



TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
SELECT BOARD
MINUTES

REGULAR MEETING – MONDAY, FEBRUARY 14, 2011 –7PM
TOWN HALL

1. Non-Public Session Pursuant to RSA 91:A-3 II (a) (c) 6:45 PM

Motion by Selectman Maggiore to seal the minutes from the Non-Public Session. Seconded by Chair Wollmar. Motion carries 2-0.

2. Call to order

Chair Wollmar called the meeting to order at 7:00 PM. Those in attendance were Selectman Jim Maggiore and Town Administrator Steve Fournier. Selectman Jon Rineman was absent due to illness.

Chair Wollmar invited those in attendance to join in saluting the flag.

3. Approval of Minutes of Previous Meetings

Regular Meeting January 24, 2011

Motion by Selectman Maggiore to accept the regular meeting minutes from January 24, 2011. Seconded by Chair Wollmar. Motion carries 2-0.

4. Consent Calendar

Motion by Selectman Maggiore to accept the items on the Consent Calendar. Seconded by Chair Wollmar. Motion carries 2-0.

5. Report of the Town Administrator

Town Administrator Fournier commended the Recreation Department and Commission for a successful Winterfest. Various events on January 29 were well attended and an inordinate amount of work was done to pull it off and it was a complete success.

With the number of snowstorms as of late, the firefighters have had to come in during their off time in order to shovel out the fire hydrants around town. Residents are encouraged to lend a hand and help clean them out.

The Public Works Department has seen some overages in their budget. The overall bottom line budget is okay, however there are a number of lines over including part time salaries, contract snow plowing and equipment maintenance. A contractor has been hired to come in to clear off the roofs of the municipal buildings due to the heavy snow load and the large amount of ice that was built up.

Town Administrator Fournier stated to the Select Board that there are a number of proposed bills in the legislature to reform NH Retirement System.

The Governor will be presenting his proposed budget for the biennium beginning July 1, 2011, on Tuesday, February 15, 2011. Town Administrator Fournier will keep the Select Board posted on any reductions in revenues coming to municipalities and any other developments.

Discussions have been held with employees that are not covered under a collective bargaining agreement, and those changes will be proposed to change the personnel policy.

6. New Business

6.1 Code of Ethics Public Hearing

Selectman Maggiore stated that he was the Select Board representative to the Ethics Committee, and introduced fellow committee member George Lagassa who would be giving a presentation of the proposed Code of Ethics. Selectman Maggiore stated that members of the Ethics Committee included: Robert Hamilton, Phil Wilson, Jim Maggiore, Steve Fournier as well as himself.

Mr. Lagassa stated that his intent was to present what the content is of the Code of Ethics, and to give a brief overview on how this got started.

Mr. Lagassa stated that there were concerns raised in 2010 Deliberative Session and the Code of Ethics had been put forth to be voted on at that time, but it was decided not to go forward with it and rescind the old one and replace it with a new one. The general feelings at the Deliberative Session was that there were some problems with it primarily whether or not it limited free speech and there was also the thought that perhaps adjudication enforcement procedures required more thought than what was given. The result was that the old procedure was repealed and a new committee was designated to come up with a new Code of Ethics in 2011.

Mr. Lagassa stated that in addition to the members outlined above, there were provisions made that the general public should be invited to join, and there were no "takers."

Mr. Lagassa stated to the Select Board that he would illustrate the principles that the committee adopted and what he hopes have been built in to this Code of Ethics. He further stated that the evolving principles were the "KISS" policy, or "Keep It Simple Stupid" policy, consolidation of multiple codes, value brevity, promote civility, and protect the right to free speech and self enforcement. Mr. Lagassa stated that the committee encouraged a positive ethical culture, and not to simply state not just what we stand against but what we stand for. He further stated that the committee felt that a standing committee should be appointed at the start of the year before anybody claims that there is a ethics violation.

