

MEDIATION REPORT
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PROBLEM: Fractured relationships between selectboard (hereafter Board) members amongst themselves; fractured relationships between the board and the town office; fractured relationships between Jim Hayes and the town office; and fractured relationship between Jim Hayes and the board.

PROCEDURAL HISTORY: The members of the board were not working effectively, professionally, nor fairly. The spirit of any cooperation had vanished and it became two people zealously advocating on behalf of the road foreman, Jim Hayes, and the remainder of the board on the other side. Each blaming the other. The board was completely dysfunctional with members getting up in meetings and having separate side meetings and conversations leaving the public to wonder what was happening. I was asked to mediate the disputes. I agreed. I first asked all participants to email me with their perceptions of the issues. This was to include all selectboard members, the town treasurer, the town clerk and the road foreman. I reviewed all emails and all attached exhibits. The meeting was scheduled to be held on February 18, 2026 at 5:00 pm in the Waterford Fire Department offices. Present were myself, Ron Gray, Tim Yarrow, Sue Hayes, Jim Hayes, Heather Gonyaw, Marcel LaPierre, and Deb Benoit. Will Jones had COVID and we arranged for him to be present remotely. There were no issues with audio or video during the meeting. Selectman Wade Cochran was excused as his appointed term expires in a matter of weeks and he does not plan on running for a selectman position. He was also otherwise engaged with work. The meeting lasted approximately three hours.

I also made clear that my plan was to put on the table all that they had said behind each other's backs as a means of putting the truth on the table. I pre-warned them that they might not like my style nor my approach. I reminded them that what I would raise as issues were not raised by me, but rather by each of them. Many of them would later forget that as the meeting progressed and needed to be reminded.

SUMMARY OF THE FACTS: This is the mediator's summary of the facts as set forth by the parties and her perceptions during the mediation.

SELECTBOARD:

The responses from the board members were very different from one another telling me that they were very far apart from resolution of their problems. Following mediation, the mediator believes they remain very far from a resolution and they are angry with each other. This does not bode well but as there is a new election soon perhaps we should remain hopeful that this fact alone may assist in the resolution of some issues. There were some emails that were very personal attacks on their fellow board members that caused me great concern. Some other responses were factual, some were professional.

Sue Hayes has only a few weeks left on her term and said “absolutely not” when asked if she was running again for a position on the board. As the mediator I did pay attention to everyone as they entered. When Sue entered she did not greet anyone, she found her seat and sat down with no smile. I said “hello”, she then responded. I assumed she was not in a cooperative place and this was later proven when she walked out of the meeting upon being confronted with her perceived conflict of interest and the mediator’s recommended course of action. There was nothing else of note on arrival.

What I found from my review and discussion is that Will Jones and Sue Hayes believe that the other board members are unfairly targeting Jim Hayes. It seems clear that this particular board does not function as a unified group. Sue Hayes, instead of using a person’s name referred to those she sees as Jim’s detractors as “those two over there”. Her involvement with the meeting began adversarial and remained so until she chose to walk out. Will Jones’ email was the most personal of all I received. He cited, without proof, others intentions. He took issue with matters such as not having a salutation or signature on an email, poor grammar and poor punctuation. I will not comment further on this except to say I found it to NOT be the problem. What I found to be problematic was that Will seemed focused on his perceived intent of the author, rather than the content itself. Different people communicate in different ways and I found nothing objectionable to Marcel’s communications to Will. We need to read for substance, not form.

Sue and Will find fault with the chair, Ron Gray, and Tim Yarrow. (I will be using first names once I have identified a person) It is probably a good thing that there will be new board members in the coming weeks. This board cannot operate in its current state. They are not even cordial to one another. Public service work is thankless and it is difficult. It can also be tremendously enjoyable. However, when it becomes an us against them mentality, which I assert this board has, the work comes second and the grudges come first.

TOWN OFFICE: The response from the Clerk, the Treasurer and The Assistant Treasurer came in one concise document that set forth a need to understand roles and responsibilities and to stay in everyones own lane. They asked for respect and improved communication.

