

**TOWN OF WEBSTER**  
**Office of Selectmen**  
**945 Battle Street/Rte. 127**  
**Webster, NH 03303**

7:00 P.M. Selectmen's Meeting – May 2, 2011

Present: Selectman Chairman George Cummings, Selectman Hashem and Selectman Bruce Johnson.

The Board signed the payroll and check manifests.

The Board signed the following for Administrative Assistant Judith Jones:

- Selectman Johnson made the following corrections to the Selectmen's Minutes of April 18, 2011: on page 1 change Chairman Johnson to Selectman Johnson and on page 3 change Ellen Cilley to Ellen Kontinos-Cilley. Selectman Hashem then made a motion to accept the minutes with the aforementioned amendments; seconded by Selectman Johnson and approved. The draft watermark will be put on the original minutes and will be kept with the approved minutes;
- Selectman Johnson made a motion to accept the non-public session Selectmen's Minutes of April 18, 2011 as written attended by Chairman Cummings and Selectman Johnson; seconded by Chairman Cummings and approved. These minutes were voted to be sealed;
- Selectman Hashem made a motion to accept the first non-public session Selectmen's Minutes of April 25, 2011 as written; seconded by Chairman Cummings and approved;
- Selectman Hashem made a motion to accept the second non-public session Selectmen's Minutes of April 25, 2011 as written; seconded by Chairman Cummings and approved.; Selectman Hashem made a motion to seal the two non-public session minutes of April 25, 2011; seconded by Selectman Johnson and approved;
- Selectman Hashem made a motion to accept the special session of the Selectmen's Minutes of April 25, 2011 as written; seconded by Selectman Johnson and approved;
- The Board reviewed an application for a Veteran's Exemption. Based on research provided Selectman Hashem made a motion to deny the application; seconded by Selectman Johnson and approved;
- Chairman Cummings signed a building permit for David and Joan Kimball – Map 7-39-3;
- After discussion the Board signed a Deed Waiver, as they will not accept the Tax Collector's Deed for Map 10-1-68;
- 911 liaison paperwork to add Therese Larson as being authorized to sign paperwork for addresses as well as the mapping;
- A letter to Franklin District Court advising that the Webster case scheduled for May 5, 2011 has been satisfied in full and is now considered closed; and
- A vacation leave slip for Mrs. Jones.

Chairman Cummings advised that the Board has settled a case out of court, which would not have been as successful had it gone to court, that had been ongoing for more than a year. The Settlement has gone to Superior Court as of Friday morning for filing. Once it has been signed by all parties, the Court will make the settlement an enforceable order. Robert Lake inquired as to what the legal case was and what the costs were. Chairman Cummings will check with Town Counsel to see if the case information can be released and if so, copies of the order could be made. Regarding costs, the final bill has not been received. It was noted that the expenses had been shared with the Town of Warner.

The Board signed an Intent to Cut for Pauline Kienia – Map 7-15 for Financial Administrator Wendy Pinkham. Ms Pinkham reminded the Board that she will be out until May 13<sup>th</sup>.

Police Chief Robert Dupuis provided or advised the Board of the following:

- Semi-monthly report with 26 calls for service, pointing out the highlights. He noted that there was one call to cover traffic in Salisbury due to a structure fire only to be told in route that the fire was actually in Franklin, which Webster covered for only a few minutes before returning to Town;
- In checking with Warner, Boscawen and Andover, he found that none of those towns had any ordinances regarding fireworks, but rather handled any issues under a noise ordinance;
- Regarding the sale of the surplus firearms discussed at an earlier meeting, he referred to the Warrant Article adopted in 2009 whereby the Selectman can declare items surplus, with the revenue to be put in the General Fund to be used to defray taxes. He referred to John Clark's previous inquiry about purchase of the former Chief's firearm to be presented to the former Chief at no expense to the Town, noting several folks had expressed interest in participating. Chief Dupuis requested that the Board vote to declare the guns surplus and approval for the disposition of one of the guns. Selectman Hashem questioned who brought it up, saying that if it were to happen, he objected to it being done on Town property

