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2 TOWN OF NORTH HAMPTON, NEW HAMPSHIRE  
3 SELECT BOARD  
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5 ***MINUTES APPROVED 07/27/2009***

6 REGULAR MEETING – MONDAY JUNE 8, 2009 –7PM

7 MARY B HERBERT CONFERENCE ROOM  
8

9 *These minutes were prepared as a reasonable summary of the essential content of this*  
10 *meeting, not as a transcription.*  
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12 **1. Call to Order & Call of the Roll**

13 Chair Salomon called the meeting to order at 7:07 PM. Those in attendance were Selectman  
14 Coutu and Selectman Rineman.

15 Chair Salomon asked Ms. Facella if the meeting had been properly posted, and she responded in  
16 the affirmative.

17 Chair Salomon invited those in the audience to join the Select Board in the Pledge of Allegiance  
18 if they wished to do so.

19 **2. Presentation**

20 **2.1. Commendation for Ryan Quinn**

21 Chair Salomon stated that Mr. Quinn had not arrived yet and the Select Board agreed to  
22 proceed to the next item on the agenda and take up Mr. Quinn's commendation when he  
23 arrived.

24 **3. Consent Calendar<sup>1</sup>**

25 **Motion by Selectman Coutu to accept the Consent Calendar. Seconded by Selectman**  
26 **Rineman. Motion carries 3-0.**

27 **4. New Business**

28 **4.1. Cable Ascertainment Hearing – Atty. K. Miller**

29 Attorney Katherine Miller of the law firm of Donahue, Tucker & Ciandella reviewed the  
30 Cable Franchise renewal process with the Select Board and stated that the Cable Franchise  
31 renewal process is governed by Federal law.

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**THIS LOCATION IS HANDICAPPED ACCESSIBLE. THOSE WISHING TO ATTEND WHO ARE HEARING OR VISION IMPAIRED  
MAY MAKE THEIR NEEDS KNOWN BY CONTACTING THE AT TOWN HALL 964-8087**

<sup>1</sup> These items are routine in nature and are approved without discussion. Should a member of the Board request to have an item removed, it shall be placed on the agenda under new business. The consent format is to expedite the business of the Board when adequate backup material has been provided.

32 Attorney Miller suggested that the process begin with a Franchise Compliance Audit with  
33 records being gathered and analyzed so that Attorney Miller can draft audit questions for  
34 Comcast. Attorney Miller noted that questions will also be drafted for Town officials and  
35 staff so that answers from Comcast and the Town can be compared to determine if there are  
36 areas of non-compliance or matters that warrant a follow-up.

37  
38 Attorney Miller stated that there will be a Public Ascertainment Hearing and that one way  
39 to reach members of the community on the cable franchise work that the Town is  
40 undertaking is to develop a short, two paragraph description of that work and use the  
41 information for a press release to local media as well as broadcast on Channel 22. It was  
42 also suggested by Attorney Miller that the Town should make an effort to work with school  
43 administration to identify persons who might provide valuable input in a public hearing.

44  
45 Attorney Miller next spoke about the formal process required to begin a public  
46 ascertainment process, and that it had to begin within six (6) months of the renewal notice  
47 provided by the cable operator. North Hampton must begin its process by August 9, 2009.  
48 Failure to begin the public ascertainment process within those six months means that the  
49 Town would be unable to avail itself of the formal renewal process. For purposes of  
50 negotiating leverage, it is important that the Town reserve its rights under the formal  
51 process.

52  
53 Attorney Miller stated that work should be done to craft a statement of the objectives of the  
54 committee and the presentation of that statement through local media and the community  
55 at large. Work in this area will involve consultation with municipal departments, all school  
56 departments, police and fire departments and other community or business groups which  
57 the committee identifies as having an interest in the telecommunications infrastructure of  
58 the Town.

59 **Motion by Selectman Coutu to close the public hearing at 7:40 PM. Seconded by**  
60 **Selectman Rineman. Motion carries 3-0.**

61  
62 4.2. Public Hearing on Unanticipated Revenue - \$19,599.00 FEMA Reimbursement

63 **Motion by Selectman Coutu to accept the \$19,599.00 FEMA Reimbursement.**  
64 **Seconded by Selectman Rineman. Motion carries 3-0.**

65  
66 4.3. Appointment of Zoning Board of Adjustment Alternate Member – ZBA Recommendation: D.  
67 Buber

68           **Motion by Selectman Rineman to appoint David Buber as an alternate member of**  
69           **the ZBA for a term to expire May 31, 2012. Seconded by Selectman Coutu. Motion**  
70           **carries 3-0.**

71           4.4. Transferring Tax Deeded Properties to the Conservation Commission

72           Chair Salomon explained that there are four (4) pieces of property in North Hampton that  
73           were tax deeded to the Town in 2007 and the Conservation Commission has asked for them  
74           for conservation land.

