

**North Hampton Public Library
Board of Trustees
Monthly Meeting**

Date: August 14, 2019, 6:30 pm
Location of Session: Town Hall
Meeting Recorded by Channel 22

Attendees:

Chair: Susan Leonardi
Treasurer: Jacqueline Brandt
Secretary: Kathleen Kilgore
Library Director: Susan Grant
Alternate: Open Position

Disclaimer – These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91-A:2, II. They will not be finalized until approved by majority vote of the Board of Trustee.

The intent of these minutes is to provide a summary of the essential meeting content and not a transcription.

A recording of the meeting can be found at: http://www.townhallstreams.com/towns/north_hampton_nh, and a DVD recording is available at the North Hampton Town Administrative Offices, 233 Atlantic Avenue, North Hampton, New Hampshire 03862.

Board of Trustees Monthly Board Meeting

1. Administrative

a. Call to Order in Public Session

The meeting was called to order by Susan Leonardi at 6:34 pm

b. Approval of Meeting Minutes:

Listening Session Minutes – June 27, 2019

Motion to accept meeting minutes

Made by Kathleen Kilgore

Seconded by Jacqui Brandt

Vote: 2 -0- 1 X.

JUL Regular Meeting of BOT Minutes – July 10, 2019

Motion to accept meeting minutes

Made by Jacqui Brandt

Seconded by Kathleen Kilgore

Vote: 3 - 0.

Work Session Minutes – July 17, 2019

Motion to accept meeting minutes

Made by Kathleen Kilgore

Seconded by Jacqui Brandt

Vote: 3 - 0.

Work Session Minutes – July 25, 2019

Motion to accept meeting minutes

Made by Kathleen Kilgore

Seconded by Jacqui Brandt

Vote: 3 - 0.

- c. Library Director's Report
Please see attached report for details provided

Liz Herold has been promoted to Assistant Director of the Library

- d. Youth Librarian Report
Please see attached report for details provided

We will have the rented Maker Crate until October, so Connie will be using it periodically thru the beginning of the fall season until it has to be returned.

- d. Treasurer Report
Operations for the month and review of year were within budget
Paid for some programming out of our non-appropriated account. Balance remains healthy / robust.

Discussion on reviewing cost of on-line services, usage and adjustments needing to be made.

*Motion to accept the Library Director's Report, Youth Librarian Report, and Treasurer's Report as presented tonight
Made by Jacqui Brand
Seconded by Kathleen Kilgore
Vote: 3 - 0.*

2. Old Business

- a. Library Strategic Plan – Community Analysis: Listening Handout of the plan to review.

We need to work on this, it has been set aside for a bit and we need to work on it. The suggestion we divide it up for homework and then schedule a workshop to put it all together, choosing our goals and then decide how to implement them.

Homework:

- Come up with a goal?
- How do you implement the goal?
- How do we measure the progress?

Homework will be due for the work session scheduled for Wednesday, August 28, 2019 at 5:30 at Library.

Discuss moving forward on the Community listening project / process.

- b. Select Board meeting 7/22 follow up
Kathleen Kilgore recuses herself, sits in the public section of the meeting room

Sue Leonardi sent a letter to the Select Board and it was read in their meeting on Monday. Mr. Miller presented a proposal for a new library building on The Homestead Property so will be discussed in another 2 weeks at a Select Board meeting.

Jacqui confirms that she is still in support to our current plan and is hopeful that the Select Board will take us seriously and the needs of the community and the community's desire to move forward with our plan.

3. New Business

a. FY21 Budget –

1. Creation of a Merit Pool

Suggestion of a \$ 6K for the pool's creation

Would like to reward staff hard work

Preliminary suggested compensation increase is at about 4%

Healthcare – Actual increase was 13%, we only budgeted 10%

Accounts for 20% of our overall budget.

Connie may be retiring in May 2020. We will need to discuss the plan going forward.

Budget due to town 9-13-2019. Will continue to re-work the budget towards finalization.

b. CIP submission and update

Jacqui provided update on the committee's work and they have added 2 additional meetings to the schedule because the town is doing some additional work and submissions. CIP has requested that we come up with a more solid number of what we will be asking for to build / renovate according to our plan.

c. Trustee Alternate

Sue Leonardi confirms we have received an email from Emily Creighton dated August 6, 2019 detailing her interest and qualifications in becoming an Alternate Trustee.

