

ZBA meeting response.

Setting aside the tone of the ZBA discussion last Thursday, I want to address the content of the discussion and answer questions as best I can.

First, some background to the ZBA meeting last Thursday.

Public boards don't merely email an invitation to attend other boards without compliance to RSA 91A.

Briefly, upon receiving the 'invitation', the Select Board office contacted NHMA for guidance which culminated into the following from **Jonathan E. Cowal, NHMA:**

The answer to these questions really all comes back to my original response below which includes 91-A's definition of a meeting. Again, any time you have a quorum of a public body present together there is the possibility of a "meeting" occurring under the statute if the members end up discussing something of relevance to their duties or responsibilities.

You have mentioned that this ZBA meeting is only intended to be a ZBA meeting and not a joint meeting of the ZBA and the selectboard. Therefore, you should treat it as such, just a ZBA meeting. That being said, we cannot predict what will happen at the meeting, like say if one or more of the board members makes a comment or a discussion sparks. However, at the end of the day it is important to remember that the rules of 91-A are meant to be followed in good faith. If something inadvertently occurs involving the selectmen that could arguably be considered them acting in an official capacity I suppose someone could complain that they violated Right-to-Know but obviously that was unintended and the town was acting in good faith.

My suggestion would be to have your ZBA meeting, treat it like any regular ZBA meeting and just make sure the selectmen are aware that they should only be there as attendees of the ZBA meeting and not acting in any official capacity as selectmen.

Heather's reply to the ZBA 'invitation' was:

Good morning Aaron,

Thank you for the formal invite to the ZBA's meeting on March 10th. The Selectmen met last night and feel it would be best for the ZBA to meet as a Board on the 10th to discuss the outcome and come up with any questions and/or concerns to present to the Selectmen at their next meeting on the 15th, as the ZBA Chair, in regards to the outcome of the recently concluded legal case. The Select Board is meeting on March 15th at 5:00pm. Please let me know if this works for you and I will make you first on the agenda.

Thank you,

Subsequent response from Aaron:

I do not accept that at all. We will be discussing and it will be on the agenda. If the members of the select board don't want to participate in the process and hide, then that is their prerogative and will be noted in the minutes. The ZBA members deserve the attention of the SB members so that we can understand all of the ramifications and hopefully not make the same missteps in the future. We will proceed with the conversation with or without the select board. Their attendance will have a great effect on the conversation.

The select board made choices that caused significant effects on the zba. The least they could do is face us.

Aaron

And so it began...

Now getting into the content of the ZBA meeting last Thursday:

Aaron commented on planning board meeting minutes Jan 7, 2021 regarding Scalley stating: "I am here to protect the town from things Planning and Zoning have done in the past that were mistakes."

This was not the boards themselves—from the planning board meeting minutes Jan 7, 2021 Scalley: "I am here to protect the town from things Planning and Zoning have done in the past that were mistakes."

Aaron construes the minutes changing it to wording that makes it personal toward the PB and ZBA which isn't accurate.

Scalley was referring to past **actions** by the boards that he viewed as causing **mistakes**. You need only refer to past litigation in the town for that information.

Aaron twisted the quote in the minutes to make it about the boards themselves when it is submitted in the minutes regarding actions and mistakes, not the boards themselves.

Really need to not make things so personal, this is town business not personality contest.

The comments and remarks appeared to be an attempt to relitigate the issue while it has already been resolved in the court.

Aaron asked: "What is it about the legal ruling on the ZBA/SB litigation the SB disagrees with?"

I am not going to relitigate the case. The case's initiation was predicated on a difference of opinion on how the process played out. The Select Board followed established processes which, when taken to their full conclusion ended in the litigation seeking a court opinion.

I can accept a court's opinion, but I don't have to agree with it...that is my own opinion. You don't argue opinions. It in my view pointless.

Aaron: "We could have had a conversation."

With the denial of administrative appeal by the ZBA 'a conversation' was ended. Regardless, you can't just have a conversation. Again, 91A is clear on right to know requirements regarding boards, meetings, deliberations, etc.

The SB followed the process as it is set in RSAs. Litigation was the last step. There were also deadlines involved necessitating actions at certain times.

Aaron: Wanted the SB to deliberate on the question "What is it about the outcome of the litigation the SB disagrees with?"

Again, no desire to relitigate the case. It is done.

Aaron: 'Just hash it out' so we don't have to have judges and spend lots of money...

That is not an option in that characterization given the RSA 91A requirements. Maybe joint board meetings or something along those lines, but that is all I see as another potential action between public boards. We "hash it" out in accordance with legal requirements governing it.

Aaron: "Ken, ask you specifically if you voted in denying the appeal (while on ZBA) do you still agree the outcome of the litigation is wrong?"

Here is my offer: regarding events after leaving the ZBA to join the SB and why I agreed with moving forward on the litigation.

- 1) On the ZBA, I should have abstained given the limited time I had on this particular matter. I thought at the time the ZBA had provided enough information that I could comfortably 'go along' with denying the appeal of administrative decision.
- 2) Subsequently however, I was approached by different individuals (some who were directly involved in the application process who expressed concerns with how the application/ZBA case had been handled. Former Selectman, Fire Chief to note two. I also spoke with others who weren't as concerned and didn't follow why it was an issue; so there were differences in opinions.
- 3) Encountering all of this, I took a lot of time to read all of the relevant meeting minutes from the boards. My conclusion from that reading was the application appeared to have been 'sheparded' through the process from the dialogue in the meeting minutes (my opinion) rather than just reviewed as an application and decided upon; it appeared to be an effort of shoe-horning the lot into the subdivision to 'make it fit'.

4) While the judge disagreed, at the time of my review, the recusals appeared to be warranted. The judge disagreed, I accept that.

It is important to note, hindsight is always 20/20. We all act in the moment with the information we have at that time. To **judge** events after the fact doesn't help anyone.

Aaron: Wants to know what the SB thinks about the case so they can avoid future litigation.

I don't think you can expect a precognition of events that may lead to litigation. Continued work by the various boards is all we can do.

Aaron: Two specific topics for discussions of "not seeing eye to eye" on

Aaron: Article 3 section 302 discussion. (Aaron opinion re: PB and ZBA there was no confusion.)

Aaron: discussion on recusal process.

Aaron "felt" SB didn't 'respect' the decision on recusal.

The SB disagreed with the decision. It wasn't personal and participants shouldn't make it personal.

Aaron: RE: the litigation: "What was the point? Motive? Why the issue was pushed so hard? Could not getting a driveway? So much money, zero results, **hurt feelings**."

Aaron had Additional lamentations regarding trust; trust in town counsel; and a ZBA member leaving,

Frankly, I sensed a lot of judgement in Aaron's remarks.

Aaron My impression was Aaron took issue that the SB members were all present at the ZBA but would not engage—You can see my prior discussions regarding RSA 91A.

Aaron: "Hoped and expected to reach a dialogue on these issues".

That is limited given the requirements of RSA 91A

To conclude my comments:

The ZBA meeting came across to me as an attempt to scold the SB publicly with Aaron holding court. As the SB representative to the ZBA, I chose to not engage in it. I was there to listen, take notes and be as prepared as I could for tonight's meeting and discuss those items in this venue in accordance with the requirements of RSA 91A

Aaron: His final comment was: "I have felt attacked at a personal and professional level" I have no reply to that comment. I can't help what Aaron feels.