

**OFFICE OF SELECTMEN  
6 HOLLAND STREET  
PO BOX 139  
MOULTONBOROUGH, NH 03254**

Selectmen's Public Hearing

September 9, 2013

**MINUTES**

Selectmen: Joel R. Mudgett, Jonathan W. Tolman, Edward J. Charest, Christopher P. Shipp, Russell C. Wakefield; Carter Terenzini, Town Administrator; Hope K. Kokas, Administrative Assistant.

**I. CALL TO ORDER:** Joel called the Public Hearing to Order at 1:00 P.M.

1. Joel stated that this public hearing is to determine if there is cause to remove Planning Board member Josh Bartlett from the Planning Board in accordance with RSA 673:13. Jon Made the Motion that the Board of Selectmen take a brief recess to meet with just Town Counsel. Chris Seconded and the Motion carried Unanimously. The Selectmen went into recess with Town Counsel at 1:09 p.m.

The Selectmen reconvened at 1:30 p.m. Joel repeated the purpose of the public hearing. Town Administrator, Carter Terenzini using PowerPoint, presented the case. Written packets were provided to the Selectmen and also to Mr. Bartlett's attorney, Christopher Meier (PowerPoint presentation attached). Statutory basis for removal of members of Land Use Boards falls under RSA 673:13. He cited paragraph II which states that, "The Board of Selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing." He added that members may be removed after written findings of "inefficiency, neglect of duty, or malfeasance in office." Carter spoke to the Planning Board's oath of office which all members are required to take and sign. He further explained that the hearing came to be because he had received several complaints about the action of two individuals and he reviewed the public record and felt there was cause to take this matter to the Selectmen. Upon presentation of that memorandum, this Board of Selectmen called this RSA 673:13 show cause hearing. Carter stated that he is not relying upon the presentation of witnesses, but solely on the transcript of the public record. Attorney Meier made a point of order, stating that his client has not received the referenced complaints which Carter referred to and he asked for copies. Carter replied that the complaints are not in writing, but were verbal complaints. He repeated that he will not name names. Joel called the audience to order. Carter added that the complainants are not being called as witnesses and this isn't a case of, 'He said, she said'. There are no matters of character here, but he is relying solely on the transcribed written record.

Chris Made the Motion to discontinue the public hearing. Ed Seconded the Motion. Chris stated that from the beginning the two individuals were told that they would receive the names of the people who made the complaints. They were also lead to believe that there were several people and that isn't the case. In this situation we have reached a point where the repair process has become more of an issue than the original problem. Chris said he didn't feel comfortable continuing. Ed stated that he didn't attend the Planning Board hearing in question where this began. He did review it after they received the complaint and personally he has never received any complaints. Ed stated that he served

on the Planning Board for 7 years and as Selectmen for 9 years. It has always been his intention that whenever a complaint has been served against a person, that they have the right to know who made the complaint. He recalled that when anonymous complaints were received in the church and other institutions that he served, that if one didn't sign their name, the complaint wasn't valid. Ed felt that how one person interprets the minutes may be different than another's interpretation. Having served on the Planning Board, he found it difficult to go against the defendants. Ed stated that he too did the same thing when he was on the Planning Board. He recalled the discussions had on CG Roxane, adding that he voted the same way as they had done. Due to this Ed found it extremely difficult. Russ stated that he's been a contractor in Town for a number of years and repeated what he said at the last Selectmen's meeting, when many people had asked for names of those complaining. He explained that if one was a contractor in Town and had a problem with the way the Planning Board or Zoning Board of Adjustment were operating, one might complain, but they would be the last people to put the complaint in writing. This would require them to come before the accused board and their name be dragged through the mud because of the complaint made. He stated it would not happen. Russ said that he understands Carter, he's heard the complaints himself, and Jon has heard many complaints. There are people who have come to the Selectmen's meeting since this began and think that it is a travesty that it is even being discussed. Russ said regardless if the hearing is held or not, he personally has questions of Mr. Bartlett. Chris said that he would probably agree with the issue of anonymity if they were addressing the action of the Planning Board as a whole, but they are not. They are addressing actions of individuals and when individuals are accused they have the right to know their accuser. Jon acknowledges everyone's desire to know the accuser. In particular if he was being accused of something that had happened only between himself and the accuser, occurring outside of the public purview, then that would be pertinent. He stated that wasn't the case here. This happened in public and the only thing at issue are the actions that the members took in a public meeting. Jon repeated that this isn't a, 'He said, she said', not something that happened in a corner somewhere. This is conduct that occurred in open public meeting of which there is video and written minutes for anyone to go and observe the actions. Jon thought that this was no different than a person calling in a complaint to the police that somebody is speeding through Town resulting in the police officer using radar and making the stop. The speeder doesn't get to know who made the call to the police. The police officer doesn't need that information as he observed it himself. Jon said that this is the same case here. Everyone has had the opportunity to view the actions in question. Again, he understands the desire to know one's accuser if it is something that is dependent upon the accusation and accuser's words for the judgment to be made, and based on that person's word against your own. Jon said that this isn't the case here, as the actions were completely in the public purview. Ed said he disagreed. The situation is different as a police officer doesn't have a committee to make the decision. Two members of a committee (board), who if these charges are found valid, then the whole board deserves to be indicted. During that public hearing, the board should have recognized it at the time and stopped it. This did not happen. Chris understands what Jon said, but his issue is from the onset of this process, that these people were lead to believe that there were multiple accusers outside of the Board of Selectmen and those names at some point would be provided. If that is not the case then the Selectmen should not move forward. Jon replied that, yes some members of the Board said this and lead the public to believe that. He was not one of them and made it quite clear that he didn't

feel that was the case. Joel called for the vote. Chris and Ed, Aye. Jon, Russ, and Joel, Nay. The Motion did not carry.

Carter continued saying that the first issue was the failure to act. He cited the application for Bears Nest Trail, LLC for a conditional use permit, with the public hearing of July 10, 2013. The Planning Board needed to consider and act affirmatively on 11 criteria. Carter, reading from the transcript, quoted Mr. Bartlett when he asked if he had to say yes to every one of the criteria, and then adding that he could not do it, especially for number 1 and 4. Carter pointed out that Mr. Bartlett then acknowledged what the rules were and the need to follow them. At that point, Peter Jensen, the acting Chair confirmed that was what needed to happen. Carter then reviewed criteria #1, consistent with the spirit and intent of the ordinance. During that public hearing, a discussion resulted on the tally of that vote for #1, and upon Mr. Wakefield asking Mr. Bartlett how he had voted, he responded that he didn't, adding it was deliberate and further saying that he would not vote on criteria #1. Mr. Bartlett gave as his reason for not voting was he did not believe they met the criteria. Carter then spoke to criteria #4, which asked if no "practicable alternatives" existed to the location being proposed for the structure that was the subject of the conditional use permit. Chair Jensen asked Mr. Bartlett if his was a no vote. Mr. Bartlett again said that he abstained and explained that he did not feel that it passed and met the criteria. Carter pointed out that the initial pass through was a 3 to 3 tie.

Carter then went on to faithful discharge of duties, which is the subject; dereliction of duties and the faithful discharge of duties. In a discussion with Planning Board member Judith Ryerson, she asked if she could change her vote, to which Mr. Bartlett asked how she voted, adding that he'd tell her whether or not she could change it. He then went on to say that he deliberately lost the vote, as he wasn't going to vote yes because he did not believe they met the criteria. Carter stated that Mr. Bartlett did not vote yes. He did not vote no despite his belief that the applicant had not met the 2 out of the 11 criteria.

