

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

Meeting Minutes - November 16, 2016
At Town Hall

Present (6): Jane Allen, Robert Collins, John Giger (Secretary), Michael Manugian (Chair), Michael McCoy, Bud Robertson (Vice-Chair)

Not present: Stuart Schulman

Recorder: Stephen Legge

Visitors (16): Judy Anderson, Don Black (BOA), Garrett Boles (BOA), Josh Degen (BOS), Lisa Doig (Human Resources), Anna Eliot (BOS), Jennifer Evans (BOA), Russell Harris, Mark Haddad (Town Manager), Lorraine Leonard (Finance Committee), Tom Orcutt (Water Dept.), Barry Pease (BOS), John Petropoulos (BOS), Rena Swezey (Principal Assessor), Jonathan Greeno (Assessor's Office), Connie Sartini

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

Approval of Meeting Minutes:

The draft meeting minutes of November 9, 2016 were considered. **Ms. Allen moved to accept the minutes of November 9th as submitted.** Mr. Collins seconded. The minutes were approved unanimously.

Administrative Issues:

Mr. Manugian announced there would be two presentations made this evening for the two outstanding submissions made to the Committee. Each would be of three minutes duration, then questions would be accepted from the Committee and the public. Discussions by the Committee would take place after both presentations had been made.

Presentation of Submission #192, Assessors' and Principal Assessor's Roles and Responsibilities:

Submission #192, from John Petropoulos, pertains to the roles and responsibilities of the Town's Principal Assessor and the Board of Assessors. Mr. Petropoulos pointed out that our Assessors' function is divided between an elected board and appointed town employees, each responsible to different and independent authorities. There is an issue of interdependence within the function, but no governing structure which ensures good communication and cooperation. It is proposed that our Charter address this issue. Mr. Petropoulos includes five specific points for consideration.

Mr. Robertson asked who appoints the Principal Assessor today? The Town Manager does so.

Mr. Manugian asked, what is the aim of this submission? Mr. Petropoulos responded, to replace undocumented expectations with written policies and procedures. He wants to ensure smoothness of operations and good communication.

Mr. Collins asked, are not the Assessors (elected) responsible to the Massachusetts Department of Revenue? Answer: They are.

At 7:10 PM Mr. Boles (Chairman of the Board of Assessors) convened a formal Board of Assessors meeting, with all three members present.

It was explained that each assessor made his/her own decisions individually and independently.

At 7:13 PM Mr. Petropoulos (Chairman of the Board of Selectmen) convened a meeting of the Board of Selectmen with three of five members present.

Visitor Ms. Evans explained what the Principal Assessor does in Groton. The position holder answers questions from the Board of Assessors and may do research on request. She further explained the Assessors do not always get what they ask for because the Principal Assessor is accountable to the Town Manager and not to the Board, under the Charter. Mr. Boles and Ms. Evans claimed they had not been given the opportunity to participate in the Principal Assessor's performance review since the current Charter has gone into effect.

Visitor Mr. Haddad explained when Principal Assessor Ms. Swezey was a member of the elected board, he did not feel it was appropriate for other board members to be in a position to judge or evaluate her. At this point in time Ms. Swezey is no longer a member of the elected Board.

Visitor Mr. Black offered his opinion that Ms. Swezey has been doing her job well and disagrees with the other two Board members that there is a problem.

Mr. Haddad asked Ms. Evans to refrain from evaluating his employee (Ms. Swezey) in a public meeting. Ms. Evans responded that she has been a member of the elected Board for eight years. Her comments are more about clarifying future relationships than judging past behavior.

Mr. Boles added there is no line authority for the Principal Assessor to the Board – that is a problem for them. He asks for public records and gets filtered and incomplete reports.

Mr. Manugian announced to the meeting that there would be no more comments with regard to performance of any individual. Mr. Petropoulos echoed the latter comments saying attendees should stick to policy issues, not who did what.

Mr. Black said the cart is before the horse – Mr. Petropoulos could have come to the Assessors first before bringing this to the Charter Review Committee. Mr. Manugian explained that any individual is allowed to bring any Charter-related issue before the Committee.

Mr. McCoy asked if the Principal Assessor's position is for a fixed term. The answer was given, it is open-ended. The position is a Town paid employee.

Ms. Evans commented the Board has no power to establish policy and procedures for the Principal Assessor. All is done on a “hand-shake”.

Visitor Mr. Pease asked what is to be changed in the current Charter.

