

TOWN OF WOODBURY

Office of the First Selectman

281 Main Street South

Woodbury, Connecticut 06798

TELEPHONE: (203) 263-2141

FAX: (203) 263-4755

BOARD OF SELECTMEN SPECIAL MEETING

MINUTES

Friday, July 17, 2015

Shove Conference Room

3:00 p.m.

PRESENT: First Selectman William J. Butterly, Jr., Selectman Barbara Perkinson, Town Attorney Paul Jessell

ABSENT: Selectman Martin Overton

1. Call to order – First Selectman Butterly called the meeting to order at 3 p.m.
2. Discuss and take action regarding 2013-Established Charter Revision Commission Revisions – First Selectman Butterly reiterated that this meeting was called to focus on the final revisions before the deadline next Thursday, July 23.

At the Board of Selectmen Meeting of July 9, Attorney Jessell was asked to draft a memo outlining the salient portions of the Final Report of the Charter Revision Commission, with special reference to the issues raised by the Board of Selectmen (BOS) in its report to the Charter Revision Commission (CRC) dated May 11, 2015. This memo is as follows:

Section 101 and 102.

The words "general laws" and "laws" in those two sections have been changed to "General Statutes." Query whether the more general language had been used in these paragraphs, which outline the basic incorporation of the Town and its general powers, in order to account for the operation of any Special Act of the state legislature now existing or which might later be enacted.

The CRC did not make any change to their original proposal. This is not an issue I would recommend the BOS make any strong objection to.

Section 105 B.

It is suggested that the word "taking" be re-inserted after the word "or" in the first sentence.

CRC accepted this change.

Section 105.C.15, 16 & 17.

Town staff has recommended that these not be included as being unnecessary. The CRC Attorney made the same recommendation at the October 7, 2014 meeting, unless Chapter 7 was amended to address those specific situations. It does not appear that Chapter 7 was amended in those respects.

The definitions referred to here were: Operational Surplus, Unassigned Fund Balance, and Reserves. The CRC has amended Section 702C.2.d. to include Operational Surplus and Unassigned Fund Balance. They have therefore left those two definitions in section 105. They did delete the definition of Reserves. Finance Director did not appear to have an issue with this.

Section 202.B.3.a.

While the May 16, 2014 memo from the CRC Attorney was not available, the reasons for the change to this section are not clear. Neither the prior language nor the revised language are wrong. The old language simply referred to section 402.J.1.b., while the new language, by default, refers to section 402.J.1.a. Perhaps a more complete change would be to leave the proposed change in 202.B.3.a., and add a new 202.B.3.c. which would track the language of the original subsection a. The current 202.B.3.c. would become 202.B.3.d.

The CRC put the language here back to what was originally in the Charter. No change is proposed to this section.

Section 204.B.1.b.

It has been suggested that the words "published in a newspaper having circulation in the Town" be removed and the section be rewritten as follows: "The Notice shall be published on the Town Bulletin Board, and, when available, on the Town website, and as otherwise required by the General Statutes."

There have been several attempts to remove the statutory requirement that legal notices be published in a newspaper. In the event the statutes are changed, does Woodbury nonetheless want to continue to require newspaper publication because it is called for in the Charter?

The CRC did not agree with the change recommended by the BOS. The CRC felt that regardless of what the legislature might do with respect to requiring newspaper notices, that notice should still be required. The CRC decided to leave the newspaper publication in and add the new language "when available in the Town worksite". The changes originally proposed by the CRC were included in the final report along with the new change.

Section 302.F.

The Tax Assessor had requested that the Board of Assessment Appeals be altered by adding two alternates. The CRC proposed to increase the number of regular members of the Board of Assessment Appeals from 3 to 5. In general, the reason for having alternate members of a board or commission is to better ensure that a quorum is available so that the board or commission's duties can be fulfilled. Increasing the number of members actually increases the number that must be present in order to have a quorum. In addition, the use of alternates helps to ensure that there are always 3 members hearing appeals as opposed to only 2 members. Because the work of the board of assessment appeals must be

accomplished within fairly definite timeframes, loss of meetings through lack of quorum can be problematic for the Town.

The CRC agreed to provide for alternates and proposed 3 alternates to be elected to four year terms. The number of alternates was questioned and Attorney Paul Jessell will check with CRC to see if the number of alternates is correct or should be reduced to 2.

Section 306.

The Board of Selectmen may want to look at the issue of limiting the number of consecutive years an individual may serve as Chairman of a board or commission, if only because it has generated significant comment on both sides of the question.

The BOS had recommended that the language "to become effective on January 1, 2018 such that on that date a new chairman shall be elected." The CRC did not include that language in its final report.

