

DRAFT Minutes of the Town of East Montpelier Charter Committee  
Monday, November 28, 2016  
7:12 pm at the Municipal Building

**Committee members present**

Richard Brock (co-chair; chairing tonight's meeting)  
Michael Duane (7:15)  
Carl Etnier (Selectboard liaison; secretary)  
Norman Hill  
Rick Mastelli  
Jack Pauly (7:15)  
Julie Potter  
Kim Watson (7:15)

**Others present**

Deborah Fillion, elected auditor

**A. Call to order**

Mr. Brock called the meeting to order at 7:12 for the purposes of discussion, before a quorum was present. Discussion continued at 7:15, when a quorum was achieved..

**B. Additions to the agenda**

Auditor Deborah Fillion will talk to the committee  
Notes from Vermont League of Cities and Towns handbooks

**C. Public comment**

None.

**D. Minutes**

Postponed until next meeting.

**E Discussion with Deborah Fillion, elected town auditor**

Ms. Fillion presented on behalf of the the town's three elected auditors. She said auditors have read-only access to all the town files that are relevant to finances. One of the things they do is to review the warrants for paying town bills, before the selectboard (SB) approves them.

She mentioned the external auditor, a CPA hired by the SB. The elected auditors report annually in a way that they hope is easier for the average voter to understand. If the external auditor finds a problem, the town auditors work on finding a solution.

The annual report is also put together by the auditors, and in the process of doing so, they review the reports for internal consistency and work with all the town officers.

She thought the search committee for the treasurer in the current charter is composed of the right group of people. She said the listers work closely with the town clerk (TC), and so she thinks it makes sense to substitute a lister for a CPA on the TC search committee. She thinks a CPA is not necessary for the DTC search committee, but perhaps the treasurer should be on it. And she thinks an auditor is

appropriate for all the search committees, as auditors play an active role in working with all three positions (treasurer, DTC, and TC).

Q: What would you look for in a TC candidate?

A: Needs to get along well with others. The TC needs to be organized. Some bookkeeping is required, e.g., for dog licenses and marriage licenses.

#### **E. Notes from Vermont League of Cities and Towns handbooks**

Mr. Mastelli sent a memo to the committee based on research in handbooks put together by the Vermont League of Cities and Towns (VLCT).

**Motion: I move to incorporate the memo into the minutes of this meeting. Made: Mr. Mastelli. Second: Mr. Etnier. 4-3.**

#### **F. Review of draft language for amendments to the charter**

Committee consensus for one-year terms for all three positions.

The committee reviewed communications from attorney Paul Gillies, beginning with the Nov. 16 letter..

Further clarification was needed on the first point.

Mr. Etnier may do research on Waitsfield and how they handle job descriptions. Richmond imposes duties from SB.

It's the committee's sense that we want SB to have power to assign additional duties.

It is the sense of the committee to keep language about keeping chapter simple.

The committee had questions about obsolete positions we think are abolished already.

Turning to Mr. Gillies' Nov. 25 memo. The committee's sense is to include the following provisions in the charter:

- ! TC Assistant will be appointed by SB.
- ! SB appoints assistant TC and treasurer, in consultation with TC and treasurer, respectively.
- ! Say nothing about supervision.
- ! ZA is employee of the town, subject to personnel policy, add to E7.
- ! Treasurer one-year term

**Motion: I move to authorize Richard Brock to draft a new version of the charter, based on tonight's discussion. Made: Mr. Etnier. Second: Ms. Watson. 8-0.**

#### **G. ADJOURN**

The meeting was adjourned at 9:07 p.m.

Note: The appended documents contain citations from handbooks of the Vermont League of Cities and Towns (VLCT). The text in italics is commentary by committee member Rick Mastelli.

