

Hudson, NH Board of Selectmen

Minutes of the May 18, 2004 Workshop w/the Cable Committee

1. **Call to Order** by Chairman William P. Cole at 7:00 p.m. in the BOS Meeting Room at Town Hall.

Selectmen: William P. Cole, Teresa Stewart, Kenneth J. Massey and Richard J. Maddox. Kathleen MacLean was absent.

Staff/Others: Steve Malizia, Town Administrator; Priscilla Boisvert, Executive Assistant; Cable Committee--Coleman Kelly, Harry Schibanoff, Denise Babcock and Steve Boucher (John Beike & Michael O'Keefe were absent); Bob Barry, Assistant Superintendent of School Resources; Howard Dilworth, Jr; Scott Brooks, Union Leader; Anne Lundregan, TEL

2. **The Pledge of Allegiance** was led by Chairman Cole.

3. **Discussion of Cable TV Policy and Procedures**

Chairman Cole said this was a carry-over from the Selectmen's meeting of April 27, at which time they received the document *Access Policies & Procedures*. The reason that the Board had asked Coleman to prepare the document was to start the process of formalizing the procedures by which the public access TV capability in Hudson would be managed, executed, etc. There is a serious lack in policies and procedures to properly manage the capability in the best interest of the Town. He feels that the Board of Selectmen, for the past six, seven years has been remiss with regards to this responsibility. The hope is to end up with a formalized approach to access TV in Hudson, one that benefits the community across the entire spectrum, is sensitive to the needs of the community and is fair and equitable—as much as government can be--across the board.

He wanted to identify where they are today in order to help them determine where they want to go in the future. In looking at the document Coleman provided of the United States Code, §522 (9), "the term franchising authority means any governmental entity empowered by Federal, state or local law to grant a franchise." Chairman Cole asked Coleman if, in fact, the Board of Selectmen, representing the people of Hudson, is the franchising authority. Coleman said that was correct. Chairman Cole referred to USC 531, §611 (a), that says the franchising authority (Board of Selectmen) may establish requirements with respect to the designation or use of channel capacity for public, educational and governmental use only to the extent provided in this section. Coleman said the establish of requirements was applicable in the context of dealing with its cable operator—from the franchising authority to the cable operator for the purpose of writing a franchise agreement. In essence, the franchising authority says these are what our wants, needs, desires, etc. are as we have determined in ascertainment for the needs and benefit of the community. Chairman Cole said the designation would appear to be the relationship between a franchise authority and the franchiser. The use would be between the franchise authority and the three channels and the way they are actually utilized. Coleman said part of that is the justification for the requirement of those channels to exist for those purposes. Selectman Massey referred to §611 (b), which says the franchising authority may require rules and procedures *for the use* of the channel capacity, i.e., the Board of Selectmen may require rules and procedures for cable operations. Coleman said it meant 'cable operator' because the physical plant itself, made up of multiple channels, is owned by the cable operator, who could leave town if he so chose, and there would be no authority to stop him.

Chairman Cole said HCTV is being scrolled on TV but, in actuality, there is no such thing that comprises HCTV; it doesn't exist. To go forward with policies and procedures now is putting the cart before the horse. The first thing that needs to be addressed--and should be been years ago--is the establishment of an entity called HCTV to manage the access TV capability—PEG--in Town. The makeup of HCTV could be a non-profit organization, it could be a new committee that the franchising authority creates, it could be the Board of Selectmen, acting as a committee of the whole, with an Ad Hoc committee called HCTV, or it could be the Board of Selectmen, but the first thing they must do is to establish an HCTV, to create an entity with real people, a governing board or board of directors, whatever, to manage this capability.

