

# ELIOT TOWN CHARTER COMMISSION

## MINUTES – JANUARY 14, 2015

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PRESENT: Charles Rankie, Jr. (Chair), Gary Sinden, Rosanne Adams, Roland Fernald, Robert Fisher, Dennis Lentz, John Murphy, Maryann Place, Edward Strong. Also present: 6 citizens (includes 3 members of the Eliot Planning Board, 3 members of the Eliot Board of Appeals )

Meeting opened at 7:00PM

### BUSINESS

1. MOTION by Robert Fisher, 2<sup>nd</sup> Roland Fernald to approve the Minutes of December 17, 2014 as corrected. VOTE: 9-0.
2. The Chair reviewed the format of the Commission's meetings for benefit of members of the public in attendance and presented the main topic under discussion for the evening – the question as to whether the positions on the Board of Appeals [BOA] and Planning Board [PB] should be elected positions or continue as they are by being appointed positions.
3. Public Comment:
  - a. Donna Murphy asked to speak to some FOAA requests she had made on Monday, January 12th. The Chair asked if she might wait till later in the meeting when he had planned to make it an addition to the agenda after the Planning Board and Board of Appeals discussion. She chose to speak now and proceeded to present background information on her previous requests and the most recent that she felt had not been dealt with in a timely matter. She also handed out to Commission members a copy of an email dated December 18, 2014 from Ms. Kielty, Maine Assistant Attorney General, to the Chair of the Charter Commission regarding her FOAA request. She expressed that the ruling was in her favor.
  - b. Edward Cielezsko raised the question of being able to give comment during the discussion on the BOA and PB. He was informed, by the Chair, that there would be time given for citizen comments on this before the Commission made their decision. Mr. Cielezsko said he would wait till then to speak.
4. The Chair asked to add discussion on FOAA requests to the agenda after the Planning Board/BOA discussion. There was no objection.
5. The Chair invited the Planning Board members present to join the discussion. He explained that the Board of Appeals had not authorized any representation other than as private citizens and so will be recognized during public comment; the Planning Board members will speak during the Commission's discussion. The Chair asked Gary Sinden, as a proponent of having membership for these boards be elected, to open the discussion with his ideas and thoughts. He declined in favor

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of hearing from the Planning Board members and what others have to say first. The Chair, for the record, stated that, although he is a member of the Planning Board, he is participating in the discussion as a Charter Commission member. Dennis Lentz also a member of the Planning Board said he was participating as a member of the Charter Commission.

- a. Gary Sinden stated that he believes that semi quasi-judicial boards should not be under control the Board of Selectmen. Citizens have more input if elected.
- b. Robert Fisher said that at first he was in favor of election of these boards. He then questioned what would happen if an elected member doesn't attend the meetings, how do you get rid of them? You can't get rid of them although now we have a provision in the Charter for recall. And what happens if you don't get enough members through election? The Selectmen then appoint some members. So you now have elected and appointed. He is swayed both ways and said he was looking forward to the discussion.
- c. Gary Sinden presented his written response/thoughts/solutions to the objections [for elected membership] raised by the Planning Board which were contained in their written response to the Commission. [attached] The citizens of Eliot should have equal power over semi quasi-judicial boards. He also said he would like to hear if there are any other objections that could be addressed. After hearing from both boards he would then offer to draw up some language to be considered at the next meeting.
- d. Stephen Beckert [Planning Board member] presented, for the record, the Planning Board minutes of Nov. 4, 2014, noting lines 127-215 containing the Planning Board's discussion of "elected vs appointed" [attached] and referenced the board's response to the Commission's request previously submitted. [attached] He reiterated that at the last Planning Board meeting the members did make an official motion and vote so that every member of the Planning Board could come and speak as a member of the Planning Board tonight. He pointed out that the executive branch of the United States appoints the judicial branch. He said that the record of the Planning Board's position on the subject will stand on the minutes and the response letter from the Planning Board to the Commission on this topic.
- e. Roland Fernald stated that once the PB and the BOA are appointed the Selectmen have no control over them.
- f. John Murphy stated that the operation of the BOA requires that decisions be appealed by citizens, bypassing the selectmen entirely.
- g. Gary Sinden responded that he recently witnessed the BOA being brought into a disciplinary hearing with a charge of "bias" given. He watched this and saw no just cause presented to have triggered it. The process was harmful to members, it was degrading, and it was embarrassing to the town. The solution for this would be through the courts not

