



# Warner Board of Selectmen

Meeting Minutes  
Thursday, July 10, 2014  
APPROVED

Chairman Hartman opened the meeting at 3:05 p.m.

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

Others present: Peter Wyman, Judy Newman-Rogers

## **1. Retreat Road**

The Board talked about going to Retreat Road as part of this meeting to review the road in relationship to the subdivision application in the Planning Board.

## **2. Town Clerk & Tax Collector – Accrued Hours**

- A. Chairman Hartman asked if there are any other elected officials accruing time and the Town Administrator said no. Chairman Hartman said then compared to other elected officials the Town Clerk and Tax Collector are receiving other special benefits.
- B. Selectman Brown said he doesn't understand how this all began because he has read the RSAs and it is very clear that the two positions are not entitled to the benefit of accruing vacation and sick time. The Town Administrator said that was the point of his memo, to point out to the Selectmen that there is no record authorizing the accruals, it just happened. The other problem is the accruals for the Town Clerk and Tax Collector are not being addressed in the same manner as other long term employees. Which is, they must use their time up until they achieve below a 2 week accrual. The Town Clerk and Tax Collector's accrual time kept accruing, there was no consistent record of time being used, there are discrepancies on what is being used and what is being carried over partly because the Town Clerk and Tax Collector have different work schedules than full time employees. Every other salary person in Town accrues and works 40 hours. The Town Clerk works 35 hours and is accruing at the 40 hour salary rate and the Tax Collector is also the same accruing at 40 hours and says she loves her flexibility, sometimes it's a lot of hours and sometimes very little.
- C. Selectman Brown said the Board does not have the authority to tell them the hours they should work. The Town Administrator agreed, he said the Town Clerk began documenting her time recently because it's a requirement of the NH Retirement System.
- D. The Town Administrator said this accrued time for the Town Clerk and Tax Collector is sitting on the books and has consumed time in both the Finance office and the Town Administrator's office about how accurate it is. Selectman Carson said he would be happy to provide his comments, but only in a nonpublic session. Selectman Brown said that elected officials do not have that privilege per the RSAs.
- E. The Town Administrator said he was trying to be comprehensive in the memo dated June 15, 2014. During the July 8<sup>th</sup> Selectman's meeting the Tax Collector said there was an error on how he quoted one of the motions voted at Town Meeting and she was correct. The motion did not say "as employee's" it said "not as elected officials", everything else in the memo stays relevant. The Town Clerk at the same meeting said there were also inaccuracies in the spreadsheet. He said quite possibly, the numbers were generated around June 15<sup>th</sup> so they were accurate at that time. The Town Administrator has backup documentation showing several emails, both to all employee's and specific employees from the Town Administrator at that time explaining the vacation policy was to go into effect and the long term employees should be actively using their accrued time to bring it down. The Town Administrator said the one long-term employee that has accrued time is actively reducing his accrued time, which is the Police Chief. The Town Administrator said

the Town Clerk and Tax Collector are receiving the benefits of an employee and they consider themselves non-employees. The Town Administrator would like the accrued time eliminated from the Town Clerk and Tax Collector; the Town did vote to provide health benefits which will remain. The Town Administrator said the accrued time is not necessary for these two elected positions, he spoke with the Tax Collector today and she said she is very willing to sign off the accrued time, she told the Town Administrator that she never expected it anyway. The Town Administrator would like the Board to make a decision because the policy is not being followed.

