

**MADISON DEPARTMENT OF
POLICE SERVICES
REGULAR MEETING – January 19, 2006
9 CAMPUS DRIVE, MADISON– 7:00 PM**

Attendees: Chairman Michael Heaney; Commissioner Mike Rollinson; Chief Paul Jakubson

Absent: Commissioner David Smith; Commissioner Emile Geisenheimer; Commissioner Thom Cartledge

Also Present: Kathi Traugh, Board of Selectmen; Peter Pardo, Board of Finance; Robert Cerosky; Craig Caplinger; Residents; Off-Duty Police Officers; Press

CALL TO ORDER

REGULAR SESSION

Chairman Heaney advised that he was opening and calling to order the Regular Board meeting, which was posted with the Town Clerk on or about 12/16/05, prior to the appointment of the new commissioners and well prior to their acceptance.

Chairman Heaney welcomed Commissioner Rollinson and noted the absence of Commissioners Smith, Cartledge and Geisenheimer and ex-officio member First Selectman Tom Scarpati. He also welcomed and thanked members of the Board of Finance (Peter Pardo) and Board of Selectmen (Kathi Traugh) for attending, although he stated he believes Charlie Walz is the official Board of Selectmen liaison. He said he mentioned Mr. Scarpati because he is by charter an *ex-officio*, non voting member of the Commission and all boards and commissions and said he would expect him to attend on a fairly regular basis, due to the importance of what is discussed. He said he greatly respects Mr. Pardo's views and thanked other attendees, to include several officers of the department, members of the press and two former police commissioners.

Chairman Heaney stated that although there was not a quorum, as former Chairman Robert Cerosky pointed out, a discussion could be held.

He continued, the first item is a change from the traditional format in that he will ask for public comments rather than have the public wait until the end of the meeting, in keeping with Board of Selectmen meetings. He then invited the audience to make their brief comments.

Walter Lippmann, 52 Sycamore Drive thanked Commissioner Rollinson for attending and Mr. Heaney. He cited that we are a nation of laws and he is very disturbed that this Police Commission did something which will be overturned by the FOI. He said he hoped there was a written record of the illegal 1/12 meeting.

Mr. Lippmann continued, in reading Mr. Heaney's letter, he finds everything as to what he would look for as to conciliation; when the commissioner who is empowered to have oversight conducts an illegal action of its own, it sets a very bad example for the public as a whole. He expects FOI will overturn what the Police Commission did on 1/12 and feels it would be in the best interest of those commissioners to resign because of the precedence they set at the illegal meeting. He would like to see that those minutes are available to the press.

Commissioner Rollinson stated the press was invited to the January 12 meeting and said it was properly posted in the correct time frame as a Special Meeting; the press was there. He continued, Chris was the stenographer. Chairman Heaney said it was his understanding, in that there was a posting of the Special Meeting in advance, there are draft minutes kept and presented; the detailed minutes of the meeting, once approved, will be available. His concern about this Special Meeting is not the lawfulness of having called it, but the lawfulness of some of the things that occurred during it.

Officer and Resident Dan Hedges: Thinks no one questions the inevitability and right for new members who are the Republicans in majority to appoint a new chair; we knew they were going to do that. The

manner and way in which it was done that you (Heaney) could not be present, and how quickly it was handled, astounds him. Without being mean-spirited, he thanked Commissioner Rollinson for attending tonight. The way the meeting of January 12 was brought about and the way the vote taken so quickly was so unprofessional that he could not believe a Board in this town would do so. Commissioner Heaney, who was the only commissioner prior to the new appointments, always impressed him in that he would always follow up at the next meeting with information and research he had from a previous discussion at a previous meeting. He continued, this is an unsolicited speech; he has gotten to know Chairman Heaney and is very impressed with his ability to be levelheaded and fair when things have gone 'kind of wrong'. The former Commission had a tough time with the current Republican Board of Selectmen members. Some is a difference of opinion, some is dirty pool. He feels the Board of Police Commissioner Republicans had a right, but the way it was done doesn't surprise him – it was a coup d' etat. Chairman Heaney has always had an outstanding attendance record; Mr. Geisenheimer has had one of the worst Police Commission attendance records, including leaving meetings early. Mr. Hedges continued, the first thing Mr. Geisenheimer said was, as you know the former commission elected a 'temporary' chairman. Mr. Hedges continued, his question to Mr. Heaney and the former commissioners present tonight is, at any time, was the word temporary ever used?

