

**Town of Bennington**  
**Charter Review Committee**  
**Minutes**

**Town of Bennington  
Charter Review Committee**

**Friday, July 21, 2017**

**12:00 p.m.**

**Town of Bennington Conference Room**

**205 South Street**

**Bennington, Vermont 05201**

**MINUTES**

**Members Present:** Jon Cohen, Robert Ebert, Lynn Green, Michael Keane, Dan Malmborg, Sean-Marie Oller, Robert Plunkett

**Also Present:** Dan Monks, Tom Jacobs, Ed Damon

**Meeting was called to order at 12:00 p.m.**

**Introductions & Organization of Committee:** All of the members of the committee introduced themselves. Dan Malmborg nominated Sean-Marie Oller and Robert Plunkett as Co-Chairs of the committee, Michael Keane seconded the nomination. They were elected by a unanimous vote.

**Method of Communication:** All were made aware that the open meeting law applied to the Charter Review Committee. It was suggested that a group e-mail be created by the Town for them to use, so that all e-mail correspondence was located on the town's e-mail server. The committee also requested that a link for the committee be created on the Town's website. Information regarding the committee's work and requests for public input will be placed on the Town's website.

**Establish Meeting Dates & Times:** The committee agreed that, commencing on August 2<sup>nd</sup>, 2017, they would meet, at least initially, on Wednesday's from 11:45 am to 1:15 pm. The committee requested that town staff ask Jim Barlow, an attorney specializing in Municipal law, to attend the August 2<sup>nd</sup> meeting to facilitate their review of the Charter. The Co-Chairs will work with staff and Mr. Barlow to prepare an agenda for the August 2<sup>nd</sup> meeting.

**Information requested by the Committee:** The committee discussed the topics that they may wish to consider including the Downtown Improvement District and the advisability of a mayoral system of government. The committee requested that staff develop a list of Vermont Towns with a mayoral system of government, a list of towns with a town manager system of government, and staff recommendations of charter issues to consider. The committee members agreed that they would each review the Charter again and make a list of sections/issues that they would like the committee to consider.

**The meeting was adjourned at approximately 1:15 pm.**

Respectfully submitted

Daniel W. Monks  
Asst. Town Manager

1 CHARTER REVIEW COMMITTEE MEETING

2 BENNINGTON FIRE FACILITY

3 130 RIVER STREET

4 BENNINGTON, VERMONT 05201

5 AUGUST 2, 2017

6 MINUTES

7 **COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmborg;  
8 Jonathan Cohen; Michael A. Keane; P. Lynn Green; and Robert Ebert.

9 **COMMITTEE MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town  
11 Clerk; Joan Pinsonnault-Treasurer; Jeannie Jenkins-Select Board; Jim Barlow-Attorney and Nancy H. Lively-  
12 Secretary.

13 At 11:45 AM, Co-Chair Robert Plunkett called the meeting to order.

14 1. MINUTES – JULY 21, 2017

15 *Michael Keane moved and Robert Plunkett seconded to approve the Minutes of July 21, 2017 as*  
16 *submitted. The motion carried unanimously.*

17 3. QUESTIONS

18 Please hold questions until the end of the presentations

19 *Michael Keane moved and Sean Marie Oller seconded to amend the Agenda to allow questions*  
20 *throughout the presentation. The motion carried unanimously.*

21 2. PRESENTATION BY JIM BARLOW

- 22 a. Overview of Town Charters  
23 b. Specifics related to Bennington Town Charter  
24 c. Process for amending a Town Charter  
25 d. Role of Committee to review Charter

26 Jim Barlow, shared his background with the Committee and is now an attorney specializing in Vermont  
27 Local Government Law. The following are the highlights of his presentation:

28 *Municipal Governance Charter -*

- 29 • Charter amendment must follow a statutory process.  
30 • In 39 states, local governments are free to pass laws and ordinances as they see fit, limited only by  
31 the bounds of the state and federal constitutions. However, Vermont is not one of them.  
32 • Vermont's constitution does not grant any power or legal authority directly to the state's  
33 municipalities, except that the Town Clerk keeps land records for the town.  
34 • Vermont municipalities only have those powers specifically delegated to them by the Legislature.  
35 "We cannot make it up as we go along."



- The Bennington Charter is a grant of state law, approved by local voters and the Legislature that sets out specific laws for operation of local government in Bennington.
- There are 9 cities, 50 towns and 50 village charters plus fire district charters, etc. in Vermont. Most charters are available online in Title 24A.
- Amending the Bennington Charter is amending the laws of the State of Vermont as they apply to Bennington.
- If there is a conflict between a Town Charter and the State Statute, the more specific statute controls. For example, the fact that Bennington appoints Listers trumps the State Statute of electing them.
- Four characteristics define a local governance model: What officers are elected and which are appointed?; Who appoints, controls and directs municipal employees?; How are the budget and tax rate set?; What powers do the voters have?.
- Basic statutory town government model has 16 elected town officers are mandatory unless opted out in the Town Charter: Selectboard; Clerk; Treasurer; Constable; Town Agent; Listers; Auditors; Grand Juror; Moderator; Delinquent Tax Collector.
- Within their statutory responsibilities, one elected position does not answer to another.
- The only requirement to hold any of these elected positions is that you are a resident and registered voter in the town. Being a resident of the town is not required for an appointed position.
- Bennington is one of 16 towns that have a recall process for elected officials.
- Voters adopt the budget; Selectboard sets the tax rate and administers the budget during the fiscal year.
- The selectboard operates like a proprietor of a small business.
- Voters also have the right to disapprove town ordinances, adopt zoning bylaws, and approve borrowing, etc. This is called Permissive Referendum.
- Town government relies heavily on political remedies and "social control" which is as much tradition as it is statute.
- Town government has a high level of accountability and transparency making the process very slow. The lack of time, expertise, and resources within selectboards also impedes the efficiency. Nevertheless, 187 Vermont towns operate under this model. "It is a great way for ordinary people to govern themselves."

#### *Municipal Manager Form of Local Government -*

- Bennington, along with 53 other Vermont municipalities, has adopted the manager form of government through a local vote of a municipal governance charter.
- The Selectboard retains its quasi-judicial and legislative functions but the administrative and executive responsibilities are vested in the manager who reports to the selectboard.
- The manager is hired to assist the board in determination of policy and serves at the direction of the board to carry out those policy decisions.
- The selectboard operates like a board of directors in a public corporation.

#### *Vermont City Government*

- A city is a city rather than a town because the local voters decided to do so and is not determined by population.
- There are 9 cities in Vermont and all cities must have a Charter.



- There are fewer elected and more appointed city officers. Most cities have an appointed city manager and a mayor with varying responsibilities.
- The voters are not directly involved in the budget approval process. Generally, the city governance system is more representational and less participatory than statutory town government.

*Rutland City – strong mayor – Population 17,292*

- Mayor, treasurer, and assessor elected for two year term; mayor appoints the city clerk and attorney for two year terms; no city manager.
- 11 member board of alderman elected to two year terms, adopt and amend city ordinances, and confirm appointments made by mayor.
- Mayor and president of board of aldermen comprise the board of finance who approves payment of the bills.
- City clerk and city treasurer has same authority as town clerk and town treasurer. Elected assessor same authority as town listers.

*Barre City – intermediate mayor – Population 9,291*

- Clerk, treasurer and mayor elected to two year terms; manager appointed by city council; and assessor appointed by manager subject to city council approval.
- City council is comprised of six aldermen and the mayor; council appoints the manager, attorney most board and committee members, fills vacancies in elected offices, adopts ordinances and determines all matters of city policy.
- The mayor is the leader of the city council but has little executive authority under the charter.
- The manager is the chief administrative officer of the city appointed by the city council to an annual term and can be removed without cause. He/she appoints and removes all department heads and other officers and is responsible for carrying out city council policies.
- The city council is prohibited from giving orders to anyone that reports to the manager.
- The mayor is the “public face” of the city, whereas the manager runs the city.
- City clerk and city treasurer has same authority as town clerk and town treasurer. Manager appoints the assessor subject to city council approval and has the same authority as town listers.

*South Burlington City – no mayor – Population 15,418*

- Clerk elected to three-year term; manager and treasurer appointed by city council; no mayor; assessor appointed by manager.
- Council is comprised of 5 members elected at large for two and three year terms; appoints the manager, other officers and board members; and adopts ordinances subject to voter initiative authority.
- Manager is CEO of city appointed by the city council to an indefinite term and removed from office without cause on 90 days notice.
- Manager is responsible for all financial accounting and reporting, enforcement of all city laws and ordinances, and collects all current and delinquent taxes.

*Town of Bennington – Population 15,764*

- Clerk and treasurer elected for three year terms; 7 member selectboard elected for three year terms; manager appointed by selectboard; and a 3 member board of listers appointed by the selectboard is unique to Bennington.
- Voters have authority to compel nonbinding advisory votes on warning, as well as, the authority to recall elected officers.
- Selectboard has authority to set speed limits less than 20 mph; establish polling places; establish special assessment districts without a vote of the town; and a person appointed to fill a selectboard vacancy holds the position until the next annual election.
- A reduction in town property tax is allowed for those living in Bennington Fire District No. 1.
- Establishing the Bennington Downtown District in the charter is also unique to Bennington.

#### *Things to Think About –*

- Should Bennington have a mayor? A mayor can function as a CEO or be a ceremonial figure.
- If so, what should the role of the manager be? A manager would complement the role that the mayor takes.
- Should Bennington have a local option tax? 1% local option tax on sales, rooms, meals, and alcoholic beverages would require an amendment to the charter.
- There are some charter “housekeeping” changes – grammar, terminology, spelling, etc. – that need to be addressed when amending the charter.
- The charter amendments will be presented to the voters in sections.

#### *Charter Amendment Process –*

- The committee drafts a charter amendment; it goes to the selectboard who decides if it should go to the voters and can amend the changes as they see fit.
- Once approved by the selectboard, the proposal goes to the town clerk who puts it on file for availability to the public.
- No later than 10 days after the filing, the selectboard must hold the first of two informational hearings on the proposal. The first hearing must be held at least 30 days before the meeting at which the voters will vote to approve the amendment.
- The selectboard may revise the proposal based on the hearings.
- Voting on a charter amendment is by Australian ballot.
- If the amendments are approved, the clerk must certify the results to the Secretary of State. Be sure to follow-up that the Secretary of State has received it.
- The amendment becomes effective upon affirmative enactment by the Legislature.
- As a state statute, the Legislature is free to amend the charter proposal as it sees fit, although, most pass through without change.
- The selectboard and manager should be ready to testify and advocate for the proposal in the Statehouse. If they wish, citizens may also testify.
- Speak to as many representatives as possible before it goes to the Legislature so they are aware that this is the wish of the voters.

The Committee will list questions as they come up and contact Mr. Barlow on an as needed basis going forward.

157 The next meeting will be August 9, 2017 at 11:45am in the Conference Room of the Bennington Town  
158 Office.

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160 *At 1:25pm, Jonathan Cohen moved and Robert Ebert seconded the adjournment of the meeting. The*  
161 *motion carried unanimously.*

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165 Respectfully submitted,

166 Nancy H. Lively

167 Secretary

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**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**

**AUGUST 9, 2017**

**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmborg (at 11:55am); Jonathan Cohen; Michael A. Keane (skyped from The Netherlands); P. Lynn Green; and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town Clerk; Michele Johnson-Human Resources and Contracts Administrator and Nancy H. Lively-Secretary.

At 11:45 AM, Co-Chair Sean Marie Oller called the meeting to order.

**1. PUBLIC COMMENTS**

None.

**2. APPROVE MINUTES OF AUGUST 2, 2017**

*Michael Keane moved and Jonathan Cohen seconded to approve the Minutes of August 2, 2017 as submitted.*

Ms. Oller requested that the PDF of Attorney Barlow's power point presentation be attached to the end of the Minutes. The Committee agreed.

*The motion carried unanimously.*

**3. REVIEW OPEN MEETING AND PUBLIC RECORDS REQUIREMENTS**

Mr. Plunkett pointed out that any e-mail exchange among committee members is public record, so a separate file should be created by each member where all charter committee communications can be stored. E-mail exchanges are not considered to be a "meeting" unless a quorum, or four members, are involved.

Ms. Oller clarified that if an individual unable to access the Town's website requests a copy of the Minutes or The Charter, for example, that town staff would send them one, and Mr. Hurd agreed.

**4. TIMELINE FOR CHARTER REVIEW TOPICS AND SETTING AGENDA TOPIC FOR NEXT FEW MEETINGS**

Mr. Ebert would like to start on Page 1 of the Charter and work through it to the end, stating that it is an "organized and structured" document that should be reviewed as a whole. He sees the beginning chapters as "easier" topics for discussion and that will give the Committee the opportunity to familiarize themselves with each other which may make the discussions of the "thornier" topics go more smoothly. He also feels that methodically reviewing the document as it exists will promote credibility to the Committee and rebut those that may feel that the Committee is "agenda driven".

35 The rest of the Committee agreed with Mr. Ebert's approach recognizing that, apart from the more  
36 "boiler plate" issues, there will be "parking lot issues" that will require lengthier more in depth discussions.

37 Mr. Plunkett expressed a different approach – not necessarily one that he agreed with – where each  
38 issue should be taken separately because of the fact that there are major issues that the Committee was  
39 charged with that everyone is aware of, i.e., mayor or manager, taxation, downtown district and TIF.

40 Ms. Green feels that the Committee is aware that there are "pebbles and boulders" for issues. The  
41 pebbles may be able to be decided in one meeting, whereas, the boulders may take several meetings each.

42 Mr. Ebert stated that the Charter gives us a year and we shouldn't have hard and fast deadlines that  
43 rush the Committee into decisions by November 1, 2017 just to be able to bring it to the voters for the March  
44 2018 vote.

45 Mr. Cohen likes deadlines, and noted that only some of the changes may be ready for the 2018 vote  
46 when others may not be ready until 2019. Mr. Hurd agreed that is possible.

47 Given the discussion, Ms. Oller proposed the following agenda schedule to also include the continuation  
48 of the final report, housekeeping amendments and communication at each meeting:

- 49 • August 16<sup>th</sup> Meeting – Chapters 1-4
- 50 • August 23<sup>rd</sup> Meeting – Chapter 5
- 51 • August 30<sup>th</sup> Meeting – Chapters 6 and 7
- 52 • September 6<sup>th</sup> Meeting – Chapter 8

53 Mr. Plunkett would prefer to pull out the topics that may be changed and discuss them as they occur  
54 during the review.

55 Ms. Oller added that this schedule does not mean that we will spend 4 weeks just reviewing the  
56 Charter that exists. We will be "playing it by ear" as we roll through the chapters and will adjust our agenda  
57 accordingly.

58 ***Robert Ebert moved and Robert Plunkett seconded to review the entire Charter, pages 1-23, and to go***  
59 ***back as needed.***

60 Mr. Keane added that he just wanted to be sure that the Committee is not just going to proofread the  
61 Charter but will take on the issues as they occur.

62 ***The motion carried unanimously.***

63 Mr. Ebert asked how decisions are made within the Committee, and they are made with a majority  
64 vote. The Committee will conduct itself by following the Roberts Rules guidelines. Those who disagree with  
65 the vote are free to explain why they voted against, however, should back the decision that the Committee  
66 made.

67 Mr. Cohen questioned his qualifications to be making changes to the Charter, and Mr. Malmberg stated  
68 that that was the charge the Committee was given by the Select Board.

69 **7. COMMUNICATION: SOLICITING INPUT, CHARTER REVIEW WEBPAGE ON TOWN WEBSITE**

70 Mr. Keane asked if there had been any public input, and there has not been any at this time.

71 Ms. Oller suggested creating a blog on the town website for gathering citizens input with no reply  
72 expected. Getting the word out to the public could be done through a Select Board meeting, Letter to the  
73 Editor in the Banner, and Mr. Hurd could mention the various communication opportunities in his monthly  
74 column.

75 Mr. Plunkett would also like to specifically invite any "stakeholders" to a Committee meeting where a  
76 topic that is of specific interest to them is on the agenda.

77 After further discussion concerning potential monitoring of a blog, it was decided that an e-mail address  
78 with an auto reply would be the best vehicle for public comments. And, as always, any citizen may attend a  
79 Select Board meeting and make their comments under Citizens. Ms. Oller and Ms. Johnson will create the e-  
80 mail address and auto reply message.

81 Ms. Oller suggested, and the Committee agreed, that she and Mr. Plunkett should attend the August 28,  
82 2017 Select Board meeting to update the Board on the Committee's progress, and Attorney Barlow should be  
83 scheduled for an hour presentation to the Board on the September 25, 2017 meeting.

#### 84 **6.HOUSEKEEPING AMENDMENTS**

85 To be done as they occur.

#### 86 **5. FINAL REPORT FORMAT**

87 Mr. Keane made the following comments:

- 88 • As a committee, we will need to present a professional final report to the Select Board that will be a  
89 public document.
- 90 • An outline should be developed where the Committee decisions can be entered as they are made  
91 explaining how and why such decisions were made, and not be held until the end.
- 92 • They need to be "high level", structured and easily understood.
- 93 • He will work on putting together some format templates for the Committee.

94

95 Mr. Hurd will send the Committee the housekeeping changes that the staff has notated on Chapters 1-  
96 4 for their perusal.

97 Mr. Cohen requested Select Board input concerning the Charter changes, and Mr. Hurd will ask them  
98 to provide that.

99

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101 ***At 1:06 pm, Daniel Malmborg moved and Robert Ebert seconded the adjournment of the meeting.***  
102 ***The motion carried unanimously.***

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104 Respectfully submitted,

105 Nancy H. Lively

106 Secretary



CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

AUGUST 16, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmborg; Jonathan Cohen and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** Michael A. Keane and Robert Ebert.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town Clerk; Michele Johnson-Human Resources and Contracts Administrator; Joan Pinsonneault-Treasurer; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:45 AM, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS**

None.

**2. APPROVE MINUTES OF AUGUST 9, 2017**

*Sean Marie Oller moved and Daniel Malmborg seconded to approve the Minutes of August 9, 2017 amended as follows:*

*Page 2, Line 67 – change “questioned his qualifications” to “felt that he would need additional outside consultation on the manager/mayor issue to be qualified”*

*The motion as amended carried unanimously.*

**3. REVIEW BENNINGTON TOWN CHARTER CHAPTERS 1-4**

Mr. Plunkett stated that some of the changed that Mr. Keane had submitted did not follow the Town Charter that is on the Town’s website, which, in turn, does not follow the Charter as it appears in the Statute. For today’s discussion, we will use the Charter that is on the website but will need “an editable copy” for next time.

Review of the Charter began as follows:

“AN ACT TO PROVIDE A CHARTER FOR THE TOWN OF BENNINGTON

It is hereby enacted by the General Assembly of the State of Vermont:

**Sec. 1. RATIFICATION**

The amendments to the Charter of the Town of Bennington, as approved by the voters on June, 1991, September, 1994, and March, 2003, are ratified.”

- Mr. Plunkett: The above is not part of the Charter but part of the Act.

35 "Sec. 2. PREAMBLE

36 The people of Bennington reaffirm faith in Government of the people, by the people, and for the people  
37 and describe this government in a Charter with provision to review and amend. The Charter of the Town of  
38 Bennington reflects concern to improve the quality of life for all people."

- 39 • It was decided that, since the "Sec. 2." was related to the Act, that it could be removed from the  
40 PREAMBLE, which is the beginning of the Charter.
- 41 • Ms. Oller: Questioned, exactly, what "reflects concern" means. Discussion ensued to replace "reflects  
42 concern" with "exists" or "desires" and to replace "people." with "people and to improve the  
43 operation of town government."
- 44 • Mr. Plunkett: Asked Mr. Hurd why this Preamble amendment had been made in 1993 or 1994, and he  
45 responded that it was because, at the time, the legislature struck the language that addressed the  
46 specifics of whom the Town did not discriminate against.
- 47 • After further discussion, the majority of the Committee did not want to change "reflects concern". Ms.  
48 Oller still preferred "exists" and Mr. Plunkett doesn't feel that any wording should be changed or  
49 added.
- 50

51 *Daniel Malmborg moved and P. Lynn Green seconded the following change to the end of the*  
52 *PREAMBLE:*

53 *Change "all people." to "all people and to improve the operation of town government."*

54

55 *The motion carried with Robert Plunkett opposed.*

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57 "POWERS OF THE TOWN

58 Sec. 101. General law applies

- 59 (a) All provisions of the Constitution and laws of the state relating to towns and villages shall apply to  
60 the Town of Bennington, except as modified by this act;
- 61 (b) The Town of Bennington shall have all the powers and functions conferred upon towns and villages  
62 by the Constitution and general laws of this state and shall also have all implied powers necessary  
63 to implement such powers and functions;
- 64 (c) The powers and functions conferred upon the Town of Bennington by this act shall be in addition to  
65 the powers and functions conferred upon the town by laws now in force or hereafter enacted.  
66 Nothing in this act shall be construed as a limitation upon such powers and functions."
- 67 • Ms Oller: Asked what "implied powers necessary to implement such powers and functions" means, and  
68 the best explanation by Mr. Monks was that implied powers were those powers under expressed  
69 powers. For example, an expressed power would be to set a tax rate, whereas an implied power under  
70 that would be to send out the bills reflecting that rate.
- 71 • Discussion ensued with the Committee deciding on the following changes:
- 72

73 Daniel Malmborg moved and Sean Marie Oller seconded the following changes to the POWERS OF  
74 THE TOWN:

75 Sec. 101. General law applies, (b), Line 2 – Delete “general”

76 Sec. 101. General law applies, (b), Line 3 – Change “this” to “the” and “state” to “State”

77 Sec. 101. General law applies, (c), Line 2 – Change “act” to “Charter”

78 Sec. 101., General law applies, (c), Line 3 – Change “town” to “Town”

79 Sec. 101., General law applies, (c), Line 3 – Change “by laws” to “by the laws”

80 Sec. 101., General law applies (c), Line 3 – Change “now in force or hereafter enacted.” to “of  
81 the State.”

82 The motion carried unanimously.

83 -----  
84 “POWERS OF THE TOWN

85 Sec. 102. Additional Town powers

86 In addition to powers otherwise conferred by law, the Town of Bennington is authorized to adopt,  
87 amend, repeal and enforce ordinances:

- 88 (a) relating to collection and removal of garbage, ashes, rubbish, refuse, waste and scrap by the town  
89 and establishment of rates to be paid to the town for such service;  
90 (b) relating to construction and alteration of public and private buildings and the use thereof, including  
91 establishment of minimum standards for plumbing, heating and wiring, so as to prevent hazardous  
92 and dangerous conditions, fires and explosions by precautionary regulations and inspection;  
93 (c) relating to the use of fire arms in settled areas;  
94 (d) relating to the packaging, marketing and handling of produce and other foodstuffs;  
95 (e) relating to the prevention of pollution of streams, ponds, and other waterways within the Town.”