**Annotated Excerpts from *Handbook for Vermont Municipal Clerks***  
Vermont League of Cities and Towns, 2000

In many Vermont municipalities the municipal clerk is the most visible elected official and as such is expected to be informed about all aspects of town business from animals to zoning. 24 V.S.A. §§ 1151–1179....While many of the municipal clerk’s duties and responsibilities are clearly defined in state statutes, others are a result of custom, such as receiving telephone inquiries dealing with anything from the next selectboard meeting to landfill hours. While a municipal clerk is not legally required to perform such extra duties, it is a good idea to be courteous and helpful. A municipal clerk will probably hear many complaints and should make an effort to listen sympathetically. For example, if a citizen has a complaint about the grading of a gravel road, the clerk could notify the road commission or pass the information on to the selectboard and/or town manager. (p. 1)

*This speaks to the cooperative, coordinative, and communicative expectations for the position, both internally (interacting with other town officials) and externally (interacting with the public).*

Before a person assumes the office of municipal clerk, the selectboard shall require a bond conditioned for the faithful performance of his or her duties. 24 V.S.A. § 832. The sums and sureties of this bond are prescribed and approved by the selectboard and are designed to insure the town against loss of any money entrusted to the clerk. (p. 3)

*This speaks to the fiscal responsibilities of the position, and the sense in specifying that the treasurer and an auditor be include in the search committee.*

The town is liable and must make compensation for loss or pecuniary damage which may accrue to a person as a result of neglect or default of a municipal clerk in carrying out his or her duties. 24 V.S.A. § 834. (p. 3)

*This supports the position being appointed: subject to supervision and the Town’s personnel policy.*

After a municipal clerk is elected, he or she *must* appoint one or more assistant town clerk(s). 24 V.S.A. § 1170. (p. 6)

*This raises the question whether we need to stipulate in the charter that an assistant clerk shall be appointed by the selectboard—is the statutory default that the clerk (even though appointed) shall appoint his or her own assistant clerk?*

...when the assistant town clerk keeps records of orders drawn by the selectboard, he or she may not also be the town treasurer or the spouse of the town treasurer, or any person acting in the capacity of clerk for the town treasurer. 24 V.S.A. § 1622. (p. 6)

*Doesn’t this seem to prohibit responsibilities typically assigned to our assistant town clerk?*

The municipal clerk and listers must work together in order to carry out the complex duties involved in property taxation. Those duties include doing appraisals, hearing grievances and appeals, developing the grand list, making adjustments and corrections to the grand list, filing and certifying data, sending out notices and serving on the board of abatement. In addition, most of these processes are subject to deadlines which must be met. (pp. 53–54)

*This excerpt begins Section XI “Taxation – Grand List,” which continues for nine pages detailing the protocols for interaction between the town clerk and the listers. Notwithstanding at our last meeting the treasurer recognized no significant working relation between the two positions, this section of the VLCT handbook would seem to support having a lister included on the search committee for town clerk. A conversation with our auditors would confirm that clarity, accuracy, and timeliness in transactions between our town clerk and our listers can an issue.*

R. Mastelli, 11/20/16

DRAFT

**Annotated Excerpts from *Handbook for Collectors of Delinquent Taxes***  
Vermont League of Cities and Towns, 2008

All delinquent tax collectors, whether specifically elected, appointed, or also holding the office of treasurer or constable, must obtain a bond as surety for performance of his or her duties. This bond is designed to insure the town against losing money entrusted to the collector, so that if a delinquent tax collector embezzles the taxes collected, the town can recover the lost amounts from the bonding company.... It is the delinquent tax collector's responsibility to obtain a bond, and if he or she does not do so within ten days after the selectboard demands it, the office of tax collector will be considered vacant. 32 V.S.A. § 4643. Note that, even though it is the collector's obligation to obtain a bond, the town must pay the premium. (p. 5)

*This speaks to the fiscal responsibilities of the DTC; the advisability that the position be appointed, supervised, and subject to the Town's personnel policies; and the sense in specifying that the treasurer and an auditor be included in the search committee.*

