



Warner Board of Selectmen

Meeting Minutes
Tuesday, July 8, 2014
APPROVED

Chairman Hartman opened the meeting at 6:05 pm.

In Attendance: Selectman David E. Hartman – Chairman, Clyde Carson – Selectman, Allan N. Brown – Selectman, and Jim Bingham – Town Administrator

Others present: Mike Byrne – Kearsarge Mt. Hill Climb, Elizabeth Labbe & Natalie Fairney – Relaxed Home Schoolers, Martha Mical, Ed Mical, John Leavitt, Barbara Annis, Peter Wyman – FSASC, Alfred Hanson – FSASC, Howard Kirchner – FSASC, Mike Amaral – FSASC, Tracey Hallenborg – Bookkeeper, Judy Newman-rogers – Town Clerk, Marianne Howlett – Tax Collector

1. 2014 Kearsarge Mountain Hill Climb

- A. Mike Byrne from the Hopkinton Rotary Club is before the Selectmen to talk about the Mt. Kearsarge Hill Climb (bicycle race) scheduled for Saturday, September 27. The start will be for 8:00 am. at the Kearsarge Business Center. For traffic safety and control a duty officer will be used, the road will be closed 10 minutes before the start with about 3 waves, with 2 minutes in between waves; the road will re-open after the start. There will be Marshall's staged along the race with cell phones. Mike will be touching base with the Warner Fire Department EMT's as well. The race is expected to be over around 10:30 am.
- B. Martha Mical informed Mike that a logging operation may still be active on the date of the race. Martha said she could provide the necessary contact information listed on the intent-to-cut.

2. "Gear Up" Homeschoolers Memorandum of Understanding

- A. The Town Administrator explained that "Gear Up" is a home school organization. They began using the top floor of the Old Grade School, a Memorandum of Understanding was created with a deposit fee, and a very nominal rental fee for using the rooms on Friday afternoons.
- B. For the next school year "Gear Up" would like to use the 2 large rooms on the top floor for Monday, Wednesday and Friday afternoons exclusively, they also want to use the Senior Center room for preschool on Friday afternoons, plus they will be using the Warner Fall Foliage Festival office as well on Monday, Wednesday and Friday afternoons.
- C. The Town Administrator asked Elizabeth Labbe from "Gear Up" if they will be keeping to the school district schedule and Elizabeth provided the following dates when "Gear Up" will not be in session; November 28, December 26, and January 2. The Town Administrator was concerned about "Gear Up" being the only ones using the building during school vacation, but, he has learned that the Community Action Program office will be manned full time during those periods as well.

- D. The Selectman's office then gathered information pertaining to the actual costs associated with the building and forwarded this information onto "Gear Up":

Total square footage of the building = 10,634

2013 expenses are:

Oil - \$8,824.00 + Electricity - \$3,380.00 + Water/Sewer - \$907.00 + Alarm - \$406.00 + Liability Insurance + \$900.00 = \$14,471 divided by 10,634 = \$1.36 per square foot

"Gear Up" is requesting sole use of the upper two rooms which amounts to 842 square feet per room:

$842 \times 2 = 1,684 \times 1.36 = 2,290.24$ divided by 10 months = \$229.02 this equals the actual cost.

- E. The Town Administrator reviewed the actual cost and felt it was too high and recommended a \$75.00 per month fee. This was sent onto "Gear Up" asking them what their feelings are on the monthly fee. "Gear Up" is before the Selectmen this evening to discuss this rental amount. The Town Administrator said the Old Grade School is a net expense for the Town, but, it provides a lot of services to the Town. There is Headstart, Co-operative Preschool, CAP, Senior Center, Food Pantry and now the homeschoolers. The Town tries to at least have everyone pay a nominal fee and he asked Elizabeth what they would be comfortable paying. Elizabeth said it would be easier for "Gear Up" to pay a yearly fee because all the members pay at the beginning of the year. Elizabeth said the new monthly fee is a huge increase compared to the \$100 yearly fee they paid last year, she also said because they are so far into the summer it would be difficult to get people to pay such a drastic increase. The Town Administrator asked how many families are involved in the program. Elizabeth said there are 24 families with a total of 55 students.
- F. The Town Administrator said the suggested annual fee works out to be \$750.00 for 10 months. He is now suggesting \$400.00 for the year.
- G. Selectman Brown asked if this services only Warner students. It was explained the families are from the school district, there are families from Newbury, Springfield etc., he also asked if the space is being used for anything now and the Town Administrator said no.
- H. Because the Senior Center is always set up, the Town Administrator asked if there are any potential hazards in that room that would affect the preschoolers. Natalie said the parent to child ratio is very high, there is 1 parent for every 2 preschoolers.
- I. The Town Administrator asked Ed Mical, Building Maintenance, what his experience has been this past year dealing with maintenance since "Gear Up" has been there. Ed said for the most part its been good, there has been a few times when smelly trash was left. During the winter he said the parents worked at keeping the stairs clear.
- J. John Leavitt asked if any of the 55 students attend public schools. Natalie said some attend high school classes at the Tech. John asked if they are saving the Town more money than is being charged for using the building because they are not going to public schools. Martha Mical explained the Town still is charged if a homeschooler uses anything in the school system. Natalie said there are no Kearsarge District area students that attend "Gear Up" using the High School. Natalie said "Gear Up" is aware that the district will charge the Town and "Gear Up" does not want to add that burden to the taxpayers. John said if the group is saving more money for the Town than the cost at the Old Grade School, he asked why charge them for the space. Chairman Hartman said the Town owns the building, and it has annual expenses to operate the building. Chairman Hartman said there are 4 Budget Committee members present this evening, maybe the Budget Committee should talk about how the Town should operate the Town's assets. Chairman Hartman does not feel \$400.00 is a monumental cost. Martha Mical, as a Budget Committee member, feels personally, the fee is to help off set the cost for their use of the building.

