

Charter Review Committee (CRC)
Town of Groton, Groton, MA 01450 978-448-1111

Meeting Minutes - January 27, 2016
At Town Hall

Present: Robert Collins, John Giger (Finance Comm), Michael Manugian (Chair), Michael McCoy, Bud Robertson (Vice-Chair [for CRC], Finance Comm), Stuart Schulman (BOS)

Not Present: Jane Allen

Recorder: Stephen Legge

Visitors: Judy Anderson, Michelle Collette (Land Programs), Bob Colman (Cable Channel), Peter Cunningham (BOS), Tom Delaney (DPW), Dawn Dunbar (Exec. Asst. to Town Manager), Anna Eliot (BOS), Mark Haddad (Town Manager), Scott Harker, Tom Orcutt (Water Dept.), John Petropoulos (BOS), Art Prest (Fin Comm)

Call to Order: Chairman Manugian called the meeting to order at 7:00 PM.

Approval of Meeting Minutes:

The minutes of January 20th were discussed and several minor edits made.

Mr. Collins moved the minutes of January 20, 2016 be accepted as amended. Mr. Giger seconded. The amended minutes were approved unanimously with Mr. Schulman abstaining due to absence from the meeting.

Discussion of Deferred and Previously Considered Items:

Mr. Manugian asked the Committee to develop a process to reconsider previously discussed items. Mr. Robertson said issues should be reopened when justified and the public also should have this opportunity to reopen an issue. Mr. Collins reminded everyone that every issue is considered at least twice as both the intent and exact wording changes to the Charter change must be separately approved by voice vote. Mr. Schulman affirmed the public will have another say on issues at a public hearing before final recommendations are assembled by the Committee for Town Meeting.

Mr. Manugian suggested that the Committee can and should reopen a topic if there is a consensus to do so. If a consensus is not clear, then a vote should be taken whether or not to reopen. There was a consensus to do this by the Committee.

Mr. Manugian had reopened issues #41 and #42 before this evenings reopening procedure was agreed upon. He requested that these be subjected to the reopening procedure. Item # 41 involved the HR director reporting to the BOS instead of the Town Manager. This item was tabled in last week's meeting until the Personnel Board's responsibilities had been discussed and decided.

The Committee voted 1-5 to not reopen #41 at this time, Mr. Manugian was the only yes vote.

This left #41 as dismissed with no changes to the Charter and the tabled discussion was now moot.

Submission # 42 proposed that a Personnel Policy Negotiation Team be created and that it must include one member of the Finance Committee, one member of the BOS, the Town Manager, one member of the Personnel Board and the HR director. The team must be involved in any town policy or procedure involving town employees. It would also be involved in union or employee contract negotiations. It was pointed out by Mr. Manugian this submission was voted to be dismissed for Charter change in the December 30th 2015 meeting, but was then approved in the last meeting (January 20th). He asked the Committee to decide whether to continue discussion of this submission in light of the new reopening procedure.

The Committee voted 4-2 to leave last week's approval vote intact with Misters Robertson and Schulman voting no. Mr. Giger asked if it was necessary for the Committee to officially rescind the December 30th vote to dismiss. The Committee felt this was not necessary.

Mr. Giger provided copies of his latest drafts of the "Working Draft Charter", discussed in previous meetings. He announced it, and a preamble statement and history log, had been sent to the Town's website manager for uploading.

Mr. Manugian reported on the status of the Committee's "Public Records Policy" draft given to the Selectmen in December. Everything which had been recommended has been handled well to date with one exception: the handling of emails between members of town boards. The issue is complicated and will be considered at a future time.

Discussions on HR and Personnel Board Issues (Submissions #41, 119, 133 and 145);

Mr. Manugian announced he had received a letter from the Town of Groton's Supervisors Union regarding last week's discussions about having the HR director report to the BOS. The union was organized in town in 2013. The letter is attached to these minutes. Visitor Tom Delaney, the vice-chair for this union and DPW director for the Town, read the letter for the Committee. The union takes the position it does not want to see the HR director report to the BOS and it

wants the Personnel Board to remain in a purely advisory role to the town, without any responsibility for day-to-day management.

The Selectmen announced they had posted a meeting for tonight at the Charter Review meeting. Four Selectmen were present.

Discussion shifted to the role of the Personnel Board. (Refer to the minutes of December 9, 2015 for the first discussions of this topic.)

Ms. Allen had proposed in **Submission # 133** the Charter provide a clear and detailed definition of the Personnel Board's responsibilities.

Visitor Mr. Petropoulos had proposed in **Submission # 145** the Personnel Board have a stronger, better definition in the Charter. He offered background information on how a citizens' petition had brought the Personnel Board back to life a few years ago, after it had been disbanded.

