

FINAL

Bob _____
Keith _____
Don _____

FINAL _____
Accepted _____
Accepted as _____
Amended _____

**TOWN OF EPSOM
BOARD OF SELECTMEN MINUTES
FEBRUARY 28, 2011**

Present: Bob Blodgett, Chairman, Keith Cota, Vice-Chairman; Don Harty

Other Attendees: Tony Soltani; Gordon Ellis, Road Agent; Andrew Walton; Wayne Preve, Police Chief; Rob Topik; Dave Fiorentino; Peter Muise; Victor Rondeau; Dylan Rondeau; David Marston; Nicholas Muise; Gary Marston; Cal Preston; Len Gilman; Barbara Clark; Nancy Wheeler

Bob opened the meeting at 5:45 P.M., having Chief Preve lead the Pledge of Allegiance.

Bob noted there would be no public input until after the business meeting tonight. The public will be respectful to others speaking or they will be asked to leave the meeting.

5:45 P.M. Non-Public Meeting Requests

Bob indicated Andrew Walton has requested a non-public meeting with the BOS. Keith explained that the request falls under RSA 91-A: 3 II(c) to discuss a matter that may affect the reputation of another person. Keith noted the purpose of granting the request is for the BOS to determine if the "matter" at hand is an official issue or not for the BOS. Keith asked Andrew Walton if the person who he requested a non-public meeting for was present; Andrew indicated he was; identifying Attorney Soltani. Keith explained as required under the same statute, the other person identified under the request has the rights to attend the non-public meeting or request the meeting to be held in the public forum.

Keith explained that Attorney Soltani was not attending the BOS meeting as Town Council, but as a private resident who has been identified for discussion under RSA 91-A. Keith inquired with Attorney Soltani as to his wishes. Attorney Soltani requested an open public meeting and not a non-public session.

The floor was given to Andrew. Andrew noted he would be referring to a number of Board of Selectmen minutes beginning with July 26, 2010 in which he has asked for a non-public session to discuss a matter he felt is a function of the BOS.

In the July 26, 2010 minutes Andrew noted that he requested a non-public meeting with the Board and town council, whereas he was not granted his request. At the July 26th meeting there were discussions regarding a particular issue with the continued appointment of Zoning Compliance Officer Committee member. Andrew read the section of the July 26th minutes as to the above. Following the BOS meeting on Tuesday, July 27th Andrew noted that he received a cell phone call from Attorney Soltani

at Andrew's residence. Andrew noted he had a Sprint phone bill that depicts an 18 minute call from Attorney Soltani's cell phone. Andrew noted comments were made to him during the telephone exchange regarding statements made at the July 26th Selectmen's meeting. He questioned how the discussion from the meeting held the night before was brought to Attorney Soltani's attention. He inquired as to whether either of the Board of Selectmen contacted Attorney Soltani directly after the July 26th meeting? Keith and Bob confirmed that neither Board member contact Attorney Soltani the day after the BOS meeting. Andrew explained that he has donated considerable time and support to the town and felt the call from Attorney Soltani, Legal Counsel for the Town, was not appropriate and uncalled for. He had no intention to negatively affect the reputation of any town citizen which was the reason for requesting the non-public meeting. Andrew noted in the phone call with the Town Attorney, Attorney Soltani requested a public apology for comments made at the July 26th meeting and made reference to a tape recording of the July 26th meeting that did not exist. Andrew noted a subsequent encounter at the Evans Gas Station with Attorney Soltani and the exchange of conversation relative to this matter over heard by other customers. He noted that Attorney Soltani again stated he wants Andrew to make a public apology to him regarding comments made at Board of Selectmen meeting. Andrew explained that at a subsequent BOS meeting, he was advised that no recording existed for the July meeting. Andrew noted someone had to contact Attorney Soltani shortly after the July 26th meeting to inform him of what had been stated at the meeting.

Andrew noted at the chance meeting in the gas station at the traffic circle, another customer overheard the statements from Attorney Soltani that was directed at him in the doorway of a local business, and this customer questioned if Andrew had an issue with Attorney Soltani. Andrew noted he did not know that person and is concerned as to what the person has told other people. He pointed out that Attorney Soltani is being paid by taxpayers' money, charging the Town a good rate.

