

TOWN OF ALLENSTOWN
Zoning Board of Adjustments
16 School Street
Allenstown, New Hampshire 03275
January 24, 2018

Call to Order

The Allenstown Zoning Board of Adjustments meeting of January 24, 2018 was called to order by Chair Feustel at 7:38 p.m.

Chair Feustel called for the Pledge of Allegiance.

Roll Call

Present on the Board: Eric Feustel, Chad Pelissier, Keith Klawes, Dawna Baxter

Others Present: Michael Juranty, Matthew Gish

Ms. Baxter agreed to take minutes.

UNAPPROVED MINUTES & UNSIGNED MINUTES

On motion of Mr. Pelissier, duly seconded by Mr. Klawes, it was voted to approve the minutes of October 25, 2017.

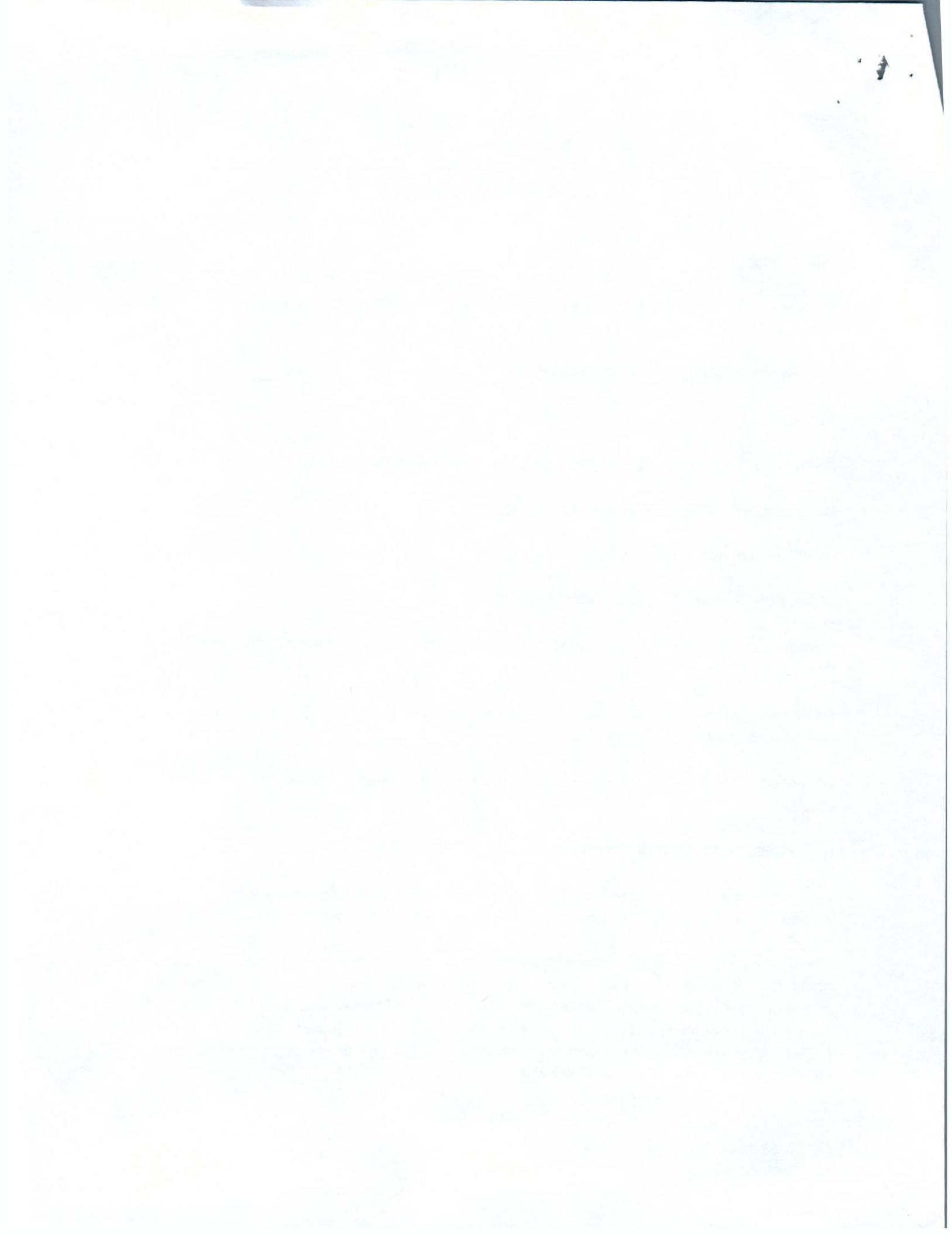
On motion of Mr. Pelissier, duly seconded by Mr. Klawes, it was voted to approve the minutes of November 8, 2017.

