

## GUNSTOCK AREA COMMISSION MEETING

November 10, 2021

Powder Keg Pub, Historic Lodge at Gunstock Mountain Resort

### APPROVED MINUTES

**Gunstock Area Commissioners Present:** Brian Gallagher, Gary Kiedaisch, Rusty McLear, Peter Ness, Jade Wood (by phone)

**Gunstock Personnel Present:** Tom Day, Cathy White, Peter Weber, Kristen Lodge, Robin McGonagle, Patrick McGonagle, Becky LaPense

**Belknap County Delegates Present:** Representatives Sylvia, Ploszaj, Bean, Johnson, and Hough

Chair Gallagher called the meeting to order at 8:06AM with the Pledge of Allegiance and a moment of silence in honor of Veterans Day. Commissioner Wood was in attendance by phone and Chair Gallagher asked if there was anyone else present on the line, Commissioner Wood confirmed that she was the only person on the call.

Miscellaneous - Chair Gallagher began the meeting with an update on the performance evaluation process for the Gunstock President & General Manager, Tom Day. He explained that during the October GAC meeting, the Commissioners were asked to complete an evaluation questionnaire. That process has been completed and summarized and he plans to meet with Tom soon to review the evaluations. After that meeting, he will schedule a public/non-public meeting to discuss the evaluation and potential recommendations with the rest of the Commission.

BCD Notification of GAC Removal for Cause - Chair Gallagher reported that the purpose of the meeting is to review a Belknap County Delegation GAC removal cause notification received on November 6<sup>th</sup> and for the GAC to act on the same. He explained that on Oct 25, 2021, the BCD held what they considered to be a public meeting on a request that had come from a GAC majority regarding the misconduct from one GAC Commissioner. He said it was his personal opinion that the public hearing appeared to be more of a public political activity and that it was discouraging for voters and taxpayers to witness their public officials conducting themselves in that manner.

Chair Gallagher said he believes it would be beneficial to begin with a summary of the events leading up to the current situation. He reported that on July 29<sup>th</sup>, the GAC authorized the hiring of an attorney to investigate the conduct of Commissioner Ness, which seemed to have been beyond the bounds of ethical standards for a Gunstock Commissioner. Attorney Tom Quarles was hired in that public meeting and the report was shared in the August 25<sup>th</sup> public meeting. After GAC discussion and a lengthy public discussion of the finding, there were two motions presented for a vote. The first was a vote of no confidence against Commissioner Ness, which passed with 4 "yes" votes and no abstentions. After that, a second motion was made to refer the matter to the BCD. He said that the GAC referred the matter to the BCD with reluctance, but he believes it was within the spirit and the letter of the law. Prior to that action, Chair Gallagher said that the former GAC Chair made multiple attempts to contact Commissioner Ness and discuss the matter at hand. Those attempts were not acknowledged and there was no communication from Commissioner Ness.

He stated that at the BCD's public hearing, public comments were not allowed by the BCD Chair and, as a result, he feels that due diligence was not adhered to. He added that, after their vote to dismiss the GAC's request, Chair Sylvia approached Commissioner Kiedaisch and asked

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for his resignation. Chair Gallagher said that kind of behavior is not what public bodies should be involved in, that the GAC does not conduct themselves in that manner and that as long as he is GAC Chair, he will not tolerate it. He said that Chair Sylvia approached Commissioner Kiedaisch a second time and presented him with a one page resignation letter asking him to sign it. He said that activity is disruptive, unnecessary, and at best political theater and that he hopes the BCD and the public understand what has driven the GAC to this step. He then asked each Commissioner for their comments and observations of these events.

Commissioner McLear said he considered the BCD's public hearing a travesty, given that the meeting was held to discuss a very serious concern but there turned out to be no discussion. He said neither the GAC nor members of the public were allowed to speak, and that he believed it was poorly done and politically motivated.

Commissioner Wood said she had no further comment other than what she said at last GAC meeting. She added she is eagerly awaiting and excited to move past the issue so they can be prepared to open the mountain in less than a month.

Commissioner Ness said Chair Gallagher needs to be disabused of the notion that what is occurring at this meeting and what occurred during the BCD hearing is something other than political because that is the nature of the action. He said it was not a court of law but if it were, the result would have been the same. He added that the action taken by the BCD is under their purview and whatever they choose to do, the GAC is not in control of that. If they choose to remove Commission members for cause, that is something wholly under their purview under the enabling statute.

