

16 November 2020

To the members of the Lyme Select Board,

Thank you for your time during the public comment section of the 12 November 2020 Select Board meeting and then for sitting in at the Planning Board meeting that same evening. I expect you now understand the background for the questions I asked in the earlier meeting.

I want to better understand the interplay between NH's RSA 91-A Right-to-Know law and the Town's policies as expressed in its Committee Handbook. My questions concern permissible forms of communications outside a noticed meeting between myself (I am an alternate on the Planning Board), and:

- The chair of the board
- Other members of the Planning Board
- Members of the General Public
- New Hampshire Municipal Association (NHMA)

I realize that some of these answers may require advice from counsel, but I ask that you respond with specificity to these questions.

Finally, I want to emphasize that I ask these questions in the spirit of finding the best way to inform the public of the actions of town government.

Thank you again for your consideration.

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#1 The Committee Handbook (page 5) states, "An individual committee member may originate information and send it electronically to the committee chair" Was my note to Mr. Stadler impermissible?

#2 The Committee Handbook (also, page 5) states, "Other than setting an agenda, arranging a meeting, and forwarding draft documents for review prior to a meeting, communication between members about business is not allowed to take place other than at a noticed public meeting." Under what circumstances would it be permissible for a member to email all members prior to a meeting, laying out their thoughts on a matter?

#3 That same paragraph of the Handbook further implies that no members should ever have communication with other board members outside a meeting, even if there is no quorum present. This seems at variance with RSA 91-A:2, that states, "... a 'meeting' means the convening of a quorum of the membership of a public body..." Would you explain the reasoning for the Handbook's more restrictive policy?

4 The Handbook (page 3) seems to lump virtually any form of electronic communication under one term, stating, “‘email’ is a similar encompassing word covering all forms of electronic communication including, but not limited to telephone, fax, email, instant messaging, text messaging, twitter, web pages and blogs.” I regularly correspond with many people in town about housing, land use, taxes, and other topics, some of which are the purview of the Planning Board. I use email, my blog/website, telephone, physical bulletin boards, and (less often, sadly, because of Covid-19) in person. I have not, but could conceive of a reason to use newspaper editorials or advertisements, postal patron mailings, or other non-electronic messages. Are any of these forms listed above impermissible by the requirements of the Handbook? If so, please explain the reasoning.

5 The Handbook sets guidelines about use of the Lyme Listserv (page 9), stating, “Because of the issues regarding the ‘Right-to-Know’ law, officials, board and committee members are not to respond to any Listserv discussion of issues or comments made about their specific areas of responsibility on the Listserv, nor should they elaborate on published notices.” I believe this policy is in place to avoid the potential of a back-and-forth between members being deemed to be an improperly noticed public meeting. Is this correct?

#6 Lyme encourages candidates for public office to post a statement to the Listserv. May candidates rebut statements from other candidates on the Listserv? What about a rebuttal in other venues, such as those listed in #4 above?

#7 Does the town have a policy regarding dissemination of public records (as defined in the RSA), either by a member of the public or of a public body? Does the venue matter, such as those listed in #4 above, or the Listserv?

#8 RSA 91-A:2-a-I requires that public bodies "... shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power" only in open meetings. After a public body finalizes the language of a particular article and places it on the warrant, does that body still have those powers (listed above) over the article?

#9 Specifically, which venues may officials use to advocate for or against warrant articles? Again, I request a review of the venues listed in #4 above and the Listserv. If the answers to these differ, please explain the reasoning.

10 The New Hampshire Municipal Association provides legal advice to towns for a flat membership fee. The NHMA runs workshops for "new public officials". When I attended in May 2019, I understood the lawyers running the course to say that they welcomed legal questions from individual members of public bodies. The Handbook now states (in its 2020 revision, pages 5 & 6) that only select Lyme officials may contact the NHMA for advice. Is this due to a change in NHMA policy? Or is it a change to Town policy? If the latter, what are the reasons?