- 96  
97 • In (c), Ms. Green would like to add “and drones” after “fire arms”. Mr. Monks added that this may be  
98 an area that is exempted to Federal and State law, and Mr. Plunkett said that the State is working on  
99 something concerning drones.

100 The Committee decided to change “fire arms” to “firearms” and leave Sec. 102. (c), open for  
101 now.

- 102 • Mr. Cohen asked why these items were specified and other potential issues were not, and Mr. Hurd  
103 answered that he is guessing that these were drafted in 1968 when the Town of Bennington merged  
104 with the Village of North Bennington but he really doesn’t know.  
105 • Mr. Plunkett feels that this is a listing of the additional powers that the Town has, whether they’re  
106 using them or not, and may be questioned by the State if we start changing them. We should review  
107 the charters of other towns as a comparison.  
108 • Mr. Cohen posed the question of how do we know that we may have powers that other towns don’t.  
109 • Mr. Hurd looks at the Charter as “a means to focus State authority.”



- Mr. Cohen noted that the additional power of the Town are reiterated similarly for the Select Board in Chapter 3, SELECT BOARD, Sec. 302. and feels that the Charter should be an easy to read document.
- Ms. Oller added that redundancy can be eliminated but, if there is a need for repetition, it should be duplicated exactly.
- Mr. Plunkett interpreted the Town powers as controlled by the voters, whereas, the Select Board powers did not require voter approval, even though some of these powers may overlap.
- Mr. Monks stated that ordinances are the purview of the Select Board, and Mr. Hurd added that the voters may petition for an ordinance.
- Mr. Hurd clarified that Sec. 102. has never been a problem. There are ordinances for much of what is mentioned and we follow the State guidelines on pollution of waterways and air.

*The Committee decided to ask Jim Barlow for his input on combining Sec. 102 and Sec. 302 and suggest modern language. Mr. Plunkett will do that on behalf of the Committee.*

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#### "POWERS OF THE TOWN

##### Sec. 103. Initiative: Advisory Votes

The voters of the Town have the power to petition for a non-binding advisory vote to reflect public sentiment. Such petition shall be signed by at least five (5) percent of the voters of the Town and shall state that it is advisory only. The Select Board, upon receipt of such a petition, shall place the article on the warning for the next Town meeting or any other Town election."

***P. Lynn Green moved and Jonathan Cohen seconded to change "Select Board" to "Selectboard" throughout the Charter.***

Mr. Plunkett does not want to change "Select Board" to "Selectboard" because it has been that since 1966 and is unique in the State. Also, all existing letterhead would need to be changed, as well. Rather, his preference would be to add a statement to the Select Board portion of the Charter that states "The Select Board of the Town of Bennington shall be known as the Select Board."

***The motion was withdrawn.***

- Mr. Malmborg was concerned that there wasn't a specific time when a petition should be presented to the Select Board but, because it is in the statute that the warning must be within 30 days of the Town meeting, the timing issue was covered.
  - Mr. Cohen asked if anyone had a problem with the (5) percent of voters, and Ms. Barbeau stated that 5% of our voters is 450 – "a good number".
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#### "POWERS OF THE TOWN

##### Sec. 104. Recall

- (a) The voters of the Town may recall any of the elected Town officers listed in Chapter 2 of this Charter.
- (b) A recall petition, clearly stating cause, signed by at least thirty (30) percent of the legal voters of the Town, and bearing their addresses, shall be filed with the Select Board within fifteen (15) calendar days of its issue. The Select Board upon receipt of a valid petition shall, after sixty (60)

calendar days, hold a special election, with voting by Australian Ballot, to consider the recall of an elected Town Officer. When such a petition is approved by a majority of two-thirds of the ballots cast at such special election. The officer named in the petition shall thereupon cease to hold his/her office, and the office shall be considered vacant until filled by a special election to be held within sixty (60) days.

(c) A recall petition shall not be brought against an individual more than once during his/her term of office."

- Mr. Cohen asked what the 15 calendar days "of its issue" meant. Discussion ensued and it was determined that there was no clear answer to this.

***Daniel Malmborg moved and Robert Plunkett seconded to amend POWERS OF THE TOWN, Sec. 104. Recall, (b), Line 2 and 3 as follows:***

***Change "Board within fifteen (15) calendar days of its issue." to "Board."***

***The motion carried unanimously.***

- Mr. Keane had submitted his opinion that "officer" should be replaced with "official" throughout this Section. The Committee disagreed with this saying that "officer" was the correct word.

***Jonathan Cohen moved and Robert Plunkett seconded to amend POWERS OF THE TOWN, Sec. 104. Recall, (b), Line 9 as follows:***

***Change "election. The" to "election, the"***

***The motion carried unanimously.***

#### **4. CONTINUED DISCUSSION RE: COMMUNICATION**

##### **A. REVIEW AUTOMATIC RESPONSE TO PUBLIC INPUT FROM THE WEB**

Ms. Oller stated that she and Ms. Green had discussed the best way to receive public comments, and they were thinking that a form where an individual interested in making a comment could put their name, address and e-mail address would be better than them just clicking on an e-mail address.

Ms. Oller had prepared a lengthy informational auto reply which Ms. Green had edited down. Ms. Green will do further editing for a more condensed version and send this to Ms. Johnson to put on the website as the auto response. Ms. Oller noted that this is just one avenue of gathering public comments. Others are the Select Board meetings under Citizens and Letters to the Editor in the Banner.

Ms. Oller and Mr. Plunkett will attend the August 28, 2017 Select Board Meeting to update the Board on the Committee's progress.

***At 1:05 pm, Daniel Malmborg moved and Robert Plunkett seconded the adjournment of the meeting. The motion carried unanimously.***

Respectfully submitted,

Nancy H. Lively Secretary

**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**

**AUGUST 23, 2017**

**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmborg; Jonathan Cohen (at 12:15pm); Michael A. Keane; Robert Ebert and P. Lynn Green (at 11:49pm).

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town Clerk; Michele Johnson-Human Resources and Contracts Administrator; Joan Pinsonnault-Treasurer; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:45 AM, Co-Chair Sean Marie Oller called the meeting to order.

**1. PUBLIC COMMENTS**

None.

**2. APPROVE MINUTES OF AUGUST 16, 2017**

*Daniel Malmborg moved and Robert Plunkett seconded to approve the Minutes of August 16, 2017 as submitted. The motion carried with Michael Keane abstaining.*

**3. REVIEW BENNINGTON TOWN CHARTER CHAPTERS 2-4**

Mr. Plunkett stated that the most recent Charter amendments took place in 2013 when the Legislature passed a law allowing the Legislative Counsel to make changes on their own, so much of the grammar corrections and gender neutrality changes have been done. A copy of this version, which is the 2005 Charter approved by the voters plus the 2013 Legislative Counsel changes, will be used as the Committee's Charter copy to work from.

Review of the Charter began as follows:

"Chapter 2

**OFFICERS**

Sec. 201. Elective officers

(a) The elective officers of the town shall be:

- (1) Seven Select Board Members elected from the Town at large at a duly warned Annual Town Meeting;
- (2) a Town Clerk;
- (3) a Treasurer;
- (4) a Moderator.



(b) All elective officers shall hold office for a three year term. The term shall expire the first day of April following the Annual Town Meeting."

Discussion ensued as follows on electing vs appointing the Town Clerk and/or Treasurer positions with strong focus on the Treasurer:

- There are both elected and appointed treasurers in Vermont.
- Anyone can run for an elected position, whether qualified or not.
- The town of Coventry has had fraudulent issues with an elected Treasurer, who was also the delinquent tax collector. The population of Coventry is fewer than 1,000, so the likelihood of a similar occurrence in Bennington with a population of 16,000 is minimal.
- Mr. Ebert: Appointing would guarantee a qualification screening, but, "if it's not broken, why fix it?."
- Mr. Keane: Feels the Treasurer should have some form of financial expertise, albeit experience or education.
- Mr. Plunkett: There don't need to be any changes made to this Section.
- Ms. Green: If the change is made to appointed, the citizens will decide if they want to do that or not. Or, if it remains elected, then perhaps the required qualifications of someone wanting to run could be put on the website.
- Ms. Pinsonnault: Fears that if the position was appointed, an individual would be more at risk of losing their job due to a personality conflict, for example, and, therefore, would like to have it remain elected. Ms. Pinsonnault added that the State tells the treasurers what meetings to attend to stay current within the industry. Ms. Pinsonnault is bonded.
- Ms. Barbeau: Stated that she is required to attend an Election Training every two years and report to the Secretary of State that she has done so. However, if she didn't, the only recourse to remove her from office would be the recall process.
- Ms. Oller: Is fine with leaving as is but would like to get information on the requirements of the State as backup to the decision.

*P. Lynn Green moved and Michael Keane seconded to not make any changes to Chapter 2, OFFICERS, Sec. 201. Elective officers. The motion carried unanimously.*

"Sec. 202. Appointive officers

(a) The Select Board Members shall annually appoint a constable and other officers required by law or this Charter, including a board of not less than three nor more than five Listers to serve for such terms as the Select Board Members decide, but not less than one nor more than five years, such appointments to be made as vacancies occur in the elected Board of Listers."

- Mr. Hurd: Recommended to eliminate "constable" from the list of appointed officers. Because we have a 24/7 police department, the position is unnecessary. We haven't appointed a constable in over a decade.
- Ms. Green: Clarified that there will be a place to explain the reasoning behind the changes, and Ms. Oller stated that it could be in the margins of the Charter next to the changes, as well as, in the Final Report to the Select Board. Mr. Plunkett added that there are also requirements of explanation and Minutes availability in reference to the two Public Hearings that will take place prior to the vote.

- Mr. Hurd: Explained that the Board of Listers, though not required, is a secondary level of approval for all tax adjustment grievances sent to the assessor, who is the same person that did the appraisal. The existence of a peer group is more comforting to those that have submitted the grievance.

*Daniel Malmborg moved and Robert Plunkett seconded the following changes to Chapter 2,*

**OFFICERS:**

*Sec. 202. Appointive officers, (a), Line 1 – Delete “Members”*

*Sec. 202. Appointive officers, (a), Line 1 - Change “shall” to “may”*

*Sec. 202. Appointive officers, (a), Line 1 – Delete “a constable”*

*Sec. 202., Appointive officers, (a), Line 2 – Delete “and other”*

*Sec. 202., Appointive officers, (a), Line 3 – Delete “not less than three”*

*Sec. 202., Appointive officers, (a), Line 3 – Change “nor” to “not”*

*Sec. 202., Appointive officers, (a), Line 4 – Delete “Members”*

*Sec. 202., Appointive officers, (a), Line 4 – Change “decide,” to “decides.”*

*Sec. 202., Appointive officers, (a), Line 4 – Delete “but not less than one nor”*

*Sec. 202., Appointive officers, (a), Line 5 – Delete “more than five years, such appointments to be made as vacancies”*

*Sec. 202., Appointive officers, (a), Line 6 – Delete “occur in the elected Board of Listers”*

*P. Lynn Green moved and Robert Plunkett seconded to amend the motion as follows with all other sections remaining as moved:*

*Sec. 202., Appointive officers, (a), Line 1 – Leave “shall” as is – do not change to “may”*

*Daniel Malmborg withdrew the motion and Robert Plunkett withdrew the second.*

Discussion ensued as follows:

- Mr. Cohen inquired as to the job of a Lister, and Mr. Ebert – a Lister – stated that once a year for a week or so, the grievances are reviewed with the assessor. It was reiterated that the comfort level of having a grievance reviewed by someone other than the individual that raised the taxes was important and comforting to the person that submitted the grievance.

*Michael Keane moved and P. Lynn Green seconded the following changes to Chapter 2, OFFICERS:*

*Sec. 202., Appointive officers, (a), Line 1 – Delete “Members”*

*Sec. 202., Appointive officers, (a), Line 1 – Delete “annually”*

*Sec. 202., Appointive officers, (a), Line 1 – Delete “a constable”*

*Sec. 202., Appointive officers, (a), Line 2 – Delete “and other”*

*Sec. 202., Appointive officers, (a), Line 3 – Change “less than three” to “fewer than two”*

*Sec. 202., Appointive officers, (a), Line 4 – Delete “Members”*

*Sec. 202., Appointive officers, (a), Line 4 – Change “decide,” to “decides.”*

*Sec. 202., Appointive officers, (a), Line 4 – Delete “but not less than one nor”*

*Sec. 202., Appointive officers, (a), Line 5 – Delete “more than five years, such appointments to be made as vacancies”*

117 *Sec. 202., Appointive officers, (a), Line 6 – Delete “occur in the elected Board of Listers”*

118  
119 *The motion carried unanimously.*

120 -----  
121 “Chapter 2

122 OFFICERS

123 Sec. 202. Appointive officers

124 (b) The Select Board Members may create such appointive officers not provided for by this Charter or  
125 required by law as they deem to be in the best interest of the Town.”

126 *Robert Ebert moved and Michael Keane seconded the following changes to Chapter 2, OFFICERS:*

127 *Sec. 202., Appointive officers, (b), Line 1 – Delete “Members”*

128 *Sec. 202., Appointive officers, (b), Line 2 – Change “they deem” to “it deems”*

129 *The motion carried unanimously.*

130 -----  
131 “Chapter 2

132 OFFICERS

133 Sec. 203. Compensation

134 (a) Compensation paid to the Select Board Members shall be set by the voters at Town Meeting.

135 (b) Subject subsection (a) of this section the Select Board Members shall fix the compensation to all  
136 elective officers and of all officers appointed by the Select Board.

137 (c) The Town Manager, under policies approved by the Select Board Members, shall fix the  
138 compensation of all other officers and employees whose compensation is not fixed by the Select  
139 Board pursuant to subsection (b) of this section.”

- 140
- 141 • Mr. Hurd stated that compensation is a budget discussion in open session with the Select Board and  
142 that there are no policies, per se. There are 65 employees, or 60% of the work force, governed by  
143 contracts.
  - 144 • Mr. Keane clarified that Mr. Hurd only sets the salaries, whereas, compensation also includes the  
145 benefit package that is approved by the Select Board. The Committee discussed changing  
146 “compensation” to “salaries” but decided to leave the broader term of “compensation”.

147 *Michael Keane moved and Robert Plunkett seconded the following changes to Chapter 2, OFFICERS:*

148 *Sec. 203., Compensation, (b), Line 1 – Change “Subject subsection” to “Subject to subsection”*

149 *Sec. 203., Compensation, (b), Line 2 – Delete “Members”*

150 *Sec. 203., Compensation, (b), Line 2 – Change “to” to “of”*

151 *Sec. 203., Compensation, (c), Line 2 – Delete “Members”*



152        *The motion carried unanimously.*

153        -----

154        **4. CONTINUED DISCUSSION RE: COMMUNICATION**

155            Ms. Oller stated that the website auto response has been set up. Public comments will go to Ms.  
156 Johnson and Mr. Hurd to be sorted through with the appropriate comments forwarded onto the Committee.  
157 Those comments deemed inappropriate containing profanity or personal attacks will only be sent to the co-  
158 chairs for them to distribute to the rest of the Committee at their discretion. The public will be made aware  
159 that inappropriate content will not be posted.

160            With a few tweaks, the Public Comment link will be available to the public later this afternoon.

161        **5. APPEARANCE AT SELECT BOARD MEETING ON AUGUST 28**

162            Ms. Oller and Mr. Plunkett will attend the August 28, 2017 Select Board Meeting to update the Board  
163 on the Committee's progress.

164            *At 1:06 pm, Daniel Malmborg moved and Michael Keane seconded the adjournment of the meeting.*  
165 *The motion carried unanimously.*

166

167            Respectfully submitted,

168            Nancy H. Lively Secretary

1 CHARTER REVIEW COMMITTEE MEETING

2 BENNINGTON TOWN OFFICE – CONFERENCE ROOM

3 205 SOUTH STREET

4 BENNINGTON, VERMONT 05201

5 AUGUST 30, 2017

6 MINUTES

7 **COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmborg;  
8 Jonathan Cohen; Michael A. Keane; Robert Ebert and P. Lynn Green.

9 **COMMITTEE MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Michele Johnson-Human  
11 Resources and Contracts Administrator and Nancy H. Lively-Secretary.

12 At 11:45 AM, Co-Chair Robert Plunkett called the meeting to order.

13 **1. PUBLIC COMMENTS**

14 There were 3 comments from the public on the website. Ms. Oller noted that Ron Alderman was  
15 grateful for the information available and Lora Block supported that the Treasurer position remain elected and  
16 require some professional qualifications and expertise.

17 Ms. Green added that two citizens spoke to her in agreement with the required qualifications for  
18 Treasurer and also needed reassurance that Mr. Hurd and Mr. Monks, as well as, the other town staff in  
19 attendance were only advisory and not influencing the decisions of the Committee. Mr. Plunkett added that it  
20 is in the Charter that the Town Manager is an ex-officio member of all standing committees – which this  
21 committee may not be. Mr. Hurd stated that he was invited to attend the Charter Review Committee  
22 meetings.

23 Mr. Keane added that the Committee is thankful for the public comments and will take them under  
24 advisement. Mr. Cohen suggested that a meeting could be set aside to address the public comments after a  
25 few more have flowed in.

26 **2. APPROVE MINUTES OF AUGUST 23, 2017**

27 *Jonathan Cohen moved and Robert Plunkett seconded to approve the Minutes of August 23, 2017 as*  
28 *submitted. The motion carried unanimously.*

29 **3. REPORT ON SELECT BOARD MEETING PRESENTATION (OF AUGUST 28)**

30 Ms. Oller and Mr. Plunkett attended the Bennington Select Board meeting on August 28, 2017 to  
31 provide the Board with an update of the Committee's progress. Mr. Ebert was also in attendance but did not  
32 speak to the Board.

33 Ms. Oller felt that the update was "well received" but found it interesting that the Board Chair didn't  
34 want to incorporate a presentation by Jim Barlow into a Select Board meeting. After the meeting, Board Chair  
35 Tom Jacobs, commented that he didn't want Mr. Barlow to be giving "legal advice or consultation" that would  
36 lead the Select Board into a decision, and Ms. Oller explained to him that Mr. Barlow's presentation was

37 informative only on what other towns/cities are doing throughout the State. Mr. Barlow will be doing a  
38 televised presentation – tentatively on September 27, 2017 at 5:00pm at The Fire House – for the public. The  
39 Select Board will be invited and the sense was that Mr. Jacobs doesn't want the Board to be involved as the  
40 Board, but rather, involved as any other citizen would be.

41 The questions that were asked of the Committee at the meeting were concerning the Committee's final  
42 report, did the Committee think that it would be done at a certain time, and would there be meetings held at  
43 a different time.

44 Much discussion ensued on how to go forward with the following comments:

- 45 • Mr. Barlow will provide education to the citizens of how things are done in other towns in Vermont, as  
46 well as, transparency for the Committee.
  - 47 • The Committee can also add what they have learned so far.
  - 48 • Perhaps the Committee should have a public forum once a month at 5:00pm - September with Mr.  
49 Barlow, October and November with the Committee only. Dates should be set for the October and  
50 November forums sooner rather than later.
  - 51 • These forums will be avenues of opportunity for the Committee to hear actual changes directly from  
52 the public with their reasoning's. It should be made clear to the public that the forums are a give and  
53 take of ideas from both the Committee and citizens.
  - 54 • The Committee's job is to see if the process in other towns can benefit Bennington and to then  
55 objectively make recommendations one way or the other for the public to vote on, regardless of  
56 Committee member's personal opinions. This will require research, number crunching, etc., especially  
57 on the more controversial topics.
- 

58  
59 **4. REVIEW BENNINGTON TOWN CHARTER CHAPTER 3-4**

60 "SUBCHAPTER 3.

61 SELECT BOARD

62 §301. Select Board members, the legislative body

63 The Select Board shall constitute the legislative body of the Town of Bennington and shall have all  
64 powers and authority necessary for the performance of the legislative function."

65 *Sean Marie Oller moved and Daniel Malmberg seconded the following change to Subchapter 3,*  
66 **SELECT BOARD:**

67 ***§ 301. Select Board members, the legislative body – Delete "members"***

68 ***The motion carried unanimously.***

69 -----

70 "§302. Additional powers of Select Board members to adopt ordinances

71 In addition to powers otherwise conferred by law, the Select Board members are authorized to adopt,  
72 amend, repeal, and enforce ordinances:



- 73 (1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of  
74 law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be  
75 required by the safety and welfare of the inhabitants of the Town;  
76 (2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars,  
77 garbage, ashes, rubbish, refuse, waste, and scrap, and collection, removal, and disposal of such  
78 materials;  
79 (3) relating to registration and regulation of bicycles;  
80 (4) relating to the keeping of dogs, cats, and other domestic animals in settled areas."

81 *The Committee agreed to the following changes:*

82 ***§302. Additional powers of Select Board members to adopt ordinances – Change "of Select" to "of***  
83 ***the Select" and Delete "members".***

84 *The Committee had contacted Mr. Barlow for his opinion on the combining of §102. Additional Town*  
85 *powers and §302. Additional powers of Select Board members to adopt ordinances. It was Mr. Barlow's*  
86 *recommendation that they be combined. Both §102 and §302 read as they did in 1966. Below is §102.:*

87 "§102. Additional Town powers

88 In addition to powers otherwise conferred by law, the Town of Bennington is authorized to adopt,  
89 amend, repeal, and enforce ordinances:

- 90 (a) relating to collection and removal of garbage, ashes, rubbish, refuse, waste, and scrap by the Town  
91 and establishment of rates to be paid to the Town for such service;  
92 (b) relating to construction and alteration of public and private buildings and the use thereof, including  
93 establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous  
94 and dangerous conditions, fires, and explosions by precautionary regulations and inspection;  
95 (c) relating to the use of firearms in settled areas;  
96 (d) relating to the packaging, marketing, and handling of produce and other foodstuffs;  
97 (e) relating to the prevention of pollution of streams, ponds, and other waterways within the Town."

98 Discussion followed:

- 99 • Ms. Green: Municipal governments have to start thinking about intrusive and advancing technologies  
100 and businesses. The State of Vermont doesn't have the resources to deal with Airbnb's, Uber's  
101 marijuana, solar panels, or police body cameras.
- 102 • Ms. Green: Proposed "DRAFT 1.0 of intrusive advancement clause – Where the State Law does not  
103 apply and supersede, The Selectboard has power to create and enforce ordinances that deal with  
104 intrusive technologies and advancements to provide the right balance between recreational interests,  
105 commercial opportunity, law enforcement and the protection of fundamental rights of citizens." (it  
106 could end here or continue and be more specific) "including the regulation of : Vacation rentals such as  
107 Airbnb and car services such as Uber; Unmanned aerial vehicles (drones); Marijuana and e-cigarette  
108 use; Police body cameras; Solar panel installations"
- 109 • Mr. Ebert: Suggested taking all of the lists out and have §302 read this way: "In addition to powers  
110 otherwise conferred by law, the Select Board is authorized to adopt, amend, repeal, and enforce  
111 ordinances relating to the health, safety and quality of life for Town residents." "Why have a list of  
112 anything?"
- 113 • Mr. Cohen: If something is specifically stated, then there is no question on that subject.

