

Amy Winchell

From: Angus McDonald
Sent: Thursday, December 27, 2018 4:16 PM
To: Robert Ghinder; Selectman; Gina Sopneski
Cc: Amy Winchell
Subject: RE: Appointment of Jonathan Kastner to the Planning & Zoning Commission

Dear Mr. Ghinder,

Thank you for your note, it will be read into the record at tonight's meeting, unless you are in attendance and would like to read it yourself. Let me see if I can respond now, though, in case you are not in attendance.

First and foremost you should be aware that Mr. Kastner is currently a member of the Planning & Zoning Commission, and has been a member in good standing for over thirty years. In those thirty years Mr. Kastner has filled roles on the Commission ranging from alternate member to chairman, and is currently an alternate member. The reason for tonight's meeting is to fill a vacancy created by the resignation of one of our regular members, and practice since time immemorial has been for the longest sitting alternate member to fill the regular member vacancy.

This meeting was scheduled first and foremost because our regular meeting of December 25 was canceled due to the holiday. We had hoped that a meeting would not be necessary, but as a result of the afore mentioned resignation, in order to have a full complement of regular members on the P&Z for their next regularly scheduled meeting the Board of Selectmen need to act. The BoS are required to appoint regular and alternate members, who are then confirmed at a subsequent Town Meeting. We are planning the next Town meeting to take place on January 8, prior to the next regularly scheduled P&Z meeting in January.

What I think is the bulk of your concern has been asked and answered, going back to 1993. I have attached the legal opinion of the Town Attorney written then, as well as a current legal opinion here, "The General Statutes contain 7-421(e) which authorizes a town to adopt an ordinance that permits municipal employees to serve on zoning and planning commissions, so it is not considered wrong, per se, to have town employees serve on those boards.

Therefore we are left to determine what Deep River's ordinance means.

It could have prohibited all employees from serving or it could have allowed all employees to serve, or anything in between. Since the town chose to use the words "Salaried office" rather than any employment, which would have been easy to say, I take this to mean something different from all employees. An ordinance was not even needed if all employees were to be banned, as the default is that municipal employees cannot serve without such an ordinance. Words used are taken to have their ordinary meaning and no words can be disregarded as unimportant if there is a reasonable interpretation by using them.

Therefore, in my opinion, Jonathan is not a salaried employee because he is paid by the hour, and therefore he can serve," again written by Town Council, in anticipation of your concern.

To that I add my own thoughts about "salaried office." Taken together the words salaried office might describe a Selectman, Town Clerk, Tax Collector, or other town executive. They certainly do not describe a town employee whose rate of pay is \$15.50 *per hour*, and whose duties include such tasks as answering questions from the public in person and on the telephone, helping to write and edit articles for the quarterly newsletter, changing light bulbs and adjusting light timers as seasons change, filling in at the transfer station, and picking up dead crows for testing by the DEEP. I do not believe that any of his tasks could be construed as having an effect on public policy.

Lastly, I think it is important to remind people, even those who sometimes chose to forget, that the land use commissions are not "overseen" by the selectmen's office but are an independent branch of local government with a separate statutory authority.

Thank you again, and feel free to contact me with any other questions or concerns,

Angus

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First Selectman
Town of Deep River
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From: Robert Ghinder [mailto:Rghinder@att.net]
Sent: Thursday, December 27, 2018 1:29 PM
To: Selectman; Angus McDonald; Gina Sopneski
Cc: Amy Winchell
Subject: Appointment of Jonathan Kastner to the Planning & Zoning Commission

Board of Selectmen -

Re: Special Meeting - 12/27/2018

I wish to express my opposition to the appointment of Jonathan Kastner to the Planning and Zoning Commission for the following four reasons:

Reason #1

Deep River Ordinance, Section 8, Item 1a clearly states the following: "The Planning and Zoning Commission shall consist of seven members and three alternate members who shall be electors of the Town of Deep River, shall not be members of the Zoning Board of Appeals and who shall not hold any salaried office within said town."

On Tuesday, December 26, 2018 at approximately 3:15 PM, I had a phone conversation with Cathy Kehlenbach, Accounts Manager for the Town of Deep River. She confirmed the Jonathan Kastner is in fact an employee and his salary is included as a line item in the communications budget. Per this ordinance, he should not be considered and should likely be removed as an alternate.

Reason #2

Even if he were not a salaried employee and had another contractual arrangement with the Town of Deep River, Jonathan being an Assistant to the First Selectman's Office is a conflict of interest. All Commissions Members should be separate and distinct from the Office of Selectman. They are meant to oversee one another.

Reason #3

The scheduling of this meeting was not announced in advance as would be normal protocol.

Reason #4

Besides not announcing this meeting in adequate advanced notice, meetings as important as this should not be held during the holiday season when residents are traveling and preoccupied with holiday events. Was this poor planning on the part of the Board of Selectmen, or was this intentional to get this shoved under the radar so that the Floating Zone proposal now in review will get pushed through more easily by having a member of the Selectman's office be appointed to the Commission?

I would suggest the Board of Selectmen choose a different candidate not associated with the Selectman's Office, one who is not a Town employee and also reschedule the meeting to discuss this at a time more appropriate for resident feedback.

Thank you!

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To: Board of Selectmen
Town of Deep River

Re: Eligibility of members of the Deep River Planning Commission

Apparently some discussion has arisen concerning the eligibility of three present members of the Deep River Planning Commission to continue to hold their position in light of a Town ordinance and state statute, both of which disqualify anyone holding a "salaried municipal office".

At first, thinking this prohibition was only by reason of our town ordinance, I gave advice that the ordinance could be amended for clarification. I have since been corrected by many sources; the language in our ordinance is taken word for word from CGS Section 8-19 and therefore cannot be eliminated. The town can amplify and clarify, however.

I have done some research into the correct interpretation of "salaried municipal office" to give the town some guidance. It is my opinion that none of the three persons in question presently holds such a position. The two members of the board of tax review are municipal officials but they are not salaried. Their jobs are essentially volunteer. During the year of revaluation, one has been reimbursed \$142.00 and the other \$185.00 for the expenses associated with special viewings of property. This would not be the case in the nine intervening years of no revaluation. The fact that they have received these small amounts does not make them "salaried" within the meaning of the statute. A municipal official is one who has the authority to make sovereign decisions on behalf of the town and who has a term of office, ending only when the term expires or upon removal for improper behavior. As such, members of the board of tax review are municipal officials, but they do not receive a salary, thus they qualify to be on the Planning Commission.

The other member whose status is questioned works at the control center. He is a town employee who is under the supervision of the Board of Fire Commissioners. He is salaried under the meaning of the statute, which includes earning wages. However, in my opinion he is not a municipal official in that he does not make sovereign decisions on behalf of the town. His term is not specified through election or appointment and he continues to be employed at the discretion of the Board of Selectmen as any other ordinary town employee.

It is necessary for a person to meet all aspects before he is disqualified. The mere fact that someone is on the town payroll does not in and of itself disqualify. If it was desired, a list could be formulated of the ineligible positions. It would certainly include the selectmen, the assessor, the tax collector, the probate judge and the town clerk. No volunteer positions would be disqualified except positions on other land use commissions.

I hope this memorandum has helped to clarify the issue. If not, I am of course willing to further into it in person.

Sincerely,

Jane R. Marsh

DATED on DE 26/93

4/13/1993

RECORDED IN VOL 7/PAGE 246