Andrew noted businesses have come before the BOS requesting non-public meeting with some being granted and others not. Andrew wants the issue done with; he is not looking to damage the Town and/or other residents.

Andrew noted the Board of Selectmen can do as they want; he just wants to put this fire out. Andrew indicated that he has complied with Chairman Blodgett's prior requests for a letter from Andrew for review with LGC (legal assistance). Andrew felt the answers received from the LGC to the BOS were out in left field. Andrew noted he also met with Don, at the request of the other Board members, and explained the issue to him. He felt this could have been done in a 10 minute non-public session. Andrew indicated that he has not spoken with anyone regarding the issue. Keith inquired with Andrew as to whether Attorney Soltani indicated in the personal exchanges as to whether Attorney Soltani was acting upon a direct request from the BOS? Andrew indicated that not specifically, but noted that he is the attorney for the town.

Keith asked Attorney Soltani if he called Andrew on the night indicated by Andrew. Attorney Soltani noted he did call him, but was not on the Town clock. He was asserting his private rights to do so.

Bob turned the floor over to Attorney Soltani. Attorney Soltani noted the call to Andrew was a courtesy call where he inquired as to whether Andrew had anything to say to him. Attorney Soltani noted the personal exchange has no official business for the functions

of the BOS and as such, were personal conversations for Andrew's comments at the prior BOS meeting directed toward his integrity and professional conduct. Attorney Soltani noted that a grievance appeal to the Supreme Court (by John Klose) as to a conflict of interest in the matter discussed at the July 26th BOS meeting and the Court indicated that Attorney Soltani has not done anything wrong to warrant any grievance review. Attorney Soltani explained that Selectmen and others can use hypothetical situations in defining a legal situation without identifying people to determine what legal approach should be considered. Attorney Soltani acknowledged that he was incorrect by indicating there was a tape recording of the meeting, as he thought the secretary for the BOS was using a tape recording to assist in the development of the minutes. Attorney Soltani noted Andrew was wrong to accuse him of misconduct. Attorney Soltani noted he has done nothing wrong and has not received a public apology. He also noted he has issued a verbal non-contact request to Andrew and will be doing a letter as he does not want Andrew around him or his children, his business, etc.

Keith asked Attorney Soltani what particular concerns he spoke of and as to the notations in the July 26 Board of Selectmen minutes. He referred to several references in the minutes including Andrew's request for a non-public session which was not granted, comments by John Klose on alleged conflict of interest and Andrew's comments on court documentation he had in hand showing Attorney Soltani representing another person taking legal against the person under discussion. Attorney Soltani noted Mr. Klose's statements were in direct reference to information that Andrew said he had obtained from court records to illustrate the position as to legal conflict of interest in the issue with the BOS, which the Supreme Court has determined the allegations of misconduct brought forth by Mr. Klose are not valid.

Attorney Soltani noted he does not want to be Andrew's friend; he would like him to go away and leave him alone.

Don asked Chief Preve if he had received anything from Attorney Soltani as to references for a non-contact letter. Chief Preve indicated that the Police Department has not received any written notice and pointed out that Attorney Soltani is now publically advising Andrew to not have any contact with Attorney Soltani, his family or go to his business, etc. If Attorney Soltani wants to send a letter with a copy to the Police Department he may do so.

The BOS closed discussion on the subject matter. Keith explained the basis of the issue stems from conversations at the July 26, 2010 meeting and remains a matter between two private citizens as to whether private or personal reputation has been affected due to discussions at prior BOS meetings. He summarized that this is not a matter of direct interest to the BOS nor does it require any formal administrative decision by the BOS. Bob and Don concurred with Keith's assessment and consensus of the BOS is no further action is required through the BOS as to this personal matter.

Bob indicated the second non-public request was from Robert Topik. Keith explained that the BOS received a written requested on February 25th from Robert Topik of 46 Lena Lane for non-public meeting under RSA 91-A:3,II-c to discuss a matter that would likely adversely affect the reputation of Town Council Tony Soltani. In the four-page written narrative, Mr. Topik highlights several conclusions for the BOS to consider. Keith explained the matter at hand is relating the services provided by Attorney Soltani as the Town's Legal Council and, as such, cannot be held in non-public session. He noted that

town staff provided a copy of the reference document to Attorney Soltani at his request. Attorney Soltani concurred the meeting cannot be held in a non-public session and in any case, he would request an open meeting, not a non-public session.

