

ELIOT TOWN CHARTER COMMISSION

MINUTES – July 7, 2015

PRESENT: Charles Rankie, Jr. (Chair), Rosanne Adams, Roland Fernald, Robert Fisher, Dennis Lentz, John Murphy, Maryann Place, Edward Strong. 1 member of public.

ABSENT: Gary Sinden [excused]

Meeting opened at 7PM.

The Chair noted that Mr. Sinden had family obligations and was excused from the meeting and that Mr. Bill Hamilton was present at the table. He has been invited for a discussion of item #4 on the Agenda – Consent Agreements. He asked, if there was no objection, that the review of the June 24th minutes be put on the agenda for the next meeting (July 8th). NO OBJECTION.

BUSINESS

1. PUBLIC COMMENT: none.
2. CORRESPONDENCE:
 - a. Agenda for July 7th and 8th meetings
 - b. Email from Gary Sinden – that wouldn't be able to attend the meetings this week [attached]
 - c. Listing from Dennis Lentz of the Articles with their most recent draft dates [attached]
 - d. RFP for Legal Review proposals [attached]
3. The Chair suggested, if there was no objection, that the review of the Articles of the Charter be postponed until tomorrow night and we proceed to discuss the issue of consent agreements with Mr. Hamilton. There was NO OBJECTION.
 - a. Mr. Hamilton explained that he had been contacted by Ms. Adams as a citizen (while also recognizing that she is a member of the Charter Commission) about comments he had made concerning consent agreements and suggested that he might like to share his views with the Commission. He was invited by the Chair to do so.
 - b. Mr. Hamilton noted that there is a state policy concerning consent agreements but no state statute. Typically the code officer issues a violation to the citizen who then, instead of going to court, may take an appeal to the Selectmen. The Selectmen are the ones who have the job of enforcement following the issuance of a land use violation.
 - c. Mr. Hamilton noted that in other towns the Selectmen have entered into consent agreements with contractors where there was no violation which then leaves the rights of the abutters out of the process.
 - d. He stated that he was here speaking as a private citizen and not as a member of the Board of Appeals.

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- e. Mr. Hamilton noted that consent agreements are a policy that can be changed depending on the feelings of the Selectmen. He thought it would be good to put something in the Charter because it would take more work to change.
- f. John Murphy said that in 2011 he compiled a notebook of all the cases he could find that had occurred in Eliot and worked to produce a set of steps that needed to be followed. He presented the notebook. The Selectmen came up with a document proposal for policies and procedures which was sent to Attorney Chris Vandiotis who changed 2 words and added the last two paragraphs of the procedure. He noted that consent agreements do not only apply to the Board of Appeals and land uses but are used in other way by the Selectmen. Courts can also decide to remand a case back to the town to come up with a consent agreement between the town and the citizen.
- g. It was noted that there is no appeal to a consent agreement.
- h. Mr. Hamilton elaborated on his concern that consent agreements have been written between contractors and the town when there have been NO violations and as he stated in his email – for a contractor the payment of a fine is just “the cost of doing business” and is passed on to the buyer. He gave some examples.
- i. Roland Fernald objected and felt there was much more to the situations that were cited by Mr. Hamilton.
- j. Edward Strong asked if the Selectmen had accepted the policy that Mr. Murphy spoke about. The reply was yes, they have.
- k. Mr. Hamilton said that the Board of Appeals, in their discussions, were in opposition to the Board of Selectmen being able to enter into consent agreements where no violations exist.
- l. The Chair pointed out that the policy could change with a new Select Board.
- m. Rosanne Adams asked if the Charter could reference a consent agreement ordinance and then call for its creation.
- n. Mr. Hamilton stated that he thinks it would be if the ordinance stays that way and is stated in the Charter
- o. Roland Fernald said he had no objection to the present policy on consent agreements becoming an ordinance and then is referenced in the Charter.
- p. Mr. Hamilton said he would like to see it [procedures/policy] clarified. He has been on the other side of consent agreement where you might want to sit down and solve an issue but it is taken right out of your hands and you have no appeal.
- q. Robert Fisher suggested wording in the Charter such that – an appeal must be on a violation issued by the Code Enforcement Officer.
- r. Mr. Hamilton clarified that the CEO notices the violation, issues a notice and then asks the Selectmen what can be done about it. He reiterated that it should be used only when there is a violation. When asked he said that typically a consent agreement is used in cases where there is a violation of a land use ordinance.
- s. Dennis Lentz said we are not speaking of limiting the authority of the Selectmen but offering clarity and transparency for the citizens.
- t. Rosanne Adams asked about state statute concerning land use violations and Edward Strong explained that the statute only deals with fines.