Visitor Mr. Cunningham: The Charter makes no mention of a Personnel Board. The new Charter pre-empts all existing by-laws. Mr. Manugian clarified that the Charter only pre-empts where it makes an explicit statement. The fact that something is not mentioned in the Charter does not imply that it should not exist in a town by-law, such as is the case with the Personnel Board.

Action Item #1: Mr. Petropoulos offered to provide the Committee with a copy of his notes on the circumstances around bringing the Personnel Board back after the Charter implementation.

Mr. Schulman: The role of the Personnel Board was definitely changed by the adoption of the Charter, but the Board was not eliminated by the Charter.

Mr. Manugian asked the Committee to consider the questions: do we mention the Personnel Board in the Charter, and what are its role and responsibilities to be? Now it is purely advisory, and not required by the Charter.

Mr. Robertson (present Chair of the Personnel Board) agrees with Mr. Manugian's assessment. The Board is acting in an advisory capacity to the BOS, the HR director and the Town Manager.

Mr. Haddad: Chapter 48 of the Town's by-laws set forth the Personnel Board's existence and duties. It (the Board) has functioned well in the last two years in his opinion. Mr. Robertson said 8-10 people, including present Personnel Board members, participated in the drafting of Chapter 48.

Action Item #2: Committee members should review the language of Chapter 48 in the Town's by-laws regarding the Personnel Board.

Mr. Robertson expressed the view that the Personnel Board should be included in the Charter. He also believes a short description of roles should be included, mirroring the provision in the present by-laws.

Mr. McCoy agrees with Mr. Robertson, and emphasizes the provision on roles should go into the Charter and not be left in the by-laws only with the Charter referencing the by-laws.

Mr. Collins questions why the Personnel Board should be included in the Charter – it is only an advisory board. He remembers in an earlier time when there were significant problems associated with the Personnel Board and he wants to be very careful about enshrining its status in the Charter.

Mr. Schulman: Only put in the Charter what absolutely needs to be there. It is not wise to incorporate Chapter 48 material from the by-laws into the Charter. Everything is working fine the way it is now. Mr. Manugian answered it makes sense to put in the Charter what we want to remain in place. If it is in the Charter, we can be sure it can't be eliminated without changing the Charter.

Mr. McCoy feels there is reason to put this in the Charter. The by-laws have provisions as follows: 48.1: Establishes the existence and membership of the Personnel Board. Three members will be appointed by the BOS. 48.2: Establishes its role as advisory to the BOS, HR director and Town Manager; offers wage schedule guidance to the Finance Department; and advises on wage schedules for all town employees; and other duties as enumerated.

Mr. Manugian asked members if the scope in the by-laws is proper, and if the scope as presently written be added to the Charter, but in less detail.

Mr. Robertson said the scope as stated in the by-laws is correct and reflects current practice.

Mr. Giger observed that since the Personnel Board was created in the by-laws, Town meeting has the power to eliminate it.

Mr. McCoy suggested to put a brief description in the Charter and include “and such other duties as written in the by-laws”.

Mr. Giger feels the Personnel Board should not be mentioned in the Charter.

BOS members felt the Personnel Board had value as an independent advisory voice in personnel affairs.

Mr. Collins reiterated his concern that there had been too much controversy in the past to consider making the board a Charter required one.

Mr. Manugian suggested the level of importance of a committee is a criterion for whether or not to put it in the Charter. There are many committees, existing today, not mentioned in the Charter. He added the Personnel Board should protect the Town as well as employees.

Mr. Robertson moved to put the Personnel Board in the Charter and include a brief description. Mr. McCoy seconded.

Mr. Delaney asked if all town personnel policies were going to have be reviewed and approved by the Personnel Board. Mr. Manugian responded that the changed currently proposed would give the personnel board and advisory role only.

Mr. Haddad suggested the Charter certainly grants authority to the BOS to appoint certain named committees and boards, but does not elucidate their duties (Section 3-2(d)). Why not consider naming an advisory Personnel Board in this section and put in no mention of duties. This will be simple and gives them ongoing status to exist. Leave the responsibilities as they are in the by-laws.

Mr. Haddad separately stated the Chair has several times referred to the need for various committees to protect the public and asked for examples of issues which merited this concern. Mr. Manugian responded by saying there have been no nefarious dealings relative to personnel issues he knows of. However, it is important to have the independent advisory function to help reduce the likelihood that personnel problems arise in the future.

Visitor Mr. Harker commented he feels there is no reason for the Personnel Board to be mentioned in the Charter.

