

Response to Petition Items:

Following the Selectmen's meeting on July 11th, and the petition that was presented, as well as other accusations that were made, the Board determined that a response to the accusations was warranted in order to disseminate facts and retain a transparent government. The following is the Board's official response to the issues that were raised at that meeting, and through rumors on the web.

From the Newspaper Article regarding the Petition for the dismissal of the Town administrator:

Accusation 1: The town administrator is not fulfilling expected work, such as writing grants, despite having been freed of some of the more time consuming duties covered by the former full time town administrator.

Response: *The Town Administrator (T.A.) is covering all of the duties of the prior Town Administrator and more. Currently, and in addition to those prior duties, he has taken responsibility of the Admin./Bookkeeper duties including processing all accounts payable, deposits, incoming applications, resident walk-ins and phone calls, timber and gravel intents, current use and abatement requests and the meeting minutes of the Selectmen. He is also writing the Town's amendment to the Master Plan. As to grants, to date he has written, or co-written grants for:*

- 1. \$30,000 for Inflow and Infiltration Grant – USDA Water and Wastewater Disposal*
- 2. \$10,000 for Economic Development Feasibility Study - Economic Development Administration*
- 3. \$200,000 for Firefighting gear and equipment - Assistance to Firefighters Grant*
- 4. \$60,000 for Economic Development Action Plan – USDA Economic Development*
- 5. \$75,000 for Water/Wastewater Mapping and Asset Management Plan – NHDES Clean Water State Revolving Fund*
- 6. \$750,000 for Water Well Improvements for Well #1 – NHDES Drinking Water State Revolving Fund*

Total grants applied for to date: \$1,125,000

Additional grants will be applied for following the Master Plan Process when projects and goals are identified.

Accusation 2: An expected part time administrative position has increased to full time at a highly inflated salary.

Response: *The contract signed in July of 2015 included provisions for an initial weekly work schedule of 40 hours per week to allow a new T.A. to assess the workload and catch up on items that were previously neglected and clear the back log of projects and tasks that needed to be addressed immediately. The text from the contract regarding this is below:*

"Section 3. Salary

- A. Effective August 3, 2015, the Town agrees to pay the Employee for his services on an hourly basis at a rate of \$40.00 per hour. The position shall begin at forty (40) hours per week for a period of six (6) months. Thereafter the Employee and the Town shall review the needs of the Town and the current and anticipated workload of the position and may reduce the average weekly work**

schedule up to no less than twenty-four (24) hours per week for the remainder of this contract period. If the needs of the Town require an increase in such workload following said six (6) month period during the time of this Agreement, the Board of Selectmen may require such increased work hours for a period of no more than six (6) additional months with, or without, the consent of the Employee. If after such time period the workload of the position shall continue to require the full forty (40) hours per week, or more, the Town and the Employee may renegotiate the terms of this Agreement, subject to the needs of the Town. In all cases, the needs of the Town shall hold precedence. During the course of this contract, forty (40) hours per week is the maximum number of hours the employee may work unless advanced written permission is granted by the Board of Selectmen to allow overtime.”

This 40-hour work week was extended, per the terms of the contract, for a further 6 months to allow the T.A. to work on the Master Plan, (saving the Town of \$50,000-\$60,000 by completing the work in-house). It should be noted that the T.A. contract explicitly states that this period shall be for no more than one year as the needs of the Town dictate per the determination of the Selectmen, not the Town Administrator. The salary has not changed since the contract was signed and has remained at \$40 per hour from the contract initiation, with no annual increase. The T.A. did not receive the 3% Cost of Living Adjustment that other staff did for 2016.

Accusation 3: The town administrator is often not available to the public or to town employees during working hours. His door is kept closed and he does not return calls.