Mr. Topik indicated that he wrote the request to address the issue Andrew brought to the BOS's attention as to concerns for conduct by Attorney Soltani and his ability to function as town attorney. Rob suggested hiring an independent Attorney or someone to determine if this matter should be a non-public or public.

Mr. Topik explained that what was brought before the Supreme Court by others is not what the Epsom Ethics Code defines as a conflict. Rob felt the Epsom Ethics Code should apply to actions taken by Town Attorney. If it applies to everyone else, he questioned why it not also applies to the person giving the legal opinion to the BOS.

Mr. Topik questioned as to when the Supreme Court Conduct Committee found no misconduct. The BOS noted they do not have this information as the information is likely on record at the Supreme Court. Attorney Soltani was not sure if unsuccessful grievance complaints and Court rulings are available to the general public. Keith pointed out that it seems Mr. Topik's issues and the grievances that went to the Supreme Court appear to be similar in content.

Mr. Topik noted the person who came to the BOS meeting last week regarding the snow plowing also stems from a Town activity and felt that discussion should have been held in non-public. He noted that Andrew's case also stems from what was said outside Town activity.

Attorney Soltani noted Rob was speaking about Epsom Ethics Code vs. the Code of Ethics adopted by the NH Supreme Court that covers State attorneys. Attorney Soltani explained when he is acting as a lawyer that he is guided by the New Hampshire rules, both by appearance and actual conduct. In Klose vs. Attorney Soltani, the case involved a question of allegations of criminal intent. Chief Preve explained that Mr. Klose called the Police Department to advise about a possible criminal grievance, but a actual written complaint was never filed which required no action by the Town Police Department.

Attorney Soltani noted allegation number 1 in Mr. Topik's summary is false with no factual backup to prove the accusations. Keith explained that as to Rob's appeal for the Klose case to the ZBA, he had a conversation with Chairman Horner questioning Mr. Topik's standing to make such an appeal and suggested to Chairman Horner to contact the LGC (Legal Assistance) for a ruling on Rob's application of standing to make the appeal. Upon receiving the LGC comments Mr. Horner may have conferred with Town Council to confirm the legal advice in case of a legal appeal by the applicant.

Attorney Soltani addressed Mr. Topik's statements as to phone conversations with Dave Fiorentino. He agreed that Dave Fiorentino and he had a conversation that ended with no animosity. He again pointed out the issues outline in second portion of Mr. Topik's summary is unfounded in facts and remain unsupported. Attorney Soltani questioned if Mr. Topik has proof as to Attorney Soltani's billing on legal representation for Joanne Randall against Len Gilman and if a bill actually existed. Mr. Topik indicated that he has no proof of any invoice or whether Attorney Soltani did it on a pro bono case.

Mr. Topik indicated he could prove Joni Kitson's attorney had to send a letter requesting Attorney Soltani to recuse himself from the issue of former Selectman Kitson and her rights to review a time card of a particular employee.

Mr. Topik commented on past responses Attorney Soltani had given to his questions at previous Town Deliberative Sessions when the Town Moderator asked for legal interpretation. He felt Attorney Soltani was inappropriately demeaning his request to change a particular article through the response given. Attorney Soltani explained that it is good practice when he or any attorney is representing the Town at a Town Meeting (Deliberative Session), to state the legal fact and as little as possible in opinion. He noted that there was no personal intent behind the response as alleged by Mr. Topik.

Mr. Topik summarized that he stands by his comments. Keith noted the attorney under consideration is contracted for Town Counsel and provides legal services and advice to the Board of Selectmen. The attorney is not a town employee and therefore does not fall under the Town Ethics policy but under the Supreme Court ethics code. Keith point out that he has not seen any factual evidence to back up what has been presented to the Board with the written statements from Mr. Topik.

Keith concluded that in his opinion the complaints as outlined in the letter from Mr. Topik to the BOS regarding the conduct of Town Counsel lacks supporting facts and remains only subjective opinions and general hearsay. The findings in Mr. Topik's written summary do not support why the BOS should discontinue legal services with Attorney Soltani as Town Counsel. Keith indicated that Mr. Topik needs to take his grievance concerns against a State Attorney in regards to ethics and profession conduct to the Supreme Court and not through this Board. Keith noted that if Mr. Topik's grievances are proven to be factual and warrant discipline action by the Court, then and only then, the BOS should review its relationship with Attorney Soltani. Bob and Don concurred with this summary. All agreed that no further action is required by the BOS.

