

CONFIDENTIAL WORK PRODUCT  
REPORT OF INVESTIGATION  
by  
RM Consulting Solutions LLC  
Ronald Mendrick  
For  
Board of the Town of Enfield  
and  
Guy Krogh, Esq.,  
Thaler and Thaler  
Counsel to the Town of Enfield

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## EXECUTIVE SUMMARY OF REPORT OF INVESTIGATION

**Nature of Investigation:** Thirteen individuals were interviewed in conducting the investigation including the current members and two former members of the Town Board (“Board members” or “Councilpersons”); two former and the current Town Clerks and the former Deputy Town Clerk; the former and current Supervisors; and the Highway Superintendent. Several documents were reviewed for this report, including a letter of resignation by a former Board member and several emails provided by interviewees. The statements of the interviewees and material from the documents were cross checked and analyzed to compile the information gathered for this report.

**Format of Report:** This Report presents first a narrative summarizing the information gathered from reports during the interviews. That information consistently characterized the relations among Town officials and at meetings of the Board as controversial. This narrative is a compilation of that information from a neutral perspective. Those interview reports consistently identified several events as examples of the alleged controversial nature of the environment in the Town and its government. Several of those examples that reportedly illustrate the characterization of the relations as controversial are narrated here in a neutral manner to describe the environment that reportedly resulted from an aggregate of many such incidents. The Report then presents a summary of the weight of the evidence, first as to the events and then as to their impact on relations and managerial performance, followed by suggested recommendations.

**Summary of that Evidence & Recommendations:** Based on analysis of all the reports and documents reviewed, the Town has a long history -- a culture -- of controversy among its officials and some residents. This controversy is evidenced in the nature of the commentary in meetings, emails, and posts on websites and social media. Such commentary has long included raised voices and inappropriate language at meetings and critical assessments by officials of their colleagues, including attribution of nefarious motives for their actions. Officials in the same political party reportedly harbor and express publicly such feelings about one another and express suspicions about officials’ conduct and motives.

This unfavorable commentary is variously reported as political or personal, but clearly is taken personally by many of its subjects. Reportedly, in some instances this unfavorable commentary reached officials’ employers and business interests. This controversial commentary and conduct resulted in an acrimonious back and forth of response/counter retort. Many report that they feel compelled to respond in public to public commentary to defend themselves, but this same justification is then used by the subject of their response for a further retort, fueling and rationalizing a continuing cycle of acrimonious back and forth commentary.

It is reported generally that this controversial commentary distracts from the Town’s business and that the engendered ill feelings result in a lack of compromise, action, and gridlock. Reportedly, this may serve the individual interests of some. Some report that valued officials left office.

Reportedly, nearly all those engaged express a desire to stop this cycle, but most feel compelled to continue to respond to the next comment about themselves. A few report that they have disengaged and do not respond to others' commentary and several reports are that the controversy has decreased in recent weeks.

Suggestions resulting from analysis of the information gathered include Board consideration of protocols and standards for meetings and the conduct of Town business, to be created and adopted by consensus and to be honored by all and evenly applied to all. Suggestions also include orientation for all new officials and training for those selected for certain offices that have ministerial or management duties, as well as for the resolution of the controversies over the Town's IT system and the workload and compensation of the clerical position.

### **PREAMBLE: NATURE OF REPORT**

Reportedly, in the past year or more, the tone of Town Board meetings and relations among some officials had been characterized as escalating controversial personal attacks and counter attacks. This controversy reportedly led to a continuing back and forth among some former and current officials and at times has interrupted Board meetings (and prolonged them), other functions, and relationships. Reportedly, there was a threat of litigation challenging the Town's response to a FOIL request for related documents and various allegations of defamation.

The Town Board, on advice from Guy Krogh, Esq., of Thaler and Thaler, the Town attorney, asked that I investigate as an outside, neutral party, based on my experience with such issues and investigations. My responsibilities included reviewing documents, interviewing current and former Town officials, and providing this written compilation of my findings of the information gathered and my resulting recommendations. My responsibilities did not include legal advice on any matter to any party. I conducted interviews with the thirteen persons who were identified by the Board's representative, including all current and two former members of the Board, a former and a current Supervisor, two former and the current Town Clerks, a former Deputy Clerk and the Highway Superintendent. The interviews were conducted as promptly as the interviewees could be scheduled. All the interviews were conducted by virtual video session.

In conducting the interviews, I provided each interviewee with the same introductory statement describing my neutral role and the purpose of investigation, and each was asked about the same topics and events, except where an interviewee stated that he/she had no information about a topic or provided information about additional instances related to the issues under investigation. Interviewees were asked to provide any documents supporting their statements, and several stated they would do so; although some did not do so, I received several examples of emails and a letter of resignation reportedly submitted by a former Board member.

A few expressed concerns about potential retaliation and that their comments might contribute to further undesired back and forth emails, commentary at meetings, and/or postings on websites and social media. All were informed that confidentiality could not be guaranteed since the purpose of the investigation is to make a report to the Town Board of the information, but that this report would be a compilation of information and I would not attribute specific responses to any particular individual.

Reported below in a narrative form is information gathered about several often-cited examples said to illustrate the controversy, followed by a summary and recommendations.

## **CONTROVERSIAL EVENTS AND ACTIONS**

The stated objective for this report was to gather information and make suggestions about the on-going controversial nature of relations among Town officials and residents which reportedly escalated during the year past and interrupted and prolonged Town Board meetings and Town business. In particular, one objective was to suggest how to stop or reduce the “drama” that fuels the controversy, to improve Board meetings and the conduct of Town business.

Reportedly, there have been many controversial events and situations that might serve as examples of the recent highly controversial nature of Town business and that contributed strongly to the disruptive back and forth among Town officials, and sometimes residents at meetings. The purposes here are served by neutrally addressing some examples of these controversial matters that were identified by interviewees, instance by instance, below.

**Examples of Alleged Instances and Information Adduced:** The examples below are intended to be neutral narrations of reported events compiled from interviews of a range of officials to illustrate the controversial tone of relations in the Town and suggest resolutions of some of that controversy. It is said there are two sides to every story; all sides are reported here without judgment.

