



**TOWN OF NORTH HAMPTON, NEW HAMPSHIRE
THE MUNICIPAL ETHICS COMMITTEE**

MAY 16, 2019 6:30 PM

NORTH HAMPTON TOWN HALL

Approved June 6, 2019

MEMBERS PRESENT: Chairman Jonathan Pinette, Vice-Chairman Susan Leonardi, Timothy Harned, Mark L. Janos, Phillip E. Wilson (Alternate)

ALSO PRESENT: Town Administrator Kaenrath, Town Counsel Steve Bennett

AGENDA

Chairman Pinette welcomed everyone to the May 16, 2019 Meeting of the Municipal Ethics Committee and called the meeting to order at 6:33 pm, followed by the Pledge of Allegiance.

Chairman Pinette stated that all parties received an email on how the meeting was going to proceed, and said 30 minutes were allotted to each side for statements and witnesses and the Board would have a chance to interact with any witnesses and ask questions.

OLD BUSINESS – None

NEW BUSINESS

Approval of the Minutes of the May 2, 2019 Meeting

Motion: To approve the Ethics Committee Meeting Minutes of May 2, 2019.

Motioned: Mr. Janos

Seconded: Mr. Harned

Changes/Corrections: Mr. Wilson made a correction on line 52 to change the word “characteristically” to *categorically*.

Vote: Motion was approved as amended 5-0

Preliminary Investigation of the Complaint Received April 24, 2019

Chairman Pinette said they would essentially be getting into the testimony, and asked Mr. Maggiore to speak first and reminded the parties that there was a 30-minute time allotment.

Complainant Testimony – Mr. Jim Maggiore

Mr. Maggiore thanked the Chairman and members of the Ethics Committee. He said as recommended by the Committee, his attorney reached out to Mrs. Kilgore's attorney with regard to mediation and the request was rejected.

Jim Maggiore stated that he was currently serving his 4th term as an elected member of the North Hampton Select Board, and his service also included the Planning Board, Heritage Commission, and Water Commission. He said he was also serving on the Board of Directors for the North Hampton Municipal Association and was nominated from that board to serve on the Governor's Council on Diversity & Inclusion, which was created to combat discrimination. He said in 2018 he was elected to his first term as a State Representative from North Hampton.

Mr. Maggiore stated that his appeal to the Standing Ethics Committee was based on 3 facts. He said he was not guilty of discrimination or prejudice based on gender or sexism as alleged, and stated that Mrs. Kilgore's baseless accusation, comments to the press and conflicting stories between the Select Board and the press, violated Article 2 of the preamble to the North Hampton Code of Ethics, which states in part: "all Town Officials, whether elected, appointed or hired, shall act in the best interests of the Town, shall maintain the highest standards of personal integrity in discharging their public duties".

Mr. Maggiore stated that Mrs. Kilgore violated the Select Board Rules and Procedures, Section 3 (c) v) to: "treat with respect the rights of all members of the Board despite differences of opinion" and violated the North Hampton Code of Ethics Preamble to maintain the highest standards of personal integrity in the discharge of her public duties, when she spoke as a member of the Select Board in the April 14th Hampton Union article. He said the accusation would be with him for the rest of his life regardless of the outcome of the hearing.

Mr. Maggiore stated that he had never discriminated against anyone in the discharge of any of his duties nor with Town staff or members of the public. He said his demeanor and comments at the Organization Meeting of April 8th were consistent with every other meeting during his tenure on the Select Board: respectful, understanding, measured and focused on the best interests of the Town. He said Mrs. Kilgore may be disappointed with the results of that meeting, but to trump up a charge of sexism is a violation of Select Board rules. He said Mrs. Kilgore was first quoted as a member of the Select Board accusing him of being sexist, then flip-flopping and doubling down on the comment, which were violations of Select Board Rules & Procedures and of the North Hampton Code of Ethics.