The second issue, Carter said was the failure to faithfully apply required criteria. At the beginning of the same meeting, Chair Jensen stated that they were to consider the application brought to them before anything had been done. Although Mr. Bartlett acknowledged this, he began to stray away from this standard, at which Mr. Jensen attempted to redirect him back to the standard. Carter pointed out that this will come up again.

Carter then went to the third issue, Failure to Apply the Juror Standard. The Planning Board policies VII. A. which states, "...no ...member shall participate in a matter if that member would be disqualified to act as a juror of the same matter in any action at law." Carter stated that the standards in RSA 500-a:12 I, are (d) Has directly or indirectly given his opinion or formed an opinion, and (f) Is prejudiced to any degree regarding the case. In the Bears Nest case there was a discussion about one of the criteria that would apply for which the applicant had obtained a variance. There was discussion with Planning Board members Keith Nelson, Chair Jensen and Mr. Bartlett. Mr. Bartlett asked for clarification that they expressly specified setbacks, and he doesn't understand the point that they can't tell people where to build a building. Mr. Wakefield pointed out that the Zoning Board had already decided on that. Mr. Bartlett then stated that he was sick of the Zoning Board. Carter pointed out that the Zoning Board is the adjudicatory body that adjusts the zoning ordinance based on application and criteria. In a discussion on the

criteria and the final motion, Mr. Bartlett said that he abstained on the criteria which could result in their going to court, but that he was furious that this thing went ahead without a permit, and furious with the applicant's attitude that it would give them the best view. Mr. Bartlett later said that the Board ought to be very careful to consider what happens if they vote no and that he didn't like having his feet held to the fire. Carter said that Mr. Bartlett was projecting what might happen should they vote no, adding that this was not in the Board's purview. When Ms. Ryerson asked if the applicant could go to the ZBA with this, Mr. Bartlett responded that they could and the ZBA will give it to them.

Carter proceeded to speak to the Rock Pile case, where he said Mr. Bartlett also failed to apply the juror standard. March 27, 2013, following the granting of a special exception of the ZBA and other variance actions taken, Mr. Bartlett gave his opinion that it was a very inappropriate place for the business. Planning Board Chair Tom Howard, reminded Mr. Bartlett that they needed to address issues that are in the Planning Board's purview. Mr. Bartlett agreed, but thought that the site plan was in their purview. Upon Mr. Howard agreeing, Mr. Bartlett continued to question a settled matter by the ZBA, and gives his opinion about the validity of that decision. The Chair goes on to ask him to not talk about issues that were in the variance that was granted. Later in that meeting, Mr. Bartlett questions the ZBA's decision of granting the permit as a retail business and if it is appropriate. Again the Chair must remind him that the issue of the use was determined by the ZBA and the Planning Board doesn't have purview to override their decision. Mr. Bartlett continues to state that he disagrees and he is having trouble accepting the ZBA decision. On the meeting of June 12, 2013 for the Rock Pile property, the applicant's attorney comments about Mr. Bartlett's statements which were about what should and shouldn't be in a retail bakery, when in fact, his statement contradicts what the property owner says they mean by a retail bakery. Further on in the meeting, after being reminded by Chair Howard on several occasions that the matter had been decided by the ZBA and not within their purview, Mr. Bartlett continues to questions the use. Mr. Jensen again reminded him of the ZBA's decision and the property owner's attorney also states that this has been decided by the ZBA. Mr. Bartlett continues to question the hours of the business, again already decided by the ZBA. In this meeting, there was discussion of the location of a table and seating. Mr. Bartlett replied, with what Carter found after viewing the video as sarcasm, about how it fit right in with the historic character of the neighborhood.

Carter posed the following questions. Issue #1: Does refusal to vote on issues become a failure to act, when one has acknowledged the criteria was not met, without recusing himself from the case, or handing his seat to an alternate. Is this a refusal to act a neglect of duty? Carter said he will provide his answer to this question in his closing statement. Issue #2: Is there a failure to faithfully apply required criteria when there is a continual stray into matters not before the board or within its purview as being inefficient, a neglect of duty, or a faithful and impartial discharge of duties? Issue #3: Based on the juror standard, is it a violation to proceed to act while freely expressing anger toward the applicant or a dislike for the ZBA's decisions? Is it a "...failure to faithfully and impartially discharge and perform all duties..."? Carter asked is that a "dereliction of duty". Carter concluded his presentation and saved the balance of his time for any follow-up rebuttal and to answer these questions posed.

Joel asked the Selectmen if they had any questions of Carter, of which they had none.

Mr. Bartlett provided the Selectmen with his statement (attached) and proceeded to speak on his behalf. Carter, as a point of order, said that he provided Mr. Bartlett's attorney with the information given to the Selectmen, and requested that he too receive a copy of Mr. Bartlett's letter. (Joel left the meeting room at 1:58 p.m. to have a copy made and returned at 2:02 p.m.) Mr. Bartlett said that he has already asked that the Town's attorney, Peter Minkow to remove himself from the proceedings, as he also represents the Planning Board, and this would be a conflict of interest. He thanked all those that have supported him and for showing an interest in clear and transparent government. He expressed sadness for the volunteers of the Town's government as they are "under threat". Mr. Bartlett said that he is forced to defend himself, his reputation, and his actions from vague charges by the Board of Selectmen. As volunteers, they are not experts, but are expected to exercise their good and honest judgment without allowing their feelings to cloud their decisions. Town boards and committees rely on professionals such as the Town's Counsel, Town Administrator, Town Planner and others to provide them with good advice. Mr. Bartlett thought that the Selectmen had been given bad advice in this matter. He felt that the charges were false and developed from hearsay complaints brought forth at an illegal meeting. Mr. Bartlett said the Town Administrator admitted that his memo dated July 16<sup>th</sup> was presented during a non-meeting. He said the Selectmen agreed this occurred, with discussion taking place and at least 2 decisions were voted upon. The first decision was to provide him with an opportunity to resign. The second decision was to hold a public hearing based on his refusal to resign, which was unanimous with the four Selectmen present. Mr. Bartlett thought that the non-meeting and decisions violated the State of NH Right to Know Law, RSA:91-A. He added that the Board of Selectmen should have known that this was a violation and should have been advised that it was a violation by Town Counsel, who was also present at the non-meeting. Mr. Bartlett felt that this remained a problem for all that were present at the non-meeting, despite the failed attempt to legitimize the actions by the request to ratify their letters at last week's meeting.

Mr. Bartlett stated that originally he was told that there had been anonymous complaints made by those who didn't want to be identified out of fear of retribution from the Planning Board. He has since learned through the latest Right to Know request made by his attorney that the only written complaint is from Carter Terenzini, a Town employee, who is now leading the prosecution of the case against him. Mr. Bartlett felt that the constitution guarantees the right to face your accuser, and it is a right given to Town employees. His original request to Mr. Terenzini for information was made on August 12, 2013 and was "denied". Upon engaging an attorney, who then made a second request for information on September 5, 2013, they received Mr. Terenzini's memo to the Selectmen requesting his and Judith Ryerson's removal. Mr. Bartlett said that other information requested, such as the minutes to the non-meeting were not disclosed. He felt this was an attempt to deny him his due process.

Mr. Bartlett said that at the Planning Board's special meeting of August 14, 2013, they approved the motion that they do not support the removal of two of its elected members based upon the allegations as set forth in the notice of the hearing. Mr. Bartlett said that voluntarily leaving his Planning Board seat would be to ignore his responsibility. He felt that the non-meeting held and the request made of him to resign resembled blackmail,

when he had done nothing wrong. Mr. Bartlett stated that the formal procedures of this public hearing were an issue. He did not know what evidence would be used or who might testify against him until his attorney submitted the second Right to Know request. He asserted that having the Selectmen and Town Administrator as the accusers, the prosecutors, the witnesses, and the jury was against his due process.

