

**ADVISORY AND FINANCE COMMITTEE  
MEETING MINUTES  
September 3, 2015**

A meeting of the Advisory & Finance Committee was held on Wednesday, September 2, 2015. The meeting was called to order by Chairman John Moody at 6:30PM and was conducted in the Mayflower II Meeting Room at the Plymouth Town Hall, 11 Lincoln Street, Plymouth, Massachusetts.

**PRESENT**      **Fourteen members of the committee were present:**

Belinda Brewster, Kevin Canty, Betty Cavacco, Richard Gladdys, Harry Helm, Shelagh Joyce, Ethan Kusmin, Patricia McPherson, Marcus McGraw, Christopher Merrill, John Moody, Patrick O'Brien, Harry Salerno, Marc Sirrico

**ABSENT**      **No members of the committee were absent**

**AGENDA ITEMS**

**TOWN MEETING ARTICLES:**

**18: Charter Review – Conflict of Interest**

Michael Lincoln, Chairman of the Charter Review Committee, presented Article 18. Article 18 asks the Town to vote to delete in its entirety, Chapter 2, Section 10, 10-1, 10-2, and 10-3 of the Town Charter, all relating to Conflict of Interest. The Charter Review Committee voted 7-2 in support of this recommendation. There is existing Massachusetts Law governing the conduct of Town Meeting Representatives with respect to Conflict of Interest. The current Charter sections appear redundant in relation to State law, have questionable enforcement provisions, and are confusing. Town Counsel said as it is written, it is not enforceable. The Charter Review Committee believes this matter belongs before Town Meeting, and the Representatives should vote on this section.

**Questions:**

- The Charter Review Committee's initial take was to leave the section in, then the decision reversed. How did that come about? (S Joyce) In June we proposed removing the section then tabled it to learn more. We heard arguments from both sides. We then voted and came to conclusion that Town meeting should have ability to discuss, debate and vote on this important topic.
- Does the Charter Review Committee feel that this section of the Charter impedes Town Meeting. (H Helm) Some people felt that way.

**Public Comment:**

Pat McCarthy, Town Meeting Member – Precinct 5: She will be making a motion to amend the order to hear Article 18 before Article 17 at Town Meeting. She feels it is time to delete this section and abide by State regulations. Most Town Meeting Members do abide by State Ethics Guidelines. She reported that Moderator, Steve Triffletti, said that the Conflict of Interest section in the charter is very difficult for the Moderator to enforce.

Bill Abbott, Town Meeting Member – Precinct 12: He was a member of the 1999 Charter Commission that wrote this section of the Charter, which strengthened the power and credibility of Town Meeting. This addition to the Charter passed with 72% of the vote at that time. They hired Kopelman & Page to write this Conflict of Interest section for the Charter. It was legal and valid and was approved by the State Ethics Commission. Our desire was to hold our Town Meeting members more accountable. We were the first town to adopt Conflict of Interest Rules and several towns followed Plymouth's lead. We helped define "financial interest". The key is moral authority. Keep these provisions in the Charter because elimination sends a terrible message and puts in peril our Town Meeting form of government.

Tom Kelley, Town Meeting Member – Precinct 6: He supports removing this section from the Charter. MGL 268A is the law. Cities have Ethics Commissions to enforce Conflict of Interest law, towns do not. Towns can be sued for charter provisions regarding Conflict of Interest. He has a letter from Attorney Betsy Lane of Kopelman & Page which says elected Town Meeting Members are exempt from 268A – State Conflict of Interest Law. As this section of the Charter is written, it is inviting a witch hunt, it is time to remove it from the Charter.

Mike Hanlon, Town Meeting Member – Precinct 15: He served as Vice Chair of the Conflict of Interest Sub-Committee. There is lots of confusion about this section of the Charter. They investigated to see if it is valid and enforceable and they found that it is both valid and enforceable. They talked to Town Counsel and State Ethics office. MGL 28E allows the town to pose its own independent sanctions which is what the town has done. This section of the charter was created by the 1999 Charter Commission and reevaluated by the 2005 Charter Committee and was approved by the legislature, the Governor and passed by town vote. The sub-committee looked at enforcement provisions and Town Counsel said the Attorney General would never approve those enforcement provisions. Chapter 10 of Town Meeting Time, by which Town Meeting is run, states, “If a Town wishes to regulate Conflict of Interest, they should do so by bylaw and not expect the Moderator to do it.” In 16 years, we have not had one lawsuit regarding Conflict of Interest. This is a moral issue. To keep the credibility of Town Meeting, the Conflict of Interest clause should be kept in the Charter.