Board Action

Selectman Carson moved to accept the Town Administrator's proposal of an annual fee that amounts to \$400.00 for two years. Selectman Brown seconded the motion; all were in favor, the motion passed.

Natalie asked in the next school year that arrangements are made before 2016 for the following year and the Town Administrator said yes.

3. Fire Station Alternate Sites Committee Report

- A. Chairman Hartman said the charge of the Committee was to investigate alternate sites other than the site the Town had purchased (Map 29 Lot 1). There has been a lot of negative discussion about the current site so the Selectmen developed this Committee to report back by early July. The members of the Committee are Selectman Allan N. Brown, Alfred Hanson – Budget Committee, Mike Amaral -Conservation Commission, Jim Bingham – Town Administrator, Ed Raymond – Fire Chief, Peter Wyman – Fire Fighter, Ken Milender – Public Representative, Howard Kirchner - Alternate member.
- B. Selectman Brown, as Chair of the FSASC, reported the Committee started with over 30 sites that were provided by the Assessing Clerk; these sites had to have at least 3 to 5 acres, located in and around the downtown area. The Committee whittled the sites down to good sites, bad sites, and sites that were not usable. The current site (Map 20 Lot 1) ended up in the not usable status.

| FIRE STATION - POSSIBLE SITES | | | | | | | | | | |
|---|------------------------------|------------|--|--|---|-----------------------------------|---------------|----------------------|-----------------------|--|
| Parcels | Vote of | Parcel | Qualifications | Utilities | Site | Site | Subdivide | Total | Market | |
| Reviewed | Committee | size | of Site | Access | Alterations | Availability | sell home | Points | Price (M) | |
| | Alternate voted to break tie | # of acres | Very Good = 3 Acceptable = 2 Poor =1 Unaccept. = -1 | Phase 3 = 2 Swr/Wtr = 2 wl & sptc =1 | Minimal = 3 Moderate= 2 Signif. = 1 | Owned by Town = 2 For Sale = 1 | plus 2 points | TOTAL QUALITY POINTS | or Assessed Value (A) | Significant Points |
| The following four Lots, ranked 1 to 4 by vote of preference, are the Parcels recommended by the Committee for the new fire station | | | | | | | | | | |
| Map 29 Lot 4 | yes-6 no-0 | 8.2 | 24 | 3 | 14 | 1 | 0 | 42 | \$91,570 (A) | 3% grade needed for driveway, well & septic Req. |
| Map 34 Lot 15 | yes-5 no-1 | 3.0 | 26 | 4 | 20 | 0 | 0 | 50 | \$221,850 (A) | available? Remove building? |
| Map 34 Lot 16 | yes-4 no-2 | 4.0 | 24 | 4 | 17 | 0 | 0 | 45 | \$239,950 (A) | available? Remove building? PSNH has ROW |
| Map 14 Lot 5-1 | yes-4 no-2 | 4.2 | 25 | 4 | 9 | 0 | 2 | 40 | \$295,000 (M) | Can subdivide and sell house, development easements w/ neighbors on Split Rock Rd. |

| Following Lots were also viewed and evaluated by committee members | | | | | | | | | | |
|---|----------------|-----|----|---|----|-----|---|----|--------------------------|---|
| Map 30 Lot 44 | Yes-0 no-6 | 3.4 | 20 | 4 | 20 | 0 | 0 | 44 | \$48,720 (A) | requires access to Rte. 103 thru adj. lot -38, 39, or 40 |
| Map 32 Lot 30 | omitted | 1.5 | 26 | 4 | 17 | 2 | 0 | 49 | \$863,090 (A) | Demolish CAP bldg. lot needs to be combined w/ L31 |
| Map 32 Lot 31 | N/A | 2.8 | | | | 0 | | | \$294,350 (A) | Definitely not available..Not evaluated but qualities generally acceptable |
| The next four Lots on Map 34 were all adjacent lots that were considered in two and three lot combinations | | | | | | | | | | |
| Map 34 Lot 7 | Yes -3 no-4 | 4.2 | 30 | 4 | 12 | 1 | 2 | 49 | \$239,000 M (7 & 7-1) | Both lots seem to be included in sale. Can subdivide and sell house |
| Map 34 Lot 7-1 | | 2.2 | | | | | | | \$70,170 (A) | tax card info. |
| Map 34 Lot 8 | Yes-2 no-4 | 1.1 | | | | | | | \$52,870 (A) | Must be combined w/adj. parcels, demolish structure |
| Map 34 Lots 8 & 9 | | 3.6 | 28 | 4 | 18 | 0 | 0 | 50 | \$285,140 (A) | Remove Building likely |
| The present proposed Site and a late consideration | | | | | | | | | | |
| Map 29 Lot 1 | not voted | 3.1 | 22 | 2 | 12 | 2 | 0 | 38 | \$76,270 (A) | present site, Phase 3, water/sewer poor, major riverbank stabilization needed |
| Map 34 Lot 20 & Lot 20-2 | Yes-2 no-4 | 4.0 | 25 | 4 | 18 | 1 ? | 2 | 51 | \$386,080 (A) | Owner has offered to sell the 2 lots together, could sell or keep house on L 20 |

- C. The Committee broke up in teams and used an evaluation form on each of the properties. The Selectmen will review this information as well as visiting the top 4 recommendations.
- D. Chairman Hartman asked Selectman Brown if he has a cost for the current site regarding the stabilization of the river bank. Selectman Brown said he had a contractor look at the site and the contractor gave a quick \$70K cost which does not include engineering or permitting costs. Selectman Brown also contacted another engineering company and asked to meet at the site, when they were at the site they did not feel the State would grant a permit and recommended a different repair which they are working up the cost for with engineering and permitting costs.