Response: *The majority of the time the T.A.'s door is open when he is in the office. The reasons for his absence include conducting town business, and/or leaving early or arriving late the day after an evening meeting to remain under the contract's strictly regulated 40 hours per week. The T.A.'s office hours are posted on the Town web site: Monday - Friday, 9:00 am to 4:30 pm. Beginning August 1st, they will be adjusted to: Mondays, Wednesdays and Thursdays – 9:00 am – 4:00 pm and Tuesdays – 1:00 pm – 4:00 pm. When he is in the office, reasons for his door being closed include private/confidential meetings with someone, or a confidential phone call with the Town Attorney, etc. The T.A. returns all calls placed to him and he can be reached directly at 838-6376, ext. 12.*

Accusation 4: There have been numerous complaints by employees of the town administrator using aggressive communication and creating a hostile work environment.

Response: *To date, there have been no official complaints lodged with the Board of Selectmen, or any other agency, about aggressive communication or creating a hostile work environment. On the contrary, the T.A. has gone out of his way to seek input from the staff, including: weekly department head meetings, monthly newsletters, e-mail communication and the regularly Monday morning dropping off of hours. Staff should feel comfortable approaching him any time.*

Accusation 5: Many residents are concerned that this administrator has committed the town to long term planning without the knowledge of the Selectboard and/or voters; this includes plans to outsource the town's transfer station, police, and EMS departments. These plans go against the majority of property owner and voter wishes and voter input on the matter has not been sought.

Response: *Only the Board of Selectmen can obligate the Town to do ANYTHING. Legally, the T.A. can make purchases under \$5,000 – which can only occur with the Board's approval after the fact and the Town meeting approval of the budget prior. There have been no official plans to outsource any*

departmental function, though we think it prudent to keep an open mind and explore all options. The Transfer Station proposal was one that was made by the Town Manager in Littleton to Lisbon – it was not solicited and it was simply referred to the Selectmen for their review and decision. There are no plans to outsource the PD, Fire, Life Squad or any other service or department at present. Any such decision would be up to the Board of Selectmen, not the T.A.

Accusation 6: There are questions about the legality of the town administrator representing himself as a substitute for one missing Selectboard member to create a two person vote. Presently there is only one sitting Selectman in the town of Lisbon due to the temporary absence of one selectman and one vacant seat on the Selectboard. There has been no attempt to fill that seat.

Response: *The T.A. has not, nor could he, act as a “third Selectman”. Legally, the Board of Selectmen are elected, or in the case of a vacancy while in office, appointed by the other Selectmen. The T.A. cannot and has not voted on anything. Nothing the T.A. has done has been an act that could only be required of a Selectman. There were no meetings or decisions made while Tom Demers was on deployment this past month with the Air Force. The Board has made efforts to fill the seat of the third Selectman including posting the position and word of mouth. However, the Board is not required to fill this seat and until the meeting on the 11th, there was limited interest from the public in applying for this seat.*

Accusation 7: Residents have also voiced concerns over the fact that Mr. Merhalski has written his own contract and later amended that contract to mold his position to favor himself over the clear intentions of the people of Lisbon in regards to his position.

Response: *The Board wrote the contract that was presented to Dan Merhalski upon his acceptance of the T.A. position, before he was hired. This original contract has not been amended. The T.A. has not amended this contract, nor the job description, without the Board’s approval. The Board approved the job description for this position, and they review it each year as a new Selectboard is elected. In accordance with the purview of the Board – a Town Administrator is not a statutorily-governed position like a Town Clerk or a Police Chief, its duties are solely up to the Selectmen to assign.*

Accusation 8: Employees feel hampered by the town administrator’s creation of policies that actively suppress open communication among town employees and deny them their right to communicate directly with the Selectboard.

Response: *The T.A. Job Description requires him/her to “establish and maintain[ing] a system of policies and standard operating procedures for all functions within the town office” – pg. 2 of Job Description. The T.A. is following the requirements of the position and standard procedures in Town Government when he drafts a policy. The Board of Selectmen can choose to approve, amend, or deny any policy that the T.A. drafts on their behalf.*

The accusation of denying employees access to the Board of Selectmen is untrue. The staff are permitted to speak with the Board of Selectmen about all matters except disciplinary action. The only time that staff are not able to go to the Selectboard is when a disciplinary procedure has begun, not including termination. In such cases, the Selectmen have adopted a policy that is in agreement with standard personnel law practices, which mandates employees appeal to their supervisor, then the T.A. If further appeals are necessary, these can be brought before the Superior Court. The reason for

removing the Selectmen from the disciplinary process, where termination is not sought, is to ensure that discipline does not become a political issue. Any disciplinary act rising to the level of termination must go to the Select Board for action as only the Board of Selectmen can hire or fire staff. The rule of law cannot be a popularity contest. Disciplinary procedures are legal procedures and the Town follows the rule of law in those instances.

