

TOWN COUNCIL MEETING MINUTES
Wednesday, October 23, 2013

CALL TO ORDER

Chair Sullivan called the meeting to order at 5:09 pm.

ROLL CALL – ATTENDANCE

James Sullivan, Nancy Comai, Donald Winterton, David Ross, James Levesque, Todd Lizotte, Susan Orr, Robert Duhaime, Adam Jennings, Dr. Dean E. Shankle, Jr. (Town Administrator), Shawn M. Tanguay, Esquire (Council Attorney)

PLEDGE OF ALLEGIANCE

PUBLIC HEARING ON PERSONNEL ISSUE IN ACCORDANCE WITH TOWN CHARTER 4.6a

Dr. Dean E. Shankle, Jr., Town Administrator

Attorney Buckley (Dr. Shankle's Attorney)

Jo Ann Duffy, Town Planner

Attorney Douglas (Jo Ann Duffy's Attorney)

Recording Clerk – Katie Rosengren

J. Sullivan: This is public hearing on a personnel issue according to the Town Charter 4.6a regarding a disciplinary action from the Town Administrator to Jo Ann Duffy, a department head who has requested that this be public. We did receive a notice from Attorney Douglas who is representing Ms. Duffy regarding the process that the Council is following so we will address those two issues regarding whether we are holding this hearing properly first. I have the notice dated 10/17, the first item is regarding 4.6a which states that the hearing should be scheduled within two regular scheduled meetings of the Council once the Council received the notice of request to have the hearing. And I would like to waive that notice because we did adhere to the process.

T. Lizotte motioned to accept the Chairman's assertion that he was notified of the hearing on September 26, 2013 in accordance with the requirements under 4.6a of the Charter. Seconded by D. Winterton.

J.Sullivan: I received a reference to that letter that was dated September 23rd which was the Monday that was before the Council meeting scheduled for September 25th. The first time I was aware of a request for a hearing for Ms. Duffy was via an email sent on Sept. 26th at 11:54 am. The letter that was sent on the 23rd I have here and I actually did not receive it until recently and it's been unopened. So according to my understanding the first time I received that notice was on the 26th so it's up to the Council to decide if we met the requirements under 4.6a.

Roll Call

S. Orr – Yes
A. Jennings – Yes
N. Comai – Yes
R. Duhaime – Yes
D. Winterton – Yes
D. Ross – Yes
J. Levesque – Yes
T. Lizotte – Yes
J. Sullivan – Yes

Vote unanimously in favor.

J. Sullivan: The second item and question of us following our rules was regarding Town Council procedure 8 which states according to rule 8b the agenda for the regular Council meeting should be posted by the close of business on the Wednesday prior to the regular Council meeting. However, in the case of October 23rd the agenda was not posted until Thursday, the 17th. The question is did we adhere to the proper posting rules?

A. Jennings motioned that rule 8 is inapplicable at this type of meeting and it's not a common occurrence. Seconded by T. Lizotte.

D. Winterton: Clearly this meeting is scheduled more as a convenience to the volunteer members of the Town Council where it is a portion of the Town Council meeting and that's why it is today. It is my belief that legally we would only have to post this 24hrs before.

Roll Call

T. Lizotte – Yes
S. Orr – Yes
A. Jennings – Yes
N. Comai – Yes
R. Duhaime – Yes
D. Winterton – Yes
D. Ross – Yes
J. Levesque – Yes
J. Sullivan – Yes

Vote unanimously in favor.

J. Sullivan: So with that we'll proceed into the hearing. Prior to this hearing the Council met to clarify the process that we would be following for this hearing. We do have our legal counsel here Mr. Shawn Tanguay. We sent out the information to all of the attorneys how we would proceed and they all have a copy of that which indicates a brief statement from the Town Planner's legal counsel for five minutes, then there will be a brief statement from the Administrator's legal counsel, then a presentation of testimony and evidence by the Town Planner and following that her witnesses shall come forward and the Council will have opportunities to ask questions as well. Once that's completed we'll move onto the second part where the Town Administrator's legal counsel will come up and follow the same procedure with questioning witnesses and presenting information, then the Council again can ask questions. Once that is done there will be a closing statement from the Town Administrator's legal counsel, then from the legal counsel for the Town Planner, then the Council will move to close the hearing. There will be a public deliberation scheduled where the Council will make a decision. So at this point according to agreed upon procedures we'll ask Attorney Douglas to do a five minute opening statement.

Atty. Buckley: The Town Administrator has determined that he would like to make his own statements and present his own testimony rather than me do it I assume you won't have objection to that?

Atty. Douglas: I have no objection.

J. Sullivan: We agree to those terms since you both do.

Atty. Douglas: Thank you Councilors I want to thank you for taking this opportunity to hear our appeal today. I just need to state for the record that the way my motion to dismiss was characterized was not the way that I intended it to be. This woman has worked for the town for more than 20 years and served the town well. Her job per her job description is to provide guidance to the Planning Board. Per request of a Planning Board member she researched the current sign ordinance and presented it and possible alternatives to a single Planning Board member. She then received an ambiguous email from the Town Administrator who said he was unsure about the appropriateness of her communication with that single Planning Board member but she should use the documents that were utilized and continue to research them. She did this, and without any clear direction from the Town Administrator she met with the Planning Board member again. She was not told she could not meet with that Planning Board member again. After this the Town Administrator derived that he had given her clear instruction not to meet with that Planning Board member then wrote her up for insubordination. Ms. Duffy decided to explain herself and apologize for the perceived insubordination. She did not intend to be insubordinate. This apology letter wasn't sufficient for Dr. Shankle. He met with Jo Ann Duffy again and this time he criticized her upbringing and threatened to discharge her unless she accepted the following: training each day for a year with him for an hour where he would pick a topic of study and if she was late once for these meetings she could be

discharged. Believing the meeting with the Planning Board member was the issue, Jo Ann Duffy offered to submit to training under the Right to Know law and offered to prepare a training herself after she properly received this training. This suggestion of training and what should have been the substantive issue was not sufficient for Dr. Shankle. At the end of the hearing today you will see that there is not just cause for the discipline of Jo Ann Duffy. This disciplinary action is not reasonable. Thank you.

J.Sullivan: Thank you very much.

Dr. Shankle: I'd like to open by making three points. 1. My goal today is to present to you the information that I had available when I wrote the letter to Jo Ann on 9/20. I believe then and I believe now that Jo Ann was part of a small group of people tasked by the Planning Board to work on the sign ordinance on their behalf. I further believe then and believe now that this group were a public body as envisioned in RSA 91-A and that as a department head she should have understood this and complied with the law. The letter that I sent her on 9/20 regarding her discipline seems to have led to the development of an alternate reality. 2. Regarding whether the disciplinary action I am requesting is reasonable considering the offense, her actions have demonstrated a lack of understanding of the Right to Know Law and also basic management techniques. All I am suggesting is between 150 and 180 hours of training, this is roughly the equivalent a student would be expected to put into in a one semester, three credit course if you include study time. 3. This is about the public's right to know what their government is doing and to see public policy being developed. I suspect we'll see attempts to nitpick the law or shoot at loopholes, but I think we should expect more than that from our town's staff. I want to conclude that I believe then and I believe now that Jo Ann was part of a small group of people tasked by the Planning Board to work on the sign ordinance on their behalf. I further believe then and believe now that therefore they were a public body as envisioned in RSA 91-A and that as a department head she should have understood this and complied with the law.

Atty. Douglas: I have a number of exhibits I would like the Councilors to review as I take Jo Ann's testimony. Might I distribute those to you now?

J. Sullivan: Please.

Atty. Buckley: On behalf of the Town Administrator in regards to her exhibit package I object to the attempt to submit the affidavit from Richard Marshall as he is not going to be a live witness. I can't cross-examine a piece of paper. I request to remove the letter from Planning Board member Richard Marshall.

Atty. Douglas: The rules of evidence do not apply here, this is a hearsay rule. We were given notice of this hearing as of mid-day October 17th, we had four days to call our witnesses. Mr. Marshall was prepared to testify for her but could not make this hearing. Dr. Shankle has put the interests of a few select Planning Board members at issue and in order for Jo Ann to defend herself Mr. Marshall's testimony should be heard.

J.Sullivan: We're going to hold off on ruling whether we'll take the information from Mr. Marshall.

Atty. Buckley: I think the witness should be sworn in.

J.Sullivan: Please swear in each witness

Attorney Douglas swore in Jo Ann Duffy, Town Planner

J. Duffy: I was first hired by the Town of Hooksett on July 1, 1993 as a land use clerk. I received several promotions while employed by the town. July 1 of this year makes twenty years. Some of my titles have included: Administrative Assistant, Assistant Planner, Planning Coordinator and Town Planner. I was promoted to Town Planner in February 2007. My job description outlines my duties which my basic duties are to be in charge of the Community Development department. I supervise our staff, have a lot to do with the business community and assist the Planning Board. Our department also helps the Planning Board each year update the Master Plan, all the zoning ordinances each year and the development regulations. I provide regulatory advice to the Planning Board on a regular basis.

Atty. Douglas: Have you received any positive feedback regarding your performance?

J. Duffy: Yes, regularly from the developers and applicants in town. I try to bring people together and act as a middle man. I was a Planning Board member myself in Goffstown so I understand how it works. I've received letters complimenting my work most recently from Merchants Motors, a realty company in town and one letter from the organization that runs Robie's store due to some legislation that I testified for recently, as well as the library. The Planning Board talked about the Sign Committee as a result of the Bass Pro project which required a lot of variances for their signs. Mr. Walsh, a Planning Board member, attended a Zoning Board meeting and came back to the Planning Board and suggested that we make changes to our sign ordinance which was approved by unanimous decision at the August 5th Planning Board meeting.

Atty. Douglas: Was there a small group of people who tasked you with working on the sign ordinance on their behalf?

