

Town of Lyndeborough NH  
2013 Town Meeting Minutes  
March 16, 2013

Meeting was called to order at 10:05am by Moderator Walter Holland on Saturday, March 16, 2013 at Citizens Hall in Lyndeborough, New Hampshire.

Lyndeborough Town Warrant

To the Inhabitants of the Town of Lyndeborough, in the County of Hillsborough in said state qualified to vote in Town affairs; You are hereby notified to meet at Center Hall, 1131 Center Road in said Lyndeborough on Tuesday, the twelfth (12<sup>th</sup>) day of March 2013 at ten of the clock in the forenoon until seven of the clock in the evening, for ballot Voting of Town Officers and all other matters requiring ballot vote; and, to meet at Citizens' Hall, 9 Citizens' Hall Road in said Lyndeborough, on Saturday, the sixteenth (16<sup>th</sup>) day of March 2013 at ten of the clock in the morning, to act upon **Articles 2 through 19:**

**Article 1: To choose all necessary Town officers for the year ensuing.**

\*-indicates elected (349 ballots cast – 1188 registered voters)

Results:

Selectman (3 years)	Donnie Sawin	95
	*Frederick G. Douglas Jr.	246
Treasurer (3 years)	*Ellen Martin	314
Trustee of Cemeteries (3 years)	*Robert H. Rogers	313
Library Trustee (3 years)	*Robert H. Rogers	274
	*Sally Curran	286
Trustee of Trust Funds (3 years)	*Richard Herfurth	300
Budget Committee (3 years)	*Walter Holland	324
	*Steven M. Brown	35 write-in
	*William Ball	27 write-in
Budget Committee (2 years)	*Burton Reynolds	304
Zoning Board of Adjustment (3 year)	*Richard Roy	314
Zoning Board of Adjustment (1 year)	Scott Roper	136
	*Walter Holt	186

All those elected will be sworn in as the last order of business today.

**Article 2: To see if the Town of Lyndeborough will vote to discontinue the Pistol Permit Revenues special revenue fund previously created by action of the town meeting March 13, 2005, all monies contained therein to be paid to the Town Treasurer and distributed only in accordance with the purpose described in NH RSA 159:6, (I)(b).**

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Kevin Boette. Selectman Byam explained that this is a housekeeping article so the Police Department can use the Pistol Permit money. Town Administrator Kate Thorndike stated that it was something that wasn't set up properly to begin with; we are trying to right it. It was set up as a special revenue fund which means that in order to get any of those monies out you have to come to a Town Meeting for approval. That is not the way Pistol Permit money is supposed to be handled, it is supposed to be held by the Treasurer and upon the Selectmen's authority and approval an Officer in Charge can request it to spend it on something and that is what we are trying to allow here.

Moderator: Any other questions? Ready for question? Read Article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article Passes**

**Article 3: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of one million six hundred forty thousand four hundred two dollars (\$1,640,402), representing the Operating Budget for fiscal year 2013 as prepared by the Budget Committee. Said sum is exclusive of all special or individual articles addressed; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Kevin Boette.

Budget Committee Member Burton Reynolds gave an overview of the budget. The Selectmen are responsible for managing the budget. Under the Municipal Budget Act you have the right to increase the budget that is presented by ten percent, the bottom line budget. You can decrease it by any amount you see fit. The operating budget increase is around seventy five thousand dollars; it consists primarily of things that are ongoing, routine, year after year. These are things like salary and benefits for the people that work for the town. Utilities, maintenance cost, repairs on equipment, fuel supplies, those typical things; those are in the operating budget. Larger or one-time expenses or capital items, CIP items, what we want to have for capital reserve funds for various pieces of equipment and so forth. Those are all warrant articles. Warrant articles consist of any individual items and the items to deal with capital improvement plan. The reason for having a capital improvement plan is to try and take those large capital expenses and come up with a game plan for paying for those that doesn't cause huge swings in the tax rate. The total tax rate, much of that is the school, we are twenty five to thirty percent typically here at the town, the school is more like sixty five to seventy and the county is typically around 5. At the moment, town spending is up by seventy five thousand in the operating budget and we have thirteen thousand more because of the capital items which brings us to a total of eighty eight thousand dollars. That is about fifty three cents on the tax rate. There are some issues on the revenue side which cause about twenty six cents worth of difficulties and that is something that we have to wait till the end of the year to see where we really are with revenues. The Selectmen will look at all that before they sit down with the DRA and set the tax rate. When you are looking at how much the tax rate could go up for the town side, I don't think it would be any worse than eighty cents. The school, based on what passed at the school meeting, that would cause about twelve to fourteen cents on the tax rate. The county typically doesn't change a lot, if you just put in five cents to account for that. When I added all that up I came up with ninety nine cents; probably will be less than that. I would say this is a conservative

scenario because we have done this based on a very conservative estimate of our revenues for the coming year. Budget Committee Chair Don Guertin explained some of the increases in the budget.

Jennifer Howe: I live on Brandy Brook Road. Our road was washed out I don't know how many years ago and it is in disarray and it is covered up with sand and gravel and every time we have a lot of heavy water that road is going to be impassable someday. We were supposed to get our road paved probably four or five years ago and they keep pushing it back and pushing it off. Who decides what roads are going to get paved and how that all works?

Road Agent Kent Perry: Unfortunately throughout the years we have put the paving off for so long that some of our roads are nineteen forties and that is probably one of them. What we are going to do is concentrate on the major thoroughfares first. For example, what we have run into is that we have to tear up and reconstruct a lot of our larger roads which we will do. But once this process is done, then overlay, which is a quarter of cost, we will finally see the plateau and I predict in about five or six years we will reach that stable point. Then we can concentrate on the small roads like Brandy Brook, Glass Factory, Fay, Grove, we might be able to pave, but we can't do anything with our smaller secondary roads. We may have to grind them up; we may come to that point where they are so bad that I just can't patch them anymore and we may have to grind them up and use them as dirt roads yet again. That is what we are up against and that is why you keep seeing a twenty five thousand dollar increase. There is a light way down at the end of the tunnel and that light is we are doing this correctly now. We are doing a base repair which requires a grind up which costs just the same amount as paving. But once we have accomplished this mission, from then on it will just be overlay, overlay, overlay and we will have the extra funds to concentrate on the third route. Who decides, I guess I do. My decision is school buses are first, high traffic count roads are second, and then thoroughfare roads are next, but dead end streets as in plowing, are dead last.

Budget Committee Member Burton Reynolds answered questions regarding the fund balance. Use of fund balance is a responsibility that falls to the Selectmen and it is not something that the citizens have any input into. Over the years all the boards have always taken a close look at the unreserved fund balance because there are fund balances for a number of things but they are set aside for specific purposes for future expenses. The unreserved fund balance is in the Town Report, probably in the auditor's report. Every year the Selectmen take a look at what is going to happen with the tax rate and whether or not they think there is enough money in the fund balance to be able to meet the requirements that the state has for the town to keep funds in there and if there is excess they look to use that to reduce the tax rate. That is one of the main purposes and uses of fund balance money.

Moderator: Any other questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it.

**Article passes**

Lee Mayhew asked when he could offer an amendment to the article. Moderator stated it was too late. The article had been moved and seconded when it was first read. He could ask for a motion for reconsideration at this time and get it seconded and then we can discuss the reconsideration.

Moderator: I have a motion for reconsideration (from Lee Mayhew) do I have a second. Sally Curran second. We will speak to the reconsideration.

Lee Mayhew: Mr. Moderator I would like to move that this article be amended to one thousand six hundred and thirty four dollars and five hundred and fifty two cents. That amendment actually reflects a reduction of five thousand and eight hundred and fifty dollars. That is the wages budgeted on page 26 for the part time prosecutor for the Town of Wilton. May I explain why I made the motion?

Dwight Sowerby: Point of order Mr. Moderator, I believe, shouldn't we vote on whether we are going to reconsider before we even talk about an amendment?

Moderator: We had a motion and a second; I thought that would be sufficient. We have a motion and a second to reconsideration, all in favor signify by saying Aye, those opposed signify by saying Nay, Nays have it. **Motion to reconsider does not pass.**

**Article 4: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twenty four thousand dollars (\$24,000) to be added to the Replacement of the 1994 Fire Department Pumper Capital Reserve Fund previously established; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it. **Article passes**

**Article 5: To see if the Town of Lyndeborough will vote to establish a Capital Reserve Fund under the provisions of RSA Ch. 35:1 to Repair and Replace the 2005 Fire Department Pumper and to raise and appropriate twenty four thousand dollars (\$24,000) to be placed in this fund; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required).***

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Donnie Sawin.

Moderator: Any questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it. **Article passes**

**Article 6: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of fourteen thousand dollars (\$14,000) to be added to the Replacement of the 1984 Fire Department Tanker Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it. **Article passes**

**Article 7: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of thirteen thousand five hundred dollars (\$13,500) to be added to the Replacement of the 2002 Fire Department Rescue Truck Capital Reserve Fund previously established; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Donnie Sawin.

Moderator: Any questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it. **Article passes**

**Article 8:** To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twenty five thousand dollars (\$25,000) to be added to the Replacement of the 2002 John Deere Grader Capital Reserve Fund previously established; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).*

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comments? Question regarding how long a grader lasts. Road Agent Kent Perry stated 20 years is pushing our luck. Moderator asked if there were any more questions, seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 9:** To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twenty-three thousand dollars (\$23,000) to be added to the Replacement of the 2002 Mack Dump Truck Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)*

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comment? (couldn't hear question or response) Any other questions, seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 10:** To see if the Town of Lyndeborough will vote to raise and appropriate the sum of thirteen thousand five hundred dollars (\$13,500) to be added to the Replacement of the 2007 One-ton Dump Truck Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)*

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comments?

Jeremy Cloutier: I don't see a need for either one of these one ton, they are too small, and they don't really do a good job of plowing roads. They don't seem rugged enough to handle the roads in Lyndeborough. The one ton trucks are just glorified pickup trucks, those are five fifties I believe, they cost a lot of money, eat up a lot of gas. I would think it would be a lot better if they were just looking to get around, to do some regular road maintenance, cut some brush or do whatever they do with those trucks it would just be a lot easier to get something smaller that just does the same amount of work for a lot less money.

