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**MINUTES OF THE  
BOARD OF SELECTMEN MEETING  
RIGHT TO KNOW LAW WORKSHOP**

**June 25, 2007**

9 The Board of Selectmen held a workshop for Town Board, Committee members and staff on  
10 Monday June 25, 2007, the Salem Town Hall, 33 Geremonty Drive, Salem, NH.  
11

12 **PRESENT:** Chairman Everett P. McBride, Vice-Chairman, Elizabeth A. Roth, Secretary Arthur  
13 E. Barnes, Selectman Michael J. Lyons, Selectman Patrick Hargreaves, and Town Manager Dr.  
14 Henry E. LaBranche, Attorney Gordon Graham of Soule Leslie,  
15

16 **CALL TO ORDER**

17 Chairman McBride called the meeting to order at 7:03 p.m. with the Pledge of Allegiance. He  
18 began by announcing that the Board of Selectmen had authorized Dr. LaBranche to extend a  
19 conditional offer of employment to Mr. Jonathan Sistare for the position of Town Manager. He  
20 provided some information about Mr. Sistare's background and experience, stating that he would  
21 be available to assume his new responsibilities as Town Manager in October, 2007. Chairman  
22 McBride thanked staff for performing the search for a suitable candidate. He also thanked the  
23 other candidates and everyone who participated in making the decision.  
24

25 Chairman McBride then introduced the Board members, Town Manager Dr. Henry E.  
26 LaBranche, Town Counsel Attorney Gordon Graham from Soule, Leslie, Planning Director Mr.  
27 Ross Moldoff, Vice Chairman of the Budget Committee Sue Covey, Chairman of the  
28 Conservation Committee Mr. Bill Carter and members of the Planning Board, Conservation  
29 Commission, Council on Aging, Housing Authority and Recreation Advisory Committee who  
30 were in attendance.  
31

32 Chairman McBride then handed over to Attorney Graham, who introduced himself and  
33 explained the purpose of the workshop. Attorney Graham explained that the Right to Know Law  
34 is heavily statutory and rule based and stressed the importance of the law. He outlined his plan  
35 for the workshop, referring the audience to the key elements of Attorney General, Kelly Ayotte's  
36 memorandum dated February 8, 2007 which had been provided for all individuals attending  
37 (copy attached). Attendees were also given, during the course of the meeting, an abbreviated  
38 outline of the law as it applies to meetings which Attorney Graham had prepared. He informed  
39 the audience of the following:  
40

41 ***General information:***

- 42 • Updates to the document are published bi-annually, every other year.  
43 • The purpose of the updates is to keep public officials up to date with decided cases  
44 • It is meant as a guide for public officials  
45 • The focus of this workshop would be on concerns addressed by the staff of the Town in their  
46 work.

- 1 • The workshop was intended as a refresher, but changes in the law would be highlighted.  
2

3 **Key elements:**

4 Attorney Graham stated he would focus on:

- 5
- 6 • Meeting law – requirements; how a non public session works.
  - 7 • Public records
  - 8 • Electronic communications between Board and Committee members and how these  
9 should be handled (he pointed out this is not addressed in the Attorney General’s memo)
- 10

11 Referring to page 1 of the Attorney General’s memo, Attorney Graham explained the memo  
12 creates a framework for the law which is essential to a democratic society, and its purpose is to  
13 ensure greatest public access to records and public bodies. He stated that the Supreme Court  
14 resolves all cases with this in mind.  
15

16 Attorney Graham explained what constitutes a meeting, citing examples to clarify when a public  
17 body should hold a meeting, as stated in RSA 91-A:1 and 2. He provided examples of when  
18 committees and sub committees are required to follow open meeting laws, and also examples of  
19 bodies that would be required to follow open meeting laws. He provided an example of when  
20 open meeting laws do not have to be followed.  
21

22 Mr. Bob Campbell asked whether meetings involving private citizens would be subject to the  
23 open meeting laws and Attorney Graham clarified that any meeting which was made up of a  
24 quorum of any of the Town Boards or Committees or sub Committees would be.  
25