Mr. Maggiore stated that at the April 8th Organizational Meeting of the Select Board Mr. Larry Miller nominated him as Chairman which was seconded by Mrs. Kilgore for discussion and ultimately passed 2-1. He said his decision and vote were based on the best interests of the Select Board after 2 years of morale-building for the Town, and said he was not willing to put the Town's progress at risk by changing the current Select Board Chairman who was clearing supported. He said his decision was also based on availability as Mrs. Kilgore has a fulltime job in Lawrence, MA and Mr. Miller owns his own business in

Hampton and would be available to address the prudential affairs of the Town on a daily basis. Mr. Maggiore said he had also considered individual workloads.

Mr. Maggiore said that the Town learned of the accusations of Mrs. Kilgore in an April 18th article posted on Seacoast Online and in the print edition titled: "Kilgore Alleges Sexism by North Hampton Board Colleagues". He said she spoke as a member of the Select Board, on a specific Select Board issue, and not as a private citizen when she said that "their tone and body language was dismissive" and she felt there was a sexist part to the decisions made by the Board. He said at the next Select Board Meeting Mr. Miller addressed the accusation that "she believes Maggiore and Miller showed sexism when they turned her down as chairman". He said Mrs. Kilgore, participating in the meeting as a Select Board member, said "sexism and the header on the story were not her words at all".

Mr. Maggiore reminded everyone present that the Town of North Hampton values honesty, transparency, accountability, and respect and civility in the behavior of its officials as stated in the Preamble to the Code of Ethics, and said government employees were only protected by the first amendment as private citizens. He stated that in another article on April 25th in Seacoast Online Mrs. Kilgore stated that she considered the comment that she was too busy had do to with her gender as much as her ability. He said that Select Board Rules and Procedures and the North Hampton Code of Ethics each establish standards by which board members should hold themselves in the discharge of their duties, and Mrs. Kilgore violated the terms of those documents when she made the accusation and then doubled down on the accusation.

Mr. Maggiore said the responsibility of the Select Board was defined simply in NH Article RSA 41:8 and stated that Selectmen shall manage the prudential affairs of the Town and perform the duties by law prescribed, and that any Selectmen shall be competent in all cases. He said when the Select Board acts, he believes each member is making a decision that will benefit the residents of North Hampton, and said they worked diligently to find common ground despite differences of opinion.

Mr. Maggiore said any meeting from the Video Stream in which he participated would show that he never treated Mrs. Kilgore or any others members of boards and committees or members of the public, regardless of gender, race, or religion, with anything but respect. He said his relationships with those who served the community and the State as a whole would not be possible if he did not hold himself to the highest standards of ethical behavior, honesty, and personal integrity.

In closing, Mr. Maggiore reiterated that "members of the Select Board shall act in the best interests of the Town, shall maintain the highest standards of personal integrity in discharging their public duties and shall treat with respect the rights of all members of the Select Board despite differences of opinion." He said Mrs. Kilgore had a right to be disappointed, and said he was disappointed that Mrs. Kilgore would violate the rules, procedures, and ethical standards, and asked the Standing Ethics Committee to find that Mrs. Kilgore violated these rules and procedures and censure appropriately.

Witness Testimony on behalf of Mr. Jim Maggiore

Julie Gilman, Exeter Select Board Member, said she was in her second term as a State Representative and had worked with Mr. Maggiore on the Municipal and County Government Commission. She said as Selectwoman she had seen in her service dismissiveness from fellow members and misogyny from witness testimony. She said she recognizes it when she sees it and has not seen it in Mr. Maggiore's behavior at

the Statehouse. She said he kindly drove her to Concord and they had many discussions about how their Town's worked, and said she never had an experience where she felt like she was being dismissed by Mr. Maggiore because their Towns acted differently.

Gabriel Grossman stated that she was also a State legislator for Exeter in her first term in Concord and said she was honored to sit beside Mr. Maggiore in the Statehouse. She said when she heard about this she wanted to come and support Mr. Maggiore because he was constantly trying to help out and support others, male and female. She said his commitment to the Town of North Hampton and his passion and love for the Town, as well as his commitment to public service, was evident. She said Mr. Maggiore was always willing to listen and was able to work with people on both sides of the aisle. She said she came today to make sure that when upstanding members of the community were attacked, someone was there to stand up for them. She said Mr. Maggiore was a dedicated coach, father, and husband and he was constantly trying to lift people up and help support them to do good.