75           **Motion by Selectman Coutu to transfer the following parcels to the Conservation**  
76           **Commission: Map 3-32; Map 15-8; Map 12-29; and Map 9-4. Seconded by Selectman**  
77           **Rineman.**

78  
79           Chuck Gordon asked the Chair if the Conservation Commission was allowed to hold title of  
80           the property or should it be the Town.

81           The Board decided that this should be reviewed before transferring and the Chair asked for  
82           a motion to withdraw the motion.

83  
84           **Motion by Selectman Coutu to withdraw the motion to transfer the following**  
85           **parcels to the Conservation Commission: Map 3-32; Map 15-8; Map 12-29; and Map**  
86           **9-4. Seconded by Selectman Rineman. Motion carries 3-0.**

87  
88           **Motion by Selectman Coutu to table item 4.4 until further information regarding**  
89           **the transfer is received. Seconded by Selectman Rineman. Motion carries 3-0.**

90  
91           4.5. Request to Change Town Checking and Repo (Sweep) Accounts- P. Holbert

92           Town Treasurer Penny Holbert requested authorization from the Select Board to change the  
93           Town's current checking account and overnight investment account structure at Citizen's  
94           Bank.

95           The proposed change in accounts would be an interest earning checking account along with  
96           a non-interest earning account for the compensating balance. Excess cash would continue to  
97           be invested in certificates of deposit, and the proposed plan would increase the Town's  
98           interest earnings on the balance needed for immediate expenditures.

99           The Town's current Sweep account is earning 0.18%, which is less than the proposed  
100           change. The Town's compensating balance would remain at \$100,000.00. **Motion by**  
101           **Selectman Coutu to accept the recommendation of Town Treasurer Penny Holbert**  
102           **to move the repo account to a checking with interest account at Citizens Bank.**  
103           **Seconded by Selectman Rineman. Motion carries 3-0.**

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4.6. Code of Ethics Complaint Against J. Arena – P. Simmons

Chair Salomon outlined the procedures for the Code of Ethics hearing that the Select Board would be following.

Chair Salomon asked Selectmen Coutu and Rineman if they had reviewed the Rules of Procedure and the changes that were adopted, and they both stated that they had. Selectman Rineman asked Chair Salomon if the Board was addressing the first matter in the complaint letter or would they be taking up the other five complaints addressed. Chair Salomon stated that the letter that was received from Mr. Simmons came in after the original complaint so only the first complaint would be taken up at the hearing if the other Board members were in agreement. Selectman Coutu and Selectman Rineman both agreed.

Chair Salomon stated that the complainant will have five (5) minutes to present the complaint. Chair Salomon stated that the Select Board may question the complainant during any time of their argument, and questions will be limited to the complainant. Chair Salomon stated that the respondent which the complaint is filed on will then have five (5) minutes to explain their case, and that the Select Board may question the respondent with questions being limited to the individual.

Chair Salomon stated that after hearing both arguments, the Select Board may call any witnesses that it feels will provide relevant information to either side's argument. After the Select Board has heard and read all relevant testimony and evidence it will begin deliberations. The Select Board has the right to recess the proceedings at any time by a majority vote.

Chair Salomon stated that after deliberations and any consultations with legal counsel the Chair will call for a vote on the charges, and the Board shall conclude by recorded vote in accordance with RSA 91-A:3, II (c) that:

- No action is appropriate because there is not clear and convincing evidence that improper conduct occurred; or
- There was improper conduct based on clear or convincing evidence, but such conduct does not justify formal disciplinary action and should be resolved by informal methods; or
- There was improper conduct based upon clear and convincing evidence, and the improper conduct was of a serious nature so as to warrant formal disciplinary action, which includes but not limited to:
  - A public censure

- 140                                   • Removal of office pursuant to applicable state statutes  
141                   ▪ The Select Board shall submit a summary report of the deliberations  
142                   regarding the complaint and its findings as follows:  
143                                   • The Town Administrator, to be kept on file  
144                                   • The Town Clerk – Tax Collector  
145                                   • The Committee on which the individual charged serves  
146       ➤ If the Select Board determines that any filing of a complaint was in bad faith or is  
147           determined to be frivolous, the Board may take such actions as it deems appropriate  
148           against the complainant.