- Mr. Keane: The lists of both could remain with verbiage at the end such as “including, but not limited to”.
- Mr. Hurd: There are 30 ordinances, adopted by the Select Board as dictated within the statutes that address most of these issues.
- Ms. Oller: We should have a list of the ordinances for availability at the forums.
- Mr. Plunkett: First, has concerns about bringing §102 and §302 together because they are not the same, and second, are any of these concerns “already within the power either by statute or within the Charter, itself”?
- Ms. Oller favors combining the two and questions the message that is sent to the public if anything listed is taken out.
- Mr. Plunkett and Ms. Green do not want to see them combined. Ms. Green added that that would be confusing to the voters.
- Mr. Cohen: It is clear that all of the Town powers have to come through the Select Board so why not add §102 to §302?
- Mr. Plunkett: §102 could be “tacked onto §302 without duplication”.

***Jonathan Cohen moved and Sean Marie Oller seconded to move §102. Additional Town powers to §302. Additional powers of the Select Board to adopt ordinances as a preliminary way to address this issue.***

Discussion ensued as to whether or not this motion should be made at this time since there is no precise way as to how the two sections should be combined.

Mr. Plunkett doesn’t want to see them combined so as not to be seen taking powers away from the Town and giving them to the Select Board.

Ms. Oller asked why these specific items were listed, and Mr. Hurd answered that they’ve been in the Charter “since the beginning of time” and probably date back to when the Town of Bennington and Village of North Bennington combined. Mr. Hurd also reminded everyone that Bennington is the only town than can set a speed limit less than 20 miles per hour and deals with cats. The State only deals with dogs.

***The motion carried with Robert Plunkett and P. Lynn Green opposed.***

*Mr. Plunkett will send §102. Additional Town powers and §302. Additional powers of the Select Board to adopt ordinances to Attorney Jim Barlow with the suggestion of Ms. Green, “DRAFT 1.0 of intrusive advancement clause – Where the State Law does not apply and supersede, The Selectboard has power to create and enforce ordinances that deal with intrusive technologies and advancements to provide the right balance between recreational interests, commercial opportunity, law enforcement and the protection of fundamental rights of citizens.” (it could end here or continue and be more specific) “including the regulation of: Vacation rentals such as Airbnb and car services such as Uber; Unmanned aerial vehicles (drones); Marijuana and e-cigarette use; Police body cameras; Solar panel installations” and the suggestion of Mr. Ebert, “In addition to powers otherwise conferred by law, the Select Board is authorized to adopt, amend, repeal, and enforce ordinances relating to the health, safety and quality of life for Town residents.” for him to edit and return to the Committee with language for combining the two sections.*

## 5. SCHEDULE FOR PUBLIC FORUMS, IF TIME ALLOWS

This was discussed under Agenda Item #2.

154 **ONGOING TOPICS - FINAL REPORT FORMAT**  
155

156 Mr. Keane will forward a couple of final report formats to Ms. Oller and Mr. Plunkett by the end of the  
157 week for Committee discussion at the next meeting. It was the consensus of the Committee that when the  
158 format has been decided upon, Mr. Keane will do the draft of the Final Report and disburse to the Committee  
159 for their input.

160  
161 *At 12:57 PM, it was moved and seconded to adjourn the meeting. The motion carried unanimously.*  
162  
163  
164

165 Respectfully submitted,

166 Nancy H. Lively, Secretary  
167



1 CHARTER REVIEW COMMITTEE MEETING

2 BENNINGTON TOWN OFFICE – CONFERENCE ROOM

3 205 SOUTH STREET

4 BENNINGTON, VERMONT 05201

5 SEPTEMBER 6, 2017

6 MINUTES

7 **COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair (at 11:59am); Robert Plunkett-Co-Chair; Daniel  
8 Malmborg (at 11:50am); Jonathan Cohen; Michael A. Keane; Robert Ebert and P. Lynn Green.

9 **COMMITTEE MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Michele Johnson-Human  
11 Resources and Contracts Administrator; James Therrien-Bennington Banner and Nancy H. Lively-Secretary.

12 At 11:48 AM, Co-Chair Robert Plunkett called the meeting to order.

13 **1. PUBLIC COMMENTS**

14 None.

15 **2. APPROVE MINUTES OF AUGUST 30, 2017**

16 *Michael Keane moved and Jonathan Cohen seconded to approve the Minutes of August 30, 2017*  
17 *amended as follows:*

18 **3. REPORT ON SELECT BOARD MEETING PRESENTATION (OF AUGUST 28), Paragraph 2, Line 1 - Change**  
19 ***“found it interesting” to “noted”***

20 *The motion carried unanimously.*

21 **3. DISCUSSION OF SEPTEMBER 27 PUBLIC FORUM FORMAT; OTHER EVENING SESSIONS**

22 Mr. Plunkett asked the Committee if they wanted Attorney Jim Barlow to do the same presentation that he  
23 had done before, or present a different format? Mr. Barlow had recommended repeating the same  
24 presentation. The only advertising of the original presentation was as part of the meeting Warning.

25 Comments were as follows:

26 Mr. Cohen: Mr. Barlow should remind the public that it is in the Charter, § 103, for them to petition for a  
27 charter change.

28 Mr. Keane: It should be advertised, as citizens will benefit from it, learn from it, and rethink assumptions that  
29 they may have made.

30 Mr. Ebert: More emphasis on the mayor vs. town manager issue would be helpful to the public. And shorten  
31 the presentation, if possible.

32 Ms. Green and Mr. Malmborg: More explanation of the charter change process for the public's understanding.

33 Mr. Plunkett: Clarification of the Town's powers and the Select Board's powers.

34 Generally, the Committee agreed the forum should be advertised so the public understands the  
35 educational part will be followed by an opportunity for them to speak; questions should come at the end of  
36 the presentation, not throughout; Ms. Oller and Mr. Plunkett should act as moderators; it will be televised on  
37 CAT-TV and will take place at the Bennington Fire Facility on September 27, 2017 at 5:30pm.

38 There will also be one public forum in October and one in November. These will be more listening to  
39 public comments and answering their questions, with perhaps, a brief overview of the Committee's process  
40 and progress. Ms. Oller and Mr. Plunkett will respond to questions with other Committee members joining in  
41 as needed.

42 Mr. Hurd will contact CAT-TV and the Fire Department for date and time scheduling of the October and  
43 November public forums.

### 44 3. REVIEW BENNINGTON TOWN CHARTER - CHAPTER 3, SECTION 303-CHAPTER 4

45 "SUBCHAPTER 3.

46 SELECT BOARD

47 §303. Further powers of Select Board members

48 In addition to powers otherwise conferred by law, the Select Board members shall also have the power  
49 to:

50 (1) organize and from time to time reorganize, the Fire Department under the supervision of a  
51 coordinating committee formed by the Select Board from its members, such Department shall be a volunteer  
52 department and the Select Board shall have authority to continue any existing contract with a volunteer fire  
53 department or to enter on behalf of the Town into contracts with other volunteer fire departments to provide  
54 additional fire protection to the inhabitants;

55 (2) create departments not now existing for the performance of municipal services;

56 (3) create commissions and committees not now existing and appoint the members thereof;

57 (4) provide for and shall provide on an annual basis an independent audit of all Town financial records  
58 by a certified public accountant;

59 (5) inquire into the conduct of any officer, commission, or department and investigate any and all  
60 municipal affairs;

61 (6) discharge all duties heretofore devolving on the Town Agent by general law and hire attorneys on  
62 behalf of the Town;

63 (7) establish an adequate number of polling places within the Town as required for the convenience of  
64 the Town voters and without regard to election district boundaries, to the end that election expenses may be  
65 lessened and confusion among the voters as to the proper place for them to vote may be avoided; however,  
66 one such polling place shall be in North Bennington and the central polling place shall be within the  
67 boundaries of the former Village of Bennington."

68 Discussion followed:

- 69 • Mr. Keane: 'Additional powers' in §302 and 'Further powers' in §303 seem redundant.



- Mr. Cohen: Why are some powers mentioned in §102, §302 and §303 but others aren't? Perhaps a question for Mr. Barlow.
- Mr. Hurd: The Fire Department operates under a contract with the Select Board. The Select Board has never reorganized them but the ability to do so should remain in the Charter.
- Mr. Ebert: Would like to eliminate "such Department shall be a volunteer department" so future Select Boards have the flexibility for the Fire Department to have paid positions at some point in time.
- Mr. Hurd: The Town presently doesn't have any contracts with other fire departments. This is unrelated to the need for mutual aid.
- Mr. Cohen: Should we get more information from other towns as to how they have addressed the current volunteer fire department to the potentially paid fire department.
- Mr. Plunkett: Feels the Fire Department should be consulted before a change is made.
- Mr. Hurd: There have been previous discussions on paying the Chief, and the Department of Labor and Industry wants paid departments. The Town currently pays a clerical person (not a member of the Fire Department) to do the additional reports required by the Department of Labor and Industry.

***Sean Marie Oller moved and Jonathan Cohen seconded the following changes to SUBCHAPTER 3., SELECT BOARD, §303. Further powers of Select Board members as follows:***

***Change "§303. Further powers of Select Board members" to "§303. Further powers of the Select Board"***

***Line 1 - Change "Board members shall" to "Board shall"***

***(1), Line 2, Change "; such" to ", the Fire"***

***(1) Line 3, Change "shall be a volunteer" to "may be a volunteer or paid"***

***(1) Line 4, Change "volunteer" to "volunteer or paid"***

***(1) Line 5, Change "volunteer" to "volunteer or paid"***

***(2) Change "create departments not now existing for the performance of municipal services;" to "create, consolidate, or dissolve departments as necessary or relevant for the performance of municipal services;"***

***(3) Change "create commissions and committees not now existing and appoint the members thereof;" to "create, consolidate, or dissolve commissions and committees as necessary or relevant and appoint the members thereof;"***

***(4) Line 1, Change "provide for and shall provide" to "shall provide"***

***(6) Delete "(6) discharge all duties heretofore devolving on the Town Agent by general law and hire attorneys on behalf of the Town;"*** NOTE: This change will be sent to Mr. Barlow for his input.

***(7) Change "(7)" to "(6)"***

***The motion carried unanimously.***

***At 1:00pm, Michael Keane and P. Lynn Green seconded to adjourn the meeting.***

Respectfully submitted,

Nancy H. Lively, Secretary



1 CHARTER REVIEW COMMITTEE MEETING

2 BENNINGTON TOWN OFFICE – CONFERENCE ROOM

3 205 SOUTH STREET

4 BENNINGTON, VERMONT 05201

5 SEPTEMBER 13, 2017

6 MINUTES

7 **COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Daniel Malmberg;  
8 Jonathan Cohen; Michael A. Keane; Robert Ebert and P. Lynn Green.

9 **COMMITTEE MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Michele Johnson-Human  
11 Resources and Contracts Administrator; Beth Antognioni; James Therrien-Bennington Banner and Nancy H.  
12 Lively-Secretary.

13 At 11:47 AM, Co-Chair Sean Marie Oller called the meeting to order.

14 **1. PUBLIC COMMENTS**

15 None.

16 **2. APPROVE MINUTES OF SEPTEMBER 6, 2017**

17 *Michael Keane moved and Robert Plunkett seconded to approve the Minutes of September 6, 2017*  
18 *as submitted. The motion carried unanimously.*

19 Ms. Oller reviewed the agenda and stated that the Committee needs to have a way to discuss topics  
20 that are not currently in the Charter, and perhaps it should be noted after the review of each section what  
21 discussion points were being put in "the parking lot".

22 Mr. Malmberg: This is a deliberative process and, after 6 or 7 weeks, we are only on Page 6. "That's a lot of  
23 wheel spinning."

24 Mr. Ebert: "We have 52 weeks. If the Select Board wanted this done by March, they should have gotten us to  
25 work on this in January."

26 Mr. Keane: There are definitely areas that the Committee can recommend changes on by December, and  
27 areas that require more work.

28 Ms. Oller: "We don't have to have changes to the entire document" and felt that the Select Board was just  
29 looking for a review of as far as the Committee could go in the time allotted. Ms. Oller sees the deadline as "a  
30 positive".

31 Mr. Cohen: "I think that our charge was to review the Charter, and I think that we should make a priority of  
32 getting through this document." Mr. Cohen also agreed to join the Committee with a time frame in mind.

33 Ms. Oller: Would like to put the review of the responses that were received from Jim Barlow on the questions  
34 that have been asked of him so far - the qualifications of the Treasurer and §102 and §302 - on the September  
35 20<sup>th</sup> meeting agenda for Committee discussion prior to his presentation on September 27<sup>th</sup>.

36       **3. FURTHER DISCUSSION OF SEPTEMBER 27 PUBLIC FORUM FORMAT; OTHER EVENING SESSIONS**

37           To inform the public of the September 27, 2017 Public Forum with Mr. Barlow's presentation, Ms. Oller  
38 and Ms. Green will write a Letter to the Editor, Mr. Hurd will contact CAT-TV and put it on the Town's website  
39 and Facebook page, as well as, in his newspaper column. Ms. Johnson added that the promotion could also be  
40 put at the 5 locations commonly used for events, and Mr. Ebert suggested announcing it at the Select Board  
41 meeting on September 25<sup>th</sup>.

42           The October and November public forums will also be promoted with the actual dates and times to be  
43 announced at the September 27<sup>th</sup> meeting.

44           Mr. Plunkett noted that Mr. Barlow would prefer to allow questions throughout his presentation  
45 instead of holding them to the end. To avoid specific individual monopoly, Ms. Oller or Mr. Plunkett would  
46 interject, as needed, to ask the individual to keep his/her questions until the end.

47       **4. REVIEW BENNINGTON TOWN CHARTER - CHAPTER 3, SECTION 304-CHAPTER 4**

48       "SUBCHAPTER 3.

49       SELECT BOARD

50       §304. Organization of Select Board

51       (a) Forthwith after the annual meeting of the town, the Select Board members shall organize and elect a  
52 Chair and Vice Chair.

53       (b) The Chair of the Board or in his/her absence, the Vice Chair, shall preside at all meetings of the  
54 Board and such presiding officer shall be a voting member of the Board.

55       (c) When a vacancy occurs on the Select Board, except as provided in section 104, the remaining  
56 members may fill the vacancy by appointment of a registered voter of the Town, such appointment to be for  
57 the period until the next annual meeting, when the voters of the District shall fill the vacancy.

58       (d) The Board shall fix the time and place of its regular meetings to be held at least twice a month.

59       (e) The presence of four members shall constitute a quorum."

60       Discussion ensued:

- 61       • Ms. Oller noted that there is a Secretary position on the school boards who sends out correspondence  
62 from the Board as needed, and also serves as the third in line should the Chair and Vice Chair not be  
63 available. The Town Manager does correspondence on behalf of the Select Board, and Mr. Monks  
64 added that, it hasn't happened in 20 years, but the Select Board would appoint a temporary Chair for  
65 that meeting only.
- 66       • *The following suggestion had been previously submitted by Tom Jacobs on (c):*  
67       *"As the recall provisions in section 104 at least are dealing with Board members are onerous, I suggest*  
68       *that the Charter Committee consider a. A provision to deal with the number of absences by a Board*  
69       *member, and if exceeded, would constitute automatic removal from the Board; b. Term limits for Board*  
70       *members; c. Require the Board to revisit, revise, if necessary, 'The Board Rules of Procedure' which*  
71       *probably could be retitled 'The Board Rules of Procedure and Conduct' with each Board member*  
72       *acknowledging his/her understanding coming in."*



- Mr. Hurd: The Select Board can't remove a member of the Board because they are elected, and Ms. Green clarified that Mr. Jacobs stated it should be in the Charter that they be removed but not by the Select Board, themselves.
- Comments during discussion were that the recall process should be onerous; would it be automatic removal if the number of absence's were met or would there be an arbiter if this clause was violated?; how have other towns dealt with this situation?; if an even number of Board members are split on a controversial issue, a motion/decision will not be obtained.
- Mr. Barlow will be asked his recommendation on the removal of a Board member due to absences.
- Mr. Ebert: Would like to see the Select Board annually review their Rules of Procedure and Conduct.
- Mr. Malmberg and Ms. Green: Are against having term limits for Board members.
- Mr. Keane: Feels that term limits provide "a refresher".
- Mr. Ebert: "There is definitely power and advantage to incumbency that is hard for a newcomer to overcome" so he is basically against term limits "for philosophical reasons".
- Mr. Plunkett and Mr. Cohen are ambivalent on term limits but Mr. Cohen, if forced to vote, would vote for some form of term limit.
- Ms. Oller: It is often difficult to find people that want to run, and term limits, would force that issue. "New blood does not necessarily mean younger."

***Sean Marie Oller moved and Dan Malmberg seconded the following changes to SUBCHAPTER 3., SELECT BOARD, §304. Organization of Select Board as follows:***

***(a), Line 1, Change "Forthwith after" to "After"***

***(b) Line 2, Change "and such presiding officer shall" to "and shall"***

***and have a placeholder for (f) Annual review of the Rules of Conduct and (g) Term limits***

Ms. Green asked if we could just vote on the term limits now, and Ms. Oller thought that input from the public forums may be beneficial to that decision.

Mr. Ebert asked if we should vote on the changes to (a) and (b) now because a mayor vs. town manager would change those, and Ms. Oller stated that Mr. Barlow had indicated that a mayor may not necessarily be the Chair of a Select Board so there would still be the need for a Chair and Vice Chair.

Ms. Green stated that it wasn't necessary to "parking lot" the annual review of the Rules of Conduct, and the Committee agreed.

***Sean Marie Oller moved and Daniel Malmberg seconded to amend the above motion as follows:***

***Add "(f) The Board shall review The Board Rules of Procedure and Conduct annually."***

***and retain a placeholder for (g) Term limits.***

***The motion and amended motion carried unanimously.***

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"SUBCHAPTER 4.

TOWN MANAGER



110 §401. Appointed by selectors

111 The Selector Board members shall appoint a Town Manager for an indefinite term, and upon such  
112 conditions as they may determine.”

113 Discussion followed:

- 114 • The Town Manager position is an ‘at will’ position with 90 days’ notice (§406. Removal) which  
115 eliminates the need for a specified term.
- 116 • There is no contract in place.
- 117 • The Select Board began conducting an annual review two years ago.
- 118 • Perhaps there should be a term indicated or just remove “indefinite term”.
- 119 • Leave “indefinite term” in so the Select Board still has the option of contracting a Town Manager for a  
120 designated term.

121 The following were the preliminary changes discussed. These were not voted on for approval.

122 “§401. Appointed by Select Board

123 The Select Board shall appoint a Town Manager for an indefinite term, and upon such conditions as they  
124 may determine and review annually.”

125 **5. ONGOING DISCUSSION - FINAL REPORT FORMAT (IF TIME ALLOWS)**

126 Mr. Keane sent some formats to the Co-Chairs a couple of weeks ago. Ms. Oller did not receive her  
127 copies so this topic will be discussed at a later date.

128  
129 *At 1:03pm, Michael Keane moved and Robert Plunkett seconded to adjourn the meeting. The motion*  
130 *carried unanimously.*

131  
132  
133 Respectfully submitted,

134 Nancy H. Lively

135 Secretary

CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

SEPTEMBER 20, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean Marie Oller-Co-Chair (left at 12:48pm); Robert Plunkett-Co-Chair; Daniel Malmborg; Jonathan Cohen; Michael A. Keane; Robert Ebert and P. Lynn Green (in at 11:48am).

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS**

The Committee had received comments from Abby Shapiro and William Stewart. Town Staff will see that they are available on the website free of any contact information.

**2. APPROVE MINUTES OF SEPTEMBER 13, 2017**

*Michael Keane moved and Sean Marie Oller seconded to approve the Minutes of September 13, 2017 as submitted. The motion carried unanimously.*

**3. REVIEW RESPONSES RECEIVED FROM JIM BARLOW ON QUESTIONS THE COMMITTEE HAS ASKED HIM TO RESPOND TO (ROB WILL FORWARD RESPONSES FROM JIM)**

Mr. Plunkett noted that Mr. Barlow would field questions from committee members directly, however, the Committee preferred to continue to have them go through the Co-Chairs.

---

Committee question #1:

**"Do you know of any qualifications that the State requires for [a] town treasurer?"**

Mr. Barlow's response:

*"To be elected, a candidate for treasurer must be a registered voter in town. See 24 V.S.A. 2646. This requires one to be 18 years of age, have taken the voter's oath, be a citizen of the United States and a resident of the state of Vermont, and have registered to vote. See 17 V.S.A. 832. Also, the treasurer may not simultaneously be an auditor, selectboard member, school director, or town manager. 17 V.S.A. 2647. In some instances, the town treasurer may not be the assistant town clerk. 24 V.S.A. 1622."*

---

Committee question #2:

34 **"Could the town require its own qualifications for an elected position?"**

35 Mr. Barlow's response:

36 *"Looking at this from the perspective that the Town charter is a state law, the charter could impose any*  
37 *eligibility requirement for an elected office that is consistent with the Vermont and United States constitutions.*

38 *However, the United States Supreme Court has held that persons "have a federal constitutional right to be*  
39 *considered for public service without the burden of invidiously discriminatory disqualifications." Turner v.*  
40 *Fouche 396 U.S. 346, 363 (1970). Without going into an overwhelming amount of detail, if a fundamental*  
41 *constitutional right is affected by the eligibility requirement, and if the qualification is challenged, the Town*  
42 *would be in the position of having to prove that the qualification is necessary to promote a compelling state*  
43 *interest, which is a very high legal threshold. On the other hand, if the qualification does not impact a*  
44 *fundamental right, the qualification could potentially be justified on a rational basis, which would be much*  
45 *easier to accomplish. The right to be a candidate for public office is potentially a fundamental constitutional*  
46 *right."*

47 Committee discussion on questions/responses #1 and #2:

- 48 • The Treasurer does not need to have any qualifications but needs to be bonded, and Ms. Pinsonneault
- 49 is bonded by the League of Cities and Towns.
- 50 • Mr. Hurd will find out the amount of the bond and what criteria would deem someone unbondable.
- 51 • The Treasurer is audited as part of the Town's annual financial audit.
- 52 • The League offers trainings for newly elected officials which Ms. Pinsonneault has attended.
- 53 • If we wanted to impose criteria, then we should make it an appointed position.
- 54 • The Select Board would probably do the appointing.
- 55 • The Treasurer position works 20-30 hours per week and is "concise" in that he/she takes in the money,
- 56 deposits it in the bank, signs the checks, and summarizes the account activity to the Board.
- 57 • Since the Treasurer does not perform any "bookkeeping" tasks, then there is no need to make any
- 58 changes to our process.