Motion: We nominate Emily Creighton to the position of Alternate Trustee for 1 that will Run thru March 2020.

Made by Kathleen Kilgore

Seconded by Susan Leonardi

Vote: 3-0.

Motion: We forward to the Select Board for consideration and approval that Emily Creighton presented expressing her credentials and interest in serving as Alternate Trustee for a year's term which will expire in 2020 and accompanying our vote to approve her.

Made by Kathleen Kilgore

Seconded by Susan Leonardi

Vote: 3-0.

d. Foundation update

Letter received Kelly Parrott notifying the Library team (staff, Friends and BOT) that they have contracted with Sandra Mitchell to assist with the fundraising campaign. They are currently conducting a feasibility assessment.

e. September Newsletter submission

The deadline for the fall community newsletter article is September 17, 2019.

4. Public Comment

Cynthia Swank –

Extends an invite to

Thank you for everyone's effort at Old Home Day

Raised money from bake good sales and handed out free books from the

Beach Book Buggy

Liz Herold –

Thank you for the promotion and to Susan Grant for the opportunity and

mentoring

5. Correspondence

Written Correspondence from Emily Creighton

Written Correspondence from Larry Miller

6. Next Meeting Date / Adjournment

The meeting was adjourned by Susan Leonardi at 7:33 pm.

Appendix of Additional Documents to Meeting Minutes (for reference):

Agenda

Librarian Report

Youth Librarian Report

NHPL Strategic Plan - 2018

Letter to Select Board from Chair, Board of Trustees dated 7-30-2019

Written Correspondence from Kelly Parrott, NHPLCC Foundation

Written Correspondence from Emily Creighton dated 8-06-2019

Written Correspondence from Larry Miller dated 8-13-2019

North Hampton Public Library
Board of Trustees
Regular Meeting
14 August 2019, 6:30 pm
Town Hall

Chair: Susan Leonardi
Secretary: Kathleen Kilgore
Treasurer: Jacqueline Brandt
NHPL Director: Susan Grant
Alternate: TBA

Agenda

1. Administrative
 - a. Call to order
 - b. Approval of Meeting Minutes- Work sessions July 25th, 2019 & July 17, 2019.
Regular meeting July 10, 2019 and Listening session June 27, 2019
 - c. Library Director's Report
 - d. Youth Librarian Report
 - e. Treasurer Report
2. Old Business:
 - a. Library Strategic Plan – Community Analysis: Listening
 - b. Select Board meeting 7/22 follow up
3. New Business
 - a. FY21 Budget - creation of merit pool
 - b. CIP submission and update
 - c. Trustee Alternate
 - d. Foundation update
 - e. September Newsletter submission
4. Public Comment
5. Correspondence
6. Next meeting date/Adjournment

Librarian's Report
August 14, 2019
Susan Grant, Director

Operations

- We had the carpets cleaned by our cleaning company FCServices who did a great job.
- Steve from Lamprey Energy gave us a quote for a replacement boiler for the CIP Committee, which was \$10,405 though the price is only guaranteed for 14 days.
- We now have bumper stickers to sell and distribute to promote the library. The Trustees sold them at Old Home Day along with the Commemorative ornaments from 2013.
- We received a large donation of audio books that we are working on integrating into our collection without overloading our shelves all at once.
- We are switching to once a month (every 4 weeks) dumpster trash pickup due to the high cost of every 2 week pick up. We are also locking the dumpster so it doesn't overflow and we incur extra charges. The savings could be over \$100 per month if it works out.

Staff

- We have scheduled a workshop in October by HealthTrust for staff on dealing with stress in the workplace.

Financial

- Operating Account TDBank reconciled ending balance 7/31/2019 is \$47,139.45
- Non-appropriated Funds Account TDBank reconciled ending balance 7/31/2019 is \$88,911.18
- Peoples Bank CD#1 143,660.44 as of 6/30/2019
- Peoples Bank CD#2 \$96,056.62 as of 6/30/19
- Peoples Bank Checking Account \$10,083.50 as of 7/31/19.
- Capital Reserve Fund as of 7/31/2019 \$706,153.01.