- E. Howard Kirchner suggested to the Board that they should look at other sites as well in case the top 4 suggestions are not available for purchase. Selectman Brown agreed with Howard and said what is before the Board is the Fire Station Alternate Sites Committee's recommendations.
- F. Peter Wyman commented about one of the sites that would need a septic system. He said to keep in mind that the amount of sewer going into the system would be minimal, the system would probably last forever, plus it would eliminate annual billing. He said in the scoring system septic systems received a -1 point, but long term in cost, it's very beneficial.
- G. The Board will meet on June 10th at 3:00 pm. and will discuss the properties in a nonpublic session under RSA 91-A: III (d) consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community. John Leavitt questioned if the properties should be discussed in nonpublic and the Town Administrator said the discussion does meet the criteria.
- H. Alfred Hanson said as a member of the Committee, he learned a lot. He said the path that he thinks he is hearing from the Selectmen is no different than the path that was taken by the first fire station site committee. He feels there is more planning that needs to be done, besides the parcels of land, the building also needs to be considered. The current property was purchased and a design was created based on the confinements of the property. Alfred said during the Committee's process, the future was discussed, build something that will accommodate the Fire Departments needs now that can also be added onto in the future. Alfred said there were suggestions during the end of FSASC process about establishing another committee that would evaluate the building. Alfred sees this as phase I the land, and phase II the building and he feels before the Selectmen can make a decision on phase I, phase II needs to be looked at, he feels this could be accomplished in the next 2 or three years. He also feels it will be more affordable for the Town in 2 or three years and if it is presented to the voters in its entirety, he feels it will be more accepted by the voters. Chairman Hartman said he has the same concerns regarding the current building design and he has heard the same from residents, the design is much more than actually needed.
- I. Alfred said if a committee is established that is similar to what the FSASC accomplished he thinks the results will be incredible. Selectman Carson agrees and he feels the time frame should be similar as well. Selectman Brown said the criteria was to find enough square footage on a property that would be able to provide space enough for parking, the building that was designed and room for expansion.
- J. The Town Administrator talked about John Leavitt's concern about discussing the properties in a nonpublic session on July 10. He thinks the Board will be discussing topics around the properties that does not fall under nonpublic criteria, there is always the option during the meeting if the criteria arises. The Town Administrator will create an agenda for the work session. The Selectmen agreed that a building committee is needed and will discuss the creation of at a later date. Peter Wyman encouraged the Board to agree with Alfred, keep a rounded table similar to the FSASC so all aspects will be looked at and he feels it will solve some issues later on when it is presented to the public. Martha Mical asked if the committee could be more diverse and not all male, men don't do well in developing kitchens.
- K. Howard Kirchner said the Town Administrator did a great job on this committee, he did all the leg work, created the evaluation sheets and did a really good job.

4. Unrequested Funds from the Trustees of the Trust Funds

- A. The Town Administrator said the Town has been notified by the auditors on several audit cycles that there are some invoices paid by the Town that need to be reimbursed from the capital reserves in order to balance the books. If there is no money in the capital reserve the money would need to come from the fund balance. So in order to resolve this issue the Bookkeeper was granted extra hours to complete the research on which invoices that were not paid.
- B. The Bookkeeper, Tracey Hallenborg, explained that she researched all the invoices back to 2007 and created a spread sheet showing the outstanding invoices, most are from FEMA projects. The total amount that needs to be paid back is \$279,599.94; the auditor's in their report have requested this to be addressed since 2008. Until this is cleared up, the capital reserve balances are not accurate.

| YEAR | HIGHWAY UNREQUESTED INVOICES | | |
|-------------|--|-------------|---------------------|
| 2012 | PUMPKIN HILL-HENNIKER SAND | \$112.97 | |
| 2012 | N VILLAGE RD HENNIKER SAND | \$60.38 | |
| 2010 | MAIN STREET PAYROLL | \$1,959.82 | |
| 2010 | EAST ROBY ROAD-MULTI INV | \$58,876.67 | |
| 2009 | MASON HILL AUDIT INV RECLASS | \$48,351.50 | |
| 2009 | PROV/LORBER INVS-CONNORS MILL | \$5,034.80 | |
| 2008 | NEWMARKET RD- MULTI INV | \$25,530.01 | |
| | These Invoices were not requested from the Trustees | | |
| | TOTAL DUE FROM TTF | | \$139,926.15 |
| | | | |
| | HWY DEFERRED FEMA | | |
| 2009 | DEFERRED FEMA-MASON HILL, HORNE, JOPPA | \$94,654.29 | |
| | Auditors are researching if money is due from Trustees | | |
| | TOTAL DEFERRED FEMA | | \$94,654.29 |
| | | | |
| | FIRE DEPARTMENT | | |
| 2009 | FD BLDG MOSHER INV | \$500.00 | |
| 2010 | FD VEHICLE | \$1,370.00 | |
| 2013 | FD BLD NO \$ LEFT IN CRF | \$1,750.00 | |
| | No money available in CRF/not requested from Trustees | | |
| | BALANCE DUE FROM TTF | | \$3,620.00 |
| | | | |
| | TOWN HALL IMPROVEMENTS | | |
| 2012 | TH IMPROVEMENTS | \$85.26 | |
| | This invoice was not requested from Trustees | | |
| | BALANCE DUE FROM TTF | | \$85.26 |
| | PREV YEARS BALANCE | | \$238,285.70 |
| | 2014 INV TO BE REQUESTED | | \$41,314.24 |
| | TOTAL BALANCE DUE FROM CRF AS OF 7/8/14 | | \$279,599.94 |

C. Selectman Brown asked how can someone sign off on an audit and owe money. The Town Administrator said first you need to understand what the auditor's role is. The auditor comes in and looks at the books and says is the Town managing the finances and reporting those finances in a way that's acceptable in general accounting practices. The auditor's point out areas that are outstanding which were reported but there were no final steps taken. The Town Administrator believes that the balancing can be done in two years, but it is advisable that it is done so the books balance.

