

Charter Review Committee

Remote Meeting via On-Line Link posted on the Town of Pepperell website with this Meeting's Agenda

5/6/2020 - Minutes

1. Call To Order And Pledge Of Allegiance

The meeting was called to order at 7:07 pm. The pledge of allegiance was said.

Attendance (Charter Review Committee Members attended via remote connection): Doug Adams (Chair), Caroline Ahdab, Matt Jussaume (Vice Chair), John Ladik, Ramona Reed (Clerk), Marilyn Tremblay, Harvey Serreze **Absent:** Bob Newton, Mike Tang

2. Acceptance Of Minutes

John Ladik made a motion, seconded by Caroline Ahdab, to accept the meeting minutes of April 22, 2020. **(Note- correction made to change minutes date from May 6, 2020 to April 22, 2020)**

John Ladik commented that he had only received about 30 of the 51 emails that were reported in the minutes of May 6th. Ramona confirmed the count was correct based on the email records the Committee received.

After this discussion, these minutes were accepted by the committee members who were present: Caroline Ahdab, Matt Jussaume, John Ladik, Ramona Reed and Harvey Serreze. Doug Adams and Marilyn Tremblay abstained because they did not attend that meeting.

3. Public Comments On The Agenda

Mr. Andrew MacLean, Town Administrator of Pepperell - Mr. MacLean addressed the committee with the following comments:

1. Mr. MacLean expressed concern about the origin of the letters referenced at this meeting by Ramona Reed (these letters stated a preference that the number of the Pepperell Board of Selectmen remain as 3 in the Charter), and in April, he asked Doug Adams about them because the Board of Selectmen also received some and they didn't seem to result from a public discussion. He mentioned the comments appeared to be "cut and pasted", as 43 out of the 45 received by the BOS had identical wording. He advised that his understanding of Doug's response was that the Charter Review Committee (CRC) was using these as a "man on the street" survey for information/feedback and then used these as a basis to vote on the Charter. Mr. MacLean commented that these were not a survey, as there are multiple sides of this issue and if people are to be surveyed, then the entire discussion should be presented publicly so that people know what they are commenting on and not just cutting/pasting something they were asked to send to the Selectmen. Mr. MacLean further commented that based on past issues in Town, this could give the appearance that "discussions are happening behind closed doors" or that "positions are being railroaded", and this appears this way to him. He advised that he had discussed this with the Board of Selectmen as well, and believes they are in agreement that multiple sides of a position should be made clear before people are asked to relay opinions. He mentioned that his opinion of the CRC's role is to review and make decisions to change the Charter and then present it to the Town for a vote. While surveys can help with decisions, if the CRC has vetted and fully understands an issue and decides on a recommendation, we should make it without worrying about public sentiment and allow the Town Meeting to decide on the Charter changes. He also mentioned that while he has encouraged the CRC to take surveys, as he believes they can be valuable, he is disappointed if the CRC considers these emails as representing a "survey" response. Also, if this is the case, he advised that he would insist that the Town also put out the information and let others weigh in on the multiple sides of the issue.

Note: Item 2 was amended to add the first sentence after the CRC's discussion of these minutes at the meeting on June 3, 2020. The second sentence was amended to reference the first sentence. Item 3 was amended to add the email date "5/4/2020" to the first sentence.

2. In response to action items assigned at the CRC meeting on 11/20/2019, CRC member Caroline Ahdab sent an initial email to the Board of Selectmen and Town Administrator on 12/1/2019, re-sent this on 2/20/2020, then sent another on 5/4/2020. Mr. MacLean addressed a question in these emails which asked for their input about the document, 2018 Pepperell Selectboard Code of Conduct (relating to how it will be referenced in the Charter). Mr. MacLean advised that two of the Selectmen met with the CRC in the Fall and both had mentioned they are not in favor of including this document in the Charter, even just as a reference. He further commented referencing a document like this which is subject to change and has strong wording can be risky, and that the current document may also be "suspect". Mr. MacLean advised he doesn't think it's a good idea for it to be referenced in the Charter.

