

Approved: October 11, 2011

ETHICS POLICY REVISION COMMITTEE

PUBLIC MEETING MINUTES

September 27, 2011

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

Present: Carol Allen, Mike Gelinias, Dot Veisel, Barbara Hunter

Also Present: Mary McHale, David Bickford

Approval of Minutes: Chair Veisel moved for the review, additions, and omissions in the minutes of September 13, 2011. There being none, motion to approve: Gelinias. Second: Veisel. Vote: unanimously approved.

Business:

Chair Veisel distributed a sheet outlining her visioning of the Section V: Inquiries noting that on the present Policy Work In Progress document, the number needs to be changed to V and not VI. Gelinias commented that he thought that to be Ethics Committee would establish the procedures. Hunter agreed stating that this committee needs to put the guidelines in the policy but there can be major considerations, e.g., non-public screening of complaints when people are identified. She distributed her points to consider under inquiries and complaints with references to the Board of Ethics Rules of Procedure from the Town website.

Discussion followed as to how inquiries and complaints should be dealt with by the committee as well as whether or not complaints should be included. Veisel's vision is that the committee would receive inquiries as a fact finding status and it then would be the decision of the applicant to bring it complaint status. Once it became a complaint, it would go to the Board of Selectmen. Thus the committee wouldn't be hearing complaints.

Gelinias suggested that in Section IV the last bullet be changed from hear complaints to screen complaints. Hunter asked since this committee talked about the Ethics Committee being a sounding board wouldn't that also be a hearing? Gelinias felt a screening is the same as sounding board.

Discussion reflecting back to previous meetings included issues of the committee deciding if a complaint has merit, whether the respondent should be notified that a complaint has been received and he or she was identified. Veisel asked could a complaint be screened without a respondent.

Gelinias stated that his vision is that the complainant could come before the committee and all the committee does is decide if the situation described is covered in the Ethics Policy and states what that section is. That finding would be put in writing to the BOS. Veisel, said that if she was the respondent and

not been made aware of it, it would be a violation of her rights. Gelinas commented that advice would be given and not a determination.

Bickford, from the floor stated that the EC would not be dealing with complaints. It would be like prepping them for the next step in the process. Lengthy discussion followed that even if the committee is limited to inquiries, there should be advice included in a complaints section as to the steps to follow when there are complaints. Gelinas suggested first going through the regular avenues with complaints, for example department heads etc., then to the BOS but the committee could be asked to sit in on any BOS hearings.

Allen suggested one section including both inquiries and complaints. Hunter referred to page 3 of the BOE's Rules of Procedure which did a similar combination. Veisel asked, once a person decides to pursue a complaint do they just go to the BOS? Hunter stated all are encouraged to go through the proper lines of command with a concern but when it is felt the issue wasn't fairly resolved the EC would be a place where someone could bring their concern and be heard. Members were referred to page 1 last paragraph of the Ethics Policy.

Much discussion ensued asking what real power the EC has. Hunter asked, what kind of satisfaction or outcome is expected when someone feels they really weren't fairly dealt when they went through the proper channels and they come before the committee? Veisel stated that she has emailed requests for information to the Office of Public Integrity and the State Attorney General's office related to this issue. She is still waiting for a response from the Town attorney regarding her request sent a month ago.

Gelinas offered another option; the EC holding a joint meeting with the BOS and after the hearing the EC steps out for a deliberation and offers of written opinion to the selectmen before they make their determination. He stated that it probably would be a non-public hearing unless the person accused requests a public meeting.

Hunter referred to the purpose of the committee regarding resolving complaints on page 1 last paragraph. Veisel wondered what would compel the BOS to take a second look at a complaint if the complainant was dissatisfied with how it was dealt with in the first place. Hunter and Veisel supported the committee advocating for a review, Gelinas disagreed. Allen felt the committee's role should be a sounding board to provide advice lacking legal authority but could go along with the person to the BOS should he or she feel intimidated. Bickford, from the floor, said the committee becomes an advocate. Veisel replied there needs to be an advocate for the process, not the individual with an absolutely unbiased approach. Bickford said if the committee is going to try to resolve an issue it is going to cost the town a lot of money. Stating that the committee doesn't have the power to make a resolution; if people are dissatisfied they can go to Superior Court.

Mary McHale, from the floor, commented that the EC should be empowered and it sounds like it isn't.

Allen stated that the committee does not have the power to resolve an issue. Hunter said that being the case, this committee needs to go back to the last paragraph, page one under purpose and review the following: ". . . and it establishes a course of action for resolving disputes in a manner that is fair to all of

the parties involved.” Gelinas felt that establishing a course of action might be first going through the regular avenues with complaints and then to the BOS followed by an appeal to the Superior Court if needed. Gelinas and Veisel stated the committee establishes a course of action but would not be responsible for a resolution.

Allen suggested that the “. . . ” section be removed and the sentence read, “This code establishes a process by which one may obtain guidance regarding potential ethical issues.” Chair Veisel asked members to weigh in regarding consensus. Gelinas said he would like to see under a complaints section (1) the complainant shall exhaust all other avenues available within town government prior to going to the BOS (2) complaints will be handled by the BOS (3) all appeals will go to the Superior Court. He noted that the BOS can be bypassed directly to Superior Court. Thus establishing the procedure and the sentence wouldn’t need to be changed and the complaints section is limited to those steps.

Chair Veisel summarized that the committee would deal solely with inquiries and the BOS with complaints. Discussion continued with reviewing the various options shared during the meeting. A consensus was not reached.

As a result, it was decided if the Ethics Committee is going to deal with complaints, several questions need to be answered by the Town attorney dealing with: rights of complainants and respondents, the role of the EC under a policy and the advocacy role of the EC at a hearing with the BOS and offering an opinion in writing to the BOS before their deliberation of the complaint. She will meet with the Town Administrator to submit those questions to Town counsel to be followed up with a phone call with her and then a written response to the questions to be shared with the committee prior to the next meeting.

Chair Veisel asked if there is a need to define volunteer and complainant. Consensus was reached not to include them. She summarized the roles that she felt are of the EC as: to clarify, to educate, to advise and to be an advocate.

Next Meeting: Tuesday, October 11, 2011 providing Chair Veisel hears from Town counsel, if not, the meeting will be delayed until October 25.

Adjournment: Motion – Gelinas, second – Allen. Vote unanimously in favor. Adjourned at 9.18 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.