

**Ethics Committee Meeting**  
**05/15/18**  
**Town Hall**

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

**Selectboard Liaisons:** Mary Kehoe and Vice Chair Jaimesen Heins

**Public Attendees:** Carole Obuchowski, Linda Riell, Sara Tompkins, and Tom Tompkins

Call to order 7:05

Welcome to the Selectboard liaisons Ms. Kehoe and Mr. Heins and members of the public.

**Review and Approve the Agenda for May 15, 2018:** Ms. Webster moves to approve the agenda. Seconded by Mr. Deming. Hearing no comments, motion passed unanimously.

**Opportunity to Disclose Conflicts of Interest:** Hearing none, the Chair moved on the next agenda item.

**Public Comment:** Hearing none at this point, the Chair moved on to approved the minutes of the last meeting per Vice Chair Little's request.

**Approve the Minutes from April 25, 2018** – Vice Chair Little moved to accept the minutes. Ms. Webster seconded the motion. Hearing no comments, motion passed unanimously.

**Comments from Selectboard Liaisons on their Role** – Ms. Kehoe, and Mr. Heins commended the Committee on the enormous amount of work already done in the current draft Ordinance. They are excited to be here and looking forward to helping get the Ordinance across the finish line.

On Monday 05/14/18, Chair Suskin and Vice Chair Little met with Ms. Kehoe to discuss the current draft Ordinance yesterday. No decisions were made. Ms. Kehoe suggests some re-organization to determine and clarify which behaviors are aspirational and which behaviors are prohibited. Does it apply to Town Employees? This is mentioned in Chapter 3 but not in Chapter 1. What are the best practices for recusal on page 6? If a person recuses and must leave the room, in some cases that might violate that person's due process rights to be heard. An investigator is a good idea. How it's done requires careful consideration. The Committee does not have consensus on this topic.

Ms. Kehoe suggests inviting Chris Davis or another person from the Judicial Conduct Board to come to a meeting and speak on the investigator issue. Mr. Heins disclosed

that Chris Davis is in the same law practice as Mr. Heins' wife – all agreed that this did not create a conflict. Mr. Davis would be able to answer some questions on how the JCB uses an investigator and provide general guidance.

The Committee would like to know from the Selectboard liaison, if they feel the Committee is on the right track and where the Committee may not be on track. The Selectboard liaisons suggest that on next Tuesday at the May 22, 2018 Selectboard meeting, the Committee should present the 4-5 major issues that need to be discussed by the Selectboard.

Major Issues determined tonight to possibly discuss with the Selectboard:

1. Investigator – should this role be added to the Ordinance? If so, to whom would this person report to and be accountable to?
2. Are Town Employees subject to any provisions in the Ordinance?
3. Should a public official who recuses always be required to leave the room?
4. If complaint is filed against an Ethics Committee member – do all the members recuse? Is it an appearance of COI?
5. Aspirational guidelines – should they be added and clarified?
6. Subpoena power – can and should the Committee have this power?
7. Standard of proof for a violation – what should this be? Preponderance of the evidence?
8. Clear guidance on what is confidential and what is not.
9. Define probable cause to proceed with a complaint.
10. Advisor/Ombudsperson/Mediator
  - a. Should each member of the Committee serves in this capacity on a monthly rotation and as a result would be prohibited to serve on a hearing for any ethical issues discussed, OR
  - b. Should the Selectboard appoint a member of the community with some Ethics or Human Resource experience to serve in this capacity
  - c. Should advisory opinions be binding or non-binding?
11. Clarify how the Committee may have access to funding, if the Town Manager somehow feels compromised in granting access.

The group discussed goals to create an Ordinance that is simple, clear, and precise. The end result will have integrity and credibility without being too extreme. We owe it to the town to have something more accessible and easier to read. And have a process for members of the community to get guidance short of filing a complaint.

Currently the Public Official definition excludes all the town employees except Town Manager, Town Clerk, and Library Director. In Chapter 3 the guidelines apply aspiration conduct are not subject to a complaint. That part could include the Town Employees. The question is does the Selectboard want it in the Ordinance or in the Personal Policy? In this current draft of the ordinance, the aspirations align with new personal policy. The process the SB uses to make changes in an Ordinance is a bigger process than the process to changing a policy.

There appeared to be consensus that a public official's misuse of Town property and using confidential information for one's own personal use should be identified as prohibited behavior, subject to a complaint.

**Public Comment:** If there is something suspicious happening that maybe is unethical and I'm not sure it's worth making the complaint. I want to have someone to talk to about whether or not I have a legitimate complaint.

**Advice on the standard/burden of proof for determining a violation:** Should the standard be *preponderance of the evidence*, which is defined as more likely than not, and used as the standard in most civil cases, or *substantial evidence*, used in some administrative cases. The general feeling was to use the preponderance of the evidence standard.

Probable cause is defined in the definitions section and is used as the standard that the committee uses whether to proceed with a complaint. The ordinance needs state the definition of probable cause clearly.

Another point that needs to be clarified is the potential need for funding and how to authorize the use of necessary funds.

And one last point is to clarify that it would not be an ex parte communication in violation of the ordinance for committee members to question the claimant and/or respondent at a hearing to determine probable cause. This process does not taint the committee and would not interfere when hold hearing.

Ms. Kehoe left at 8:45. Thank you Ms. Kehoe.

Vermont Legal Research Service Report (VLRS) – The results were excellent and placed an emphasis on education. Maybe the Committee could have a web page with a quiz for CBC members to take, complaint guidelines, etc. The key to the Ethics Ordinance working well is to get the chairs of the CBC's to show strong leadership and holding themselves to a high ethical standard. This sets an example for their members to follow and creates a culture around the Ordinance. Mr. Ashooh sent a thank you to the leader of VLRS. Mr. Heins will send one from Selectboard. And thank you Mr. Ashooh for coordinating the project.

Thank you Mr. Heins, for attending tonight. Our next meeting is scheduled for June 28, 2018 at 7:30 AM in Meeting Room One at the Town Offices.

Adjourned at 9:00 pm Moved by Ms. Webster. Seconded Mr. Ashooh. Motion passed unanimously.

Respectfully submitted by Diana Vachon, Clerk of the Committee