche

Ms. LaBranche remarked that in Atkinson's Building Code Ordinance, there is no reference to the State Building Code. That is what governs issuance of building permits and building code in the State. The State Building Code was updated to the National Building Code of 2015 a few years ago. It is not updated to the newer version of the National Building Code.

Vice Chair Turell stated that there is also no reference to the International Building Code. The International Building Code is not the same as the State code.

Ms. LaBranche stated that the State building code includes building, plumbing, electrical and a couple of other things. She suggested working with the Building Inspector for the language.

The Board discussed a reference be inserted with general language making sure it has something like "according to the latest State approved MOCHA and international building code so the book does not have to be reprinted. Ms. LaBranche suggested inserting "as amended or updated".

The Board discussed when the building code was last updated.

Ms. LaBranche stated that the Department of Safety and the State Fire Marshall are in charge of the building code. If there is conflict between the codes, the fire code carries the day.

Vice Chair Turell found the reference, Building Code, Section 610:1 references the State building code and he read from the handout. It references 2006 and 2008. The State updates go to 2015. It states “conventionally constructed buildings” because there are buildings that are not conventional, that could be an innovated process and are allowed.

Member Stewart suggested taking out the dates in Section 610:1 and inserting “latest State Building Code” as a reference. Otherwise every time the State building code is amended, then Atkinson would have to reprint its building code book. The Board is not clear if an amendment to the Building Code has to go to Town meeting. Some research would need to be done.

Ms. Coppeta informed the Board by text that 2018 is the last time the building code was updated. Chair Killam stated she is referring to 610:1. The dates are not meant to suggest when the code was adopted, they are meant to suggest when that line in Section 610:1 was adopted. Member Wainwright remarked that the dates look like Town Meeting dates.

Chair Killam stated that Atkinson is not adhering to any other code than the State building code. Ms. LaBranche asked if the Board agrees that Section 610 covers everything. Chair Killam agreed and said there may be some issues where they could get some input from the Building Inspector. Ms. Coppeta informed the Board by text that 2018 is the State building code is in effect.

Chair Killam stated she knows there are questions about fire doors and fire egress windows that need to be reviewed with the Building Inspector and the Planning Administrator.

Chair Killam explained that zoning is only changed by a vote of the people. The subdivision section is amended by the Planning Board and this is allowed by a vote at Town meeting and by State legislation. The Planning Board has never been authorized to amend building code by themselves, they need to take it to the Selectmen. The name for Water Supply and Pollution Control needs to be changed. Ms. LaBranche stated that corrections can be done without a vote.

Surveys: Ms. LaBranche has not read the surveys, she is hiring her neighbors’ daughter to put them into survey monkey.

Adjournment:

Member Wainwright made a motion to adjourn. Vice Chair Turell seconded the motion. Vote: 5/0/0. All in favor.

Meeting adjourned at 8:45 PM.

The next Planning Board meeting will be a workshop on May 17, 2023 at Atkinson Town Hall.