

FINAL Minutes of the Town of East Montpelier Charter Committee
Wednesday, July 24, 2013
7:00 pm at the Municipal Building

Committee members present

Rick Mastelli
Edith Miller
Norman Hill
Julie Potter
Karen Gramer
Carl Etnier (recording secretary)
Jack Pauly
Ed Deegan (8:04 pm)

A. Call to Order

Ms. Miller opened the meeting at 7:10 pm.

B. Public Comment

None

C. Additions to the Agenda

None

D. Conversation with Jim Barlow, attorney with Vermont League of Cities and Towns (VLCT)

Mr. Barlow described his experience working with towns on charters. Frequently he is called in when the town has done most of the work on developing or amending the charter. Or he is called to interpret a charter that is decades old and has a provision that they now do not understand.

He described a recent case where a town gave him a 25-page charter to review, and he went back to them and suggested backing up a bit. They pared it down to two and half pages and got it passed.

Ms. Miller asked him how he would envision us working together. He said there are several ways. For example, on appointing a treasurer, the committee could do the work of reviewing the ways of doing that in other charters and compile an approach for the town, and then run it by him. Or we could tell him what we're trying to accomplish, and he could describe the different approaches that could accomplish that, with their advantages and disadvantages.

Mr. Etnier asked what he would bring to the conversation that we would not get from the plain reading of the charters. He responded that he has been addressing town issues, and state statutes, five days a week for nine years and is very familiar with what works and what leads to difficulties.

Mr. Mastelli asked about how to reference state statutes in the charter. Mr. Barlow suggested that we incorporate state statutes by reference in the charter and only enumerate any differences that we desire.

Ms. Miller said she had an epiphany that a charter is an amendment of state statute applying to a specific town. Mr. Barlow agreed.

Mr. Hill asked whether copying another town's charter language would guarantee legislative approval.

Mr. Barlow and Ms. Miller said that the legislature can do whatever it wants, but that it is helpful in the legislature to be using language already in another charter. Furthermore, tax issues are special. The legislature was hesitant to allow St. Albans to have a local options tax, even though other towns and cities have it.

Mr. Hill asked whether a state could take away a power from a town after it's been granted in the charter. Theoretically yes, replied Mr. Barlow, but he doubts they will.

Ms. Gramer asked about the role of the Legislative Council. Mr. Barlow said they will polish it, but that even if the language is changed, the charter is binding once the legislature has passed it.

Mr. Mastelli asked whether Mr. Barlow had worked on a charter with an appointed treasurer before. He has not, but he sees it as straightforward.

He has seen some difficulties in the handoff from an elected to an appointed treasurer. Others mentioned Berlin's frequent turnover in their position of appointed treasurer.

Mr. Etnier why we would want to choose Mr. Barlow over another attorney. He said that he works in municipal law full time, and no other attorneys in Vermont do that. He writes extensively, and he frequently answers questions about charters. He claims as broad a knowledge of Vermont municipal law as anyone in the state.

Mr. Barlow suggests we pick 3-4 topics that we really want to address, either because they are real issues for us or they are easy to do, and get the initial charter approved. Don't try to address everything at once, but consider it the beginning of a process of incrementally improving town governance. Also, the more stuff there is in a document, the easier it is for someone to find fault with some part of it and therefore find reason to rejecting it.

Mr. Hill asked whether he recommended an appointed treasurer. Mr. Barlow said VLCT's position is that both work. However, he said that if you have issues with competence, an appointed treasurer can help. If you have issues with internal control or fraud, then there is an additional control with the treasurer being elected. Most embezzlement issues have, nonetheless, come from elected treasurers in Vermont. Other elected treasurers have left the books out of whack.

On the other hand, when the Selectboard appoints someone, they tend to rely on the treasurer and perhaps give less oversight.

Mr. Pauly pointed out that we have a limited budget. Mr. Barlow said that VLCT is very cost conscious. We would contract with VLCT for his services, and his salary would not be diminished or augmented by the contract.

