

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

6:32 PM Selectmen's Meeting – March 5, 2012

Present: Chairman George Cummings, Selectman George 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 a motion to accept the Selectmen's Minutes of February 21, 2012 as written; seconded by Chairman Cummings and approved.
- Selectman Johnson made a motion to accept the sealed non-public session Selectmen's Minutes of February 21, 2012 as written; seconded by Chairman Cummings.
- A sick leave slip for Mrs. Jones.

Acknowledging the work it takes to pull together the Town Report, Selectman Johnson thanked the office staff for their hard work and saying that it looked nice and after a quick review it appeared to be pretty accurate.

The Board signed a sick leave slip and a vacation leave slip for Financial Administrator Wendy Pinkham:

Chief Dupuis advised the Board of the following:

- There were 34 calls for service in the last two weeks. He read the highlights from the report.
- He then advised that one officer approached him prior to his vacation and both officers have approached him since his return regarding the on-call time. Both officers indicated to him that they were dedicated to the Town and will continue to do on-call time without compensation. Officer Daniel Shapiro started a month after he was hired and Lieutenant Mitchell has been doing it right along. He told them that he would draw up an agreement in writing prior to Town Meeting, requesting the Board's authority to send it to Town Counsel for review and if approved, the officers would then sign it. Chairman Cummings advised that the Board would like to review what is sent to Counsel as well. Selectman Hashem spoke at this time as this same issue was on the agenda at the end of the meeting. He provided a print-out of research he had done. The Chief said that the officers never asked for compensation stating he was the one that reviewed the Garcia decision many times and thought that the Town could be in a bind if someone demanded payment at some point and felt that compensation was the right thing to do. There was extensive discussion between Chairman Cummings, Selectman Hashem and the Chief regarding the on-call time, when it began whether it was restricted or not, whether there was ever a policy and if so whether it had been properly communicated to the officers, whether the officers may have felt their job was threatened relative to on-call time, the recording of on-call time on the officers timesheets, compensation for on-call time, Officer in Charge Don Gross' time with the Town, several references to rumors of suing the Town and how best to get a final decision on this issue. Selectman Hashem felt that the only right thing to do was to find out if the Town does owe this with a determination to be made through the Labor Board, not Town Counsel. He felt that if in fact the time was to be compensated, that it would be at a rate much greater than the \$2 per hour previously paid, noting that from some of his research it could be at regular or overtime rates and could possibly amount to as much as \$102,000, noting that an employee has three years to file a claim, Chief Dupuis was leery about using the Labor Board for a determination, as they may demand a labor audit. Chairman Cummings then questioned if Selectman Hashem was in agreement that there should be a policy, to which he was and he then stated that there should be an agreement of understanding for the officers to sign off on. Selectman Hashem made a motion to ask the Labor Board to determine what the proper treatment is; and from that then develop a policy going forward. Chairman Cummings asked for clarification of which Labor Board, with Selectman Hashem saying the New Hampshire Department of Labor. Chief Dupuis indicated that the NH Department of Labor probably wouldn't rule on the Garcia decision, only NH law. Chairman Cummings said that he had not had time to review the material provided tonight, though his feeling had been that there is not a great risk to the Town, but for the future, it should be made clear. Chairman Cummings seconded the motion. The vote was two in favor and one opposed. The decision was for Mrs. Pinkham to contact the Labor Board for information.

Butch Thornton said that research that he had done lead him to believe that an employee cannot wave his legal right to compensation. He continued with a question after reading an excerpt from the Board minutes of 5/31/11, noting that as a taxpayer he would like clarification from the Board as to what is the policy, whether it be hours or taking the cruiser home, as it cannot be both ways. He continued saying secondly that taking the cruiser home should only be done by the on-call officer and third

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G. C. Cummings

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G. K Hashem

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B. G. Johnson

ly saying that if money was owed to the officers, they should be paid. Chairman Cummings stated that the subject will be reviewed.

Fire Chief Colin Colby advised of the following:

- There have been 25 calls to date.
- The Ashby, MA Fire Chief has made a verbal offer of \$15,000 for the used fire truck, which has not yet confirmed. If he has not heard from them by Thursday, he will call them and if no action, he will continue to advertise the truck for sale. The original asking price was \$25,000, but failure of the pump test has affected the offer. Chief Colby noted that now that they were aware of the failure, they needed to either fix it or disclose the problem. There was discussion on the cost to fix the pump, which was approximately \$4,500. Chief Colby based the original asking price on input from knowledgeable folks prior to any knowledge of any problems.
- He referred to a letter he received today from a concerned Webster resident, which he thought the Board had also received. He noted that it was cc'd to a number of others. The Board advised that this issue would require a non-public session.
- Selectman Johnson inquired as to whether Chief Colby had checked with the Moderator regarding setting up a display at Town Meeting. Chief Colby advised that he was unable to get the day off so did not pursue the issue.
- He advised that the generator purchased for the new truck was too large for the compartment and had to be returned for a smaller unit, which actually resulted in an increase in cost of \$184. The extra funds needed came from his equipment fund. Mrs. Pinkham advised that a check for \$2,700 was received from Greenwood for the difference between the \$5,000 allocated and actual funds spent for equipment for the new truck, which was part of the agreement when the truck was purchased.

Road Agent Emmett Bean made mention of the recent storm. He inquired as to whether there had been any calls left at the officer regarding complaints, of which there had been none. He indicated that perhaps he was a bit sensitive, but felt that there had been some negative comments by a few folks about senseless spending of funds by the Road Agent. The Board indicated that there is always that type negativity regardless of who was the Road Agent. The audience then gave Mr. Bean a hearty thank you and a round of applause for a job well done.

