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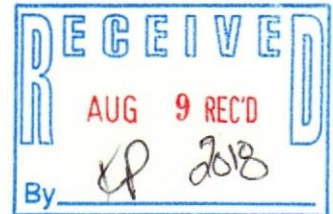
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August 9, 2018

**VIA HAND DELIVERY**

Dawna Baxter  
Town of Allenstown  
Zoning Board of Adjustment  
16 School Street  
Allenstown, NH 03275



Re: Hynes Group  
Appeal of Building Inspectors July 11, 2018 Decision

Dear Ms. Baxter:

Enclosed, please find the following:

1. Town of Allenstown Zoning Board of Adjustment Application for Appeal;
2. Motion for Appeal Pursuant to RSA 676:5 and RSA 674:33; and
3. Motion Seeking Disqualification of Zoning Board Member Pursuant to RSA 673:14.

Thank you for your assistance in this matter. Please do not hesitate to contact me if the Town requires anything further.

Sincerely yours,

James J. Bianco, Jr.

Cc: Blaine Burnett, Hynes Group





Town of Allenstown
Zoning Board of Adjustment

Application for Appeal

Applicant Name Bianco PA on behalf of Hynes Group Phone (603) 225-7170
Address 18 Centre Street Home Work
Owner of Property Concerned Hynes Group Map # 109-21; 410-29,31; 411-2, 3, 4, 5
Address of Property Concerned Granite Street Zoning District MHPD
Description of Property - Frontage 1478 Side 5629 Side 9788 Rear 2830 Acres/SF 384.12 A SF
Proposed Use 55 and older Manufactured Housing Community

COMPLETE SECTION 1, 2, OR 3. DO NOT COMPLETE MORE THAN ONE SECTION

Section 1 - APPEAL FROM AN ADMINISTRATIVE DECISION

The undersigned alleges that an error has been made in the decision, determination or requirement by the Building Inspector/Code Enforcement Officer on 7/11/18 relative to Article VXII, Section 1703(c) of the zoning ordinance. Please see additional filing.

Section 2 - APPEAL FOR A SPECIAL EXCEPTION

The undersigned hereby requests a special exception as provided in Article, Section of the zoning ordinance.

Section 3 - APPEAL FOR A VARIANCE

The undersigned hereby requests a variance to the terms of Article, Section and asks that said terms be waived to permit

Applicant Signature [Signature] Date 8/9/18

PLEASE LIST ABUTTERS TO BE NOTIFIED ON REVERSE SIDE OF THIS APPLICATION

Received Stamp



**STATE OF NEW HAMPSHIRE**

TOWN OF ALLENSTOWN

ZONING BOARD OF ADJUSTMENT

Zoning Compliance Review  
Holiday Acres Manufactured Housing Park Expansion  
(Stephen Hynes, LLC)

**MOTION FOR APPEAL PURSUANT TO RSA 676:5 AND RSA 674:33**

**NOW COMES** Stephen Hynes, LLC (Hynes), by and through counsel, Bianco Professional Association, and respectfully requests, pursuant to RSA 676:5 and RSA 674:33, that the ZBA hear this appeal on the issue of the Allenstown Building Inspector's Zoning Compliance Review. In support of this Motion for Appeal, Hynes states as follows:

**I. INTRODUCTION:**

This motion concerns Building Inspector Steven Paquin's Memorandum regarding zoning compliance for Hynes's site plan application for a 55 and over manufactured housing community. In the Memorandum, the Allenstown Building Inspector, Steven Paquin, deemed Hynes's Site Plan Application noncompliant with the Allenstown Zoning Ordinance based on his density calculation including both the existing park and the proposed 55 and over park, which calculation is inconsistent with the Allenstown Zoning Ordinance and New Hampshire law.

Although Article XVII (Presite Built Housing and Manufactured Housing), § 1703(h)(1) (Individual Home Site Requirements) of the Allenstown Zoning Ordinance requires only that "home sites shall be at least 10,000 square feet [approximately .23



acres] in size”; Article VXII, § 1703(c) restricts this allowance by a factor of approximately 8.7 by establishing a maximum density of one (1) unit for every two (2) acres.