A delinquent tax collector will not be liable for the consequences of a mistake, mischarge or overcharge in a tax bill committed to him or her for collection. Moreover, the town must indemnify the collector for any damages that the collector might suffer by reason of the illegality or error of the tax. 32 V.S.A. § 4642....Because the delinquent tax collector is an elected or appointed official any action brought against the collector must be brought in the name of the town. The municipality must assume all reasonable legal costs incurred by the delinquent tax collector in such cases, so long as the collector was acting in the performance of his or her duties, and did not act with malicious intent. 24 V.S.A. § 901. (p. 7)

*This also supports the position being appointed: subject to supervision and the Town's personnel policy.*

The *elected* delinquent tax collector holds an independent office of local government. This means that, absent a charter provision to the contrary [as of 2013 17 VSA 2651(d) provides for SB appointment of the DTC by Town vote], the delinquent tax collector is not answerable to any other municipal official....Because the selectboard or manager has no power to require the elected delinquent tax collector to perform his or her duties in any particular way, the collector may set his or her own hours, may establish his or her own procedures for collecting the delinquent taxes, adopt his or her own collection policies, set up his or her own bookkeeping method, etc. Although the collector is required to conform to all of the statutory requirements of the office, even if the collector fails to or improperly conducts the business of the office, he or she cannot be fired from the position. The collector is answerable only to the voters who may express their displeasure by declining to reelect. (p. 7)

*This speaks further to the rationale for making the position an appointed one.*

Delinquent tax collectors in Vermont are paid in a variety of ways. Consider the following methods of

compensating Delinquent Tax Collectors:

**1. Commission.** Most delinquent tax collectors in Vermont are paid by commission. This means that the collector gets paid by keeping the commission that may be collected on delinquent accounts. 32 V.S.A. § 1674. In such cases the delinquent tax collector usually pays for the expenses of office, such as postage and stationary, from these fees. Some collectors have towns that will cover these expenses so that the entire fee amount is the collector's payment.

**2. Salary.** In some municipalities the delinquent tax collector is paid a salary. Section 1530 of Title 24 states that "If a municipality votes to pay a salary or other compensation for collecting taxes in lieu of fees and commissions, the latter shall be turned in to the municipal treasurer at least once a month." This means that the selectboard and collector may agree upon a salary, or the voters can vote to pay the collector a particular salary in lieu of fees.

**3. Fees plus salary.** In some municipalities the collector receives fees plus salary. Municipalities should make it clear when they vote a salary for the collector whether it is in addition to, or in lieu of, the statutory fees. (p. 8)

*Thus the Town could change the way and amount the DTC is compensated without a charter—by Town vote. A charter provision would enable the SB to make these changes directly.*

According to statute, the collector of delinquent taxes *may* charge a commission of 8% on the amount of the taxes owed. This commission is often referred to as the collector's fee, or penalty. The collector of delinquent taxes has discretion to charge a commission from zero up to a maximum of 8%. 32 V.S.A. § 1674(2). (p. 12)

*Making the DTC an appointed position would enable the SB to determine the penalty delinquent taxpayers pay, independent of the DTC's compensation.*

R. Mastelli, 11/30/16

**Annotated Excerpts from *Handbook for Locally Elected Auditors***  
Vermont League of Cities and Towns, 2008

The town auditor plays a vital role in preserving the democratic nature of Vermont's local government by ensuring that local officials are accountable for their expenditures of the taxpayers' money. It is the auditor's job to review the accounts of local officials and report the findings directly to the taxpayers for review. Because this report is presented only days before town meeting, the statutory scheme envisions that if the taxpayers do not like what the auditors' report indicates about how the officials have spent the taxpayers' money, the officials will be voted out of office. Thus, it is the auditor's function to present an easy-to-understand picture of the town's finances to the people of the town. (p. 5)

*This confirms the importance of the auditor being independent and responsible directly to the electorate. Elected auditors are the people's eyes and ears, uniquely charged with examining and reporting on municipal operations, expenditures, and actions. This role also has value on the search committee for candidates to statutorily elected positions we're proposing to be appointed.*

