

THESE MINUTES ARE SUBJECT TO APPROVAL AT THE NEXT BOS BOF MEETING

TOWN OF CHESTER, CONNECTICUT
BOARD OF SELECTMEN
BOARD OF FINANCE
SPECIAL JOINT MEETING
November 1, 2021
ZOOM Meeting and Chester Town Hall

CALL TO ORDER

The meeting was called to order at 7:06 p.m. In attendance included First Selectwoman Gister, Selectwoman Janecek, Selectman Englert, Virginia Carmany, BOF Chairman, John O'Hare, Rick Nygard, Andrew Gardner, Jon Joslow, Mike Jordan, Chris Pollack, seated for Jennifer Rannestad, Susan Wright, Attorney Roberts and Terri Englert.

Jon Joslow requested that the order of the agenda be amended to move agenda item #4 "Discussion and Clarification of Process to fill Alternate Vacancies on the BOF" to above agenda item #2 "Role, Representation and Discussion of Process for Obtaining Legal Advice/Opinions from Chester's Town Attorney". Virginia denied the request reported that this is a "Special Meeting" and she and Lauren developed the agenda. Lauren reported that while this is a "Special Meeting" and items may not be added to the agenda, it would be permissible to "rearrange" the order of the agenda.

Jon expressed a desire to understand the "chain of command" and establish the authority relative to the process prior to discussing all of the aspects.

Jon Joslow made a motion to amend the agenda and move agenda item #4 "Discussion and Clarification of Process to fill Alternate Vacancies on the BOF" to above agenda item #2 "Role, Representation and Discussion of Process for Obtaining Legal Advice/Opinions from Chester's Town Attorney". Charlene Janecek seconded the motion. Discussion followed:

Lauren reported that in developing the agenda with Virginia, she felt that having Discussion and Clarification of Process to fill Alternate Vacancies on the BOF prior to Role, Representation and Discussion of Process for Obtaining Legal Advice/Opinions from Chester's Town Attorney was appropriate, but after further discussion with Virginia, Lauren commented that they are both separate questions and the order of discussion does not really matter.

Virginia strongly feels that the authority for the BOF to hire an attorney to support the BOF is within the BOF's purview and it makes sense especially if there is contention between the BOF and BOS. She favored keeping the order of the agenda as posted.

Jon Joslow withdrew the motion.

DISCUSSION AND CLARIFICATION OF PROCESS TO FILL ALTERNATE VACANCIES ON THE BOF
REVIEW OF ORDINANCE AND STATUTES PERTAINING TO APPOINTMENTS TO FILL VACANCIES ON
VARIOUS BOARDS AND COMMISSIONS

Lauren, after discussion with Attorney McDonnell (who discussed the matter with Attorney Bennett, who is now retired), determined that Attorney Bennett, when offering his opinion in 2018, determined that since the BOF alts. were created by an Ordinance, not per Statute, the alternates, should be treated

as a separate board than the BOF, for purposes of appointments. The State Statute is somewhat unclear; however, the Town Ordinance is clear as to the initial appointment of alternates but silent on filling alternate vacancies.

Virginia commented that Attorney Bennett's interpretation is incorrect. BOF alternates are members of the BOF, they are not a separate Board.

Attorney Roberts reported that the ability to have alternates on the BOF is permitted via Statute. The 1976 Town Ordinance granted to the BOS the power to appoint the alternates until the next election. Attorney Roberts' interpretation is that the Ordinance only granted the BOS the appointment power for the initial set of alternates and after that, the BOF fills its own vacancies. There is a statute that provides the BOS the ability to appoint an alternate, only if the BOF does not do so within 30 days.

Lauren requested clarification relative to boards filling their own vacancies (if there are no alternate board members) and the process used in other towns to seek volunteers to fill board/commission vacancies.

In response to Lauren's question, Attorney Roberts reported that in his experience, many times, individuals who lost at a prior election may still be interested in serving on a board. In addition, the town's RTC or DTC provide recommendations for appointment and notices on town websites or newsletter have been effective. Also, some towns place a list of vacancies on each BOS agenda.

Jon Joslow questioned Attorney Roberts' interpretation and commented that the spirit or intention of the Ordinance is that the BOS appoints BOF alternates. Attorney Roberts replied that the Ordinance is silent and that Statute gives the authority to appoint alternates to the BOF.

