

**Shapleigh Board of Selectmen
Minutes of Meeting – Time 6:00 pm
November 10, 2020**

Call to Order

Chairman Jennifer J. Roux called the meeting to order at 6:00 pm with Scott E. Cudworth and William J. Mageary in attendance. Karla Bergeron, Town Administrator was also in attendance.

In Attendance: Attorney Brad Morin, Attorney Greg McCullough, Fire Chief Steve Guillemette, Carolyn Rand, Brian Rand, Aaron Sabine, Mike Sabin, Knathan Sabine, Ryan Sabine, Autumn Littlefield, Dee Brown, Jim Brown, Scott Wilcox and Paula Lantagne

Pledge of Allegiance was recited.

Approval of minutes from previous meeting:

A motion was made by Scott E. Cudworth to approve the minutes of October 20, 2020 and October 27; seconded by William J. Mageary. The Town Administrator noted that the audio was available as backup per Council. All in favor.

Public Comment: None

Unfinished Business:

- **Personnel Policy Review** - Changes to the policy were made to align with Steve appointed holidays and a line in the policy which was no longer pertinent to the policy was removed as requested.

A motion was made by Scott E. Cudworth to approve the Personnel Policy as presented; seconded by Jennifer L. Roux. Vote 2-1 (Mageary). Opposition was to state holidays. Motion carried.

- **Maintenance Contract Awards-**

Sports and Recreation Fields	1 year	3 years
i. Lakes Region & Landscaping	\$ 5,223	\$ 15,000.00
ii. Seacoast Property Maintenance	\$ 6,600	\$ 19,800.00
iii. C&D Landscaping	\$ 5,500	\$ 16,500.00

After comparing all aspects of each bid, a motion was made by William J. Mageary to award the Sports Field Maintenance Contract to Lakeside Region for 3 years; seconded by Scott E. Cudworth. Discussion ensued on 3-year award with \$1,500 savings. All in favor. Motion carried.

- **Commons, Town Hall and Library -**

	1 year	3 years
a. Lakes Region & Landscaping	\$ 4,869	\$ 13,173.90
b. Seacoast Property Maintenance	\$ 6,300	\$ 18,900.00
c. C&D Landscaping	\$ 4,800	\$ 14,400.00

A motion was made by William J. Mageary to award the Commons, Town Hall and Library Maintenance Contract to Lakeside Region; seconded by Scott E. Cudworth \$13,173.90 for 3 years with a savings of \$1,226.10. All in favor. Motion carried.

- **Policy RE: Employee Use of Cell Phone - DRAFT -**
Tabled until next week at the Chairman's request.

- **Recreation Committee Mission Statement -**
Tabled until next week when committee is present.
- **Executive Session MRSA Title 405 (6)(a) - Personnel**

A motion was made by Scott E. Cudworth to move into Executive Session pursuant of MRSA 405 (6)(a) - Personnel; seconded by William J. Mageary.

Attorney Brad Morin reminded the Board that the Executive Session was to be held as an open session. Motion was withdrawn.

The Board confirmed with both Carolyn Rant and her Council that this session was being held as an open session. Carolyn Rand acknowledged. Attorney Greg McCullough agreed.

See Attached Hearing Minutes.

New Business:

- A. Bid Opening for Printing of the Town Report** - This will be tabled until next week's regular BOS meeting.
- B. Tax Abatement for Map 3, Lot 44-1 and Tax Supplemental Map 3, Lot 44-1** - The Town Administrator reviewed the tax abatement and supplemental with the Selectmen. The property was assessed to the wrong owner. Motion made by William J. Mageary, seconded by Scott E. Cudworth to approve the tax supplemental for Map 3, Lot 44-1 and the tax supplemental for Map 3, Lot 44-1 as presented. No further discussion. Motion carried unanimously.
- C. Information Regarding Earned Time Off for Review** - The Town Administrator presented to the Selectmen with information regarding the state statue beginning January 1, 2021 regarding offering Earned Paid Leave to employees. This information was being presented so that it can be discussed during the budget money.
- D. Executive Session for a Personnel Matter Pursuant to 1 MRSA 405(6)(a)** - Motion made at 8:27 pm by William J. Mageary to enter into an executive session for a personnel matter pursuant to 1 MRSA 405(6)(a), Seconded by Scott E. Cudworth. No further discussion. Motion carried. The BOS came out of executive session at 8:30pm.

