

TOWN OF CONCORD PLANNING BOARD
Town Hall

November 1, 2022
7:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Karl R. Lux, at 7:00 p.m.

ITEM #2: Roll Call

Present:

Karl R. Lux, Chairman
Bruce Luno
James Jozwiak
Julie Zybert
Raymond Hilliker
Michael Cochran

Also Present:

Darlene Schweikert
Clyde Drake, Town Council Liaison

Not Present:

Joseph Edbauer

ITEM #3: Citizen Participation

There was no one for Citizen Participation.

ITEM #4: Comments from Council Liaison Drake

Councilman Drake advised the following:

- a) The Town Board is going through the budget process and the Public Hearing will be held November 10th. The budget has not yet been approved by the Board but it does contain a 3% raise for the Planning Board Members. He noted that this does not keep up with the inflation rate but the members were thankful for the increase.
- b) The Town Board has \$20,000 in the budget to try to get the Town Code Books updated. This has not been done since 2005 and the Planning Board will be asked to start reviewing the Code. General Code representatives will be available to answer questions as the process goes on.
- c) There was no update on Kevin Thie, the wood guy.

ITEM #5: Approval of Minutes

a) September 6, 2022– M. Cochran made the motion, seconded by J. Jozwiak to approve the Minutes as presented. All in favor. Carried. The October 4, 2022 meeting was cancelled.

ITEM #6: Business from the Members

- a) J. Zybert asked if there was any update on neighbor adjacent to the

homeowner on Trevett Road that had a campground. There was no update; CEO Roberts awaits direction from the Town Attorney.

b) J. Jozwiak noted that there was an article in the Town Topics. The article contained options available for towns in situations where towns have difficulty finding individuals willing to sit on the Planning or Zoning Boards.

c) B. Luno asked Liaison Drake if Grottanelli at 11847 Summit Lane was cooperating with the Town with regard to his Hog Holiday event. The owner had been directed by the Court to submit documentation (including proof of insurance) to the Town but he has not been cooperative.

d) Town Clerk Schweikert advised the Board that resident Michele Burke 10219 Trevett Road called to determine the process to put a shed in the front of her property to be used as a wine tasting room. Mrs. Burke noted that she just completed a project like this, Foxhole Farm Winery, in the Town of Boston at 8325 Cole Road. The Board will put Mrs. Burke on the Agenda for December; she should bring in any drawing/sketch of the property noting placement of the shed and dimensions from property lines and the road and provide the Board with a detailed description of what she would like to do. This parcel is currently zoned R-Ag. Town Clerk Schweikert will contact Mrs. Burke.

ITEM #7: Motion of Adjourn

J. Zybert made the motion, seconded by R. Hilliker, to adjourn the meeting at approximately 7:37 p.m. All in favor. Carried.



Darlene G. Schweikert
Planning Board Secretary

Frequently Asked

Planning & Zoning Board Vacancies

Some towns have difficulty finding individuals willing to sit on planning and zoning boards when vacancies arise. (Although working in town government can be extremely rewarding, this author supposes that some people prefer to not be yelled at – I mean, have residents “care loudly” to – them during public hearings). So what are some options available for towns in this situation?

1. Keep calm and carry on with vacancies

Under Town Law § 64, the town board has the authority to fill vacancies, but there is no set timeframe for them to do so, and the wording of the statute is that the town

board *may* fill vacancies not that they *must*. Therefore, the town board can opt to not fill a vacancy at that time, and planning boards and zoning boards can continue to operate with vacancies so long as there is a quorum. This may cause some headaches if there is a tie vote or other vacancies arise; nevertheless, continuing to operate the planning board or zoning board with vacancies can be an option for some towns.

2. Abolish the planning board and transfer its functions to other boards

Many people are surprised to learn that a town is not required to have a planning board. Under Town Law § 271, the town board has the authority to create a planning board by local law, but it doesn't have to. Also, the planning board only has those responsibilities that are delegated to it by the town board; there's no statute that says “the planning board does this,” although typical functions include things like site plan review and special use permits. Because the planning board has no statutory function, and the fact that the board is a creation of the town board, the town board also has the option to get rid of the planning board altogether (see *Conklin v Town Bd. of Town of Warwick*, 59 AD2d 532 [2d Dept 1977]). The law is silent on how to do this; however, because planning boards are created via local law, under the doctrine of legislative equivalency, abolishing the board should also be done via local law. A quick note in case anyone's mind went there – abolishing the board and immediately



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reestablishing it in an attempt to get all new people on the board is not cool – a court said so (see *Seifried v Town of Clarkstown, Rockland County*, 23 AD2d 795 [2d Dept 1965]; Op St Comp 78-585). Also, the town has no authority to abolish the ZBA.