Mr. Lagassa read the following articles : Article IV.-Sustaining an Ethical Culture, Article I. – Preamble, Article II.- Purpose, and Article III. – Respectful and Responsible Contact, Article V. – Code of Ethics, Article VIII. – Enforcement and Adjudication of Complaints A copy of the draft Code of Ethics is attached at the end of these minutes.

Selectman Maggiore asked that before opening up for public hearing that the Town Administrator reiterate the rules for actions during a public hearing.

Town Administrator Fournier read Section 2. (f) Actions for a Public Hearing from the *Select Board Rules of Procedure* which states the following:

(i) The procedures for a public hearing are as follows:

- (1) At the outset of each public hearing the Presiding Officer will announce the purpose of the public hearing and ask the parties wanting to speak to limit their presentations to information within the scope of the matter before the Select Board.
- (2) The Presiding Officer may call upon the Town Administrator or other person to describe the matter under consideration.

- (3) Each speaker, for or against the matter before the Select Board for public hearing, shall identify himself or herself by name and address. Each speaker shall be limited to three (3) minutes. When everyone wanting to speak has had one opportunity to speak, the Presiding Officer shall call for anyone wanting to speak for a second time. Second time speakers shall be limited to the time allowed by the Presiding Officer, or as established by a majority vote of the Select Board.
- (4) Once all Town residents wanting to speak for a second time have spoken, the Presiding Officer shall call for any non-residents wanting to speak. These speakers shall be limited to three (3) minutes.
- (5) During the hearing any Board Member shall be permitted to ask the speaker questions provided all questions are relevant to the matter before the Select Board for Public Hearing. The Presiding Officer shall retain the right to determine the relevancy of any question.
- (6) The Presiding Officer closes the public hearing.
- (7) The Presiding Officer shall then inquire if there is a motion by any Board Member. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Board Members. The Presiding Officer may call on an individual Board Member in the discussion.

Chair Wollmar opened the Public Hearing for the proposed Code of Ethics for the Town of North Hampton.

Chair Wollmar recognized Mr. Field and stated that he had three minutes in which to speak.

Robert Field, 123 Mill Road stated that he is a resident and Chairman of the Zoning Board of Adjustment where there has been a chance to experience both the need for and the ethical principles, but he is speaking as a citizen, and not as a member of the board. Mr. Field thanked Mr. Wilson, Mr. Lagassa, Town Administrator Fournier and Mr. Hamilton for their fine work.

Mr. Field stated that he wanted to point out to the Selectmen [sic] and reiterate things that he has sent them. Mr. Field stated that took advantage of using the Local Government Center for their legal advice and contacted them after having read through an article in *N.H. Town and City* that caused him to do some thinking that he hadn't previously considered, and what are the rights of the town to create a Code of Ethics.

Mr. Field stated that in speaking with the Local Government Center, a code of ethics is as problematic as it is beneficial. He further stated that there are many things suggested in the draft that can be done but will not have any effect, and whether or not they can be used to chill or limit a person from running for office because they are going to have to be deemed subject to the code of ethics.

Mr. Field read from highlights from an article that appeared in a January 2009 publication of the Local Government Center called *N.H. Town and City*.

Chair Wollmar stated that Mr. Field's three minutes were up.

Chair Wollmar recognized Mr. Stanton. Mr. Stanton stated that he would yield his three minutes to Mr. Field.

Mr. Field continued to read highlights from the January 2009 publication of *N.H. Town and City* that pertained to conflicts of interest. Mr. Field reminded the Select Board that although they do have an extraordinary power to initiate the proceedings to remove an officer or an elected official from office, that is only accomplished through a process through the Superior Court. He further stated that no one in town has the unilateral authority to remove officers especially now since many are elected and they represent citizens in town.

Mr. Field stated that he felt that the Code of Ethics should be cast as more of an advisory code and contain many of the principles that the committee has established for it, but one must keep in mind what it can and cannot do.

Mr. Field read an email that he submitted to the Select Board, Zoning Board members and others. Mr. Field asked the Select Board what there perceived need is for a code of ethics, and how does the board intend to use it.