Mr. Cunningham said the issue is really should the Personnel Board have a more activist and direct role in personnel matters.

Mr. Petropoulos said leave its role as it is – it works fine.

Ms. Eliot said she agrees with Mr. Giger. Putting things in the Charter can be limiting. It is better to leave these matters to the discretion of Town Meeting.

A vote was taken and the motion to incorporate the Personnel Board into the Charter in an advisory role was approved 4 – 2 with Misters Collins and Schulman voting no.

Action Item #3: Mr. Manugian asked Mr. Robertson to develop wording to incorporate the Personnel Board into the Charter in an advisory role. Mr. Robertson said his intent was to make it one short paragraph.

Mr. Schulman likes the idea of putting the Personnel Board in the BOS section of the Charter and just naming the Board, as suggested by Mr. Haddad earlier. Mr. Collins agreed with Mr.

Schulman. He emphasized , however, to be very, very clear about the responsibility being advisory only in nature. Otherwise he fears we may see a replay of the problems of the past.

Mr. Giger agreed little needed to be said. It should exist. It should be advisory.

Mr. Cunningham suggested the wording be incorporated in Charter Section 3-2(d).

Mr. Manugian asked the Committee to turn its attention to **Submission # 119**, proposed by Connie Sartini. This submission proposes to have members of the Finance Committee and the Personnel Board appointed by the Town Moderator in order to ensure their complete independence from influence by those appointing. Presently the BOS appoints the Personnel Board.

Mr. Robertson felt that the BOS should continue to appoint the Personnel Board. **He moved to leave the appointment of the Board as presently done, by the BOS, as stated in the Town's by-laws.** Mr. Schulman seconded. The motion was approved unanimously.

Discussion of the Town Manager's Authority to Waive Fees (Submission # 27):

Submission # 27, submitted by Russell Harris states there needs to be a limitation on the Town Manager's ability to waive fees on construction permits and it should be in the Charter. He cited an example of a claim made he could waive fees at his discretion (recent Blood Farm fire). Mr. Harris wants to give this power to the BOS, to be deliberated in open public session and not permit the Town Manager to do so.

Mr. Manugian asked how are fees created, assessed and waived?

Mr. Giger answered who has authority varies by type of fee and the organization which creates the fee. A number of town organizations can do this.

Mr. Manugian asked can a fee be waived by a non-elected position?

Mr. Giger answered yes. Building related fees of all types can be waived by the head of the department which levied the fee. This was according to Attorney Doneski.

Mr. Haddad: a clarification – the person who appoints the department head who creates the fee, sets the fee, i.e., the Town Manager. Mr. Giger said he was not totally in agreement with Mr. Haddad's statement. He then said he thought elected officials may have responsibility for fee levels. It is not codified anywhere.

Mr. Robertson asked how much are the total fees assessed and collected by the town over a one-year period. Mr. Haddad thought the total was about \$240,000 per year. He said departments budget fee revenue every year. Waiving a fee is a significant issue because it would amount to lost revenue to the town.

Mr. Haddad went on to explain that fees in the Building Department are set by the Town Manager, and he only waives fees on projects for the Town itself so that the Town is not paying itself. He said the Planning Board can set fees and waive them. The same applies to the Conservation Commission.

Mr. Schulman pointed out the BOS has set the burning fees for the town. Previously there had been no fees for burning, but the Town Manager had asked for the fee to be assessed. Mr. Schulman said the BOS voted unanimously to institute the fees and now they are responsible for them.

Mr. Manugian said the issue at hand is that waiving of fees should always be done in a public setting. He asked do we support the concept a fee should always be waived in a public setting.

Mr. Collins said the whole situation is very complicated. It would be best to leave this issue out of the Charter because it is well handled by state law. Let the BOS deliberate on this and decide what to do.

Mr. Robertson agreed with Mr. Collins - because there is a lot of money involved, the issue should be referred to another Committee and not handled by the Charter Review Committee.

Mr. Collins moved to refer the issue of fees and fee waivers to the BOS along with Mr. Giger's research results. This motion was seconded by Mr. Robertson.

Mr. Schulman said because money is involved here it would be good to give the issue some attention in public meetings.

The motion was approved unanimously.

Administrative Matters:

The next meeting is scheduled for Wednesday, February 3rd. Discussion will be continued on the Town Manager's responsibilities. No new submissions will be presented at this meeting. Also outstanding action items will be reported on.

Mr. Manugian announced that four people would not be able to attend the meeting on Wednesday, February 10th. This means there would be no quorum. The meeting was cancelled.

Mr. Petropoulos said he would obtain Town Counsel's opinion on the citizen's petition to reinstate the Personnel Board, and bring that to the next meeting.