Richard Serkey, Town Meeting Member – Precinct 2: The sub-committee has worked on enforcement mechanisms to hold Town Meeting Members to more stringent standards. The Conflict of Interest provisions of the Charter are legally valid and enforceable. The Charter provisions are “like speed limit signs”, some may violate them at times, but the answer is not to remove the signs. The answer is to keep the provisions and put some additional teeth into them, which Article 17 will seek to do.

Dale Webber, Town Meeting Member – Precinct 3, and Town Employee, and Employee Representative: Mr. Webber shared a packet of information with the Advisory & Finance Committee. He spoke to Mr. Wilson at State Ethics Commission and asked him to put his comments in writing. Mr. Webber asked for an opinion of his personal situation, being a Town Meeting Member and a Town employee, regarding the Conflict of Interest law. Mr. Wilson states in his letter of 10/10/2014, “The state conflict of interest law, general Laws chapter 268A, does **not** prohibit you from participating *as an elected town meeting member* in the Town Meeting’s deliberations concerning and vote on the warrant article relating to the Town employees’ contract. This is the case even though, as a municipal employee, you have a financial interest in that matter which would prohibit you from participating in it *in your capacity as a municipal employee*. The reason this is true is because elected town meeting members are expressly excluded from GL C 268A’s definition of “municipal employee,” and are thus not subject to the restrictions of the conflict of interest law applicable to municipal employees *when acting as elected town meeting members*. Thus, they may, as such, deliberate and vote on matters in which they have a financial interest.” Because our Town Meeting Members are elected, they have no Conflict of Interest.

Karen Keane: To give a timeline, the Charter Review Committee began meeting on November 10, 2014. On June 10, 2015 they discussed Conflict of Interest but made no motion no action. On June 24, 2015 they again heard Conflict of Interest and made no motion no action. On July 22’ 2015 they asked some clarifying questions, heard additional speakers and finally voted in August to recommend this article to Town Meeting.

Doug O’Roak: He commends the work of the Charter Commission of 1999. The Charter is written to require review every 5 years or so. Town Counsel says the Conflict of Interest provisions in the Charter are not enforceable so we are recommending removal of the provisions. Removing the provisions does not remove the morals. We can request that this issue be fixed at the state level, requesting that “Open Town Meeting Members” be excluded not “Elected Town Meeting Members”, but we can not fix the problem within our Charter.

**Christopher Merrill made a motion to recommend Article 18 to Town Meeting. Marc Sirrico, second.**

Questions:

For Mr. Serkey:

- Where in 268A does section allow us to create more restrictive rules? (K Canty) It is not in 268A, 23E allows for that.
- Have there been any changes to 268A since our Charter provision passed in 1999? (B Brewster) No, do not believe any changes have been made to 268A.

For Mr. Webber:

- I assume the question you posed to Mr. Wilson was “Am I violating State Ethics Law?” (K Canty) Correct
- Letter does not address if Town Charter can impose tougher laws does it? (H Salerno) Last paragraph says only a “Head of Municipal Agency through employment contracts” may do so. So only the Town Manager through employment contracts can say that employees can not serve as Town Meeting Members or may not vote on any articles regarding salaries, etc.
- As an employee representative or union president, do you make the choice to recommend or not recommend something to your union? (B Brewster) It is my lawful obligation to bring all options to them. I do not vote on the contract.
- Other union members could vote on their own contract, and if they are Town Meeting Members, vote again on it at Town Meeting? (B Brewster) Yes.
- Why do you believe it is okay to vote on salaries at Town Meeting? (B Brewster) I am a law abiding citizen and the law says that as an Elected Town Meeting Member I can vote on every article.
- If handled at the state level and the “elected” exemption was removed, would there be a conflict? (B Brewster) Yes, voting on that would be a conflict without exemption.
- What makes this provision dysfunctional at Town Meeting? (M McGraw) As a Town Meeting Member of 25 years there was never a problem until lately. There is a lot of finger pointing at Town employees, and that is gaining momentum, there is an atmosphere in which we are being treated like second class citizens.

