

Official

**TOWN COUNCIL MINUTES
Special Meeting
Hooksett Public Library
1701 B Hooksett Road
Wednesday, July 18, 2007**

CALL TO ORDER: Chairman P. Loiselle called the meeting to order at 7:00 pm.

PRESENT: James Gorton, Jason Hyde, George Longfellow, David Ross, Stuart Werksman, Chairman
Paul Loiselle

ALSO PRESENT: Debra Weiss Ford (Devine Millimet), Lauren Simon Irwin (Upton & Hatfield) & John
Meyer (Backus, Meyer, Solomon & Branch), Danielle Pacik (Devine Millimet)

EXCUSED: David Dickson, William "Bill" Gahara, and Patricia Rueppel

PLEDGE OF ALLEGIANCE:

APPEAL HEARINGS FOR Michelle Bonsteel and Sandra Piper

John Meyer: I've discussed the procedure with Atty. Ford. I had submitted to Atty. Ford a memorandum to request an opportunity to question each member of the Council...

Debra Ford: John, let me read a statement first. I'm going to address that in the statement, if I could.

Good evening. I'm Debra Ford. I represent the Town of Hooksett in these matters. I'd like to give a brief statement of what we're going to do tonight.

By letter dated April 12th, 2007, Sandy Piper and Michelle Bonsteel were terminated from employment. The letter stated that upon reviewing the report authored by an independent investigator, Atty. Lauren Irwin, the Council concluded that there was cause for discipline as Ms. Piper's and Ms. Bonsteel's conduct was "insubordinate, dishonest and unsuitable and that the conduct interfered with effective job performance and has had an adverse effect on the efficiency of Town services". In the letter of termination for each employee, it stated that they could request in writing a hearing before the Town Council.

On April 20, 2007, Atty. BJ Branch, on behalf of his clients, Sandra Piper and Michelle Bonsteel requested a public hearing. The Council has granted Atty. Branch's request for a public session pursuant to RSA 91-A:3 II(a) and pursuant to Section 4.6 of the Town Charter. Atty. Meyer has requested and the Council has agreed that it will hear both the Piper and Bonsteel appeal hearing together. The Council will not be taking any questions or comments from the audience as this is a personnel matter.

On May 17, 2007, Atty. Meyer has forwarded a letter outlining the procedures for both Ms. Piper and Ms. Bonsteel's appeal hearings. Those procedures are:

- The matter will be heard by offers of proof. Neither the Council, nor Ms. Piper or Ms. Bonsteel would be able to call witnesses. Atty. Meyer or his clients will have 90 minutes to state their position why they believe the termination should be rescinded.
- Atty. Meyer was invited to submit any memorandum of law to support his position so long it was submitted no later than the date of the hearing.
- Atty. Meyer was invited to submit any document or other evidence to the Council as part of his or his clients' presentation.

- During or after Atty. Meyer's presentation, the Council may ask questions. Neither Atty. Meyer nor his clients are permitted to question the Council.
- Atty. Lauren Irwin, the independent investigator will then discuss her findings and conclusion with the Council. She will be limited to 60 minutes. The Council may ask questions of her. Atty. Irwin will not be subjected to examination by either Atty. Meyer or his clients. Atty. Meyer may, however, ask the Council to follow up on any issue with Atty. Irwin. The Council will give Atty. Meyer the opportunity to make comments after Atty. Irwin's presentation tonight.

We received a request this afternoon from Atty. Meyer to address issues regarding whether the Town Council should be disqualified from conducting this post-termination hearing. Atty. Meyer has the opportunity this evening to examine the Town Council for the purpose of determining whether the Council should be disqualified from hearing this matter. The Council denies that request. In order to consider that request and any other legal issue raised during post-termination hearing, the Town Council will be suspending the public meeting at the conclusion of this hearing. The Council will meet again on July 25th, 2007 and will then enter a motion to enter a non-public session pursuant to RSA 91-A:3 II (e) to discuss the legal implications of the request for disqualification and the post-termination appeals, since both of these matters involved litigations that has been threatened by the employees. The Town Council will also be using that time to conduct a "non-meeting" pursuant to RSA 91- A:2 I (c) for the purpose of consulting with the Counsel. At the conclusion the non-public session on July 25th, 2007, the Town Council will reconvene the public meeting in order to announce its decision on the request for disqualification from both termination appeals. The Town Council will not be delivering in public and at that time, will only go "Aye", "Nay" or "Abstain" and giving reason for abstention. The minutes of the non-public meeting will be available within 3 business days and the minutes from the public meeting will be available within 5 business days. The Town Council also anticipates providing a written decision in the near future. The Council's decision on the appeals is final.

All present here tonight are reminded that this is a serious personnel matter affecting the personal and professional lives of many individuals. Atty. Meyer and Atty. Irwin are reminded to be careful not to divulge any names of persons who have not either initiated this complaint or not on trial in these appeals. On behalf of the Council, we request courtesy, decorum and fairness. Thank you.

Atty. Meyer: In terms of the statement made by Atty. Ford, first, I would request that our memorandum regarding the issue of recusal be entered into the record of this proceeding. Secondly, I've observed that the decision about the recusal after the conclusion of the hearing is, to my knowledge, unprecedented. The reason for that is if the recusal request is granted, essentially everything that goes on today is nullified. In my opinion, the more appropriate chronological way to address this issue is to decide the recusal issue first prior to the hearing. And although it is true that the particular memorandum that I submitted was submitted this afternoon. The fact is that I have been raising this recusal issue from day one and more specifically the context of the press release issued by the Council have been raising that issue at the time I have requested this hearing. It has been before the Council and I do think to decide it after the fact of the hearing, assuming it'll be given genuine consideration...there is statutory procedure in the case where a Council has to recuse itself and select a replacement body to hear the appeal. If that procedure would be utilized, then it should be utilized before the hearing than after the hearing. The third point I want to make in response to Atty. Ford's statement as it relates to the Right-to-know Law and in particular the future conduct of this proceedings. I just made clear in the past my position that the Council in its prior considerations of this matter have not fully complied with the Right-to-know Law. I have no objection with the Council meeting in private session with the counsel for the purpose of obtaining legal advice. I do strongly object, pursuant to RSA 91-A, to any other non-public meeting relative to this proceeding. In my opinion, RSA 91-A, the two appellants who requested this hearing to be open, are entitled not only to an open hearing with respect to the presentation of these offers of proof but also an open hearing with respect to deliberations by the Council. The Right-to-know Law formerly had an exception for deliberations. That exception has been removed from the statute. And in the context of a public proceeding like this, where the two employees have the right to a public hearing, that should be respected in all stages of the proceeding. With respect to this appeal hearing, both of my clients are

department heads. Under the Charter, which governs this Town, there's only one procedure available for the termination of department heads. And that's contained in Section 4.6.a.

