

Approved: December 13, 2010

**BOARD OF ETHICS
PUBLIC MEETING MINUTES
November 15, 2010**

The meeting of the Board of Ethics was called to order by Barbara Hunter, Chair at 7:00 PM. The meeting was held at the New Durham Public Library.

Present: Barbara Hunter, Chair, Jan Bell, Skip Fadden, Mike Gelinas, and Marcia Clark.
Anneleen Loughlin, Recording Clerk

Absent: No member absent.

Also Present: Ron Gehl, Robert Craycraft, Dorothy Veisel, George Gale, and Cathy Orlowicz.

Agenda Review: Chair Hunter made a comment about clarification for inclusion of NHLGC Inquirers under **New Business**. This will be discussed later in the agenda.

Public Input - 1: Dorothy Veisel stated that she had wanted to urge the Board to include some money in the budget for education, but as the budget has already been submitted, the issue is moot. There being no other public in-put at this time, the Chair suggested moving on to review the minutes of the previous meeting on September 14.

Approval of minutes: Following a review of the minutes of the September 14, 2010 meeting, Chair Hunter asked for any additions or corrections. Motion Fadden, Clark second to approve minutes of September 14th as written. Four in favor, Bell abstained, as she was not at that meeting. Motion passed.

Old Business:

Continuation of Ethics Ordinance Review: The Board resumed review of tabled items: Sections 1A (viii), 1B, IV paragraphs 4-6.

Review of Section 1 A (viii), Chair Hunter read the ordinance. She reminded the Board that the reason the section was tabled was to enable the members to do additional research on the language of the code.

Discussion ensued regarding need to change ordinance versus keeping it as written. Arguments were presented that the current wording is the same as the Federal wording and it ought to remain. Additional argument was made that a need to more clearly define the word "misuse" ought to be added within the paragraph. Further discussions included specific misuse versus general misuse. Chair Hunter cited two places in the Code where the use of "misuse" is included and suggested that clarification and definition of "misuse" ought to be included in the Definition Section. There was additional discussion and concerns about making the definition too specific which might weaken the meaning.

The statement was made that this ordinance can serve as a guideline so town residents have another means to address a concerns or issues other than having to take their issues to the Board of Selectman. Clark

commented that, “The Town body is all political and this is a means to prevent the politics from going the wrong way.” A reminder was made that the ordinance refers to “public officials” and all those persons who are included in that statement.

Reference was made to the court ruling regarding the Hatch Act in which the court stated that the Hatch Act did not interfere with freedom of speech. There were discussions and concerns voiced regarding disclosure of position and freely voicing one’s opinion related to an issue or electioneering.

Chair Hunter reviewed the ideas and recommendations which were discussed and the opinions stated for the need to clarify and define the word “misuse”. The question raised was how and where the word “misuse” is to be defined.

Chair Hunter asked for further discussion, hearing none, she requested for a motion. Motion- Clark that the statement remain as written. Second- Fadden. Vote two in favor; one oppose- Gelinias, one abstained- Bell.

Following vote further discussion ensued relating to individual’s point of view. Gelinias stated his strong position for freedom of speech in certain circumstances in which he felt disclosure would be necessary. Bell voiced her position for including definition within the statement.

Chair Hunter brought up the issue of continuing discussion after a vote was taken and voiced questions concerning the proper procedure at this point.

Chair Hunter instructed the Board not to become overly concerned regarding the past complaint, which the Board had to address, and that the Board ought not narrow itself to that one situation while the board is doing the work of reviewing the ordinance. Hunter reminded the Board that the purpose is when there is a complaint the Board needs to take what is presented in the ordinance and apply it to the situation.

Discussions continued regarding disclosure, official position, misuse, and legal versus illegal conduct with each member restating their personal opinions on the subject.

Chair Hunter inquired from the public and the Board what is the proper procedure regarding the vote taken prior to reopening of the discussion. Chair Hunter was informed that following the second discussion that it was proper the return to the original motion and take a second vote. Chair Hunter read the original motion put forth by Clark and seconded by Fadden. Vote four agreed, one opposed- Gelinias. Motion passed to leave statement as written.

Chair Hunter suggested that the members of the Board of Ethics review the Code and identify terms in the Code such as misuse, official authority, appearance, etc. which they find problematic. The Board members are to bring a list of those terms so it can bring clarifications and definitions of those terms to be discussed at the next meeting.