Chair Wollmar recognized Dr. Joseph Arena.

Doctor Arena stated his name and that he lived on Dancer's Image, and stated that he would like to make two comments.

Doctor Arena stated that he is one of those people that feels that people who are talking should not be limited time so long as they are on the subject that is being presented they should absolutely be allowed to present it without any interruption, and do it in a clear fashion.

Chair Wollmar recognized Chris Ganotis.

Chris Ganotis, 18 Deer Run Road stated that he felt that the code of ethics revision was a great start and is well on its way in trying to achieve the goals and objectives that George [Lagassa] pointed out.

Mr. Ganotis stated that he would like to make a suggestion and that as chair of the Conservation Commission he took it upon himself to get written information and easy to understand language from the Local Government Center, and the Attorney General's office memorandum that spoke to the issue of what 91:A allows and does not allow. He further stated that he felt that not only should the town board's read the first three articles in the code of ethics but also to spend 15 or 20 minutes in one of their regularly scheduled meetings to address what 91:A does and does not allow.

Chair Wollmar recognized Phil Wilson.

Phil Wilson, 9 Runnymede Drive stated that there is a "typo" under 5.03 (a) the word "town" should be replaced where it says "personal."

Mr. Wilson stated that in establishing the code of ethics committee, they were very cognizant of the fact that only the Select Board and only under specific procedures under the RSA, could anybody be removed from office.

Mr. Wilson stated that he read very carefully and noted that towns in New Hampshire have only the authority to do what the RSA's grant them authority to do. He further stated that much of what was accomplished was really a kind of gathering, or codification of fairly accepted practices, and obviously the enforcement procedures are not as they are relatively new and different from anything that has been seen. He further stated that with respect to the duties of the Chair, all that has been done is essentially write down what the presiding officer of any body is expected to do as the Chair. Mr. Wilson stated that he had personally seen a number of meetings in town that standard procedures for a board Chair have not been followed to the letter.

Chair Wollmar recognized Craig Salomon.

Craig Salomon, 100 Woodland Road stated that he felt that the draft dealt with a couple of issues that are good. The first is to deal with the issue of first amendment rights. He further stated that under the old Code of Ethics he was forced to cast a vote where that was in play, and it was a difficult choice to make. Mr. Salomon stated that secondly, stating that this is what is inspired to as opposed to this is what we want to prohibit or discourage is a good one.

Mr. Salomon stated that his concern is with the procedures or lack thereof. He further stated that he heard what Mr. Lagassa said about trying to establish procedural flexibility, and to him that is something that in a perfect world a great idea, but we are in an imperfect world and there is a body of aspirations that are going to be enforced by individuals. When you have something that allows case by case rules, you don't have a level playing field going in, people who are serving on town boards don't know the rules.

Mr. Salomon stated that he felt there is a lack of parameters for consequences. He further stated that he felt the code of ethics should be a three legged stool; what do we aspire to, if aspirations are not met how are they dealt with, if a violation is found then what.

Mr. Salomon suggested that the draft be sent to Town Counsel to be vetted.

Chair Wollmar recognized Donald Gould.

Donald Gould, 21 Fern Road stated that he had read all of Bob Field's written comments, and commended him for the work that he has done, and agree entirely with almost every point that he has made. He further stated that he also agrees with the comments made by Mr. Salomon and he shares concern of what is based on an apparent lack of a vehicle for ensuring due process; that being the absence of any rules of procedure.

Mr. Gould stated that he found troubling the adjudicatory process is to be put in the hands of an unelected, unaccountable to anyone, committee as opposed to the last one which was the Board of Selectmen that did the adjudicating. He further stated that he questioned whether or not the town has the authority to structure this kind of a procedure.

Mr. Gould stated that there is nothing in the rules that contemplates the rules procedure for the second stage, and that is when there is a recommendation for censure or reprimand made to whatever appropriate body is being talked about.

Mr. Gould encouraged the Board to refer this to Town Counsel, and have it thoroughly vetted; otherwise, he is afraid that we may be embarked on a path that we may regret.