As "homework" to the committee, Mr. Barlow gave his brief review of the following charters:

St. Albans City did a good job with a revision of their charter.

Jamaica did a good job of a comprehensive charter.

St. Albans Town's is good.

He does not like Woodford's or Hartford's.

E. Review & Approval of Minutes of July 10, 2013

Motion: I move we approve the minutes of July 10 as submitted. Made: Mr. Hill. Second: Ms. Gramer Passed 7-0.

E. Information and discussion on potential charter content

Edie Miller: report on attorneys and discussions with other towns

She held discussions on attorneys in the charter process with people from Jamaica, Williamstown, and Stowe.

She reported that Williamstown and Jamaica both used Paul Gillies and raved about working with him. Ms. Miller thinks Mr. Gillies may know more than anyone in the world on Vermont municipal law. He worked on municipal law as deputy secretary of state before going into private practice, and he is a historian of Vermont laws. He has done dozens of charters.

She believes Mr. Gillies would be by far the best. His municipal rate is \$150 an hour. He will work for the \$90 an hour because he likes to do it. He's now donating his services to the City of Montpelier, which is cleaning up an old charter now. He told Ms. Miller he works in the wee hours and can turn around an email overnight.

She was struck that in Williamstown and Jamaica, they spent very little. They couldn't find their bills, but that was their impression. She would be interested in asking the Selectboard for permission to pay Mr. Gillies his normal rate as long as the total cost remains under the \$3600 given.

Williamstown and Jamaica did most of their back and forth by email. Mr. Gillies was also available for meetings.

Stowe used Bob Fletcher, who is from Burlington; she recommends we use someone more local when we have good choices nearby.

At the committee's request, Ms. Miller will ask Mr. Gillies to come in for an initial discussion, in the same format as with Mr. Barlow

b. Julie Potter: report on research on recall provisions

Ms. Potter distributed the following written report on her findings:

1. State statute does not provide for recall of elected municipal officials, unless provided for in a municipal charter. Therefore, if the town wants to have the option for recall, the recall process must be specified in the town charter.
2. Most town charters do not include recall provisions (34 towns with charters; 12 towns with recall/removal provisions)
3. Typical elements and conditions of charter recall provisions (alternative conditions in parentheses)
Section in Charter: Usually a stand-alone recall section; occasionally in section with listing of elected officials

Who can be recalled: Elected town officers; occasionally town school district officers

Recall petition: Names, signatures and addresses of 25% of registered voters (50 voters, 15%, 30%, 35% of # of voters at previous town meeting) Filed within unspecified days of issue (15 days, 30 days) Filed with Selectboard (Town Clerk). Petition identifies person and position for recall (occasionally statement of cause).

Special election: Warned within unspecified (7 days) of petition filing. Special election/town meeting to be held within 45-60 calendar days (within 45 days, after 60 days) of petition filing. Information meeting not specified (to be held 4-15 days prior to special election). Election by Australian ballot. Requires election turnout (unspecified, at least as large as election when official was elected or 1/3 of registered voters whichever is greater)

Recall election threshold: Majority of votes cast (2/3 of votes cast).

Filling vacancy: Special election to be held within 45 days to fill vacancy for remaining term (filled "as prescribed by law", left vacant if special election would fall within 75 days of annual town meeting, second warned article for special town meeting if recall passes)

Frequency of recall elections: Unspecified (not more than once in 12 months, not more than once during term of office).

Note: One town (Shelburne) allows for removal of elected officials by Selectboard after a hearing.

4. Two examples of typical recall provisions: [Town of Hardwick; 24 V.S.A. App. § 105-91; Town of Hardwick; 24 V.S.A. App. § 123-311. Text of charters omitted in these minutes. --cme]

Mr. Mastelli, Ms. Gramer, Mr. Mastelli, Mr. Deegan, and Ms. Miller expressed support for the concept.

