

**BOARD OF SELECTMEN**  
**Minutes of March 26, 2012**

**MEMBERS PRESENT:** Chairman Bruce Breton called the meeting to order at 7:00 PM. Selectmen Ross McLeod, Phil LoChiatto, Kathleen DiFruscia and Roger Hohenberger were present, as was Town Administrator David Sullivan and Town Counsel Bernard Campbell. Mr. Breton opened with the Pledge of Allegiance.

**ANNOUNCEMENTS:** Mr. McLeod announced that the 20<sup>th</sup> Annual Firefighters' Ball is scheduled for March 31<sup>st</sup> at Castleton. Tickets are \$40/pp and may be obtained by calling 434-4907.

**LIAISON REPORTS:** None.

**MINUTES:** None.

**CORRESPONDENCE:** None.

**CONFLICT OF INTEREST ORDINANCE:** Mr. Sullivan opened the discussion by noting he felt it would be appropriate for Town Counsel to go through the Board's options in response to the passage of these ordinances; followed by response to some specific questions that have been posed regarding their applicability and enforceability. He went on to note that the Board could then proceed to avail themselves of one option as presented, and that the Board could accept public comment as they desire.

Mr. Marc Sneider, Galway Road, requested a point of order; and asked that the Chair poll the Board to see if there were any current conflicts of interest in accordance with Section IV of the current Conflict of Interest ordinance. After a brief discussion, the Chair took no action on this request.

Attorney Campbell approached and explained that he was in attendance as he had been asked by the Town Administrator to address how the Town should respond to the passage of Articles 18 and 19. He noted that, as the Board was aware, he had raised concerns regarding these documents since January; and that certain of those concerns had been made public as part of the Deliberative Session which resulted in the articles being amended. Attorney Campbell went on to state that, on 2/13, he had offered a second opinion regarding the amended articles in which he had indicated that, if they did pass, he believed the Town would have to respond in some fashion. He added that he believed that both were poorly drafted, overbreadth, and suffered from a lack of clarity as to what the petitioners were trying to accomplish.

Attorney Campbell noted that he had addressed the passage of each individually in correspondence dated 3/19, and went on to sum up his opinion on each as follows:

*Article 18:* Although amendment of the language at the Deliberative Session to focus on prohibiting a Covered Person from deciding or acting upon a Town matter was a step in the right direction, Attorney Campbell still had significant concerns regarding the legality of the ordinance. These include the definition of a Covered Person as any Town official, employee, or business as well as the principals, partners, employees of same. Attorney Campbell indicated he would renew his belief that there is no statutory authority for the Town to adopt an ordinance with such a broad sweep of covered persons; citing RSA 31:39A which allows Towns to adopt Conflict of Interest ordinances specific to Town employees and officials, but not persons beyond that, as far as conduct is concerned.

Attorney Campbell noted other issues with this document as it pertains to "indirect" benefits, as NH law generally focuses on "pecuniary" interests as defined by case law. Also, the broad net over covered persons which Attorney Campbell notes, in the third paragraph, appears to prohibit private communications between citizens when read broadly; representing a First Amendment issue. He also indicated that concerns have been raised regarding the violation clause language of "shall be grounds for removal" as to whether it is contrary to existing employment contracts or bargaining agreements.

In summary, Attorney Campbell noted that primary concerns regarding Article 18 relate to the breadth of a covered person and restrictions on communication. He indicated he would recommend the Town respond by affirming that any Town official should not participate in deciding or acting upon any Town matter in which they have a direct interest; thereby affirming the principle of the ordinance which the voters clearly supported. He added that he would further recommend that the Town interpret the ordinance in keeping with State law and proceed accordingly.

*Article 19:* Similar issues exist regarding the definition of Covered Person and, because this ordinance is focused on the representative process and the ability to apply for permits, etc., it reaches much more nefariously into the lives of employees, volunteers and contractors. Attorney Campbell opined that this represents serious issues, both constitutionally and otherwise, and the Town's immediate response could be opting not to enforce the ordinance by not blocking anyone from appearing or representing their business before a Town board. He added, however, that this is not a long-term solution.

Attorney Campbell expressed concerns that the Town will suffer irreparable harm through the loss of business relations or volunteers, and indicated there are two potential responses for the Board to consider. The first would be to call a Special Town Meeting per RSA 39:4 to enact amendments to these ordinances, which Attorney Campbell noted would not require court approval to conduct as no appropriations are involved. He added he would not advocate an outright repeal, but rather amendments to correct the issues that exist with the language due to lack of professional drafting or legal review beforehand. Attorney Campbell noted that there is a 14 day posting requirement for a Special Town Meeting, and there will be some modest costs related to town officials/ballots; however ostensibly the process could be completed by late May.