Road Agent Kent Perry: The system we have for our town is a dual team system where we have two groups of men working on different projects. In the summertime we found it cost effective not to drive around in the larger trucks and because they are put out twenty and fifteen years you don't want to rack up the miles on them and the maintenance on a five fifty is far more cheaper than the larger trucks. If you have a larger truck worked on now it is a hundred and thirty five dollars an hour. We do try and do a lot of the work ourselves. Whereas the five fifty it is like your vehicle it is ninety dollars an hour. Also, a lot of the salt runs you see at night or you don't see at night, you are asleep, are done by the five fifties because they are much more efficient mitering out the salt where as a larger truck just whips it out there and it is harder to regulate. The five fifties are more efficient for the initial salt runs. A good example of how good they came through for us was during the ice storms. One five fifty was fully dedicated, we never saw it, it had the chipper on the back of it and it was off doing Fema work for the chippers around

the town. The other thing was when I had to go parts chasing, one guy has to leave town to go chase parts, what are you going to chase parts in. If you have one pickup it means the rest of the crew just stands there and waits for you to come back. Where if they have a five fifty to go work on they can do the other smaller projects, brush projects and things like that. We have found that in these times the larger pieces of equipment that are higher in maintenance are parked, they don't run. If you look at my fuel expenditures they are way, way, way down because we are not running the big heavy equipment, the five fifties are doing a lot of the work. They are the primary vehicles that we use. Snow Plowing, you will see the five fifties running around and what they are basically doing is intersections, very small roads. They are not meant to do the larger roads. You might catch the guys doing it every once in a while, but I don't want them too, and because we only have three larger trucks on a very large area you may see them go by and as far as pushing snow banks you want snow banks pushed back when the snow is sticky the day after the storm because it just goes right up behind you and comes down during the storm. We do rely on the five fifties very much.

Moderator asked if there were any more questions, seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 11: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twelve thousand dollars (\$12,000) to be added to the 2009 One-ton Dump Truck Repair/Replace Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)***

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Arnold Byam.

Moderator: Any questions or comments?

Jeremy Cloutier: Everything I said before.

Moderator: Any other questions, seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 12: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twenty thousand five hundred dollars (\$20,500) to be added to the Replacement of the 2007 Backhoe/Loader Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)***

Motion made by Selectman Donnie Sawin to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Any questions or comments? Seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 13: To see if the Town of Lyndeborough will vote to establish a Capital Reserve Fund under the provisions of RSA Ch. 35:1 to Repair and Replace the 2008 Volvo dump truck and to raise and appropriate nineteen thousand dollars (\$19,000) to be placed in this fund; or take any other action relating thereto. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)***

Motion made by Selectman Kevin Boette to accept article as read, seconded by Selectman Donnie Sawin

Moderator: Any questions or comments? Seeing none he read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it. **Article passes**

**Article 14:** To see if the Town of Lyndeborough will vote to raise and appropriate the sum of twenty-three thousand dollars (\$23,000) for the purchase of a new police vehicle total cost to be thirty-seven thousand dollars (\$37,000) with fourteen thousand dollars (\$14,000) applied from funds approved under Warrant Article 15 last year under non-lapsing provision RSA 32:7 VI and the balance of twenty-three thousand dollars (\$23,000) to come from general taxation. *The Selectmen and Budget Committee recommend this appropriation (Majority vote required.)*

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Kevin Boette.

Fred Douglas: When I went to the public budget meeting that was held a while ago, I questioned the mileages on these cruisers, the life cycle of these cruisers, the types of cruisers we have. I understand that previously, maybe the Board, in conjunction with the officer in charge felt that these vehicles that we currently deploy were necessary. These cars are top of the line, Chevy Tahoe's; believe they have 5.7 liter engines in them. I asked the question about gas efficiency, I was told they get 15 miles per gallon. Since then the research through the Town Administrator and the Officer in Charge identifies that the mileage on these cars per gallon is approximately 10 miles to the gallon. The question I have, and I want to give you some statistics first. The 2009 Chevy Tahoe that we are looking to replace on this warrant article currently has approximately sixty six thousand miles on it. That is a 2009. The 2011 has approximately forty two thousand miles. What I did was ask for some information about the gasoline logs through 2012 and what I came up with is the 2009 had fifteen thousand and thirty miles put on it last year and the 2011 had twenty seven thousand eight seventy six. You take that and you divide that, that is roughly twenty two thousand miles per year these cars get. The life cycle of these vehicles in the CIP, I submit to everybody here is too small. It is a four year rotation plan that should be pushed out at least five years and possibly six. Those cars are commercially heavy duty built vehicles for the purposes of law enforcement but law enforcement has changed. I would submit to you that those cars are good for anywhere from one hundred and ten to one hundred and fifteen thousand miles. You do the calculation. You can take that CIP and push it out at least one more year or possibly six years and take that twenty three thousand dollars that is being appropriated this year, push it out, and with Burton and the Budget Committee and the Board of Selectmen, revisit the CIP. Push everything out. The second item I want to bring out to you is the type of vehicle. We are running Chevy Tahoe's; there is nothing about fuel economy with these vehicles. I work on them myself part-time now. I would submit to you that Ford Explorers, which I have deployed myself from my previous experience. I have gotten some information that the Ford Explorers right now as far as the room, the hip room, head room, leg room, is just as good if not better than what we have in those Chevy Tahoe's. I have the literature here for anybody to look at. The estimated miles per gallon with those Ford Explorers are fifteen to twenty miles per gallon. Let's talk about sedans, versatility, best of both worlds in this town. I guarantee you we need a four wheel drive. But right now Ford puts out a sedan, it is all wheel drive. Let me give you the numbers on them, just what the base price of those vehicles are. The Ford sedan all-wheel drive which are very very good in snow, that base price is twenty four thousand five seventy five. The utility four wheel drive is twenty six thousand seven twenty five. Right now we are spending thirty six thousand dollars, I believe Mr. Moderator for these Chevy Tahoe's, it is unnecessary. There are some retro fittings that have to be done to it so your first year into this may be a little bit more money. I have worked these numbers through; I can only tell you that what this warrant article is representing to you is not a need. We need to reduce; we have to come to fuel economy. The years of high speed chases in law enforcement, those days are gone, so it is not about that. Between the idle time and the actual use of these cars, miles per gallon, we need to start looking at this, everybody else is but it doesn't seem we are. I understand there

is a lot of equipment, I have the literature in the back here, the Ford Explorers will still hold this equipment and still serve this town accordingly.

Selectman Kevin Boette: With all due respect to Mr. Douglas's assessment one of the things I don't believe he considered is a lot of time in a police vehicle is spent idling. So when he went and gathered this information on the fuel economy on these Tahoe's they are very equivalent to those Ford Explorers. But what he did in this case was he went down and he got how many gallons we burned and how many miles we went and calculated that. Then when he presented the Ford Explorer argument he took the sticker of what these vehicles get on them but once you add a fifty percent, thirty to fifty percent idling time you are going to find that the gas mileage is going to be very similar. The other thing to consider, one of the things he brought up was sedans. Even though they are all wheel drive sedans I know just from my driving around in town, I have gone to work in twelve inches of snow and more on our roads and the last thing we want to do is to have one of our vehicles in the shop being worked on and all we have is a sedan in a snow storm here in town and have somebody have a call where they need a police response and we can't get there because we don't have the ground clearance to get there. We have mud on New Road that actually; I think there are a few old cruisers probably down on the bottom of. A sedan is not going to make it through. I have pulled many sedans and all-wheel drive vehicles out over the years just driving along and helping residents out. We had a very lively and thorough discussion about this in the budget committee, probably four or five years ago where we really did argue this point because we did use to have a sedan and a four wheel drive and what happens is that left us vulnerable when the four wheel drive was in for repairs. If the officer happened to be driving the sedan at the time and a call came in, in an area where he wasn't going to be able to get to it with the sedan, he would have to drive back to the department prior to deploying to that area of concern. I would like Officer Deware perhaps to come up and speak to this too. I know from the police department they do support having two four wheel drive vehicles. We also have a trailer that we need to haul around and these new sedans and these new Explorers do not haul these trailers.

Fred Douglas: In response to Selectman Boette's comment about the miles per gallon, that was taken into consideration. The fuel economy on one of those vehicles, Ford estimates twenty miles per gallon, I was conservative at fifteen.

Dwight Sowerby: Two things, one is I am not sure what Mr. Douglas is proposing, is he proposing an amendment to this or to vote it down. I would submit that maybe the thing to do with this, especially seeing as with his experience and everything and he is the new incoming Selectmen that this fight or this discussion is best suited for the Budget Committee meeting next year. Because we put money into the fund does not mean we spend the money for a new car, it does not mean that we are getting another Tahoe. That decision all will be made by this group at the time of the actual replacement. This fund that is currently in there and the amount of it can be changed by vote of the town meeting next year if that is what the decision is of the Budget Committee and the Selectmen and the town next year. But it would seem to me that it would be best currently to go forward with the existing plan, let Mr. Douglas and the new Board of Selectmen work with the Budget Committee to figure this out. I am not sure who is right and I don't think necessarily this is the forum to decide that. So I would suggest that we just go forward and approve this now and let them fix it if necessary.

Moderator: The Budget Committee did have quite a debate and discussion about this vehicle because it seems like we could push it out another year as far as replacing it. It was pointed out that in this year's Capital Reserve Fund, CIP; this would be the place to put the money aside because years out our CIP plan gets a little more congested. At least that was my understanding. So, even if we put the money away this year, we won't use it until next year probably anyway.

Lt. Rance Deware: The cruisers that we currently have can go definitely another year. The 2009 car is right below seventy thousand miles as of this morning. The 2011 is at right below fifty thousand miles. In 2012 we drove forty thousand five hundred and ninety five miles. The gas mileage averaged between eight and eleven miles per gallon between the two cars because the eleven being a newer model and with the modifications that were made to it over the two year period gets a little bit better gas mileage than the 2009 does. So that is the variance in the mileage, it comes out to about nine and half, ten miles a gallon. The money that gets put into this fund just as Mr. Sowerby said is put in there so that when we do have to replace the cruiser, the money is already there and you don't have to eat a thirty thousand, thirty five thousand, forty thousand dollar line item in one year. Even if we push this back to two thousand and fourteen, which is what I have already recommended to the Board of Selectmen and they are on board with that along with the Budget Committee is to go with these cars at least another year. Then reevaluate again during next budget season what we are going to do and what type of vehicles we are going to get. Our gas price only went down one cent this year so we were locked in at the state last year for three dollars and thirteen cents. This year it is locked in at three dollars and twelve cents. That just means that that is the maximum amount of money that we are going to pay per gallon of gas. Sometimes it may be less than that, we had occasion where it was in the two nineties in some of the months in two thousand twelve when gas actually went down. As far as the type of vehicles, the mileage that they get, all that can be looked at in the future. We can go from there based on the current two thousand and fourteen year models that are available. The Tahoe for two thousand and thirteen was priced at thirty thousand four hundred dollars. The reason the line item is more than that is because it costs money to take all the equipment that is in the current cruiser that we have and put it in the new cruiser and that is anywhere between five thousand and seven thousand dollars for the graphics and the up fit of the equipment. Obviously, like Mr. Douglas said, if we get a new car that is other than a Tahoe that is probably going to go up slightly because we have to fit the equipment to the car. If we stay with the same kind of cars we have now it is the same equipment and it is just a transition from one to the other.