149  
150       Selectman Coutu stated that one of the troubles he has with trying to adjudicate the  
151       matter is if the document is not precise and does not provide guidance. Selectman Coutu  
152       raised two technical points. The document is binding from a Code of Ethics point of view  
153       on municipal employees and officials, whether elected or appointed. Selectman Coutu  
154       stated that one of the factual questions that may arise should the Board go forward is  
155       whether or not Dr. Arena was speaking as a member of the Planning Board or as a  
156       private citizen. Selectman Coutu stated that point needs to be made clear.

157  
158       Selectman Coutu stated that his second technical question is the issue of a phrase or  
159       term used to describe Mr. Simmons. He further stated in reviewing the Code of Ethics  
160       its prohibited nature seems to be codified in a whereas clause. Selectman Coutu read  
161       aloud the three whereas clauses in the Code of Ethics. He further stated that there is a  
162       drafting disconnect between the recital in the third whereas clause which goes to the  
163       issue of innuendos and derogatory comments to the actual prohibitions in the document.  
164       Selectman Coutu stated while the intent was to prohibit such conduct that is contained  
165       in the whereas clause, the document itself does not speak to the consequences arising  
166       from an allegation that meets the whereas clause as he recited. He further stated that it  
167       is a difficult issue between hearing a situation which is presumably going to fall in the  
168       whereas clause that refers to innuendos and derogatory comments, and then looking at  
169       the document and being able to point his finger and say that action, or that comment was  
170       an act that was specifically prohibited, precluded, or otherwise identified in this Code of  
171       Ethics as being improper conduct. If the document that the Board is being asked to  
172       render decision on, does not provide guidance that one can point to clearly and say the  
173       consequence of that act is Section “whatever,” then he is unsure how the Board can  
174       adjudicate the matter. He further stated that he considers the document inconsistent

175 internally and the Board is being asked to make a substantiative decision on the  
176 complaint as it was filed.

177  
178 Selectman Rineman agreed with Selectman Coutu that the document was imperfect, but  
179 stated that the people voted for it however imperfect it is. Until there is another vote on  
180 a better document, the peoples wish is this document is used to settle a conflict.

181  
182 Chair Salomon stated that he has struggled with the disconnect with the whereas clause.  
183 He further stated that he does see some merit in Section 2.1 which states affirmatively  
184 what the duties of the officials are, and therefore he does not have a jurisdictional  
185 question.

186 Chair Salomon stated that he feels that the spirit of the Code of Ethics distinguishes  
187 whether an official is speaking as a citizen or a board member.

188  
189 Chair Salomon stated that when the document was being written, the impetus behind it  
190 was a feeling that was strongly expressed that public officials should be held to a higher  
191 standard, and if that is the case that higher standard is not selective.

192  
193 Chair Salomon asked Selectman Rineman and Selectman Coutu if they felt the Board  
194 had any jurisdiction over this part of the complaint.

195  
196 Selectman Rineman stated that he agreed with Selectman Coutu that this was an  
197 imperfect document, however the people voted by a large majority to approve the Code of  
198 Ethics.

199  
200 Selectman Coutu agreed with Selectman Rineman, but questioned the Chair as to the  
201 matter as falling within the provisions of section 2.1. Selectman Coutu read from  
202 section 2.1 and further stated that Dr. Arena was not speaking as a representative of the  
203 planning board or any other board he may sit on, and therefore he disagrees with using  
204 section 2.1 for this matter as it states clearly that it is a proviso as to how one conducts  
205 themselves when acting in official capacity.

206  
207 Chair Salomon asked for a motion on whether or not the Board has jurisdiction over this  
208 matter, and also stated that the Chair will not vote unless it is to break a tie.

209

210 **Motion by Selectman Rineman that the Board take jurisdiction of the matter**  
211 **before them regarding the Town's Code of Ethics. Seconded by Selectman**  
212 **Coutu for discussion. Chair Salomon stated that the motion has been moved**  
213 **and seconded based on the whereas clause that the Board has jurisdiction.**

214 Selectman Coutu stated that he would like the Board to vote that they are citing the  
215 whereas clause as the basis for jurisdiction of this matter. He further stated that if both  
216 Dr. Arena and Mr. Simmons, notwithstanding the technical difficulties of the document,  
217 are willing to go forward, then he felt that desire or right ought to prevail over the  
218 technical aspects that he had raised. He further stated that if both parties want to move  
219 forward and have the matter heard, then he would concede that jurisdiction is  
220 appropriate based on their interest.

