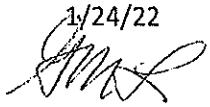


**CHARTER REVIEW COMMITTEE**  
**REVISED MINUTES**  
January 3, 2022  
*Virtual meeting convened and recorded  
with remote participation*

Date approved:  
1/24/22  


The meeting of January 3, 2022 was called to order at 5:30 pm by Jon Fuller, Chair, via Zoom. Present by roll call were Mr. Fuller, Mark Berson, Patricia Fallender, Robin Hubbard, Gail Meyers Lavin, Maxine Minkoff, and Walter North. David Lyttle, Town Moderator, was also in attendance. **This was a virtual meeting convened and recorded with remote participation via Zoom.**

**It was moved by Mark Berson, seconded by Maxine Minkoff, to approve the Minutes of December 20, 2021 and was voted as amended unanimously by roll call – 7-0-0.**

**Public Comment:** David Lyttle attended to say that he had watched the videos of the last two CRC meetings of Dec 6<sup>th</sup> and 20<sup>th</sup> and wanted to thank the CRC for sharing John Kelly's 2010 memo to the Moderator at that time, Duey Landreth, and to Town Counsel, and Michael Ford's letter in response. With the respect to the Dec 6<sup>th</sup> meeting, he said that he had no comment on any requests for changes that were brought up by the Finance Committee and would defer to the CRC or Town Counsel in that regard. He said that he was primarily attending to make comments relative to the meeting of Dec 20<sup>th</sup> and felt that he did need to say that a few or several of Finance Director Cathy Doane's comments at that hearing were very difficult and somewhat disparaging for the Finance Committee to hear. He added that one of the Finance Committee members had resigned as a result, and that he had attended a meeting with a quorum of the Committee on Dec 30<sup>th</sup> to discuss this issue because some of the members were visibly upset and concerned about the way the Dec 20<sup>th</sup> meeting had evolved and ended.

He reiterated that some of the members were upset, and he informed the CRC that at the end of that Dec 30<sup>th</sup> meeting, the Finance Committee had chosen essentially to rise above Ms Doane's comments and move forward with the work they had to do, noting that the next few months were the busiest time for them. He said that he had been pleased to hear that they had chosen not to take the issue to another level or cause any more angst, or take any further action, but rather intended to do their job as it was outlined in the Charter. He commented that his bottom line was that what happened at the last CRC meeting was much ado about nothing.

He said that if one looked at the June 2010 memo John Kelly had sent to the Town Moderator and Town Counsel, and which had been forwarded to him recently, the undertone seemed to be that the Finance Committee was flexing its muscles, ruffling feathers, and apparently doing things that might be frustrating for Town Counsel and the Finance Director at that time. He read out a portion of page 5 of Mr Kelly's 2010 memo stating: ***"Going forward it would be important for my office, outside of the traditional Fin Com areas of reviews as outlined above, to follow the previously established protocol and be contacted by the Chairman of the Finance Committee for requests involving either staff time or information."***

Mr Lyttle said that in his view nothing had changed in that the Finance Committee was definitely going through the Town Administrator to meet with any staff and emphasized that there was nothing wrong with the language in the Charter, which had been obvious when it was discussed in 2010. He commented that he thought that ruffling a few feathers was healthy, and that the fact the FinCom was doing so demonstrated that members were doing their job. He added that in terms of qualifications, several of the members were quite qualified, and contrary to Ms Lavin's comment when she said she had read something to do with appointing housewives, that although he had not appointed any to the Committee, he might very well do so in the future to add a certain aspect to it that might be missing. He said that there was no need to speak further since nothing had changed since 2010, as Town Counsel opined then, and he was opining now. He concluded by saying that he did not think changes were needed now, and it was a good thing that there were diligent members of the Finance Committee.

Ms Lavin said that she had to respond to Mr Lyttle's "housewife" comment in that she had been recalling on a section from the Association of MA Finance Committees Handbook that she had read after being appointed to the FinCom, about diversifying the composition of FinComs and that she thought the advice to select among CEOs to housewives was a funny example of the times, not whether any of our Town Moderators had appointed the latter.

