

TOWN of SHELBURNE
ETHICS COMMITTEE SPECIAL MEETING
Tuesday, June 19th, 7:00 PM
SHELBURNE TOWN OFFICES
Meeting Room 2
AGENDA

1. Call to Order
2. Review and Approve the Agenda for June 19th, 2018
3. Approve Minutes from May 15, 2018 and May 22, 2018
4. Opportunity to Disclose Conflicts of Interest
5. Public Participation and Comments
6. Committee Discussion of Suggested Revisions to the 6/12/18 Ethics Ordinance – Lee Suskin
7. Discussion of Shelburne Employee Core Values – if time permits
8. Other Business
9. Adjournment

Please call Diana Vachon at 264-5075 or email at dvachon@shelburnevt.org if you are unable to attend.

Reasonable accommodations shall be provided upon request to ensure that this meeting is accessible to all individuals regardless of disability.

Town of Shelburne
Conflicts of Interest Ordinance
June 12, 2018 Draft

Article 1. Authority. Under the authority granted in 24 V.S.A. Chapter 59 and 24 V.S.A. § 2291(20), the Selectboard for the Town of Shelburne hereby adopts the following civil ordinance concerning conflicts of interest. The ordinance applies to all Town public officials as defined in the ordinance.

Article 2. Purpose. The purpose of this ordinance is to ensure that the business of the Town will be conducted in such a way that no public official of the Town will gain a personal or financial advantage from his or her office and so that the public trust in its public officials will be preserved. It is also the intent of this ordinance to ensure that all decisions made by public officials are based on the best interests of the Town. The ordinance authorizes an appointed Ethics Committee to hear conflict of interest complaints.

Comment [1s1]: This ordinance only covers conflicts of interest. We should suggest that the Selectboard create a separate document on ethical guidelines similar to what they adopt for employees.

Article 3. Application. This policy applies to all individuals elected or appointed to perform executive, administrative, legislative, or quasi-judicial functions of the Town of Shelburne. With certain limited exceptions, it does not apply to employees of the Town.

Article 4. Definitions. For the purposes of this ordinance, the following definitions shall apply:

A. Conflict of interest means any of the following:

1. A real or seeming incompatibility between a public official's private interests and his or her public or fiduciary interests to the Town of Shelburne. A conflict of interest arises when there is a direct or indirect personal or financial interest of a public official or a person or group closely tied with the public official including his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother- or sister-in-law, business associate, or employer or employee in the outcome of an official act or action, or any other matter pending before the public official or before the public body in which the public official holds office. A conflict of interest may take any of the four following forms:
 - a. A direct financial conflict of interest arises when a public official acts on a matter that has a direct financial impact on that official.
 - b. An indirect financial conflict of interest arises when a public official acts on a matter that has a financial impact on a person or group closely tied to the official.
 - c. A direct personal conflict of interest arises when a public official acts on a matter that has a direct impact on the official in a non-financial way but is of significant personal importance to the official.
 - d. An indirect personal conflict of interest arises when a public official acts on a matter in which the officer's judgment may be affected because of a familial or personal relationship or membership in some organization and a desire to help that person or organization further its own interests.

Comment [1s2]: What is the definition of "seeming"? Do we need to use and reinstate the "appearance of a conflict of interest" into the definitions section?

Comment [TL3]: First cousin?

Comment [1s4]: Not sure what his means. Does it include denying a zoning permit to keep land undeveloped in one's own neighborhood? May need to contact VI.CT

A personal conflict of interest does not exist solely because two public official are members of the same Town Board, Commission or Committee

2. A situation where a public official has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding. This shall not apply to a member's particular political views or general opinion on a given issue.

Comment [1s5]: We should consider whether to move the actions identified in paragraphs A.2 and A.3 to Article 5, prohibited actions – in order to set forth all actions subject to a complaint in one place in the ordinance.

Comment [TL6]: Perhaps delete?

3. A situation where a public official has not disclosed ex parte communication(s) related to a quasi-judicial proceeding that is before the body of which that official is a member.

A conflict of interest does not arise in the case of an official act or action in which the public official has a personal or financial interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision.