Accusation 9: There have been questions raised as to the handling of town funds as well. The town budget committee has had difficulty obtaining records from this administrator and it seems there is little information currently available as to the state of Lisbon town finances.

Response: *This accusation was proved untrue at the meeting as the majority of issues had to do with correspondence and access with the Budget Committee and the former Administrative Assistant/Bookkeeper, not the T.A. The T.A. has been open to the Selectmen and the Budget Committee having complete access to all Town financial records. He has even gone so far as to allow the budget committee chair, who also wrote the BMSI software that the Town uses, to give him instruction on procedures to retrieve reports from the system that he then e-mailed to the chair for committee use. There is as much information now as there always has been in regard to the current state of Lisbon town finances. It should be noted that these issues were in existence long before the T.A. position was filled.*

Misc. Additional Rumors or Issues:

- 1.) The T.A. makes over \$100,000 a year.
The T.A.'s salary is \$40 per hour, for a total this year, with 40 hours a week until August and 32 hours a week afterward, of \$76,160. (See "List of Town Employee Payroll" for more details.) When health insurance and FICA are added, the T.A.'s cost to the Town for FY 2016 will be \$102,329. The T.A. is not the most expensive position in the Town. The Police Chief's cost to the Town, not including Overtime, Details, or Court time is a minimum of \$105,494.
- 2.) The T.A. fired Welch's and hired an outside contractor.
The T.A. can't hire or fire anyone. Only the Selectmen can hire or fire. The contract with Welch's was terminated by the Board for failure to carry out the duties required in it. The Board voted to terminate Welch's contract, then the Board voted to hire Utility Partners for a slightly less expensive cost than Welch's and a more modern service to help the town keep track of necessary maintenance and records.
- 3.) Utility Partners was hired without going out for bids.
Yes, they were hired without going out for bids. The Town Purchasing Policy that requires bids is set by the Board and the Board can waive the requirements of the policy if they so choose. There is nothing in the statutes that requires the board to go out for bids. The reasons for this decision were discussed at the meeting on July 11th, but include security of the Town's water and wastewater systems and continuity of their operation through a potentially hostile transition.
- 4.) Why was Utility Partners hired so quickly and in closed session?
Utility Partners was not hired in Executive Session. They were hired at the June 6th meeting in open session at the same time Welch's contract was voted to be terminated. The reason for

the swiftness of the action was the need to have someone able to take over operations at the water and wastewater plants immediately. Though it was not publicized, once declared to be breached, there was no guaranty or requirement on either party to carry out the duties of the contract. As this was the Town's water supply, the Board acted to ensure its safety and continued supply, in accordance with legal counsel's advice.

5.) Why can't I get a copy of the Town Administrator's Personnel File?

Personnel Files are confidential folders. While some information within them is public and open to a Right to Know request, such as job descriptions and employment contracts, some information within them is not. The main items that are not permitted to be public are medical and financial information. For example, a drug test or insurance application is not a public record. According to HIPAA, the Town cannot release this information. Other information, such as employment contracts, letters of employment, and job descriptions are public and you are welcomed to have copies of them upon request.

6.) Why can't the Board of Selectmen have access to Personnel Records?