- D. The Town Administrator said it is likely that there will be some money that will have to come from capital reserve funds or from the general fund surplus in November in order to take care of some of the outstanding receivables. Selectman Brown said this will affect Waldron Hill Road.
- E. Ed Mical asked if the FEMA project sheets were reviewed and Tracey said yes.
- F. Martha Mical suggested that if the invoices are paid from the capital reserves a warrant article should be presented next Town Meeting to replace those funds.

5. Elected Officials – Accrued Time

- A. The following is a memo the Town Administrator drafted for discussion:

MEMORANDUM

DATE: June 15, 2014

TO: Board of Selectmen

FROM: Jim Bingham, Town Administrator

RE: Accrued time for elected officials

Warner has been treating their elected officials as employees and included them in the employee fringe benefits and wage increases traditionally reserved for town employees. Some of these inclusions were voted in at town meetings, such as offering health insurance and retirement benefits and some may have been unintentionally adopted with no documentation authorizing these benefits. Accruing vacation, personal and sick time falls into this latter category. Consequently, there seems to be confusion regarding accrued time expectation with these two positions particularly when it comes to termination of employment and what the town may be expected to payout as part of their severance (Please see attached spreadsheet).

In looking into this matter further I felt that it was important to provide pertinent information from the following perspectives: Legal – State and Federal, Town Meetings, Personnel Policy, Common Practice in other towns and past decisions by town governing bodies or administration.

Legal: (including overview of the topic in articles by legal counsel of NHMA)

1) Title 29 Part 785 of the Code of Federal Regulations, US Dept. of Labor 803.05 Exemption: the term "Employee" as it applies to NH RSA 275:42, I and RSA 279:1, X shall not apply to the following...

(g) Elected public officials, of counties or municipalities

2) NH RSA 273-A:1 Definitions.

IX. "Public Employee" means any person employed by a public employers except:

(a) Persons elected by popular vote

XI. "Terms and conditions of employment" means wages, hours, and other conditions of employment...

3) New Hampshire Town and City, May 2006, Municipal Employee and Municipal Official – Is There a Difference? (An article by C. Christine Fillmore, Esq. Available online and at Selectmen's Office)

4) Town of Exeter Website (<http://exeternh.gov>) Click to Town Clerk's Home screen. An article about the duties and compensation of the town clerk. Below

is a quote from the article:

"As a town official, the town clerk is not an employee of the town. This, the town clerk is not subject to the personnel policies of the town with respect to vacation time, sick time, or hours of work per week. The town clerk may set his or her own office hours and take what vacation and sick time they feel they can, while still providing the service their constituents expect."

Town Meetings:

1988 – Article 4 – To see if the Town will vote to change the method of compensation for the Town Clerk from salary and statutory fees to salary only. Voice Vote. Article carried.

1990 – Article 23 – " To see if the Town will vote to increase Town Clerk office hours and salary to 40 hours per week and the Deputy Town Clerk's office hours and salary to 20 hours per week in order to provide decals, plates, extra evening hours and to bring the Town Clerk's records up to date and to maintain the increasing amount of daily paperwork." Amended to 35 hours per week for Town Clerk ... Ballot vote 118 yea, 108 no. Deputy Town Clerk hours remained at 20 /week.

2000 - Article 21 (operating budget) was amended as such " to amend Article 21 to add \$13,217 (amount provided by the finance director) to the bottom line to provide for a two-person health insurance package and retirement for the Town Clerk and Tax Collector. This amended article passed.

2001 – As I stated in my memo of May 12, 2014, under Article 36, (To transact any other business that may come before said meeting), a motion was made and passed authorizing the Board of Selectmen to enter into future salary negotiations with all elected officials as though they were not elected officials and put them on regular pay scale.

In my opinion, this was an "end of meeting" motion (meeting adjourned at 11:32 pm) that did not receive prior review by town counsel and DRA as had the other appropriation articles. I would venture that someone at DRA would have not allowed or at least would have questioned the phrase "...elected officials treated as though they were not elected officials but employees...".

In looking into what was voted at town meetings for these two elected officials, the town clerk and tax collector, I found that these positions were converted to salaried positions, later provided health insurance and retirement benefits and later had the positions included in the wage grade and scale with other employees so that wage increases were managed by the Board of Selectmen and not being determined at town meeting every year. Going by what the town specifically voted there was nothing I could find here or in other documentation including a review of minutes, that had awarded elected officials the fringe benefits of vacation, personal and sick leave. The primary reason elected officials do not have such accrued time is that they are not under the supervision of Management, are not set to performance goals, not evaluated of their performance and therefore are not obligated to be at work at the times and set hours or meet work expectations in accordance with management objectives as are employees.

Offering compensation in the form of a base salary is an allowable alternative to fees for service in collecting taxes and fees by persons holding these offices under RSA 41:25 Fees, but treating them as employees is in contradiction to the RSAs and the NH and US Dept of Labor regulations.

Town Personnel Policies:

The town personnel policy prior to being revised in 2011 stated the following regarding accrued vacation time –

"The vacation time will extend from January 1 to December 31 of each year. Unused vacation time shall expire December 31."

The older personnel policy on accrued sick leave states –

"Upon separation from the town, if accumulated, up to thirty (30) days sick leave will be reimbursed to the employee only if a two-week notice has been given.

And the older policy also states that "Personal days are non-accruing."

The Board of Selectmen adopted the revised Personnel Policy in 2012, but adopted Section VII, Leave of the updated Personnel Policy on January 1, 2011. Regarding accrued vacation time, the updated policy states: "**Unused vacation time in excess of the equivalent of two weeks shall not be carried over into the next calendar year.**"

And also states that "**The term "week" in this section refers to the amount of hours per week an employee was hired to perform (ex: 20, 25, 30, etc.).**"

In the case of the elected officials working under a salary that would be 35 hours per week based on the warrant article passed in 1990 for the Town Clerk. There is no record of formally setting the number of work hours per week for the Tax Collector position.