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and wanted to be sure that no Town expense be incurred and that the gun be reimbursed at the full price, and be purchased from a registered gun dealer, to which Chief Dupuis agreed. Chairman Cummings asked as to whether the value had been established. Chief Dupuis had an undisclosed figure, noting that Marshall's was the highest to date. There was additional discussion on the sale of and amount of money the Town would get for the guns. Selectman Johnson made a motion to declare three guns described by the Police Chief as three sig sauer semi-automatic 45 caliber guns as surplus; seconded by Chairman Cummings and approved with two Selectmen in favor and one against. Tom Mullins, referring to selling Town property via means other than an open market, suggested this would predetermine who could purchase it and would prohibit just anyone the ability to purchase. Discussion ensued regarding alternative means of selling items. Selectman Hashem inquired as to why the weapons were not traded at the time of the purchase of new weapons, which made sense to him. Chief Dupuis did not disagree, but offered no explanation. Chairman Cummings requested Chief Dupuis establish a value and get back to the Board. Robert Lake questioned again why the guns could not be traded for other items, believing that the article mandating funds to go into the general fund only referred to cash. Chairman Cummings clarified that they would do what was in the best interest.

Fire Chief Colin Colby advised that the Department is up to 60 calls for the year to date. They responded to a mutual aid structure fire in Warner with a good turnout, leaving seven certified firefighters waiting at the Station should a call come in. There was a severe lightning strike on Deer Meadow Road that took out an electric fence area near a barn, but ended well.

Road Agent Emmett Bean has been doing cold patching and grading. He has removed some of the postings on the tar roads, noting that the dirt roads are drying up, but still have soft shoulders. He left a letter for the Board regarding the cable near the salt shed, which the Board will review later. Chairman Cummings inquired about the length of time for the posting of the roads, with Mr. Bean noting that previous Boards had left it up to him to decide.

Brenda Silver, Old Home Day Committee Chairman, requested that the Board vote to put the parade route back to what was considered the original route, from the Dam on White Plains Road to the school and to hold a street dance on Allen Road, as had been done in the past. There was discussion on when, where and how the route was changed, what steps are necessary to make a change, etc. Chairman Cummings made a motion to go back to the original Old Home Day parade route which started at the Dam on White Plains Road and proceeded south on Battle Street; seconded by Selectman Hashem and approved. Chairman Cummings made a motion to allow a street dance on Allen Road as part of the Old Home Day Celebration; seconded by Selectman Hashem and approved. Other general discussion continued regarding the return of Old Home Day scheduled for August 20<sup>th</sup>.

Chairman Cummings read the following prepared statement regarding the Selectman Member of the Planning Board as was appointed at the last meeting and subsequent action taken:

“NH statutes specify that the Board of Selectmen shall appoint one of their members as the selectman representative to the Planning Board. In Webster the practice for many years has been for each newly elected selectman to serve their first year on the planning board. As a review of town records show, one of the rare exceptions was a person who completed the year for a selectman who resigned, then served one-year after being elected as selectperson, and then filled in for a second year because the next elected selectman did not wish to serve. The only other exception came in 2010 when Selectmen Hashem and Klumb voted to bypass new Selectman Cummings and instead re-appointed Selectman Hashem a second time.

At a February Board of Selectmen meeting an allegation was made that for all these years the practice of one-year terms of selectmen on the Planning Board was “illegal” and “against the law”. A selectman appointed to the Planning Board remained in that position for the remainder of his term as selectman. Back in 1980 that was true.

In 1980, case law in *Silva v. Botsch* confirmed a selectman remained on the planning board for the duration of his elected office. After a one year term a new selectman was appointed to replace Selectman Silva on the planning board in the Town of Merrimack. Silva went to court and not only prevailed, he was also awarded costs. However, it should be noted that this case law decision wasn't just about the statute pertaining to selectman appointed to planning boards. It was as much or more about the interpretation of any law when “...statutory language is plain and unambiguous...” In 1980, the law was unequivocal. There were no options. A selectman appointed to planning board was there for the duration of his term as selectman. Evidently short term selectman appointments to planning boards weren't uncommon at that time because towns then approached the legislature seeking more flexibility. In response, in 1983 the legislature amended the law to allow one year selectman terms on planning boards. In 1996 it was amended once again to allow for appointments as brief as 4 months.