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- in a public spectacle where their reputation is tarnished. This is the sort of thing that should not be permitted unless there is gross misconduct.
- h. Charles Rankie [Chair] said that he was a part of that hearing and accused and while agreeing that the Selectmen handled it rather poorly that this is not cause to change from the appointment process to the election process. That in his job description it is the Town Manager’s job to monitor the Boards, Commissions, and Committees and report back to the Selectmen if there is something of concern. Coming in as he did in February it appears he wasn’t “up to snuff”.
  - i. Melissa Magdziasz [Planning Board, alternate]: She doesn’t see the PB under the direct control of the BOS at all; cannot remember when, if ever, the members of the BOS have attended and they are not a very involved group. She challenged the language being proposed – are we giving the citizens direct control or equal control of the Boards? As for qualifications she would not want to deter qualified applicants. Not sure if she has the qualifications other than to be interested in the process and wanting to serve in the town. Not sure anyone could come up with a list of qualifications that they (applicants) would fit into unless they went to school, The only qualification that could be on there could be that you need some level of reading skills. Interpretation skills cannot be taught and how could this be evaluated? If it could it would turn it political – persons being taught a certain way of interpreting an ordinance. As for politicization – someone not agreeing with the PB could turn into a slander campaign; badmouthing people who have been elected. She does think that elections would make it political; it is dangerous territory. She notes that there are not any towns around that have an elected PB and BOA.
  - j. Gary Sinden, responding to “direct control of the Selectmen”, said that you can’t get any more political then what you have now with the chair of the PB also being the chair of the Board of Selectmen.
  - k. The Chair stated that under the proposed Charter Selectmen will not be permitted to sit on another board.
  - l. Gary, speaking to “politicization” said that he believes when we are using this term we are referring to a person’s ideology driving their decisions as opposed to the facts; not necessarily politics in the election sense. Regarding the idea broached in the PB letter [to the Commission] of losing the opportunity of appointing qualified members [though an election process] he asked that if there are qualifications they should be placed before the public; it can be made known and used.
  - m. Roland Fernald : He has not heard anywhere that someone has to meet a list of qualifications to be elected to any office or any board.
  - n. Jack Murphy said there are only 2 – that you have to be 18 and a resident of the town.

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- o. Gary Sinden said he listed this issue as a response to the concern raised by the PB that the voters may not choose the proper people.
- p. John Murphy: He has served on the PB for 16 years and found it interesting to see the different people that have come on board. They had many different reasons as to why they wanted to serve. Among the members there have been those with personal agendas who have seen that the PB hasn't been "out to get" anybody; and some who didn't realize the work involved and didn't stay too long and others who just wanted to learn more. All had a right to be there and those that realized it wasn't the job for them got off the board.
- q. The Chair asked if there was no objection the discussion will be opened up to the citizens. No objection was made.
- r. Maryann Place: We are fortunate to have citizens to volunteer and serve on these boards. You are not going to get all those people who have the head knowledge for all the laws and ordinances. It is a learning process for those willing to give of their time. Putting it to an election will make it far worse to be able to fill these boards. We need to give our citizens credit for stepping up to the plate, being willing to serve, giving of their time to learn the process and the ordinances and do what they can. Elections are not the way to go.
- s. Gary Sinden: He wanted to make it clear that he wasn't advocating that there be a list of qualifications he was simply responding to a point made by the PB - their fear that qualified citizens may not want to join [if there is an election process]. He suggested that if there is a list of qualifications that they be made part of the process.
- t. Edward Strong: the interview of applicants takes place in public and has worked well for these appointments. The public had a right to comment. He cannot remember that there has ever been a problem with the process.
- u. Maryann Place said that in Kittery they have put in place term limits. So if people have issue that it is the same old people serving then term limits can be put in.
- v. Edward Cielezsko [Board of Appeals member]: The Board of Selectmen lose nothing [with election] other than the ability to appoint. This is given to the public. All the same rules still apply – the BOS can still appoint if there is nobody willing to run for election; the BOS can remove for the same reasons that are now on the books. What you are going to get is 2 layers instead of one layer of rules. Anything that gets too complicated gets too cumbersome to run and is more apt to be corrupted. He said he was not talking about today but 10-15 years down the road when the town gets bigger. Adding another layer makes it messy and more apt for failure. Believes we should keep the rules simple. Both of the Boards only go by the ordinances; mistakes may be made but any decision can be appealed to a higher court. There are so many protections built into the process already

