

Approved: January 11, 2011

**BOARD OF ETHICS
PUBLIC MEETING MINUTES
December 13, 2010**

The meeting of the Board of Ethics (BOE) was called to order by Barbara Hunter, Chair at 7:03 PM. The meeting was held at the New Durham Public Library.

Present: All members were present, and Anneleen Loughlin, Recording Clerk.

Absent: No member was absent.

Also Present: Dorothy Veisel and Cathy Orlowicz

Agenda Review: Chair Hunter queried the board if the members had any questions or concerns regarding the agenda. Hearing none, she suggested that the board move forward with the agenda.

Public Input - 1: Chair Hunter inquired if D. Veisel had any input at this point. D. Veisel stated that she would refer to her input of the November 15th meeting.

Approval of minutes: Following a review of the minutes of the November 15, 2010 meeting. Chair Hunter asked for any additions or corrections. There being none, she asked for a motion to approve the minutes. Motion- Bell, Clark seconded to approve minutes as written. Vote was unanimous in favor of approval. Motion passed.

Old Business:

Completion of the Ethics Ordinance Review:

Chair Hunter reviewed the terms in the Definition Section, (Appearance/Appearance of Conflict of Interest, Misuse, Official Authority), which had been brought up at the last meeting which the board felt might need clarification. Prior to beginning this process, she queried if there were any additional items which the members felt needed to be added or further clarified.

There being none brought up; the board began working on the terms which the members felt needed further review and/or clarification.

Fadden suggested before the board began work on the definition that the board ought to determine if definitions should be in the ordinance. He objects to adding definitions. His concern being that if definitions are in the ordinance, individuals would find ways of going outside the definitions which might not be in the town's best interest.

Chair Hunter reminded the members that at the last meeting, she had stated that the definitions ought not to be too narrow and ought to encompass a broader meaning. Chair Hunter reminded the board that the definitions were originally agreed upon by the board. She queried, in order to clarify, whether it was the adding of new definitions, which was being objected or the removal of all definitions which was being suggested. In order to clarify Fadden's objections, she inquired whether the objections he had were related to term definitions, as opposed to defining words such as "board", etc.

Bell stated that the definitions of these terms in the ordinance are defined as they apply to the ordinance, and help to make the terms less subjective. The definitions can be used as guidelines for individuals to help them determine if they are functioning within/outside the intent of the ordinance.

Chair Hunter inquired if Fadden was ready to make a motion relating to his objection. Chair Hunter explained the possible procedure to follow for continuing the process. After hearing the presented discussions, Fadden decided against making a motion, and opted to continue with further discussions. Then he would be better able to decide appropriately about making a motion, if one was needed.

Bell distributed definitions for the terms which she developed from her research of the terms. Fadden read a definition which he had for the term Appearance/Appearance of Conflict. Hunter, later, also distributed the definitions she had developed from her research. An intense discussion ensued over the wordings in each definition. There was discussion as to whether the word “appearance” ought to be defined separately from “conflict of interest.”

Clark stated she had no problem with the word “appearance” being defined in the ordinance. She opined that the terms as defined in the draft needed no further clarification. She voiced a concern about whether the board intended to redefine all the terms in the Definition Section. Chair Hunter reassured Clark that the board was reviewing only those terms which had been identified as problematic within the context of the ordinance.

At this point, Bell brought up the issue that on page 5 under Principals, in her copy of the ordinance, the wording “Ethics Committee” appears at the end of the sentence. She suggested that the wording ought to be changed to “Board of Ethics” in order to make it consistent with all other references to the board within the ordinance. There was discussion that different members have different editions of the **Code of Ethics** in their possessions. Chair Hunter will check on the Town web-site to locate the most recent revision, so each member will have access of the same revised copy.

Chair Hunter brought up the item on page 3 Part C: A Duty to Disclose: and reviewed that definition as it may apply to a definition for “appearance. She requested that the board look at the suggested definitions with the intent to not box-in, to not change intent of the **Code**, but to clarify. Upon receiving general agreement from the members, she then suggested that the members begin with looking at the first term listed on Bell’s list of definitions.