Attorney Campbell then presented proposed amendments to the Board for review as attached. He explained that, as it pertained to article 18, it revises the scope of a Covered Person and adds the term Disqualified Decision Maker, requiring that same must recuse themselves and not discuss the matter with any other decision maker except as provided elsewhere in the document. Attorney Campbell felt that this will satisfy the petitioners' intent to prohibit a covered person from influencing others. He also recommended a change to the disciplinary clause amending "shall" to "may" result in measures in accordance with terms of employment.

As it pertains to article 19, Attorney Campbell would recommend the same revisions to the scope of the Covered Person definition in keeping with Statute, clarification of appearances before any Board he/she has or is serving on when same is for any type of consideration, the addition of language allowing application/appearance on behalf of the Covered Person's business or other entity he/she may be a member of, and similar amendment to the disciplinary clause.

Attorney Campbell then advised that option two would involve seeking a Declaratory Judgment from the Court, however, he noted as with any type of litigation this would pose an increased cost. He also noted that there was the question of how the petition would be brought, as normally it would be a third person filing against the Town to challenge the validity of the ordinance. Attorney Campbell noted that, while there may be no lack of potential plaintiffs, there may be none with the funds to petition the Court.

Attorney Campbell explained that the Board may be able to submit a petition under RSA 498:1, similar to that filed for a Special Town meeting. He indicated such a filing would include a request that notice be given to the community that the Town is seeking an opinion from the Court on the validity of the ordinance, which would advise those with an interest to appear at the hearing to defend it while the Town seeks a ruling on the language as to which parts they would affirm or strike down. Attorney Campbell went on to note that, should a third party petition for a declaratory judgment be submitted, he would recommend the Town retain outside counsel. He also noted that, to date, he had not been able to find a Municipal Law practitioner that felt these ordinances, particularly article 19, were defensible. Brief discussion ensued before the Board invited Mr. Sneider to approach.

Mr. Sneider again requested that the Chairman poll the Board regarding any conflicts regarding these two ordinances, citing the existing ordinance's challenge procedure. Mrs. DiFruscia inquired of Attorney Campbell whether Mr. Sneider's request was appropriate. Attorney Campbell replied that the Board was not conducting a public hearing nor adjudicating any matters, however, if there were a person who were in a position to have a conflict of interest in the matter of how the Town will respond to articles 18 and 19, that person may feel that they should recuse themselves. As to whether Mr. Sneider's request needed response, he indicated the Board did not need to respond, however, they do so at the peril of possible impacts to the action if someone were to be disqualified. He indicated that anyone could make such a request, however, any resulting vote of the Board regarding such a recusal would be non-binding.

Mr. Sneider disagreed, again citing the existing ordinance. Mrs. Margaret Case requested a point of order to inquire whether Mr. Sneider was referring to the existing ordinance or the newly passed ones. Mr. Sneider replied that it was the former.

Mr. McLeod, Mr. Hohenberger, and Mr. Breton then all noted for the record that they had no conflicts regarding this matter. Mrs. DiFruscia indicated she objected to Mr. Sneider's question, but added she does do volunteer work for the community. Mr. LoChiatto advised that he did not have any financial interest in this matter, and Mr. Sneider disagreed. Discussion ensued regarding a recent news article regarding this matter and Mr. LoChiatto's comments therein, and Mr. LoChiatto posed the question to Attorney Campbell whether he should recuse himself. Attorney Campbell replied he did not see a need for Mr. LoChiatto to do so.

Mr. Sneider then proceeded to read the attached statement into the record. He added that Mr. LoChiatto's refusal to recuse himself is an example of the need for these ordinances, and that the Supreme Court has rules via 564-US that individuals having a conflict cannot speak to or act upon a matter.

Lengthy discussion ensued with concerns regarding the impacts/implementation of these ordinances being presented by Mr. Dennis Senibaldi, Mr. Scott Baetz, Mr. Bob Coole, Mr. Tom Case, and Mr. Bob Young. Concerns raised included impacts to volunteerism/donations, impacts to resident business owners, restrictions on communication, and investigations of conflicts. Ms. Vanessa Nysten approached during the discussion to note that she felt stricter ordinances were required; citing that she had personally brought a conflict to the attention of a Department Head and found the resistance to looking into it to be severe.

Discussion also ensued regarding the timing of the implementation of the new ordinances given the 180 day exemption, and Attorney Campbell noted that the 180 days applied only to existing covered persons and that any new volunteers, employees, etc., would be under the auspices of the new ordinances effective immediately.