J. Duffy: No, Tom Walsh said we would get together and talk about it and he brought it up at the next Planning Board meeting and they said to go ahead with it and the others decided to participate. Tom is a regular member and Mr. Marshall is the Vice-Chairman.

Atty. Douglas: Were you aware of any hidden agenda that they had?

J. Duffy: No they were concerned with the number of businesses coming forward for waivers and wanted to cut down on the number of businesses coming for waivers. They asked me at the August 19th meeting, when Mr. Marshall and Mr. Walsh volunteered to be on the subcommittee, they said why not meet with staff first then we'll bring it to the subcommittee when there is one, there wasn't a subcommittee at that time. The Planning Board agreed, Leo Lessard also volunteered and we all agreed to meet on August 28th. We met with Mr. Marshall, Carolyn Cronin, Matt Lavoie, and Leo Lessard. Tom Walsh was not able to make it.

Atty. Douglas: Was it unusual to meet with these people, and what is Leo's title?

J. Duffy: Leo is the Director of Public Works. No yearly we come up with zoning changes for the Planning Board to assess, review, and decide if they want to move forward with it and have often met with the Chairman.

Atty. Douglas: Is there any record of the Planning Board asking you to facilitate this meeting?

J. Duffy: Yes in their minutes which are on the town's website.

Atty. Douglas: Was Dr. Shankle at the August 19th meeting?

J. Duffy: I don't believe so. Carolyn provided all copies of our sign ordinances and we talked about: merging the three ordinances into one, what the problem areas seem to be and how we can do things better. Mr. Marshall has been a member of the Planning Board for a long time and has seen a lot so he provided a good historical perspective. After that Carolyn researched what other towns do across the country with their signs, red-lined our suggestions and distributed this information as well as a booklet on how to form a sign committee electronically. She put it together after the meeting and distributed it. We were hoping to give this to the Planning Board as helpful information once they got started.

Atty. Douglas: Did you hear from Dr. Shankle about this meeting?

J. Duffy: We had two meetings with Mr. Marshall, the first on the 28th and the next day I was on vacation and I received an email from Dr. Shankle that said that he didn't realize that a Planning Board member would be attending this meeting and that he thought it would only be staff and he wasn't sure if it was appropriate, and that once the Sign Committee meets I would have to explain to them what had occurred.

Atty. Douglas: So he understood that the Sign Committee hadn't met yet?

J. Duffy: Yes

Atty. Douglas: Did you interpret the second statement from his email as an objection to the draft ordinance?

J. Duffy: No. And I think the goal of the Planning Board via the Sign Committee would be to cut down the number of waivers and variances. It was the entire board's concern.

Atty. Douglas: Did you think you were in violation of any law?

J. Duffy: No, I responded to Dr. Shankle that the Planning Board had discussed this on the 19th and that we do some preliminary work. I thought it was straight forward and didn't see any issue with it and I never heard from him when I returned to work. I never saw him. He didn't say that I shouldn't meet with Mr. Marshall anymore and on September 3rd Mr. Marshall called and spoke with Carolyn and asked if he could stop by the next day to ask some questions regarding her red-line. Then she asked me if she should invite Leo and I said well if he can it's not a meeting but yes if he can stop by, so she sent him an email saying this. Then we met to go over Mr. Marshall's concerns. Leo was there and at one point Matt Lavoie came in. Leo did not say that he was aware that we shouldn't have this meeting. He did send me an email that morning saying that he thought we should invite Dr. Shankle or at least tell him about it. Halfway through the meeting Dr. Shankle walked into the room and then walked out. Leo got nervous and said that he was in trouble and that Dr. Shankle had told him not to meet and was not in favor of these meetings. After the meeting I received an email from Dr. Shankle to both Leo and I saying that he told us not to have these meetings and he sounded mad.

Recording Clerk – AnnMarie White

J Duffy: He said that neither one of us are to provide staff support and referred to an email regarding not doing anything further.

Attorney Douglas: Did Dr. Shankle tell you this was inappropriate?

J. Duffy: No. I had no indication I did anything wrong.

Attorney Douglas: Did you meet with Dr. Shankle that Thursday?

J. Duffy: Yes. I was 5 minutes late. I had a TRC meeting which ran late. Dr. Shankle did not come out and I was handed a letter from him.

Attorney Douglas: Do you recognize the letter on p102?

J. Duffy: Yes, that is the letter.

Attorney Douglas: What did the letter ask you to do?

J. Duffy: The letter asked me to explain why we did what we did.

Attorney Douglas: What did you do?

J. Duffy: He wanted the letter no later than 8:05 on Monday, Sept. 9, so Sunday night I sent him a letter via email explaining why I did what I did and apologized for lack of mis-communication.

Attorney Douglas: Is Exhibit 106 the letter you wrote?

J. Duffy: Yes.

Attorney Douglas: How did you close out that letter?

J. Duffy: It said, I hope we can put this behind us, continue to work together and work things out in the future.

Attorney Douglas: Did Dr. Shankle respond to this letter?

J. Duffy: He had me come in to his office. When I got there he questioned me for about 40 minutes as to what happened and why.

Attorney Douglas: Was anyone else present?

J. Duffy: Donna Fitzpatrick was taking notes.

Attorney Douglas: Did you take notes as well?

J. Duffy: Yes.

Attorney Douglas: Is Exhibit 107 your notes?

J. Duffy: Yes.

Attorney Douglas: Are the notes on p109 Donna Fitzpatrick's notes?

J. Duffy: Beginning on p108 are Donna's notes.

Attorney Douglas: Please turn your attention to p111. Could you read the last line of Donna's notes, next to (j).

J. Duffy: Yes. "I wasn't raised to disrespect my boss I am not here to pick a fight, just here to do my job".

Attorney Douglas: What happened after this meeting?

J. Duffy: Some time went by and on Sept. 20 I received a notice of disciplinary action.

Attorney Douglas: How long did Dr. Shankle propose that you be disciplined for?

J. Duffy: He said what I had done was grounds for dismissal, however, since I was a long term employee he was offering me a training session for 1 year, 5 days a week, with the exception of holidays and vacations.

Attorney Douglas: What does that training session look like?

J. Duffy: It was open-ended, could be held here or any other place he chose, and would include topics that he chose.

Attorney Douglas: What would happen if you were late to one of these sessions?

J. Duffy: If I was late or did not show for 1 time that it would be grounds for dismissal.

Attorney Douglas: Was anyone else who attended the Aug. 28 or Sept. 4 meeting disciplined in any way?

J. Duffy: Carolyn and Matt were given a training session for 4 days, for 1 hour.

Attorney Douglas: Did Dr. Shankle offer this to you?

J. Duffy: No.

Attorney Douglas: Did you ask him if you could do this?

J. Duffy: During the time period after I filed the appeal, Dr. Shankle, through his attorney, had contacted my attorney.

Attorney Buckley: I object. We have had discussions on behalf of the Town Administrator to the extent that we had off the record discussions that we had tried to come to some middle ground. That is not an appropriate subject of testimony. I would object anything along the lines of a proposal that is different that what was stated in the disciplinary letter.

Attorney Douglas: The evidence rule, that I believe Attorney Buckley is referring to, precludes settlement discussions for the purposes of showing liability. When a plaintiff offers evidence of settlement discussions as a way of saying he may have done something wrong, this is excluded. This is distinct from the evidence rule. This is the Plaintiff saying, I offered to settle which suggests that she acknowledges that there are things she could have learned about the Right-to-Know law. The reasonableness of Dr. Shankle's discipline is at issue where Miss Duffy counter proposed a reasonable resolution to this matter.

Attorney Buckley: If I'm going to make a compromise to a personnel matter, it becomes the subject of a debate in a judicatory proceeding. I am not going to make compromises or proposals. It is inappropriate to discuss a compromise offer whether made by the Town Planner or discussed by the Town Administrator. I object to this line of questioning or the evidence.

J. Sullivan: We should try to remain on topic with the extent of the discipline. I would encourage you to stay away from alternates to discipline. Our task as Council is to discipline.

Attorney Douglas: Was Leo Lessard disciplined in any way?

Attorney Buckley: Again, we have to be cautious. We have another town employee who has rights as does the Town Administrator. If a town employee who is not a subject of this hearing suddenly has matters involving his personnel file, that employee has the right to say they do or do not consent to have it heard. If Mr. Lessard wanted to have a public hearing he would have requested one.

Attorney Douglas: The relevance of the information is that if Dr. Shankle did indeed fail to discipline Mr. Lessard or disciplined him in a more lenient way that is probative of him targeting JoAnn Duffy, without cause. They are both department heads. If he was treated differently for the same conduct, that should be considered.

J. Sullivan: I agree with this line of questioning. If Mr. Lessard was part of the Committee and was engaged in that, I think it is relevant to find out if there was equal treatment.

T. Lizotte: Would the other employee that did not ask to be in public, be afforded that testimony to be in non-public.

Attorney Tanguay: The subject matter tonight is Miss Duffy's disciplinary action, not Mr. Lessard's. The question asked was whether or not someone who is working in concert with Miss Duffy during these meetings received equivalent disciplinary action.

Attorney Buckley: I've just consulted with Mr. Lessard and he does not object to this discussion taking place in open session.

Attorney Douglas: Was Leo Lessard disciplined?

J. Duffy: I did not see a letter but Leo told me he was disciplined.

Attorney Douglas: When was he disciplined?

J. Duffy: He was disciplined 11 days after I was and after I had filed my appeal. I believe his discipline was for 6 months of training.

Attorney Douglas: Your discipline was for how long?

J. Duffy: 1 year.

Attorney Douglas: Has Dr. Shankle ever made statements regarding your age?

Attorney Buckley: I am going to object.

Attorney Douglas: It is relevant regarding a pretextual note of discipline.