JIM HAYES: Jim submitted the lengthiest document. Some of his exhibits were completely inappropriate for the mediation and the mediator did not appreciate the inclusion of old letters to the editor praising his work. I found it inappropriate. In addition it bears noting that both Will and Jim accused others of “bullying” Jim. Jim is a large man with a booming voice and a very gruff manner. I want it noted that throughout the meeting he laughed at me, jeered at me and sneered though many of his responses. He does not intimidate and if I should suffer any retaliation from him, I will make sure it is known.

ISSUES TO BE MEDIATED

1. **CONFLICT OF INTEREST:** This has been an ongoing unresolved issue for a number of years between Sue Hayes, Jim Hayes and the public. It is my belief that members of the current board are attempting to now play games with the law. They did not understand the law and now they are attempting to use their newly provided information to subvert the intent of the statute. These board members are absolutely violating their duty to the public they serve if that is their objective. The issues are not there for their own personal agendas but for the best of the town. See conclusion for further discussion.

Sue has at various times refused to recuse, denying she had a conflict and refusing recusal when raised. At other times, she has recused. It has caused a great deal of confusion. A conflict of interest of this sort doesn't come and go. There either is or is not a conflict or an appearance of a conflict. I asked Sue to detail her understanding of the conflict of interest. She did respond in a forthright manner that left little doubt in my mind that she had, in written form, confirmed the existence of a conflict of interest with Jim Hayes. Not for the reasons she believed. Sue has known Jim since he was 16 years old (Sue's statement), she married Jim's brother and after 30 years she divorced and she moved back to the area from Washington D.C. Sue believed that the only kind of conflict was that as set forth in the definitional portion of the statute, or that he was "family" because he was a former in-law. There was a training held on the Vermont Municipal Code of Ethics, which included discussion of conflicts of interest and the appearance of a conflict of interest. Sue had completely misread the statute. She did not look past the preliminary provisions of the statute containing the definitions. There was a black letter law definition of conflict of interest being (to simplify) an officer having a family or financial relationship with another. She advised that she learned in the seminar that Jim did not fit the definition of family, as she understood it, so that ended her inquiry. Read on. I have attached the actual 11 pages of the law on ethics which must be followed. I asked whether she ever asked for an advisory opinion from the Vlct, which is something they offer and encourage. She did not. I asked whether she called the Vlct to discuss that a conflict had been raised against her.. She did not. I asked whether she had explained her reasons, verbally, to the public as required by law. She did not. I asked whether she gave her written reason for non recusal to the legislative body, which Will correctly pointed out, was the board. She did not. Had she read past the one example of a black and white conflict of interest definition, she would have found much more. I will highlight certain sections followed by my recommendation.

Section 1992 of Title 42, Chapter 60 Municipal Code of Ethics, Conflicts of interest subsection (a). A municipal officer has a DUTY to avoid conflicts of interest. Remember it is not about Sue and whatever she believes, but rather is about the duty you owe the community you represent.

“In the municipal officer’s official capacity, the officer shall avoid any conflict of interest or the APPEARANCE of a conflict of interest. The appearance of a conflict shall be determined from the perspective of a reasonable individual with knowledge of the relevant facts. So if any reasonable person raises a conflict or what they believe is an appearance of a conflict, the officer should do all they can to avoid this bad appearance. Again, this is your duty.

Section 1992(a)(1) reads that when confronted with a conflict or the appearance of one, the officer shall immediately recuse themselves from the matter, except as otherwise provided in Section 2, which outlines the many things that must be done and placed on the record regarding the official’s refusal to recuse, and why they have good cause to proceed including various reasons as written in the statute, and also must do so in writing to their legislative body. Sue did not like my reading of the statute, folded her arms and just smiled. She did not read the statute and disagreed with my opinion that reading section 1993 Prohibited conduct subsection (b) entitled Preferential treatment, was the exact prohibition requiring her recusal by law. It reads as follows.