4.6.a. The Administrator, for just cause, may suspend or dismiss said officers or other department heads or take other appropriate disciplinary action. Said suspension, dismissal or other disciplinary action shall be effected only upon the Administrator's presentation to the said officer or department head of written specification of the reasons therefore. The said department head or officer involved may within five (5) days demand a hearing before the Council. The Administrator may suspend said officer or department head from duty during said period with or without pay.

It is only necessary to read this position to make clear how far the Council has departed from the Charter in prior proceedings of this matter. I want to make two points in particular, the first is, that because Michelle and Sandy are department heads, they could only be terminated with "just cause". "Just cause" is a provision that has been interpreted by the New Hampshire Supreme Court in the context of cases involving Police officer terminations, to only be available for substantial job related reasons where the individual involved, has been given actual or at least implied notice before the fact their conduct that continue to lead to termination. That is the legal standard that needs to be applied to this proceeding.

The second point is that the employees are entitled to a hearing before termination not after termination. And I would submit, if that procedure has been followed, my clients would have been given a fair opportunity to be heard before the train left the station. Before everybody was firmly locked in their positions. Before there were press releases. This proceedings never would have gotten to this point. You will not be facing the context of litigation you are facing today. With regards to the proceeding we are engaged in tonight. I use the word proceeding rather than the word hearing because to use the word hearing, I would have to put that word in quotation marks. This is not a hearing of a sort that I have encountered before. It's not the type of hearing that I have heard of before. Typically, a hearing means that the employer and the employee are both given a fair opportunity to present testimony and a response. That is the standard normal procedure. That is the procedure required by due process clause

of the United States Constitution. And that is the procedure we've been denied. If this Town could contemplate the dismissal, my clients who held responsible positions, in Ms. Piper's case was employed by the Town for 27 years. Based on this type of procedure, is almost beyond imagination. Certainly beyond my prior experience. Because of the fact that this is not a conventional hearing, because there is no testimony being presented against us, aside from second hand evidence and notes, this is like jousting a ghost. And that experience was confirmed by what happened at the first hearing. That decision that this council wrote makes reference to all sort of alleged facts, all sort of information or misinformation that is nowhere to be found in the investigative report. This evidence, testimony, information, misinformation that we have no opportunity to respond to because we don't know about it. This is decision-making being done in secret. I have no reason to believe that you gentlemen do not genuinely want fairness. I'm not intending to attack your motives or your intent...(inaudible) we've ended up with the procedure that is so far divorced from normal standards of fairness, required in the due process clause. I understand the Council has the right to questions. I understand those questions would be relayed through Atty. Ford. I would welcome questions. I would prefer that those questions come from you directly not through Atty. Ford. I'd like to be able to look at you in the eye and respond to that person's question. I was told we should not be using certain names. I will do everything I can to respect that but in the situation where there's a lot of she told X or Y or Z so on and so forth it becomes very difficult sometimes to sort out exactly what the testimony is without the names. At any point there is confusion about that on the part of the Council, I would ask the Council to stop me to clarify in private session, if necessary.

With respect to the investigative report, as I understand is the only thing we have here, I will make a couple of comments. First of all, I need to acknowledge the difficulty of the task that was given to Lauren Irwin. This is not a situation with one particular incident, one conversation or one act to be investigated. She was asked with apparently no advance notice to investigate a whole series of conversations and interactions involving at least a dozen if not maybe more people that occurred over the course of several weeks. Based on my own investigation in the last several days, the difficulty of trying to nail down exactly who said what to whom, and under what context is an extremely difficult one. The interview she conducted, I gather that ranged in length to 5-10 minutes, as a preliminary investigation for the Council's

investigation, it was certainly a competent job. But the difficulty is it was not reasonably possible under those parameters to come up with a sufficient basis for the Council to decide whether or not someone should be terminated. And the shortcomings of the report in that context are overwhelming. First of all, I would point to and ask you to focus on the questions that were presuming to be answered. And those questions in themselves substantially limited ...(inaudible)... and one of the reasons ...(inaudible)...reflection of what actually occurred. In particular, she's asked to investigate whether or not who started the rumors on romance, etc., etc. She's not asked to investigate what facts were out there, which might have led to the belief or perception of some type of issue or concern involving the Administrator and a particular employee. The testimony will be, if and when you permit this, is that there was substantial reason for persons inside and out side City Hall to believe that there was real closeness that was unusual between the Administrator and one of the employees under his supervision. Now that information which is referred to only in a glancing way in the investigative report, included the facts that after hours in a regular basis, the Administrator and that employee's vehicles were the only vehicles left in the parking lot and the only light on in the building is the Administrator's office. Michelle Bonsteel would testify, if given the opportunity, that she has an office right across the hall to the Finance office and that the two doors to the Finance Department, and forever those two doors were always left open. And suddenly, there was a change where one of the doors was closed all the time. And the other door was frequently closed. There will be testimony that a number of other employees when they came into the Finance Department felt uncomfortable. They felt they were interrupting the Administrator with this particular employee. And there will be testimony that this employee and the Administrator were together a lot in City Hall and not just the Finance Department. Now, it's important to emphasize that none of these facts, and even if you multiply and added in magnitude, in any way amounts to a romantic relationship. Nobody ever said that there was a romantic relationship. But there was enough objective information out there to indicate there was a closeness between the Administrator and one employee that was unusual in the context of supervisor/supervisee relationship. As Ms. Piper said, "*they seemed too chummy*". Now, that is not a rumor. "Rumor" is defined in the dictionary as being essentially unverified opinion. That was not based upon unverified opinion that was based upon observation. And those observation were made in large part by people who worked at City Hall and citizens who came in the City

