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2 **TOWN OF NORTH HAMPTON, NEW HAMPSHIRE**
3 **SPECIAL SELECT BOARD MEETING**
4 ***Appointed by the Rockingham Superior Court***

5 **FEBRUARY 26, 2020 6:30 PM**

6 **NORTH HAMPTON TOWN HALL**

7 ***DRAFT MINUTES***
8

9 APPOINTED SELECT BOARD MEMBERS: Chairman Don Gould, Rick Stanton, Emily Creighton

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11 ALSO PRESENT: Interim Town Administrator Michael Tully, Town Attorney Stephen Bennett
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13 **AGENDA**

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15 Chairman Don Gould welcomed everyone to the second meeting of the Special Select Board, appointed
16 by Rockingham Superior Court, and called the meeting to order at 6:30 pm followed by the Pledge of
17 Allegiance.

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19 **NEW BUSINESS**

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21 **2.1 Discussion of Releasing Legal Opinion of Attorney Stephen Bennett**
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23 The Board discussed releasing the legal opinion of Attorney Stephen Bennett.

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25 **Motion:** To not approve the release of the legal opinion of Attorney Stephen Bennett.

26 **Motioned:** Mr. Stanton

27 **Seconded:** Ms. Creighton
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29 Chairman Gould stated that the legal opinion was a confidential communication from the Town Attorney
30 and he would therefore vote in favor of the motion to not turn over the memo. All members were in
31 agreement.
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33 **Vote:** Motion approved by a vote of 3-0; motion carries
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35 **2.2 Re-Address Select Board Passage/Non-Passage of Indemnification RSA 31:105**
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37 Chairman Gould asked the Select Board whether they should re-address the passage/non-passage of the
38 indemnification under RSA 31:105.
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40 **Motion:** For the Select Board to reconsider Selectwoman Kilgore's request for indemnification.

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Motion fails for want of a Second.

Chairman Gould said the Board has been advised by their Attorney that there is another possible theory under which they could, if they chose, grant Mrs. Kilgore’s request for fees under the general power the Select Board has under RSA 41:8 to manage the prudential affairs of the Town. He said Attorney Bennett recommended they consider addressing that issue to avoid possible litigation.

Motion: To consider whether this Board should exercise its authority under RSA 41:8 and grant Mrs. Kilgore’s request.

Motioned: Chairman Gould

Seconded: Mr. Stanton, for discussion

Discussion: Mr. Stanton said he is familiar with RSA 41:8 from a case in the 1800s, and said he read the decision and the statute and in his opinion RSA 31:105 is more appropriate to the issues being discussed. He said it might apply in a broad sense, but did not think it applied here and was against using that as justification. Ms. Creighton said she also read the case, but felt that for the Town to not provide indemnification for its Select Board seems unreasonable.

Mr. Stanton said he agrees the Town should take a position, but that is not the job of this Select Board and they should stay to the purpose for which they were selected. He said he did not think they should make a decision for the Town.

Chairman Gould said he did not believe this Select Board should exercise their authority under management of the Town’s prudential affairs. He said the application does not fit in with the criteria listed in RSA 31:105 as there was no negligent act causing harm to Mrs. Kilgore, and they already determined the fees were unreasonable. He said he believes this is a situation of a self-inflicted wound, as it was a comment by Mrs. Kilgore that gave rise to the Ethics situation and Mrs. Kilgore refused several requests for mediation. He said there is also the American Rule that when people don’t accord they pay their own legal fees, and it was not the Town who took action against Mrs. Kilgore it was Mr. Maggiore. He said for all those reasons he did not believe the Select Board should consider granting relief requested pursuant to RSA 41:8.

Vote: Motion to reconsider failed by a vote of 0-3; motion does not carry

2.3 Review and Approve Written Decision from Attorney Bennett

Chairman Gould said Attorney Bennett has prepared a decision that reflects what the Board did at the meeting of December 30, 2019. Attorney Bennett recommended that it be revised, and Chairman Gould said this would require another meeting of the Board unless they instructed Attorney Bennett and Chief Tully to insert additional language and delegate to them the authority to approve. Attorney Bennett suggested they take a brief recess now and put it together for approval, make a decision and vote tonight.

Chairman Gould asked that they first address the minutes of the prior meeting.

MINUTES OF PRIOR MEETINGS

3.1 Approval of Meeting Minutes of December 30, 2019

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Motion: To approve the minutes of December 30, 2019 as presented.

Motioned: Mr. Stanton

Seconded: Ms. Creighton

Vote was not taken on this motion.

Changes/corrections: Chairman Gould made corrections to line 34, lines 53/54, line 232, and line 332; all corrections were made as stated. Mr. Stanton corrected a statement by Ms. Creighton on line 254 to read: "...she *could not say* it seemed to her to be reasonable."

Motion: To approve the meeting minutes of December 30, 2019 with the emendations listed above.

Motioned: Mr. Stanton

Seconded: Chairman Gould

Vote: Motion approved, as amended, by a vote of 3-0; motion carries.

Chairman Gould recessed the Select Board Meeting at 6:48 pm to redraft the decision; the meeting was resumed at 6:52 pm.

Re-Draft of the Decision of Attorney Stephen Bennett

A copy of the complete redrafted decision will be attached to this minutes.

Chairman Gould said Attorney Bennett provided the Board with a hand-written addition to his drafted decision, and read the decision in its entirety into the record of the minutes (attached).

Motion: To accept the decision as just presented on the case of the indemnification of Mrs. Kilgore.

Motioned: Mr. Stanton

Seconded: Ms. Creighton

Vote: Motion approved by a vote of 3-0; motion carries.

Attorney Bennett recommended the Board sign the draft decision and attach the hand-written note initialed and dated February 26, 2020, and said they did not need to reconvene to approve these minutes.

Any Other Item that may Legally Come Before the Board

ADJOURNMENT

Chairman Gould said this concluded the duties of this Special Select Board and they are finished with the task assigned by the Rockingham Superior Court.

Ms. Creighton made a motion to adjourn the meeting which was seconded by Mr. Stanton.

Chairman Gould polled the Board and the motion to adjourn was approved by a vote of 3-0; the meeting was adjourned at approximately 7:00 pm.

Respectfully submitted,

Patricia Denmark, Recording Secretary