“ A municipal officer shall act impartially and not unduly favor or prejudice any person in the course of conducting official business. An officer shall not give, or represent an ability to give, undue preference or special treatment to any person because of the person’s wealth, position, status or because of a person’s personal relationship with the officer unless otherwise permitted or required by State or federal law.” (Emphasis added)

Support:

While Sue failed to realize there exists a prohibition against undue preference, she focused her response on her understanding that the conflict ONLY applied to families. I tried to give real life examples of my having to assess credibility between my best friend I’ve known forever and a stranger. It is not possible which is why it is prohibited. In her written remarks she stated the following:

“ I have known Jim Hayes since he was 16 years old, when I started dating his brother when I was 18. His brother Richard and I were together 30 years, separated “, etc. (not relevant as not section applying).

“ When I am accused of siding with Jim, it may be true, but it is not due to a familial relationship but rather my knowledge of his CHARACTER. (Emphasis provided). Jim is not a liar. He is a very hard worker who takes pride in his work.”

This all seems a conflict of interest as described in the prohibited acts section entitled preferential treatment , and even to those seeking to stretch what is plain, it most certainly has an APPEARANCE of a conflict given her comments regarding her knowledge of Jim’s character, truth telling, etc. To this mediator it appeared that she would plainly have a duty to recuse and if she failed to follow my recommendation, I felt strongly enough that I would continue to raise her conflict at which point she did confirm she would not be running again and I believe this matter to be moot today if that is true. Additionally, she failed to follow the proper recusal or non

recusal procedure. It has also been alleged that Sue has said she will get Jim a raise if it is the last thing she does. When confronted with the statement, she did not deny it but rather said she did not remember saying it.

IT IS THE RECOMMENDATION OF THE MEDIATOR THAT SUE HAYES MUST RECUSE FROM ALL MATTERS INVOLVING THE ROAD FOREMAN GIVEN THAT SHE HAS A CONFLICT OF INTEREST OR AN APPEARANCE OF A CONFLICT OF INTEREST RENDERING HER INCAPABLE OF FAIRLY EVALUATING ANY MATTER OF HIS EMPLOYMENT .

2. FEMA: It appeared from the emails that most agreed that the breakdown between Jim and the town office members present in the Town Clerk's Office occurred when we had massive storms requiring applications and communication with FEMA. Jim and the treasurer appeared to be working cooperatively, with Heather agreeing to help Jim with the "office stuff". The was to look like Jim would gather all the information and Heather would just have to input his information to help him perform the task. As time continued it became apparent that Heather and Marcel would be doing much more than was anticipated to include communicating with FEMA regarding extensions as a result of not getting what was needed to submit certain things by deadlines. This became an enormous task that hopefully they will not have to repeat. All involved agreed that it was a huge responsibility for all. It appears that at a public meeting Jim alone took credit for completing the requirements and securing the FEMA assistance. This was not true and was objected to by Heather and Marcel. During the meeting Jim did apologize to Heather . It was freely given and accepted.

I highlighted in this discussion that the board has no right or ability to tell other elected officials, namely town clerk and town treasurer how to do their jobs. They must stay in their lane. There is no ability of the board to tell others how to do their job. They are the boarding were not elected as Treasurer or Clerk,

IT IS THE RECOMMENDATION OF THIS MEDIATOR THAT NOTHING FURTHER MUST BE DONE AS THE PARTIES TO THE DISPUTE, TOWN CLEK, TOWN TREASURER, ASSISTANT TOWN TREASURER AND JIM, HAVE AGREED TO OPENLY COMMUNICATING THEIR VARIOUS RESPONSIBILITIES TO AVOID A SIMILAR SITUATION FROM HAPPENING.

3. TOWN AUDITOR: Kathleen Hodgdon is an elected town officer. She is also very vocal at monthly board meetings. This mediator was clear that I found her position to be untenable. You cannot really take off an elected hat, put on your citizen hat, and trash talk the town in public. It has a very bad perception. In addition she herself took great exception to town employee, Clem Gray, who circulated a petition to get her husband removed as a selectman. One of the things Clem was sanctioned for was not just the timing of the circulation, but that he circulated it at all given that he was directly fighting and opposing his own boss. Why is this not similarly true of Kathy? She represents the town of Waterford yet is constantly attacking both the board and Jim.

