

Town of Red Hook Ethics Board Minutes

Friday, June 19, 2009

Attendance: Fred Cartier, Susan Goldstein, Gail Nussbaum and Linda Keeling

Absent: (no fifth member)

Guest: Councilman Harry Colgan, liaison to the Town Board and Christine Chale, Attorney for the Town

Location: Town Hall, Conference Room

Call to Order: Chairman Fred Cartier called the meeting to order at 8:08 a.m.

Purpose: To discuss various topics:

1. Minutes of April 17 and May 22
2. Candidates for open position
3. Personnel issues
4. Bio-disclosure form
5. Review procedures
6. Any other issues

Correspondence: none

Discussion:

1. Minutes of April 17th: Linda noted she opposed the vast amount of corrections of the taped transcribed minutes. She wanted to add that missing was her comment regarding agendas in that they should be posted 72 hours before a meeting. Fred challenged by saying it was not a legal requirement. Linda indicated it was not a debate of the issue but rather it was a statement made during the last meeting. The insertion between items 2 and 3 should read: "agendas should be done 72 hours prior to a meeting."

Susan Goldstein stated on her definition of what minutes are as giving the general flavor of what occurred at any meeting and to include official resolutions, etc.

Linda asked Christine Chale if she would like to add to this discussion.

Christine Chale stated that minutes minimally need to include who is there and not there, and resolutions. She recommended that the minutes include that when you make a decision like a board like this, like the ZBA and any board that makes findings that they include reasons for decisions so you have a basis for making a decision. Because this is a quasi-judicial board and you need to have a basis for making a decision.

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Susan Goldstein stated that it is not a legal requirement that's a legal opinion. Christine Chale said it's a pretty strong recommendation. It doesn't mean that every piece of discussion needs to be recorded in that way. It means that when the Board reaches a decision it should state in writing the reasons for its findings so that there is a record of that decision. Often when a discussion is going on back and forth and Board members change their opinions. At the end of the discussion, the material question is why did the Board make the decision? The Ethics Board should make an effort to record that decision so that if the decision is challenged we have a reason and a basis for the decision. That is what Christine is looking for when she looks at minutes. She indicated that not everything has to go in minutes but that is a reason to preserve tapes if a question comes up. Typically the minutes do not reflect everything that is said. They reflect the material points of discussion.

Linda Keeling responded that it shows what happened and what people were thinking and it is from the tape. She had no problem with rewording sections but wanted to keep the same flavor of what went on; she was in favor of that. She had no problem with rewording things but to eliminate because you feel that it's detrimental to one's own personality is wrong.

Susan Goldstein questioned if that is what I felt was her motivation. Linda Keeling agreed it was. Susan stated that she could tell what her motivation was for eliminating sections of the minutes but did not elaborate further.

The discussion became very personal in nature. Susan felt the minutes as written lack any objectivity. Linda responded that they are transcribed from the tape.

Susan moved to accept the April 17th minutes as amended, seconded by Gail. The vote was 3 to 1 with Linda voting no.

Chairman Fred Cartier brought up the May 22nd minutes. Linda stated that she felt the May 22nd meeting was an illegal meeting for the following reasons: 1. Not 72 hrs. prior notice; 2. That the 4-3 minutes were illegally scrubbed and posted with my name on the town website which she didn't agree with; 3. The candidates were discussed 4. As a board we can't have a meeting without the official secretary which Linda is; 5. Fred did not recuse himself from when discussing and selecting the candidate. Susan Simon is the treasurer of PANDA from which Fred works for and receives paycheck.

Linda Keeling asked for a legal interpretation of the May 22nd meeting. Christine Chale asked the board if she should address each allegation.

Susan Goldstein wanted to know about the notification for a meeting of an executive session.

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Christine Chale said it doesn't matter if it's an executive session meeting or not. A meeting is a meeting.

The process for setting a meeting is not dependent upon an executive session; in fact, the Committee on Open Government says technically you can not go into executive session until you get to the meeting because it takes a motion to go into executive session. Most put it on the agenda as "expected executive session" for the public's awareness. In terms of 72 hours, there's not an absolute requirement that there be 72 hours notice. There is a requirement for a special meeting 72 hours notice is to be given for a meeting that is scheduled on less than 72 hours notice. The notice should be given as soon as possible and that the notice, in general, the guidance of the Committee on Open Government is an emergency meeting should generally be scheduled when it's really an emergency. That's not unlike an emergency when there's a public bid there's a specific procedure for that. When there's an issue that requires a meeting on less than 72 hours notice there's not necessarily a hard and fast rule. It certainly is good practice and recommended that 72 hours notice be given unless there is a good reason for not doing so. What should probably be documented is the reason for providing less than 72 hours notice. The method of giving notice should be the same method that has been determined in your procedures that you are going to give notice, obviously on the town board website but notice to the members to be given as well.

Christine Chale could not address the 4/3 minutes being illegally scrubbed and posted. She didn't know what that had to do with the legality of the other meeting. She didn't feel it was material to the legality of the May 22nd meeting.

Linda Keeling explained that the 4/3 minutes and the 4/17 minutes were discussed and voted upon at the May 22nd meeting. Christine Chale questioned what that had to do with the legality of the May 22nd meeting. Linda Keeling responded that they discussed those minutes at that time. Christine Chale still felt that had nothing to do with the legality of the meeting.

