

ELIOT TOWN CHARTER COMMISSION

MINUTES – March 11, 2015

PRESENT: Charles Rankie, Jr. (Chair), Gary Sinden, Rosanne Adams, Roland Fernald, Robert Fisher, Dennis Lentz, John Murphy, Maryann Place, Edward Strong (via video teleconferencing at 7:05) and 3 members of the public.

The meeting opened at 7:00pm.

The Chair offered copies of the agenda to the members of the public attending.

BUSINESS

1. MOTION by Robert Fisher, 2nd John Murphy to accept the minutes of February 25, 2015 as written. VOTE: 7-0. (Gary Sinden abstained as he was not at the meeting and Edward Strong was not yet SKYPED into the meeting)
2. PUBLIC COMMENT: none
3. The Chair noted that Road Commissioner Joel Moulton was present to discuss, with the Commission, Article 5 - Wastewater.
4. CORRESPONDENCE:
 - a. The Chair reported that he is still pursuing the original agreement of the formation of SAD 35. Randall Stewart sent what information he had (the most current cost sharing agreement) but has still not located the document that the Commission is looking for. [communications attached]
 - b. Email from Robert Pomerleau re: the status of the Commission obtaining a legal opinion concerning a vote of the townspeople on the union contracts before being signed by the selectmen. He offered as an alternative that it could be a non-binding referendum vote which would give the Select Board an idea of the public's feeling about the contract. [attached] The Secretary read from the August 27, 2014 minutes confirming the decision to seek a legal option. MOTION was made by Robert Fisher, 2nd Dennis Lentz that the chair submit the wording as recorded in the August 27, 2014 minutes to the Town Manager to be given to a labor lawyer and to also ask about the legality of it if it were to be a non-binding vote of the electorate. There was no objection.
5. REVIEW of ARTICLE 5- Wastewater with Road Commissioner Joel Moulton:
 - a. Joel went over the points he made in his letter to us. [attached] It was noted that an ordinance guides the running of the system.

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- b. When asked by Robert Fisher as to why it should be in the Charter Joel replied that it is a separate entity; a unique thing and in parts of the Charter the Town Manager has all say and in the sewer department he does not have all say.
- c. Mr. Fisher and others questioned needing it to be in the Charter as it is controlled by ordinance.
- d. Gary Sinden pointed out that the Charter is about governance and not so much about management procedures. These management issues [in the letter] are far better handled by ordinance, which we have. Any time you need a change it is far easier to make the changes by ordinance than when it in the Charter. He said he believed that a Charter would make it more difficult to function.
- e. The Chair noted that the purpose of the Charter, in some instances, is to present a hindrance to change. So that change is not easy. He suggested that [the Charter] might just say that the Sewer Department should be overseen by a Sewer Superintendent.
- f. Dennis Lentz said that is one thing to create the structure which shows you the governance and other to describe it in detail. He didn't feel we wanted to do that. Maryann Place agreed.
- g. Edward Strong said that he liked the statement in #1 of the letter- "it is strictly a user based system fully funded by sewer users". John Murphy disagreed with the statement in #1 of the letter. That it is not the only utility in town.
- h. Rosanne Adams noted that we should be careful with the terminology- the use of the words "public utility". It may be a town utility but that she doesn't believe that Public Utilities Commission gets involved with our sewer system or at this point with our electrical system. Also the reason that the Commission is looking at it is because the Rockport Charter obviously has a wastewater system. We do not. We have sewer lines that go outside of the town to Kittery who has the wastewater system and are responsible for making sure it does not pollute the water. If we put it in the Charter it is a hindrance. If there is a change then the Charter will have to change.
- i. Roland Fernald said that he didn't believe it should be part of the Charter at all. There is a possibility that there are going to be too many changes down the road and is going to make it very difficult. That he understands that we want to make it very difficult to change but believes that it should be referenced as we do other things.
- j. Joel Moulton clarified that the intent of the system is to be funded by the users although that is not presently the case. He then further explained that if any of the pumps fail the town of Kittery won't be paying the fines and penalties for elicit discharge. It will be paid by the town to the Federal Government and the Maine DEP. The town has a sewer

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system and although Kittery treats it, we are ultimately responsible for the collection and transmission of waste.

- k. Robert Fisher explained that he owns a public utility and that would be the worst thing that could happen – that our sewer system be a public utility. He then talked about needing qualified people to run the system and asked what Joel's education is for running the sewer system and if he was an engineer. Joel replied that he has a background in engineering and construction but he is not a licensed engineer. Mr. Fisher thanked Joel.

MOTION by Robert Fisher, 2nd Gary Sinden that we do not include Article 5- Wastewater and the Eliot Sewer System in the Charter and that we reserve Article 5 for future use. VOTE: 8-1.

Before taking a vote the Chair asked if there was any public comment. Donna Murphy questioned why Article 5 was being left in at all and suggested it could be taken out completely. Robert Pomerleau explained and stated that his opinion was that Article 5 should be left as is and that it reflects how business is done in Eliot today.