Mr. Hohenberger indicated he favored holding a special town meeting, which would allow Mr. Sneider and others to make their case. He felt the passage of these ordinances was affecting volunteerism, and though the people see a need for stronger regulations, the language was causing undue stress.

Mrs. DiFruscia indicated she favored having the Courts make a determination, noting she had questions regarding the constitutionality of these ordinances. She indicated while elected officials/employees should be held to higher standards, she questioned whether others should be subjected as such. She believed Mr. Sneider had made his position clear and the Board should now obtain direction from the Court as to how to enforce these ordinances.

Mr. LoChiatto indicated he would prefer a declaratory judgment, as well, and went on to express concerns with the ramifications of these policies. He also clarified the whole of his comments in the news article referenced earlier by Mr. Sneider, and felt that the latter should have asked him directly regarding any conflict rather than polling the whole Board.

Mr. McLeod expressed his concurrence with Mr. Hohenberger, adding that he believed a Deliberative Session would be advantageous and, via amendments, the ordinances can be streamlined. He noted that Attorney Campbell's proposed edits clear the way for potentially effected people to appear before Boards, etc.

Lengthy debate ensued regarding the options before the Board, and the benefits/downsides of each.

Community Development Director Laura Scott approached seeking clarification of existing covered persons versus new; the latter of which Attorney Campbell clarified would be under the ordinances as passed at Town Meeting. Further, lengthy discussion ensued regarding re-elected/re-appointed officials versus new, donors versus officials, and the 180 day period during which an existing covered person could resign to avoid the two year restriction on activities.

Mr. Sullivan requested clarification of the issue of employees serving on Boards, and Town Counsel clarified that, as written, employees would be prohibited from serving as, read literally, they cannot appear before any board for any reason.

Further discussion ensued, with input from Ms. Deb MacKenzie, regarding the impacts to volunteerism, and a declaratory judgment versus Special Town Meeting. Mr. Breton requested that Attorney Campbell clarify what the Town would receive via a petition to the Court. Attorney Campbell noted that if the Board opts to proceed to petition the Court without a third party, the Courts may decline to take up the matter without said third party claim. Also, with a third party claim the Court will only rule on those particular issues cited rather than the ordinances as a whole. He added that, should the Board wish to proceed with a petition, he would draft it as such to request a ruling on the issues of covered persons and equal protection.

Mrs. DiFruscia inquired whether, if the court rejects the petition, the Board could proceed with a Town Meeting. Attorney Campbell replied in the affirmative. Lengthy discussion ensued regarding the Board foregoing their decision for a short period to allow any third parties to come forward and the process regarding a declaratory judgment.

Mrs. DiFruscia then moved and Mr. LoChiatto seconded that the Town file a motion for a declaratory judgment.

Further discussion ensued and Mr. Sullivan requested that Attorney Campbell clarify the submission process. Attorney Campbell indicated he would bring it forth as a petition "in re:" the validity of the ordinances, and file it with a motion to post for public notice asking the court to set a date for a hearing and to schedule persons to appear. Discussion ensued.

Mrs. DiFruscia rephrased her motion, and Mr. LoChiatto seconded, that the Board of Selectmen bring a petition by the Board of Selectmen for a declaratory judgment on the conflict of interest ordinances. After further discussion, the motion passed 3-2, with Mr. McLeod and Mr. Hohenberger opposed.

The Chairman called for a ten minute recess to allow the Board to meet with Town Counsel.

**FUND BALANCE POLICY:** Mrs. Call distributed to the Board the proposed Fund Balance Policy for their review and future discussion.

**BOOKKEEPER POSITION:** After a brief discussion regarding the specifics of the position, it being 25 hours/week with no benefits and a starting salary of \$16.14/hour, Mr. Hohenberger moved and Mr. McLeod seconded to approve the job description as drafted. Passed unanimously.

**OLD/NEW BUSINESS:** The Board reviewed the annual liaison appointments. After a brief discussion regarding the Housing Authority and Haz-Mat assignments, which Mr. LoChiatto indicated he would fill; and an Alternate Recreation liaison which Mr. Hohenberger will fill, Mr. Hohenberger moved and Mr. McLeod seconded to approve the liaison assignments as attached. Passed unanimously.