### HISTORY OF CONTROVERSIAL RELATIONS:

*Reported Information:* The consensus of the information gathered is that the Town has a long history of controversial relations at meetings and among some Town officials who have in some instances come and gone. This history was illustrated by some characterizing it as “decades long” and by others as resulting in the Town being referred to as the “wild western hills” or the “Tabloid Town.”

The history of controversy as reported by many includes yelling and profanity at Board meetings, disrespectful comments back and forth among the public and public officials, attribution by some that others have personal, political, and/or unseemly motives, and much less than civil relations. For example, reportedly in the past a Sheriff was needed at meetings to keep order by removing participants who were disorderly.

However, the general consensus was that this history of controversy has waxed and waned over time. A commonly cited example of a period of heightened controversy was that surrounding a proposed windfarm and windfarm legislation a few years ago. Nevertheless, many interviewees expressed belief that the controversy this past year was worse than that period, the worst year for some time if not ever.

*Impact:* This history reportedly is an important contributor to the current relations, that people’s experiences with the long on-going controversies have made the current tone seem common, acceptable, and unavoidable, and perhaps seen as the only successful way to get attention for an issue and results. However, the result of the on-going controversies reportedly recognized by many is interference with Town business, distracting officials from the Town’s needs, and

resulting opposition to others' proposals based on *who* is making that proposal or supporting it, rather than the *merits* of a proposed resolution or action.

*Resulting Relations:* This history of controversy reportedly is resulting in gridlock [i.e., no action] or split votes on resolutions along factional lines and, therefore, a lack of collaboration and compromise among Town officials generally, and adverse commentary in public that fuels an even greater back and forth among, and mistrust by, officials and residents.

*Managing the Relations:* Historically, the controversial commentary and back and forth was prevalent primarily at the Board meetings, in individual conversations, and election campaigns. The management of the relations similarly was focused on the control of the meetings, for example, by having a Sheriff present to remove the especially strident or recalcitrant participants. This past year, it is reported, the back and forth and commentary has been prevalent in emails, postings on a website and social media, of commentary about meetings and one another, as well as at meetings. Some oft-repeated recent events and examples of this past year's controversy are addressed below.

#### CLERK'S RESPONSIBILITIES & MINUTES:

*Reported Information:* A Town Clerk's responsibilities are ministerial. Reportedly, and historically, the responsibilities have included attendance at each meeting of the Board to take minutes to record the Board's order of business, the Board's actions, and identify the Board's resolutions (i.e., by their proper number). The draft minutes of each meeting are provided to the Board before its next meeting to inform the Board and for its review and approval, and published for the public. At meetings, the Clerk also may call attention to procedures when needed. Other responsibilities also are ministerial – clerical -- such as processing tax notices based on the Board's budget decisions, collecting the taxes paid in person or by mail, issuing dog licenses, and the like.

A Town Clerk's role is not legislative; it is the Board members acting by resolutions adopted at a meeting that set local law, direct actions to be taken, and adopt a budget allocating tax funding to various purposes and departments. Neither the Clerk nor other Town officials perform these legislative functions, other than the Board.

In this Town, the Town Clerk is not an employee of a Town Board, but an elected Town official performing their responsibilities independently, but obviously in support of the Board's process and for the public.

As reported generally, minutes for meetings during 2020 were not provided to the Board or public from meeting to meeting. (Reportedly, most or nearly all of the minutes for Board meetings during 2020 were presented to the Board at a meeting in January 2021 and approved at that time.) The absence of minutes about prior meetings was a frequent source of comment during 2020. The work load of the position was reported by some to be too great to be performed on a part-time basis (addressed below) which resulted in the minutes being uncompleted during the year. Eventually, other persons in the Clerk's office were assigned to assist with listening to audio tapes of past meetings to prepare draft minutes, but reportedly was slow going because those persons had not been personally at the meetings.

*Impact:* According to multiple reports, the lack of minutes of prior meetings hindered Board operations, such as resulting in a lack of history of recent Board actions and the numbering of past resolutions (and so the numbering of current resolutions), etc. Further, the public lacked information about the previous Board meetings and the actions taken. In the absence of the minutes, the public had no official statement of the Board meetings so unofficial commentary such as in emails and website posts stood uncontroverted. The back and forth commentary about the lack of minutes for the Board and the public contributed to controversy between the Clerk and some members of the Board and had an effect on a controversy over the work hours and salary of a Town Clerk, addressed below.

*Resulting Relations:* The back and forth comments about the lack of timely and accurate minutes resulted in acrimony, further adding to the controversy among officials and a back and forth between the Clerk and some Board members and Supervisor.

*Managing the Relations:* Of course, since a Clerk is not an employee of a Board, neither the Supervisor nor the Board had authority to enforce direction to complete the minutes on time or to impose disciplinary action. (Note that this also contributed to a controversy over a proposal to change the Clerk's position from an elected position to a Board-appointed position which would have given the Board authority over its clerical assistance.) Collaboration which was lacking might have enabled the responsibilities for the minutes to have been prioritized, and the timing of other work adjusted.

#### TOWN BUDGET:

*Reported Information:* The Town's budget is set by the Town Board after deliberations over various budget proposals. The budget information is provided to the County to prepare tax bills. Some taxpayers have legal exemptions from taxes for certain Town operations, so the tax rates based on the Town budget differ for those residents. Reportedly, no other Town official has authority to set or change a Town budget.

To summarize the information gathered about this issue, reportedly the Town's budget was approved by the Board. When the tax bills based on the budget were returned from the County for preview, reportedly, the Clerk believed that the rates on the preview were erroneous based on her understanding of Town funding of the Fire Company (reportedly she was its secretary). The Clerk reportedly sent the preview back to the County with changes reflecting the understanding of the respective funding for the Town and Fire Company. Reportedly, the Clerk told the Supervisor that the County had gotten something wrong on the preview bill and that she had sent it back for correction. Reportedly, the nature of the change was not discussed with the Board or Supervisor; the Supervisor did not review the error or the change at that time.

When the tax bills were received by taxpayers, the Supervisor recognized her bill was not correct. Reportedly, the Clerk has no authority to change the bills since they are based on the Board-approved budget. When asked about the bills at a Board meeting, reportedly, the Clerk described the change made, and the Supervisor said that the Clerk could not make such a change, it is fraudulent. Reportedly, a communication was sent to the State Comptroller's Office requesting an audit to establish the standards for processing tax bills in the future.