Regarding the accusations of failure to act by abstaining from a vote and not recusing himself, he felt that was untrue. If abstaining was the same as admitting bias or a conflict, then many legislators in the U.S. Congress or the General Court of NH are also at fault. If there are special rules, he said he did not know about it. He asked that if a chair of a committee or board doesn't like a person's vote, should they then ask that person to recuse themselves with someone who will vote as the Chair desires. Mr. Bartlett didn't think so. As to the charge of refusing to participate, he directed the accuser to listen to the tapes or read the minutes as he participated and is quoted a number of times in the minutes.

The charge of failing to faithfully apply required criteria, Mr. Bartlett said, refers to following the "de novo" standard, which meant they should pretend that the application was for a proposed and unbuilt building. The issue was considered and he said he acted based upon the reality that the building was already there. Mr. Bartlett agreed that was true as he found it hard to deny reality. After hearing the facts he stated at the meeting that it was better for the environment and the Town if the Planning Board did not order the destruction of the building. He questioned where it is stated that the "de novo" standard is required and who required it. Mr. Bartlett said that he could not find this in the Planning Board's rules. He added that his final vote was the same as Selectmen Wakefield's and they followed the written "Staff Recommendation" prepared for the Zoning and Planning Board by the Town Planner.

Mr. Bartlett felt that the charge that he failed to faithfully apply the juror standards was not true. He stated that RSA 673:14 says that it requires the actual member of the board to make the decision, even when other members vote to ask for that member's recusal. Mr. Bartlett said he had no personal or monetary interest that would affect his decision. In addition, his friendship to the abutter of the Rock Pile property was not grounds to recuse himself. He added if this were the case, then very few cases could be heard in this small town. Mr. Bartlett thought that the charge that he spoke disparagingly against the ZBA was subject to interpretation. He thought it was constructive criticism. In addition, he thought it was his duty to point out what he believed to be a failure of Town departments or boards in order for them to do their jobs properly. He asked if the Selectmen really wanted to remove any "Whistle Blowers."

Mr. Bartlett felt that he did not fail to meet his fiduciary responsibilities. Abstaining in a straw poll, showing bias, disparaging the zoning ordinance and the organizational units, are all charges he refuted. He did not think that he had exposed the Town to substantial legal risk in the defense of any appeal that might be filed. He added that any decision made by any board is subject to appeal and nothing that he has done has created an extraordinary situation. The final vote for Bears Nest was 4-2, of which he voted in the majority along with Selectmen Wakefield. He suggested that if the Selectmen or anyone else did not like the decision they could go to court and ask that it be overturned. In fact, Mr. Bartlett said that Mr. Terenzini, in his memo to the Selectmen, suggested that they go



to Superior Court. He suggested that this public hearing and the actions of the Selectmen have exposed the Town to legal risk. He argued that the non-meeting held was a violation of the Right to Know law and can also bring court action. In addition the removal of elected members is often overturned in court, with awarding legal costs.

Mr. Bartlett concluded by suggesting that the Selectmen received poor advice in pursuing these complaints in this manner. He felt that this will have a negative effect on people volunteering to serve the Town. He asked the Selectmen to consider Joanne Coppinger's letter, which he thought clearly identified the issues of the case and her belief that neither he nor Ms. Ryerson acted neglectful or with malfeasance. Mr. Bartlett expressed his concern that this process will have a long term bad effect on the character of the Town. He stated that none of the alleged charges, which he refuted, rise to the level of neglect of duty or malfeasance and were not grounds for removal of an elected official. He asked for exoneration of the charges and the removal of any cloud on his service and reputation.

Attorney Chris Meier, speaking on behalf of Mr. Bartlett, said that on two occasions they raised procedural concerns with this hearing, which are unlawful. 1) Mr. Bartlett alluded the decision to hold this hearing was done in secret during an alleged non-meeting. 2) Attorney Minkow assisted the Selectmen with the hearing, despite his also being Town Counsel for the Planning Board, and could be called to advise Mr. Bartlett on the proceedings, his involvement would be infirm. It was Mr. Meier's assumption that the Selectmen proceeded thinking that it was not unlawful, because they didn't believe they had an option based on the complaint of Mr. Terenzini and they needed to hold the public hearing under the statute. Mr. Meier told the Selectmen that they had the option to make a decision now. The standard for removing a Planning Board member is extremely high in NH, with only one reported case in NH's history, which was overturned. The Supreme Court in doing so, said the standard for malfeasance was willful or corrupt action in the discharge of official duties. Mr. Meier stated that nothing in Mr. Terenzini's presentation rises to the level of that standard. He continued to say that the Selectmen have a non-lawyer attempting to tell them what the legal standard is for removal and a non-lawyer telling them that Mr. Bartlett rose to that level. Mr. Meier stated that he is not qualified or entitled to give his opinion. In addition he said that Mr. Terenzini is not a citizen of Moultonborough and is making a complaint against an elected official and criticizing how he has voted. He asked the Selectmen to imagine if a town employee could seek to remove and force a public hearing on each one of their removals for any decision they had made. He said that they disagree with the Selectmen's belief, that they did not have any discretion in the first place to hold this public hearing, but suggested that they do have the opportunity to correct it now and to decide that Mr. Bartlett's actions did not rise to that level. Mr. Meier asked that they keep that standard in mind during deliberations. He concluded by saying that Mr. Bartlett did nothing wrong and did what he was elected to do.

Joel asked the Selectmen if they had any questions of Mr. Bartlett. Chris asked if during his two terms as Planning Board member, if the Town provided him with any formal trainings on his legal obligations. Mr. Bartlett replied that the Town did provide an opportunity and he attended a seminar put on by LGC regarding the Right to Know law. He was provided a document by the Office of Development Service regarding the Standards for Recusal. Also, at every Planning Board meeting, the members receive guidance from the Planner. Chris asked if there was any training about failure to act,

failure to follow laws, neglect or malfeasance. Mr. Bartlett replied that there have been no trainings on these matters. Russ spoke of his long time service to the Town, as a Selectmen prior to this term and as a previous Planning Board member, and now as the Selectmen's representative. He stated that yearly, at least a half a dozen trainings are offered to Planning Board members and the Planner makes sure that these offerings are emailed to the members. The Town cannot force a member to take these trainings, but they are available. Russ, referring to Mr. Bartlett's statement that Attorney Minkow should recuse himself, explained that Town Counsel is the Planning Board's attorney, not Josh Bartlett's attorney. He asked and Mr. Meier confirmed his statement, replying that Town Counsel advises the Planning Board and each member what their legal responsibility is in making a decision. The purpose of this hearing is whether Mr. Bartlett as a member of the Planning Board violated those standards, upon which Mr. Minkow could have advised him of what the legal standards are. Russ replied that he understood the Town Attorney's role was to advise the Selectmen as the petitioners. Mr. Meier argued that was the problem, as he is advising the Selectmen as the deliberating party, advising the Town Administrator as an employee, and he's advising the Planning Board and each member on the legal standards. Russ understood what he was saying, but argued that he did not agree. Attorney Minkow is the Selectmen's counsel and also the Planning Board's counsel, but not a specific member's counsel. Russ said that the hearing is specific to Mr. Bartlett and not the Planning Board. In Mr. Bartlett's statement, Russ thought that he focused mainly on the Right to Know law, and did not defend himself about the charges against him. Russ asked Mr. Bartlett to recall a meeting he was asked to attend with the Chair of the Planning Board, Tom Howard, Bruce Woodruff, Town Planner, and Russ concerning Rock Pile. Russ said that he requested and was given approval by the Selectmen to call this meeting and to ask Mr. Bartlett to follow some semblance of order. He added that this wasn't the first time he had seen this happen. Mr. Meier objected, stating they were told that the only evidence to be used was the events that occurred at the hearing and now Mr. Wakefield is adding his personal opinion. Russ said that he was providing back-up material and asked that Mr. Meier sit down. Joel called for order from the audience. Russ added that Mr. Bartlett had provided back-up material in his statement. Mr. Bartlett replied that the presentation of charges has already been made. Chris said that the Selectmen's role is to make a decision, and not prosecute, and that is what the audience is objecting to. He added that Russ should be asking questions or for clarification of what has been said. Russ then asked Mr. Bartlett if he thought it was his duty as a Planning Board member, when every application comes to the Board, which has gone through the Zoning Board process, if it is his duty to inform everyone that the Zoning Board's decision was incorrect. He asked if it was his duty to inform everyone that the Board of Selectmen and the Code Enforcement Officer are in dereliction of their duty in enforcement. Russ asked if it was necessary to continually disparage the Town in the processes that are done. Mr. Meier replied that Mr. Bartlett has never attempted to remove any member of the Board of Selectmen nor any member of the ZBA, even though he may disagree with them. As a point of order, Mr. Meier thought that Russ had an opinion about the charges and therefore he should ask for his recusal. Russ asked the audience to consider if they were an applicant of the Planning Board, paid the fee for their application, and paid additional money on engineering, if they would feel like their application meant something if as soon it was submitted everything wrong with it would be indicated. A member of the audience, Jane Fairchild responded that she is an observer of this hearing, and if she is being asked this question, then she would expect honesty, judgment based on what the