Based on the attached emails and discussion with the present bookkeeper who inherited this situation and was told by her predecessor to keep recording accrued time, it seems that when the revised personnel policy was adopted, supposedly the accrued vacation hours for three or four long term employees, which included the Town Clerk and Tax Collector, were frozen at the current amount and set as a maximum limit. So they would not have to use all their accrued time in one year or have the town "buy back" these amounts, these long term employees were told to begin using up their accrued vacation time over the next few years in order to bring the accrued amount to 2 weeks of carryover consistent with the personnel policy. They were not allowed to carryover unused vacation time from one year to the next.

The problem is there are no consistent town records confirming the number of hours worked by the incumbents of these two positions since time sheets were not submitted, until last year in the case of the Town Clerk position. As you may recall, the Town Clerk is now submitting time sheets to be in compliance with requirements of the NH Retirement System, in which she participates.

Therefore, there is no HR / payroll records of vacation, personal or sick time requested or used unless notification was offered to the finance office by the incumbents as a courtesy. The accounting system just continued to accrue vacation and sick time but did not subtract time used unless the Bookkeeper received notification by either incumbent, because there was no established system in place to do so for these two positions. Elected officials are not required to request vacation time in writing.

Survey of Other Towns:

Fifty nine towns with populations (2,000 – 4,999) similar to Warner's population were surveyed about these elected positions. Most of these towns (38) had Town Clerk and Tax Collector duties combined in one position. Of these 38 towns only three offered health insurance, retirement and accrued time and the position was a full time 40 hour position.

Out of the twenty two (22) towns surveyed with populations (2,000 – 4,999) similar to Warner's population that have a separate town clerk position, eight (8) towns have town clerk positions that are full time and just 3 of the full-time towns (Auburn, Dunbarton and Lancaster) offer fringe benefits – health insurance, retirement and accrued time for this position. The other towns with full time town clerk positions do not. Full time town clerk hours ranged from 36 to 40 hours per week. Most were at or near 40 hours. Warner is clearly in the minority in its present practices of offering employee benefits to the Town Clerk and Tax Collector positions. The majority of the towns surveyed maintain compliance with the RSAs and Dept of Labor regulations pertaining to these elected positions.

Recommendations:

My opinion is that the accrued vacation time attributed to these two positions is not legitimate for the following reasons:

1. The State RSAs and NH Department of Labor rulings clearly state that elected officials, are not employees and as such do not receive the fringe benefit of accrued vacation time that employees are granted nor are they subject to control of their work hours by the governing body as employees are.
2. Because the town clerk and tax collector have not been obliged to submit timesheets (their prerogative as elected officials), the town has no way of independently determining how much net vacation time they have or how much time they have taken off in the years they have held their office.
3. There is clear record that the town residents voted to provide 1. a salary in lieu of recompense through fees to incumbents in the town clerk and tax

collector positions, 2. that these elected officials receive benefits of health insurance up to 2 person coverage and retirement benefits and 3. the positions were to be included with other employee positions when determining compensation by the Board of Selectmen. However, there is no clearly stated record of the legislative body having voted to offer accrued sick and vacation time to these positions.

The Board of Selectmen needs to review this report and the accompanying documents and provide any additional information or documentation that each selectman may have pertaining to the revision of the personnel policies in 2011 and 2012 that may provide further insight to this present situation.

Depending on what the Board decides to do regarding acknowledging whether the accrued vacation time is allowed for these two positions, and how to address the present accrued time, the Board will need to re-emphasize to the town clerk and the tax collector of their decision.

(For later)

If the Select Board decides to permit the town clerk and tax collector to "use up" their accrued vacation time within a specified period, several factors need to be addressed. Firstly, due to the programming of our accounting system the rate at which vacation time was accrued for 'salaried' employees is 40 hours per week. Since these positions are 35/week positions adjustments may have to be made to their accrued totals to reflect the difference in the work week. According to past emails the Board should go back to 1/1/2011 to establish the maximum accrued amount for each position adjusted if necessary to 35 hours per week and have the incumbents draw down from this amount minus what has been used in 2014. It should be made clear that it is not the policy for the town to "Buy Back" unused vacation time and sick time beyond what is allowed by the present personnel policy or under a separate written agreement upon termination of employment.

- B. Selectman Carson asked the Town Administrator if he wants the Board to read the memorandum and act on it tonight. The Town Administrator said that he provided the Board with this memo a while ago and told the Board that it would be on a future agenda. The Town Administrator feels it's important for the Board to realize that there is either confusion or discrepancies on how the Town is running the personnel policy with respect to leave in particular, where the Town stands with respect to the elected officials when compared to the RSA, what other Town's are doing and compared to the personnel policy. At this time the Tax Collector and Town Clerk have a large number of accrued hours. He said back in 2011/2012 the Board adopted a revised policy where people who had a large number of accrued hours would not accrue any more until those hours were used up and would not be able to carry over any hours until they were down below the 2 week allowable carry over.
- C. The reason the Town Administrator is bringing this before the Selectmen is so everyone is clear as to what happens with the accrued time while the Town Clerk and Tax Collector are in their positions and what happens if they were to terminate. And in general, does the Town want to treat the elected officials as employees and to what extent. He said the attorney at NH Municipal Association and the Department of Labor both said the Town is going against the grain, they are elected officials and they run with a different set of rules and RSAs than employees.
- D. Chairman Hartman asked the Board members for comments. Selectman Carson admitted that he has not read the memorandum, Selectman Brown said he has read it. Chairman Hartman asked the Town Administrator if he wants the Board to take action this evening. The Town Administrator said no, he would like to here discussion from the Board.
- E. Chairman Hartman said he knows the Board has no jurisdiction over the Town Clerk and Tax Collector. They can set their own office hours as long as the job gets done and receive the same paycheck.
- F. The personel policy reads as follows:

Vacation time will accrue from January 1 to December 31, of each year. Unused vacation time in excess of the equivalence of two week's pay shall expire December 31st and not be carried forward. Vacation schedules shall be arranged so as to cause the least interference with the work load. Employees have a responsibility to request vacation time as far in advance as practical to avoid last minute conflicts and confusion.