Chairman Heaney replied no, his election as Chair last year, whether to be overturned or not, was certainly not intended to be temporary and that word was not used. Last year, with the difficulties faced in going to a fully appointed Board rather than elected Board and the fact that there would be four out of five new commissioners starting in January, last year's Board felt it prudent to change the election of a chair to the end of last year so there was someone with experience in charge – it was presumed that he would be the only commissioner with experience. Mr. Geisenheimer, who served 17 months out of a 4-year term, was elected chairman. The record shows that he missed 58% of the meetings during his tenure; he also missed more than did the other commissioners of the rest of the regular meetings. However, maybe he has found a new commitment and that's fine. To answer the question, it was intended that he (Heaney) serve as the regular chair for a two year term. He has reached out to all four of the new commissioners to meet with them individually and has met with only Commissioner Rollinson. No one mentioned changing the chair; he felt they could have done this in a more dignified and legally acceptable way.

Former Police Commission Chairman Robert Cerosky: Mr. Cerosky stated he would like to make the point that he is very familiar with state statutes, the town charter and policies. Elections are called for at the first regular meeting of a new term. The most important thing is that state statute states the election has to be for the chairman and clerk of the Board of Police Commission. Chairman Heaney concluded, that has been our tradition.

Walter Lippmann said, for the record, he feels the Board of Selectmen's liaison to the Board of Police Commission is conspicuous by his absence and he wonders what led to the decision-making process that Mr. Walz, who is always here, is not here tonight. Mr. Lippmann questioned the decision-making process as to how this Board had a special meeting and who advanced the agenda for that night? Chairman Heaney said he could not respond, as he was not here.

Commissioner Rollinson stated, he doesn't know who generated the agenda, maybe the Chief? Chief Jakubson advised, he cannot call for a meeting. Commissioner Rollinson said he thought any commissioner could call for a meeting; Mr. Cerosky advised, no the chairman has to put a majority item on the agenda. It is reasonable that a commissioner can put an item on the agenda.

Chief Jakubson read a section from the Board of Police Commission Policy Manual: A. Regular Meetings which states “ (1) There shall be 12 regular meetings annually. All regular meetings for the ensuing year shall be filed with the Town Clerk each year before November 30. (2) Meeting Dates: Meetings shall be held at the designated time and place as agreed upon by the Board. If at any time a regular meeting falls on a holiday, such regular meeting shall be held on the next business day. Special meetings may be at the call of the Chairman of the Board of Police Commissioners. Mr. Lippmann commented, it is clear that the policy was violated. Chairman Heaney added, he thinks the other 4 commissioners had a right to call a Special Meeting. Commissioner Rollinson said he didn't know who called for the meeting.

Chairman Heaney continued there is a concern about the whole special meeting; some of the things happened so quickly and without any discussion about nominations of officers, that it was clear there was a

discussion about these issues outside that meeting; that is clearly violating FOI restrictions. He feels this violation can be corrected and the cloud now over the Board can be cured, rehabilitated. But, he continued, it will take some doing at another properly posted meeting with an agenda that properly gives notice of what is going to be discussed with those discussions in front of the camera.

Mr. Lippmann commented, there was no transparency and it was not in front of the public, per se. As this goes through the courts, testimony will be taken under oath.

Chief Jakubson added, he is not the parliamentarian, but the manual states special meetings may be held at any time at the call of the chairman. Mr. Cerosky interjected, it wasn't posted, it was a special meeting. Political party members of the same party can meet in a quorum to caucus on a specific issue, but not, as he understands it, to hold a meeting. Party members have a right to caucus as a majority, but he doesn't think that applies here.

Robert Maloney introduced himself as a former police commissioner for 5 years. He spent considerable time discussing the Board's annual meeting schedule, which is submitted to the Town Clerk and that those meeting dates are 'iced'. He asked if this Board gave its annual schedule to the Town Clerk and is that the proper procedure based on statute? You 'ice' in the meeting dates. Mr. Maloney said by 'iced', he means locked in the dates, established. Chairman Heaney said yes, that is the intent of that provision; all boards are supposed to post their meeting dates for the following year although regular meeting dates, as other meeting dates, can be changed. The Board of Police Commission votes to change the dates. Mr. Maloney said he has problems with that process and asked Chairman Heaney if the former board established dates in November/December? Chairman Heaney asked, if that's true, why did the other four commissioners not convene on the 'iced' date? Mr. Maloney continued, you and the former commissioners locked into the dates? Chairman Heaney advised he would call Mr. Maloney to order as this not a debate, but an opportunity to make public comments. Mr. Maloney concluded, the point is, the meeting was scheduled and asked if Chairman Heaney disagreed.