Information:

- i. 23rd Street Email Thanking Road Commissioner, Jeff Goodwin for paving a section of that road.
- ii. Planning Board Agenda - No Meeting on Tuesday, November 10, 2020
- iii. Milone & Macbroom Field Meeting Minutes for Emery Mills Bridge
- iv. Cemetery Superintendent's Report for 2020
- v. EcoMaine Information

Signatures:

- i. Warrants

Any other business to bring before the meeting - None.

Adjourn :

A motion was made by William J. Mageary to adjourn at 8:32pm; seconded by Scott E. Cudworth. Motion passed unanimously.

These minutes are not verbatim. Cheryl L. Drisko, Office Assistant.

Executive Session held in open session - Minutes for Hearing Regarding Carolyn Rand

Attorney Brad Morin opened the Open Executive Session Hearing reminding all present that today's meeting was a continuation of the last meeting held on Tuesday, November 3, 2020. Time was permitted to review the tapes and new information as presented by Carolyn Rand and her Attorney.

The Chairman of the Board indicated it was the goal of the Board to go into deliberation at the end of this hearing and stay focused on the conduct of the employee.

Attorney Greg McCullough asked if all Board members had a chance to listen to Carolyn Rand and Aaron Sabine's testimony. Response, yes.

Attorney McCullough noted he did not hear Aaron stated that he wrote the statement. There was no denial of conversation or language, it was not addressed.

Attorney McCullough asked the Board if they noted any discrepancies between what transpired in Attorney Morin's office, last week and now. The Board related that for the most part the stories were similar, but could not attest for word for word. When Selectman Cudworth made a statement using credible witness as a descriptor, Attorney McCullough stated that Selectman Cudworth should recuse himself as he had prejudgment. Attorney McCullough went into Aaron Sabine working for Kevin Romano and what was lost. The Board indicated they knew nothing about that.

Selectman Mageary indicated he heard the information and was not ready to comment at this time. Everything was taken in consideration and the Board gave their opinion and were all set for the Attorney to move on.

Selectman Mageary spoke up and indicated the Board would be fair and impartial. Attorney McCullough was glad to hear that as he was concerned with statements indicating one is credible. If his impressions were wrong, he apologized.

Next Attorney McCullough turned to Fire Chief Steve Guillemette to ask him some questions about his letter.

Attorney McCullough asked why Carolyn Rand was not present when he sat with Denise DeAngelis and questioned her on the incident. Attorney Brad Morin indicated this was irrelevant. Attorney McCullough tried again asking, why would you question the accuser if the accused was not present. When asked by the Chairman, Attorney Morin again stated the Fire Chief was in his rights to meet with Denise DeAngelis while performing his investigation. This is not a court of law. Attorney McCullough was in his right to ask questions as long as they pertain to the issue at hand.

Attorney McCullough came back asking Fire Chief, when trying to ascertain the facts, wouldn't you want to have the accused present to say if true or not? Attorney Brad Morin said the facts were not disputed: the Chief met with Denise DeAngelis, Carolyn Rand was not present and this line of questioning is best left for arguments at the end.

Attorney McCullough replied, he was trying to ascertain the Fire Chief was getting to the facts and this is important to the credibility of the witness. Fire Chief Steve Guillemette chose not to respond, but to hold off. Attorney McCullough conceded the Board could listen to the audio. Attorney McCullough asked Fire Chief Guillemette if he remembered saying Carolyn was bullied. Fire Chief responded he did not recall that being said; he had no text messages or anything that indicated he said that.

After a lengthy conversation over material discrepancy, Chairman Roux stepped in commenting that this was already listened to and did not need to be gone back through.