- B. **Emergency** means an imminent threat or peril to the public health, safety, or welfare.
- C. **Employee** includes all individuals covered by Section 1.4 of the Shelburne Personnel Policy, as amended from time to time, including all volunteer fire and rescue personnel who are paid a salary or stipend.
- D. **Ex Parte Communication** means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel or any person interested in the outcome of a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.
- E. **Official act or action** means any legislative, administrative or quasi-judicial act performed by any public official while acting on behalf of the Town. This term does not apply to ministerial acts or actions wherein no discretionary judgment is exercised.
- F. **Probable Cause** means credible facts and circumstances sufficient for a prudent person to form a reasonable belief about a public official's conduct in the context of reviewing a complaint filed under this ordinance.
- G. **Public body** means any board, commission, or committee of the Town or other individual or group appointed by the Selectboard to serve in a volunteer capacity to perform duties for the Town.
- H. **Public interest** means an interest of the Town, conferred generally upon all residents of the Town.
- I. **Public official** means a person elected or statutorily-appointed to perform executive, administrative, legislative, or quasi-judicial functions for the Town. This term does not include Town employees except for the Town Manager, Town Clerk and Town Library Director.
- J. **Quasi-judicial proceeding** means contested hearing as defined by the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203 – 1209, as amended, or a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, and which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 5. Prohibited Conduct - Conduct that Violates the Ordinance and is Subject to a Complaint

- A. A public official shall not participate in any official act or action if he or she has a conflict of interest, whether real or perceived, in the matter under consideration.
- B. A public official shall not personally – or through any member of his or her household, business associate, employer or employee – represent, appear for, or negotiate in a private capacity on behalf of any person or organization that has an interest in an official act or action pending before the public body in which the public official holds office.

Comment [197]: What is the definition of "perceived?" Do we need to use and reinstate the "appearance of a conflict of interest" into the definitions section?

- C. A public official shall not accept gifts or other offerings for personal gain by virtue of his or her public office that are not available to the public in general.
- D. A public official will not request or accept any reward, gift, or favor for taking an official act or action or advocating for or against an official act or action.
- E. A public official shall not use resources unavailable to the general public – including but not limited to town staff time, equipment, vehicles, supplies, facilities, or confidential information – for private gain or personal purposes.
- F. A public official who is a member of a public body shall not give the impression that he or she has the authority to make decisions or take actions on behalf of that body.

Comment [Is8]: We could consider whether limiting this to "de minimis" use

Comment [Is9]: The committee has not discussed whether to include this conduct as a violation—prohibited by the VLCT Mode Code.

Article 6. Disclosure. A public official who, while serving on a public body, may have a conflict of interest, whether real or perceived, in a matter under consideration by that public body shall, prior to taking an official act or action or participating in any official act or action on the matter, publicly disclose at a public meeting or public hearing that he or she has an actual or perceived conflict of interest in the matter under consideration and disclose the nature of the actual or perceived conflict of interest. Alternatively, a public official may request that another public official recuse him or herself from a matter due to a conflict of interest, whether real or perceived.

Article 7. Consideration of Recusal. Once there has been a disclosure of an actual or perceived conflict of interest, other public officials shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered during a meeting or hearing conducted by a public body of the town, the public body shall take evidence pertaining to the conflict and, if appropriate, adjourn to an executive session to address the conflict.

Article 8. Recusal of Public Officials. After taking the actions listed in Articles 6 and 7, a public official, whether appointed or elected, shall declare whether he or she will recuse him or herself and explain the basis for that decision. If the public official has an actual or perceived conflict of interest but believes that he or she is able to act fairly, objectively, and in the public interest, in spite of the conflict, he or she shall state why he or she believes that he or she is able to act in the matter fairly, objectively, and in the public interest. Otherwise, the public official shall recuse him or herself from the matter under consideration. A public officer that recuses him or herself may, but not must, explain the basis for that decision.

Comment [Is10]: This paragraph, enabling a public official to act despite an actual or conflict of interest seems incompatible with Article 5.A, which prohibits participating. We need to reconcile. AND we need to make clear whether a member of the public can file a complaint if the person disagrees with the public official's decision to act fairly and then participate.

Comment [Is11]: What is the definition of "perceived?" Do we need to use and restate the "appearance of a conflict of interest" into the definitions section?

Article 9. Recording. The minutes of the meeting or the written decision / minutes from the meeting / hearing shall document the actions taken in Articles 6 through 8.

Article 10. Post-Recusal Procedure.

- A. A public official who has recused himself or herself from participating in an official act or action by a public body shall not sit with the public body, deliberate with the public body, or participate in the discussions about that official act or action in any manner in his or her capacity as a public official, though such member may still participate as a member of the public or private party, unless prohibited from doing so by separate agreement.