*Impact:* Reportedly, the Town made future adjustments and the Comptroller's office has not yet followed up with the Town. However, reportedly the matter substantially increased the controversy between the elected officials in subsequent meetings, emails, and postings on websites and social media.

*Resulting Relations:* The events and reported acrimonious subsequent commentary about it increased the controversy between the Clerk and the former and current Supervisors which continued long after. Reportedly, suspicions were expressed and motives attributed to one another in meetings and via email and postings on a website and social media.

*Managing the Relations:* Reportedly, regret has been expressed that this matter was raised during a Board meeting. Some reports indicated that mediation was suggested but not pursued. There the matter apparently stood.

#### RESPONSIBILITIES FOR THE TOWN WEBSITE & EMAIL:

*Reported Information:* In the recent past, this Town's Clerk has had some responsibility for the Town's website and email system. Reportedly, in the recent past the Board had passed a resolution allocating these responsibilities among the Board, Supervisor, and Clerk. Reportedly a controversy subsequently arose over who had access and authority for the website and email system based on this allocation. This dispute raised questions of whether the Supervisor's position has or should have equal or sole such authority. Reportedly, the authority for the Town's IT (some called it being a "key master") provides the ability to post items on the Town's website, issue new email addresses, and to read the emails sent using the Town email system. Reportedly, there was a dispute over whether some postings on the Town's website were personal or political and so should not have been posted.

This controversy reportedly included commentary about suspicions that one official or another might misuse those capabilities such as to read others' emails, and other attributions by some officials of motives to others. In the interviews, some reported that in any case such authority should not be limited to only *one* individual (such as in case that person became unavailable or passwords were lost, etc.).

*Impact:* The website and the email system reportedly continued to function, and the Clerk's office exercised authority over the systems, although a Board member who had IT experience assisted the Clerk with the systems and an upgrade of the capabilities.

*Resulting Relations:* The back and forth over which officials had the authority over the website and emails, and the voiced suspicions and allegations that certain postings on the website were not appropriate and that others' emails might be read, reportedly added to the controversy among the Clerk and some Board members and the Supervisor at the time. The Board member who assisted with the IT systems reportedly was perceived by some to be on the Clerk's "side" in this issue which contributed to the factionalization of the Board and Town officials.

*Managing the Relations:* As noted above, the Board and Supervisor do not employ or supervise the Clerk, but, as to the Town's IT system, reportedly there was general agreement if not

unanimity that the Board has authority to allocate responsibility for that system. During this dispute, reportedly both “sides” cited the recent Board resolution allocating responsibility as authority for their respective positions, apparently at least agreeing that the Board has authority to do so while disagreeing about the meaning of that resolution.

A few reported that this dispute could have been quickly and effectively resolved by a new Board resolution simply clarifying or changing its allocation of authority for the Town’s IT systems. This would have ended the continuing controversy over whether the meaning of its previous resolution was that only one official or both had authority for the system. The Clerk reportedly did not support reducing or eliminating the Clerk’s responsibility for servicing the IT system, although reportedly also asserted that this responsibility had previously been the Supervisor’s, that it had been delegated to the Clerk to burden the Clerk with a greater workload, and overloaded the Clerk’s duties to the detriment of the completion of other responsibilities.

Some reported that the suggested change by resolution was very “doable” but for the controversy among officials that created gridlock on such an action. In keeping with the pattern of attributions of motives, some reported that it was in the interest of some, maybe many, to continue the controversy rather than simply fix it by a clear Board resolution.

#### CLERK’S WORK LOAD & SALARY:

*Reported Information:* It is noted that the Town Clerk is not paid at a rate *per hour* of work, but rather an *annual amount* for the work by the Clerk over the course of a year. The Clerk also has Board authorization and funding to hire a part-time deputy clerk although reportedly after taking office in 2020 did not initially hire a deputy. The funding for the compensation paid to these and other Town officials and employees comes chiefly from taxes.

Reportedly, the Clerk elected to the office for 2020 advocated for an increase in the Clerk’s salary, justifying that request by the increased number of hours she said she had to work to accomplish the required duties and the amounts she said were paid Clerks in other towns of similar size.

Reportedly, the previous Clerks and subsequent Clerk have not worked more than part time over the course of a year (i.e., although more hours typically are required during tax season than other times, on average the work load reportedly has been part time). Although reportedly the work had increased historically, it has not risen to a full-time commitment.

However, reportedly it also was recognized generally that a newly elected or appointed Clerk new to the role and starting during the busy tax season, naturally had a “learning curve” so the work at first might require more hours than would be required by an experienced Clerk. Reportedly, the new Clerk eventually hired a part-time Deputy Clerk, and subsequently the Board authorized, and the Clerk hired, a second Deputy for a specific part-time project.

There also was controversy about training for the new Clerk which some reported might have reduced the work hours needed to learn the job. For example, some reported that the newly elected Clerk was invited and scheduled for training by the out-going Clerk after the November election, but missed or shortened some scheduled sessions. On the other hand, another report was

that the Clerk was denied funding to attend or be paid for training after assuming office. Further, some reported that neither being new to the position nor the training issue would explain the continuing assertion over the course of the year that the work regularly required more than full-time hours.

Reportedly, Board members generally believed that the annual salary paid the former Clerk should be increased in 2020, which is confirmed by the Board's approval of an increase of about 20% according to reports. (Other Town officials and employees received no pay increase that year, according to all reports.) The Clerk's increase reportedly was based both on the salary rates paid by other towns of similar size to their Clerks and on the number of hours this Town's Clerks had worked in recent years.

However, it was generally reported that the Clerk continued to advocate for a further pay increase. Reportedly, frequent requests for increased salary were interjected into many Board meetings during discussion of Town business and were raised in individual conversations, emails, and social media posts. Reportedly such requests continued to be accompanied by statements of weekly hours worked -- up to 60 hours -- that would greatly exceed the level of a part-time position as justification for a greater increase in salary.

