

## Official

### **TOWN COUNCIL MINUTES Regular Meeting Wednesday, November 30, 2011**

**CALL TO ORDER:** Chair Sirak called the meeting to order at 6:30 pm.

**PRESENT:** Nancy Comai, Michael Downer, Vincent Lembo, James Levesque, Todd Lizotte, Susan Lovas Orr, James Sullivan, Nancy VanScoy, Dean E. Shankle, Jr. (Town Administrator) and Chairman William Sirak.

#### **PLEDGE OF ALLEGIANCE**

Joseph Mariano and JD Hogue lead the group.

#### **APPROVAL OF MINUTES**

November 9, 2011 – *J. Sullivan moved to approve the November 9, 2011 minutes as amended. Motion seconded by T. Lizotte. Motion carried.*

November 9, 2011 Non-Public – *T. Lizotte moved to approve the November 9, 2011 non-public minutes. Motion seconded by M. Downer. Motion carried.*

#### **PRESENTATION**

A plaque of appreciation was presented to Councilor Nancy VanScoy for her service to the Town and the Town Council.

Councilor VanScoy thanked everyone for the opportunity to serve the Town of Hooksett.

#### **CONSENT AGENDA**

Market Basket Surety (\$1,443,943.73) Release

*V. Lembo moved to approve the consent agenda. Motion seconded by J. Sullivan. Motion carried unanimously.*

#### **PUBLIC INPUT**

**Mary Farwell, 24 Grant Drive:** As a resident of District 2, I would like to thank Councilor Nancy VanScoy for her service. She's been a phenomenal Councilor, very responsive, any time I've had an issue, i.e., the Beauchesne water issue. She was very much right in front helping us get the attention we needed. You were there when neighbors needed you to listen to them. I think that was really important. You're leaving some pretty big shoes to fill. Thank you for your service.

**David Hess, 68 Pine Street:** I just want to make a comment about your consideration of a complaint practice or procedure, which I understand is still under consideration and to urge you to approach that subject with considerable caution. I've served in the legislature for 22 years. I've been a practicing lawyer for 37 years, 28 years advising municipal entities including the Town of Hooksett. I also served on the Town Charter committee which drafted and secured the approval of the Town Charter under which you operate. I urge caution for several reasons, based upon experience and legal review of documents. Not all complaints are equal. They are of varying seriousness. Many, and this is no reflection on any individual complaints, but based upon my legislative experience, are groundless or near groundless. When you establish a formal procedure for any and all complaints, you commit yourselves to a due process, which you will have to follow for each and every complaint, whatever you call a complaint that you receive. And any deviation from the process you establish would open you to a justifiable complaint in of itself because you're not following your own rules. When you have complaints of varying

seriousness, from my experience, once you establish such a process, you basically are inviting complaints. Most of them are relatively groundless. Nevertheless, they would require the substantial commitment of time, efforts and resources that the process you have implemented requires. I think it's very dangerous to adopt an open-ended policy such as this without consideration. Let me throw out a couple of thoughts to you from the Charter. The Charter in Section 3.2 defines the qualifications for Councilors. It specifically provides (5) grounds for disqualification or removal of Councilors by yourselves. The Charter specifically says that "*the Council is the sole judge of qualification for office*". That is the standard phrase which we adopted in 1989 from legislative laws and the judges recognize it. If you receive complaints dealing with one of those (5) qualifications for office, certainly, you should receive them, evaluate, discuss and act on them as those are the specified grounds for disqualification. But, there is a principle of law that says, once you have a list of items, there's nothing outside of the list that qualifies. In other words, if you specify (5) grounds for disqualification, other grounds are not grounds for disqualification. I would suggest if and when you decide on adopting a complaint procedure, you should confine it to subjects that you could appropriately take action on. There's nothing in the Charter which qualifies or authorizes the Council to rebuke, remand or condemn an action of a Councilor other than to find a disqualification for office. The procedures for complaints set forth in the Charter direct the complaints to go to the administrator and he is to handle. The role of the Council with respect to that matter is defined in Section 3.13 regarding inquiries and investigations but the language does not have provision for any of your members. I would suggest the language in the Charter does not authorize or warrant consideration of complaints against any members of the Council. That's the sum and substance of my comments and observations. There are remedies for people that are not disqualification for office that are contained in the Charter. One of them is re-election and another one is recall. If there is an activity by a Councilor that a sufficient number of voters (2%) found to be so offensive as to warrant recalling that Council person, they can do that. It doesn't have to be one of the grounds for disqualification. You have re-election and recall as recourse for behavior deemed to be unacceptable.

