

Cemetery Trustee Minutes

July 11, 2024

- Meeting opens with Joyce Keegal, Jim Hajjar, Justin Kane, Albert “Skip” Belanger, Jillian Benedix present. Wayne Almon present as an interested citizen.
- **Light bill** signed
- Justin motion, Jim 2nd to accept June 6 minutes as written.
- **Budget** update
 - **CIP** update - Discussion re: Potential expansions of Tonry paved areas.
- **Cemetery Activity**
 - **Web Page** - general discussion and updates. Town website access training coming in near future.
- **Other business**
 - **Mapping & GPR** update - Review of GPRadar quote. Review of initial reasoning behind using GPR in Veasey and Tonry. General feeling that Veasey GPR may not be necessary at this time, absent a functional need to know about unmarked burials in Veasey. Discussion of GPR in Tonry for the Almon family’s misplaced burial became heated. No GPR is planned for this season. No vote taken.
 - Review & update **Rules/Regs** - Reviewed the review and updates.
 - **Motion** Justin, 2nd Jillian to enact the changes reviewed as discussed.
 - Jim to re-write and disseminate.
 - **Review and Discussion** of internal Cem. Comm. email policy, ensuring compliance with Right to Know law, existing Town and State policies. See attached material from *A Guide to Open Government: New Hampshire’s Right to Know Law*.
- **Future Planning, calendar**
 - **Alternate Trustees** - Aug. 20 BOS swearing in of alternates.
 - **Poor Farm** - Joyce is coordinating volunteers to make a casket that will fit the bankers box the remains will be reburied in. Discussion around clean up of Poor Farm site and a group work day
- **Motion** to adjourn by Jillian, Justin 2nd.

Next meeting Thursday, July 25

Email & Electronic Communications Outside a Meeting

Even though electronic participation in a meeting is permitted, it must be done in accordance with RSA 91-A:2, III. Remember that one of the most important requirements of that statute is that members of the public and members of the public body who are physically present at the meeting must be able to contemporaneously hear the board member who is participating electronically, and vice versa. When members of a public body are emailing each other, it is impossible for the public to have contemporaneous or simultaneous access to those communications. Furthermore, RSA 91-A:2-a says “[u]nless exempted from the definition of ‘meeting’ under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.” Therefore, a substantive discussion of matters within a public body’s supervision, control, jurisdiction, or advisory power can never take place by email.

This doesn’t mean that email is prohibited among a quorum of a public body, but caution must be taken. Remember that the Right-to-Know Law says a meeting is occurring only when a quorum of a public body communicates contemporaneously on matters over which the public body has authority, jurisdiction, advisory power, etc. So, although it is true that a meeting is not technically occurring when one planning board member sends a communication regarding his opinions on a pending application to the other members of the planning board, such an email invites trouble. If and when another planning board member hits “Reply All” and responds to that email, a discussion has begun, resulting in an illegal meeting communication outside a meeting. Therefore, emails of this nature should be avoided.

In fact, one superior judge has ruled that even a one-way communication from one board member to his other board

members does constitute a meeting, even though no “discussion” among the board members had taken place. The judge decided that the potential for an email discussion to arise out of that original email was enough to create an “illegal meeting”: “The key to the contemporaneous communication is the ability to communicate contemporaneously—as opposed to whether the contemporaneous communication actually occurred.” *Town of Sandwich v. Porter*, No. 212-2014-CV-180 (Carroll County Superior Court, August 14, 2015) (emphasis added).

Although the New Hampshire Municipal Association does not agree that the one-way communication constitutes a meeting—or that the mere ability to communicate contemporaneously constitutes a meeting—no public body member should ever send an email to the other members discussing any substantive topic that the board acts upon, conducts business upon, or is involved with in any way (i.e., “official matters” of the public body).

Ultimately, one board member should never send an email to his other board members on a topic that should be discussed in a public meeting or proper nonpublic session. Instead, email communication should be saved for administrative or non-substantive purposes. The most obvious example is the select board chair emailing the packet for the upcoming meeting to her other select board members. The public body can take even further precautions by having an administrative person send the email, if such a person is available in your municipality, and/or putting the email addresses for the other board members in the “BCC” line rather than the “To” line of the email. Using the BCC line prevents a board member from being able to click “Reply All” and respond to all members of the board. Instead, a response email, even if “Reply All” were used, would reply only to the sender of the original email.

Even though an email communication may not constitute an illegal meeting, remember that it is still a governmental record. Depending on the content of the email, just like any

other record, it may be subject to a particular retention period under the Municipal Records Retention Statute, RSA Chapter 33-A. That is a separate issue, and it is discussed in Chapter Three on Governmental Records.

- ❖ To summarize, here are some basic tips on using electronic communications:
- ✓ Never use email to express ideas, concerns, opinions, etc. on issues or matters related to the business and duties of your public body.
- ✓ Use an administrative person (i.e., someone who is not a member of the public body) to send an email to members of a public body, if you have that option.
- ✓ Put the recipients' email addresses in the BCC line of the email to prevent the possibility of "Reply All" and a discussion ensuing among a quorum of the public body.
- ✓ Always use official email addresses issued by the municipality, school district, or other governmental entity for communicating town business because such communications constitute governmental records that will be subject to disclosure, as discussed in Chapter Three.
- ✓ Leave discussion and deliberation of official matters for a public meeting, a properly-held nonpublic session, or proper "non-meeting," as discussed later in this chapter.

2. *Communications that Circumvent the "Spirit and Purpose" of the Law*

Not only are email communications outside a meeting potentially illegal, such conduct may signal to the public that the body is trying to circumvent the open meeting requirement.

In fact, circumventing the spirit and purpose of the Right-to-Know Law is a violation of the law in and of itself. RSA 91-A:2-a, II says that "[c]ommunications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter." Such circumvention may come in the form of email communications among a quorum of the public body, but could also take the form of several separate oral communications among less than a quorum of the board, which, in the aggregate, are among a quorum. For example, on a board of five, if the chair contacted each of her other board members by phone, one at a time, to ask their opinions on a matter before the board, each phone call between the two board members would constitute less than a quorum. However, in the aggregate, a quorum of the board has communicated, sequentially, on a matter within its jurisdiction. Therefore, the board has engaged in illegal communications and violated RSA 91-A:2-a.

3. *A Site Visit Is a Meeting*

A site visit or site walk most often occurs when a land use board, usually a planning board, goes to the physical site where a new land use project is being proposed. Although a site visit is most common for land use boards, it could also occur when, for example, a select board goes to view a property it has taken by tax deed or a school board goes to view the progress on a new auditorium being built.