

ELIOT TOWN CHARTER COMMISSION

MINUTES – September 24, 2014

PRESENT: Charles Rankie, Jr. (Chair), Gary Sinden, Rosanne Adams, Roland Fernald, Robert Fisher, Dennis Lentz, John Murphy, Edward Strong. 6 members of the public including the Town Manager (Dana Lee) and Fire Chief (Jay Muzeroll).

ABSENT: Maryann Place (excused)

Meeting opened at 7pm.

BUSINESS

1. Minutes of September 10, 2014: MOTION by Dennis Lentz, 2nd Robert Fisher to approve. VOTE 7-0. 1 abstention (John Murphy, as he had not read the minutes)
2. PUBLIC COMMENT: NONE
3. CORRESPONDENCE:
 - a. Copy of communication between our Town Manager and John Hawley, Town Manager of Mechanic Falls, concerning referendum voting on the budget. [attached]
 - b. Memorandum from Town Manager concerning issues relating to the town's fire department and bringing the Fire Chief under the direction of the Town Manager. Dana Lee made it clear that his comments spoke to the office of Fire Chief and not to any particular person.
4. OCTOBER MEETING SCHEDULE: It was AGREED to meet on Wednesday the 8th and 22nd of October at 7:00PM.
5. PREPARATION FOR MEETING WITH FIRE CHIEF: The Chair recognized the Eliot Firefighters who were in attendance and explained that the intent of the discussion, in fairness to the Chief, is to compile some questions that he could then look at and so come prepared to meet with the Commission at the next meeting. During the discussion Dana Lee handed out a chart showing the "Organization of Eliot Town Government" and the Chair handed out information from the Fairfield Charter and Statute references, both to aid in the discussion. [attached]

The Fire Chief was present and asked to speak; to give some background as to how the Eliot Fire Department is structured; to clear up some misconceptions and possibly help the Commission in developing a list of questions. He said he preferred, in the future, to deal with specifics. If the Commission has specific things he can answer he will do that. He stated that he was hesitant to answer questions tonight. Members of the Commission agreed that they would like Chief Muzeroll to review the structure and that it would help in formulating questions.

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Chief Muzeroll thanked the Commission for being allowed to speak to the Commission. He has spoken with the Town Manager; has read two sets of the minutes that deal with the fire department. The Chief pointed out the following:

- a. There is a Town Ordinance that governs the Fire Department and
- b. The department, in addition, has its own set of bylaws [Constitution and Bylaws] which outline the responsibilities within the department. They also contain a process for removal and complaints which is available to the membership. In Chief Muzeroll's 40 years there he has seen it only used once for the removal of a firefighter.
- c. All officer positions (including the Fire Chief) are filled by nomination and voted on every year. Term of office is for one year.
- d. Elected positions are the Chief, Assistant Chief, Deputy Chief, five Lieutenants, Secretary, Treasurer and three Trustees.
- e. At a business meeting in November nominations are presented for all officer positions. This nomination period stays open for a month and the election is held at a business meeting in December.
- f. The Fire Chief has only 1 vote like everyone else. If a vote is contested there is the option of holding a secret ballot vote.
- g. Officers are elected by the membership. Traditionally 60% of the membership is present for the voting. It is done by a show of hands, but if there is a motion it can be done by secret ballot. Those elected must receive a 2/3 vote by those present at the election.
- h. The officers are:
 - i. Chief
 - ii. Assistant Chief (reports to the Chief)
 - iii. Deputy Chief (has charge of all equipment and training)
 - iv. 5 Lieutenants (answer to the Deputy Chief) Men in the department are assigned to trucks, each under one of these Lieutenants, and are responsible for keeping the equipment in good order.
- i. The Trustees control the fire department assets.
- j. The Fire Association Constitution and Bylaws state that the department can have up to 45 members. There is a process that they go through – training, probation.
- k. The Fire Chief does not hire the men of the department. They are voted in by the membership. Other departments Chief's hire the people that work for them but he does not. They don't owe him anything.
- l. Presently there are 41-42 members.
- m. Only residents of Eliot can be members of the Fire Department.
- n. The average age is mid 40s and most stay an average of 25 years.
- o. The volunteers are paid \$10/hr.
- p. The department has a stable workforce. They have a record of longevity in leadership roles. In its 100 years there have only been 6 Fire Chiefs, 7 Assistant Chiefs and approximately 10 Deputy Chiefs.

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- q. The Fire Chief is tasked and governed by State law as to what he is required to provide to the town. He is required to present the department's budget to the town and to supervise the department.
- r. Each member of the department is required to work within the restraints that the Chief sets.
- s. The Chief is responsible to the people of Eliot and also to the members of his department (having been put there by the membership).