members felt was the right decision at the right time. She added that the money put into it had nothing to do with it, but it needs to follow the laws and regulations, and decision made based on this. Ms. Fairchild added that everyone's interpretation can be a little different, just as questions come before the Selectmen and they have different interpretations. Jon made a point of order, asking the Chairman to advise the Selectmen to keep their questions specific of what has been presented by either Mr. Terenzini or Mr. Bartlett and his attorney. The Chair agreed. Ed said he was concerned about the allegation that the Selectmen's non-meeting was illegal and also RSA 91:A, keeping of minutes. Attorney Peter Minkow said under NH law, meeting with counsel is not a meeting, therefore no minutes are kept and this is entirely legal. Within the scope of what happens in conference with counsel there is very little law. What is clear is that counsel must be present. Mr. Minkow stated that he was present at this meeting, which meets the threshold of a conference with counsel. He added that to suggest that there can be no deliberation when conferring with counsel is ridiculous because the Selectmen would have to remain silent and not be able to confer with counsel. It is the Town's position that the meeting that was held on July 18<sup>th</sup> was entirely legal and what occurred was direction to counsel and that is within the scope of the law. Chris stated that there were two Right to Know requests made, with the first yielding nothing and the second yielding a letter. He asked why this letter was not given on the first request. Carter replied that he did not believe that the document was subject to disclosure, thinking that it was privileged and confidential having being discussed in conference between the Selectmen and Town Counsel. When the second request was made, he discussed with Counsel again and it was his opinion, that if there should be an appeal of this matter, it would then be subject to disclosure, and therefore it was appropriate and expedient to disclose it at that point in time. He explained that is why the two requests yielded different results and why they were viewed differently. Joel asked and the Selectmen did not have any further questions.

Joel asked Carter if he had a rebuttal statement. Carter said he did, but asked when the Board would like his closing statement. Upon a request by a member of the audience to speak, as it is a public hearing, Attorney Meier asked that if they are speaking in support of Mr. Bartlett, he did not want to lose that opportunity. Joel opened the hearing to the public. 1) Paul Punturieri made two points. The first was that Mr. Terenzini mentioned the videos that are available and he said that they are not the official public record of any meeting, unless the Selectmen have made a change in their official policy. The written minutes are the official public record and whatever mannerisms seen in the video should not be admissible to this hearing. Second, he spoke to Russ' statement about the Planning Board kind of looking the wrong way at a contractor who may have complained about the Board. As a Planning Board member, he found this insulting and thought the other members would feel the same. Every case is judged as it should be. 2) Nat King said he is a Planning Board Alternate, and he thought that the charges were relatively accurate, but did not rise to the level to discharge from the Planning Board. If there was fraud or corruption, then he could see that. He thought they missed their window by not taking the Planning Board to court, as there was plenty of reason to do so. Mr. King said that he hoped in the future they take that route, that any actions taken by the Planning Board that are inappropriate versus trying to expel a member. He thought it was a good thing that this comes out into the open, but a different initial route on the Selectmen's part would have been preferred. 3) Kevin Kelly said the Town should look to expand commerce and business, and this action makes the Town look foolish. He said that the

two individuals involved, were people he was glad to know as neighbors versus just Planning Board members. 4) Peter Jensen, a Planning Board member, said that he chaired the Bears Nest hearing, which was an unusual situation and it was the first time to look at the criteria, and to view it as the building hadn't been built (the de novo standard). Members often give their opinions and are usually redirected by the Chair. He thought that this happens with newer members. Mr. Jensen said that the actions of Mr. Bartlett were not at the level to remove him from the board. 5) Richard Brown, CIPC Chair, said that Mr. Bartlett, a member of the CIPC hasn't neglected his duties, offers his opinions and substantial thought. He said that he was opposed to removal. In addition he was not aware of any trainings on legal compliance. 6) Eric Taussig, stated he was an attorney and represented the abutter in opposition to the Rock Pile hearing. Although he was unhappy with the Zoning Board, he didn't file an anonymous complaint against the ZBA. He took the matter to the Superior Court. Reading from the Town Administrator's memo, he sought the Selectmen's permission to petition the Superior Court to remand the matter of the Conditional Use Permit granted July 10, 2013 to Bears Nest Trail for a tower on Bears Nest Trail LLC property pursuant to 677:15. He questioned the terminology of remanding, but thought that the matter should have gone to the Superior Court if the Selectmen were dissatisfied. Mr. Taussig thought that the procedure used was totally inappropriate and he didn't think the statute being used is intended for this purpose. He thought that this should have gone to superior court. 5) Keith Nelson stated that he is an Alternate to the Planning Board. He acknowledged that the Selectmen have acted in good faith, as have the members of the Planning Board. They have a discussion, they have a deliberation and part of that are comments of what they feel, just as Mr. Wakefield said he felt. They should not be held accountable and put into a position where they feel they are going to be individually sued, just as the Selectmen should not be individually sued for their actions today. Mr. Keith said that he disagrees with Mr. Bartlett a lot, but he has the right to say it at a meeting, and then make a decision. The allegations, although 100% true, do not rise to the level where they should be removed from the Planning Board. 6) Jordan Prouty said he hopes that the Town will move forward from today, and asked everyone to think about how people will look at volunteering. He is concerned that based on today's hearing people will be not want to volunteer their service to the Town.

Joel asked Carter approximately how long his closing statement would be. Carter thought he had ten minutes approximately. Attorney Meier, as a point of order, asked that any proceedings be limited to evidence. He stated that Mr. Terenzini is not a prosecutor or a citizen and not a lawyer. Any opinion on his behalf would be inappropriate for this proceeding. Mr. Meier said that if he has more evidence, then he asked that it be submitted and he will rebut it if necessary, but otherwise he doesn't have anything else to say on Mr. Bartlett's behalf. Carter corrected Mr. Meier about his citizenship. He stated he lives at 67 St. Moritz Street, registers his car in Moultonborough, is a Moultonborough registered voter, and uses this address for all state and federal tax purposes. For the record he would like that removed as an issue. In addition Carter thought he had the right to present a rebuttal to anything that has been said and present his closing remarks. This is not a court of law, but it is a reasonable expectation to have and was anticipated when the initial presentation was given. Joel asked the Selectmen how they would like to proceed. Mr. Meier noted that Mr. Terenzini used all of his time that was allotted in his initial presentation and provided in the initial notice that they were given. He added that Mr. Terenzini has one vote as a citizen and is

not entitled to prosecute an elected official of this Town. Carter stated that he used approximately 20 minutes which was interrupted on a couple of occasions. The Board decided to proceed with his closing statement.

