

ELIOT TOWN CHARTER COMMISSION

MINUTES – AUGUST 27, 2014

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

Meeting opened at 7:00pm.

BUSINESS

1. The Chair opened the meeting and suggested the placement of a “Correspondence” item on the agenda. This would be to allow a place for correspondence that comes in that does not “fit” in an item up for discussion. It was AGREED to place this on future agendas.
2. MOTION by Maryann Place, 2nd Edward Strong to accept the minutes of August 13th as corrected, reserving the right for further corrections to be made if necessary. VOTE 9-0.
3. Public Comment – none
4. Schedule of September meetings – AGREED to meet on the 10th and 24th. Maryann Place agreed to do the changes agreed upon at the September 10th meeting because Denny Lentz will be out of town. Maryann Place noted that she will not be able to attend on the 24th.
5. Correspondence:
 - a) Letter from the Chair to Selectmen dated 8/20/14 re: extension for Commission. (attached) The Chair noted that it has been placed on the agenda for their 8/28/14 meeting. There was discussion about whether we are asking for a 12 month extension from today or from the 1 year anniversary of the election of the Commission. It was AGREED that the Chair will ask for a 12 month extension, as allowed by statute, to take us to November 6, 2015.
 - b) Gary Sinden passed out the wording from the County’s Code of Ethics relating to further discussion re: Conflict of Interest – Article 8.4.
6. Review of Article 2- Select Board:
 - a. Article 2.7.J –Powers and Duties of the Select Board: The Chair presented our letter to MMA dated 8/20/14 and their reply dated 8/21/14 (both attached) concerning the submission by Robert Pomerleau in reference to the voters having the opportunity to approve the financial implications of labor contracts (see minutes of 8/13/14 under 3C). The Commission discussed the town’s present procedure for negotiation. Presently 2 selectmen and the town manager are part of the negotiating team but the Select Board approves and then votes on the final contract. Jack Murphy pointed out that the team also

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has had legal advice from David Barrett of MMA there also, he may also be the spokesman on behalf of the town. Gary Sinden pointed out that in New Hampshire with different laws this is done, but not in Maine. Robert Pomerleau was asked to speak to his submission and he said that he believes the MMA opinion is flawed; that as was pointed out in the very beginning of the letter that none of the staff attorneys are experts in labor law. In State government, after bargaining is completed, the contract needs to go to the body for approval. MMA's basic premise is flawed since the public is not voting on the provisions of the contract, just on the cost of the contract. It's a very narrow interpretation which is not accurate at all. Gary Sinden and Roland Fernald both spoke to citizens voting on the total budget of a department which in effect allows the voters the opportunity to vote on the cost of the contract which is included in the budget and lessen the amount if they so wish. Gary Sinden pointed out that only the legislative body can appropriate money and that this then serves as a warning to those negotiating a contract that if they go crazy with the contract they may lose a large chunk of money and have to let people go, etc. Rosanne Adams voiced her concern that the response from MMA seems to imply that they are responding to the idea of the public voting on the contract as a whole and not just the cost of the contract. Perhaps if this went back to MMA or a lawyer versed in this there might be a different answer? Roland Fernald and the Chair pointed out that the cost of the contract isn't just the salaries; everything in the contract results in a cost. Jack Murphy pointed out that the response was just about our side, not the labor union side. Denny Lentz was concerned that one of the largest costs we are taking the voters right out of the picture. Robert Fisher spoke to negotiating of contracts and the cost to the town regarding wages, hours, conditions of employment, cost of overtime, etc. Each of these items should be assigned a cost in the contract so it is clear what each part is costing. Unions make the move to combine these so it becomes unclear what the cost of each of these is and what the actual cost is for each person. Maryann Place asked if Eliot has a line item budget that it votes on. Edward Strong explained that the town used to have some line items but has slowly begun lumping everything into one figure to vote on. The public votes on the bottom line. Gary Sinden pointed out that once a contract is signed, nothing will change that unless negotiations are reopened and that is rare so you have to be careful what you negotiate. Each item that is being negotiated should be broken down to a cents per item cost. Denny Lentz made a MOTION, 2nd by Fernald to leave in Mr. Pomerleau's first sentence re: Select Board being the sole negotiators of a labor contract. VOTE: 7-2. Robert Fisher suggested that it include "or their designated person (s)". Edward Strong suggested that we look more at alternatives for warrant article recommendations that we can put in the charter. Jack Murphy suggested that we may want to simply refer to the statutes of the state regarding labor negotiations with municipal employees.