3. Mr. MacLean provided his summary of a second question in the previously mentioned email dated 5/4/2020 to the Board of Selectmen from Caroline Ahdab. He mentioned that Caroline asked if the Board of Selectmen could vote on the issue of changing the BOS from 3 to 5. He advised that the BOS would be prepared to do that at a Board meeting, but prior to doing so, they wanted to further understand the purpose, as there was some confusion about the email.

After Mr. MacLean finished, Doug Adams asked if anyone had comments on the feedback.

In response to Mr. MacLean's questions on the email to the BOS, dated May 4, 2020, Caroline Ahdab advised that she asked the Board of Selectmen for their preference on the issue of a 3 vs. 5 member BOS because at a past meeting, where the CRC heard input from the Selectmen, Margaret Scarsdale and Bill Greathead, their position on the matter hadn't been clear, and it was felt it would be important for the public to understand where they stood on this. Caroline also clarified that she emailed the BOS on behalf of the CRC, as an action item after discussion of the issue at prior CRC meetings, and was not asking on her own behalf. She also clarified that her email did not mention anything about the BOS taking a vote on a 3 vs. 5 member BOS. She asked for their "written preference". Caroline read from the 5/4/2020 email to the BOS to confirm this.

Andrew MacLean confirmed that he understood Caroline's email to be on behalf of the CRC, just as he also understood the email he referenced earlier from Doug Adams to be on behalf of the CRC. He asked for clarification of the action item for the BOS. For example, would the action item be that the CRC would like a specific vote from the BOS on their opinion of what the right size of the BOS should be? Mr. MacLean also asked if there was a document with the pros and cons of a change.

John Ladik advised he did not feel it was necessary to ask the BOS for their opinion. He further commented he did not consider the request to be on behalf of the CRC, and he said it was inappropriate. He disagreed that it was an action item from the Committee.

Doug Adams commented that although he hadn't attended the prior meeting (on 4/22/20), it was not his understanding that the request was to ask the BOS for a vote on the 3 vs. 5 BOS issues, and would be surprised if that was what was requested. Caroline Ahdab confirmed again that it was not a request for a vote and she had first sent an email to the BOS on the topic on April 13, 2020.

Andrew MacLean clarified that the BOS cannot state a written preference, as was requested, without a vote. They cannot take public positions like this, although they can take personal positions. He reiterated that if the BOS is being asked to take a vote, the request should be clear and thoughtful, in order to be considered.

To clarify the Committee's intent on the request to the BOS, Doug Adams asked John Ladik and Ramona Reed for further information. John did not further comment. Ramona reported that based on prior meeting discussions (e.g. on Oct 30, 2019) and subsequent feedback we had received from Selectmen Scarsdale and Selectmen Radwich, regarding their personal preference on a 3 vs. 5 member BOS (both had suggested keeping the BOS at 3 members), we wanted to clarify feedback from Mr. Greathead as to his personal preference about this in order to hear from all 3 members. This was mainly because this had seemed to be a "hot button" in Town.

Doug Adams further commented that it hasn't been determined as to whether the "3 vs. 5 member BOS"

question is a hot topic. He suggested that if the CRC tried to make the change to a 5 member board, or any other significant change to the Town government, that this is where there could be controversy. For this reason, we tried to determine what was driving the motivation to change the Charter to require a 5 member BOS. Doug advised if we were considering changing the Charter, then we may have taken more time to pursue how to do this. Doug also provided some background that during our first pass through the Charter, he asked CRC members to independently research what would be the motivations for making a change from a 3 to 5 member BOS. Multiple members presented information and after reviewing the research, including info about other towns, Doug mentioned that he believed many of the CRC members came to a point where they could make a decision about a change to the number of BOS members. Prior to taking a vote, the Committee had wished to alert the community who have been following us that we planned to make a decision on whether or not to move on from reviewing this issue (leaving the Charter as is). Each committee member was making an independent decision. The vote was held to see if there was an appetite within the Committee to do further research. He commented that the people who responded to the CRC was only one data point, and these responses were not meant to determine "yes or no" on changing the Charter.