Chair Hunter read Bell’s definition for the term “Appearance of conflict of interest.” Fadden suggested that the term be broken down and only put in a definition for “appearance.” Fadden read his preferred definition of the term.

Gelinas strongly opposed the use of the word “appearance” in the **Code of Ethics**. He opined that the word “appearance” is a political tool. It is too subjective. He presented the idea that not much can be done with “appearance of conflict” until it is brought to court and only an actual conflict of interest will be reviewed in court. He is against the word being in the Code. He cited examples in which “appearance” could be used in a negative manner in certain circumstances.

Chair Hunter read from her definition of “appearance of conflict of interest.” Gelinas stated he agreed completely with her definition, and that is why he strongly opposes the inclusion of the word “appearance” in the **Code**.

Hunter reminded the board that the **Code** is more of a guide. Discussion of the pros and cons continued, including discussion by reviewing each various presented definitions.

Hunter recognized D. Veisel for an opinion of the present discussion. Veisel stated that “appearance” is a

very tricky word and the definition would be difficult to apply. She stated that the word “appearance” relates to recusal and disclosure. That “appearance” is not asking for disclosure; it is asking for recusal, and as a board member that is very serious.

Clark related to the first case brought before the board by an individual in which the person felt there was an “appearance” when actually the elected official acted within his duty to act. The individual submitting the complaint lacked understanding between “appearance” and actual conflict.

Clark reminded the board that this is new to the Town and the people of the town. Part of the problem is that some people lack the initiative to find out what are the real truth and issues, but rather base their actions on someone else’s say-so.

Bell referred to page 1, **PURPOSE**, third bullet, and suggested that a period ought to be placed after “conflict of interest”, and remove “or even the appearance of one.” Discussion ensued regarding potential relationships, “appearance”, and the duty to disclose.

Chair Hunter brought up the statement on page 2, Section 1, Part A. (1) – “Public Servants shall avoid conflicts of interest or, when possible, the appearance of a conflict of interest.” She indicted the difference in the intent between the first statement under **PURPOSE**, and second statement under **SECTION 1**. She suggested that that the term “appearance of conflict of interest” in the second statement ought to remain as written. Further extensive discussion and questions ensued.

The topic for the need of proper education of the Code to potentially reduce problems was brought up in the course of the discussions.

Gelinas asked for clarification of the term “avoid the appearance of conflict of interest” in a potential situation which might occur, if a very distant relative appeared before the board, would that necessitate him to recuse himself, even though he seldom has any contact with this distant relative. It was explained that in such a case, recusal might not necessarily be required, but the best course of action would be to make a disclosure of the distant relationship before the board. Additional discussion followed.

Chair Hunter reinforced that the **CODE**, with proper education, would serve as a guide and assist public servants in the proper conduct to avoid problems. The **CODE** is not designed to serve in a punitive manner.

Chair Hunter recognized D. Veisel’s request to speak. Veisel inquired if there is any mechanism in which the public has the possibility to write a request for information prior to writing a complaint. She was informed by Hunter that the public can indeed write a request for information prior to writing a complaint. There is a procedure on the Town website explaining the details for submitting a request.

Chair Hunter reviewed the course of the discussions which had ensued. At this point Gelinas request permission to make a motion.

Gelinas - Motion to place a period following “conflict of interest” in bullet 3 on page 1, **PURPOSE** and to remove “or even the appearance of one.” Bell – seconded. Following additional discussion of the pros vs. cons of removing that part of the statement, Chair Hunter called for a vote: 3 in favor, 2 opposed, Clark and Fadden. Motion passed with 2 opposed.

Definitions: Appearance:

Chair Hunter opened the discussion with a question if a definition of the word “appearance” is needed? How should the word be defined in a way that it would help and guide public servants avoid getting in trouble? Views were presented which identified for and against writing a definition for “appearance” in the ordinance.

Gelinas stated he did not believe there was a need to define the word, and voiced his reasoning for his position. He stated that there are laws regarding conflict of interest, but there are no laws regarding appearance of conflict.