Fred Douglas: Mr. Moderator I would like to ask Lt. Deware if he could give the audience the maintenance, how much maintenance have we spent on these cars. Is it major component failure or is it normal routine maintenance.

Lt. Rance Deware: The maintenance that we have put into the vehicles over the last year and a half since I have been here, because I didn't start working here until October of two thousand and eleven has been tires, lube, oil, filter, normal maintenance. On the 2009, this year we started running into some issues. We have had to replace an electronic harness on the vehicle that goes to the fuel tank and the ABS brakes. This Thursday it is actually going in because the traction control system is not working correctly and the warning lights are on for that. The harness that we had replaced cost two hundred and thirty five dollars. We are averaging about four thousand dollars a year between thirty five and four thousand dollars a year right now on maintenance. We are budgeted for five thousand and I believe the reason that the budget is at five thousand dollars for that line item is because if something major does go, it is going to cost a lot more money than we have been spending on the newer vehicles. Normal routine with a couple of exceptions.

Selectman Kevin Boette: One other item to note as we look at this, we are not looking at purchasing it this year. Next year we are going to have a blip in the CIP of about twenty five thousand dollars and if we wait and we put this purchase off until next year we won't be adding money in the fund next year for another police vehicle because we will be buying it next year. So, that should keep our CIP totals fairly flat.

Mike Kaelin: If the car were totaled tomorrow do we have to wait another year until the next town meeting?

Selectman Kevin Boette: Insurance would cover it.

Moderator: Any questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying nay. Ayes have it. **Article passes**

**Article 15: To see if the Town of Lyndeborough will vote to discontinue the Bridges Repair Replacement Capital Reserve Fund established by Town meeting vote in 2011 article 15 and the Bridge Repair Replacement Capital Reserve Fund established by Town meeting vote in 2012 Article 5, said sums with accumulated interest in the amount of sixty-three thousand eight hundred sixty six dollars (\$63,866) are to be transferred into the general fund and further to establish a Bridge Build/Repair/Replacement Capital Reserve Fund and to raise and appropriate sixty-three thousand eight hundred sixty six dollars (\$63,866) from the general fund for the purpose of adding to the Bridge Build/Repair/Replacement Capital Reserve Fund. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Kevin Boette to accept article as read, seconded by Selectman Donnie Sawin

Selectman Kevin Boette: What happened last year was we had a little bit of a discussion over naming a fund, putting money into a fund and it was kind of a nightmare. This is just essentially the renaming of some of these funds that we have created. What we are going to do is we are going to disband some funds, we are going to take that money and put it into the General Fund. Now we are going to create this new fund with this correctly worded name and we are going to take that money that we just put in the General Fund and we are going to put it back into the bridge/repair/replace fund. Because, last year all we were trying to do is add the word repair to our bridge/replacement fund. We wanted to be able to make repairs and in the process of a very confusing worded article we didn't do that right. So what we are trying to do is rename this article to a repair or replace fund. Take the money out of these other funds and put it into that.

Robert Prest: I read it as you are changing it from a bridge/repair/replacement to a bridge/build. What new bridges do you intend to build with this fund?

Road Agent Kent Perry: What has happened before is the two major bridges that we have left and we are lucky they are called bridges by the State, is the bridge right down here is mark \_\_\_\_\_ which is a giant culvert and the Johnsons Corner culvert which frequently floods over. For the past three years we have been that close to getting the FEMA funds to repair these bridges and they would be replaced as bridges. And, we needed to put a percentage of money away to prepare for the grant money or the FEMA money. They expect us to do engineering studies. We have to contact hydrology studies. We have to get our licensing to even touch the water. So, what this money is for is to do these projects. Also, the word repair is the State is so broke that our bridge funds are fifteen and twenty years out and they are starting to say we will fund you to repair some of our bridges because a lot of times you can do a fix you don't necessarily have to tear the whole bridge up and make it look like a state road like we have down on Old Temple Road. So, that is why this wording has changed and that is why these funds are available, or made available because I, the next one is going to be Johnsons Corner, we are still trying to get FEMA funds we are waiting to find out and we are still applying with the State to make the repairs. This is just to make sure we have our ducks in order. A good example of why we have to have our ducks in order is if anybody that goes to Francestown sees that they have a closed bridge. The State told them, red flagged their bridges, they didn't do anything about it, they don't have any funds and now they are looking at some astronomical sum and bonding and they also have to make a bypass bridge to

wait for all the money and that is sixty thousand dollars above and beyond that just has to come out of taxation. So this is an effort by us to make sure that we don't fall into that same trap.

Robert Prest: So far you haven't explained what the purpose of putting the build into this.

Selectman Kevin Boette: I believe the build is we are going from a culvert at Johnson Corner and we are going to put in a bridge so we had to put build in there as well and with the FEMA grant money, that will allow us, because what they are trying to do is, it is essentially a mitigation grant so they are....

Robert Prest: I am sorry but I read this it says bridge build/repair/replacement and the previous name was bridges/repair or replacement capital reserve. The point is if you have a current method of transferring water from one side of the road to the other which is a culvert that if it became inadequate because of rainfall or because of climate change or whatever you want that replacement would be a normal term of \_\_\_\_\_ unless you are going to construct something that has got cableways and abutments and all those other issues. My point is this would give you the permission or the ability to take that fund and build a new bridge somewhere, where there is no current bridge or conduit or whatever. So, I am just looking to use this money to take care of the current bridges we have and repair or replace them as necessary and not to be funding, putting this money away to be capable of building a bridge somewhere because somebody comes up and says hey guess what and by the way I have a lot of water that passes from the property across the street from me down the side of my street and I would like to see something there to replace that. I haven't said anything because it is tax dollars and I think I can put up with it the way it is. Does everybody understand what I have said? The difference between build and replace or repair.

Dwight Sowerby: Again, these Capital Reserve Funds and the DRA, the Department of Revenue Administration gets very picky on how you name them and what you can do with them. But, more importantly, this is a Capital Reserve Fund. We are putting money away for those categories but the money isn't being spent on any bridge. Before that money can come out to be spent on a bridge we have to vote for it here. So, in the scenario that you came up with, we might very well vote to put that bridge in for the neighbor, but chances are we wouldn't.

Selectman Kevin Boette: The end goal in mind with this current article is, we stand a very very good chance of getting that FEMA remediation grant this year due to super storm Sandy when it came through because we were declared a disaster area. In order to do that we are going to have to have matching funds to get that through and what it would be doing is taking out the current large culvert at Johnson Corners and replacing it with a small bridge. The point behind the remediation funds is we continually have problems in that area and what FEMA is trying to do is instead of just replacing in kind so you will have those same problems again is to make it so that you don't have issues in these flooding events.

Moderator: Any more questions or comments? Seeing none, are you ready for the question? Read article. All those in favor signify by saying Aye, those opposed signify by saying Nay. Ayes have it.

**Article passes**

**Article 16: To see if the Town of Lyndeborough will vote to raise and appropriate the sum of fifty thousand dollars (\$50,000) to be added to the Bridge Build/Repair/Replacement Capital Reserve Fund previously established; or take any action relating thereto. *The Selectmen and Budget Committee recommend this appropriation. (Majority vote required).***

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Donnie Sawin.

Moderator: Any questions on this.

Fran Bujak: I would like to propose an amendment to the article to change the dollar amount to eighty thousand dollars and if there is a second I would be willing to explain. (second from audience member)  
The reason for this is based on the future money is in the Capital Improvement Plan. There is a potential increase in the Capital Improvement Plan next year and as we mentioned earlier in the meeting there is ten thousand dollars being set aside for legal purposes because of a DRA error of which the town is potentially right now liable later on for a one hundred and forty two thousand dollar inappropriate DRA ruling to Lyndeborough on the tax rate. What I am proposing to do is, this would potentially make a down payment if that, in savings, because it would free up the money out of the capital reserve in future years if a ruling were to come next year or the year after which we were then obligated to pay one hundred and forty two thousand dollars to the Town of Wilton. This would allow thirty thousand dollars of future capital improvement money move forward, freeing up that, lessening the burden on the tax payers of Lyndeborough for anytime that that ruling were to come forward and if that ruling were to never come forward all we are doing is moving up money that we know we would have to spend at some point anyways of which we could lessen next year's bubble in the capital improvement plan.

Moderator: Okay, so you are not saying that the extra thirty thousand that you are adding here could be used for the DRA mistake, you are just saying you want to add extra money so the bridges will be protected.

Fran Bujak: That is correct, I am proposing to move thirty thousand dollars, increasing it to the Capital Improvement Plan for the bridges which would free up thirty thousand dollars in future years capital improvement which would allow the town to use that money as necessary and adjust not being forced to, if the ruling comes, not being forced to take all money out of either increased taxation or unreserved fund balances or having to cancel future capital improvement plans.

Moderator: Any questions or comments on his amendment to increase it by thirty thousand dollars?

Andy Roeper: Just for point of clarification than. Any vote that we take here will be our vote for this year it does not reflect what will happen in future years. So this is a wish and not a mandate.

Moderator: Any other questions or comments on the amendment? The amendment before the table on Article 16 is to amend it to add thirty thousand dollars to this article. So the Amendment would say **"To see if the Town of Lyndeborough would vote to raise and appropriate the sum of eighty thousand dollars (\$80,000) to be added to the bridge/build/repair/replacement capital reserve fund previously established."** All those in favor of adding thirty thousand dollars signify by saying Aye, all opposed signify by saying Nay. Nay's have it. **Amendment does not pass.** We are back to the original Article 16, any other questions on Article 16? Read original Article 16. All those in favor signify by saying Aye, all those opposed signify by saying Nay. The Aye's have it. **Article Passes.**

We will take a quick break for lunch. Before we do that we have a special presentation for our Tax Collector/Town Clerk Trish Schultz.

Selectman Arnold Byam presented Trish Schultz with a Plaque and a bouquet of flowers for her 25 years of service to the Town.

Moderator: Our next article for your consideration is Article 17.