7:14 PM

STAFF DISCUSSION

Barbara noted the Selectmen were provided Zoning Board information on the Coldan property development. The BOS members confirmed that they have the information for discussion with the Road Agent.

Nancy noted the IRS mileage reimbursement rate is currently set at 51 cents per mile. Normally the BOS adopts the IRS rate for reimbursement of town staff.

Keith motioned to set the mileage reimbursement rate at 51 cents per mile, Don seconded the motion. The motion passed.

Nancy noted the Welfare Director had listed the donations received and to be accepted by the Board. Keith questioned a donation from the Epsom-Chichester Lions Club and another from the Epsom School Sunshine Fund as to how the funds would be expended. Nancy noted one is specific for fuel assistance with the other used to purchase items for the food pantry, Christmas and other Welfare items for applicants.

Keith motioned to accept donations of \$2,220.50 from various organizations as identified in the February 14, 2011 letter from the Welfare Director, Don seconded the motion.

Bob asked for any discussion on the motion. Keith noted the donations came from the First Congregational Church of Pittsfield, New Rye Congregational Church, New Rye Ladies Aid, Davis Fuels, John Barnes, Epsom-Chichester Lions "Club, and the School Administration Unit Sunshine Fund.

The motion passed.

Alison Parodi – Bear-Paw Recognition Roadside clean-up

Cal Preston was present for an appointment to the Conservation Commission; he gave the Board a letter indicating his interest to serve on this commission. Keith asked if Mr. Preston had spoken with Alison, and he replied that he has. Keith explained the staff would complete the formal appointment papers for next weeks meeting, the Board would motion to approve and then Mr. Preston would have to come into the Town Clerk's office to sign them.

FOR SIGNATURE

1. **Accounts Payable/Manifests – were signed**
2. **Application for Automobile Recycling Dealer Registration
Keith motioned to approve the application for the Automobile Recycling Registration for Ponderosa, Don seconded the motion.**

Don inquired as to the purpose of the application. Keith explained that the Auto Recycling facility was applying for a renewal of dealer plate for the business as required by the State.

The motion passed.

3. Abatements (2)

The first abatement was for Tax Map U17, Lot 10 on L & S Lane. This abatement is recommended by Avitar. Don asked how such a large reduction in property value could occur, as the value had dropped by approximately 50%. Discussion ensued as to a need for better understanding for the reasons supporting the reductions. Don questioned if it was correctly assessed in 2010. The BOS will seek more information from Barb and/or will have Avitar come in to explain the reduction. The BOS did not take action on the abatement.

The second abatement is for Tax Map U4, Lot 19 at 51 Black Hall Road. Avitar has recommended denying this request.

**Keith motioned to deny the abatement request for Tax Map U4, Lot 19 at 51 Black Hall Road as recommended by Avitar, Don seconded the motion.
The motion passed.**

4. Policies – Winter Maintenance & Complaint

Keith noted a Winter Maintenance Policy and Compliant Policy following the Nottingham policy has been drafted for the BOS consideration; he recommended several revisions to the policies to further clarify the intent and purpose. . Additional road guidance information from the LGC regarding personal property within the Town right of way was included in the Board members packets for review and consideration.

The policies will be revised and returned next week for motion and signature.

1. Letter to Resident

Bob and Don have viewed the trees that were trimmed under the Road Agents request Bob would like clarification from the Road Agent as to what he is going to do to rectify the cutting of the trees. Don did not have an issue with the way the branches were cut. Keith noted he did not have time to visit the site since the last meeting. Don felt in the future it would be a good idea for the Road Agent to notify the property owner before cutting trees, Bob agreed it should be policy.

Gordon returned to the meeting. The Board reviewed the letter from Sarah Harkness Nelson with the Road Agent. Gordon did not feel it would be possible to satisfy the issue brought forward by the property owner. Don asked if Gordon discussed cutting trees with the homeowners before he cuts them; Gordon indicated he did most of the times, but did not in this case as he thought it was an emergency.