On motion of Mr. Klawes, duly seconded by Ms. Baxter, it was voted to approve the minutes of January 10, 2018.

NEW BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS

Ms. Baxter made a motion to re-hear the Administrative Appeal Denial for 4NH Homes, LLC regarding property @ NH Route 28 & Pine Acres Road. The motion was duly seconded by Mr. Klawes.

Chair Feustel requested that Board members effectively communicate and be forthright. He stated that he is against granting a re-hearing. He said that the ZBA is a citizens committee; members are not lawyers and the applicant has presented legal arguments. The ZBA has had legal advice from the Town attorney, who essentially has said that they have done what they should do. The applicant is challenging the ordinance and the legality of what has been done. There is an ordinance in place allowing the applicant to have a cluster development without ZBA approval.



Mr. Klawes asked Chair Feustel to explain more clearly what the Town attorney said.

Chair Feustel responded that their conversation was protected by attorney/client privilege. He was instructed to share with other Board members only the principal of what they discussed.

Mr. Klawes stated that a reason to grant a re-hearing is to exhaust everything they can. It might prevent going to court, or the applicant might decide to explore what can be done to make it work, having been denied several times.

Mr. Pelissier said that the applicant can say the same things they have already said, and the Board can do the same but still say 'no.'

Mr. Klawes said that the applicant has the right to be heard one more time, and it might prevent burdening the taxpayers of Allentown with the expense of going to court.

Chair Feustel said there is a possibility of going to court no matter what the Board decides.

Mr. Pelissier said that they were all guessing. The Board has done its due diligence. These are legal issues which should be addressed by the Town attorney. The applicant no longer needs two of the things they asked for; what they did not ask for is what they are looking for. He said he is in favor of a continuance for this meeting in order to have a discussion with the attorney before making a decision. If the Board denies a re-hearing, he believes this will go to court.

Chair Feustel reminded the Board that the attorney only gives advice. The Board makes the decision.

Ms. Baxter stated that the original application didn't address the 200-foot buffer requirement. She suggested starting over with a new application.

Mr. Klawes asked if the Board could throw this out and start over.

Chair Feustel responded that he wished they could, but they cannot.

Mr. Pelissier said that the ZBA could tell the applicant that we are willing to start over if they are.

Chair Feustel said that there are problems with hearing the same case again versus having a re-hearing. He said that Mr. Tilsley, the attorney for the applicant, wanted to be heard under the new ordinance. That is clearly stated in the minutes.

Ms. Baxter stated that the applicant uses pieces from both ordinances and it is very confusing.

Mr. Pelissier said that if enough members agree with Mr. Klawes, they could continue the meeting, meet with the attorney, and come back to the question of a re-hearing. He noted that scheduling meetings might be a challenge because of other commitments of Board members.

Chair Feustel said that the applicant is trying to say that the ZBA approved items that never came before the Board. They had a good faith hearing, and by not granting a re-hearing, we are saving the applicant time and money.



Mr. Klawes said that he is not concerned about the expenses of the applicant; it costs the Board nothing to re-hear the case.

Chair Feustel said that the applicant is making several arguments, hoping that one will work.

Mr. Pelissier said that is what lawyers do.

Chair Feustel said he does not want expense to be an obstacle to justice.

Mr. Klawes stated that he does not believe a lawyer will help the Board re-think its decision.

Mr. Pelissier stated that he believes they will come back with a conventional plan rather than go to court.

Mr. Klawes said that was a reason to hear the case one more time.

Chair Feustel asked why he would change his vote. Mr. Pendergast made the correct decision. He was very forthright. The applicant is not saying we made an error; they just don't agree. Also, Mr. Tilsley cites cases in the applicant's defense, but should know that we do not set or follow precedent. We only strive to be consistent.