Commissioner Kiedaisch read a prepared statement as follows: On Saturday November 6, 2021, Chairman of the Belknap County Delegation, Michael Sylvia, provided e-mail notice to the GAC informing the Commissioners he will hold a public meeting on November 16<sup>th</sup> for the purpose of removing Commissioners Kiedaisch, Gallagher and McLear for cause. There are several events that have led up to this point in time. In November 2019, Peter Ness of Belmont was appointed as one of five Commissioners to the GAC by the BCD. Immediately following Ness' appointment, he began an in-earnest campaign to sell his software product called OTTO to GMR. This attempt was in clear violation of the NH statute that prohibits an appointed public official from self-serving. Notwithstanding repeated calls to Ness from the Commissioners to stop his attempt to sell, he continued carrying his message to BCD, GMR employees, Commissioners, and ski school personnel. Concurrently at this time, Ness refused to sign the GAC Code of Ethics that memorializes the state statute prohibiting self-serving and addresses many other conditions of behavior that GAC members must comply with. For this reason, among other inappropriate behavior by Peter Ness as a Commissioner, the Commission voted 4-0 in a vote of NO CONFIDENCE at the August 25<sup>th</sup> GAC meeting. The vote passed 4-0. The GAC subsequently asked Ness to resign and step down. He did not and continued his attempts to sell OTTO, taking it to the BCD Chair and Vice Chair. Ray Howard said he instructed Ness to give his product to GMR and 3 years later he could charge us for it. That's a violation, he's breaking the law and Chair Sylvia did nothing to stop that from happening. Based on Ness's refusal to sign the Code of Ethics and ongoing attempts to sell OTTO, along with his absences from GAC meetings, the GAC on August 25, 2021 voted 4-0 to ask the BCD to remove Ness. On October 16, 2021, in a meeting with Belknap County Commissioner Peter Spanos, Rep. Norm Silber, and

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Commissioners Gallagher and Kiedaisch, Rep. Silber announced that he controlled 13-14 BCD Delegate votes that act as a voting block and that the Ness matter was dead on arrival. No revenue comes to GMR from taxpayers, contrary to what Mr. Silber prints in the paper all the time. GMR reinvests all its earnings into the operation and does distribute funds to the BCD, with this year's payment being the highest amount in recent memory. Silber also announced in their October 16<sup>th</sup> meeting that Gallagher would not be reappointed next year, giving Silber a three-vote majority on the GAC so he would have control and could lease GMR. His reason for intending to lease the facility is that he does not believe the county or government has any business in running a business. At the October 25<sup>th</sup> BCD public hearing on the request to remove Ness, Chairman Sylvia denied any comments supporting the request put before the Delegation for removal of Ness by the public or the GAC. Notwithstanding a robust objection from several newly elected Delegates to hear testimony, Sylvia called the vote. The very block of voters that vote with Silber, voted to take no action against Ness. Ness walked away from any consequences for attempting to self-serve and breaking the law. And to show his arrogance on the way out, he approached two Delegates and said, "Would you like to hear about my OTTO?" and his wife said, "Peter, stop it". Prior to this meeting, based on firsthand knowledge by Gallagher and Kiedaisch that both Sylvia and Silber were prejudice prior to the hearing, GAC's attorney, Tom Quarles, presented to Chair Sylvia a request for disqualification of the prejudiced delegates. Sylvia set this aside and called the vote with no input or disqualification.

Commissioner Ness called objection and said what you need to understand is suborning perjury and Chair Gallagher told Commissioner Ness he was out of order and would be given a chance to respond later. Commissioner Ness said to stop making false statements.

Commissioner Kiedaisch continued by saying at the October 25<sup>th</sup> public hearing, Sylvia called Kiedaisch into the hallway and asked him to resign. Kiedaisch refused. Rep. Silber then put a motion forward that GMR should not be run as a business. Sylvia called a vote and it passed. Meanwhile, Silber and Ray Howard have legislation before the NH legislature to transfer authority of managing GMR's budget from the GAC to the Delegation. On Saturday November 6<sup>th</sup>, the GAC learned via e-mail from Sylvia and from a posting in the *Laconia Daily Sun* that there would be a hearing to remove Commissioners Kiedaisch, Gallagher, and McLearn. This action is outrageous, mean spirited, unjustified, retaliatory, and without cause by Sylvia and the Delegation, and must be stopped to prevent serious harm to GMR operations, personnel and the future of the enterprise. It gives me pause to think about this. Rebecca LaPense, what do you think is going to happen to you as the HR Director who signed off on Peter Ness' separation from Gunstock? Tom Day, what do you think is going to happen to you? This will cause irreparable, material harm. Next Tuesday's meeting is retribution for the GAC standing up for state law and the Delegation leadership. Three sitting Commissioners Kiedaisch, Gallagher and McLearn believe Commissioners should not violate the law and the Delegation should not turn a blind eye to it. Gunstock is not a football and should not be kicked around for political gain or game. Jobs are on the line here along with the economic stability of the county, its residents, and businesses. Silber has made it clear he intends to lease the property and has the voting block to make it happen. While today is not the day to debate that, I can assure you there are many, many reasons why that should not be done. For now, we have a top-notch leadership team and associates who are doing an excellent job managing the county facility. I look for your support before next Tuesday's meeting to prevent this from happening.

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Chair Gallagher asked for any other comments from the GAC about the upcoming BCD hearing on November 16<sup>th</sup>. Commissioner McLear said he is looking forward to it and that they are claiming removal for cause, but the BCD has not said what the cause is. He said he has only been on the GAC for 11 or 12 months and has mostly just asked questions. He said he did accuse the BCD of engineering a meeting that wasn't fair or representative of the county so maybe that was his malfeasance, but he will say it again: the October 25<sup>th</sup> meeting was a poorly run meeting and one that was done in a self-serving way, and he hopes it does go to court so a judge can decide who's right or who's wrong.