Lisa Wilson said she had been a resident of North Hampton for 22 years, and upon first meeting Mr. Maggiore she was impressed by his kind nature, good will, and honesty, and said he was one of the most thoughtful and caring individuals she had ever met. She said in her work with Mr. Maggiore over the years he had always been fair and was extremely respectful to both men and women. She said he was a good listener and took into account all the facts pertaining to Town issues and addressed issues in a timely manner and without prejudice. She said as Chairman of the Select Board, Mr. Maggiore consistently presided with civility and respect for his fellow Board members and the public, even when faced with criticism and less than civil behavior by members of the public. She said those who know Mr. Maggiore know he is an individual who can be trusted at all times and has always shown respect to the residents of North Hampton.

Jane Boesch, resident of North Hampton, said she was making this statement on behalf of herself and her husband William Boesch. She said it was perfectly clear to both of them that Jim Maggiore is not and has never been sexist in his actions with a member of the North Hampton Select Board. She said having known him personally and in his role as Chairman of the Select Board, they had found him to be punctilious in dealing with members of the Board, Town employees, and other board and committee members as well as members of the public.

Mrs. Boesch said it was apparent to her that the results of the Organizational Meeting of the Select Board were the best possible outcome, and said Mr. Maggiore and Mr. Miller both listened carefully and courteously when Mrs. Kilgore made her claim of qualifications for chairman. She said Mr. Maggiore had demonstrated his commitment to the Town of North Hampton throughout his years as a Select Board member, and said North Hampton had moved beyond any sexism in the assignment of Town roles and stated that there was no sexism on the part of Mr. Maggiore.

Nancy Monaghan of Atlantic Avenue said most of us believe you can tell the character of a man by the way he treats people. She said in her first contact with Mr. Maggiore she was a stranger and had called him for assistance on an issue and he had taken his time to listen and called her several times to set her on the right track. She said Mr. Maggiore was a man of character and treated all people equally and respectfully, and said Jim is no way a sexist, he is a man of honor and said everybody else knows that.

Donna Etela of Exeter Road said she was Chairman of the North Hampton Heritage Commission and first met Jim Maggiore as the Select Board Representative to that commission. She said she valued his service on the commission, and had always been impressed by his willingness to be actively involved in his efforts. She said Mr. Maggiore was a true colleague in every sense of the word and she had never experienced a negative encounter or outcome from their many meetings over the years. She said she admired his dealings with members of the public, who were less than respectful to him, and said he was one of the most engaged and devoted citizens of North Hampton and followed through with his promises and commitments.

Ms. Etela said in terms of Mr. Maggiore's demeanor and treatment of women, she had never seen him do, say, or act in an inappropriate manner, and said he treated all people with respect and was genuine in his interactions with men and women. She said he was not fake and was not a phony, and felt she was fortunate to know Jim as a person away from his public persona. She said he had a beautiful family who were very supportive of his work and she was pained to imagine the effect all these accusations, verbally and in print and online, might be having on the family. She said he was a good, honest, and upright person.

Respondent Testimony – Mrs. Kathleen Kilgore

Town Administrator Kaenrath said they needed to make sure there was an agreement for an Attorney Presentation, which was verified with Chairman Pinette.

Attorney James Scully addressed the Chairman and said no one was made aware of the procedures, and he had tried to reach Chairman Pinette by phone but his call was not returned. He stated that the fact that they were being silenced was unethical by itself.

Chairman Pinette said emails were sent out to both parties including the Police Department and Fire Chief regarding what the expectations were and what the procedures were going to be. He said he had spoken with Mr. James Scully by phone about his concerns about being able to do a presentation and told him any testimony, information, or witnesses could be submitted in writing as well as any presentation and said they had a mutual agreement during that conversation. He said he was made aware of a call on Monday to the Town Counsel about the exact same conversation. He stated that he was not going to go back and forth with rebuttals, and stated this was not a courtroom.

Mr. Scully said it was ironic that one side was allowed to present and the other was not, but said they stood by their statement as submitted and would call no further witnesses. He said Mrs. Kilgore had chosen not to speak this evening and was standing by her statement.