26 **Public Meetings:**

27 Attorney Graham went on to explain the elements of a public meeting, i.e. a quorum is convened  
28 for the purpose of discussing official Town business. He stressed the following:

- 29 • Members of a public body are not permitted by the law to discuss or act on public  
30 business at a chance meeting
- 31 • When a meeting is convened, but there is no quorum members of a Town body can  
32 discuss town business but cannot make decisions
- 33 • The court looks at whether exceptions to the law are being used to get around the law
- 34 • Consultations with legal counsel and collective bargaining sessions are exemptions to the  
35 Right to Know Law and do not require that minutes be taken
- 36 • Strategy sessions are not considered a meeting under the law
- 37 • When doing anything in an official capacity, the Right to Know Law applies.  
38

39 Mr. Bob Campbell asked whether public officials getting together prior to, or after a meeting to  
40 sign documents constitutes a meeting, and Attorney Graham explained his example would be  
41 considered chance and social as the actual town business had already taken place. He stated if  
42 the documents being signed were new and being dealt with out of the purview of the public, that  
43 would be problematic. He went on to say that every town has a process for getting documents  
44 signed and occasionally this will take place before or after a meeting and is still considered  
45 chance and social.

1 Chairman McBride asked that individuals posing questions use the microphone and state their  
2 name for the record.

3 Attorney Graham went on to summarize the requirements for an open meeting as follows:

- 4 • Anyone can attend
- 5 • No votes by secret ballot can be cast at public meetings; except for town and school  
6 board meetings which have provisions for this
- 7 • All kinds of recording devices are acceptable, and he provided examples
- 8 • There is no expectation of privacy and no requirement for consent to tape recording
- 9 • Minutes must be kept and be available within six days – this will change to five working  
10 days from July 21<sup>st</sup>, 2007 – even if they are only in draft form until the final minutes are  
11 available; they need to be at town hall. Attorney Graham stated everyone needs to be  
12 sure to do this and the Chairman of a Committee or Board should police this
- 13 • A notice needs to be posted of the meeting
- 14 • A full agenda should be posted

15  
16 Attorney Graham clarified that where the law states ‘should’ this means best practice, versus  
17 where it states ‘must’ which is required by law. He stated that if the body is planning to go into a  
18 non public meeting it is a good idea to give notice of this on the agenda but it is important to  
19 recognize that if it is not posted on the agenda it is still acceptable to go into a non public  
20 session. It should however be reflected in the minutes of the public meeting.

21  
22 Mr. Tom Campbell, Planning Board asked for clarification as to whether it is acceptable to have  
23 a consultation with parties if it is not possible to hold a planned public hearing due to notification  
24 issues. Attorney Graham responded that it is acceptable to have a meeting and conduct the  
25 business of the Board and go into consultation at that time even although they could not conduct  
26 the public hearing. He stated that there may be other issues which are tricky.

- 27
- 28 • The notice of the meeting should be posted in two places in the community
- 29 • In an emergency situation the Chairman of the body holding the meeting has the authority  
30 to call an emergency meeting and then provide whatever notice is possible. Attorney  
31 Graham strongly advised that, in these circumstances the chairman of the body should  
32 check with the Town Administrator as to the reason for the emergency meeting and  
33 reflect this in the minutes of the meeting, providing a reason why the 24 hour notice  
34 requirement could not be adhered to.

35  
36 ***Non public sessions:***

37 Attorney Graham highlighted the following:

- 38 • The reasons for going into a non public session are limited to those listed on pages 8 and  
39 9 of the Attorney General’s memo
- 40 • Public business cannot be discussed in a non public session
- 41 • The procedure for non public sessions needs to be followed precisely
- 42 • If the members of a Board or Committee go into non public session after a public or open  
43 meeting it has to be noted in the minutes of the public session, and a roll call taken as  
44 agreement to move to non public session. The motion in the minutes should state the  
45 reason (from the list in the Attorney General’s memo)

- The minutes need to be disclosed within three days (at least in draft form) and should always reflect attendees; what was discussed; motion and decisions made.

Attorney Graham pointed out that minutes of meetings need not be verbatim.

