

**TOWN OF WINCHENDON
BOARD OF SELECTMEN MINUTES
MONDAY, JANUARY 24, 2011 7:00 P.M.
4th Floor Robinson-Broadhurst Conference Room**

Present: C. Jackson Blair, Chairman James M. Kreidler, Jr., Town Manager
Elizabeth Hunt, Vice Chairman Linda Daigle, Executive Assistant
Robert Zbikowski
Robert O'Keefe

Absent: Keith Barrows

List of Documents Presented at Meeting:

- Redacted minutes of Board of Selectmen Executive Session of December 20, 2010 (filed)
- Town Manager's amendment to his contract (filed)
- Zbikowski Open Meeting Law Complaint Form (filed)
- Open Meeting Law Executive Session Exemptions (filed)
- Town Manager's email response to Zbikowski regarding his concerns of Executive Session held on December 20, 2010 (filed)
- Snowbound Club, Inc. Liquor License Application (filed)
 - o Public Hearing Notice
- Board of Selectmen's Draft Policies and Procedure changes (filed)

Chairman Blair called the meeting to order at 7:01 p.m. with the Pledge of Allegiance. This meeting aired live on local cable access television Channel 8.

Announcements: None.

Selectmen's Comments:

O'Keefe asked the Town Manager to describe his new business to the Town. Kreidler mentioned there had been some discussion of late on an electronic bulletin board of a private business venture of his. Without violating Executive Session privilege, he asked to give a brief overview of the matter but mentioned an opportunity to discuss in more detail if the Board would consider releasing redacted minutes of December 20, 2010. One of the matters that evening no longer enjoys Executive Session privilege and could be discussed, he explained. After reviewing the minutes passed out to them, Blair moved to release the redacted minutes; Zbikowski seconded. By roll call vote of all aye, the motion carried.

Kreidler explained the discussion the Board had in Executive Session regarding his contract. First was an amendment discussed and approved making the evaluation this year in June instead of in February. He next brought to their attention the provision in his contract allowing him outside employment with prior written approval from the Board. There was an opportunity for him to do solar power procurement with other municipalities. There was some discussion and limitations on the matter that culminated with a vote of the Board for approval with conditions. Kreidler explained a regulation had been created and more recently revised for municipalities to take advantage of placing solar arrays on public lands. It's under that regulation that the Town procured, negotiated and executed a contract to put a solar field on our Transfer Station site. He realized an awful

*Board of Selectmen Minutes
January 24, 2011*

lot of money was put on the table for developers and after our deal, a handful of subsequent deals were being done higher than what Winchendon did. Kreidler believed an opportunity existed to work with his fellow managers and administrators to procure on their behalf and negotiate terms and conditions to get them a better deal. In so doing, he stated, he could make a couple dollars for himself and his family, so it was brought to the Board's attention. The amendment to his contract, including the required opinion letter from Kopelman and Paige, is now a public document and is available to the public, he concluded.