The Board of Selectmen assigned the duties of Human Resources/Personnel Administrator to the T.A. Once that occurred, the rights of confidentiality passed from the Board as the body that had previously acted in that capacity, to the T.A. position. Under HIPAA and personnel laws in the state of New Hampshire, no one may have complete access to an employee's personnel file except the employee themselves, and the HR/Personnel Administrator. If the Board of Selectmen were to reassign this duty from the T.A. to another position, or back to themselves, the T.A. would not have access to this information either. Personnel Law is a complex topic that incorporates both written laws, case law (court decisions) and standard practices based on the input and advice of legal counsel. The right to privacy of employees for items like their health conditions, social security numbers and personal contact information are required to be kept confidential by the Town. Failure to do this could result in costly damages being awarded in a law suit against the Town.

7.) Did the Town Administrator write a \$5,000 cashier's check without authorization, as stated by Mr. Tavernier?

The Board inquired about this and it was confirmed by Arlene Hite, Town Treasurer, that no cashier's checks, bank checks, etc. were issued by the Town going back to the date of Mr. Merhalski's hire. This is statement is simply untrue.

8.) How Much does the Town Administrator get paid?

The T.A. is paid \$40 per hour, with a contract for three years beginning in August of 2015. For the first year of that contract, the Board has set the weekly hours of that contract to be 40 hours per week. If this was a set yearly salary, the T.A. would gross \$83,200/yr. The T.A.'s hours will be reduced on August 1st of 2016 to 32 per week. This would be an equivalent of \$66,560/yr. On August 1st, of 2017, the position will drop to its intended 24 hours per week, which would be the equivalent of \$49,920/yr. This amount does not include the costs to the Town of health insurance or FICA. The T.A. does not have an expense account and does not get reimbursed for expenses, mileage, etc. The T.A. is prohibited from working more than 40 hours per week. He does not get overtime. Any hours spent working beyond those permitted are unpaid. The T.A. does not receive Aflac, and does not take a 457 retirement plan. There is

no other compensation afforded to the T.A. See "Town of Lisbon Employee Payroll" for more information.

9.) Why is Health Insurance so high for the Town?

The costs of health insurance plans for the Town are set by HealthTrust, the Town's health insurance provider. These costs change from year to year based on the insurer's models, usually they go up. For the 2016 FY the Town's costs of health insurance for a family plan is \$20,187/yr. For a two-person family, the cost is \$14,999/yr. For an individual, the cost is \$7,692/yr.

10.) The Town Administrator tried to fire the Transfer Station Superintendent and asked him to keep it from the Selectmen.

This did not occur. Fred Garafalo was not fired, not threatened with being fired and he was not told to keep this from the Select Board. Please see the corrected response from Fred Garafalo, the Transfer Station Superintendent below:

"As requested by the Select Board and communicated to me by Dan Merhalski I am writing under duress a clarification of what I said at the July 12, 2016 Select Board meeting regarding the Transfer Station. I am writing under duress because I feel this issue is resolved and needs no further discussion. ---- Dan Merhalski told me at a previous meeting with him that Littleton has given a proposal to Lisbon to have Lisbon residents bring their trash and recyclables to Littleton and that the select board didn't know the proposal was coming but he would present the information to the select board at the next meeting. He also told me should the Littleton Proposal be accepted the Lisbon Transfer Station would close on December 31, 2016 and he would give me a good reference. Dan Merhalski did not threaten to fire me nor did he tell me to keep our conversation from the select men. I was waiting to respond to Dan Merhalski at the select board meeting on July 12, 2016 when Joe Tavernier was questioning me about this and the meeting went off in to other subjects with him and Peter Nightingale. My response to what I had previously said which is something like "I was going to be fired and I wasn't to tell the select board about the Littleton proposal" was going to be "what I heard as an employee listening to him as my supervisor is I will get a good reference and the transfer station is closing". Working as a Paper Mill Engineer in the past when I was told there were proposals to sell or close a paper mill the words "--would give me a good reference" were always used by Mill Managers and then the following words were always said to me off the record; "You had better start looking for a new position elsewhere." This is why I felt my job was in jeopardy and I had better start looking for another. I sincerely hope this is the end of this particular instance and we can move forward working together for the betterment of Lisbon and its residents.

Sincerely and Respectfully

Fred Garafalo

Transfer Station Supervisor"