

MINUTES – CHARTER REVIEW COMMITTEE
Thursday, August 10, 2017
Seth Ventress Hall, 76 South River Street

Present: William Bowers, Donald Gibson, Robert Marzelli, Barbara Farnsworth, Scott Borstel, Jonathan Grabowski (alternate), Alyssa McNamara Reed (alternate)

Mr. Bowers opened the meeting at 7:00 p.m. and announced that the meeting is being recorded by MCTV.

Old Business:

Mr. Bowers noted that the subcommittee has begun the formal drafting of the charter. Don Gibson, Chairman of Drafting Subcommittee, gave an update on their progress and said that they have reviewed the language in Articles 1-4 of the changes that have been made to the charter. Alyssa Reed provided the committee with the latest version of the charter with changes included. Mr. Gibson said that they corrected punctuation errors and eliminated duplicate language. Mr. Gibson said that they had some questions for the committee on Article 2 regarding whether the town meeting warrant should be posted on the town website. The charter does not require it, but the subcommittee is wondering if that should be made part of the language. Also there is a conflict between the bylaw, which states it must be published 4 weeks prior to town meeting and the charter, which says 2 weeks prior to town meeting.

Bill Bowers noted that the committee has not reviewed Article 2 yet, but they will take these things into consideration when discussing this article.

Article 3:

Bob Marzelli said that the language in Article 3.2.1A regarding the five member Board of Selectmen for three year terms is not clear. Mr. Marzelli said that he looked at the language for the School Committee and found that to be much clearer. After some discussion, Scott Borstel moved, seconded by Barbara Farnsworth, to replace the language to make it parallel with the language under the school committee article. The vote was unanimous.

Bill Bowers asked if it would make sense to include language under Article 3.2.1B to say that “a vacancy shall be filled by a special appointment by a majority vote of the remaining members of the BOS until such time as a regularly scheduled election may occur . . . in the event of a tie vote, such a tie would be broken by the vote of the Town Moderator.” Bob Marzelli suggested that this language be approved by Town Counsel before being added to the Charter.

Scott Borstel said that the language in 3.2.1B is very well written and states “provided by the General Laws, this charter, by-law and/or vote of the town meeting” so if the Board of Selectmen feels that a special election is not needed they can create a bylaw. Mr. Borstel added that changing the language would be too restrictive in preventing the Board of Selectmen from having a special election. Bill Bowers said his concern is that if the need to create a bylaw comes up, they would not be able to create it fast enough to fill the vacancy. Bob Marzelli said that there is a general law that covers filling a vacancy on the Board of Selectmen. Scott Borstel said that he would recommend creating a bylaw to cover this. Bob Marzelli said we should first check with town counsel on the legality of overriding the general law with a bylaw.

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Bob Marzelli read the language from Article 3.2.1.C-10 as follows: “the selectmen shall not transfer or dispose of any real property of the town unless town meeting by appropriate vote has approved the use or uses intended for the property upon its disposition”. Mr. Marzelli said that the problem with this language is that there are only two town meetings per year and if the Selectmen want to dispose of something they would have to wait for the next town meeting. Mr. Marzelli said that this language may be cumbersome in practice, and suggested removing it from the charter. After some discussion, it was decided that the committee would defer to Town Counsel on this language.

Dan Burke joined the meeting at 7:15 p.m.

Bob Marzelli said that the subcommittee had some concerns about Article 3.2.1C11 since there is rarely an appropriation to pay judgments, when a judgement is paid it gets added to the recap sheet, so this language might prevent the town from being able to settle a case. After some discussion it was decided that Town Counsel should look at this language.

Bill Bowers noted that in Section 3.2.7 the word appointed needs to be changed to elected.

Article 4:

Bob Marzelli said that the subcommittee wondered if the language in Article 4.1.1H6 regarding hiring and removal is necessary in view of Article 8.2. It was decided that this was another question for Bob Galvin.

There was some discussion regarding the best way to track changes as they are approved.

Bill Bowers read into the record the proposed language for Article 4.1.6 regarding the Finance Director. Scott Borstel asked why it is necessary to have the Finance Director job description in the charter and not in a bylaw as the committee is recommending for the Facilities Manager. Mr. Borstel noted that he supported having the Facilities Manager language included in the charter.

Dan Burke said that for him it is because of the whole description of the budget process that follows this section and added that he sees the Finance Director as a department head, which is not the case for the Facilities Manager. Scott Borstel said that the Facilities Manager is different as it reports to both the School Department and Town Administrator and is funded by both.

Bob Marzelli said that the language Mr. Bowers read is different from option 1 that was decided on at the last meeting. Option 1 provided guidance for the Town Manager to create a job description.