Ms. Baxter said she is on the fence but does not think she needs to re-hear the case. She is concerned about the cost of an attorney, which would be borne by the taxpayers, only to make the Board feel more secure about their decision. She recommends putting the ball back in the applicant's court.

Mr. Klawes said that having an attorney would not make any difference.

Mr. Feistel called for a vote on the motion to re-hear the Administrative Appeal Denial for 4NH Homes, LLC regarding property @ NH Route 28 & Pine Acres Road.

A roll call vote was taken: Chair Feustel, no; Mr. Pelissier, no; Mr. Klawes, no; Ms. Baxter, no

The request for a re-hearing was unanimously denied

Ms. Baxter asked about providing a reason for their decision.

Mr. Feustel suggested the following: 'Nothing was presented to convince the Board to re-hear the case.

CORRESPONDENCE & OTHER BUSINESS

Ms. Baxter shared with the Board a fee schedule proposal. It would institute a fee of \$150 for filing an application for a variance, an appeal, a re-hearing, or a special exception. Currently, there is no fee. This requires BOS approval, but is being presented to the ZBA for comments or opinions. Currently, applicants pay \$65 for advertising and \$6.56 for each certified mail notice.

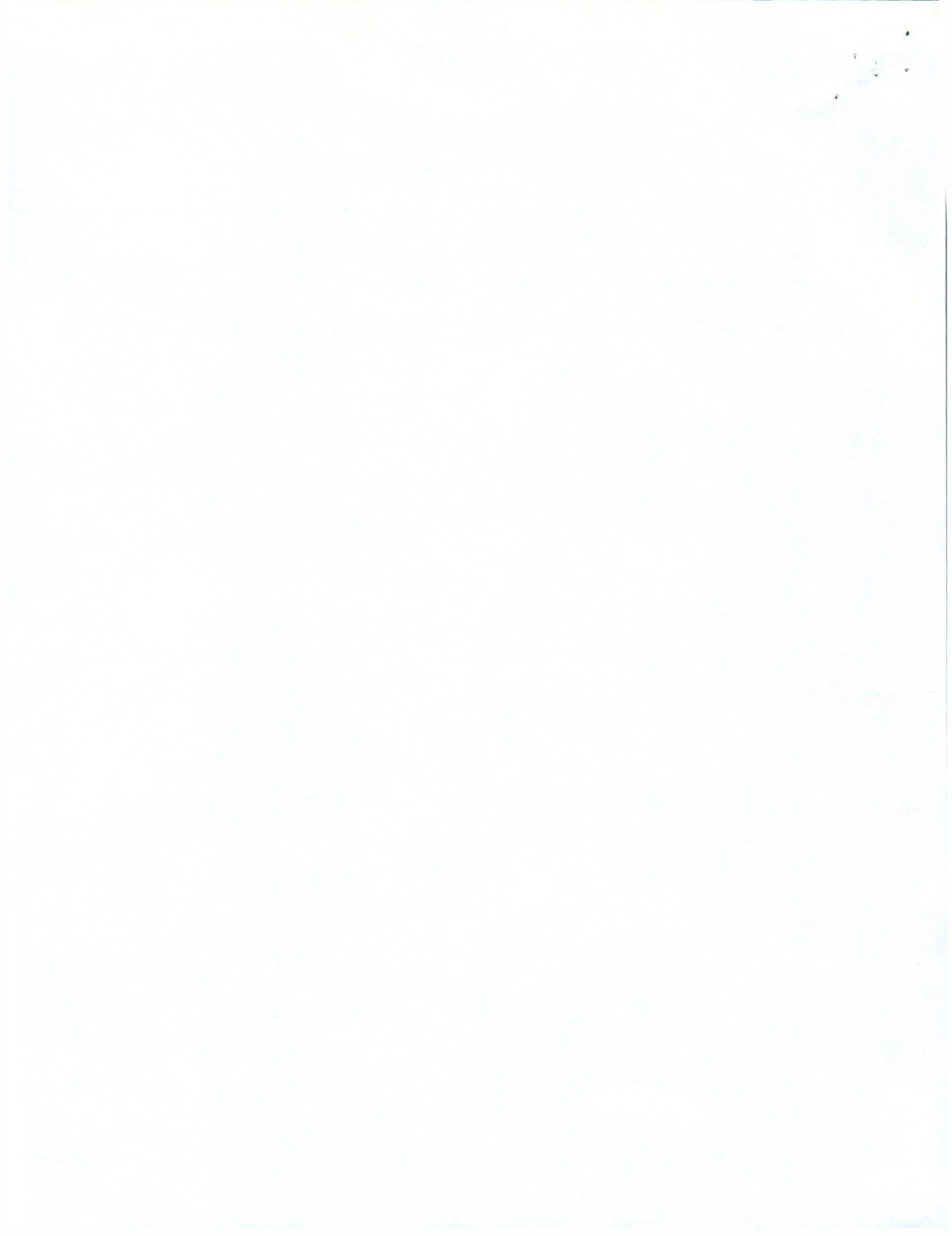
Chair Feustel said the Board should also be able to bill the applicant for professional or expert studies such as traffic studies, surveys, or wetland studies. The applicant, however, should not be billed for the expenses of the Board's attorney.