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When Bruce Johnson was elected as selectman, consultation with Town Counsel indicated that the many years of consistent convention clearly showed the town had always followed the option of one year selectman appointments to the Planning Board and that was entirely legal.

Accordingly, at the April 18 Board of Selectmen meeting, Selectmen Cummings and Johnson voted to appoint newly-elected Selectman Johnson as the selectman representative as well as reappointing member Richard Doucette. (Selectman Cummings brought this to a vote at this meeting because it had been postponed at the previous meeting and the April Planning Board meeting was scheduled for 4/21 to vote in a chairman and secretary.) At the end of the meeting, Selectman Hashem arrived and challenged the vote saying he wanted to serve until the end of his term of selectman. He described the vote to appoint Bruce Johnson as illegal.

On Wednesday morning, 4/20, Selectman Johnson went to the Town Clerk's office at 9:00 AM to be sworn in as the selectman representative to the planning board. In the course of conversation about planning board terms he and the town clerk checked to see what term expiration for selectman representative George Hashem had been entered on the 2010 re-appointment document. Although the 2010 document could not be found, the 2009 appointment document showed a 2012 end date. The same expiration date used for all the other planning board appointments was not changed to 2010 in the course of printing up the appointments. Even the selectman alternate, David Klumb's appointment card, showed a 2012 expiration. Both documents carry the signatures of Selectmen Mullins, Hashem, and Klumb, were sworn by the appointees and certified by the town clerk. Selectman Cummings learned of this while in a meeting with town counsel. Although the expiration dates were unintentional and contradicted by the meeting minutes and town website, these were legal documents and town counsel agreed they introduced an element of uncertainty. While likely that 25 years of convention would probably still prevail in a legal test, a contest would undoubtedly be even more involved and expensive. There would also be the risk of a circus of publicity the town could do without.

Accordingly, Mr. Hashem will be serving another year as the selectmen representative on the Planning Board and Emmett Bean will continue to be his alternate."

Chairman Cummings advised that when Selectman Johnson came to the Town Clerk's office to be sworn in, it was discovered that Selectman Hashem's term was to end in 2012. At this time Selectman Johnson contacted Chairman Cummings, who was at the office of Town Counsel regarding another legal issue. He was then able to discuss the issue briefly with Town Counsel, who agreed that "it's just not worth it." He continued with a bit more of the history of the PB Selectman Representative. He then requested that the vote taken at the earlier meeting be reversed. Tom Mullins inquired as to when the Board met to make this decision. Chairman Cummings replied that they did not meet, that he made the decision unilaterally, feeling that the issue was urgent due to the imminent meeting of the PB on that Thursday. Chairman Cummings made a motion to reverse the vote previously taken to appoint Selectman Johnson as Selectman PB Representative and Chairman Cummings as Alternate; seconded by Selectman Johnson; two approved and one abstained. Selectman Hashem inquired, as there was quite a bit of legal opinion from the attorney, as to whether Chairman Cummings had this in writing, to which Chairman Cummings said no. Chairman Cummings indicated that Selectman Hashem had nothing in writing from earlier conversations regarding this issue either. Selectman Hashem noted that obviously Town Counsel had changed his mind, indicating that he would like to see his opinion in writing as the Town had obviously paid him, though he was willing to take Chairman Cummings' word. Selectman Hashem referred to the Statute regarding the appointment of the PB member and how it allows for flexibility, noting that the only precedent seemed to be that others gave up their position after one year as an option. Chairman Cummings again referred to history, which Selectman Hashem indicated was not relevant. Selectman Hashem then requested reimbursement from the other members of the Board, noting he had protected his right to the elected position, stating that he felt the reimbursement should come from the other members personally and if not, he would reserve his right to do something about that. He felt that he had forewarned the Board of his course of action and having spent \$400 of his own money, which he felt was a waste of his money and time as well as the Town's, that he should be reimbursed. Selectman Johnson rebutted that Selectman Hashem too had wasted a lot of time, money and aggravation as he could have shown his appointment card on file with the Town Clerk at no expense. Selectman Hashem advised that he did not realize what was on the appointment card, but was going by the minutes and intentions of the Selectmen at the time, noting that fortunately the appointment card backed him up. Selectman Johnson noted that he voted in good faith. Selectman Hashem indicated that the court case was very clear and that he was entitled to reimbursement of his expenses, again saying he would still like to see Town Counsel's opinion in writing and that he was willing to take the issue to court if need be. Audience participation and discussion with the Board ensued.

