

**Email Sent:** Thursday, April 30, 2020 5:36 PM

Dear Linda,

Please submit the following comments for tonight's selectboard meeting with regard to the assignment of the Land Use Department and the Building Department. Please also submit the attached letter from my attorney to be read into the public record:

Dear Madam Chair,

I request that selectboard member Boyd Chivers not be assigned to oversee the Building Department or Land Use Department. His consistent abuse of power and demonstration of malicious intent with regard to the 55+ housing community known as Candia Crossing is well documented. Mr. Chivers' fanatical obsession with stopping the Candia Crossing project should be very concerning and alarming to the board. In my opinion, assigning these departments to Mr. Chivers would be inappropriate and irresponsible. If the board would like to have a more in depth discussion with regard to this matter, it would be my pleasure to do so.

Very truly yours,  
Scott Komisarek

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April 30, 2020

Chair Susan Young  
Candia Board of Selectmen  
74 High Street  
Candia, NH 03034-2741

Re: Preventing Unreasonable Concentration of Power

Dear Chair Young:

I am writing to you at the request of my clients, Scott and Amy Komisarek. I understand that at tonight's selectmen meeting that the Selectmen will discuss and likely decide which departments each Selectman will be responsible for in the coming year. I respectfully suggest that Candia avoid having a selectman that also sits on the ZBA from being responsible for the Building/Land Use department. There is too great a potential for conflicts of interest or abuse of power that both decreases the public confidence in a truly impartial decision and carries an unreasonable risk of liability to the Town of Candia.

It is a bedrock principle of law that an impartial decision-maker is an "essential right" in civil proceedings. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *see also In re Pennichuck Water Works, Inc.*, 160 N.H. 18, 36 (2010). "The neutrality requirement helps to guarantee that life, liberty or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall v. Jerrico*, 446 U.S. 238, 242 (1980).

The ZBA is a quasi-judicial body that is responsible for making determinations based on the evidence presented to it. The ZBA must be composed of impartial members who have not prejudged an application nor can a member of the ZBA rely on facts outside the record before the board. A ZBA member who gains information from outside the record or prejudges an application before it comes to the ZBA needs to be disqualified from sitting on the board. See

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RSA 674:13. The “mere 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*, 125 N.H. 262 (1984). If this were to happen, a new hearing would need to be held with an entirely new board.

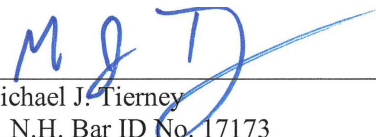
Unlike the ZBA which acts in a quasi-judicial fashion, the Selectmen are generally responsible for all the prudential affairs of the Town. As such the Selectmen oversee the Building Inspector whose decisions may be appealed to the ZBA. RSA 676:5. Likewise, the Selectmen have the right to appeal decisions of the ZBA when it deems that to be in the best interests of Town. RSA 677:2. In either situation, a Selectman in charge of the building department is essentially reviewing his own decision which is not permissible. An applicant before the ZBA will be able to use a selectman’s dual role as both the selectman in charge of the building department and a member of the ZBA to vacate what the applicant sees as a negative decision.

Finally, although I am not aware of any cases where the Town of Candia has been held liable for money damages, there are other towns in Rockingham County where the Town has been held liable for money damages for a selectman using the perception of their influence as a selectmen to prevent a development from obtaining approval from a land use board. The Town of Candia should not put itself at risk by having a selectman having undue authority over development decisions in the Town.

I ask that you share this letter with your fellow board members and make it a part of the public record.

Please do not hesitate to contact me with any questions or concerns. Thank you for your assistance.

Very truly yours,

  
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Michael J. Tierney  
N.H. Bar ID No. 17173

MJT