Attorney Buckley: I would still object. We are going into areas that are not the proper subject of this hearing.

J. Sullivan: I am going to agree that issue is outside the scope of this disciplinary hearing.

Attorney Douglas: What has happened with the Sign Committee since the discipline letter?

J. Duffy: There was an organizational meeting that was supposed to be held on Sept. 23rd.

Attorney Douglas: Was that meeting publicly Noticed.

J. Duffy: It was not an official Sign Committee meeting because the Committee had not been appointed yet. It was a Committee meeting to find out who would like to serve on the Committee.

Attorney Buckley: Who was in charge of Noticing it?

J. Duffy: My office was. At the time we invited members of the Zoning Board, Planning Board and Economic Development Committee (EDC). The meeting was held and we obtained the names of those people who were interested. Then we put in on the Oct. 7 Planning Board agenda and the members of the Sign Committee were appointed. We had a meeting scheduled for Oct. 8. We advertised it as a Sign Committee meeting. Late in the day it was mentioned to me that Dr. Shankle had advised that he felt it was not appropriately Noticed because the members of the EDC constituted a quorum of that Committee. We canceled the meeting and notified the members. I then called the Municipal Association because I had not heard of this before unless it was advertised as a joint committee meeting.

Attorney Douglas: Is the Municipal Association the regular resource for you for this kind of information?

J. Duffy: Yes. We contact the Association for simple matters because they don't charge us. I spoke with Attorney Sanderson and he advised me that we should include a note on the agenda stating there may be a quorum of the EDC. We then re-posted for an Oct. 15 meeting.

Attorney Douglas: Then what happened.

J. Duffy: On the morning of Oct. 15, Dr. Shankle told one of my staff that he could not find the Notice on the website for EDC only one for the Sign Committee. I told him what Attorney Sanderson said. Attorney Buckley disagreed. I also relayed the information to Dr. Shankle and told him that I respectfully disagreed. Mr. Walsh was in my office for something else and I asked him if he would mind calling Attorney Buckley with me. My view was if we advertised it as EDC as well, then other members of the EDC could attend and it looked like they were having a meeting when they were not. Attorney Buckley advised to be prudent so we canceled the meeting. We have a meeting scheduled for Oct. 28 and I did 3 different agendas for Planning Board, EDC and Sign Committee and they are posted in all 3 places on the website as well as the public postings.

Attorney Douglas: At any time did you ever prepare, draft, or communicate information to the Planning Board for any personal or political gain?

J. Duffy: No.

Attorney Douglas: At any time did Dr. Shankle mention a concern about catering to businesses in town?

J. Duffy: When I was in his office on the 9th, he seemed to be upset that Dick Marshall was involved in the preliminary meetings. He asked me several times if I thought Mr. Marshall was anti-businesses. I said that I do not feel that he is.

J. Sullivan: At this time, I would invite Legal Counsel for Dr. Shankle to question.

Attorney Buckley: I am going to hand out an exhibit packet that I will ask JoAnn to reference. Do you agree that you are a town employee as well as a department head and are subject to the towns personnel plan?

J. Duffy: Yes.

Attorney Buckley: I have highlighted p20 and p21 of the personnel plan and will read those sections. Do you agree that I have read p20, in the section "Standards of Conduct" of the Towns Personnel Plan regarding prohibited behaviors and p21, the section referring to insubordination being a grounds for disciplinary action, correctly?

J. Duffy: Yes.

Attorney Buckley: Looking at the exhibit packet that I have supplied to the Council, please turn to p2. This is an email forwarded by Donna Fitzpatrick sending an attachment to all of the Planning Board and yourself. Is that correct?

J. Duffy: Yes.

Attorney Buckley: You were a recipient?

J. Duffy: Yes.

Attorney Buckley: That email was forwarding a letter dated January 22, 2013, that the Town Council Chairman had sent, that was designed to bring to your attention, as well as to Boards and Committee members, recent changes to the Right-to Know law.

J. Duffy: Yes.

Attorney Buckley: Looking at p5, would you agree that definitions of a public body now includes an advisory body?

J. Duffy: Yes.

Attorney Buckley: I am going to read RSA 91-A:1-a (VI) (d) located on p5 of the exhibit. Did I read that correctly?

J. Duffy: Yes.

Attorney Buckley: Turning to p11 and p13 of the packet, this was a meeting of the Planning Board on Aug. 5, 2013, where the initial discussions took place with developing a Sign Committee sub-committee of the Planning Board. Is that correct?

J. Duffy: Yes.

Attorney Buckley: On p15 of the packet, it shows that the Planning Board met again on Aug.19. One of the things it says is that, based on the prior meeting of Aug. 5, people had volunteered to be on the Committee.

J. Duffy: We volunteered as staff not as Committee members.

Attorney Buckley: Two standing members of the Planning Board had said that they would sit on the sub-committee.

J. Duffy: They volunteered to be on the sub-committee.

Attorney Buckley: Then there was a discussion about meeting, where Mr. Marshall said he was available during the day and you and Leo would be available during the day. Is that correct?

J. Duffy: Yes.

Attorney Buckley: Mr. Walsh then said nighttime was best for him, but if you could post the daytime meeting there is a good chance he could attend.

J. Duffy: I thought he was talking about the actual Sign Committee.

Attorney Buckley: It is clear to me that he said there should be a posting taking place and a posting refers to the requirement under the Right-to-Know law. Correct?

J. Duffy: I don't believe he was referring to the Right-to-Know law since the Sign Committee had not yet been appointed.

Attorney Buckley: On p17 of the submitted records of the Town Administrator are minutes of the EDC of Aug. 27, 2013. Highlighted with pen marks on the margin is a note I will read regarding a comment at the meeting, about an invitation by you to Board members, to a Sign Committee meeting on Aug. 28. Did I read that correctly.

J. Duffy: It was read correctly. The term Sign Committee was being used loosely at the time. The Sign Committee never happened until Oct 7. I should have called it an organizational meeting instead. I was wrong in calling it Sign Committee.

Attorney Buckley: Nevertheless that is what appears in the EDC minutes. Is that correct?

J. Duffy: Correct.

Attorney Buckley: To be clear in an email to you from Dr. Shankle he says he is not sure that was appropriate and it should be disclosed in your first meeting with the Committee. He is saying he knew that you had a meeting on Aug. 28, and that Mr. Marshall, yourself, Leo Lessard, the Code Enforcement Officer and Carolyn Cronin were there. Correct?

J. Duffy: Yes.

Attorney Buckley: He is telling you that he saw you had a meeting and did not think it was appropriate. Did you understand the word appropriate?

J. Duffy: I did understand and that is why I replied right away.

Attorney Buckley: In your reply you said the draft is just a starting point so we can move forward from there rather than discussing the same thing over and over. It sounds like you wanted to have a meeting with your group and develop the draft outside of the view of the public so you didn't have to spend hours discussing the same think over and over.

J. Duffy: That was not my intention. There were members that were interested in serving that are members of the EDC and they are not familiar with our sign ordinance. If I had a conversation with Dr. Shankle things might have been able to have been resolved but he has not spoken to me since Sept. 4 except for at a department head meeting.

Attorney Buckley: If your supervisor is telling you something is inappropriate, wouldn't you make sure you got the all clear?

J. Duffy: When he said he wasn't sure it was appropriate and should be disclosed I did not take that to mean we should not work on the project as the Planning Board had given the ok to do. There was no Committee at the time so we were not violating the Right-to-Know law.

Attorney Buckley: The new statute carries with it a new definition of an Advisory Committee and it is very clear that it is a sub-committee or any Committee advising a sub-committee. Are you saying this group you had together was not advising the Planning Board on the content of the proposed sign ordinance changes?

J. Duffy: I am saying that the advisory committee was the sub-committee, not my staff. It says in the law that the advisory committee is appointed by the appointing authority which is the Planning Board. They appoint the Sign Committee which is the advisory committee, not the staff and Mr. Marshall.

Attorney Buckley: But only by virtue of the fact that Mr. Walsh is there, your position is that as long as only one Planning Board member is present that is not a sub-committee of the Planning Board?

J. Duffy: There was no quorum of the Planning Board present.

Attorney Buckley: We are not talking about a quorum of the Planning Board. We are talking about this meeting and those who are going to revise the sign ordinance and do it in a way you are going to do it yourselves with no public input.

J. Duffy: An email can be perceived in different ways. I never had any intention of keeping the public out of this process.

Attorney Buckley: You are at the point where Carolyn is asking Leo Lessard to come to a meeting and he sends an email to you that states you should invite Dr. Shankle. Do you think your fellow department head put you on notice that you should be careful and should include Dr. Shankle?

J. Duffy: No because Dr. Shankle never said anything to me about not holding a meeting with staff and a Planning Board member. Leo said Dr. Shankle should be invited. I didn't think it was necessary because the only thing we were doing was going over the current sign ordinance not making any decisions.

Attorney Buckley: We don't have a lot of information of what took place at the meeting except a letter from Mr. Lessard.

Attorney Douglas: How is it that Mr. Marshall's statement is not allowed but Mr. Lessard's is?

J. Sullivan: The Council nor I have decided whether or not we would get to Mr. Marshall's affidavit. We are bringing this in because he received discipline as well so I believe it is within the scope of this hearing.

Attorney Buckley: I am trying to understand the context of Sept. 4. Mr. Lessard was entering your office and you were already there with Mr. Marshall when Dr. Shankle entered?

J. Duffy: Yes. We were sitting around the table talking about the edits. Dr. Shankle walked in, looked around, said nothing, and walked out. Mr. Lessard said that he was in trouble and Dr. Shankle did not want this meeting to occur. That is when we became aware of it.

Attorney Buckley: That is not what Leo Lessard said. He says when he entered the meeting he noticed Dr. Shankle was not present and asked if he was notified. Did this happen?