For Ms. Keane:

- I didn’t catch who you work for? (S Joyce) I work for the Town, I am a Town Meeting Member, Member of the Committee of Precinct Chairs, and Member of the Charter Review Committee.
- How did you vote on this article? (S Joyce) I was one of the 7 that voted in favor.
- Why is the recommendation to wipe out the provisions completely and not tweak them? (R Gladdys) We had that discussion and decided it was best to consider all or nothing.

There was a point of order discussion involving Article 18 and the mention of Article 17. Should the committee hear both articles together? Are the articles mutually exclusive? Chairman John Moody said that Articles 18 and 17 would be heard separately and voted on separately. Our recommendations will be made to advise Town Meeting on how to vote on each article. He said that the articles are complementary in that Article 17 would tuck into the Charter provision.

Discussion:

- Elected members of Town Meeting are exempted specifically.
- The Charter provision is in violation of the intent of Mass General Law.
- The Conflict of Interest provisions in our Charter are unenforceable, lets get rid of them.
- Everyone is entitled to their own opinion but ultimately the laws decide.
- It is a shame this issue has become so decisive in our community, vote and move on respectfully, act civilly and treat others the way they should be treated.
- I like the speed limit sign metaphor, but still believe provisions should be removed from charter.
- Town Meeting members promise to abide by higher standards than state law dictates.
- Good to remind people about Conflict of Interest, should leave provision in Charter.
- Provisions set a higher standard and there is nothing wrong with that.
- Need to challenge at state level for changes.
- Having these provisions here as a reminder is a good idea so we should keep them.
- Proud that Plymouth has this in their Charter.
- Baffled why 268A exempts elected representatives.
- If someone has a financial interest, they should recuse themselves from voting, they are not doing anyone a favor by voting anyway.
- Both sides of this claim that not supporting their side may put an end to Town Meeting.
- Our Conflict of Interest provisions do not fit into State Law.
- I do not support this article, it is morally wrong to not have these provisions in our Charter.
- I have witnessed people voting on articles in which they have a financial interest, and it is wrong.
- Agree this is a moral issue, but there is a difference between morals and ethics, morals are at individual level and ethics are at community level.
- Solve this at the ballot box not in the Charter.
- It should be up to the voters to decide.
- The Charter gives the standard to hold Town Meeting Members to.
- There is an exemption for a reason.

**The motion fails (6-7-0). Kevin Canty, Betty Cavacco, Richard Gladdys, Harry Helm, Patrick O'Brien, and Marc Sirrico, in favor. Patricia McPherson, Belinda Brewster, Ethan Kusman, Christopher Merrill, Shelagh Joyce, Harry Salerno, and Marcus McGraw, opposed.**

At 8:50PM Harry Salerno made a motion to take a 10 minute break. Shelagh Joyce, second. The motion passes unanimously.

The meeting was called back to order at 9:00PM.

**19: Charter Review – DPW Director**

Michael Lincoln, Chairman of the Charter Review Committee, presented Article 19. Article 19 asks the Town to vote to amend Chapter 3, Section 6, of the Town Charter removing the requirement that the DPW Director be a Civil Engineer. This is seen as an obsolete requirement as the Town has several engineers on staff. The change will allow the Town Manager to appoint an individual with management and/or project management experience, a person with experience overseeing multiple projects and delivering them to completion.

**Ethan Kusmin made a motion to recommend Article 19 to Town Meeting. Harry Salerno, second.**

**The motion passes unanimously (13-0-0).**

## **20: Charter Review – Roll Call Vote**

Doug O’Roak, Vice Chair of the Charter Review Committee, presented Article 20. Article 20 asks the Town to vote to amend Chapter 2, Section 4-6 of the Town Charter by requiring a roll call vote for all final main motions on every warrant article that comes before Town Meeting. This article does not stipulate electronic voting but an electronic vote can be used as a roll call. If electronic voting becomes unavailable, this change will require a traditional roll call. This does not require roll call voting or any procedural votes, such as a motion to adjourn, a motion to take articles out of order, a motion to call the vote, etc. This change comes at the request of those who asked for more accountability from Town Meeting Members, as the roll call votes will become a permanent record for how each member votes on each article and will be recorded in the minutes and therefore posted on the Town’s website.

Questions:

- Did the Charter Review Committee ask Moderator, Steve Triffletti, his opinion? (H Salerno) Yes, and he supports this article.

