

**Approved: February 22, 2011**

**BOARD OF ETHICS  
PUBLIC MEETING MINUTES - Revised  
January 11, 2011**

The meeting of the Board of Ethics (BOE) was called to order by Barbara Hunter, Chair at 7:00 PM. The meeting was held at the New Durham Fire House meeting room.

**Present:** Barbara Hunter, Chair, Jan Bell, Marcia Clark.  
Anneleen Loughlin, Recording Clerk.

**Absent:** Skip Fadden and Mike Gelinas.

**Also Present:** George Gale, Dorothy Veisel, and Cathy Orlowicz.

**Agenda Review:** Chair Hunter queried the board members if there were any questions regarding the agenda for this meeting.

Bell commented that she understood that the BOE had been asked by the Board of Selectman to respond to Mike Gelinas's proposed ordinance. She queried how the BOE would respond to that request by the Board of Selectman.

Chair Hunter responded that she would make a statement shortly in response to that request.

Chair Hunter distributed copies of an article which appeared in The BAYSIDER, January 6, 2011. Although it was listed under the heading BARNSTEAD, the article reported an occurrence at the New Durham Board of Selectmen meeting of January 3, 2011. The article stated that at the meeting, Mike Gelinas, as a private citizen of New Durham, presented to the Board of Selectman his own proposed ethics ordinance to be placed on the Town Warrant Articles for the March Town Meeting. In the article, Gelinas is quoted that he is "in disagreement with the BOE over the inclusion of the term 'appearance' in the Code of Ethics." The article continues to quote Gelinas in his explanation for his disagreement with the BOE. The article stated that "Board of Selectman Chairman Jarvis suggested that the two boards meet to review all the proposed changes to the Code of Ethics and discuss the merits of each and decide what to do."

Chair Hunter inquired if there were any other questions regarding the agenda for this meeting. Hearing done from the members present, Hunter decided this might be the appropriate time to make a statement regarding the suggestion by Board of Selectman Chair Jarvis.

Chair Hunter read from her prepared statement, "As you are aware, Mike Gelinas has brought his request to the BOS that his revised Ethics Ordinance be placed on the Town Warrant for the March Town Meeting..."

As a result, Chair Jarvis has suggested that we as a Board review Mike's Ordinance, compare the merits of each, and meet with them to decide what to do.

It is inappropriate to do that... after completing our extensive review process of the Code of Ethics last month, the integrity of the Board of Ethics, its decision and proposals must be maintained. Likewise, Mike's right to submit his document as an individual citizen is respected.

Our proposal is in the form of our Articles to be included in the Warrant. After our review or the DRAFT for corrections and acceptance, they will be submitted to the BOS."

Bell stated that she has to agree with Chair Hunter's statement. She stated that the proposed ordinance presented for a Town Warrant is not an issue to be discussed by the two boards outside of the Town Meeting. She stated that since the Ordinance was voted in at Town Meeting, before BOE comes before the BOS about it, maybe it needs to come before the voters.

Discussions followed about how the two proposals would be presented together at Town Meeting. The BOE would present its proposed changes, and then something else is proposed totally out of the blue. Regardless of how good or bad a proposal is, it would be very difficult for voters to sift through two documents and make a clear decision between each one in such a short time period. The awkwardness of this situation presents a dilemma.

Chair Hunter stated that this dilemma is not the BOE dilemma, as the BOE has gone through the proper process of motions, discussions, and votes. She pointed out the BOS last Monday night that Mike is one of five. She pointed out that everyone participated in the process, sometimes there was agreement, and other times there wasn't agreement. The board's votes are recorded as such. The minutes clearly document why decisions were made as they were made.

Bell voiced curiosity about what aspect the BOS want to discuss.

Chair Hunter responded that from what the BOS said last week, and then correspondence which followed, was to take a look and see if we could come up with some compromises, and make changes.

Bell stated that the intent of the BOE for reviewing the ordinance initially was not to totally undermine what the voters had put in place two years or so ago. Chair Hunter clarified that it was three years ago. Bell continued that it was to try to address those things within the ordinance which were glaring problems, and to try to clarify some issues and items.

Chair Hunter identified that at the time the BOE decided to initiate the review, the ordinance had been in place two and a half years. During that time, the BOE had received one inquiry and one complaint. The BOE felt that in light of time and experience to do a review, and see what should happen, and proceeded from there. It was not because the board had received a deluge of complaints, but it was time to review the Ordinance.