Comment [Is12]: To discuss. This language permits a public official to present his/her case to the body after recusal; it prohibits a public official from participating if the public official has signed an agreement requiring the public official to leave the room.

- B. The public body may adjourn the proceedings to a time, date, and place certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the total membership of the public body. The public body may then resume the proceeding with sufficient members present.

Article 11. The Ethics Committee

- A. An Ethics Committee of seven members is established. The Selectboard shall solicit volunteers from among Town residents who are willing to serve on the Ethics Committee and appoint five members and two alternates to serve staggering terms of three years. The list of members shall be filed with the Town Clerk. The Committee shall elect a Chair and Vice-Chair from among its members. If a member cannot participate in a particular matter, one of the alternates shall be designated by the Committee's Chair to fill in. The Ethics Committee shall elect a chair and vice chair from among its members. The Selectboard shall invite the Town Clerk to serve as the Clerk of the Ethics Committee. Should the Town Clerk decline or be unavailable, the Committee Chair shall appoint a person to serve as Clerk pro tempore and make the Clerk pro tempore known to the public.
- B. The Ethics Committee is authorized to:
 - 1. Educate and inform public officials on provisions of the ordinance and committee activity.
 - 2. Appoint one or more of its members or other qualified persons to:
 - a. issue an advisory opinion if requested by a public official or on its own as a means of educating public officials and residents of the Town as to matters covered by this ordinance; a public official cannot later be found to have violated the ordinance if the public official acts in a manner consistent with the advisory opinion
 - b. assist persons as a neutral, impartial resource to draft and/or respond to complaints;
 - c. mediate a complaint or potential complaint for Ethics Committee approval, where the complainant and respondent are agreeable to mediation;
 - e. investigate the allegations of a complaint before or after committee's preliminary investigation by asking questions of the respondent, complainant and other witnesses, review public records and take similar steps to examine the allegations; as appropriate, the investigator may provide information to the complainant and the committee that could result in the dismissal of the complaint; the investigator may file his or her own complaint;
 - f. Any member appointed to perform a function identified in Article 11. B. 2. (a) – (e) shall recuse him or herself from participating in any quasi-judicial proceeding involving the matter.
 - 3. Determine materials to be posted on the Ethics Committee section of the Town website.
 - 4. Adopt Rules of Procedure, educational materials and forms that align with the ordinance and that strive for the simple, and inexpensive disposition of complaints.
 - 5. Issue concise public statements regarding confidential proceedings when needed to provide fairness to the public official.
 - 6. Conduct hearings in accordance with Article 11.C. of this ordinance.
- C. Hearings before the Ethics Committee.
 - 1. Any person who believes that a public official has engaged in conduct prohibited by Article 5 of this ordinance may file a complaint directly with the Clerk of the Ethics Committee within 60 days of the person having discovered the matter or concern. The burden of proving the date the person first discovered the matter of concern shall be on the person filing the complaint.
 - 2. A complaint filed against a public official shall be a signed, sworn statement, based on the concerned individuals' personal information using a complaint form developed by the Ethics Committee available

from the Town Clerk or a form substantially similar to that. Until the determination of probable cause, the complaint shall be confidential and not subject to disclosure under Vermont public records laws.

3. a. Upon receipt of a complaint regarding a public official, the Ethics Committee shall undertake a confidential preliminary investigation of the complaint in a closed, deliberative session, to determine if there is probable cause to believe that a violation has occurred. The Committee may separately interview the complainant or the respondent, or both, under oath, in the closed session.

b. If probable cause is not found by the Ethics Committee, the Chair of the Committee shall notify the person who filed the complaint and the public official in question that probable cause was not found and the complaint and file shall be closed, sealed and exempt from disclosure under the Title 1, Section 317(c)(1) and (7) of the Vermont public records laws; provided, however, that the public official in question may have access to the file.

c. Upon finding probable cause that a violation has occurred, the Clerk shall set a date for a hearing before the Ethics Committee as soon as possible taking into consideration the scheduling and hearing preparation needs of the complainant and the respondent public official. Personal notice shall be given to each member of the Ethics Committee, including the alternates, to the complainant, and to the respondent. Notice of the hearing shall be posted in accordance with Vermont's Open Meeting Law.

d. At any time, the Ethics Committee may appoint a mediator where the complainant and respondent are amenable to mediation, to attempt to resolve a complaint and to submit any mediated agreement to the Ethics Committee for approval.