- F. Selectman Brown is concerned about the Town treating elected officials the same as employee's, this could be a liability issue because the law states they are not employee's; the law also states they can be offered health insurance and retirement. The Town Administrator said if the Town wants to handle compensation for Town Clerk and Tax Collector through the operating budget, it's stretching the RSAs, some may say that it isn't transparent, but at the time, the voters did not want to make legislative decisions on both of those salaries. Selectman Brown said that vote came after a few years of the voters dealing with various wage issues.
- G. Chairman Hartman said that he wanted to hear from Selectman Carson. Selectman Carson said he would happily give comment one on one but he is not comfortable in a public meeting. The Town Administrator confirmed that elected officials do not have the privilege of a nonpublic session, only employees.
- H. Chairman Hartman does not see what the Board is discussing as a negative thing, the discussion is about trying to redefine what the Town has voted to provide the Town Clerk and Tax Collector. It was established at Town Meeting to include both on the wage and salary scale, which has been done, and it was also established at Town Meeting that both would receive a two-person health coverage plan plus eligible to participate in the retirement plan and in order for the elected officials to be eligible for retirement they must provide time sheets. From what Chairman Hartman can see the voters never approved accrued time for the Town Clerk and Tax Collector. Chairman Hartman said in order to implement leave time, the Board would need to be the elected officials supervisor which the Board cannot be. The Bookkeeper's were trying to figure out how to keep track of this accrued time based on floating schedules. Selectman Brown said the Town cannot set their hours, we have absolutely no jurisdiction over them. He then asked how can the Town provide a benefit that we don't control. Chairman Hartman said the only way to control the accrued time is if the voters provide the benefit; then the debate would be at Town Meeting.
- I. Selectman Carson said he looks at this as a prescriptive right-of-way, if you do something long enough your stuck with it. Same thing on Hartshorn Lane, those residents think they live on a Town road. Selectman Brown sees this as a huge liability to the Town, if both are not reelected, they could come to the Town looking for a check for their accruals which could be a sizable sum..
- J. Selectman Carson said there are two issues, one is you have to come to some sort of negotiation/settlement with the existing officials and then set a precedent for anyone who comes in afterward. The Town Administrator disagrees, he does not feel the Board needs to negotiate and make a settlement, there is no documentation saying they should earn vacation and sick time and secondly they were both taking time off and it was inconsistently documented, so it is unknown if the accrued time on the books is accurate. The Town Administrator said the Town Clerk and Tax Collector receive a salary amount each year, both of them can take 4 weeks vacation and will still get paid whether they are in the office or not. Employee's can't do that unless they have the earned time. The Town Administrator said if the Tax Collector was paid off today the check amount would be \$33,800 and \$18,695 for the Town Clerk. Selectman Carson said the Tax Collector said to him that this is a bookkeeping entry from her perspective, she said she has no intention of using the accruals. The Town Administrator said the Tax Collector said the same to him, but he does not have a clear message from the Town Clerk. Selectman Brown said at the last Selectmen's meeting the Town Clerk said she keeps track of her time in case a voter questions her, but, Selectman Brown said nothing was ever turn in until NH Retirement required a time sheet from the Town Clerk. The Town Administrator said this topic was brought to both the Town Clerk and Tax Collectors attention back in 2011 and he has the memos to show that, they were to use their excess time because there is no buy back.

- K. The Town Administrator said the Tax Collector's expectation is when she looks at her paycheck her accruals will now show zero. Selectman Brown said the accruals should have never been on their pay stubs. The Town Administrator said that is the whole point because the Town Clerk would be pointing out to either the Bookkeeper or himself discrepancies on the carry-over time. When the Town Administrator looked back into this he learned that it was an on-going issue with his predecessor and the Bookkeepers predecessor so it is an obvious bone of contention.
- L. Chairman Hartman asked the Town Administrator if a conclusion will be made today and the Town Administrator asked the Board to discuss the next step from this point, he also asked if the Board needs any further information.
- M. Selectman Brown asked the Town Administrator in the information he provided there are 3 towns similar in size to Warner (Dunbarton, Auburn and Lancaster) that provide the Town Clerk and Tax Collector sick and vacation time, what did they do, was it by Town vote? The Town Administrator will find out if it was by Town vote, he said there are plenty of times when Towns pass illegal warrants and this is certainly a minority situation.
- N. Selectman Carson restated his thought which is draft the way the Board would like to see it, what makes sense moving forward. In terms of what has been, he feels it's just like a prescriptive right-of-way.
- O. Chairman Hartman suggested ceasing the accruals for the Town Clerk and Tax Collector immediately, each paycheck they receive is adding to the accruals. Selectman Carson said even though they have the flexibility to set their own hours they should be able to take a sick day. Chairman Hartman said they can, they can take time off anytime and still get paid. The Town Administrator said both the Town Clerk and Tax Collector are very dedicated in what they do, that is not the issue, the issue here is somehow as a Town, an employee benefit has been provided to elected officials that do not need it, and, it needs to be made very clear that when they sever from the Town, the accrued time vanishes.
- P. Selectman Carson said he hears what is being said. The past can be faulted for implementing the practice, but he feels to stop the practice without going to Town Meeting would be a compounding mistake. Chairman Hartman said the Town should not be doing this because they are elected officials. The Town Administrator said in some respect Town Meeting put the Town in this situation because the last motion that carried was introduced at 11:00 pm. and had no review from the Department of Revenue or an attorney and was passed. What was meant is the Town would like to include the Town Clerk and Tax Collector into the wage scale and add that cost into the operating budget. This employee benefit does not fit with the elected officials and the Town Administrator does not feel this is an item the Town needs to vote on but it does need to be addressed by the Board of Selectmen with respect to clarifying the policy. Someone along the way made the assumption that they should get accrued time. Of the two elected officials, one says she never even thinks about the time and doesn't want it, and the other is counting her hours every 15 minutes. He said neither elected official has used the extra accrued time as instructed back in 2011, plus there is no way of knowing the exact figure because until recently no time sheets were provided.
- Q. Selectman Brown also said that this practice should stop immediately to limit the liability for the Town. Selectman Carson said no matter what the Board votes on it's not going to go away. Selectman Brown said maybe so, but it will bring the issue to a head. Chairman Hartman said on July 8 it was argued very clearly that the Town Clerk and Tax Collector understand that they are not employee's.
- R. The Town Administrator feels the Board is on the right track by saying they agree the practice should cease. Then the next step is negotiate, he knows that the Tax Collector wants to sign off completely. Either way the Town Administrator said it's a financial liability that needs to be addressed one way or the other. If the Board is going to address a buy out then it needs to be budgeted and explained to the Budget Committee.