J. Duffy: Yes, but he never said why he wanted to know until after Dr. Shankle came into the room.

Attorney Buckley: He goes on to say that he was told you were only meeting on changes and that would not be a problem and it was stated from both JoAnn and Dick that this was ok'd by the Planning Board. Leo said he stated, "It doesn't matter, Dean wants to know". At that point Dick stated, "Dean is not in charge of the Planning Board. If there is a problem I will discuss it with Dean". Leo replied, "You are right, but he is in charge of us and I think you should talk to him." Did that take place?

J. Duffy: I do not remember the exact words but I do remember Leo said he was going to be in trouble because Dr. Shankle told him not to meet again.

Attorney Buckley: So you are not saying this was not said, you do not recall hearing the words.

J. Duffy: Correct. There are parts of that I don't recall.

Attorney Buckley: If a Planning Board member says something like that in your presence about your supervisor and you did not say anything to make clear to that Planning Board member that the Town Administrator runs the town, don't you think that is a form of insubordination on your part?

J. Duffy: Mr. Marshall has been on the Planning Board for 41 years, he states what he wants to and I have no control over what he says. I just listened. It wasn't even a meeting. It was Mr. Marshall stopping by to go over some edits that he thought Carolyn had left out.

Attorney Buckley: The point I am trying to make is the level of discipline. I am comparing and contrasting the reaction of the department heads responding to the same situation in a different way. It appears that Mr. Lessard was concerned about the role of the Town Administrator and you were not.

J. Duffy: Mr. Lessard was concerned about himself getting into trouble. He said we were going to be in trouble because Dean didn't want us to meet because apparently Dean had told that to him but never said anything to me.

Attorney Buckley: Initially, Dr. Shankle sent you a letter which is located on p33 of the materials. I understand a similar letter was sent to Mr. Lessard, where he takes you to task but says he was not immediately disciplining you, but stating that he had concerns and was thinking about a form of discipline and asking you to explain yourself in writing. Was that what this letter was about?

J. Duffy: Yes.

Attorney Buckley: He waited to decide what he was going to do after he received your reply. Your reply is found on p41. Correct?

J. Duffy: Yes.

Attorney Buckley: One of the issues Dr. Shankle later raises in his Notice of Disciplinary Action is

Attorney Douglas: We are talking about future testimony about what Dr. Shankle will later raise?

Attorney Buckley: I am asking to get a picture from her as to how she was responding to Dr. Shankle's statement that he felt discipline was necessary. What appears to be the case, is that you are saying that because the Planning Board asked you to do certain things you felt you had to follow their directives? Is that a fair statement?

J. Duffy: I explained to Dr. Shankle that the Planning Board had authorized two Planning Board members to meet with staff. I understand that I work for Dr. Shankle, not the Planning Board, however, I staff the Planning Board and it was the consensus of that Board to go ahead. I felt there was nothing wrong because we were not holding a meeting nor did we have a quorum.

Attorney Buckley: Isn't that one of the issues Dr. Shankle raised, that he felt you were not taking responsibility and were placing blame on others.

J. Duffy: I never placed blame on the Planning Board. I brought that up to show Dr. Shankle that the Planning Board had discussed this matter and there wasn't any malice.

Attorney Buckley: So we are clear about the work of this advisory group of the Planning Board that met on Aug. 28 and Sept. 4. There is an email found starting on p48 of the materials and then the edited documents of the town zoning ordinance which are highlighted and include edits. I have counted 28 separate edits to the town ordinances as well as two separate new sections. All of this work was done without public notice, without minutes kept as to how you reached these decisions, and the public had no notice they were taking place until you started having meetings of the Sign Committee with public notice. Is that correct?

J. Duffy: The only thing we were doing was brainstorming so the not yet assigned Sign Committee could have some material to begin working with. The edits that you see are repetitive throughout the three different sign ordinances because some of them all say the same thing. We were not trying to recommend anything because we do not have that authority. This is no different from any other year when staff provides information exactly as this to the Planning Board to begin debating what zoning ordinances they would like to change.

Attorney Buckley: In this instance the red-line version of these changes is a product of a meeting of a member of the Planning Board, made by consensus of the Planning Board, not just staff members.

J. Duffy: There was not an advisory group or any other group. It was staff and one member of the Planning Board. This is the same thing we do year after year. A Planning Board member can offer advice.

Attorney Buckley: In hindsight, would you agree that any time you have a Planning Board member participating in any such group, it should be posted as a sub-committee with Public Notice and minutes?

J. Duffy: No. We were not a Committee. If we were appointed as the Sign Committee then yes but there was no Sign Committee until Oct. 7.

Attorney Buckley: No further questions.

Attorney Douglas: I do not have a redirect. However, I would like to move the admission of the affidavit of Mr. Marshall, on grounds that the statement by Leo Lessard, referencing the substance of the Sept. 4 meeting, has been admitted. In fairness requires that, Mr. Marshall's affidavit would similarly be admitted.

Attorney Buckley: I don't think it is the same thing. Regardless, Mr. Lessard is here and we could call him on direct and ask him if his letter is accurate.

J. Sullivan: Let me rule on the request from Counselor Douglas.

Attorney Tanguay: To be clear, Attorney Douglas you are talking about the Mr. Marshall's affidavit?

Attorney Douglas: Yes.

Attorney Tanguay: Attorney Buckley you are discussing Mr. Lessard?

Attorney Buckley: They are totally different situations. It is inadmissible because I cannot cross-examine Mr. Marshall.

J. Sullivan: At this point we are going to take that under advisement.

Attorney Douglas: No redirect.

J. Sullivan: At this point the Council might ask questions.

N. Comai: When was the last time you have read the Right-to-Know law?

J. Duffy: A few days ago.

N. Comai: The formal Committee was created on Oct. 17?

J. Duffy: Oct. 7.

N. Comai: If you could go to your email from you to Dr. Shankle on Aug. 29, which is in the packet from Counselor Buckley on p22, Exhibit 6. On Aug. 19, they talked about having a Committee, however, on Aug. 29 you stated the Committee was formed as a sub-committee by the Planning Board. That tells me a Committee was formed.

J. Duffy: It should have said the idea of a Committee was formed. It meant the Planning Board had agreed to form a sub-committee.

N. Comai: You stated earlier that at the meeting that was held with Mr. Marshall and a few others at 10:00 am, you were only going to talk about present ordinances.

J. Duffy: Which meeting are you talking about?

N. Comai: The Sept. 4 meeting.

J. Duffy: That was the intention of our first meeting to talk about the current ordinances and what was wrong with them. At the Sept. 4 meeting we were only going over edits and Carolyn had left out a few things and Dick wanted to correct that.

N. Comai: So Aug. 28 was the first organizational meeting and Sept. 4 the edits had been created?

J. Duffy: The red-lined version you have in your packet was created as a result of the Aug. 28 meeting and they were then distributed to the staff, Mr. Marshall and Mr. Walsh. Then we met again with Mr. Marshall because he had corrections to be made that Carolyn had left off.

N. Comai: Had the formal Committee met yet?

J. Duffy: No. They plan to meet on Oct. 28.

N. Comai: So there are no minutes because there has been no formal Committee established?

J. Duffy: Correct. We did have the organizational meeting on Sept. 23rd to find out who was interested in serving and there are minutes of that.

N. Comai: What makes that meeting different than a formal one?

J. Duffy: The Planning Board wanted to first find out who was interested and figure out what would work as far as scheduling.

N. Comai: Who is on the Committee?

J. Duffy: 5 from EDC: Mr. Winterton (EDC and Planning Board) Mark Sanborn, Leslie Boswak, David Scarpetti, and Matt Mercier. We also have Dick Marshall and Tom Walsh.

S. Orr: Is it a common occurrence for a member of the Planning Board to pop in to have communication with your department?

J. Duffy: Yes. It happens often.

R. Duhaime: If Mr. Marshall was Chairman, would he be able to serve?

J. Duffy: He could. There was no restriction.

D. Winterton: In your letter on p41 to Dr. Shankle, in Attorney Buckley's packet, it says that the Planning Board "suggest at the meeting." Tonight I think I am hearing that the Planning Board authorized the meeting. Is there a difference?

J. Duffy: They authorized the meeting by consensus.

T. Lizotte: Referencing, p64 from Attorney Douglas's packet. The email coming from Carolyn Cronin on Aug. 29 refers the subject matter to yesterday's Sign Committee meeting. Did everyone understand that it was not a Sign Committee meeting? I am wondering if Carolyn believed it was a Sign Committee meeting based on what it says in the subject of her email.

J. Duffy: No one believed it was a Sign Committee meeting. I am guilty of calling it a Sign Committee when it was not yet a Committee. I should have called it a preliminary Sign Committee meeting.

T. Lizotte: How long did the Aug. 28 meeting go on for?

J. Duffy: Approximately 2 hours.

T. Lizotte: Was there a discussion and debate on the edits?

J. Duffy: It was very informal. It was a brainstorming session and we threw out there what we felt the concerns by the business owners as to what they might like to see by way of suggestions may be. The Code Enforcement Officer was consulted about complaints that he has received. When Carolyn put the edits together it was just as a starting point as to where there were problems. Once the Sign Committee met they could have tossed it in the garbage.

J. Sullivan: It appears that Aug. 5 was the initial discussion on forming a Sign Committee. Since then the Committee has not met?

J. Duffy: Correct.

J. Sullivan: Referencing the email from Dr. Shankle, dated Aug. 29, located on p22 in the documents from Miss Douglas, where he says, "I'm not sure that was appropriate and it should be disclosed at the 1st meeting of the Committee. I would have asked what was inappropriate about it. Did that ever come to your mind to ask? What was your thought process?"

J. Duffy: I typed it up quickly. I was at home on vacation with my family. I believed he thought it was inappropriate because he thought we were having some kind of a meeting without it being posted. That is when I explained to him that it was the Planning Board's idea and it was just a staff meeting with one Planning Board member present.

