

Minutes, Charter Commission, January 23rd, 2019, Meeting

The meeting was called to order at 8.30 Am by the Chair, Michael Gurtler.

Present: Julie Berberian, Joseph Cough, Anna Durand, Jill Goldthwait, Michael Gurtler, Patricia Samuel, Peter St. Germain, Christopher Strout

Absent: no-one

I. Approve Agenda: M. Gurtler asked to amend the agenda to insert an item between numbers II. And III., and another item between numbers V and VI. It was moved and seconded (J. Goldthwait, P. St. Germain) to accept these additions; the motion carried unanimously.

II. Minutes of Jan. 7 meeting: It was moved and seconded (J. Goldthwait, P. St. Germain) to accept the minutes, with the addition of all the members names, individually. The motion was carried unanimously.

III. Public Comment Period: No-one from the audience at the time spoke.

IV. Format for work: The Chair reported that the comments from the Public Hearing of Jan. 7th, individually identified, were now incorporated with the Charter review Outline, previously distributed.

V. Public Comment Review

A. Hearings, discussion:

- Town Council expects a public hearing time at our (Chtr. Comm.) meetings.
- Other committees do this differently, e.g. Cruise Ship Com. has two public comment periods, one at the beginning of the meeting and the other at the end, while other committees have one.
- More discussion followed, with general agreement that the public should have a time to ask questions.
- While we do not need to use Council's format, we should have comments from the public pertaining to the day's agenda; general agreement on this point.
- A Charter Comm. member, who recently served on T. Council, gave the history and reasoning for Council's format, and stated that Charter Comm. should take comments pertaining to the day's agenda. General agreement followed.
- Another member favored a public comment period but not a set time of duration for it.
- Our meetings are work meetings.
- Suggestion of a comment period at the end of each meeting, with rebuttal if needed.
- It was moved & seconded (P. St. Germain, J. Cough) to include public comment at the start of each meeting, allowing 3 minutes per speaker and 15 minutes total. The motion passed unanimously.
- The Chair recognized Matt Hochman, Vice-Chair of Town Council, who explained Council's recommendation of electronic voting at Open town Meeting. Council does not want another confusing vote as happened at a recent Town Meeting where colored cards were held up by voters for counting.

Many people immediately left the meeting after their cards were counted, but a question about the counting arose and the Moderator ruled that a re-vote was necessary. Unfortunately many people had already left and thus missed the re-vote.

- The Chair asked M. Hochman to explain exactly what Council means by electronic voting. M. Hochman replied that the devices would be electronic “clickers”, such as those used at two recent public visioning sessions as part of the Town’s civil discourse project.

- P. St. Germain referred to the process as a digital tally.

- J. Goldthwait explained that the use of paper ballots at Open Town Meeting for certain portions of the school budget is a state requirement.

B. Letters: Two have been received thus far, one via a letter to the editor of the MD Islander newspaper.

VI. Assignments, referring to the Charter Review Outline, previously distributed, with accompanying public comments

There was much discussion about how to group the Charter sections for work, taking into consideration comments received from the public. Comments and questions from Commission members follow:

-Many residents do not want to change the town Meeting form of government, but proposed other Charter changes

-Charter Comm. needs attendance data for recent Open Town Meetings, as well as numbers of people voting (secret ballot) in recent elections.

-Moving Open Town Meeting to November presents a problem only with the school budget; the current June time is for fiscal reasons, not attendance.

-Town Council will be discussing the Warrant Committee soon; does this affect our consideration of the Warrant Com.? Chair’s reply: No, we keep to our own schedule.

-Bylaws of the Warrant Com. were amended in 2016 to include a Public Comment period at the beginning of each meeting; Charter Comm. will receive copies of these by-laws.

-Membership of Warrant Com. displays diversity, especially of ages. Much discussion followed. A major point was that membership on Warrant Com. is a good way to learn how town government functions, and to gain experience, helpful for possible service on other boards or committees.

-For order of Charter Comm. work, Proposal 1: form several groups of members, each to work on different sections of the Charter.

-Proposal 2: All members of the comm. work through the Charter together and decide on a group of articles to discuss at each meeting.

-Discussion followed: how to group the articles, in order, or by subject?

-Suggested subject categories: A, town organization, elections; B, operations, form of bodies, administration; C, budgetary matters.

-Suggested groupings of Articles, using the subject categories above (A, B, C)

1) I & II VIII, IX, X, XI III, IV, V (VI, VII)

2) I, II, V VIII, IX, X, XI III, IV, VI, VII

3) I, II, IV, V VIII, IX, X, XI III, VI, VII

4) suggestion to get started: work on subject category A (I, II, IV, V) and see what happens.

5) question: how about I, IV, V first, then II ? There was general agreement on this suggestion.

-Question: What about notifying the public if some work takes two successive meetings to finish?
Discussion followed. Conclusion: we (Chtr. Comm.) will post this information on the Town website, to keep residents informed.