- S. Peter Wyman said the he has dealt with labor issues through the court system. If the Town Clerk and Tax Collector are not employees then in reality the accruals should be zeroed out as a clerical error, he said they are salary employee's, it will not matter if they take one day off or ten days off they will automatically get paid.
- T. The Town Administrator will contact Dunbarton, Auburn and Lancaster to find out what procedures they took. Selectman Brown is interested in what the Town's have to say, but, it won't change his mind. Chairman Hartman asked if legal counsel has been contacted. The Town Administrator said he contacted legal advise from the NH Municipal Association and the municipal hot line attorney about if this discussion should take place in a nonpublic session and they both agreed since it involved elected officials that exemptions didn't carry. Chairman Hartman recommends further review by the NHMA attorney. The Town Administrator said they will not advise and he recommended contacting the Town's attorney instead. Chairman Hartman would like the Town's attorney review and offer his opinion.

### **3. Fire Station Sites**

- A. Selectman Brown said he had Weaver Brothers Construction look at the current fire station site (Map 29 Lot 1) to provide a cost for stabilizing the riverbank, they provided a quick on the spot cost of about \$68K which does not include engineering or permitting costs. He then had Provan & Lorber create a cost which came in at \$250K which does not include permitting, back-fill and other costs, the total would be about \$500K. The difference between the two is Weaver Bros. cost is for on the surface, Provan & Lober's cost stabilizes 15' under the riverbank.
- B. The Board reviewed and discussed the properties proposed by the Fire Station Alternate Sites Committee.
- C. The Board discussed when these properties should be discussed in nonpublic. The Town Administrator said a nonpublic will be needed when the Board is closer to picking a lot, at this time there is just general discussion.
- D. Chairman Hartman recommended reassigning the Fire Station Alternate Sites Committee to the Fire Station Building Committee that includes a member from the Energy Committee instead of the Conservation Commission and as requested from Martha Mical a female member.
- E. The Board had discussion about the building, is it better to build what is needed and add on later. The Town Administrator said the committee can go through all the what if's and return with their recommendations.
- F. Selectman Carson asked Peter Wyman that he is under the impression that as the seasoned members retire there is not enough younger members joining and that may push the Town into a full-time situation. Peter said if there is no expertise or a fire chief, yes, potentially. He said there is a difference between having a full time fire chief and having EMTs, he doesn't feel the Town in 10-years will be in a situation for a full time station, maybe full time EMTs. Peter also feels the building committee will need guidance from the Board of Selectmen on what they expect of a building, Cadillac or Ford.
- G. Chairman Hartman would like to see a building that will accommodate the needs of the Fire Department plus a number of years. Selectman Brown said he would be open to up to 15 – 20 years.
- H. Selectman Brown will be on the building committee as well as the Town Administrator. Selectman Brown asked if the intent is to be ready for Town Meeting. The Town Administrator said it could be a one step or two step process, buy the land or the package deal. Selectman Brown said the Board needs to decide how much of a building they are willing to promote and once that is established he can move forward with the committee. The Town Administrator encouraged the Board to establish the building as soon as possible because the committee could be working on items which will help the Board decide come the fall if they are moving towards money to secure a lot or the entire package, land and building. Selectman Brown would like the Fire Chief on the committee again, he said he will talk to the Budget Committee for a representative and Selectman Carson said he would do the same at the next Energy Committee meeting. Selectman Brown said he will also speak to Anthony Mento about being on the committee, Anthony is an architect.

#### **4. Site Walk**

The Selectmen will complete site walks at some of the fire station recommended sites on July 22 as well as a site walk at Retreat Road beginning at 9:00 am.

#### **5. Adjournment**

A motion was made to adjourn at 5:24 pm.

Board of Selectmen  
David E. Hartman – Chairman  
Clyde Carson  
Allan N. Brown

Respectfully submitted,  
Mary Whalen  
Recording secretary