

MEMORANDUM

TO: Cathy

CC: David and Lydia

RE: "Remote" Participation by Planning Board Members

FROM: Nick Herman

DATE: July 7, 2017

This Memorandum responds to the question of whether a member of the Planning Board may participate remotely in a Planning Board meeting. The answer is "yes," subject to the Planning Board Bylaws, which provide at Section XI I. H. as follows:

At the discretion of the Chair and provided that quorum requirements are otherwise met, a regular member who is unable to attend a meeting due to physical incapacitation or absence from the Town beyond a reasonable travel distance may participate by teleconference, subject to the availability of functioning equipment, and will be considered present but not able to vote. A member wishing to participate by teleconference should contact the Chair at least 24 hours prior to the meeting.

In my judgment, this provision of the Bylaws is lawful, although neither our statutes nor case law have specifically addressed the legality of remote board participation in this context. The Bylaws, as rules and regulations governing the procedures and operations of the Planning Board, are authorized by our LUO at Section 15-25 (b) and by G.S. 160A-71(c), which allows for rules "not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure." The limitations in subsection H of the Bylaws quoted above that remote participation is authorized if quorum requirements are otherwise met and that a remote participant will be considered present but not able to vote guard against any legal challenge to the lawful quorum and voting requirements for Board action. So too, the Bylaws provision does not run afoul of the Open Meetings Law, which defines "official meeting" to include "the simultaneous communication by conference telephone or other electronic means." G.S. 143-318.10(d). The Bylaws provision also does not confer any "right" of a board member to participate remotely (there being no such "right" under the law), as the

decision to allow such participation is discretionary with the Chair and subject to the limitations that a quorum exists of members present and the remote participant cannot vote.

The only ambiguity in the Bylaws about remote participation is the question of whether remote participation counts in calculating the absenteeism of a board member and his/her potential removal from the Board under Section III. D 2. of the Bylaws, which provides that “Unless the Chair waives the requirement, members shall be removed from the Planning Board if they are absent from three consecutive Planning Board meetings or if they miss more than 30% of the meetings during a 12month period.” This issue might be considered by the Planning Board—i.e., to clarify the extent to which remote participation counts in determining absenteeism under this removal subsection so that remote participation is not abused.

Let me know if you need anything further on this.