Section 402.G.

The need for mandating 2 joint meetings of the Board of Selectmen and the land use boards and land use officials every year has been a matter of some concern. While the annual joint meeting does serve a valuable purpose, there is no common feeling that additional meetings are necessary. The section as originally written provides for additional meetings if needed.

The CRC decided to leave this section as it was originally, requiring only one mandatory meeting.

Section 402.I.1.c.

The requirement that the ordinances be codified is a matter of some concern only because of the cost of the initial codification. In the event that the Board of Selectmen and the Board of Finance determine that the money is available, and once codification is in place, there is no reason to think that the updating of the codification will be a problem since ongoing update costs are relatively minor. Certainly this need not be dealt with in the Charter. This particular section of the Charter relates most specifically to the manner in which new ordinances are filed and published, i.e. notice to the public of new ordinances.

The CRC left the word "codified" in its final report. The general feeling was that this is a goal that should be attained at some time.

Section 402.K.1.

The addition of the requirement of a hearing on the sale, lease or disposition of Town owned real property does comport with the requirements of General Statutes §7-163e (note that the actual statute number does not have parenthesis around the "e"). However, subsection (b) of the statute provides three exceptions to the hearing requirement as follows: "The provisions of subsection (a) of this section shall not apply to (1) sales of real property, except parkland, open space or playgrounds, if the fair market value of such property does not exceed ten thousand dollars, (2) renewals of leases where there is no change in use of the real property, and (3) the sale, lease or transfer of real property acquired by the municipality by foreclosure." Is it the intent to require a public hearing in all cases, or only where required under section 7-163e? Perhaps add the language "unless such public hearing is not required pursuant to section 7-163e(b)."

The CRC removed all reference to General Statutes section 7-163e and left this section as it was in the original charter.

Section 402.K.2.

The CRC has proposed that the word "appraised" be added to this section. This section deals with the sale of tangible personal property of relatively little value. In practice, when a department head wants to sell property (old trucks, equipment or the like), they will provide to the Board of Selectmen some evidence of value such as Kelly Blue Book or some other recognized valuation service. The requirement of an appraisal may well incur additional costs, in some cases costs in excess of the value of the property to be sold. Rather than deal with that issue in the Charter, perhaps it would be better to develop a policy, much like the existing purchasing policy, to spell out the methods of determining these values.

The CRC removed the word "appraised" from its final report.

Section 402.M

The CRC has removed the Town Counsel description from section 801.B. and has severely shortened the description. This will be discussed in more detail in the discussion of section 801, infra. However, in the event that the Board of Selectmen agree that this change be made, the existing wording will prove unworkable. The First Selectman, both by statute and under the Charter is the chief executive officer and the chief administrative officer of the Town. Under the proposed language, only the Board of Selectmen can authorize the Town Attorney to provide legal services or provide a written opinion to an officer, agency, board or commission. Under the prior language, it was the First Selectman or the Board of Selectmen which could make those decisions. It would be unduly burdensome and could lead to serious problems to require that the Board of Selectmen act every time a legal opinion or legal assistance is required by the Town. There are many times that the First Selectman or a board or commission requires a quick answer from the Town Attorney which would not be possible under the proposed wording.

The CRC removed subsection 402.M from its final report and resorted to the language in section 801.

Section 502.B.5.a.

There has been some discussion regarding the addition of the word "current" to this section. There is an ongoing effort by Town staff to update job descriptions, but the process is painstaking and time consuming. The concern is that adding the word "current" may impose some additional requirement that job descriptions be updated on some regular (annual?) basis, which would be unworkable. In addition, in the case of union employees, changing and updating job descriptions could conflict with existing union contracts. Union job descriptions need to be modified as part of the negotiating process.

The CRC agreed to remove the word "current" from its final report.

Section 602.C.

Simple matter of changing the word "Council" to "Office" in the second sentence for consistency.

The CRC agreed to this change. N.B. this change is not highlighted in the final redline draft. It should be highlighted (i.e. 'Council' should be lined out and 'Office' should be underlined for consistency).

Section 602.H, I & J.

In all of these sections, the suggestion from staff has been to change the wording in each paragraph from: "It may interview and make recommendations to the Board of Selectmen for appointment to the position of Director." to "The Chairman may be involved in the interview process and the (board/commission) may make recommendations to the Board of Selectmen for appointment to the position of Director." The feeling is that the interview process will become unwieldy and there are dangers of improper interview actions with a large number of interviewers.

The CRC agreed to the change recommended to these three section, with only slight variation. The actual vote was to make the language: "The Chairman or his designee shall be involved in the interview process, and the Commission (or Board in the case of Section 602J) shall make recommendations . . ." N.B. that language is not the same, or is not complete in each section of the final report draft. These sections should be fixed to accurately reflect the language voted by the CRC.