**Article 17: (Article by Petition)**

**To see if the Town of Lyndeborough will vote to raise and appropriate the sum of seven thousand four hundred dollars (\$7,400) the purpose of this appropriation is to establish and accomplish a complete and thorough interviewing and vetting process for the hiring of the next commanding officer of the Lyndeborough Police Department. Said process to contain, at a minimum but not be limited to the following steps:**

- Selection of an outside competent firm to handle the recruitment and vetting process for the town.**
- Detailed and thorough background investigation, reference analysis and non-peer comment evaluation.**
- Written test and or essay to determine if the candidate has current knowledge of policing techniques and knowledge of the community of Lyndeborough.**
- Telephone interview in order to establish passage onto the final interview processes.**
- Establish a citizen's panel of a cross section of Lyndeborough citizens for interviews of the candidates.**
- Establish a professional panel for analysis and interviews of the candidates and selection of those to be submitted to the Selectmen panel for final interview and hiring. Selectmen's panel to include in addition to the Selectmen, three Lyndeborough registered voters, one of which has professional law enforcement experience, one of which is a former elected town official and the other a taxpayer of at least five years.**
- Interview of finalists by the Board of Selectmen and selection of the next commanding officer.**
- Upon passage of this Article, its procedures shall remain in effect until specifically rescinded by a vote of a future town meeting. *The Selectmen and Budget Committee do not recommend this appropriation. (Majority vote required).***

Moderator: Do I have a motion? (Lee Mayhew moved, audience member seconded.) Would someone please speak to this article?

Dwight Sowerby: I have been asked to speak to this article in terms of the legal opinion that Bill Drescher wrote, Drescher & Dokmo Law Firm are Town Counsel to the Town of Lyndeborough as well as most of the other area towns here. This is Mr. Drescher's opinion, you have copies of it out there, copies of it were on the town website. I have been asked to explain the letter a little bit, let me start by saying that I am speaking not in favor or against the warrant, I am not taking a position on it as in my role standing up here when I go back down there I may. I just want to explain what Mr. Drescher is saying with this. He has given an opinion on this and an opinion on various police department issues and town issues over the years, as have I. So, in regards to his letter in this warrant, the first thing we need to understand is that New Hampshire is not a home rule state. By that I mean that all of the power, governing power given by us as citizens to the State. The State then turns around and delegates some of that power back to towns and cities. So a town and a city has only those powers that the State gives us and only in the manner that the State gives us. Some of those powers that they give us they give to this group, the legislative body of the town, the Town Meeting and some of those powers they give to the Board of Selectmen. Often time's things will come up for a vote at Town Meeting that really lie within the purview of the Selectmen. The second warrant article we are going to look at today is one of those as to whether or not we should have a Police Chief. We voted in 2005, I think it was, to eliminate the position of Police Chief that was an advisory vote. The Selectmen could have turned around the next day and hired a Police Chief because it is not our duty as a legislative body; it's their duty as the governing body. This warrant article number 17 falls kind of in that area. It describes the process by which a new commanding officer would have to be appointed if one were to be appointed. It does not mandate that one would be appointed the Selectmen don't have to do it. The process that is laid out would be completely advisory and the Selectmen could ignore it totally except it also has money attached to it. Because it has money attached to it that is our job here in this legislative body, we raise and appropriate the money, they spend it. So because it has money attached to it what that means is that if we pass this article as written, the Selectmen may choose to spend the money or not, they can ignore

it. Because the Selectmen have the power to decide how money is going to be actually be spent. We decide how it is going to be raised and appropriate; they decide how it is going to be spent. If, however they decide to spend one penny of that money, because we put strings with that money, that process that is laid out in the warrant article has to be followed. So, if we pass it as written the Selectmen can ignore it or they can follow it. If they follow it, they have to follow it precisely. If they take any of that money they have to follow it precisely. There is a secondary problem, which is, if we defeat it. If this comes up for a vote and we defeat it, the Selectmen may then be barred from spending any money in the process of hiring a commanding officer for the Police force. Because, although there is one little caveat that's come down from the courts, where the legislative body really does rule, if at any time you say you reduce a line item to zero you are saying no, don't do that and they can spend no money for that line item. So, if this comes up for a vote and is defeated and then we do have a need for a commanding officer we go out forward to do that, they can't even put an ad in the paper. So there are some issues if it is passed, there are some issues if it is defeated and I am not speaking at this point at all to if you pass it if it is a good idea or a bad idea I am just trying to let you know what the legal implications are of either. The alternatives are, you amend it in some manner or you table it and don't vote on it at all. If you amended it in some manner to take out the money then it becomes a sense of the meeting, it says this is what we would like you to do, and they can do it or not do it. Any questions?

Selectman Kevin Boette: What was the recommendation of Mr. Drescher, did he have a recommendation?

Dwight Sowerby: Not our job to recommend what you actually do with an item but really just to tell you what the legal issues if you go one way or the other. I think the letter does say that if it is in fact tabled than you don't have to worry about either the up or down but if it is amended you could have the same result.

Robert Prest: The question comes up, if this is voted down I don't think this would stop the Selectmen from saying to the Police Department, to any particular officer, assigning him the task of interviewing potential candidates to take over the OIC job, correct me if I am wrong. So, we wouldn't have to appropriate any money at all if it was being done under the auspices of the Police Departments staff in searching for an OIC.

Dwight Sowerby: That depends entirely on how much trouble somebody wants to make. Many years ago, most of you are too young to remember the Iran Contra Affair. One of the complaints there was there was a law that said you could not spend any money at all on giving arms to the Contras, or support to the Contras, any Department of Defense money. Our Senator, Senator Rudman at the time made the point that when Lieutenant Colonel Oliver North was working on that project as a national security advisor his payment was still coming from the Marine Corps therefore it was Department of Defense money, therefore it was in violation of the law. Which is a bit of a stretch but that was the argument and it carried the day. So, an argument could be made that while somebody is expending time for which the Town is paying salaries or wages that that in fact is spending money on that. That is getting out there a ways but somebody could make that argument.

Chris Colotti: Is it safe to assume that we currently have a vetting process when we hire somebody?

Selectman Boette: Yes

Chris Colotti: What we are saying in this it sounds like we are trying to put a more stringent process around that.

Selectman Boette: Actually our OIC's that we currently have, have gone through a very similar process.

Chris Colotti: The other thing that comes to mind is that the way this is written to me it seems almost like a catch 22. So it seems poorly written, number one, so the options you have laid out make sense, either tabling it or rewriting it. I mean taking the money out is one thing, if it is tied to the money that

completely makes sense, you can't do anything you have to follow it to the letter. To me, I don't know that I agree with everything that is written if we already have a process to hire somebody. I think it is safe to assume that every officer we have had we have at least put them through some kind of process. So, why we are adding to that process I don't know. It would be nice to know what that current process is, what the deltas are, how it compares to the new process being proposed, why are there gaps, why do we think we need to have more information. What makes them different, because you have obviously hired people, so at the end of the day we have already brought people in as Commanding Officers or whatever you want to call them, whether it is Chief or not. I don't know if you can help explain that or I guess that is just my opinion on the way this is written right now.

Dwight Sowerby: Again, my job is to give legal analysis on it, so I can't respond to some of what you said but I will say this that the Statute gives the Board of Selectmen the power to hire a Police Chief and it says the Board may hire a Police Chief. That means no matter what process you legislate, it is still the Board of Selectmen who are going to make a decision, no matter what you do. If it is not tied to money they don't have to follow the proceedings that you vote for here today, it would be advisory only. If it is tied to money they have to follow it precisely.

Emmie Brown: My question is I am wondering if the majority of people in this town would like a Police Chief why in the world would the Selectmen not go along with it, are not the Selectmen here to do what the people in this town would like.

Dwight Sowerby: Well, again you go back to what I said in the beginning is that the Selectmen have the responsibility to be the governing body and to run the town as they see fit. We have the responsibility here to vote the funds for that and at times to tell them how we want it to be done. In terms of why you might not want a Police Chief, the reason we voted in 2005 not to have a Police Chief had partially to do with the issues we were going through at the time but a Police Chief has certain statutory protections. It is very difficult to terminate a Police Chief once appointed. The Statute which is RSA 105 something or other specifically says you can only fire a Police Chief for cause and that the Police Chief has the ability to immediately appeal to Superior Court. That law is in there to shield, the purpose of it is to shield the Police Chief from the political winds that blow, to keep patronage down and the buddy system and that sort of thing and to keep the Police Chief a certain amount of protection so they don't have to worry about pulling over the Selectman's wife for speeding.

Selectman Boette: This article right now is based on the search process not the Chief vote.

Dwight Sowerby: Correct, and it doesn't say anything about a Police Chief by the way, it says Commanding Officer. The next one is about the Police Chief.

Chris Colotti: Point of clarification to the Board of Selectmen, the current process that we use to hire a Commanding Officer was that actually legislated or is that simply a process that we trust and we follow.

Selectman Boette: Current process that we use now we hire an outside firm that specializes in that kind of thing and they come in and take care of that process. I believe the last one we did was MRI, Municipal Resources, correct.

Chris Colotti: So if what I understand Dwight said if this passes we have to follow this specific process to the letter, every single step in there, correct?

Dwight Sowerby: If they take any of the money.

Chris Colotti: If you take any of the money so I guess my question is, I don't know the answer and it is just a question in my head, I don't know where this comes from, I don't know where this petition started, I don't know why we don't trust the existing process we have had or why we are trying to inject a stricter process into what we have done for years. We have done hiring for a long time so if we feel we have to legislate every single thing we should legislate how we hire everybody for this town.

Andy Roeper: I won't speak to details; I will let that for Mr. Mayhew to go into for further explanation, but suffice to say it is unsafe to assume that every single recommendation will be followed and that every step recommended by an outside agency will be executed. This has been a problem in the past; I believe that is why this motion was drafted.

Lee Mayhew: Good Afternoon, my name is Lee Mayhew and I would like to explain to you why the motion that we have today, before us now and the one that will follow, how it came to be. In the opinions I will give you, as we discuss these articles come from my almost nineteen years of experience as a Town Administrator in Milford and then after I retired I worked as an acting Town Administrator in Amherst and then acting Town Manager of Bow for a while. During these periods where I worked I have worked with over thirty-five different Selectmen and as a whole they acted with care and consideration for the best interests of the community. They knew what skills they brought as Selectmen and were appreciative of the knowledge, skills and abilities of the Department Head. The two petition articles came as a result of some citizen dissatisfaction with how Selectmen Byam, Boette and Sawin were, in the citizen's opinion, interjecting their management initiatives into the Police Department that was organized under Captain Burke. I allow that they have the prerogative to do that under the OIC concept that the Lyndeborough Police Department currently operates. However, all Selectmen that I have worked with before understood when they did not have the requisite skills that are required of Department Heads and so the normal process was to partner a change, in other words, the Selectmen and the Department Head worked together to partner a change. Here I did not see partnering or generally an appreciation of the skills and training that Captain Burke brought to the table. Many citizens who have lived in this Town and served a while became troubled by the adamancy of the Board of Selectmen for certain specific Police Department changes such as reduction of police hours when the department was operating at approximately twenty-five percent under budget and started to attend these Selectmen's meetings. Such gentlemen as Bob Rogers, Clayton Brown, Bud McEntee, Andy Roeper, Bob Prest, Brendan Philbrick, myself and others. In time we were called by the BOS, the Selectmen, the old retired men with nothing else to do, and sometimes we were called the old retired bearded men, but I think that only Bob and I have the beards. I presume they meant nothing better to do than attend our Selectmen's meeting and ask questions about the Police Department and the Selectmen's interactions in what we thought of the proposed changes, in fact, it seemed at times that our input and interaction with elected officials were not welcome. As you know there came a time when Captain Burke was ordered to fire Sgt. Roy and he could not do this and so he resigned and Selectman Boette, thereafter, delivered to Sgt. Roy his termination notice. Many residents could not believe that we had just lost two professional experienced officers who were doing in many citizens' eyes a wonderful job patrolling and interacting with the public, especially after what the town had recently been through with the prior police administration and others. As you know in the blink of an eye that all changed. Last time I can remember this, I can remember something like this happening was when Richard Nixon ordered Attorney General Elliot Richardson to fire Special Prosecutor Archibald Cox, that was I think called the Saturday night massacre. After this the old retired men with nothing better to do and others met at the Library to see what they could do to deal with these issues. The results were that they felt there should be community meetings to discuss what had happened and what they would like to see for a Police Department in their community. These petition articles came to fruition after three meetings this summer with up to sixty citizens in this room. One night it was ninety degrees in here and still the large group met who are very concerned about the apparent micro-managing of the Police Department and the over thirty thousand dollars of expenditures to the Stein law firm in Concord by the Selectmen. The only way we were able to get detailed information for this group of Selectmen was to initiate several Right to Know requests, including one to the Attorney General's Office. The result is the petitioned warrant