- I sent a report to the NH Charitable Foundation with photos of some of the programs we were able to offer because of the Dan Brown Charitable Foundation grant we received this past year. Their representative Lisa Detweiler was very pleased and said she would share the info and photos with him at their next meeting.

Statistics

- Total circulation was down 8% over July of last year and up 10% over last month.
- 1450 people visited the library
- 55 meetings were held
- Public Computers used 161 times
- Museum passes were used 32 times
- Signed up 19 new patrons
- Overdrive was used by 85 people to download eBooks, audiobooks and magazines.
- 426 people checked out library materials in July.

Programs

- Aug 1st 6pm we had the **Tick Talk** with Martha Wassell, Director of Infectious Disease Prevention at Wentworth Douglas Hospital, and Dr. Craig Kelleher, DVM in North Hampton. Sponsored by the Dog Park Committee. It was a very informative program.
- Aug 8th 6 pm we had the workshop **How to sell on eBay** by Robbin Levin. We had about 15 participants and almost all their evaluations rated her presentation a 5 (using a 1 – 5 rating, 5 being the highest)
- Aug 22nd 6:30 pm **Hidden History of the NH Seacoast** – book and talk by Terry Nelson
- Aug 27th 6:30 pm Gus' Bike Shop program with Jeff Latimer
- Sept 10 at 6:30 we will have Joe Marttila of SeaBee Honey talk about bee keeping in the seacoast area, including the history of bee keeping in this area.
- September 12th Sheena Simpson of Yai & Co. Financial Services will be doing a workshop on strategies for paying for college.
- NH Humanities program: **Stark Decency: New Hampshire's WWII German Prisoner of War Camp**. Sept 17th at 7 pm.
- Oct 2nd 6:30 **Pilgrims of Woodstock**, John Kane who wrote a book and put together a program commemorating the 50th anniversary of Woodstock.
- Oct 10 6:30 pm **Nature of New Hampshire**, a Speaking for Wildlife program (rescheduled from Sept 26th)
- Oct 17th 6:30 pm **Quotable Eleanor Roosevelt** with author Michele Albion
- Oct 24th 6:30 pm **Spirit Chasers** – 3rd year presenting a “spirited” program at NHPL.
- Nov 5th 6:30 pm Stephen Collins will present Herman Melville in a literary program/performance entitled **Sailing Towards My Father**. Stephen Collins has performed as Robert Frost and Walt Whitman in past years at the library.
- Nov 12th 6:30 pm– **Layer Upon Layer: Women's Clothing in the Civil War Era**: Aileen Kelly, Living History reenactor will present a historical program about women's dress in the Civil War period.
- Nov 14th **Mt. Kearsarge Museum Travel Program** on Native Americans.
- Nov 19th 6:30 pm Mike Rogers concert.

Youth Services Department Report – August 12, 2019

Summer Reading Program

84 youth registered for the 2019 Summer Reading Program. This number held steady compared to 2018 (85 registrations). SRP events held since my last report were: Pajama Campfire Story Hour; reenactment of the Hamilton/Burr duel using water balloons for teens; live turtles at a nature talk; a workshop on nocturnal animals by the Children's Museum of New Hampshire; a play by Hampstead Stage about constellations; and an outdoor "Water Cool-Down Party". Attendance at these scheduled events was good.

Every week we held STEM activities and a movie matinee. Attendance for these began well, but then it dwindled as the summer progressed.

The SRP wrapped up on August 9 with a day-long drop-in event at which the children presented their activity logs and made themselves ice cream sundaes. We recognized the activities that they achieved and did the raffle drawings for the prize baskets.

A **new adult volunteer**, a special education teacher in Rye, organized the metal kids' supply closet, set up the STEM Happenings, and prepared craft materials during July.

Our rented Maker Crate contained a **Drone** and I did some demonstrations on how to fly it in the library parking lot. The **merge cube and VR goggles** were very popular and children used our new mini iPad to explore the materials. We have the crate until mid-October so I will promote other events using the books and gadgets.

We have the NH State Library **3D printer** for the duration (several more weeks). I offered demonstrations on printing 3D objects over the course of a week. I uploaded the compatible 3D imaging software, "Youmagine", on the teen room laptop for anyone who wished to build their own 3D object for printing.

