

*Town of Freedom, State of Maine*

DECISION AND ORDER OF REMOVAL

IN RE: Eleanor MacMakin, Board of Appeals Member.

This Decision and Order of Removal is issued for the purpose of revoking the prior appointment of Eleanor MacMakin from the Freedom Board of Appeals pursuant to State statute, 30-A MRS 2691, and the Freedom Town Charter, and the Freedom Board of Appeals Ordinance. At the time of the Hearing, Eleanor MacMakin was a duly appointed by the Select Board as voting member of the Board of Appeals.

A duly noticed Hearing to consider removal for just cause was held at 4:00 pm on March 11, 2024 at the Freedom Town Office. Eleanor MacMakin attended and gave testimony, as did the current Select Board (Municipal Officers) members Ryan Willette, Laura Greeley and Heather Donahue, and former Select Board Member Stephen Bennett. All testimony was under oath, administered by the Hearing Officer, Town Attorney William Kelly. The Hearing followed the process outlined in the written Hearing Agenda, which included the listing of all witnesses at the commencement of the proceeding.

At the commencement six Exhibits were marked and copies provided to the Select Board and Eleanor MacMakin, as follows:

1. Notice of Just Cause Hearing, with Exhibit A and copy of 30-A MRS 2601.
2. Freedom Town Charter.

3. Freedom Board of Appeals Ordinance.
4. Memorandum from Eleanor MacMakin to Select Board, dated 11/12/2023.
5. Colorized Flow Chart created by Eleanor MacMakin.
6. Memorandum from Eleanor MacMakin dated March 8, 2024.

The Exhibits were admitted into evidence.

The Hearing Office provided an overview and explanation that 30-A MRS 2601 provides authority for both the appointment and removal of Town Officials by the Municipal Officers. He further advised that pursuant to 30-A MRS 2691, Board of Appeals members were bound by that statute to follow relevant portions of the Charter and Ordinances, as adopted by the voters. In particular, it is noted that 30-A MRS 269(4) provides that a municipality may give a Board of Appeals power to hear any appeal, and the jurisdiction of the Board of Appeals as “the municipality has by charter or ordinance specified.” The Hearing Officer described that under Maine case law, the term “just cause” refers to conduct that affects the ability and fitness of an appointed official to perform their duties. And he further read excerpts from Maine Law Court cases that the decision of removal may not be arbitrary or capricious and that the just cause “must be one in which the law and sound public policy will recognize as a cause for [his] no longer occupying the office.” See, *Napolitano v. Ward*, 317 F. Supp. 79, 81 (N.D. Ill. 1970), cited as authority in *Durepos v. Van Buren*, 516 A.2d 565, 566 (Me. 1986).

The Select Board adopted as their testimony the comments and references to behavior and statements by Eleanor MacMakin as referenced in the Exhibits, without re-stating them word for word; Ms. MacMakin had access to all of these Exhibits for review prior to the Hearing to review and from which to prepare her comments, and had herself drafted Exhibits 4, 5 and 6.

The Select Board provided an overview of the facts referenced in the Exhibits that collectively demonstrated a refusal by Ms. MacMakin to behave in a civil and polite manner in public meetings, with particularly pejorative comments made in meetings and in emails to Select Board Members. The nature of these comments were (i) Appeals Board Members should not be required to follow the Charter, (ii) the Charter was illegally drafted/adopted, (iii) asking the Board of Appeals to hear appeals of Conflicts of Interest as described in section 240.3 of the Charter amounted to “slave labor”, (iv) accusing Select Board Member Stephen Bennett of planning to create a “false flag event, scare residents and convince your followers to fire the Select Board” and to pay himself after he single-handedly took over the Town government and appointed himself to the Appeals Board, (v) applying the Charter conflict of interest provisions by the Board of Appeals is a “dangerous error to require volunteers to perform unpaid shift work on demand”, (vi) that the delegation of authority to the Board of Appeals in the Charter was a deterrent to current and future Board of Appeals members, AND (vii) and repeated general comments in official Board of Appeal meetings and to the Select Board that the Charter provisions were illegal, she would not follow them, and open hostility and rudeness to Select Board members.

Eleanor MacMakin presented her view of the matter and stated generally that she did not have to follow the Charter, and it appeared her justification was that she could simply recuse herself from any conflict of interest appeal matter brought before the Board of Appeals. To paraphrase the testimony she stated: “I am done. I let it go. I don’t need to be involved in the Charter. I will recuse myself.” Thus, the Select Board takes this testimony to reinforce Ms MacMakin’s prior repeated statements and writings that she will not respect or follow the Charter requirements to hear appeals brought under the Conflict of Interest provisions of the Charter,

section 240.3. This stated position from Ms. MacMakin contradicts an essential duty of a Board of Appeals member. Ms. MacMakin is entirely confused to think that it is permissible to “recuse” herself because of her singular interpretation that the Charter is illegal and that she expects to pick and choose which appeals she deems appropriate to be considered by the Board of Appeals.

Additionally, as to the pejorative statements referenced in the record and from the testimony, Ms. MacMakin was specifically asked if her comments were judicious with the appropriate demeanor for a person appointed to the quasi-judicial role of the Board of Appeals, tasked with finding facts and passing judgment on appeals. Ms. MacMakin “objected” to the question initially and refused to answer, and upon repeated questioning stated that she was “undecided” as to whether or not she had behaved with an appropriate demeanor. Ms. MacMakin finished with the defiant statement that she is not a “puppet”, and thus not required to answer the question directly.

Therefore, for the reasons stated above including, but not limited to, : (i) the requirement of the Charter for the Appeals Board to hear conflict of interest matters, (ii) the unrefuted evidence of Ms. MacMakin’s refusal to follow the Charter and pejorative and fantastical statements (e.g. Stephen Bennett’s intended false event and takeover of Town government), (iii) the testimony and writings of Ms. MacMakin, which did not effectively or in-fact refute the statements and actions attributed to her as described above, and, (iv) and testimony on the record, the Select Board sitting as the Municipal Officers hereby finds that there is just cause for the removal of Eleanor MacMakin. The Select Board finds that Ms. MacMakin has not acted with propriety or acceptance of the obligations to be perform her appointed duties as a Member of the Board of Appeals, and it is clear that she will refuse to follow the requirements of the Charter in the future,

or exhibit the demeanor necessary to promote public confidence in her role as a member of the Board of Appeals.

For the reasons described herein, it is hereby Ordered that the appointment of Eleanor MacMakin to the Board of Appeals is revoked, effective immediately.

NOTICE: Any appeal of this Decision and Order should be made to the Waldo County Superior Court pursuant to M.R. Civ. P., Rule 80B within 30 days of the date of this Decision and Order.

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Laura Greeley, *Chair, Select Board*

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Ryan Willette, *Select Board*

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Heather Donahue, *Select Board*