Presentation of Submission #193, Use of Alternate Members for the Finance Committee:

Submission # 193, from Lorraine Leonard, a member of Groton’s Finance Committee, proposes to consider the use of active alternates to the Finance Committee. She cited the Town of Harvard’s model for this which has been in effect for at least five years. Their committee has seven members and two alternates, the latter appointed to one-year terms. If the Finance Committee has a quorum, the alternates do not vote, but they do participate in the discussion of all business. If a quorum is not present at a meeting, the chair can appoint the senior alternate to the committee temporarily, with full voting privileges for that meeting, or until a regular member arrives. In this manner, the two alternates become experienced in the committee’s work and may be considered for appointment to replace any regular member who must leave either mid-term or at the conclusion of their term. Then a new alternate is appointed by the appointing authority. Ms. Leonard claimed this procedure has almost completely eliminated problems with absence of a quorum and problems filling mid-term vacancies.

Mr. Robertson asked for confirmation that alternates get assignments and do work even without a vote. Ms. Leonard confirmed, yes.

Mr. Giger asked how do Harvard’s Finance Committee members get appointed or are they elected? Ms. Leonard replied all seven are appointed by the town moderator.

Visitor Ms. Sartini asked if this idea is being proposed or considered for other town committees than Finance. The answer was no.

Discussion of Submission #192, (Board of Assessors):

Mr. Manugian invited general comments.

Mr. McCoy tried to put the issue in a perspective: sometimes committees and boards have responsibilities yet not authorities. How is that problem resolved? How do we reconcile that the Board of Assessors (BOA) needs to do its work well and with fairness, but not have the authority over the Principal Assessor?

Ms. Allen said she feels the Board should have some input. But how do we do that without taking power away from the Town Manager?

Mr. Manugian asked Mr. Collins about the state’s requirements for assessors. Reference was made to a letter filed with the Committee by Mr. Collins (dated November 15, 2016 – two pages) which explores the roles of the Assessors under state law. It is clear that the assessors occupy a unique role among municipal employees and their responsibilities are subject to the directives of

the Massachusetts Department of Revenue (DOR). The roles of the assessors are outlined in the General Laws in Chapter 41, Sections 24 and 25. The latter allows for the appointment of an assistant assessor whose role is to assist the assessors in their statutory duties. Mr. Collins also refers to the somewhat conflicting and contradictory experience of the authority that the Commissioner of Revenue has over municipal assessors, according to the Attorney General. The Commissioner is said to have the authority to replace an elected or appointed municipal assessor who is failing to perform his/her duties.

It was further explained by Mr. Collins that the Town of Groton does have the authority to do some things differently by virtue of its charter form of government. An obvious example is that the Town Manager gets to appoint the Principal and Assistant Assessors.

The Town Manager explained that all employees, including the Principal Assessor must be reappointed by him annually.

Mr. Manugian observed that by statute the Board of Assessors is responsible for the fairness and accuracy of the work of the Principal Assessor.

Ms. Evans noted a big part of the work done by the Board of Assessors (BOA) is to use statistics to evaluate the fairness of assessments. The DOR does not get involved in individual property assessments in a town or city. Research is done on statistics for the BOA by the Principal Assessor.

Mr. Boles said one choice the BOA have is to refuse to sign off on information generated for them being forwarded to the DOR when they feel the information is inaccurate or incorrect.

Mr. Haddad said every home owner is protected by the law in the sense that there is a 30-day period in which one can file an abatement request after receiving a tax bill from the Town. The Principal Assessor's role is also defined in state statutes. There is no need to define it again in Groton's Charter. Mr. Haddad also pointed out that Groton varies from state law (by virtue of the Charter) in that the Assessors do not appoint the Principal Assessor. Ms. Allen stated that abatements are not usually requested for properties that are under assessed.

Mr. Petropoulos said it is not appropriate to say that abatement is a fix for a property tax fairness problem because it is better to do things right in the first place and make abatement requests less necessary.

Ms. Allen feels it is important for the BOA to have some power and authority accompany its responsibility for the Principal Assessor.

Mr. Pease observed there was a problem with Mr. Petropoulos' proposal in Submission # 192 in that it essentially gives veto power to the BOA over the Town Manager's authority for the Principal Assessor. There is a supervisors' union in Groton and this power would have implications for the union relationship.

Mr. Haddad said he re-appoints all 70 Town employees each year. The union cannot block a failure to re-appoint. He also said if the Charter Review Committee is inclined to change one board's powers in an employee relationship, why not do so for all boards and committees – that would be a significant change to the structure of our government under the Charter.

