

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

Meeting Minutes - December 28, 2016
At Town Hall

Present (5): Jane Allen, John Giger (Secretary), Michael Manugian (Chair), Bud Robertson (Vice-Chair), Stuart Schulman (arrived at 7:28 PM)

Not Present: Robert Collins, Michael McCoy

Recorder: Stephen Legge

Visitors: Peter Cunningham (BOS), Anna Eliot (BOS)

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

Approval of Meeting Minutes:

The draft meeting minutes of December 14, 2016 were considered. Ms. Allen requested changes to the wording of attributions made to her on Page 2, Paragraph 8: at the end of the first sentence add “without taking authority away from the boards.” In the second sentence, she asked to change wording to “... Town Manager to support all employees to implement decisions of their boards.”

Mr. Robertson asked to have spelling of his name corrected on Page 5, Paragraph 2.

Mr. Manugian asked to have Paragraph 9 on Page 3 deleted because the statement was incorrect.

Ms. Allen moved to accept the minutes of December 14th as amended. Mr. Robertson seconded. The minutes were approved 4 - 0.

Administrative Issues:

Mr. Manugian announced again the Committee would continue to receive new submissions of proposed change to the Charter until January 30, 2017.

Mr. Manugian commented that discussion of both Submissions #192 and 193 on the agenda would be limited because Mr. Collins had action items on each one and was not present tonight.

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

Submission #192, by John Petropoulos, pertains to the roles and responsibilities of the Town’s Principal Assessor and the Board of Assessors. It was pointed out that our Assessors’ function is divided between an elected board and appointed town employees, each responsible to a different and independent authority. 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 directly and be revised accordingly.

Mr. Manugian began by saying if there is a conflict between citizens, employees of the Town and/or boards, there is no adjudicating authority at the Town level of government, or under our Charter. He proposes to raise all such issues for mediation (not arbitration) to the Board of Selectmen. All employees and boards would be required to agree to at least one such mediation session if mediation were requested by any part in a disagreement.

Mr. Giger agreed with the concept.

Ms. Allen said a mediation procedure would be good – it may resolve some problems which would otherwise not be resolved. She added, in general response to the main issue raised in the submission, she believes no employee has a right to work against the policies of a board. This principle should, in one way or another, be stated in the Charter.

Visitor Mr. Cunningham: He said the BOS has recently adopted a policy to be a point of last resort for citizens in conflict with a board's or employee's decision. It was discussed and adopted in an open meeting.

Visitor Ms. Eliot said the details of a dispute recently heard were discussed in executive session.

Mr. Robertson said this issue should be handled at the policy level and not included as a change to the Charter.

Mr. Manugian moved to pursue the concept of adding a mediation process to the Charter. There was no second to the motion.

Mr. Giger moved to add to the Selectmen's duties the requirement that the Board of Selectmen maintain a policy to address disagreements between Town boards, Town employees, and citizens. Ms. Allen seconded.

Mr. Robertson: The BOS already has a policy. That is good. It is all that is necessary.

Ms. Allen was not sure this issue needed to be addressed at any level. She feels it is a BOS responsibility to mediate disputes between boards, employees of the Town or others in cases where such parties are unable to handle or resolve the problem.

Mr. Schulman arrived at 7:28 PM.

Ms. Eliot expressed her concern that putting mediation into the Charter or requiring it in other ways could lead to the BOS conflicting or interfering with other boards.

Mr. Giger said it is clear the BOS cannot tell other elected boards what to do.

Ms. Eliot responded, putting mediation into the Charter is a very big responsibility with possible unintended impact.

Mr. Schulman questioned the wisdom of the motion.

Ms. Allen moved the question. A vote was taken to end debate and it passed 4 – 0 with Mr. Schulman abstaining.

A vote was taken on Mr. Giger’s motion and it failed 0 – 5.

Reconsiderations and Discussion of Types of Appointments:

Mr. Manugian asked if members wished any new reconsiderations. None were offered.