Hall. It's easy to say there was no romance going on ...(inaudible)... but nobody said there was something going on. What they said was there was a lot of closeness. And yes, there was certain speculations that this closeness might mean there was a relationship. Nobody said or claimed they saw any improper physical activity between these two individuals. That was never claimed. If my clients said, "we saw the Administrator kissing or holding her hand", and it was false, then that would be obviously justifiable ...(inaudible)... but that never happened. When you look carefully at the comments that were made that are referenced in the report, 90 % of those comments are comments relating to the perceived closeness between the Administrator and this employee. There was no reference whatsoever, to sex, romance or anything of that nature. I recognize that this particular society where the media is saturated by sex, that any reference to some sort of friendship can be interpreted as romantic relationship. The fact is, that it is possible to have a non-romantic relationship. And it's possible to create the perception of closeness in the workplace without being anything more than a friendship. And the concern that was expressed here was the concern of perception. And that was something legitimate for the Administrator to be aware. And if he's not doing anything wrong, a perception has been created. That needs to be addressed. Another thing that got somewhat lost is that this report had a very specific (inaudible) focus...(inaudible)...and in the course of her report she outlines dozens of conversations somewhere in that order. What is missed here is these are conversations involving dozen, fifteen, twenty people over the course of several weeks. If you added up all conversations those people had in that timeframe, you'll probably end up with an excess of a thousand. So, we're talking about tiny portions of the total conversations. And by focusing on those conversations and only those conversations, it creates a false impression that this subject is the only subject of conversations, etc., etc. none of which is true. Yes, it certainly came up, yes it certainly remarked upon and noticed but it was no more than a relative and minor issue. At least prior to the investigation was undertaken. What is most striking here is the gulf between the investigative report on one hand and the press release issued by this Council, and also the decision... (inaudible). Atty. Ford has said my complaint about the Council's objectivity (inaudible) forcibly benefit by the prior decision. I'm not sure what benefit it is. As I understand, the Council's decision to object to the prior appeal is primarily ...(inaudible)...upon the claim that there was a conscious and concerted effort by employees to damage reputation. This was not some sort of casual conversation.

This was a premeditated, essentially a campaign to damage the reputation of the Administrator. I will address that later. I just want to point out there is nothing of substance in the investigative report to support that conclusion. And overwhelmingly, the report talks about conversations that are no more than casual conversations. The second point the Council talks about is it essentially blames my clients and two other employees for all the ills, atmospheric ills at the City Hall. And basically talks about the number of administrators who've come and gone and related points. That was not even referenced in the investigator's report. One of my points about the Council going beyond the evidence in front of it. And of course the Union Leader published this story where prior Administrators were interviewed and essentially denied that they left because of anything done by employees, my clients in particular. Putting that aside, the report says and I quote, "The distinct issue being investigated was only a small part of a larger dysfunctional environment." She talks about this being a small part of a dysfunctional environment. Look at your own opinion, your own press release essentially turned around and blamed the entire environment on this issue and my clients in particular. I would simply point out to you that is not claimed in the report. The report does say the rumor is false. The report says, they knew the rumor was false. But it doesn't say they engaged in fabrication of a lie. They would only be engaged in a lie of any sort if they said the rumor was true. Nothing in the report where any of the four employees said, "Yes, there is an affair going on. Yes the rumor is true." Knowing that it is false. Finally, the two other points, the Council has said, "If we don't do something here, we could be guilty of permitting sexual harassment or a perception of sexual harassment and defamation." You have the benefit of Atty. Ford, who's an expert in this area of law and she's the one who's been telling me what's not sexual harassment. She'd be the first to tell you even it had been claimed of a sexual relationship, which was not claimed, it does not amount to sexual harassment. You have to show an unwelcome sexual relationship, certainly there was nothing. The defamation argument is certainly not a claim by the Town and the Administrator has not claimed defamation. There's no basis for doing that. Two final points, there's been a lot of statement by the Council how come they have not heard remorse. Haven't heard any regret. That's rightfully a very unusual observation. What happens in the judicial proceedings is the finding of guilt and before you get to sentencing, there's a question of the defendant, "Are you sorry, do you apologize, etc., etc." This is case where my clients were fired. They were fired first. To fire them first, then come around months later

and expect an apology is very unusual. They didn't even realize there were subject to being fired. The Council has harshly criticized my partner, Atty. Branch for allegedly blaming Mr. Jodoin, the Administrator. One of the things that we all have the benefit of is an unusually detailed set of minutes of the first appeal hearing. And I would ask you to review what he actually said and not what is being characterized as what he said. The claim is not that the Administrator acted wrong, the point is that there is a perception, not just employees, or just the employees fired but also people outside the Town Hall that there to be an excessive closeness and friendship between these two individuals. That fact is there was a perception out there. That's not a matter of blaming anybody. That's a matter of fact. That's part of the explanation for the statements and comments that are the subject of this hearing. Getting to the claims against Ms. Piper and Ms. Bonsteel, one of the observations that Atty. Irwin made in the first hearing when she was asked was that she saw an unusual conversion of testimony. Most of the testimony given by the 12 employees were consistent. Although she didn't say that, the assumption was people responded in a candid way. This is the case where people were asked question by the investigator and people responded in a candid and truthful way. Secondly, there is no policy about gossiping or not gossiping in the workplace. Therefore, when you claim my clients were insubordinate, presumably, have violated some policy or procedure. The question is what policy or procedure did they violate. There are a lot of types of infractions for which you don't need to have a prior policy. When you're talking something like gossiping and not gossiping, which is basically human nature, if there is a concern that too much gossiping going on, that should be addressed to the employees prior to termination. One of the things that certainly could have happened here is that memo could have been sent to employees saying, "We don't want you to do X, Y and Z". Many things that could have been done by most employers, if they thought this was a significant problem.