Article 17 and 18 before you today. Article 17 deals with the hiring process that is important as without a good process anybody could be hired in any fashion. Article 18 is just a determination of whether the Selectmen will appoint a Chief of Police for our department and I would note that at one meeting where several of us were at, Selectman Boette and Selectman Byam and Selectman Boette articulated that he doesn't have pleasure with the Chief of Police issue but they did say they would go along with whatever the vote of the Town Meeting was. The citizens who met this summer felt very strongly that the voters should have a good polite and courteous discussion on these matters. After reading Attorney Drescher's opinion letter and knowing that the Selectmen normally run a twenty to forty thousand dollar annual surplus, this year it was a bit over I think a hundred and twenty five thousand but eighty one thousand dollars of that was encumbered before the books were closed. So that leaves about forty some odd thousand dollars in good management techniques that they could probably apply to funding this article. And, as a result of that and when the Moderator allows it I will in fact offer an amendment to petition article number 17. I would ask that no matter what your opinion is on these articles let us have a good and enlightened discussion, respect your neighbors right of opinion, allow it to be presented, it is extremely important to this community. Thank you.

Moderator: At this time I would like to hear your amendment sir.

Lee Mayhew: I would move to amend Warrant Article 17, and if you look on your green sheets, the main section of the change to the warrant is in the first paragraph. The first paragraph I am proposing to change as follows

**To see if the Town of Lyndeborough will vote to ask the Board of Selectmen to incorporate the following fundamental principles of interviewing and vetting processes into the next hiring of a Chief of Police for the Town of Lyndeborough. Acknowledging that this is a Sense of the Meeting Article, the petitioners request that the Selectmen consider incorporating the following important criteria into the hiring process. The steps that are detailed below in your warrant remain with the exception of the last article that says Interview of finalists by the Board of Selectmen and selection of the next commanding officer I have amended to read Interview of finalists by the Board of Selectmen.:**

- Selection of an outside competent firm to handle the recruitment and vetting process for the town.**
- Detailed and thorough background investigation, reference analysis and non-peer comment evaluation.**
- Written test and or essay to determine if the candidate has current knowledge of policing techniques and knowledge of the community of Lyndeborough.**
- Telephone interview in order to establish passage onto the final interview processes.**
- Establish a citizen's panel of a cross section of Lyndeborough citizens for interviews of the candidates.**
- Establish a professional panel for analysis and interviews of the candidates and selection of those to be submitted to the Selectmen panel for final interview and hiring. Selectmen's panel to include in addition to the Selectmen, three Lyndeborough registered voters, one of which has professional law enforcement experience, one of which is a former elected town official and the other a taxpayer of at least five years.**
- Interview of finalists by the Board of Selectmen.**

And that would be my Amendment which Trish has a copy and you have a copy.

Moderator: The Amendment on the table, I have a motion for this Amendment, do I have a second?

(Second from audience member). To explain what he just said, he said is to make this a, and Dwight alluded to this, a Sense of the Meeting and he has taken out all of the money articles and he is adding it as more of a guideline for this request. The petitioners are asking that this be a request to incorporate the following criteria. It is more of a guideline now and no money involved. So, therefore whether it passes or does not it doesn't really restrict the Selectmen as Dwight had alluded to with the original amendment. That is the way I understood this and it kind of clears up some of that part about not really tying their hands to the money issue and also making it more of a suggestion. Any questions on the amendment, seeing none, are you ready for the amendment? The amendment will be as follows:

**To see if the Town of Lyndeborough will vote to ask the Board of Selectmen to incorporate the following fundamental principles of interviewing and vetting processes into the next hiring of a Chief of Police for the Town of Lyndeborough. Acknowledging that this is a Sense of the Meeting Article, the petitioners request that the Selectmen consider incorporating the following important criteria in said hiring process:**

**-Selection of an outside competent firm to handle the recruitment and vetting process for the town.**

**-Detailed and thorough background investigation, reference analysis and non-peer comment evaluation.**

**-Written test and or essay to determine if the candidate has current knowledge of policing techniques and knowledge of the community of Lyndeborough.**

**-Telephone interview in order to establish passage onto the final interview processes.**

**-Establish a citizen's panel of a cross section of Lyndeborough citizens for interviews of the candidates.**

**-Establish a professional panel for analysis and interviews of the candidates and selection of those to be submitted to the Selectmen panel for final interview and hiring. Selectmen's panel to include in addition to the Selectmen, three Lyndeborough registered voters, one of which has professional law enforcement experience, one of which is a former elected town official and the other a taxpayer of at least five years.**

**-Interview of finalists by the Board of Selectmen.**

That is the way it is worded for the amendment. All those in favor of the amendment as read signify by saying Aye, all opposed signify by saying Nay. **The Amendment does pass as read.**

We are back to Article 17 with the amendment having passed. Any other questions on Article 17, this is the vetting process for the Commanding Officer?

Mike Kaelin: If we are not appropriating money, then, when there is a hiring process where does that money coming from?

Selectman Kevin Boette: Normally what happens is, let's say Lt. Deware decided to put in his notice and left. This is actually quite an extensive process; it doesn't happen over just a period of a couple of weeks so generally the money that you are not spending in salary during that time as you are searching for this new officer you use that money that is in that salary line item. It is usually pretty close.

Mike Kaelin: And, I also see that there is no budget for a new Commanding Officer, where would that money come from?

Selectman Kevin Boette: We would essentially use the OIC line item because we wouldn't have an OIC anymore.

Fred Douglas: I think everybody should understand here that if you pass this and the Sense of the Meeting is that the Board of Selectmen hires a Chief of Police it does not have to be a full time Chief it could be a part time Chief of Police.

Dwight Sowerby: Just a clarification if the issues in Mr. Drescher's letter are answered by the amendment that just passed but I would also point out that this sets the Sense of the Meeting for how a new Commanding Officer would be hired. It does not demand that a new Commanding Officer be hired.

Selectman Arnold Byam: I have a question for Dwight on the legality and this maybe, can we actually tie a residency, it is spelled out for five years. They have to be a taxpayer for five years to serve on a board. Everybody has the same rights in town. If you moved in tomorrow you should still be able to serve on a board or anything like that.

Dwight Sowerby: We weren't asked that question before and I would have to do some research on it but it would get my attention as a potential problem. But since it is advisory only you could seek a legal opinion before you actually did that. It strikes me that I agree that it could potentially be a problem but it may not.

Selectman Arnold Byam: Maybe Mr. Mayhew would strike that from his motion.

Dwight Sowerby: Well it is still just a Sense of the Meeting and you could choose to get a legal opinion before you actually appoint such a panel.

Chris Colotti: So since we have just amended this to now say Chief of Police, what is our process if we decide not to hire a Chief of Police?

Selectman Kevin Boette: It would be exactly the same; you would still go through this very important vetting process.

Chris Colotti: No, well we just stated Chief of Police; we took Officer in Charge out and replaced it specifically with the words Chief of Police. So, now this process would be followed, potentially followed for a Chief of Police.

Selectman Kevin Boette: This becomes advisory. Let's say Lt. Deware left and we were getting another OIC next week we would still follow process very similar to this.

Chris Colotti: But you don't have to.

Selectman Kevin Boette: We don't have to, but in the long run it makes a lot of sense.

Lee Mayhew: I would just respond to what Arnold said. There is a reason that I put the five year residency in the initial article and that basically, in all honesty, is so that nobody could say that Lee Mayhew was stacking the deck to have himself on the committee. I have only been here four years so that excluded Lee Mayhew from being a part of the committee. But it is totally advisory, you could pick someone here in your own process, you could say I want them here seven years or two years, that is up to you and you don't have to follow the five years, it is purely advisory. But, I wanted to exclude myself from any political overtones.

Mike Decubellis: Does this article differ significantly from your existing hiring process?

Selectman Kevin Boette: No, it does not.

Mike Decubellis: I think it is a bad article and I think we should let the Selectmen do their job otherwise we will be here writing job descriptions for every employee in town. I trust the guys that we elect to do the right thing when they hire these different positions and this is micro-managing to the nth degree as far as I am concerned.

Fred Douglas: Mr. Moderator I have a couple of questions seeing if you could solicit from the Board of Selectmen. The last hiring process did you do a criminal background check on a candidate?

Selectman Arnold Byam: Who specifically are you looking at?

Fred Douglas: I am asking if you did a polygraph test.

Selectman Arnold Byam: We have done polygraph tests.

Fred Douglas: Did you do a polygraph test on a current employee that's OIC?

Selectman Kevin Boette: No.

Fred Douglas: Did you do a psychological test?

Selectman Kevin Boette: No we didn't.

Fred Douglas: So, you didn't follow thorough procedure, whether or not the person was previously employed as a law enforcement officer or not.

Selectman Kevin Boette: With our current OIC no, with the OIC before it was.

Fred Douglas: Thank you.

Bob Rogers: I think the reason; the motivation for this article was that some years ago when we hired our previous Chief of Police, I think in the interest of saving money and time a lot of steps were omitted. There were certainly things that we realized later on that would have excluded our Chief, but, the process wasn't followed, he was hired without proper vetting and then we had a problem. I think this article simply wants to avoid that and suggest to the Selectmen that a process be followed all the way.

Mike Decubellis: I am guessing that with Fred Douglas now a member of the Board of Selectmen I think that the things that may have been missed in the past will certainly not be missed this time, if needed.