Carter said that the elected Planning Board members have two critical roles for a community. The first is that of a philosopher as the land use of the community, as to how the land is to be used and what the land looks like and says to the outside world about the community. The second is that of adjudicator, to judge plans and their conformance to the ordinances and regulations to the extent that they have amended by the Zoning Board of Adjustment. The members are sworn to an oath of office to faithfully and impartially perform their duties. The statute as visited by the Selectmen, this serious duty, to determine if a member fails to show to do so and establishes specific causes. Carter said that the ones before them are inefficiency and neglect of duty. What is not before them is any free speech Mr. Bartlett has made in the course of his role as philosopher. It is not about one's ability to speak one's mind freely. It is not about if you like Mr. Bartlett, or the process, or even himself (Carter). What is before them is the role of Mr. Bartlett as an adjudicator in the several hearings. This role does not allow one the same freedom as that of a philosopher. It is constrained by statute and the Planning Board's own rules, which were submitted as exhibit 9 with Mr. Bartlett's signature. Evidence was heard at this hearing that the juror standards are in those rules. They are not in what Mr. Bartlett brought to their attention, but they are in those standards. Did Mr. Bartlett indirectly give his opinion or form an opinion. Was he prejudiced? Carter reminded the Selectmen that in his presentation, he read Mr. Bartlett's statement of how he was sick of the Zoning Board. Although one can talk about the Zoning Board, one cannot do it in the hearing process. Also heard as evidence, Mr. Bartlett's statement that the ZBA "...will just give it to them (relief)." Those kinds of opinions cannot be expressed in the hearing of an applicant. Mr. Bartlett's anger towards the applicant was also heard as evidence. During Mr. Bartlett's statement at this hearing, he acknowledged he said all of those things that he doesn't like the Zoning Board, he acknowledges a lot of things that he doesn't like and he is open about it. Carter pointed out that the problem is, that inside of the adjudicatory process of those hearings, this is inappropriate behavior, as it violates the juror standard. It was stated by Mr. Bartlett that the straw vote was a run up to in totality of each criteria. This was the process to determine if the 11 criteria had been met, and then vote in the totality. In the materials Mr. Bartlett presented to the Selectmen that were provided to him that he read and trained upon, under NH law, a member who abstains is presumed to go along with whatever the majority or the rest of the Board determines. One must look at the context in which it was done. Carter said that Mr. Bartlett abstained because he couldn't vote his conscience, which was No, and he said it. Mr. Bartlett said it was his job to point things out. Carter argued that this is not his role as an adjudicator. He needed to keep the roles separate and distinct and this is what he doesn't understand. The juror standard requires individual members to make decisions on recusal beyond just the financial interest, if they cannot meet these other standards, which is a standard the Planning Board has adopted. Carter said that the issue is not the final vote, but the actions in respect to Mr. Bartlett to that one vote and in respect to another case. Carter agreed that the Town does need good people to volunteer. He does not question that Mr. Bartlett has given countless number of hours on behalf of the Town. However, the fact that the Town needs volunteers does not mean that the Selectmen should not call them up short if they don't feel that they've met the standards. The need for volunteers is not enough to cause them to turn their eye aside. Mr. Bartlett did not refute what he said, or

the standards, but says he has a right to his opinion. Carter argued the problem is that he doesn't have that right during those hearings. He signed the rules and it is the expectation that he will follow them. Carter summed up that by failing to stay on the matter, in both Rock Pile and Bears Nest, he has violated the matter of being efficient. It was an open violation when he failed to recuse himself on matters where he has openly stated his disdain for the ZBA, the applicant or the enforcement process. If it is found that he did not need to recuse himself, did his failure to act in the Bears Nest case deprive the voters and their voice as a neglect of duty? Carter recalled Mr. Jensen and a few others who commented that this doesn't rise to the level for removal, but stated that this is for the Selectmen to decide. Carter concluded that if the Selectmen decide it does not rise to that level, then he encouraged them to advise Mr. Bartlett to be more circumspect in his statements that he makes as his role as an adjudicator from this point forward. Joel called for order from the audience.

Mr. Bartlett said he would not respond to much of Carter's closing statement, but would comment about Mr. Wakefield's statement regarding a meeting that was held between himself, Mr. Wakefield, Planning Board Chair Tom Howard, and Town Planner Bruce Woodruff. Joel called for a point of order, reminding Mr. Bartlett that earlier in the hearing he and his attorney did not want any of this brought up as it wasn't part of the stated evidence, but now he wants to talk about it. Mr. Bartlett said that Mr. Wakefield brought it up and he wants to address it now. Joel allowed it. Mr. Bartlett said that he asked Mr. Howard if the rules say that if a member wants somebody to recuse themselves, it should be brought up publicly in a meeting and the Board should vote on it. He said he was willing to hear the Board's opinion. He asked Mr. Howard if that was what he wanted done and he said no, he did not want to do this. Regarding the failure to follow the de novo standard, Mr. Bartlett referred the Selectmen to the Town Planner's guidance that was given, that one shouldn't ask it to be torn down as it would do more harm. Mr. Bartlett said at that hearing that he said he did not want the thing torn down as it will do more damage to the environment and cause a great deal of difficulty to the Town. He said that this is his explanation and remains as such. Not once did the Planning Board members ask him to do things differently or say he was out of line. Mr. Bartlett says it was done in secret, and these complainers brought it to Mr. Terenzini with what he believed to be justification to have a secret meeting to offer him the option to resign quietly without any publicity. Mr. Bartlett concluded that it is up to the Selectmen to decide.

Mr. Meier reminded the Selectmen that there is one Supreme Court case on this, Williams vs. City of Dover, the standard for removal is the willful or corrupt action in the discharge of official duties and requires an intentional act or omission relating to the duties of public office. Three attorneys have given their opinions that Mr. Bartlett did not violate his duty to the Planning Board or the citizens of Moultonborough. Mr. Terenzini disagrees, but the Selectmen must find it was intentional. His actions were not willful and his actions don't meet or come close to the standard.

Joel opened the discussion to the Selectmen. Russ reminded them that they can only ask questions and can't make a statement. Ed said that he thought he could make a statement. He proceeded to say that Carter often accuses him of thinking with his heart instead of his mind, which he thought was accurate and happens often. As a former Planning Board member, he recalled several discussions of recusal, which is the choice of the individual.