**Marc Miville, 42 Main Street:** Mr. Hess outlined (5) points, I was wondering what those (5) points are, for the record. As a fellow District 2 constituent, Councilor VanScoy is an exemplary of what a Councilor should be, fully researched, does her homework and engages and participates in every board she's been on. I sincerely thank her for her efforts. I am advising the Town Council of my full and enthusiastic support for Mr. John Danforth as a strong and viable candidate for the open District 2 Councilor position to replace Councilor VanScoy. His calm demeanor and solid administrative approach would be a good fit for the Council make up. John will add a strong level of integrity and contribute enormously to improving the Town's perception and efforts to resolve Town agenda issues. I can personally vouch for his detail oriented focus and citizen concern while serving with him on the Budget Committee for several years. John Danforth is a genuine decision maker, a no non-sense of fact finding and research in determining results that are beneficial to the citizens he represents with consideration always of the taxpayers. John has served the Town on many boards in a respectful manner. And in my opinion is ready to serve in the Town Council with distinction, accountability and transparency. Please consider Mr. Danforth with high regards for his nomination to accompany your collective efforts to oversee the Town.

J. Sullivan read the (5) points David Hess referred to for the record:

(1) The Council is the sole judge of qualification for office. (2) A majority of the Council may after investigation and hearing declare a vacancy if a member is ultimately convicted of a violation of the Town Charter. (3) Council may also declare a vacancy if a member has missed 3 regularly scheduled meetings in sequence, or has missed one quarter of all meetings within one calendar year, (4) or has interfered with Administration, (5) or falsified records, misapplied Town funds or property, or has been ultimately convicted of a Federal or State crime as a felon.

#### **NON-PUBLIC SESSION**

***J. Levesque moved at 7:00 pm to enter into non-public session under RSA 91-A:3, II (d) "Consideration of the acquisition, sale, or lease of real or personal property, which if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community."***

**Motion seconded by T. Lizotte. Roll call vote carried unanimously.**

**J. Sullivan moved at 7:15 pm to exit non-public session. Motion seconded by T. Lizotte. Motion carried.**

The Council made a statement that they voted to seal the minutes of the non-public session.

#### **TOWN ADMINISTRATOR'S REPORT**

D. Shankle informed the Council of the following:

1. The Town Administrator shared some information from the LGC conference with regards to RSA 91-a and governmental records.
2. The DPW/Recycling & Transfer Labor union was certified. Contract negotiations should follow. Town Council Representatives to the Union negotiations will have to be appointed.
3. The Town Administrator has contracted with Granicus for recording and streaming meetings. Starting in January Town board meetings will be available through live streaming and on demand.
4. The Bureau of Turnpikes is looking into open road tolling by 2013. A public information meeting is scheduled the 1<sup>st</sup> week in January.
5. Merrimack County proposed budget.
6. The High School Study Committee is being re-activated. The Town Administrator and Councilor Orr will join the committee.

#### **NOMINATIONS AND APPOINTMENTS**

##### Nomination

District 2 Councilor - Frank Kotowski & John Danforth

Frank Kotowski has removed his application. Mr. Kotowski is also a member of the Sewer Commission. Upon review of the Town Charter, it was learned that a Councilor cannot serve in another commission or board other than the Budget Committee, Conservation Commission and the Planning Board.

The Town Council discussed the Councilors' membership in other boards and committees.