Mr Berson said that he had looked at the operative documents on the issues. He noted that it went without saying that there was a certain degree of friction between the Finance Committee, the Director of Finance and perhaps the Town Administrator at least in a cultural sense. He added that he had read the enabling provisions of the Charter and the Massachusetts statute, and that the language in the Charter and what the Town Counsel wrote basically tracked the statute. He noted that the CRC had expressed support for considering a proposal that would make more explicit that the Charter would be the supreme law as long as it did not conflict with MGL. He also had gone to the Massachusetts Municipal Association and Finance Committees Handbook. He said he was bringing it up because there had been a suggestion that there be developed a Finance Committee Handbook for Orleans, and asked Mr Lyttle if he would support the development of a Handbook between the FinCom, Town Administrator and the Director of Finance, and whether that was appropriate. Mr Lyttle responded that he did not know. Mr Berson added that he was looking for a way to understand where the professional administration was coming from and divorcing it from whatever personalities there might be to find a way of fixing something as important as this.

Mr Lyttle commented that he had listened to an hour of Ms Doane's presentation, during which she had provided no specifics, and he did not think the FinCom should take on something like that now when they were so deeply busy. Mr Berson said he had not meant for it to be now, but that there had been areas the CRC had uncovered that had been worth bringing forward, like Emergency Planning and succession policies. He then returned to the importance of looking at other models to review. Mr Fuller pointed out that this was a policy issue and not Charter work. Mr Lyttle again said that he did not think it unhealthy for a Finance Committee, Town Administrator and Finance Director to disagree; but he was not there to opine on that. He commented that his job was to be the Moderator; so, he was reporting, at several people's request after reviewing the CRC's Dec 20<sup>th</sup> meeting, that he had had a good meeting with the Finance Committee and was glad that its members had agreed to just move on and do their job. Mr Fuller asked Mr Lyttle to stay while the Committee dealt with a few short items and that he would then be discussing section 8-1-6.

**Tracking Sheets:** Robin Hubbard said there had been no new input, and Ms Fallender said that she had realized that she was to have entered the FinCom ideas into the spreadsheet, but with the holidays and other matters she had not but would do so by next time.

**Resource Page Update:** Gail Meyers Lavin suggested that the email and memo correspondence from the Finance Committee, Finance Director Cathy Doane, and Town Administrator John Kelly, as well as the 2010 correspondence between Mr Kelly and Town Counsel with their interpretation of the provision that had been added to Charter section 8-1-6, should be made available in the Resource Folder. Members agreed by consensus. It was agreed to take Agenda Item 7 out of order so that Mr Lyttle could leave earlier.

**Further discussion on 8-1-6:** Mr Fuller read out the current language: "It is the responsibility of the Finance Committee to independently examine and analyze the Town's financial affairs, including proposed budgets, the Capital Improvements Plan, and all other proposals which would have a financial impact; and to inform the citizens of the Town of its findings and recommendations." Ms Lavin said that she had found a Summary statement for 8-1-6 from 2/16/2008 which read: "***This article adds a Finance Committee statement of purpose; clarifies Finance Committee and Board of Selectmen Joint Hearing responsibilities and submittal of Budget and Capital Plans to both. These clarifications do not change intent of the referenced clauses.***"

Mr Berson said that he was not sure if there was an appetite for looking at this further with a hope of making it better, noting that there were a lot of other models out there regarding the makeup of Finance Committees and

their responsibilities. He added that he was an advocate of defining the words in an operative document and referred again to the Association of Finance Committees Handbook. He asked if the Committee should spend some time on the length and breadth of what the words were meant to mean and whether it was in effect a method of auditing without stating as such, or did the CRC feel that it seemed to be working. He said that he felt that what the Director of Finance said was concerning and asked again if there was an appetite to further define the scope of the FinCom's role. Mr Lyttle said that he had no interest in being involved in a process like that, that the Town had had Town Counsel opine on this – and he had, and that it was not a perfect world. He said that people could agree to disagree, and that if the Town Administrator and Finance Director were comfortable with everything the FinCom raised, perhaps the FinCom was not doing its job. He remarked that in no way did he think the Finance Committee was trying to tell John Kelly and Cathy Doane how to enact municipal government – not heard that anyone was trying to do that and thought that it was just trying to do its job.

