

Minutes of the Town of East Montpelier Charter Committee (Approved September 26, 2016)
Monday, September 12, 2016
7:00 pm at the Municipal Building

Present

Michael Duane
Carl Etnier (Selectboard liaison; secretary)
Norman Hill
Rick Mastelli
Edie Miller (chair)
Jack Pauly
Julie Potter
Kim Watson

A. CALL TO ORDER

Ms. Miller opened the meeting at 7:05 pm.

B. ADDITIONS TO THE AGENDA

Committee composition (Shall the committee ask to add another member to regain an odd number?
The item was added to the agenda in the beginning, but it was never taken up.)

C. PUBLIC COMMENT

None.

D. MINUTES

Approval of the draft minutes was postponed to next meeting.

E. DISCUSSION ON POTENTIAL CONFLICTS OF INTEREST FOR COMMITTEE MEMBERS

Ms. Miller reminded the committee of Karen Gramer's recusal from the 2016 work of the charter committee. She said Ms. Gramer's rationale was not only that (as Delinquent Tax Collector (DTC)) she had a conflict of interest in the discussions about the tax language on the ballot and the election or appointment of the DTC, but also she wanted the committee to have the freedom to talk about DTC and town clerk positions together.

Ms. Miller also said Mr. Deegan had been a candidate for the appointed town clerk position and that she had put this item on the agenda to leave room for discussing whether he now has a conflict of interest. (Mr. Deegan was not at the meeting to give his view.)

Ms. Miller asked if anyone else on the committee thought they had a conflict of interest. No one said yes.

F. RESCHEDULING OF OCTOBER 10, 2016 COMMITTEE MEETING

The Charter Committee (CC) is scheduled to meet the second and fourth Mondays of each month. The October 10 meeting conflicts with a town-wide discussion of conservation and housing. The CC will meet instead at 7 pm on October 5, at the town office.

G. REPORTS FROM COMMITTEE MEMBERS ON RESEARCH ASSIGNMENTS; PRELIMINARY DISCUSSION ON THE ITEMS

Hiring an attorney

Ms. Miller reported the Selectboard (SB) approved a budget for the CC and hourly rate for an attorney. She spoke with Paul Gillies, and he is agreeable to working for the committee at that rate.

She asked whether the CC wants him to visit the committee and speak with us early on. Committee members indicated they were comfortable proceeding on our own, with the option to email him questions as needed. Ms. Miller will ask him via email whether he has any general tips related to the questions in the committee's charge; we expect him to answer concisely.

Motion: I move to work with Paul Gillies as our consultant in this work. Made: Mr. Hill. Second: Mr. Duane. 8-0.

Legal status of town clerk position during a transition

Mr. Duane reported that a clerk is elected for a three-year term, and that statutes are unclear about the exact procedure when the position is vacated in the middle of a term. He contacted an attorney at legislative council who said that Selectboard (SB) can appoint someone to serve until the next town meeting, and then hold an election for the remaining time in the town clerk's term. That is what the SB did on September 7; Christopher J. Flynn was appointed until Town Meeting Day 2017, at which time there will be an election for the remaining year in the term Terri Conti was elected to in 2015.

Mr. Duane also reported that if the 2017 town meeting holds a vote on a charter change to appoint a town clerk and elects someone to a one-year term for town clerk, the charter vote supersedes town clerk election. If the charter passes, transitional language will determine how long the elected town clerk serves. If the charter doesn't pass, the person elected in 2017 serves until 2018, and then a new election is held.

Research on DTC position and the annual tax payment article at Town Meeting

Mr. Mastelli summarized some of his findings in the documents he referenced in an email to the CC (appended to these minutes). A key finding was that the town may choose, via a vote at town meeting, to elect a DTC for a one-year or three-year term. As of 2014, a town may also vote to appoint a DTC, without authorization in a charter.

Ms. Potter raised the question of the basis for compensation of the DTC, and whether a charter would be required to change the basis for compensation. A discussion ensued. Points raised include that it is possible for towns without a charter to choose among a menu of options for compensation, and that a charter can refer compensation questions to something more flexible, the way Jamaica's charter refers to the town's personnel policy.