All members present agreed that the fee of \$150 is a good idea.

Mr. Pelissier suggested looking at the Planning Board documents on this subject for guidance.

Ms. Baxter stated that the application would include an instruction sheet explaining what the applicant is expected to provide, what is needed for each type of application, and what will happen at the meeting. There is also a cover page. If and when they receive BOS approval, she will post everything on the website. She encouraged members to email her with suggestions.

On motion of Mr. Klawes, duly seconded by Mr. Pelissier, it was voted to adjourn at 8:38 p.m.

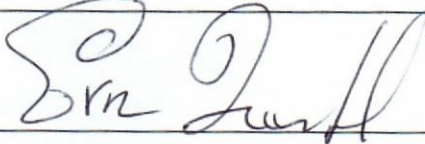
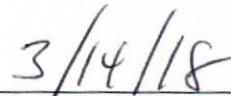
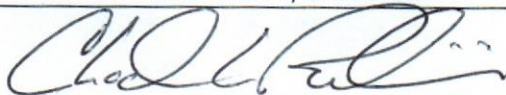
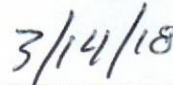
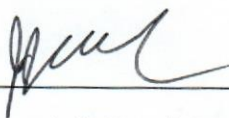
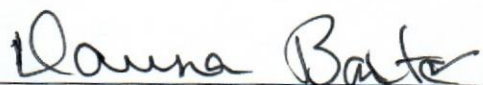