Currently, Hynes owns Holiday Acres, a manufactured housing community in Allenstown, New Hampshire. Holiday Acres is adjacent to the proposed 55 and over manufactured housing community and has 287 home sites on 183.922 acres of land. Holiday Acres was established before the Allenstown Zoning Ordinance was adopted, so the preexisting nonconforming use is a grandfathered use. The proposed 55 and over manufactured housing community would have 100 home sites on 201 acres of land.

## **II. PERSON AGGRIEVED:**

On or about February 27, 2017 Hynes entered into a contract with the Town of Allenstown to purchase 166 acres of land. The Town knew that Hynes’s intent was to use the land to develop a new manufactured housing community for residents 55 years of age and older. The sale of the land is contingent upon Hynes obtaining the necessary Planning Board Site Plan Application approval.

The Site Plan Application at issue, along with all required fees, was filed with the Town on or about February 28, 2018. The Building Inspector did not issue his density determination until over 130 days (approximately 4 ½ months) later, on or about July 11, 2018.

The Building Inspector’s density determination regarding the proposed 55 and over community prevents the Planning Board from hearing the application. Therefore,





Hynes is aggrieved and seeks to have the Zoning Board review the Building Inspector's decision in order to fairly and correctly apply the Allenstown density requirement consistent with both the Allenstown Zoning Ordinance and applicable New Hampshire law. Hynes is aggrieved by the overly restrictive density requirements for manufactured housing communities, which preclude it from developing any type of manufactured housing community on the land that it has contracted to buy from the Town.

### **III.   GROUNDS FOR APPEAL:**

#### *i.     Jurisdiction*

To the extent that the Building Inspector's decision was based upon the terms of the Town's Zoning Ordinance (or upon any construction, interpretation, or application of said Zoning Ordinance), such decision is appealable to the ZBA.

#### *ii.    Grounds*

##### **a.     The Allenstown Building Inspector Improperly Calculated the Allotted Number of Home Sites.**

Hynes contracted with the Town of Allenstown to purchase land for the development of a new 55 and over manufactured housing community. The proposed manufactured housing community will be 201 acres in size and be comprised of 100 home sites. The proposed community will be separate from Holiday Acres; it will have separate entrances and exits, a new community clubhouse, and will be a 55 and over community.

In the Building Inspector Memorandum, Mr. Paquin incorrectly states that the additional home sites would be an extension of the existing Holiday Acres



nonconforming use. Mr. Paquin calculated the density of the lots for the existing Holiday Acres park and the proposed 55 and over community together, when the Allenstown Zoning Ordinance requires density to be calculated for each manufactured housing community separately, based on the size of the parent tract. *See* Allenstown Zoning Ordinance § 1703(c). The proposed 55 and over community will be a completely separate entity from the existing Holiday Acres community, so the Building Inspector was incorrect when assuming that the proposed community would be an expansion of Holiday Acres parent tract. When viewed as a separate plan, the density requirements are met because the parent tract for the proposed 55 and over community is 201 acres in size and will only have 100 home sites.

Alternatively, even if the application is reviewed as if the proposed community is an expansion of Holiday Acres, “nonconforming uses may be expanded where the expansion is a natural activity, closely related to the manner in which a piece of property is used at the time of the enactment of the ordinance creating the nonconforming use.” *New London Land Use Ass’n v. New London Zoning Bd. of Adjustment*, 130 N.H. 510, 516 (1988). Even if the Zoning Board of Adjustment finds that the proposed 55 and over community is an expansion of Holiday Acres, the expansion is a natural continuation of the original purpose of the community, namely to provide an affordable housing option to Allenstown residents, specifically individuals over the age of 55 (a demographic specifically referenced by Selectwoman Sandy McKenney when she ran for a seat on the Selectboard earlier this year). The expansion will not substantially change the nature and purpose of the original use, meaning that it is a permissible expansion of the original