Chair Wollmar recognized Robert Field.

Mr. Field stated that people's lives are ruined by code of ethics that are not adequately, substantively and procedurally protected of people.

Mr. Field continued reading the memorandum that he had written and distributed to the Select Board. He further stated that there are plenty of statutes to guide public officials and asked why there is a need for a code of ethics.

Mr. Field asked that his email of Saturday, February 5, 2011 at 11:33 AM be included in the record.

Chair Wollmar recognized Phil Wilson.

Mr. Wilson stated that he would like to comment on what has been referred to as flexible procedures, and in trying to come up with a one size fits all set of procedures the committee felt was not fair to either the complainant or the defendant.

Mr. Wilson read from Section 8.03 (e), (i), (4) of the draft code of ethics.

Mr. Wilson addressed some of the concerns raised by Mr. Field, and agreed that the code of ethics definitely needs to go to Town Counsel for review.

Chair Wollmar closed the public hearing.

Chair Wollmar read comments from Selectman Rineman. Selectman Rineman stated that the prior code of ethics from 1995 was used for approximately 13 years with no problems. Selectman Rineman also had several questions in Section 5 and in Section 8.

Chair Wollmar stated that having been involved with the first code of ethics 13 years ago, he felt along with his fellow Selectmen that there was a need to have a code of ethics do to certain happenings around town. He further stated that he felt there should be a universal rule of “do unto others as you would have them do unto you.”

Chair Wollmar stated that if this is the will of the people than he would support that, but would like to see a few minor changes.

Motion by Selectman Maggiore to remand the Code of Ethics back to the Ethics Committee for consideration of everything that was brought up at this meeting before it comes to a vote of the Select Board. Seconded by Chair Wollmar. Motion carries 2-0.

6.2 Approval of Warrant Article Creating Revaluation Capital Reserve Fund

Town Administrator Fournier stated that the Municipal Budget Committee asked that the Select Board review establishing a Capital Reserve Fund in order to fund a revaluation. He further stated that pursuant to State Law, the Town must complete a revaluation every five years. The Town last completed one in FY 2008, and the Town will need to complete another one in FY 2013. After discussion with the Town’s Assessor, he has indicated that it would cost the Town about \$160,000 for a complete measure and listing of all properties. However, since quarterly updates have been done, there would only be the need for an update at an estimated cost of \$80,000. The Town Administrator recommended putting half of the \$80,000 in a Capital Reserve Fund, and raise the sum through taxation.

Selectman Maggiore stated that he is not in favor of spending additional monies, however recognizing what the respondents in the Planning Board survey said concerning the assessments, and also looking at the number of abatements that were submitted, this would be money well spent and would also be recognized as the will of a significant amount of people in this Town and would be in favor of the warrant going on to the ballot.

Motion by Selectman Maggiore to place an article on the 2011 Town Meeting Warrant creating a Town Revaluation Capital Reserve Fund and to raise and appropriate \$40,000 for said purpose. Seconded by Chair Wollmar. Motion carries 2-0.

6.3 Approval of use of Town Common – American Lung Association Cycle the Seacoast

Motion by Chair Wollmar to authorize the approval of the American Lung Association to use the Town Common on May 1, 2011 in association with their Cycle the Seacoast event and waive any associated fees, and contingent upon approval of Chief Page. Seconded by Selectman Maggiore. Motion carries 2-0.

7. Closing Comments

7.1. Closing Comments by Visitors

7.2. Closing Comments by Select Board Member

Selectman Maggiore stated that as compared to the documents that the Ethics Committee read from other towns and states, North Hampton compared well to the other towns. He further stated that he feels strongly that a Code of Ethics needs to be in place, and feels that it is important that the full Board vote on it.

8. Adjournment

**Motion by Chair Wollmar to adjourn the meeting. Seconded by Selectman Maggiore.
Motion carries 2-0.**

Respectfully submitted,

**Janet Facella
Administrative Assistant**