59 -----

60 Committee question #3:

61 **"We have decided that Section 102 and 302 will be combined into a single section in 302, and we would like**  
62 **your thoughts, including proposed language, on combining and streamlining the sections without listing**  
63 **every power but also without losing any of those powers."**

64 Mr. Barlow's response:

65 *"See attached for a starting point. I think that each subsection should be considered by the committee,*  
66 *keeping in mind not only streamlining but preserving existing authority and avoiding unnecessary debates and*  
67 *disputes, both locally and in Montpelier. There may be existing provisions in the charter that perhaps should*  
68 *be left alone, if only because of their "hot button" nature. For example, the provision for regulating, "use of*  
69 *firearms in settled areas" might be something that is best left for another day. It may be helpful for you to talk*  
70 *with Dick Sears and your other reps about what reception the Town should expect in Montpelier on certain*  
71 *topics."*

72 Committee discussion on question #3:



- Ms. Green: Moving language that is in 102 to 302 would raise questions from the public that are voting without previously being involved in the change process.
- Ms. Oller: Though in agreement with Ms. Green, Ms. Oller stated "if we're to review it and make it a more efficient, well-read document, then we stand behind our changes and educate the people".
- Mr. Ebert: Had there been clarification on the difference between Town power and Select Board powers, and Mr. Plunkett stated that Mr. Barlow had previously said "that there really isn't a difference".

***This is how Mr. Barlow has suggested as a "starting point" to combining Section 102 Additional Town powers and 302 Additional powers of the Select Board to adopt ordinances:***

"In addition to powers otherwise conferred by law, the Select Board members are authorized to adopt, amend, repeal, and enforce ordinances:

(1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;" ***No change.***

"(2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars; garbage, ashes, rubbish, refuse, waste, and scrap and collection, removal, and disposal of such materials;"

***Delete "garbage, ashes, rubbish, refuse, waste, and scrap"***

***Add after 'cars' ", and solid waste as defined at 10 V.S.A. §6602(2)-"***

***Add after 'materials' ", including the collection and removal of junk cars and solid waste by the Town and establishment of rates to be paid to the Town of such service"***

"(3) relating to registration and regulation of bicycles;" ***No change.***

"(4) relating to the keeping of dogs, cats, and other domestic animals in settled areas"

***Delete "in settled areas"***

***Add after 'animals' ";***

***Add the following:***

***(5) relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection;***

***(6) relating to the use of firearms in settled areas;***

***(7) relating to the packaging, marketing, and handling of produce and other foodstuffs;***

***(8) relating to the prevention of pollution of streams, ponds, and other waterways within the Town;***

Committee discussion:

- Solid waste in 10 V.S.A. §6602(2) means "any discarded garbage, refuse, septic, sludge from a waste treatment plant, water supply plant or pollution control facility and other discarded material including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations" ....etc.

- Much additional discussion ensued on the language of §302 (2).

*Sean Marie Oller moved and Jonathan Cohen seconded the following changes to SUBCHAPTER 3. SELECT BOARD, §302. Additional powers of the Select Board to adopt ordinances (1) and (2):*

*“§302. Additional powers of the Select Board to adopt ordinances*

*In addition to powers otherwise conferred by law, the Select Board members are authorized to adopt, amend, repeal, and enforce ordinances:*

*(1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;” No change.*

*“(2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars, garbage, ashes, rubbish, refuse, waste, and scrap, and collection, removal, and disposal of such materials;”*

*Change (2), Line 2, “and scrap” to “scrap, and solid waste as defined at 10 V.S.A. §6602(2)-“*

*Change “materials;” to “materials, including the collection and removal of such materials by the Town and establishment of rates to be paid to the Town for such service”*

*The motion carried with Robert Ebert opposed.*

---

*“(3) relating to registration and regulation of bicycles;”*

*The Committee did not make any changes to (3) above.*

---

*“(4) relating to the keeping of dogs, cats, and other domestic animals in settled areas”*

- The definition of a “domestic animal” is “an animal as the horse or cat that has been kept and tamed by humans as a work animal, food source or pet.”

*The Committee did not make any changes to (4) above.*

---

*Committee question #4:*

*“Robert Ebert suggested expansive language for the section: “In addition to powers otherwise conferred by law, the Select Board is authorized to adopt, amend, repeal and enforce ordinances relating to the health, safety and quality of life of Bennington residents.”*

*Mr. Barlow’s response:*

*“Again, I would suggest that you talk with your reps about how this might be received in Montpelier. My sense is that “health, safety and quality of life” may be too broad for the Legislature - it is far broader than the ordinance adoption authority granted to any other municipality.”*

---

*Committee question #5*



143 "There was also a suggestion to include a power to regulate new technologies. Lynn Green suggested this  
144 language:

145 Where the State Law does not apply and supersede, The Selectboard has power to create and  
146 enforce ordinances that address intrusive technologies and advancements to provide the right balance  
147 between recreational interests, commercial opportunity, law enforcement and the protection of  
148 fundamental rights of citizens including the regulation of:

- 149 - Vacation rentals such as Airbnb and car services such as Uber
- 150 - Unmanned aerial vehicles (drones)
- 151 - Marijuana and e-cigarette use
- 152 - Police body cameras
- 153 - Solar Panel installations"

154 Mr. Barlow's response:

155 *"As with my comment on Mr. Ebert's suggestion, I don't have a good sense that this is going to be welcomed*  
156 *by the Legislature. Also, keep in mind that the Town already has authority to address some of these topics*  
157 *(e.g., vacation rentals through zoning, police body cameras through general orders adopted by the police*  
158 *department). There are other topics that the Legislature is very unlikely to turn over to the Town (e.g.,*  
159 *regulation of marijuana)."*

160 Committee discussion on questions #4 and #5:

- 161 • Even though eliminating the list of specific items may be the best approach, it may not be well received  
162 by the voters or the Legislature.

163 **4. CONTINUE REVIEW OF CHARTER IF TIME ALLOWS**

164 Time did not allow.

165 **5. OTHER**

166 None.

167

168

169 *At 1:00 pm, Michael Keane moved and Jonathan Cohen seconded to adjourn the meeting. The*  
170 *motion carried unanimously.*

171

172

173 Respectfully submitted,

174 Nancy H. Lively

175 Secretary



Rob and Sean-Marie,

In response to your questions:

***Do you know of any qualifications that the State requires for [a] town treasurer?***

To be elected, a candidate for treasurer must be a registered voter in town. See 24 V.S.A. 2646. This requires one to be 18 years of age, have taken the voter's oath, be a citizen of the United States and a resident of the state of Vermont, and have registered to vote. See 17 V.S.A. 2121. The treasurer must also not be "unable to perform his or her duties due to a mental condition or psychiatric disability." See 24 V.S.A. 962. The treasurer must be bondable. See 24 V.S.A. 832. Also, the treasurer may not simultaneously be an auditor, selectboard member, school director, or town manager. 17 V.S.A. 2647. In some instances, the town treasurer may not be the assistant town clerk. 24 V.S.A. 1622.

***Could the town require its own qualifications for an elected position?***

Looking at this from the perspective that the Town charter is a state law, the charter could impose any eligibility requirement for an elected office that is consistent with the Vermont and United States constitutions.

However, the United States Supreme Court has held that persons "have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications." *Turner v. Fouche* 396 U.S. 346, 363 (1970). Without going into an overwhelming amount of detail, if a fundamental constitutional right is affected by the eligibility requirement, and if the qualification is challenged, the Town would be in the position of having to prove that the qualification is necessary to promote a compelling state interest, which is a very high legal threshold. On the other hand, if the qualification does not impact a fundamental right, the qualification could potentially be justified on a rational basis, which would be much easier to accomplish. The right to be a candidate for public office is potentially a fundamental constitutional right.

***We have decided that Section 102 and 302 will be combined into a single section in 302, and we would like your thoughts, including proposed language, on combining and streamlining the sections without listing every power but also without losing any of those powers.***

See attached for a starting point. I think that each subsection should be considered by the committee, keeping in mind not only streamlining but preserving existing authority and avoiding unnecessary debates and disputes, both locally and in Montpelier. There may be existing provisions in the charter that perhaps should be left alone, if only because of their "hot button" nature. For example, the provision for regulating, "use of firearms in settled areas" might be something that is best left for another day. It may be helpful for you to talk with Dick Sears and your other reps about what reception the Town should expect in Montpelier on certain topics.

***Robert Ebert suggested expansive language for the section: "In addition to powers otherwise conferred by law, the Select Board is authorized to adopt, amend, repeal and enforce ordinances relating to the health, safety and quality of life of Bennington residents."***

Again, I would suggest that you talk with your reps about how this might be received in Montpelier. My sense is that "health, safety and quality of life" may be too broad for the Legislature - it is far broader than the ordinance adoption authority granted to any other municipality.

***There was also a suggestion to include a power to regulate new technologies. Lynn Green suggested this language:***

***Where the State Law does not apply and supersede, The Selectboard has power to create and enforce ordinances that address intrusive technologies and advancements to provide the right balance between recreational interests, commercial opportunity, law enforcement and the protection of fundamental rights of citizens including the regulation of :***

- ***Vacation rentals such as Airbnb and car services such as Uber***
- ***Unmanned aerial vehicles (drones)***
- ***Marijuana and e-cigarette use***
- ***Police body cameras***
- ***Solar panel installations***

As with my comment on Mr. Ebert's suggestion, I don't have a good sense that this is going to be welcomed by the Legislature. Also, keep in mind that the Town already has authority to address some of these topics (e.g., vacation rentals through zoning, police body cameras through general orders adopted by the police department). There are other topics that the Legislature is very unlikely to turn over to the Town (e.g., regulation of marijuana).

***In section 303, is subsection 6 necessary?***

Section 303(6) provides, "In addition to powers otherwise conferred by law, the Select Board members shall also have the power to: ... (6) discharge all duties heretofore devolving on the Town Agent by general law and hire attorneys on behalf of the Town. This subsection is not strictly necessary, but it is helpful. Under 17 V.A. 2646(11), a town is required to annually elect "A town agent to prosecute and defend suits in which the town or town school district is interested." This officer is referred to as the town agent. Most of the responsibilities of the town agent have been superseded or vested in other officers, and only a few vestigial responsibilities remain. Many towns no longer bother to elect a town agent. Section 303(6) alleviates the legal requirement to elect a town agent and clarifies that the selectboard has authority to hire attorneys to represent the Town.

I hope this is responsive to the committee's questions. Please let me know if additional clarification is required.

Regards, Jim

James W. Barlow PLC



20

## Preamble

21 The people of Bennington reaffirm faith in Government of the people, by the people, and for  
22 the people and describe this government in a charter with provision to review and amend. The  
23 charter of the Town of Bennington reflects concern to improve the quality of life for all people.

24

## SUBCHAPTER 1.

25

## POWERS OF THE TOWN

### 26 § 101. General law applies

27 (a) All provisions of the Constitution and laws of the State relating to towns and villages shall  
28 apply to the Town of Bennington, except as modified by this charter;

29 (b) The Town of Bennington shall have all the powers and functions conferred upon towns  
30 and villages by the Constitution and general laws of this State and shall also have all implied  
31 powers necessary to implement such powers and functions;

32 (c) The powers and functions conferred upon the Town of Bennington by this charter shall be  
33 in addition to the powers and functions conferred upon the Town by laws now in force or  
34 hereafter enacted. Nothing in this charter shall be construed as a limitation upon such powers  
35 and functions.

### 36 ~~§ 102. Additional Town powers~~

37 ~~In addition to powers otherwise conferred by law, the Town of Bennington is authorized to~~  
38 ~~adopt, amend, repeal, and enforce ordinances:~~

39 ~~(a) relating to collection and removal of garbage, ashes, rubbish, refuse, waste, and scrap~~  
40 ~~by the Town and establishment of rates to be paid to the Town for such service;~~

41 ~~(b) relating to construction and alteration of public and private buildings and the use~~  
42 ~~thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as~~  
43 ~~to prevent hazardous and dangerous conditions, fires, and explosions by precautionary~~  
44 ~~regulations and inspection;~~

45 ~~(c) relating to the use of firearms in settled areas;~~



46 ~~(d) relating to the packaging, marketing, and handling of produce and other foodstuffs;~~  
47 ~~(e) relating to the prevention of pollution of streams, ponds, and other waterways within~~  
48 ~~the Town.~~

49 **§ 103. Initiative: advisory votes**

50 The voters of the Town have the power to petition for a nonbinding advisory vote to reflect  
51 public sentiment. Such petition shall be signed by at least five percent of the voters of the Town  
52 and shall state that it is advisory only. The Select Board, upon receipt of such a petition, shall  
53 place the article on the warning for the next Town meeting or any other Town election.

54 **§ 104. Recall**

55 (a) The voters of the Town may recall any of the elected Town officers listed in  
56 subchapter 2 of this charter.

57 (b) A recall petition, clearly stating cause, signed by at least 30 percent of the legal voters of  
58 the Town, and bearing their addresses, shall be filed with the Select Board within 15 calendar  
59 days of its issue. The Select Board upon receipt of a valid petition shall, after 60 calendar days,  
60 hold a special election, with voting by Australian Ballot, to consider the recall of an elected  
61 Town officer. When such a petition is approved by a majority of two-thirds of the ballots cast at  
62 such special election, the officer named in the petition shall thereupon cease to hold his/her  
63 office, and the office shall be considered vacant until filled by a special election to be held within  
64 60 days.

65 (c) A recall petition shall not be brought against an individual more than once during his/her  
66 term of office.

67 **SUBCHAPTER 2.**

68 **OFFICERS**

69  
70 **§ 201. Elective officers**

71 (a) The elective officers of the Town shall be seven Select Board members elected from the  
72 Town at large at a duly warned annual town meeting; a Town Clerk; a Treasurer; and a  
73 Moderator.

74 (b) All elective officers shall hold office for a three-year term. The term shall expire the first  
75 day of April following the annual Town meeting.

#### 76 § 202. Appointive officers

77 (a) The Select Board members shall annually appoint a Constable and other officers required  
78 by law or this charter, including a Board of not less than three nor more than five listers to serve  
79 for such terms as the Select Board members decide, but not less than one nor more than five  
80 years, such appointments to be made as vacancies occur in the elected Board of Listers.

81 (b) The Select Board members may create such appointive officers not provided for by this  
82 charter or required by law as they deem to be in the best interest of the Town.

#### 83 § 203. Compensation

84 (a) Compensation paid to the Select Board members shall be set by the voters at Town  
85 meeting.

86 (b) Subject subsection (a) of this section the Select Board members shall fix the compensation  
87 to all elective officers and of all officers appointed by the Select Board.

88 (c) The Town Manager, under policies approved by the Select Board members, shall fix the  
89 compensation of all other officers and employees whose compensation is not fixed by the Select  
90 Board pursuant to subsection (b) of this section.

### 91 SUBCHAPTER 3.

### 92 SELECT BOARD

#### 93 § 301. Select Board members, the legislative body

94 The Select Board shall constitute the legislative body of the Town of Bennington and shall have  
95 all powers and authority necessary for the performance of the legislative function.

#### 96 § 302. Additional powers of Select Board members to adopt ordinances

97 In addition to powers otherwise conferred by law, the Select Board members are authorized to  
98adopt, amend, repeal, and enforce ordinances:

99 (1) regulating the parking and operation of motor vehicles; including, despite any  
100contrary provisions of law, the establishment of speed zones wherein the limit is less than 20  
101miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;

102 (2) relating to regulation, licensing, and prohibition of the storage and accumulation of  
103junk cars; ~~garbage, ashes, rubbish, refuse, waste, and scrap,~~ and solid waste as defined at 10  
104V.S.A. §6602(2) -and collection, removal, and disposal of such materials, including the  
105collection and removal of junk cars and solid waste by the Town and establishment of rates to be  
106paid to the Town for such service;

107 (3) relating to registration and regulation of bicycles;

108 (4) relating to the keeping of dogs, cats, and other domestic animals ~~in settled areas;~~

109 (5) relating to construction and alteration of public and private buildings and the use  
110thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as  
111to prevent hazardous and dangerous conditions, fires, and explosions by precautionary  
112regulations and inspection;

113 (6) relating to the use of firearms in settled areas;

114 (7) relating to the packaging, marketing, and handling of produce and other foodstuffs;

115 (8) relating to the prevention of pollution of streams, ponds, and other waterways within  
116the Town.

### 117§ 303. Further powers of Select Board members

118 In addition to powers otherwise conferred by law, the Select Board members shall also have the  
119power to:

120 (1) organize and from time to time reorganize, the Fire Department under the supervision  
121of a coordinating committee formed by the Select Board from its members; such Department  
122shall be a volunteer department and the Select Board shall have authority to continue any



Hi Rob and Sean-Marie:

Sept 15, 2017

1. In reviewing Section 304, a question arose on whether certain duties, or rules of conduct, could be required of Select Board members, and whether a failure to perform those duties could lead to removal. The specific proposal was in regards to absenteeism with, I believe, automatic removal after a certain number of absences. Do other charters include such requirements? What, if any, process is there regarding removal in that context?

The following town and city charters address absenteeism:

- The [Barre Town](#) and [Windsor](#) charters provide that upon notice and a hearing, the Selectboard may remove one of its members from office for failure to **attend** four consecutive, regular meetings of the Board without prior approval of the Chair. The removal requires the affirmative vote of all four remaining members.
- The [City of Winooski charter](#) provides that the office of a councilor shall become vacant upon the death, resignation, removal from office in any manner authorized by law, or forfeiture of office. A councilor forfeits office if, at any time during the term of office, the councilor fails to attend three consecutive regular meetings of the Council without being excused by the Council.
- The [Town of Westford charter](#) provides that if any member of the Selectboard fails to attend at least 70 percent of the meetings in any 12-month period or misses three consecutive meetings without the consent of the Selectboard, the Selectboard may declare the position vacant and fill it in accordance with State law.
- Charters of the towns of [Middlebury](#), [Plainfield](#), and [Hardwick](#) provide that upon a vacancy due to incapacity of a Selectboard member, the remaining members may appoint someone to fill the vacancy. Each charter provides that incapacity shall include the failure of a Selectboard member to attend 50 percent of the meetings of the Board in any calendar year. Stowe has a similar provision, but requires failure to attend 70 percent of the meeting in a calendar year.
- The [St. Albans City](#), [Rutland City](#), [Burlington](#), [Montpelier](#) and [Barre City](#) charters each authorize the adoption and enforcement of ordinances to compel council meeting attendance.

2. In general, what is your experience with selectboard term limits?

I have no experience with selectboard term limits. I do not believe that there are presently any Vermont cities or towns with term limits for any elected office.

3. With town managers, do other municipalities have a term of appointment rather than the "indefinite term" in our charter? Do any charters carry specific language for a town manager contract and procedures regarding expiration or renewal of that contract?

- Most city, town and village charters that address the appointment of a manager provide, like Bennington, that the selectboard, council or trustees "shall" appointment of the manager to an indefinite term. These municipalities include [Montpelier](#), [Essex Junction Village](#), [Stowe](#), [Middlebury](#), [South Burlington](#), [Barre Town](#), [Milton](#), and [St. Albans City](#). The [Williston](#) and [Springfield](#) charters provide that the selectboard "may" appoint the manager for an indefinite term.
- The City of [Winooski](#) charter provides that the city council shall appoint a city manager for a mutually agreed-upon term.
- The [Village of Enosburg Falls](#) charter provides that the Board of Trustees may appoint and employ a Village Manager for a term not exceeding three years.
- The [Town of Hartford](#) charter provides that the town manager shall be appointed for a period not to exceed three years and may thereafter be appointed for successive terms of not more than three years.
- In [Vergennes](#), the charter provides that the city manager is to be appointed annually by the city council.

It will be fine if committee members e-mail me directly, copying just the chairs. I will respond as promptly as I but may cry "uncle" if I get overwhelmed with questions.

I hope that this helps.

Let me know if you need anything else.

Jim



**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**

**SEPTEMBER 27, 2017**

**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair (left at 12:55pm-following vote on §302 motion); Robert Plunkett-Co-Chair; Jonathan Cohen; Michael A. Keane; Robert Ebert and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** Daniel Malmborg.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Michele Johnson- Human Resources and Contracts Administrator; Cassandra Barbeau-Town Clerk; Thomas Jacobs-Bennington Select Board Chair and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Sean-Marie Oller called the meeting to order.

**1. PUBLIC COMMENTS**

Ms. Oller mentioned that she had put the informational letter to the public on tonight's meeting in the Bennington Banner and phoned a few people, as well.

Ms. Green requested that Mr. Barlow advise the public that there is already a provision in the Charter for the public to petition to be on the ballot. Ms. Barbeau added that the petition must be signed by 5% of the voters, or 450 at our present count. Mr. Plunkett stated that he has already informed Mr. Barlow of this.

Ms. Oller also noted that Mr. Plunkett had attended the September 25, 2017 Select Board Meeting to again invite the Board to Mr. Barlow's presentation this evening.

Mr. Jacobs thanked the Committee for their time and efforts on the Charter review, urged them to keep up the good work while being mindful of not letting "the parking lot get too full". The couple of people that Mr. Jacobs has spoken to were not in favor of his suggestions for Select Board member removal for excessive absenteeism or limiting terms. Mr. Jacobs feels that serving an extended number of terms tends to make a board member "complacent". "New people bring new ideas."

The Select Board can suggest changes to the Charter, themselves, but are relying heavily on the recommendations of the Committee.

**2. APPROVE MINUTES OF SEPTEMBER 20, 2017**

*Michael Keane moved and Robert Plunkett seconded to approve the Minutes of September 20, 2017 as submitted. The motion carried unanimously.*

**3. DISCUSSION OF PUBLIC FORUM**

Dates and times for the October and November public forums still need to be decided. CAT-TV has been contacted for their availability but have not yet responded. The dates will be set at the October 4<sup>th</sup> Committee meeting regardless.



Town Staff had also put the informational Letter to the Editor on WBTN, on the website where all agendas are put, on the bulletin board of the Police Department, the four corner kiosk, and at the Town Office.

If anyone attends tonight with the perception that Mr. Barlow will be giving an opinion on what changes Bennington should make to the Charter, they will realize that he is only there to educate the public on what is in the State, what is possible, and how you review a charter.

Regardless of the attendance this evening, many people will be watching it on CAT-TV. When those rebroadcast times are known, they will be put on the website. CAT-TV also puts it on YouTube, so a link to that will also be put on the Committee's page of the website.

#### 4. DISCUSSION OF SECTION 302

The following is removing from SUBCHAPTER 1. POWERS OF THE TOWN, §102. Additional Town powers (b) through (d) and adding them to §302 below as (5) through (8):

"SUBCHAPTER 3.

