

Approved: September 14, 2010

## **BOARD OF ETHICS PUBLIC MEETING MINUTES AUGUST 10, 2010**

Chairman Barbara Hunter called a Board of Ethics meeting to order at 6:30 PM in the upstairs conference room of the New Durham Town Hall located off Main Street.

### **Present**

Barbara Hunter, Chairman  
Marcia Clark  
Jan Bell  
Mike Gelinias

### **Absent with Apology**

Skip Fadden

### **Also Present**

Anneleen Loughlin  
Dorothy Veisel (at beginning and end of meeting)  
Cathy Orlowicz (late arrival)  
David Bickford (toward end of meeting)

### **AGENDA REVIEW**

No additions or changes to agenda by board members.

Chairman Hunter referenced an earlier request from Gelinias for public input throughout the meeting rather than just at the beginning as noted on the agenda. As a solution, she had offered the possibility of adding another public input session after Old Business. Since this info had been relayed via email and, in turn, had prompted viewpoints from other board members, Gelinias expressed concern about how it had taken place in lieu of the law. Clark, not an email user, believed the back-and-forth communications constituted a "meeting." While the intent was well meaning, members agreed with Gelinias that it was kind of a "slippery slope." Regarding the topic at hand, Gelinias was in favor of ongoing public input, saying that it was his understanding that a majority of the board could overrule the chairman's decision. Clark stated that it wasn't the public's place to change board decisions. Bell felt that two opportunities for public input should be sufficient, also citing the need for the BOE to be able to function as a board. Motion Gelinias to allow limited public input during the work session if time allowed; no second; motion dropped. Chairman Hunter recapped that a second Public Input session would be added after Old Business.

### **PUBLIC INPUT**

To clarify the "flawed document" statement she'd made at the July meeting, Veisel passed out a handout entitled "Quasi-Judicial/Legislative," which she said contains important language that should be added to the Code of Ethics. As a new Planning Board member who had read the ordinance, she cited a situation where she had disclosed and then recused herself when, in fact, it had been unnecessary to do so since the board had been acting in a legislative vs. quasi-judicial function. She emphasized the importance of the

BOE's educational presentation, urging the BOE to review quasi-judicial and legislative definitions/distinctions so that ethical standards are clear. She also expressed interest in having ongoing input since the Code of Ethics directly affects her role on the Planning Board.

Orlowicz asked if there would be time later for public input, saying that she understands the need for the board to act as a board but also would appreciate a second opportunity for comment.

### **APPROVAL OF MINUTES**

Motion Gelinias, second Clark, to accept the meeting minutes of July 13, 2010, as written; vote unanimous.

### **OLD BUSINESS**

#### **Vice-chair Vacancy**

With the position still vacant, Chairman Hunter asked what the board proposed in the event she can't attend a meeting or must recuse herself. Clark again nominated Bell, who firmly declined. Clark then asked Gelinias about his interest; he noted that he still had a lot to learn. Chairman Hunter noted the ongoing vacancy, and Clark suggested finding an alternative if the situation arises. Motion Gelinias, second Clark, for either the chairman or the majority of board members present to appoint an "acting chair" in the event of Hunter's absence; vote unanimous.

#### **Educational Presentation**

Bell asked if it made more sense to complete the ordinance work first. Chairman Hunter, recapping Veisel input earlier, pointed out the need to clarify the quasi-judicial and legislative roles that boards play. Clark commented that other boards go their own way and that the code was something employees needed to understand and live with. Gelinias explained that the ordinance covers everyone, not just employees. Hunter reminded members of the request for interpretation received months ago, stressing the BOE's involvement only after an issue is brought before it as a request or complaint. Gelinias commented that the BOE certainly can't fill the ordinance with examples pertinent to different boards. A good topic for the presentation, he said, would be discussion outside of meetings, claiming that it can be easily confused and get out of hand. Bell suggested that it would be beneficial for the presentation to make a distinction between ethics and the law, explaining that anything illegal most likely also is unethical but that something unethical isn't necessarily illegal. Chairman Hunter also identified the need to distinguish between guidelines and ordinances.