Bob Prest: I think all of the discussion subsequent to the vote is kind of like an afterthought and could have been discussed after the meeting because it has already been passed.

Moderator: No, the amendment has been passed. We haven't voted on the article yet.

Bob Prest: I thought the article had been passed, I am sorry, I apologize. The history, I have been here twenty years in this town and I have been associated with most of the Police Department members, quite a few of the Fire Department members in the past. In recent years we ran into this problem where there were issues that were brazed by the Selectmen with the Police Department going back to when we had the Police Chief. That problem was brought on by the fact that the Selectmen at that time chose to write their own agreement without really running it through the town attorney or taking it, and investigating doing a background check or anything else like that because everybody was in a big rush. And, then when stuff started happening, where people were being investigated for various reasons, there seemed to be an awful rush to get rid of the Police Chief. Because RSA, being that he was protected, became kind of difficult. It seemed like, when I sat through some of the discussions, some of the meetings with the Chief and the Board it was like attending a Kindergarten class where the kids were fighting with each other and arguing and pointing fingers at each other and things of that nature. None of it was very nice because I was present at those events. So, getting back to why would we want to have a reasonably structured procedure for selecting a Police Officer and, because the police force is one of the things that, you are not going to go to the Highway Department, you are not going to go to the Sanitation Department, you are not going to go over and see Patty and bring up an issue that has to do with the law. You are going to the Police Department and that is something that you want to have about as solid as you can get because those are the people that protect us. I would say that the selection process should be such that the people we get in the Police Department you can trust. You can go to the bank with them. And, we should support them in that manner. I haven't always seen that, the support that I am talking about. I have seen the people support them but I haven't necessarily seen the governing board in this town support them. But at any rate, to speak towards this article, I think that the \_\_\_\_\_ that are in here are very important. Now the money has been taken out I would say these are good guidelines for the Selectmen to use when they choose any officer that is going to operate in the Police Department. We have plenty of history in the past to show why it's important.

Dwight Sowerby: I am now taking off the Attorney hat and putting on the former Selectman hat. One of the concerns that I have with this, and I am not against it, but one of the concerns that I have with this is that no matter what process you have, you ultimately have the Selectmen making the final decision. And, no matter how good the process is you can have a bad result. In my former life I owned businesses with over seven hundred employees. I hired a lot of people, I made some extraordinarily good hires, I

made some extraordinarily bad hires, it happens. But, I would also like to respond to the comments made about the hiring of the prior Chief that we had. There was a process involved in that. There was, I think, a pretty thorough process. There was advertising that was done. There was the culling of the resumes'. There was a panel empowered by the Board of Selectmen which consisted of a State Police Officer, couple of citizens, couple of area Police Chiefs, who then, we had interviews in front of that panel, very similar to the panel laid out in Mr. Mayhews proposed article. From there we came down to an individual. I don't remember all of the details with that individual. I don't remember if we had a polygraph Mr. Douglas, I would have to go back and look, it was a long time ago, but I do know this, we checked with all of his prior employers, we had at that time a administrative officer who was, I can't remember his name but he was the former Police Chief in Dublin because we had no police force at all. We sent him up to the Town of Madison to review the personnel records. I personally talked to the Chair of the Board of Madison. I personally talked to the Police Chief in Pelham who gave him resounding reviews. He came to us, during the interview process I asked a question, I said you don't have a lot of experience as Chief do you have connections with other area Chiefs such that if you have an issue you can call somebody. He said I am glad you asked that and handed me a sheaf this thick of the strongest recommendations possible from Police Chiefs all over the State, including the Police Chief in Hollis, the Police Chief in Brookline, well that is all I remember precisely I don't want to say something that wouldn't be true. I think we followed a pretty good process which was pretty close to Mr. Mayhew's. It turned out very badly for which I will take partial responsibility; I was on the Board of Selectmen. No matter what process you put in place, there is no guarantee that you are not going to end up with a decision that you regret. The better the process the more likely you are going to have a good result, but, it is no guarantee and I take exception to those people who say that we did not follow a process. We followed a pretty good one, obviously not quite good enough.

Bill Ferra: With regards to a nineteen year veteran in the Milford, running the town as the Administrator and a Police Chief for many years, retired. This is Lyndeborough; we don't have multi apartments with lots of people living here who come and go and don't stay as long term residents. We don't have bars in this community where there are people coming from outside of our town and in. We don't have businesses, large businesses that take people from other towns that come into your town where you need a Police Chief, you need a full time Police force and you need these for that reason. We don't have that, we are a bedroom community. So the Officer In Charge, who has been doing a fine job, tomorrow if he was to mess up we would say you are all done, you are at will but if we get a Police Chief and we are back where we started again and we really don't want to go down that road. I mean we have done it twice already, how many times do we have to do it before we get smart about it. I think right now we are smart about it. The system they have set up, and I understand why they hired Officer Deware into that position when they got rid of the other two, I mean, no one talks about what happened, why was this officer let go. It is all, you know, I don't know, do we know? The point is, is that we moved from this article basically into the next already by talking about a Chief which the Town of Lyndeborough, as far as I am concerned does not need a Chief, we need someone who can, if they were to make a mistake or mess up say, they are gone and we don't have to worry about going through Courts and costs and expenses.

Moderator: Right now we are talking about the process; the next one is justification for a Chief. I have a motion to move the question, do I have a second (second from audience members). We are up to **Article 17**, the amendment is to make an article a Sense of the Meeting vote and it reads as:

**To see if the Town of Lyndeborough will vote to ask the Board of Selectmen to incorporate the following fundamental principles of interviewing and vetting processes into the next hiring of a**

**Chief of Police for the Town of Lyndeborough. Acknowledging that this is a Sense of the Meeting Article, the petitioners request that the Selectmen consider incorporating the following important criteria in said hiring process:**

- Selection of an outside competent firm to handle the recruitment and vetting process for the town.**
- Detailed and thorough background investigation, reference analysis and non-peer comment evaluation.**
- Written test and or essay to determine if the candidate has current knowledge of policing techniques and knowledge of the community of Lyndeborough.**
- Telephone interview in order to establish passage onto the final interview processes.**
- Establish a citizen's panel of a cross section of Lyndeborough citizens for interviews of the candidates.**
- Establish a professional panel for analysis and interviews of the candidates and selection of those to be submitted to the Selectmen panel for final interview and hiring. Selectmen's panel to include in addition to the Selectmen, three Lyndeborough registered voters, one of which has professional law enforcement experience, one of which is a former elected town official and the other a taxpayer of at least five years.**
- Interview of finalists by the Board of Selectmen.**

All those in favor signify by saying Aye, all those opposed signify by saying Nay. Forget that, Alright, here's the thing, I had a request and somebody just pointed out to me that I have a request that this be a ballot, a paper vote. I have seven people who have signed a petition, signed an article for that. I would ask that would you want this to still remain as a ballot vote or for this particular one or since it is a Sense of the Meeting it does not allow any money would you allow this to be a vote or card vote or ballot. (audience stated ballot vote). Ballot, okay that is the way it is, Ayes and Nays do not have it. What we are going to do is do a ballot vote and we will cycle through real quick for this particular article. You have some voter's cards in front of you. Those that got here early got gold cards that say yes or no; those that might have gotten here a little bit later have a yellow card that says yes or no. So that is the color that we are going to use, is yellow or gold, whichever one you have and if you agree with the article you put an x beside yes, if you don't agree with the article you put an x beside the word no. Do that now, please. (People proceeded to vote and place ballots in ballot box) They are counting the ballots now but we will continue with the meeting. Okay, continuing on, we are up to Article 18. Again, this was an article by petition. It came out of the meetings this past summer and fall from citizens in town.

Moderator read Article:

**Article 18: (Article by Petition)**

**To see if the Town of Lyndeborough will vote to direct the Board of Selectmen, in accordance with all applicable New Hampshire Statutes and Administrative Rules, to undertake with immediate action, the appointment of a Police Chief for the Town of Lyndeborough, said Police Chief to operate under the authority of NH RSA 105.**

May I have a motion please, (Lee Mayhew moved, Fred Douglas Seconded) would someone speak to this article please.

Lee Mayhew: The explanation basically is what I gave you before, that talk was to cover both articles and it was a feeling from the group that had met even though we had troubles in the past they would like to have some degree of separation from the operating elected officials to the Police Department so that there could be proper police functioning without perhaps political overtones.

Leo Trudeau: Perhaps Mr. Sowerby could explain to us what New Hampshire RSA 105 is and that maybe helpful in clarifying some of the thought process.

Dwight Sowerby: What we are referring to is RSA 105:2-a Police Chiefs Powers and their Dismissal. It allows the Board of Selectmen to appoint a Chief and it says, "Such Chiefs, Superintendent or City Marshall shall be subject to suspension without pay or dismissal only for cause and after he or she has been presented with a written specification of the reasons. Upon such suspension or dismissal he or she shall be entitled to a hearing on the merits and reasonableness of the actions in Superior Court in the County in which the municipality is located provided that he or she petitions the Clerk for the Superior Court for such a hearing within forty-five days of his or her suspension or dismissal. The Courts shall have the power to affirm, modify or negate such suspension or dismissal based upon its findings." So, you can't just terminate somebody because you decided that you want to hire somebody else, you have to have cause and the Police Chief, and the Police Chief is immediately able to go to Court and have a hearing on the merits in Superior Court and the Superior Court then can do whatever it wants in terms of modification and so forth. To my knowledge of the cases that I remember there was only one case in which, cause, there was a specific cause, interestingly enough it is blowing your budget. Blow the budget; you can be terminated for that. Pretty much everything else is going to be up to the Court.

Mike Decubellis: And, in our case when we had Mr. Basinas here the Town was building a case to eliminate him and remove him from the position. Spent a lot of time doing so and ultimately the Judge didn't buy it, we couldn't get rid of him, he put him back in office against the Towns will. All the officers quit, it was terrible. RSA 105 is a terrible law that needs to be changed. There is nothing wrong with our existing Police Department, it is fantastic and I would argue that the circumstances surrounding our discussing this article are terrible. The scenario was long and drawn out and I would argue that Lee sort of stirred the pot with his excellent politicking, getting it in the paper, getting people to come into a meeting and these sixty people were responding to an article that was in the paper saying that the Selectmen are micromanaging the Police Department and that was not true. The Selectmen were doing their job. Officer Burke wanted to keep that third cruiser in the worst way. He came before the CIP committee, the budget committee, would not take no for an answer. The Selectmen told him at multiple meetings sell the cruiser, and he wasn't happy with that, he was doing everything he could. And, I don't know for a fact but I am guessing that Lee might have a good relationship with Tom, Tom was a great guy, I like Tom too but I think that Lee is really going to bat for Tom and you know things went downhill in the relationship from there. But, it wasn't because these guys were micromanaging the Police Department they were doing their job as managers. I will leave it at that.