Thirdly, when you look at "just cause", one consideration is a prior performance and conduct of the employee. Because you need to look at the events alleged in the context of history of their entire performance. Does this amount to a cause for termination? In the first hearing, Atty. Branch presented all of the good evaluations his clients have received. None of those evidence is even referenced in the Council's opinion. The Council's opinion does talk about its perception of the work performance of the Town Administrator. First of all, that's not part of the investigation. Secondly, Mr. Jodoin is not on trial

here. It's not an issue of his performance. It's an issue of terminating two women before you last time and my two clients before you tonight. Finally, like I said gossip is part of human nature. Atty. Branch, in the first hearing, made reference to a number of statements by the Administrator himself of the gossip type, which are far more self-incriminating than anything attributed to my clients. I don't know why the Council chose not to consider that. Maybe because Mr. Jodoin after all is not on trial. The point is again, it's not that he did anything wrong. When you're an employee and working with people who are not only co-employees but also friends and confidants, it's not unusual for people to say things if reported to them in a public proceeding might seem embarrassing than appropriate. That is not unusual, that's common. What is uncommon is that those statements are thrust up against you as a basis for termination.

I want to address the issue with Ms. Bonsteel, two separate employees before you. The investigative report with respect to Ms. Bonsteel. I'm going to quote verbatim what it says: "*Whether intentionally or not Michelle fed the fire of the rumor by speaking to Jessica about a citizen's question concerning David and Lee Ann and by asking other employees what hold Lee Ann had over David and the perceived preferential treatment.*" Even if you take all that to be true, which you don't, it strikes me as so extraordinary that you would terminate a department head with this and this alone. Let me talk about what's true here and what's not true. If given a chance to testify, she would testify that more than one citizen not employee came into her office and made comments about their perception that Mr. Jodoin seems to be unusually close, having an affair, whatever, with this employee. The fact that those comments were made to her, is it now a terminable offence for her to allude to those comment? This comment was made to Jessica, her assistant. They work in the same office. Can you really fault her for alluding to those comments? That's number 1, number 2 is asking other employees what hold Lee Ann had over David. The context of this is this is a lunch that occurred outside the City Hall with other employees, mostly department heads. And the context of this is that there was a discussion going on about what was perceived not just by Michelle but by other department heads as being preferential treatment. The department heads were receiving a lot of encouragement to use this woman in their departments in lieu of other people to do the same work at much lower hourly rate. They were concerned about why they were being asked to do this. When Michelle raised a question about the "hold", "What hold she had on David", she wasn't thinking of any type of relationship. She was aware both individuals

grew up in Hooksett. She thought that they were friends. Perhaps they worked together in the past. Those are the only findings that are attributed here. The report raised two things I'd like to address one that Michelle called Mr. Jodoin "The Furor". That's a true statement. What's entirely left out was the context. This comment was made in April 2006. At that time, this was a discussion that was occurring where Mr. Jodoin was present, Michelle was present and at least one councilor was present. The discussion was regarding the emergency powers the Administrator had during the flood. In context of having these emergency powers, Ms. Bonsteel made a reference to him as being like a "Furor". At that time they all laughed. It never occurred to Michelle that more than a year later, that this comment, as a joke, would come back to her as insubordination. The other claim against her, again, these were jokes and the context were left out. She said to the other employee, "*You should know because you're always with him.*" The context of comment was that this employee complaining to Michelle that her job duties have been changed without her being told by Mr. Jodoin or by department head. And Michelle's response was, "*You should have known about the change because you're always with Mr. Jodoin.*". That was based upon her observation and her spontaneous surprise that this employee was complaining about something that she thought she would have been aware of just by being with Mr. Jodoin. That's it. That is the case that led to the termination of Ms. Bonsteel.

Now, I want to address the case against Ms. Piper.

The findings against Ms. Piper are almost equally brief. Although there was a factual dispute where Sandy Piper suggested to Michelle that David and Lee Ann were kosher are "a little too chummy". Although there was a factual dispute where Sandy also suggested to Jessica, "something is going on between those two." ...(inaudible)... Again, note the difference between the actual contents of the report versus the language used by this Council in the press release. First of all, Ms. Piper would agree that she said that they were a little too chummy, and it didn't seem too kosher. And that was an honest expression of an opinion. She thought and feels that in context of a supervisor/supervisee relationship that it appeared a little too chummy. It didn't appear to her to be kosher in the context of objectivity. She did not mean that they were having an affair or a romantic relationship or anything of that sort. Atty. Irwin,

during the investigation asked, "Did you interpret this to mean they are having an affair?" Most of the listeners when they asked responded by saying "no". In terms of the question, "What did you intend?" Ms. Piper made clear that she did not intend to suggest that they were having any type of improper relationship, sexual or romantic relationship. That's not what she said. It's important to note, we're not talking about general distribution in context of a supervisor, the context of going around City Hall. As with Ms. Bonsteel, she was receiving these third party complaint about these people being too close together. All these conversations were actually all part of the same conversation about these rumors between Michelle, Sandy, Joanne and Jessica. One of the things that's contained in the report after saying, "yes, they appear to be too chummy, it doesn't appear to be kosher". She said, "Just stand back, if there's any truth to this it'll come out. If not, so be it." Her influence on this issue consistently was a restraining influence. One of the great irony to this proceedings is Ms. Piper saying, "Let's stay away from this stuff. You'll find yourself terminated for allegedly spreading false rumors." Through her testimony, you would hear that her role was not that of spreading rumors but trying to keep people away from the rumors. You can't do that without referencing the rumors themselves. What happens is that the reference of the rumor is included against her. In terms of Sandy suggesting to Jessica, "Something is going on between those two." Sandy's recollection is that she said, again, in reference to the outside, people are claiming, "Something is going on between those two." Sandy admitted to discussing the rumors with Joanne Drewniak. Joanne was her assistant. This is information that is coming from the outside. It's possible that theoretically, in retrospect, that maybe either Michelle or Sandy should have gone to the Administrator and said, "People are making these comments, there is a perception, maybe you should do something about it." In retrospect, maybe that would have been the best course for them to take. But, first of all, it was an awkward subject and they were understandably reluctant to ...(inaudible)... And secondly, in terms of magnitude proportion, it wasn't like a hundred people were coming to them. It wasn't like this was interfering with the work at City Hall. It was a relatively minor issue. The final finding has to do with the fact that one of the employees has spread the rumor. Sandy admitted that she was one of the employees that spread the rumors through _____. Under the guidelines we have here, I can't mention the name. That's really an important part of this because this employee was on leave at the time and we're talking about a phone conversation that occurred with this employee at home. That's really