*Chief McPherson* approached to review with the Board an opportunity for grant funding for training through Homeland Security; explaining that this would be for various technical training such as hazardous materials courses, technical rescue classes, and incident command systems. Chief McPherson noted that the grant would cover all costs, including back fill of absences in staffing to attend training, and that the funds will be issued on a first come/first served basis. After a brief discussion, Mr. McLeod moved and Mr. Hohenberger seconded to authorize the Chief to proceed to apply as outlined. Passed unanimously.

**MUNIS ASP TRANSITION:** Mr. Sullivan presented a contract to the Board for execution, explaining that it pertained to the conversion from in-house hosting of MUNIS to an outside ASP management service. He noted that this is an item which would have been recommended as part of the ongoing IT assessment; and that it relieves the Town of server and maintenance costs and will provide greater efficiency with no difference to the end user. Mr. Hohenberger inquired as to the cost of the agreement, which Mr. Sullivan indicated was \$39K/year. Mr. Breton felt that this should be scheduled for a workshop with the IT Director.

Discussion ensued, and Mr. Sullivan clarified that if the Board chose not to execute the agreement, which was debated at budget time and is included in the budget, then they will have purchase a new server and convert our platform to SQL at a cost of \$42K +/- in order to support MUNIS upgrades. He noted his disagreement to the Board's not executing the contract, and Mrs. DiFruscia sought clarification of cost savings moving forward. Mr. Sullivan confirmed that moving to ASP removes the costs of equipment upgrades/maintenance and further discussion ensued.

Mr. LoChiato indicated that his only concerns regarding the transition involved whether the Town had a big enough internet pipeline to handle the increased traffic, if six user licenses adequate, and would there be any other infrastructure requirements as a result of upgrades, such as new computers. Mr. Sullivan explained that the Town currently only has six licenses, representing concurrent uses, without issue. He added, however, that the transition actually offers the ability to sporadically allow more than six without an issue or added cost. Mr. Sullivan also noted the existing infrastructure had passed the MUNIS test and was more than adequate. Discussion ensued.

Mr. Breton inquired whether Tyler was the only supplier of the MUNIS system, and Mr. Sullivan replied in the affirmative. Further discussion ensued regarding the number of communities that utilize the software and the length of time the Town has had it. Mr. Breton inquired what the downside would be to not executing the contract. Mr. Sullivan replied that the Town would have to upgrade its platform at significant cost, and that other financial systems do not equate to MUNIS which represents a complete system encompassing all of the Town's needs.

After further brief discussion, Mr. McLeod moved and Mr. LoChiato seconded to approve the agreement. Passed 3-2, with Mr. Breton and Mr. Hohenberger opposed.

**HIGHWAY BIDS:** Mr. McCartney reviewed his annual contracts with the Board as follows:

*Roadway Sweeping:* Mr. McLeod moved and Mr. Hohenberger seconded to extend the contract for sweeping for an additional year with Immaculate Power Sweeping at their bid price of \$69.75/hour. Passed unanimously.

*Crack Sealing:* Will be placed out to bid for the 2012 season. Brief discussion ensued regarding the number of pallets to be bid and the coverage it provides.

*Roadside Mowing:* Mr. LoChiato moved and Mr. McLeod seconded to extend the contract for mowing with Rail Head Tractor for one year at their bid price of \$16,740. Passed unanimously.

*Catch Basin Cleaning:* Mr. Hohenberger moved and Mr. McLeod seconded to extend the contract with Larry Blanchette for his bid price of \$15/basin with onsite disposal. Passed unanimously.

**POLICE SUV BIDS:** Chief Lewis advised the Board that seven bids had been received, as attached, and indicated that it would be his recommendation to award the bid to Hillsboro Ford as they are able to deliver the vehicle approximately four weeks earlier than Londonderry. Discussion ensued.

Mr. McLeod then moved and Mr. Hohenberger seconded that, based upon the price and delivery time, the bid for the police SUV be awarded to Hillsboro Ford for their bid amount of \$23,156 after trade. Passed unanimously.

*Financing:* Mrs. Call advised that Enterprise Bank, with whom the Town currently has multiple vehicle loans, has again offered the lowest financing rate of 2.19% with no related fees. Mr. LoChiato moved and Mr. McLeod seconded to award the financing for the police SUV to Enterprise Bank in Salem. Passed unanimously.

**OLD/NEW BUSINESS:** Mr. Sullivan advised that the Town's legal services are currently out to bid, and that proposals would be being reviewed by him, Mr. Norman, and Ms. Scott. He then requested two Board members to assist. He noted that four proposals had been received for general counsel, and that interviews would be conducted the following week. Discussion ensued regarding process/availability, and it was the consensus of the Board that Mr. McLeod and Mrs. DiFruscia participate in the reviews.

