

REVISED  
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, Kris Pollock, seated for Jennifer Rannestad, Susan Wright, Attorney Richard Roberts and Terri Englert.

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 Former Town 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, while Chester ordinances that created alternate members of certain boards (P&Z, ZBA, etc.) stipulated that subsequent vacancies on such organizations would be filled by the Town's selectmen, no such stipulation was included in the 1976 ordinance that created alternate members of the Board of Finance.

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.

Several points were made concerning the statutes and ordinances:

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.

Kris commented that the BOF alternates, per statute, 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 agreed with Kris and 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 handbook for elected and appointed officials says you can put someone up from another party (incorrectly; it does not state anything about requirements for minority representation). We had 3 candidates but it seemed that none could serve because it had to be a Republican. 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 Handbook and/or Ordinance can be amended for clarification purposes.

The joint boards reached a consensus, summarized as follows:

The joint boards agreed on the reading of State Statutes under Title 7 – Municipalities; Town Boards of Finance: 7-340 – Towns may establish a Board of Finance; 7-340a – Alternate Members of Boards of Finance and 7-343 – Filling of Vacancies; and, under Municipalities: General Provisions; 7-107. Vacancy appointments by Selectmen and, in conjunction with the Chester Town Ordinance – Creating Alternate Members to the Board of Finance. All part of the record and attached to the agenda.

- The Board of Finance is one Board with full and alternate members - 7-340 and 7-340a;
- The Board of Finance has the legal right to fill vacancies – 7-343;
- The Selectmen have the legal right to fill vacancies on any board if, after 30 days, the Board of Finance has failed to do so;
- The Chester Town Ordinance creating alternate members to the Board of Finance covers only the initial setup for alternate members and does not cover subsequent vacancies; and

- The Board of Finance and Board of Selectmen will work together to determine the most qualified candidates from the Democratic Town Committee (DTC), the Republican Town Committee (RTC), the Common Ground Party and other State parties and establish how to reach out to unaffiliated members of the Town.

The boards did not vote on these points because “we would just be following the law” as we are obligated to do.

#### 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, Lauren indicated that Attorney Bennett should have been consulted to provide clarification. She expressed concern that the BOF, unlike other nonregulatory 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”.

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.

Kris and Andrew expressed their belief that the Board of Finance should have a budget for legal expenses that might arise when there were issues between the two Boards that required the use of lawyers on both sides to reach a settlement. Mike and Jon indicated their view that legal issues should in all cases be dealt with by the Town Attorney

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.

No vote or other resolution was made or taken on this item.

#### 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

Revisions made by Rick Nygard, Chair and John O'Hare Vice Chair, Board of Finance