Virginia reported that the Town established an Ordinance to provide for alternate members of the BOF. That Ordinance, unlike Ordinances/Statutes pertaining to regulatory boards; i.e., P&Z, ZBA, etc., specifically states that the BOF fills its vacancies.

Lauren stressed the importance of communicating to the public, not just the DTC/RTC, that there are openings on Boards/Commissions to allow unaffiliated individuals the to opportunity to get involved and not be shut out of the process.

John O'Hare outlined the protocol for appointing individuals to vacancies from surrounding towns (Madison and Westbrook). Those towns go to the DTC or RTC for candidates to fill vacancies for the first 30 days of the vacancy. If no candidate is identified, the BOS can do a search for a candidate. All candidate names are given to the Board Chair and the Board interviews candidates. If the BOF cannot fill a vacancy in 30 days, the BOS may do so.

Virginia reiterated that the Statute is the law and the Statute (law) states that the BOF fills vacancies (in the first 30 days). She continued that it falls under the BOF to determine a process to fill said vacancy on the BOF, not the BOS. If the BOS wishes to develop a policy to fill a vacancy in the event that the BOF fails to do so in 30 days, the BOS may do so.

Chris commented that the BOF alternates, in her opinion are not a separate Board from the BOF and that it is the BOF's purview, in the first 30 days, to fill a board vacancy. All interested parties should be

under consideration for appointment. If there is no appointment within 30 days, perhaps a review process can be established.

Andrew commented that it may be helpful to collect all recommendations from the DTC, RTC and work with the BOS to determine the proper protocol for appointment. It appears that the two attorneys have different interpretations but are not necessarily “hard and fast” on their original opinions.

Rick agreed that alternates are members of the BOF and that the BOF, during the first 30 days, has the authority to fill vacancies. If after 30 days, the BOS can have input into getting candidates, especially unaffiliated people not associated with a committee. We need to work together to figure out a process.

Charlene commented that the BOF has the authority to appoint within the first 30 days and the BOF should have input from the town.

For clarification purposes, if a voting (full member) of the BOF leaves during their term, the BOF fills the vacancy until the next election.

Virginia requested clarification on how Attorney Bennett could indicate that the way to fill BOF vacancy is through an Ordinance that has a title, “Creating” an alternate to the BOF. We had 3 candidates to fill an alternate position. The hand book for elected and appointed officials says you can put someone up from another party (it does not state anything about minority representation). We had 3 candidates but none could serve because it had to be an R. Then the question was, how did the BOS have the authority to fill a vacancy when a Statute states the BOF has that authority and Attorney Bennett was referring to an Ordinance relative to CREATING an alternate. Because Attorney Bennett’s response did not provide sufficient clarification, the BOF moved forward with a memo from Attorney Roberts. As reported above Attorney Roberts’ interpretation is that the Ordinance only granted the BOS the appointment power for the initial set of alternates and after that, the BOF fills its own vacancies. There is a statute that provides the BOS the ability to appoint an alternate, only if the BOF does not do so within 30 days. Virginia continued that it is logical for the BOS to step in, if after 30 days, the BOF cannot fill the vacancy.

Lauren reported that the Hand Book and/or Ordinance can be amended for clarification purposes.

In summary, it was agreed that by Statute, the BOF fills vacancies and the individual appointed serves until the next election. If they wish to keep their “seat” they must run at the next municipal election. In addition, public notices, DTC, RTC, newsletter, social media, etc. will be used to identify qualified individuals. If the BOF has not filled a vacancy within 30 days, the BOS will work with the BOF to appoint. It was also agreed that alternate members of the BOF are part of the BOF and not a separate Board.

ROLE, REPRESENTATION AND DISCUSSION OF PROCESS FOR OBTAINING LEGAL ADVICE/OPINION FROM CHESTER’S TOWN ATTORNEY

Lauren, after consultation with Attorney McDonnell, reported that the Town Attorney represents all of the town with the exception of regulatory boards (unless there is a conflict or litigation between departments/commissions, etc.) and should be consulted prior to going to an outside attorney.

