

Approved: August 10, 2010

## **BOARD OF ETHICS PUBLIC MEETING MINUTES JULY 13, 2010**

Chairman Barbara Hunter called a Board of Ethics meeting to order at 6:33 PM in the downstairs conference room of the New Durham Town Hall located off Main Street.

### **Present**

Barbara Hunter, Chairman  
Marcia Clark  
Jan Bell  
Mike Gelin

### **Absent with Apology**

Skip Fadden

### **Also Present**

Terry Jarvis  
Cathy Orlowicz  
Dorothy Veisel  
David Bickford (at end of meeting)

### **AGENDA REVIEW**

No additions to agenda by board members.

### **PUBLIC INPUT**

Dorothy Veisel expressed gratitude to BOE members for their efforts and urged them to revisit the Ethics Ordinance, claiming that it is "Flawed in many ways." She said that some of it is good but some of it is not backed by RSAs. Chairman Hunter acknowledged that revisiting the Ethics Ordinance had become one of the board's goals after the last complaint, emphasizing the importance of making sure that the entire ordinance is in line with RSAs, etc. Jarvis recognized that the BOE has been very busy the past couple of months but urged members not to let the educational component get lost in the dust, explaining that speaking about ethics and ethics policy would be advantageous to all. Veisel agreed, saying that language ambiguities make it difficult for new members of town boards to understand the actual intent. Hunter assured both that the planned educational presentation has not been forgotten but explained that the topic was not on the meeting agenda because Skip Fadden, who is playing a lead role in the effort, could not be present.

Bell commented that the BOE is in an interesting position and expressed concern about proceeding with an educational presentation when the Ethics Ordinance itself is in question. Jarvis said that the overall topic of ethics, ethical decisions, and ethical behavior could be covered even without specific reference to the town ordinance. In light of the recent complaint, Bell shared that she was starting to question why the town even has an ethics ordinance if it isn't enforceable. Jarvis stated that a town can have an ordinance as long as it doesn't violate state or federal laws or regulations. Orlowicz echoed that this is an important opportunity to educate the people who would be affected by or held accountable to the Ethics Ordinance. She also agreed with Bell about the difficulty of teaching when you don't know where the ordinance is going at this point.

Jarvis said that the main thrust of the educational effort should be what is ethics? Orlowicz emphasized

the need for the educational presentation to be made directly by the BOE to all employees at one time and then annually after every town election when board members change. She urged the BOE not to rely on the board chairs to educate new members on ethics, saying that much often is lost when information trickles down.

Chairman Hunter pointed out that BOE members were not involved in the creation of the Ethics Ordinance but have come to realize that in practice it perhaps contains more grey areas than previously thought. Although employees and board members supposedly have signed acknowledging receipt and review of the Ethics Ordinance, she stressed the importance of an educational program to help people understand it.

Clark said it was well and good to hold some sort of meeting after town election but expressed interest in providing some type of education to individuals assuming board vacancies so they know what is expected of them and understand what they need to know and learn. The problem, she said, is that people don't question, claiming that it was a surprise to folks that we didn't have any business in the public's business. Bell commented that she understands the First Amendment but believes that the purpose of a town's ethics policy is to set a standard for how it would like employees, board members, and volunteers to act. Companies, colleges, and organizations, she noted, often set parameters for behavior in order to ensure the best interests of all.

#### **APPROVAL OF MINUTES**

For clarification purposes, Chairman Hunter suggested the following two additions to the June 8 Minutes; agreement unanimous.

- abUnder Old Business, last sentence should end with "*distributed by Cathy Orlowicz.*"
- abSentence under Any Other Business should read, "*The Ethics Ordinance presentation development was passed over until Skip is present.*"

Motion Gelinias, second Clark, to accept the Minutes of June 8, 2010, as revised; three votes in favor; abstention by Bell who had not attended.

#### **OLD BUSINESS**

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

Chairman Hunter noted that Skip Fadden, nominated previously, had declined for job-related reasons. Clark then nominated Gelinias, who kindly declined; Gelinias nominated Bell, who also declined; Gelinias nominated Clark, who declined as well. Should a situation arise preventing her to attend, Hunter stated the need for a procedure to call upon another board member to take her place. The issue was tabled until the next meeting in hopes that all members will be present.

#### **NEW BUSINESS**

##### **BOE Goal Setting**

In response to the request for all chairmen of town boards to come before the Board of Selectmen and present goals for the year, Hunter noted that the BOE already had finalized development of its Rules of Procedure, addressed one complaint, and begun an educational presentation. Through in-depth discussion, board members established four goals.

##### **Goal #1: Revisit, Revise, and Rewrite the Ethics Ordinance**

Gelinias distributed a handout outlining his proposed goals. The ordinance, he said, should have boundaries in both directions. He pointed out that the BOE could play an educational role, suggesting that a flow chart might be helpful.