Blair read an open meeting law complaint he received from Zbikowski that was brought to the Board's attention this evening. He alleges a violation of the purpose of going into Executive Session December 20, 2010 occurred and requests the Selectmen go back into Executive Session with the correct exemption to discuss the issues again and re-vote the matters. Blair asked the Town Manager, being the first time receiving this type of complaint, if we wish to grant relief by reopening the meeting or does the matter go back to Zbikowski to forward to the State Ethics Commission. Kreidler responded that once the complaint is officially received by the Board, which is tonight, by motion, the Board takes up the complaint, has a discussion and takes a vote on its merits. If founded, Mr. Zbikowski would like to reconvene Executive Session under the corrected exemption, reconsider and revote the issues. If the complaint is unfounded, then the complainant has the right to take it to the Attorney General's office. Blair asked if there was a motion to receive the complaint. O'Keefe stated he had a problem with the complaint just receiving it today, not within the thirty day requirement. Zbikowski said he doesn't see in the open meeting law that the Board has to receive or accept it. He stated he did give it to the Chairman within the period and unfortunately it fell away. I was gray on time, he said, and didn't know what he was going to do. However, after the meeting of the 20th, I did send an email to the Chair with my concerns of that meeting which Mr. Kreidler answered. The Board discussed the timelines and O'Keefe read the open meeting law complaint procedures stating the complaint needs to be presented to the public body within thirty days. Zbikowski felt he was on solid ground giving it to the Chair and the law doesn't state it has to be voted at a meeting. Zbikowski explaining why he was doing this said he was uncomfortable with it that evening and had questions about the Town Manager working outside his position. He went on further to say it was awkward writing a complaint against his own Board and he hesitated on how to go about it, that's why it was kind of late. His intent is to follow the Charter, Bylaws and the Open Meeting Law to the letter and expected if another vote was taken, it would go the same way. He felt the best way to correct the error is to go back into Executive Session under the correct exemption and had no problem postponing the issue until the next meeting when a full Board was present. Hunt said she has two parts; one of them being showing consistency by following the Bylaw and/or Charter and the other being the differences between the exemptions. Kreidler read the revised Open Meeting Law Exemptions Two and Three for Executive Session that went into effect as of July 1, 2010. Prior to July 1st, they were both under Exemption 3. Contracts and Collective Bargaining (non-union and union) were all under Exemption 3 until July 1, 2010. At that time, contracts (non-union) and collective bargaining (union) were split. Hunt said the Town Manager's contract falls under exemption two, contracts. For the record, Kreidler offered his email response that Selectmen Zbikowski referenced. The position offered by Town Counsel is to ask the intent of the Open Meeting Law which is to provide notice to the public of what you are going to do. The determination of Counsel was that the written word, being far more descriptive than the numerical citation, would trump and that the written word on the posted agenda says both union and non-union, while the notation of numerical three, the broader and more directly applicable and more easily to understand referenced in words is both.¹ Zbikowski, holding a copy of the posted agenda, asked for clarification stating Exemption Three states contracts and collective bargaining, it doesn't say anything about union or non-union. Kreidler clarifying an earlier statement said, non-union is contracts; they are synonymous in the law. Collective Bargaining is union; they are synonymous in the law. If you look to the email I sent you the very day, 34 days ago when you asked the question, you will see that it's clearly spelled out for you. That is the distinction that comes from Counsel. The public notice on the posted agenda is both union and non-union, contracts and collective bargaining, he concluded.

¹ The actual written words posted on the agenda for Executive Session were "Exemption No. 3, Contracts and Collective Bargaining."

Blair summarizing the issue, stated at the last meeting (Dec. 20, 2010) of the Board of Selectmen, the Board conducted Executive Session under Exemption 3. Zbikowski is raising the matter that some of the topics didn't fall under that exemption and is asking that we have another meeting under the right exemption, have a discussion and revoke. O'Keefe has commented it is past the deadline. Zbikowski commented he had delivered his complaint to the Chairman on time, but the Chairman held the complaint until this evening. The matter discussed, Blair went on, was the Town Manager wanting to start a company. We were told what the product would be, what the marketing plan would be and that he would be good at it. I, Chairman Blair continued, asked to hold off to another meeting to have more time but that wasn't acceptable. We discussed more, each Selectmen had questions answered satisfactory. We then took a vote of 4-0-1 for a six month period for the Town Manager to do this outside work. Mr. Zbikowski expressed concerns then and abstained from voting. We are now confronted with one of those crazy issues that just has to do with dotting the i's and crossing the t's. The matter is, do we accept Zbikowski's concern, reconvene the meeting, have discussion and re-take the vote or not due to the timeline or for whatever other reason you might have. Will we accept Zbikowski's complaint or not? If this is not acceptable to Mr. Zbikowski, he may take another step and get an answer from the state authorities. Blair asked the Board if they would accept the piece of paper. O'Keefe stated we are accepting the paper; but it is too late. Hunt asked about the main intent and would like to see a preventive measure taken. She is asking the exemptions be at every meeting of the Board. Can't we resolve this between us, Hunt inquired. We agree if we used Exemption 2, it would have been clearer. Mr. Zbikowski you make a great point, but what can we accomplish right now without going further. Zbikowski said what he is looking for is written in the complaint form. He wanted to go back in Executive Session under Exemption 2 to do it right. If the Board doesn't agree to redo it, he'll copy the response from the Board and go forward with the complaint. O'Keefe stated according to the Open Meeting Law, this body must respond within fourteen (14) days to this complaint and moved that his complaint arrived outside the thirty (30) day window and therefore it is not valid; Hunt seconded. By roll call vote of Hunt aye, O'Keefe aye, Zbikowski no and Blair aye, the motion carried and a response letter will be drafted for the Board to sign.