Attorney McCullough asked the Fire Chief, are you denying authenticity? Fire Chief responded he did not recall. Attorney McCullough asked, you do not recall seeing that contemporaneous message? Are you saying your lack of recollection about that, and by the way you said you don't recall? Are you saying that because you know for a

fact you didn't say that to Charles Starbird. Fire Chief responded; I would have to say I don't remember. Ok, now that's different. Would you concede when someone can't remember something one way or another, that ought not be credited to the same extent as a contemporaneous account that is documented. Yes or No? Fire Chief Guillemette responded that he would have to say that he did not know what contemn... (temporaneous) whatever that word is meant. Attorney McCullough wanted to show Fire Chief Guillemette.

Chairman Roux stepped in to state that they did not see the text message again. She then reiterated what she stated in the beginning and wanted to give Attorney McCullough ample time to focus on these things but Steve Guillemette was not the Fire Chief during all this time. He did his best and believes that he could with what he had in front of him. This is where the Board believes they are. There is a list of things that Steve has said she has done that will allow a call for termination. The Board needs to go over what is in the disciplinary action and decide whether she has done them or not. It is disciplinary action based on the Personnel policy.

Attorney McCullough, with respect to the central issue to this case on whether any language that Carolyn Rand might have used when speaking with her son while she was at home and he was not known to be overheard, do you believe that any type of foul language that a Fire Department Member uses in her private life ought to be grounds for discipline.

Chairman Roux indicated they all knew the answer to that question because it was presented in the disciplinary action plan.

Attorney McCullough continued, regarding personal use of foul language or sexualized language on their Facebook Page was cause for discipline? Fire Chief Guillemette stated it depended on the circumstances. This issue was never discussed on Social Media and has no bearing on the content at hand.

Mine Sabine asked to go over a few quick points if Carolyn and her Counsel allowed:

- Question 2 key witnesses - wanted to go back to Denise's complaint, on January 29th her written complaint and then the audio you listened to. From Mr. Sabine's point of view, it is un-credible statement of the January 29th. After he listened to the audio and nowhere in the audio was there any foul language stated by the Fire Chief, Denise DeAngelis or the Tech. You can clearly hear what transpired from the time she walked to her vehicle, all the way into the station, and all the way back. From Denise DeAngelis there were written, text and email statements and when Ms. DeAngelis stated it took her 16 days (as it was unprofessional for her to do a hand written statement - even though that is how it has always been done in the past), why all of a sudden did it take 16 days?
- The next day, Denise DeAngelis admitted that she had been appointed Assistant Chief that night. So, she gained a position that night. Also, Steve Guillemette gained a position that night.
- Carolyn Rand's position was given away that night. Attorney McCullough spoke up to indicate this was borne out on the recording from Attorney Morin's office and the testimony where Kevin told Aaron even before the telephone call that he was going to be dismissing Carolyn.

Chairman Roux asked to go on the record to state that Fire Chief Steve Guillemette stated that was not true. He was not given a promotion that night. She referred to the Chief's letter and the Town's Personnel policy. Regardless of what was done, promotions, etc. What she did, was it a violation of our policy or not? Even though the information is appreciated, the Board is not sure it is relevant. One of the pieces that is relevant, is whether or not Aaron said that night his Mother said that. Even if she did say it, the Board has not had a chance to have a conversation to say she said that. She admits she said that, is it a violation of the personnel policy? The Board does not know what they think about that yet.

The other key point to be considered is whether the Fire Chief was being lied to during the investigation by the

employee and her witnesses; noting that he needed to take in account the person on the receiving end of the language.

The Chairman continued that is the piece the Board was going to focus on now. If the Chief took into consideration how Aaron felt, when he was referenced about this sexual vulgarity, and whether it happened or not, that is where the Board needs to focus. It needs to be determined whether it is a true statement or not.

Discussion needs to turn to Aaron. All of this filler information is relevant and the Board know what is going on, the previous Fire Chief and the other info, the Board gets it. Again, the Board has to find out if that conversation took place or did he lie to his Department Head. Let's get Aaron here and walk through everything.