The meeting was adjourned with unanimous consent at 9:02 PM.

**** The next meeting is scheduled for Wednesday, February 3rd, at 7:00 PM. ****

Exhibit A: Fees and Waivers Research Report, John Giger, Editor

	A	B	C	D	E	F	
1	DRAFT	Town of Groton Fees, Fee Waivers and Appeals					
2		CAUTION: Thought to be complete for all Town "building" related fees; not exhaustive for all Town fees.					
3		Subject to Revision	Created by John Giger		File ID: ToG Fees and Waivers jrg1c.xlsx		
4	Categories/Entities	Board of Health	Board of Health	Planning Board	Planning Board	Building Commissioner	
5							
6	Fee Type	Admin/Permit	Project Review	Admin/Permit	Project Review	Admin/Permit	
7							
8	Fee Goes To	Town's Current Operating Budget (see note K)	MGL Allowed 593 Account	Town's Current Operating Budget	MGL Allowed 593 Account	Town's Current Operating Budget	
9							
10	Authority for Establishing Fee	CoG C. 278-2	MGL C. 44 § 53G and CoG C. 278-7	CoG C. 381-28	MGL C. 44 § 53G and CoG C 381-28	2009 International Residential Code, Section R108, R108, Fees and Town Manager	
11							
12	Exemptions and Authority	Yes, BoH <u>may</u> waiver admin fees for other Town Departments, CoG C. 2787-5. Waiver approval requires a motion approved by a majority of BoH in a meeting open to the public.	Yes, Initial Deposit Only, CoG 278-10 § B	Yes, GPB waives admin fees, by right, for other Town Departments, CoG C. 381-28 § C(3)	Yes, Initial Deposit Only, CoG C 381-30 § D(2)	Yes, fee waived for all Town departments as well as contractors and tradesmen doing work for the Town. (<i>Assumed either not documented or not properly documents.</i>)	

DRAFT

	A	B	C	D	E	F
4	Categories/Entities	Board of Health	Board of Health	Planning Board	Planning Board	Building Commissioner
5						
13						
14	Fees Waiverable and Authority (Level 1)	Yes, by BoH, CoG C. 278-5	No, not applicable	Yes, by GPB, CoG, 381-28 § D	No, not applicable	Yes, Town Manager (see note H)
15						
16	Does waiver have to be approved in a meeting open to the public?	Yes, Waiver approval requires a motion approved by a majority of BoH in a meeting open to the public.	No, not applicable	Presumably yes, but requirement not documented (see note L)	No, not applicable	No
17						
18	Fees Waiverable and Authority (Level 2)	Undetermined	No, not applicable	Unknown (tentative)	No, not applicable	Yes, Board of Selectmen (Assumed but not documented, see note G)
19						
20	Appeal Available (Level 1)	No	Yes, BoH, Choice of Consultant Only, CoG C. 278-8 § A	No	Yes, BoS, Choice of Consultant Only, CoG C. 381-30 § B(1)	No
21						

DRAFT

For Discussion Only

	A	B	C	D	E	F
4	Categories/Entities	Board of Health	Board of Health	Planning Board	Planning Board	Building Commissioner
5						
22	Appeal Available (Level 2)	No	Yes, BoS, CoG C. 278-8 § B	No	No	No

DRAFT

For Discussion Only

	A	G	H	I	J	K
1	DRAFT					
2						
3		Subject to Revision				
4	Categories/Entities	Conservation Commission	Conservation Commission	Zoning Board of Appeals	Zoning Board of Appeals	Earth Removal Storm Water Advisory Committee
5						
6	Fee Type	Admin/Permit	Project Review	Admin/Permit	Project Review	Admin/Permit
7						
8	Fee Goes To	Town's Current Operating Budget	MGL Allowed 593 Account	Town's Current Operating Budget	MGL Allowed 593 Account	Town's Current Operating Budget
9						
10	Authority for Establishing Fee	CoG 344-15 § F and particularly CoG 344-15 § F(1)(h)	CoG 344-1	CoG C. 338-14 and CoG 381-28 § B(9)	CoG C 338-29	CoG C 352-3 § B ?? (see note J)
11						
12	Exemptions and Authority	Yes, fee waived for all Town departments. (Assumed but not documented.)	No Noted	Yes, fee waived for all Town departments. (Assumed but not documented.)	None noted	Yes, fee waived for all Town departments. (Assumed but not documented.)