Ms Minkoff stated that in fairness she thought everyone was trying to do their best job; but asked if, as the CRC had done with other issues and areas, it should not be reviewed. She said that it could not hurt to look if it was the way the CRC wanted the Charter to be or not, that the conversation, and looking at it, should not be problematic, whereas not looking at it might be. Mr Lyttle responded that Ms Doane had provided no examples, and that if she had, then there would be something to review. Ms Fallender asked to go back to 8-1-6 and stated that, having served on the 2008 Charter Review Committee when the language was added, the CRC had always expected that the Finance Committee would give its opinion after all its hard work reviewing both reviewing the Budget and the Capital Improvements Plan and any Warrant articles that had a financial implication. She questioned whether instead of “proposals,” it might say “all Warrant articles and proposals” as a way to clarify it – or not.

Mr Lyttle remarked that he found it interesting that about 4 years ago, the Finance Committee had proposed an additional way to get revenue for the Town, which was not received at all well by the Town Administrator or Finance Director. Yet, he said, despite that the same revenue proposal – with respect to fees, etc. - was bought forth by the Town and had been approved by a recent Town Meeting. He added that he was not in favor of restricting the FinCom's work anymore than it was; rather that perhaps it was doing it well and its purview should go a little further. He added that this work had not been part of the FinCom's purview, but it had nonetheless spent a lot of time trying to help the town, which was commendable; so again, he was not in favor of limiting its role in any way and said that it may have been an example of how well its members had been doing their jobs.

Mr Fuller remarked that he had not been aware of the June 2010 correspondence and was sure that most people today were unaware of it. He pointed out that the opinion of Town Counsel was clear – and essentially the Attorney General had approved it that way too. He agreed that it could be interpreted in more than one way, but having now seen the June 2010 memo, he thought 8-1-6 should stay the way it was. He added that he did not see any expansion of the Finance Committee's powers. Mr Lyttle said that he respected all the energy and time the members of the CRC were taking, but it had been very difficult for the FinCom to listen to the last meeting. Mr North said he would like to recommend that the language stay as it was, including the structural independent oversight, as it seemed to be more or less working. **It was moved by Mr North, seconded by Ms Lavin, and preliminarily voted unanimously to make no change to the language of 8-1-6 by roll call 7-0-0.**

**Review Preliminary Votes Spreadsheet:** Ms Lavin said that she had tried to pull out the Preliminary Votes taken in Chapter order and put them on a spreadsheet, that she had done a run-through of the meeting dates left before multi-member bodies were required to submit their articles, and that the deadline was Feb 21<sup>st</sup>, one hour before that date's CRC meeting. She added that the Committee had only five possibilities to meet, excluding Martin Luther King Jr Day.

She strongly recommended that the CRC concentrate on the following:

**Chapter 2**, the Quorum change; changing the timings and publication of the Warrant articles; going forward with changing five minutes to two minutes for speaking at Town Meeting and making the language of 2-7-6 and 2-7-7 consistent with that of 8-3-3, all of which she thought should be simple to prepare.

**Chapter 3**, with the Code of Conduct; Emergency Plan; deleting 3-5-3 the Intermunicipal Agreement clause; and possibly a housekeeping article at 3-10-1, which has not been reviewed yet, to remove language stating "on the effective date of this Charter..."