**Board Appointments:** Selectman Hashem made a motion to reappoint Sue Rauth as an Alternate on the Planning Board; seconded by Selectman Johnson and approved. There was discussion amongst the Selectmen regarding attendance of some members. The Board then reviewed and discussed some of the applications of interest received or verbal interest expressed.

8:16 P.M. At this time Selectman Hashem made a motion to go into non-public session pursuant to RSA 91-A:3 II (c) regarding matters, which if discussed in public would likely adversely affect the reputation of any person; seconded by Selectman John-

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son. Roll call: Chairman Cummings – yes; Selectman Hashem – yes and Selectman Johnson – yes. Mrs. Jones was asked to attend.

8:23 P.M. Chairman Cummings reconvened the meeting advising that the Board discussed prospective appointees to the Board positions. No decisions were made and the Board voted to seal the minutes. He then recommended that the Board move forward with no further appointments tonight. Selectman Hashem spoke in favor of the appointment of former Selectman David Klumb to the Zoning Board of Adjustment with no action taken.

The Board reviewed a quote for an on-demand hot water heater and installation from Huckleberry Heating Oils, LLC. Chairman Cummings had information for an on-demand heater obtained after the last Energy Committee meeting. There was public and Board discussion on the pros and cons of what would be best for the Town. When asked about the sediment that had accumulated in the old tank, it was noted that a new filtration system has since been installed, thereby eliminating that problem in the future. No decisions were made tonight though the Energy Committee is still looking into solutions. Later in the meeting Joan Tracy recommended that the Board seek three bids and then make a decision. No action was taken at this time.

Barbara Corliss, Refuse Disposal Committee Member, earlier had brought to the attention of the Board that Webster is not on two original deeds to the landfill property, though Webster is on a later deed. Mrs. Jones had contacted Hopkinton Administrator Neal Cass and he was to talk with Hopkinton's Board, which he did. Hopkinton's Board requested a joint meeting, perhaps in June. This Board suggested the week of June 20th, to which Mrs. Jones will respond with this date to Mr. Cass. Ms Corliss also advised that the Committee is working on an update to the Ordinance, which will need signatures of the Boards as well, suggesting that it may be ready by the time the Boards meet. Chairman Cummings suggested getting a resolution to the deed issue before the meeting, to which Ms. Corliss agreed.

After review of a quote from Yestramski Electrical for repairs or replacement of the central vacuum system Selectman Hashem made a motion to accept the replacement of the vacuum; seconded by Selectman Johnson and approved. Selectman Hashem made a motion to take \$745 for replacement and installation of a new Nutone vacuum from the Town Hall Fund established in 1991 for this purpose; seconded by Selectman Johnson and approved.

Upon advise of the Local Government Center regarding expansion of the membership for the Agricultural Commission and the addition of alternates as had been requested by the current membership, it is evident that it will take a vote of the Town Meeting to make these changes. The Board had appointed alternates on 3/9/09, but LGC advised that these are not valid appointments. Mrs. Jones advised that LGC indicated that any interested folks can participate anytime in the Committee meetings and participate in anything except voting. Mr. Bean inquired about any by-laws. There are none written to the Board's knowledge.