*Impact:* Some reported that frequent interjections of repeated requests for a greater pay increase and the number of hours worked interrupted Board meetings, and so prolonged Board meetings. Reportedly, there was a difference of opinion among some Board members over whether the salary should be increased further. Reportedly, some Board members favored a further increase while some other Board members had favored the increase of 20% but did not favor a further increase during the COVID pandemic when no other Town officials or employees received an increase and Highway employees were laid off. Contributing to the controversy reportedly was the lack of completion of some duties, such as timely presentation of minutes addressed above. The sense that there were factions on the Board reportedly was further reinforced with this perception that some were on the Clerk's "side." The controversy over the salary and work hours deepened when the Clerk's interjections of this subject during discussion of other Town business were muted during zoom sessions of meetings of the Board when they continued after being asked to remain on topic (addressed below).

*Resulting Relations:* The repeated and frequent requests for a pay increase and assertion that the hours worked exceeded part time resulted in further rifts between Board members and between the Clerk and the Board and Supervisor. The nature of the comments made during Board meetings and in emails and social media resulted in deteriorating relations between the Clerk and some other Town officials.

*Managing the Relations:* The Clerk does not have a role in Board legislative decision making and so does not have a role to advocate at meetings for or against proposed Board actions. Nevertheless, it was generally reported that the Clerk frequently spoke about various proposed Board actions and often also interjected the salary/hours issues in doing so, and that was out of order. Reportedly the Clerk often was asked to remain on topic -- and to return to topic when she strayed off-topic -- and when she remained out of order, her microphone on Zoom sometimes was muted. Reportedly, in some such instances the Clerk who remained visible on screen made

disapproving faces and displayed angry gestures. Reportedly, the Board had no other means to enforce orderly discussion during virtual Board meetings and would have none in a “live” session because, as noted above, the Board does not supervise and may not discipline an elected Clerk.

#### APPOINTMENTS:

*Reported Information:* Reportedly, Board proposals to appoint replacements to fill vacancies in Town offices have been controversial as well. The controversy reportedly has been expressed in commentary at meetings, in emails, and in website and social media posts, and in some instances, reportedly appointments have been blocked by gridlock. For example, reportedly the former Supervisor made public her intent to resign early last year, but did not formally resign until the fall. Reportedly, she stated that she remained in office to see the Town through its attempts to respond to the COVID pandemic. Others reportedly attributed her remaining in office past the deadline for adding a vacancy to the ballot for the November election to a desire to “hand pick” her successor and to block another candidate from seeking election to the position. Reportedly, however, no other candidate came forward and reportedly those anticipated to do so denied such intent.

Meanwhile, reportedly the Supervisor and the Board appointed a new Deputy to become familiar with the responsibilities by working with the outgoing Supervisor. (A Deputy would become acting Supervisor upon the position being vacated.) Again, some attributed the same motives as reported above to this appointment of a deputy. (However, subsequently, reportedly the Town Clerk expressed an intent to resign her position and appointed a new Deputy to prepare her to assume the position, and the same commentators who opposed appointing a Deputy Supervisor for the same purpose made approving comments in this instance.)

When the former Supervisor resigned in the fall, the Deputy assumed the acting role. Reportedly, after some controversy it was confirmed that the Board member also serving as the Acting Supervisor was not permitted to vote for her own appointment as Supervisor. Since another Board position had been vacated, and one of the remaining members declined to support the appointment, a majority was lacking. Board appointment for the Acting Supervisor to be Supervisor was blocked as a result of this lack of a majority vote. Reportedly, attributions of motives of other Board members were made on both sides.

A new Board member was appointed to fill the vacant Board position, apparently without much controversy, but reportedly an affirmative majority to appoint the Supervisor remained lacking. When that appointed Board position shortly again became vacant, there were again attributions made on one side of hand picking a successor and on the other side attributions of unseemly motives in resisting the proposed replacement appointment. Ultimately, after reported controversy including an ultimatum, a majority appointed the Acting Supervisor as Supervisor and a successor was appointed to the vacant Board seat. However, the attributions of nefarious motives reportedly continued as has website and social media commentary.

*Impact:* This short summary of the events cannot cover all the details, but for this report it is said to illustrate the impact of a series of appointments that led to multiple reports that Board appointments (and other actions) are determined by the *identity* of the person who proposed the

action, the identity of the proposed appointee, or who otherwise is perceived to benefit from a proposed action, rather than the *merits* of the appointment or the Town's interests in a proposed action.

*Resulting Relations:* Reportedly, Board votes often are by faction, resulting in split votes repeatedly along the same lines. There had continued to be controversial comment at meetings and in the website and social media commentary, continuing back and forth among Town officials. Reportedly, attributions of motives continued, and comments were made that were derogatory regarding other officials. Most recently, reports indicate that the controversial commentary has decreased.

*Managing the Relations:* As noted above, the Board reportedly has limited authority to enforce its Civility Resolution and other standards on commentary outside a Board meeting or to limit the Town's IT system to Town business. However, the Board, as noted above, has and can adopt additional standards and protocols for civility and order in its meetings and for the use of Town IT systems. Reportedly some favor a recent attempt to produce and adopt a protocol for appointments and support additional actions to agree on protocols or standards for order and civility. Reportedly, some have called for officials to put aside the past controversies and commentary, to stop responding to website and social media posts that merely continue the back and forth, and to vote based on the Town's interest rather than based on who proposed or might benefit from a Board resolution.

#### RESPONSE TO FOIL OF TOWN DOCUMENTS & EMAILS:

*Reported Information:* The Town received a request for certain types of records under the Freedom of Information Law ("FOIL") from its former Supervisor. Reportedly, the FOIL requested, among other records, numerous emails between and among the Clerk and other members of the Board.<sup>1</sup>

Reportedly, the Town's records of emails are voluminous and to find emails that fit the criteria of a FOIL request is laborious because the email system does not provide an effective "search" function to do so. Further, according to reports, each email that does fit the request criteria must be reviewed to determine whether it is subject to FOIL (e.g., is a Town record that is covered by the law and is not otherwise excluded by an exception, etc.). The Clerk reportedly is the Town's designated FOIL officer and so responsible for locating, assessing coverage of, compiling, and disclosing the records requested by a FOIL request.

It is my understanding that with the assistance of Deputy Clerks and another assistant, the response to the FOIL was completed in early 2021. Reportedly, the response might be subject to a legal challenge as incomplete (i.e., alleging that records that were requested werenot included) for which a legal defense might be costly for the Town, whatever its outcome.