D. Shankle clarified that other than the boards and committees specifically mentioned in the Charter, if it is the will of the Council to have someone sit on the board, it should be stated and clarified in the Administrative Code.

**N. Comai nominated John Danforth for District 2 Councilor position.**

John Danforth, 31 Dale Road, introduced himself to the Council. He has been a resident of Hooksett for about a decade. He served in Operation Desert Storm and was honorably discharged as a disabled veteran. He used to be a Middle School Social Studies teacher. He currently works for the Department of Veterans Affairs in Benefits Administration. He has served on the Recycling & Transfer Committee and Budget Committee. He is currently a member of the Cemetery Commission. He also volunteers for the Hooksett Cub Scout Pack 292.

He stated the Council has a charge to review the budget and make hard decisions. The Council has to keep in mind that every decision it makes is going to impact neighbors and friends in the community.

J. Danforth is also a member of the Cemetery Commission. He will have to resign in order to serve on the Town Council.

**S. Orr moved to waive the rules of waiting period between nomination and appointment. Motion seconded by T. Lizotte.**

#### **Roll Call**

N. Comai	Yes
M. Downer	Yes
V. Lembo	Yes
J. Levesque	No

T. Lizotte	Yes		
S. Lovas Orr	Yes		
J. Sullivan	Yes		
N. VanScoy	Yes		
Chair Sirak	Yes	8-1	<b><u>Motion carried.</u></b>

**The Council voted unanimously to appoint Mr. John Danforth as District 2 Councillor.**

Parks & Recreation Advisory Board, exp. 6/2012

Dustin Raiche, 2V Bayview Terrace Road, introduced himself to the Council. Mr. Raiche acquired his Bachelor's Degree in Business Administration from SNHU. He is currently working on his Master's Degree at Rivier College. He has never served in a Town board. He hopes to be able to bring about a fresh perspective to the board.

***M. Downer nominated Dustin J. Raiche.***

Planning Board, exp. 6/2012

***J. Sullivan nominated Brendan Perry to be moved from an alternate to full member position.***

John Gryval, Planning Board Chair: On behalf of the Planning Board, I'd like to thank Nancy for her help and support in the Planning Board. We have one opening for a full member. We have 3 alternate members. The most senior alternate member, Yervant Nahikian has no intention of moving up. Our new alternate member, David Rogers was interested in moving up but withdrew in favor of Brendan Perry.

The Town Charter states that alternate members will be considered first for any open full position.

Appointment

Economic Development Committee

***Jesse Marchand was appointed to the Economic Development Committee.***

Available Positions

Heritage Commission – (2) Alternate Members (Exp. 6/2012 & 6/2014)

Planning Board – Alternate Member (Exp. 6/2014)

**SCHEDULED APPOINTMENTS**

Heritage Commission Update

Kathie Northrup, Chair requested for the Council to accept \$600 donation for the Veterans' Memorial Park project.

***J. Sullivan moved to accept the donation of \$600 per RSA 674:44-b,1(h). Motion seconded by N. VanScoy. Motion carried unanimously.***

K. Northrup informed the Council of Heritage Commission's current and completed projects.

- The Head School had a very successful year. Did 18 school tours including one Pembroke School and a Manchester private school.
- Hooksett Heritage Commission was featured by the Division of Heritage Resources in the State's 5-year preservation plan.
- Veterans' Memorial Project
- Working on designating Goffstown Road as a scenic road.
- Conservation of town-owned mural by NH artist William Abbott Cheever.

Approval of Quimby Mountain Conservation Easement Deed for Bear Paw Regional Greenways

David Hess and John Turbyne of Conservation Commission presented the easement deed to the Council for approval.

The Council has previously voted in principle to authorize and approve both the transfer of conservation easement on Quimby Mountain and a deed conveying the easement to Bear Paw Regional Greenways. The Conservation Commission voted unanimously to accept these easements. The State's Fish and Game Commission is interested in holding an executory interest in the property as it is recognized as the highest level of wildlife habitat in the State.

