

Town of Islesboro
Board of Appeals
Organizational Meeting
November 21, 2024, 5:00 PM
Town Office Meeting Room

APPROVED
2/20/25

MINUTES

Members Present: Tom Tutor, Patrick O'Bannon, Susan West, and Dylan Purington as an alternate.
Members Present via Zoom: Jon Kerr
Members Absent: Peter Willcox
Others Present via Zoom: Donna Leone

1. Call the Meeting to Order – Establishment of Quorum
 - Chair Tom Tutor called the meeting to order at 5:01 PM, and a quorum was established with over three full members present.

2. Approval of the minutes of January 11, 2023

MOTION BY S. West, seconded by P. O'Bannon, to approve the minutes of January 11, 2023, as written. No discussion. Motion passed, 4 yes, 0 no.

3. Annual Election of Officers

- Currently, Tom Tutor is Chair and Patrick O'Bannon is Vice Chair. T. Tutor would like to step down as Chair.

MOTION BY T. Tutor to nominate Patrick O'Bannon as Chair. No discussion. Motion passed, 4 yes, 0 no.

MOTION BY S. West to nominate Tom Tutor as Vice Chair. No discussion. Motion passed, 4 yes, 0 no.

MOTION BY T. Tutor, seconded by P. O'Bannon, to nominate Susan West as Secretary. No discussion. Motion passed, 4 yes, 0 no.

4. Review Purpose and Jurisdiction

- D. Purington went to the training last year, but needs a manual. Carrie provided a copy.
- T. Tutor read some rules from the Board of Appeals manual.
 - To avoid violations of the Freedom of Information Act and the Constitutional right to due process, board members should not have discussions with other board members regarding an application or other board business outside an advertised board meeting.
 - The FOAA requires discussion, deliberation, and voting by the board be done at a public meeting so that the public can hear and observe what is said and done by the board.
 - Discussion between board members about board business outside of public meetings should not occur whether or not a majority of the board is involved, and whether or not the discussion occurs by phone, by email, at a sports event, or a grocery store, or after the board meeting was adjourned.
 - Generally, a majority of the total number of regular members constitutes a quorum. A member who must abstain due to a legal conflict of interest in a particular case may not be counted in determining whether a quorum is present

for that issue, absent ordinance language to the contrary. However, if so many members are disqualified due to a conflict of interest, bias, or other legal reason, that the board will not be able to meet its quorum requirements, and there is no body legally authorized to act, those members may be able to participate under a legal theory called the Rule of Necessity. The board should consult with its attorney before applying the Rule of Necessity in order to determine whether some other alternative is possible, such as the creation of a special board to hear that particular case.

- Alternate members: If alternate board member positions were created by the legislative body, and if those positions had been filled, then the chairperson may designate an alternate to take the place of a regular voting member at a particular meeting when a regular member is absent or disqualified due to a conflict of interest or otherwise. An alternate who has not been designated to take the place of a regular member at a particular meeting is not legally a board member for the purposes of that meeting, and has no right to make motions, second them, or vote. It is safest from a due-process standpoint to allow alternate members to make comments or ask questions, only to the extent that members of the public are allowed to do so. Neither alternates nor members of the public should be allowed to make comments once the board has closed its record and begun its deliberations and decision-making process, unless the board is prepared to reopen its record and allow both comments and rebuttal.
- If there were an appeal in process, an alternate could only be sitting as a voting member if that alternate has been there at all of the meetings of substance, about that appeal.
- T. Tutor reported that a citizen contacted him about the appeal process. He stated that he exchanged several emails, explaining the appeal process. The citizen was asking about subdivision ordinances. Tom directed this person to the Land Use ordinance, which is available on the Islesboro website. The citizen said that was a lot, and asked if there were certain parts they should look at. Tom continued to explain the function of the Board of Appeals. The citizen made a vague request about an appeal. T. Tutor explained to this citizen that it's not possible to appeal the process, but it's possible to appeal a decision.
 - For an appeal to be made, there needs to be a specific decision and a date of that decision. The Land Use ordinance states that the Board shall hear appeals from decisions of the Planning Board, as set forth in 1510 A and B on an appellate basis. The Board shall hear appeals from the Code Enforcement Officer, as set forth in 1510 A and B, as well as variance requests on a di novo basis. When acting in an appellate capacity, the Board may reverse the decision of the Planning Board only upon finding that the decision was contrary to the specific provisions of the ordinance or contrary to the facts presented to the Planning Board. Such appellate review is limited to the record of the proceedings before the Planning Board, and the Board shall not receive or consider any evidence that was not presented to the Planning Board, but the Board may receive and consider oral and written argument. If the Board determines that the record of the Planning Board proceedings is not adequate, the board may remand the matter to the Planning Board for additional fact finding. When acting in a di novo capacity, the Board shall hear and decide the matter anew, undertaking its own independent analysis of the evidence and the law, and reaching its own decision. For all matters before the Board, the person filing the appeal or request shall have the burden of proof. A violator or complainant may not appeal enforcement matters to the Board.
 - Any party can make an appeal within 45 days of the date of the vote on the original decision, or 15 days from the date of the vote on the decision of