Mr. Manugian introduced a memo submitted by Mr. Giger, dated December 28, 2016 (five pages), regarding clarification of types of appointments made in the Charter. Mr. Giger referred to the Charter Changes Full Report draft, dated November 6th, on Page 9, a section on how different types of appointments are made. He proposed that three types presently proposed, appointment to an Open Meeting Law committee, appointment to a non-Open Meeting Law committee and appointment to a position as a town employee be changed to four types. This would be accomplished by differentiating a town employee as a compensated or non-compensated employee.

Mr. Manugian said he thought the proposed change was a good one. He also commented that Open Meeting Law appointments overlap with compensated and non-compensated appointments.

Mr. Schulman commented this is a noble effort to educate the public. But that is not the Committee’s job as a Charter Review body. The Committee has had an enormous number of meetings and discussions. This is out of the Charter Review Committee’s scope. Boundaries need to be drawn. The BOS can handle this issue, Mr. Schulman said.

Ms. Allen did not agree with Mr. Schulman. Our job is to report back to the public on issues raised.

Mr. Manugian observed the section in question is concerned only with committees, not individual employees. He feels it appropriate to have only the first two categories mentioned regarding Open Meeting Law committees and non-Open Meeting Law committees, removing the present third category on town employees. He offered to make this change to the report.

By consensus the Committee members agreed with Mr. Manugian on this point.

Action Item #1: Mr. Manugian offered to rewrite Mr. Giger’s proposal to make clearer the differences in categories and narrow the scope to committee appointments.

Discussion of Comments on the Revised Charter from Town Counsel:

Town Counsel was asked by the Committee on December 9th to review the draft revised Charter (version as of early December 2016). Counsel immediately returned with a request to see changes highlighted and also requested an MS Word version instead of the pdf version. These were provided the day after the request.

Town Counsel, Mr. David Doneski, responded to the Committee in an email dated December 23, 2016. According to Mr. Manugian, the proposed changes are fairly clear and relatively minor in nature. Mr. Doneski did say, however, that the form, style and document numbering changes were important and relevant. The Committee had chosen not to flag capitalization and section numbering changes in the interest of making what it considered more significant content changes easier for the public to see. Mr. Doneski commented, the Committee, rather than submitting only changes to the Charter to Town Meeting, is instead submitting a new revised complete Charter. He indicated that the Committee should formally list the types of changes which were not flagged.

Mr. Manugian commented he felt all of Town Counsel's comments regarding what was and was not flagged as a change were addressed in the Committee's Final Report.

Mr. Giger then led a section-by-section review of Counsel's recommended changes and specific comments on the revised Charter. The Committee approved or withheld approval on each individual comment.

Sections 1.9.1 and 1.9.5 changes: approved.

Section 2.1 comments: leave as is.

Sections 2.2.1, 2.7.1, 2.7.2, 2.8 and 2.11 changes: approved.

Sections 3.1.1, 3.1.2, 3.1.3 and 3.1.4 changes: approved.

Section 3.2.2 change: approved.

Section 3.2.2.1 comment: open, see action item. Mr. Doneski felt that the language in this change limited the ability of the Board of Selectmen to create policy. Mr. Doneski didn't explain how the wording limited the BOS and gave no example of a limitation. Since the Committee did not understand how the wording resulted in a limitation, it requested more detail from Mr. Doneski.

Action Item #2: Mr. Manugian will talk to Mr. Doneski to make clear the intent of his comment.

Section 3.2.2.3 change: rejected, due to usage and definitions in the Charter.

Sections 3.2.6, 3.3.2, 3.4.2 and 3.6.2 changes: approved.

Sections 4.2.1, 4.2.3, 4.2.6 and 4.2.11 changes: approved.

Sections 4.3.1, 4.3.1.2, 4.3.1.4 and 4.5.1 changes: approved.

Sections 5.2, 5.3.2, 5.3.5, 5.3.6 and 5.3.7 changes: approved.

