

NEW DURHAM BOARD OF SELECTMEN

New Durham Town Hall

July 22, 2015 10:00 A.M.

July 22, 2015

**Present**

Chair David Bickford

Selectman David Swenson

Selectman Gregory Anthes

**Also Present**

Jeremy Bourgeois, Town Administrator

Don Jutton, Municipal Resources, Inc. (MRI)

Alan Gould, Municipal Resources, Inc. (MRI)

Cathy Allyn, resident

Dot Veisel, resident

Cecile Chase, resident

Janice Anthes, resident

Jen Nyman, resident

Alicia Hernandez, resident

Nicole Hinchey, resident

Eileen Berry, resident

Robert Chase, resident

Ellen Phillips, resident

Mark Foynes, reporter/*The Baysider*

Carole Ingham, Town Clerk/Tax Collector

Richard Leonard, resident

Sam Cataldo, NH State Senator

Mark D'Entremont, resident

Susan D'Entremont, resident

Lura Meaney, resident

Mark Sullivan, resident

Reggie Meattey

Robert Kroepel, resident

Rudy Rosiello, resident

Bill Meyer, resident

Jacki Snyder, resident

Corie Waldron, resident

Sharon Taylor, resident

Alan Rowe, resident

Gayle Hardy, resident

Charlotte Hardy, resident

Diane Bellington, resident

Lon Berry Jr.

Jeff Martin  
Kristyn Bernier, resident  
Susan Randall, resident  
Michele Kendrick, resident  
William Kendrick, resident  
Sherri Brulotte, resident  
Michael Brulotte, resident  
Barabard Brulotte, resident  
Keith Jensen, resident  
Amy Jensen, resident  
Katie Woods, resident  
Cathy Garland, resident  
Nicole LaBelle Hinchey, resident  
Susan Glenney, resident  
Linda Roy, resident

**Call to Order**

Chair Bickford called the meeting to order at 10:55a.m.

**Chair Bickford made a motion to go into nonpublic session.pursuant to RSA 91-A: 3 II (a) -the dismissal, promotion or compensation of any public employee or the disciplining of such employee. Selectman Anthes seconded the motion.**

Selectman Swenson read a formal request for Chair Bickford to recuse himself from any discussions regarding the Police Chief's employment (See attachment). Chair Bickford stated he disagrees with his request and declined to recuse himself.

**Roll Call: Selectman Anthes- Aye; Chair Bickford -Aye: Selectman Swenson -No. Motion passed, 2 - 1.**

The Board entered nonpublic session at 11:09 a.m.

**Selectman Anthes made a motion to seal the nonpublic minutes. Chair Bickford seconded the motion. Motion passed, 2 - 1.** Selectman Swenson stated he was opposed because the sealing of the minutes does not affect adversely the reputation of any person other than a member of the board or render the proposed action ineffective.

Don Jutton and Alan Gould left the meeting at 12:10 p.m.

**Selectman Swenson made a motion to leave nonpublic session. Chair Bickford seconded the motion. Motion passed. 3 - 0.**

The Board returned to public session at 12:13 p.m.

**Chair Bickford made a motion to recess the meeting until July 23,2015 at 10:00a.m. Selectman Anthes seconded the motion. Motion passed. 3 - 0.**

Meeting recessed at 12:13 p.m.

NEW DURHAM BOARD OF SELECTMEN

New Durham Town Hall

July 23, 2015, 10:00 A.M.

Meeting reconvened at 10:05 a.m.

**Selectman Anthes made a motion to go into nonpublic session pursuant to RSA 91-A: 3 II (a) -the dismissal, promotion or compensation of any public employee or the disciplining o(such employee. Selectman Bickford seconded the motion.**

Selectman Swenson asked what the topic would be and the response was the Police Chief. He once again asked for Chair Bickford to recuse himself.

Chair Bickford asked Police Chief Bernier to join the Select Board in non-public session. Chief Bernier declined and requested a public hearing. Chair Bickford stated "I am not interested in that."

**Roll Call: Selectman Anthes-Aye; Chair Bickford-Aye: Selectman Swenson-No. Motion passed, 2 - 1.**

The Board entered nonpublic session at 10:15 a.m.

**Chair Bickford made a motion to seal the nonpublic minutes. Selectman Anthes seconded the motion. Motion passed 2 – 1, Selectman Swenson opposed. He stated he does not believe the content needs to be sealed.**

Selectman Swenson he was opposed because the sealing of the minutes does not affect adversely the reputation of any person other than a member of the board or render the proposed action ineffective.

**Selectman Anthes made a motion to leave nonpublic session. Selectman Swenson seconded the motion. Motion passed, 3 – 0.**

The Board returned to public session at 11:24 a.m.

Chair Bickford stated the Board has concluded its nonpublic session and voted to seal the minutes. The Board has instructed the Town Administrator to deliver a letter to the Police Chief and that Sergeant Meattay will be the Officer in Charge of the Police Department.

**Adjourn**

**Chair Bickford made a motion to adjourn. Selectman Anthes seconded the motion. Motion passed 2 – 1 with Selectman Swenson opposed.**

The meeting was adjourned at 11:24 a.m.

Respectfully Submitted,

Jeremy Bourgeois, Town Administrator

July 22, 2015

## **Request for Recusal**

The New Durham Ethics Policy states that we expect: a) our public servants and volunteers to act in the best interest of the town, b) public servants to disclose any personal, financial, material or substantial interests in matters affecting the town which come before them for action, c) public servants to be independent, impartial, and responsible to their fellow townspeople in their actions, d) public servant positions in our town not be used for personal gain, and e) most importantly, public servants to remove themselves from decision making if they have a conflict of interest. It is critical that these policy statements be strictly applied so that the public retains confidence in the integrity of its government.

