

Ethics Committee Regular Meeting
March 28, 2018
Town Offices in Meeting Room 1
DRAFT MINUTES

Attendees: Lee Suskin Chair, Tom Little Vice Chair, Mike Ashooh, Bill Deming, Pete Gadue Alternate, Diana Vachon Clerk, Gwen Webster

Called to order 7:05PM

Public Attendees: Ann Hogan, Vivian Jordan, Sean Moran, Carole Obuchowski, Linda Riell, Doris Sage, Jerry Storey, Anna Watson, Tom Tompkins,

The Committee would like to enact a new Ordinance by the end of June 2018. We will hear from Chair of the Selectboard. Chair Suskin welcomes everyone including the Chair of the Selectboard Jerry Storey and his new wife Anna Watson.

Motion to Approve the agenda of March 28, 2018: Moved by Mr. Ashooh. Seconded by Vice Chair Little. Motion passed unanimously.

Opportunity to Disclose and Conflicts Of Interest: There was nothing to disclose.

Public Comments: The public was invited to comment on anything not on the agenda tonight. Hearing none we proceeded to the next agenda item.

Discussion of a Schedule and Timetable for Working with and Assisting the Selectboard to adopt an Ordinance: Chair Storey appreciates the invitation and is happy to be here. The Selectboard has a full plate with a search for new Town Manager and interim manager, coupled with on-going matters. For the last several weeks, they have been decentralizing the board and Selectboard members have been volunteering to be liaisons with other committees. It will be Chair Storey's pleasure and maybe one other member to attend and track the meetings to support the Ethics Committee where they need it. They will be available for consultation when needed. It is important that the Ethics Committee rely on themselves to come up with an Ordinance. The Selectboard is maintaining the same schedule as the previous Chair. They would also like a new Ordinance for June 30th.

Approve the Minutes for 2/28/18: Chair Suskin was to reach out to the Selectboard, which he has done. He has some written comments from Selectboard members and is waiting for another set of comments, which will be forthcoming soon. If we tonight can reach a consensus, we could hold public meetings and invite the chairs of CBC's and as many members as will join us. The bottom line is to enhance public trust in Town Government, to let Public Officials know what is expected of them, and to enable the public to be a watchdog. If someone is not conforming to the Selectboard's expectations, it may then be pointed out. Mr. Deming asked Chair Storey if this would be a Selectboard amendment or public vote.

He will verify but should be an amendment. Chair Suskin and Vice-Chair Little confirmed that the 2015 Ordinance approved by the voters authorized the Selectboard to make future amendments.

Motion: Vice Chair Little found a typo on page 1 and Mr. Ashooh found one on page 2. Mr. Deming moved to accept the minutes with the correction. Ms. Webster seconded. The motion passed unanimously. Vice Chair Little abstained.

The Committee worked on the framework of the Ordinance discussing what behaviors should be prohibited under the Ordinance. They discussed what is subject to a complaint and what is a violation and what is bad behavior. The Selectboard could in the Ordinance identify unacceptable behavior, possibly creating certain guidelines of appropriate behavior that they and all public officials should use. Those behaviors would not be considered an ethical violation or a financial Conflict of Interest but would establish expectations for how public officials and employees are to behave and interact with each other and the public.

Public Comment: The Town Manager with the approval and subsequent adoption by the Selectboard establishes performance standards and a code of conduct. Newly adopted is a Social Media policy. The Ethics Rules and Personnel Policy should accurately reflect the Ordinance. As the Ordinance is written no one can file a complaint against an employee or CBC member.

Suggested Revisions to the Ethics Ordinance:

Prohibited Conduct:

The Framework suggests keeping the prohibited conduct identified in Articles 4 – 13 as they appear in the Ordinance.

The Committee discussed the Framework document created by Chair Suskin. It was agreed to keep B. (2) (a) To Protect a Whistle Blower and (c) To Prevent Personal Bias or Prejudice. It was agreed to not include B. (2) (b) To Prevent Revolving Door Employment and (d) requiring Due Diligence as mandatory conduct. Due Diligence is not needed at the Ordinance level, because the Boards have their own standards of diligence.

Regarding the provision prohibiting “Revolving Door Employment”: it was agreed that because the concept is not enforceable, but it could be laid out in an aspirational section of the Ordinance.

Motion: Mr. Deming made a motion to take Revolving Door out of the framework. Ms. Webster seconds the motion. Discussion: Mr. Ashooh suggested possibly finding language to put it in the Ordinance as an aspiration due to not being able to enforce it. The motion unanimously passed.

Motion: Chair Suskin moved to keep (a) Whistle Blower Protection and figure out how to incorporate it into the ordinance. Ms. Webster seconded. Passed unanimously.