I conducted a story hour at **Fuller Garden** as part of the area town librarian rotation. There were approximately 20 people in attendance.

North Hampton Public Library
Strategic Plan - 2018

North Hampton Public Library Profile

The first public library in North Hampton was established with state funds in 1892, in the southwest corner of the historic Town Hall building. In 1907 a fieldstone structure was approved and built, and in 1955 an addition was made to this structure. In 1974, a new 5600 square foot library was built, which serves the community to the present day.

The mission of the North Hampton Public Library is to provide library resources and services to meet the evolving educational, cultural, informational, and recreational needs of the community of North Hampton.

The goals of this plan are:

- To work toward an expanded facility to meet community needs
- To develop and provide programming & services for all age groups that reflect the mission of the library
- To make available materials for all users in diverse formats.

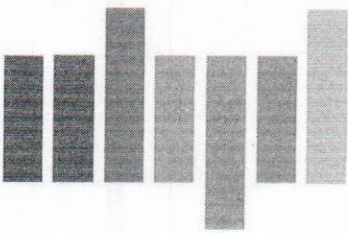
Community Vision Statements from 2006

These were the vision statements receiving top priority from the Long- Range Planning Committee in 2006:

- North Hampton will have a municipal complex that includes an expanded library.
- North Hampton's town departments will be housed in facilities that present a welcoming and attractive center for the community, that provide adequate space for all departments, and are environmentally friendly.
- North Hampton's historical heritage will be preserved and disseminated to community members through the collaborative efforts of community groups.
- North Hampton will offer community space for diverse cultural opportunities and civic events.
- North Hampton will provide for the needs of all residents, regardless of age or income.

Service responses from 2006:

- Commons: Address the need of people to meet and interact with others in their community and to participate in public discourse about community issues by providing public space for meeting and gathering for individuals and groups in the community.
- Current topics and titles: The North Hampton Public Library will help fulfill community residents' needs for information about popular cultural and social trends and their desire for satisfying recreational experiences by providing a current collection with sufficient copies of titles in high demand to ensure customer requests are met quickly. Materials will be offered in the formats people want, and will be selected primarily on the basis of local demand.
- General Information: The North Hampton Public Library will help meet the need for information and answers to questions on a broad array of topics related to work, school, and personal life by offering print, non-print, and electronic reference resources that cover a broad variety of topics, and will provide staff skillful in determining users' needs and in locating relevant information that satisfies those needs.
- Lifelong Learning: The North Hampton Public Library will help address the desire for self-directed personal growth and development by providing an extensive collection of circulating materials on a wide variety of topics in which the general public has a sustained interest.



**North Hampton
Public Library and
Cultural Center**

North Hampton Public Library Board of Trustees
237A Atlantic Avenue
North Hampton, NH 03862
July 30, 2019

North Hampton Select Board
233 Atlantic Avenue
North Hampton, NH 03862

Dear North Hampton Select Board:

Thank you for meeting with the Library Board of Trustees on July 22, 2019 and listening to our presentation on the library addition/renovation plan. We appreciate your feedback and acknowledge that your offer of building a new library on the "Homestead property" is in good faith, but after careful consideration of advantages and concerns, the Library Board of Trustees have voted to move forward with renovating and expanding the current library building.

The Trustees have learned from experience participating in past town plans and feel that this plan represents the most feasible, cost-effective option for the town. Members of the North Hampton community have invested years of time and tax payer money to support the library and the library capital reserve fund. The Trustees feel that changing course now would only disappoint the community and require additional time and money.

Sincerely,

Susan Leonardi

North Hampton Public Library Board of Trustees

Dear NHPL Staff, Friends, Trustees, and Foundation Members

This year, the Library Trustees has developed a separate, detailed plan for the expansion and renovation of the current Library building, a practical alternative which will serve the community for decades to come.

We wanted to let you know that we are currently conducting a feasibility assessment to gain some feedback on our plan to generate funding for the renovation and expansion of the North Hampton Public Library. The Foundation has contracted with Sandra Mitchell, an independent consultant, to conduct a series of interviews to help evaluate this plan. This month Ms. Mitchell will be interviewing approximately 30 individuals from the community. All responses from these interviews will be anonymous and will be incorporated with the suggestions and perspectives of others in a written report to the Library Trustees and Foundation Board to gauge community support to fund this project.