Under 17 V.S.A. § 2651b, a town may vote by ballot at an annual town meeting to eliminate the office of town auditor. This authority extends to all towns, whether or not they have a charter provision covering election of auditors. If the town does vote to eliminate the office of auditor, the selectboard of the town will then contract with a certified public accountant (CPA), who is licensed in Vermont, to perform an annual financial audit of all town funds. The selectboard must also provide for all other services the elected auditors previously performed, including production of the annual town report. (p. 7)

*In incorporating, contextualizing, and illuminating a CPA's annual report, the town auditors can (and do) complement the work of a contracted CPA.*

...

Each year, as municipal budgets grow and sources of revenue become more diverse, the task of auditing municipal financial records becomes more difficult. Presently, there is no legal requirement that locally elected auditors have any education or experience in bookkeeping or accounting. As a result, reliance upon locally elected auditors can sometimes create a false sense of municipal financial security. Accordingly, while **VLCT continues to support the election of local auditors and their work**, we recommend that towns that have not voted to eliminate the office of auditor obtain periodic or regular audits from a certified public accountant. (p. 7)

*Boldface added.*

The auditors are elected for three-year terms by the voters at town meeting. The terms are staggered, so that at each annual town meeting only one auditor is elected. See 17 V.S.A. § 2646. This means that, as a practical matter, each year there is only one novice auditor, and the more experienced auditors may offer their advice and experience in training him or her to perform the functions of the position. (p. 9)

*This speaks to the importance of continuity and familiarity among the auditors with how the Town works, applicable to the search for other town officers as part of an integral team.*

**Independence of Office.** Because the auditor is an elected official and not appointed by the selectboard, the selectboard may not direct how the auditors perform their functions. However, according to 24 V.S.A. § 1686(a), upon request of the selectboard, the auditors must “examine and adjust the accounts of any town officer authorized by law to receive money belonging to the town.” Nevertheless, in conducting the functions of his or her office, the auditor may not be directed or controlled by any other officer, including the selectboard. (pp. 9–10)

*This reinforces the rationale for auditors being elected rather than appointed: Auditors are unique in their function, a separate power that checks and balances other officials on behalf of the people who elected them.*

The auditor’s job requires the assistance of other town officers insofar as the auditor must be provided access to the officers’ records and accounts. The statutes recognize that free access to these records and accounts is necessary for the auditors to perform their function... (p. 14)

*This speaks to the broad perspective of the auditors and their extensive familiarity with how the Town works, all valuable in vetting candidates for formerly elected, now appointed positions.*

**Digesting the Financial Information.** Strictly speaking, it is the auditor’s duty to simply gather and report the financial information of the town. Although the auditor is not required to go beyond his or her strict statutory duties, there are significant benefits to be gained by towns when local auditors consider the audit function to also include the following:

- a. To determine whether the financial statements accurately present the financial condition of the town and town school district.
- b. To determine the propriety, legality and mathematical accuracy of the financial transactions.
- c. To determine whether all financial transactions have been properly recorded.
- d. To determine if public officials who are responsible for the town’s financial resources are upholding their duties in a responsible manner.
- e. To identify areas for possible improvements in accounting practices and procedures. (p. 15)

*This puts into perspective the relationship between the literal duties of the auditor and the pervasive benefit of those duties on the effective workings of the Town.*

**CONCLUSION:** Locally elected auditors play a vital role in municipal government. Although the office of auditor is not often a visible position, the auditors’ report is very visible, and should form the foundation for the electorate’s decision about the proposed budget and whether to reelect the various municipal officials charged with spending and managing the taxpayers’ money. (p. 23)

*Reiterating the auditors’ role in providing an informative context for deciding on the reelection of*



*various municipal officials reinforces how instrumental they can be, as the peoples' eyes and ears on government, on the search committees for formerly elected positions we're proposing be appointed.*

R. Mastelli, 11/20/16

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