In this instance, Attorney Bennett provided generic information several years ago regarding appointments to boards. Before requesting an opinion from Attorney Roberts, Attorney Bennett should

have been consulted to provide clarification. Lauren expressed concern that the BOF, unlike other non-regulatory Boards/Commissions in Chester, has funds budgeted for legal.

Lauren agreed that there may be instances where a second opinion from an attorney is necessary; however, in this case, the BOF got a second opinion without ever discussing the first opinion that Attorney Bennet supplied. The process for going through the First Selectman for legal is because legal is part of the Selectman's budget and the First Selectman needs to know how money is being spent. It is not to be the "gatekeeper".

Chris commented that it is appropriate for the BOF to have a budget for legal to be used as they deem appropriate and that it is important that the BOF have some "independence" for checks and balances purposes.

Lauren stated that her concern was that this budget could be used to get another opinion if an individual does not like what the Town Attorney said. The Town Attorney represents the entire Town, not just the First Selectman's office. In this particular instance, Attorney Bennett never got asked this specific question about BOF alternates. We had an opinion from him about generic appointments. Then, all of the sudden, we had an opinion from Attorney Roberts that contradicted that but Attorney Bennett never had an opportunity to weigh in on the specific question.

Mike Jordan commented that having seen how the legal budget can be misused, it should be eliminated from other town offices (non-regulatory Boards).

Andrew commented that it would be difficult to challenge the Town Attorney if one is not an attorney and that it is appropriate that the BOF have a legal budget.

Jon Joslow commented that the Town Attorney is for the entire town. If the BOF has questions regarding finances, they retain a Bond Counselor. He reported that a protocol is necessary and general legal questions should be forwarded to the Town Attorney. If there is a concern that the Town Attorney is not "loyal" to the Town, that is another matter.

Mike commented that the Town Attorney is "quarterback" and "specialist" attorneys should be consulted as necessary.

Virginia stressed the importance of the BOF's ability to speak confidentially with an attorney without having to divulge the nature of the question to the First Selectman. This specific issue about BOF vacancies has been on the table since March and we are getting together 7 months later to discuss it. Attorney Bennett referenced an Ordinance, possibly incorrectly, 2 years ago. She felt that a \$500 legal budget in the BOF's budget was appropriate. In past years, the BOF could not speak to the Town Attorney without going through BOS. This did not build trust that we would get a straight answer from the Town Attorney.

Lauren requested that Virginia expound on the BOF needing confidentiality with the Town Attorney against the First Selectman.

Virginia replied that one question asked of Attorney Roberts was have other BOFs retained their own attorney and is it relevant. Attorney Roberts' response was that other town BOFs have retained an attorney in various situations. This occurs most commonly when differences of opinions arise between

the BOS and the BOF. It can also occur when the Town Attorney may not have specialized knowledge on a particular matter. Virginia continued that the BOF needs to have the ability to raise questions with an attorney confidentially when there is an issue between the BOF and the BOS.

Lauren replied that the question is, do you need to go to the town attorney first? Doing so would have avoided the past several months of “spinning”. The base question is should the Town Attorney be consulted before outside council is obtained. Attorney Roberts’ rationale used in other towns for a BOF using an outside attorney was not the case here. Had the specific question regarding BOF appointments been posed to Attorney Bennett, this matter could have been resolved months ago. Lauren expressed concern that additional town funds were used to argue something that didn’t have to be an argument in the first place.

Mike commented that as a tax payer, it is not right for boards to go “cloak and dagger” against each other without going to Town Attorney; this leads to the misuse of funds and vendettas. Jon Joslow agreed and added that the duty of the Town Attorney is to represent the Town’s interest. If the BOF has issue, document it, and if it is not getting done right, then go to an outside counselor and potentially contact the State.

OTHER RELATED BUSINESS REGARDING THE ABOVE ITEMS, IF APPLICABLE

Virginia requested that the Hand Book for Elected Officials be reviewed and updated as necessary. All agreed.

AUDIENCE OF CITIZENS

Susan Wright commended the Boards on this evening’s good, constructive discussion. It was not a waste of time and she learned something new.

ADJOURNMENT

On a motion made and duly seconded, the meeting unanimously adjourned at 8:40 p.m.

Respectfully Submitted,

Suzanne Helchowski
Clerk