DRAFT

For Discussion Only

	A	G	H	I	J	K
4	Categories/Entities	Conservation Commission	Conservation Commission	Zoning Board of Appeals	Zoning Board of Appeals	Earth Removal Storm Water Advisory Committee
5						
13						
14	Fees Waiverable and Authority (Level 1)	Yes, by ConCom (see note H)	No, Not applicable	Yes, by ZBA (see note H)	No, not applicable	Yes, by Earth Removal Stormwater Advisory Commitatee (see note H)
15						
16	Does waiver have to be approved in a meeting open to the public?	Presumably yes, but requirement not documented.	No, Not applicable	Presumably yes, but requirement not documented.	No, Not applicable	Presumably yes, but requirement not documented.
17						
18	Fees Waiverable and Authority (Level 2)	Undetermined	No, Not applicable	Undetermined	No, not applicable	Undetermined
19						
20	Appeal Available (Level 1)	No	Yes, BoS, Choice of Consultant Only, CoG C 344-5	No	Yes, BoS, Choice of Consultant Only, CoG C 338-30	Undetermined
21						

DRAFT

For Discussion Only

	A	G	H	I	J	K
4	Categories/Entities	Conservation Commission	Conservation Commission	Zoning Board of Appeals	Zoning Board of Appeals	Earth Removal Storm Water Advisory Committee
5						
22	Appeal Available (Level 2)	No	No	No	Yes, CoG C 338-39, in the case of a 40B application denial to the Housing Appeals Committee as provided in MGL C 40B § 22	Undetermined

DRAFT

For Discussion Only

	A	L	M	N	O	P
1	DRAFT					
2						
3		Subject to Revision				
4	Categories/Entities	Earth Removal & Storm Water Committee	Historic Districts Commission	Department of Public Works Roads & Ways & Transfer Station	Department of Public Works Roads & Ways & Transfer Station (see Note I)	Signs
5						
6	Fee Type	Project Review	Admin/Permit	Admin/Fee	Transfer Station	Admin/Fee
7						
8	Fee Goes To	Town Maintained Revolving Account	Town's Current Operating Budget	Town's Current Operating Budget	Town Maintained Revolving Account	Town's Current Operating Budget
9						
10	Authority for Establishing Fee	CoG C 352-3 § A	MGL C 40 § 22F and Town Charter, Section 4-2, Town Manager	MGL C 40 § 22F and Town Charter, Section 4-2, Town Manager	MGL C 40 § 22F and Town Charter, Section 4-2, Town Manager	CoG C 196-2 § C as amended by Article 15 at the Fall 2015 Town Meeting) Town Manager
11						
12	Exemptions and Authority	No applicable	Yes, fee waived for all Town departments. (Assumed but not documented.)	Yes, fee waived for all Town departments. (Assumed but not documented.)	Not applicable	Yes, fee waived for all Town departments. (Assumed but not documented.)

DRAFT

For Discussion Only

	A	L	M	N	O	P
4	Categories/Entities	Earth Removal & Storm Water Committee	Historic Districts Commission	Department of Public Works Roads & Ways & Transfer Station	Department of Public Works Roads & Ways & Transfer Station (see Note I)	Signs
5						
13						
14	Fees Waiverable and Authority (Level 1)	Not applicable	Yes, Town Manager (see note H)	Yes, Town Manager (see note H)	Not applicable	Yes, <i>Selectmen (Assumed but not documented)</i>
15						
16	Does waiver have to be approved in a meeting open to the public?	Not applicable	No	Apparently not.	No applicable	No
17						
18	Fees Waiverable and Authority (Level 2)	Undetermined	Yes, Board of Selectmen. <i>(Assumed but not documented, see note G)</i>	Yes, Board of Selectmen. <i>(Assumed but not documented, see note G)</i>	Undetermined	Undetermined
19						
20	Appeal Available (Level 1)	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined
21						

DRAFT

For Discussion Only

	A	L	M	N	O	P
4	Categories/Entities	Earth Removal & Storm Water Committee	Historic Districts Commission	Department of Public Works Roads & Ways & Transfer Station	Department of Public Works Roads & Ways & Transfer Station (see Note I)	Signs
5						
22	Appeal Available (Level 2)	Undetermined	Undetermined	Undetermined	Undetermined	Undetermined

DRAFT

For Discussion Only

	A	Q	R	S	T	U
1	DRAFT					
2						
3		Subject to Revision				
4	Categories/Entities	Town Clerks Office	Fire Department (see Note I)	Fire Department (see Note I)	Police Department (see Note I)	Unknown Number of Other Town Entities Collecting Fees
5						➡➡➡➡➡➡
6	Fee Type	Administrative	Admin/Fees	Ambulance Svcs	Admin/Fees	
7						
8	Fee Goes To	Town's Current Operating Budget	Town's Current Operating Budget	Town Receipt Reserve Account	Town's Current Operating Budget	
9						
10	Authority for Establishing Fee	MGL C,262 § 34, CoG C. 139 and Town Clerk				
11						
12	Exemptions and Authority	None				

