

**Approved:** November 15, 2010

**BOARD OF ETHICS**  
**PUBLIC MEETING MINUTES**  
**SEPTEMBER 14, 2010**

The meeting of the Board of Ethics was called to order by Barbara Hunter, Chairperson at 6:30 P.M. in the downstairs meeting room of the New Durham Town Hall.

**Present:** Barbara Hunter, Gelinas Gelinas, Marcia Clark, and Skip Fadden.

Anneleen J. Loughlin, Recording Clerk

**Absent:** Jan Bell

**Also Present:** Paul A. Raslavicus, Cathy Orlowicz, Dorothy Veisel, George Gale, and David Bickford.

**Agenda Review:** Chair Hunter stated she had a couple of additions for the agenda under Any Other Business: Budget request, New Durham Video Policy, and Right to Know Law. Members agreed to the agenda.

**Public Input - 1:**

At this time, Mr. Raslavicus addressed the Board of Ethics in his official capacity as of Chairman of the Planning Board. He reported that the letter was a result of the Planning Board's September 7 meeting in which the Board of Ethic's August 10 meeting minutes were reviewed. Chair Hunter reported that she received part of the letter this past Fri and another part of the letter on Sat. He read from a letter which had been sent to and distributed by B. Hunter, Chairman of the Board of Ethics to each member of the Board. The letter was sent following much discussion at the Planning Board about the issues identified in the minutes of the Board of Ethics. The letter stated that the Ethics Ordinance enacted in 2009 has stricter standard with regards to declaration of conflict of interest and recusal in matters of legislative and quasi-judicial in nature than the State (RSA 31:39- a). He stated that the Planning Board has its own "Rules of Procedure" which was approved April 20, 2010. He quoted from the Planning Board's Rules of Procedure Section VII "Code of Conduct" C) which had been reconfirmed without change. Mr. Raslavicus stated that the Planning Board strongly recommends to the Board of Ethics retention of the broader recusal provision currently in our Ethics Ordinance. He sited the need for declaration of conflict and recusal by a Board Member when an issue being discussed, in which immediate, personal, and financial or pecuniary interest exist.

He, also, sited from a letter by Town Counsel for New Durham, John Teague, Upton and Hatfield, dated March 26, 2010 in response to a letter from David Allen, Land Use Administrative Assistant , dated March 12,2010. Copies of Counsel Teague's letter and a letter by David Allen dated September 9,2010 were distributed to each members of the BOE. In the letter, Counsel Teague states how the Ethics Ordinance Section 1.A.(iii), as well as Planning Board Rules of Procedure on declaration and recusal would be applied regarding an issue

involving a Planning Board member. Mr Teague states in the letter that the Town of New Durham is entitled to use a higher standard by RSA 31:39-a.

Mr. Raslavicus strongly suggested that a recusal clause when an individual involvement is immediate, personal, and financial or pecuniary interest exist should be included by the BOE in the wording of the Ordinance, but should not be interpreted too broadly as all may be involved in some way.

Dot Viesel expressed her gratitude to Chair Hunter for holding this meeting downstairs instead of in the upstairs conference room which is very difficult for her to access. Chair Hunter stated that she has reserved this room for the BOE meetings to facilitate accessibility to the Board's meetings.

Chair Hunter offered Paul Raslavicus the opportunity to present personal input.

Fadden intervened to requested that the members be granted a few minutes to read the letters which had been distributed before Paul Raslavicus adds more input. He wanted to gain more knowledge about the contents of the letters.

Paul Raslavicus added personal comments. He advised in favor to minimize any possible conflict. Referring to previous correspondence, he stated, he had written in 2009, to the Government Law Center and received a response, "In all case, public officials shall not vote in matters in which they have direct, personal, or pecuniary interest." He brought up and read what in 2006, the legislature in Concord did with these same regards. He reports as Mr Teague stated that he agrees the Code of Ethics is a good workable code. He suggested that the BOE maintain much intact the wording including legislative and quasi-judicial.

Chair Hunter thanks Paul Raslavicus for his valuable input.