VII.Proposal regarding election security and voting machines; Comments:

- not our (Chtr. Comm.) purview

- let Town Council chase it down

- ask Council, Town Manager, Town Clerk to pursue this

- comment: technology for voting will change over time

- response: voting *security* is all that could be added to the Charter

- proposer agreed on this point, stated that proposal is about security of voting, using current voting technologies as examples

- J. Goldthwait, Chtr. Comm. Vice-Chair, and C. Knight, Town Manager, agreed to consult the Secretary of State on this matter.

VIII. Agenda items for Feb. 6th meeting: Charter sections I, IV, V, and II, in that order

IX. Other

-Attendance? Several members will be absent from one meeting or another of the next few scheduled, but a quorum will be present, and the absent members will try to participate via Skype or telephone.

X.Adjournment: Moved, seconded (P. St. Germain, J. Cough), passed unanimously to adjourn, 9.50 AM.

Respectfully submitted,

Patricia Samuel, Secretary

Handout 1/23/19

Proposal to Consider a Town Charter Amendment, Article VIII, Section C-41: Manner of Voting

From: Patricia Samuel, secretary

22 January 2019

The present situation: Paper ballots are marked with a pen, then read and counted with an optical scanner. The ballots and scanners are kept in a large walk-in safe in the Town Clerk's office.

Reason for action: The time may come that a different technology would be required, for example if optical scanners are no longer manufactured, or if the State of Maine mandates a different technology for state & federal elections. We want ensure that our elections are secure and accurate: ballots, counting method, reporting.

As it happens, this question may arise very soon. While consulting Town Clerk Sharon Linscott, I learned that the state's contract with the company that prints the ballots we use in Bar Harbor and leases the optical scanners to us will expire at the end of this year, 2019. The Maine Attorney General's office is preparing a request for proposals (RFP), but its terms are not yet known.

Hazards of voting by computer:

- A. Technical failure
- B. Interference, malicious or otherwise, in the voting process and/or in the counting & recording process (hacking); voting by computer would make Bar Harbor an attractive target.
- C. Costs: for equipment, security, of equipment, maintenance of software; these will be high.

Remedies:

- A. If voting by computer becomes necessary, e.g. via state mandate, then there **MUST BE** a paper backup for each ballot and a receipt for each voter
- B. Sufficient monies must be allocated for in-house (by a Town employee) security systems maintenance in addition to ordinary software and equipment maintenance

Recommendation:

Since we must use whatever voting technology the State of Maine mandates for federal and state elections, I respectfully suggest that, in addition to keeping abreast of the bidding situation in the Attorney General's office, we become proactive and give input to the Attorney General.

Open Town Meeting
Attendance

Handout 1/23/19

Year	Approximate Attendance	Remarks
2011	69	Residents request for full time planner and fulltime economic development director, and
2012	79	
2013	171	staff request for special project manager
2014	144	School board proposed cutting music position time
2015	170	2 bonds and Lease for Community Solar Farm
2016	117	Adding or cutting \$50K for broadband project
2017	440	Sanctuary Town Resolution & Bond for Parking Meters
2018	144	no big issues

Arthur Greif
8 Devon Road
Bar Harbor, ME, 04609

January 13, 2019

Dear Members of the Charter Commission,

I had occasion to watch the Commission's first public hearing on January 7, 2019 and I thank you for your careful attention to the speakers. I write because one speaker, Tom St. Germain, misremembered the factual and procedural history of the failed attempt to repeal and replace our Land Use Ordinance, and another speaker, Cornell Knight, both misremembered key facts surrounding the failed attempt to enact Article 13 and failed to understand the primacy of our First Amendment when it comes to elected legislative bodies such as the Warrant Committee.

Mr. St. Germain made the totally unsupported claim that Warrant Committee members did not read either the Land Use Ordinance or the proposed repeal and replace version that the voters rejected in June of 2015. I attended numerous Planning Board and Warrant Committee meetings on the repeal and replace issues, including the meetings of the General Government Subcommittee of the Warrant Committee. I had extended discussions with those Subcommittee members and was impressed at the efforts they made to closely examine what Mr. St. Germain described to your Commission as a \$100,000 effort to correct "typos" and make "very few changes" in the LUO rewrite. When that rewrite was on the Planning Board agenda, I always saw Warrant Committee members at Planning Board meetings, speaking as citizens.

The Planning Board voted unanimously to advance the rewrite despite these thoughtful criticisms from Warrant Committee members, speaking as citizens. Planning Board members assured the public that there were no substantive changes in the permitted uses in each of the many zoning districts in Town. At a preliminary meeting of the Warrant Committee on March 17, 2014, members of the General Government Subcommittee pointed out that the rewrite involved significant unnoticed changes in permitted uses in each district they had examined. This discovery involved a painstaking line-by-line comparison of the current LUO with the proposed LUO rewrite. Attorney Dennison, who helped the Planning Board in its rewrite, was in attendance and she emailed the Town Manager that evening, advising that the Town withdraw the LUO rewrite from the June 2014 ballot and pledging that she would refund \$5,000 of the legal fees she had been paid. The next night, the Town Council voted to pull the LUO rewrite because of the good work of the Warrant Committee in uncovering these errors. John Dargis was referring to this good work when he spoke with you on January 7, 2019.