Clark inquired if the meeting with the BOS is supposed to be a private meeting.

Chair Hunter responded that issue was not addressed at the meeting. What was stated as in the article, and the request that Alison Rendinaro get copies of Mike's document, so Barbara can distribute it to the BOE for review, comparison, and develop a document from both documents.

Bell opined that before the board does any further major revision, as previously stated that the board was trying to keep the basic spirit of the ordinance intact, she believes, the board needs to have that directed to the board by the voters.

Chair Hunter agreed that is the only way this can happen. She further stated that if the voters choose to accept the articles, which have had wording changes and will be presented as a Warrant Article at the Town Meeting, it does not mean that in another year they may not bring other articles before the voters.

Bell stated that the original ordinance was discussed at one Town Meeting and was not adopted until the following Town Meeting.

Chair Hunter queried if anyone from the public have any recollection of the details. Chair Hunter recognized Mr. Gale from the audience at this time.

Gale stated, based on personal experience, that a committee was formed to review the original document, which had been developed from review of State and several towns' documents. The committee made very few changes at that time. The document with revisions was brought to the next Town Meeting at which it was voted-on and approved. At that time a recommendation was made to form the Board of Ethics.

Bell stipulated that it is impossible to ask the voters in one meeting to read something which they have never seen before and to make an educated decision in such a short period of time. Even a person with experience with these issues, cannot do that in the short time period allocated for the presentation of a Warrant Article. The Articles could be presented and the voters could decide how to proceed.

Chair Hunter mentioned that it is up to the Selectmen to decide regarding Mike's revision. If the BOS decide not to accept it, then Mike can proceed with the Warrant Article Petition. For the BOE's purpose, it is just a matter of waiting to see how it plays out.

Bell suggested that time-wise it is impossible for the board to return to the review process and have it ready by the time of the Town Meeting. She recommended that the BOE just go with the article revisions as they are for the Warrant Article. Let Mike go ahead and present his own revised articles.

Chair Hunter presented her concerns that the BOE has been charged with this responsibility, which was carried out in an appropriate process, with everybody having input. The integrity of the board should be such that when the board has made a decision and present a proposal, it

should be carried through with that rather than having that pushed aside and another tract taken.

Chair Hunter inquired of the members present if there was further input. A short period of discussion followed. The question was raised whether a motion was needed at this point. It was decided that a motion would be appropriate.

Bell made the motion that the BOE allow the Selectmen to proceed as they wish with the BOE revised articles for the Warrant Article and with whatever Mike's submitted proposal and they can take before the voters. Bell opined that a discussion between the BOE and the BOS is not required. Second None. Vote 3 unanimously in favor of motion. Additional questions were raised followed by more discussion regarding the wording of the motion. Chair Hunter asked Bell to clarify the motion's wording.

Bell reworded her motion to state: That the BOE proceed with the warrant Article as planned. If Mike wants to present his as a Warrant Article, he could do it as a Petitioned Warrant. That is a whole separate activity. Clark seconded. Vote 3 in favor of the motion. Motion passed unanimously.

Bell opined that a conversation between the BOS and the BOE was not required in advance to presenting the Warrant Article to the voters.  
Clark second. Vote taken 3 unanimous in favor.

### **Public Input - 1:**

Chair Hunter inquired if there was any public input at this time.

Gale stated that the most important thing is for the BOE to maintain its integrity, and to be strong and apolitical. He stated that it is unprecedented for the BOS to interfere with a board's function, especially for only one selectman to interfere.

Veisel interjected that it was her understanding that Gelinas' document and the BOE's original document were both based on the Dunbarton Ordinance. When looking at the Dunbarton and the New Durham's document, they are almost parallel.

Gale responded that there were 20 to 30 town ordinances in affect in the State at the time. Most have similarities as they many include some wording from the State's Code of Ethics. The same phraseology is found from one to another.

Veisel reported that having read Mike's proposal that it is very similar to the BOE's proposal. She queried if she had misinterpreted the BOE members' responses to Mike's announcement at the last BOE meeting to present his own proposed revision of the articles. She wondered if the members felt somewhat betrayed by Mike's action.

Bell responded that she had not felt betrayed. She stated that as Mike had been part of the entire Ordinance review process as everyone else. He had the same opportunity to voice his opinions and vote as everyone else as indicated in the minutes. If he felt, he had to take this course of action; he had every right to do so. He has tried to become part of the solution. She stated that some things that the board

went through he agreed with initially. Now he has changed his mind on certain things.