**Chapter 4**, considering the change of Title only from Town Administrator to Town Manager

**Chapter 5**, to delete "unpaid" regarding the Old King's Highway

**Chapter 6**, various issues with Associate members language, ie: add "and vote" and some other updated language; the request of the Board of Water and Sewer Commissioners to increase to 7 members; and to change the composition of the Community Preservation Committee to include a representative appointed by the Recreation Advisory Committee

**Ch 7 and 8**, to change the "newspaper" language to be made consistent with the "Town website" language elsewhere ("Local public bodies are required to post notices in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located. This may be a bulletin board, an electronic display, or a binder. As an alternative method of notice, a municipality may adopt a website as the official notice posting method for all the public bodies within the municipality, and must notify the Attorney General's Office in writing of the website's address. Municipalities that have not adopted websites are noted in the spreadsheet as posting a "physical notice." Website - Office of the Attorney General)

**Ch 9**, to change "shall" to "may" in presenting a report to Town Meeting

She said that some of them could be brought forth together into one article. She proposed using the spreadsheet to identify what could reasonably be brought forward, and then use the "shepherd" assignments for each person to take the proposed articles within their chapter, find anything else that would need to be made consistent with proposed articles identified; and stop doing any further consideration of Chapter changes until this work was done, the articles and summaries written, the Public Hearing scheduled, and the articles recommended to the Select Board. She stated that if this were not done, the Committee would lose the opportunity to bring forward any articles in May.

Ms Hubbard went over the timing from when the Warrant opened (Feb 8th) until it closed on Feb 21<sup>st</sup>. Mr Fuller noted that March 10<sup>th</sup> was the deadline date for others, and that articles could be put on the Special Town Meeting Warrant too. He said that the Committee must meet more often to bring forward what each member of the Committee thought should be in the Warrant and reach consensus. Members agreed that Ms Lavin's suggestions were valid.

Ms Fallender agreed that it was reasonable to provide a rationale without having to jump through hoops. She pointed out that there was more work to do with the Board of Water and Sewer Commissioners' article to increase membership, which must be checked with Town Counsel. She also suggested that each of those who have proposed articles within Chapters could work with someone else and bring drafts back to the full committee.

Mr Berson asked for guidance on prioritizing, and Mr Fuller recommended that Ms Lavin's spreadsheet should be used to determine which each of us wanted to do, and reach consensus. He said that the priorities should be sent to him where he would tabulate them to see which articles were the simplest. Ms Hubbard asked if the issues of redundant language in Chapters 5 and 6 regarding multi-member bodies should be looked at now or later. Ms Lavin suggested waiting because the CRC's past history had shown that it took a lot of readings to agree the words and would take too long. Members acknowledged that there were already two potential articles in Chapter 6, and it would be good to get them resolved and in process. Mr Fuller informed the Committee that he had put in a request with Mr Kelly to meet with Town Counsel to ask about the format of the articles and summaries, etc. but had not had a response yet. Ms Fallender said that her recollection was that in the last CRC, she visited with Mr Ford on several occasions in advance of the Public Hearing to confirm appropriate language and to ensure that what was presented at the Public Hearing was in as close to "Warrant-ready" form as it could be, subject to amendments that came up at the Hearing.

Mr Fuller said that he would ask the Town Clerk and let members know what was possible for Jan 10<sup>th</sup>, 24<sup>th</sup> and 31<sup>st</sup>, and Feb 14<sup>th</sup>. Ms Minkoff asked if Ms Lavin could do something like she did for Chapters 1 through 4 to insert the proposed articles within the Charter language, to which she agreed, and Mr Fuller asked for a clean copy to be sent to all.

**Continuation of Chapters 3 and 4:** Mr Berson read his recommendations for 4-2-1, a new section identifying **Qualifications**, sent by email on December 23<sup>rd</sup>, which would delete the existing 4-2-1. Members discussed the specificity of including Microsoft Office Suite, and several said that they preferred the existing 4-2-1 as it was, with the educational qualification and experience. Members went over the specifics and concluded that the items might fit better in a job description or interview at which time questions about those skills would be discussed. Mr Fuller added that they might better be placed in the **Duties** section.