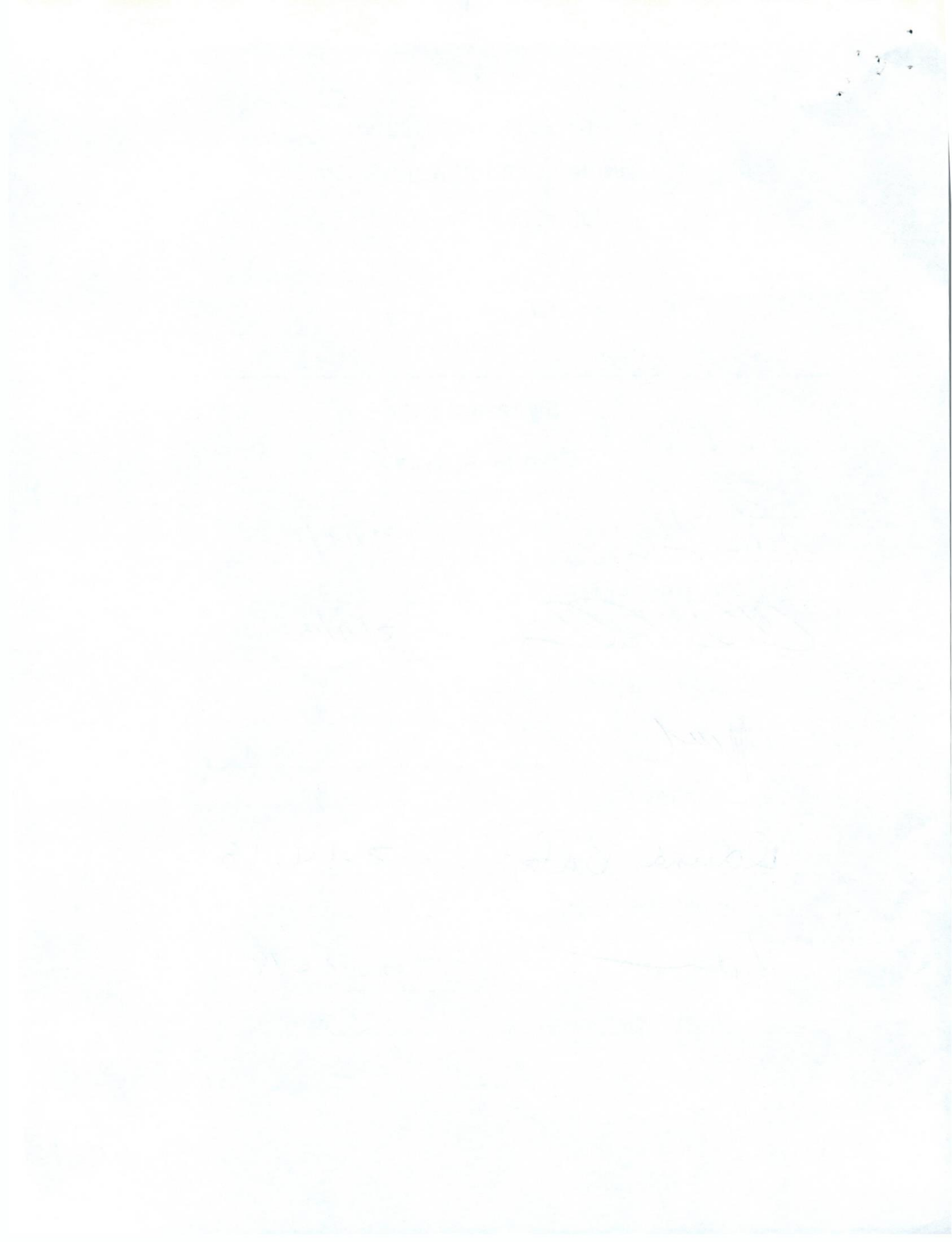
TOWN OF ALLENSTOWN
ZONING BOARD OF ADJUSTMENTS
PUBLIC MEETING MINUTES

January 24, 2018

Signature Page

Original Approval:

	
Eric Feustel, Chairman	DATE
	
Chad Pelissier, Vice-Chairman	DATE
	
Jeff Gryval, Member	DATE
	
Dawna Baxter, Member	DATE
	
Keith Klawes, Member	DATE



ALLENSTOWN ZONING BOARD AGENDA

January 24, 2018

The Town of Allenstown Zoning Board will meet on, **Wednesday January 24th at 7:30p.m.** at the Allenstown Town Hall, 16 School Street, Allenstown, New Hampshire. **Applications and public hearings that have not been considered by the Board by 9:00p.m. will be continued to a time and a place to be announced.** The order of business is subject to change without notice.

6:30 ROLL CALL

I. OLD BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS

- a. Any old business as necessary

II. NEW BUSINESS/RECEIPT OF APPLICATIONS & PUBLIC HEARINGS

- a. ZBA Meeting- To determine whether or not to Re-Hear the Administrative Appeal Denial for 4NH Homes, LLC regarding property @ NH Route 28 & Pine Acres Road

III. UNAPPROVED MINUTES & UNSIGNED MINUTES

- a. December 14th, 2016 – minutes need to be completed
- b. October 25, 2017
- c. November 8, 2017

IV. CORRESPONDENCE & OTHER BUSINESS

- a. Other business.

V. STAFF UPDATE

- a. None

VI. ADJOURN

NOTICES REGARDING THE CONDUCT OF THE MEETING

Meetings may be electronically recorded in any manner for the purpose of preparing written minutes. A record of the meeting is available for public inspection no later than five (5) business days after the meeting, as required by RSA 91-A:2, II. Minutes are ordinarily approved at the next regular meeting of the board.

If you require accommodations under the Americans with Disabilities Act of 1990 (as amended), please contact the Town Administrator by telephone (603-485-4276 ext. 112) or email smulholland@allenstownnh.gov