Boards/Committees: N/A

Appointments/Resignations: N/A

Permit/License Applications, Hearings:

PUBLIC HEARING – Snowbound Club, Inc. – Liquor License: Alteration of Premises, Change of Manager, New Officer/Director: Blair read into the record the Public Hearing notice and swore in Rick Moulton present for the Snowbound Club. Mr. Moulton told the Board the proper paperwork had been submitted for the request to change their liquor license and stated they are in need for a new Bar Manager due to the fact that the past one has joined the military. He also informed the Board that Mr. Gordon Davis is now the new president of the Club due to the past president's work/travel schedule. He mentioned the fundraisers the Club does throughout the year which entail outdoor concerts serving beer in the pavilion. In the past, they came before the Board for a special one day liquor license but would now like to alter the premises of their current alcohol license to include the pavilion. Blair asked if there were any abutters who might have a concern. With none being heard, Blair then asked if the Board had any questions. Zbikowski asked about the alteration of premises. Moulton replied that they currently have a liquor license for inside the club but now would like to serve in the outdoor pavilion. It really is an addition to the premises. The Town Manager pointed out for the record that the numbers that are crossed out on the application (which reference the ABCC license number) was done by the applicant. Hunt moved to approve the application; O'Keefe seconded. By roll call vote of all aye, the motion carried unanimously.

Common Victualler - Golden Empire, d/b/a Friend's Garden Restaurant: Blair read from the agenda addendum that they would like to change their corporate name to Golden Empire from Silk Road Restaurant. The new owner is Guo Ping Chen and the manager, Gui Lin, will remain. A consideration for the fee was mentioned since it was just paid in December during the renewal process. The required Board of Health application has been pulled by Mr. Lin. Keith and Guo Ping Chen came up before the Board. Hunt wanted to inform the Board that

*Board of Selectmen Minutes
January 24, 2011*

she and Keith have known each other outside of work and what's happening tonight wouldn't have any influence. Blair said the same thing, saying he's been a friend since he's come into Town. Hunt moved to approve; O'Keefe seconded. By roll call vote of all aye, the license was approved unanimously. Blair motioned to waive the fee; Hunt seconded. By roll call vote of all aye, the fee was waived.

New Business: N/A

Old Business:

BOS Policies and Procedures Update: O'Keefe and Zbikowski (BOS Policies and Procedures Update Subcommittee) presented the Board with a report of suggestions. The Chair accepted the report and stated at the next meeting they will make discuss it, possibly make changes and take a vote. O'Keefe said the current version is twenty-three (23) pages and with a timeline of one month to respond back we decided to first look at all the changes the Board had made earlier last year since there were issues about them. We mostly limited our work to just those areas. We also are suggesting each October we should be reviewing the policies and around next August we will review the sections we did not review at this time. Zbikowski said we changed some of the policies and feels the new changes blend in very well. We both feel comfortable with them. We spent ten-twelve hours doing them. Zbikowski explained the color coding he used; gray highlights with lines means that section was removed. If it was highlighted in gray with capital letters, it stayed in but has moved somewhere else in the document. Yellow highlights are new additions to the policy. Blair asked to ensure Selectman Barrows received a copy. Any suggestions from the Board as they read through this should be emailed to Zbikowski who would make a list. Kreidler mentioned that the Executive Session exemptions listed in this policy are the old ones and they should be updated.

Blair announced that he and Selectwoman Hunt, the subcommittee for the Town Manager's evaluation tool, will be getting together soon to work on this for his evaluation scheduled in June.

Ron Chaulk, present at the Selectmen's meeting, inquired about changing the evaluation from February to June asking about the elections being held in May. Blair informed Mr. Chaulk that the Board voted to change the date of the evaluation to occur in June after the next election and it was agreed to the parties for one year only. The reason was to concentrate on the budget.

Questions By The Public And Board To The Town Manager:

Ruth DeAmicis asked if the Town Manager could finish his comments he was discussing earlier. Blair said he would do that under the Town Manager's report.

Hunt questioned the vote taken at the last meeting permitting Christine Apgar of Edward Jones to go door to door. She inquired about the conditions put on this permit and asked about the CORI check and bond and that Keene was going to provide us information. Daigle responded that she was not authorized to do CORI checks for that purpose and told the Board it could take a couple months or so to apply and get the authorization back from the state and suggested the Board have her back before the them to consider the condition. Daigle informed the Board she did receive the letter from Keene where she currently has a Solicitation Permit and that she will be providing us with a Bond from Edward Jones.