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<sup>1</sup> The FOIL request was not reviewed, and as stated, I provide no legal advice on these matters, so I leave to respective legal counsel for the Town and each individual to advise whether there are any legal implications about complying with the FOIL request and/or about any subsequent disclosures of the requested emails.

*Impact:* Some reportedly perceive the FOIL request to have been aimed at impacting an individual or individual(s), not the Town.<sup>2</sup> For example, some reportedly suspect that some of the records requested might contain commentary that was part of the back and forth among officials that might be embarrassing to some or include commentary to officials' employers and/or business interests, bring further disrepute to the Town, and continue the controversial back and forth among former and current officials.

Others reportedly attributed a punitive motive for the request: That a request for many documents that are difficult to find reportedly resulted in adding a huge amount of work for the officer responsible for finding and reviewing the requested documents. (Others reportedly doubt this motive, observing that continuing to pursue such records would not burden a targeted individual who has since left that office.)

In any case, there was impact on the Town and the work of the Clerk's office, and resulted in further controversial back and forth among former and current officials.

*Resulting Relations:* The request for records continued the controversial back and forth among the Clerk (now former Clerk), Board members, and the former and current Supervisors. Reportedly, further disclosure of records, if any, containing derogatory commentary about former and current officials reportedly might result in a further controversial response/counter response by email, social media, website, and comments at Board and other meetings.

*Managing the Relations:* The Town must, of course, comply with the FOIL and defend its response if legally challenged. However, several of the perceived primary protagonists have left office. Many of those interviewed expressed a desire to disengage or disentangle from the back and forth, including former and current officials. If all of those expressing that desire did so -- simply stopped responding -- the controversy would be at least greatly diminished. The Town apparently has no authority to require individuals to cease and desist their use of personal media, but may set limits on the use of its IT systems including its emails for personal business and commentary that is not Town business, and may rule personal comments and disruptions out of order at its meetings (and enforce such rulings) as it reportedly has done in the past. Since the back and forth continues despite the generally expressed desire to end the controversy and mechanisms to reduce the use of Town forums to do so, a question posed was in whose interests is it to continue the controversy? If it is in no one's interest, then why would it not have stopped?

## **SUMMARY OF THE EVIDENCE GATHERED TO DATE**

Reported above are some of the many reported instances that illustrate a controversial back and forth commentary among Town officials (and residents). Reportedly, this back and forth has included conduct at Board meetings, and in emails, social media and website trolling and commentary, including commentary not only to Town officials but also to employers, business interests, and the State Comptroller.

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<sup>2</sup> These comments are about the request were compiled from multiple sources except the author of the FOIL request; the reports here should not be attributed to the FOIL's author.

Such commentary reportedly has included diminishing others by attributing various motives to them, by references to gender and other protected classifications, and with demeaning characterizations. For example, reports were made about Town officials referring to a controversy between two female elected Town officials as a “catfight,” and referring to other Town officials as “puppets,” “nemesis,” and “activist,” among other labels.

As to “activist,” many Town officials use meetings, email, posting on websites and social media to advocate for the interests of the people in the Town, and so might all be “activists” to that extent. However, reportedly this term is perceived as derogatorily implying that the persons so characterized advocate for their own *personal* causes, as opposed to those who advocate for their own perception of the interests of their perceived constituents, and so use the term to diminish the vision of those opposed to *their* vision. Of course, perhaps each simply has a different vision of what the Town’s people want and neither vision is more justifiable or pure than another, they just reflect different perspectives, constituents, and/or values.

As a consensus of the reports showed, such commentary and responses to the commentary resulted in a back and forth that fueled the continuing controversy and perhaps even the FOIL request. Each comment is justified as a response to another’s comment, and stimulates a further response, in a continuing cycle. Some report that the commentary is *political* and report as an example their perception that there was fallout from the election of officials to serve for 2020.

**Political:** In the lead up to that election, the incumbent Town Clerk reportedly had announced she would not run for re-election. A candidate for another office who reportedly was perceived as having political experience with the windfarm issues and who had experience serving as a Board member, reportedly asked someone she knew to run for that vacant Town Clerk’s position. She then assisted that Clerk candidate with her campaign through a primary win and the fall election. Reportedly, it was not expressly suggested that they would run as a “slate,” but she also asked that candidate for Clerk to endorse one of the two candidates who were running for an open Board seat. The Clerk candidate reportedly endorsed neither candidate for the Board seat, reportedly remaining neutral.

Some report that this caused a falling out and attribute the subsequent controversy between the two officials as political “payback,” reporting this as an illustration that the controversy in the Town is *political*. However, others’ reports differed, noting, for example, that the same official subsequently supported that 20% pay raise for the Town Clerk, and reported doubts that the controversy is due to traditional party politics because the controversy is among those in same politic party.

However, it also was reported above that there are factions on the Board -- and there was competition in a primary and for the Board seat -- among those in the same party. It is said that often factions, even if only perceived and informal, reduce the members’ willingness to listen to one another or compromise. Building and sustaining factions sometimes can reduce collaboration, and some say that the members of factions might discuss and commit to decisions among themselves outside of public Board meetings which would exclude those in the other faction from the discussion (and which if were outside of public view of the deliberation process, might violate the Open Meetings Law).

Such intra-party politics are not unusual, nor is it unusual for members of a party to take support away from another party member – and even run candidates against them or pressure them – when that party member is perceived to have acted contrary to the party’s interests, such as not having supported the party’s slate of candidates or its appointments to office, such as who will be Supervisor. Some would say that this would be a typical political response to “discipline” the party. (That it might not be not unusual neither condones nor condemns such actions, that is not the purpose here.) Here, such intra-party adverse political action is one motive that is attributed to others, on and off the Board.

Reportedly, there have been numerous social media and website posts by officials rationalized as serving the public and responding to others’ postings and emails, but including comments about other officials in the same party. If not *party* politics, this pattern is, at the least, evidence of intra-party controversy, perhaps aimed at others who are not perceived to be on the “same team” during an election and throughout the year. Thus, the controversy is attributed by some to be political.