George Gale offered a word of caution to the BOE to be mindful it be hesitant to change too much of the wording of the Ordinance which was passed and approve a year ago. He quoted, "When in doubt... step down." He suggested that it was sound advice, reminding the members that every board has alternates who can step in when a member has to recuse themselves.

Dot Veisel stated, she subscribes to that philosophy, and stated that the "doubt" should be within oneself, and not within the ordinance. She stated that quasi-judicial is what the Board does when developing an ordinance. She felt there ought not be any ambiguity in the document.

George Gale suggested that the BOE review the Planning Board's minutes when that Board was discussing its own Rules For Procedure.

Paul Raslavicus referenced that the issue of the Planning Board re: Dot Viesel was legislative not quasi judicial, personal, or immediate, therefore in her case recusal was not necessary.

Chair Hunter opined that what is key is that the issue supports a goal of the BOE which is education. She mentioned how important education is not only for members of boards and employee but also for board chairs to keep up with education.

At this time, public input session was closed.

Fadden reviewed under the Knowing Your Territory Chapter 13 and RSA 31:39-a. He suggests that with these writings that legislative ought to be included in the ordinance.

**Approval of minutes:** Motion Gelinas, Clark second to approve the minutes of the August 10<sup>th</sup> meeting as written. Three in favor, Fadden abstained, as he was not at the last meeting. Motion passed.

### **Old Business:**

#### **Educational Presentation:**

Secondary to last meeting review of all available materials, Chair Hunter asked for any comments that might be added to the presentation.

Fadden requested input from each member use the blank slides and write in with a marker any comment regarding exact content to be included in the presentation. He stated that he has put together the initial format but what is needed now is content from the members.

Gelinas stated that as a member, he needs more information on The Right to Know Law, disclosure.

Fadden discussed beginning the presentation with the definition of ethics; consider possible include to be the ethics policy. Chair Hunter reminded that the task of the presentation is to be completed in 10 to 15 minutes, and it needs to be clear and concise. Chair Hunter distributed copies of The Right To Know Law to each board member. She requested if the members had any other thoughts to be included.

Chair Hunter read a written statement from Jan, “Anything illegal could also be unethical: anything legal may not necessarily be ethical. Could be used as guidelines vs as ordinance or law.” Fadden added that being legal may not necessarily be ethical; there may be unethical laws.

For next meeting as homework, the Board members need to write out content comments to develop the power point presentation. The presentation needs to be ready by the end of the year. As a reminder we wanted to begin the presentations right after Town meeting, and the education presentations need to be completed by next summer.

#### **Continuation of Ethics Ordinance Review:**

Review will comprise of Section 1A sections ( i, ii, iii, and viii), then we will move on to Section 1B.

Review of Provision 1A (i)

Chair Hunter read the provision as written, and then read from written input from Bell, “In favor of leaving in “the appearance of conflict of interest.” Bell also cited Know Your Territory, Chapter 13, 1 - “Regulation of Ethical Behavior” states: “Not only is it critical for official and employees to act ethically, but it is important to avoid even the appearance of unethical behavior.”

Following a discussion of whether to keep or remove the word “appearance”. Fadden stated that

he read code of ethics from other towns and found no problems stated in other towns. Fadden and Clark stated the word should remain. Fadden made reference that he had could not find where the Town counsel found the wording problematic with remarks.

Gelinas strongly lobbied for the removal of the word. Gelinas referred comments by New Durham Town

Counsel Teague that the word “appearance” was too subjective, which had been discussed at the May 11, 2010 BOE meeting. Gelinas sited reinforcement of this opinion by a second Town attorney who had issues with the wording “appearance of conflict.” Gelinas referred to a court case in which “appearance of conflict” was deemed too subjective He also made reference to Knowing Your Territory, Chapter 13. He feels if “appearance” is to remain in the Ethics Ordinance, then it needs to be clearly defined to include the words immediate, personal, and financial or pecuniary interest. Fadden requested a copy of the chapter which Gelinas was referencing. Further discussion followed.

Chair Hunter stated she felt the wording “appearance of conflict” should remain in the ordinance. It is critical that officials towns and cities maintain the highest code of conduct by all. Quoting from Local Regulation of Ethical Behavior-NH Town and City, January 2009 document It is understandable that towns and cities would want to take appropriate steps to maintain the highest of conduct. She emphasized the role which the ordinance plays when looking at a case by case.