SELECT BOARD

§302. Additional powers of the Select Board to adopt ordinances

(5) relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection;

(6) relating to the use of firearms in settled areas;

(7) relating to the packaging, marketing, and handling of produce and other foodstuffs;

(8) relating to the prevention of pollution of streams, ponds, and other waterways within the Town:"

Discussion ensued:

- In (5), remove "so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection". The Town adopts the codes that the State adopts by reference so this phrase is not necessary.
  - If the above phrase is removed, "the Town could dictate the quality of the structure".
  - Building codes were initiated in 1971, and the above phrase, was probably put in the Charter so people realized why building codes were established.
- 
- In (6), add at the end "consistent with 24V.S.A.2295" so people realize that the Town must follow the State statute.
  - But since the Town does need to follow the State statute because the State statute supersedes the Charter, (6) will remain as is.
  - We are opening this section up to discussion and to vote on because we moved it. This wouldn't be the case if we had left it in §102.
-

- Delete (7) because nothing is done with it.
  - Every meeting the Committee is torn between leaving something in that is never used only to prevent a negative public reaction by removing it.
  - There has been no compelling arguments to either leave it in or take it out.
  - (7) will remain in as is.
  - The food vendors in the downtown have to get health certificates to operate and the Town only tells them where they can locate. The Ben Mont farm stand is agricultural, not in the Downtown and is set up on private property so it isn't subject to this regulation.
- 
- (8) will remain in as is.
- 
- Ms. Green would like to add her previous suggestion without the list as (9) and the Committee agreed.
  - Much discussion ensued as to the wording of the addition of (9).

***P. Lynn Green moved and Michael Keane seconded to override last week's approval of §302. Additional powers of the Select Board to adopt ordinances and to accept this week's version of §302. Additional powers of the Select Board to adopt ordinances in its entirety as follows:***

*"§302. Additional powers of the Select Board to adopt ordinances*

*In addition to powers otherwise conferred by law, the Select Board members are authorized to adopt, amend, repeal, and enforce ordinances:*

- (1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;*
- (2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars, garbage, ashes, rubbish, refuse, waste, and scrap, and collection, removal, and disposal of such materials;*
- (3) relating to registration and regulation of bicycles;*
- (4) relating to the keeping of dogs, cats, and other domestic animals in settled areas."*

***Line 2, Change "members are" to "is"***

***(2), Line 2, Change "and scrap" to "scrap, and solid waste as defined at 10 V.S.A. §6602(2)-"***

***(2), Line 3, Change "materials;" to "materials, including the collection and removal of such materials by the Town and establishment of rates to be paid to the Town for such service;"***

***Add (5), (6), (7), (8) and (9) as below:***

***"(5)relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring;***

***(6) relating to the use of firearms in settled areas;***

***(7) relating to the packaging, marketing, and handling of produce and other foodstuffs;***

***(8) relating to the prevention of pollution of streams, ponds, and other waterways within the Town;***

*(9) relating to intrusive technologies, including drones, in order to provide a balance between recreational interests, commercial opportunity, law enforcement, and the protection of fundamental rights of citizens."*

Mr. Ebert stated that a couple of years ago the Select Board passed "The Panhandling Ordinance" and asked where it resides on the list of ordinances. Mr. Hurd responded that it is within "the broader powers of the Board" to have passed that. "That issue came with some questions of constitutionality that have not been resolved in Vermont courts".

*The motion carried with Robert Ebert opposed.*

**5. CONTINUE REVIEW OF RESPONSES RECEIVED FROM JIM BARLOW**

Not done.

**6. CONTINUE REVIEW OF CHARTER IF TIME ALLOWS**

Time did not allow.

**7. OTHER**

None.

*At 1:00 pm, Michael Keane moved and Robert Plunkett seconded to adjourn the meeting. The motion carried unanimously.*

Respectfully submitted,

Nancy H. Lively

Secretary



TOWN OF BENNINGTON  
INFORMATIONAL FORUM  
CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON FIRE FACILITY  
130 RIVER STREET  
BENNINGTON, VERMONT 05201  
SEPTEMBER 27, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; P. Lynn Green; and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** Daniel Malmborg; Jonathan Cohen; and Michael Keane.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town Clerk; Joan Pinsonnault-Treasurer; Select Board Members-Tom Jacobs, Jeannie Jenkins, Jeanne Conner, and Jim Carroll; Jim Barlow-Attorney; Michael Bethel; Joey Kulkin; 6 citizens; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 5:30 pm, Co-Chair Sean-Marie Oller and Co-Chair Robert Plunkett called the meeting to order.

**1. PRESENTATION AND DISCUSSION LED BY ATTORNEY JAMES BARLOW**

Jim Barlow, shared his background with the Committee and is now an attorney specializing in Vermont Local Government Law. The following are the highlights of his presentation and questions will be taken throughout:

*Municipal Governance Charter -*

- All town charters are available online at the Legislature's webpage in the Statute section under Title 24A.
- Charter amendment must follow a statutory process.
- In 39 states, local governments are free to pass laws and ordinances as they see fit, limited only by the bounds of the state and federal constitutions. However, Vermont is not one of them.
- Vermont municipalities only have those powers specifically delegated to them by the Legislature. "We are not given the benefit of a doubt."
- The Bennington Charter is a grant of state law, approved by local voters and the Legislature that sets out specific laws for operation of local government in a municipality.
- There are 9 cities, 52 towns and 50 village municipal governance charters in Vermont that operate within the boundaries of their respective municipalities.

*Question: Mr. Plunkett - Is a city charter different from a town charter?*

*Answer: Mr. Barlow - They are the same document in the way that they come into being and how they are approved, but "typically, a city charter is more representational and less participatory". "You are what you chose to call yourself."*

- Amending the Bennington Charter is amending the laws of the State of Vermont as they apply to Bennington.
- If there is a conflict between a Town Charter and the State Statute, the more specific statute controls. For example, the fact that Bennington elects 7 Select Board members trumps the State Statute of 3 or 5 members.
- Charters need to be kept current because general law in the State of Vermont may move faster than charters.
- Four characteristics define a local governance model: What officers are elected and which are appointed?; Who appoints, controls and directs municipal employees?; How are the budget and tax rate set?; What powers do the voters have?.
- Bennington voters are given the authority to recall an elected official, whereas, this is not allowed in most municipalities or State law. Statutory process for this can be overridden within a town's charter.
- Basic statutory town government model has at least 16 elected town officers are mandatory unless opted out in the Town Charter: Selectboard; Clerk; Treasurer; Constable; Town Agent; Listers; Auditors; Grand Juror; Moderator; Delinquent Tax Collector.
- The Statutory Form of Vermont Town Government is a horizontal organizational chart - one elected position does not answer to another.
- Most municipalities have this most inclusive horizontal organization chart where there is no mayor or town manager.
- The voters' primary authority is the election of town officers and adoption of the town budget.
- Bennington is one of 16 towns that have a recall process for elected officials.
- Voters adopt the budget; Selectboard sets the tax rate and administers the budget with some measure of discretion to deviate from the budget as required by circumstances during the fiscal year.
- Voters also have the right to disapprove town ordinances, adopt zoning bylaws, and approve borrowing, etc.
- Town government relies heavily on political remedies and "social control" which is as much tradition as it is statute.

*Question: Ms. Green - Can a provision for excessive absenteeism also be written into the charter?*

*Answer: Mr. Barlow - Yes.*

*Question: Mr. Ebert - For what purpose would a town include an absenteeism provision?*

*Answer: Mr. Barlow - Why did you do that? would be a question to town's that have done it.*

- Town government has a high level of accountability and transparency making the process very slow. The lack of time, expertise, and resources within selectboards also impedes the efficiency. Nevertheless, 175 Vermont towns operate under this model.
- In the Statutory Form of Vermont Town Government, the selectboard operates like the proprietor of a small business.

*Municipal Manager Form of Local Government -*

- This is the most common variation from the basic statutory model.

- There are two ways a town can adopt the manager form of government - 1. A vote under State statute; and 2. The adoption of a charter that provides for a town manager.
- Bennington, along with about 53 other Vermont municipalities, has adopted the manager form of government through a local vote of a municipal governance charter.
- The Selectboard retains its quasi-judicial and legislative functions but the administrative and executive responsibilities are vested in the town manager who reports to the selectboard.
- The selectboard members are the elected representatives of the community, and theoretically, concentrate on policy and ensuring that the local government is responsive to community needs and wishes.
- The manager is hired to assist the board in determination of policy and serves at the direction of the board to carry out those policy decisions.
- The manager may be terminated if not responsive to the wishes of the board.
- The Manager Form of Vermont Town Government is more of the pyramid structure with many departments reporting to the manager.
- This, theoretically, increases accountability and efficiency in delivering government services.
- In the Manager Form of Vermont Town Government, the selectboard operates like the board of directors in a public corporation.

*Question: Mr. Ebert - You have just said that the manager may be terminated if not responsive to the wishes of the board. Our charter says that the manager can be terminated without cause. How are these different?*

*Answer: Mr. Barlow - If a town has adopted the manager form under State statute, the manager would be terminated with cause, and if the town adopted the manager form of government through their charter, the manager can be terminated without cause.*

#### *Vermont City Government -*

- A city is a city rather than a town because the local voters decided to call itself that and is not determined by population.
- There are 9 cities in Vermont and all cities must have a Charter.
- There are fewer elected and more appointed city officers. Most cities have an appointed city manager and a mayor with varying responsibilities.

*Question: Ms. Green - Is the job of mayor a full time or part time job?*

*Answer: Mr. Barlow - Typically they are holding a full time job and being mayor is part time, mostly ceremonial, running the City Council role except in the City of Rutland where the mayor is a full time employee of the City.*

- The voters are not directly involved in the budget approval process. Generally, the city governance system is more representational and less participatory than statutory town government.

#### *Rutland City – Population 17,292*

- Mayor, treasurer, and assessor elected for two year term; mayor appoints the city clerk and attorney for two year terms; no city manager.
- 11 member board of aldermen elected at large to two year terms. They adopt and amend city ordinances, and confirm appointments made by the mayor.



- The mayor can veto an action passed by the board of aldermen subject to being overridden by the council. And the mayor appoints department heads and officers, subject to confirmation by the board of aldermen. The mayor cannot veto the confirmations.
- Mayor and president of the board of aldermen comprise the board of finance who approves payment of the bills.
- City clerk (appointed) and city treasurer (elected) have the same authority as town clerks and town treasurers. Elected assessor has the same authority as town listers - positions that are becoming difficult to fill. In Bennington, we appoint a board of listers and hire an assessor.

*Barre City – Population 9,291*

- Clerk, treasurer and mayor elected to two year terms; manager appointed by city council; and assessor appointed by manager subject to city council approval.

*Question: Mr. Carroll - Who has the final say, the mayor or the manager?*

*Answer: Mr. Barlow - The mayor has no authority other than being a member of the council, so the final say is with the council.*

- City council is comprised of six aldermen and the mayor; council appoints the manager, the attorney, most board and committee members, fills vacancies in elected offices, adopts ordinances and determines all matters of city policy.
- The mayor is the leader of the city council but has little executive authority under the charter. However, in case of riot, insurrection, or other emergency, the mayor can deputize anyone and outranks the Chief of Police.

*Question: Ms. Green - Does the mayor in Barre serve similarly to our Select Board Chair?*

*Answer: Mr. Barlow - Yes, but is granted more recognition as the ceremonial head of government than the Select Board Chair.*

*Question: Mr. Ebert - Can the charter endow more authority to the Select Board Chair?*

*Answer: Mr. Barlow - Yes.*

- The manager is the chief administrative officer of the city appointed by the city council to an annual term and can be removed without cause. He/she appoints and removes all department heads and other officers and is responsible for carrying out city council policies.
- The city council is prohibited from giving orders to anyone that reports to the manager.
- The mayor is the "public face" of the city, whereas the manager runs the city.
- City clerk and city treasurer have the same authority as town clerk and town treasurer. Manager appoints the assessor subject to city council approval and has the same authority as town listers.

*Question: Ms. Oller - Do mayors have a political party affiliation? Our charter states that the manager must be apolitical.*

*Answer: Mr. Barlow - I suppose the mayors could have but I don't see it. And the apolitical requirement for a manager dates back 100 years to when political favors were granted repeatedly to ensure that the professional that was being hired as manager had no political aspirations.*

*Mr. Hurd: Some managers within the State carry the apolitical requirement to the degree of not even signing a petition for someone to run for local office.*

Mr. Barlow added that it is important to remember when comparing the variances within the position of mayor that it depends on the expectations of the community and the personality of the individual person holding the office. For example, the charters of Barre and Montpelier are very similar, but the mayor/manager relationship within each is very different.

#### *Town of Bennington – Population 15,764*

- Clerk and treasurer elected for three year terms; 7 member selectboard elected for three year terms; manager appointed by selectboard; and a 3 member board of listers appointed by the selectboard is unique to Bennington.
- Voters have authority to compel nonbinding advisory votes on warning, as well as, the authority to recall elected officers.
- Selectboard has authority to special assessment districts without a vote of the town.

*Question: Ms. Green - Is a special assessment district different from a local option tax?*

*Answer: Mr. Barlow - Yes. For example, a special assessment district would be charging for water and sewer only to those that are using it and not to the whole town.*

- Establishing the Bennington Downtown District in the charter is also unique to Bennington.

#### *Things to Think About –*

- Should Bennington have a mayor? A mayor can function as a CEO or be a ceremonial figure.
- If so, what should the role of the manager be? Do you need a manager? A manager would complement the role that the mayor takes - weaker mayor/stronger manager or vice versa.

*Question: Ms. Oller - Doesn't the authority given to the mayor and manager determine whether one is stronger or weaker instead of the personalities?*

*Answer: Mr. Barlow - It is his opinion that the personality of the person holding the position is equally as important as what is written in the charter.*

*Question: Ms. Green - It would be easier to have a mayor and then change the charter to accommodate a CEO or ceremonial mayor. But, we can't do that, so how do we know whether to put language in the charter for a stronger or weaker mayor?*

*Answer: Mr. Barlow - By holding public forums and finding out what the voters want.*

*Question: Mr. Bethel - Aren't there two votes for a mayor - first, to decide if you want a mayor at all, and second, to decide what type of mayor you want?*

*Answer: Mr. Barlow - The mayor language is going to be set before it goes to the voters.*



Mr. Bethel gave the petition that had been drafted by his attorney to Mr. Barlow to read, and Mr. Barlow noted that this petition is eliminating the town manager and indicating that the mayor would take over the current functions of the town manager.

- Should Bennington have a local option tax? Because Bennington was not one of the original "gold towns", to establish a local option tax on sales, rooms, meals, and/or alcoholic beverages would require an amendment to the charter.

Question: Ms. Green - If we did begin a local option tax, can we earmark where that money would go?

Answer: Mr. Barlow - Yes, this could be done through your charter. Mr. Hurd added that it could be dedicated as a reserve fund for a specific purpose each year.

#### *Charter Amendment Process –*

- The Select Board appoints a Charter Review Committee to submit suggested charter changes via a final report to the Select Board. The Select Board then decides if the changes should go to the voters and can amend the changes as they see fit. The changes must go to the voters within 1 year from the submission of the Committee's report.
- There is also a statutory process that requires that a petition be submitted for a charter amendment.
- The selectboard must hold the first of two informational hearings on the proposal. The first hearing must be held at least 30 days before the meeting at which the voters will vote to approve the amendment.
- The selectboard may revise the proposal based on the hearings and/or present any recommendations that they have that have not come from the Committee.
- Voting on a charter amendment is by Australian ballot.
- If the amendments are approved, the clerk must certify the results to the Secretary of State. Be sure to follow-up that the Secretary of State has received it.
- The amendment becomes effective upon affirmative enactment by the Legislature and follows the same process as any other law in the State of Vermont.
- Once approved by the Legislature and signed by the Governor, it becomes the law in the Town of Bennington.
- As a state statute, the Legislature is free to amend the charter proposal as it sees fit, although, most pass through without change.
- The selectboard and manager should be ready to testify and advocate for the proposal in the Statehouse. If they wish, citizens may also testify.

Question: Ms. Green - How will it be presented to the voters? By line item, chunks, etc.?

Answer: Mr. Barlow - The Select Board determines how it will be presented to the voters, and Mr. Jacobs stated that it will be by sections.

Mr. Hurd - Regardless of how it is presented to the voters, it will go up to the Legislature as a whole.



Mr. Plunkett - If a charter amendment is presented by a petition from the voters, it cannot be changed by the Select Board. Mr. Barlow agreed.

Question: Mr. Bethel - Wouldn't it be better for the Committee to work on the more important issues now for the 2018 vote, and then 6 months from now, work on the others for the 2019 vote?

Answer: Ms. Oller - The Committee was charged with looking at the whole document, so we will do that and then go back if we believe it is necessary. We are obtaining all the information and documentation on an issue before reaching a decision on it. "These are not just our opinions."

Mr. Ebert added that he does not want to be hurried, or "pushed or pulled" into prioritizing which issue is more important than another. The Charter gives us a year to review it, and if it takes that long, so be it. "The Town will still be here."

Question: Ms. Oller - Would we vote on the mayor's salary like we do the clerk's and treasurer's?

Answer: Mr. Barlow - It is typically a line item in the budget.

The Committee will be having two other public forums - one in October and one in November. When CAT-TV notifies Mr. Hurd of their availability, the dates and times of those meetings will be publicized. The Committee strongly encourages input from the public on the charter review.

The Committee will also be presenting all of their recommendations to the Select Board in one final professional report where all of their reasoning's for either changing or not changing something will be explained.

Mr. Jacobs recommended that Mr. Barlow give examples of both 'at will' and 'for cause' town manager contracts to the Committee for them to peruse, and he will do that.

Mr. Barlow's power point presentation will be on the Charter Review Committee page of the Town's website.

***At 7:07 pm, Sean-Marie Oller moved and P. Lynn Green seconded the adjournment of the meeting. The motion carried unanimously.***

Respectfully submitted,

Nancy H. Lively

Secretary

CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

OCTOBER 4, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Jonathan Cohen; Michael A. Keane; Daniel Malmborg; Robert Ebert (at 11:50am) and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Dan Monks-Zoning Administrator; Beth Antognioni; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Robert Plunkett called the meeting to order.

*Robert Plunkett moved and Sean-Marie Oller seconded to add "Final Report-discussion and format" to agenda #5. "Discuss Committee meeting time and length of meetings going forward". The motion carried unanimously.*

**1. PUBLIC COMMENTS**

None.

**2. PUBLIC COMMENTS RECEIVED**

Two public comments were received this week. One was from Spoon Agave, a resident of Brattleboro who had served as the Chair of the Brattleboro Charter Review Commission about six years ago and also sent a Letter to the Editor of the Banner on the same topic - Mayor/Manager, and one from Ron Alderman who preliminarily "basically agrees" with some of the points that Mr. Agave made in that letter.

Ms. Green: Unless you have a mayor that is strictly ceremonial, the mayor is a "hands on" position and requires some managerial background.

Mr. Malmborg: Having a mayor doesn't preclude also having a town manager. There are some points in Mr. Agave's comments that Mr. Malmborg agrees with and some points that he doesn't agree with. He has yet to make up his mind on having just a major, both a mayor and town manager, or just a town manager.

Ms. Oller: The questions at the end of Mr. Agave's comments - 'what problems are you trying to solve? Is a mayor significantly more likely to solve them? Are there other ways of solving your problems?', and what problems are we trying to solve in Bennington? Ms. Oller has heard "on the street that a mayor would be more accountable because he/she would be elected". Since the town manager is reviewed every year, she doesn't see how the mayor would be more accountable than that. "What are we trying to solve?"

Mr. Plunkett: Read from Mr. Agave's Letter to the Editor on the process that Brattleboro went through - "It was a three year process using more than 70 meetings. In the end we recommended 33 changes of which 24 were accepted by the voters."

Ms. Green: Keeping in mind what we are trying to solve is good advice that we sometimes lose sight of.

37 Mr. Ebert: The charge that the Charter gives us is "to find ways to improve the operation of Town  
38 Government so if something isn't broken doesn't mean we have to walk away from it".

39 Mr. Keane: Mr. Agave makes some assumptions that the Select Board members have the backgrounds  
40 to be able to make good hiring decisions when they may very well not.

41 Ms. Green: It is Mr. Agave's point of view that a Select Board as a hiring body will have the opportunity  
42 to review resumes, experience, etc. that the population at large will not.

43 **3. DECIDE DATES FOR PUBLIC FORUM IN OCTOBER AND NOVEMBER AND DISCUSS PUBLIC OUTREACH**

44 The dates for the October and November Public Forums are:

45 Thursday, October 26, 2017 at 5:30pm-7:00pm

46 Tuesday, November 28, 2017 at 5:30pm-7:00pm

47 **4. DISCUSS WHO WILL ATTEND FIRE DEPARTMENT QUARTERLY MEETING ON OCTOBER 4, 2017 AT**  
48 **6:00PM**

49 After the Informational Public Forum on September 27<sup>th</sup>, Bill Latour and Jeff Barry from the Bennington  
50 Fire Department expressed concern about potential changes that the Committee may be proposing for the  
51 Fire Department without having heard about them first.

52 Ms. Oller added that another Fire Department member had approached her on a different day stating  
53 that he felt that the Town wouldn't be able to afford paying any of the current volunteers.

54 Mr. Ebert noted that it is often the assumption that if a change is made to allow for the possibility at a  
55 future date that that change was to become effective immediately. We are not trying to change the Fire  
56 Department, we're just trying to improve Town Government by allowing them to talk about it. Also, it has  
57 been Mr. Ebert's experience that when volunteer departments establish paid positions it is not to pay the  
58 Chief, it is to pay the drivers.

59 Mr. Plunkett, Mr. Ebert and Ms. Green will attend the Fire Department Quarterly Meeting on October  
60 4, 2017 at 6:00pm to explain the Charter Review Committee process and intent.

61 **5. DISCUSS COMMITTEE MEETING TIME AND LENGTH OF MEETINGS GOING FORWARD AND FINAL**  
62 **REPORT-DISCUSSION AND FORMAT**

63 Ms. Oller stated that, since the Committee has only reviewed 1/3 of the Charter so far, perhaps longer  
64 meetings should be set at possibly other times of the day to be able to have gone through the Charter by  
65 December.

66 Mr. Ebert reiterated his feeling that there is actually a year to review the Charter and it does not have  
67 to be done by "the artificial deadline" of December.

68 Discussion ensued and the Committee decided to meet on October 17, 2017 in the Town Office  
69 Conference Room from 4:30pm-7:30pm in lieu of the midday meeting on October 18, 2017.

70 -----

71 The Committee approved the final report structure that Mr. Keane had submitted, and he will work on  
72 a draft of it for as far as the Committee has gotten to this point within the next couple of weeks.