Hunt then asked about Ray Radar's concern he brought up at the last meeting about the ballot. Kreidler explained the ballot in question was handled properly by the Town Clerk following protocol in the law.

Hunt then asked the Town Manager about the Boards and Commissions booklet looking for a completion date. Kreidler asked to have a couple days to look at what's needed to gather the information getting a better handle on the timeframe for completion. Hunt asked to have an update at the next Selectmen's meeting.

Hunt asked the Town Manager to provide an update on the courthouse matter especially with Mayor Hawke coming out speaking about regionalizing. Kreidler told the Board the courthouse issue has not changed from the last meeting. The issue of regionalization is a broader issue that would involve a conversation with not only the

Mayor in Gardner but other smaller communities like ours in the region. We'd be looking at a number of services from health services to inspectional services, assessing services, veteran's services, etc. One of your goals and objectives for me was to make certain to explore those things. Last year it was transportation; this year we are part of a regional collaborative but on transportation. The next step is to look at these other services. On the issue of dispatch specifically, where the confusion of the overlap may lay, there was a study commission by Gardner, Winchendon, Ashburnham, Ashby and Westminster, and possibly Templeton regarding regional dispatch being funded by the Commonwealth in your Read Me file. It does not look feasible, being less about the technical feasibility but the procedural and political. He has an appointment with Mayor Hawke tomorrow to discuss the issue. A brief discussion was held regarding the viability of the lock up of prisoners and the benefit of having a live body available to answer your questions, or in a dire need, have someone to assist you.

Zbikowski questioned the Town Manager about the courthouse issue stating now that the Brassi case has been settled, where are we and what's going to change. Kreidler replied things that might change are out of his control and he couldn't tell him. He isn't the Inspector General nor the Attorney General and said there are things that they are doing that he hasn't any control over. Further he said he is not the owner of the private property. Zbikowski asked for clarification since the case has been settled he thought that's what they were waiting for. Since the Brassi case was lost, didn't it affect us negatively? In regards to the other possibility, he assumed the person may build on the specs that the Town paid for. Kreidler replied the Brassi case has been adjudicated. They sued the Commonwealth in the entity of UMass Lowell. What we don't know is how that will filter out at the end of the day for all of us. The Inspector General's Office has not issued guidance yet. The Attorney General's office prosecuted the case; the Inspector General's office is responsible for how the regulation would be implemented. It's not done yet; I cannot control the timeline, so I can't say it's likely to be done soon or not. Hunt suggested as a Board to be rethinking the issue, to create a Plan B. Blair agreed and stated at the safety meeting the general consensus was to hope for the best and plan for the worst.

Public Comments: N/A

Town Manager's Report: Kreidler, speaking of the issue of his private employment and the discomfort around it, asked Selectman Zbikowski if there were to be a proverbial do over of the vote that occurred in Executive Session, would he be satisfied. Zbikowski answered, "Yes." Kreidler then suggested to the Board since Executive Session is not required under the Open Meeting Law, its optional, that the Board vote it again as they sit. If the vote is in the affirmative, the matter is resolved. If it changes, we go from there. It addresses the member's concern, it protects the town proper and it protects me because of questions being raised now of my private business being legitimate and it protects those communities interested in using my services. Blair said I understand it places everything in a bit of a haze and asked if the Town Manager would consider a broader discussion having more questions being answered. He agreed. O'Keefe asked about the difference between a vote to ratify or a vote to reconsider. Kreidler explained the standard recourse through the Attorney General's office with an issue like this is to ratify the earlier actions. Failing to ratify, Blair then added, doesn't change the Executive Session vote. O'Keefe made the motion to ratify the vote the Board of Selectmen took in Executive Session on December 20, 2010 concerning the Town Manager's outside employment; Hunt seconded. Zbikowski stated it is not accomplishing what he wants to do and will not satisfy him. The Board and the Town Manager discussed how his concern was with the exemption and how a vote in open session would be more transparent and actually, at this point, there was no privilege for Executive Session to be convened. Kreidler explained what the outcome would be with both votes. Zbikowski stated if there was an open debate about it, he would be okay with it. Blair clarified if the vote is not to ratify, then Zbikowski could then opt to go to the Attorney General's office. O'Keefe and Hunt stated they had no additional questions for the Town Manager. Blair had a question about the nature of his job being 24/7 wondering if it was in conflict with the hours he will put in with his private business. Kreidler explained due to the professional nature of his position, the hours are not specified in his contract. He went on to say the specific part of the contract regarding being available 24/7 relates to his vehicle. He said there will be times that he will be doing something other than thinking of the Board or the Town of Winchendon. There hasn't been a time that I haven't been available or done the job when it's been asked of me or required of me. The same will continue to apply. He said if he was needed to leave an appointment relating to his business for a town's need, he would. That's what I've done; that's what I'll do. Kreidler responding to Blair's comments