Ethical Guidelines: -

Page 5 of the Framework – The Committee discussed creating an Ethical Guidelines section in the Ordinance. Should they be included in the Ordinance, and if so how? The concept is based on the belief that when something is in writing people generally behaved accordingly.

Public Comment: it's worthless if it doesn't have any teeth. Some people are not going to adhere.

The Committee discussed whether "Trust" should be eliminated – because it belongs at the CBC level, thinking that public officials act in good faith on their board or committee. Each CBC could adopt best practices and police themselves. The Public should not feel that they need to stand up.

Chair Story mentioned that the Selectboard is creating rules of procedure to be more transparent, create trust, and create a good standard of practice.

The Selectboard could ask each CBC to develop their own standards and to adhere to them within themselves, possible using the word "Aspirations" instead of Guidelines in the Ordinance

Powers and Duties:

The Committee should educate public officials and the public on the Ordinance. Education is key. The Ethics Committee should control what's on the Ethics Town web page, not the Town Manager or Selectboard. The creation of an Ombudsperson is worth thinking about and it is feasible. The Committee discussed who should serve as the Ombudsperson _ Should the Ombudsperson be separate and distinct from the Ethics Committee? Because there are six members of the Committee, one member could talk to the public and then recuse if a complaint is filed. We could increase the Alternates, to make it work, because it's a problem with our current framework of the committee. The Committee will consider this option.

The Committee should be able to appoint a mediator to resolve a conflict before the complaint is filed or a situation escalates. There was general agreement that it would not work to require mediation if one party does not want to mediate. The Committee should have access to funds to pay for mediation. if it is wanted. What do we want to do with advisory opinions and is it binding to the whole committee or non-binding? Vice Chair Little doesn't think it should be bound, but consideration taken to what was advised.

The Committee should explore the Ordinance enabling the adoption of Rules similar to those used in Small Claims Court Rules in order to reduce need for the

complainant or respondent to retain an attorney. The Ordinance and the Rules must be in alignment. The Ordinance should be simple and easily read by all.

The Complaint Process – Page 1 of the Framework.

When a complaint is filed with Town Clerk, it is a private confidential document. Then it's investigated privately. Chair Suskin presented a complaint process handout. (Note: # 5 should delete "Public" – this is a confidential deliberative session. The handout is a visual summary of page 1 and 2 on the framework. The process enables the Committee to skip steps, and when appropriate go from step 1 or 2 directly to 6, depending on the situation. The process does not use the term "Probable Cause: - a term used in criminal court where police gather evidence and prosecutors present it. In our committee there are no police and lawyers. The person filing the complaint needs to lay something out. We need some step to help them present what determines a continuation. What do we require to show a violation? What standard do we use to evaluate what is presented?

Steps 4 and 5 are very similar. The intention of 4 is to be able to appoint an investigator. So there would be more information at the beginning of 5. It does double the number of deliberative sessions. The investigator could be a person hired by the Committee or a member of the Committee who would then not sit on the quasi-judicial board hearing.

Chair Storey questioned the role of the investigator – as written, it could create another complaint as a third party. And what if the complainant doesn't like the direction the investigator is going in? Then the investigator could become a prosecutor.

The Committee needs to create a better complaint form and instructions.

Vermont Legal Research Service Project (VLRS) has accepted the Committee's request to investigate if there is any evidence of effectiveness in Ethics standards around the country.

Motion: Mr. Ashooh moved to go into deliberative session 9:12 PM to discuss the complaint filed on 12/7/17 and produce a written decision. Gwen seconded. Chair Suskin recused himself from entering this deliberative session. The motion passed unanimously.

Return from deliberative session at 9:22 PM. Vice Chair Little read the Decision.

DECISION Re: Complaint #20171207 – 006

On December 11, 2017, the Committee met to deliberate on Complaint #20171207 – 006. The members carefully read the Complaint, discussed it and asked questions about it of each other. The members determined that no conflict of interest or appearance thereof required any member to recuse himself or herself. The Committee then deliberated on whether the Complaint satisfied the Ordinance's probable cause

requirement, and concluded unanimously that the Complaint failed to clearly or credibly state or support a violation of the Ordinance by the Respondent. Because the vote was to find no probable cause, and thus the identities of the Complainant and Respondent must remain confidential under the Ordinance, any further or more detailed discussion of the rationale and reasoning for the Committee's conclusion is not possible or permitted.

For these reasons, the Committee dismissed Complaint #20171207 – 006 on December 11, 2017.

The decision passed unanimously by all those who deliberated (Thomas A. Little, William Deming, Michael Ashooh, Gwen Webster).

Motion: Mr. Deming moved to adjourn at 9:26 PM Mr. Ashooh seconded. Passed unanimously.

Respectfully submitted by Diana Vachon, Clerk of the Committee