Ms. Miller asked Mr. Etnier whether the SB, when crafting the CC's charge, considered the 2014 law change allowing an appointed DTC upon a town vote. He said they had not discussed it.

On tax payment policy, Mr. Mastelli pointed out the Town has a delinquent tax collection policy on its website, written by the DTC. He referred to surveys about this and other issues conducted by the Vermont League of Cities and Towns (VLCT) in 2008, 2012, 2015 (the last is not yet published). His review of the surveys showed a movement to modify payments down from a flat 8% penalty for the

initial delinquency. There are 7 towns that report having a grace period, a reduced and/or graduated delinquent tax penalty. Wolcott has an example that he recommended looking into, as it may be a way to promote more rapid payment of taxes.

Mr. Mastelli said he had reviewed recent town reports and found a consistency in delinquency, around 3%. Within six weeks, about one third of that has already come in, and much of it is within two weeks. The initial collection spike comes in as a result of notices coming from and paid for by the Town, yet the DTC gets 8% of that.

In response to a question, Mr. Mastelli said questions of penalties for delinquent payment of taxes fall within the CC's charge because the current tax article at Town meeting specifies that taxes shall be paid at certain deadlines "without discount." Middlesex offers 1% discount for early payment, and we might choose to do something similar, or to adjust penalties for late payment.

Ms. Miller said maybe we don't want to put this exact tax boilerplate into charter, where it's harder to change.

Mr. Duane asked whether the Town is required to vote on the tax boilerplate each year now. Mr. Mastelli said that's his understanding, from his research in 32 V.S.A. Chapter 133.

Mr. Mastelli also said his conclusion is that Vermont laws about the DTC are obsolete, dating back to a time when DTC was an independent agent who kept her own books. Now the municipality keeps the books for the DTC.

Ms. Miller said she would write a letter to the SB saying what we've learned about need for charter for two of the three items in the charge. She'll draft a letter for us to discuss at our next meeting.

And she noted that even if the CC recommends the DTC not be appointed via a charter provision, the CC may choose to recommend whether to ask Town voters to make the position an appointed position.

Mr. Hill pointed out that now the SB or someone gathering a petition with 5% of town voters can bring to Town Meeting a vote on whether to appoint or elect DTC. He said a charter provision to appoint a DTC would be harder to undo and therefore prevent someone from running for election on a platform of stopping collection of delinquent taxes.

H. DEVELOPMENT OF QUESTIONS/ISSUES TO BE FURTHER RESEARCHED

Mr. Hill volunteered to ask VLCT how many towns and which towns have a charter change to elect town clerk.

Mr. Hill pointed out that the new town clerk is the son-in-law of the town treasurer. And, since the two positions began to be held by different people, the town clerk has operated as assistant town treasurer. He raised the question of whether all officials appointed should also have the SB appoint their assistants. And he asked, if a town clerk is appointed rather than elected and nothing is specified in a vote or charter provision, what happens to the authority of a town clerk to appoint an assistant?

I. OTHER BUSINESS

None.

J. DEVELOPMENT OF SEPTEMBER 26, 2016 MEETING AGENDA

None needed.

K. ADJOURN

The meeting was adjourned at 9:10 pm.

APPENDIX TO MINUTES (AS NOTED IN G, ABOVE)

SUBJ: Researching Items 2 & 3: DTC & Tax Warning Policy
TO: EMCC
FROM: Rick Mastelli
9/9/16 3:24 PM

Hi all,

In researching items #2 and #3 of our mandate from the Selectboard, I have gathered a plentitude of source material—statutes, guidelines, precedents—lightly annotating it here for reference in our deliberations. Most of this matter is readily online; where it's not, I've attached it or cited it directly. You might browse this, and I can highlight a few points on Monday. I'm looking forward to our discussion.