**NON-PUBLIC SESSION:** Mr. Hohenberger moved and Mr. McLeod seconded to enter into nonpublic session in accordance with RSA 91-A:3 II c. Roll call vote all "yes". The topic of discussion was reputations.

The Board, Tax Collector Ruth Robertson, Mr. Sullivan, and Ms. Devlin were in attendance.

The Board reviewed a proposed forbearance agreement. Mr. Hohenberger moved and Mr. McLeod seconded to approve the agreement in the amount of \$200/month. Passed unanimously.

The Board reviewed a request for a waiver of interest. Mr. Hohenberger moved and Mr. McLeod seconded to waive all interest accrued from 6/17/2011 to present due to transfer of the property. Passed unanimously.

Mr. McLeod moved and Mr. Hohenberger seconded to adjourn. Passed unanimously.

Meeting was adjourned at 10:35 PM.

Respectfully submitted,

Wendi Devlin, Administrative Assistant.

*Note: These minutes are in draft form and have not been submitted to the Board for approval.*

3/26/12 BOS

Mr. Chairman, pursuant to section IV of the currently enforce code of ethics, I request that you pole the board to determine if anyone has a conflict of interest concerning their participation in these proceedings regarding the new conflict of interest articles.

Mr. Lochiatto should recuse himself from participating on the matter. His participation violates Section II and III of the current town conflict ordinance as such he is disqualified from partaking in discussions and voting on this matter.

Mr. Lochiatto has commented in the press that the new ordinances would affect his business. As such he has a direct financial interest in the outcome of these ordinances and must be disqualified from partaking in their discussion and vote

Even Mr. Campbell's letter dated 1/4/12 points to the fact that Lochiatto's dealings with the town would be affected by the ordinance. He must be disqualified.

You each took an oath to uphold the laws of the US, NH and this town. The town has voted to adopt these ordinances and it is your duty to uphold them. You promised-you gave an oath. It is town counsel's job to defend them. If there is a resident of the town who is aggrieved by the ordinance, that resident certainly has the right to challenge them in court.

This is a democracy and these ordinances were legally and democratically adopted. As representatives of the voters you are required to uphold them. You do not have the right to ignore the overwhelming majority of the voters who supported these articles. These ordinances are the law of the town of Windham and you must enforce them whether or not you like what they state.

We have been provided with a redacted letter from town counsel and can only respond to those matters stated in the letter.

1. The ordinances were adopted pursuant to RSA 31:39A which permits towns to adopt conflict of interest ordinances which can be more strict than those specified by state law.

2. Mr. Campbell complains about the word "participating." Mr. Campbell has misinterpreted the language and has taken the word out of context. The ordinance states that you shall not participate in deciding or acting on any town matter if **THE** matter may provide a direct or indirect benefit, create a material gain or advantage to relations, friends, employers, groups, groups, businesses to which the Covered Person has an affiliation. The ordinance states that the

covered person "must refrain from participating, voting or taking any action on the MATTER (not any matter) if you are disqualified from participating in the particular matter only-not "any town matter" as Mr. Campbell would have you believe.

Mr. Campbell's statement that the ordinances can be interpreted much more widely is misplaced. A covered person is only disqualified from "participating, voting or taking any action" on the matter with which he has a conflict. Mr. Campbell has taken the word out of context and then speculates that his interpretation of the ordinance is inappropriate.

3. Mr. Campbell claims that the last sentence of the ordinance prohibits citizens from talking to other citizens about "any town matter." Again, he has misread the law and then imposes an absurd interpretation. Firstly, it only prohibits a covered person from entering into discussions with other covered persons. Second, the prohibition does not extend to any town matter, it only extends to the particular matter with which the covered person has a conflict of interest. Third, there is specific language permitting the covered person to speak about the matter as a citizen as long as he makes it clear on the record that he is speaking as a citizen and not an official.

Essentially, Mr. Campbell has again changed the wording of the provision and then claims the provision (as modified by him) is inappropriate. Likewise he has ignored other provisions of the same ordinance which carves out permission to discuss the matter before the board.

In short, if your conflict prohibits you from sitting in on a particular matter, you cannot discuss it with other covered persons in order to persuade them to vote the way you would have voted if you were able to decide the matter. You can still speak about the matter as part of the general public.

This is consistent with other town conflict of interest ordinances and provisions.