important. That's the only conceivable shred of evidence that could be used to support the claim that somehow my client had spread the rumors. The Council relies heavily if not exclusively on that conversation. Therefore it is really important to detail exactly what happened. I think all these conversations I believe occurred on the 14th of March. This employee was friendly with all four employees involved. She initiated the conversation. She called and asked to speak to Jessica. Jessica was busy. Jessica called her back. This employee expressed concerns that while she was out she might lose her position to this woman. Jessica responded to that trying to defuse the concern by making a joke (inaudible). And when this employee was interviewed by the investigator she said, "Yes, Jessica said it as a joke. I didn't think she meant it seriously." What happened after that is, same employee was passed from Jessica to Michelle. Again there was the same concern she was going to lose her job. Michelle was reassuring, she told her how valuable her work was. Then, this woman asked to speak to Sandy. Sandy was busy and couldn't speak to her at that time. Sandy later called her back. The principal part of that conversation had not dealt with rumors but was about the fact this woman was to have surgery. There were discussions about the surgery. This woman brought up the rumor that she had heard. Sandy said yes, there is that rumor. This is not the case of anybody deliberately trying to spread rumors. All three of them were trying to defuse this woman's apprehension about losing her position while she was gone on leave. And reference to this rumor came up. Sandy simply acknowledged there was a rumor. She didn't say it was true. She didn't do anything to magnify it. That is the case as I understand it from the investigative report against Sandy Piper.

Both of my clients received letters of termination. Those letters of termination alleged three grounds for termination. The first was insubordination. The second was, dishonesty. And the third was interference with job efficiency.

Now, on insubordination - There's been still nothing presented as to any type of oral or written directive policy rule or anything else that was violated here. Obviously, the line between permissible gossip and provoked gossip is in theory a fine line that if the employer wants to enforce surely should be done through some type of system. In context of dishonesty – again, my clients accurately reported the fact

they have received rumors, accurately relayed the perception of closeness. We simply wondered as to not whether that closeness was romantic that was never raised. What was the basis of the closeness.

...(inaudible)...My clients continued with their jobs exactly as they have during (inaudible). There is nothing in the investigative report or anything else I'd be able to respond to at this point, suggesting any interruption prior to their termination in their performance or the performance of any other employee of this Town. Each of the three reasons in the termination letter do not stand up if compared to the actual testimony that you would hear, if and when you will permit us a fair hearing. Thank you. I'll be happy to answer any questions.

J. Hyde: Mr. Chairman, if I may I have a short series of questions. In your opinion, where did the idea that the Town Administrator and the female employee were having an untoward relationship start?

Atty. Meyer: From citizens who spoke to the Code Enforcement Officer. I don't want to accept the fact that the rumor going around was about an untoward relationship. There were certainly some suggestions of it. Overwhelmingly, the discussions focused upon the closeness between these two employees. It wasn't intended or perceived to be sexual.

J. Hyde: Thank you. Next question will be, who was it repeated to, for Sandy and Michelle particularly, who did they repeat that?

Atty. Meyer: The thing that is important to understand is the statement ...(inaudible) the discussion primarily occurred between four people. The only exception to that I am aware of is the one phone call from this employee, whom I can't name.

J. Hyde: So, it was only repeated by Michelle and Sandy to that particular employee. This is in reference to Sandy and Michelle particularly. Did you ever even once discuss this rumor with a member of the general public.

Atty. Meyer: Members of the general public discussed the rumors with them. There's no...

J. Hyde: So the answer is yes.

Atty. Meyer: Well, people came in the office and said, this is what we saw happened, it's strange. I'm not sure, I haven't asked my clients pointblank. They would testify in terms of the public comments they received, that their response was to try to defuse. I don't want to over blow this. It's not like people came in and said the world is coming to an end. They weren't hysterical about it. They were kidding about it. As I understand it from Michelle and Sandy, the response was to try and shrug it off to defuse it.

J. Hyde: Why didn't you (Michelle and Sandy) step in and use your authority as not only a department head but a representative of the Town to put a stop to the behavior or at the very least bring it to the attention of the HR department, the Town Administrator or the Town Council rather than engaging in conversations with members of the general public.

Atty. Meyer: Wait, first of all, it's not like they went out and started talking to people in public. There's no claim and I don't believe they talked to anybody aside from people who came to them and said, this is what we've seen. I did say to you that in retrospect, maybe they should have gone to the Town Administrator. I don't think it takes a lot of effort to understand that could be somewhat of an awkward thing.

J. Hyde: You brought up a concern about the management of the office, about a particular employee who's being paid more doing work than someone who got paid less. Why didn't you ask for a meeting with the Human Resources rep, the Town Administrator, the Town Council regarding a concern about office management rather than repeating or talking about this alleged relationship?

Atty. Meyer: Michelle said, in retrospect, she wishes she had gone to the Council on that issue. Bear in mind, "that issue" is primarily the issue of preference, not necessarily the closeness. But in retrospect, she was not aware at that time of the procedure of going directly to the Council. Had she been aware of that, I'm sure that's what she would have done. On Sandy's part, I think there was a discussion with the Council about related concerns. By concerns, I don't mean the closeness issue but the management concerns.

D. Ross: One thing that seems to be in conflict with what I understood. With the other employee, regarding this phone call that was made, the suggestion of someone's job being in jeopardy. So you're contending it was that other employee that instigated that phone call. And it was that other employee that also brought up the subject of this rumor?