He recalled making disparaging remarks about the ZBA's decisions. He said it is difficult to not bring in your own prejudices. Ed admitted that he did not always agree with Mr. Bartlett. He too has abstained from votes, and has had prejudices, and has learned to not have them. Ed did not think Mr. Bartlett acted willfully or out of malice, and agreed that it doesn't rise to the level of removal. Chris said that he has not been a fan of this process. He has heard valid points on both sides and hopes that all will learn from this. It would be counterproductive to think that one side won and one side lost. Mr. Bartlett interjected that if removed, he loses. Jon said that he agrees with a little bit of what Chris said. This is not about Mr. Bartlett's character, but his conduct during a particular hearing. Jon said he remembers when zoning was installed in the Town and anyone in this room could point to any decision any of the boards have made that they've disagreed with. It is about Mr. Bartlett's conduct and although he is entitled to his opinion, however during the hearing he made his opinion clear and yet voted contrary to his own opinion. Jon recognized that several attorneys have spoken at today's hearing. He thought any of those attorneys would point out to an abutter the statements made by Mr. Bartlett at that hearing, that it doesn't meet the criteria in this zoning ordinance, but he voted the other way. Jon said that is the complete focus of the matter. Does it rise to the level of removal? He said he would have a difficult time removing an elected official and the place to do this is in the voting booth. However he thought it important and the conduct is very serious. Board members change their mind, as he often does, and then you vote that way. That was not the case in this situation. Right up until the final motion was made by Mr. Bartlett, he stated repeatedly that he does not think that those criteria had been met. Jon felt that this was the heart of the matter. Chris Made the Motion that they do not remove Josiah Bartlett from office. Ed Seconded the Motion. The Motion carried Unanimously. Upon the Selectmen being asked by a member of the public to apologize to Mr. Bartlett, Joel said that he agreed with what Jon said. He added that during the hearing he heard Planning Board members admit that mistakes were made, however he found it interesting that Mr. Bartlett did not say this. Chris said that he did not like the process and he was sorry Mr. Bartlett had to go through it. Jon said the process could have been better. He said that when you state your opinion, then vote contrary, that is the problem. Ed apologized to Mr. Bartlett.

Joel called for a recess at 3:26 p.m. The Selectmen reconvened at 3:36 p.m.

Joel stated that this portion of the public hearing was to see if there was just cause to remove Judith Ryerson from the Planning Board per RSA 673:13. Russ Made the Motion to dispense with the hearing. Ed Seconded and the Motion carried Unanimously. Chris offered his apology for the process.

There being no further business before the Selectmen, the meeting adjourned at 3:37 p.m.

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Approved

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Date:  
Respectfully Submitted  
Hope K. Kokas, Administrative Assistant

## RSA 673:13 Public Hearing

September 9, 2013

Josiah Bartlett

Term Ending 2016

## The Statutory Basis for Removal

### **RSA 673:13 Removal of Members:**

- II. The board of selectmen may, for any cause enumerated in paragraph I, remove an elected member or alternate member after a public hearing.
- I. "After public hearing... members of an (*appointed*) local land use board may be removed... upon written findings of inefficiency, neglect of duty, or malfeasance in office".



## The Oath of Office

“... I will faithfully and impartially discharge and perform all duties incumbent on me...”

## How this Hearing Came to Be

Several complaints to the Town Administrator; A review of the record showed there to be cause to take the matter to the BoS

BoS called this RSA 673:13 show cause hearing following notification process in RSA 43:2

This case does not require witnesses: relies upon the public record

## Issue #1 – The Need & Failure to Act

**Application of Bears Nest Trail LLC for a Conditional Use Permit (CUP) (July 10, 2013 cont.)**

**Setting: The PB needed to consider and act affirmatively on 11 criteria (Page 2 Line 25)**

**Bartlett: "This check list, CUP criteria worksheet that we received...says that a Conditional Use Permit shall be granted... Planning Board, after a public hearing, and upon positive findings by the Board for the following criteria and performance standards. And, I don't know, is this, is this and absolute? I mean do, does it have to, do we have to say yes on every one of these? Because I can't say yes on every one of these. Number one, number four and number 1 seven are definite no's. " (Pag2 Line 26)**

**Bartlett: "...if this is the rules, then we ought to follow them." (Page 3 Line 16)**

**Discussion**

**Jensen "So the answer to the question, and the Board seems to agree, that yes, this would have to happen." (Page 4 Line 10)**

## On Criteria #1: Consistent w/Spirit & Intent

**Discussion on the tally on criteria #1**

**Wakefield: "How did you vote Josh?" (Page 30 Line 8)**

**Bartlett: "I didn't. I deliberately didn't."**

**Jensen: "Are you going to vote?"**

**Bartlett: "I am not going to vote on that one."**

**The reason???**

**Bartlett: "I abstained... for the reason that there is a reality here..." (speaking on enforcement) (Page 32 Line 8)**

**Ryerson: "Why don't you just vote then?"**

**Bartlett: "Because I am not going to say that I believe that they passed, that they met those two criteria."**

## On Criteria #4: No Practicable Alternatives

**Jensen:** "All right... Number four, the applicant must demonstrate that no practicable alternatives exist to the proposal..." (Page 30 Line 21)

**Whitney:** "I take it Josh is a no vote?" (Line 29)

**Bartlett:** "I'm abstaining on that." (Page 31 Line 1)

**The reason???**

**Bartlett:** "I abstained... for the reason that there is a reality here..." (expounding on issues of enforcement) (Page 32 Line 8)

**Ryerson:** "Why don't you just vote then?" (Line 22)

**Bartlett:** "Because I am not going to say that I believe that they passed, that they met those two criteria." (Line 23)

## On Faithfully Discharge of Duties

**In a discussion of the Ryerson change to her vote:**

**Ryerson:** "Can I change my vote?" (Page 38 Line 24)

**Bartlett:** "How did you vote? I'll tell you whether or not you can change it." (Line 30)

**Ryerson:** "You lost your chance Josh." (Line 31)

- **Bartlett:** "I know." (Page 39 Line 1)
- **Ryerson:** "Straddling that fence must be very uncomfortable." (Line 2)
- **Bartlett:** "No, I deliberately lost" (inaudible). (Line 3)
- **Ryerson:** "It's a matter of time." (Page 41 Line 6)
- **Bartlett:** "It's not a matter of time, the amount of damage that would be done taking it down.... I wasn't going to vote yes because I did not believe they did..." (Line 7)

## Issue #2 – Failure to Faithfully Apply Required Criteria

- **Jensen:** "We're looking at this ... from the perspective of the application being brought to us before any work has been done." (Page 1 Line 28)
- **Bartlett:** "I don't have any problem with it. We're treating it as a clean piece of property that they went to the Zoning Board first and got their variance, and that's essentially what we're considering at this point. If I may, I do not think in any way the fact that something has already been built should affect our decision at all." (Page 5 Line 21)
- **Discussion on Criteria**
- **Bartlett:** "we could pretend that it didn't happen and I know..." (Page 21 Line 13)
- **Jensen:** "Let's not go there Josh." (Line 15)
- **Bartlett:** "I, but." (Line 16)
- **Jensen:** "I don't want to go there." (Line 17)
- **Bartlett:** "I know you don't want to go there." (Line 18)
- **Jensen:** "No, I really don't want to take the time to go there cuz this is taking enough time as it, as it stands already. Let's, we're talking about this application and where they want to put it. Is there, have they demonstrated there are no practicable alternatives?" (Line 19)
- **Bartlett:** "No." (Line 20)

## Issue #3 – Failure to Apply Juror Standard

### Planning Board Policy

**VII. A.** "...no... member shall participate ...if that member would be disqualified to act as a juror of the same matter in any action at law."