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- that it seems ridiculous to lose the talent of people because they don't want to run for the position. As for qualifications – the only qualification he can see is that the person wants to be on it.
- w. Donna Murphy [Public]: An argument could be made for the other side. We have had a qualified person in town who has been volunteered and been rejected twice to an appointment on a board just because he wasn't liked. Regarding the comment comparing the executive appointing federal judges to the selectmen appointments - she doesn't believe the comparison to be valid. While it is true that the president does appoint judges they do have to be approved by the legislative body – the Senate.
- x. Roland Fernald: Taking a look at what we have done in the past and those who are on these boards, we have done a pretty good job appointing. You can't ask for better qualified people than we have on the PB and BOA. The process we have now, works.
- y. John Murphy: We should probably consider the membership of a volunteer committee almost a right of citizenship. You have a right to be on a board if there is room. You can't be denied unless there is a real cause for it. May want to make a statement [in the Charter] such that memberships on committees are open to any citizen who volunteers, for consideration, if there is an opening on the board. Dennis Lentz suggested it could be placed under "Powers of the Town".
- z. William Hamilton [Board of Appeals member]: He has no special qualifications to determine the difference between election or appointment. The reason the BOA chose not to make a statement was because none of them felt they had any special knowledge as to whether it would be better to be appointed or elected. Agreed it might add another level of complexity and people who want to participate may not be willing to go through the political process because it is somewhat cumbersome for a lot of people and takes away the enthusiasm a volunteer may have. The executive does appoint judicial positions even though they are reviewed and confirmed by the legislature on the federal level but it still doesn't deny the fact that it is part of the executive authority. It is a correct authority and any abuse of that authority is subject to the legislative reaction – that you are not going to reelect them or some sort of appeal. The system is working; the boards are well staffed; well qualified and it is an extra layer of complexity that we don't need (election). He doesn't understand why we would want a change, but is not opposed to it if there is an underlying need that feels election is the key. He doesn't see that need right now. He doesn't see that the issue of a lack of people to fill vacancies on boards will be resolved by the electoral process. He doesn't see it as an improvement but has no serious position on either side.
- aa. Gary Sinden: He spoke in defense of the electoral process; that every position he has held has been through this process and feels his enthusiasm has been greater because of it. He doesn't see it as a nasty thing that you would face. We can accomplish this citizen

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- involvement by simply leaving them as they are, as appointed, but just adding a statement that they would be subject to recall, if there is just cause that the Selectmen fail to recognize or act upon. It would give the citizen some level of involvement. He believes that would solve a lot of the issues, hearing here a consensus forming against election. At least “recall” would give the citizens a level of participation.
- bb. Dennis Lentz: He spoke in appreciation of Gary’s efforts to consolidate the issues and after listen to the discussions on the Planning Board and here, the question he would ask is – is it going to change the work that they do on those two boards today? Either way - is it going to make it easier for them? Will they make better decisions? He doesn’t think so. So, at this point, why change.
- cc. Charles Rankie: To clarify - there are judges who are elected. He was raised in New York state and owns property there. Judges there are elected and there is corruption in some areas.
- dd. Edward Cielezsko [Board of Appeals member]: It has sounded like it is the Selectmen who are being seen as the problem. He does not agree but if that is so then we have a recall procedure.
- ee. Ellen Lemire [Planning Board member]: Agreed with what others have said but if it was an elected position she would not run for it. It would take the joy out of it. It would take money and time. What bothers her about this is that it is another layer of regulation and makes it more complicated than it need be. Simple is not a bad word. We have a new form of town government. The town manager came into a mess, and is still trying to catch up with all the problems left for him to fix. He is part of this process. We need to let the process run its course a little further to see how well it works under him. We have a new form of government and this would add all kinds of stuff to make it too complex or create more chaos. She would not run however she is well qualified for the position.
- ff. Larry Bouchard [Planning Board member]: Has been in town for 20 years. Volunteered for the Planning Board at a time when there was a sub-division going in on Government Hill Road, his point being that if he is going to complain about something he wants to be part of the solution. He was against it. Joining the planning board turned his head around. He explained that the PB takes an application and see if it fits within the ordinances. The PB is far from being under the control of anyone. They are a diverse group of people that come from all walks of life. Believes they have a very qualified group of people. Everyone looks at things from a different way and that is what you need. They are not influenced by the Selectmen or anyone. Anything they decide upon can be appealed by the applicant – that is control by the citizens. If it went to elections he wouldn’t have the time to do it or want to do it. It would be a great disservice to this town if we went to elections because you wouldn’t get the people.