Atty. Meyer: To me, instigated is a rather harsh word to use in a phone conversation between co-employees and friends. But if the question is, who initiated the phone call, it definitely was the other employee. I only had a chance this afternoon to see her letter or e-mail about the conversation. And those are very partial. For example, she omitted the fact that she also talked to Michelle and omitted the fact she had tried to talk to Jessica. Yes, it is true that Sandy called her but that Sandy called her in response to a message for her to call Sandy. This employee initiated the concern about her job. Jessica was the one who brought up the rumor, in a joke context to try to defuse her. Then, when she talked to Sandy, she asked Sandy whether in fact there was an affair, whether there was a rumor about the affair. Sandy said she had heard such a rumor. The context is important.

Chairman P. Loiselle: With regard to the outside people. Apparently, these rumors appear to have started from the outside, not the inside. Are there any names to these outside people? And what specifically are these outside people professing? Primarily, that the Administrator's car and the other employee's car is there after hours? Is that the basis?

Atty. Meyer: Yes.

Chairman P. Loiselle: That's it?

Atty. Meyer: Yes.

Chairman P. Loiselle: That's it.

Atty. Meyer: Wait, bear in mind I'm speaking based on what my clients told me. What they were commenting on was the fact that the two cars were there at multiple occasions and the only light on was the Town Administrator's office. Apparently, the Finance Office does not have any windows.

Chairman P. Loiselle: And that's it?

Atty. Meyer: That's it.

Chairman P. Loiselle: Well, prior to that, I don't know if you know Diane Savoie. Diane Savoie worked a zillion hours for the Town of Hooksett and many, many evenings the Administrator and Diane Savoie are there alone with the light on.

Atty. Meyer: If your point is, these individuals didn't have a lot to base their comments on. I'm not disagreeing. These individuals had come to Sandy and Michelle and said, "We see these awful goings on at the Town Hall", then yes, it would have been their obligation to report that to somebody.

Chairman P. Loiselle: "Something's not kosher." What does that mean?

Atty. Meyer: It means that there is more than friendship. First of all, kosher refers to food. The context in which it was given was that these people seem to be closer, physically closer, spending more time together than you would expect a supervisor/supervisee. It's also crucial that you remember the context

when she made that comment. And the context was, "stay back from this rumor, don't get involved, if there's anything improper, that would come out. And it's none of your business."

Atty. Ford: John, do your clients wish to make a statement to the Council?

Atty. Meyer: As I understood, we were given the option of either having me to speak for them or for them to speak for themselves. They chose for me to speak as their attorney. They didn't realize, nor did I, that they had that option. At some point, if you'd like to take a break, I can ask them. Our plan was consistent with the Council rules for this procedure for me to speak on their behalf.

Atty. Ford: If they do have anything to say, we'd be happy to hear that. Thank you, John.

Lauren Irwin: Good Evening. My name is Lauren Irwin and I was the fact-finder investigator in this matter. I am not here to argue the case for or against the terminations. I am here to talk to the Council about what I did for my investigations and why I came to the conclusions that I did on the facts. I was asked to be the fact-finder investigator because the Town Administrator could not investigate a complaint where he was the victim. I was told of David Jodoin's complaint and shown the letter from the employee who was on leave, the employee who was involved in the telephone call. The letter from the employee on leave shared David Jodoin's upset over the destructive nature of the rumor that she heard from Jessica and Sandy. I confirmed that this telephone call had taken place by looking at the telephone bills. I also looked at e-mails from that employee to David Jodoin and confirmed by telephone without witness that what she had written in the letter was correct and accurate. The letter stated that Jessica had called her from work. Maybe that came after she had called Jessica. In my view, even if I had known that the initial call was made by the employee, it wouldn't have changed any of my findings. Jessica had called her and then after Jessica told her about the rumor she was transferred to Sandy. Sandy had repeated the same rumor and said she had heard, "*there must be something going on between David and the female employee because they spend so much time together*". I want to emphasize, the next thing was I met with David Jodoin. He was incredibly upset. I heard a lot in the hearings that this was a minor issue,

this was human nature, typical gossip. I have to say that's not at all how it was perceived by Mr. Jodoin or the employee who wrote the letter. Both of them viewed it as absolutely suggesting some sort of adulterous romantic relationship. It's not a romantic relationship between two unmarried people, it's a romantic relationship between a married person who has young kids in the community and his subordinate employee. They took the rumor extremely seriously and not at all considered it a minor issue or any type of water cooler gossip. Mr. Jodoin told me that he was happily married and has young children. He was very concerned that the rumor of a romantic relationship could damage his family life and his reputation in the community. He was also concerned that his career could be tainted by the suggestion of a relationship with a subordinate employee. He was also concerned that if employees were willing to spread this false rumor, what would they do next to try to undermine him or harm his reputation. He was concerned that qualified employees will not work for him because of the rumors. He told me he has physical symptoms and significant stress over the issue. He was concerned over his ability to continue in the position. I can't say with certainty because it was not in my notes, I do believe he took some leave during the time of the investigation was going on because he really was not functioning. He did tell me he was having difficulty functioning because of this issue and significant stress. He did tell me about the background issues. That there was this "toxic" environment that was confirmed by other employees. He told me he was aware that employees were jealous and upset about his recommendation that this female employee get the part-time position or salary that she was paid for this position. I think the suggestion was there and I think was supported by interviews that they were upset about what they viewed as a management issue. Based on that, spread the knowingly false rumor to undermine the decision about this employee. The next thing I did was I obtained a copy of the Town's Personnel Policy. I looked at five personnel files and I met with ten other employees over the course of three days. I told each witness of my role as an investigator and the issues I was investigating. I would point out that the first issue that I was investigating was whether any Town employees had been involved in suggesting, discussing and/or speculating that David Jodoin and the female employee were having a romantic relationship. That's what we were talking about. We weren't talking about whether they were friends, whether they were buddies or simply spent time together. The investigation was, was there a suggestion of a romantic relationship. That's what people answered to me. That's the disagreement I have with the