Sincerely,

Susan Leonardi, Trustee
NHPLCC Board of Trustees

Kelly Parrott, President
NHPLCC Foundation

From: **Emily Creighton** <sodiumc@comcast.net>

Date: Tue, Aug 6, 2019, 11:14 PM

Subject: Library Trustee Alternate Position

To: <nhpldirector@gmail.com>

Dear Susan,

Would you please forward this request to the Trustees.

Dear Trustees,

I am interested in volunteering as a Library Trustee Alternate.

I have a long service history at the North Hampton Library. First serving as a member of the Friends of the Library, I had the privilege to work with Jane Palmer, Dottie Dalrymple, Betty Coyne, Lee Kierstead, Beth Seaverns and other dynamic women who were actively raising money to supplement the Library's budget as well as promoting the building of a new library. During that same time, I also volunteered to assist the Children's Librarian, (Lorreen Keating) with a young adult reading group. And lastly, I served as a Trustee of the North Hampton Library for six years. It was during this time that the Trustees got a warrant article placed on the ballot to establish a capital reserve fund to build or expand the library.

To serve as an alternate will allow me the opportunity to return to serve with others working on behalf of the residents of our community.

Thanks for your consideration,
Emily Creighton

Sent from my iPad

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I Recuse Myself | New Hampshire Municipal Association/ when in doubt step down

RM

Ray Miller <rmiller@northerncomposites.com>

 Reply all | 

Today, 10:17 AM

Susan Leonardi <msialeonardi@gmail.com>; 'Jacqueline Brandt' <brandtdev@corr >

Inbox

Trustees,

At last evenings Select Board Meeting, I called into question the votes the Trustees made at their last meeting because Trustee Kilgore did not recuse herself from the deliberations or the subsequent vote.

I suggest you read the following explanatory article which very clearly explains the recusal process, why it is important and why nonadherence can be fatal to the affected decisions regardless of their merit.

Please read the entire article and focus on paragraph 15.

While we may be on different sides of a present choice before the Town, we must adhere to law and now a promise made in public by Trustee and Select Board member Kilgore.

Please do not respond to this message.

Larry Miller.

<https://www.nhmunicipal.org/town-city-article/i-recuse-myself>

I Recuse Myself

It is generally understood that a municipal official who has a conflict of interest in a specific situation is not supposed to participate in that matter. What is less understood is how this process works and what is at stake in making that decision.

What is recusal?

What do you call it when an official decides not to participate in something when they have a conflict of interest? The word is “recuse.” To recuse is to remove oneself as a participant for the purpose of avoiding a conflict of interest. You could use the word “excuse” instead, but it would not be as precise.

When is recusal appropriate?

In general, recusal is appropriate when an official has a conflict of interest with respect to a specific matter, or when the official is biased and cannot act impartially.

One of the most troubling situations to face as a municipal official is when an angry citizen claims that the official should not participate in a matter because of a conflict of

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allegation. It is a charge that goes to the heart of the people's trust in their government and questions the personal motives of elected and appointed officials. After all, in this context, conflict of interest involves an official who has a conflict with the public interest. Consequently, it is something that all officials should be aware of and consider carefully.

Conflict of interest has proven difficult for courts and legislatures to define in a way that applies to all situations. The particular circumstances and facts of each case must be factored into the determination of whether an official is disqualified from acting on a matter. However, the basic rule is that a conflict of interest requiring recusal will be found when an official has a personal or pecuniary (financial) interest in the outcome of a matter. That interest must be "immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative." *Atherton v. Concord*, 109 N.H. 164 (1968). As the Court in *Atherton* explained, "the reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest."

A conflict also exists when an official is actually biased in one direction or the other before the information is even presented to the board. Part I, article 35 of the N.H. Constitution says, "it is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit." Local officials deciding matters of a quasi-judicial nature are held to the same standard of impartiality. Of course, unless an official says something in public indicating bias, the existence of a bias may not be known. However, an official who knows they are biased has a duty to the public to recuse him- or herself from the proceedings.