221  
222 Chair Salomon polled Mr. Simmons and Dr. Arena and asked if they would like to go  
223 forward. Both Mr. Simmons and Dr. Arena agreed.

224  
225 **Motion by Selectman Coutu to amend the motion to include that Mr. Simmons**  
226 **and Dr. Arena were polled and have asked to go forward. Seconded by**  
227 **Selectman Rineman. Amendment carries 2-0 with the Chair abstaining. Chair**  
228 **Salomon asked for a motion on the vote as amended. Motion carries 2-0 with**  
229 **the Chair abstaining.**

230  
231 Chair Salomon asked Selectman Coutu and Selectman Rineman if they felt the need to  
232 have a preliminary investigation which would delay the matter for another two weeks.  
233 Both Selectman Coutu and Selectman Rineman stated that this should move forward  
234 and no preliminary investigation is needed.

235  
236 **Motion by Selectman Rineman to only consider the complaint on the April 9,**  
237 **2009 Select Board meeting comment by Dr. Arena. Seconded by Selectman**  
238 **Coutu. Selectman Coutu wanted it noted for the record that at a minimum the**  
239 **May 2007 matter predates the Code of Ethics and therefore is not relevant to**  
240 **this meeting. Selectman Rineman stated that there was a Code of Ethics that**  
241 **was adopted in 1995. Chair Salomon polled Mr. Simmons and Dr. Arena and**  
242 **asked if they wished to have all four complaints heard or just the April 9, 2009**  
243 **complaint heard. Mr. Simmons and Dr. Arena agreed that all four complaints**  
244 **should be heard.**

245 **Motion by Selectman Coutu to waive a preliminary investigation in the matter**  
246 **that is before the Board of Dr. Arena and Mr. Simmons. Seconded by**  
247 **Selectman Rineman. Motion carries 2-0 with the Chair abstaining.**  
248

249 Chair Salomon called the public hearing to order at 7:50 PM and stated that he would  
250 read the complaint from Mr. Simmons and then ask Mr. Simmons to sign the complaint  
251 as the copy before him was not signed.. Chair Salomon asked Mr. Simmons if the  
252 complaint he read was the complaint that he wrote. Mr. Simmons stated that it was.  
253 Chair Salomon then asked the Board if he would like Mr. Simmons to sign a copy and  
254 they stated yes. Mr. Simmons relied upon his written complaint.

255  
256 Chair Salomon asked Mr. Simmons to go to the podium and that he had five minutes in  
257 which to present his case.

258 Chair Salomon then called Dr. Arena to the podium and stated that he had five minutes  
259 in which to present his case. Dr. Arena asked Chair Salomon to recuse himself as he has  
260 represented Mr. Simmons in the past. Chair Salomon stated the he felt it was important  
261 for him to sit as this was the first test of the Code of Ethics and that he would not vote  
262 unless there was a tie.

263 Dr. Arena stated that any comments that he made at a public meeting were as a citizen  
264 and not as a member of any board. Dr. Arena explained that on the night of the Select  
265 Board meeting of April 8, 2009, Chair Salomon asked for any comments, pro or con on  
266 Mr. Simmons as a candidate for alternate to the Conservation Commission. Dr. Arena's  
267 stated he was answering Chair Salomon's request for any comments that were "con," and  
268 that he was merely making a statement as a citizen regarding Mr. Simmons being a  
269 bully.

270 Dr. Arena stated that when he spoke to Selectman Rineman at Select Board meeting and  
271 told him that he was going to speak slowly, he stated that because he has a tendency to  
272 speak fast, and that he was making it a point to speak more slowly.

273 Dr. Arena stated that he was at an informal meeting when he asked the question "what  
274 idiot sponsored that?" when referring to the statement regarding the term Selectman  
275 being changed to Select Board. Dr. Arena stated that he was giving his opinions which  
276 are subject to the First Amendment of our Constitution that says he has a right to free  
277 speech and to render an opinion as a citizen.