Ms. Allen asked Mr. Boles if the Town of North Andover has written policies governing this situation in their town (Mr. Boles works for the North Andover municipal government in addition to being an elected Assessor in Groton).

Mr. Giger asked if North Andover had a town manager form of government. The answer was, yes.

Visitor Mr. Degen commented in Mr. Petropoulos' suggested changes the word "elected should be removed from the phrase "The elected Board of Assessors will be responsible for the fairness and accuracy ...". His reasoning is that there is no need to mandate the Assessors be elected in the current Charter language.

Mr. Giger commented the word "supervised" in the phrase "The Principal Assessor will be supervised ..." should be considered carefully because it can be interpreted very broadly.

Mr. Manugian requested the Committee to focus more on the concepts proposed and less on the specific language and possible redundancies.

Mr. Pease does not like the word "consider" in the phrase "The Town Manager will consider input from the Board of Assessors ...". He believes the word has no teeth.

Mr. Manugian supported the last bullet point in Mr. Petropoulos' suggested changes, "No individual may serve on both the Groton Board of Assessors and as the Principal or Assistant Assessor for the Town of Groton."

Visitor Ms. Eliot disagreed with Mr. Manugian: Don't deny any citizen the opportunity to elect whom they want.

Mr. Boles: There are two reasons to disallow the Principal Assessor to be on the Board: performance appraisals should not emanate from fellow Assessors, and from a legal standpoint it is essential that each and every member be totally impartial when it is necessary to evaluate the correctness and completeness of information provided by the Principal Assessor.

Mr. Degen, referring to Mr. Black's earlier point, stated it was not necessary for Mr. Petropoulos to go directly to the BOA before submitting his Charter change proposal. Any citizen has the right to propose a change.

This concluded the Committee's discussion of Submission #192.
The Board of Assessors adjourned their meeting at 8:37 PM.

Discussion of Submission #193, (Alternate Members for the Finance Committee):

At 8:43 PM, Mr. Petropoulos adjourned the Selectmen's meeting.

Ms. Allen moved to accept Ms. Leonard's proposal to appoint alternates to the Finance Committee and give them specific duties and rights as specified in her submission. Mr. Collins seconded.

Misters Robertson and Giger expressed their wishes that the Finance Committee have an opportunity to be in attendance and comment on this proposal.

Ms. Eliot suggested the Finance Committee could consider this proposal at their next posted meeting on December 5th.

Ms. Allen said quorum problems with the Finance Committee have caused late budget action in the last fiscal year. She feels this is an important issue and that Ms. Leonard's proposal has merit. She also feels this Committee should make its decision sooner rather than later. More discussion, and reconsideration, can take place later.

Mr. Pease is concerned that the alternates idea subverts the democratic process of succession. Mr. McCoy said when you appoint an alternate it is not intended to be a guarantee that this will result in full membership downstream.

Visitor Mr. Harris commented the Finance Committee is a powerful and influential committee, but it is appointed, not elected. Alternates could have more political skills than technical expertise and this mix could result in a more capable Finance Committee.

A vote was taken on Ms. Allen's motion and it was approved 4 – 0 with abstentions by Misters Giger and Robertson. Both gentlemen desired more direct involvement of the Finance Committee before making a final decision on this issue.

Ms. Leonard made concluding remarks to the effect that she is concerned with present-day attendance problems on the Finance Committee and its failure thus far to take action on this.

Other Administrative Issues:

Mr. Manugian announced there will be no meeting on Wednesday, December 23rd, the day before Thanksgiving.

Misters Collins and Robertson and Ms. Allen said they were unable to attend the meeting scheduled for Wednesday, November 30th. Mr. Manugian said it is the policy of the Committee not to meet when less than five members are present. The November 30th meeting was cancelled.

The next meeting is scheduled for December 7th. Mr. Manugian proposed the November 30th meeting be made up by meeting on December 28th, presently an unscheduled meeting day. There were no objections to this.

Mr. Manugian announced he had emailed a new draft master schedule for the Committee (through Spring Town Meeting), dated November 16, 2016, to members today.

Mr. Collins said he has thus far not heard from Town Counsel on the Committee's proposed review schedule for the revised draft Charter. He expects, however, to hear by the end of the week.

Mr. Manugian expects to complete work on the latest revision to the revised draft Charter (Version 0.8-6) in the next week. This was an action item for last week's meeting.

The meeting was adjourned with unanimous consent at 9:03 PM.