73       **6. APPROVE MINUTES OF SEPTEMBER 27, 2017 X 2**

74           *Sean-Marie Oller moved and Jonathan Cohen seconded to approve the September 27, 2017 Minutes*  
75 *of the Charter Review Committee Meeting and the September 27, 2017 Minutes of the Informational Forum.*  
76 *The motion carried unanimously.*

77       **7. REVIEW CHAPTER 3 SECTION 303 (6) - RETENTION BASED ON BARLOW COMMENTS**

78           Mr. Barlow commented that "Many towns no longer bother to elect a town agent. Section 303(6)  
79 alleviates the legal requirement to elect a town agent and clarifies that the selectboard has authority to hire  
80 attorneys to represent the Town". The Committee had previously deleted Section 303 (6).

81           *P. Lynn Green moved and Sean-Marie Oller seconded to make the following changes to Subchapter*  
82 *3., Select Board, §303. Further powers of the Select Board:*

83           *Add (6) that had previously been deleted - "(6) discharge all duties heretofore devolving on the Town*  
84 *Agent by general law and hire attorneys on behalf of the Town;"*

85           *Change the current "(6)" back to "(7)"*

86           *The motion carried unanimously.*

87       **8. REVIEW CHAPTER 3 SECTION 304 - ABSENTEEISM AND BARLOW COMMENTS**

88           Committee comments:

89           Mr. Malmborg: There are other reasons than absenteeism that warrant removal of a Board member,  
90 i.e., a breach of executive session confidentiality, criminal activity, etc. "A thousand roads." Mr. Malmborg  
91 doesn't feel this should be in the Charter because "90%" of the votes are not determined by a tie breaker and  
92 the Select Board has other ways to get it on the record that a person is not regularly attending the meetings.

93           Mr. Ebert: Is the purpose of removing a Board member for absenteeism to ensure the efficiency of the  
94 Board, or is it as a sanction to an individual, or both?

95           Mr. Keane: It is for the efficiency of the Board. "It's not a sanction but a necessary encouragement for  
96 people to take this seriously".

97           Mr. Cohen: Feels there should be a mechanism in place to remove a Board member if their  
98 circumstances are such that they are unable to attend the meetings. It is about "essentially not having that  
99 seat filled".

100          Ms. Green: Agrees with Mr. Cohen.

101          Discussion ensued and the Committee developed the following language:

102          *"(g) A Select Board member who fails to attend more than 4 consecutive regular meetings or 50% of all warned*  
103 *meetings in a 12 month period shall be removed from the Board."*

104          This was proposed but not voted on.

105       **9. CHAPTER 3 SECTION 304 - TERM LIMIT DISCUSSION, IF ANY, FROM BARLOW COMMENTS**

106          No discussion occurred.

107       **10. IF TIME ALLOWS CHAPTER 4 SECTION 401 - TOWN MANAGER APPOINTMENT AND CONDITIONS**

108 No discussion occurred.

109 *At 1:03 pm, Daniel Malmborg moved and Sean-Marie Oller seconded to adjourn the meeting. The*  
110 *motion carried unanimously.*

111

112

113 Respectfully submitted,

114 Nancy H. Lively

115 Secretary

116

CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

OCTOBER 11, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Jonathan Cohen; Michael A. Keane; Daniel Malmborg; Robert Ebert and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Michele Johnson- Human Resources and Contracts Administrator and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Sean-Marie Oller called the meeting to order.

*Michael Keane moved and Daniel Malmborg seconded to add #7. Approval of Minutes - October 4, 2017 to the agenda. The motion carried unanimously.*

**1. PUBLIC COMMENTS**

None.

**2. PUBLIC COMMENTS RECEIVED**

None.

**3. REVIEW CHAPTER 3 SECTION 304 - ABSENTEEISM AND BARLOW COMMENTS**

Jim Barlow's comments suggest the following language if absenteeism is to be added:

*"If a Select Board member is absent from four consecutive regular or special Select Board meetings or is absent from more than 50 percent of the regular and special Select Board meetings in any 12-month period, the member's office shall be vacant and the Select Board shall fill the vacancy in accordance with Section 304(c)."*

Discussion ensued:

- The 12-month period is too long. It should be replaced with a 6-month period. If there's a problem it should be addressed in a timely fashion.
- Four consecutive meetings is normally being absent for 2 months of regular meetings; 50% in a 6-month period is normally being absent for 6 regular meetings.
- There are 6 to 7 special meetings within a 12-month period.
- This is a reasonable amount of time since the Board will fill the vacancy and could potentially even appoint the person that has been absent.
- The resulting vacancy is automatic and occurs by operation of law and there is no such thing as an excused absence.
- The Chair or Vice-Chair of the Select Board should keep track of attendance.



- If you are not physically present but participate in the meeting by phone or skype and vote, you are considered to be attending the meeting.

**P. Lynn Green moved and Michael Keane seconded to add Subchapter 3., Select Board, §304 (g) as follows:**

*"If a Select Board member is absent from four consecutive warned Select Board meetings or is absent from more than 50 percent of warned Select Board meetings in any 6-month period, the member's office shall be vacant and the Select Board shall fill the vacancy in accordance with Section 304(c)."*

**The motion carried unanimously.**

#### **4. CHAPTER 3 SECTION 304 - TERM LIMIT DISCUSSION, IF ANY, FROM BARLOW COMMENTS**

Jim Barlow's comments:

*"I have no experience with Select Board term limits. I do not believe they are present in any cities or towns for elected office."*

After discussion, it was the consensus of the Committee not to add term limits to the Charter.

#### **4A. FIRE DEPARTMENT REPORT ON OCTOBER 4, 2017 QUARTERLY MEETING**

Mr. Ebert reported that Chief Barry would like to meet with the Committee members to discuss language and expressed that they would like to have any paid position requests be able to only come from the Fire Department. They said that if and when they go to the point of having paid positions, they would deal with it then. It appeared to Mr. Ebert that the "older guys were all against it, and the younger guys were all nodding their heads".

Ms. Green added that they have "a lot of pride and identity" and they're a membership organization that has been working very well the way it is for a long time. They want to continue to be able to elect their own leaders without Town oversight coming in, and said that they save the Town \$2M-\$2.5M/year.

Mr. Plunkett concurred that their volunteerism has more value than any dollars they would receive. He and Ms. Oller will be meeting with Chief Barry and at least one other fireman on October 12, 2017 to review any language the firemen may have for the Charter.

Mr. Ebert's experience when he served on the Austin, Texas Fire Department was that when a fire department went from all volunteer to a part paid department, it was to pay the drivers for station coverage.

This will be an agenda item in the near future.

#### **5. CHAPTER 4 SECTION 401 - TOWN MANAGER APPOINTMENT AND CONDITIONS**

Jim Barlow's comments:

*"Most Town Managers are shall be appointed for an indefinite term. Winooski is an agreed upon term with the City Manager; Enosburg Falls is a 3-year term; Hartford is a 3-year term; and in Vergennes, the City Manager is appointed annually."*

Discussion ensued:

- It is hard to get a good, qualified person that is an at will employee with a set term of 1 or 3 years.

- Or, it could be a 5-year renewable term, which would eliminate the 'at will employee' part and institute a contract part.
- And there are contracts that state termination with 90 days' notice by either party.
- If a person is relocating from a distance, there should be an amount of time that a person has to prove themselves that is either renewable or not.
- There should be some interval where each member of the Select Board has "to make a stand" that the public can see as to whether or not to keep the Town Manager.
- It is in the statutes that a School Superintendent cannot be hired for less than 2 years.
- It should be in the Charter that the Town Manager is reviewed annually.
- All Town employees below the department head level are reviewed by their supervisors annually and the Town Manager reviews the department heads annually.
- Currently, the Town Manager is reviewed annually which is a combination of a self-review and full Board review. The time involved is the Town Manager doing his/hers self-evaluation and each Board member doing their comments. The actual time together is no more than 1 ½ hours.
- The value of an evaluation is what is put into it.
- It's good management practice to do annual evaluations.
- A term limit would be a positive for a person who is new to the job, whereas, the at will termination with a 90-day notice would be a negative. The corporate world has a different perspective.
- We are trying to accomplish a definitive appointment time for a Town Manager and acknowledge that people have said that they want a change.
- We need to establish structure where there is none and encourage the Select Board to follow these policies and processes.

The Committee will ask Mr. Barlow the following question:

*Can we set a 3-year renewable term and also continue to employ the Town Manager as an at will employee?*

#### **6. REMAINDER OF CHAPTER 4**

Potential questions when reviewing the remainder of Subchapter 4. Town Manager:

§402. Manager nonpartisan - should this also apply to the Assistant Town Manager?

§403. Oath and bond - Mr. Hurd is bonded.

§404. Duties for Manager - reference the Town Manager's job description.

§405. Compensation - general discussion.

§406. Removal - further discussion.

Ms. Oller anticipates getting through Chapter 4 and suggests having the petition for mayor that Mike Bethel is circulating available for discussion at the 3-hour meeting on October 17<sup>th</sup>.

Mr. Hurd added that the petition can go to the voters, as long as, 5% of the voters have signed it and there are no technical flaws in the way it is written.

Mr. Plunkett stated that the Committee should be able to get through Chapter 4 and discuss the mayor issue, as well.

108 Ms. Green suggested that everyone compose their language changes - if they have any - prior to the  
109 meeting so less time would be needed for wordsmithing.

110 **7. APPROVAL OF MINUTES - OCTOBER 4, 2017**

111 *Michael Keane moved and Daniel Malmborg seconded to approve the Minutes of October 4, 2017 as*  
112 *submitted. The motion carried unanimously.*

113

114

115

116

117 *At 1:03 pm, Michael Keane moved and Robert Plunkett seconded to adjourn the meeting. The*  
118 *motion carried unanimously.*

119

120

121

122 Respectfully submitted,

123 Nancy H. Lively

124 Secretary

125



CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

OCTOBER 17, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair (left at 5:37pm); Jonathan Cohen; Michael A. Keane; Daniel Malmborg; Robert Ebert and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 4:30 pm, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS**

Ms. Oller and Mr. Plunkett met with a couple of firemen who gave them suggested language to become part of the Charter. Mr. Plunkett will send this language to Mr. Barlow for his comments and both will be on a future Committee agenda.

**2. DISCUSSION OF ANY PUBLIC COMMENTS RECEIVED**

None.

**3. APPROVE MINUTES OF OCTOBER 11, 2017**

*Michael Keane moved and Jonathan Cohen seconded to approve the Minutes of October 11, 2017 as submitted. The motion carried with P. Lynn Green abstaining.*

**4. REVIEW OF CHAPTER 4 - TOWN MANAGER; DISCUSSION TO INCLUDE APPLICABILITY OF SECTIONS TO PUBLICLY ELECTED POSITION**

*"§401. Appointed by Select Board*

*The Select Board members shall appoint a Town Manager for an indefinite term, and upon such conditions as they may determine and review annually."*

Jim Barlow submitted the following language from the Town of Hartford's Charter:

*"The Town Manager shall be appointed for a period not to exceed 3 years and may thereafter be appointed for successive terms for not more than 3 years."*

Discussion ensued as follows:

- The consideration of a 3 or 5-year term should be renewable with annual reviews by the Select Board with all Select Board members publicly indicating that they want to retain the Town Manager within 30-60 days prior to the expiration of his/her term.
- If the evaluation is too in depth, perhaps a bi-annual evaluation would be appropriate.

- The Town Manager should remain an at-will employee.

*It was the consensus of the Committee, that the Town Manager should be reviewed annually.*

It was noted that this shows the voters the accountability of the Select Board to the Town Manager and the Town Manager to the Select Board. The Select Board to annually review the Town Manager should be written into the Select Board's Policies and Procedures.

*Michael Keane moved and Sean-Marie Oller seconded to amend Subchapter 4. Town Manager §401. Appointed by selectors as follows:*

*In §401. Appointed by selectors - Change "selectors" to "Select Board"*

*Line 1, Change "Selector Board members" to "Select Board"*

*Line 1, Change "for an indefinite term, and" to "for a 3-year term which may be renewed for successive terms"*

*Line 2, Change "they" to "it"*

*Line 2, After "determine." Add "Notwithstanding the above, the Town Manager position shall continue to be subject to "Section 406. Removal". The Select Board shall review the Town Manager's performance annually."*

*The motion carried unanimously.*

*\*\*The motion will be sent to Jim Barlow for his comments.\*\**

*"§402. Manager nonpartisan*

*(a) The Manager shall be chosen solely on the basis of his/her executive, administrative, and professional qualifications.*

*(b) The Manager shall not take part in the organization or direction of a political party, serve as a member of a party committee, nor be a candidate for election to any public office."*

Discussion:

- Send the question to Jim Barlow to see if the nonpartisan requirement is in the Statutes.
- Should the Assistant Town Manager also have the nonpartisan requirement? Mr. Monks is presently on the Bennington School District Board which is not a town school board. Most school boards in the State are town school boards.

*P. Lynn Green moved and Jonathan Cohen seconded to amend Subchapter 4. Town Manager §402. Manager nonpartisan as follows:*

*In §402. Manager nonpartisan - Change "Manager" to "Town Manager"*

*(a) Line 1, Change "The Manager" to "The Town Manager"*

*(a) Line 1, Change "The Manager" to "The Town Manager"*

*The motion carried unanimously.*

---

**"§403. Oath and bond**

*Before entering upon his or her duties, the Manager shall be sworn to the faithful performance of his or her duties by the Town Clerk and shall give a bond to the Town in such amount and with such sureties as the Select Board members may require."*

Discussion:

- The League of Cities and Towns insurance covers the bond for town managers and treasurers.

*Michael Keane moved and Jonathan Cohen seconded to amend Subchapter 4. Town Manager §403. Oath and bond as follows:*

*Line 1, Change "the Manager" to "the Town Manager"*

*Line 2, Change "and shall give a bond to the Town" to "and the Town Manager shall be bonded"*

*Line 3, Change "Board members may" to "Board may"*

*The motion carried unanimously.*

---

*P. Lynn Green moved and Daniel Malmberg seconded to amend Subchapter 4. Town Manager §404. Duties for Manager as follows in bold italics:*

*In §404. Duties for Manager - Change "for Manager" to "for the Town Manager"*

*Add "The Town Manager shall be the Chief Executive Officer of the Town, and;"*

*\*\*Currently reads\*\* "(a) The Manager shall be the Chief Executive Officer of the Town and shall carry out the policies established by the Select Board, to whom the Manager shall be responsible."*

*Delete "(a) The Manager shall be the Chief Executive Officer of the Town"*

*Line 1, Change "and shall" to "(a) shall"*

*Line 2, Change "the Manager" to "the Town Manager"*

*Line 2, Change "responsible" to "accountable"*

---

*\*\*Currently reads\*\* "(b) The Manager shall attend all meetings of the Select Board, except when his or her compensation or removal is being considered, shall keep the Select Board members informed of the financial condition and future needs of the Town, and shall make such other reports as may be required by law, requested by the Select Board members, or deemed by him or her to be advisable."*

*(b) Change "The Manager shall" to "shall"*

*Line 2, Change "Board members informed" to "Board informed"*

*Line 4, Change "Board members," to "Board,"*



*\*\*Currently reads\*\* "(c) He or she shall perform all other duties prescribed by this charter, required by law, or resolution of the Select Board members."*

*(c) Change "He or she shall" to "shall"*

*Line 1, Change "charter" to "Charter"*

*Line 1, Change "or resolution" to "or by resolution"*

*Line 2, Change "Board members" to "Board"*

---

*\*\*Currently reads\*\* "(d) The Manager shall be an ex-officio member of all standing committees except the Zoning Board, but may not vote."*

*(d) Change "The Manager shall" to "shall"*

*Line 1, Change "Zoning Board" to "Development Review Board"*

*Line 2, Change "but may" to "and shall"*

---

*\*\*Currently reads\*\* "(e) The Manager shall prepare an annual budget, submit it to the Select Board members, and be responsible for its administration after adoption."*

*(e) Change "The Manager shall" to "shall"*

*Line 1, Change "Board members," to "Board,"*

---

*\*\*Currently reads\*\* "(f) The Manager shall compile for general distribution at the end of each fiscal year a complete report on the finances and administrative activities of the Town for the year."*

*(f) Change "The Manager shall" to "shall"*

---

*\*\*Currently reads\*\* "(g) The Manager shall provide to the Select Board a monthly financial statement, with a copy to the Town Treasurer."*

*(g) Change "The Manager shall" to "shall"*

---

*\*\*Currently reads\*\* "(h) The Manager shall perform all duties now conferred by law on the Road Commissioner within all areas of the Town, except within such villages as may vote not to surrender their charters under this charter, notwithstanding the provisions of 24 V.S.A. §1236(5)."*

*(h) Change "The Manager shall" to "shall"*

*Line 3, Change "charter" to "Charter"*

**NOTE: Check with Jim Barlow on 24 V.S.A. §1236(5).**

---

**\*\*Currently reads\*\*** "(i) The Manager shall perform all duties now conferred by law on the Collector of Delinquent Taxes."

**(i) Change "The Manager shall" to "shall"**

---

**\*\*Currently reads\*\*** "(j) The Manager, under policies approved by the Select Board members, shall be the General Purchasing Agent of the Town and purchase all equipment and supplies and contract for services for every department."

**(j) Change "The Manager," to "shall,"**

**Line 1, Change "Board members, shall" to "Board,"**

**Line 3, Change "department." to "department pursuant to the purchasing and bid policies approved by the Select Board."**

---

**\*\*Currently reads\*\*** "(k) The Manager shall be responsible for the system of accounts."

**(k) Change "The Manager shall" to "shall"**

---

**\*\*Currently reads\*\*** "(l) The Manager shall be responsible for the operation of all departments, including by specification the Police and Fire Departments."

**(l) Change "The Manager shall" to "shall"**

**Line 1, Change "including by specification" to "including"**

---

**\*\*Currently reads\*\*** "(m) The Manager, under policies approved by the Select Board members, shall have exclusive authority to appoint, fix the salaries of, suspend and remove, all officers and employees except those who are elected or who are appointed by Select Board members. When the managership is vacant, this authority shall be exercised by the Select Board."

**(m) Change "The Manager, under" to "shall, under"**

**Line 1, Change "Board members, shall" to "Board,"**

**Line 3, Change "by Select" to "by the Select"**

**Line 3, Change "the managership" to "the Town Manager position"**

---

**\*\*Currently reads\*\*** "(n) The Manager may, when advisable or proper, delegate to subordinate officers and employees of the Town, any duties conferred upon him or her."

**(n) Change "The Manager may" to "may"**

*The motion carried unanimously.*

---

***\*\*Currently reads\*\**** §405. Compensation

*The Manager shall receive such compensation as may be fixed by the Select Board members."*

*Jonathan Cohen moved and Michael Keane seconded to amend Subchapter 4. Town Manager, §405. Compensation as follows:*

*Line 1, Change "The Manager" to "The Town Manager"*

*Line 1, Change "Board members" to "Board"*

*The motion carried unanimously.*

---

***\*\*Currently reads\*\**** §406. Removal

*(a) On 90 days written notice, the Manager may be removed without cause by a majority of the Select Board members so voting at a meeting called for the purpose of voting on removal. During the 90 day period, the Manager may be suspended with pay"*

*Jonathan Cohen moved and P. Lynn Green seconded to amend Subchapter 4. Town Manager, §406. Removal as follows:*

*Line 1, Change "notice, the Manager" to "notice from the Select Board, the Town Manager"*

*Line 2, Change "Board members so voting at" to "Board at"*

*Line 3, Change "the Manager" to "the Town Manager"*

*Line 3, Change "pay" to "pay; or"*

---

***\*\*Currently reads\*\**** *"(b) The Select Board members may adopt at any time a resolution stating their intention to remove the Manager and the reasons therefore, a copy of which shall be sent to the Manager. The Manager may, within 10 days after such notice is sent, request a hearing which hearing shall be held by the Select Board members not less than 10 days nor more than 20 days from the date of such request, after which the Select Board members may dismiss the Manager. If no request for a hearing is filed in accordance with the foregoing, the Select Board members may dismiss the Manager immediately. During the period after the resolution of intention is adopted and until the Manager's dismissal, he or she may be suspended with pay."*

*Line 1, Change "Board members may" to "Board may"*

*Line 2, Change "remove the Manager" to "remove the Town Manager"*

*Line 2, Change "to the Manager" to "to the Town Manager"*

*Line 3, Change "The Manager" to "The Town Manager"*

*Line 3, Change "hearing which" to "hearing. This"*



Line 4, Change "Board members not" to "Board not"

Line 5, Change "Board members may" to "Board may"

Line 5, Change "the Manager" to "the Town Manager"

Line 6, Change "filed in accordance with the foregoing" to "filed"

Line 6, Change "Board members may" to "Board may"

Line 7, Change "the Manager" to "the Town Manager"

Line 8, Change "the Manager's" to "the Town Manager's"

The motion carried unanimously.

---

## 5. OTHER FORMS OF TOWN GOVERNMENT. FURTHER DISCUSSION

The Petition that Mike Bethel has initiated was circulated among the Committee. It reads as follows:

*"We, the undersigned voters of the Town of Bennington, hereby petition the Selectboard to warn the two public hearings and the vote by Australian ballot to allow the following amendments to be made to the Bennington Town Charter:*

*Shall the Bennington Town Charter be amended by adding Section 103-407 to read as follows:*

### §103-407. Mayoral form of government

(a) In lieu of a town manager, the voters may adopt a mayoral form of government, by vote at a duly-warned annual meeting, warned pursuant to a petition signed by five percent of the voters or on the Selectboard's own motion. Once a vote in favor of this form of government is successful, the voters shall elect a mayor at the next annual meeting. Once the mayor takes office, the Town Manager system of governance shall end for Bennington.

(b) The mayor shall be responsible for the management of the administrative affairs of the Town, in the same manner and with the same powers and responsibilities as the Town Manager, as stated in statute and this charter.

(c) The mayor shall have the power to make or break a tie, and shall have the power to veto any action of the Selectboard.

(d) The mayor shall serve as the voice of the Town of Bennington, taking responsibility for implementing the policies of the Selectboard, leading the Town toward greater prosperity and a healthy economy, and a better life for all its residents."

The Committee took a straw poll on the mayoral form of government and how it should look as follows:

Mr. Ebert: The people that he has asked about the mayoral form of government have basically two opinions - "1. A mayor would bring vision, leadership, and accountability to town government. And, 2. Stu Hurd has been here too long." These comments are referring to a 'strong mayor' and Mr. Ebert is against that

but doesn't see any reason not to try a 'weak mayor', who would be "first among equals", with the town manager position remaining intact.

Mr. Cohen: "Without some due diligence on this Committee's part", he is "reluctant to make a recommendation to the Select Board based on our opinions alone", and would vote no or abstain without further information. Educating the voters on the pros and cons of the mayoral forms of government should be done. Perhaps interviewing mayors and town managers - as Brattleboro did - plus financial information on the systems could constitute due diligence, but Mr. Cohen doesn't have a clear definition of 'due diligence' at this time.