Bob Marzelli said that the committee needs to be careful about creating levels of complexity that could cause problems. The main focus of the charter should be to create centralized government. Mr. Marzelli recommended going back to just the first paragraph of Option 1 which was presented at the last meeting. Bob Marzelli moved that the language in Article 4.1.6 should read: “There shall be a Finance Director” followed by the rest of the first paragraph in Option 1. Don Gibson noted that the words “or more” need to be removed from the language in option 1.

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Alyssa Reed asked if they wanted to give the Town Manager the ability to serve in this role if he or she chooses. Bob Marzelli said that this language does not prohibit the Town Manager from appointing himself as the Finance Director.

Don Gibson moved the amended language, Dan Burke seconded. The vote was unanimous.

Dan Burke asked if we should re-look at addressing the facilities manager position in the charter.

Don Gibson said that his recollection is that the Brian Adams said that he should work under the Department of Public Works. Bob Marzelli said that Brian Adams is working more as a project manager than as a facilities manager. Dan Burke said that he recalled that Brian Adams said that ideally the facilities manager would work under the DPW, but not in this current environment.

Scott Borstel moved to relook at the facilities manager section to see why it is not being treated in the same way as the Finance Director. Seeing no second, Mr. Borstel withdrew his motion.

Dan Burke said that there needs to be a strong bylaw regarding the Facilities Manager using the language from the old charter. Bill Bowers suggested that Scott Borstel draft the language for the proposed bylaw.

Article 5:

Bill Bowers said that Articles 5.2 and 5.6 had the following bullet points from the February 23 meeting:

- Look at Capital Budget Committee process
- Explore the need to define and codify the budget process

Don Gibson said that Bill Last said that he would not be upset if the capital budget committee was abolished if there was a strong town manager and a finance director. Dan Burke said that in the past the capital budget committee did not have a capital plan to work from. Bill Bowers said that ideally the finance director would be driving the process and the capital budget committee would be working in an advisory capacity. Bob Marzelli said that there is a capital budget bylaw that already exists which was passed in 1993.

Dan Burke noted that Section 5.6 is about the capital improvement program, it does not specifically address the Capital Budget Committee and suggested leaving it as is.

Scott Borstel said that the biggest criticism of the capital process as it exists now is that if a department submits a 5 year capital request, even if the capital budget committee recommends zero funding, it still shows up in the warrant with zero funding. This gives the voters the opportunity to circumvent the recommendations and fund it. Mr. Borstel said that zero funded items should not show up on the warrant.

Bob Marzelli said that the bylaw says that you need to show both in the warrant, because Department Heads did not want the Capital Budget Committee to have a veto power over what they want to present to town meeting.

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Dan Burke said the Capital Budget Committee makes the recommendation then it goes to the Board of Selectmen to approve and include on the warrant. Mr. Burke recommended that the bylaw be modified. Scott Borstel said he will put it on the list.

Barbara Farnsworth said that in Hingham the capital budget is in the back of the warrant and shows every item that was recommended as well as a five year plan. The actual line item budget shows salaries, expenses, and capital outlay, but doesn't necessarily describe what the capital project is, it just gives a dollar amount.

Bob Marzelli agreed that this is not the best way to do things, but said that it was a political compromise that was made in 1993.

Dan Burke moved that the committee make a recommendation to the Board of Selectmen to change the bylaw to eliminate the inclusion of zero funded items in the capital budget article on the warrant. Bill Bowers said that at some point the charter needs to be reconciled with the bylaws.

Dan Burke read the language from Article 5.2 which states that "on or before the last Monday of January the selectmen, assisted by the town administrator, shall file with the advisory board a proposed budget for the ensuing fiscal year with accompanying budget message and supporting documents." Mr. Burke asked where the recommended finance director fits into this process.

Scott Borstel said that this language doesn't need to change other than changing town administrator to town manager, since the finance director reports to the town manager.

Don Gibson said he attended the joint meeting of the Advisory Board and the Board of Selectmen and the warrant was distributed at that meeting, making it impossible for the public to come up with any meaningful questions. Mr. Gibson suggested requiring that the warrant containing the budget be disseminated to the public in advance of this meeting.

Dan Burke noted that there is a conflict between the bylaw and charter with respect to when and how the warrant is posted.

Jon Grabowski agreed with Don Gibson that the purpose of the joint meeting is to give the public an opportunity to ask questions and this is not possible if they don't receive the warrant in advance of the meeting.