Linda explained if the meeting was illegal then everything discussed was illegal. Christine Chale explained that doesn't make the meeting illegal. Christine Chale explained if the meeting was properly scheduled, it's properly scheduled.

Christine Chale questioned what was the problem about discussing candidates? Linda explained if the meeting was illegal then they should have not been discussing candidates. Christine Chale explained if it was an illegal meeting then nothing can be discussed.

Christine Chale addressed the statement about no meeting without the official secretary. She said that is not true. A person who is at the meeting can be designated to take minutes. She never heard of anybody allege that you can't have a meeting if the secretary can't come to the meeting. Linda Keeling explained that she understood that the town board could not have a meeting without the presence of the town clerk to take minutes. Christine said as a matter of convenience they needed to have someone there the clerk or the deputy or someone available. They could have designated someone else to take minutes. Normally, they look to the clerk and deputy clerk. This is not the town board; it doesn't have an official town clerk whose responsibility is to take minutes. It has a

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secretary that's a matter of convenience. So it is definitely not the case that you can't have a meeting if the secretary can't be there. You certainly do need to take minutes, that's the rule. Somebody needs to take minutes of the meeting and they need to be presented at the next meeting. They need to be available within two weeks of the date of the meeting. That's public government's rule.

Christine Chale addressed Fred's recusal. She asked Fred if Susan Simon is a board member of PANDA and is she involved in hiring and firing of staff which are an "at will" position? She felt this is a question that this Ethics Board should consider as a judgment call.

Christine Chale reminded, in respect to candidates, this board is only advisory and has no legal impact. It's for the consideration of the town board. More important than a vote is probably comment and input feedback on the qualifications of the candidate based on the criteria set forth in the Ethics Code.

Discussion focused on whether the May 22nd meeting was legal. Susan wanted to move that the meeting was legal. Christine indicated that if the Committees on Open Government were asked, they would state that 72 hours would be needed. Christine Chale indicated you can't move as to whether or not it was legal. You can appropriately move to reconsider the appointments and recommendations.

Harry Colgan explained why the town board allowed the recommendation process to be reconsidered with the full Ethics Board as there was no hurry.

Gail Nussbaum inquired as to the procedural responsibility for members to respond to a meeting call. Christine Chale indicated that it is not necessary to respond but as a courtesy it helps to know if enough members are available for a quorum so, if not, another meeting can be scheduled.

Susan Goldstein moved to go into executive session to discuss the board candidates for the open position for the Ethics Board. Fred Cartier seconded. All agreed. The meeting was from 8:38-8:50. Susan Goldstein motioned to go out of executive session, Fred Cartier seconded, all agreed.

Susan Goldstein moved to recommend to the Town Board: Susan Simon with Rev. Thomas Theilmann as an alternate. Fred Cartier seconded. The vote was:

Susan Goldstein	yes
Fred Cartier	yes
Gail Nussbaum	yes
Linda Keeling	no

Fred Cartier motioned to go into executive session for an attorney client session. Gail Nussbaum seconded. All agreed. The session was from 8:52-9:10.

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Susan Goldstein stated that it was her opinion given Linda's discomfort with fulfilling both roles without the tape recorder and given what she believes to be a perversion of what is on the tape recorder that I would recommend that Linda has a choice to make to either continue as secretary or continue as a member of the Ethics Board.

Linda Keeling indicated that she doesn't mind not being the secretary but reminded the group that we need a secretary and one can be found from the town's secretarial pool. Christine Chale reminded the group that this group is a standing board and absolutely needs to have a secretary. Susan Goldstein again addressed Linda as to her agreement. Fred Cartier said he checked with Debbie Marks yesterday and there is no problem getting someone. Gail felt that it might be the best thing that way Linda can express herself freely and she doesn't have to feel like her concentration is split.

Fred Cartier called for a motion but Christine Chale indicated it is not up to this board to make that decision because it's the town board's appointment of the recording secretary.

Fred Cartier motioned to request the town board appoint a new secretary to the Ethics Board. Susan seconded. All agreed.

Fred Cartier addressed the bio-disclosure form and indicated the only form the town has is at the back of the Ethics Code. It has no biographical disclosure form. The purpose would be to disclose a potential conflict. Christine Chale asked what the question was before the board. Fred Cartier asked Linda Keeling to speak. She would like this board, in particular, to give detail as far as their resume, background and associations so if we have someone come before this board we would all know ahead of time if there is a reason why a particular person should recuse themselves. Christine Chale indicated that this board could consider doing that for themselves. The Town Board did not elect to make that a part of the mandatory reporting of their Ethics Code. They could choose or not choose to do that. Certainly, if there is a specific conflict that arises the person involved is supposed to make that disclosure using that form or some other form. Of course, anyone can voluntarily provide that information.

Linda Keeling is requesting this Board members to voluntarily give biographical information in a written form to be shared by the Ethics Board. Following a discussion the Board could not come to any consensus on the question.

Meeting Ended: Fred Cartier motioned to end the meeting and Susan Goldstein seconded, passed unanimously . The meeting ended at 9:30 am.

Next Meeting: A regular meeting is scheduled for **Friday, July 17th** at 8 am.

Respectfully submitted,

Linda J. Keeling,
Ethics Board Secretary