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March 22, 2021

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.

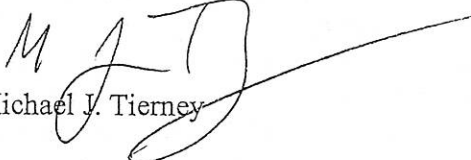
Unlike the ZBA which acts in a quasi-judicial fashion, the Selectmen are generally responsible for all the prudential affairs of the Town. As such the Selectmen oversee the Building Inspector whose decisions may be appealed to the ZBA. RSA 676:5. Likewise, the Selectmen have the right to appeal decisions 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,

  
Michael J. Tierney

MJT

Sue:

I do not share the same concerns as Attorney Tierney. The role of the land use board liaison does not allow that Selectboard member to issue building permits or approve planning and zoning board relief. Furthermore, the ZBA and selectboard act as one body. If there is a conflict between the ex officio and an applicant then the ex officio can simply step down from that application. But to have an overall prohibition is not required by law.

I also note that ZBA members are not required to sit on a case with zero knowledge of an application. Instead, RSA 673:14 states that reasons for disqualification do not include "knowledge of the facts involved gained in the performance of the member's official duties." I do not think it would be unlawful for an ex officio member to use knowledge he gained while overseeing the land use department. Of course, the ex officio should not have a financial or familial interest with the applicant or project.

Please let me know if you have any questions.

Thanks,  
Mike

Danielle Gagnon  
14 New Boston Rd.  
Candia, NH 03034

March 26, 2021

Selectmen's Office,  
Town of Candia

Dear Selectmen,

A few weeks ago, a large, dead tree uprooted and fell towards my back yard during one of the snow/wind storms. It is being held up by the tip of a branch on a much smaller tree that is bending at mid trunk from the weight. There is also a large, pointed branch at the top that broke off, is dangling and aiming straight down into my yard. I started making phone calls to determine who owned the property between my house at 14 New Boston Rd and Rt 43, Deerfield Rd. It went from the Road Agent to State of NH to tax collector, all stating that any uprooted tree needs to come down; it's just a matter of finding out who owns the property. It was determined by town officials the land falls under the property of The Town of Candia and a Selectmen would come out to look at it. I received a call from Linda stating that Selectmen Brock looked at it and deemed it "not an imminent danger." The result was that nothing would be done about the tree at this time. I'm curious what qualifications he has to determine whether this a danger to person or property and if there was a tree service that was called for their recommendation.

I have several pictures; however, they do not accurately depict proximity to property and size of the tree. I have attached a few of them.

I am asking for this to be reviewed by the Board of Selectmen as a whole and a redetermination be made to have the tree felled into the woods away from my back yard. I understand it is not in the most ideal of places and that it is not aimed at my house, but I don't feel it should just be ignored either. If the tree falls, it would take out part of the fence in the corner of my back yard and potentially harm my dog or me and my boys. Furthermore, if I wanted to sell my house tomorrow, I would not be able to do so until this fallen tree has been taken care of.

I have never complained about anything and have volunteered countless hours serving on the Fire Dept as an EMT, Firefighter and Secretary on the Association. I find it unacceptable that this could be deemed as not an imminent danger and ignored until the tree falls it takes out my fence or worse. I understand there is a meeting tonight, however I am unable to attend with short notice. I look forward to your update and can be reached any time at 603-303-2485.

Sincerely,

*Danielle Gagnon*

Danielle Gagnon

Thomas DiMaggio

42 North Rd.

Candia NH 03034

To whom it may concern:

I am resigning my position on the cemetery committee for what I believe will be a conflict of interest and an unethical situation since we will now have two members of the same family on the committee.

Thomas DiMaggio

A handwritten signature in black ink, appearing to read "Thomas DiMaggio". The signature is written in a cursive style with a large, looping initial "T".

CC: selectmen

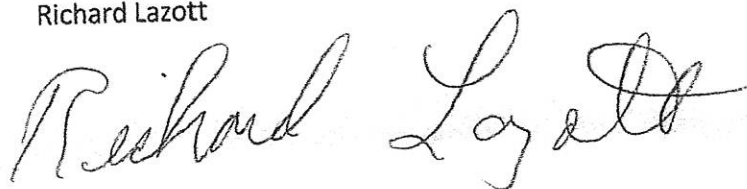
To The Candia Board of Selectmen,

I would like to be considered to finish out Mr. DiMaggio's term on the Trustees of the Cemataries.

I understand that it is thorough March of 2022 and am willing to commit to that time.

Thank you for your consideration,

Richard Lazott

A handwritten signature in cursive script that reads "Richard Lazott". The signature is written in dark ink and is positioned below the typed name.

Weekly Payroll and Accounts Payable Manifest Totals				
<u>Check Date</u>	<u>Payroll Manifest</u>	<u>Total Amount</u>		<u>Payroll Subtotal</u>
03/18/21	1148-	31,775.70		31,775.70
03/25/21	1149-01	16,820.76		48,596.46
<u>Check Date</u>	<u>Accts Pay Manifest</u>	<u>Total Amount</u>		<u>Accts Pay Subtotal</u>
03/18/21	202111	65,236.83		65,236.83
03/25/21	202112	41,163.01		106,399.84
<b>Grand Total Payroll and Accts Pay</b>				<b>154,996.30</b>