4. The Ethics Committee shall consider the matter in accordance with the Vermont Municipal Administrative Procedures Act, 24 V.S.A. Sections 1203-1209 and the Committee's Rules of Procedure at a public hearing. Testimony and other evidence shall be taken under oath. The complainant and respondent shall have a right to present evidence personally or by other witnesses, to examine and cross-examine witnesses and to be represented by counsel. The hearing shall be audio or video recorded at Town expense.

5. a. At the conclusion of the hearing, the Ethics Committee shall consider all of the evidence and render a decision and may go into a closed deliberative session in doing so. The Committee shall issue a written decision, using a preponderance of the evidence as its standard of proof on whether the public official violated Articles 8-14 of the ordinance.

b. the Ethics Committee may take appropriate steps to sanction a public official who has violated the ordinance and shall state in writing the reasons for its decision. Sanctions could include:

(i) For all public officials:

(a) require recusal from the matter in question due to a conflict of interest;

(b) require a disclosure statement concerning a conflict of interest; and/or

(c) recommend private or public training, issue a private or public warning, issue a private or public reprimand, and/or issue a public censure;

(ii) For appointed officials: recommend that the Selectboard consider removing the public official from the public body.

Comment [13]: The Committee has discussed some but not all of these potential sanctions.

D. Funding. The Ethics Committee may spend funds allocated to it by the Selectboard. The Committee may spend additional funds as approved by the Town Manager or the Selectboard.

Article 12. Amendments to the Ordinance

The Selectboard shall have authority to adopt amendments to this ordinance in accordance with the Town Charter (24 V.S.A. App Section 147.16).

Article 13. Effective Date

This ordinance shall take effect immediately upon adoption by the Selectboard.



Employee Core Values

The Town of Shelburne employees agree these are their core values.

We hope that you will embrace them.

T ransparency	O wnership	W ork together	N eeds
<i>honesty</i>	<i>responsibility</i>	<i>teamwork</i>	<i>respectful</i>
<i>communication</i>	<i>excellence</i>	<i>productive</i>	<i>customer service</i>
<i>integrity</i>	<i>pride in work</i>	<i>common goal</i>	<i>empathetic</i>
<i>approachable</i>	<i>positive attitude</i>	<i>encouragement</i>	<i>listen</i>
<i>accountability</i>	<i>best effort</i>	<i>solutions-oriented</i>	<i>friendly</i>
<i>unbiased</i>	<i>commitment</i>	<i>constructive input</i>	<i>safety</i>
	<i>self-improvement</i>		<i>patient</i>
	<i>efficiency</i>		<i>professional</i>

These values are aspirational – an ideal to strive for every day.

Transparency. Ownership. Work together. Needs.

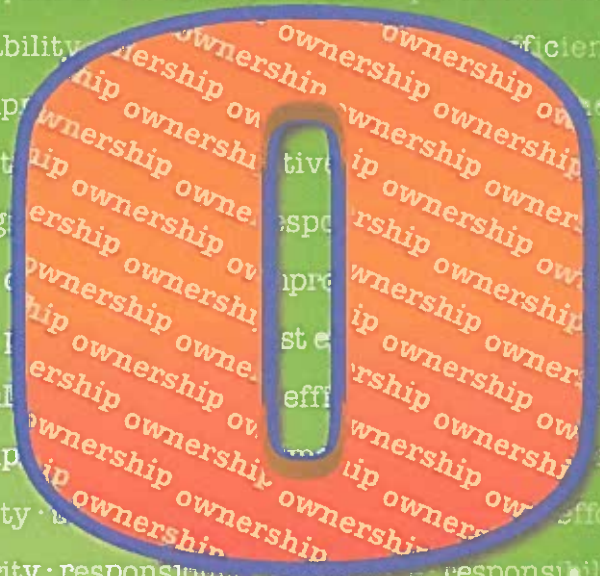
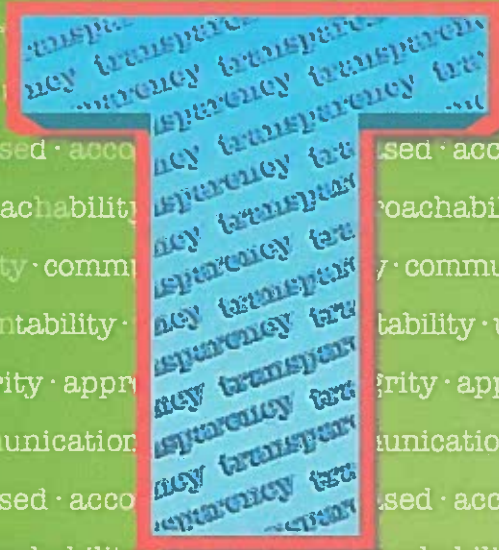
Transparency: Together, we will ensure trust with the public and with each other through openness, public participation, and collaboration. Information that is not confidential will be shared without impediment and public input will be sought when making decisions. We will be honest, accountable, and unbiased in our interactions.