Scott E. Cudworth - Basically, if he didn't take that call, we would not be here tonight.

Chairman Roux - Let's focus on that call and not everything else.

Mike Sabine spoke up and stated when he was at Carolyn's residence that night, after the call, he was standing with Charles Starbird and Steve Guillemette at the Carolyn's house. When Carolyn Rand returned from the Fire Station, she called Mike S on the way home. Mike did make the statement that if Aaron made such a bullshit comment, he was not welcome in our home. Chairman Roux indicated not relevant. Mike Sabine - This was a long-standing issue with promises made. Aaron gets wound up and there are actually screaming matches on the way to calls.

Chairman Roux would like the Board to have a conversation on whether this call as worst-case scenario was breaking policy. The other is whether the work environment and the other employees concern (which was part of Steve's concerns). Denise stated she saw Aaron type the letter and proofed it. Aaron is saying the Fire Chief typed it and he was feeling pressured by him and thus allowed the Fire Chief to send it. is this accurate? Yes - offered a better position if sent it. Aaron indicated he would be bumped up to C2. It was promised before the vote of the Fire Chief into position.

Chairman Roux asked Aaron Sabine to walk the Board through what happened from the moment he hung up from his mother. Aaron related:

- He was in the meeting room at the PSB.
- Kevin was in front of the computer. He was going through Aarons MEPEs on his account.
- Why logged in? Kevin was pushing Aaron as an Administrator and he stated he still is an Administrator.
- Aaron stated Kevin told him he was typing the statement and that they needed to do that because he (Kevin) wanted Brian and Carolyn off the department. If he could get those two off, he could bump me up and that way I would be better off.

The Town Administrator asked Aaron (she assumed he was doing the reporting) why the Fire Chief mentions via a telephone call that Aaron recorded on how hard it must be for him (Aaron) to write an email that goes against your Mother. You don't bat an eye, you don't change your voice...Aaron - because he told me not to.

Attorney McCullough indicated that the Town Administrator was holding a CD audio regarding this. Chairman Roux asked if they could listen to the audio. This was an audio submitted to Attorney Morin from Attorney McCullough.

Chairman Roux indicated the Board was only interested in the piece related to the issue at hand. This event

happened and it is a conversation about the email 1 month later.

In short, it stated, it must have been really difficult for you to type that email about your Mother. Aaron made the recording. He indicated they recorded all the time.

Audio was listened to - it was the wrong audio (number 3 at 15:08) which was the correct audio.

Mike Sabine tried to get the Board to revisit Steve and driving trucks.

The Board continued to listen to the audio. Audio stated - the documentation you had to use against your Mother.

The Board had a conversation to catch up. If Aaron lied, what does it have to do with Carolyn. Fire Chief Guillemette asked did the three of them conspire against Carolyn. Worst case - she is at home. The Board doesn't agree with it or condone it because it is wrong, but that is one piece that has to be considered. Is it enough to break the Personnel policy? But, even if Kevin, Denise and Aaron conspired to write this statement, what else is the Board supposed to be considering?

Chief Guillemette believed the conversation was on speaker phone and the Denise D heard it and now if he allows Carolyn to stay on, he will have created another battle where Denise would file sexual harassment charges and he would be in the middle of two things.

Brad Morin stated there isn't a 1st amendment right violation. The first amendment comes into consideration when someone makes a racially charged comment that is overheard, it wouldn't be a question. Chairman Roux stated, if it was at the station it wouldn't be a question. Attorney Morin continued - let's say she said things that were rather inappropriate about 2 people doing a sexual act and did not know it was being overheard but it was overheard, he did not think there was any insulation. Now you have to consider whether it is creating a hostile working environment because you have to consider the effects on the people in the department. Then there is the fact whereas the Fire Chief felt he was being lied to during the investigation.

Fire Chief Guillemette agreed. Credibility is just not there on both accounts.