- b. Article 2.8.C- Prohibitions- Interference with Elected Boards: Discussed the submission by Edward Strong regarding the Budget Committee filling vacancies by appointment of individuals until the next election. It was noted that this wording will be moved to Article 6.3A. It was AGREED to discuss now. Edward Strong made the point that it is an

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independently elected board and that the Budget Committee should fill it within 14 days. Jack Murphy disagreed that they or any board should appoint their own. The Chair felt it was not appropriate for them to appoint but that the Select Board, receiving a recommendation, could then appoint as it represents a second level. Gary Sinden pointed out that the Budget Committee is a “subcommittee” of the legislative body (the people) and elected by the legislative body and as such its members should not be appointed by the executive body (Select Board) under any circumstance. Either appointed temporarily by the Budget Committee or left vacant till the next election. It would be wrong for the executive body to appoint members to a legislative body committee. Roland Fernald felt they should not appoint their own members, they should be elected by the town and it is possible to have a special meeting. Edward Strong felt that they should have the right to search out people and appoint someone to a vacancy until the next election. Roland Fernald questioned how they would be selected which was his concern. Maryann Place brought up the procedure of holding a special election or decide not to fill until the next election. Gary Sinden suggested the possibility of “alternate” positions for the Budget Committee [which would help alleviate shortages in the membership until the next election]. The idea of alternates was discussed. Roland Fernald and others felt that alternate positions would need to be specified on a ballot [elected]. It was AGREED to modify the wording that Edward Strong submitted to appointment “until the next election” and then place a note in RED re: “alternate positions” for further discussion while moving to Article 6.3.A.

- c. The rest of the article was reviewed and it was AGREED that Denny Lentz will make the updates. The disclaimer will be put on the top, and the document posted on the website.

7. Article 8- General Provisions:

- a. 8.3 – Swearing in the Town Clerk: The oath that the town uses was discussed (attached). Maryann Place read Kittery’s which several members preferred, in part. Members reworked some of the wording. It was AGREED that this section needs more work which Maryann Place agreed to do.
- b. 8.4.B- Conflict of Interest: Members reviewed the wording from Kittery’s charter and AGREED to use it for defining “family members”. Denny will make the change and we will review this again.
- c. 8.8- Recall of Elected Officials: It was noted that there is reference to a Recall Committee which we do not presently have. Although several members thought the percentage of petitioning voters (40%) was too high and perhaps 20% would be better. It was AGREED to highlight the number, take a look at other charters and discuss further. It was

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AGREED to clarify that the official will be removed following the recall vote “effective upon certification of the vote by the Town Clerk.