**Personal:** Reports noted that such commentary in meetings, posts, and emails might be political, but that it also appears *personal*, particularly to the target since the comments are critical, directed at and attribute motives to that *individual*. The frequency and vehemence of some of the back and forth responses and posts would support a target’s perception that these are *personal* attacks, whatever their actual intent. That they fuel a personal animosity is evidenced by the number of responses they engender and reports by many of those responding that they feel compelled to set straight their personal “record” in the community. Each response stimulates a counter response, a continuing back and forth, each rationalized as responding to the other’s response.

It has been said all politics are personal -- since typically each official runs against another person and openly disagrees with that other person in meetings, campaigns, and posts. Perhaps the best description of the controversy here comes from the multiple reports that the controversy here is a mesh of both, political and personal. In any case, the impact is that the nature of the comments has resulted in a continuing back and forth over a substantial time.

**Impact:** There is general consensus that the result of the controversial back and forth could be that the controversy distracts officials and residents from the Town’s business, and results in gridlock. Reportedly, votes on matters and appointments might be based on *who* proposed the resolution or who is the person to be appointed, rather than the *merits* of the issue or person. To avoid such possible results, many reported that he/she wants to stop, to disengage, disentangle from, the cycle of response/counter retort, yet many continue to take the bait and respond to the next public post or comment about them. That is like saying someone else started the fight [so I am not responsible], but here it is not possible to identify who started it nor does it matter. Reportedly, many want all to stop the back and forth which would break this chain of heated controversy. Reportedly, they want to have civil discussion, collegial relations, and compromises on issues. If most or all wish to stop, what is the reason they have not?



**Cultural:** The consensus is that the Town has a long history -- some say decades long -- of such controversy. But it is not just in the distant past. Reportedly it swells and recedes as issues come and go. Reportedly it swelled during the windfarm controversy and again during the past year. It is not experienced by merely an individual or two; most if not all involved have experienced this history of some Board members and residents modeling on-going contentious relations including yelling and swearing at public and executive sessions and critical commentary among officials via emails and posts on websites and social media. This modeling can result in officials and residents accepting that this is how the Town operates and so they behave accordingly because it appears that is how to bring attention to their needs and proposals.

A useful construct to understand this is that Boards, communities, and nations have a “culture” of their own that has evolved over time and continues to evolve. Some of these cultures are more civil and respectful than others, and the level of civility can change to a confrontative culture and back over time. Using this construct to view the Town’s history can be a practical means of describing each of the recent controversial events of interest here, and to step back to get a perspective and consider whether change is desired, and if so, how to change. Using it, one can “see” the Town’s process and its effects. Then, decisions can be made about whether it fits their needs, or they want to change it.

**Whose Interests Are Served:** As reported, the consensus is that this culture should be changed, so what is the reason this culture has not changed? The current culture must be serving needs or interests of those engaged or each would simply stop responding and/or would vote to change it as a Board.

What are those needs or interests? Typically, such a continuing critical comment/retort pattern creates controversy which gets attention from the public. Conducting business effectively and quietly rarely does so. Such controversies have long been seen to “sell air time,” that is, increase viewers or readers of media including newspapers, radio, and television, and now social media and websites (that often are monetized). Often such comments in posts and emails show their author in the best light while diminishing the target even if in the same party. Such attention builds public recognition of the author or diminishes a rival, which is believed to increase voter recognition of the author that enhances election/re-election prospects.

Such attention is valuable in politics because it gives the individual power when their constituency reads their controversial interpretation of events such as their version of what happened at a Board meeting and comments about officials. In part, it adds power because allies or foes may be intimidated by what might be said about them if they do not support the author and/or their positions on issues. Thus, political strength may be gained in that the authors’ name recognition by the public is increased by making such controversial comments, and also because their power is increased relatively by their diminishing their opponents’ recognition and following.

**Change:** Such cultures have been changed, often most successfully during a period of relative calm and collaboration, as reportedly exists now.

As noted above, many attest that they want to stop the back and forth. To do so they merely need not to respond. When there is no response, not only is the other person not stimulated to again defend them self, the controversy decreases so the author gains less attention. Although it takes two to tango, it might take only one to disentangle.

Of course, as reported, it is difficult for an individual to stop defending them self in the face of continuing public personal attacks. Nevertheless, some have reported that a few have stopped, and relations are calmer at the moment. But it is also reported that some have been confronted about making positive comments about another official, about being civil to a perceived rival, as if that is aligning with that person's other critical comments or uncivil conduct. The feeling of being in a faction can result in such "us against them" behavior and enforcement of allegiance to us.

More than a few reported that if everyone engaged simply could recognize that all have a common goal to serve the Town effectively, instead of factional or personal interests, this culture would change. This would require that everyone recognize that everyone else has a *genuine* reason for their position -- although it might be different than their own --and stop attributing nefarious motives to one another.

This recognition, and the culture, has changed elsewhere when a board has been willing to change its customs and culture. Sometimes that has occurred by an election replacing the protagonists, but often by the board -- or at least a majority -- joining together to create and apply standards of civil relations. This is particularly possible when all recognize that debate is about a *Town* issue and how to best address it, rather than about the *person* who commented, who is to be appointed, or whose idea is to be accepted.

## RECOMMENDATIONS

Based on the information gathered from the interviews and the review of provided documents, several suggestions are presented below for Town Board consideration.

**1. Create, Adopt, & Apply Standards & Protocols<sup>3</sup> for Officials:** If the Town prefers to change its culture of conducting the Town's business, the Board and other officials might consider a few steps taken by others in similar circumstances. A majority could collaborate in the Town's interest to:

- a) Create Neutral Protocols/Standards Together by Consensus;
- b) Model Those Protocols/Standards as Officials at All Times;
- c) Evenhandedly Enforce those Protocols/Standards on All Officials and Residents During All Town Business.

What do these mean in action?

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<sup>3</sup> A protocol has been defined as an accepted or established way of behaving that is specific to a particular society, place, or time [e.g., Town officials on Town business]; a standard is an agreed level of quality or attainment, a norm or rule. A custom is a traditional and widely accepted way of behaving that is specific to a society, time, or place [e.g., a history or culture of controversial conduct at board meetings].

a) Create Neutral Protocols/Standards Together by Consensus: To operate effectively, boards typically adopt and use a well-known process for discussion and decision making. Some boards adopt a generally accepted set of standards such as Robert's Rules of Order as a general guide for the conduct of meetings and member conduct.<sup>4</sup> Other model procedures are available as well.