If the town does abolish the planning board, it has to transfer the functions that were assigned to the planning board to other boards. For example, the planning board might have been in charge of making determinations on special use permits, and the town could make a body like the ZBA responsible for those, or it might have the town board itself review land use applications.

3. Decrease the number of seats on the board

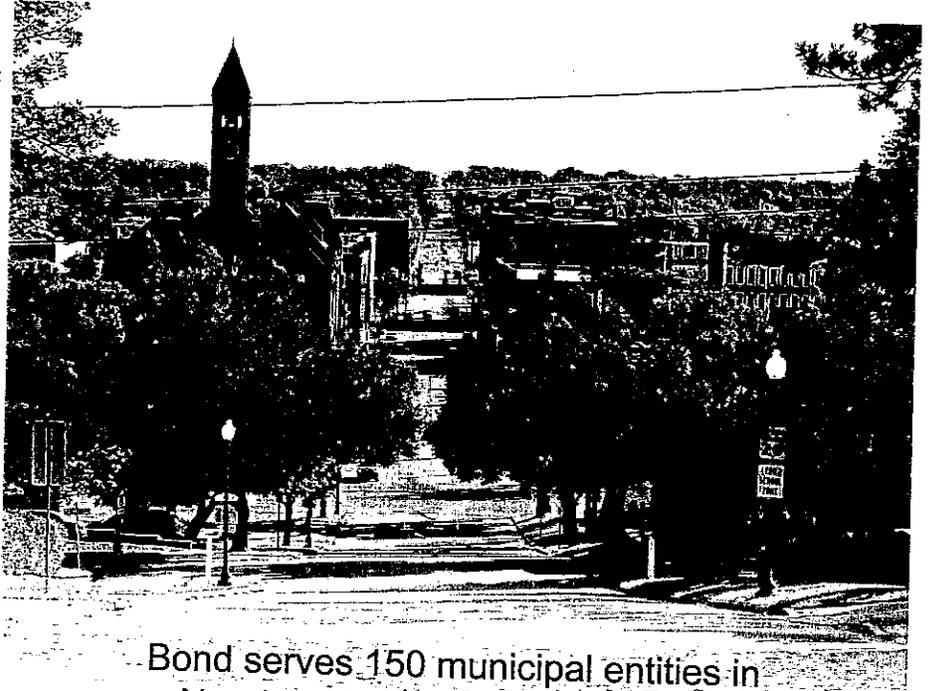
Town law § 271 says that a planning board can have between five and seven seats, and under Town Law § 267, the ZBA can have between three and five seats. If your town has a seven-member planning board and you're having difficulty filling those positions, consider reducing the number to five. The town could also reduce the number of positions on the ZBA but, a word to the wise, three-member boards are susceptible to quorum issues, so you want to take that into consideration before taking action. Also, with three-member boards, you need to be particularly mindful of Open Meetings Law because a conversation between two board members could become a meeting if you're discussing town business.

Should you decide that decreasing the number of seats on the board is the right move to make, the town can do that by adopting a local law. The decrease in membership would not go into effect immediately, two people would have to term out. In other words, if you have a seven-member board and the town adopts a local law to decrease the board to five, when the next person's term on the board ends, that seat no longer exists. Then, you would need one other person to term out and then the town would officially have a five-member board. **You can't use decreasing the board as a way to truncate someone's term.**

Some people might be wondering "well can the town combine the planning board and zoning board?" Ehhhhhh, there's not a clear legal answer on this, but this author will give you her unsolicited opinion – combining the two boards could get legally and administratively messy, and an easier approach would probably be to abolish the planning board and transfer the functions to the ZBA or town board. In addition to the

confusion that could arise regarding when the combined board is operating in its planning board capacity or its zoning board capacity, there's also the issue of compatibility of office. If the town combines the planning board and zoning board, the people who sit on that board will hold two offices – planning board member and zoning board member. Those two positions are incompatible if your code is written in a way where the ZBA has review authority over planning board issues or vice versa.

As always, if you have any questions on this or other legal issues, you can reach us at 518-465-7933 or email your inquiry to info@nytowns.org. □



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