Selectman Maddox said his thoughts ran along those same lines. He thought the Cable Committee was the overseer of HCTV. Chairman Cole wondered if there was a need for both the Cable Committee and HCTV, or if there should be only one group. Coleman said with the establishment of an HCTV for managing the assets of access television, the Cable Committee could be disestablished and the membership of that committee folded into HCTV. Selectman Maddox asked if the Cable Committee was also tasked with the renewal process and a number of other things. Coleman said yes, it had an episodic purpose and the HCTV personnel could be asked to function in that capacity because the Cable Committee was just acting as the Board of Selectmen, who are the franchising authority, representative in that process. From the time they started in the fall of 1994 with the renewal process, he was the only representative from Hudson. Former Selectman Dilworth was involved in one or two renewal meetings in Milford. After that, no Selectmen were involved in the process, nor was the Town Administrator. He didn't see a need for two committees to be in existence. They already have enough problems with similar-sounding and functioning committees being able to bring a single voice to the Board for decision-making.

Selectman Maddox said, regardless of what name the body calls itself, they need to have a clear set of rules because §559 says there is a \$10,000 fine or two years in jail for whoever transmits over a cable system any matter which is obscene or unprotected by the US Constitution. If the franchising authority is the one who transmits, they should make sure they are covered by a policy that protects them. Selectman Massey agreed it was premature to talk about policies and procedures until it is determined who is responsible for what. He thanked the Cable Committee for the magnificent job they have done with the tools they were given, but some things need to be better structured in order to prevent problems in the future. He thought there was a difference between a HCTV and a Cable Committee. The franchising authority, has statutory capabilities that, when the cable operator indicates they are going to raise the rates, there is a 30-day window in which the franchising authority can bring the cable operator before them to provide justification for the increase. Merrimack just went through that and was able to make some changes. The Board of Selectmen brought Adelpia in. That isn't necessarily the role for an entity that is running a cable television. He envisions it to be a body who advises the Selectmen on rates for new or existing services and who would make recommendations to the Board of Selectmen when negotiating a new cable contract. They are They are two separate bodies with different functions. One is advisory and the other would manage and operate HCTV. Coleman said the franchising authority has the right to comment only on the basic tier, which the Selectmen were aware of.

Selectman Massey thought the next step would be for the Board to meet with an attorney who is familiar with cable TV and access policies to help craft an appropriate organizational structure and, from that, would flow the policies and procedures. He envisioned an entity called HCTV, a non-profit organization with a Board of Directors, but he didn't know what their responsibilities would be. He didn't think the Board of Selectmen should be the cable TV czars. Chairman Cole asked Coleman if there was some reason HCTV had to be non-profit. Coleman said there was no requirement, other than practice and precedent around the country to operate the access and to manage the assets of the Town. Selectman Massey asked if that was how Bedford was organized. Coleman did not know about Bedford specifically, but the majority of the 200 organizations that he reviewed throughout the country have been non-profit, which leads him to believe that it was done to provide a separation from the franchising authority for that operation so that there could be no criticism of undue control and influence over what the programming was on those cable assets. In Londonderry, cable access is a function of the Town. His counterpart Dottie Grover, is a town employee. Chairman Cole realized that it was situational with every town. Coleman said a memorandum of understanding should be drafted between the franchising authority and HCTV as to its role, mission, function, responsibilities, etc. Chairman Cole said if something goes wrong, the Board of Selectmen are the deep pockets representing the people. There must be some controls for not only access television, but for the community as a whole.

Chairman Cole thought they should contact Attorney Epstein to set up an attorney-client session on Tuesday, June 1 at 7:30. Following a discussion on times and dates, it was decided to schedule the attorney-client session for June 1, if Atty. Epstein was available, with a fallback date of June 15. Chairman Cole told Coleman to get with the Town Administrator either tonight or tomorrow to structure what it is the Board wants to ask Atty. Epstein to do that night.