DRAFT

For Discussion Only

	A	Q	R	S	T	U
4	Categories/Entities	Town Clerks Office	Fire Department (see Note I)	Fire Department (see Note I)	Police Department (see Note I)	Unknown Number of Other Town Entities Collecting Fees
5						➡➡➡➡➡➡
13						
14	Fees Waiverable and Authority (Level 1)	Yes, Town Clerk				
15						
16	Does waiver have to be approved in a meeting open to the public?	Apparently not.				
17						
18	Fees Waiverable and Authority (Level 2)	Yes, Board of Selectmen. (Assumed but not documented)				
19						
20	Appeal Available (Level 1)	Undetermined				
21						

DRAFT

For Discussion Only

	A	Q	R	S	T	U
4	Categories/Entities	Town Clerks Office	Fire Department (see Note I)	Fire Department (see Note I)	Police Department (see Note I)	Unknown Number of Other Town Entities Collecting Fees
5						➡➡➡➡➡➡
22	Appeal Available (Level 2)	Undetermined				

DRAFT

For Discussion Only

Town of Groton
Charter Review Committee
Fees, Fee Waivers and Appeals Study
January 2016
Editor: John Giger

Ancillary Information

1. Abbreviations, Definitions and Notes

- A. CoG - Code of Groton
- B. MGL - Massachusetts General Laws
- C. 593 Account: a special account, maintained by the Town, in which project review fees are kept.
- D. GPB - Groton Planning Board
- E. CMR - Code of Massachusetts Regulations
- F. BoS - Board of Selectmen
- G. Assumed because Town Manager is hired by and reports to the Board of Selectmen
- H. Per Town Counsel: In general, in the absence of a prohibiting provision of law, a municipal officer having control over local fees may be considered to have the authority to waive such fees.
- I. No documentation examined.
- J. Chapter 352-3 § B indicates the fee for a limited stormwater management permit is placed in a revolving fund, Is this correct does it go into the Town's current operating budget?
- K. Cells filled in **Light Green** indicate that if a waiver is granted, it will have a direct negative impact on revenue projections in the current fiscal year's operating budget.
- L. Cells filled in **Yellow** simply highlights the required transparency, if any, for the public in various waiver situations.

2. Anomalies

- A. CoG C 381-36 § 1(G) instructs the reader to see fee in CoG Chapter 340. No Chapter 340 exists in the CoG currently available on E-Code.

3. Exhibits

- A. E-mail from David Doneski, Town Counsel, to Mark Haddad, Town Manager, dated January 5, 2016, subject: RE: Waiving Fees
- B. E-mail from David Doneski, Town Counsel, to Mark Haddad, Town Manager, dated January 26, 2016, subject: RE: Fee Setting

Exhibit A

From: [Mark Haddad](mailto:Mark.Haddad@townofgroton.org)
To: [John Giger](mailto:John.Giger@townofgroton.org); [Michelle Collette](mailto:Michelle.Collette@townofgroton.org); [Edward Cataldo](mailto:Edward.Cataldo@townofgroton.org)
Cc: [Dawn Dunbar](mailto:Dawn.Dunbar@townofgroton.org)
Subject: Fwd: Waiving Fees
Date: Wednesday, January 6, 2016 01:29:55

FYI

Sent from my iPhone

Begin forwarded message:

From: David Doneski <DDoneski@k-plaw.com<<mailto:DDoneski@k-plaw.com>>>
Date: January 5, 2016 at 7:38:14 PM EST
To: Mark Haddad <mhaddad@townofgroton.org<<mailto:mhaddad@townofgroton.org>>>
Subject: RE: Waiving Fees

Mark,

In follow-up to our telephone conversation today, it is my view that as Town Manager you have the authority to waive fees for those permits for which you set the fee schedule. I offer the following as the basis for this opinion:

In general, in the absence of a prohibiting provision of law, a municipal officer having control over local fees may be considered to have the authority to waive such fees. You have informed me that it has been your practice since taking office as Town Manager to set the types of permit fees noted, based on your status as appointing authority for the Town officials administering the permit processes for which the fees are charged. (See Town Charter (Chapter 81 of the Acts of 2008, as amended), section 4-2(c): Town Manager's duties include "[t]o appoint and remove department heads, officers and subordinates and employees and other appointed members of town government for whom no other method of appointment or removal is provided in this charter or by-law.") In addition, the Charter authorizes the Town Manager, "[u]nless otherwise required by law, this charter or by-law, to manage and coordinate the administrative activities of all town agencies. (Section 4-2(a))