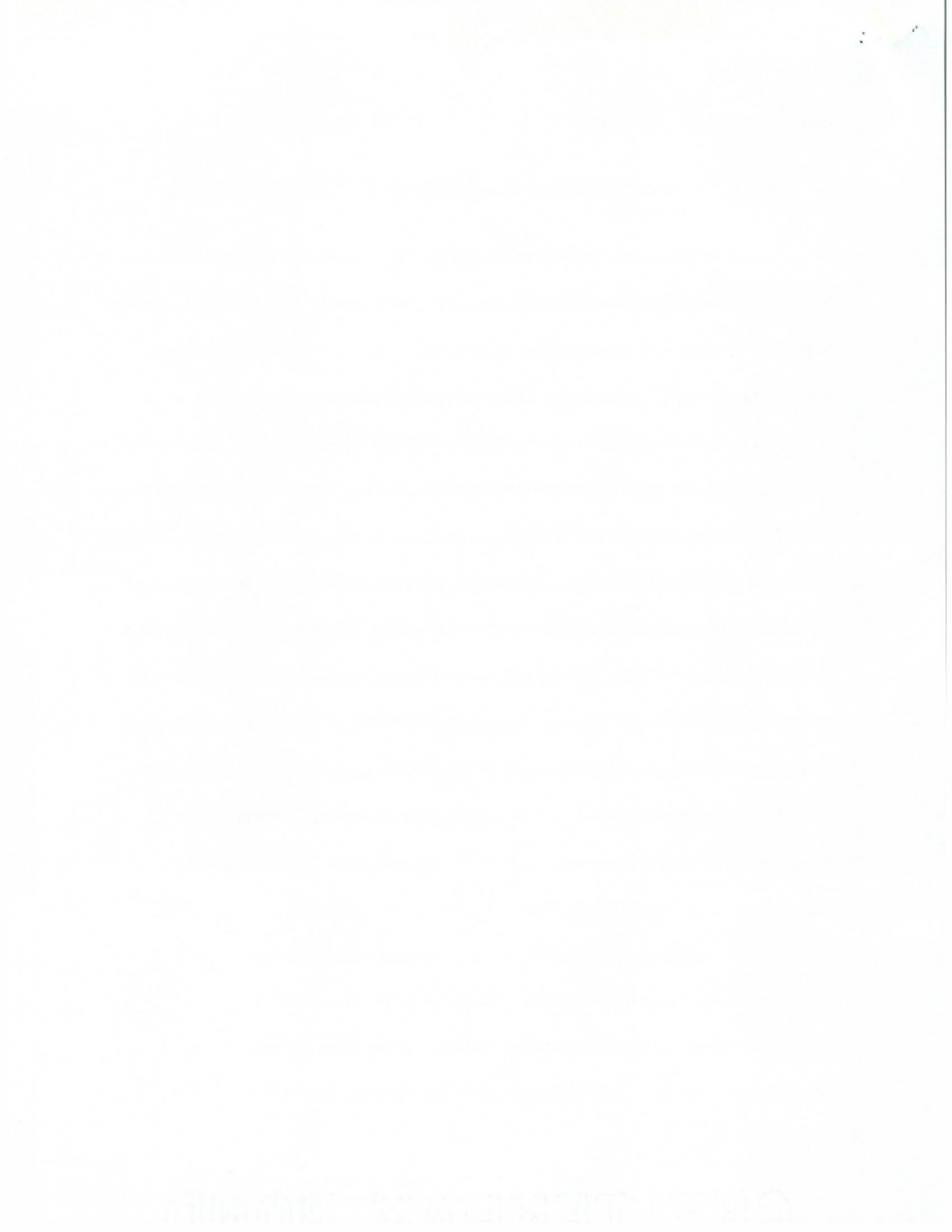


nonconforming use. *See Hampton v. Brust*, 122 N.H. 463, 468 (1982).

b. The Density Requirements in the Allenstown Zoning Ordinance Are Unreasonable.