Upon voluntary separation or layoff of employment, (such separation not being under threat of disciplinary action, as provided in these policies), an employee shall receive payment of any unused vacation leave not exceeding the equivalent of two weeks pay.

It is the policy of the Town not to grant payments in lieu of vacations or personal time.

The Town Administrator said the accrued hours for the Town Clerk and Tax Collector exceeds the policy and he is not sure why they holding onto the accrued time. Selectman Brown said elected officials can't provide a two week notice, he also asked how many town's offer accrued time. The Town Administrator said 59 towns with populations from 2,000 to 4,999 were surveyed. Most of these towns (38) have a combined Town Clerk/Tax Collector position, of the 38 towns, 3 offered health, retirement and accrued time and the position is a full time 40 hour position. 22 towns surveyed with populations from 2,000 to 4,999 that have a separate Town Clerk position, 8 towns have a full time Town Clerk (40 hours) and 3 of the full time towns (Auburn, Lancaster and Dunbarton) offer full time benefits. The remaining towns with a full time Town Clerk do not. Full time Town Clerk hours ranged from 36-40 hours per week, most were at or near 40.

- G. The Town Administrator said the issue at hand is that there is a large amount of accrued hours and he wants to make sure that the Town Clerk and Tax Collector understands this accrued time needs to be used up, it will not be purchased back. Plus there is no way of knowing over the course of the years whether any of the accrued time was used because they are not required to fill out time sheets. There are some minimal records by way of a memo, or the Bookkeeper was told, and other times it was understood that it's a slow period so they wouldn't be in that much. The Town Clerk said she takes exception with that comment, she said that's an assumption. The Town Administrator said no, it was what the Tax Collector told him.
- H. Judy said the accrued hours on the last page of the memorandum are not accurate, she does not know where the figures came from and there is a variety of things wrong with the information provided in the memorandum, some of it is incomplete. The Town Administrator asked such as what.
- I. Marianne said she takes objection to the fact that the Town Administrator said the Town made (us) employee's, in the two warrant articles mentioned the word "employee" is never mentioned. Marianne said she does not consider herself as an employee of the Town nor did the Town; the warrant articles did not use the word employee.
- J. Chairman Hartman said the issue is the accrued time. Judy said it wasn't our choice, no one ever asked us. Marianne said she never had any expectations of accruing hours, she said she never paid attention to it because it doesn't apply to her. Marianne told the Board that she has no expectation of getting accrued vacation and sick time when she leaves her position. However, she does take exception to the fact in the memorandum there are inaccuracies, the word "employee" was not used by the Town in the two votes. Marianne also requested a copy of the survey that is spoken about in the memorandum. Marianne said if the Town Administrator or a Selectman had come to her instead of seeing it on the agenda, it would have been simply resolved, Marianne said she is only speaking for herself. Marianne said she is not a member of the NH Retirement either because at the time it was offered she was 50 and she didn't think she would be staying until she was 70, but, circumstances have changed and she probably will. She said she is extremely grateful for the health and retirement benefits and for putting her position on the wage study.
- K. Chairman Hartman said there may be a need to have an amendment to the memorandum if there are inaccuracies. Chairman Hartman said he didn't have a reason to come to Marianne. Marianne said the memorandum is dated June 15th. Chairman Hartman said the Town Administrator had said to him that he sees a problem with the way the elected officials are treated like employee's, when it comes to accruals; it could lead to a payout.
- L. Judy said her particular issue is what the Town Administrator is trying to address. Is it excessive accrued hours? Is that the issue? Further in the memorandum it says 3 or 4 other employees, she asked we are two, who are the others. Judy said if it's excessive accrued hours, that could be addressed. If it's only the elected officials, then don't bring in the others with excessive hours. She said we are either being singled out because we have excessive accrued hours on the books, and that needs to be dealt with or the payout for employees with excessive hours will happen, if the issue is financial for the Town when those people leave then that should also be addressed.

- M. Tracey asked if Marianne is not acknowledging her accrued time is it a moot point to have elected officials accrue time. When the auditor's come, because the Town Clerk and Tax Collector are in the system accruing, this is an accrue liability. Per the Department of Labor the Town is not allowed to limit the elected officials time, accruals limit time. The other employees that have excessive time have been notified and are working on knocking down their hours.
- N. Selectman Brown said he doesn't understand why the elected officials are accruing because the RSAs were written to set guidelines for those two positions. Tracey said there were accruals long before the Town purchased the current municipal accounting software because Judy used to put in for her time. Judy said she always requested and explained her time off because she has to answer to 3,000 people, she said she has documented her time since she was a Deputy Town Clerk. She also said when the accruals started showing up on her pay stub she didn't think anything of it except for documentation and accuracy. Marianne said that she has never been as efficient as Judy, she has never tracked her time because she works at home a lot, plus at the office, she makes herself available to residents on off office hours, and she knows during a revaluation which is every 5 years that she will be working twice as much than usual.
- O. Martha Mical said in the 2001 Annual Report, on page 141, which is the minutes from the 2000 Town Meeting states the following:

Martha Bodnarik made a motion:

To direct the Board of Selectmen to carry on future salary negotiations with the Town Clerk and Tax Collector as though they were not elected officials and to put them on the regular pay scale.