IT IS THE RECOMMENDATION OF THIS MEDIATOR THAT KATHY MAY CONTINUE TO WRITE TO HER FELLOW ELECED OFFICIALS ON WHAT SHE SEES IN THE TOWN AS ISSUES, BUT SHE SHOULD REFRAIN FROM ATTACKS ON THE BOARD AND THE ROAD FOREMAN AND MUST CHOOSE BETWEEN TOWN AUDITOR AND COMPLAINING CITIZEN.

4. Kris Hayes: There has been a great deal of friction with this non resident, non employed person due to her being the wife of Jim. For years I have found her position inappropriate. I acknowledged during the session, unprompted, that I had told Kris in the summer of 2023, just during a conversation that I believed she should let Jim handle his business as it was not hers. Her involvement in his business with the town is extreme. She requests and is granted permission to speak at board meetings on behalf of her husband. In addition she regularly visited the clerk's office while there was a pension dispute between her husband and the board. It is worth noting that the office of the Town clerk is a place of business. It is a small one room office with a vault. Many people conduct business with the clerk. The town treasurer and assistant treasurer work from that office. The listers conduct business there and use the vault, The historical society comes there. All these people plus the residents who have business to conduct regarding their properties etc. The kind of information that Kris sought is not to be provided by the town to anyone but the employee regarding a town employee. The matters of his employment are confidential and not to be delivered by the town clerk, treasurer or assistant treasurer. She became a problem with her constant presence and questions regarding her husband and she was asked to not return. She was not banned as has been suggested, nor does one need police involvement to prevent her from being there. It is the town clerk's right if someone is disrupting the normal course of their business to ask them to leave. How do the town officials know that husband and wife hadn't just filed for divorce and wife was attempting to get information she was not lawfully entitled to? I asked Jim what reason Kris would have to come to the office given no further pension issues, her non resident status and now knowing that the information she seeks will not longer be provided , and he stated that he did not have a problem with her continuing to remain out of the office. Additionally her continuous bad mouthing of the town that employs her husband is not lost on anyone and he would do well as an employee to not join her in this pursuit.

IT IS THE RECOMMENDATION OF THIS MEDIATOR THAT IF THE TOWN CLERK FEELS ANY PERSON'S PRESENCE IS DETRIMENTAL TO THE WORKINGS OF THE OFFICE AND DISRUPTIVE TO THEIR REGULAR BUSINESS, SHE MAY ASK THEM TO LEAVE AND NOT RETURN.

5. Jim Hayes:

Jim was not very cooperative with what we were trying to accomplish. One of the big problems with the highway department is an inability keep employees. In the past 20 months, 5

people have obtained jobs there only to quit soon after. At least two perhaps three have cited Jim Hayes as their reason for leaving. Jim refuses to accept any responsibility for this even though it strains the imagination to believe five in a row would leave so quickly.