New Hampshire law requires municipalities to “afford realistic opportunities for the development and expansion of manufactured housing parks.” RSA 674:32, I. In order to provide development and expansion opportunities, municipal “lot size and overall density requirements for manufactured housing parks shall be reasonable.” *Id.*

The current density restrictions in Allenstown do not afford realistic opportunities for the development and expansion of manufactured housing parks. The individual home site ordinance only requires each home site be 0.23 acres in size. *See Allenstown Zoning Ordinance § 1703(h)(1)*. However, manufactured housing community developers must set aside two acres for each home to comply with density requirements. *See Allenstown Zoning Ordinance § 1703(c)*. The discrepancy in size requirements for home sites and density requirements can render up to approximately 88.5% of the land in a developer’s park useless because useable home sites can permissibly use only approximately 11.5% of the land a developer must set aside to comply with density requirements. It is unreasonable for a park owner to be expected to forego 88.5% of the land in a manufactured housing community that could be used to provide housing due to an unreasonably restrictive and discriminatory density requirement. Such a restriction unreasonably and unlawfully discriminates against manufactured housing and denies manufactured housing park developers a realistic opportunity to develop manufactured housing parks. This is even more unreasonable and discriminatory when, as here, the



density requirement and calculation prohibits the placement of even one home on 201 acres of land.

Furthermore, the land in question is zoned under the Manufactured Housing Park Overlay District of the Open Space and Farming category of the Allenstown Zoning Ordinance. *See* Town of Allenstown Zoning Map. The land in question is one of only three areas zoned for manufactured housing in Allenstown. *See* Town of Allenstown Zoning Map. By prohibiting the land from actually being used as a manufactured housing community, Allenstown is committing waste because developers will be unwilling to purchase and improve the land if it cannot be used for its zoned purpose.

c. The Allenstown Building Inspector and Planning Board Did Not Uphold Their Constitutional Obligation to Work with Applicants.

A town's Planning Board has the constitutional obligation to reasonably work with applicants. *See* N.H. Const. pt. I, art. 1.

According to the Allenstown Zoning Ordinance, the Building Inspector is appointed by the Board of Selectmen and administers and enforces the Zoning Ordinance. *See* Allenstown Zoning Ordinance § 2. Within his role, the Building Inspector acts as an agent for both the Planning and Zoning Boards in order to ensure that applications are in compliance with the Zoning Ordinance.

Hynes retained Holden Engineering, a local engineering firm, to plan and design the layout of the proposed 55 and over community. Holden Engineering submitted the Site Plan Application, Conditional Use Variance Application, and two checks for the fees associated with both applications, totaling \$2,355.24, to the Allenstown Town Hall on or





about February 28, 2018. Both checks cleared on March 16, 2018. After submitting the application, a representative from Holden Engineering, Peter Holden, discussed the project with Matt Monahan, an Allenstown Building Inspector. Mr. Monahan suggested that the application was in compliance with the Allenstown Zoning Ordinance. However, in July 2018, Mr. Monahan recused himself from the Hynes applications due to an alleged conflict of interest. In telling contrast, Planning Board members who have been outspoken on the record *against* the 55 and over manufactured housing community have, as of yet, failed to recuse themselves despite the clear application of the juror standard.

On or about July 10, 2018, a representative from Allenstown told Mr. Holden that there had been no payment of fees associated with the Hynes application, which had delayed the application from review. On or about July 11, 2018, Stephen Paquin, an Allenstown Building Inspector, reviewed the Hynes Site Plan Application and deemed it noncompliant with the Zoning Ordinance, despite what Mr. Monahan had previously conveyed to Mr. Holden. Additionally, as referenced above, at several Board of Selectmen meetings held in 2016, when discussing the sale of the land to Hynes for the purpose of a manufactured housing community, three Planning Board members and two Zoning Board of Adjustment members spoke out in strong disapproval of the proposed 55 and over community. Taking all of the actions of Allenstown representatives together, it is clear that the Planning Board and its agents have not acted reasonably with Hynes throughout the application process.