Intense discussion of “appearance” ensued which included the idea that the definition in the **CODE** could be used as a punitive measure even if the board has no authority. Individuals would be less willing to become involved in the Town. The question of a need to define “appearance” continued. Concerns were voiced related to possible irreversible personal character damage that an individual could be subjected to if brought before the board based on “appearance” of conflict when none exists. Chair Hunter restated the importance of keeping the definition more generic.

An amalgam of the different definitions, which had been read earlier in the meeting, was suggested, “The outward impression of how something seems; the way something or somebody looks or seems to other people.”

Upon review of the various views presented, Chair Hunter called for a motion. Bell – Motion to add the above definition for the word “appearance” in **SECTION II: DEFINITIONS**. Second – Clark. Vote taken: 4 in favor, 1 abstained, Gelinas. Motion passed with one abstention.

Misuse: Again, Chair Hunter queried the members if a definition of the word “misuse” was needed. The sample definitions submitted by Bell and by Hunter were read for the benefit of the members. Fadden voiced concerns when defining “misuse” the board is “boxing itself in” by limiting the definition to public servant, because members of the public can misuse public property, also. Further discussions ensued with the members voicing individual concerns. The need to define “misuse” may not be necessary, it was suggested that the need may be to include what actions would constitute “misuse.” That the need is to identify what is “misuse”, so that people will understand what “misuse” is. The concern was raised that the word cannot be defined to cover every incidence case-by-case, and that is the reason that the definition needs to be broad. The presented sample definitions were reviewed, again. The definition which was eventually composed and presented as a motion was: The incorrect or improper use or misapplication of information, position, authority, or influence, as well as, Town resources, property, or time by a public servant. Motion – Fadden; Second – Gelinas. Vote taken passed by unanimous approval.

Official Authority: Chair Hunter read the definition as presented by Bell. She then reiterated the question if a definition was needed for this term. She read from SECTION I, A; (viii): “No public servant shall misuse his or her official authority” The general consensus was that a definition was not needed, but clarification of the term would be beneficial. Fadden made a motion that the term “official authority” be included in the list of **DEFINITIONS** to read as written by Bell: “The power delegated to an individual by nature of the position that he or she holds.” Second- Bell. Vote – 4 in favor, 1 abstained- Gelinas. Motion passed with 4 in favor and 1 abstention.

Bell raised the issue for some editing needed in the **CODE**. She identified on the first page, in the box, the last item No Nepotism; the “N” in nepotism ought to be a lower case letter. Another edit needed in that same box is the bullet above “nepotism”; “No Investments in conflicts with duties:” the “I” in investments ought to be lower case, also. These changes will bring these two items in uniformity with the other bullets. In continuation with the investment bullet, Bell suggested a change in the wording, which would improve the item grammatically, and ought to read, “No investments that, (rather than in), conflict with duties.” She suggested the same change on page 4, SECTION I: CODE PROVISIONS; I. Investments, change, (in) to (that) Conflict with official Duties.

As these were grammatical edits in the **CODE** a motion was not needed at this time.

At this point in time, Gelinas requested to speak before the board; Chair Hunter recognized Gelinas's request to speak. He raised an issue regarding the current ordinance which the board has been reviewing. He stated that he does not agree with the ordinance. He reported his intent to go before the Town meeting in March with an ordinance which he has developed based on the Dunbarton Board of Ethics Code. He presented a copy of his proposed ordinance. He stated he believes he has enough support and can obtain the necessary signatures on a petition to present as Minority Report, Warrant Article. For clarification, he was queried if his intent was to completely eliminate the current Code and replace it with an entire new Code, his response was affirmative. He made explanations of the process he went through in writing his revisions. He offered to have copies made for the members, which all the members agreed they wanted to receive. He expressed that he was not certain, at this time, the process of action in which he will proceed to present his proposed ordinance as a Minority Report. He would be researching that process further before he takes action, but he fully intends to follow this course of action.

Chair Hunter raised some concerns about how to move forward with this issue, as it represents work that is completely different from the current work by the board. Hunter pointed that the minutes of the meetings reflect those areas in which he disagreed with the consensus. Hunter identified that it appears that Gelinas intends to move in another direction, at which he agreed that he will follow with his intention to present a Minority Report.