Chair Hunter mentioned that likewise he should not feel betrayed by the committee, either. She also clarified her reaction to Mike's action, when he held up his proposed revision document up at the December meeting. She stated her reaction was that he ought not to have presented the document while he was sitting at the table as a board member. He should have done it as a private citizen not as a board member. She informed those present that at the last Selectmen's meeting Mike's revision was listed on the Selectmen's agenda under boards and committees and not as private citizen presentation. She voiced concern that could give the wrong impression to citizens who might consider that the BOE was trying not to be truthful to the process. Chair Hunter further mentioned that she had received an e-mail with a document which took the original document and identified comparisons between the two document of the similarities and differences. She stated that is when she felt the impression of interference. Questions and discussion of the issue ensued.

Chair Hunter opined the idea that if Mike had presented his document to the board in the beginning, and the board had the opportunity to have gone through it, then make comparisons and dialog from that. The process might have been different.

Weisel commented, that since began attending the BOE meetings in July, she has found that the board has made great efforts in the changes in the articles.

Clark interjected that Mike worked off our document and took word for word and, therefore not the Dunbarton document. She also expressed that her belief the BOS ought to deal with the non-BOE articles.

At this point, Chair Hunter closed this session of the public input session.

#### **Approval of minutes:**

Chair Hunter moved for the review, additions, and omissions in the minutes of the Board of Ethics December 13, 2010. There being none, she asked for a motion to approve the minutes. Motion: Bell. Second: Clark. Vote: 3 unanimously approved.

#### **Old Business:**

Ethics Ordinance Warrant Articles for 2011 Town Meeting.

Chair Hunter reported that right after the last BOE meeting, she went through all the minutes for the revisions, changes, and edits of the articles that the board had completed. She drafted the information calling it Draft 1. She reported that she sent a copy of the draft to Alison Rendinero to find out if this format is O.K., and have not heard from her regarding that. She inquired if the board members had reviewed and had found any omissions or additions and need to make any corrections.

Bell stated that she had read through everything and had a few items. She questioned how could the changes that were made be identified? A discussion ensued as to what method would best enable the voter to make a comparison of what had been changed.

Bell suggested that the part in the original article which was changed should be underlined, as well as, underling any wording change in the proposed revision of the article. The boards members agreed that

this method would enable the voters identify the original from the changes in the articles.

Chair Hunter proceeded to read through Draft 1 of the 2011 Warrant Articles.

**BOARD OF ETHICS ARTICLE 1: PURPOSE:** underlined from the original or even the appearance of one was eliminated in the revision.

**ARTICLE 2: SECTION I B: CODE PROVISIONS**

**B. A Duty to Recuse in Quasi-Judicial Actions:** In the original, there is detailed explanation of quasi-judicial action and descriptions of how this could be applied in cases of conflict of interest.

Revision reads:

**B. A Duty to Recuse:** Explains how conflict of interest can apply in quasi-judicial/judicial and legislative situations. It breaks out the definitions and explanations of each term.

**(i) quasi-judicial/judicial action.**

**(ii) Legislative action.**

**BOARD OF ETHICS ARTICLE 3: SECTION IV: COMPLAINTS:**

In the first sentence of SECTION IV: The Board of Ethics may require.

The proposed change is: The Board of Ethics may request.

In the last sentence of the paragraph: The board may for this purpose administer oaths and require the.

The proposed change would read: The board may for this purpose request.

An additional sentence has been proposed at the end of the paragraph: The Board only can make findings based on evidenced provide.

**BOARD OF ETHICS ARTICLE 4: SECTION IV: COMPLAINTS:**

The Board of Selectman shall appoint a board of no more than 5 nor less than 3 persons, with staggered terms, such board to be named Board of Ethics.

Proposed change to be a new section called **SECTION IV: BOARD OF ETHICS**, with subsequent numbering becoming **SECTION V: COMPLAINTS and SECTION VI: EFFECTIVE DATE:**

**BOARD OF ETHICS ARTICLE 5: SECTION II: DEFINITIONS:**

Propose the addition of three new terms and their definitions to this Section.

The new terms are:

- **Appearance:** The outward impression of how something seems; the way something or someone looks or seems to other people.
- **Misuse:** The incorrect or improper use or misuse or misapplication of information, position,

authority, or influence, as well as Town resources, property, or time by public servant.

- **Official Authority:** The power delegated to an individual by nature of the position that he or she holds.

