

Approved: May 10, 2011

ETHICS POLICY REVISION COMMITTEE
PUBLIC MEETING MINUTES

April 26, 2011

The meeting was called at 7:04 PM in the New Durham Public Library by Dot Veisel, Chair.

Present: Mike Gelinias, Dot Veisel, Katie Woods, Barbara Hunter

Also Present: Mary McHale

Vacancy on Committee: Veisel said Cecil Chase, Town Moderator, is still recruiting to fill the vacancy created when Susan Hoover resigned from the committee on April 12. Members are encouraged let her know of anyone interested in joining the committee.

Approval of minutes: Chair Veisel moved for the review, additions, and omissions in the minutes of April 12, 2011. There being none, she asked for a motion to approve the minutes. Motion: Woods Second: Gelinias. Vote: unanimously approved.

Business: Review of current Ethics Policy

Gelinias suggested that before we review the policy for additions/changes or deletions, we review the Ethics Articles 14-23 in the 2011 Town Warrant for consideration of adoption into the Ethics Policy. It was agreed.

- Article 14 – Hunter shared the rationale to remove “or even an appearance of one” under the purpose section in the Ethics Policy since it is not expected that members to remove themselves even if there is just an appearance but it is expected that they disclose that. Motion to accept the article as written in the 2011Town Warrant: Gelinias. Second: Hunter. Vote unanimously accepted.

The committee agreed that the acceptance of any articles or revisions will be revisited before the final adoption of the policy.

- Article 15 – Discussion included the need to distinguish the difference between quasi-judicial and legislative actions on boards, committees and commissions. Motion to accept the article as written in the 2011Town Warrant: Gelinias. Second: Woods. Vote unanimously accepted.
- Article 16 & 17 – Motion Gelinias to table these two articles and not deal with any issues regarding complaints until the revision process is complete with all other sections in the policy. Second: Hunter. Vote unanimous.
- Article 18 – Discussion included how appearance relates to conflict of interest and a need to provide a clear benchmark so the public and officials have a clear understanding of what is meant by terms that have been found to be confusing.

Motion Gelinas that there is a need to define appearance, misuse and official authority but we wait till the revision of the policy is completed. Hunter motioned to amend the motion to also consider nepotism to be defined because that has been problematic. Second: Woods. Vote unanimous. Gelinas' original motion as amended was brought forward. Second: Hunter. Vote unanimous.

Woods will share the definition of nepotism from the employee personnel policy for discussion at that time. The policy is being reviewed presently.

- Article 19 - Motion to accept the article as written in the 2011Town Warrant: Gelinas. Second: Veisel. Vote unanimously accepted.
- Article 20 - Motion to accept the article as written in the 2011Town Warrant: Gelinas. Second: Woods. Vote unanimously accepted.

Gelinas disclosed that he submitted Articles 21-23 as a private citizen after unsuccessfully trying to have the changes accepted as a member of the Board of Ethics.

Veisel queried committee members as to whether or not they could be impartial when deciding on the following articles. Gelinas and Hunter disclosed their previous involvement on the Board of Ethics, Veisel being vocal as a member of the public during the BOE deliberations and Woods who was a member of the original committee authoring what became the New Durham Code of Ethics. All felt that they could be impartial and ready to go forward.

- Article 21- Woods stated that she has no problem with removing "avoiding appearance" since it is no longer in the purpose and it is a really gray word allowing for different interpretations. Gelinas said he feels that often it is used for political purposes trying to find anything to get someone to step down when there is disagreement on views and to bully.

Veisel referred to a statement by Susan Slack, Esq "in the standards set out in *Atherton v Concord* court cased, the mere perception of a conflict does not require the disqualification of a public official from participating in a decision. The concept of appearance of a conflict of interest is too broad and can lead to unfair results." She would like to see that appearance is contained and a definition that does that.

Gelinas commented that in the past, attorneys Teague and Mayer have highlighted concerns with appearance because it can be carried to extremes.

Woods stated that several policies she's reviewed didn't have the word appearance in them.

Hunter said feels that appearance should stay in and that a definition addressing the concerns voiced already is needed so that people could understand what is entailed. In support she read "The ethical behavior of all public officials and employees is of significant concern to everyone. Not only is it critical for officials and employees to act ethically, it is important to avoid even the *appearance* of unethical behavior." (NH Local Government Center, Knowing the Territory 2010 Edition, page 207.) She noted that in our policy it states to avoid when possible the appearance of conflict of interest. It is found often to set that standard.

Hunter also referenced the following from page 3 in the handout from the NH Municipal Lawyers Association Ethics and Local Governments seminar on April 4, 2011 that she and Veisel attended. "The increase in the number of states with ethics policies, committees, and commissions reflects the growing public demand for higher standards and for legislators to recognize "that they need to confront the appearance of conflicts of interest between their private and public duties."