- d. 8.9-Planning Board Makes Warrant Recommendations: AGREED to highlight in RED and look at other charters for better wording.
 - e. 8.10- Committee and Board Service: It was AGREED to take out the definition of “official” and to leave “conflict of interest” and then reference Section 8.4 for this. Various other small changes were made to the sections within this.
 - f. 8.10.B- Committee and Board Service- Organization: There was discussion on how the bi-laws of town committees are prepared and should the preparation of them be included here? Jack Murphy stated that the present ordinance calls for the committee or board to draw up their own. It was AGREED to change 8.10.B.1A to- “shall prepare and operate under by-laws, updated as necessary and provide a copy to the Town Clerk”. There was discussion on whether referencing the present ordinance that the town has regarding Committees, Boards and Commissions might not be enough. Several spoke to being careful not to put too much detail in the Charter as it would be difficult to change whereas the town’s ordinance can be changed by the voters. It was noted that the ordinance governing Boards, Committees and Commissions is written as guidance to them.
 - g. 8.10.D- Committee and Board Service – Exceptions: It was AGREED to take out #1- Schools and #2- Library and change #4 reference to ZBA to Board of Appeals.
 - h. 8.10.D.4- Exceptions- Planning Board and Board of Appeals. AGREED that Jack Murphy and Roland Fernald will look at Article 2, Section 7.B reference to “removal for cause” and see that it follows the ordinances of the town.
 - i. The Chair closed further discussion on this article as it was getting late.
8. Publicity: The Secretary noted the announcement in the Portsmouth Herald and read from an article she had drawn up announcing the posting of Articles on the website with plans to submit before our next meeting.
9. Public Comment:
- a. Robert Pomerleau spoke on the previous discussion about labor negotiations and citizens voting on the financial aspects of the contract. He clarified that he was talking about citizens taking a vote before the BOS ratifies (signs) the contract. There was further discussion among the commission. Rosanne Adams asked Mr. Pomerleau about union contracts and its availability to the public before signed by the BOS. He stated that at that point it is public knowledge; all union members have the contract to review before voting on and so it is public at that point.

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- b. Robert Pomerleau spoke on the importance of public input and the need for an intellectual discussion between the public and the commission; a back and forth, not one liners. He felt the way he was limited in discussing his suggestion was discouraging and was a detriment to encouraging people to come to meetings and speak.

10. New Business:

- a. MOTION made by Rosanne Adams, 2nd Gary Sinden to seek a legal opinion from a labor lawyer as to what would prevent the town from taking to the voters for a vote the financial implications of a labor contract, once it has been negotiated by the town but before being signed by the Select Board and voted on by the union membership. VOTE: 9-0. This motion was made following clarification given by Mr. Pomerleau that at the point the contract goes to the union membership and the selectmen to be ratified, it is public knowledge. It was felt, at this point, that the townspeople should be aware of the contract and be able to have a say as to whether they agreed that it is good for the town in regards to the contract's financial aspects. AGREED that the Chair will discuss with the Town Manager first before proceeding to contact a labor lawyer. Robert Fisher suggested that there would be no problem asking the union representative to come talk with the Commission.

11. Commission Roundtable:

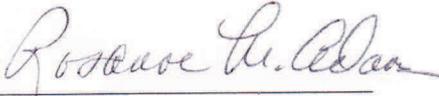
- a. Jack Murphy distributed a copy of the Sunday New York Times (8/17/14) "The Disappearing Volunteer Firefighter". He has discussed this with Jay and felt it might be of interest as we prepare to discuss the fire department.
- b. Gary Sinden, in reference to the previous discussion on employee union contracts being voted upon by the citizens, made the point that public employee unions are fairly weak. In the state of Maine public employee unions have 40% or even less power relationship with management. They have no right to strike. If management has the will and understands their power and their authority they should bargain vigorously with the unions because if you go to impasse the next step would be fact finding with a panel appointed. This panel makes its recommendations to a mediator, except that they have no authority to make any financial recommendations or demands. So the unions go into negotiations very weak because they have no right to strike and once they go impasse they lose all their power entirely. A mediator cannot approve financial clauses. So - the solution is management who understand their obligations to the people and understands their authority at the bargaining table. And if we don't have this we should have municipal officers who understand their obligations to the people. Municipal officers have all the authority they need right now. If the Select Board and department heads are going to give away the money then replace them because they don't have to give the

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money away. They have the authority to draw the line and there is nothing that a public employee union can realistically do about it.

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

Approved: September 10, 2014



Rosanne M. Adams
Secretary

CC: Committee Members
Eliot Town Clerk