Prior to adoption of the Charter, the Town voted in 1992 to accept the provisions of section 22F of G.L. c. 40 regarding municipal fees. Section 22F, first paragraph, provides as follows:

Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town, and may fix reasonable charges to be paid for any services rendered or work performed by the city or town or any department thereof, for any person or class of persons; provided, however, that in the case of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

Given that statutory language and the provisions of the Charter, it is my opinion that the Town Manager's exercise of authority to set the local fees charged by Town officials for whom the Town Manager is the appointing authority is a reasonable application and integration of the general fee setting provisions of G.L. c. 40, §22F and the authority granted to the Town Manager under section 4-2 of the Charter. Such exercise of authority may also be supported by section 20 of the Home Rule Procedures Act, Chapter 43B of the General Laws, which states: "The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices." In the context described, it is my view that the noted exercise of fee setting authority may be reasonably inferred from the text of the Charter.

Please contact me if you have any further questions.

David J. Doneski, Esq.
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-----Original Message-----

From: Mark Haddad [<mailto:mhaddad@townofgroton.org>]
Sent: Wednesday, December 30, 2015 8:17 PM
To: David Doneski
Subject: Waiving Fees

Does the Town Manager have the authority to waive building permit fees, electrical fees, etc? Please provide an opinion on this with any statutory authority. Thanks.

Mark

Sent from my iPhone

Exhibit B

From: [David Doneski](#)
To: "Mark Haddad"
Cc: [Jack Petropoulos](#); [Michael Bouchard](#); [Michael Manugian](#); [John Giger](#)
Subject: RE: Fee setting
Date: Tuesday, January 26, 2016 14:16:42

Mark,

This will confirm my comments in our telephone conversation yesterday. I did take account of the 'exception' language of G.L. c. 40, §22F in preparing the opinion in my e-mail memo of January 5 referenced below. In light of the provisions of the Charter and G.L. c. 43B, §20, as noted in that memo, it is my view that the fees in question may be considered as the fees of the Town officials collecting them, for example, the Building Commissioner and other code enforcement officers, not the fees of the Town Manager. It is those officials who are the officers "empowered to issue a license, permit, certificate, or to render a service or perform work" for which the fee is charged.

G.L. c. 40, §22F. Thus, I would not consider those fees to be fees of an "officer appointed by an elected board" within the meaning of section 22F. Rather, in this context, it is my opinion that they are fees imposed by a Town officer who is subject to appointment by the Town Manager – an appointed official.

If further detail or a different approach is desired, that could be addressed in a proposed amendment to the Charter.

Please contact me if you have any further questions on this matter.

David J. Doneski, Esq.
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Boston, MA 02110
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From: Mark Haddad [<mailto:mhaddad@townofgroton.org>]
Sent: Sunday, January 17, 2016 5:51 PM
To: David Doneski
Cc: Jack Petropoulos; Michael Bouchard; Michael Manugian; John Giger
Subject: Fwd: Fee setting

Hi David:

Please see below. Can you provide your opinion on this. Thanks.

Mark

Sent from my iPhone

Begin forwarded message:

From: John Giger <john@cybergiger.com>
Date: January 17, 2016 at 5:44:27 PM EST
To: Mark Haddad <mhaddad@townofgroton.org>, "jpetropoulos@townofgroton.org" <jpetropoulos@townofgroton.org>
Cc: "John \"Jack\" Petropoulos" <jack.petropoulos@gmail.com>, Michael Manugian <mike@Manugianinc.com>, Michael Bouchard <mbouchard@townofgroton.org>
Subject: **FW: Fee setting**

So that no one is surprised and you both know the source of this information, I want to alert you that earlier this afternoon I sent the appended message to Michael Manugian, Chairman of the Town's Charter Review Committee.

No action required, just want you to be informed.

>> John

<<<<<<<<<>>>>>>>>>>>>
John R. Giger
152 Whiley Road
Groton, MA 0145 USA
Phone: +1 978-448-9628
Mobile: +1 508-320-7330
Fax: +1 978-448-9629
E-mail: john@cybergiger.com
<<<<<<<<<>>>>>>>>>>>>

This email was sent on 17/01/2016 at 17:44 EST [UTC-5] by John Giger.