**Christopher Merrill made a motion to recommend Article 20 to Town Meeting. Patricia McPherson, second.**

**The motion passes unanimously (13-0-0).**

## **21: Charter Review – Development Commission**

Karen Keane, Clerk of the Charter Review Committee, presented Article 21. Article 21 asks the Town vote to delete Chapter 3, Section 11, in its entirety from the Town Charter which pertains to the Development and Industrial Commission. This Commission no longer exists therefore it should be removed from the Charter.

**Richard Gladdys made a motion to recommend Article 21 to Town Meeting. Belinda Brewster, second.**

**The motion passes unanimously (13-0-0).**

## **22: Charter Review – May Election Date**

Karen Keane, Clerk of the Charter Review Committee, presented Article 22. Article 22 asks the Town to vote to amend Chapter 5-1-1 of the Town Charter by changing the May town election from the second to the third Saturday of May each year. The intent is to increase voter turnout by not conflicting with Mother’s Day or Memorial Day weekends. This change will continue to keep the election after Spring Town Meeting but well before the start of the July 1 fiscal year.

Questions:

- Memorial Day can never be the third weekend of May? (S Joyce) Correct, that will never be a conflict.
- Was Town Clerk, Larry Pizer, consulted? (H Salerno) Yes, he supports this article.
- Why not move it to the fall in conjunction with the national election? (B Brewster) We did discuss that option. The Town Clerk did not recommend the fall. Local elections would have to be kept separate. Citizens would have to check in for one election, fill out the ballot, enter it into machine, check out then go to next line, check in for the other election, fill out the ballot, enter it into a different machine, then check out. It would require 2 sets of poll workers to cover 7AM-8PM, there really would not be much cost savings, and it would be very confusing for the voters.
- Is there an expense to change from the second to the third Saturday of May? What is the plan to get the word out? (S Joyce) No expense involved. Getting the word out does not fall within the scope of the Charter Review Committee.

- Any discussion about moving the elections to a weekday? (K Canty) Yes there was discussion. Weekdays add to the challenges particularly because the town does not have school on election days. It was believed that Saturdays are easier for most voters, there can be more visibility, and it is easier for volunteers and poll workers.
- Did anyone look at what other towns do? (B Brewster) Yes, Bourne has it in April, Whitman in June. There is no data for when the best turnout is achieved though.
- Will dates be discussed again if voter turnout does not increase? (S Joyce) Yes, it can always be readdressed in the future.

**Patrick O'Brien made a motion to recommend Article 22 to Town Meeting. Betty Cavacco, second. The motion passes (12-1-0). Shelagh Joyce, opposed.**

#### **24: Charter Review – Elect ZBA**

Doug O'Roak, Vice Chair of the Charter Review Committee, presented Article 24. Article 24 asks the Town to vote to amend Chapter 3-12-1 by changing the Zoning Board of Appeals from appointed to elected. It is believed that the Selectmen can be more likely to appoint members to the Zoning Board who support the development preferences of the current Board of Selectmen. Therefore if a majority of Selectmen are pro-development or anti-development it is likely that citizens appointed to the ZBA will have similar views of the current appointing authority. In contrast, elected ZBA members will tend to have preferences that are consistent with the majority of over 60,000 Plymouth citizens. The advantage to an elected Zoning Board is that they would be loyal to the people. By being a member of an adjudicate board and one of the most important boards in the town, it is important they answer to the voting public not the appointing authority. The election of the board would keep them honest, fair, impartial and only beholden to the people who elect them and not the appointing authority. The Zoning Board should have autonomy as it relates to important decisions affecting the residents of our entire community. Also if ZBA is elected, they can not also serve as Town Meeting Members. Therefore we avoid giving them "several bites of the apple," vote as ZBA member then vote on same subject as Town Meeting Members.

#### Questions:

- What if not enough candidates run for ZBA? Will appointments be made or can the ZBA operate with fewer members? (B Brewster) Not exactly sure. With the Planning Board, the Board of Selectmen can appoint to fill an empty seat. Need to find out if this would be handled the same way. John Moody pointed out that the section of the Charter pertaining to the Planning Board (3-14), does not have language regarding how vacancies are handled.
- Did you consult with the current ZBA members? (H Salerno) Yes we did. The general consensus was that if they are forced to compete and spend money on an election, they may not run. The also felt that some candidates may be well funded and backed by developers, which is the opposite of what the Charter Review Committee is trying to achieve.
- What is the implementation plan? (B Brewster) The warrant language says that existing members may serve out their term.
- When appointed by the Board of Selectmen, do potential members have to state their credentials publicly? (J Moody) Only if there is competition do they hear their credentials publicly, then vote to choose who to appoint.
- Was there any discussion about the appointed review process versus the elected review process? (J Moody) Yes there was and we believe candidates would be better vetted going through the elected route. Our 3 options were: status quo (appointed), review process through Committee of Precinct

Chairs, or elected. We did not want to see the COPC with more power and thought elected was the best route.