Sections 5.5 and 5.6.1 changes: approved.

Sections 6.2.1, 6.6 and 6.10 changes: approved.

Section 7.10 change: approved.

At the end of the review Mr. Schuman commented, having no significant change necessary as a result of Town Counsel's review is a testament to the thoroughness of the Committee's work and the Chairman's management of the process.

Other Administrative Issues:

Mr. Manugian said he would develop revised versions of the Charter including the town Counsel's revisions of the draft revised Charter approved by the Committee and the Full Report. He expected to discuss this at the next scheduled meeting. Mr. Giger said the last revision of the Full Report document was dated November 6, 2016. Mr. Manugian also plans to bring the results of discussion with Town Counsel of their proposed revisions questioned by the Committee. Mr. Manugian reported he has received comments from Judy Anderson and will review and incorporate her comments in the report document.

Action Item #3: Mr. Manugian asked all members to review the Full Report draft before the next meeting and bring specific comments.

At the next meeting, Mr. Manugian also expects to discuss Mr. Collins' research on Submissions # 192 and 193.

Mr. Giger said Fran Stanley will record minutes next week and possibly the week following while Steve Legge is out of Town.

Public hearings are tentatively scheduled for Wednesday, January 18th, day-time and evening, to receive public comments and comments from all Town officials and employees.

Action Item #4: Mr. Manugian will confirm days and times for the public hearings with Mr. Haddad.

The meeting was adjourned with unanimous consent at 8:54 PM.

**** The next meeting is scheduled for Wednesday, January 4th, at 7:00 PM. ****

Exhibit: Memorandum to Charter Review Committee from John Giger, dated December 28, 2016, subject: Types of Appointments

MEMORANDUM

Date: December 28, 2016
To: Charter Review Committee
From: John Giger
Subject: Types of Appointments

Reference: The Appointments section on page 8 of the Town of Groton, Charter Review Committee, WORKING DRAFT- Recommended Charter Changes - Full Report, dated November 6, 2016 (copy attached).

Referenced section currently reads:

Appointments

There are three types of appointments.

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

I proposed that the Appointments section be changed to read as follows:

Appointments

There are four types of appointments:

- Appointment to 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

The rationale for my proposed change is explained in Exhibit C to CRC Minutes of 20161116, Prepared by John Giger, 2016-11-16 (copy attached).

Any subcommittee created by an open meeting law committee is also subject to the open meeting law, regardless of the number of members of the subcommittee. However, an individual member of a committee charged with a task is not subject to the open meeting law while performing that task and may communicate with another committee member while performing that task. This is a gray area.

Role and Responsibility of a Committee

The description of a committee is called its Charge. The Charge of every committee should contain the following.

- The formal name of the committee
- The number of members, how they are appointed or elected and by whom
- What the purpose of the committee is
- What the duration of the committee is
- What the deliverables of the committee are
- Who the committee reports to (often implied or omitted)

Committee Reporting

For the most part an open meeting law committee reports to and is responsible to the voters. An OML committee does not report to the Board of Selectmen, Town Manager or any other entity.

Appointing Committee Members

The process for appointing members and the appointing authority (appointers) must be specified in the charge for an appointed committee. When a committee member is appointed, they have no obligation to the appointing authority other than to carry out the duties of a committee member. They are not obligated to represent the appointing authority or to support the point of view of the appointing authority.

Removing Committee Members

A Committee member may be removed if they are not performing the duties of a member of the committee. They may be removed by the authority which appointed them.

Appointments

There are three types of appointments.

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

Appointment to an open meeting law committee is covered in the charge of the committee already discussed above.

Appointment to a non open meeting law committee is done by the town officer who creates the committee or their designee.

Appo Appointment of individual volunteers not members of committee.

GIGER MASTER;

**Town of Groton
Charter Review Committee
WORKING DRAFT - Recommended Charter Changes – Full
Report**

November 6, 2016

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, Field 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.

jrg/2016-11-16

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