In Section 602.I. there has been a suggestion that "Commission for the Elderly" be changed to "Commission for Seniors" and the "Director of Elderly Services" be renamed the "Director of Senior Services."

The CRC implemented this change.

Also, in the last sentence of section 602.J., the word "whether" should follow the word "review".

The CRC implemented this change.

Section 702.A.

The sole change was changing the title of this section. The question that has arisen is whether it is the Chairs of the boards or commissions or the Town staff that prepare and propose the budget. For example, does the Zoning Commission Chair file the budget, or the Zoning Enforcement Officer or Land Use Administrator? The section remains about proposed budgets, and the body of the paragraph identifies the filers. Why make the change?

The CRC went back to the original title.

Section 702.B.1

In the first line, add the word "it" before the word "deems." In the 5th line, add the word "the" before "Capital."

The CRC implemented these two changes.

Substantively, at the end of the last sentence, add the words "so far as is practicable." The fact is that, while the Board of Selectmen and the Fiscal Officer make every effort to have the budget to the Board of Finance expeditiously, there are factors that could make the timing somewhat later. For example, when a new First Selectman and a new Board of Selectmen take over, there can be learning curve issue that causes some delay. More importantly, it is often impossible for the Board of Selectmen to present a complete budget by March 1. By way of one example, seldom does the Board of Selectmen get

its final insurance numbers by March 1. Therefore, the suggested language would provide a target date, with allowance for circumstances beyond the Board of Selectmen's control.

The CRC changed the target date to March 15.

Section 702.C.1.

Based on the above discussion, the recommendation is to remove the new proposed language permitting the Board of Finance to proceed to create a budget based on the preceding years' budget if not supplied by March 1.

The CRC left the changes proposed for this section, except it changed the target date to March 15.

Section 702.C.1.d.

There are two specific questions regarding the setting of the First Selectman's salary as part of the Annual Budget. First, the language states that the salary cannot be reduced during the current term of office. Does this mean that any reduction would take place on the date the new First Selectman is sworn in in December, or would it still occur on July 1, that being the start of the fiscal year. Second, presumably the salary could be increased during the term. Is that intentional? There is some argument that could be made that the salary should be neither increased nor decreased during a term to avoid any appearance of collusion. The sitting First Selectman would still know before the election cycle that his salary would be increased were he to run again.

The CRC did not make any change to its original proposal.

Section 702.D.6.

The timeframes for the Board of Finance Meeting are very tight. Questions could arise as to whether there could be adequate notice to the public of the meeting. It might also be better to add to the new language, in the third line after the word "public" the words "and the Board of Selectmen" so that the Board of Finance could at least hear the Board of Selectmen on where its recommendations for cuts might be based on its closer knowledge of the operation of the various departments. In practice, second and subsequent budgets have generally had Board of Selectmen input even if not specifically required in the Charter.

The CRC made two changes in response to this recommendation. It set the Board of Finance meeting for five business days after a failed referendum, and it allowed for comment from the BOS at that meeting.

A technical matter, in the third to last line of paragraph 702.D.6. it provides "Notwithstanding anything to the contrary contained herein this Section 702(d)(5) . . ." That phrase should either end after "herein" or the language should be changed to "in this Section 702(D)(6)."

Section 702D.6. has a technical defect. It should reference section "702(D)(5)" NOT "702(D)(6).

Section 703.A.2.

This is the transfer limit issue which has generated such heated debate. Both the Chair of the Board of Finance and the Fiscal Officer are of the opinion that this limitation is unworkable and unnecessary. There is a legal opinion directly on this issue, and a response.

The CRC has changed this section to permit interdepartmental transfers of the greater of \$20,000 or 5% of the "total approved department budget." With respect to several departments, this would permit larger transfers without a Town Meeting than under the prior Charter language.

Section 707

The CRC has not recommended any change to this section. It has been discussed that the second and third sentences should be removed. The reports filed by the boards are done on a fiscal year basis, but the attendance provision in the Charter, section 608.A., is done on a calendar year basis. This leads to confusion and people claiming that they made the proper number of meetings based on a fiscal year measurement versus the calendar year.

The CRC did not make any change to this section.

Section 708

The Fiscal Officer has indicated that a dual reporting situation could become untenable. The First Selectman and Board of Selectmen hire, and they should be the primary reporting body for this position. Something for discussion.

The CRC removed the language concerning the Fiscal Officer from this section and moved it to section 801. However, the dual reporting role for the Fiscal Officer remains in the language.