The Conservation Commission asked the Council to approve the easements with qualifications that the Conservation Commission be granted permission to pursue an executory interest with Fish and Game and to make those changes in these easements.

Once the Quimby Mountain acquisition is done along with the 4,000 feet of Merrimack River frontage north of the dam and another upcoming project, Conservation Commission will be about 90% completed of 5 major goals set in 2004 Master Plan.

***T. Lizotte moved to approve the Quimby Mountain Conservation Easement Deed with specification that the Conservation Commission has the discretion to include an executory interest in favor of the NH State Fish and Game Commission and to make such changes in the mandatory arbitration and mediation provisions of the easements as are necessary. Motion seconded by S. Orr. Roll call vote carried unanimously.***

CRDC (Capital Regional Development Council) & SNHPC (Southern New Hampshire Planning Commission) Contracts

Jo Ann Duffy, Town Planner presented an update on the contracts.

The original contract with SNHPC was signed in 2008. This was to update the Economic Development chapter of the Master Plan. They have accomplished everything they needed to do. The Town has to complete the Economic Development chapter, which is currently being reviewed by Economic Development Committee and will be presented to the Planning Board for final adoption. There are (3) amendments to the contract. One amendment is for the Exit 11. SNHPC is currently working on a "mini" master plan for the Exit 11 area. A boundary has been designated. The purpose of the plan is to get public input on what residents would like to see developed along the Exit 11 area. A survey was done with the stake holders as well as home owners. Responses will be compiled and presented at a workshop to be held at the Library on December 1<sup>st</sup> at 7 pm.

T. Lizotte attended a meeting with regards to this contract. In order for CRDC to complete the task, the Town has to accomplish some items. He stated the Council should give guidance as to whether the Town should hold off on this contract until the Town understands what actually needs to be done in order to complete the task. There are some issues with Sewer and other basic items.

Chair Sirak stated David Preece of SNHPC agreed to hold off on this contract. There is no TIF proposal at this point. This is the beginning of the process for the Town to be prepared when opportunity presents itself.

D. Shankle concurs to hold off on the contract until the Town has more information. The contract will expire in March but is expected to be extended.

J. Duffy stated funds will have to be encumbered in June as the department has not budgeted for this project.

David Pearl, re: Complaint (see file)

Vice Chair VanScoy took over as Chair.

A 3<sup>rd</sup> complaint was received from Mr. David Pearl as a response to how the (2) original complaints were handled.

***T. Lizotte moved to establish a technical finding of merit for the complaint. Motion seconded by N. Comai.***

T. Lizotte stated the Town Council needs to adopt a complaint system. As a body, the Town Council needs to project that it takes certain things, like members of the community, seriously. When certain things happen, the Council should find the findings, clear and Councilors should come together to make a determination. The problem with the process done is that the Council just arrived to the end without findings. Because there is no process, the Council is left with the situation. The Council should vote on the merit of the findings and decide on the next step, even if that next step is doing nothing.

Chair Sirak: I think I have a solution for you. This has been very uncomfortable and difficult for me. I came on board five or six months ago with the idea of trying to establish a very positive culture in this community with regards to governance. We've talked about Hooksett advantages and I think we could all be proud of what we've accomplished in the last five or six months with our priorities, our goals and the best boards win. It's obvious that certain people in this group and the community are not going to listen to it. So I'd like to respectfully submit my resignation as a member of the Town Council effective immediately.

Chair Sirak walked out of the room.

V. Lembo: We're going somewhere with this that Mr. Hess has suggested we don't go. We don't have a policy or procedure in place. We don't want, as a consensus of this Council, a policy or procedure in place. And we shouldn't discuss it because if we have a finding, that leaves the door open to sit here and listen to complaints every night of the meeting.

Vice Chair VanScoy: The discussion seems to be over whether or not we should have a complaint procedure and whether we should discuss the 3<sup>rd</sup> complaint and proceed on any type of a motion.