- How did the Charter Review Committee vote on this article? (J Moody) 5-2-1

Public Comment:

Steve Lydon, Town Meeting Member - Precinct 12, supports this article. There is currently no accountability to the citizens. The citizens have no recourse except to voice their concern to the Board of Selectmen. If elected, there will be recourse, citizens can choose to vote the ZBA members in or out.

- Do any other towns elect their Zoning Board? (H Salerno) Yes, the Town Clerk had said that some towns do elect their Zoning Board.

**Shelagh Joyce made a motion to recommend Article 24 to Town Meeting. Christopher Merrill, second.**

Discussion included liking the idea of elected, better vetted, concern about using ZBA to further their own personal agenda, funding from developers is a concern, uncertainty regarding if not enough candidates run, role of ZBA is so important, 3 Town Meeting on ZBA would have to resign as Town Meeting members, it is worth trying.

**Harry Salerno made a motion to postpone a decision until September 17, 2015, until Town Counsel has reviewed the article and has answered what is to happen if not enough candidates run. Marc Sirrico, second.**

- If Town Counsel changes the article, would Charter Review Committee have to meet to revote? (S Joyce) Town Counsel can make changes to wording at any time, there is no need to meet or revote.

There was discussion that no other committee in the Charter has this type of wording, having a full Zoning Board is essential, Board of Selectman section of Charter allows them to appoint if there is a vacancy in general terms, would like opinion of Town Counsel.

**Motion to postpone fails (5-8-0). Harry Helm, Richard Gladdys, Christopher Merrill, Harry Salerno, and Marc Sirrico, in favor. Patricia McPherson, Belinda Brewster, Ethan Kusmin, Shelagh Joyce, Betty Cavacco, Kevin Canty, and Patrick O'Brien, opposed.**

Returning to the main motion, there was additional discussion about better vetting of candidates through election process with interviews in paper and with League of Women voters, still have special interest groups involved in elections but part of democratic process.

**The motion to recommend Article 24 to Town Meeting passes (12-1-0). Harry Helm, opposed.**

## **25: Charter Review – Multiple Offices**

Michael Lincoln, Chairman of the Charter Review Committee, presented Article 25. This Article asks the Town to vote to amend Chapter 4-2-1 regarding not holding two elected offices simultaneously. It pertains to timing by adding “beginning the day s/he is sworn in to the county, state, or federal office.” The intent of this change is to avoid the situation when an elected town official is elected to state or federal office, as presently written that person is immediately ineligible to continue in their current role, despite the fact it can be many weeks before that person assumes their new office. This change will allow that individual to continue to participate in town business until the swearing in date of their newly elected position. It can also allow the town time to implement the process to fill the soon to be vacated seat.

**Kevin Canty made a motion to recommend Article 25 to Town Meeting. Harry Salerno, second.**

**The motion passes unanimously (13-0-0).**

**26: Charter Review – Time Taking Office**

Michael Lincoln, Chairman of the Charter Review Committee, presented Article 26. Article 26 asks the Town to vote to amend Chapter 5-3-1 regarding Time Taking Office, by adding language to require swearing in “within 30 days from Date of Election.” Presently the Town Clerk does not have a means to require a newly elected person to appear to be sworn in. This change will allow the Town Clerk to communicate to a newly elected person the date upon which they must appear to be sworn in by.

Questions:

- Can anyone other than the Town Clerk swear someone in? (S Joyce) Yes, Pearl Sears or Pam Borgatti.
- What happens if they are not sworn in by the 30 days? (B Brewster) There is provision for removal or for extension.

**Patrick O’Brien made a motion to recommend Article 26 to Town Meeting. Betty Cavacco, second.**

**The motion passes unanimously (13-0-0).**

The Charter Review Committee was thanked for all of their hard work.

**ADJOURNMENT**

**Kevin Canty made a motion to adjourn. Harry Salerno, second.**

**The motion for adjournment carries unanimously (13-0-0).**

The meeting adjourned at 10:15PM.

Respectfully submitted,  
Kere Gillette