With considerable time having lapsed since presentation components last were discussed, Bell reminded members of the topics outlined in an earlier agenda, as well as the need to limit the presentation to 10 or 15 minutes. Since Fadden had taken the lead in generating computer slides, Chairman Hunter offered to contact him to determine the likelihood of his attendance at the September meeting and to find out his level of future involvement in light of his work schedule. She also noted that someone else may need to provide the required computer assistance. In light of everything, Hunter asked members what they saw as a possible timeline for completion. Bell thought the presentation should be wrapped up by end of year if possible, while Gelinias suggested aiming to have the presentation ready once new officials and board members are seated after Town Election in March 2011.

To keep the process rolling, Bell asked members to revisit the preliminary work that Fadden and she had done earlier, encouraging each to also do some individual thinking regarding presentation content. With Gelinias having joined the board since, Bell offered to email him the slide ideas for review. Chairman Hunter expressed the need for an added element to make a distinction between quasi-judicial and legislative roles. Clark pointed out that Section I.B. does define quasi-judicial actions and said that she believes employees already feel that the Code of Ethics is understandable. Hunter stressed that the code encompasses two different audiences, employees and board members. The consensus among members was to add a legislative section. Saying that he goes to lots of board meetings, Gelinias stated the need to spell out when to recuse, as well as when the line crosses from sharing ideas to communicating in a nonpublic format.

### **Warrant Article Process**

Having asked the administrative consultant about the timeline of a warrant article for 2011 Town Meeting, Chairman Hunter shared that submittals are requested around the second week in December. Bell suggested that the BOE might have more time since any article pertaining to the Code Of Ethics would not contain budgetary items. Hunter recalled that the BOE's warrant article last year had not been submitted until late January or thereabouts.

### **Ethics Ordinance Review**

Before starting to review the ordinance section by section, Chairman Hunter reminded board members that the exercise was intended not to undermine the original written ordinance or town residents who had voted but rather to identify items that might be problematic in the future. She acknowledged that the work session might underscore the need for additional information and research.

### **Section I: Code Provisions**

#### A. No Conflicts of Interest

**(i)**

Gelinas spoke to the word "appearance," claiming it to be too broad, undefined, and speculative. As evidence, he referenced "Chapter 13" of Knowing the Territory, the BOE's meeting with town counsel, and a court case in Concord. He urged members to keep in mind how the word "appearance" is used. Bell believed the word to serve a purpose but also realized how it could be subject to personal interpretation. Clark reminded members that the Code of Ethics only applies to employees and board members when doing the job, but others weren't so sure. Gelinas commented that a good topic to add to the presentation would be: When does the Code of Ethics apply – only on the job or also elsewhere? Bell expressed concern that the underlying purpose of the code – to serve as a guideline for how town officials, employees, board members, and volunteers should act, might be getting derailed. Hunter stated that part of the hearing process is to look at situations on a case-by-case basis to determine if and how the code applies. According to town counsel, said Gelinas, "appearance" is too problematic. While she sees it as well intended and understandable, Bell entertained the possibility of removing the term. Before making a decision, Chairman Hunter suggested researching other town ordinances. Gelinas estimated that about 50 percent of those he'd reviewed do contain the word "appearance" but said the more recent ones generally do not. Instead of reviewing other town ordinances, which may or may not be in compliance, Bell favored finding clear-cut evidence, one way or the other, in NH statutes. Clark felt strongly that the word "appearance" should stay. To be legal, stated Gelinas, everything in the ordinance must comply with NH statutes. Motion Gelinas, second Bell, to table the discussion and resume deliberation on the topic at the next meeting; vote unanimous.

