

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

IN RE: PETITION OF MARK GRAFFAM, SOLE REMAINING DISTRICT  
COMMISSIONER OF THE VILLAGE DISTRICT OF EIDELWEISS, NEW HAMPSHIRE

Docket No. \_\_\_\_\_

**EMERGENCY VERIFIED PETITION PURSUANT TO RSA 669:63 AND RSA 670:12  
FOR APPOINTMENT OF COMMISSIONERS TO FILL VACANCIES**

NOW COMES the Petitioner, Mark Graffam, the sole remaining District Commissioner and a Citizen of the Village District of Eidelweiss, New Hampshire (“**the Village District**”), with an address of 59 Appenvel Way, Madison, New Hampshire, by and through the Village District’s attorneys, Donahue, Tucker & Ciandella, PLLC, and petitions this Honorable Court pursuant to RSA 669:63 and RSA 670:12 to appoint two individuals to fill the vacancies occurring on January 31, 2024 on the Board of Commissioners for the Village District. In support of this Petition, Mark Graffam (the “Petitioner”) states as follows:

1. The Village District has a three person Board of Commissioners. On January 31, 2024, Commissioners Ralph Lutjen and Mike Smith resigned, each submitting their resignation as Commissioners for the District, effective immediately. Commissioners Lutjen and Smith submitted their resignations in writing, copies of which are attached hereto as Exhibit A. This resulted in the immediate vacancies of two of the three positions on the District’s Board of Commissioners.

2. RSA 669:63 provides, in full, the following:

Vacancies in the board of selectmen shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the superior court or any justice thereof, on petition of any citizen of the town, and after such notice as the court shall deem reasonable, may appoint a suitable person to fill the vacancy; provided, however, that if the town has adopted the provisions of RSA 669:61,

IV, and a petition thereunder is submitted before the submission of a petition under this section, the provisions of RSA 669:61, IV shall apply.

3. RSA 652:12 provides, in relevant part, the following:

A "vacancy" shall occur in a public office if, subsequent to his or her election and prior to the completion of his or her term, the person elected to that office:  
I. Either dies, resigns [Emphasis added], or ceases to have domicile in the state or the district from which he or she was elected...

4. RSA 670:12 provides, in full, the following:

The commissioners shall make appointments to fill vacancies in the offices of village district clerk, moderator, and treasurer, and their own board. In the case of a vacancy in the office of commissioner with a 2- or 3-year term, the remaining commissioners shall make an appointment to fill said vacancy until the next annual meeting of the district, at which time a commissioner shall be elected to fill the unexpired term.

5. The Village District's next Annual Meeting is currently scheduled for March 23, 2024. The necessary Budget Hearing and approval of the Warrant for this Annual Meeting have NOT yet occurred.

6. Commissioner Smith's term expires at the 2024 Annual Meeting. Commissioner Lutjen's term expires at the 2025 Annual Meeting.

7. The Petitioner seeks to have the Court appoint two individuals as Commissioners, on an interim basis to serve until the 2024 Annual Meeting, in order to provide the necessary number required to transact the Village District's business, particularly the holding of a Budget Hearing and approval of the Warrant for the Annual Meeting.

8. This is of immediate importance, as among other matters that may no longer be addressed by the District absent any Commissioners, the District must authorize payroll by the end of this week in order to pay its employees. As the Court well understands, one Commissioner alone is without authority to approve even the District's manifest necessary for payment of payroll to the District employees. The manifest must be approved by the Board of

Commissioners in accordance with RSA 32. With the current vacancies of two of the three of the District's Commissioners, there is no authorized individual under State law to approve the District manifest to pay District employees on its next payday scheduled for Monday, February 5, 2024. If the District fails to pay its employees on this date, it will be in violation of RSA 275:43, which mandates the timely payment of wages to employees on the employer's designated payday.

9. Mark Graffam is a resident of the District and currently serves as the sole Commissioner of the Village District. Mr. Graffam petitions this Court pursuant to RSA 669:63 and RSA 670:12 and requests that the Court appoint the following individuals on an interim basis until the conclusion of the next Annual Meeting on March 23, 2024. By the time this Petition is filed with the Court, the District Administrator shall have posted a notice of this Petition at the District office and on the District's website of District affairs.