6. REVIEW of ARTICLE 9 – Transitional Provisions and Charter Amendments (using the 2/25/15 draft):
 - a. Article 9.4B.3 – Continuance of Office or Employment : There was discussion on the addition of wording from John Murphy explaining that at the time of the ratification of the Charter that a Select Board member holding more than one position would have to select where they want to serve. Cannot serve on more than one board, etc. There was a CONCENSUS to adopt the submitted wording.
 - i. Rosanne said that she thought that the suggested wording that refers to Select Board members should read any member of a town, board, committee, or officer. That we had made a decision previously that unless no one steps forward a person cannot serve on more than one committee. John Murphy and the Chair did not agree that we had made such a decision. Rosanne said she would check because she thought we had made that decision.
7. REVIEW of ARTICLE 7 – Nominations and Elections (using 2/11/15 draft):
 - a. Article 7.4- Elected Officials: waiting for information from the School Board.
 - b. Article 7.5 – Eligibility: Robert Pomerleau spoke to his objection to not allowing a person to be a candidate for more than one office. There was discussion on the possible implications when a person is put on a ballot for more than one position. Maryann Place said she thought it was in the law that a person could run for more than one position.

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Rosanne Adams asked if it [Charter] could be stricter than state law and raised the concern that if the person is elected to both then an immediate vacancy would be created. She said this would then result in another election having to be held. That would be the problem of a person running for more than one – the process is disrupted. Gary Sinden pointed out that if a person withdraws before their swearing in then they are not resigning, just removing themselves as a candidate and then the next higher vote getting person would take the position. Maryann Place said she would check State Statute so we could look at the wording. CONCENSUS to discuss further at next meeting when we have the information from Maryann.

- c. Article 7.8 – Determination of Election Results: No Change
- d. Article 7.8.C – Vacancy of Office: There was CONCENSUS to remove all but “If a position receives no votes, then a vacancy shall be declared. In the event of a vacancy the position shall remain vacant until the next election”.
- e. Article 7.10 – Vacancy of Office: Gary Sinden read the statute and although they were listed in the statute, there was a CONCENSUS to remove “incompetence” and “permanent disability”.
- f. Article 7.11 – Forfeiture of Office:
 - i. Gary Sinden pointed out that previously there was a strong argument made that all of this could be covered under recall.
 - ii. The Chair pointed out that Article 7.10 should be listed after 7.11. Forfeiture results in vacancy. There was no objection.
 - iii. Edward Strong said that these were all good reasons for recall but not sure if they are for forfeiture.
 - iv. The list was gone through and there was discussion on each item.
 - 1. John Murphy suggested that H should read the “offering or accepting of bribes” and that G might need the addition of the words “under oath” when making false statements.
 - v. Gary Sinden again raised the issue of having the Select Board be able to remove another elected official. That they should not be able to do this.
 - vi. The Chair asked, if there was no objection, for public comment. There was no objection.

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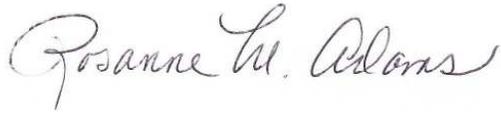
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- vii. Robert Pomerleau spoke to the wording in 7.11 saying that if there were a “hot button” item it would be the Selectmen given the power to remove an elected official. The public should always be able to initiate a recall and in addition the Select Board could bring forth a warrant calling for recall under this article
 - 1. Dennis Lentz suggested that for clarity that it could be stated that recall could be done in two manners – by the Select Board bringing forth a warrant and by citizen petition.
 - 2. Gary Sinden suggested that this would be a question for the lawyer- can the Select Board remove another elected official legally.
 - 3. There was a CONCENSUS that one elected official should not be allowed to remove another elected official and that John Murphy will use the wording submitted by Mr. Pomerleau and draw up something for consideration at the next meeting.

 - g. Dennis Lentz noted that in looking at the Kittery Charter that they have something about filling vacancies for elected officials
8. PRESS RELEASE – Rosanne Adams said she is planning to write up an article for the paper.
9. PUBLIC COMMENT –
- a. Robert Pomerleau commented on the timeframe for getting a public vote on the Charter and strongly suggested that June was not a good time to do it with all the other important votes coming up. The Charter deserves the full attention of the citizens and to be discussed thoroughly.
10. NEW BUSINESS:
- a. The Chair passed around an index that Dennis Lentz had created for the Charter and asked, if no objection, that it be put up on the website. There was no objection. There was CONCENSUS that a disclaimer be put on the top and it be submitted.
 - b. The Chair recognized the work that Wendy Rawski, our town clerk, has been doing in making sure the latest version of the Charter Articles are up on the website.
11. COMMISSION ROUNDTABLE:
- a. The Chair said that he has not heard back from the Fire Chief regarding the wording in the Charter and that he will contact the Chief and that he will send out the information on SAD 35 as soon as it is received.

Meeting adjourned at 9:40pm upon the MOTION of Robert Fisher, 2nd Dennis Lentz. VOTE: 9-0.

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Approved: March 25, 2015

Rosanne M. Adams
Secretary

CC: Committee Members
Eliot Town Clerk