J. Sullivan: So you never thought to ask Dr. Shankle what was inappropriate?

J. Duffy: It did not occur to me because I knew I didn't do anything wrong.

D. Ross: What do you consider the relationship between your position and that of Mr. Marshall?

J. Duffy: I am there to advise the Planning Board and Mr. Marshall has been on that Board for 41 years. I have been working for the Planning Board for over 20 years. I have never had any issues with him and I respect him.

D. Ross: Has there been anything that changed that would make you feel differently.

J. Duffy: No, nothing has changed.

R. Duhaime: After the Aug. 29 letter from Dr. Shankle, he showed that there was concern stating he did not think it was appropriate. Why did you not include him in the material just to keep him informed?

J. Duffy: This is something I have done every year, for 20 years, whenever I put together proposed zoning changes for the Planning Board. It didn't occur to me there was anything wrong.

R. Duhaime: When I was reading the Planning Board minutes, Dean was at the meeting and you knew he was interested.

J. Duffy: Dr. Shankle used to be a member of the Planning Board and we would invite him to things but now that he is not on the Board I normally don't invite him to meetings. I meet with people all the time and don't include him unless it is requested that he attend or he wants to.

J. Levesque: When you had the 2nd meeting, and it was brought up by Leo Lessard to invite Dr. Shankle, I would think you would want him to know what was going on. Why did you not go out of your way to make sure he understood you were going to have that 2nd meeting?

J. Duffy: I didn't know he was upset with it because of the way he worded his email and we never had any verbal discussion on this.

J. Levesque: If my boss tells me something is inappropriate I think I would follow it up. I am having a hard time understanding why you did not.

J. Duffy: It was the way he worded it, "I'm not sure if this is appropriate." It didn't say he felt it was not appropriate. There was no verbal discussion. It was just that one line that I had to go by.

S. Orr: When you got this email from Dr. Shankle saying he was not sure it was appropriate, did you look at the Policy?

J. Duffy: I read the Right-to-Know law, referenced the section about Advisory Committee, and came to the conclusion that there was no reason to be concerned because we were not breaking any laws. On hindsight, I think that Dr. Shankle thought we should be doing something in the public eye because eventually this will become a public issue. However, if you read through, the Local Government Center (LGC) explains the changes on the new Right-to-Know law. It says that working documents of staff are just that, and you don't want those public because the public might become concerned thinking that one day they may become official. It was staff trying to be helpful. That's all. We had no ideas of leading the town or Committee any certain way.

J. Sullivan: You said that working staff documents do not apply. Is a member of the Planning Board, in your mind, considered part of the staff?

J. Duffy: No, but he is not a quorum of the Board either.

T. Lizotte: On p22 of Attorney Buckley's packet, in the 1st paragraph of Dr. Shankle's initial letter, he emphasizes that he was under the impression that the meeting was for staff and did not realize a member of the Planning Board would be there. He then asserts he wasn't sure it was appropriate and it should be disclosed at the meeting. Taking into consideration 91A's Preamble regarding the openness and conduct of public business, you believed, when you read this, that he wasn't concerned a Planning Board member was part of it and a 2nd meeting would be ok?

J. Duffy: I didn't know what his concern was. I believed he must think we are a Committee because Mr. Marshall was there, but I knew that wasn't the fact. I wrote back trying to explain what happened in the Planning Board meeting and I really thought I was all set.

T. Lizotte: You had indicated that it was a 2 hr. meeting, edits had taken place and Miss Cronin forwarded an email in the sense of saying Sign Committee edits. She also states that in a subsequent meeting, Mr. Marshall came to make sure the edits were correct. Was Mr. Marshall making the decision on those Articles?

J. Duffy: No. Carolyn had left out a few things about the size we were including in the documents and he just caught what she had left out.

T. Lizotte: Who made the decisions to make the changes on the 1st edits?

J. Duffy: Carolyn took notes as we went along and she did the edits. There was no instruction.

D. Winterton: On the letter that Councilor Lizotte just referred to, was Mr. Walsh copied on that?

J. Duffy: I think Carolyn left him off because he wasn't there, but I sent it to him myself afterwards.

S. Orr: An email from Dean implies that he walked into the meeting and then walked out. Did he say anything to anybody at that time?

J. Duffy: No. He looked around and then left. There was no interaction.

J. Sullivan: That concludes our questions. Are there any more witnesses?

Attorney Douglas: No.

D. Shankle: What I am going to go through is how I saw what I saw up until the 20th. When I made my decision, I had everything up to Exhibit 16 on p73. The Sign Committee meeting posted on the 23rd happened prior to that. Then they got the letter, the 23rd happened and everything changed. Exhibit 1 is a letter that the Council did. The email went to everybody and the reason you wrote this letter was because of actions that were taken by the Planning Board against Councilor Winterton before he was Councilor Winterton. An advisory committee is a group of people getting together to do work that is going to be brought back to the public. One of the issues that kept coming up was whether an advisory committee can have a combination of staff members and Planning Board members. According to the LGC, a Committee can be made up of both staff and Board members. When looking at Exhibit 2, the Aug. 5 meeting, my mindset was still Sign Regulation sub-committee. On p13, T. Walsh, Leo Lessard and Dick Marshall stated they would be willing to sit on the Sign Committee. Two of those people are Planning Board members and one is staff and nobody disagreed. I want you to note on Exhibit 3, the meeting of Aug. 19, J. Duffy, said that "at your last meeting you agreed to have a formation of the Sign Committee. The people who have volunteered are T. Walsh, Leo Lessard, Carolyn Cronin, Dick Marshall and myself." You will see those names over and over again when talking about the non-existent Sign Committee. That is the Sign Committee that everybody, from that moment on, considered the Sign Committee or a sub-committee. Their meeting time and what would be discussed was talked about in the 3rd paragraph from the bottom. The thing that is important about that sentence is that Dick Marshall saw this sub-committee as something that would save the Sign Committee time. In other words, he was expecting them to do work that, otherwise, they would have had to do in public. I understand why they were trying to save people time but, if you are going to do that, you need to admit that you are doing work that was going to be done by the Sign Committee. One of the things said was they needed to do this pre-work because the EDC would not be familiar enough with the sign ordinance to go through it in the same detail they would. One of the things the Sign Committee should have been planning on doing is educating the people in town, including the members of the EDC, any business that came in or anyone interested from the public about what the ordinance meant and what it was trying to do. Exhibit 4 mentions a meeting of the Sign Committee on Aug. 28 with JoAnn Duffy inviting EDC Board members to attend. If the EDC Board members were there they would have no reason to believe that wasn't a posted meeting of the Sign Committee. It is what they were told and it is what I had in front of me when I needed to make my decision. Exhibit 5, p20 says it is a Sign Committee organizational meeting. The meeting organizer was JoAnn Duffy and the same names Leo Lessard, Dick Marshall, Carolyn Cronin and Tom Walsh, that were mentioned at the Aug. 19 meeting were mentioned again. Moving to the bottom of Exhibit 6, p22, I will answer the question I have been asked about why I said I was not sure it was appropriate. I had not been at the meeting on the 19th so I did not know, at this point, that a Committee had been assigned by the Planning Board. This was just a question in my mind if it was appropriate, considering all of the interest in the community, to start this process behind closed doors. The other question I was asked was why I did not go and talk to JoAnn. Each morning, between 8 and 9 am I go in to most offices and she was not in the office each time I went in to talk to her. Once 9 am comes I get swamped with work. JoAnn said she was concerned that I might think it was a Sign Committee. The way she tried to relay that concern is to tell me, on p22, that the Committee was formed as a sub-committee of the Planning Board. That is why I thought it was. I had no reason to think this was not either a Committee or sub-committee and she said it was done by consensus of the Planning Board. Regarding p24, I would have thought, if there was going to be a 2nd meeting, I would have heard about it. Exhibit 8, p26. When I walked in to talk to her, around 10 am, there was a meeting going on. I turned around and walked out, which I usually do, so as not to interrupt. It did not occur to me that it might be their 2nd meeting until I got back downstairs. From my perspective, it would have been inappropriate to go back up and confront my staff in front of an outsider. Exhibit 9 makes reference to awareness of the Planning Board, another meeting on Sept. 23, and that all members would be invited. At that time, my understanding was evolving and I was gathering information. That is why I didn't do anything right away and took my time to think about it. My concern is in the 2nd paragraph of Exhibit 10, Letter 33, regarding staff working behind the scenes. One of the concerns raised was why Leo Lessard got 6 months and JoAnn got 1 year. It was important to me that Leo understood that he did something wrong and he wanted to do the right thing. In my letter, Exhibit 11, 4 paragraphs