Mr North stated that he did not think the existing "at least two years of prior full time compensated executive service in public or business administration, and a master's degree in an appropriate discipline" was enough. After further discussion, Mr Berson made the point that increasing from two to five years as had been suggested would limit the field dramatically, if hiring platforms like Indeed were used, and could prevent the Town from getting good candidates because those with fewer years of experience would automatically be purged out. Ms Lavin agreed, saying that she knew people who had graduated with her MPA class and become Town Administrators within five years, and further commented that the MA Municipal Association was concerned at the number of professional administrators aging out, so there was a push to encourage a younger demographic to enter the field.

**After Ms Fallender moved and Ms Lavin seconded a preliminary vote to leave 4-2-1 the way it was, there was further discussion during which Mr Berson reminded members that the next hire would be a significantly important choice and the search should be given as much flexibility as it can. Ms Lavin offered an amendment to the motion, seconded by Ms Fallender, to keep 4-2-1 as it was, but to change the last sentence to make the sentence read "at least three years..." instead of "two" ... "and a master's degree in an appropriate discipline..." , which was carried by roll call 6-1-0. The new preliminary main motion as amended was voted by roll call 6-1-0.**

In **Duties**, Mr Berson said that in his proposed additions to 4-3-2 he had added items (m) Ensure compliance with public meeting laws, (n) coordinate personnel training and other tracking, (o) oversee management of Town website, and (p) assist the Select Board in economic development, community relations and recreation. Ms Lavin said that she did not think the CRC was ready to make these changes given that it would be fully considering changing the role of the Town Manager at a later time, and that some of it seemed better placed in a job description. Ms Minkoff suggested that these would be more appropriate for the Select Board to come up with in a Job Description. Mr Fuller agreed, also noting that the Planning Board was already responsible for economic development. Ms Lavin commented again that this was not something that could be considered for May, and if the CRC chose anything in Chapter 4, it could be to change the title; but it was an area that was going to need a lot of Select Board input; and she suggested tabling it until the rest of the articles were ready for Town Meeting.

Ms Fallender stated that, while in this area, she had been asked to find out about the language in 4-3-2 (c) and had been referred to the Town Clerk to find the "Doings" of 1998. She said that that the second sentence, "The Town Administrator, with the approval of the Board of Selectmen and the Finance Committee, shall have the authority under extraordinary circumstances to transfer funds within the budget as long as the total budget is not increased" should not have been in this CRC's certified copy, nor on the website, and she could confirm that it had not been in the copy used by the CRC in 2014. She explained that because the Attorney General had not approved it after it was voted at Town Meeting, it had never been presented on the ballot for its second vote in 1998. She said that she and the Town Clerk had

agreed that the CRC's next memo would be to ensure that the sentence was deleted from the website and the e360 code, which went from Ms Darling's office on Dec. 17th.

Mr North said he was conflicted about Ms Lavin's suggestion to park section (o) because there had been a lot of concern expressed by citizens about the quality of the communications and the website, which was a core function; but he respected the point about the Committee's workload. Mr Fuller responded that it should be put on the ideas' spreadsheet, but not be put forward for this Town Meeting. Ms Lavin commented that a new website would be online, it was hoped, by next month; but Ms Minkoff noted that it was not only the website, but the responsibility of the Town Administrator to create constant communication and transparency, and Mr Fuller added that this had been a major complaint that people were not getting the information they needed.

Mr Berson said that in Section 9, which referred to procedures to remove a Town Administrator, he recommended removing the existing 4-9-4 which read: "The Moderator shall preside at any such hearing." He proposed "The Town Moderator may designate a professional neutral hearing officer to conduct and preside at any such public hearing in place of the Moderator. The rules of evidence shall not apply to the removal hearing process and/or proceedings." He explained that a particular Moderator might very well be perfectly fit to be a neutral hearing officer, but he/she might not, so he had tried to provide an alternative whereby the Moderator could select a public hearing professional. He added that, as far as the rules of evidence were concerned, he had learned the hard way that they did not work in an administrative hearing. Mr Berson gave an example of the formality used in a courtroom, but not in administrative hearings, which allowed some hearsay.