**BOARD OF ETHICS ARTICLE 6:** Edits for clarification on Page 1; sidebar [**THE CODE**] that currently reads:

No Investments in conflicts with duties

Proposed edit to read:

No investments that conflict with duties

Page 1 sidebar [**THE CODE**] that currently reads:

No Nepotism

Proposed edit to read:

No nepotism

**SECTION I: CODE PROVISIONS I:** that currently reads:

Investments in conflict with Official Duties

Proposed edit to read:

Investments that conflict with Official Duties

**SECTION I: CODE PROVISIONS G:** that currently reads:

**A Duty to Cooperate**

All officials, board members and employee of the Town of New Durham shall cooperate with the Ethics Committee regarding any complaint or inquiry alleging violation of this Code of Ethics.

Proposed change to read:

**A Duty to Cooperate**

All officials, board members, and employees of the Town of New Durham shall cooperate with the Board of Ethics regarding any request for information/guidance or complaint alleging violation of the Code of Ethics.

**SECTION II: DEFINITIONS:** the last two words in the definition that currently reads:

**Firm:** the Ethics Committee.

Proposed change to read:

**Firm:** the Board of Ethics.

**SECTION II: DEFINITIONS:** the last two words in the definition that currently reads:

**Principals:** the Ethics Committee.  
Proposed change to read:

**Principals:** the Board of Ethics.

**BOARD OF ETHICS ARTICLE 7:** for explanatory purposes, to reorder the first two sections in the Ethics Ordinance such that they read **SECTION I: DEFINITIONS** and **SECTION II: CODE PROVISIONS.**

After the completion of the review of the proposed changes in the Ordinance for the 2011 Town Warrant Articles, a discussion ensued regarding the order sequences in the CODE OF ETHICS. It was the consensus that the reordering of the Sections of the CODE OF ETHICS would improve the overall flow of the Ordinance.

Bell made a motion recommending the following changes in the sequence order of the Ordinance Sections.

- **SECTION II: DEFINITIONS:** would become **SECTION I: DEFINITIONS.**
- **SECTION I: CODE PROVISIONS:** would become **SECTION II: CODE PROVISIONS.**
- **SECTION III: EXCLUSIONS:** would remain **SECTION III: EXCLUSIONS.**
- **SECTION IV:** would become the new proposed **SECTION IV: BOARD OF ETHICS.**
- **SECTION IV: COMPLAINTS:** would become **SECTION V: COMPLAINTS.**
- **SECTION V: EFFECTIVE DATE:** would become **SECTION VI: EFFECTIVE DATE.**

Clark second. Vote 3 in favor; unanimously approved to include the proposed sequence changes of the Ethics Ordinance in the 2011 Town Warrant Articles.

Bell volunteered to work with Chair Hunter with the sequence reordering for clarification of the Ordinance.

At the conclusion of the review of the proposed changes in the Ethics Ordinance Warrant Articles for 2011 Town Meeting, Chair Hunter inquired if there were any questions or additional discussion. Hearing none, the meeting continued to the next item on the agenda under **Old Business.**

#### **Ethics Ordinance Education Presentations:**

Chair Hunter explained that Skip had sent her copies of the Education Presentation slides as he would not be present for the meeting. He requested that the board members review the slide for content and



sequence order only. Chair Hunter began placing the slides on the table.

As a result of a persistent, overwhelming, propane chemical odor in the meeting hall, Cathy Orlowicz went to the Town Hall to report the problem. The people in the Fire Station meeting room were experiencing unpleasant symptoms from the propane chemical odor. Upon Cathy's return to the Fire Station, she reported that the BOS suggested that the BOE recess its meeting immediately and move to the Town Hall.

Once in the Town Hall, the BOE resumed its meeting, and continued reviewing the slides. The slides were organized in a sequence which provides for a natural flow for the education presentation. Once the sequencing of the slides was completed, Chair Hunter collected the slides, and will return them to Skip to be completed.

**Public Input-2:**

Secondary to the change in venue for the meeting, the majority of the public had left. This public input was not held.

**Any Other Business:**

Chair Hunter inquired if there was any other business. Hearing none, she moved to the next item on the agenda.

**Schedule Next Meeting: February 8, 2011 at 7:00 PM.**

Chair Hunter reported that she had received an e-mail informing her that the BOE was scheduled for the next meeting at the Fire Station meeting room.

**Adjournment:** Motion- Bell. Second- Clark. Vote unanimously in favor. Adjourned at 9:45 PM.

Respectfully submitted,

Anneleen J. Loughlin, Recording Clerk