278 Dr. Arena stated that when he was at the May 2007 ZBA he was not allowed to speak  
279 and that when he sat down he spoke to Phil Wilson in a low voice, referring to Susan



280 Smith, and said “she’s an idiot.” Dr. Arena stated that he was speaking only to Mr.  
281 Wilson, and to no one else.

282 Dr. Arena stated that there is no cause for him to be accused by his accuser because he  
283 spoke as a citizen. He further stated that the Board must look at this as a frivolous  
284 complaint which is very serious and if necessary he will carry it on.

285  
286 Chair Salomon asked Selectman Coutu and Selectman Rineman if they had the need to  
287 call any additional witnesses. Neither Selectman Coutu nor Selectman Rineman had  
288 any.

289 Selectman Rineman stated that he felt that Dr. Arena violated section 3.04 (b) of the  
290 Code of Ethics. Chair Salomon suggested that because section 3.04 (b) calls for a  
291 preliminary investigation which the Board has waived, that section 4.02 (f) iii would be  
292 more appropriate. Selectman Rineman and Selectman Coutu agreed with Chair  
293 Salomon.

294 Chair Salomon stated that the informal procedure should be to find that some or all of  
295 the alleged comments were made, and that all public officials, himself included, should  
296 take the whereas clause to heart, and refrain from making any kind of personal attacks.

297  
298 **Motion by Selectman Rineman to submit a letter to Mr. Fournier that having**  
299 **gone through the hearing, the Board decided in this case there may have been**  
300 **improper conduct based on clear, convincing evidence, but does not justify**  
301 **disciplinary action and should be resolved by informal methods, and that the**  
302 **Board has had the discussion that those informal methods would be that the**  
303 **Board would ask all of the town employees and citizens who sit on boards,**  
304 **committees and commissions to keep in mind the whereas clause regarding**  
305 **being civil to their fellow citizens. Motion fails.**

306 **Motion by Selectman Coutu to, based on testimony given, and based on his**  
307 **recollection of what was said, there were in his judgment comments made that**  
308 **clearly were, however said, would have been better if they had not been said,**  
309 **suggest the Board agree simply to ask Dr. Arena to be conscious of fact that**  
310 **there is a provision in the Code of Ethics whereas clause that should be**  
311 **avoided, and everyone should avoid comments and language that might be,**  
312 **because the whereas clause considered either offensive or pejorative, and**  
313 **because the whereas clause exists that the Board would ask that it be**  
314 **purported with, in respect to, any future meetings whether it be as an official**  
315 **in office sitting on the board or as a citizen with respect to making comments**

316 at a public meeting. He further stated it should be made clear that there is a  
317 specific provision in the Code of Ethics in the whereas clause that seeks to  
318 prohibit innuendoes, inferences and derogatory comments and simply ask Dr.  
319 Arena to be more mindful of the whereas clause in future meetings and  
320 participation he may be involved in. Motion by Selectman Coutu to also  
321 provide a summary report of the discussion. Seconded by Selectman Rineman.  
322 Motion carries 2-0 with the Chair abstaining.

323  
324 Phil Wilson asked to be recognized and read a summary of three Supreme Court  
325 decisions.

326  
327 Don Gould asked to be recognized and stated that the cases Mr. Wilson read are libel  
328 cases and the matter discussed was not a libel case.

329

330 **5. Items Laid on the Table<sup>2</sup>**

331 5.1. Select Board Rules and Procedures

332 5.2. Personnel Policy Review

333 5.3. Review of Forms of Government

334 No votes or action taken.

335 **6. Report of the Town Administrator**

336 Town Administrator was out of town and therefore no report.

337 **7. Minutes**

338 7.1. Regular Meeting May 11, 2009

339 Motion by Selectman Coutu to accept the May 11, 2009 minutes with the changes  
340 noted. Seconded by Selectman Rineman. Motion carries 3-0.

341 7.2. Regular Meeting May 27, 2009

342 Motion by Selectman Coutu to approve the May 27, 2009 minutes with the change  
343 on line 46 to insert the word "carry" after the word "which." Seconded by  
344 Selectman Rineman. Motion carries 3-0.

345

346 **8. Adjournment**

347 Motion by Selectman Coutu to adjourn the meeting at 9:15 PM. Seconded by  
348 Selectman Rineman. Motion carries 3-0.

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<sup>2</sup> Items laid on the table shall remain on the table until a member of the Board of Selectmen makes a motion to remove such item from the table.

350      Respectfully submitted,  
351      Janet Facella