10. The individuals recommended to this Court by Petitioner for such appointment under RSA 669:63, and subject to each individual, upon appointment by this Court, taking the oath of office required under RSA 669:9, are as follows:

- a. Wooda McNiven, who is domiciled in the Village District (as required by RSA 669:6), residing at 104 Eidelweiss Drive, Madison, NH 03849. Mr. McNiven currently serves as the Village District's Clerk; and this role is not listed as an "incompatible" office with that of Commissioner pursuant to RSA 669:7. Mr. McNiven is a retired U.S. Navy Commander, is of good moral character and standing in the community.
- b. Nancy Cole, who is domiciled in the Village District (as required by RSA 669:6), residing at 30 Bern Drive, Madison, NH 03849. Ms. Cole previously served as the Village District's full time Administrator for 15 years, , is of good moral character and standing in the community.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court:

- A. Grant the Petition and appoint the above named individuals pursuant the Court's authority under RSA 669:63 and RSA 670:12 to serve as interim Commissioners for the period of this appointment until the conclusion of the District's Annual Meeting on March 23, 2024; and,
- B. Grant such other relief as is just and proper.

Respectfully submitted,  
MARK GRAFFAM  
By his attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

Date: February 2, 2024

By:

  
Christopher L. Boldt, Esq.  
NHB #15301  
164 NH Rte 25, Towle House, Unit 2  
Meredith, NH 03253  
(603) 279-4158  
[cboldt@dtclawyers.com](mailto:cboldt@dtclawyers.com)

**Verification**

I, Mark Graffam, hereby state that the statements of fact contained in this Petition are true and accurate to the best of my knowledge, information and/or belief, and that any and all accompanying attached documentation are true and accurate copies of what they purport to be.

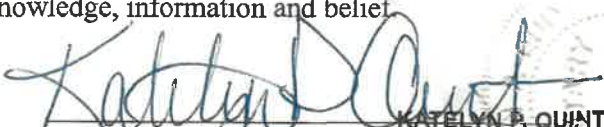
Dated: February 2, 2024

  
Mark Graffam

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL, ss.

On this 2 day of February, 2024, before me, the undersigned, personally appeared the above-named Mark Graffam, known to me or satisfactorily proven to be the person whose

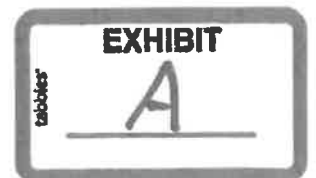
name is subscribed to the within instrument, and acknowledged that the statements contained herein are true to the best of his knowledge, information and belief.

  
KATELYN P. QUINT  
Notary Public Justice of the Peace  
State of New Hampshire  
My Commission Expires: February 8, 2028

Jan 31, 2024

I resign as Commissioner

Ralph Jutz



## Christopher Boldt

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**From:** Office@vdoe-nh.org  
**Sent:** Friday, February 2, 2024 7:28 AM  
**To:** Mark Graffam (mark@graffam.com)  
**Cc:** Christopher Boldt  
**Subject:** [EXTERNAL] FW: Resignation

Best,  
Katelyn

*Katelyn P. Quint*  
Office Administrator  
Village District of Eidelweiss  
1680 Conway Road, Madison, NH  
603-367-9022

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**From:** Mike Smith <thepurplefinch@hotmail.com>  
**Sent:** Wednesday, January 31, 2024 10:43 AM  
**To:** Village District of Eidelweiss <vdoecommissioners@gmail.com>  
**Subject:** Resignation

Katelyn,  
As of mid-night tonight 1/31/24 I`m resigning as Comm. of the Village District of Eidelweiss. I can`t effectively work with Comm. Graffam thus I see no future going forward trying to work with him. I know this is a bad time as work needs to be done concerning the Annual meeting, but I see nothing getting done trying to resolves issues with him. It has been a pleasure getting to know you and working with you Katelyn, you will be an asset to anybody you work for. Take care and be safe out there.

Cheers,  
Michael E. Smith

Sent from Mail for Windows