

August 24, 2015

To the Norwich Selectboard:

Chris Katucki and I have spent some time these past couple weeks trying to get our arms around our current Town Manager's employment status. The issue is more complicated than we had understood, but we hope this memo can help clarify matters.

We have used as our starting point, the proposed contract submitted by Neil Fulton dated 7/8/15. While our analysis departs from his on several points, we recognize we may have missed some of the documents which would support his position and look forward to having an opportunity to see those gaps filled.

Current Contract Terms:

First of all, contrary to Valley News coverage, prior discussions of this matter at the Selectboard, on the listserv -- including my own posts -- it appears there is indeed what amounts to a written contract between the Town and Neil Fulton.

The contract is comprised of at least three specific documents which we've posted to the web for everyone's convenience:

1) Item 5 of the 9/19/11 Selectboard Minutes:

<http://dailyuv.net/navelobserver/2011/09/19/nrfinterimtm/>

2) Item 8 of the 4/11/12 Selectboard Minutes:

<http://dailyuv.net/navelobserver/2012/04/11/fultonappointment/>

3) Pete Webster's 9/18/08 Contract:

<http://dailyuv.net/navelobserver/2008/09/18/webster-town-manager-employment-agreement-18-september-2008/>

On September 19, 2011, the SB appointed Neil as interim TM with:

1) **"the same compensation and benefits as provided to the previous town manager"** — meaning SB appointed interim TM to be covered by same contract used for Pete Webster;

2) plus, **"5 weeks of vacation per year"**

3) plus, **"the same health insurance cost to be a cash benefit based on a two person plan and to provide a health savings account the same as other employees."**

From our reading, this means the SB effectively 1) amended Pete Webster's 9/18/08 contract to include 2) an extra week of vacation, and 3) a cash payment in lieu of health benefits.

Subsequently, on April 11, 2012, the SB removed Neil's interim status, appointing him Town Manager with the following additional changes to what had been approved on 9/19/11:

4) ***"to appoint Neil Fulton as Town Manager, effective immediately and at will,"*** (emphasis added)

5) plus, ***"the same compensation and benefits now provided as Interim Town Manager with a salary increase from \$77,250 to \$95,000 effective July 1, 2012"***

In sum, the SB offered, and Neil accepted, an amended version of Pete Webster's 2008 contract which included three specific bumps in compensation — more vacation, cash in lieu of health benefits, and a 23% raise in salary from Pete Webster's pay level. However, as quoted, the SB also effectively amended Webster's 2008 contract by specifying Neil's appointment "at will" rather than for a specific term.

These changes were properly noted in SB motions, duly voted upon, and recorded in SB minutes. They are legally binding on the Town and, at this point, on Neil as well so we believe they amount to a legal contract between the parties.

As stated, we haven't found any other relevant sections of SB minutes that would suggest additional terms agreed to by the SB since that time, but we may have overlooked something and certainly invite input to that end.

#### Possible Additional Contract Terms:

Neil Fulton's 7/8/15 proposed contract includes a number of additional changes from Pete Webster's contract which may, or may not, be supported by official acts of the SB.

Neil stated, at the last SB meeting, that his proposed contract reflected what he understands to be his current employment status with the Town. We were unable to find substantiation for some of the terms proposed in his draft, but want to caution that our review wasn't exhaustive and should be undertaken by town counsel before proceeding much further.

Obviously, any differences in opinion between the SB and TM on the specific terms of his employment need to be resolved to the mutual satisfaction of both parties.

We have highlighted significant differences between Pete Webster's contract and the contract language proposed by Neil Fulton in his July 8, 2015 draft for the SB here:

<http://dailyuv.net/navelobserver/wp-content/uploads/sites/21/2015/08/TM-Proposed-K-7-8-15.pdf>

Specifically, we note significant differences in sections 3, 6(a), 8, 10, 12(a), 16 and 19. We've summarized the documentary support for any changes we were able to track, but have included bullet pointed questions below for provisions which we were unable to substantiate.

Section 3 concerns "Performance and Salary"

The language Neil proposes here appears to reflect a decision to extend the BUC grade and step salary plan to the Town Manager position. We recall this debate, including annual merit increases, but didn't find the specific passage in our quick review of SB minutes.

- Did the Town also agree to make the annual step increase mandatory regardless of job evaluation as reflected in the final sentence of Section 3?

Section 6(a) concerns "Vacation"

The increase to five weeks from Webster's four weeks is documented in the 9/19/11 SB minutes.

- Did the Town also agree to pay any accrued vacation as a lump sum at the end of the Town Manager's employment?
- Doesn't this provision also allow Town Manager to receive accrued vacation as a cash payment even if it is Town Manager's choice to terminate the agreement?

Section 8 concerns "Automobile"

All but the final sentence tracks the language of Webster's 2008 contract.

- Did the Town also agree to annual adjustments of the \$3,600 vehicle allowance?

Section 10 concerns "Health and Other Insurance"

The cash payment in lieu of health benefits was agreed to in the 9/19/11 SB minutes. Reference to the BUC is beyond our review and presumably related to the grade and step decision noted in Section 3 above.

### Section 12 concerns "Removal"

Neil's draft rewrites 12(a) to include the language "*only for cause as provided for in 24 V.S.A. §1233.*" We believe this is an erroneous legal interpretation of the Town's legal authority to remove him and a vital point for clarification by Town counsel.

We also highlighted 12(b) which includes a "golden handshake" requiring a payment equivalent to six months' compensation in the event of removal pursuant to Section 12. This language is also present in Webster's contract and so, in our view, already approved by the SB at the 9/19/11 SB meeting. We highlight here simply to remind SB members of its presence.

### Section 16 concerns "Business Expense"

- Did the Town also agree to provide a smartphone on the terms included in the second half of this section?

### Section 19 concerns "Indemnification"

- Did the Town also agree to an expansion of liability coverage from indemnification against judgment to defense against claims as added here?
- Is this consistent with the Town's own liability coverage or could this be an added cost to taxpayers?

As may be gathered, there appear to be a number of potential discrepancies regarding the applicable terms of employment now in place, some quite significant. Based on our review, we feel even more convinced this is a matter the SB must take up with counsel before any further contract discussion occurs with Fulton.

### Executive Session:

We believe there are at least six specific questions SB should submit to counsel as part of that consultation and would welcome the opportunity to present those questions in Executive Session as we feel public disclosure would likely be prejudicial to the Town's interests in this matter.

Sincerely,

Watt Alexander and Chris Katucki