The problem appears to be that Jim and one of the road commissioners and selectmen, Will, have joined forces. While Will takes exception to grammar and punctuation, I take exception with the way in which he handled the matter of the plowing of a portion of River Road on which Marcel Lapiere lives. He has lived there for 36 years and the town of Waterford has always plowed that section of the road that is clearly in Waterford. This section, coincidentally with their continued bad relationship, of Marcel's road was not plowed during a recent storm. Marcel notified Will of the road commission and Will was later told by Jim that they are not responsible for nor do they plow this section of road. **THIS IS NOT TRUE**. At the meeting Jim admitted with a smile that St Johnsbury did NOT in fact plow that section contrary to what he had advised Will on that date. Will further confused matters by getting some memorandum of understanding that St Johnsbury would from here on out plow that section. This was clearly a childish payback from Jim to Marcel. When Jim admitted his untruth, I asked if Will had heard the admission. He said he did, yet it didn't seem to matter to him that Jim had just admitted to lying to Will on that date about who ACTUALLY plowed Marcel's portion of the road. Jim admitted it was a lie. This lie meant Will jumped through hoops of the MOU so Jim would be able to deny Marcel. His advocacy of Jim while distancing himself from his brethren board members was puzzling. When pursuing the position of board member he was constantly citing the rules. It appears the rules mean less to him in terms of his duty to his constituents. His duty is not to protect Jim. His duty is to effectively manage the roads to the satisfaction and fairness of his constituency. I feel his cross over into advocacy instead of management, compromises him with this community. Additionally, I inquired of both Will and Jim if Jim plowed Will's driveway while he was using the driveway to tun around in. Jim acknowledged he has been doing this at that property for years. The difference is the appearance of impropriety. The person residing in that home is now Jim's supervisor. Will does not pay him for this service. Will disputed there was any conflict or appearance of conflict because Jim has done it for prior owners and because he still has some shoveling to do when Jim is done.

IT IS THE RECOMMENDATION OF THIS MEDIATOR THAT THE NEW BOARD ADDRESS THE ISSUES WITH JIM'S EMPLOYMENT WITH THE TOWN WHEN THERE IS A BOARD FREE OF CONFLICTS AND AWARE OF THE HISTORY AND THIS REPORT

CONCLUSION: I found as mediator that this board is dysfunctional. Perhaps some new and invested members will help. I believe the two road commissioner experiment was a failure. It would take approximately two years to elect a road commissioner and unless and until then I recommend the five select board members function as the road commissioner. Two out of the five set us up for failure as it became an us versus them with no one willing to back down. The board definitely wants to do the right thing. They definitely do not like being told they are

wrong. Excuses come flooding before the question is completed. Quick defense, very little listening. This is not a cohesive effective governing body. It was raised at the meeting, without any proof that Ron Gray should be recused from anything to do with Jim because he holds animus. The examples cited of talking to other members of the highway department were unpersuasive and quite frankly he would be delinquent in his duties as chair if he did not so inquire. He may not like Jim but that in and of itself does not mean he cannot be fair. Jim sees nefarious motives where this moderator fails to see them. Will is a nice young man who did not like this moderator's approach. He did not like the accusations surrounding him and I had to remind everyone that these were not my allegations but their own coworkers words. He was super demonstrative with throwing up his hands, and gave completely disrespectful facial expressions to almost all of my findings. He appeared shocked several times that his beliefs were not the beliefs of the all. He acknowledged Jim lied to him yet was unfazed. Will's expected email structure is fine if that is his chosen method. But taking issue with this was minor and not appropriate nor professional. We all deal with multiple different types of people and their communications. Some people are timid, some are bold, some are gruff, some sweet, some may be struggling with something that has nothing to do with you yet you attribute ill motive. Unless you are unable to understand the content of the communication, take the email, take the contents and act. Let it go and move forward.

Of significant concern to me is that I learned that the new reading of the conflicts issue is now sought to be played with. I would remind you all that you are public servants whose sworn duty is to your constituents. Using the law to play games is frowned upon and I for one, will be the first to point it out. I have advised you I spent 35 years in court. If you misrepresent the law or its intended application, I will pursue this. That is completely improper and would be absolute incontrovertible proof that your judgment has been compromised and you should no longer be in your position. Of this I am serious. Those who would take the law and manipulate it to their own purposes have no business being a public servant. That would be corruption. Check yourselves. I understand you may not have liked my approach, my words, nor my advice. The person that doesn't prevail in mediation is usually the person who states that the moderator was unfair. Play games with the law and I will do something about it. The law is the law. You must follow it. You may not manipulate it to suit your need to somehow in your mind beat this mediator's recommendation. The games are numerous and they must stop. Remember where your lane is, and stay there. I have no stake in the outcome of your dispute with Jim Hayes, but my final remarks are that every single one of the town's issues with cooperation revolve around your road foreman, Jim Hayes. This town is more than that.

MARIA L. DANTOS