Review of 1B: Duty to recuse, quasi-judicial/judicial, legislative.

Chair Hunter read the ordinance as written. Following the reading, Bell distributed and read a proposed rewording of the code which she had written based on review of the code as originally written and additional research which she had done. Upon review by the Board, Gelinias stated he fully agreed with the new wording. Fadden suggested that discussion be opened to the public, seconded by Gelinias. Veisel thanked Bell for the work that she had done on reworking of the code, which she found was very well stated. Gale questioned the meaning and intent of the second statement which she had written. Bell replied that she had taken it from the State RSA. Gehl suggested striking two words from the second statement as written, “always and however” and replacing “however” with “ultimately”. The board agreed with making those suggested changes

Therefore, the Board agreed that it liked the clear definitions of each functions: (i) quasi-judicial; (ii)

legislative action.

See Attachment: Code of Ethics

Upon conclusion of further discussion, Chair Hunter called for a motion. Motion- Fadden that the wording in Section 1B in the Code of Ethics be replaced by the work by Bell as presented to the Board, seconded by Clark. Vote passed unanimously in favor.

Section G: Duty to Cooperate. Bell recommended that the word Committee be replaced with the word Board as an editorial change to the statement and to make it uniform with the rest of the Code where Board is used not committee.

Bell suggested a second editorial wording change to replace the word “inquiry” with “request” also for uniformity.

Discussion followed as to whether the Board has the authority to make such changes or if these changes need to be included in a warrant article. It was determined with input from the public that it was within the Board’s capacity to make editorial changes.

Chair Hunter called for a motion to adapt the word changes. Motion Bell, second Fadden. Vote unanimous to approve word changes.

Review of Section IV Complaints, paragraphs 4-6:

Discussion opened with the agreement from the members that the first statement in that section was out of place: “The Board of Selectmen shall appoint a board of no more than five nor less than three persons, with staggered terms, such board to be named Board of Ethics.” It was thought that the sentence ought to be placed on the first page of the CODE of ETHICS and ought to appear under the heading PURPOSE. It was then decided that the sentence would be better at the end under a new section, SECTION VI: BOARD OF ETHICS.

Chair Hunter indicated that by relocating the first paragraph to the first page of the CODE that Section IV now has 5 paragraphs, not 6, therefore, paragraph 2 now becomes paragraph 1 and so forth. The Board reviewed the wording of paragraphs 1 through 3. Following discussion, especially of paragraph 3, agreement from the Board to the wording of the paragraphs reviewed.

Paragraph, five, was reviewed. Following discussion of the wording in this paragraph, the consensus was to replace “require” with “request” as the Board does not have the authority to “require”. Fadden read paragraph 5 as it has been reworded. “The Board of Ethics may request with sufficient written notice, any official, board members or employee of the town government to appear before it to provide testimony regarding pending complaints. The Board may for this purpose request production of evidence such as documents. The Board can only make findings based on evidence provided.” Also in paragraph five, the last sentence the wording “administer oaths and require” ought to be eliminated; the Board cannot administer oaths based on legal advice which the Board received from legal counsel. On completion of discussion, Chair Hunter called for a motion.

Motion- Bell the Board accepts the edits and additions to paragraph five in Section IV. Second-Clark. Vote- four in favor to accept, abstaining-Gelinas. Motion passed with 1 abstention.

Chair Hunter gave the members a homework item, which was to look at any terms that may need discussion, definition, and clarification by the Board at the next meeting.

Ethics Ordinance Education Presentation- Content items:

Chair Hunter reminded the Board of the request made at the last Board meeting that the member were to come prepared to bring feed-back and suggestions to be given to Fadden, so he can prepare the education presentation. Members of the Board turned in their slides with their recommendations. Hunter made the statement that there is so much materials that the presentation could not be properly made in only 15 to 20 minutes as previously suggested at an earlier meeting. Following discussion of the suggested time allotment, it was recommended that the presentation could be extended to no more than 30 minutes and allows time for questions. Fadden stated that he thought he could accomplish the presentation in the given time. Fadden reported that he will be able to put together slides for review at the next meeting.