Ownership: Ownership means embracing responsibility for the work we have been entrusted with for the betterment of the community. Departments and workgroups will strive to continually improve, seek excellence, and always attempt to be positive and make the best efforts.

Work Together: Through teamwork among employees, among departments, and with outside groups, employees will be productive and helpful. We will work together to promote a solutions-oriented culture of encouragement and support.

Needs: We will provide the highest level of friendly and respectful customer service to all members of the public and each other. We will listen, be empathetic, and create a safe, professional environment at all times.

Transparency. Ownership. Work together. Needs.



The Town of Shelburne employees agree these are their core values. We hope that you will embrace them.

The Town of
SHELBURNE
Vermont

Diana Vachon

From: lee suskin <lsuskin@msn.com>
Sent: Friday, June 15, 2018 9:04 AM
To: tlittle@vsac.org; 'bill deming'; 'gwen webster'; mashooh@uvm.edu; 'pete gadue'; Mary Kehoe; Jaimesen Heins; Diana Vachon; Ann Janda
Cc: lee suskin
Subject: FW: Shelburne Employee Core Values
Attachments: Memo-Employee Core Values Project.pdf

Committee and Selectboard Liaisons

I received an e-mail from Ann Janda on Wednesday saying:

The Core Values presentation to the SLB went well last night. The SLB asked me to contact you and see if you might add to the next Ethics Committee agenda a presentation from one of the Core Values team members. I have attached the information for that item. When is your next meeting?

I do not know if we will have time to discuss aspirational guidelines this coming Tuesday evening. I think that we should focus on the draft ordinance that I distributed earlier this week. If we do have time, we could review the attached core values document prepared by Ann and a group of employees.

In particular, I would like to hear the committee's views as to whether aspirational guidelines for public officials should be similar to the format being recommended for employees, or whether a different format such as what was contained in our May 4 draft (below) or a format similar to what was adopted in Riverside, CA (below) would be more clear and understandable to volunteer public officials.

Shelburne Chapter 3. Ethical Guidelines

It is vital to the public good in the Town of Shelburne that public officials and Town Employees should serve with high standards of integrity by aspiring to the following guidelines and principles:

1. Conduct their public official duties, and treat each other and members of the public appearing before them justly and fairly, and with honesty, integrity, civility and respect;
2. ;
3. Provide courteous, equitable and prompt service to everyone;
4. Make themselves available to the public; listen to diverse opinions and communicate effectively;
5. Strive to make fiscally responsible decisions and to ensure that public resources are used and conserved for the public good.

Alleged violations of these guidelines may not be the subject of a complaint before the Ethics Committee, as they are guidelines and not behavior standards. Serious concerns about a public official's failure to observe the guidelines may, however, be addressed to the public official; to the chair of the public official's board, committee or commission; or to the Selectboard.

Riverside, California Code of Ethics and Conduct

Section 2.78.050 Core Values.

The people of the City of Riverside share a set of core values that constitute the guiding principles for the establishment of this chapter. These core values are expressed in the following aspirations:

A. To strive to create a government that is trusted by everyone.

The public officials of the City of Riverside shall aspire to operate the City government and exercise their responsibilities in a manner which creates trust in their decisions and the manner of delivery of programs through the local government. The public officials shall aspire to create a transparent decision-making process by providing easy access to all public information about actual or potential conflicts between their private interests and their public responsibilities. The public officials shall aspire to make themselves available to the people of the city to hear and understand their concerns. They shall aspire to make every effort to ensure that they have accurate information to guide their decisions and to share all public information with the community to ensure the community understands the basis of the officials' decisions.

B. To strive to make decisions that are unbiased, fair, and honest.

The public officials of the City of Riverside shall aspire to ensure that their decisions are unbiased, fair, and honest. They shall strive to avoid participation in all decisions which create a real or perceived conflict of interest and to disclose any personal interest that could be perceived to be in conflict with the fair and impartial exercise of their responsibilities.