characterization tonight. I think it was very clear that even if sexual or kissing or those words were used, I think people understood that the suggestion was, whether jokingly or not, "*there was something*", meaning something romantic going on between those two. I told each witness of my role. I told them of issues I was investigating. I told them that there will be no retaliation for their participation in the investigations and they were not to retaliate against anyone else participating in the investigation. I read each witness my notes, which I will admit are not the neatest hand writing in the world. I read them my notes and asked them if my notes were correct. Several employees made correction and gave me additional information to which I added to my notes. Any employees who asked for copies of my notes were given copies of my notes. Sandy Piper asked to have an attorney present for her interview and we accommodated that request. After meeting with Mr. Jodoin, I next met with the female employee, the other victim of the rumor and confirmed that there wasn't any basis for the rumor. One thing I wanted to make sure was there wasn't any inappropriate or sexual harassment or any type of problem between a supervisor and a subordinate employee. I confirmed that there was no basis for the rumor and that she too was very upset about the detrimental effect that rumor was having on her children and her reputation in the community. Jessica Skorupski reported she first heard the rumor from her supervisor, Michelle, who told her that a citizen had said that he or she felt uncomfortable that he or she was interrupting David and the female employee. Jessica also reported that Sandy told her "*something is going on between those two.*" And I asked Jessica what she interpreted "*something*" to mean. She told me "*something*" meaning "*something romantic*". Joanne Drewniak reported that her supervisor, Sandy Piper was one of the ones to tell her about the rumor and that she and Sandy continue to chat about the rumor at work. Michelle reported that Sandy was the first one to tell her that she had seen things between David and the female employee that she didn't think were "kosher". And that she thought David and the female employee were a little "too chummy". And she felt uncomfortable going up to the second floor because it seemed strange. And then, Michelle said that Sandy had asked Michelle what she thought. Michelle also claimed she had heard jokes and questions from builders and contractors although she said she didn't recall who they were. She admitted she may have told her subordinate Jessica of those questions or jokes. In addition, Michelle admitted that she asked other employees what hold does that other employee had over David when she was questioning what she believed was preferential treatment. She denied that

she intended to suggest the romantic relationship by that comment. Michelle also admitted that when other employees came to her with their comments on the rumor, she probably told them that she noticed David and female employee spending a lot of time together. One thing that's interesting is that the only major factual dispute I found in the case was between Michelle and Sandy. Michelle said that Sandy basically started it and certainly said affirmative things to suggest there was a romantic affair. But when I asked Sandy, she said that Jessica first told her of the rumor when they were in the office with Joanne Drewniak present and Sandy said she did say, "*Sit back, relax, let the rumor take its ride and the truth would come out if there was any truth.*" She denied that she had talked to Michelle about it. And I specifically asked her, I have it on my notes, I told her because I already talked to Michelle by that point. I said, "Michelle reported that you said there was something not "kosher" about this and that they were "too chummy", that you felt uncomfortable". She disputes that. She said, she doesn't go upstairs. She only goes upstairs for the morning coffee. She never saw David and the female employee together. She basically goes upstairs to submit her time slips and get her coffee. She was really in conflict with Michelle on that. I think I heard tonight that Sandy would testify that she did say those things about "kosher", "chummy", "uncomfortable", which is surprising to me because in the meeting where her Attorney was present, she specifically denied making those statements to Michelle. I guess I'm confused by that. But that was really the major factual dispute and I did have to make a factual finding and found that Sandy probably did say those things and that's started Michelle to think about those issue of the rumor. I would say when Sandy reported that she said, "Sit back, relax, let the rumor take it's ride and the truth will come out if there was any truth." That suggesting to me, she was not talking about are they friendly, are they spending a lot of time. That's not something you have to see if the truth comes out. I think that suggested she thought the rumor was, "are they having an affair or romantic relationship". So I do think that's what she's suggesting. I do agree that Sandy reported that she advised Jessica and Joann to stay out of it and not get involved in the rumor. But after that, she did have further conversations with Joanne about it. Sandy admitted that she told the employee that was out on leave about the "newest rumor". Importantly, I don't think there are any disputes at this point. Both Sandy and Michelle admitted that they did not believe the rumor was true. I think by "rumor", they meant "romantic relationship". If they were speculating about something else, "friendly" or "innocent", I don't think they would have said they

absolutely did not think it was true. I found that they both admitted that they circulated the rumor. I did not make specific recommendations for discipline and I viewed that as the Town's role under the policies to decide on what the discipline should be. I did however, view the Personnel Policy and found that disruptive, unprofessional, dishonest and insubordinate behavior are grounds for discipline. I recommended that Michelle and Sandy be disciplined in some way. I believe that the Council's actions were consistent with my findings and recommendations. I will say that on the honesty issue, when I mentioned on my report about dishonest behavior, it wasn't about employees lying to me during the investigation. Other than the factual dispute between Sandy and Michelle, I didn't believe anyone was trying to mislead me on anything. The dishonesty was they all said they believed the rumor was not true and they decided to be part of spreading of the rumor anyway. I just want to be clear on that. I didn't think people were dishonest to me. I would agree that I made reference to a "larger toxic environment" without getting into what it may have been. I would note that Michelle was one of the ones to say to me, "They eat their young in this building." That they are vicious and backstabbing and when I asked her who she meant by "they". She actually named Sandy and Joanne Drewniak were two of the people she was talking about. To the extent that there was this "toxic environment" only created by others, I'm not sure that that would be supported by what Michelle told me. One of the points that Atty. Meyers said about my report was inconsistent with what the Council said about there being a "conscious and concerted effort to damage Mr. Jodoin's reputation". I guess what I would say is, based on the idea that these people were unhappy about the female employee being paid or the fact that she was given work and the response was not to complain to the management. I heard Atty. Meyer suggest that, that's not a defamation issue, that's not the Town's claim. I would say the only issue with that is how serious was this regular gossip or was there more serious. I would say, it's my understanding when you say to somebody doing something criminal, or you suggest that someone's having an adulterous relationship, that's viewed as undoubtedly harming someone's reputation. I think that is different than other types of things you might say about someone. That's the point I would raise. The fact there's no policy on gossip. It was clear that it has interfered with Mr. Jodoin's ability to work and to work happily. Because of the nature of this type of rumor as opposed to what you might consider as run-of-the-mill gossiping, I would view it as a type of conduct people would know is not going to be acceptable because it is dishonest behavior and disruptive.