Keith asked Gordon if he was aware of the process on this road for tree removal and trimming due to the scenic road status. Keith noted that in an emergency, the request for tree removal or trimming has to come before the Board of Selectmen and if it is not an emergency, it had to go before the Planning Board. Gordon indicated he was aware of the process.

Don will provide an adjusted letter for signature next week to send to Ms. Harkness Nelson.

6. Request for Leave – was signed

FOR DISCUSSION

A. Draft Minutes on Website

Keith noted comments from Department Heads including Police, Zoning, Budget Committee and Fire that the consensus is to not have draft minutes on the Website until Boards, Committees, etc. can review the minutes as final. He explained that at the Planning Board meeting, the same sentiment was expressed.

Keith noted the BOS needs to have a conversation with Deb as to any administrative issues for putting the draft minutes on the Website. At this time, the Town meets the intent and spirit of the right-to-know law. Don felt the current practice did not allow the average citizen time to review the minutes if they wanted to, to attend the BOS meeting to discuss the accuracy of the minutes at the following meeting. Keith noted with the current minute review policy, it is usually two weeks

before the minutes are posted. Keith would like to discuss with the staff the posting from an administrative perspective. Keith will have Deb come to the next meeting to discuss the issue.

B. RFP for Financial Audit

The Board was agreeable with posting the RFP on the website, in the Concord Monitor and in the Suncook Valley Sun.

40 Unit Road

Keith noted the Road Agent was concerned with the ZBA approving the cul-de-sac road extension as a publicly maintained Town Road. The Road Agent is considering an appeal to the ZBA to have them reconsider it as a private vs. public road.

Gordon noted the developer had expressed his desire for a public road. One of the primary things to be discussed is what is in the best interest of the Town. Gordon would like to have the ZBA re-examine if keeping the road as public ownership is in the best interest of the Town. Gordon would like the Board of Selectmen to waive the ZBA fees should he seek an appeal. He objects to it being a town road. Keith noted he had read in the minutes of the ZBA meeting the owner's willingness to accept the maintenance of the roadway until the second phase of the project occurs sometime in the future. Keith questioned why the objection to the public road as it meets the zoning criteria and intent of the ordinances we govern development under. Keith noted the apartments are built off the cul-de-sac to allow further development of the property and it provides reasonable access for emergency responders to access the 40 unit apartment development. Keith noted Gordon had the standings to appeal to the Board of Adjustment. Regarding the costs, Keith noted Gordon does not want his department budget to bear the costs of the appeal per RSA 676:5. Keith felt the ZBA did a good job discussing the issue as the developer wanted to keep open the ability to further develop a commercial lot.

Gordon noted the developer chooses to not use the frontage on Route 28 for the 40 units, but keep it for another use. Keith noted per the zoning ordinances and subdivision regulations the developer has the right to do so and create a public road to provide the required legal access even though the Road Agent is against it. The cost of the appeal was discussed and felt if an appeal was to be applied, Gordon can officially request a waiver or find the funds within his budget.

C. Road Postings

Gordon indicated that he is requesting the BOS to grant him the authority to post town roads throughout this spring season as he determines the need for it. He wants to have the ability to do so once the weather turns warmer before frost heaves are more evident. Gordon indicated that he has posted roads in the past under this process. Contractors know to contact him as he can allow use early in the mornings if the temperature is below freezing. Gordon noted exempt vehicles are emergency fuel, milk or emergency vehicles. Gordon noted trash trucks are an ongoing issue.

Don asked if every road is posted the same or if the weights are different. Gordon noted all the signs are for 6 tons. The posting can only be for a specific time period per State regulation and can be based upon road by road posting.

Keith motioned to allow Gordon to post the Epsom Town roadways from March 1st to May 1st as he determines appropriate. Don seconded the motion. The motion passed.

MINUTES FOR REVIEW AND DISCUSSION

Final – Non-Public February 14, 2011

Keith motioned to approve the non-public minutes of February 14, 2011, Don seconded. Motion passed.

Final – February 14, 2011

Keith motioned to approve the public minutes of February 14, 2011, Don seconded. Motion passed.

Draft – February 22, 2011

Keith motioned to accept the draft February 22, 2011 minutes as amended, Don seconded the motion. The motion passed.