The Board reviewed a quote for repairs needed at the Town Hall as was discussed at the last Joint Loss Management Committee Meeting. Chairman Cummings noted that this quote did not include the chimney cover that has blown off, or repairs of the boards below the soffit on the back side of the building. Robert Lake noted that the rotting of the boards was because of the back-up of ice and insufficient insulation. No decisions were made to do these repairs at this time.

Chairman Cummings advised that he met at the Town Hall with Rodney Sargent, who was awarded the bid for the roof, and discussed the possibility of doing the above mentioned soffit and chimney repairs. Mr. Sargent's proposal requested 50% of the quote up front, which Chairman Cummings suggested that the Board would probably not want to do. He then proposed that the Town pay the supplier directly for the materials thereby alleviating any cash flow issues and any potential issues if the contractor doesn't pay for the materials, noting that this was also suggested by Town Counsel. He then discussed the job specs specifying a "double course of wood starters, eves only" be used. Mr. Sargent indicated that he was not in favor of this process as these are untreated and in strong rains can have a wicking affect thereby causing damage. He noted that currently there are shakes on the Grange and Church portions of the hall, but not on the connector. He then indicated that if there was no damage from the current wicking that he would do the process. Mr. Lake then requested that the two sealed bids received be read aloud as he questioned that both contractors had not bid on the same specs. Chairman Cummings noted that they were not read aloud as no decisions were to be made on April 4, 2011 because not all Board members were present. A vote was taken on April 18, 2011 to award the bid to the lowest bidder, Rodney Sargent, even though Selectman Hashem was not present. After discussion, the bids received were read aloud. Mr. Lake was upset that the bids received were not according to the specs provided and pointed out

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the differences he felt were important, indicating that he could match the lower bid if he followed Mr. Sargent's bid. There was a very lengthy discussion on the ventilation, the wood starters and louvers as specified in the bid specs with audience and Board participation. Selectman Hashem discussed the importance of a contract. Chairman Cummings stated that his intent was to draw up an agreement based on the specs sent out and to address the use of shakes or not after review of the current shakes. Mr. Lake again stated that Mr. Sargent did not bid on the specs as received, questioning why the Board even accepted his bid. More discussion ensued on the specs, who wrote them and the bids. Robert Pearson recommended that any and all future sealed bids received by the Town be read aloud at the opening of the bids in a public forum. Mr. Sargent requested that the Board figure out a solution and get back to him, even if it involved sending out new bids. There was discussion on having specs written by an outside source by someone who is not interested in bidding on the job. Discussion ensued on who might be contacted to draw up specs. Barbara Corliss indicated that having a set of specs drawn up by one who wants to bid on the project gives that person preferential treatment. Selectman Johnson noted that the door had been opened by Mr. Sargent to send out requests for new bids, perhaps adding insulation to the project as had been discussed. Mr. Pearson recommended asking Hamilton's Building Supply to provide specs for the roof, suggesting that the supplies be bought from them. If the bids are sent out again, Ms. Corliss recommended sending the specs out, setting up a meeting with the contractors for a walk through, thereby allowing them to make any suggested changes to the specs and providing any amendments to the bidders, and requesting the sealed bids be due usually within two weeks after that date. Selectman Hashem made a motion to rebid the roof project and to call in an expert to look at the specs we have and adjust them accordingly; seconded by Selectman Johnson and approved. Selectman Hashem made a motion to call an insulation expert to determine the insulation/ventilation needs and to see what they suggest; seconded by Selectman Johnson and approved. Mrs. Jones will make the calls to Hamilton Building Supply and Energy Improvements Center.

After review of the prepared "Temporary Alternative Duty Policy", Selectman Hashem made a motion to approve the policy as written; seconded by Selectman Johnson and approved. Mrs. Jones suggested that this separate policy be incorporated into the "Personnel Policy" when that policy is updated.

9:58 P.M. Selectman Hashem made a motion to adjourn the meeting; seconded by Chairman and approved.

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George C. Cummings, Chairman

George K. Hashem

Bruce G. Johnson

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