from the bottom, I mentioned that I would like him to tell me why he chose to act as he did, what he sees as his role as part of my Administration, and his part in what was going on before I decided on my level of discipline. We have a lot going on and I need to know that the department heads are on the same page. I felt Leo was responsive to this. Other differences are that JoAnn involved brand new employees of her department in this knowing that I was concerned, she hosted it, and she has been here for 20 years. Leo has been here 2 years. P14 is the one that sent out the red-lined draft of the sign ordinance. As Carolyn pointed out, in the end of the 1st paragraph, this is a combination of her research as well as the same people from the beginning. They clearly went through this ordinance line by line deciding what to do. I think an exercise like with a 40 year member of the Planning Board, that was not done in public, was a shame. After things coming up over a 2-3 week period I went to the Sept. 16th meeting to try to figure out what was really going on. This meeting is referenced on p69. Whether this was the Sign Committee or an Advisory Committee on behalf of the Planning Board, it falls under the Right-to-Know law. If a Committee, as a whole, can tell people to get together and then bring everything back, everything could be done out of the public view using this loophole. If they have been doing this with zoning ordinance changes every year we need to talk about that. It is not an issue to have Planning Board members dropping in and talking to staff. The issue is that a group of people were assigned by the Planning Board to go off and do this work. That is a huge difference. It could be considered an ethical problem, for instance, under the ICMA Code of Ethics, if I individually worked with Councilors on a proposal if the idea was to circumvent the rest of the Council. This particular case is not an ethical issue. They were assigned by the Planning Board to do this work by consensus. They left that with the idea that they would hold another meeting on Sept. 23rd. In the middle of p70, Dick Marshall said that it was not part of the public committee. It was so they have something consolidated in front of them when they walk in. If staff would have done this it would have been fine. That is what we are paid for. The Right-to-Know law is clear. Staff work product, until it gets to the Board, is not public. If you mix in anybody other than staff you no longer have that exemption. I asked if the Planning Board instructed them to do this. I mentioned I did not see a vote in the minutes. Dick Marshall corrected me and told me the Planning Board took a consensus so that was verified for me. Another member said that yes they were supposed to get together. They were doing it at the behest of the Planning Board, going to the Sign Committee and what was going to the Sign Committee was going to come back to the Planning Board. This was ultimately an advisory committee. A group of people sent out by the Planning Board to do work on their behalf and bring that work back. In my opinion that is an advisory committee. On p71, I explain that I called the Municipal Association and what their response was. At the bottom Representative Walsh states that they had set up a Committee, gave them a charge, the charge could have been clearer, some mistakes had been made and he wanted to straighten it out. P72, 3rd paragraph down, references a request for a motion if a Sign Committee meeting was going to be held on Sept. 23. What normally is done is the Board decides who will be appointed or the Board suggests that a meeting be held that people could be invited to talk about it. It would be a meeting of the Planning Board, or the Council or something like that. The meeting of Sept. 23, was posted as a Sign Committee meeting and has minutes. Who is going to approve those minutes if there was no Sign Committee? When the consensus was taken the volunteers were again the same people as were mentioned before, who agreed to serve on this Committee and there was going to be some reaching out to others. In italics and bolded below on the page, Dick Marshall moved that a Committee meeting of the Sign Committee be held on Sept. 23 at 5:30, seconded by Tom Walsh. I cannot prove this but isn't it odd that the two people that moved and seconded were part of the original Committee. The motion carried unanimously and there was no other Committee mentioned or formed at that point. Exhibit 16 on Sept. 12, mentions that a Sign Committee agenda was posted and the business was going to talk about the establishment of the Committee. I think they tried to make the argument that they were establishing the Committee by showing up, but clearly that is not what they meant. They were going to talk about why the Committee was established, what they were supposed to be doing, what their charge was, but they clearly already had a Committee in place that they were going to do that with. Otherwise you would have this situation where it is suggesting they are creating themselves which is not what they were trying to do. It was the Planning Board establishing the Sign Committee. Once the 20th hit everything got strange. All of sudden the Sign Committee minutes on the 23rd say that Sign Committee is supposed to be established, 2 of the 3 Committee meetings had to be canceled because they were not posted correctly. P79 is why I go back to the alternate realities. In the middle, D. Marshall says, there was no Sign Committee until this action was taken by the Planning Board until it was just appointed. D. Rogers states that there was no Sign Committee until it was just appointed and there has been no business conducted by this Committee. Once again even if they think that is true, up until I sent that letter on the 20th, all I heard from everyone involved that this was a Committee assignment by the Planning Board to do this work. It was called the Sign Committee over and over again on everything and all of a sudden it changed.

Attorney Douglas: You said in your testimony just now that all it took for you was a call to the LGC to determine that what JoAnn was doing was wrong. Am I stating your testimony correctly?

D. Shankle: No. Could you please be more specific.

Attorney Douglas: I believe you said all it took was a call to the LGC for me to determine that the meeting she held on Aug. 28 was wrong.

D. Shankle: Yes.

Attorney Douglas: So, in other words, you didn't know it was wrong?

Shankle: I was double checking because, obviously, when dealing with something like this I want to make sure I am right. That is why you make calls and double check.

Attorney Douglas: Should the Council then oppose upon you a training that would take place every workday, M-F beginning at 8:15 and lasting until at least 9 in the Town Hall, which would comprise of direct training, reading books, taking classes on-line, developing training for others, working on special projects and anything else that may be deemed appropriate?

J. Sullivan: I have been advised the question you are asking is out of the scope of this hearing.

Attorney Douglas: Would it be appropriate for you to be disciplined for your lack of knowledge of the Right-to-Know law?

J. Sullivan: Again same ballpark as the previous question.

Attorney Douglas: You testified the reason you took the actions against JoAnn is that you felt that staff not appear to be working behind the scenes to craft an ordinance out of public view. Is that why you disciplined JoAnn, because you felt it was important that staff not appear to be working behind the scenes?

D. Shankle: I do not believe I said that was the only reason.

Attorney Douglas: You opened the hearing with the assertion that you were concerned that JoAnn was tasked to work on the sign ordinance on behalf on individual Planning Board members.

D. Shankle: I think you are incorrect. I will reread my opening statement.

Attorney Douglas: So you were truly concerned about JoAnn working on behalf of individual Planning Board members?

D. Shankle: That is not what I said. I said tasked by the Planning Board. Nothing to do with individual members.

Attorney Douglas: The meeting with JoAnn on Sept. 9. Did you or did you not say Dick is not considered to be business friendly?

D. Shankle: I don't remember saying that, but I may have said that, because the business community has come to me and told me they felt that Dick Marshall has been a lot of the problem, especially when it came to signs. I may have said that in the context of my job as being responsible for economic development, reporting to the people here and the fact that the Committee that was put together had somebody on it that I knew the business community would have concerns with.

Attorney Douglas: So you were actually concerned about promoting the interest of the business community.

D. Shankle: That is part of my job.

Attorney Douglas: You are not concerned about transparency and public participation?

D. Shankle: Of course I am. I already said that.

Attorney Douglas: Are you politically motivated?

D. Shankle: No. Politically motivated to do what?

Attorney Douglas: To promote the interest of the business community.

D. Shankle: No. The Town Council has given me direction to promote the interest of the business community. That is my job. From the first time they interviewed me they talked about economic development. Are you saying I shouldn't do that?

Attorney Douglas: I am saying the purpose of the Right-to-Know law is to make sure all aspects of the community are represented. Do you disagree?

D. Shankle: Why would I disagree? That is a common sense statement.

J. Sullivan: We need to get to the facts. I would like to ask both parties to ask the questions and answer as quickly as possible.

Attorney Douglas: I would like to go through the chronology beginning from when you learned of the Aug. 28 meeting. Exhibit p97. You sent an email to JoAnn reading: "I was under the impression that the meeting the other morning was for staff and did not realize that a member of the Planning Board would be there. I am not sure that was appropriate and it should be disclosed at your first meeting with the Committee." Did you call the LGC after this email to determine whether or not it was appropriate to have the meeting?

D. Shankle: At some point after, but not right after. At this point, I did not know the Planning Board had told them to meet.

Attorney Douglas: When did you tell JoAnn what the LGC told you? Did you tell her conclusively that it was inappropriate? You never did. Did you?

D. Shankle: Why would you say that?

Attorney Douglas: After that email, JoAnn did respond to you? Right?

D. Shankle: Yes.

Attorney Douglas: She did respond to your concern about the potential for inappropriateness. Is that not true?

D. Shankle: If you consider what's on there the response, than yes.

Attorney Douglas: Did she explain to you what she was doing with that meeting?

D. Shankle: She did.

Attorney Douglas: You said that you tried to talk to her about that?

D. Shankle: I said there were several times through this process that I stopped up to that office.

Attorney Douglas: Could you not have sent an email?

D. Shankle: I could have done a lot of things. I like to do things one-on-one especially if there seems to be some confusion or misunderstanding. JoAnn made the point earlier that email is not the best way to communicate.

Attorney Douglas: If it was really important to you wouldn't you have made sure that you emailed her the LGC's response?

D. Shankle: I don't know when I got the LGC's response. I did not know there was going to be another meeting.

Attorney Douglas: Are you attempting to discipline JoAnn for something that you did not understand?

D. Shankle: No.

Attorney Douglas: After you walked in on the 2nd meeting, you wrote Exhibit p100 to JoAnn that says: "I told both of you that I thought it was inappropriate. Neither one of you are to do anything more on this nor are you to provide any further staff support to the Sign Committee until and unless I give you written permission to do so. When are each of you free tomorrow?" Did I read that correctly?

D. Shankle: Yes. I think so.

Attorney Douglas: Did JoAnn respond to you? Did she try to explain herself?

D. Shankle: I don't see a response to that.

Attorney Douglas: Was her response instead to the one you sent on p99 stating, "I'm hoping the meeting I just walked in on was not another meeting regarding the sign ordinance when I have expressed to both of you I did not think it was appropriate to have meeting that did not include only staff." Did she respond to this?

D. Shankle: The one at the bottom of p100? Yes. I guess that is the response. That is where she explained to me it was a Committee set up by the Planning Board.

Attorney Douglas: After she explained herself you sent a letter to her?

D. Shankle: Yes.

Attorney Douglas: In that letter, you were primarily concerned about her insubordination?

D. Shankle: Not primarily, but it was an issue.

Attorney Douglas: You talked about dismissal in terms of her insubordination not in terms of violation of the Right-to-Know law. Is that a fair statement?

D. Shankle: Yes.

Attorney Douglas: You required that she explain to you how she was not insubordinate?

D. Shankle: Ok.

Attorney Douglas: Referencing p106, she wrote a letter back to you on Sept. 6 explaining why she met with a Planning Board member regarding the sign ordinance and apologizing, stating that this was in no way an intentional act of insubordination on her part. What flaw is represented by JoAnn's response as an employee that will be corrected by the training you would like her to do?