Right To Know Law Discussion:

Discussion ensued requiring certain procedural issues. Gelinas brought up concerns about getting involved in “slippery slide”, especially concerning e-mails, etc. He felt a need to clarify issues with regard to distribution of some documents for review prior to a meeting, which give the members the ability to act more appropriately during a meeting. The members discussed the issues and concerns. The determination was made that members could distribute material or e-mails prior to the meeting but cannot discuss the contents amongst them prior to the meeting. Consensus was that the members can receive informational documentation prior to a meeting, so they can more intelligently discuss it during the meeting, but they are not to discuss the information with each other prior to the meeting.

Bell asked the question regarding the time span for submission of the minutes to the town clerk. She reported that in the RSA there are two stated times which appear in conflict with each other. One statement indicates that the submission ought to be made in 144 hours, which equals 6 days. Another statement indicates submission must occur in 5business days. Her inquiry was which is the correct time span? Hunter responded that 5 business days is the time span in the Right to Know Law.

Public Input-2:

Gehl, in addressing Section 1A in the Code of Ethics, suggested that the Board does not lose sight of what might happen in the misuse of authority when Town officials and/or Town employees meet “behind closed doors” which could include intimidation, cooperation, or influence to affect the results of an election. The Board needs to recognize other types of misuse of authority and interference, which is less transparent. He mentioned that the influence could occur in two directions, either public officials influencing Town employees or Town employees influencing public officials. He suggested that the Board bear in mind that there are nuances of other types of misuse of authority that ought to be addressed. Hunter made comments for clarification of Gehl’s suggestions and recommendations. Gelinas raised questions regarding the statements made by Gehl. Discussion ensued regarding official position, disclosure, and misuse of authority, interference, and influence.

Gale presented examples of misuse of authority to further provide clarification.

At the end of all discussions in the matter, Chair Hunter called that the Board move on to New Business.

NEW BUSINESS:

Video Recording and Community Television Broadcast Policy Review:

Chair Hunter introduced the Town’s policy and inquired if the members, after review of the policy, would comment on if the Board’s action apply, how the policy would apply, and how the Board could implement it if and when applicable?

Bell introduced discussion that upon review of Town policy, proposed that most of the Board of Ethics' actions do not apply to that policy.

Gelinas interjected that the policy states, "All other boards".

Bell read from the policy that segment that supports her position.

Fadden suggested times when the Board of Ethics actions would meet the criteria as stated in the Town policy, such as when the Board is conducting hearings, investigating a complaint, and reporting on its findings.

Chair Hunter raised the questions of who would be responsible for obtaining the equipment, setting up, and doing the video recording of the meeting. She stated that the town has the equipment. One concern she brought up was, what if an unexpected issue came up at a meeting, but it was determined that the Board would set-up to discuss that issue at the next meeting. The equipment could then be obtained for the next meeting when the issue would be discussed.

Without further discussion on the matter of the Town policy, Chair Hunter suggested moving on to the next issue on the agenda. Fadden volunteered to make the arrangements for and video tape the meetings required by the policy.

NHLGC Inquiries: New Hampshire Legal Government Center.

Chair Hunter opened with an explanation for including this topic in this segment of the agenda. She proposed that the Board develop a procedure for submitting inquiry of questions or issues to the Center. Her concern is that the Board should try not to over-burden the Center.

1. Avoid multi-requests for information for the same question or issue. Instead, the Board would send one question to the Center.
2. It would be more important for the Board to format the question to the NHLG Center to make sure that the question asked for the information the Board really wants to obtain. When the Board has a need for response for a legal or ethical question, the Board can then formulate and send 1 question, rather than sending multiple requests worded differently and receiving differing responses.

Chair Hunter opened the topic for discussion. Gelinas voiced concerns that this intent was meant to prevent him from sending his own inquiries regarding his concerns of some issues to the NHLGC. Chair Hunter clarified the intent of establishing a procedural format for the Board to send to the NHLGC to obtain a response to what the Board really wants to know about certain issue. Gelinas voiced his understanding of the intent as Chair Hunter explained.

Additional discussions ensued as to the need for establishing a procedure for obtaining the response the Board needs.

Any Other Business:

Chair Hunter inquired if the members had any other business to discuss. There being no other business, she moved on to the next section of scheduling the next meeting.

Schedule Next Meeting:

Next meeting of the Board of Ethics is scheduled for Monday December 13, 2010 at 7:00PM in the New Durham Town Hall.

Adjournment:

Meeting adjourned at 9:14PM. Motion-Gelinas, Second-Bell. Vote Unanimous to adjourn.

Respectfully submitted,

Anneleen J. Loughlin, Recording Clerk