**** The next meeting is scheduled for Wednesday, December 7th, at 7:00 PM. ****

Exhibits:

- A. Revised wording of Submission 192 presented by Jack Petropoulos, dated November 16, 2016
- B. Letter from Attorney Robert Collins to the Charter Review Committee, dated November 15, 2016, RE: Submission 192
- C. Document concerning types of Town's Employees Based on Compensation, prepared by John Giger, dated November 15, 2016

Exhibit A to Charter Review Committee
11-16-16 Meeting Minutes



Background

**** Revised version of submission 192,
submitted by Jack Petropoulos***

- The Assessor function of our town is filled by 2 full time employees (Principal Assessor and Assistant Assessor) and 3 elected Assessors (Board of Assessors)
- The most comprehensive description of Assessors' role (and the definition that we reference on our town website) is defined here at the Mass Assn of Assessing Officers:
 - o <http://www.maa.org/content/The%20Role%20of%20the%20Assessor.pdf>
 - o This description provides some high level responsibilities but does not define how they are implemented.
- I spoke with Bob Ellia of Mass Association of Assessing Officers.
 - o He said that the content on their site were the general guidelines and that towns tended to implement their own configuration.
- 2/3 of Assessors in MA are elected and the balance are appointed. In our case we have both appointed and elected
- Assessor's Oath of Office:
 - o "I, <name>, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the Town of Groton for the Fiscal year 2009 and ensuing, do swear that I will truly and impartially according to the my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully perform all the duties of said office."
- It has come to the attention of some members of the Board of Selectmen that the current structure of the relationship between the Principal Assessors and the Elected Board is such that there is no governing structure that would assure that the critical interdependence is optimized by either policy or charter.

Problem

- The challenge with our implementation is that we have both an elected and an appointed body, each responsible to different and independent authority and oversight.
 - o The appointed Principle Assessor is responsible to the Town Manager
 - o The elected Board of Assessors are responsible to town voters
- The elected Board relies on the Principal Assessor for the vast majority of the data that is required to do their work, but has no authority over the Principal Assessor, nor over the Principal Assessor's management
- Nor do we have guidelines on how these entities must work together.
- The consequence of ineffective relationship can have a profound impact on:

- o The confidence of our property owners in our assessments
- o The smooth financial operation of our town as we incur abnormally high and unnecessary abatement request and refunds

Solution

- Provide language in the charter that defines these roles and the relationship between them either specifically or by reference

Suggested Language

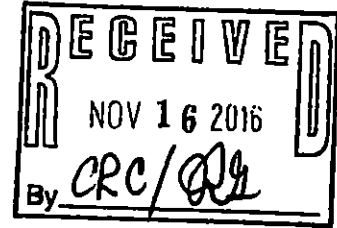
- The Principle Assessor's role is to to manage the day to day operations of the Assessor's Office and to support the work of the Board of Assessors.
- The elected Board of Assessors will be responsible for the fairness and accuracy of the work of the Principal Assessor, the setting of the tax rate, and the adjudication of all requests for abatement that have been filed by, or on the behalf of, the taxpayer.
- The position of the Principal Assessor will be filled by a recommendation by the Town Manager and requires a ratification by the Groton Board of Assessors followed by ratification by the Groton Board of Selectmen
- The Principle Assessor will be supervised by the Town Manager and will operate under a set of operational policies and procedures created by the elected Board of Assessors with input and advice from the Town Manager, the Principal Assessor, and such other entities as the Board of Assessors see fit.
- The Town Manager will consider input from the Board of Assessors in execution of his or her supervision of the Principal Assessor
- No individual may *simultaneously* serve on both the Groton Board of Assessors and as the Principal or Assistant Assessor for the town of Groton.

Library Trustees in Charter

Section 3-8: Trustees of the Groton Public Library

- (a) Composition, Term of Office - There shall be a board of trustees of the Groton public library, which shall consist of 6 members, each serving for a term of 3 years. The terms shall be arranged in order that the terms of 2 members shall expire each year.
- (b) Powers and Duties - The trustees of the Groton public library shall establish written policies governing library activities and services; engage in ongoing planning which assesses the needs and the role of the library in the community; ensure that the library meets the community's needs; work on preparation of the annual library budget and its adoption by the town; monitor and oversee maintenance of the buildings and grounds and regularly review facility needs; hire and evaluate the library director and work with the personnel board on job classifications for all staff; promote the library and act as library advocates in the community; study and support legislation which will benefit the library and the larger community; and have such other powers and duties as provided for by law, this charter and by-law.
- (c) Appointments - The trustees of the Groton public library shall appoint the library director and such other appointments as provided for by law, this charter or by-law.