Ramona Reed commented that in reference to Mr. MacLean's earlier comments about the mass emailing, it was clear to our Committee that someone had organized a writing campaign for the one side of the issue, in support of the BOS remaining at 3. She further mentioned that for feedback suggesting a Charter change to a 5 member BOS, other than comments received from Mr. MacLean, himself, and CRC member, John Ladik, suggesting the move to 5 members, the CRC received feedback from only 2 members of the public who suggested on multiple occasions that the BOS should have 5 members. Due to our standing "Feedback" agenda item, this is one of the reasons it had been discussed at multiple CRC meetings, and that this is not the only Charter issue that has been discussed much on multiple occasions. Ramona advised that as a committee, we have not received enough feedback from the public for this to be enough of a hot topic to consider changing the Charter. She reiterated Doug Adams' comments that there could be more controversy if we decided to make a change. Her concern about taking a survey, putting a vote on a ballot, or bringing a warrant to Town Meeting, after not receiving much feedback in favor of a change to a 5 member BOS is that people may make a decision about changing the BOS in the Charter without having listened to our meetings where the pros and cons for both sides have been discussed. The Committee made a decision based on the data we had to leave the Charter as is. If in the future we receive more feedback we can review this again.

Based on these comments, Andrew MacLean mentioned that while this is not the only topic that's been discussed multiple times, this is the only topic that has been treated this way, so he is suspicious of the motives out there. He also commented that he wants the Committee's recommendations to be taken seriously when the Charter is brought to Town Meeting which is why he brought these concerns to us and that he isn't looking to change the Committee's opinion. He suggested that if this is a topic we're concerned about and there is a split vote about it, then a full airing of the pros and cons should be done more publicly and not only for the people following the CRC meetings. If it's the CRC's decision to "let it die", then he suggests we do this, as he also does not feel it's a hot topic. His further advice was that in doing this, it should not be presented with a public statement that it's the Town that does not want the Charter changed.

4. Public Feedback Received

None received since the last meeting.

5. Discussion / Action Items

5.1. Charter Revision Discussions - Starting With Article 3.2B, Board Of Selectmen-Powers And Duties, And Subsequent Sections, Time Permitting

The Charter Review Committee continued review and discussions of Article 3.2b, Board of Selectmen Powers and Duties.

Charter Revisions (if the Charter section is not listed , there was no revision or specific discussion). Matt Jussaume documented the revisions.

Section 3.5 - Library Trustees - On the first review we had noted possibly referencing the specific MGL in this section but Ramona Reed recommended that the section remain as is, since the text already makes reference to the General Laws, and we do not reference specific laws in other Charter Sections.

Section 3.6 - (Town) Moderator - Caroline Ahdab advised she had a note from the first review about considering adding a Deputy Moderator because there had been an instance at Town Meeting where we had to elect a moderator from the floor because the Town Moderator at the time could not make the meeting. Matt Jussaume and Doug Adams reported that Section 3.7 Filling Vacancies, covers what happens when the Moderator can't make it so it was agreed that no change should be required here.

Section 3.7 - Filling Vacancies

3.7 a -Reconciled discrepancy of calendar days vs. business days between Sections 3.7 and 7.9 Notice of Vacancies. Section 3.7, First bullet, changed to 10 business days. Second bullet, changed to "...notice of the vacancy is not given within 1 month..." and "... (1) week notice..." to 5 business days notice".