Mike Sabine stated that Aaron was a follower and not a leader.

Carolyn indicated she was never interviewed through this process. Response: No, she had Counsel.

Attorney McCullough stated that a party does not vouch for their witnesses. Carolyn has no idea what is being said when she is not present. She is in no position to correct her son if he states anything inaccurate; neither does he as her Attorney. He was in no position to credit or discredit, but whenever people state they don't recall something they definitely should recall, a red flag goes up.

Chairman Roux asked Selectman Mageary for his thoughts. He asked if the Chairman wanted his final thoughts. Town Administrator asked if they were deliberating. Chairman Roux responded no but she had a question on whether the Board had a right to go in to an Executive Session to go over information the Board needed to be reminded of at this conjecture; not on this matter but discussions held in Executive Session on previous matters and the credibility of individuals.

Attorney Morin replied that the Board can only have an Executive Session on the legal rights and obligations. He recommended the Board go on what has been presented here and now.

Selectman Mageary stated he listened intently to the statements and testimony as everyone else had and believed that the vast majority of the conversations were not relevant to the issue at hand but merely a smoke screen. It was unfortunate that timing wise, the Chief was thrown into this after the fact; It just muddied the situation. He also believed that yes there was a phone call made to Carolyn Rand to Aaron and he further believed that the call was intended to be private in nature. Selectman Mageary continued to state he did believe there was inappropriate language during this call, however, he does strongly believe in the first amendment right and the freedom of speech. He continued by stating he supported the Town of Shapleigh's policy regarding progressive discipline. Selectman Mageary also commented that progressive discipline steps can be skipped if the behavior is egregious enough. Selectman Mageary felt that placing Carolyn Rand on suspension pending the outcome of this hearing was appropriate. It's been 9 months; there were delays; not caused by the Town but by COVID and meeting schedules.

Chairman Roux asked Selectman Cudworth for his thoughts.

Selectman Cudworth indicated he only had two thoughts. 1. If Carolyn is reinstated what kind of work environment will be provided for her and those, she worked with and 2. Are you reinstating a Fire Fighter that the Chief does not want on his watch.

Carolyn Rand spoke to Selectman Cudworth's comments. Carolyn indicated she has prepared a letter of resignation and does not want to go back on the force. She does however, want to collect back pay and her attorney fees.

Chairman Roux asked Attorney Brad Morin if she could have a private conversation with him. Steve Guillemette is a good person who was put into a very bad situation. He walked into and had to deal with the prior Chief. Everyone present knows why the prior Chief is no longer here with us. But this Chief has done the best he could with the information he has. Chairman Roux told Attorney Morin that she did not believe Chief Guillemette had all the information he should have on all the key players, the people he is taking statements from and trusting. If he knew the information that this Board has, that it would change things. But they are previous Executive Sessions but pertinent to people characters.

Attorney Morin reminded the Board that personnel related matters done in Executive Session are confidential.

Attorney McCullough stated that Carolyn has a right to say if the Board knows something information that might expedite its decision in her favor, she had no objection to the Board to consider that information without it being disclosed to her or her Attorney.

Chairman Roux stated this is where it currently stands. To determine if Carolyn would be terminated or resigns. Attorney McCullough indicated Carolyn Rand would resign if she was granted back pay and attorney fees. The notion a person can't be reinstated because they litigated with a Supervisor, come on. Response - No one said that.

Attorney McCullough. this issue of whether or not there will be a workability, a feasibility if she is reinstated? Selectman Cudworth - she will have to work on that too; it is not one sided. There are multiple parties involved.

Attorney McCullough stated he had not heard Carolyn Rand state she could not work with Steve, Denise or others in the department. Selectman Cudworth - That is why I brought it up; to ask the question.

Chairman Roux asked the Board if they (all three) agreed that she had that conversation on the phone. Response - yes. Next, we all agree she said it to her son from her home and her son was at the station. Did he make a poor

choice of putting it on speaker? Absolutely. That falls on him. If he lied about this email and whether he sent it or whomever sent it. Those are all things to take into consideration for taking him back into the department because he is the once causing the majority of this. Now the Board needs to figure out where Carolyn falls into this.