(Start Tape 1, Second Side)

Coleman said he will check to see if Merrimack's policy and procedures, which was given to him in confidence during its draft stage, is non-profit. Chairman Cole said once HCTV is established, one of its first missions is to put together a policy and procedures for the franchise authority to approve and implement. Coleman said they also need to do a Memorandum of Agreement. Chairman Cole said only one body had to agree to it; the other, just sign it. Selectman Massey said the entity might get established in such a way that they may not be subject to the Board of Selectmen's approval.

Selectman Maddox hoped that research would be done between now and then to find out what other NH communities have already done so Hudson does not have to re-invent the wheel. He wasn't going to vote for something over which he has no control that might put him in jail. Chairman Cole said they will not approve anything that leaves the Town vulnerable. Coleman said the sole purpose for the liability in an indemnification form, which any producer (not discernable) has to sign, will go a long way in mitigating the concern that the Board has for the potential for a lawsuit. If someone was to sign something and present it, if he (Coleman) was in charge of accepting that for cable casting, he would not put it on before demanding adequate proof of who that person was. Selectman Maddox said the draft policy just says a form has to be signed, but nothing about providing identification. Coleman said he would correct that.

Selectman Maddox thought the representative from the School Board should be recognized and hoped the School was aware that there is an educational channel that they could utilize. Coleman said he has been working with them for four years. Chairman Cole recognized Bob Barry, inviting him to attend the attorney-client session, once it is scheduled. Selectman Stewart said the High School kids have been doing a lot of videotaping. A teacher should review the material and, if appropriate, get it to Coleman to air it. It might be a football game, the prom or the musical Cabaret--which was an awesome production. She'd like to see more of that, and she's sure the kids and their parents would like to see what they are doing, too.

Selectman Massey asked if the person who wishes to put something on Hudson's channels has to be a Town resident. Coleman said

practice says yes. Eventually, whatever would be permitted is going to be constrained to within the borders of the Town of Hudson. At present, the system is being delivered to Litchfield, Amherst, etc. Selectman Massey said he was asking if the sponsor of a program on the local access stations has to be a resident of the Town. Chairman Cole thought the question was if the producer, the person that signs off on the document, has to be a Hudson resident. Coleman said if not a resident, that they have some direct tie to Hudson, such as a teacher that may live in Derry, but teaches at Alvirne, or a member of the Chamber of Commerce. Selectman Massey said before they go down that path, they have to work out the legalities and determine the enabling legislature from the SEC. Selectman Maddox said that if anyone can put something on, then the Selectmen can't limit it to Hudson residents. Selectman Massey said the educational bodies would have total control over the content. Coleman said they would have control over the programming, but control over the content is another aspect. Selectman Massey asked if a non-governmental entity would be able to broadcast on a government channel, without the governmental entity's approval. Coleman said probably not. Selectman Massey said, with reference to the school channel, the School side would have to give approval before anything could be broadcast. However, in the case of the public channel, everyone was fair game under Freedom of Speech. Coleman said that was correct.

Chairman Cole asked for a clarification of 'fair game.' Selectman Massey said anybody who meets the basic criteria for being able to put something on. Coleman said that was correct. Chairman Cole said the franchise authority is going to delegate authority to HCTV to do certain things—set parameters, goals and mission statements. He didn't envision the public side of the house just swinging free, and he didn't think the US Code envisioned that. One of the documents said this would all be done within the *spirit* of the First Amendment. Some things that are covered in some venues would be considered obscene in this venue. Coleman said the federal law is broadly written to encompass large populations of differing demographics--New York City has significantly different demographics than Hudson, NH. Selectman Stewart said the Town might end up with a Wayne's World on the public channel. Coleman said if the kids were Alvirne students, and the content adhered to basic decency standards, he could see no reason why it couldn't be on. Public demand would either keep it on, or the reverse. Selectman Stewart recalled that the Selectmen in Rochester had a morning coffeehouse talk show. School Superintendent Bob Barry said the problem with that show was they started using it to make political statements. Coleman said several State Legislators are producers in their towns.