reconsideration, if the original decision is reconsidered to superior court from any order of relief or denial in accordance with Maine rules of civil procedure.

- T. Tutor believes he responded correctly to the citizen. His first advice was to make sure they had spoken with the Planning Board and the Codes Enforcement Officer. He pointed out that we couldn't hear an appeal about a process, only a decision. He asked pointedly about a decision and a date, and that was never produced. Tom asked the board if he should continue the conversation with this individual and see if there's a decision they want to appeal.
- J. Kerr discouraged continuing the conversation. This comes into our hands if there is a decision and they want to appeal that decision. He doesn't think we should be counseling anyone, other than what the law says. We don't want to get into a fuzzy area.
- S. West agrees strongly with J. Kerr. Tom has said what needs to be said in the email. It's not appropriate to go further, in terms of any kind of side door conversation.
- T. Tutor stated that in his email responses, he included Janet Anderson and Bill Schoppe. There's been no formal follow-up on any of this.
- All board members agreed that T. Tutor has been helpful already, and there's no need to do anything directly for this individual.

5. Discuss Upcoming Training

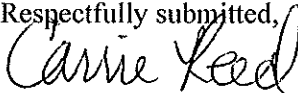
- D. Purington has completed the Board of Appeals training through the Maine Municipal Association.
- T. Tutor stated that he believes Peter Willcox has completed the training as well.
- T. Tutor doesn't know about any follow-up training that is offered.
- Although Dylan is an alternate, the board would like him to attend all meetings.

6. Other Business

- T. Tutor stated that this is a board with large responsibilities. That hasn't come to play for any of us yet. One of the benefits of having Jim Mitchell on the board is that he had actually been through the appeal process with Lucadia, about 16 years ago. It was an international company that bought Northeast Point. They proposed a subdivision of 25 buildable lots. It went on for several years, until 2008 when the real estate market tanked, and they backed away.
- The fall is a good time to have an annual meeting.
- T. Tutor sent out a list of when members' terms expire. The clerk keeps this information on file. T. Tutor, J. Kerr, and D. Purington expire in 2025. P. Willcox, S. West, and P. O'Bannon expire in 2027.
- This board would benefit from continuity. If anyone would like to continue, just say so, and the Select Board will reappoint you.
- Discussion about finding another alternate member. Members agreed to ask around. Carrie can put out a Constant Contact email if the Board would like.
- Discussion about reading the manual to refresh understanding in the case of an appeal.

7. Adjourn

MOTION BY P. O'Bannon, seconded by S. West, to adjourn meeting at 6:03 PM. No discussion. Motion passed, 4 yes, 0 no.

Respectfully submitted,

Carrie Reed