Chairman Roux asked Attorney Morin if the Board had adhered to timeline and done their best due to COVID. No extensive time was taken? Following the governor's edicts. Attorney Morin's response was that no he did not think the Board took excessive time.

Attorney McCullough rebuttable that the suspension was being ratified by the Board but the suspension started under Kevin and should have only occurred after a hearing according to the Fire Department bylaws. Carolyn received no hearing; she had not been heard until tonight.

Attorney Morin spoke up that the personnel policy supersedes all bylaws. There was a meeting with the previous Chief before she was suspended. The Attorneys went back and forth regarding how long it took before a hearing was scheduled and Carolyn Rand was heard.

Chairman Roux stated she felt sorry for Chief Guillemette as he has not gotten a full story. He has been a godsend to step into a deal with what he has had to do.

A discussion ensued reiterating that Carolyn had to follow the Fire Departments bylaws and was told such by the Town Administrator. If the Board followed everything correctly, Carolyn would not be entitled to back pay and legal fees. The Board wanted to ascertain if that occurred or if something was missed.

Attorney Morin indicated attorney fees and back pay indicated some sort of legal claim.

Selectman Mageary spoke. Before we get into back pay, he did not think anyone would do that holding this suspension depending on the outcome of this hearing and if the Board was to find against any of those charges that were brought, and talking about progressive discipline, there are steps in between and if we were to find one of those steps, then there is no cause for any compensation.

Chairman Roux indicated according to Attorney Morin that was a whole other conversation and tonight the Board is making a decision one way or another whether policy was broken.

The Board reviewed the Personnel policy. Attorney McCullough brought up a suspension of more than 7 days. Happened February 5th and left in May. Town Administrator had advised her to set up a meeting with Kevin. She did. When Carolyn arrived at the meeting, Kevin indicated the meeting was in regards to her conduct not her concerns.

Chairman Roux that this did not matter tonight, especially if there is going to be a lawsuit made against the Town of Shapleigh. What was important was, did Kevin Romano have the right to change the subject of the meeting that Carolyn had requested.

Attorney McCullough indicated if she was not legally suspended then back pay should be automatic. She had no opportunity to discuss the incident. Then asked Attorney about the bylaws being superseded by the Board. The line applied to the policies not they bylaws. Attorney McCullough continued to read out the bylaws regarding suspension and indicate there was no hearing. Chairman Roux asked for a set of bylaws signed by the Board. Mike Sabine stated he would provide.

Chairman Roux asked if the Board was ready to deliberate. There will be 3 minutes allotted. No one will speak during deliberations including Attorneys - no input.

Attorney McCullough stated this refers to the first amendment and he stands by the fact she wasn't given the opportunity to discuss the incident after seven days notice which is what that language indicated.

Chief Guillemette stated to the Board that he had three signed statements (Kevin, Denise and Aarons), the information from the meeting with Attorney Morin and he made the best decision he could.

Mike Sabine stated there was a fourth statement, but the Board ascertained it was not pertinent to the situation as the writer was not there. Carolyn disagreed stating he was there and his statement was the most accurate of any one there. This statement had nothing to do with the phone call that Carolyn made.

The Board went through deliberations.

Outcome was as follows:

Findings and Decision of the Selectmen

1. Carolyn Rand made the call referenced in the Chief's letter.
2. Carolyn Rand made the statements referenced in the Chief's letter.
3. The conduct violated the Town's policies for verbal comments that were sexual in nature.
4. Carolyn Rand initiated the call from her home.

Motion made by William J. Mageary, seconded by Jennifer Roux to reinstate Carolyn Rand at this time and place a letter of reprimand in her file. Discussion: Scott E. Cudworth felt that Board should support the Fire Chief's recommendation which is to terminate said employee. Chairman Roux stated this is a difficult decision to make. Vote: 2 in favor 1 opposed (Cudworth).

End of hearing.