Section 709

This is a change that is strongly opposed by some staff members and is believed by Town Council to be unworkable. No other Town Board has the right to retain its own counsel (Pension Board excepted). The Board of Selectmen is responsible for hiring Town Counsel and the Board of Finance has every right to request that Town Counsel issue an opinion on any issue it desires. The old Charter provisions for Town Counsel additionally gave the Board of Selectmen the power to hire additional counsel for specific boards if the facts warrant. In all cases, however, the Board of Selectmen hires the attorneys representing all of the Town Boards. So, for example, there is separate counsel for bonding, labor and land use. Those additional attorneys, however, are retained presumably because they have specialized knowledge in specific areas of the law and, in any event, all of them are hired by the Board of Selectmen.

If the fear is that the Board of Finance will not be allowed to obtain a legal opinion if it is having a dispute with the First Selectmen/Board of Selectmen, there are two answers to that. First, the denial of a formal request for a legal opinion on a significant matter would be a major political issue for the First Selectmen/Board of Selectmen. Second, were that to happen, there is case law that permits boards to hire their own attorneys if the Town fails to provide for its needs in performing its functions.

The CRC removed this new section in its entirety.

Chapter VIII

Staff has serious issues with removing all of the language related to the administrative offices in **Section 810.B**. As an initial matter, that language states affirmatively who appoints each position and gives an overview of the duties of the position. Staff relies on that information and in many cases that information has become important in making legal determinations regarding the duties and expectations of the positions and their relationship to their constituencies.

With specific reference to Town Counsel, there are limitations imposed and powers granted to Town Counsel that otherwise become matters of interpretation in the future.

While there is some benefit to simplicity, this language has been developed over a long period of time, and has worked well for years.

That having been said, the following changes should be made if this language is to be reinserted:

1. Remove number 4, Assistant Building Inspector; number 8, Director of Health; number 9 Assistant Director of Health; number 10 Town Sanitarian.
2. Add new "Director of Senior Services. The Board of Selectmen shall appoint a Director of Senior Services who is professionally qualified by education and experience as specified in the job description on file with the Town Clerk. The Director of Senior Services shall oversee the management and use of the Senior Community Center and be an advocate for the elderly population of the Town of Woodbury. The Director of Senior Services shall have all the powers and duties conferred by the General Statutes and such other powers and duties as the Commission for the Elderly, the Board of Selectmen and the First Selectman may establish by order or instruction not inconsistent with law."
3. Add New "Director of Social Services and Municipal Agent. The Board of Selectmen shall appoint a Director of Social Services and Municipal Agent who is professionally qualified by education and experience as specified in the job description on file with the Town Clerk. The Director of Social Services and Municipal Agent assists Town residents in utilizing social services and other government assistance programs and is an advocate for the residents of the Town of Woodbury. The Director of Social Services and Municipal Agent shall have all the powers and duties conferred by the General Statutes and such other powers and duties as the Commission for the Elderly, the Board of Selectmen and the First Selectman may establish by order or instruction not inconsistent with law."

The CRC put the bulk of section 801 back into its final report. The BOS should review the changes that were made.

Beyond the issues presented above, there are one or two additional items that bear further consideration by the BOS

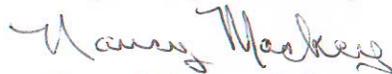
1. The CRC has removed all reference to the Judge of Probate. A question arose as to whether that would mean that Woodbury cannot vote for Probate Judge. That is not the case. General Statutes section 45a-18 provides for election of a Probate Judge by the electors of each community in the region.
2. The BOS, at its meeting on June 25 recommended that the CRC replace the references to the Region 14 Budget in sections 702C.2.c. and 702D.4. The CRC rejected that recommendation. There are two potential issues. One is that the contingency account, which may not exceed 1% of the budget, would not be figured using the Region 14 Budget as part of the measuring stick. Second, there is some concern that the Board of Finance would have difficult setting a mill rate without a reference to the Region 14 budget. I have not researched that issue at this point.

3. The only other proposed change that has caused some local concern is section 302A, regarding the fact that an unsuccessful First Selectman candidate does not get a seat on the Board of Selectmen regardless of how many votes he receives, and that each elector may vote for two candidates for Selectmen.

Any changes that are to be made by the BOS are to be made by next Thursday, July 23rd.

3. Adjournment – MOTION TO ADJOURN: Selectman Perkinson moved to adjourn the meeting at 3:54 p.m. SECOND: First Selectman Butterly. MOTION PASSED UNANIMOUSLY

Respectfully submitted,



Nancy Mackey, Acting Clerk

RECEIVED & FILED
IN WOODBURY, CT

This 20 day of July 2015
at 2:33 o'clock P M

Linda S. Clark
Town Clerk