D. Shankle: From that letter or the situation as a whole?

Attorney Douglas: Why do you feel that disciplinary action remedies JoAnn's insubordination in light of that letter?

D. Shankle: That is like apples and oranges. My letter from the 20th has nothing to do with the letter you just referenced. Just looking at that 1 letter makes no sense.

Attorney Douglas: From the apologetic tone of that letter and from the explanation about the misunderstanding, do you think a program lasting a year and threatening discharge should she be late once, having no discernible topical content, is appropriate?

D. Shankle: So you are asking me about the appropriateness. You are making incorrect statements. I did not say she would be fired for missing once. At the bottom of my letter of the 20th, I said, being late for or failing to attend any of these training sessions would result in further discipline up to and including dismissal. It does not say the first time she misses something or is 5 minutes late she is going to be dismissed. If you go through my letter, it talks about a number of management, ethical and legal issues. We are talking about approximately the same amount of time that somebody would put in if they were taking a 1 semester course in management. I have taught a lot of those courses all over the world and I know enough that if I am not absolutely sure about the law I am going to call.

Attorney Douglas: No further questions.

J. Sullivan: At this point the Town's Administrator's legal counsel will do a redirect.

Attorney Buckley: I have no questions.

J. Sullivan: The Council can now ask questions.

N. Comai: What are JoAnn's hours?

D. Shankle: We have been looking at that. The personnel policy says that the office hours are 8-4:30. This came up at a training session Donna went to, and one of the things she learned, in the general sense, was salaried employees drift in and leave whenever they want. What was recommended at the training was to put the hours of work in people's individual job descriptions. We have not done that here yet, it but we may in the future. We expect salaried people to do their job and be here when they need to be here, but the federal law gives them some latitude, unless we have that covered somehow.

R. Duhaime: Do you attend all of the EDC meetings?

D. Shankle: I try to attend as many as I can.

R. Duhaime: On p13 it says the staff can volunteer. That isn't really true because staff is getting paid?

D. Shankle: That is one of the things I have been working on since I have gotten here. I got Leo and myself off the Planning Board because I don't feel it was right we were on it. What happens when staff sits on committees is that the real volunteers expect that the staff are going to be doing all of the work. Committees assign work to staff and that is not what is supposed to happen. I did it first to set the example.

J. Sullivan: I do have a piece of information that might help answer Counselor Comai's inquiry. In the exhibits submitted by Attorney Douglas in p.40 there is a a copy of JoAnn Duffy's job description and there is a statement about her hours on the last page p42. This was an exhibit Miss Duffy offered. It says her hours are 8am-4:30pm.

S. Orr: You believe strongly that the process that was followed was illegal. Early on you suspected it was illegal. As the person responsible for running the Town's offices and responsible for the staff, do you feel you did everything in your power at that time to identify what you suspected to be an illegal meeting and to prevent anything further from happening?

D. Shankle: I admit I should have seen earlier that was illegal, but I did not see certain things in the beginning. A lot of the things are much clearer to me now. When they really got clear was between their meeting on Sept. 9 and when I finished my letter on the 20th. Donna and I were gathering all of the

information we could so I would not make a bad decision. The first time I said it may have been inappropriate, I did not know they had even appointed a Committee at that point. Later on she said it and it should have clicked. I did not pick up on it quick enough. Until I really sat down, after the meeting on the 9th, and I questioned them about if they really did this, and Dick Marshall said, yes by consensus. That is when it started to click. If I had known sooner I certainly would have jumped in. I was surprised they had a 2nd meeting after I told them both I thought it may be inappropriate. If they didn't agree with me they should have come to me and asked why I thought that. I understand what you are saying and wish I caught it sooner.

S. Orr: There is an expectation being set for a department head to know something she believes she knew and, as it turned out, may not have know. In that 2nd meeting you said you walked in and saw all of them in there. You suspected that it might have been a 2nd meeting. You went back down to your office and wrote that email.

D. Shankle: I did not say it in that order. It did not occur to me until I went downstairs that is might be a 2nd meeting.

S. Orr: When you went back down to your office and realized that might be a 2nd meeting, knowing how important it is to not have an illegal meeting, and you are in that building and you suspect that it might be, did you ever rethink your decision to not go back up, pull JoAnn out, and stop it in the process so that it didn't continue instead of wondering.

D. Shankle: At that point I wasn't wondering. I didn't think they should be having the meeting I don't think it really clicked in at that point that they weren't appointed by the Board. I know she told me their idea but I guess I did not pay close enough attention. Usually if the staff does something wrong I let them know. With this I could have done a better job but she is a 20 year employee, she runs Boards and Committees all the time and I didn't focus on it enough.

S. Orr: Someone can come to this Council or any Board and say they would like to volunteer for a position. When new Councilors come and say they would like to run for this office we are putting our hat in the ring to be in that position. At that point they are still just volunteers who would agree to take that position. Is it not true that until someone is officially appointed by the Board they are volunteering for, they are not technically Board members?

D. Shankle: Except that even you folks do things by consensus. I tried to tell the Planning Board, no you didn't do this and Dick Marshall corrected me and said yes we did do this by consensus.

S. Orr: When you say, "do this," what do you mean?

D. Shankle: I mean form the Committee.

S. Orr: What is the difference between forming a Committee and then appointing members to that Committee. Is it 1 or 2 steps? My question is whether it was an official Committee that was holding a meeting outside of the public realm. I am trying to break it down. When do we determine when it is an official Committee meeting, when we appoint members to that Committee and the process that goes in? Was that gray in this case or was it clear?

D. Shankle: From the very beginning JoAnn laid out a number of people who volunteered for that Committee. Every meeting after that those are the people they invited to the Committee meetings and they called them Committee meetings. If you go to p70 that is where Dick Marshall talks about the consensus and Board instruction.

S. Orr: Your response to that was I think there is an ethical issue even if there is not a legal issue.

D. Shankle: That's right and why I was trying to find out if there was instruction and I was told by Dick Marshall there was a consensus and instruction.

S. Orr: At that point, it looks like on Oct. 7 members were officially appointed to this Committee as discussed prior.

D. Shankle: Yes. That is the alternate reality after my letter went out.

S. Orr: I don't see minutes that say there was an official appointment of anybody to that Committee. Am I missing where it mentions that people have been officially appointed.

D. Winterton: Mr. Chairman, I request that we have consultation with the Council as a non-meeting?

J. Sullivan: We are able to go into consultation with our Legal Counsel or we can do a brief recess. We can ask everyone to leave and then go into legal consultation if we need to for a few minutes.

J. Sullivan moved for a request to go into a 5 minute break at 9:08pm as well as have a Town Council consultation with their Legal Counsel. Seconded by S. Orr. Motion carried unanimously.

Recording Clerk – Katie Rosengren

Return From Break 9:27 pm

S. Orr: What was the date of the letter that you sent to both Jo Ann and Leo?

Dr. Shankle: September 5th

S. Orr: Did you have any conversations with them to clarify your understanding of what was going on?

Dr. Shankle: I sent the email to Jo Ann which could have been stronger. I did talk to Leo because he stopped in my office maybe right after the meeting and he clearly understood.

S. Orr: Could you see that maybe it wasn't made as clear to Jo Ann as it could have been at that time?

Dr. Shankle: I won't deny that, however, in the stream of things it was irrelevant because the letter on 9/5 wasn't the disciplinary letter. She sent me back a letter saying that she didn't clearly understand it and that informed my choice to give her training. So I did understand that I could have been clearer otherwise I would have taken further action. I took time gathering information and factored that into the final disciplinary action.

R. Duhaime: In your letter that you sent her dated the 5th you mention that you don't think she answered that directly, do you feel she did?

Dr. Shankle: I would have expected a more in depth answer. Leo's letter was a page and a half and hers was two paragraphs.

T. Lizotte: Regarding the letter that was sent as a result of the Town Council dealing with RSA 91-A can you please explain why you highlighted the specific sections on page 5?

Dr. Shankle: There were two possibilities and both of them were a problem. At the bottom, 91-A:1-a VI (d) it says that those are definitions of a public body. At the top 91-A:1-a I it discusses an advisory committee. So that's the theory of why they didn't comply with RSA 91-A.

T. Lizotte: You started gathering this information up to the 20th. In your opinion based on what you gathered, do you believe it was an advisory committee?

Dr. Shankle: Yes. I do.

T. Lizotte: Regarding the September 30th letter about disciplinary action can you please summarize the background for reasons for disciplinary action? Please say what you feel is most important.

Dr. Shankle: I think all of it's important, one of the things that we're discussing here is whether the requirement for the training is related to the specific issue at hand and I guess that's why I put these things in here to explain why it's important. You heard her say tonight that she still thinks that it's

appropriate. She's been here a long time, so to me the idea of giving training was a positive thing. I just finished four courses at Rutgers on performance measurement. I'm a lifelong learner it's hard for me to see that as punishment. I think that my decision was reasonable and I think that the disciplinary action was appropriate.

D. Ross motioned to extend the meeting at 9:30pm for ½ hour to 10:00pm. T. Lizotte seconded.

Vote unanimously in favor.

T. Lizotte: Did you say that Leo Lessard came down to you?

Dr. Shankle: Mr. Lessard came down and I saw him after the first meeting but before the 2nd meeting.

T. Lizotte: Was he responding to the letter that you sent?

Dr. Shankle: No

D. Winterton: In your letter on 9/22 you mention her discipline could include up to and including dismissal. Is that common language that you use or is that what you told her?

Dr. Shankle: Yes it's common language.

R. Duhaime: Are there times available for Jo Ann to pop in or staff meetings where she can chat with you?

Dr. Shankle: We always have a staff meeting eight days before a council meeting. We go over the draft agenda and make sure people are doing their staff reports and then we go around and let every department head share what people may need to know. That is another time where people could talk to me after the meeting.