Discussion continued with various interpretations and examples of the appearance of conflict of interest. Veisel emphasized to be useful; we must clearly define what an appearance of conflict looks like and tie it to disclosure.

Woods said as an employee, it is difficult for her to apply this provision. She emphasized that it is important that employees be protected and actions are in the best interest of the town. She questioned since there are various employee policies under different departments and the town policy, "what trumps what?" Veisel said they should meld together.

Gelinas made a motion that the appearance of conflict of interest be removed from Section 1 A. i and added to provision C. in the title to read, A Duty to Disclose a Conflict of Interest or Even an Appearance of One.

Hunter noted that there is a difference between the two as under A I it says "to avoid when possible the appearance of a conflict" and the other is saying not only does one need to disclose a conflict of interest but needs to disclose even the appearance of one.

Gelinas wants the change to include as many people as possible on boards and commissions so they won't need to step down when there is an appearance of a conflict of interest.

After discussion and there not being a second, he withdrew his motion.

Discussion continued referencing materials and seminar positions when including the appearance of conflicts of interest from both perspectives.

Woods said she doesn't like the word appearance thinking there are too many tangents off of it. It should be kept simple, basic and common sense.

Motion to accept Article 21: Gelinas. Second: Woods. Vote 3 for, Hunter opposed. Article accepted.

- Article 22 – Since the statement in the warrant was incorrect, Section 1A ii was read from the Code of Ethics (now policy).

Gelinas stated that someone can't be on a board and still be in the position of his or her employment.

Hunter said it means that someone could be on a board but should a client of his or hers come before the board, he/she must step down.

Gelinas read from NH Local Government Center, Knowing the Territory 2010 Edition page 219, “The conflict of issue — whether an official is disqualified to make a particular decision — is often confused with the issue of whether a person is disqualified from holding office at all. Is it proper for a real estate broker to be on the planning board? If a realtor represents a developer, he or she obviously cannot vote on that developer’s application before the planning board. But the realtor certainly is not ineligible to be a member of the planning board simply because he or she is a realtor . . .” His stated that the purpose of his article is to spell out the steps when someone can be on the board and represent a client.

Woods questioned how someone could represent a client when as a board member has information learned on the board. Members voiced when boards are run open and ethically all information are publically known.

Weisel stated the issue is can you work or serve? Woods commented that when she served on the original ethics committee she had a real problem with that because there were a lot of people in town who wanted to serve on boards who had businesses that went hand-in-hand with boards. They got off when the Ethics Ordinance was passed.

Hunter emphasized that someone can’t remain on the board and represent a person coming before the board on an issue that is being deliberated by the board. She referenced “A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest. “ NH Local Government Center, Knowing the Territory 2010 Edition, page 208. We want to make sure the interest of the public is protected.

Motion to accept the Article 22 as written in the 2011Town Warrant Gelinas. Second: Woods. Vote3 for, Hunter opposed. Article accepted.

- Article 23 - Before discussing this article, Gelinas asked Woods if she was one of those involved in the situation against whom the first complaint was submitted to the Board of Ethics a year ago as the article relates to that. Woods as well as, Weisel disclosed in the affirmative. Hunter and Gelinas were both on the BOE at that time.

Gelinas stated that the way the policy is now written can be misused. He questioned if we should be even including electioneering. He asked, what constitutes misuse?

Hunter emphasized that it is spelled out here as a guideline or standard and that there are other ways that someone can influence an election other than simply misusing ones time and town property.

Gelinas referred to provisions vi and vii as addressing the other ways to influence or misuse.

Woods said that the policies that were distributed by Alison Rendinaro at the last meeting did not include this issue.

Weisel doesn’t see the difference between the original and the suggested change. Reading misuse means abuse.

Gelinas stated that public servants should be able to electioneer on their own time and some people feel town officials even on their own time have influence.

Motion to accept the article as written in the 2011Town Warrant: Gelinas. Second: Woods. Vote3 for, Hunter opposed. Article accepted.

For Next Meeting: Dot will have the above accepted changes made to the draft policy and copies emailed out to the committee before the meeting. The agenda for that meeting will be to address revisions and definitions up to Section IV Complaints.

Next Meeting: The scheduled meeting for Monday, May 2 is cancelled as Gelinas will be out of state. The next meeting will be Tuesday, May 10 at 7:00. Place to be announced. The committee would like to consistently meet in the Town Library.

Adjournment: Motion to adjourn: Hunter. Second: Veisel. Vote unanimously in favor. Adjourned at 9:30 PM.

Respectfully submitted,

Barbara Hunter, Secretary

A video recording of this meeting is on file with the Office of Town Clerk, is available for public viewing during normal business hours, and will be retained in accordance with the New Hampshire Municipal Records Board rules established under RSA 33-A:4, or for a minimum of 24 months.