Whatever process is adopted, the board must come together to create and by consensus adopt that process and other stated customs that are neutral and will be applied neutrally to all. Acting together by consensus creates a commitment in each member to abide by and support the standards and protocols, which is necessary to apply them. (The applicable maxim is "people support what they help create.") And all must see that the standards will apply to everyone evenly.

Typically, these protocols and standards are in written form, sometimes by formal resolution or by an informal "customs manual," that all can review as orientation when first elevated to the board and thereafter to inform them of the board's operating process and standards.

These standards and protocols are all about *everyone* being heard in discussion and participating in the decision. Therefore, one of those standards to be modeled and enforced is that all discussion take place during a board meeting as a whole and the result should account for everyone's contributions to a compromise. This includes requiring that Board member communications about issues and the preferred decision must be made only at a meeting, not in a series of -- or a faction's -- telephone calls, emails, social media, etc., before a meeting (which also might violate Open Meetings Law which intends that all such deliberation be observable by the public).

The standards and protocols include a standard of civility in all discussion and relations, showing respect for the office [if not for the office holder], and that the other members have a genuine belief in their position or opinion (rather than attributing a hidden, improper motive). By doing so, all agree to all participate in setting the board's standards for future meetings and conduct, and agree to model and enforce such standards individually and as a board with civility and good humor.

This Board appears not to have adopted such clear protocols -- stated expectations of behavior at meetings and among Town officials and the public attendees -- that are *modeled and enforced*, according to the information provided. Although according to its website, this Board passed a "civility" resolution a few years ago (reportedly in response to a past outbreak of such controversy), reportedly it has not been recently observed, modeled, or enforced. Similarly, it is reported that the Board has not adopted or used Robert's Rules of Order or other such generally accepted protocols to guide meeting conduct, nor are attempts to impose such standards -- such

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<sup>4</sup> Typically, Robert's Rules is too procedurally complex to follow in detail so boards adopt it as a general guide and follow its better-known components such as requiring a motion-and-second-before discussion of any matter; civil discussion and only by the board members in a public meeting (or invited experts); the use of rulings such as "out of order" by the chair when a speaker strays from the topic, repeats themselves, or is not civil; calling or moving the question to a vote when speakers begin to repeat the same points; and stepping up to vote to support the rules when a chair's ruling is challenged; etc.

as by ruling a speaker out of order – always accepted by Councilpersons (or then, of course, by other officials or the public attending a meeting). However, recent reports are that the Board is considering a newly drafted protocol for the process of considering appointments which is most encouraging and might set a pattern for creating additional meeting protocols and standards!

Such standards often state that civility and decorum are required for participation, that mutual respect must be exhibited at least for the each other's office if not for the person, in meetings and in conduct toward one another, that each issue on an agenda is to be discussed only in session, and decided by a vote that is final and then implemented with the support of all.

Such standards often state that they will be enforced on all evenly without rancor, such as by:

- cutting off a speaker by ruling as out of order comments that are off-topic, repetitive, disrespectful to a person, or lacking in civility (e.g., name calling, sarcasm, swearing/offensive/obscene comments, yelling, including seemingly un-aimed criticism that everyone knows is aimed at a specific person, etc.);
- by calling a question when debate is repetitive; and
- expelling audience members from a meeting who persist in violation of the standards (whether in person or in virtual sessions [by muting a microphone or cutting off the video]); etc.

b) Model Those Protocols/Standards as Officials at All Times: Officials must act in accord with the standards and protocols at all times both to uphold them and to show residents and new officials how the Town officials conduct Town business. This tends to keep discussion focused on the Town's business under consideration, reduce controversy, and lower the attention paid to those who are disruptive. Residents learn by watching that yelling, swearing, and criticizing others, do not succeed and so adopt the modeled behavior. Just as those observing the "wild west hills" of the past learned how to get attention at meetings and in Town business, observing a civil, respectful process will help discipline their conduct of Town business in meetings and in Town offices.

Part of this important modeling is simply behaving with civility and respect for others, even when the matter is stressful and there is disagreement. This reduces the drama which helps reach compromise and agreement.

Further, all discussion by officials should address the *issue*, not the person suggesting or speaking about it. That is, in debate rather than address a person, speak about the issue and the direction to be advocated, even when supporting another's position. For example, instead of starting with "Jane has a good point, and I support her position," start with "adopting the resolution would be best for the Town because ...". Making it about the issue, not a person, sets the tone for respectful discussion of the merits and gets away from the personal attributions and feeling of personal attacks.

c) Evenhandedly Enforce Those Protocols/Standards on All Officials and Residents During All Town Business: To preserve orderly, effective protocols and standards, a board must enforce the standards evenhandedly. Even a perception that the chair's perceived allies are violating them while others are ruled out of order will undercut their observance. Similarly, despite the hour or

the topic or the person, all rulings must be made with civility and respect to avoid any feelings of personal attack or bias. Using titles and last names in addressing colleagues -- even friends-- helps; calling someone by a first name might be viewed as either demeaning if it is an opponent or too familiar if an ally.

Of course, part of the modeling is to *accept graciously* the imposition of the standard on yourself. For example, we all will forget from time to time, so when ruled out of order, a Board member must accept that ruling graciously and stop speaking. (Apologies are optional.)

If the ruling appears misapplied, under many sets of rules the ruling of the chair may be challenged by a motion for a vote on its validity. Board members must observe fairness in voting whether the ruling shall stand, but also stand up for the standards and protocols by supporting the chair when the ruling is proper. Voting against the chair when the ruling is proper might seem to undercut the chair, but in fact undercuts the process by lack of support, or worse, bias in its application. This might include, in hopefully rare instances, supporting enforcement when needed --until the culture has changed -- by a sergeant at arms and even a return to a Sheriff's attendance and assistance with enforcement.

Some boards, when a majority expresses a desire to change its culture and protocols, found it helpful to participate together in a workshop to learn about standards that have worked for other similar boards and to discuss and reach consensus about their own standards and protocols. Such an educational session can assist both in identifying standards that a board might adopt and by providing a neutral meeting for discussion and consensus building on those to be adopted that later results in acceptance when those standards are applied at a meeting of the Board.