What is at stake?

If a person with a disqualifying conflict of interest or bias participates in a matter, the legal results will depend on the kind of matter at hand. (It is important to note here that if no one challenges the board's decision in court the only consequences are the political ramifications of eroded public trust in their government.) A court will look at whether the board was acting judicially or legislatively.

Briefly, a judicial action is one in which officials are bound to notify and hear parties, and can only decide after weighing and considering such evidence and arguments as the parties chose to lay before them. *In re Bethlehem*, 154 N.H. 314 (2006). Examples include a zoning board of adjustment's decision on a variance application or a board of selectmen's decision on whether or not to take private property by eminent domain. The other actions a board may take which are not judicial are generally referred to as legislative. Examples include the creation of proposed zoning amendments by a planning board or a town council's decision regarding whether or not to replace a yield

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Decisions: Understanding Conflicts of Interest and Disqualifying Bias,” which appeared in the January 2011 issue of NHMA’s *Town and City Magazine*.)

When a board acts judicially, a court will invalidate the board’s decision if a person with a disqualifying conflict participated in the matter. *See Totty v. Grantham Planning Board*, 120 N.H. 388 (1980) (a member who owns property abutting the property which is the subject of an application before the planning board is disqualified, and that member’s participation requires the decision to be invalidated). In such a case, the board must begin all over again without the participation of the disqualified person. This is a tremendous waste of the municipality’s money, time and effort, which can be avoided when a disqualified person recuses him- or herself.

When a board acts legislatively, the stakes are lower. A court will only invalidate the board’s action if the person with the disqualifying conflict cast the deciding vote. *See Quinlan v. Dover*, 136 N.H. 226 (1992) (a city councilor expressed bias on one side of a rezoning issue before the Council in advance of the Council’s discussion of the issue did not require the court to invalidate the Council’s action because his was not the deciding vote and he had no financial interest in the matter.) This lower-stakes situation may play into an official’s decision regarding recusal.

How does recusal work?

The crux of the difficulty with recusal is that the person with the potential conflict or bias must make his or her own decision about whether or not to step down. No one, except a court, has the legal ability to force a recusal.

Whether the issue of a conflict is raised by a party in a case, a member of the public, a member of the board or the official him- or herself, the ultimate decision is always in the hands of that member. Anyone may raise the issue. What happens next is up to the board and the member.

Members of all land use boards (planning board, ZBA, historic district commission, heritage commission, agricultural commission or housing commission) have a specific option under RSA 673:14 when a question about a disqualifying conflict of interest is raised. Any board member may request that the board take a vote to see whether they believe there really is a conflict. The board must take the vote if that motion is made, but the result is nonbinding. Again, the final decision is left to the member with the alleged conflict or bias. No similar statute exists for other municipal boards, but there is nothing preventing any board from taking a nonbinding vote regarding an alleged conflict of a board member.

Why take a vote at all if it is nonbinding? The answer is that the result of the vote may help the official make their decision. If the member does not believe a conflict exists and the board agrees, then perhaps recusal is not necessary. On the other hand, if the board believes a conflict exists and the official is uncertain, the result of the vote may

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down.

Something for all officials to consider is that if the potential existence of a conflict is disclosed to the public at the beginning of the matter, and if no one objects at that time, the parties are deemed to have waived their right to appeal on that issue later. *Taylor v. Wakefield*, 158 N.H. 35 (2008); *Fox v. Greenland*, 151 N.H. 600 (2004); *Bayson Properties, Inc. v. Lebanon*, 150 N.H. 167 (2003). That settles the matter and everyone can move along with the business of the board.

Another important idea is “when in doubt, step down.” The New Hampshire Supreme Court has made it clear that it will overturn a board’s judicial decision if a disqualified person participates. *Appeal of Keene*, 141 N.H. 797 (1997); *Winslow v. Holderness Planning Board*, 125 N.H. 262 (1984). It may not be worth taking the risk that the board’s decision will be overturned because of a conflict of interest. Conflicts usually have nothing to do with the merits of a decision, and the board’s hard work should not be put to waste. A board member can always step down if they do not feel right about sitting on the case, even if the potential conflict does not fit any of the court-created rules about conflicts and bias.

