

Page 1 of 3
Resignation
Tabled
Rec'd. 9/12/12

Linda

From: "legalinquiries" <legal_inquiries@nhlgc.org>
Date: Monday, September 10, 2012 4:08 PM
To: <mtview@roadrunner.com>
Subject: Carroll Planning Board and ZBA questions
Dear Ms. Dowling,

The law is silent on all of this. Therefore, the answers should come in the first instance from the Board's rules of procedure. If the rules do not address it, then a commonsense approach is best. As I understand it, the offer to resign was not acted on in any official way at the August meeting other than to table it. Subsequently, the resignation was withdrawn. While a member attempted to revive it at the September meeting, there was no second and the issue was tabled. At that point, it seems logical to conclude that the Chair was not resigning, and the Board was not accepting it. The issue, therefore, is over.

Turning to your specific questions, if the resignation was rescinded, common sense dictates that it cannot be accepted, so the answer to the first question is "no."

On the second question, the answer is "no." Unless an elected Board member voluntarily leaves the board (which has not happened in this case), the only way to remove the member is by following the process in RSA 673:13. Removal is only proper in cases of inefficiency, neglect of duty, or malfeasance.

On the third question, the argument given for the motion is irrelevant because there is no legal prohibition against spouses serving on the Planning Board and ZBA simultaneously. As you correctly point out, they could serve on the same board at the same time legally.

The fourth and fifth questions are governed by the Board's rules of procedure. I suggest that if the rules do not address this situation, then a simple majority vote of the board on how to proceed would be controlling.

Finally, as to the sixth question, according to our notes, I spoke with Donna Foster of the Planning Board on August 9, 2012. She informed me that the Chair of the Board had resigned recently at a meeting but, at that meeting, had been asked to stay on for one more month to see if the vice chair was able to handle the situation. The chair then rescinded his resignation the next day. Ms. Foster asked what the Chair's status was, and I explained that the law is silent on this issue. If the resignation was not accepted by the board, then presumably he is still in office. If it was accepted, the Board can always decide to ignore the resignation and continue business as usual. It was unclear during that conversation whether the Board had rules of procedure that governed the situation, or whether the resignation was actually accepted at the initial meeting or not.

I hope this information is helpful.

Regards,
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9/11/2012

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From: Linda [<mailto:mtview@roadrunner.com>]
Sent: Sunday, September 09, 2012 9:42 PM
To: legalinquiries
Subject: Carroll Planning Board and ZBA questions

Good Morning,

Thursday evening the Carroll Planning Board met and a number of questions arose during the meeting that I was tasked to contact you about. The first situation is as follows;

Keeping in mind that our Planning Board is elected; at the August Planning Board meeting, the Chairman resigned. There was no motion to accept the resignation and it was tabled. A few days after the meeting, the Chairman sent an e-mail to all the members stating that the conditions that caused his resignation had been resolved and he was again able to continue to chair the Board and he rescinded his resignation. Thursday evening at the September Planning Board meeting, a member made a motion to accept the chairman's resignation and not accept his rescinding of it. There was no second and the matter was tabled. When asked why the member made such a motion, the member said that the chairman is a member of the (elected) Planning Board and his wife is chairman of the ZBA (elected board), and someone might perceive that they may not get even handed treatment and this might cause a future applicant not to bring his project to the town.

Many questions;

1. Is the motion to accept a rescinded resignation and not accept the rescinding of it legitimate?
2. Can the Board, in effect, force an elected member off the Board with such a motion?
3. Is the argument given for the motion reasonable in light of the fact that the membership on both these Boards is by election and spouses serving the town on different Boards is not prohibited by statute? (In fact, as you know, statute does not forbid spouses from serving on the same board)
4. Regarding procedural issues – somewhere in my reading I believe I picked up the idea that to table an issue required only one person on a committee or board. Is this correct?
5. To "untable" a matter, is a 2/3's vote of the committee or board required?
6. The member of the Planning Board who made the motion to accept the chairman's resignation and not the rescinding of it, stated that LGC had been called on this matter and advised that member. Can LGC provide the Planning Board with the advice that it gave to this member so all parties are aware?

Another issue came up at the Planning Board meeting and it involves the ZBA. A few months ago, the elected ZBA acted on a request for appointment as a regular member of the ZBA to a vacant seat. After discussion in which a number of members voiced their concerns about repercussions, the ZBA voted to

9/11/2012

VOTER EDUCATION ANNOUNCEMENT

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO INFORM THE VOTERS OF THE TOWN OF CARROLL THAT THE UPCOMING WEEKS AND MONTHS WILL BE VERY IMPORTANT TO THEM. THE SELELCT BOARD AND BUDGET COMMITTEE WILL BE MEETING AND DISCUSSING THE TOWNS' BUDGET AND WARRANT ARTICLES FOR 2013.

I WOULD LIKE TO ENCOURAGE THE VOTERS TO TUNE INTO CHANNEL 2 FOR A BROADCAST OF THE CARROLL SELECT BOARD AND BUDGET COMMITTEE MEETINGS OR OBTAIN A COPY FOR VIEWING AT THE TWIN MOUNTAIN LIBRARY. BY DOING THIS, THE VOTER WILL BE BETTER INFORMED AT THE VOTING BOOTH ON ELECTION DAY IN MARCH.