RSA 500-A:12 I

- (d) Has directly or indirectly given his opinion or formed an opinion
- (f) Is prejudiced to any degree regarding the case

## In the Bears Nest Case:

### In a discussion

**Nelson:** "I kinda like your analogy with the, getting a variance to locate your house within ten feet of the lake. If this was an application where they got approval from the zoning board to locate the house within ten feet of the lake and they got their variance to do that, I don't think we would be... require them to go back to the fifty feet (*setback*)..." (Page 23 Line 2)

**Jensen:** "Josh." (Line 14)

**Bartlett:** "I just wanted to clarify... we expressly specify setbacks. So I guess I don't understand the point that we can't tell people where to build a building." (Line 15)

**Wakefield:** "I think the zoning board has already taken care of that." (Line 21)

**Bartlett:** "Oh boy am I sick of the zoning board." (Line 22)

## Cont... In the Bears Nest Case:

### In a discussion on the criteria and the final motion...

**Bartlett:** "I abstained on those two (*Criteria 1 and 4*), um, for the reason that there is a reality here... the alternative really is to deny it and the effect of that would be to either require that it be moved or taken down or some other, or maybe we go to court for six months or a year... I'm furious that this thing went ahead without a permit. I am just about as angry as I can be and I'm very, very angry at the attitude well it gave us the best view..." (Page 32 Line 8)

**Bartlett:** "I guess in further, to further my thoughts on the thing. I think that the Board ought to very carefully consider what happens if we say no. I don't like being held, to have my feet held to the fire." (Page 34 Line 20)

**Ryerson:** "Can they go to the ZBA with this?" (Line 25)

**Bartlett:** Of course they can and the ZBA will give it to them. (Line 26)

## Cont... In the Rock Pile Case

In a Discussion following the ZBA Special Exception & Other Actions:

**Bartlett:** "I think this is a very inappropriate place for that business."  
(3/27/13 Page 25 Line 23)

- **Howard:** "But... we need to make sure that we're addressing the issues that are within our purview." (Line 25)
- **Bartlett:** "Yes, and I think the site plan is within our purview. I think that's what we do." (Line 28)
- **Howard:** "Site plan, absolutely." (Line 30)
- **Bartlett:** "And if we say there's inadequate parking, it doesn't fly. And I don't believe there's adequate parking. I don't believe there's adequate screening and protection for the abutters. (ZBA Variance)" (Page 26 Line 1)
- **Howard:** "So... let's not talk about issues that were in the variances that have been granted..." (Line 10)

## Cont... in the Rock Pile Case

6/12/2013

**Bartlett:** (in a continuing discussing of the ZBA action) "Mr. Chair, we keep referring to this as a retail bakery, but it's a café. It's got seating for people to sit down and eat baked goods and drink coffee. Is that true?" (Page 3 Line 29)

**Howard:** "I believe the issue of the use has been determined by the Zoning Board and we don't have that purview to override that." (Line 31)

**Bartlett:** "But, it's not a bakery, it's a retail, it's not a, I'm having trouble with that." (Page 4 Line 1)



## Cont... In the Rock Pile Case 06/12/2013

- Nadeau: "... comments about, you know, we applied here for a retail bakery and you can't sell coffee at a retail bakery, and you can't have interior seating, we've made it clear through discussions and presentations here and at the ZBA that this is exactly what we mean by retail bakery." (Page 12 Line 27)
- 
- Bartlett: "... I just don't think that a, the kind of use that we're looking at, the intense traffic, long hours, 7 day a week business, is appropriate in this residential neighborhood" (Page 27 Line 27)
- 
- Discussion
- 
- Jensen: "I believe that the business use has been approved by the Zoning Board we're not here to really, to discuss that." (Page 18 Line 1)
- 
- Nadeau: "... the ZBA approved again, the use and the variances for screening, lack of screening, parking, whatever, based on the plan we presented." (Page 13 Line 8)
- 
- Bartlett: "...well, well, alright. I don't know enough about the law... I could be wrong that the Planning Board does have jurisdiction over hours and parking..." (Page 21 Line 23)
- 
- In a discussion of where exterior seating might be allowed (the deck)
- 
- Jensen: "...the table could be right on it." (Page 26 Line 31)
- 
- Bartlett: "Of course, it fits right in with the historic character of the neighborhood." (sarcasm) (Line 32)

I Pose These Questions

### **On Issue #1: Failure to Act**

- 1.) Does a refusal to vote on issues when one acknowledges the criteria was not met a "neglect of duty"?**

### **On Issue #2: Failure to faithfully apply required criteria**

- 1.) Is a continual stray into matters not before the board or within its purview (ZBA):**
  - "inefficient"**
  - "neglect of duty"**
  - "faithfully and impartially discharge (*ing*)... all duties"**

### On Issue #3

Is proceeding to act while freely expressing anger toward the applicant or a dislike for ZBA decisions a violation of the juror standard?

Is it a failure to "... faithfully and impartially discharge and perform all duties..."?

Is it a "dereliction of duty"?

### This Concludes The Presentation

I'll reserve the balance of my equal time for any follow-up rebuttal and one view as to how one should see the answers to those questions just posed.

Rec'd 9/9/13  
1:58 pm

To: Moultonborough Board of Selectmen

From: Josiah H. Bartlett

9 September 2013

To begin with, some housekeeping: I formally and respectfully ask that Mr. Minkow remove himself and disconnect from any part of this matter. He has represented the Planning Board on a number of issues over the years, and as this matter is actually an attack on the Planning Board, it would be a serious conflict of interest for him not to recuse himself now.

First, I thank you folks here and those who are not able to attend this Public Hearing for the personal support and encouragement that I have received; but even more importantly, I thank all you folks who have shown an interest in transparent government.

I would say "good afternoon", but sadly, it is not.

I am sad, because volunteers who give their time to help provide good government are under threat. I, and later today, Judy Ryerson, will be required to defend ourselves, our reputations, and our actions from vague charges made by other elected officials – the Moultonboro Board of Selectmen. They, like all town volunteers, are not expected to be experts. We, as volunteers, are expected to exercise our good, honest judgment without allowing our personal feelings to cloud our decisions. We all rely on paid professionals such as the Town Attorney, Town Administrator, Town Planner and others to provide us with good advice and counsel.

Sadly, it appears members of the Board of Selectmen, have been given bad advice in this matter. And, they followed it!

The charges are spurious and were developed from hearsay complaints brought forth at an illegal meeting. Town employed Administrator Mr. Terenzini has admitted that his memo of 16 July was presented at a "non-meeting" on 18 July. Several Selectmen have admitted that it was discussed and there were at least two decisions voted upon. The first that we know of is the decision to make a "plea bargain" offer to Ms. Ryerson and myself so that we would quietly go away. The second is that they voted, reportedly unanimously, among the four present, to go forward with this hearing if we didn't resign. The deliberations and decisions made at this meeting were clearly illegal and completely at odds with the State of NH "Right to Know Law," RSA: 91-A. These actions at this "non-meeting" were clear violations of this law, a law that a professional Town Administrator would be expected to understand and follow. The meeting was attended by four of our elected representatives, our Board of Selectmen, who also should have known, or at least been advised by our hired Town Attorney, Mr. Minkow, that the actions were illegal. Mr. Minkow was present at the "non-meeting" and there is no evidence that he let our Selectmen know they were violating the Law. No attempt was made to contact me regarding this action or allowing me to be present at this "non-meeting". (*Document: AG RTK Memo*)

This remains a problem for all of those present at that meeting, despite the failed attempt to legitimize the actions by "ratifying" the letters of charges at their Board of Selectmen's public meeting last week.

I was originally told that I was being charged based on evidence and complaints by phantoms who wouldn't be identified because they feared retribution from the Planning Board, but last week we learned, after a Right-to-Know request from my attorney that the only written complaint comes from a Town employee, Mr. Carter Terenzini, who will now be leading the prosecution of Ms. Ryerson and me. This is the same employee who gave the Board of Selectmen the bad advice that the "Right-to-Know" law did not apply to their "non-meeting". (*Documents- JHB RTK request, TA denial, C. Meier request, TA response, TA Memo of 16 July*).

The right to face your accuser is guaranteed by the U.S. Constitution, and is granted in this town if you are a town employee. Evidently, this was not thought to apply to town volunteers elected by Moultonborough residents. My original Right to Know request of 8/12/13, was denied by Mr. Terenzini. It was only after I engaged an attorney to submit a second Right-to-Know request on 9/5/13, that my attorney received Mr. Terenzini's memo to the Board of Selectmen requesting the removal of Ms. Ryerson and me; further, other information requested, such as the minutes of the non meeting, remain undiscovered. Clearly an attempt was made to deny me due process guaranteed by the U.S. Constitution.