Gelinas argued that the main problem if the term is not clearly defined, then it does not clearly educate the public. It could be used as a political tool at a later date against

Following further discussion, Chair Hunter requested a motion. Fadden made a motion to leave “appearance” in the Section 1 (I) provision as written, second Clark. Vote 3 in favor, Gelinas opposed. Motion passed: provision will remain as written in the ordinance.

Review of Provision 1A (ii):

Chair Hunter read the provision as written. Gelinas referring to Know Your Territory, quoted from that document in support for changing of wording as he believes that the ordinance over-steps legal boundary.

Clark provided clarification of the wording of the ordinance. Fadden was in favor of existing language, he thought it was concise, clear, shorter, and less confusing Chair Hunter suggested that the wording was a little awkward and that inserting or “before any governmental body.”

Gelinas suggested he would like to have this section rewritten, and read from what he recommends for a change of wording. Fadden asked if the Alton’s code of ethics is an ordinance or a policy. Gelinas didn’t know but offered to find out. Gelinas reported that the Alton code is an ordinance.

Fadden suggested it be kept as written as it is. Clark suggested it be kept as written. Chair Hunter requested a motion. Motion by Clark, seconded by Fadden. Vote: 3 in favor, Gelinas opposed. Motion passed to keep the wording of the section 1A (ii) remain as written.

Review of Provision 1A (iii):

Chair Hunter read the provision and asked for discussion. Chair Hunter reported that Jan had not added any comment to this provision.

Fadden favored keeping the original wording; the original is less confusing (keep it simple).

Gelinas's main difference between the two is the need to define to include immediate, defined, and capable of demonstration.

Clark suggested no change in the wording. Chair Hunter stated that the words pecuniary, personal interest could be added. She suggested that "any matter" refers to the higher standard that seems to raise the bar for conduct.

Following discussion, she asked for any other discussion. Fadden made the motion to maintain the provision as written in Section 1A (iii), Clark second. Vote: 3 in favor, Gelinas opposed. Provision will remain as written.

Sections (iv, v, vi and vii) were all deemed as to remain as they are.

Review of Provision (viii):

Chair Hunter read the provision as written and read a written input by Bell, "Propose the following as a possible rewrite: "(Keep) No public servant shall misuse his or her official authority or influence for the purpose of interfering with or affecting the result of an election. (Add) Misuse is defined as electioneering while performing official duties or using town property, including but not limited to telephones, fax machines, computers, and vehicles, to influence voters (RSA 659:44-a)."

Gelinas discussed issues which indicate that the ordinance is not allowed under RSA 3139-A. He could not produce the actual document to support his claim.

Fadden motioned to table Section 1A (viii) until next meeting. Second: Gelinas. Vote: motion unanimously approved.

Section 1B:

Chair Hunter read the provision as written. Fadden stated he needed more time to review this section, as well as information given by Paul Raslavicus, public input, and consider the Board's need for additional time to review. The board needs to do more homework on this section and report at next meeting. Section 1B tabled until next meeting in October.

Section 1C: Unanimously agreed there was no need for further discussion; approved as written.

Section 1D: Approved as written.

Section 1E: Approved as written.

Section 1F: Approved as written.

Section 1G: Approved as written.

Section 1H: Approved as written.

Section 1I: Approved as written.

Section 1J: Approved as written.

Section II: Definitions: Approved as written.

Section III: Exclusions: Chair Hunter read through each paragraph of this section. Approved as written.

Section IV, Complaints:

Chair Hunter read each paragraph in the section. Gelinas voiced disapproval of paragraph 6 as written. The Ethics Board cannot administer oaths or require evidence; RSA 3139 does not give authority. The suggestions were made to substitute the word request instead of the word require, and remove the part of the sentence which states that the Board administer oaths and require the production of evidence. This section was tabled until the next meeting.

Chair Hunter stated that she had queried the Local Government Law Center as to whether Ethics Board has powers re: court proceeding and administrative proceedings per, RSA 673:15, RSA71-B:9, RSA 31:39-a, give no expressed authority to the BOE to compel people to appear or compel evidence.