3.7 b Board of Selectmen - No changes regarding filling vacancies, however Andrew MacLean asked to revisit **Section 3.2 b, Powers and Duties (of the BOS)** because of the 2nd to last sentence in this section and a recent BOS vote. This sentence states that "Members of the Board of Selectmen shall be ineligible to serve on multiple member bodies established by this Charter or by by-law to which the Board of Selectmen is the appointing authority". Mr. MacLean further advised that the BOS recently voted to do this in one instance but it was deemed to be appropriate by Town Legal, with the advice to make it a very public vote and that it be rarely done. Doug Adams asked if Mr. MacLean could provide the legal basis by which Town Legal could override the Charter. Mr. MacLean advised he believed it was because the Select Board member in question had resided on the other committee as a Chair prior to being elected to the BOS. She relinquished being Chair of the committee but requested staying on as a member. The BOS agreed to allow this. Mr. MacLean further commented that Town Legal agreed that the Charter should be followed, but in some cases where State law says something different, it will override the Charter. He will need to check back with Town Legal to determine if this was the case in this decision. Mr. MacLean asked if consideration should be given to removing or broadening this restriction in the Charter. Doug Adams advised that given this decision, there could be a perceived loophole in the Charter and it might be best to close the loophole, especially as it pertains to this issue. Mr. MacLean offered to get more information from Town Legal to confirm why they instructed that the BOS decision was appropriate. Doug Adams advised that he doesn't have a hard feeling one way or the other, but given it was an area for which the BOS had to seek legal counsel, he asked others on the CRC for comments as to whether we should leave the Charter restriction as is, or pursue the reasons why Section 3.2b should be modified. John Ladik commented that we should leave it as is and he believes the BOS decision was a mistake because ultimately the BOS will need to vote on decisions made by committees and will be able to vote on things they want, which is a conflict of interest. Matt Jussaume advised that he agreed, especially where the Charter is clear. John Ladik and Ramona Reed advised that this concern was brought up by a couple of members of the public at our last Committee meeting. Doug advised that the Charter does seem clear to the CRC, but whenever wording can be construed a different way, it's in our best interest to fix it. The section doesn't mention prior boards and Town Legal leveraged this, so we should fix this. Mr. MacLean added that in some cases the BOS members can be assigned to other committees as an ex officio or liaison, so he'll look for examples of this, in case this is where the Charter might be broadened. He will bring the Legal Counsel clarification to us ASAP. Matt Jussaume asked if in cases where a BOS member served in this special capacity, would they need to recuse themselves on voting for the committee issues brought to the BOS? Mr. MacLean advised it would depend on the issue. For example, for "mechanical" votes such as voting to put something for the committee on a warrant, a recusal may not be needed, but to vote on endorsing an issue, he'd expect the BOS member should be recused. Matt Jussaume took a note to review section 3.2 b again after we receive further clarification on why the exception for the BOS's recent vote was allowed.

3.7 c Town Moderator - Matt Jussaume asked John Ladik if he had any suggested changes as he had previously agreed to review it. John advised he didn't, that the current text states the procedure. Doug Adams questioned if anyone else had suggested changes. At this time no one did, so no revisions were made.

3.7 d North Middlesex Regional School Representative - Matt Jussaume advised of a note that Mike Tang would investigate if the vacancy procedure for the NMRSD Representative would be governed by the school district. Ramona Reed reviewed meeting minutes of 12/4/19 and found that Mike already provided feedback for this. This was found and incorporated.

Section 3-8 Recall of Elected Officials

For Sections -

3.8 b Recall Affidavit

3.8 c Recall Petition

3.8 d Recall Elections

References to # of days were cleaned up to specify "business days". 30 days was left as is because this is meant to mean calendar days or 1 month. Any reference to 60, 90, or 110 were also left as "days".

Also, for **3.8 d Recall Elections** - Harvey Serreze reminded that he previously asked about revising this section pertaining to a BOS member recall. Based on Harvey's suggestion, it was agreed to add the following sentence: "If the officer whose recall is sought is a member of the Board of Selectmen, that individual shall recuse themselves from all proceedings related to the recall and the remaining members of the board shall perform the steps as described herein."

Section 3.8 g Office Holder - Correction made in the last sentence to change a reference from "...Section vii below" to "...paragraph h below."

Revisions for Article 3 were completed for this pass. The next pass at Article 4 will start at our next meeting on May 20th.

It was also discussed that the CRC's meeting dates will be slightly altered from the current schedule which is every other Wednesday. Upcoming meetings will be planned for 5/20, 6/3, 6/17, and in July and August, 7/8, 7/22 and 8/5. No meeting dates will be official until posted by the Town Clerk on the Town of Pepperell website.

6. Other Matters Which Could Not Be Reasonably Anticipated 48 Hours Prior To Meeting

None.

7. Adjournment

Matt Jussaume motioned to adjourn the meeting, which was seconded by Harvey Serreze. By unanimous vote, the meeting adjourned at 8:59 pm. The next Charter Review Committee Meeting will be scheduled for Weds, May, 20 2020, at 7 pm. This will be a remote on-line meeting.

Minutes respectfully submitted by Ramona Reed, Clerk, Charter Review Committee