M. Downer: The motion is whether or not the complaint has merit. The question is that when we look at the Charter, did it rise to the levels enumerated in the section. The (former) Chair himself stated he was not truthful to Mr. Pearl. I think that's a matter of record. We should vote on the motion whether the complaint has merit, then discuss, if necessary.

S. Orr: We're talking about a technical point and I think it is that the Chair told a mistruth. He readily admitted that he did. Although in hindsight, he admitted it was not the right thing to do.

V. Lembo: If we vote on this motion, that's accepting the fact that we have a process and we don't except for the Town Charter process.

Vice Chair VanScoy: The Town Administrator suggested that this may no longer be a matter of discussion since Chair Sirak just resigned and no longer a member of the Council. I would like to remind the Council, just because a resident requested the Council to address something, it does not mean we need to address it. Just because a board member made a motion to vote on something, it does not mean we should vote on it. My feeling is, we have addressed the complaint when the Council voted to support Chair Sirak. It is not our determination whether or not something is a fact. The board has lost the oversight at this point with the resignation of Councilor Sirak.

***T. Lizotte withdrew his motion. N. Comai withdrew her second.***

***J. Levesque moved not to accept Chair Sirak's resignation. Motion seconded by J. Sullivan.***

J. Levesque explained the pressure put on Mr. Sirak was undue and it was done in haste to solve the problem. If the Council accepts the resignation, it would be a big loss to the Council.

J. Sullivan: As stated in the Charter, the Council is the sole judge of qualification. There have been issues since 1989 that people are upset about. Are there complaints? Yes? Does it make it an official

complaint because they didn't like the way the Council handled it? I would agree with Councilor VanScoy's statements. The Council's reaction was the inaction. The motion made was to give support to the Chair.

N. Comai stated the Council will have to slow down and make the proper steps one at a time without backing and filling.

D. Pearl: It was not my goal and I was not asking for Mr. Sirak to be removed as a Town Councilor. I asked that he does not serve as Chair. If Mr. Sirak has resigned and he is not asked to come back, I will remove my complaints. My complaints will have no merit if he's no longer a sitting Councilor. The finding would be irrelevant.

**Roll call vote on the motion not to accept Chair Sirak's resignation.**

N. Comai	No		
M. Downer	No		
V. Lembo	No		
J. Levesque	Yes		
T. Lizotte	No		
S. Lovas Orr	No		
J. Sullivan	Yes		
N. VanScoy	No	2-6	<b><u>Motion failed.</u></b>

Mr. Pearl: I formally withdraw the complaint.

V. Lembo asked for clarification as to whether this means the Council now has a procedure.

Chair VanScoy stated there was no motion to adopt a procedure. This could be discussed at a future meeting.

V. Lembo requested to add this item to the next agenda.

**OLD BUSINESS**

Code Enforcement Officer/Building Inspector

D. Shankle stated since he started he's been thinking about ways to increase productivity and efficiency without increasing costs. He recommended moving the Building Department into the Public Works Department as the Division of Building and Code Enforcement. This will allow the CEO to focus on the technical aspects of the job and not be tied down in administrative tasks, such as personnel, budget issues, coordination with other departments, etc. This would require an amendment to the Administrative Code. The position pay scale will not change.

***T. Lizotte moved to allow the Town Administrator to draft the Administrative Code amendment necessary to make the CEO a part of DPW. Motion seconded by J. Sullivan.***

J. Sullivan asked if the DPW Director is concerned about any aspect of the department.

Leo Lessard, DPW Director stated a reorganization of the department will have to be done.

**Motion carried unanimously.**

**NEW BUSINESS**

Council Rules – Agenda Format

D. Shankle suggested moving the Town Administrator's Report up towards the beginning of the agenda.

***S. Orr moved to change the order of the agenda on the Council Rules (Section 7-a) and move the Town Administrator's Report before Public Input. Motion seconded by J. Sullivan. Motion carried unanimously.***

#### School Plowing

Last year, the Town and School Administrative Unit signed an agreement for school grounds maintenance. The agreement states that the school will pay the Town the amount of \$82,651 for the services. This has no impact on the Town's or school's budget, therefore, makes no difference to the taxpayer. No additional staff needed to be hired. The Town Administrator recommended not to renew the agreement and take care of school grounds maintenance as the Town has in the past.