Committee Review

Chairman Pinette said upon completion of a preliminary investigation the Ethics Committee needed to choose: (a) no action was needed; (b) violation was inadvertent and would be addressed informally; or (c) the conduct was of a serious nature and formal proceedings should be initiated. He asked if any member of the Committee wanted to ask questions of any witnesses. Mr. Wilson said he thought Julie Gillman seemed to be a person who had similar experiences, and asked her if she had time to review the tape of the meeting. Ms. Gillman said she had not had that opportunity.

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Chairman Pinette said it was up to the Committee how they wished to move forward. He said he would like to resolve this tonight and come up with a solution, as this was hurting the Town and if prolonged would be even more damaging. He said he was very disappointed as he had been pushing for mediation. He said at the last meeting the reason for mediation was because sometimes the judgment of a committee or board regarding a legal action might not be in the best interests of both parties. He asked again if there was no chance of mediation between the parties before they moved forward.

Chairman Pinette addressed Mr. Scully and Kathleen Kilgore to determine that there was absolutely no chance that they would be willing to go behind closed doors and work this out. Mr. Scully said they stood behind his statement submitted to the Board. Mr. Maggiore said he had reached out to the other party and was rejected, and said in his original appeal he had asked that the articles be retracted from the newspapers and both would agree that his comments were not sexist and there was no intent to be sexist. He said the newspaper retractions were critically important to him.

Mr. Wilson said he did not see how they could conclude this in a fair way to both parties. He said he believed there were serious allegations on both sides and felt they could not conclude this without finding something about this behavior called "sexist". He said he did not see how mediation could work, and said they had to take the allegations seriously and register a finding which will show up in a record. He said the Committee will either find there was sexism or there was not, and that was the best they could get out of an impossible situation.

Mr. Janos said he looked at Section 4 of the Code of Ethics regarding fairness and adherence to proper procedures, and said Mr. Wilson touched on where this needed to go. He said given all the information and correspondence from both sides, he thought it was necessary they determine whether the complaint had merit or not. Mr. Harned said they would all like this to be over tonight but the only way to do that was to choose (a) or (b).

Chairman Pinette again asked if the parties were absolutely sure that Mr. Maggiore's request was not in possible, and Mr. Scully said he was not sure that law allowed the retraction of a statement, but said they were not in a position to do so at this time. Town Administrator Kaenrath said from an administrative standpoint, the Code of Ethics outlined 3 options from which the Committee was obligated to choose and conclude by recorded vote.

Chairman Pinette said the Committee had already taken jurisdiction of the matter and were past the point of choosing one of the options, saying that a motion needed to be made and a vote taken. Town Administrator Kaenrath agreed that would be proper procedure.

Motion: That based on the information provided, the Ethics Committee concludes that under Section 7.06 B-3(c) of the Code of Ethics, conduct of a serious nature had occurred and the Committee should vote to proceed with formal charges.

Motioned: Chairman Pinette

Seconded: Mr. Wilson

Recorded Vote: Motion approved 4-0 (Pinette, Janos, Wilson, Harned), with 1 abstention (Leonardi)

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Town Administrator Kaenrath stated that the formal hearing was to be held within 21 days following completion of the preliminary investigation. Chairman Pinette said they would then have until June 4th, and recommended they meet on Thursday, May 23rd rather than waiting until the 30th.

Mr. Janos said the procedure should be stated so people would be aware of what would be undertaken. Town Administrator Kaenrath said that Town Counsel Steve Bennett was there and invited him up to speak. Mr. Harned pointed out that under 7.06 B any evidence, testimony, or witness list should be submitted to the Town Clerk 5 days prior to the proceedings, with copies to the Ethics Committee within 3 days.

Mr. Steve Bennett, Counsel for the Town of North Hampton, said in the next step they were required to promptly provide a formal charge. He said they would need to consider Mr. Maggiore's complaint and decide which breach of the Code of Ethics would be considered by the Committee to narrow down what the charge was, so when they came to the proceedings they would be prepared to defend or present on those issues. Chairman Pinette asked if the formal charge needed to be determined tonight.

Mr. Bennett said they could have another meeting to sit down and compose the formal charges with a short statement citing the allegations as far as the Code that they will be focused on and the section they will be dealing with. Mr. Janos said the closest fit was Code of Ethics Section 4.02, *Fairness and Adherence to Proper Procedure*, and they could say the complainant states the allegation of sexism is unfounded. Town Administrator Kaenrath asked who would be responsible for drafting the formal complaint.