Chief Jakubson added, it is not an uncommon or illegal practice to suspend meetings. The Board of Finance suspends some summer meetings; Mr. Pardo agreed. Commissioner Rollinson stated, the originally scheduled January meeting was voted on and approved prior to December. The December meeting cancelled the January 12 meeting which was rescheduled to January 19. He asked if that was the point Mr. Maloney was trying to make? Mr. Maloney answered, it was filed as an official document, in a formal letter to the Town Clerk which specifies meetings, by date. Chairman Heaney asked, are you stating that because there is a requirement of all boards to adopt a schedule of regular meetings and we subsequently changed a date that it is unlawful/improper? Mr. Maloney stated that when he was on the Board, Chairman Cerosky submitted a detailed meeting schedule to the Town Clerk and we adhered to that. Chairman Heaney stated - that's laudable.

Commissioner Rollinson added, that is when the full former board met and changed the meeting date. Chairman Heaney again advised Mr. Maloney that he was out of order and had made his point.

Officer and Town Resident Neal Mulhern: Officer Mulhern advised he is an unaffiliated voter and sees this as political bullying – you have a board that controls a board. One board member who is not on their side is out of town so they try to have it their way. Rules are broken every day; but coming to a public meeting is not the way. He concluded, air everything out and do what is straight and what is good for the police department.

Officer and Town Resident Dan Hedges: Stated he has been a registered Republican his whole life and thinks the conduct of the Board of Selectmen and some of the new commissioners is embarrassing.

Mr. Maloney stated the P & Z, which was a minority Democrat/majority Republican board, had some discord about the P & Z chairman and elected him off in a regular meeting and made an appointment of a Democrat. All this was done at a regularly scheduled meeting. If the majority of the board wants you to be or not be chairman, it can be done at a meeting. He felt Chairman Heaney made political heyday of this issue. Chairman Heaney responded, he didn't say the new Police Commission should not have the leadership it deserves and feels all his comments have been directed to accomplish that. One of the powers

that the minority has is to hold the majority accountable and make sure they follow the rules; that is all he is intending to do since he feels to do less would be a breach of his oath and that of the Commission.

Peter Pardo: There is a quid pro quo here – you were upset because the other 4 commissioners held a meeting while you were out of town and he feels Chairman Heaney is doing the same thing. He suggested all the commissioners meet and hammer this out. He is at the meeting tonight as a substitute for the Board of Finance Liaison Jim Deephouse and concluded, this is not a one-sided issue. Chairman Heaney said it doesn't matter what he thinks, but what the public thinks when they look at all this. He knows what members of the public think who have spoken to him; the actions taken speak for themselves. Mr. Pardo continued, the First Selectman is not required to be here; he has power by the charter to appoint a selectman to be here in his stead.

Bob Cerosky: There is a procedure to be followed, set forth in the policies which would have dealt with the issue if all parties did their homework. We did a lot of 'what ifs' when we adopted the policy in terms of election and if the board gets to a point where the chair can't deal with the issues at hand and what is required, they can elect a new chairman. This procedure was not followed. We look at things when we are in trouble; we should look on a daily basis.

Walter Lippmann asked, because he doesn't know the new appointees to the Commission, about the decision making process as to who was appointed to the Commission. Commissioner Rollinson has a background in law enforcement, and we need that background on the Police Commission. He asked if any of the new commissioners have law experience? He continued, why was someone with a 58% attendance record, who resigned, be appointed and even want to come back?

Commissioner Rollinson explained, there is an extensive process for candidates and said there were 30 candidates. Mr. Maloney, a member of the Republic Town Committee, advised they did detailed interviews of 15-20 people and stated the substantial majority of all the people interviewed are intellectuals and will do great. Officer Mulhern asked Mr. Maloney, why out of 30 applicants, did you end up with one who resigned from the Commission?