***N. Comai moved not to renew the School Plowing agreement with the SAU. Motion seconded by T. Lizotte. Motion carried unanimously.***

#### Town Council Officers

Council consensus was to appoint Council officers at the next meeting.

The open position will be advertised with a deadline of Tuesday, December 13<sup>th</sup>. Candidates for the position cannot be residents of Districts 1 or 2.

#### **SUB-COMMITTEE REPORTS**

##### Town Hall Preservation Committee – S. Orr

Councilor Orr has started reviewing the records from the previous committee. She has not contacted anyone for volunteers.

N. VanScoy asked if there has been any consideration to allow non-residents as advisors to the committee. S. Orr stated this has not been decided yet.

##### Fire Union Negotiation – N. Comai

Negotiations are on-going.

##### Recycling & Transfer Advisory Board – J. Levesque

Recycling has increased considerably with the single stream recycling.

##### Police Commission – M. Downer

1. Public meeting was held to discuss the results of the audit. The results are posted on the Town's website.
2. Budget discussion. Looking to increase budget for officers' training and development as suggested in the audit.
3. M. Downer suggested for the Council to invite the Police Commission to speak about the audit and how to proceed with the recommendations.

The Police Commission will be asked to attend a future Town Council meeting. N. VanScoy suggested preparing a mini-agenda for this meeting.

4. The commission originally decided to dispose of (4) vehicles. The highest bidder withdrew his bid. DPW took the (4) vehicles to make (2) functional vehicles out of them. These vehicles will be used by all Town employees.

##### Parks & Rec – M. Downer

They will begin construction on the ice rink.

##### Conservation Commission – T. Lizotte

1. A joint public hearing will be held between the Conservation Commission and Parks & Recreation Advisory Board on December 6<sup>th</sup> regarding the Pinnacle Park.
2. Quimby Mountain easement discussion.

##### Sewer Commission – T. Lizotte



T. Lizotte stated he is pleased Frank Kotowski decided to stay with Sewer Commission. The (2) other commissioners (Sid Baines and Roger Bergeron), as well as Superintendent, Bruce Kudrick are doing a great job taking care of the technical issues with regards to the sewer discharge incident. Going forward, there will be a need for diplomacy and negotiations with all parties involved including NHDES. Mr. Kotowski will be very helpful in these areas.

CIP – N. VanScoy

Completed their task and will make a presentation to the Planning Board at their next meeting and will be presented to the Council on December 14<sup>th</sup>.

Planning Board – N. VanScoy

1. The Town Council Representative will have to be appointed at the next meeting.
2. Developmental Regulations amendments were discussed i.e., clerical items and bringing back the bonds as an acceptable surety in addition to cash and letter of credit as well as how the amount is determined.

Pizza Man Property

Leo Lessard, Public Works Director attended the meeting held today. L. Lessard made some changes to the plan (retaining wall). The owner did not agree with the changes. She decided to put the slope back to its natural state and have the tenant erect the wall. The work should start Thursday morning or before Monday. The abutter agreed with it.

**NON-PUBLIC SESSION**

***T. Lizotte moved at 10:10 pm to enter into non-public session per RSA 91-A:3, II (d) “Consideration of the acquisition, sale, or lease of real or personal property, which if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.”, and,***

***RSA 91-A:3, II (e) “Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the public body or any subdivision thereof, or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.”***

***Motion seconded by J. Levesque. Roll call vote carried unanimously.***

***J. Levesque moved at 10:44 pm to exit non-public session. Motion seconded by T. Lizotte. Roll call vote carried unanimously.***

The Council made a statement that they voted to seal the non-public minutes.

**ADJOURNMENT**

The meeting adjourned at 10:45 pm.

Respectfully submitted,

Evelyn F. Horn  
Administrative Assistant

Nancy Comai  
Town Council Secretary