Rick

SB Item #2: Appointment of delinquent tax collector (DTC)

VLCT Handbook for Collectors of Delinquent Taxes [2008]:
http://www.vlct.org/assets/Resource/Handbooks/VLCT_Collector_Delinquent_Taxes_Handbook.pdf
• *See particularly pp. 3–8, Requirements of the Position*

17 VSA 2646 [Town officers; qualifications; elections, 2001]:
<http://law.justia.com/codes/vermont/2012/title17/chapter55/section2646>

17 VSA 2651(d) [providing Town to vote for SB to appoint DTC, 2013]:
<http://legislature.vermont.gov/statutes/section/17/055/02651d>

EMCC Minutes discussing and voting on elected vs. SB-appointed DTC [8/28/13]
<http://eastmontpeliervt.org/wp-content/uploads/2013/12/20130828-charter-committee-final.pdf>

Sample Town Charters [exemplifying an appointed DTC] –
Berlin [2009?]:
<http://legislature.vermont.gov/statutes/section/24APPENDIX/105/00049>

Jamaica [2011]:

<http://legislature.vermont.gov/statutes/section/24APPENDIX/123B/00008>

Panton [2014]:

<http://legislature.vermont.gov/statutes/section/24APPENDIX/123B/00008>

SB Item #3: Basic property tax guidelines now voted on in town meeting each year

EM 2016 Town Meeting Warning – Article 5:

Shall the Town authorize all property taxes for the fiscal year 2017 to be paid to the Treasurer, without discount in two installments and received by the Town Treasurer at the East Montpelier Municipal Building as follows: The first installment will be due on or before 5:00 PM Tuesday, November 15, 2016, and the second installment will be due on or before 5:00 PM Monday, May 15, 2017.

32 VSA Chapter 133: Assessment and Collection of Taxes:

<http://legislature.vermont.gov/statutes/chapter/32/133>

• See particularly Subchapter 004: Collection of Town and Other Taxes; plus specific subsections following

32 VSA 4773 [Date and method of payment; discount, 2003]:

<http://legislature.vermont.gov/statutes/section/32/133/04773>

• See also pp. 9–10 of VLCT Handbook for Collectors of Delinquent Taxes, 2008

32 VSA 5136 [Interest on overdue taxes, 1997]:

<http://legislature.vermont.gov/statutes/section/32/133/05136>

• See also pp. 11–12 of VLCT Handbook for Collectors of Delinquent Taxes, 2008

32 VSA 1674 [Delinquent tax commission and collection costs, 2003]:

<http://legislature.vermont.gov/statutes/section/32/017/01674>

• See also p. 12 of VLCT Handbook for Collectors of Delinquent Taxes, 2008

EM Delinquent Tax Collection Policy [5/17/16]:

<http://eastmontpeliervt.org/wp-content/uploads/2013/11/2016-Collector-of-Delinquent-Taxes-Collection-Policy-1.pdf>

EMCC Minutes discussing EM delinquent tax collection policy [10/23/13]:

<http://eastmontpeliervt.org/wp-content/uploads/2013/12/20131023-charter-committee-final.pdf>

VLCT Municipal Survey – 2008

http://www.vlct.org/assets/Resource/Surveys/2008_Vermont_General_Municipal_Information.pdf

• See pp. 2–4 for tax-policy analysis; pp. 21–32 for data

VLCT Municipal Survey – 2012

<http://vlct.org/assets/MAC/2012%20VLCT%20Muni%20Census%20Report.pdf>

• See pp. 2–4 for tax-policy analysis; pp. 20–33 for data

VLCT Tax Payment Survey – 2015

• Not available online; see file attached. Note that a majority of towns surveyed (83 vs. 58 towns) accept postmark in determining whether tax payments are made on time.

VLCT Delinquent Tax Survey – 2015

• Not available online; see file attached. Note that seven (7) towns in the survey report having a grace period, a reduced, and/or a graduated delinquent tax penalty.

Sample Tax Policy - Wolcott [exemplary of a reduced/graduated delinquent tax penalty, 2015]:

<http://www.wolcottvt.org/wp-content/uploads/2014/07/Tax-letter-insert.pdf>