Ms. Green: "There is a vehicle for raising the mayor form of government, and if this Committee is successful, that will come up as something for the public to vote on." If we are to introduce a new form of government we must consider how deep the position of town manager is to qualify for the job. "Any Joe can run" for mayor. Ms. Green doesn't feel that the Committee should unilaterally suggest a change to our form of government.

Mr. Malmberg: "What problem are we trying to solve?" An individual that would be elected that has a vision for the Town could be a good thing, however, the language of the existing petition is worry some. For example, there is no provision for overriding the mayor's veto over the Select Board. Mr. Malmberg doesn't see that there is a big problem but does see where people would be looking for a visionary leader.

Mr. Plunkett: In terms of the mayor issue, he has "not heard a very strong, or forceful, or convincing argument why we should have it". "To me a mayor is a city, and I don't want Bennington to be a city", and he would also like to hear of whom would be considered for the mayor position. Although Mr. Plunkett is in favor of the discussion for an alternative form of government, he is not in favor of the mayor concept for Bennington at this time.

Mr. Keane: Is "uncomfortable with the idea of a change in government when there is demonstrably so little and so poor knowledge among our citizens about what kinds and forms of government there are." The "externally focused mayors" in St. Albans and Barre are always pumping up their towns but are 'weak' mayors in that they do not have a lot of power. The 'weak' mayor model would be the one that Mr. Keane would support, however, the 5 or 6 people that he feels would be qualified for the job are too busy within their own businesses to take on the position. He is not aware of anyone else who is qualified. There should be a "stable of candidates" that could get you through the first 8 years of mayoral elections and we do not have that in Bennington.

Ms. Oller: "What would be the advantages to the citizens of Bennington to change the structure?" The Petition that is before the voters is "likened to a monarchy" and Ms. Oller would prefer to see 7 people making decisions that are not subject to the veto of one person. The citizens that she has spoken to are interested in accountability, job availability, and economic growth, and one person is not going to be able to accomplish that. More education on the mayor forms of government needs to be done for the public. The changes we have done with absenteeism, and a term and annual reviews for the Town Manager have addressed many of the concerns that the citizens have.

Further Committee discussion ensued:

- The Petition to change the Charter has too many unanswered questions; i.e., How long is the term? Why isn't there a Select Board veto override? Just how will it work?
- No Committee member seems to be in favor of a 'strong' mayor.

- The Committee's opinions/ideas are sufficient to recommend to the Select Board, as they and the voters, have the right to approve or not approve them.
  - Perhaps if we had a 'weak' mayor, a project such as the Putnam Block would have occurred sooner.
  - A mayor doesn't seem to be right for our town.
  - Staying informed throughout the years as to what other towns have done is doing due diligence.
  - The Committee should send a letter to the Bennington Banner updating the public as to what recommendations they have made so far.
- 

#### 6. DISCUSSION OF "LOCAL OPTION TAX"

Not done.

#### 7. REVIEW OF CHAPTER 5 - TAXATION

Not done.

*At 7:16 pm, P. Lynn Green moved and Daniel Malmborg seconded to adjourn the meeting. The motion carried unanimously.*

Respectfully submitted,

Nancy H. Lively

Secretary



CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE -- CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

OCTOBER 25, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Jonathan Cohen; Michael A. Keane; Daniel Malmborg; Robert Ebert and P. Lynn Green.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Robert Plunkett called the meeting to order.

Agenda item #4, Discuss Ground Rules for October 26<sup>th</sup> Forum is amended to also discuss the rescheduling of the October 26<sup>th</sup> meeting.

**1. PUBLIC COMMENTS**

None.

**2. REVIEW ANY PUBLIC COMMENTS RECEIVED**

None.

**3. APPROVE MINUTES OF OCTOBER 17, 2017**

*Daniel Malmborg moved and Michael Keane seconded to approve the Minutes of October 17, 2017 amended as follows:*

*Page 8, Line 7, Change "of 'due diligence' at this time." to "of what 'due diligence' would be in this context."*

*The motion carried unanimously.*

**4. DISCUSS GROUND RULES FOR OCTOBER 26<sup>TH</sup> FORUM AND THE RESCHEDULING OF THE OCTOBER 26<sup>TH</sup> FORUM TO A DIFFERENT DATE**

The Act 46 meeting was scheduled right after the Public Forum on October 26<sup>th</sup>, so to eliminate the potential impact of scheduling the two meetings back-to-back, the Committee rescheduled the Charter Review Committee Public Forum for November 28, 2017.

Discussion for the ground rules for the Public Forum Meeting was to allow people to speak their minds without a time limit structure, as long as, they weren't being disruptive and everyone has a chance to speak.

**5. BEGIN REVIEW OF CHAPTER 5 - TAXATION**

Discussion ensued on the Local Option Tax as follows:

- If we do initiate a Local Option Tax, the Select Board will determine how it is spent.
- The State collects the tax and 70% of that will come back to the Town.
- One opinion was that the tax should go into the General Fund of the Town, and another was that it should be restricted on an annual basis for Select Board distribution.
- If it were to be added to the room's tax, it would be relatively unnoticed on the pricier rooms but possibly cost prohibitive on the less expensive rooms. Transient rooms for 30 days or more are paid for by the State and not subject to tax.
- A couple of lodging businesses felt that, if it were added to the rooms tax, a portion of it should be earmarked for marketing and the percent of tax should not increase the rooms tax by 1% to 10%. It should be an odd amount.
- The rooms tax is generally paid by non-residents which would lessen the burden locally, whereas, a sales tax increase would affect our local citizens.
- Bennington's role as a regional, economic center is part of the Town Plan, so even though citizens shopping in Bennington would have to pay the extra sales tax, the non-residents would have to, as well.
- Because Bennington was a 'Receiving Town' and not one of the 'Gold Towns', we are not eligible for the Local Option Tax, which is 1%, as it is defined. If Bennington is to receive a 1% local option tax, it must be done through a charter change passed by the voters, and ultimately, the legislature.
- We should give our Select Board the option to do this so we are consistent with other towns that have the tax to make it more palatable to the legislature.
- There is no sales tax on food or clothing under \$100.00.
- There are currently 18 towns receiving the 1% tax.
- We are not allowed to apply the Local Option Tax to gasoline.

Mr. Hurd will assemble information on the Gold Towns that receive the tax for that reason, the towns that receive the tax through a charter change, and the towns that were unsuccessful in receiving the tax through a charter change. Mr. Barlow will also be contacted for his comments on the Local Option Tax.

Other information the Committee is interested in obtaining is the size of the towns that have the Local Option Tax and what reasons other towns have for not having pursued receiving it.

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#### *" SUBCHAPTER 5, TAXATION, §501. TAXES*

*Taxes shall be assessed by the Town based on the fair market value of real and personal property, in accordance with State law."*

Discussion:

- Personal property as stated in the State law is machinery and equipment. The law gives a town the authority to vote that out and Bennington voted that out years ago.

*Robert Ebert moved and Jonathan Cohen seconded to amend SUBCHAPTER 5., TAXATION, §501. TAXES as follows:*

*Line 1, Change "real and personal property" to "real property"*



*The motion carried unanimously.*

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*"§ 502. Discounts elimination*

*At such time as the discounts given on the tax rate to those who do not have water or sewer provided by or available from the Town may be eliminated, all costs of operation and previously incurred debt, shall be paid from funds established for those purposes and funded by user fees, as may be established from time to time, by the Select Board and applied against users of water and sewer services only."*

*Discussion:*

- Water funds used to be managed by the Water Board and Sewer Funds were managed by the Town. People living in rural areas that didn't have either, were receiving a discount of \$.65 on the tax rate. As property values went up and tax rates went down, the discounts were approaching 50% of the tax rate. The discounts were eliminated and all expenses related to water and sewer were transferred out of the General Fund and into the respective funds to be paid for by the residents that utilized the respective service.
- §502. Discounts elimination as it reads now has been obsolete for decades.

*Sean-Marie Oller moved and Michael Keane seconded to amend SUBCHAPTER 5., TAXATION, §502. Discounts elimination as follows:*

*Change "§502. Discounts elimination" to "§502. Water and sewer fees"*

*Line 1, Delete "At such time as the discounts given on the tax rate to those who do not have water or sewer"*

*Line 2, Delete "provided by or available from the Town may be eliminated,"*

*Line 2, Change "all costs of operation, and previously" to "All costs of operation of the water and sewer systems, including"*

*Line 4, Change "applied against users of water" to "charged to owners of real estate that is serviced by municipal water and sewer."*

*Line 5. Delete "and sewer services only."*

*The motion carried unanimously.*

**6. DECIDE DATE FOR LONGER EVENING MEETING IN NOVEMBER**

It had previously been decided for the longer meeting to take place on November 28, 2017 at 4:30pm, as well as, a longer meeting in December, if needed, to take place on December 20, 2017.

**7. OTHER**

Ms. Oller thanked Mr. Keane for reminding everyone of the TIF Meeting that took place on October 18<sup>th</sup>. This presentation demonstrated that the vision and leadership that people are asking for through changes in the Charter, already exist in the Town.

Mr. Keane added that they were "blown away" by the positive comments that everyone was making.



At 1:03 pm, Robert Plunkett moved and Michael Keane seconded to adjourn the meeting. The motion carried unanimously.

Respectfully submitted,

Nancy H. Lively

Secretary

CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE -- CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201  
NOVEMBER 1, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Jonathan Cohen; Daniel Malmborg and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** Robert Plunkett-Co-Chair; Michael A. Keane and P. Lynn Green.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:50 am, Co-Chair Sean-Marie Oller called the meeting to order.

Ms. Oller amended the agenda to add 'Review Local Option Tax'.

**1. PUBLIC COMMENTS**

None.

**2. REVIEW ANY PUBLIC COMMENTS RECEIVED**

Comments were received from Ron Alderman and will be posted on the website.

**3. APPROVE MINUTES OF OCTOBER 25, 2017**

*Daniel Malmborg moved and Jonathan Cohen seconded to approve the Minutes of October 25, 2017 amended as follows:*

*Page 3, #6. DECIDE DATE FOR LONGER EVENING MEETING IN NOVEMBER, Line 1, Change "November 28, 2017" to "November 29, 2017."*

*The motion carried unanimously.*

**3A. REVIEW LOCAL OPTION TAX**

Mr. Monks distributed Local Option Tax information as of FY14 that had been computed by the Vermont League of Cities and Towns based on data from the Vermont Division of Property Valuation and Review. Each listed town meets one or more of the tests set forth in 24 VSA 138.

The Committee will discuss Local Option Tax at a later date.

**4. REVIEW OF CHAPTER 5 - TAXATION**

*"SUBCHAPTER 5. TAXATION*

*§503. Fair market value of real estate*

*(a) In the event that the fair market value of real estate is materially changed because of total or partial destruction of, or damage to the property; or because of alterations, additions or other capital improvements, the taxpayer may appeal as provided by law."*

Discussion:

- Taxpayers can appeal the assessed fair market value of the real estate.
- The assessed value equates with the fair market value.
- If a house burns down, for example, the Town will go to the taxpayer and not wait for the taxpayer to appeal.
- On the other hand, if an improvement is done, the permit is filed with the Listers and the Listers go out and inspect the property.

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*"(b) When the fair market value of real estate is finally determined by appeal to the Board of Listers or to the Board of Civil Authority, then the value so fixed shall be the fair market value of such real estate for the year in which the appeal is taken."*

Discussion:

- Property is assessed as of April 1<sup>st</sup>, an appeal to the Board of Listers or Board of Civil Authority will take about 2 months, and if the appeal is successful, that value is what the property is taxed on for that year.

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*"(c) When the fair market value of real estate is finally determined by a State board of appraisers or by a court having jurisdiction, then the value so fixed shall be the fair market value of such real estate for the year for which such appeal is taken and for the ensuing two years, unless the taxpayer's property is altered materially; is damaged; or if the Town in which it is located has undergone a complete revaluation of all taxable real estate, in the event of which, such fair market value may be changed."*

Discussion:

- If the appeal is local, the value is fixed for one year; if the appeal goes to the State, the value is fixed for two years; resulting in a total of three years.
- The State board of appraisers is now the Director of Property Valuation and Review (PVR).
- Ms. Oller or Mr. Plunkett will ask Mr. Barlow if there is a State statute that can be referenced in this section.
- A town wide reappraisal isn't necessary unless the coefficient of dispersion is above 20%, or the fair market value is at 80% as determined by the State. Bennington is >91%.

*Jonathan Cohen moved and Robert Ebert seconded to approve SUBCHAPTER 5. TAXATION, §503. Fair market value of real estate amended as follows and pursuant to the appropriate State statute:*

*(c), Line 1, Change "a State board of appraisers" to "the Director of Property Valuation and Review (PVR)"*

*(c), Line 4, Delete "in which it is located"*



*The motion carried unanimously.*

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*"§504. Special assessments*

*Despite any contrary provision in general law, the Select Board may in its sole discretion make a special assessment upon real estate for the installation or construction of a public improvement, such special assessment to be such proportion of the total cost of such improvement as the benefit to a parcel of real estate bears to the total benefit resulting to the public in general."*

Discussion:

- For example, if a sidewalk was put in, the Select Board could assess an additional tax to the properties in the neighborhood that would benefit the most from that infrastructure. However, this has never happened.

*The Committee did not vote on any changes for §504. Special assessments at this time. Mr. Barlow will be contacted for better wording of this section.*

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*"§505. Tax within Bennington Fire District No. 1*

*(a) The tax assessed by the Town on the grand list shall be reduced with respect to real estate in the Bennington Fire District No. 1. This reduction shall be in direct proportion to the amount of the tax assessed by the Town which is used by the Town to provide fire protection services to property not included in the Bennington Fire District No. 1.*

*(b) The purpose of this amendment is to make substantially uniform the taxes assessed throughout the Town for fire protection furnished by all fire departments in the Town. This tax reduction shall remain in effect until such time as the Bennington Fire District No. 1 dissolves itself or merges with the Town of Bennington, in accordance with the Charter of the Town of Bennington."*

Discussion:

- The Bennington Fire Department is the former Village of Bennington Fire Department. Their budget is part of the General Fund and their tax rate is determined by the Grand List of the properties of the area that they serve.
- The Bennington Rural Fire District No. 1 (BRFD) submits their budget to the Town and their tax rate is also determined by the Grand List of the properties of the area that they serve. And, the area that they serve is everywhere except those areas of the Bennington Fire Department (former Village of Bennington), the Village of Old Bennington, and the Village of North Bennington.
- The BRFD budget is approved by the BRFD property owners at the BRFD annual meeting. Attendance is usually BRFD members and their families.
- The tax rate for all fire departments is relatively uniform.
- The Bennington School District Grand List is also the Bennington Fire Department's Grand List.

*Daniel Malmborg moved and Jonathan Cohen seconded to amend SUBCHAPTER 5. TAXATION, §505. Tax within Bennington Fire District No. 1 as follows:*

Change "§505. Tax within Bennington Fire District No. 1" to "§505. Tax within Bennington Rural Fire District No. 1"

(a) Line 2, Change "Bennington Fire" to "Bennington Rural Fire"

(a) Line 4, Change "Bennington Fire" to "Bennington Rural Fire"

(b) Line 1, Change "amendment" to "section"

(b) Line 3, Change "Bennington Fire" to "Bennington Rural Fire"

The motion carried unanimously.

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*"§506. Creation of Bennington Downtown District*

*There is hereby created in the Town of Bennington a special district to be known as the Bennington Downtown Improvement District (District) which shall be that area set forth on a map approved by the voters of Bennington and filed with the Town Clerk. The Area of the District may be changed upon a majority vote of the legal voters at an annual or special meeting duly warned.*

*§507. Repealed, 2005, No. M-6, §6. Eff. June 4, 2005.*

*§508. Purposes and powers*

*(a) The District is created for the general purpose of maintaining and improving the economic, social, cultural, and environmental vitality and quality of the Town of Bennington (in particular, the District created by this section 507 of this charter); to promote the Town and the District as a regional retail, commercial, and service center; and to serve as an advocate for the orderly development of the District in order to encourage expansion of the retail, commercial, and service base of the District and the Town by attracting new business and investment.*

*(b) The rights, powers, and duties of the District, shall be exercised by the Select Board and shall be broadly construed to accomplish the purposes set forth above and shall include the following:*

*(1) To advertise and promote the Improvement District.*

*(2) To represent the interests of the District.*

*(3) To receive and expend contributions, grants, and income.*

*(4) To expend funds as provided for in the budget or as otherwise approved.*

*(5) To manage and maintain public spaces and to assume or supplement the services and maintenance heretofore provided to the District by the Town as recommended to and approved by the Select Board.*

*(6) To acquire and dispose of property on behalf of the Town.*

*(7) To install and make public improvements.*

*(8) To improve, manage, and regulate public parking facilities and vehicular traffic with the District.*

(9) To enter into contracts as may be necessary or convenient to carry out the purpose of this charter.

(10) To regulate, lease, license, establish rules and fees, and otherwise manage the use of public spaces within the District.

(11) To plan for the orderly development of the District in cooperation with the Town Planning Commission.

(12) To do all other things necessary or convenient to carry out the purposes for which this District was created.

#### *§509. Annual Budget*

The Town Manager shall submit each year an operating budget of anticipated expenditures and revenues to the Select Board for approval for the next fiscal year. In the event the Select Board does not approve the budget as submitted, the Select Board shall return the budget forthwith to the Town Manager with its recommendations for the Town Manager's reconsideration. Appropriations other than from contributions, grants, and income shall be raised solely through District taxes which shall be assessed and collected as a tax on property as provided for in section 5.15 of this charter. The Select Board may borrow money in anticipation of District taxes.

#### *§510. District taxes*

(a) District taxes are charges levied upon the owners of taxable properties located in the District, excepting properties used exclusively for residential purposes, which taxes shall be used to defray the expenses incurred in connection with the operation, maintenance, and repair of the District.

(b) The District tax for each property in the District subject to the tax shall be based upon a rate on each \$100.00 of listed value of the property as adjusted under subsection (c) of this section. The tax rate shall be determined by dividing the amount to be raised by taxes, by the total value of the taxable properties on the grand list as adjusted located in the District which are subject to the District tax under this subchapter.

(c) The District tax shall be set by the Select Board upon approval of the budget by the Select Board and notice in writing thereof shall be given to owners of record as of April 1 of each year of property so assessed, or to their agents or attorneys, stating therein the amount of such District taxes, and such taxes shall be due and payable to the Town Treasurer when normal Town and school taxes are due. The Town Treasurer shall collect unpaid District taxes as provided for the collection of taxes in the charter. District taxes shall be a lien on the properties when assessed and until the tax is paid or the lien is otherwise discharged by operation of law.

(d) In the case of any property used for both residential and nonresidential purposes within the District as of April 1, the Board of Listers (Board) shall adjust the listed value for the purposes of determining the District tax under this section to exclude the value of that portion of the property used for residential purposes. The Board shall determine the adjusted grand list value of the business portion of the property and give notice of the same as provided under 32 V.S.A. chapter 131. Any property owner may file a grievance with the Board and appeal the decision of the Board as provided for under 32 V.S.A. chapter 131; however, the filing of an appeal of the determination of the Board and pendency of the appeal shall not vacate the lien on the property assessed, and the District taxes must be paid and continue to be paid as they become due."

Discussion:



- The Bennington Downtown Alliance was formerly the Better Bennington Corporation.
- In §509 Annual budget, the Bennington Downtown Alliance is currently the contractor that submits their budget to the Select Board, not the Town Manager. This amounts to ~\$74,000 this year, or 50% of their budget.
- There is nothing in the Charter that says how the downtown taxes are to be spent but they cannot be used to satisfy the TIF debt.
- The District tax is paid by nonresidential property owners within the District.
- The District has 1 ½ paid positions and a volunteer Board of Directors.
- §507 is the Sunset Provision.
- §506 is no longer the 'Creation of' the Downtown District, it is the 'Tax within' the Downtown District.
- The Bennington Downtown Alliance has no status in the Charter. The Select Board has used them as the contractor for Town funds but could decide not to do so at any time.
- §506 through §510 should all be consolidated into "§506. Tax within Bennington Downtown District" with the respective (a), (b), (c), etc. paragraphs as appropriate.

*Discussion will continue on these sections next week and Mr. Hurd will provide the detail of §507.*

**5. CONFIRM EVENING DATES (NOVEMBER 28, 2017, 5:30PM - 7:00PM)**

The Public Forum will take place on November 28, 2017 from 5:30pm - 7:00pm.

**6. OTHER**

None.

*At 1:01 pm, Jonathan Cohen moved and Daniel Malmberg seconded to adjourn the meeting. The motion carried unanimously.*

Respectfully submitted,

Nancy H. Lively

Secretary

CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

NOVEMBER 8, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett; Michael A. Keane; P. Lynn Green; Daniel Malmborg and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** Jonathan Cohen.

**ALSO PRESENT:** Dan Monks-Zoning Administrator; Beth Antognioni and Nancy H. Lively-Secretary.

At 11:45 am, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS**

None.

**2. REVIEW ANY PUBLIC COMMENTS RECEIVED**

Ms. Oller commented that there was an editorial in the Banner written by an anonymous individual that she feels should be considered as a public comment at the future discussion on Local Option Tax.

**3. APPROVE MINUTES OF NOVEMBER 1, 2017**

*Michael Keane moved and Sean-Marie Oller seconded to approve the Minutes of November 1, 2017 amended as follows:*

*Page 2, Line 9, Change "with the Listers" to "with the Town."*

*The motion carried with P. Lynn Green abstaining.*

**4. CONTINUE CHAPTER 5 - TAXATION**

*SUBCHAPTER 5. TAXATION*

*"§506. Creation of Bennington Downtown District*

*There is hereby created in the Town of Bennington a special district to be known as the Bennington Downtown Improvement District (District) which shall be that area set forth on a map approved by the voters of Bennington and filed with the Town Clerk. The Area of the District may be changed upon a majority vote of the legal voters at an annual or special meeting duly warned."*

Discussion:

- The Bennington Downtown Improvement District has already been created.
- Should the voters or Select Board decide if there will be a change to the designated area of the District?
- How should the affected people/businesses be notified of any changes to the District?