The Warrant Committee had done its job. It had made sure that the Town did not present to the voters as a minor LUO rewrite what actually involved numerous significantly substantive changes. It made sure the Town was acting legally. I urge any interested Commission member to review the DVD of the March 17, 2014 Warrant

Committee meeting. I am happy to share my copy. It is also available at the library. It shows how careful the Warrant Committee was.

The Planning Board voted later that year to advance the LUO rewrite a second time for the November 2014 election. A General Government Subcommittee member discovered that neither the current LUO nor the rewrite incorporated the changes that Justice Murray had ordered in her January 2013 decision in *Bracale v. Town of Bar Harbor*. This was stunning. The entire premise of Justice Murray's opinion in *Bracale* was that the Town, in its formal notices, had advertised LUO changes as being very minor and affecting very few districts, when the changes were wide-ranging and affected most of the Town. Justice Murray had ruled that Bar Harbor voters had not been fully and fairly informed of the changes on which they would be voting. This LUO rewrite sought to reauthorize zoning changes the Court had already struck down. The Council voted on August 5, 2014 to pull the proposed LUO rewrite from the November 2014 ballot, because it failed to comply with Justice Murray's decision.

Once again, the Warrant Committee's dedication to its task had saved the Town from errors the Planning Board had never caught. The Warrant Committee had saved the Town the embarrassment of losing another potential lawsuit based on the Town government describing LUO changes as minor when the changes were major, or in legal parlance, substantive.

When the LUO rewrite came before the voters for an actual vote in June of 2015, some Warrant Committee members and other citizens wrote letters against it: it authorized giant electrical substations throughout the Town's residential districts; it inappropriately streamlined the subdivision approval process; it added hotels throughout one district which are limited to a single lot in that district in the current LUO; etc. The LUO rewrite was defeated by a vote of 58%-42%. Had the Planning Board listened and responded to the earlier concerns voiced by citizens, some of whom were Warrant Committee members, they could have fashioned a limited rewrite that truly did only what the Planning Board claimed it did: moved uses listed in Appendix C into the body of the LUO. Ultimately, the Planning Board did this and last year the incorporation of Appendix C into the LUO was approved by the Planning Board, endorsed by the Warrant Committee, and enacted by the voters. In 2016, the Planning Board and Planning Department prepared clear, concise warrant articles making several important changes in our LUO, which were overwhelmingly recommended by the Warrant Committee and passed by the voters.

This useful advocacy by the Warrant Committee came under attack by Cornell Knight at your January 7, 2019 hearing. He incorrectly claimed that three members of the Warrant Committee distributed and circulated petitions to place Article 13 on the June 2017 ballot. The sworn petitions are a matter of public record and each circulator was obliged to verify under oath that he or she had witnessed each signature. If this Commission examined those sworn petitions, it would discover that only one Warrant Committee member, Jonathan Eno, was a circulator.

More fundamentally, no elected official serving in a legislative capacity surrenders his rights to free speech and free petition under the First Amendment. The Town's Attorney, Bernstein Shur, advised some time ago that the vocal opposition to a zoning change by Warrant Committee members speaking before the Planning Board did not disqualify those members from voting on the same issues when they came before their own Committee. Public officials serving in a judicial capacity, such as LUO Board of Appeals members, must disqualify themselves if they have previously opined on an individual application. However, elected officials who are weighing broad legislative changes are always free to voice their opinions to others. In 2017, members of the Planning Board wrote a column in the Islander promoting Article 12 and critiquing Article 13. That was their absolute right to protected speech under the First Amendment. The First Amendment similarly protected Mr. Eno when he circulated a petition to place Article 13 before the voters. The First Amendment by its express language protects both "the freedom of speech" and the right "to petition the Government."

The Warrant Committee, elected by our voters, has taken its duties of public involvement seriously. It should be praised when any of its members circulate petitions for LUO amendments just as the Town Council-appointed Planning Board should be praised when it crafts LUO amendments on its own. Both help to make our democracy work. Similarly, the Warrant Committee should be praised for having reviewed the LUO rewrite so carefully on three separate occasions. It has provided a critical check and balance for our government which prevents one branch of government from becoming too powerful.

Both Mr. St. Germain and Mr. Knight have critiqued the First Amendment activities of Warrant Committee members. This Commission must craft any changes to the Charter by recognizing that the remedy to speech with which government officials disagree is not enforced silence, but more speech. Rather than silence the Warrant Committee by stripping it of its powers, the Commission should keep the Warrant Committee's powers intact. The Warrant Committee is part of the healthy checks and balances which promote a more robust democracy for all of us.

Sincerely,

Arthur J. Greif