Mr. Malizia asked if Bedford had the most sophisticated cablecasting operation, which could be used as a role model. Coleman said Londonderry has been in the access business since 1984 and has close to 200 independent, experienced producers. The high school has a progressive program, which is what he has been working on with Mary Ellen Ormond, the Assistant Superintendent for Curriculum in Hudson, but the problem is space. Mr. Malizia asked if Atty. Epstein worked with Londonderry. Coleman said yes, he did. Selectman Maddox asked if Coleman could get a copy of Londonderry's policy and the program lineup. Coleman said he has a tape of the 4,000 sq. ft. facility they built two years ago that is located near the high school. He didn't have a copy of their manual because that web page wasn't available, but he would get copies from Dottie Grover before the next meeting. Selectman Maddox said before they start from zero, they should be looking at what others towns have done.

Chairman Cole said Coleman was to meet with the Town Administrator to contact Atty. Epstein to go over the discussion points.

4. Any Other Business

A. Recreation Center

Town Administrator Steve Malizia said the plumbing at the Rec Center was pretty faulty, hence the flooding problem. Insurance money will pay for the repairs, but for the deficiencies to be corrected, including an installation of a heavy-duty fiberglass wall, there wasn't sufficient funds in the budget to cover the \$4,000 request.

Motion by Selectman Stewart, seconded by Selectman Maddox, to approve the over-expenditure of \$4,138.20 from 5940-298 Contingency, as outlined in the Town Administrator's memo of May 18, 2004, carried 4-0.

B. Town Auction

Town Administrator Steve Malizia said that the annual Town auction has been conducted in October in the past, but since a lot of the items are bicycles, a June auction would probably bring out more interested parties.

(Start Tape 2, Side A)

Motion by Selectman Stewart, seconded by Selectman Rick Maddox, to hold the Town surplus property auction on Sat. June 19, 2004 at the Highway Garage, starting at 9:00 am, and to approve the list of surplus property attached to Town Administrator Steve Malizia's memo dated May 13, 2004, Annual Town Auction, carried 4-0.

C. Merrill Park

Selectman Maddox didn't know Merrill Park even existed until his and Selectman MacLean's tour of the Town's recreation areas. He asked why this park was not cleared of trash, maintained and used. The park, located behind the American Legion, right on the river, is a good place to locate the emergency boat ramp because there already is part of one there. Selectman Massey thought the lack of parking contributed to the fact that people don't frequent that area. Selectman Stewart said at one time there was talk about starting or ending the River Walk there. She's heard that the DPW dumps snow there sometimes during plowing operations. If people don't see it, they don't use it, and the neighbors in the area don't keep it up themselves, even though it is in their own back yard. This might be a good Eagle Scout project. Selectman Massey said there is a capital reserve fund for a boat ramp there. Selectman Maddox asked for authorization to talk with Kevin Burns to see what could be done within the next three months, to ask the Chief of Police to have that area patrolled, and put up some signs to let people know the park is there. Selectman Stewart thought the bike patrol could access that area, too. Chairman Cole said if the Town owns the park, it should be maintained and used and thought Selectman Maddox might want to talk with Tom Sommers, also, who put together a task force for an emergency boat ramp, because this site was a consideration. Selectman Maddox said Hudson has something most towns would kill for—a park on the Merrimack River. In looking at the Parks and Recreation Master Plan from the 80's, there was actually quite a plan for that space. A good amount of area is not being utilized. He will come back to the Board with his findings.

5. Adjournment

Motion to adjourn by Selectman Maddox, seconded by Selectman Stewart, at 8:07 p.m. carried unanimously.

Recorded and Transcribed by Priscilla Boisvert

Executive Assistant

HUDSON, NH BOARD OF SELECTMEN

William P. Cole, Chairman

Teresa Stewart, Vice-Chairman

Kathleen R. MacLean, Selectman

Richard J. Maddox, Selectman

Kenneth J. Massey, Selectman