**2. Orientation for Officials:** Newly elected or appointed officials usually benefit from an orientation, and their resulting understanding of their roles and the standards and customs would benefit all the officials and the Town.

Newly elected or appointed officials cannot know all the customs and standards even from observing meetings, and learning about the expectations can set a new tone for civility and collaboration. Some officials have specific duties and procedures that must be followed, such as the clerical duties of the Town Clerk position and the management responsibilities of the Supervisor. Many reports acknowledged that experience as a deputy was of great benefit for both positions, that experience serving in such roles is valuable, and that stepping into a new position "cold" was daunting. Also, the start of the term for the Clerk coincides with a Clerk's busiest time of year -- tax collections -- which makes advance orientation and training very important to timely completing the Town's business.

Orientation in other boards has been relatively short but very useful, such as having current board members describe the Board's standards and protocols (and providing them in writing), setting expectations for civility, mutual respect, and the process of Board meetings. For example, it has been very helpful to describe how a Board meeting is a meeting of the Board to conduct Town business in public (and that it is not a public meeting of the residents). That is, a Board meets to conduct Town business with an agenda. Pre-scheduled experts and advisors might also make presentations to the Board during its meeting, but otherwise residents and other officials

are limited to observing the Board's deliberations. They may comment only during times set aside for such public comment and input.

Another example of effective orientation topics is to identify the respective roles of officials. The Board is the *legislative* body, with an orderly process of discussion among its members of proposed resolutions to address specific agenda issues. The discussion is in view of the public, as mandated by the Open Meetings Law, but it is not a discussion by the public or other Town officials. Board members speak when recognized and so are granted "the floor," and for reasonable time and about the agenda topic. Other topics, personal commentary, repetitive comments, etc., are out of order. Even a member of the Board does not have a "right" to speak about irrelevant matters, for as long as they want, etc., during a meeting (although they, of course, have free speech rights to do so in other settings).

In contrast, the Town Clerk has *clerical* responsibilities (hence the title), not legislative. They are ministerial: They attend Board meetings to perform those clerical duties such as to take and produce minutes and call votes, not to participate in the deliberative debate on legislative matters.

Orientation of all officials to the respective roles and protocols might avoid some future controversial moments and decrease any feeling of a personal attack when the Board chair applies its procedures to keep order.

**3. Training:** For some new officials, formal training on the duties and procedures of the office is suggested by multiple reports. For example, the Town Clerk must follow mandated procedures for tax collection shortly after taking office, as well as to issue licenses, prepare minutes, and daily account for Town funds. According to reports, training opportunities vary and are not necessarily known especially by a newly elected/appointed official who has not served as a deputy. For example, reportedly there is funding for training in the Clerk's annual budget which reportedly was not known in a recent instance, even while the office holder was asking for funding for training. Further, the new official does not, reportedly, have access to such funding until *after* assuming office so it is not now available for training in advance. (Training while starting new duties at the busiest time of a Clerk's year is at best untimely.) Perhaps the budget for such offices could include funding for that training of a newly elected official immediately after the election. (If an incumbent is re-elected then that funding need not be released.) Advance training might make an enormous difference in the smooth transfer and conduct of Town business, and reduce controversy on all sides.

**4. Board Resolution of Authority Over the IT System:** As described above, many reports indicated that the controversy over which office held authority for the Town's IT systems (including its website and email) was unnecessary, distracted from Town business, and sowed dissension. As reported, it appears that all involved cited the same Board resolution as authority for their respective positions. According to reports, the Board resolution was intended to allocate authority, and the Board by adopting an amended resolution could clarify that allocation.

Since a part of the controversy involved attribution of potential abuse by one or another holder of that authority, the Town Board could allocate the roles more definitively, and also could put to

rest concerns about abuse by adding an audit process. A new resolution could provide a protocol for a periodic joint or neutral review or audit of the use of the system to ensure everyone that it is not abused.

For example, it could provide for an audit, at reasonable intervals, of the postings on the website, the use of the Town's email system for Town business only, and to ensure that there are not any abuses such as reading or getting copies of others' emails, use of the system for personal business, etc. While the Board might consult IT experts as to the best way to accomplish this, such an audit might be simple, such as appointing a Board committee with two members, one from each party or faction, or an identified in-house or outside neutral.

**5. Clerk Workload/Salary:** Reportedly a large part of recent controversies related to the workload of the Clerk and the compensation. Motives were attributed and dispersions cast back and forth. Reportedly, several obtained data from other Towns about the pay and workloads, but with differing conclusions. Whether work was being completed due to overload was in dispute. A proposal reportedly was discussed to change the status of this Town's Clerk from an elected official to an appointed employee as, reportedly, some other Towns have done. However, this proposal was itself a subject of much controversy with attributions about its motives rather than examination of its merits, which might be anticipated when there is an elected incumbent holding the position. Perhaps this could be considered dispassionately.

If the proposal has merit – discussed below – it could be agreed that it would be enacted now, but implemented only the next time there is NO incumbent, either because the officeholder has resigned or at is not seeking re-election. Perhaps this would reduce the attribution of motives on all sides.

As to merit, the Board could appoint a small bi-factional committee to gather information from towns who have employed Clerks to inform the Board. Because this is a ministerial position with only specific clerical duties, it is not unlike a civil service position whose employees may be hired and then evaluated based entirely on their qualifications. As a consensus of reports indicated, a Clerk is not a legislative, policy-making position; a Clerk is to serve all residents and the Board, not be partisan or political. As such, the position does not have the political, policy nature that benefits from having it be subject to election.

If the Clerk were an employee, the compensation would be based on the workload as reporters suggested should be the case, whether hourly or salaried and in accord with the law, rather than a round figure set by the Board for a political office holder. That should reduce controversy over the rate of pay.

Similarly, performance would be evaluated objectively based on the timely and quality of completion of the clerical tasks, and subject to the standard procedures for correction or advancement as the case might be. Further, the Clerk then would be insulated from personal and political interests because such an employee would not need support for re-election and would be protected by disciplinary due process procedures. That should resolve controversy about accountability and about political or personal motives of all involved.

The Board might consider acting on this -- for implementation if at all when there is no incumbent—NOW while it is not the subject of a current controversy. Of course, it might seem unneeded now because the controversy has decreased and so can be put off, but when there is a controversy, such change is very difficult.