The original attempts to get me to quietly resign were not successful. I was privately summoned to a closed door meeting with Mr. Terenzini and Attorney Minkow where they suggested that if I resigned, it would save me the embarrassment of this Public Hearing. Then on 8/14/13, at a special meeting of the Planning Board, the Planning moved and approved the following motion: "The Moultonborough Planning Board does not support removal of two of its elected members based upon the allegations as set forth in the notice of hearing." (Please see Planning Board minutes of 8/14/13).

Well, here we are! I am not embarrassed.

After careful consideration I decided that leaving my seat on the Planning Board would be to ignore my responsibility to the people of this town. The people of this Town have twice elected me to this seat. I believe they wanted to hear my decisions and my reasoning. Further, the closed door scheme smelled strongly of something close to extortion or blackmail. I had done nothing wrong!

The format and procedures of this Hearing are also an issue. I am still wondering if there are other complainants or what the details of the charges are; the letter said: "but not necessarily be limited to". I didn't know the evidence to be used or the witnesses who will be testifying until my attorney contacted them with a Right-to-Know request. As I have said before, this was after my request had been denied. We are told that the Members of the Board of Selectmen and the Town employed Administrator are not only the accusers, but also the prosecutors, the witnesses, the jury and the judges. This seems to fly against due process.

Now, on to the charges:

**Charge #1.** Failure to act: I am charged with abstaining from voting in the straw poll regarding the conditions under consideration for the Bear's Nest Trail Conditional Use Permit.

Somehow, someone has decided, contrary to any Rules of Order, that I had no right to abstain; that is, they are saying I had no right to say that I choose not to vote (or perhaps had not formed an opinion at the time of the vote). I am charged with not recusing myself and thus allowing someone else to vote in my place. It is charged that I should have done this because, by not voting, I would be showing conflict of interest or bias. It is also alleged, that, by this act, I "refused to participate" and neglected my duty.

Not true!

If abstaining was the same as admitting bias or conflict, many more people than I would be in trouble. Take a look at the voting in the U.S. Congress or the General Court of N.H. If there are special rules that require that all Planning Board Members vote in these straw polls, I guess I missed them. There have been some folks who have suggested that I should have been removed and replaced because I chose to abstain. So.... If the chair of a committee or board doesn't like a person's vote, the chairman should replace that person with someone who will vote the way the chairman wants him to?

I don't think so!

If the charge is "refusing to participate," I would suggest that the accuser listen to the tapes or read the minutes of the meeting in question. I am quoted quite a number of times in the official minutes.

**Charge #2.** Failure to faithfully apply required criteria: It is said that "Throughout the hearing" I failed to follow the "de novo" ('as before') standard; this means that we were told that we should pretend that the application was for a proposed development and an un-built building. I considered the issue and acted based upon the reality that the building was already there. I am also charged with criticizing the Zoning Board and the enforcement process.

As to the first part: True!

I find it very hard to deny reality. The building was built and after hearing the facts, I said in the Hearing, and I still believe, that it was to better for the environment and the Town if the Planning Board did not order the destruction of the building.

Also, where is the de novo standard "required"? Who "required" it? I could not find it in Planning Board Rules. It may help the people hearing this case to be reminded that my vote on the motion to approve the Conditional Use Permit for Bear's Nest was the same as Selectman Mr. Wakefield's and followed the written "Staff Recommendations" prepared for the Zoning Board and the Planning Board by our Professional Town Planner, Mr. Bruce Woodruff. (*Document – "Staff Memo ZBA 14 June 2013"*)



As to the “disparaging remarks” that I am said to have made: Is it not the duty of a Board member to point out, emphatically if necessary, if they see what they believe to be failures of town departments or boards to do their jobs properly? How else are improvements in procedure or process to be made?

The word “disparage” is a pretty strong word. I would suggest that my intent was to offer constructive criticism, not to “disparage.”

**Charge #3.** Failure to faithfully apply the juror standard.... and recuse myself.

Not true!

If one reads the Statute regarding conflicts and the recusal process (RSA 673:14), it requires that the Member of the Board make the decision – even when the other Members vote to ask for that Member’s recusal. I had no “personal or pecuniary interest” that would affect my decision.

Additionally, it is charged that, at another hearing, that is, Rock Pile Real Estate, LLC, I acknowledged my friendship with an abutter and I should have recused myself.

I think that if friendship with abutters or applicants was a reason for recusal, then there would be very few cases heard by folks from this small town. (*Document – “I Recuse Myself” by C. Christine Fillmore, Staff Attorney for NH Municipal Association*).

Also, a charge is made that I “spoke disparagingly of the Zoning Board of Adjustment”. That is subject to interpretation. I would say it was constructive criticism.

I answer that charge the same way; I repeat the statement that I made before: Is it not the duty of a Board member to point out, emphatically if necessary, if they see what they believe to be failures of town departments or boards to do their jobs properly? How else are improvements in procedure or process to be made? Does the Board of Selectmen really want to remove any “Whistle Blowers?”

**Charge #4.** Failure to meet my fiduciary responsibilities. I am charged that by abstaining in a straw poll, showing bias, and disparaging the zoning ordinance and the organizational units, charges that I have already refuted, I have exposed the Town to “substantial legal risk” in the defense of any appeal that might be filed.

Not True!

Any decision that any Board makes is subject to appeal. Nothing I have done creates an extraordinary situation for the Town. I would remind people that I voted with the Majority in the Bear’s Nest Hearing, the vote was 4-2 in favor of granting the Conditional Use Permit, with the Selectman’s Representative to the Planning Board, Mr. Wakefield, also voting in the affirmative. There have been many Zoning Board and Planning Board decisions overturned on appeal, and I would suggest that if the Selectmen or some “phantom” didn’t like the decision, they could surely have asked a court to overturn it. As a matter of fact, that seems to be what our Town employed Administrator Mr. Terenzini had suggested in his secret

memo for the “non-meeting”. I say seemed, because only those present can really know what was proposed and why this course of action was not followed.

Ironically, I could suggest that the actions by the Board of Selectmen and Town employee Mr. Terenzini have exposed the Town to “substantial legal risk” with this Hearing.

Violations of the Right to Know Law, (RSA 91-A), such as the “non-meeting” that the Board of Selectmen held to formulate the charges against two dedicated Planning Board volunteers, can also bring court actions. Unjust removal of elected members is often overturned in court, also exposing the Town to legal risk, particularly when historically the courts do often order reimbursement of legal costs to the successful appellant.

**I conclude with these statements:**

First, I think that it has been shown that you, as Members of the Moultonborough Board of Selectmen, have been given and voted to follow some very poor advice in pursuing these complaints in the way that you have. I fear that this will have a very chilling effect on the recruitment of people who are willing to serve this Town. We need good, dedicated people of differing perspectives who will give of their time and energy to use their minds and voices in public service.

Second, I ask that you consider carefully Ms. Coppinger’s letter to you regarding her personal views on this matter. Her letter spells out, very clearly, the issues in this case and affirms the actions of Judy Ryerson and myself as neither neglectful of duty or anything near “malfeasant”. (*Document: J. Coppinger Letter to BoS 4 Sept. 2013*)

Third, even if I am exonerated, receive a public apology and am reimbursed for my legal expenses, this will have some very bad long term effects on the character of Moultonborough and the willingness in the future of people to volunteer for service to the citizens of this town. Clean and transparent governance has suffered. I am embarrassed for our Town.

None of the alleged complaints, now refuted, rise to the level of “neglect of duty or malfeasance.” They certainly are not grounds for removal of an elected official.

I ask for exoneration of all these charges and removal of any cloud on my service and my reputation.