In response to queries from Selectman Hargreaves regarding sealed minutes, Attorney Graham pointed out the three reasons the law accepts for deciding to seal minutes (see his abbreviated outline, page 3, c), ii, a, b and c and he provided examples. He also stated that a two-thirds (2/3) majority vote is required to seal minutes, but that the decision to seal should be made public and who voted to seal can also be revealed. Periodically the body needs to review the non public minutes and eventually unseal them.

Selectman Hargreaves asked whether it was acceptable, whilst in a non public meeting, to make a decision to discuss something other than what had been announced on the agenda and Attorney Graham responded that it would be necessary to go back under a public meeting and announce that decision. He pointed out that it is acceptable to hold a non public meeting for more than one of the acceptable reasons.

Selectman Hargreaves asked whether it was acceptable to discuss something which has come up as an emergency and was unanticipated whilst in a non public session, and Attorney Graham responded that it would be acceptable to vote to go into a non public session, whilst in a public session, without prior notice if something comes up during that day.

In response to Selectman Hargreaves, Attorney Graham explained it would be necessary to recess rather than adjourn a meeting if business is unfinished, but that it would not be necessary to re-post the meeting as it would be deemed a continuation. He clarified further by explaining the two terms.

In response to a query from Selectman Lyons relative to sealed minutes, Attorney Graham stated that both conversation/discussion and written minutes would be sealed as it is a violation of the oath of office to discuss anything which is sealed, until a decision to release the information is made and approved by the full Board. He pointed out that those discussions/minutes which refer to a person's reputation are sealed indefinitely.

Selectman Roth asked for clarification regarding content of minutes, stating it was her understanding that these should be a record of decisions (motions and votes), and not necessarily discussion. Attorney Graham agreed and read from the Attorney General's memo by way of explanation. He further stated that the public do not have the authority to ask for changes or alterations in the minutes after a meeting, or to request that they be quoted verbatim in the minutes, and the Boards and Committees have a right to decide what goes into their minutes as long as they are meeting their statutory requirements.

**Records:**

Attorney Graham ran through the exemptions from disclosure (see page 13 of the Right to Know memo). He pointed out that there is no definition of what a public record is and advised everyone to treat everything in the Town Hall as a public record, with few exceptions. He spoke about some of the issues which arose relating to public records.

1 Chairman McBride asked whether reasonable and customary fees can be charged for copying  
2 public records, and Attorney Graham confirmed they could, reading from the Attorney General's  
3 memo as clarification.

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5 Selectman Hargreaves asked about sharing the costs of these between boards and a brief  
6 discussion of the subject took place.

7  
8 ***Use of E-mail:***

9 Attorney Graham explained that this was a difficult and complicated issue, citing examples of  
10 cases. He stated the Legislature has tried to come up with a set of rules/guidelines relating to  
11 electronic communication but have not succeeded due to problems with small Boards. He stated  
12 there was not much specific information available and that the Legislature is moving towards  
13 treating electronic communication such as e-mail in the same way as documents. He encouraged  
14 attendees to be cautious with electronic communications.

15  
16 Chairman McBride pointed out that if something is sent to more than a couple of board members  
17 it is public a document and advised everyone not to use e-mail.

18  
19 Selectman Hargreaves asked how anyone would know the communication had taken place if it  
20 was done electronically and Attorney Graham confirmed that anyone can ask for access to the  
21 hard drive of public officials and employees. He reminded everyone that violations of the law  
22 are dealt with seriously, citing examples of remedies and confirming that New Hampshire has a  
23 very strong Right to Know Law.

24  
25 In response to a query from Selectman Barnes, Attorney Graham stated the law does not permit  
26 you to probe for reasons behind decisions or mental process as it is a document and access law.

27  
28 There being no further questions, Chairman McBride thanked everyone for attending, stating he  
29 hoped the workshop had been informative.

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31 **MOTION:** by Selectman Hargreaves

32 ***Motion to adjourn the workshop***

33 **SECOND:** Selectman Roth

34 **VOTE:** 5-0-0

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36 Without further business, Chairman McBride adjourned the meeting at 8:30 p.m.

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38 Notes/Minutes Taken by: Sandra Maxwell

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40 Approved: Board of Selectmen

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42 Date: August 13, 2007