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- u. After further discussion Rosanne Adams made a MOTION, Robert Fisher, 2nd to place under the powers and duties of the Selectmen in Article 2 the power to “consider consent agreements for land use violations only when such a land use violation has been brought to the Select Board by the Code Enforcement Officer”. VOTE: 7-1. Mr. Hamilton said he wasn’t sure if it solved the problem at all as it doesn’t say anything about entering into consent agreements about other things such as road maintenance issues since he believes that consent agreements should only be used for land use violation issues.
 - v. Rosanne Adams asked Mr. Hamilton if the BOA had sat down with the Select Board as was recommended back in 2011 and Mr. Hamilton said that they did and the BOA recommendations were in the packet of materials he sent. [see June 24th minutes attachments]
 - w. The Chair noted that Mr. Hamilton had also submitted concerns around Initiative and Referendum - the statute (Title 21) that we have referenced has been repealed. It was suggested that the reference be taken out. In addition he was thinking that having something that might negate the action of the Select Board would be good to have. He referenced the Kittery Charter where an action by the Council can be overturned within 30 days. The Chair made a note to consider taking out that reference at the next meeting.
 - x. Members of the Commission thanked Bill Hamilton for coming and meeting with us.
4. Review language re: Budget Referendum submitted by Robert Fisher.
- a. Roland Fernald expressed that the Select Board has not yet determined what the new ordinance will look like. He expressed concern that if too much is put into the Charter and then things change it will be harder to change the Charter should the citizens want to change back to town meeting [rather than by referendum].
 - b. The Chair noted that the lawyer recommended it be put in the Charter and that is why we are talking about it.
 - c. Edward Strong noted that the citizens have voted that they want a budget referendum.
 - d. The suggested wording by Mr. Fisher was read and discussed.
 - e. The Chair read the statement from the attorney concerning the budget referendum only being binding if put in a Charter.
 - f. Public Comment was taken-
 - i. Robert Pomerleau clarified what the existing ordinance says about the ability to change the way the budget is acted upon – either by “citizen petition” or by “warrant by the Select Board. He noted that the attorney said that the two [recently passed referendum proposals] are not in conflict, they just need to be merged and then it will require an ordinance change. The question is whether the entire ordinance needs to be in the Charter or just a reference to the ordinance. He noted that Rumford has it all in the Charter. The big question is to how the ballot is best structured. He suggested putting in the statement to vote the budget by referendum“ in accordance with the town’s ordinance”.
 - ii. John Murphy suggested adding a sentence to the proposed wording – “and submit this ordinance to be voted on by town meeting”. He agreed to work on modify the wording and then we will look at it at our next meeting (tomorrow).

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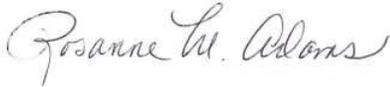
be done at either place. Robert Fisher noted that in the past the Grange played a central role in our community and it would be a good place to hold the meeting. MOTION by Dennis Lentz, 2nd Edward Strong to secure as our first choice the John F. Hill Grange and second choice the Elementary School. VOTE: 8-0. The Secretary said she would contact the Grange and see about video-taping.

15. NEW BUSINESS:

- a. The Secretary submitted expenses for the displays and handouts at the June town meeting. MOTION by Edward Strong, 2nd Maryann Place to approve the expenses. VOTE: 8-0.

Meeting adjourned at 9:10 pm upon the MOTION of Robert Fisher, 2nd Edward Strong. VOTE: 8-0.

Approved: August 26, 2015



Rosanne M. Adams
Secretary

CC: Committee Members/ Eliot Town Clerk