Fred Douglas: I would like to just hinge on a little bit of what Dwight Sowerby indicated when it comes to dealing with employees and a Police Chief. Keep in mind we had a full time Chief originally back many years ago, so to suggest that the system on the appeal process by a Police Chief always goes in their favor is not true. Our first full time Police Chief in Lyndeborough, the Town of Lyndeborough, the Board of Selectmen at that time terminated him. He immediately appealed it to Superior Court. The Superior Court came back, the Judge came back and said, because the Selectmen did their job, said, not only was the Town correct in their termination but they were obligated. That's number one, number two, I don't want to get in to the ins and outs of the past Police Chief but, this I do know from personally speaking with one Selectman who is still currently serving here. When you deal with a public employee, a Police Chief, and he appeals it, you need to be able to show a course of conduct or conduct so arbitrary and so poor that he or she do not belong in that position. I have been told is that the documentation of poor performance by that employee was not done in a proper way; it was all word of mouth. There is an old saying if it is not in writing it didn't happen. There was no demonstration or course of conduct that

is why there was an appeal process and that is why you have that process for the Police Chief. So, he can't be arbitrarily or capriciously removed from his position.

Tania Philbrick: I believe it is imperative that we have a separation of powers in this Town, without a Police Chief there is no separation of powers. Anytime a Selectman is under legal suspicion or observation the Board can at whim decide to fire the Officer in Charge and this is what has been happening.

Lee Mayhew: Just to respond to Mikes comment, I thought Tom Burke was a good Police Officer. I haven't seen Tom Burke since he left here, so I am not advocating for Tom Burke. What I am advocating for is a process by which a professional organization, I don't care if it is Kent, I don't care if it is the Conservation Commission or I don't care if it is the Police Department. They need to be respected what their skill set is and that needs to be mixed with the authority that the Selectmen have. Now, if Tom Burke actually refused to sell the car, and I know there was a lot of consternation going on and I don't know why he wanted it, but he wanted it. If Tom actually refused a direct order then these three gentlemen should have written a letter of reprimand and placed that in his personnel file. Whether that was done or not I don't know. But, I wanted to clear up the issue of Tom Burke and Lee Mayhew, it doesn't exist. Lyndeborough is a little strange structure in this sense; it is a very small town. But, you have a Town Administrator and a Town Administrator is supposed to administer the town, in my view now, administer the town under the guidelines, the operating guidelines and principles that are established by the Board of Selectmen. In other words, the Board of Selectmen are here once a week or once every two weeks if they are on the summer schedule. But, they make decisions that set policy and that policy is supposed to be implemented by that Town Administrator if you have a normal structure because that is the person that the Selectmen have to deal with. In normal structures then, under the Town Administrator would be the other supporting departments and the Town Administrator is responsible to make sure that those departments function in accordance with the guidelines and rules and regulations that the Board have established. That is a system that I don't necessarily see here either. But, it is very hard for me to understand how three elected officials, and even though we have had consternation, I still like all three of them, it is a difference of philosophies, it is a difference of opinion. They have their job to do. Some of us came and sat and met with them because we didn't think they were communicating why they were doing it and the view of the citizen, they needed to have that repartee. That didn't exist this time, that is why this thing kind of built and built and yes, I did have an article in the paper because I thought information needed to be shared. When you inform the public who elects you on certain things the public is calm, they understand why you are doing it. I wasn't getting it Mike and that is why I sent the Right to Know request to the Attorney General's Office. I got three hundred and eighty six pages of documents. Now, why couldn't we share that, there was nothing in there that should have been hidden, I didn't think. The two papers had it in and everybody has read it. What we need is a process by which we don't have banging of the fists and everything. This Town is such a wonderful place we need the ability to partner with each other and grow together and I didn't see that in the Police Department. One of the former officials said, well why are we reducing their budget and then there was a discussion, a long discussion about overlap. I understand overlap, maybe there was too much overlap, I don't know, that didn't come out clearly in the discussions. So, it perhaps exacerbated itself, but this, Tom and I, I haven't seen him.

Therese Roy-Mayhew: I know why Tom wanted that car and I read it in the reports, a Selectmen's meeting report. He wanted that car because he thought he could fix it up and have it going so that people who had to run errands for the Town, such as Trish or Cindi or any of them, could use that car as a vehicle rather than having to use their own car or to use another car. I read it in the Selectmen's notes

themselves and I will look for it and find it if it is something you need to know. But that is why Tom wanted the car.

Chris Colotti: I actually want to agree with what Fred said. Part of the problem that we are afraid of with 105, we are afraid of the firing process. I have been a part of numbers and numbers of organizations where, New Hampshire is a work at will state for everybody, but that doesn't mean from an HR perspective that they can't do it without a paper trail. So whatever happened in the past happened because of the lack of the paper trail. Things were not tracked, things were not actually, unfortunately I don't want to point at any Selectmen, there was mistakes made, it was all hearsay. So, whether we have a Police Chief or not we just need to understand that it is not RSA 105 that is the problem, it is making sure that those guys track any potential issues with that person and make sure that they can take the corrective action legally and make sure that that legal process is quick and easy. That didn't happen. It is in the past. We just need to say, oh well, it didn't happen. If my employer today wants to fire me from my job they better have a paper trail because if they don't I am going to probably take them to Court because I want to see the cause. It is that simple. So, put that aside and just think about what some other folks have said which I truly believe as well which is we should have a separation of legislation and law. We shouldn't have the same people making the legislation necessarily running the Police Department, in my opinion. We maybe are not large enough to have a Police Chief but in the same fundamental level having it all wrapped up into one, kind of goes against why we have the judicial branch, the legislative branch and the executive branch at the government level. We don't have them all as one because then we wouldn't be a democracy, we would basically be China. Think about those two things, I know I have been pretty vocal today but we have to put the trust in the people managing that department to have the paper trail to make sure that they can take action if there is a problem. If they don't, then we have a different problem. If they are not managing that position then we have a very different problem than that person being able to go to court. Definitely think about whether we should have that separation in my opinion I don't think it is a bad thing. We have had problems but I think it is also a time to heal and move on from the problems and move forward.

Tom Chrisenton: Is a position of Police Chief handled differently than all the other town employees because of the statute?

Selectman Kevin Boette: Yes

Tom Chrisenton: The Road Agent is treated differently; the Fire Chief is treated differently if you adopt the Police Chief. The Town Administrator handled differently. The only one that has this special protection by this special RSA is the Police Chief and that has created problems for us in the past hasn't it.

Moderator: I would think that if they fired somebody like the Road Agent or whatever without cause, which they can do, I think there would still be a lawsuit. I think people are trying to protect their jobs in this economy and you really need to show why they are not performing their duties.

Tom Chrisenton: The Police Chief is treated differently than every other employee in the town. Right now the Police Chief is treated the same as every employee in the town.

Moderator: The Officer in Charge.

Selectman Kevin Boette: Just a few comments from me, I am one of the guys who worked to get the position of Police Chief removed last time we had all these troubles going on in the Town. I currently don't support Article 18, but not because I don't believe in the political separation between the powers. I actually do think that it is a very good idea that we have a political separation between the Board of Selectmen and the Chief of Police. What I don't agree with in RSA 105 is how difficult it is to get rid of somebody. If he robs a bank you can get rid of him, but if you have somebody who is not performing well and on Election Day Fred and I spent some time discussing this, but it is very difficult. If you read

the papers about all the Chiefs that have been fired what do you see, they haven't been fired, they get put back. If we have a Chief of Police that is not performing up to the standards that we set forth, okay, but they are meeting the minimum requirements they are just not doing a great job. Like, Officer Deware, he is up in the school, he is at community events, he is out doing what he wants. What if the Chief decided he didn't want to do that? Well we could counsel him in his annual review and tell him we wanted him to be more involved in the community, we want to see him doing things and then he still is performing at a minimum. Well, right now he is still performing his job and RSA 105 will protect him but he is not doing what the people want. What I would like to see changed is, I would like to see 105 changed so there is a review board of let's say two Selectmen picked at random from the town, two law enforcement officers, somebody from the public defender's office and somebody from the AG's office and then once a month maybe there is a meeting in Concord where the town that has the trouble with their Chief, we could go up and appeal to the Arbitration Board and get some of these things solved. But, right now that Chief is in his job practically for life and you can't get rid of him and I disagree with that. Every one of our employees in this town works hard and does a great job but they don't have the special protection. You know what keeps them in their jobs, they do a good job and they work hard and that is why they stay there and if they decide to stop working hard and stop doing a good job the Selectmen are going to remove them. Another thing that was brought up in this discussion was, by Mr. Mayhew was the fact that the Selectmen were micromanaging in the Police Department. Now, today I had heard Mr. Douglas and Mr. Mayhew come up and want to bring up Police Department issues about the prosecutor. They don't think the Police Department needs a Prosecutor. The Police Department approached us and requested this. Then the Police Department approached us and requested a certain type of vehicle that they decided would do their job better and they could serve the citizens of the town better. Well, Mr. Douglas disagrees with that. He doesn't think they should have that well that also is micromanaging, okay; they want to have control of the Police. I disagree with that. We need to have a way out, and another thing I would like to point out today and I will tell you this is probably a sure thing, but if we reappoint this position of Chief of Police, Mr. Basinas will sue us again. I will guarantee you and depending on how that turns out he might..... (comments from audience that he can't – Moderator stated he signed papers) He had just sued us after he had signed papers, it doesn't mean he can't sue us, it doesn't mean he might not be successful but I will guarantee you that we will see something if Lyndeborough approves a Chief of Police. I just want to point that out and again I don't support the article.

Moderator: I would like to ask legal opinion, can you put into a Police Chiefs contract term limits, meaning that on the annual basis of his hiring you do a review and you say you are doing a great job and do you want to sign it for another year. At that time he could be released as well as the Town. Can that be done?

Dwight Sowerby: No. Just before we went through the process with Chief Basinas there was, the Town of Litchfield had an issue with their Police Chief. They had hired that Police Chief and had a contract which said you are probationary for some period of time, a year or whatever it was, and the Police Chief signed that. Then they decided you don't meet the requirements, the probationary requirements, goodbye. He sued them. The Court said the statute rules over the contract. Which is why Basinas's contract was never an issue or shouldn't have been an issue because he was still protected by 105?

Andy Roper: I believe, however you can, I don't know why you would want to, you could set up the Police Chief as an elected position. Let's not go there.

Moderator: I would like for Dwight to explain the issues surrounding an Officer in Charge versus a Police Chief. In other words if the Officer in Charge walks like a duck, talks like a duck, it probably is a

duck. Is it the same thing, I just want to get clarification on Officer in Charge, Police Administrator and Marshall of the City.