C. To strive to ensure that everyone is treated with respect and in a just and fair manner.

The public officials of the City of Riverside have a responsibility to make extraordinary attempts to treat all people in a manner which would be considered just and fair. They shall strive to value and encourage input from members of the community and encourage open and free discussion of public issues. They shall strive to have all persons treated with respect as they RIVERSIDE MUNICIPAL CODE RIVERSIDE, CALIFORNIA come before the body on which they serve. They shall aspire to create an atmosphere of genuine interest in the point of view expressed by members of the community even if it differs from their own.

D. To strive to create a community that affirms the value of diversity.

The public officials of the City of Riverside shall aspire to recognize and affirm the value of all persons, families, and communities within the City of Riverside. They will encourage full participation of all persons and groups, be aware and observe important celebrations and events which reflect the values of the City's diverse population, and provide assistance for those who find it difficult to participate due to language barriers or disabilities.

E. To strive to ensure that all public decisions are well informed, independent, and in the best interests of the City of Riverside.

The public officials of the City of Riverside will encourage and support research and information gathering from verifiable sources. They will seek to ensure that information provided by the City Government to the public is accurate and clear. They will ensure that all information utilized in the decision making process, except that which by law is confidential, will be shared with the public.

F. To strive to maintain a nonpartisan and civic minded local government.

The public officials of the City of Riverside shall affirm the value of a nonpartisan council manager form of government.

G. To strive to ensure that all public officials are adequately prepared for the duties of their office.

The public officials of the City of Riverside shall commit to participation in all orientation and training sessions which are presented to ensure full preparation for the exercise of their public duties.

H. To strive to ensure that appointed members of boards, commissions and committees attend regularly scheduled meetings.

Appointed members of boards, commissions and committees of the City of Riverside shall make a diligent effort to attend all regularly scheduled meetings of their respective board, commission or committee. (Ord. 7328 § 3, 2016)

Lee Suskin
802-734-6382

From: Ann Janda <ajanda@shelburnevt.org>
Sent: Wednesday, June 13, 2018 10:49 AM
To: lee suskin <lsuskin@msn.com>
Subject: Shelburne Employee Core Values

Hi Lee,

The Core Values presentation to the SLB went well last night. The SLB asked me to contact you and see if you might add to the next Ethics Committee agenda a presentation from one of the Core Values team members. I have attached the information for that item. When is your next meeting?



Town of Shelburne, Vermont

CHARTERED 1763

P.O. BOX 88 5420 SHELBURNE ROAD SHELBURNE, VT 05482

Clerk/Treasurer
(802) 985-5116

Town Manager
(802) 985-5111

Zoning & Planning
(802) 985-5118

Assessor
(802) 985-5115

Recreation
(802) 985-5110

FAX Number
(802) 985-9550

Memorandum

To: Shelburne Selectboard
From: Ann Janda and Core Values Team: Bruce Beuerlein, Carol Casey, Susan Cannizzaro, Chris Carlson, Betsy Cieplicki, and Jeff Pillsbury
Date: June 12, 2018
Re: Shelburne Employee Core Values Project

Culture creates the context within which we behave and make choices. Although an employee personnel policy lays out the rules and expectations that guide staff and management, it is the culture of an organization that plays the strongest role in determining how we behave, and ultimately, how we treat each other.

In July 2017, at my request, the Town Manager authorized me to convene a group of employees to articulate the Town of Shelburne's Employee Core Values. This project was meant to supplement the revised personnel policy and be aspirational in nature, not regulatory. I recruited staff that had shown interest in this topic in the past, and that were representative of the different areas of operations.

Over the course of almost a year, we met half a dozen times to hone the values the group thought most important. I served mainly as a facilitator so that the ideals would be generated by staff, not management. A document was drafted and shared with all staff for feedback. The group felt strongly that a written document would not be enough over the long-term. So we recruited Ashley Campbell of Rustic Roots to create artwork to convey the information via another medium. This would be something people could view every day.

The results are attached for your information and feedback. We are hoping that you will support this effort and that it can be aspirational for all who engage in town affairs.

The next steps will be for management to review and discuss with department heads and for the project to be presented and discussed at the annual employee picnic. The document will be included in new employee packets.

The group is open to ideas that would support the core values over the long-term. One idea is to include core value games at annual staff events.