Bell expressed the need to simplify the Ethics Ordinance, with Hunter saying that one goal definitely is to review, simplify, and clarify so that town residents would have a clearer understanding of the ordinance overall.

Gelinas suggested that any part of the ordinance governed by a state statute also include a reference to the specific RSA to provide authoritative backing. He also suggested that the BOE obtain other examples of ethics ordinances for comparative purposes, saying that he personally would like to be educated on what better ordinances look like.

Hunter agreed that it would be helpful to look at other ordinances that better deal with certain issues. As a starting point, she proposed taking an in-depth look at the current Ethics Ordinance and seeing where it leads. She noted that members might find the basic document to be legal and in line with its intended purpose. From there, she said, the board could make revisions and incorporate RSA references as appropriate.

Jarvis suggested some outside sources that might be able to provide example ordinances. Gelinas observed that Bart Mayer, town counsel, is one of the best municipal counsels in New Hampshire. Hunter pointed out the need to garner comprehensive information from a variety of sources and not necessarily only from a legal angle. Jarvis suggested that the BOE review the state ethics ordinance.

### **Goal #2: Continue/Complete Work on the Educational Presentation of the Ethics Ordinance**

Gelinas favored moving forward with an educational program and said that a PowerPoint presentation would be the way to go. The process, he said, would involve lots of questions and educate BOE members along the way. Chairman Hunter noted that work on the presentation would commence at the next meeting.

### **Goal #3: Clarify the Different Roles of Boards**

Chairman Hunter and Gelinas both expressed the need to distinguish between the legislative, judicial, quasi-judicial, and administrative roles of town board members. If the BOE does a good job of teaching, said Hunter, a lot more could be accomplished. Gelinas agreed, saying that a clear understanding of these differing roles could do the town as a whole the most educational good.

### **Goal #4: Continue to Carry Out the Ethics Ordinance**

Chairman Hunter reiterated the overarching goal of the BOE, which is to carry out the Ethics Ordinance, reviewing requests and reviewing/hearing complaints as needed.

Tackling and hopefully accomplishing these goals, Bell said, would be a major accomplishment for the remainder of the year. Since the current Ethics Ordinance was adopted by the town at Town Meeting, she asked about the best way to present any suggested revisions, which could involve any number of sections. Orlowicz confirmed that all revisions could be presented at once in a single warrant article.

Motion Gelinas, second Bell, to approve the goals as written; vote unanimous. Chairman Hunter will present the BOE goals to the Board of Selectmen, most likely at the next meeting which, according to Jarvis, will be August 2, 2010. Gelinas asked if this should happen before the minutes are approved at the August meeting, but Jarvis didn't see a problem, saying that the goals of all town boards will be posted on the website to keep townspeople informed.

## **OTHER BUSINESS**

### **Ongoing Discussion of Ethics Ordinance**

Gelinas distributed a handout of suggested changes to the town's Ethics Ordinance, explaining that each would need to be looked at alongside the ordinance. One example he gave was the "appearance of a conflict of interest." He pointed out that town counsel, both former and current, as well as the state, are in agreement that this should not appear in the Ethics Ordinance. Chairman Hunter said that each item would be addressed as board members go through the ordinance section by section. She explained that this would be a challenge for all board members and require considerable preparedness. To facilitate the

process, she suggested that specific sections be identified for coverage at each upcoming meeting so that members could come prepared to address problems, concerns, and ambiguities. Gelinas pointed out that the BOE can't rely solely on sessions with town counsel given the cost involved. He commented that cost for town counsel's work with the BOE regarding the recent complaint had totaled approximately \$1,900 through May, an amount confirmed by Jarvis.

Chairman Hunter handed out the 2010 edition of "Chapter Thirteen: Ethical Issues, Conflicts of Interest, and Incompatibility of Office" from *Knowing the Territory*, provided to her by Alison Rendinaro, administrative consultant. She noted that it is almost identical to the 2009 edition distributed earlier, identifying the deletion of two short sentences. Orlowicz commented that the Local Government Center's website is an easy, reliable source for legal updates.

#### **NEXT MEETING**

The next meeting was scheduled for Tuesday, August 10, 2010, at 6:30 PM at the New Durham Town Hall. At Bell's suggestion, BOE members identified Section I – A, B, and C of the Ethics Ordinance to focus on in the meeting. Orlowicz advised Hunter to contact the administrative consultant for timeline restrictions associated with presenting an article to amend the Ethics Ordinance at Town Meeting in March 2011. BOE members also agreed to continue work on the educational presentation at the next meeting.

#### **ADJOURNMENT**

Motion Clark, second Gelinas, to adjourn at 8:03 PM; vote unanimous.

*Respectfully submitted,  
Jan Bell, Acting Recording Clerk*