Mr. Etnier asked what would happen if successful recalls were held against enough members of the Selectboard that it no longer had a quorum for making decisions until after the special election. Ms. Potter referred questions like that to an attorney.

Mr. Etnier asked what objections townspeople might have to the concept of recall. Ms. Gramer said she expected support from people who attend town meeting. Mr. Hill asked whether a recall provision would cause people to question the need for an appointed treasurer. Ms. Miller responded that our criteria about needing special skills answers that question.

Mr. Mastelli wondered about other ways than recall to enforce rules against elected officials.

The committee by consensus chose to keep recall on the list for our consideration.

c. Norm Hill, Rick Mastelli: report on discussion with listers

Mr. Mastelli recapitulated his discussion with Rob Chickering that he had previously conducted less formally. Mr. Chickering checked in with Bruce Johnson before speaking with Mr. Mastelli, and he reiterated that he supported appointment of listers. Mr. Mastelli did not hear strong reasons for Mr. Chickering's position.

Mr. Chickering was concerned that there is no such thing as a head lister, and it falls to the person with greatest seniority. Mr. Mastelli raised the possibility of an appointed lister with elected assistants, and Mr. Chickering thought it was an interesting suggestion.

Ms. Potter asked about the hours involved. Ms. Miller noted it is a part-time job, and it seems to be calling for more hours in recent years. It was about ten years ago that the remuneration was raised to amount corresponding to a part-time job.

Mr. Etnier asked whether towns with hired appraisers have the requirement we have that two people go out to each assessment. The sense of the committee is that hired appraisers work alone.

Mr. Chickering raised a concern about a history of someone getting elected and not doing the work. He said that some of the listers' note taking and record keeping could be done by someone other than an elected lister--an assistant hired by the Selectboard.

Mr. Hill spoke with lister Ross Hazel on July 11. He summarized this written report:

The interviews began with the explanation that I was a member of a committee appointed by the Selectboard and charged with exploring the idea of creating a charter for East Montpelier and that the charter could include a change in which Listers would be hired instead of elected. The questions were: Do you think it would be better if Listers were hired by the Selectboard rather than being elected by the public? Do you think that hiring town officials would make it more efficient to replace someone who did not work out? What about the learning curve involved in doing the job for someone without training but was able to get elected?

Mr. Hazel prefers to be elected and appreciates that the Selectboard cannot dictate how he does his job. This was particularly important when he first became a Lister because the Selectboard at that time did not have a full understanding of the Lister's responsibilities and how those responsibilities should be accomplished. He was quick to point out that the Selectboard has now changed. Still, he appreciates that the Selectboard "is not my boss, and I am free to use my own best judgment." Mr. Hazel is comfortable being answerable to and working face to face with the citizens who elect him, and he feels like the system is working.

Ms. Potter suggested the possibility of elected listers with a recall possibility.

Mr. Etnier suggested talking to towns with appointed appraisers to find out why they chose that route and what happened.

Ms. Miller noted that Jamaica appoints everyone other than Selectboard members, listers, and the moderator. It is a small town, population 900, and it's hard to get people to run.

Mr. Etnier pointed out that when an elected lister talks to press and says something questionable about the governor's influence on town appraisals, no one else in town is in a position to issue a clarification.

By consensus, the committee decided to leave the lister position on the list for consideration, though it may be something to be taken up in a charter revision rather than in the initial charter.

Rick Mastelli's report on corollary items to providing for an appointed treasurer

Mr. Mastelli presented a three-page report on the town treasurer position and its responsibilities, which he said he would email to committee members.

F. Set agenda for next meeting

Ms. Miller will invite Mr. Gillies to a special meeting at 7 pm next week, July 31, for a maximum of

one hour. (She will not be around for the next regular meeting in August, and the committee would like her to be present for the meeting with Mr. Gillies.)

G. Adjournment

Motion: I move to adjourn. Made: Mr. Hill. Second: Mr. Mastelli. Passed 7-0 at 9:17 pm.