Commissioner Wood asked if there was a time limit for statements and Chair Gallagher said he is trying to be fair so they can express their concerns but asked to keep their comments to 2-3 minutes. Commissioner Wood asked who decided and when was it decided to hold their current meeting. Chair Gallagher said the meeting was called by the GAC Chair after receiving the letter from Chair Sylvia and that when the meeting materials were prepared each of the Commissioners were notified of the meeting. Commissioner Wood said she found out on Monday morning. Chair Gallagher said the GAC bylaws allow the Chair to call a meeting with proper notice and her request to attend electronically was accommodated. Commissioner Wood said she had not been able to find an agenda for the meeting and suggested that the best practice going forward would be to notify all Commissioners ahead of time and include the agenda with the notice. She added that Attorney Tom Quarles has been paid almost \$20k for his services on this matter and she calculates that money could pay for 100 ski instructors to be certified. She said if Gunstock is planning to open on December 10<sup>th</sup>, the GAC needs to move on and get serious about running the mountain. Chair Gallagher said the agenda for today's meeting was included in the public notice which was issued on 11/7/21 and thanked her for her comments.

Commissioner Ness said he is confident that the BCD will do what is within their rights under the law.

Commissioner Kiedaisch had no further comment.

Chair Gallagher said he is prepared to make a motion and read a prepared preamble as follows: At its July 29, 2021 meeting, the GAC authorized hiring an attorney to investigate the conflict of interest charges against Commissioner Peter Ness. At its August 25, 2021 meeting, the GAC reviewed the attorney's report titled "Report on Gunstock Area Commissioner Peter Ness" and voted to ask for Commissioner Ness' resignation and, if needed, the removal of Commissioner Ness for cause by the Belknap Country Delegation. As a result, much communication ensued between Commission Chair Kiedaisch and Vice-Chair Gallagher with Delegation Chair Mike Sylvia and Rep. Norman Silber about the Ness investigation and removal request. When Reps. Sylvia and Silber made it clear they had pre-judged the Ness removal for cause hearing in favor of Ness, and scheduled that hearing shortly thereafter, all the Commissioners, except Ness, agreed that GAC's counsel should prepare a Request for Disqualification of Rep. Sylvia and Rep. Silber and the Delegation voting block that Rep. Silber claimed he controlled, from participating at the removal hearing, as well as to report this illegal conduct to state authorities.

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**ACTION**

**Motion:** Chair Gallagher made a motion that the GAC re-affirms its votes and decisions relative to Commissioner Ness's removal and his removal hearing and its instructions to counsel regarding these matters.

**Second:** Commissioner Kiedaisch.

**Discussion:** Commissioner Wood asked for a copy of Chair Gallagher's preamble. She said she was not prepared to make a vote because she was not a commissioner at the time and does not feel prepared to vote because she does not have adequate time to review the preamble.

**Roll Call Vote:** Commissioner McLear - Yes  
Commissioner Wood - Abstained  
Commissioner Ness - No  
Commissioner Kiedaisch - Yes  
Chair Gallagher - Yes

The motion passes.

**ACTION**

**Motion:** Commissioner Kiedaisch made a motion stating, in light of the Delegation's November 6<sup>th</sup> Notice of Removal for Commissioners Kiedaisch, Gallagher, and McLear, and the GAC's review of that notice and the GAC's conclusion that such removal attempt is retaliatory, baseless, and illegal, GAC's counsel is authorized to attempt to enjoin that removal hearing by filing a lawsuit seeking an injunction this week with the Belknap County Superior Court.

**Second:** Chair Gallagher.

**Discussion:** Commissioner Wood asked who will be representing the GAC in this matter. Chair Gallagher said the decision had not been made yet, but the assumption is that it would be existing counsel. Commissioner Wood made a motion to terminate the contract with Tom Quarles and move on from this issue. Chair Gallagher said there was already a motion on the floor and her motion is out of order. He asked if she had any comments regarding the motion on the floor. She said no. Commissioner Ness said he believes a BCD member made a 91-A request for conflict waivers. He said he may be the only lawyer in the room but when an attorney represents an organization and has an opportunity to represent individual members of that organization, there needs to be a conflict waiver signed by the parties. He said a request was made to find out who signed those conflict waivers and when. Chair Gallagher thanked him for his comment. Commissioner McLear asked who requested the waivers and Commissioner Ness said to ask Rep. Sylvia. Rep. Sylvia said he believes it was Rep. Silber.

**Roll Call Vote:** Commissioner McLear - Yes

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Commissioner Wood - No  
Commissioner Ness - No  
Commissioner Kiedaisch - Yes  
Chair Gallagher - Yes

The motion passes.

Adjourn

**ACTION**

**Motion:** Commissioner Kiedaisch made a motion to adjourn the GAC meeting at 8:50 AM.  
**Second:** Commissioner McLearn.  
**Vote:** All in favor.

The meeting adjourned at 8:50 AM.

Respectfully Submitted,  
Rusty McLearn, Secretary  
Gunstock Area Commission