Treasurer Mary Smith advised that her computer was working much better with the change in the memory added. She advised that she has talked with Merrimack County Savings Bank and Sugar River Bank about possibly using their services and should have a recommendation soon. She is also looking into the law regarding the cashing of payroll checks at the bank if one does not have an account with the bank upon which the check is drawn. Currently TD Bank is charging a \$5 fee and the other banks she spoke with indicated that there would not be a fee.

Chairman Cummings referenced the letter sent earlier on behalf of the Town of Hopkinton to the State Treasurer demanding full payment of the Payment in Lieu of Taxes for the flood control areas, saying that if they were successful, that he thought that the State would have to make restitution to all of the towns affected. Selectman Johnson inquired as to what other towns were involved, it was noted that Webster was mentioned in the letter, though the Town of Hill had been expected to be involved, but have not been heard from. Chief Dupuis said that it was discussed at the Hill budget meeting and that they had encouraged participation. He will check with them tomorrow night.

The Board approved the recommendation of Cross Country Appraisal to settle an abatement filed with the Board of Tax and Land Appeals filed by Michael Arpino. This approval will be sent the Cross Country for proper processing.

Chairman Cummings advised that a meeting, as was requested by the Conservation Commission, with the Army Corp of Engineers regarding erosion of the banks of the Blackwater River will be held on April 3, 2012 at 6:30 pm at the Town Hall. This meeting will include the Board, the Conservation Committee, and representatives from the Department of Resources and Economic Development.

Tom Mullins stated that he was glad that the Board was looking into the wage issue, referring to the on-call time. As there was the potential of a \$100,000 liability he was hoping that the Town would have an answer prior to voting on the budget. Chairman Cummings said that he would hope so. Mr. Mullins questioned the inspections in Davisville, asking if the guy that was being inspected was keeping up his part of the bargain and if he was paying. Chairman Cummings advised that they were waiting to do the final inspection regarding the agreement after the snow is gone and everything can be seen, saying that every time they have to push it, the judge is awarding the towns their costs. Selectman Hashem questioned that if he doesn't pay, are the towns paying the attorney, and if so, it was too bad that there was not an agreement that we only pay the attorney when the towns get paid. Chairman Cummings advised that the agreement was for three inspections and it was the last one that has been problematic. Selectman Hashem said that if the agree-

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ment is not followed, then the judge would toss out everything and start again, as the owner would have voided the agreement, and the judge would use the full force of the law.

Barbara Corliss inquired as to whether a joint Board meeting had been scheduled with Hopkinton regarding the amendment to the permits at the Transfer Station, which it had not. Chairman Cummings advised that this Board has agreed to the request at the previous meeting. As Ms. Corliss indicated that it needed the approval at a joint meeting to make it official, Mrs. Jones was requested to contact Neal Cass, Hopkinton Town Administrator, and set this up.

Mr. Thornton recently saw the Clerk of the Works for the roofing project and questioned the Board as to whether the contract had ever been modified as the clerk had recommended for work that had not been performed at a value of approximately \$4,000. Chairman Cummings advised that the work had been evaluated and deductions had been taken, and though significant reductions were taken, it was not the full amount recommended.

In reference to the earlier subject of on-call time, Mrs. Smith advised that it was correct that unrestricted on-call time does not need to be paid. However, she recommended that Local Government Center be called for a sample "On-call Policy" that could then be fine-tuned for the Town. She also noted that because of the Town's affiliation with LGC, the Town can get free advice from a labor attorney. She had done this a few years ago, noting that her notes were probably still in the office. Selectman Hashem was concerned that whatever they offered may not be binding or solve the issue. Chairman Cummings again said that the past and future practices need to be reviewed and could rely on LGC for advice.

Regarding the non-public, Chief Dupuis noted that if the one listed for him on the agenda was in regards to a letter received by him today, he noted that the Board approved and adopted a policy prior to his tenure, whereby any complaint received against the Police would not be handled by the Board. The complaint needs to be in writing, which this one was, and it would then be investigated by the Chief or his designee such as an outside agency. If there was need for discipline, then that would be done by the Board. The Board cannot be the investigators and then sit in judgment of the complaint. The Board agreed with him, though Selectman Hashem expressed concern of the Chief doing the investigation as it is such a small department. The Chief indicated that if it were a legitimate complaint, then it would most likely be forwarded to the Sheriff's Office or State Police. Chairman Cummings stated then that person would then have appeal rights to the Board, to which Selectman Hashem agreed. Chief Dupuis had called the person that filed the complaint and was only able to leave a message to contact him. His plan is to sit down and review the situation with the complainant. Selectman Hashem inquired as to how the Chief would determine if the complaint were frivolous or not. The Chief noted that something that was a year and a half old presented its own issues, partly due to the statute of limitation as well as the fact that the employee has the right to be heard timely. Chairman Cummings requested that the Chief advise the Board of the outcome.

7:25 PM Chairman Cummings asked Fire Chief Colby if he had similar situation to discuss. Chief Colby advised that it was about a situation regarding the action of a member of the Fire Department at a scene. Selectman Hashem made a motion to go into non-public session pursuant to RSA 91:1-3 II (a); seconded by Selectman Johnson. Roll call: Chairman Cummings – yes; Selectman Hashem – yes and Selectman Johnson – yes. Fire Chief Colby and Mrs. Jones were requested to attend.

7:40 PM Chairman Cummings reconvened the meeting. He advised that the Board voted to seal the minutes.

Immediately following Selectman Hashem made a motion to adjourn the meeting; seconded by Selectman Johnson and approved.

Chairman Cummings shouted out that the School Board Meeting would be held on Thursday.

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**George C. Cummings, Chairman**  
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**George K. Hashem**

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**Bruce G. Johnson**

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