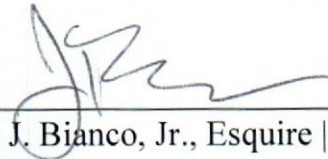


**IV. CONCLUSION:**

In light of the grounds stated herein, Hynes respectfully requests an appeal of the Building Inspector's decision before a ZBA panel "as impartial as the lot of humanity will admit." Hynes has filed for recusal of ZBA Member Chad Pelissier simultaneously with this Motion.

Respectfully submitted,  
Stephen Hynes, LLC  
Stephen Hynes, General Partner  
By and through their Attorneys,  
Bianco Professional Association

Dated: 8/9/18

  
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PHYSICS DEPARTMENT

**STATE OF NEW HAMPSHIRE**

TOWN OF ALLENSTOWN

ZONING BOARD OF ADJUSTMENT

Zoning Compliance Review  
Holiday Acres Manufactured Housing Park Expansion  
(Stephen Hynes, LLC)

**MOTION SEEKING DISQUALIFICATION OF ZONING BOARD MEMBER  
PURSUANT TO RSA 673:14**

**NOW COMES** Stephen Hynes, LLC (Hynes), by and through counsel, Bianco Professional Association, and respectfully requests, pursuant to RSA 673:14, that the ZBA hear this Motion. In support of this Motion, Hynes states as follows:

**I. INTRODUCTION:**

This motion concerns the disqualification of one<sup>1</sup> member of the Allenstown Zoning Board of Adjustment. Hynes currently owns Holiday Acres, a manufactured housing community in Allenstown, New Hampshire. Hynes contracted with Allenstown to purchase 166 acres of land to develop a new 55 and over manufactured housing community next to the existing Holiday Acres community. During several of the Board of Selectmen public hearings regarding the sale of the land for the purpose of a 55 and over manufactured housing community, Zoning Board member Chad Pelissier spoke in strong disapproval of the proposed 55 and over manufactured housing community.

The issue of recusal was presented to the Town's legal counsel; however the

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<sup>1</sup> In addition to Chad Pelissier, who is the subject of this motion, Eric Feustel, the Chairman of the Allenstown Zoning Board, had prepared a letter that was read into the record at a March 6, 2017 meeting of the Board of Selectmen. The letter expressed Chairman Feustel's disapproval of using Town land for a manufactured housing community because he mistakenly believed that the homes in the community would depreciate in value and the Town's student population would increase. This motion does not pertain to Chairman Feustel because he has moved out of Allenstown and has been replaced on the Zoning Board by Keith Klawes.



response received from Town counsel leaves the issue unresolved. In fact the response did not even directly address the issue of recusal relative to the Zoning Board

**II. PERSON AGGRIEVED:**

Hynes entered into a contract with the Town of Allenstown to purchase 166 acres of land, on or about February 27, 2017, in order to develop a new manufactured housing community for residents 55 years of age and older. The sale of the land is contingent upon Hynes obtaining the necessary Planning Board Site Plan Application approval.

The Allenstown Building Inspector has deemed Hynes's Site Plan Application noncompliant with the Allenstown Zoning Ordinance, requiring Hynes to appeal the decision with the ZBA—which appeal has been filed simultaneously with this Motion. However, with a prejudiced member of the ZBA reviewing the appeal, Hynes will be unable to receive the fair and impartial appeal review to which it is entitled. Therefore, Hynes seeks to have the prejudiced member of the ZBA recuse himself from participating in the matter.