Our Town Ethics Policy further goes on to define a conflict of interest as follows: “A situation, circumstance, or financial interest which has the potential to cause a private or personal interest to interfere with the proper exercise of a public duty, or which has rendered the individual incapable of being impartial...”

Our system requires a recusal in any process when it becomes apparent that a conflict of interest may exist. This is done so that any challenge to the neutrality of a member may be appropriately considered. A requested recusal is not designed to be a personal attack on anyone nor is to imply that the member did anything illegal. When a recusal is requested and accepted it is intended to provide the citizens of New Durham an impartial panel on the issue being considered. As an elected Town official, I feel that I am bound to try to assure the integrity of any Board of Selectmen decisions and that they are made with as much impartiality as possible.

The Town policy defines recusal as follows: “completely removing or excusing oneself from participation as a public servant in a specific action or discussion due to a conflict of interest.” The Town policy further states under Section II.A.(i) “Public servants shall avoid conflicts of interest.”

In the issue being considered by the New Durham Board of Selectmen in the matter of the employment status of Police Chief Shawn Bernier and / or making any determination of further employment related actions in the case of Police Chief Bernier I am formally requesting Selectmen David Bickford to recuse himself from any decisions made by the Board of Selectmen on these matters.

The basis for this request is as follows:

- 1) Selectmen Bickford has a clear bias towards Police Chief Bernier as evidenced by Selectmen Bickford’s multiple formal, written complaints against Chief Bernier. These formal, written complaints include the following:

- a. September 11, 2014 – Complaint from David A. Bickford alleging Shawn Bernier “is involved in utilizing Town of New Durham property, a police dog, to engage in electioneering activities.” All evidence was presented to Town Counsel and Town Attorney Mayer concluded “I continue to believe that the information presented is not sufficient to support an investigation”. The opinion further concluded that the statute cited in Selectman Bickford’s complaint was “being stretched far beyond its limited scope”. The information presented “is not the stuff electioneering is made of”. The conclusions from Town Attorney Mayer necessitated an apology letter from the TA on behalf of New Durham Board of Selectmen dated September 19, 2014 to Chief Bernier. (Copy available upon request)
- b. June 26, 2015 – Complaint from David A. Bickford stating the observation of “ Chief of Police Shawn Bernier transporting a family member in the police cruiser from March Dr. to intersection of Birch Hill Rd, Main St, and Depot Rd. Possible violation of Ethics Policy Page 5 Section II, D No Unfair Personal Use of Town Property”. In actuality the vehicle was being used for the business of the employee as Chief Bernier’s son was helping Chief Bernier lay out a training course for K9 Fred to pass certain certifications.
- c. June 29, 2015 – Complaint from David A. Bickford stating the observation of “Chief Bernier arrive at Police Dept. in cruiser with Mrs. Bernier as passenger at 4:58 pm. Sunday June 28, 2015. They went into P.D. station then returned to cruiser at 5:24 pm. and left with Mrs. Bernier as passenger. Possible violation of Ethics Policy Page 5, Section II, D No Unfair Personal Use of Town Property”. In actuality the vehicle was being used for the business use of the employee as Ms. Bernier was being transported to the Police Station to take photographs of Chief Bernier and Officer Murray during the recognition and presentation of a commendation letter to Officer Brett Murray. These photos were later published in the July 2, 2015 Baysider.

Note: None of the above three complaints from Selectman Bickford against Chief Bernier have merit based on current information.

- d. Selectman Bickford made a complaint to the New Hampshire AG's office in 2012 / 2013 making claims that the NDPD with Chief Bernier in charge of the department stole from residents. Several people were interviewed including David Bickford, Jeff Kratovil, Jeremy Bourgeois, Terry Jarvis, Karen Keefe, etc. The complaint from Selectman Bickford against the New Durham Police Department was shown to be a false accusation. A State Attorney General’s office letter of October 9, 2013 regarding concerns of individuals during the interview process brought against David Bickford stated that “facts uncovered during the investigation reveal some potential ethical concerns”.
- 2) From the period of 2010 to 2012 Selectman Bickford’s son was investigated for multiple legal infractions with Chief Bernier involved in the investigations.

- 3) At the May 18, 2015 New Durham Board of Selectmen meeting Selectman Bickford was asked by a member of the public if he had anything personal against Chief Bernier and Selectman Bickford stated publicly that he did. He later tried to correct this statement by indicating it was not personal (BoS Meeting of 05/18/15 videotape between 0:24:00 and 0:34:00).

Selectman Bickford is the only New Durham resident with any formal written complaint(s) against Police Chief Bernier within the past 18 months. This information, when placed in the light of Chief Bernier's stellar performance reviews over the past several years, I believe shows strong evidence to illustrate a personal bias on behalf of Selectman Bickford against Police Chief Bernier. Therefore, since the evidence strongly shows a bias, any voting participation regarding the employment status of Chief Bernier from Selectman Bickford is clearly an ethical violation of substance. A refusal to recuse by Selectmen Bickford in a case where clear conflict of interest is evident is a serious violation of the New Durham Ethics Policy and places New Durham in a position that potentially jeopardizes the public safety and possibly exposes the Town to a significant lawsuit.

For the above reasons that show a clear bias against Police Chief Bernier I specifically request on July 22, 2015 that Selectman Bickford recuse himself from any New Durham Board of Selectmen decisions relative to the Town of New Durham employment status of Police Chief Bernier including any New Durham Board of Selectmen considerations of Police Chief Bernier remaining as the New Durham Police Chief.

A handwritten signature in blue ink, appearing to read "Dwen", is located at the bottom left of the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.