



## Memorandum

**To:** Town Manager Scrapchansky

**From:** Asst. Town Manager Waltz

**Re:** Planning Board Seat on TDI

**Date:** October 7, 2020

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Since 2003, Topsham Development Inc.'s ("TDI") bylaws have included a designated voting seat on TDI's board of directors for a representative from the planning board. Concerns have been brought to our attention that this dedicated planning board seat on TDI's board might create a structural incompatibility or a conflict of interest which could pose a potential avenue to challenge a planning board decision.

The planning board member on the TDI board requested a leave of absence while the issue could be reviewed. We sought the opinion of our town attorney. Our town attorney's opinion is as follows:

1. It is not "structurally incompatible" to have a planning board member on TDI. Structural incompatibilities are very limited – to situations where two positions can never be held by the same person. An example might be a planning board member sitting on the zoning board of appeals.
2. While there is not a structural incompatibility, in order to avoid conflict of interest issues, if a project is expected to come before the planning board, the planning board member should recuse himself/herself from TDI proceedings which will take a position the project. Alternatively, the planning board member could participate in TDI's proceedings, but would have to recuse himself/herself from the planning board proceeding involving the project.

In sum, so long as the recusal process is religiously followed, it is permissible to have a designated board of director's seat on TDI for a planning board member. But, even if appropriate, repeated recusals can undermine the overlapping board member's ability to fully discharge his or her participatory responsibilities and fiduciary duties to each board. More importantly, we also recognize that the distinctly different responsibilities of the two boards gives rise a public perception of conflict between these roles. From a staff perspective, we want to ensure generally that our committee appointments do not create an inherent appearance of conflict. Additionally, we would like to avoid situations where failure of the planning board member to recuse himself/herself from TDI action on a proposed project forces a recusal of the member from the planning board proceedings.

It is our recommendation that TDI's board be requested to review whether it believes the benefits of having a designated planning board seat on its board of directors outweigh the drawbacks of that member having to recuse himself/herself in TDI's discussion of projects which are expected to come before the planning board.