Clark queried why he was remaining on the board if he was so unhappy. Gelinas responded that he was trying to make a difference, and he will keep on trying to make a difference. He stated that he recognized he should have waited until the time for Public Input session, and he apologized for not waiting for the proper time.

Chair Hunter explained the next steps of the tasks which she will need to take, including review the minutes of the meetings, all the edits, changes, additions to the definitions and the ordinance, and begin drawing up of Warrant Articles for the Town Meeting. She will be working with Alison Rendinero on the Article, which will be presented to and discussed with the town counsel. Then we will have the final review of the Warrant Articles along with the final board vote on the Warrant Articles. Finally, she will submit them to the Board of Selectman for their review and action needed on the Warrant Articles. Before presentation at the Town Meeting, because this is presented by the Board of Ethics, the Warrant will be presented to and discussed with Town Counsel.

Chair explained that each change made in the ordinance will have its own article unless it is contingent on another, then they would be put together. All of the several edits can be put together in one article. This brings the board to the end of the Completion of the Ethics Ordinance Review.

Ethics Ordinance Educational Presentation:

Fadden reported that he is still working on the presentation; he not quite completed putting the slides together, and he does not have them ready yet for review. Although, he did ask for any additional suggestions anyone may have to add. A suggestion was made that clear differentiation ought to be made between recuse and disclosure. He stated that he needs to clarify the "grey areas."

The suggestion was also made that he use real clear examples in the presentations. An example for clarity identified was the presentation that was made to the Conservation Commission in which the examples presented were so clear that the material presented became solidified.

Relating to an earlier question from the public about "request", Chair Hunter stated that in the education presentation would be important to remind people that there are two ways to bring concerns or issues before the Board of Ethics, 1) requests, 2) complaint.

Fadden stated, he will continue working to bring the mechanics to completion to the point that he can bring the slides to the next meeting for the board's review.

Chair Hunter inquired if Fadden would need or could use some assistance on this project. He stated that at the next meeting, he will bring the slides which would be laid out on a table & the order of the slides can be organized at that time.

Chair Hunter stated that she had received a query from the Board of Selectman (BOS) if they should budget any money for the BOE for education/presentation. She stated that she was not certain what the BOS had intended. Chair Hunter queried Fadden if he needed any money for the preparation of the presentation. Fadden stated he would not need any money for the preparation of the presentation. Following discussion and questions regarding the BOS intent in this particular matter, i.e. presentation/education about the town code of ethics vs. education for the members of the BOE, Gelinias stated, he was disappointed that no money had been budgeted for board members' education/training. He had questioned the BOS if money for BOE training would be included in the selectmen's budget. He stated that he believes that is why Chair Hunter received that inquiry from the BOS. Chair Hunter stated, she thought that the inquiry from the BOS was for whether there was a need for money related to preparations for the presentation by the BOE. Chair Hunter stated, she would obtain clarification from the BOS of the board's intent.

Clark stated that the whole question of budgeting money for members training should be left as was originally decided by the BOE. Clark made a motion to leave the question of budgeting money for members' education/training as it was originally decided at the September meeting. Second-Fadden. Vote was taken: 3 in favor; 1 abstain - Bell, 1 oppose – Gelinias. Motion passed with 3 in favor, 1 abstention and 1 opposition.

Public Input-2:

Orlowicz voiced disappointment to see that no money was being budgeted for BOE members to obtain education in order to further their knowledge.

Weisel reports that she has read Gelinias's earlier mentioned document which he intends to present as a Warrant Article at the Town Meeting. She has found that there are many similarities to the New Durham BOE's ordinance work and Gelinias's proposed document. She pointed out that both his document and the BOE's document are based on the same Dunbarton document.

New Business: No new business was introduced.

Any Other Business: No other business was introduced.

Schedule Next Meeting: Tuesday, January 11, 2011 at 7:00 PM at the New Durham Town Hall.

Adjournment: Motion – Bell, Second – Gelinias; Vote - unanimously in favor. Adjourned at 9:14 PM.

Respectfully submitted,

Anneleen J. Loughlin, Recording Clerk