Mr Berson explained that his new proposal for 4-9-4 would state that if a Town Manager were to contest or litigate the removal process, he/she would be responsible for his/her own legal expenses. Members raised a number of questions, including whether there would be liability insurance within his/her contract, whether the contract had certain waivers related to this issue, etc. He responded that these issues really should be integrated with the employment contract, but the CRC had not seen the contract, and there could be a dichotomy between the contract and the Charter – and he was looking at this issue in a defensive way for the Town. Mr North questioned whether, if the town were found to be acting with malicious attempt, the Town Administrator could sue and be paid back if he/she won. Mr Berson responded that it ought to be clear that the Town would or would not pay for one's counsel in an employment contract, but many of these issues could not be answered without having seen Orleans' particular employment contract; so, he said he was looking at this in a defensive way for the Town in that a Town Manager would understand when applying that he/she would be responsible for his/her own attorney fees in the event of a potential removal.

Mr Fuller said that he supported 4-9-4, although the Town Manager should understand that it was one of his/her jobs. After discussion involving the differences in experience between a Moderator who might be an attorney and a lay person, it was agreed that it would be wise to give that position discretion, although, as Ms Minkoff had pointed out, the Moderator would not be acting as the decision-maker and would have his/her role prescribed. Mr Berson again said that the Committee did not know how elaborate the Town Administrator's contract was, and Ms Hubbard agreed that there should be flexibility, given that Orleans was a small town, and the Moderator would know the Administrator. Members agreed that offering flexibility allowed the Moderator to say whether he/she wanted to put someone professional in the hearing officer role.

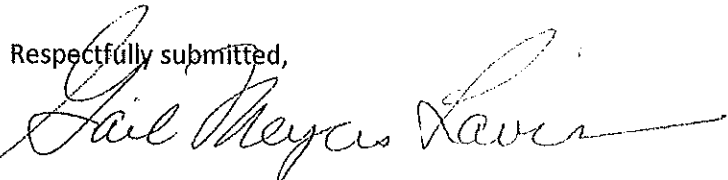
**A motion was made by Ms Minkoff, seconded by Ms Hubbard to take a preliminary vote to leave the existing sentence in place but modify it to read: "The Town Moderator shall preside at any such hearing or designate a professional neutral hearing officer to conduct and preside at such a public hearing in the Moderator's place;" and add a second sentence to read: "The rules of evidence shall not apply to the removal hearing process and/or proceedings." It was voted unanimously 7-0-0 by roll call.**

Ms Fallender noted that if 4-9-4 is changed, 5-3-1 (d) would also have to be changed. Mr Fuller stated that 4-9-8 needed more thought and might again be contractual, as Ms Minkoff said, but should remain under consideration for the Select Board.

**Chapter 5:** Mr North said, until Ms Fallender mentioned 5-3-1 that he did not think there was going to be much to consider, assuming people were comfortable with the current elected officials, and the rest were mostly scribes' work. It was noted that George Meserve had asked the Committee to consider removing the word "unpaid" in 5-9-1.

**Future agenda items:** Mr Fuller said that he would talk with the Town Clerk about additional meetings, ask Mr Kelly to speak with Town Counsel on the sequence for the Public Hearing; and he added that once Ms Lavin sent an updated spreadsheet and document of where the proposals fit within the existing Charter language and members determine their first priorities and send them to him, the Committee can decide, present them to Town Counsel and call the Public Hearing. Mr Fuller assured Ms Minkoff that Chapter 9 had not been forgotten; but the Hearing articles were the current priority. Mr Berson suggested that Mr Fuller speak with Alan McClennen in an attempt to move the possibility of additional members to the Board of Water and Sewer Commissioners to the fore.

It was moved by Ms Lavin, seconded by Ms Fallender to adjourn at 7:30 pm by roll call – 7-0-0.

Respectfully submitted,  
  
Gail Meyers Lavin, Clerk

The next meeting will be held via Zoom at 5:30 pm on January 24, 2022