**(ii)**

Finding the wording anything but clear, Bell started the discussion by asking, "What, exactly, does it mean?" Gelinas attempted to explain and presented Alton's version as an example. In the least, Bell admitted that the wording needs clarification and simplification. In small towns, said Gelinas, the section is a problem because expertise is needed but not utilized. Chairman Hunter pointed out that frequent stepping down by a member does not allow a board to get the benefit of full member participation. Recognizing the need for more supportive data, members tabled further discussion until the next meeting. For clarification, Gelinas read the definition of "public servant" to show the broad range of individuals included.

**(iii)**

Bell commented that the section was understandable and pretty much common sense. Gelinas took

exception with its “speculative nature” and focused on the “directly or indirectly” wording. He stated that board members can have political opinions on legislative but not quasi-judicial decisions. He admitted that guidelines can be very confusing, with Chairman Hunter adding that some situations require case-by-case consideration. Gelinas said the best approach is to disclose everything and then step down when there is a conflict of interest. To better define conflict of interest, he recommended inclusion of the general rule - that the interest must be “immediate, definite and capable of demonstration; not remote, uncertain, contingent or speculative.” Board members decided to table further discussion to allow for additional homework on the subject.

**(iv), (v), (vi), and (vii)**

Okay as written.

**(viii)**

Seeing a problem, Gelinas proposed adding verbiage referring to the use of facilities, citing RSA 659:44-a. He also asked board members to consider referencing RSA 98-E:1 that gives public officers and employees the right to freedom of expression. Bell suggested that each member draft a rewrite for comparison and discussion at the next meeting.

**(ix)**

Okay as written.

**B: A Duty to Recuse in Quasi-Judicial Actions**

Gelinas said that he had a problem with the phrase “The work of the planning and zoning boards is largely quasi-judicial,” stating that their work often is legislative. Members proposed striking the sentence. Clark and Gelinas agreed that quasi-judicial is well defined in the section. Gelinas identified the need to add a section defining legislative actions and offered to draft such for review and discussion at the next meeting. In preparation, Chairman Hunter advised all members to review Chapter 13 of Knowing the Territory to get a better grasp on the legislative aspect.

**C: A Duty to Recuse**

Okay as written.

Before moving on, Chairman Hunter summarized the Code of Ethics sections to be revisited and homework items to be completed for the September meeting.

**OTHER BUSINESS**

None.

**PUBLIC INPUT**

Orlowicz acknowledged that board members had accomplished a great amount of work at the meeting. She also offered the following input regarding matters covered:

- Ordinance vs. guidelines: Encouraged members to research the definitions and how they differ.
- Ordinance, Section I.A.(ii): Warned board members to be aware of the term “incompatible offices” and any restrictions. Also asked the board to remember that many boards have alternates so that members can recuse themselves when necessary and still allow for full board decision-making.
- Vice chair vacancy: Asked whether or not the Rules of Procedure define the role so that members would understand what the position would require of them.
- Educational presentation: Urged board members to work on and develop materials that

- pertain to sections of the ordinance not being considered for possible revision.
- Expressed concern about the focus on the Planning Board when citing examples.
- Ordinance, I.A.(iii): Took issue with the term “any matter” and suggested “with exception of legislative roles” be inserted.

Weisel thanked the BOE for taking the time to address language ambiguities.

#### **NEXT MEETING**

The next meeting was scheduled for Tuesday, September 14, 2010, at 6:30 PM at the New Durham Town Hall. Bell announced that she would be out of town but would send her “homework” to Chairman Hunter for consideration at the meeting. Gelinis questioned the appropriateness of this communication. To avoid any potential problem, Bell agreed to drop off the information in a sealed envelope for Hunter to pick up at the Town Hall at the start of the next meeting.

#### **ADJOURNMENT**

Motion Clark, second Gelinis, to adjourn at 9:15 PM; vote unanimous.

*Respectfully submitted,  
Jan Bell, Acting Recording Clerk*