

“The Selectboard recognizes that there is public concern about the existing conflict of interest policy, and the Selectboard will be soliciting input from the public about how to improve this policy, as well as researching the idea of having an Ethics Committee.”

## **Charlotte Conflict of Interest (COI) Policy and Ethics Committee/Advisory Board**

### **Intro:**

Some direct quotes I have heard over the course of the last two weeks on this subject:

- “How two land owning select persons one with a sale of property pending, can say they have no conflict as defined by this [COI] document, is astounding to me and if let to rest is tantamount to acceptance [of the conflict].”
- “The policy is not adhered to.”
- “This [LUR debate] is a breach of integrity.”
- “If this [LUR debate] is not a conflict of interest, then what is?”
- “COI policy must be discussed in public, it’s against the principles of this whole exercise to continue to discuss this in private.”
- “Please don’t discuss this in Executive Session.”

Vermont has no state-wide ethics code for public servants. It is up to the town to decide what COI policy best suits it.

Selectboard members (and other board members) are drawn from town and serve in a “volunteer capacity.” We all have personal and economic interests in the decisions and policies of the town. As residents of Charlotte on the Selectboard, we retain our rights to interests of a personal or economic nature in the town. However, recent discussions point to a need to further clarify standards of ethical conduct for board members and a better way to distinguish between unavoidable/inconsequential conflicts with conflicts which are substantial and material.

The Town’s *“Policy Regarding Conflict of Interest”* does not define precisely what a COI may be. Rather, it states that town business should not be conducted in a way in which an officer, appointee or employee will gain personal or financial advantage because of his/her work for the town and that no town officer, appointee or employee shall “take part in any decision concerning the business of the town in which he or she has a direct or indirect financial interest greater than any other citizen or taxpayer.”

The town policy then lays out four mitigating steps, the forth being recusal on a matter “where a conflict exists or is likely to exist.”

I feel our policy is more aspirational. We basically say we want to do good, but not much beyond that.

***We as a board have established that, at a minimum, we commit to improving our COI policy. We also commit to researching the idea of an ethics board.***

As this 25-minute session is to start the conversation on this issue, I have outlined some key questions<sup>1</sup> to address:

### **1. *Is our COI policy meeting basic requirements?***

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<sup>1</sup> Note: all answers to these questions are personal opinions of Lewis Mudge.

**Unclear.** According to 24 V.S.A. § 1984, as of July 1, 2019, every municipality in Vermont is required to adopt a COI policy that must contain at least the following elements:

1. a definition of "conflict of interest";
2. a list of the elected and appointed officials covered by such prohibition;
3. a method to determine whether a conflict of interest exists;
4. actions that must be taken if a conflict of interest is determined to exist; and
5. a method of enforcement against individuals violating such prohibition.

I would argue that our current COI policy just meets point 1. It meets points 2 and point 3 could be covered by our mitigations steps. Point 4 could be addressed by our mitigation step around recusal. However, point 5 – enforcement – appears to be missing from our current policy.

**2. *Can the Selectboard change the current COI policy or establish ethical conduct policies?***

**Yes.** Under the Vermont Statutes guiding Municipal and County Government, “For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers...To establish a conflict-of-interest policy to apply to all elected and appointed officials of the town, city, or incorporated village or ethical conduct policies to apply to all elected and appointed officials and employees of the municipality, or both.” Source: [24 V.S.A. § 2291\(20\)](#).

As far as I can ascertain, there is nothing to preclude the board from improving upon its existing policy.

**3. *Does our current COI policy match best practices as laid out by the state or Vermont League of Cities and Towns (VLCT)?***

**No.** The current 2011 COI policy sent to new Selectboard members can be improved upon.

In November 2020, the Vermont State Ethics Commission submitted a [Draft Code of Ethics](#). This statewide document, aimed broadly at state public servants, serves as a template. For example, it offers a more detailed definition of a COI and elaborates the definition of immediate family. Moreover, it gives guidance on how to define the appearance of COI in, “whether particular circumstances create an appearance that...these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”

Guidance from the VLCT is also informative. In 2018, the VLCT issued a [guidance document](#) for COI and ethical conduct. Our current COI policy follows some, but not all, of the recommended steps in the case of an actual or perceived COI. These steps are:

1. The actual or perceived conflict shall be disclosed at an open meeting or hearing.
2. The public body shall discuss the situation at that meeting or hearing.
3. The individual with the actual or perceived conflict shall consider recusal.
4. The individual with the actual or perceived conflict shall decide whether to recuse him or herself and explain why.
5. The minutes of the meeting or the written decision from the hearing shall document the above process.

Our current COI policy does not stipulate that disclosures be held at an open meeting or that the minutes of that meeting be documented.

Furthermore, VLCT offers a 2018 [model policy](#) that is far more substantive and specific than our own policy. Not only does this 2018 policy provide an in-depth definition of COI, but it also provides enforcement procedures, including public admonishment and/or votes to request board members resign.

It is worth noting that guidance from the VLCT is wide-ranging: for example, its guidance document clearly states that “Each elected official within a municipality is independent from the other elected officials and answers only to the voters.” Whereas its model policy allows for clear disciplinary actions.

I would argue the guidance from the VLCT is so disparate and wide-ranging because it is guidance. We should consider adopting language from its more robust 2018 model policy.

#### **4. *Should we research an Ethics Committee?***

**Maybe.** I put to the Selectboard that we take up our current COI policy first with an aim to improve the document and ensure that it defines ethical conduct. Following that exercise, we can consider if there is the need for an Ethics Committee and what that committee may look like.

Also, we should recognize we have a limited pool of people who will step up and volunteer for boards/committees. However, perhaps some people are skeptical and reluctant to get involved because they feel discouraged by a lack of transparency. So perhaps more people would be inclined to participate if we had a robust COI and ethics policy.

#### **5. *Can we ensure transparency of these discussions?***

**Yes.** We can commit as a board to hold these discussions at open meeting. Considering some of our fellow residents feel our COI policy has not been adhered to in the past, I feel it is important to be as open as possible in this process and I strongly suggest we actively seek to avoid Executive Session.

#### **6. *Are we receiving training on this issue?***

**Unclear.** I have not been made aware of any past trainings on this issue, but I am new, so the current Selectboard may very well have received training on this. However, I would argue that it would be demonstrative to concerned residents if we committed to continued training on managing COI. The VLCT is offering a [training](#) on April 22 for example. We could consider this training, as a full board or as individuals, as a step in this regard.

**7. *How do our neighboring towns fare?***

**Seemingly better.** Shelburne for example, has a much stronger COI policy, with an ethics board component (see packet). We could seek to incorporate some of their language and policies as a starting point.