When I spoke to Michelle about the comment, "What hold does the female employee have over him", we talked about could that have been interpreted as suggesting a romantic relationship. She said that that was not her intent. She may have recognized that could have been a suggestion, but according to her she did not intentionally do that. Michelle referring to Mr. Jodoin as "The Furor" was not used as a basis for a finding. I only referenced it because I had asked that the second issue I was investigating was, "Did any employees refer to Mr. Jodoin using derogatory terms", and she told me that. So I put it down as a fact but I didn't make a finding or think that she should be subject to discipline because on that issue because I did understand the context. I just want to make that clear. In response to some of the questions asked by the Council members, I did raise the issue that Councilor Hyde raised. It was puzzling to me if Michelle and Sandy or anyone else thought there was a management decision that was questionable or improper in any way, why didn't they go to Mr. Jodoin or to the Council, or to Human Resources or anyone else. That was one of the reasons that I found that what they were doing was a destructive way to deal with disagreement with what the Town Administrator was doing. That's it, unless there are any questions for me. Thank you.

D. Ross: If I may, this is troubling...about the phone call. It refers to a written statement that makes the claim that the phone call was made to this other employee and that the rumor was passed in that direction toward this other employee.

Atty. Irwin: That's what the statement says and that's what the phone record shows. There was a telephone call made from the Town office to the employee. It may be true that the employee called first, left a message, and called her back but I don't think there was suggestion that the employee called and said, "Hey, I heard a rumor, could you tell me about it". I don't think there was a dispute on this, the employee was very surprised to hear Jessica joking about this rumor and told her she really shouldn't do that. And then again, surprised and disappointed to hear Sandy repeating that rumor because she thought it was very harmful. I don't think it makes a big difference as to whether initially this employee called and these people called back. I think the important thing is that Sandy and Jessica were the ones who talked about the rumor to the employee and not vice-versa according to her statement.

Atty. Meyer requested for a break.

(5 minutes break.)

Atty. Meyer: My clients agreed to testify under oath if other witnesses would be allowed to testify and be cross-examined. If there is anything should be clear after hearing my presentation and after hearing her presentation is, there are very substantial disputed facts. There is virtually nothing that Atty. Irwin said that my clients are in agreement with in terms of what actually happened. And in my opinion there are a number of differences of what she said tonight and what's contained in her report. But putting that aside, if anything should be clear here is, this is a matter that's far too important and far too much in dispute factually, to try to resolve it through two lawyers giving what they refer to as offers of proof. To make clear the context here, the claim made by Ms. Irwin that Mr. Jodoin was very upset about this. First of all, I have no reason to dispute that although, he confided in my clients there were other things making him upset. Assuming this controversy was one the things that made him upset, it is not a basis for terminating my clients. If I want to make the same type of emotional appeal, I would talk to you about how upset my clients were when they were precipitously kicked out of City Hall. And how upset their firings and all the ramifications had caused to them. I chose not to make those emotional type of appeal, but stick to the facts. I would suggest that any type of emotional upset for Mr. Jodoin is again, a type of emotional appeal. When I pointed out that there was zero evidence of any effect upon anybody's work performance, Atty. Irwin came back and said, "It affected Mr. Jodoin's ability to perform happily. That's not the issue. The issue in terms of work performance is that, is anything not get done by the Town or get done by the Town employees in any way because of anything alleged against my clients. There is no evidence of that at all. Remember, the word "adultery" was never used. In terms of finding, that my clients said something that was false. They never said that there was any type of adulterous relationship going on. Put yourself in their shoes for a minute, you are a Town employee, you get reports from outsiders that there's something going on. Is it not human nature to repeat that to people within your office? It would seem hard for me to imagine that when that type of rumor comes out that you somehow

cleanse it from your mind and say nothing at all. I don't think that's a realistic expectation in terms of human nature. Then, the question asked by Atty. Irwin is, if they were concerned about favoritism, why did they not go to Mr. Jodoin. Their response was, when they get a chance to testify, that they went to him frequently on that issue. Expressing their concerns about the affect on morale and the budget, of having similar work in their department. That was the issue, when they could get the same quality job at a much lower rate. Atty. Irwin says, they had this concern about favoritism and that therefore is the reason that they talked about this rumor. That's not true. That is pure speculation. There's not a thread of evidence to support that. The reason that this was subject to the discussion is two-fold, first, it came to them from the outside, from a private citizen. The second reason is they themselves made the observation in the office. Not of any type of romantic relationship, but the fact that these two individuals seem to be close. If my clients has said there's an affair going on or anything in that nature and saying that people from the outside have speculated that something was going. That's not false statement, that's a true statement. People from the outside were speculating what was going on and people from the inside were concerned about not only the favoritism but the perception of them being too close. The thing that complicates this whole situation and one of the reason we needed a hearing is that you've got strands. You got the concern about favoritism in the workplace. You got the concern about two employees, supervisor and supervisee being friends. You got this innuendo or rumor about having an affair. What's consistently happened from day one is those three strands are being put together and stuck together and treated as if they were all the same thing. None of the circumstances have been given consideration. One of the issues that was raised by Mr. Jodoin, according to the investigator was his concern about the difficulty of hiring other employees for the Town Hall if this view that he had a close relationship with a female employee. I would ask that if the situation is not rectified about...what effect there's going to be on firing long term, successful, effective and competent employees based upon these types of allegations or even resemblance of a fair hearing. Thank you.

J. Gorton: I'd like to make a motion to suspend this public hearing until the next regularly scheduled meeting on July 25th, 2007 and move into a non-public session pursuant to RSA 91-A:3 II, (e), to discuss the legal implications of the requests for disqualification and the post-

termination hearings, since that has been brought by the employees, and then to reconvene the public hearing on July 25th, 2007 to vote on these matters.

Motion seconded by D. Ross. Roll call vote carried unanimously.

Atty. Meyer: Mr. Chairman, I'd like to respectfully state for the record, my objection under the Right-to-know Law for going into executive session for reasons stated.

Chairman P. Loiselle: Any additional input? (None) This hearing is convened.

ADJOURNMENT:

The meeting was adjourned at 9:15 pm.

Respectfully submitted,

Evelyn F. Horn

Administrative Assistant