Mr. Wilson stated that it was not drafting a formal complaint but drafting the formal charge they were going to consider. He said the charge was that in stating after the vote for Chairman of the Select Board for FY2019/2020, Mrs. Kilgore stated publicly and later in another Select Board Meeting that her not being elected Chairman was sexist, and subsequently Mr. Maggiore said that was a baseless and defamatory accusation and he wants this Committee to adjudicate his complaint. Mr. Wilson said their charge was to adjudicate his complaint and determine if the accusation of Mrs. Kilgore was accurate to determine if the sexist charge was baseless.

Mr. Bennett said if they were in agreement about the section and basis behind it, Mr. Maggiore's vote was discriminatory because it was based on gender. He said if they could make an agreement on that and write a short statement with exact wording of formal charges, as long as it was out in a short period of time. Chairman Pinette said he agreed with 4.02 and asked how much time they should spend writing it. Mr. Bennett said to outline it first and have someone draft it in language that was nice and clean.

Mr. Harned said he did not disagree with what Mr. Wilson suggested and said he would be entirely comfortable with having Mr. Bennett put that in writing. Chairman Pinette asked Mr. Bennett if he would be willing to do that for the Committee, and Mr. Bennett said he would have it drafted by tomorrow.

Motion: That the Committee finds Section 4.02 of the Code of Ethics should be considered fundamentally as Mr. Wilson stated, and they would have Attorney Bennett commit that to writing.

Motioned: Mr. Harned

Seconded: Mr. Janos

Vote: Motion approved 4-0, with 1 abstention

Determination of Next Meeting

Town Administrator Kaenrath said one party was not available on May 30th and one party on June 28th, and asked if they could consider the first week of June. He said 3 weeks from today was June 6th. Mr. Bennett said the parties of complaint could waive the 21-day regulation in order to find a date that works for everyone if there were no objections. He said if by necessity they had to go outside that time it would not negate the validity of the Board's decision.

The Committee was in agreement that the next meeting would be held June 6, 2019 at 6:30 pm, and both parties were in agreement. Ms. Leonardi asked if they could review what they would be doing at that meeting. Mr. Bennett said under Code of Ethics Section 7.06 the procedures were fairly well laid out. He said they also needed to give formal notice by registered mail/return receipt unless the parties agreed to waive that requirement. He said the parties were free to submit written statements and the Board should note what evidence they were considering. He said all videos and minutes would be part of the record.

Mr. Janos said under 7.06 they would need to deliberate based on the facts presented and they would need to make a determination whether or not the complaint has merit. Chairman Pinette said they had already decided the complaint has merit and that was why they were proceeding to the next step. He said based on the determination they would have a recommendation from the Ethics Committee on what should happen based on the complaint.

Mr. Bennett said he was going through their rules and said the Committee was not in a position to change them now. He said the Committee had selected a process for the Preliminary Hearing that was very similar to the formal process, but they could not skip the formal process. Mr. Wilson said the procedures did provide an opportunity for the members of this Committee to ask questions of the parties. Mr. Bennett said it did, but said it does not provide for counsel for either party to be a participant, and said the role of counsel for either party was consultation before the hearing or after, but there was no provision for counsel to participate in the proceedings. Mr. Harned said at the next meeting he did not want to waste time rehearing the testimony, and said members of the Ethics Committee needed to come to the next meeting prepared to make a finding.

Ms. Leonardi asked if they could submit questions beforehand and to the parties involved. Mr. Wilson said they were to conduct the proceedings by the dictates of 91-A so submitting questions to be privately answered were not allowed.

Any other Item That May Legally Come Before the Committee

Adjournment

Mr. Janos made a motion to adjourn the meeting which was seconded by Mr. Harned. Chairman Pinette adjourned the meeting at 7:52 pm.

Next Meeting: The next Municipal Ethics Committee Meeting is scheduled for Thursday, June 6, 2019 at 6:30 pm.

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Respectfully submitted,

Patricia Denmark, Recording Secretary