Dwight Sowerby: There is no such thing in the statutes that describes an Officer in Charge; this is a creation of Lyndeborough. I don't know anybody else that has done it. The statutes basically say that in the absence of a Police Chief the Police Department is headed by the Board of Selectmen. So, the issue if you have an Officer in Charge, obviously maybe you have a Police Officer who is the senior Police Officer. The fear that you get into with that is if you then delegate to that individual all of the duties that a Police Chief would have, do you have a de facto Police Chief. So, it does create a problem in that sufficient duties have to be held by the Board of Selectmen so that the Officer in Charge is not a de facto Police Chief, otherwise you have an Officer In Charge and you decide to terminate him because we are at will and he says by the way, 105, I am going to Court. That doesn't mean that you can't do what we are doing, what it means is that you have to be very careful as to what duties are delegated to that OIC and you get certain issues that, right to know issues, juvenile protection issues, you get issues in should the Selectmen really know this, should this be something that is held in open session, do we have to go into non-public every time we get to talk to the Police Department. There are real issues with either a Police Chief or Officer in Charge. I don't think you should look at either one as a panacea that this one is totally safe, that one is not. In terms of something else that was said here as to, is the Police Chief treated differently than anybody else, yes. There are some positions, the Highway Agent does have some statutory protection, but the Police Chief is the only one that has such protection that the Judge ends up making the decision of the employer. When you decide to terminate a Police Chief the Judge then is going to rule and maybe even modify it and say no, you know what you can't terminate him you have to put him on a three week paid or unpaid suspension or you have to do this. That doesn't happen. If you terminate a normal employee and New Hampshire is an at will State we can say, you know, we just don't want you anymore and if that is all you say, sorry, we don't need you anymore, there is nothing to appeal. If you say we don't need you anymore and by the way we are firing you because you are a man, you are a women, you are of color, now you have big troubles. If you say to somebody we are going to fire you because you stole money from the petty cash, that is for cause and you are going to have to prove it. You can say we just don't want you anymore, that's all you say you are probably okay. Not so with a Police Chief. The Police Chief gets to have a hearing on the merits as to whether he or she should have been fired and the Judge will make the decision almost as if the Judge were the employer.

Lee Mayhew: I merely wanted to respond to Mr. Boette with the reduction in the operating budget that I did not make. It was not to micromanage. I had asked during the budget process for documentation as to why we needed to entertain a contract with the Town of Wilton. I wanted to know the amount of Court activity and what did they consist of and all the time involved and all the rest of that and the Selectmen referred me, I believe, to the Police Department to get the statistics. The Police Department did not have any statistics so I went to the District Court. The District Court did not have any statistics either because they don't segregate town by town as to felonies and other things that come to the Court. I don't have a problem with the Wilton Prosecutor issue when it became documented as a need. That need has not been articulated or evidenced and that is the reason I was making the reduction.

Mike Decubellis: The presumption made earlier that you just need to document properly the things you have against the Chief before you let them go and you will be okay is really wrong. You need what's in the statute is quoted as cause; you need cause to let him go. And, what is cause, short of a felony I don't think anything would be considered cause by a Judge. If we have a Police Chief, gets in here, comes in, puts his feet up on his desk all day and doesn't do a thing, is that cause? I am guessing not. I am guessing the Judge is going to say you go right back to work buddy you are safe, and that is wrong. I have employed people for 25 years, people do well for me, I take care of them and they continue to have

their job. If they do poorly they are out and why should the Chief of Police be any other way. And, if the statute weren't written the way it is I might support it. But, it is awful, it is a bad law.

Fred Douglas: Mike, I have to respond to this, and I didn't want to bring this into this arena. I was a Police Officer in Milford for 35 years. I held a supervisory position from 1985; I was promoted to Police Chief in 1999. I retired last June. I dealt with some of the most wonderful people, employees in that Town and I still have the upmost respect for them. One of the things that I dealt with was organized labor. Now, you can only imagine, you have to have a great working relationship with organized labor and I will tell you right now Mike, with all due respect, you have to document every single thing. You have to give that individual the education, the background and the corrective actions to correct his or her behavior. That is showing that management feels that they are a valuable employee. Without doing that and without demonstrate a course of conduct I can guarantee you any reasonable and prudent person would say that's not fair. So, what is cause, because they weren't wearing a hat, no, but if you tell them to wear their hat and it is documented and they continue doing it then it becomes something different. What you do is pull out the rules and regulations and I am sure Lt. Deware will agree with me and then you start citing and then show that course of conduct. You don't want to build that, you want to save that employee, that person, that employee is very important to the Town. You want to save them. It costs a lot more to hire these people then it is to give them the direction and the organizational skills to correct his or her behavior. So, Mike, with all due respect, you can do it but it has to be done in a professional, standard manner.

Mike Decubellis: The problem is that historically they don't let these things go up to a Judge, what happens is they all get settled by the insurance agency and nothing ever gets solved. The law never gets better.

Selectman Kevin Boette: One of my questions I have, we have this whole discussion is, standing in the back of the room is Lt. Rance Deware, he has done an absolute fabulous job with this Police Department. He has stepped up in the midst of turmoil. He came in here and he got a Police Department fully staffed and organized and professional. This is the most professional Department I have seen in our Town. These guys are out there working hard every day. Now here we are talking about the Chief position, what are we going to do with Rance because there is no position in there for Rance if we go to a Chief unless he becomes the Chief and I see no reason to get rid of him so **I would like to offer the following amendment to this article? Top of the article reads exactly the same and then the last sentence to go in would be "this first Chief to be Lt. Rance Deware if he so chooses to accept the position"**

Fred Douglas: I respect your position Selectman Boette but I think you are circumventing the process. If this passes there is no reason why Lt. Deware can't apply for the position once it has opened up and we go through the entire process which is exactly what the problem has been in the past.

Moderator: We have never had an article with a person's name in it in my many years.

(audience member shouted it has not been seconded- **Donnie Sawin seconded**)

Selectman Kevin Boette: And, I would like to speak to this. We are going to spend seventy five hundred dollars proving that Rance Deware..... What I am saying is if we decide to go through with this it is a very expensive process when you have somebody who actually has proved the fact they have the ability that they have the ability to work with both the Board, the community, the schools. He has proven himself on the job which is way better than anything you can go through in a hiring process. He has already proved that he can do the job.

Mike Kaelin: You are telling us that you have already made up your mind and that you are planning to bypass the process.

Selectman Kevin Boette: No, No I'm sorry, I' not.....

Mike Kaelin: That is exactly what you are saying. By putting this into an amendment that you want to select this guy you have already bypassed the process.

Selectman Kevin Boette: What I want to know is what do we do with Rance if we vote in the Chief position?

Mike Kaelin: Let him apply for the job and go through the whole process. But you have already told us you have a candidate you've selected you want to put into an amendment, into a vote and bypass the whole process and I don't think that is right at all.

Selectman Kevin Boette: I guess I am not intending to bypass the process what I am worried about is what we are going to do to a valuable employee.

Moderator: I think this is something that the Select Board would decide after we choose to have a Police Chief.

Selectman Kevin Boette: I just want you to think about what do we do to a valuable employee. Like I said I don't support this article but I do support the work that Rance has done for this community, because I think we are that much better for it and as we look to vote for this article I would like us to keep in mind of what happens to Officer Deware.

Mike Kaelin: But again, I think you are still, by putting this article....

Selectman Kevin Boette: **I will withdraw my amendment** because I did not intend it to be as such but we need to think about Officer Deware and what happens to him, because of the great work that he has done for our community.

Moderator: So you have removed the amendment and **second has been withdrawn**. So the **amendment is off the table**.

Mike Kaelin: I just want to clarify, if this passes does that mandate that we hire a Police Chief?

Moderator: It is still advisory, as Mr. Sowerby has said it is still advisory, they can do what they want to do.

Mike Kaelin: If this fails then they are not banned from hiring a Police Chief.

Moderator: They can do what they want to do. This is almost like a Sense of the Meeting.

Bud McEntee: What is the status of the ballot we just voted on?

Moderator: I will entertain one more question and then I will read the status.

Sally Curran: If this passes the Board is morally obligated if not legally because they have said they would listen to the will of the people.

Moderator: Before we get to the question, the article before that, thank you for bringing that up Mr. McEntee, I really appreciate that, Article 17, with the amendment to make it a Sense of the Meeting, we took the money out of that and the vote was **Article 17 was Yes 57 No 31** so **Article 17 did pass as an advisory Sense of the Meeting vote to establish these guidelines**. We are ready for Article 18, and I have a motion to call the question, do I have a second, I have a bunch of seconds.

**Ready for Article 18:**

**To see if the Town of Lyndeborough will vote to direct the Board of Selectmen, in accordance with all applicable New Hampshire Statutes and Administrative Rules, to undertake with immediate action, the appointment of a Police Chief for the Town of Lyndeborough, said Police Chief to operate under the authority of NH RSA 105.**

All those that want to vote take out your cards, we are going to go with blue, we are either going to mark yes or no on your blue ballot and cycle through the box. (People voted) Okay we have the results. On our vote on **Article 18** by petition for establishing to direct the Selectmen to select a Chief of Police for the Town of Lyndeborough they have been directed by a vote of **YES 45 and NO 43. Article Passes.**

So, overwhelmingly by two votes, they are directed to find a Chief of Police and again it was just advisory they could do as they wish but at least the feeling of this meeting is that we should have a Chief of Police.

**Article 19: To see if the Town of Lyndeborough will vote to authorize the Selectmen to accept the reports of auditors and committees as printed in the Town Report; or take any other action relating thereto. (Majority vote required).**

Motion made by Selectman Arnold Byam to accept article as read, seconded by Selectman Kevin Boette.

Moderator: Is there any questions or corrections to any reports, seeing none, All those in favor of Article 19 as read signify by saying Aye, all those opposed signify by saying Nay. **Article 19 Passes**

**Article 20: To transact any other business that may legally come before said meeting.**

Moderator: At this time I would like to turn this over to the Selectmen.

Selectman Kevin Boette: We just have a quick presentation for Selectman Sawin, he is our outgoing Selectman and we just wanted to thank him very much for all the long hours that he served with us during the three years of his term and wish him well in his endeavors.

Moderator: Our bookkeeper Kay Hopkins who has done a wonderful job, is retiring and she and her husband are moving to South Carolina, I would just like to wish her well and thank her for her service.

Motion to adjourn from audience member.

Moderator: I have a motion to adjourn; I have a whole lot of seconds. All those in favor of adjourning signify by saying Aye, those opposed, seeing none I adjourn this meeting. Meeting adjourned at 3:40pm

Respectfully Submitted,

Patricia H. Schultz  
Town Clerk/Tax Collector  
Town of Lyndeborough NH