On the other hand, there are times when an applicant or other party alleges a conflict of interest in an attempt to “bully” one or more members off the board because they are concerned that those members will vote against them. When it is clear that no conflict exists, the officials may not wish to step down. That is their choice. It all depends on the circumstances of the situation.

If an official does recuse him- or herself, how should they behave at that point? It is critical to note that simply saying “I recuse myself” is not enough. The official must take steps to make the recusal effective. Literally. The official should immediately leave their seat at the board table, and preferably, leave the room until the board moves on to the next subject. If the official remains in the meeting room, taking a seat with the general public is appropriate. These actions make it clear to all in attendance that the official is, for all purposes, no different from any member of the public in relation to this matter.

Of course, a person does not lose their status as a citizen when they become a local official, and a recused official may wish to be heard on the matter just like any other member of the public. In some cases, the official may be a party to the action if, for example, they are the applicant in a land use case or an abutting landowner. Parties to the case have a legal right to be heard on the application, so they may certainly participate in that capacity. In most cases, however, the official with the conflict is not a party to the case. In that situation, the better practice (both legally and for the sake of

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... speak during the time set aside for public comment or testimony. If a recused official does this, they should begin with a statement that they are speaking on their own behalf as a citizen and not as a member of the board. This helps solidify the understanding that the official is not participating in the board's consideration of the matter.

In any case, if the official remains in the room, they should not act in any way as a member of the board. It would be improper, for example, for the official to ask questions of the parties (other than at times when the general public is permitted to do so), engage in discussion that is occurring only among board members, or vote on the matter. This is just as risky as remaining at the table or failing to recuse oneself in the first place. "[M]ere participation by one disqualified member [is] sufficient to invalidate the tribunal's decision because it [is] impossible to estimate the influence one member might have on his associates." *Winslow v. Holderness Planning Board*, 125 N.H. 262 (1984). It is also advisable to refrain from using body language to indicate an opinion or try to influence a decision of the board. Remember: appearances count in this situation. Officials should be concerned not only about the legal ramifications, but the political consequences of questionable behavior.

Recusal or Abstention?

There can be some confusion between recusal and abstention. Both mean that a board member does not vote, but the effect is quite different. When a person abstains from a vote, they remain "present" at the meeting for the purposes of a quorum and often participate in the discussion of an issue. When it is time to vote, they simply say "I abstain" and do not register a vote. Under New Hampshire law, a member who abstains is presumed to go along with whatever the majority of the rest of the board does in that matter. In contrast, when a person recuses him- or herself from a specific matter, that person steps off the board for the duration of that matter and does not count toward the quorum during that time. While the person remains a member of the board *in general*, they are treated as a member of the public whenever the board is addressing *that matter*. Here is an example. Imagine a five-member board of selectmen. Three attend the meeting (that is enough for a quorum to conduct business). They discuss an item of business, but when the vote is taken, one member abstains. The other two vote "yes." What is the result? The vote is 2 yes, 0 no, 1 abstention. The person who abstained is presumed to go along with the majority vote of 2-0 in favor, and the fact that he abstained did not mean the board lost its quorum. The item is approved. The New Hampshire Supreme Court clarified these rules around abstention in *Merrimack v. McCray*, 150 N.H. 811 (2004).

Now imagine a five-member planning board. Three members attend the meeting, which again is enough for a quorum. A subdivision application is the next item on the agenda, and one of the three members present recuses himself because he has a conflict of

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quorum because there are only two members sitting. On a land use board with alternates, the chair may designate an alternate to take the place of the recused member for that matter. RSA 673:11. This solves the quorum problem for those boards. However, on a board without alternates, recusal may prevent the board from acting until a future meeting at which more members are present.

Conclusion

It is important for all local officials to understand what it means to recuse themselves, when it is appropriate, and what the consequences may be if a disqualified person participates in official action. Not only may it result in the invalidation of a board's actions, but defending a court challenge uses municipal resources that might be better spent elsewhere. In addition, retention of the public trust is a significant factor that should play into every official's decision when a potential conflict of interest is at stake. *C. Christine Fillmore is Staff Attorney for the New Hampshire Municipal Association. She may be contacted at 800.852.3358 ext. 3408 or at legalinquiries@nhmunicipal.org.*