It was decided that the Board members needed additional time to do further homework research on paragraph 6. The members also reviewed paragraphs 4 and 5 in this section in relationship to paragraph 6.

These paragraphs were tabled for further discussion at next meeting.

Section IV: Paragraph 7; approved as written.

Paragraph 8; approved as written.

Section V: Effective Date: approved as written.

### **Public Input-2:**

Dot Viesel stated that she was pleased with the plan to have education sessions. She opined the importance and need for the education sessions, but recommend that they ought to be longer than 10-15 minutes long as there may be more questions. She stated that “appearance” as in Section C needs a clear definition as dealing with issues of disclosure and recusing on individual basis. She suggested a need to make a clear distinction between legislative and quasi-judicial.

Fadden stated that these areas that the education presentations will cover.

Clark reminded the group that the Planning Board has their own code of conducts and they deal with their problems themselves. It is not likely they will come to the BOE although they may.

Gelinas once again referred the need to clearly define “appearance” so that “after the fact no one can come back and bully members.”

Gale suggested that the BOE go to the other Boards in Town and make inquiries if the other

Boards have questions secondary to the ethics code. He suggested that when the Board is addressing a complaint that the Board look at the evidence provided before them and compare it with the Ethics Ordinance. The Board needs only rule on the issue presented. He also suggested that by adding wording from State statues may muddy the town ordinance. Additional wording could be brought into the slide presentation. He suggested that the Board look into checking presentations which other towns have already developed, in the process of developing the BOE presentation. He mentioned that the town of Dunbarton has a slide presentation that might be useful for New Durham presentation purpose. He brought up a philosophical idea; the right of an individual citizen versus the right of an individual when serving on a board, which is a privilege, needs to be set aside some personal rights.

Chair Hunter, after request for any further public input; and there being none, public input was closed.

Chair Hunter questioned the Board members if they would like for her to pursue the proposal of asking other Boards if they had any questions or ideas of what we ought to take into account. The Board approved the action.

### **Any Other Business:**

#### **1. Budget request:**

Chair Hunter reported that she received an e-mail from Alison Rendinero about the BOE budget (past and present). Chair Hunter informed her that the BOE has not had a budget. Chair Hunter informed her that whenever she had a money need (for example: for mailings at the time of the complaint), she went to the Board of Selectmen to obtain the money for certified letters. Chair Hunter mentioned that the issue of payment of legal counsel was discussed; and that usually those costs go to the Board of Selectmen.

Chair Hunter opened the discussion whether the BOE might have a need for a budget. Generally, the Board suggested there could be a need and it might be a good idea to have one.

Gelinas suggested that a line-item should be in the budget for training for the BOE members who might be interested in attending programs which are presented. Discussion of the pros and cons of the need for training at this time ensued. Chair Hunter stated that BOE is getting enough material and guidance to meet our needs at this time. Gelinas could go to the Selectman to gain approval to attend specific training. Clark agreed. Chair Hunter opined that there ought to be only one line-item for this year. Next year, after learning more about training programs, the Board could look into including a line-item for training.

Clark made the motion that a budget of \$200 for general operation for the BOE; Fadden seconded, Vote 3 in favor, Gelinas strongly opposed because training was not included as a line-item in the budget. Motion approved that \$200 budget be submitted.

#### **2. New Durham Video Policy:**

Chair Hunter reported that she had received an e-mail from Terry Jarvis, Chair of Selectmen, regarding the Town of New Durham's Policy for Community Television Broadcast. She distributed copies of the policy to each member. The members decided that this would require

time for review of this policy. This is a homework item and will be discussed at the next meeting, then Chair Hunter will report to Ms. Jarvis. The topic was tabled until the next meeting of the BOE.

3. The Right To Know Law.

This issue was tabled for further review and discussion at the next meeting.

**Schedule Next Meeting:** The next meeting was scheduled for October 12, 2010 at 6:30 PM at the New Durham Town Hall.

**Adjournment:** Motion Fadden, second Clark to adjourn at 9:25PM: vote unanimous.

Respectfully submitted,

Anneleen J. Loughlin, Recording Clerk