Jim Fitzgerald, member of the Board of Selectmen, said that the warrant is available 30 days prior to town meeting. The advisory board calls the joint hearing and it should have been called a week later. Mr. Fitzgerald said that the Board of Selectmen and Advisory Board have an agreement that the joint meeting will be held a week after the warrant becomes available to the public. Bill Bowers said that we should continue this discussion as part of the meeting with the Board of Selectmen.

Scott Borstel said that the language is there, it just has to be enforced and noted that the

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committee needs to talk to the Board of Selectmen about the conflict in the bylaw and the charter related to when the warrant needs to be published.

Bill Bowers said that this completes the discussion on articles 3, 4, & 5.

Appointment:

Bill Bowers said that two members of the Board of Selectmen, Jim Fitzgerald and Joe Kelleher, are here to comment on the draft charter. Jim Fitzgerald opened the meeting of the Board of Selectmen at 8:30 p.m.

Bill Bowers gave the Board of Selectmen an overview of the work the committee has done so far and said that they would like to hear from the Board of Selectmen if they have any concerns or comments.

Jim Fitzgerald said that he has concerns with the hiring and firing of staff, and said that he feels the Board of Selectmen should have a direct say in the hiring and firing of the police chief, fire chief and finance director. Mr. Fitzgerald said that he knows that the Charter Review Committee is looking to recommend that the Town Manager has the hiring and firing authority with the Board of Selectmen having a veto, but he thinks that as elected officials they have been charged by the voters with having executive authority over those important positions. Mr. Fitzgerald added that the Planning Board and Board of Health should have some input on the hiring and firing of the Town Planner and Health Agent but those professionals should ultimately be hired by the Town Manager. Mr. Fitzgerald said that he thinks the one year moratorium on public service for the town manager is short sighted, he understands the theory of not wanting a recent member of the Board of Selectmen to serve in that role, but if a well-qualified person is serving as a member of another elected board they should not be excluded from consideration. Mr. Fitzgerald said that the exclusion of all elected officials is a bit extreme and could eliminate some good “home grown” candidates.

Joe Kelleher said that he shares some of the same concerns as Jim Fitzgerald. Mr. Kelleher said that he agrees with 98% of the changes the committee is recommending, but agrees that the Board of Selectmen should have hiring authority, rather than just veto power, for the police chief, fire chief, and finance director.

Don Gibson said that his understanding of the committee’s charge was to move toward centralized authority. If the Board of Selectmen has the hiring authority over these positions, wouldn’t that lead to decentralized authority?

Jim Fitzgerald said he doesn’t think that is the type of centralized authority they were thinking of when they gave the committee their charge, the issue they were trying to resolve is that when people have a problem with a pothole in the street, they call the Board of Selectmen. People want one place to go with concerns and issues. With the new charter they would be going to the town manager who works for the Board of Selectmen, creating a centralized government. Giving the Board of Selectmen hiring and firing authority over the police chief, fire chief and finance director would not change that at all as they would all report to the Town Manager.

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Don Gibson asked Mr. Fitzgerald and Mr. Kelleher how they would stop the problem of these employees saying “I don’t report to you” to the Town Manager.

Jim Fitzgerald said that has never been a problem with the police department and fire department, the problem has been with professional staff that are hired by a separately elected board such as the Town Assessor. Jim Fitzgerald said that he thinks the Board of Selectmen needs control over the public safety positions, and added that he thinks the voters would want the elected officials to have this authority.

Scott Borstel said that the committee recently had a lengthy discussion regarding the planning board and board of health having the ability to appoint their department heads, and asked Mr. Fitzgerald what the difference is with these positions. Jim Fitzgerald said that those positions would go back to the issue of “who do you work for”, which would not be the case for public safety department heads.

Bill Bowers said that there are no problems with the police and fire departments now, but if there were different individuals in these positions there could be a problem if they have an issue with the Town Manager, and reminded Mr. Fitzgerald that with the current recommendation, the Board of Selectmen would have right of refusal for all positions.

Dan Burke asked Mr. Fitzgerald and Mr. Kelleher if they are concerned more about the hiring or the firing, and said that when Chief Tavares appeared before the committee, he said something to the effect of “I work well with the Town Administrator, but I don’t have to, all I have to do is keep two of the three selectmen happy”. Jim Fitzgerald said that he feels public safety officials should have accountability to more than one person.

Bob Marzelli said that the Board of Selectmen appoints the town manager so that should give them enough control, and in addition they have the ability to reject his recommendations for any department head. Jim Fitzgerald said that he doesn’t think there is a problem with the way things are right now.

Bob Marzelli noted that this charter is not just for right now but for the future. Dan Burke asked if the Board of Selectmen would be agreeable to veto power for firing as well as hiring. Jim Fitzgerald said that would be better.