4. For his last point, Mr. Campbell states that the board should interpret the ordinance in light of the narrow interpretation of the Marsh case. State law specifically permits a town to adopt a stricter standard. Moreover, Mr. Campbell has ignored the law contained in Appeal of Keene 141NH 797 and the Hurst case. Further, the voters have voted in favor of a stricter standard than the Marsh case as they were free to do under the RSA. In fact, the current Conflict of Interest ordinance is more strict than the standard put forth in the Marsh case



but Mr. Campbell has somehow failed to point that out. Mr. Campbell has attempted to usurp the will of the people and the democratic process by attempting to impose his interpretation on the ordinance.

As Mr. Campbell states in his letter to the board, words should be given their plain meaning and that is how these ordinances should be interpreted. Mr. Campbell's statements are in derogation of the democratic process.

With respect to the second ordinance it is difficult to know the objection in view of the redacted portion of Mr. Campbell's letter. If there is a problem, we would like to know what it is so that we can address the concerns rather than having it covered up by the town.

Pursuant to state law, the town has the right to impose rules regarding how its officials and employees conduct themselves. In addition, the town has the right to impose ethical standards of conduct upon those who desire to engage in business with or provide services to the town. Mr. Campbell has provided no legal authority to the contrary.

In fact, all you have to do is to look at some of the Conflict of Interest ordinances adopted by other towns and governmental entities.

Atkinson and Plaistow have distinct and separate ethics commissions and their conflict laws specify that:

Town officials and employees are prohibited from introducing, discussing, deliberating approving or voting upon any matter that gives rise to a conflict.

Atkinson's and Plaistow's conflict rules are even more encompassing than the ones recently adopted by the town of Windham.

Concord has similar provisions to those above and has a provision prohibiting town officials from appearing before any city board or commission. This prohibition continues for 12 months following the end of the person's service.

You should also look at Londonderry, Hampstead and other towns.

As set forth on the NH State website, the Dept of Ed states that a conflict of interest arises with respect to a spouse, child, household member, relative, employer, business partner, an organization that the official was an officer, director or trustee or any organization that the official was an active volunteer

The SEC disqualifies for 24 months any investment adviser from doing business with the government entity if the adviser contributed more than \$250 to a politician who ran for office for the governmental entity.

There are numerous examples of Conflict of Interest laws similar to those adopted by the town.

There is a compelling interest on behalf of the voters to make sure their town officials, employees and persons who conduct business with the town do so without favoritism, personal benefit or the appearance of a conflict of interest. The people have voted and their vote should stand.

Mr. Campbell's speculation that the town will somehow come to a halt or will be severely impacted if these ordinances stand - is nonsense. He made that argument before and the town did not believe it and voted to adopt these Conflict of Interest articles.

I regret that a few people who donate time to certain sport functions or events in town feel they can no longer do so. I also suggest that they have been misinformed. The prohibitions extend to those who are performing services pursuant to a contract or "arrangement" with the town. Arrangement is defined by Webster as "to bring about an agreement or understanding." If you are a volunteer with no contract with the town or without an understanding with the town, you may continue to volunteer. You need to interpret these ordinances in light of their plain meaning and the written statement of intent set forth at the top of each ordinance.

Meanwhile, just as Mr. Lochiatto has done, we have another person in town who served on a board and immediately after giving up his position on the board, filed a petition for that same board's approval of a land deal. This and other unethical conduct must stop. The practice has been so widespread throughout the country that it has been given its own name "the revolving door syndrome" It is unethical, it is unfair and it's repugnant.

Proposal to Amend Article #18 as adopted at the 2012 Town Meeting-

The purpose of this ordinance is to insure that town officials and town employees are dedicated solely to the service of the residents of the town and are not motivated or appear to be motivated in his or her actions for anything other than service to the town. Moreover, this ordinance is to promote transparency in town administration and to prohibit town officials and town employees from improperly using their position with the town for their advantage or the advantage of their friends, relations, employers or business associates.

### **Prohibition Against Conflict of Interest.**

Town shall be defined as the Town of Windham.

Covered Person shall be defined to include an elected Town official, a non-elected Town official, ~~or a Town employee, and any person or business (including the principals, partners, employees and owners of the business) that have performed or are performing services pursuant to a contract or arrangement with or on behalf of the Town whether or not the services were or are performed for compensation.~~

A Covered Person shall not participate in deciding or acting on any Town matter if the matter may provide a direct or ~~pecuniary indirect~~ benefit, create a material gain or provide an advantage to ~~said person or~~ relations, friends, employers, groups, businesses or associations to which the Covered Person has an affiliation or connection. A Covered Person with such an affiliation or connection (~~the "Disqualified Decision Maker"~~) must make that affiliation or connection public, must refrain from participating, voting or taking any action on the matter and must recuse himself or herself from involvement with respect to the action or decision. Further, the ~~Disqualified Decision Maker Covered Person~~ shall not discuss the matter privately or otherwise communicate directly or indirectly with any other Covered Person ~~responsible for making such decision or taking such action, except as provided below, regarding the matter.~~

The provisions set forth above shall not prohibit a ~~Disqualified Decision Maker Covered Person~~ from appearing before a Town board to voice their support in favor of or against a matter before said board as long as it is made clear on the record of the proceedings that ~~such person the Covered Person~~ is not acting in his or her official capacity but is acting solely in his or her capacity as a resident of the Town.