Martha said no where does it say to treat them as employees. Selectman Brown said the RSA says they are elected officials and they don't fall under certain guidelines. Martha said the voters voted to treat them as non-elected officials. Selectman Brown said then how do we treat them then, as if they are in never, never land? Marianne said that article had to do with getting both her and Judy on the wage scale.

- P. Judy said what the motion was at the 2001 Town Meeting was to direct the Board of Selectmen to carry on future salary/compensation package negotiations with all elected officials as though they were not elected officials and to put them on the regular pay scale.
- Q. The Town Administrator read a memo from the previous Town Administrator to the Bookkeeper at that time (Mike Ayotte) dated December 6, 2011.

Mike

Judy, Marianne, Bill and Allan, maximum vacation accrual carry over will be what they have in the bank at the end of 2011. They are to be working on getting their vacation time down to 2 weeks as stated in the personnel policy. Until they get below 2 weeks, they are not eligible to carry any additional vacation time over into the next year.

Marianne said the Town Administrator at that time never spoke to her/them. Martha said the communication at that time was not good, the Town Clerk agreed. The Town Administrator read another memo from the then Town Administrator to the Town Clerk dated August 13, 2012.

Hi Judy

I apologize if I am repeating this, but I can't find an email where I responded to your inquiry about the 53 hours of vacation time that you are questioning as recorded as taken in your pay stub. Tracey doubled checked with Mike and those hours are the hours that were not eligible to carry over in 2011. Our personnel policy is that employee's can carry over a maximum of 2 weeks at the end of the year. You already have more than 2 weeks in your vacation bank so you would not be eligible to add any more time at the bank at the end of the calendar year until you dip below 2 weeks.

The Town Administrator said that these memo's tell him that there was an awareness of accrued time. Marianne clarified that none of those memo's are addressed to her. Judy said the email response to her, the dip below 2 weeks part refers to the prior email sent to Mike Ayotte that Judy said she never got. Judy also said the personnel policy doesn't say you cannot carry over until you dip below 2 weeks, so she said it (email) didn't mean anything to her and that is why she questioned the Bookkeeper taking the 53 hours. Tracey Hallenborg said the policy says know one can carry over in excess of 2 weeks and technically all the accrued time could have been deleted leaving only 2 weeks per the personnel policy, but that didn't happen.

Policy reads as follows:

Vacation time will accrue from January 1 to December 31, of each year. Unused vacation time in excess of the equivalence of two week's pay shall expire December 31st and not be carried forward. Vacation schedules shall be arranged so as to cause the least interference with the work load. Employees have a responsibility to request vacation time as far in advance as practical to avoid last minute conflicts and confusion.

Upon voluntary separation or layoff of employment, (such separation not being under threat of disciplinary action, as provided in these policies), an employee shall receive payment of any unused vacation leave not exceeding the equivalent of two weeks pay. It is the policy of the Town not to grant payments in lieu of vacations or personal time.

- R. Chairman Hartman at this time closed this discussion and will need to be revisited. He set a time deadline of September 1, 2014 for the accruals to be resolved.

6. Hartshorn Lane – Private Road

- A. The Town Administrator created a letter for the Board to review for comment, this letter will be sent to the property owners on Hartshorn Lane. Below is the final version.

July 22, 2014

*Mr./Ms. Resident/Owner
____ Hartshorn Lane
Warner, NH 03278*

Dear _____:

In the past, maintenance of Hartshorn Lane has alternated between private residents and contractors in some years and by the Town Hwy Department in recent years. Town tax maps show that Hartshorn Lane is a private road and under this present legal status, any property damage or personal injury that is incurred during road maintenance by town employees and equipment would not be covered under the town's liability insurance policy.

The Board of Selectmen has been informed by Property Liability Insurance Trust, the town's liability insurance provider, that continuing maintenance of Hartshorn Lane poses a serious insurance liability for the Town as well as being in violation of NH RSA 231:59. With regret, the Selectmen's Office is notifying all property owners on Hartshorn Lane that the town will no longer be able to provide winter and summer road maintenance. The Town plans to cease all town road maintenance of Hartshorn Lane effective June 1, 2015.

It is hoped that this announcement at this time will provide ample lead time for the residents to organize and develop a plan to obtain services for road maintenance by no later than May 2015. Here are two options that the residents of Hartshorn Lane can consider in addressing the need for road

maintenance:

1. The residents of Hartshorn Lane can form a homeowners association and as such can contract for road maintenance from a private contractor or devise other suitable means of conducting snow plowing and road repairs.

2. The residents, as an organized group, can petition to the Board of Selectmen to lay out a road to town specifications and be accepted as a town road. This was recommended a few years before and it does require each resident to be willing to grant Right-of-Way (ROW) easements on their property in order for the town to create a road of sufficient width for town vehicles to use.

The Board of Selectmen is willing to meet with you and your neighbors to discuss these options and consider options that you may suggest. If you wish to meet with the Selectmen at one of their regularly scheduled Board meetings, I will be pleased to add you to the agenda. Please feel free to contact the Selectmen's office with any questions that you have.

*Yours truly,
Jim Bingham
Town Administrator*

- B. Selectman Carson said the problem that he has is the Town has been maintaining Hartshorn Lane as a Town road for many years, he questions if the Town should seek legal advisement. The Town Administrator said this is a liability to the Town, if a plow truck is damaged while on Hartshorn Lane the damage will not be covered by the insurance. And, if it is found the Town has a prescriptive right-of-way in a way that allows the trucks to travel, right now the road is very narrow. Also, if it can be proven that the Town maintained the road for 20 years prior to 1968, then the Town owns its.
- C. Selectman Brown said he knows the Town did maintenance on Hartshorn Lane since the 1950's off and on, but, at first the area was only camps.
- D. The Town Administrator said most of the properties have changed hands, with more demands and less understanding of the Town's imperfections. The Town needs to address this and follow through with whatever is declared. The Board agreed to send the letter.