R. Duhaime: So there are more opportunities to meet with you than just in the morning?

Dr. Shankle: Yes

D. Winterton: Was there ever or has there ever been a management policy contemplated where all emails are cc'd to their supervisor?

Dr. Shankle: No

J. Sullivan: That concludes our questions for the Administrator. At this point the legal counsel can make a closing statement.

Atty. Buckley: Dr. Shankle is going to make a closing statement on his behalf

J. Sullivan: We are going to let the Mr. Marshall letter into evidence but note that he could not attend.

Dr. Shankle: As we've seen in January of this year the Council sent out a letter to boards and committees sharing the most relevant part of RSA 91-A. Jo Ann and members of the Planning Board at the time received the most current copies. On 8/19 the Planning Board by consensus authorized a group of people of both board members and staff as a subcommittee to do work that the Sign Committee would also be doing. By all accounts until the alternate reality kicked in on 9/20 they were doing work on changes to the sign ordinance out of the public eye. I believe then and I believe now that Jo Ann was part of a small group of people tasked by the Planning Board to work on the sign ordinance on their behalf. I further believe that they were a public body as envisioned in RSA 91-A and that as a department head she should have understood this and complied with the law. Jo Ann carelessly included new employees in this meeting and did not inform the Planning Board that they should be concerned about these meetings. I have taught many courses on leadership and management and state and local government and to be

honest I think that training that is the equivalent of one course is not enough but it is a good start. I hope you will support me

Atty. Douglas: The Right to Know law is complicated. We've had three attorneys in this room discussing it, we've talked about consulting with the LGC and Municipal Association. There is certainly room for intelligent people to disagree about the Right to Know law. Under RSA 91-A you are committing an illegal act when you hold a secret meeting that is not posted to the public which does apply to advisory groups. The group of Jo Ann, Leo, Carolyn, Dick and Matt was not an advisory committee. These people were all meeting to advise the subcommittee not the appointing authority. Jo Ann's job description requires her to be an advisor and give technical assistance. Ultimately your task tonight is to decide whether or not the discipline as proposed by Dr. Shankle is appropriate for what Jo Ann did. After the testimony tonight we can come away with the idea that there is much grey are surrounding 91-A. Dr. Shankle himself admitted that when he sent that initial email he did not understand how inappropriate it was. He had to call the LGC and doesn't even remember when. In light of that is it appropriate for Jo Ann to perform an ambiguous training program every day for a year when there are certainly other things that Jo Ann could be attending to for the town?

T. Lizotte motioned to close the evidentiary hearing at 9:45pm. Seconded by J. Levesque.

Vote unanimously in favor.

J. Sullivan: We need to schedule a public deliberative session within 30 days.

Atty. Buckley: I have a legal memorandum to submit.

J. Sullivan: We will allow it.

Atty. Douglas: Can I have 10 days to submit one as well?

Atty. Tanguay: You were notified of this opportunity in the letter that you received.

Atty. Douglas: I did not notice that.

J. Sullivan: Seeing that we can't allow it.

J. Sullivan motioned to hold the deliberative session at the 11/13/13 meeting at 5:00pm. Seconded by R. Duhaime.

Vote unanimously in favor.

APPROVAL OF MINUTES

a. Public of 10/09/2013

T. Lizotte motioned to approve public minutes of 10/09/13 with edits. Seconded by S. Orr.

D. Winterton: On page 14 I said the Planning Board Sign Committee did not meet because the requirement to be posted was not met, and it wasn't there was confusion about posting for the Economic Development Committee so my statement that they did not meet because it was required to be posted was not accurate.

J. Sullivan: Page 7 during the scheduled appointments with Mr. Marple I would like it to reflect the statement made by Councilor Duhaime regarding respect.

S. Orr: On the top of page 12 the last sentence in my comment is supposed to be "not everyone can be a mentor".

Vote unanimously in favor.

b. Non-public of 10/09/2013

J. Levesque motioned to approve non-public minutes of 10/09/13. Seconded by T. Lizotte.

Vote unanimously in favor.

OLD BUSINESS

S. Orr motioned to reconsider the Trick-or-Treat time for Hooksett. Seconded by T. Lizotte.

Vote unanimously in favor.

D. Ross motioned to rescind the motion made at the previous meeting (10/09/13) to change the Trick-or-Treat time from 6:00pm-8:00pm to 7:00pm – 9:00pm. Seconded by S. Orr.

D. Ross: I believe the motion was out of order to begin with because I don't believe we have the authority to tell people what to do and when to do it on their holidays.

S. Orr: We had a quick discussion based on requests that Councilor Ross had received and since then I've received a lot of comments from the public saying that they did not like the change, so as a representative of the public I would like to go with their opinion.

J. Sullivan: I know we received a lot of comments as well as the Administration Office.

Vote unanimously in favor.

Dr. Shankle: By rescinding the last vote you are saying the Trick-or-Treat time is 6-8pm.

J. Sullivan: Who has the right to declare?

Dr. Shankle: Due to a Council vote years ago, if you don't do anything it's going to keep being 6-8pm.

J. Levesque: We're not setting Trick-or-Treat we're providing extra police protection from 6-8, people can go whenever they want.

At 10:00pm D. Ross motioned to extend the meeting five minutes. Seconded by T. Lizotte.

Vote unanimously in favor

N. Comai: I cannot make the majority of Parks and Rec. Advisory Board meetings. I have asked councilor Jennings to take that over and I ask the Council to remove me and ask Adam Jennings to replace me.

D. Ross motioned to replace Councilor Comai with Councilor Jennings on the Parks and Recreation Advisory Board. Seconded by T. Lizotte.

Vote unanimously in favor

TOWN ADMINISTRATOR'S REPORT

There's a groundbreaking for the Hooksett Welcome Center tomorrow at 10:30am at the northbound Hooksett Welcome Center.

NEW BUSINESS

- a. 13-105 Tax Rate discussion
Christine Soucie, Finance Director

C Soucie: Because of the revaluation of the community we don't have the final numbers but we're getting down to the wire where we need to have a decision to set a tax rate and send tax bills. There is no deadline but we would like to have it before your next meeting. Would you consider asking the Town

Administrator to apply a fund balance to keep the median single family household level, but not drop the unassigned fund balance below 6%?

J. Sullivan: So what is the median single family household level?

C. Soucie: Last year was \$257,000 and we're thinking based on the estimates that will be lower this year so we're thinking \$228,000.

***T. Lizotte motioned for the Town Administrator to if necessary apply a fund balance to keep the median single family household level, but not drop the unassigned fund balance below 6%.
Seconded by S. Orr.***

N. Comai: So \$733,315 is what you'll have to work with not including the school?

C. Soucie: If you want to use a number you can but you should leave out the percentage.

T. Lizotte: I'm comfortable with using 6%.

C. Soucie: Last year we applied zero and in the years before that applied up to a million.

T. Lizotte: I'm ok with the percentage because we're tagging it to the median level of the home so we might not use that. 6% is one factor, the other is the value of the home.

D. Winterton: This is an algebraic exercise.

C. Soucie: Right and we can do that when we're sitting down with DRA.

S. Orr: It was suggested if we wanted we could use a number but the problem is we could set the percentage at the end so we need to stick with the percentage in order to keep it below 6%.

C. Soucie: Yes

N. Comai: I agree about the 6% but it could cost us \$733,315 and our policy is we could go 5% so there's too many moving parts for me, so I would assume the moment you know what the school will be readdress it with us. It's too much money.

Dr. Shankle: The only way to readdress it would be to set a special meeting.

N. Comai: Ok.

D. Ross: We need to protect the town as a whole so I think we should call a special meeting if we need to, our target it 8%.

Roll Call

J. Levesque – Yes

T. Lizotte – Yes

S. Orr – Yes

A. Jennings – Yes

N. Comai – No

R. Duhaime – Yes

D. Winterton – No

D. Ross – No

J. Sullivan – No

Vote 5-4 passes

T. Lizotte motioned to extend the meeting at 10:15pm for 5 minutes. Seconded by R. Duhaime.

Vote unanimously in favor

- b. 13-108 Fire-Personal Protective Equipment Bid Acceptance

Dr. Shankle notified the Council that Fire Chief Williams would like to table this item to the next meeting on 11/13/13

- c. 13-109 Sander replacement
Leo Lessard, Director of Public Works

L. Lessard: The sander is broken and in need of replacement.

J. Levesque motioned that Council approves the purchase of the sander from H.P. Fairfield LLC for \$18,391.0 and to use \$2,955.32 from the fleet maintenance line to purchase the sander with the insurance money. Seconded by S. Orr.

D. Ross: How old was the sander that was destroyed in the accident?

L. Lessard: At least from 1997, its life was over.

J. Levesque: Can you salvage the parts from the old one?

L. Lessard: Yes, we will.

Roll Call

D. Ross – Yes
J. Levesque – Yes
T. Lizotte – Yes
S. Orr – Yes
A. Jennings – Yes
N. Comai – Yes
R. Duhaime – Yes
D. Winterton – Yes
J. Sullivan - Yes

Vote unanimously in favor

- d. 13-110 Town newsletter insert with tax bill

Dr. Shankle: Under RSA 76:11 we can include additional information with the tax bill by majority vote of the governing body.

N. Comai: One could argue the recycling piece is policy at the moment.

T. Lizotte: I wouldn't have a problem with that it's stating an obvious thing.

Dr. Shankle: In addition to in the tax bill this would also go online.

D. Ross motioned to include the proposed newsletter in the tax bill in black and white. Seconded by S. Orr.

All voted in favor except N. Comai who opposed

**J. Sullivan motioned to adjourn at 10:22pm. Seconded by D. Ross.
*Vote unanimously in favor***

Respectfully submitted,
Recording Clerk – Katie Rosengren & Recording Clerk – AnnMarie White