In relation to the question of who has oversight of the department Chief Muzeroll said that he has always seen himself as a member of the corporate structure /overall structure of the community. He said it is not for him to determine that legally. In our current and previous form of government with Administrative Assistant and the relationship with the Selectmen if they ask him a question he doesn't refuse but answers them the best that he can. That is his obligation to the community.

Roland Fernald noted that we now have a Town Manager form of government and that all department heads are under the town manager. In the past the Fire Chief reported to the Selectmen. He asked if that is the same for fire chiefs. The Chief then asked if we are talking the legal authority or are we continuing business as before but are just dealing with one person? The Chief said that it is his feeling that he has an obligation to respond to the present Town Manager and the Selectmen's requests. Edward Strong suggested that since there seems to be no problem [with the reporting procedure] then there wouldn't be a problem with putting it in the Charter that way. Chief Muzeroll asked why Strong didn't think he was under the direction of the town manager now, to which Strong replied that because it is not written down anywhere. The Chief said that the law requires him to do certain things for the town. That oversight is there. He is under obligation to answer questions as part of the budget process. The Chief said that he considers himself a paid employee and that the members of his department are paid employees. When it comes right down to it the firefighters are not volunteers they are paid on-call municipal firefighters.

At this point Edward Strong clarified that the Commission was not looking to change the way the Fire Department elects its officers, organizes itself or runs his department. It is merely to place all department heads under the Town Manager - The Town Manager to provide oversight for the department.

Chief Muzeroll said that the rub will be as to where the legal authority is to change that [placing the Fire Chief under the Town Manager]. There may be someone out there with a legal opinion that may differ and may set this off in another direction. It may be a matter of a couple of words in a charter that says the fire chief as department head will be under the town manager, but if there is going to be any backlash it would be from the membership if the hiring process was going to be changed. It was noted by the Chief that with the Selectmen confirming the appointment of the Fire Chief that it [oversight] is already there by law. The Selectmen and now the Town Manager have oversight of all town business.

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Dennis Lentz pointed out that the Selectmen cannot interfere with departments. The Town Manager deals with them directly.

The Chief then questioned if we would be opening up a situation by changing the language that would lead to where the position has the opportunity to be or be required to be a benefit position? Considered a part time employee? The Chief is given a salary or stipend now to do the things he does now. He said he is willing to discuss this but would like to see it clarified as to just how it would affect the position. How deep does that oversight go? Will the Fire Department be treated as all other departments are in the area of oversight, benefits, grievance procedures, etc.? He said he'd like to see that in writing. When the position became more than paying the guy for when he showed up to a fire; he became a municipal employee and was paid a salary and wage for his function, that act in itself gave whoever the administrative authority is to have oversight over that person. He said he is trying to think how it could have implications to affect every member of that department. Is the next step municipal employees? We receive no actual pay check benefits, but by definition they are municipal firefighters. If we are looking change the management oversight of one person what is he going to do with the other 44 guys? 50:07

Edward Strong stated that he believes the present Fire Department Ordinance allows for oversight. He referenced wording in Section V – Pending Matters.

Chief Muzeroll said he was trying to think of the bigger picture; that it's not just one person. Unless there is specific language it could be construed that we have one department that is not treated the same as other departments. If it is in the language to not let that happen then it should be part of the language. He does not want it to lead to the Fire Department or the possibility that the department members will lose the way they are organized and function because of the Chief coming under the Town Manager as a department head.

Gary Sinden said that the issue of volunteer members of an association or employee is a touchy matter. A change could lead to unintended consequences. He felt the Commission needs legal advice before getting too far down that road and any change is made. He stated that in the Fire Department Ordinance we have already established the relationship with the Selectmen who duly appoint the Chief. What we don't have is putting the Town Manager into that. How minimal or extensive we do that is the question here. One of the questions that needs to be asked is what problems, if any, are there now that would be solved by such a change and then go from there.

Robert Fisher expressed his disappointment in the Fire Chief and his refusal to answer questions by the Selectmen at a meeting and the reaction of the Selectmen to do nothing about it. Chief Muzeroll replied that not everything is answerable.

Dana Lee said that he sees a blurring of the line between the Fire Department and the Fire Association which are one in the same in many ways. In the other towns he has managed he has been able to break them apart and let them maintain their identities. The Association functions have nothing to do with the town. How they elect their officers, etc. we have no say in. Every

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firefighter is an employee. Often these entities become one and the same. Is there in fact a blurring between these two entities and purposes? The Commission might want to think about this as it is formulating its questions.

Chief Muzeroll again noted that the Fire Association has its own Constitution and Bylaws and some of the language is mirrored in the Town's Fire Department Ordinance. These are two separate documents. Roland Fernald noted that the way to go would be to reference those things in the Charter but not place them into the Charter so that they can be changed easily.