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- gg. Robert Fisher: Expressed appreciation to everyone who spoke tonight. That he had gotten an education. He then asked if it would help other people who want but can't get on committees if we had term limits?
- hh. John Murphy: There is a difference between the PB and BOA and other boards. On these two boards there are a limited number of people who, by law, make the decisions and do the work. On almost any other boards any citizen can be there and talk and contribute. You don't have to be a member to take part in the discussion and have the right to speak. It is an important difference. The non quasi-judicial boards are freer and more open for participation and getting involved.
- ii. MOTION by Roland Fernald, 2<sup>nd</sup> Maryann Place to retain the appointment of the Planning Board and Board of Appeals as it is today. Following discussion the vote was taken.  
VOTE: 9-0.

The Chair and other members thanked the members of the public.

6. FOAA Request issue: The Chair handed out a paper outlining the request process, his duties as Chair, the duties of the public access officer, copy of the latest request that has prompted this discussion (dated 1/12/15) and the Maine Statute re: public records and proceedings. [attached]

He explained that we have gotten several requests for Articles that are being worked upon. At the beginning the Commission voted that we would not release any Charter Articles until we completed them to a point that they represented our work. This was to prevent any misrepresentation.

The FOAA precludes any wishes that we might have and if a document exists we are required to release the document either in a paper form or, if it exists, in an electronic form.

The problem as he sees it that because commission members are not employees and sitting at a desk waiting for requests there is a question as to what is a "reasonable amount of time" to reply to these requests. Requests for our draft charter articles come through the town manager and then are sent on to the Chair. He explained that, in all fairness, the person, in this case Donna Murphy, doesn't know what she might want to request until our agenda is printed which presently are being posted the Monday before the meeting. What Ms. Murphy might feel is a reasonable timeframe for getting them to them to her might not be reasonable to the Chair because he is not sitting around waiting for requests.

The Chair asked if we want to continue such that an FOAA request will be needed in order to get copies of our Charter Article drafts.

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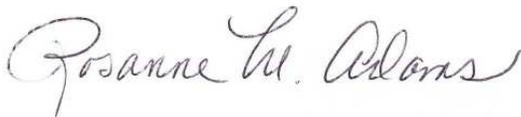
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There was discussion about what the process might be - whether release and post on the website as they become available or send to Town Manager to send out upon request. Articles would be released, as was already decided, with our disclaimer on them and in PDF form.

Motion made by Edward Strong, 2<sup>nd</sup> by Dennis Lentz to release Charter Article drafts as they are updated. VOTE:9-0.

7. There was continued discussion on getting information out to the public. Maryann Place suggested that what is sent out to the Commission members be posted as a packet on the website making them available to the public so they can follow along. Rosanne Adams explained that when the approved minutes are sent to be put on the website all documents being considered are attached but not the Charter draft articles. The Chair had previously explained that the Charter draft articles are sent to us by Dennis Lentz.
8. It was suggested and Edward Strong agreed to amend the previous motion to read “to release the Charter Article drafts as they are updated and put on the website.” There was no objection.
9. Public Comment:
  - a. Donna Murphy objected to the Commission’s previous decision not to release the draft documents as they were and are public documents. She then further explained her most recent request and read from other emails concerning this request, The Chair, in response, clarified that her request was made on Monday, January 12<sup>th</sup> and stated that it “preferably” be in electronic form prior to the meeting scheduled for January 14<sup>th</sup>. The request was fulfilled at 10 minutes of 7 (tonight) with a printed copy given to her.

Meeting adjourned at 9:17PM upon the MOTION of Edward Strong, 2<sup>nd</sup> Robert Fisher. VOTE:9-0.



Approved: 1-28-2015

Rosanne M. Adams  
Secretary

CC: Committee Members  
Eliot Town Clerk