FOR YOUR INFORMATION

Letter from ZCO

The Zoning Compliance Officer has noted the minutes of the ZBA for the 1990's are missing and have been for some time.

Irving Energy Distribution – Fuel Needs

Irving would like to provide the diesel fuel needed for the Highway Department. Don asked if the Town had a contract for diesel, we do not. They will discuss next week at staff discussion.

US Senator Kelly Ayotte Letter – Northern Pass Transmission

Keith noted there is a meeting scheduled in Pembroke on March 14 to hear local public input. The corridor being proposed skirts Epsom.

Letters from ZCO

Comcast Price Adjustments

Comcast has plans to increase costs to users.

PSNH Hosts Biennial Informational Luncheons

These are for a presentation on the Northern Pass Transmission Line.

Letter from Resident

LIAISON REPORTS

Don noted he attended the Meet the Candidates at the Library the past Sunday. Mr. Weeks, candidate for Budget Committee, noted the residents at Kings Towne feel disconnected from the Town. Don inquired as to if the BOS meeting could be held in another location such as the Kingstowne community center. Keith explained that the Board would need to ensure the alternative location for the BOS meeting meets the handicap requirements and has ample parking for general public to attend. He noted the difficult this would place on staff and the BOS for meeting documents, etc. Keith suggested the Board could hold a special public informational meeting at their facility to get their public input on town business, but the Board would need to set the ground rules

as to only Town issues are discussed not any mobile home park issues they may have with the owners of the Park..

Don noted another issue discussed was if there is a liaison between the Library Trustees and the Select Board. Keith noted that Bob was the assigned Selectman liaison to the Library.

Keith noted the Planning Board is looking to update the Subdivision Regulations this year

5 MINUTES FOR PUBLIC QUESTIONS AND COMMENTS

Len Gilman asked what happened to the 1,000 gallon fuel tank at the Highway Department that was used for the generator and backhoe. The BOS was not aware if the tank has been removed or not. Winter maintenance was again discussed and when Len was on the RAC (Road Advisory Committee) there were policies; he questions as to what happened to them. He was referring to the potential new policies for winter maintenance. The BOS was not aware of any prior policies approved by BOS. Mr. Belanger's name was mentioned for a certain salvage yard plate, Len asked how many others have been approved. Len indicated under a renewal for plates the BOS does not have to execute the paperwork. Keith explained that the documentation is for a salvage plate and it required annual renewal. Len asked the cost and number of books available for BOS reference that overviews governing of the Town. The Board indicated "Knowing Your Territory" is heavily used document and is available from the LGC. Len noted under the direction of his attorney he requested copies of any legal billings for former Selectman's interaction with town attorney. He was told by office staff that none is available. He is asking for a copy of a bill submitted by a previous Selectman that the Town did not pay. Keith suggested the request be put in writing. Len noted he has submitted a written request, but has never received a response. The BOS suggested he resubmit the request with specific dates as to the time of the billing.

Andrew saw minutes in the possession of Board members that were water stained final; he asked why they could not be posted. Keith noted if they are posted on the website the water stain generally comes out black.

Rob inquired last week as to his rights under right-to-know for an electronic copy of what Darlene had typed that night on the town's laptop by giving her a thumb drive to copy to. Rob read per RSA 91A:4 that states any notes used to prepare the minutes are to be available during normal office hours. Rob is suggesting the notes should be available the next morning in the Town Office upon request. Keith noted that RSA 91-A:5 also states that draft documents used for record and minutes are only available after a quorum of the Board has seen them. Keith's requested Rob to put his request in writing and the Board will then seek an official legal opinion. At this time, it is the feeling of the Board that RSA 91-A:5 does not permit copy to be provided at the night of the BOS meeting. Rob inquired as to who gave a copy of his letter to Attorney Soltani tonight. Keith noted the Board directed their staff to advise Attorney Soltani to the request for non-public meeting and Attorney Soltani requested a copy to be provided to him before the meeting tonight. Keith noted the other person subjected to the discussion on potential reputation has the right under the statute to the information that will be discussed about them whether in a public or non-public session.

Don motioned to adjourn the meeting, Keith seconded the motion. The motion passed.

Bob adjourned the meeting at 9:18 P.M.

Respectfully submitted,

Betsy Bosiak
Acting Recording Secretary