**III. GROUND FOR MOTION:**

*i. Jurisdiction*

To the extent that the Building Inspector's decision was based upon the terms of the Town's Zoning Ordinance (or upon any construction, interpretation, or application of said Zoning Ordinance), such decision may be appealed to the ZBA. Such appeal must be heard by a fair and impartial Board, demanding the recusal of any member who cannot remain impartial during the appeal process.





ii. *Grounds*

When a Planning Board or Zoning Board is acting in a judicial or quasi-judicial capacity, members of the board must not participate in deciding the case and must not sit in the hearing regarding the case “if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.” RSA 673:14, I; *Winslow v. Holderness Planning Bd.*, 125 N.H. 262, 268 (1984). This standard for disqualification is commonly referred to as the “juror standard.”

The New Hampshire Supreme Court has previously held that a board is acting in a judicial capacity “[i]f they [magistrates, boards, etc.] are bound to notify, and hear the parties, and can only decide after weighing and considering such evidence and arguments, as the parties choose to lay before them, their action is judicial.” *Winslow*, 125 N.H. at 266 (quoting *Sanborn v. Fellows*, 22 N.H. 473, 489 (1851)). When acting in a judicial or quasi-judicial capacity, board members are expected to act with the same level of impartiality as judges, meaning to be “as impartial as the lot of humanity will admit.” N.H. Const. art. 35, pt. I.

During the present appeal, the Zoning Board will be acting in a judicial capacity. Pursuant to RSA 676:7, the Zoning Board will have to notice the appellant, and every abutter of the appeal hearing prior to the public hearing. Additionally, the Zoning Board will hear evidence and testimony not only from Hynes as the appellant, but also from the general public. Only after hearing and weighing the entirety of the evidence presented will the Zoning Board be able to render a decision. The Zoning Board will be clearly acting in a judicial capacity based on the *Winslow* criteria because they are required to



notice parties and hear and weigh evidence for the appeal.

The court uses the juror standard to disqualify board members that are not capable of acting with the required level of impartiality. The juror standard determines, among other things, whether the juror “[h]as directly or indirectly given his opinion or has formed an opinion.” RSA 500-A:12, I(d). “If it appears that any juror is not indifferent, he shall be set aside on that trial.” RSA 500-A:12, II. Therefore, when applied to the Zoning Board, a board member who has formed an opinion about a judicial or quasi-judicial matter before hearing the full case must be disqualified and precluded from both voting on and sitting in the hearing for the case because he cannot remain impartial.

A public official has been found to make a prejudgment where he makes public statements that “give the appearance that he has already prejudged the case and that the ultimate determination of the merits will move in predestined grooves.” *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 590 (D.C. Cir. 1970). The New Hampshire Supreme Court adopted this rule and applied it to municipal board members when it held that where a citizen makes a comment in favor of one position at a public hearing and subsequently becomes a member of the board deciding on the same issue, he must be disqualified due to his prejudgment on the issue. *Winslow*, 125 N.H. at 267.

The following individual must recuse himself from participating in matters regarding Hynes’s appeal:

1. Chad Pelissier, Zoning Board, Member.

This member of the Zoning Board of Adjustment expressed his disapproval of the use of the land for a manufactured housing community at two separate Board of

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Selectmen town meetings.

At the meeting on February 27, 2017, Mr. Pelissier expressed the negative effect he believed the manufactured housing community would have on the town school system. He also expressed his belief believed that the new manufactured housing community would have a negative tax impact on Allenstown.


At the meeting on March 6, 2017, Mr. Pelissier again expressed disapproval for the project due to his negative perception of the impact that the new manufactured housing community could have on town taxes and the town school system. In addition, he raised concerns about the depreciation in value of manufactured homes.

As demonstrated by the statements this board member has publicly made at the Board of Selectmen meetings, he has prejudged the plan to use the land as a manufactured housing community. He will not be able to remain impartial when reviewing Hynes's appeal for a variance; therefore, he must disqualify himself from participation in matters involving Hynes's appeals.

Respectfully submitted,  
Stephen Hynes, LLC  
Stephen Hynes, General Partner  
By and through their Attorneys,  
Bianco Professional Association

Dated: \_\_\_\_\_

8/9/18

  
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