Chairman Heaney interjected, the question was to the process, which is similar to each town committee. The commission is a 5-member appointed board and by state law, the party that controls the Board of Selectman can appoint 4 of the 5 commissioners. Rarely is an unaffiliated voted appointed by either party. He stated, his personal view is that the process could use a serious overhaul, to which Mr. Maloney agreed, because it is too politicized and cuts out too many people who constitute good candidates. Once the nomination is made and the names are submitted to the Selectmen, the candidates don't go before the board.

Chairman Heaney stated, the people were appointed – without them being here, he will not continue the discussion and said to ask them when they are here. Chairman Heaney then made comments on agenda items:

Old Business: Intervention Process Status. Chairman Heaney explained that refers to a negotiated settlement process that began in late October as a result of a public hearing held in October which Ed Kritzman attended. How to determine that process and how it would translate to an appropriate staff level and structure for town is a fundamental issue. We have had a lot of studies and comparisons, but what does the town want? How much will it pay? What do we want the officers to do? Mr. Kritzman suggested we start a settlement discussion about those issues to involve reps from the boards of finance, selectmen, police and the police union. All representatives bought into the discussion and prevailed upon Mr. Kritzman to be the moderator because he has substantial police and corporate backgrounds in dispute resolution. There have been four meetings to date. They agreed not to discuss any of the substantive issues until there was a buy-in from the respective boards. The meetings went well for a while; good venting, good discussions and they made good progress. He regrets, the process has bogged down and has become unworkable. They agreed on a couple of things, one of which is a crucial number, i.e., how many officers it takes in town, given our record, to fill one patrol shift 365 days a year. The number is 1.8 officers, 24 hours/day, 7 days/week – that is a factor that results from plugging in training, benefit times, etc. Beyond that, there has not been much consensus – the process seems to be breaking down. It is increasingly difficult to gather the

group and agree on meeting dates. Mr. Kritzman, as the moderator, will communicate this publicly and may withdraw from his volunteer position.

Mr. Maloney interjected, we interviewed him as an independent – very impressive. Mr. Maloney stated, he agrees this police department is undermanned. Also, he wants it known that they worked at getting candidates and it was competitive. Chairman Heaney continued, unless there is a new commitment by everyone in the intervention group, it will die. He concluded, he thinks it has been very hopeful and would hate to see it end.

When asked, Commissioner Rollinson stated he had no comment.

Chairman Heaney said he wrote an open e-mail letter to his fellow commissioners today, setting forth his thoughts, which he has distributed to boards, commissions and the press. Basically, his concern is he feels he is on the horns of a dilemma and his four colleagues have put the town in a predicament. Some of their actions are legally questionable and therefore, he does not feel he can stand aside, say nothing and acquiesce, as that would condone the actions. He continued, if the Police Commissioners want to meet without him, go ahead; that would be a breach of his sworn duty. It is now clear his colleagues want someone else to be chair; they are the majority as Republicans and they can have their own leadership. He wants to facilitate that and allow it to happen, but feels it is very important that this be done in a dignified, transparent manner after adequate public notice so all the commissioners know what will be discussed and all can be prepared. There were only two acts taken last week at the meeting – the first is that this regular meeting was canceled; as has been mentioned, our regulations and practice required 12 regular meetings – one a month. He doesn't think it is in order to simply cancel a regular meeting without rescheduling it and that is why he, as Chair, asked that this regular meeting take place.

Chairman Heaney continued, it is not the election of a new chairman but the foundation of the overturning of this position's existing policy which controls the election of the chair which was not on the agenda. This action is the basis of a formal complaint by the NH Register with the FOI Commission; the whole idea of an agenda is to give everyone notice of what will be discussed.

Chairman Heaney said he feels the way out is, as he proposes, is to go forward and redo at least the election of the chair. He doesn't think anything unlawful involved the election of the vice chair and the clerk, even though he would have preferred that happen at a regular meeting. He thinks the election of the chair should be redone at the February meeting. He would expect Emile Geisenheimer to be renominated; then the commissioners can hold a discussion in public on his qualifications to be the chair. There was no discussion whatsoever about any of the officers elected on January 12.

Officer Tim Heiden stated that they have always been and are still interested in continuing with the intervention process. Chairman Heaney agreed and said the Police Commission has also been there at every meeting and is very interested in proceeding; draw your own conclusions on where the delay is.

Chairman Heaney adjourned the meeting at 8:18 PM.

Minutes Accepted as Amended: February 9, 2006