Bill Bowers asked if the attractiveness of the job would be inhibited by taking the teeth away from the authority of the position. Joe Kelleher said that his concern is that the veto power can lead to public conflict and dissension.

Don Gibson asked Mr. Fitzgerald and Mr. Kelleher if they support Town Manager vs. Town Administrator. Jim Fitzgerald said that he is 100% behind going to a Town Manager. Joe Kelleher agreed that having a Town Manager would help with the centralized government.

Don Gibson said they haven’t talked as much about the finance director being appointed by the town manager. Jim Fitzgerald and Joe Kelleher both said that they are not as concerned about having hiring authority over that position as they are about the Police Chief and Fire Chief.

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Dan Burke asked if they have shared the proposed job description for the town manager with the search committee. Jim Fitzgerald said they have not but perhaps they should.

Don Gibson said that Jim Fitzgerald mentioned that the voters prefer to have an elected Board of Public Works; the current recommendation is for no Board of Public Works, with the DPW reporting to the Town Manager. Jim Fitzgerald and Joe Kelleher agreed that this is ideal. Jim Fitzgerald said that the DPW has been running as a separate entity from the rest of the town for too long, but he is not sure that the voters will support the change.

Jim Fitzgerald said that the Charter Review Committee should take a look at finding an option for an automatic review that would lead to a recall of an elected official that is incapacitated and unable to serve in their role.

Bob Marzelli said that there is language in the charter for appointed officials who are incapacitated or unable to serve in their role. Jim Fitzgerald said there should be similar language for elected officials, some sort of a trigger mechanism after a certain amount of time.

Jim Fitzgerald said that the Board of Selectmen has instituted a policy that will no longer allow a “sum of money” on the warrant; all articles must include a dollar amount. Mr. Fitzgerald added that the Advisory Board has been notified that the joint hearing has to be at least a week after the warrant is printed.

Dan Burke asked what the Board of Selectmen thinks about the proposed change to how the advisory board is appointed. Don Gibson left the room for this discussion as it involves his position as Town Moderator.

Jim Fitzgerald said this seems over complicated and doesn’t make a lot of sense to him. Dan Burke said that the role of the Advisory Board is to advise town meeting and the committee was concerned that under the current charter that role has changed.

Joe Kelleher said he doesn’t have a strong opinion on this proposed change, but he would like to know how it is working in Norwell.

Don Gibson returned to the room.

Bob Marzelli asked Mr. Fitzgerald and Mr. Kelleher if their objections would be eliminated if the charter said that the Board of Selectmen appoints the police chief, fire chief and finance director, but after their appointment they are under the direct supervision of the town manager. Jim Fitzgerald and Joe Kelleher said that it would.

Jim Fitzgerald added that at the end of the day the town manager has to have oversight over everyone except the school department.

Bill Bowers asked if anyone wanted to change their previous vote excluding elected officials from being appointed as town manager in light of Mr. Fitzgerald’s comments.

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Bob Marzelli said that his concern is to create a process that is completely removed from political influence and to make it clear to the public that it is a purely professional position with no political inside track.

Jim Fitzgerald said that there could be a scenario where a member of the Board of Health is currently serving as Town Manager in another town and is excluded from being considered for Town Manager in Marshfield because of his service on the Board of Health. Mr. Fitzgerald said that he agrees in regard to the board of selectmen but does not want to exclude potentially qualified candidates who are serving in another elected role.

The board of selectmen closed their meeting at 9:30 p.m.

New Business:

Alyssa Reed noted that when the committee struck the section on the board of public works from the charter, all language related to the DPW was also removed, and asked if the role of the DPW should be reinserted. Bill Bowers said that it was decided that this language was too specific and the role of the DPW would fall under the town manager.

Bill Bowers told the committee that Mike Baird, Chairman of the Planning Board, has asked to be placed on the next agenda.

Dan Burke said that he has been trying to get hold of Michelle Tassinari and will hopefully have a report on the process at the next meeting.

Acceptance of Minutes:

Bob Marzelli moved, seconded by Don Gibson, to approve the minutes of July 27, 2017 as written. The vote was unanimous.

Public Comment:

Barry Cornwall, Cornwell Hill, said that he saw that the Town of Hanover is hiring a Finance Director/Treasurer Collector and in looking at their bylaws there is no reference to that being a combined position. The bylaw says that the finance director is appointed by the town manager with approval of the board of selectmen and reports to the town manager.

At 9:45 p.m. Barbara Farnsworth moved, seconded by Don Gibson, to adjourn the meeting. The vote was unanimous.

Respectfully submitted,

Catherine Burke