Exhibit B to Charter Review Committee
11-16-16 Meeting Minutes



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15 November 2016

The Groton Charter Review Committee
Michael Manugian, Chairman
Town Hall
173 Main Street
Groton, MA 01450

Dear Committee Members:

I wish to offer the following observations with regard to the issues raised by Submission 192 regarding the Board of Assessors and the Principal Assessor.

The roles of the Assessors are outlined in Chapter 41, Sections 24 et seq of the General Laws. Section 25A allows for the appointment of an Assistant Assessor, whose role is to assist the Assessors in the performance of their statutory duties.

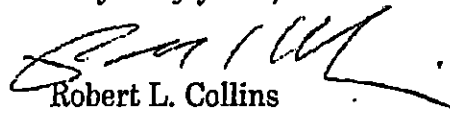
Assessors occupy a somewhat unique role under the law as municipal officers, since they are public officers subject to the lawful authority of the Massachusetts Department of Revenue (see *Sudbury v. Commissioner of Corporations and Taxation* (1974) 321 NE2d 641). While not state officers or employees, nor subordinates of the Commissioner of Revenue, the performance of their duties must be in compliance with directives of the Department of Revenue. Assessors are not "servants or agents" of the municipality they serve (see *Cox v. Segee* (1910) 92 NE 620); rather, they are obligated to perform their statutory functions in compliance with the rules and directives of the Department of Revenue.

The Commissioner of Revenue has the power to appoint assessors should the elected or appointed assessors of a city or town fail to perform their duties; this authority has led to a number of conflicting and somewhat contradictory opinions of the Attorney General over the last thirty years. Thus, while the

Commissioner has the legal authority to direct assessors to take action, and while actions of assessors must be in compliance with those directives, the Commissioner does not have the authority to remove individuals from the office of assessor.

It would appear that a municipality has limited, if any, power to change or clarify the roles of assessors, or to change the fact that by law assessors must follow the guidance of the Department of Revenue. It would further appear that that law adequately defines the legal role of members of the Board of Assessors and the principal and assistant assessors that assist the Board in carrying out its statutory duties.

Very truly yours,



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TO: MIKE MANUGIAN

2 PAGES FOLLOW

Types of Town Employees Based on Compensation

I had a phone conversation with Mark Haddad this morning and learned that from a compensation perspective there two types of town employees, ones who are compensated (e.g., Country Club General Manager/Head Golf Professional, Land Use Director/Town Planner, Conservation Administrator, Building Commissioned and etc.) and ones who are not compensated (e.g., ADA Coordinator, Fence Viewer, Filed Driver, Keeper of the Town Clock and etc.).

Definition of Municipal Employee

Chapter 268A: Conduct of Public Officials and Employees, Section 1: Definitions

(a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(f) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

(g) "Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

(n) "Special municipal employee", a municipal employee who is not a mayor, a member of the board of aldermen, a member of the city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose, compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been

Exhibit C to CRC Minutes of 20161116. Prepared by John Giger, 2016-11-16

made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

Observations/Recommendations:

1. The draft "Full Report" does not mention elected municipal agencies, and for completeness, if for no other reason, properly should provide a description of the election and recall processes.
2. The term Town Employee is not defined in the draft "2017 Town Charter" and probably should be. The definition should include an indication that a Town Employee may be in either a compensated status or a non-compensated status.
3. Page 9 to the draft "Full Report" currently indicates in a section titled Appointments the following:

There are three types of appointments.

- *Appointment of an open meeting law committee*
- *Appointment to a non-open meeting law committee*
- *Appointment to a position as a town employee*

If Observation/Recommendation 2, above, is implemented, the current identification of three appointment types is accurate. If Observation/Recommendation 2, above, is not implemented, I believe Appointments section in the draft "Final Report" should read as follows:

There are four types of appointments.

- *Appointment of an open meeting law committee*
- *Appointment to a non-open meeting law committee*
- *Appointment to a position as a compensated town employee*
- *Appointment to a position as a non-compensated town employee*

Rational: Most readers will see the term town employee and assume that it identifies a town worker who receives compensation from the town for their services. In the case of Groton, such an assumption is patently false. Groton has town employees who are compensated and employees who are not compensated (volunteers). Both categories of town employees provide services to the town which are essential to the administrative operations of town government. Some of the positions filled by non-compensated town employees are positions required by the general laws of the commonwealth (e.g., Fence Viewer). See <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter49/Section1> for more information on the fence viewer requirements.

irg/2016-15-16

File ID: Exhibit C to CRC Minutes of 20161116, Types of Towns Employees Based on Compensation.docx