A violation of this ordinance by a Covered Person shall be deemed a violation of the Town's Code of Ethics (with respect to Town employees) and ~~may shall~~ be grounds for removal from office or ~~discipline in accordance with the terms of their~~ employment with the Town.

The provisions contained in this ordinance shall be in addition to and shall supplement any and all other laws, ordinances, codes, rules or regulations now or hereinafter in force and effect.

The provisions contained herein cannot be waived, suspended or overridden.

Covered Persons who are now in office, ~~or employed by, or who are under contract or arrangement with or on behalf of~~ the Town at the time of adoption of this ordinance shall be exempt from the provisions hereof for a period of 180 days following the date of adoption of this ordinance.

If any provision of this ordinance is held to be invalid or unenforceable, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision.

## Proposal to Amend Article #19

The purpose of this ordinance is to insure that town officials and town employees are dedicated solely to the service of the residents of the town and are not motivated or appear to be motivated in his or her decision to undertake public service for personal benefit or personal advantage. Moreover, this ordinance is to promote transparency in town administration and to prohibit town officials and town employees from deriving or appearing to derive unfair advantage by improperly using friendships and associations formed or confidential information obtained while serving the Town of Windham.

### **Prohibition Against Conflict of Interest.**

Town shall be defined as the Town of Windham.

Covered Person shall be defined to include an elected Town official, a non-elected Town official, **or** a Town employee. ~~and any person or business (including the principals, partners, employees and owners of the business) that have performed or are performing services pursuant to a contract or arrangement with or on behalf of the Town whether or not the services were or are performed for compensation.~~

Covered Period shall be defined as the time period during which the Covered Person serves or served as an elected town official, non-elected town official, **or** town employee ~~and/or person or business that performed services under contract or arrangement with or on behalf of the Town~~ and shall extend for a period of two years following the termination of any of the foregoing activities.

A Covered Person shall not during the Covered Period:

1. appear before any Town board **on which the Covered Person is then serving or has served**, as a principal, agent, attorney, representative or otherwise, on behalf of any **other** person, business or entity **for any form of consideration (i.e. appearance on behalf of a non-profit entity without consideration is not prohibited)**; or,
2. act as a principal, agent, attorney, representative or otherwise, on behalf of any person, business or entity for purposes of obtaining any permits, permissions, licenses, variances, grants, or approvals from the Town **except as provided below..**

The provisions set forth above shall not prohibit a Covered Person from applying for or appearing before a Town board for purposes of obtaining a permit, permission, license, variance, grant, or approval from the Town with respect to the Covered Person's personal residence, **business entity in which he/she is a principal, or an entity in which the Covered Person is a member of.** ~~But, unless otherwise set forth below, it shall prohibit such conduct with respect to any business or entity in which the Covered Person has a legal and/or pecuniary interest.~~

~~The provisions set forth above shall not prohibit a Covered Person from applying for real estate tax abatements with respect to a Covered Person's real estate interests.~~

~~A Covered Person shall not, with respect to a business or entity in which the Covered Person has an interest, be prohibited from applying for electrical permits, plumbing permits and such other permits or licenses issued as part of and pursuant to the Town's administrative function, but such Covered Person shall be prohibited from bringing any matter regarding such business or entity before the Zoning Board of Adjustment, Planning Board, Board of Selectmen, or any Town Commission.~~

It shall be the affirmative responsibility and duty of any and all Town officials and/or Town employees to report, in writing, a violation of the above by a Covered Person directly to the Board of Selectmen.

A violation of this ordinance by a Covered Person shall be deemed a violation of the Town's Code of Ethics (with respect to Town employees) and ~~may shall~~ be grounds for removal from office or **discipline in accordance with the terms of their** employment with the Town.

~~Any permit, permission, license, variance, grant, approval or action obtained from the Town through the direct or indirect actions of a Covered Person during the Covered Period shall be void.~~

The provisions contained in this ordinance shall be in addition to and shall supplement any and all other laws, ordinances, codes, rules or regulations now or hereinafter in force and effect.