*Board of Selectmen Minutes
January 24, 2011*

of the experience he's received about this subject in Winchendon, especially the money he's paid, mentioned the money that the Town will receive from this solar deal being \$200,000 for twenty years. He assured the Board if the Town is in need, he will be available day or night as he always has. Blair asked Kreidler how he would be evaluated in the six month period if the Town suffered or not with his involvement in outside employment. Kreidler replied it would be up to you; if you think you have been responded to less then prior or whether the Town has been managed in a lesser manner than prior. Kreidler commented on the heightened awareness with the public that he did an RFP (Request For Proposal) while employed with the Town and he shouldn't use it again personally. This is a public document but my RFP is entirely different. Blair asked if there was anything in contractual arrangements that he had made with other towns to exceed the six months given in the amendment to his contract. Kreidler replied, no. The work that he's been hired to do, procure solar arrays on municipal properties will be done in a six month window. His compensation will continue without his working. Blair said he should not continue the business past the six months without revisiting with the Board.

O'Keefe commented the Town Manager's contract does not state he can't coach a little league team or have a hobby. He's choosing instead of doing those types of things to spend time on this instead. He has a full time job and is dedicated to the Town of Winchendon and in his spare time, chooses to do this. Kreidler stated for complete disclosure, that during the course of his public employment, in the middle of a hot summer day, he has left work and gone into the water swimming with his children. I'm not going to do that with this. To point, he continued, there was an opportunity to kill two birds with one stone recently. He had to drive to UMass for a matter with one of his step children. He had the opportunity to make a business stop along the way so he took a personal day. But, he stated, he came back because there was a meeting of the Public Safety Committee Study. I was off personal that day, but I felt there was a benefit to the Town that I should be there. Even though I was charged a full personal day, I came back and put in three hours that day. I would love anyone to challenge my time but they need to put their name on it. Hunt told the Town Manager that she trusted him and knows that he will do the best for the Town.

Kreidler, speaking about the cell phone issue, told the Board he contacted the State Ethics Commission about the provision in his contract providing him with an automobile for personal use and the cell phone. He explained to the Board that he pays full tax on the automobile value as well as the cell phone as non-cash compensation. The cell phone non-cash compensation could be detailed for those calls that are personal and not, and pay those that are personal. He decided just to tax him on the full amount. He asked the State Ethics Commission if he could use the automobile and his cell phone for this issue. The answer was, yes, but I did get my own cell phone but I can't use another vehicle.

Zbikowski stated that cleared his mind with a part of the Kopelman and Paige opinion letter regarding violations that had been founded in past cases by the State Ethics Commission where employees had used municipal supplies, telephones, etc. on private interest. The other concern he had was of his work schedule wondering what his normal working hours were. Kreidler replied if he wanted to propose a schedule, do so, and he would consider it. Zbikowski concluded by stating he would like to see the Town Manager full-time. Kreidler responded, I am. By roll call vote of Zbikowski no, Hunt aye, O'Keefe aye and Blair adding comments of the conundrum this decision has posed for him, reaffirmed his original vote of aye.

O'Keefe moved to amend his motion earlier in evening with the Open Meeting Law complaint to add that this body in Open Session ratified the vote taken in Executive Session on December 20, 2010. Hunt seconded. By roll call vote of Zbikowski abstaining, Hunt, aye, O'Keefe aye and the Chair aye, the motion carried.

Minutes: January 10, 2011 Regular Session: Hunt moved to approve; O'Keefe seconded. By roll call vote of all aye, the motioned passed unanimously.

Communications: N/A

Adjournment: With no Executive Session being held this evening, Zbikowski moved to adjourn; O'Keefe seconded. By roll call vote of all aye, the meeting adjourned at 8:46 p.m.

Respectfully submitted, Linda A. Daigle, Executive Assistant

Board of Selectmen Minutes

January 24, 2011