7. Capital Improvements Program – Selectmen's Representative

Chairman Hartman moved to appoint Selectman Carson as the Board's representative to the Capital Improvements Program Committee. Selectman Brown seconded the motion, all were in favor, the motion passed. Selectman Carson said he is unavailable for the first meeting scheduled on July 14, Selectman Brown offered to sit in for him.

8. Town Administrator's Report

Warner PD: Chief Chandler informed the Town Administrator that they are contacting neighboring towns to learn how these towns are replacing the old PCs in their cruisers. Sergeant Carter stated that the 50:50 grants for this equipment does not cover purchase of iPads and tablet PCs at this time. The hiring of a new full time officer is proceeding smoothly. The candidate has recently completed the psych evaluation survey, which is standard procedure and Chief Chandler will receive the results in about a week. The officers have all completed tests on the new fire arms and are now qualified.

Fire Department: The FD is anxiously waiting word on the grant to replace the personal breathing apparatus (air tanks). Their grant scored in the 97th percentile. The Concord fire Dept. received their funding for the air packs recently and their grant receive a score of 98%. If the money does not run out Warner should receive funds. The Chief is planning to submit a request to CIP committee for a gradual replacement of the air packs as a precaution.

Department of Public Works: The Highway crew is preparing equipment in order to start the "clearing" phase of Red Chimney Rd. which will be started this week. They have been cleaning plugged culverts with the old fire truck and washing the salt/sand shed, so the concrete walls will be sealed before they fill the building with sand and salt. The Highway Crew also completed back filling the Runnel's Loop drainage ditch. We added 40' of 18" culvert and back filled using gravel from the Town's Gravel Pit. Pembroke Sand and Gravel started crushing 6" gravel last week and plans to be done this week. Matt met with Weaver Bros. last week to clarify the cost estimates in the quote for Waldron Hill. Matt also had meetings with Pike Paving Ind. and J. A. F. Drainage last Tuesday and Wednesday to gain more solid quotes for Waldron Hill Project. Matt is monitoring the Telephone Pole Installation on North Rd. make sure poles are put all the way to the edge of the Town's R.O.W. on the "Cell Tower" Project.

Town Buildings: Refinishing the auditorium floor, stage floor and stairs going to the balcony was completed on Jun 27. The firewall /router for the town hall were relocated to the Town Clerk's office to improve WI-FI reception in the building. Painting on the new exterior door and trim on the west side of the OGS building is almost completed. The irrigation system at the police station is now on a timer schedule to water the new lawn.

9. Retreat Road

- A. Selectman Brown said he attended the July 7 Planning Board meeting and he said he left a little disgruntled. He said he understood the Planning Board wanted him at the meeting to provide some history on Retreat Road and then at the meeting he learned that the Planning Board was not taking any public comment. Since then, a site-walk has been scheduled for July 28, but, he said on that date he will not be available. Selectman Carson said the site walk is to get a sense of what is being talked about and the history as well. Selectman Brown said he knows of a survey from 1980. He also said Clark Davis had his land surveyed and the surveyor had plotted the road as it was in 1980 on his survey map. When Selectman Brown was the Director of Public Works he went out and set iron pins based on the survey that Clark Davis had to keep track of the where the old road was. Selectman Brown said the Davis' claimed that they lost their ability to get to their property and was landlocked. Selectman Brown said that is not the case because the road never went to their property and he based this on the size of the tree stumps. He said you can't claim that your using something through prescriptive rights if your not using it. Prescriptive rights gives you the use to use what your using in ditches and slopes but if it has trees growing in it then it is obvious its not being used for highway. Selectman Brown said in 1980, Retreat Road was a one lane mud road with pull offs along the side of the road.
- B. Selectman Carson said during the Planning Board meeting there were a variety of opinions about where the road actually went. During the Planning Board site walk there will be no public comment accepted. He also said that the abutters are all open to a solution in laying out the road. Selectman Brown said that he could go out to Retreat Road and place some grade stakes to show where the old road was. Selectman Carson asked if it is the Selectman that would need to achieve an easement and if so its to the benefit to the property owner who is trying to subdivide. This subdivision is the time to clean up the location of Retreat Road. The Selectmen decided to visit Retreat Road after their meeting on July 10th.

10. Other Selectman's Business

- A. Selectman Carson reported that the Solar Array Committee met last week and reviewed proposals from the Town of Barrington and Bedford and will try to create an RFP by combining aspects from both of those towns. The site behind the salt shed at the Highway Department seems to be the best site.

11. Manifest

Selectman Carson moved to authorize the Selectmen to sign manifests and order the Treasurer to sign Payroll check numbers 3200-3217 in the amount of \$30,250.91 (including 18 direct deposits) and Accounts Payable check numbers 49852-49899 in the amount of \$342,748.42 (which includes a check for \$245,219.85 to KRSD). Chairman Hartman seconded the motion; all were in favor, the motion passed.

12. Consent Agenda

Selectman Brown moved to approve the Consent Agenda for July 8, 2014:

- Intent-to-cut for Map 3 Lot 51-1
- Discretionary Preservation Easement Deed for:
 - Map 14 Lot 047
- Building Permits for:
 - Map 15 Lot 49-1
 - Map 14 Lot 29-1-17
 - Map 12 Lot 042-1

Chairman Hartman seconded the motion; all were in favor, the motion passed.

13. Meeting Minutes

Selectman Carson moved to approve meeting minutes dated May 29 and June 10, 2014. Selectman Brown seconded the motion; all were in favor, the motion passed.

14. Adjournment

A motion was made to adjourn at 9:20 pm.

Board of Selectmen

David E. Hartman – Chairman

Clyde Carson

Allan N. Brown

Respectfully submitted,
Mary Whalen
Recording secretary