The provisions contained herein cannot be waived, suspended or overridden.

Covered Persons who are now in office, employed by, or who are under contract or arrangement with or on behalf of the Town at the time of adoption of this ordinance shall be exempt from the provisions hereof for a period of 180 days following the date of adoption of this ordinance.

If any provision of this ordinance is held to be invalid the **invalidity** ~~enforcement of the invalid provision~~ shall not affect the other provisions or applications which can be given effect without the invalid provision.

## SELECTMEN LIASION ASSIGNMENTS - 2012

<b>COMMITTEE / BOARD</b>	<b>2011 Members</b>	<b>2012 Members</b>
<b>Cable TV</b>	Hohenberger	Hohenberger
<b>Cable TV (Alternate)</b>	DiFruscia	DiFruscia
<b>CIP</b>	LoChiatto	Breton
<b>CIP (Alt)</b>	Hohenberger	Hohenberger
<b>Depot Rd Advisory</b>	Hohenberger	Hohenberger
<b>Economic Development</b>	LoChiatto	Breton
<b>Economic Development/alt</b>	DiFruscia	DiFruscia
<b>Haz Mat District</b>	The Board - TBD	LoChiatto
<b>Historic Committee</b>	DiFruscia	DiFruscia
<b>Housing Authority</b>	LoChiatto	LoChiatto
<b>Housing Authority Alternate</b>	None	
<b>Information Tech Advisory Com.</b>	Hohenberger	Hohenberger
<b>Joint Loss Safety Committee</b>	Breton	Breton
<b>Planning Board</b>	McLeod	DiFruscia
<b>Planning Board - Alternate</b>	DiFruscia	McLeod
<b>Recreation Liaison</b>	DiFruscia, McLeod (alt)	DiFruscia, McLeod (alt)
<b>Welfare Overseer</b>	Hohenberger	Breton
<b>Union Negotiations</b>		
<b>Fire Negotiations</b>	Breton, Hohenberger	Breton, Hohenberger
<b>Police Negotiations</b>	Breton, Hohenberger	Breton, Hohenberger

## BID OPENING RESULTS - REVISED

**March 9, 2012 – Administrative Offices:** The following bids for the Police Utility vehicle were publicly opened at 10:00 AM on this date by Assistant Town Administrator, Dana Call.

Vendor	Cost for Ford Interceptor Vehicle (1)	Optional Trade-In – 2003 Impala	Net Cost per Bid	Lease Rate	Lease/Doc Fees (included in financing)	3 Years' Lease Payments (total)	1 <sup>st</sup> Year Payment (2012)
Ford of Londonderry, Londonderry NH	\$27,157.00	(\$4,000.00)	\$23,157.00	6.5%	\$425	\$25,081.65	\$8,360.55
Grappone Ford, Concord NH	\$26,607.00	(\$2,550.00)	\$24,057.00	6.0%	\$425	\$25,921.59	\$8,640.53
Autofair Ford, Manchester NH	\$28,015.00	(\$2,000.00)	\$26,015.00	6.5%	\$425	\$28,121.40	\$9,373.80
Irwin Ford, Laconia NH	\$27,792.00	(\$3,500.00)	\$24,292.00	5.5%	\$425	\$26,051.55	\$8,683.85
Stoneham Ford, Stoneham MA	\$27,626.00	(\$3,000.00)	\$24,626.00	5.25%	None-\$1 buyout	\$25,895.37	\$8,631.79
Colonial Ford, Plymouth MA	\$27,494.00	(\$3,500.00)	\$23,994.00	5.5%	\$425	\$25,737.45	\$8,579.15
Hillsboro Ford, Hillsborough NH*	\$26,656.00	(\$3,500.00)	\$23,156.00	5.5%	\$425	\$24,854.22	\$8,284.74

*\*An additional bid from Hillsboro Ford was received by Administration after the bid opening, but postmarked timely, thus it was accepted for consideration by the Board of Selectmen on 3/19/12.*

Note: 2012 Budget (Police Department) for this vehicle is as follows:

1<sup>st</sup> year payment = \$9,365

Outfit vehicle with equipment = \$2,645 (not included in lease financing)

Total new vehicle budget = \$12,010

Financing:

If the vehicle is financed with a 3-year lease through Ford municipal leasing, based on the low bid quote, the Town will pay as follows:

Principal = \$23,156; Document fee added to amount financed = \$425; Interest for 3 years = \$1,273.22

*The Town has received alternate rate quotes from banks/lease financing companies and will be recommending financing through Enterprise Bank.*