From: John Giger [<mailto:john@cybergiger.com>]
Sent: Sunday, January 17, 2016 17:34
To: Michael Manugian <Mike@ManugianInc.com>
Cc: Mike Bouchard (mbouchard@townofgroton.org) <mbouchard@townofgroton.org>
Subject: FW: Fee setting

Hello Mike, I writing with regard to Mike Bouchard's message to us on January 13th, re: Fee Setting (appended below). In my discussion, I will refer to two other documents. The first one is an e-mail from Attorney Doneski, town council, which I will refer to as the Doneski e-mail. The second one is an extract of Massachusetts General Laws c. 40 § 22F, which I will refer to as Section 22F. Both of these documents are attached.

Let me proceed by saying that I am not a licensed attorney so the conclusions I draw in the message are mine without any formal legal review by anyone.

The end of the first paragraph in Section 22f reads **however, that in the case**

of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

The Doneski e-mail does not address the exception mentioned in my proceeding sentence. Attorney Doneski does mention that the Town of Groton voted to accept Section 22F in 1992. Mike Bouchard's message of January 13th, appears to confirm this fact.

With regard to a Town Manager being able to establish and waiver fees, and my interpretation of the first paragraph of Section 22F, I believe the following statements are reasonable conclusions.

1. A Town Manager is a municipal officer appointed by an elected board (the Board of Selectmen in Groton's case).
2. Section 22F seems to suggest that all municipal officers appointed by an elected board may recommend fees to the elected board that appointed them (assumed in the absence of finding contrary information).
3. The elected board that appoints the municipal officer recommending fees must review and decide whether or not to approve fees proposed to them by their appointed municipal officer.
4. I am interpreting the words "shall be", at the end of the first paragraph of Section 22F. to be the equivalent of "must". However, it is unclear to me whether or not the elected board may delegate their review and approval responsibility to a appointed municipal officer.
5. Assuming that delegation of the elected board's review and approval responsibility, called for in Section 22F, may not be done, then it follows that any municipal officer appointed, by an elected board, does not have the authority, by law or otherwise, to establish any fee on his or her own.
6. If the assumption made in the proceeding sentence (5, above) is true and using Attorney Doneski's general thought that "he or she who may create a fee, may also waive that fee", I conclude a municipal officer, appointed by an elected board, has no authority to waiver or delete any fee reviewed and approved by the elected board who appointed that municipal officer.
7. If a municipal officer, appointed by an elected board, does not have the authority to establish fees entirely on her or his own, then it appears that this same municipal officer does not have authority to approve, waiver or eliminate fees proposed by his or her subordinates (department heads, etc.),

If my analysis, above, is correct, and it may not be, then it appears to me that the Groton Town Manager, a municipal officer appointed by an elected board (in Groton's case, the Board of Selectmen), has no authority to unilaterally approve, waive or eliminate any Town of Groton fee.

Being an individual who is pretty logical, if I can get the conclusion above, I believe others in town may reach the same conclusion on their own. This being the case, I believe we probably need to get this point clarified before we close our research on the fee and fee waiver topic.

Please let me know how you would like to proceed.

>> John

This email was sent on 17/01/2016 at 17:34 EST [UTC-5] by John Giger.

From: Michael Bouchard [<mailto:mbouchard@townofgroton.org>]
Sent: Wednesday, January 13, 2016 16:51
To: Michael Manugian <mike@Manugianinc.com>; John Giger (CRC) <john.crc@cybergiger.com>
Subject: Fee setting

Hi Mike and John,

I was following your discussion at the CRC meeting a couple of weeks ago, and subsequently saw John's chart about fee setting.

In researching something else, I ran across MGL Chapter 40 Section 22F, which the town accepted in 1992. It's repeated here FYI, as may be pertinent to you discussion.

Mike

=====

Section 22F. Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates issued pursuant to statutes or regulations wherein the entire proceeds of the fee remain with such issuing city or town, and may fix reasonable charges to be paid for any services rendered or work performed by the city or town or any department thereof, for any person or class of persons; provided, however, that in the case of a board or officer appointed by an elected board, the fixing of such fee shall be subject to the review and approval of such elected board.

A fee or charge imposed pursuant to this section shall supersede fees or charges already in effect, or any limitations on amounts placed thereon for the same service, work, license, permit or certificate; provided, however, that this section shall not supersede the provisions of sections 31 to 77, inclusive, of chapter 6A, chapter 80, chapter 83, chapter 138,

sections 121 to 131N, inclusive, of chapter 140 or section 10A of chapter 148. The provisions of this section shall not apply to any certificate, service or work required by chapters fifty to fifty-six, inclusive, or by chapter sixty-six. The fee or charge being collected immediately prior to acceptance of this section for any license, permit, certificate service or work will be utilized until a new fee or charge is fixed under this section.

The provisions of this section may be accepted in a city by a vote of the city council, with the approval of the mayor if so required by law, and in a town by vote of the town meeting, or by vote of the town council in towns with no town meeting