Dennis Lentz asked Dana Lee, referring to the memo he had given the Commission, if Dana had reviewed the Fire Association Constitution and Bylaws to which Dana replied that he had not. Lentz also asked about the organizational structure and was referred to the Town Organizational Structure Chart.

Edward Strong noted that the hiring, firing etc. are not spelled out in the Town Ordinance. There is only reference to the Fire Association Constitution and Bylaws.

The Chair asked if there were any questions that members wanted to put on a list now. Edward Strong wanted to know what the Chief's objections would be to have the position put under the Town Manager like any other department. Charles Rankie's question was "what would you propose as method of bringing the position of Eliot Fire Chief under the Eliot Town Manager as a department head?" Roland Fernald wanted to know what the problems are behind it, we don't know enough about it.

The Chief suggested that it's like bringing a brand new position to the town: but you want to incorporate some but not all of the methods.

Rosanne Adams said the Chief had given the Commission a number of things to think about. What language in the charter might have to be tweaked so that we don't cause something to happen that we don't want to happen? From what she has heard it seems that there is not an objection but that we are being asked to proceed cautiously. We need a legal opinion about changing wording.

John Murphy felt that there doesn't seem to be a mechanism for citizens who have concerns about fire protection and that in some ways we are at the mercy of the Fire Department. That it didn't seem a citizen could go to the Fire Chief as they can with other department heads and voice their concerns for things such as protecting parts of town that don't have adequate fire protection. Chief Muzeroll pointed out that citizens already have that in the Selectmen who have the final responsibility for protection of its citizens and the Selectmen can go and raise citizen's issues with the Fire chief. If they come to the department they do respond. The other mechanism - "budget appropriations" is also an avenue that citizens can use to voice their approval or disapproval of the department.

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Robert Fisher invited Chief Muzeroll to review the Charter document. Chief Muzeroll said that he hoped when it was ready to be presented to the public that we are both in agreement.

Denny Lentz felt that there is difference in the Fire Department as compared to other departments where we have day to day knowledge of those departments and what they are doing. The Chief pointed out that there is a method of seeing how the department is doing – through the ISO rating. His department’s ratings are based upon hydrant numbers/placement, response times, performance standards and dispatch service. He agreed that they are kind of invisible until we call them.

The Chief strongly suggested that the Commission ask a legal opinion (placing the Fire Chief under the Town Manager) of a municipal lawyer who does not have an insurance relationship with the town. Specifically not an MMA lawyer.

In closing the Chief reiterated that he would get the Commission a copy of the latest Fire Association Constitution and Bylaws. He said there will be discussion at the business meeting in October at which time he will get any feed back to the Commission.

The Chair thanked Chief Muzeroll and Town Manager Dana Lee for meeting with us.

6. ARTICLE 8 – GENERAL PROVISIONS: Review and changes included:
- a. Article 8.1 – General Authority – Initiative and Referendum: There was discussion on the submission by a citizen concerning payment of repeat petitions by the petitioner. It was AGREED that this would not be a good idea and the reference was stricken. A second recommendation by a citizen was brought forward – to have a time limit as to when a repeat petition can be voted on again. Gary Sinden agreed to write something for further discussion on this issue
 - b. Article 8.4.B –Conflict of Interest: It was AGREED to reword this section to strike the reference to “Select Board member” and “board member” and change so to include all board, committee and commission members.
 - c. Article 8.4.C: It was AGREED that the same be done to this section as was done in 8.4.B.
 - d. Article 8.4.D: The word “permanently” was removed.
 - e. Article 8.10.D – Elected Boards: It was AGREED that the Secretary will remind Maryann Place to submit the wording of the Kittery ordinance concerning limiting the number of committees one may serve on.
 - f. It was AGREED to review this article again at the next meeting.

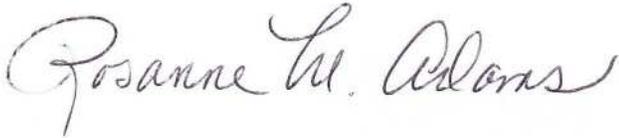
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7. PRESS RELEASE: Notice of the meeting was seen in the Portsmouth Herald. The Secretary reported that she sent a thank you email to Ralph Morang and copy to Deborah McDermott for the recent article on the Charter Commission which he wrote.[attached]

8. PUBLIC COMMENT: None

9. NEW BUSINESS:
 - a. The Chair asked if it the Commission should send a note to the Planning Board and the Board of Appeals asking for their input as to whether their board should remain as appointed or should be elected. It was AGREED to have the Chair send the request.

Meeting closed at 9:19 PM on the Motion of Robert Fisher, 2nd of Edward Strong. VOTE: 8-0



Rosanne M. Adams
Secretary

Approved: October 8, 2014

CC: Committee Members
Eliot Town Clerk