The following wording was the result of much Committee discussion:

**"§506. Bennington Downtown Improvement District**

**(a) Definition: there is in the Town of Bennington, a district, the Bennington Downtown Improvement District (District), set forth on a map approved by the voters of Bennington and filed with the Town Clerk. The area of the District may be changed upon a majority vote of the Select Board at a minimum of one special meeting duly warned."**

*These changes have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.*

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**"§507. Repealed, 2005, No. M-6, §6. Eff. June 4, 2005."**

*This will remain as is until all of SUBCHAPTER 5. TAXATION has been reviewed.*

---

**"§508. Purposes and powers**

**(a) The District is created for the general purpose of maintaining and improving the economic, social, cultural, and environmental vitality and quality of the Town of Bennington (in particular, the District created by this section 507 of this charter); to promote the Town and the District as a regional retail, commercial, and service center; and to serve as an advocate for the orderly development of the District in order to encourage expansion of the retail, commercial, and service base of the District and the Town by attracting new business and investment."**

Discussion:

- This should also be for supporting current businesses, as well as, attracting new business.
- Existing businesses should not be going through foreclosure so a new business can come in and reap the benefits of tax breaks, etc. Perhaps the existing business could have benefited from that also.
- Investment means private investment and not the Town's investment.
- What is good for the Town and the District may not be good for existing businesses, i.e., the Putnam Block and Martin's MiniMart.
- In 2005, the issues of the Downtown were not as severe as they are today. Amazon was not around and the big box stores were just coming into town.

The following wording was the result of Committee discussion:

**"§508. Purposes and powers**

**(a) The District is created for the general purpose of maintaining and improving the economic, social, cultural, and environmental vitality and quality of the Town of Bennington to promote the Town and the District as a regional retail, commercial, and service center; and to advocate for the orderly development of the District to encourage expansion of the retail, commercial, and service base of the District and the Town by supporting a vibrant business environment and new business and encouraging investment."**

*These changes have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.*



70    **5.   OTHER**

71           None.

72    **NOVEMBER MEETING DATES:**

73           Wednesday, November 15, 2017 - 11:45am

74           Wednesday, November 22, 2017 - No Meeting

75           Tuesday, November 28, 2017 - 5:30pm-7:00pm Public Forum

76           Wednesday, November 29, 2017 - 4:30pm-7:00pm

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80           *At 1:00 pm, Michael Keane moved and P. Lynn Green seconded to adjourn the meeting. The motion*  
81 *carried unanimously.*

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85           Respectfully submitted,

86           Nancy H. Lively

87           Secretary

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CHARTER REVIEW COMMITTEE MEETING  
BENNINGTON TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

NOVEMBER 15, 2017

MINUTES

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller; Michael A. Keane; P. Lynn Green; Daniel Malmborg (at 11:59am); Jonathan Cohen and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** Robert Plunkett.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni and Nancy H. Lively-Secretary.

At 11:48 am, Co-Chair Sean-Marie Oller called the meeting to order.

**1. PUBLIC COMMENTS**

Mr. Ebert noted that he had received a copy of an article that was in the Bennington Banner on November 3, 2017 entitled "Rutland Town nixes shift to town manager" from Don Miller. The gist of the article was that Rutland Town had fired their town administrator, discussed shifting to a town manager, and ultimately deciding to stay with the town administrator.

Mr. Miller's comments were as follows:

"The Administrator model gives more power and authority to the Select Board, while retaining the services of a professional public/government administrator. The cost should be less than the town manager format, because the administrator has more restricted responsibilities. The Select Board would continue as volunteers, but would play a larger role in setting the agenda. This could be combined with the idea of running one Select Person as 1<sup>st</sup>."

**2. REVIEW ANY PUBLIC COMMENTS RECEIVED**

None.

**3. APPROVE MINUTES OF NOVEMBER 8, 2017**

*Michael Keane moved and P. Lynn Green seconded to approve the Minutes of November 8, 2017 as submitted. The motion carried with Jonathan Cohen abstaining.*

**4. CONTINUE CHAPTER 5 - TAXATION**

Mr. Keane recapped that the suggested changes to §506. Creation of Bennington Downtown District, §507. Repealed, 205, No. M-6, §6. Eff. June 4, 2005, and §508. Purposes and powers (a) that were made at the November 8, 2017 meeting were tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.

Discussion resumed on SUBCHAPTER 5. TAXATION, §508. Purposes and powers, (a).

35 SUBCHAPTER 5. TAXATION

36 *"§508. Purposes and powers*

37 *(a) The District is created for the general purpose of maintaining and improving the economic, social,*  
38 *cultural, and environmental vitality and quality of the Town of Bennington (in particular, the District created by*  
39 *this section 507 of this charter); to promote the Town and the District as a regional retail, commercial, and*  
40 *service center; and to serve as an advocate for the orderly development of the District in order to encourage*  
41 *expansion of the retail, commercial, and service base of the District and the Town by attracting new business*  
42 *and investment."*

43 **"§508. Purposes and powers**

44 **(a) The District is created for the general purpose of maintaining and improving the economic, social,**  
45 **cultural, and environmental vitality and quality of the Town of Bennington to promote the Town and the**  
46 **District as a regional retail, commercial, and service center; and to advocate for the orderly development of**  
47 **the District to encourage expansion of the retail, commercial, and service base of the District and the Town**  
48 **by supporting a vibrant business environment and new business and encouraging investment."**

49 *These changes have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.*

50 Discussion:

- 51 • Though the above changes sound good, they do not accomplish what the discussion on "new and
- 52 existing" encompassed.
- 53 • We need to segregate the strategic statement (a) from the operational statements (1-12).
- 54 • The language of "by supporting a vibrant business environment" was a compromise to Ms. Green's
- 55 point of supporting existing businesses.
- 56 • None of this is about the Town supporting individual businesses in the District.
- 57 • We all benefit from a good downtown.
- 58 • The Town support of individual businesses in the District is not financial. Events such as Mayfest and
- 59 the Fall Festival are held to support the existing businesses.
- 60 • This section of the Charter gives the Select Board the authority to hire a contractor, such as the
- 61 Bennington Downtown Alliance (BDA), to accomplish some or all of the purposes set forth in this
- 62 section.
- 63 • The BDA presents its work plan to the Select Board and the Select Board approves the tax.

64 **1. After much discussion, the following changes that were tabled on November 8, 2017 have been**  
65 **removed from further consideration and future discussion will be based on the original language of §508.**  
66 **Purposes and powers, (a):**

67 **"§508. Purposes and powers**

68 **(a) The District is created for the general purpose of maintaining and improving the economic, social,**  
69 **cultural, and environmental vitality and quality of the Town of Bennington to promote the Town and the**  
70 **District as a regional retail, commercial, and service center; and to advocate for the orderly development of**  
71 **the District to encourage expansion of the retail, commercial, and service base of the District and the Town**  
72 **by supporting a vibrant business environment and new business and encouraging investment."**



73 2. Eric Petersen, the President of the BDA, and John Shannahan, Executive Director of the BDA, will be  
74 invited to the November 29, 2017 Committee Meeting for clarification on the BDA's mission and  
75 responsibilities.

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76  
77 *"§508. Purposes and powers*

78 *(b) The rights, powers, and duties of the District, shall be exercised by the Select Board and shall be*  
79 *broadly construed to accomplish the purposes set forth above and shall include the following:*

80 *(1) To advertise and promote the Improvement District.*

81 *(2) To represent the interests of the District.*

82 *(3) To receive and expend contributions, grants, and income.*

83 *(4) To expend funds as provided for in the budget or as otherwise approved.*

84 *(5) To manage and maintain public spaces and to assume or supplement the services and*  
85 *maintenance heretofore provided to the District by the Town as recommended to and approved by the Select*  
86 *Board.*

87 *(6) To acquire and dispose of property on behalf of the Town.*

88 *(7) To install and make public improvements.*

89 *(8) To improve, manage, and regulate public parking facilities and vehicular traffic with the*  
90 *District.*

91 *(9) To enter into contracts as may be necessary or convenient to carry out the purpose of this*  
92 *charter.*

93 *(10) To regulate, lease, license, establish rules and fees, and otherwise manage the use of public*  
94 *spaces within the District.*

95 *(11) To plan for the orderly development of the District in cooperation with the Town Planning*  
96 *Commission.*

97 *(12) To do all other things necessary or convenient to carry out the purposes for which this*  
98 *District was created."*

99 Discussion:

- 100 • The District does work in cooperation with the Town Planning Commission.
- 101 • The District does not 'regulate', the Select Board does.
- 102 • To have a taxing district is relatively unique in Vermont, however, many other states do have them.
- 103 Having one in Vermont improves a towns opportunities for grants and programs that are available at
- 104 the State level.
- 105 • To acquire and dispose of property on behalf of the Town in this section diverted to the Select Board
- 106 when the Downtown Commission no longer existed. For example, the Town could accept the donation
- 107 of Merchants Park and 236 Main Street without a vote of the people.

108 The suggested change in "§508. Purposes and powers, (b)" was:

Change "(1) To advertise and promote the Improvement District." to "(1) To promote the District."

*This change have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.*

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**"§509. Annual Budget**

*The Town Manager shall submit each year an operating budget of anticipated expenditures and revenues to the Select Board for approval for the next fiscal year. In the event the Select Board does not approve the budget as submitted, the Select Board shall return the budget forthwith to the Town Manager with its recommendations for the Town Manager's reconsideration. Appropriations other than from contributions, grants, and income shall be raised solely through District taxes which shall be assessed and collected as a tax on property as provided for in section 515 of this charter. The Select Board may borrow money in anticipation of District taxes."*

**Discussion:**

- The Select Board can use the District tax for any downtown improvement they choose, and do not have to use the District tax for the District budget.
- The Town does not develop a budget for the Downtown using District taxes. However, the Town budget does include some items for the Downtown, such as, Bennington in Bloom.

**The following suggested changes were made for "§509. Annual budget":**

**Change "§509. Annual budget" to "§509. District annual budget"**

**Line 1, Change "The Town Manager shall" to "The Town Manager or a contractor, hired by the Select Board as provided in paragraph (9) above shall"**

**Line 4, Change "forthwith to the Town Manager with" to "forthwith with"**

**Line 5, Change "for the Town Manager's reconsideration." to "for reconsideration."**

*These changes have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed.*

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**§510. District taxes**

*(a) District taxes are charges levied upon the owners of taxable properties located in the District, excepting properties used exclusively for residential purposes, which taxes shall be used to defray the expenses incurred in connection with the operation, maintenance, and repair of the District.*

*(b) The District tax for each property in the District subject to the tax shall be based upon a rate on each \$100.00 of listed value of the property as adjusted under subsection (c) of this section. The tax rate shall be determined by dividing the amount to be raised by taxes, by the total value of the taxable properties on the grand list as adjusted located in the District which are subject to the District tax under this subchapter.*

*(c) The District tax shall be set by the Select Board upon approval of the budget by the Select Board and notice in writing thereof shall be given to owners of record as of April 1 of each year of property so assessed, or to their agents or attorneys, stating therein the amount of such District taxes, and such taxes shall be due and payable to the Town Treasurer when normal Town and school taxes are due. The Town Treasurer shall collect*



unpaid District taxes as provided for the collection of taxes in the charter. District taxes shall be a lien on the properties when assessed and until the tax is paid or the lien is otherwise discharged by operation of law.

(d) In the case of any property used for both residential and nonresidential purposes within the District as of April 1, the Board of Listers (Board) shall adjust the listed value for the purposes of determining the District tax under this section to exclude the value of that portion of the property used for residential purposes. The Board shall determine the adjusted grand list value of the business portion of the property and give notice of the same as provided under 32 V.S.A. chapter 131. Any property owner may file a grievance with the Board and appeal the decision of the Board as provided for under 32 V.S.A. chapter 131; however, the filing of an appeal of the determination of the Board and pendency of the appeal shall not vacate the lien on the property assessed, and the District taxes must be paid and continue to be paid as they become due."

#### Discussion:

- Since downtowns everywhere are struggling, why tax just the downtown properties? Because we all benefit from downtown, why not tax the whole town?
- The Town already budgets for some items in the Downtown. Bennington in Bloom was a 50/50 split between the District and the Town. The Town took this over when the District said they could no longer afford it.
- Residential properties in the Downtown should not be excluded from the tax that is used to improve the Downtown.
- The argument was made that residential property values in the Downtown are not improved, i.e., having a Stewarts next to your house would not be a plus to a residential property owner.
- District tax is currently \$.15/hundred, so the tax on a \$200,000 residential property would be an additional \$300/year.

The following suggested changes were made for "§510. District taxes":

(a), Line 2, Change "excepting properties used exclusively for residential purposes, which taxes" to "except for owner occupied residential properties. The District taxes"

(a), Line 3, Change "incurred in connection with the" to "incurred for the"

(d), Line 4, Change "for residential" to "for owner occupied residential"

These changes have been tabled until all of SUBCHAPTER 5. TAXATION has been reviewed. Also, Ms. Oller will send all of the original language of §506 through §510, plus the alternative language that the Committee suggested, to Mr. Barlow for his comments on the renumbering, the repeal, reformatting, intent, and the V.S.A. reference.

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## 5. OTHER

Mr. Keane plans on having a draft of the Final Report to share with the Committee within a couple of weeks.

### NOVEMBER MEETING DATES:

Wednesday, November 22, 2017 - No Meeting

Tuesday, November 28, 2017 - 5:30pm-7:00pm Public Forum- Bennington Fire Facility



183 Ms. Oller felt that there should be an update to the public as to the procedure and progress of the  
184 Committee prior to the Forum.

185 Wednesday, November 29, 2017 - 4:30pm-7:00pm

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189 *At 1:06 pm, Daniel Malmborg moved and Jonathan Cohen seconded to adjourn the meeting. The*  
190 *motion carried unanimously.*

191

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193

194 Respectfully submitted,

195 Nancy H. Lively

196 Secretary

197

1 **CHARTER REVIEW COMMITTEE MEETING**

2 **BENNINGTON FIRE FACILITY - MULTI-PURPOSE ROOM 3<sup>RD</sup> FLOOR**

3 **130 RIVER STREET**

4 **BENNINGTON, VERMONT 05201**

5 **NOVEMBER 28, 2017**

6 **MINUTES**

7 **COMMITTEE MEMBERS PRESENT:** Co-Chair Sean-Marie Oller; Co-Chair Robert Plunkett; Michael A. Keane; P.  
8 Lynn Green; Daniel Malmborg; Jonathan Cohen and Robert Ebert.

9 **COMMITTEE MEMBERS ABSENT:** None.

10 **ALSO PRESENT:** Stuart Hurd-Town Manager; Tom Jacobs; Jeannie Jenkins and Donald Campbell-Select Board  
11 Members; Joan Pinnoneault-Treasurer; Maggie Dermody Pendergast; Bruce Lierman; Bob Tegart; 7 citizens;  
12 Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

13 At 5:30pm, Co-Chair Robert Plunkett called the meeting to order.

14 **1. REVIEW CHARTER COMMITTEE'S WORK TO DATE**

15 Ms. Oller stated that the Committee has reviewed the Charter through SUBCHAPTER 5. TAXATION.  
16 Each section was voted on to indicate the Committee's approval of their recommended changes or their  
17 agreement to not change the language, through SUBCHAPTER 4. TOWN MANAGER. Recommendations have  
18 been made to SUBCHAPTER 5. TAXATION but have not yet been voted on. All actions and discussions are in  
19 the Minutes of the meetings.

20 **2. REVIEW PROCESS**

21 Ms. Oller explained how the Committee was reviewing the Charter. Since July, the Committee has  
22 gone through the Charter line-by-line making grammatical changes, as well as, language changes that may no  
23 longer be needed because the law now covers it. In these cases, a reference is given to that respective law.  
24 We are focusing on the Town Manager and Fire Department - volunteer or paid - areas as indicated in the  
25 letter that was in the Banner. The Committee has recommended language for the accountability of the Town  
26 Manager and Select Board. A point of discussion not relevant in previous charter reviews, is the technology  
27 that now exists where drones, or other invasive technologies, can impose themselves on Bennington  
28 residents. We have also dealt with the fact that there hasn't been a constable in Bennington for quite some  
29 time and consistently using 'Select Board' instead of 'Selectors' or 'Select Board members' throughout the  
30 document.

31 Mr. Plunkett added that other areas of discussion have been the officer recall petition of 15 days, the  
32 process of appointing the Listers, contracting the Town Manager, and self-regulation of the Select Board.  
33 Although the Committee hasn't voted on any of the recommendations in SUBCHAPTER 5. TAXATION,  
34 discussion has taken place on the Downtown Improvement District taxation process to include the taxation of  
35 the downtown rental properties but to leave the residential properties exempted.

36 Ms. Green added that the drone discussion took place in the section where firearms are currently  
37 mentioned.

Ms. Oller also indicated that the Committee requests additional information when further explanations and clarifications are needed from the town staff, fire department personnel, and the Bennington Downtown Alliance. All changes will be indicated on the Charter with, hopefully, explanations as to why the Committee recommended these changes when it is presented to the public.

Mr. Cohen added that most of the changes were to clean up the document but there have been some substantive changes, such as the removal of a Select Board member if they have missed 4 consecutive warned meetings or 50% of the warned meetings in a 6 month period, as well as, a 3-year term for the Town Manager, renewable every 3 years for as many times as the Select Board decides.

Ms. Green stated that, even though the recommendation was not made to do so, there was discussion on term limits for Select Board members, as well. The Committee is seeking input from the public on all substantive changes with the local option tax being another one in addition to the others mentioned.

Mr. Plunkett stated the five subchapters that have been reviewed - SUBCHAPTER 1. POWERS OF THE TOWN; SUBCHAPTER 2. OFFICERS; SUBCHAPTER 3. SELECT BOARD; SUBCHAPTER 4. TOWN MANAGER; and SUBCAPTER 5. TAXATION. When the Committee has completed their recommendations, a Final Report will be given to the Select Board for their review. The Select Board then decides if they agree or disagree with those recommendations. After that there are two public hearings held before the changes go to the voters.

Mr. Keane noted that the Final Report to the Select Board will have two sections. One section will be for the substantive changes, such as a contract for the Town Manager or the number of unacceptable absences of a Select Board member, and the other section will be for grammatical corrections and consistencies.

Mr. Malmborg reminded everyone that in addition to the Committee recommendations going to the Select Board and then to the voters, they then go to the State Legislature who can accept or deny any or all of the recommendations. "We could end up with the same 2005 version of the Charter we have now or some variation of what we suggest."

### 3. PUBLIC COMMENTS

Maggie Pendergast thanked the Committee for all of their work. She agrees that there should be "checks and balances" for the Select Board and is not pro mayor because she is happy with the way the town government is running. "If it ain't broke, don't fix it", however, there should definitely be a review of the Town Manager's position. Every job has a review of some sort, and Ms. Pendergast was surprised that this had not been addressed before.

Mr. Plunkett commented that the Committee has not had access to the Minutes from previous Charter reviews so they don't know what has previously been discussed or not.

Mr. Malmborg noted that the idea of someone running for the Select Board with the political intent of never going to the meetings was a point of Committee discussion that took place on the absenteeism issue, and Mr. Keane added that the consideration was also there to enable meeting attendance via technology without physical presence.

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Tom Jacobs, Select Board Chair, also thanked the Committee for all of their work. He feels that the Charter is "a living document" that is "going to give us the future for our community" for which he has "a spirit



77 of enthusiasm and optimism". The Select Board will have an open dialogue on the Committee's  
78 recommendations that is open to the public. The hope is to have this done in time for the vote in March 2018.

79 Mr. Plunkett commented that the time frame for the Committee presenting their recommendations is  
80 running short and must be done in December 2017. Further discussion will determine if the recommendations  
81 will be on the entire Charter, or a portion of it.

82 Mr. Ebert noted that the Charter, itself, gives the Committee a year to review it. The present process  
83 began in late July 2017. "It will take as long as it takes."

84 Ms. Oller added that the Committee has been meeting weekly from 11:45am-1:00pm with one long  
85 meeting each month to try to complete the review of the whole Charter.

86  
87 Stuart Hurd, Town Manager, stated that the Charter is "the constitution of the community" that gives  
88 us what the State does not. For example, the Charter gives us a 7 member Select Board, whereas the Statute  
89 only contemplates 3 or 5 members.

90 Mr. Hurd also explained the local option tax. Originally, the 'gold towns' (those that paid more school  
91 tax than they received) were given the option for their voters to approve a 1% additional sales tax amount  
92 above the state wide 6% sales tax. Those towns receive 70% of the 1% additional tax and 30% remains with  
93 the State. Bennington was prohibited by law to receive the local option tax because we were a 'receiving  
94 town' (we paid less school tax than we received). Receiving towns can now vote to have a local option tax  
95 through their charters. Because Bennington is a regional shopping center, we could generate an additional  
96 \$700K-\$900K for the Town by adding an addition 1% to sales tax. This would probably be the preferred tax to  
97 apply the local option tax to, instead of the other two options - the current 9% room and meals or the 10%  
98 alcohol taxes.

99  
100 Bruce Lierman stated that "there's a town to be managed and there's a town to be led'. The  
101 complexities of managing the town with all of the local, state, and federal regulations speaks to the town  
102 manager form of government. However, Bennington lacks the leadership role of an individual "that has the  
103 vision of where the community is going". The management professional requirement should not be open to  
104 having to be elected every 4 years, whereas, the leadership role does fit an elected position. "We need to  
105 have both positions, and right now, we don't have them both."

106 Mr. Lierman applauded the Committee on addressing accountability for both the Select Board and the  
107 Town Manager. He feels that "it is a disservice to the Town Manager" not to give him/her a performance  
108 review annually or biannually, and does not agree with putting "tenure requirements" on the position.

109 Ms. Oller added that she has been impressed with the leadership of the Select Board, for example,  
110 with their work on TIF. The Committee has discussed their opposition to a "strong mayor" where the mayor  
111 functions both as the mayor and town manager, but we are always listening to what the public has to say.

112  
113 Bob Tegart, a Bennington resident for a year, reiterated the importance of having a professional  
114 managing the multi-million dollar budget of the Town with all of the related complexities and challenges.  
115 However, he doesn't have any objections to having a public relations person to "kiss the babies", as well.

116 Mr. Keane added that he is still undecided on the mayor/town manager/Select Board issue, but noted  
117 that if the decision is to go with a "strong" mayor, then there must be at least 10 years of qualified candidates  
118 that can participate in competitive elections. The individuals we have in Bennington that would fit this  
119 position do not have the time to take it on. If you don't have "the stable" of these qualified people, then it  
120 doesn't make sense to go down that road.

121 **4. LISTEN**

122 Public comments can be made on the Town of Bennington website, [www.benningtonvt.org](http://www.benningtonvt.org). All  
123 meeting Minutes are currently posted there, and all final documents will also be posted there when the  
124 Committee has completed their review.

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128 *At 6:30pm, Jonathan Cohen moved and Michael Keane seconded to adjourn the meeting. The*  
129 *motion carried unanimously.*

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132

133 Respectfully submitted,

134 Nancy H. Lively

135 Secretary

136



**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**  
**NOVEMBER 29, 2017**  
**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; Michael A. Keane; P. Lynn Green; Daniel Malmborg (left at 6:27pm); Jonathan Cohen and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager (in at 4:50pm); Dan Monks-Zoning Administrator; Beth Antognioni and Nancy H. Lively-Secretary.

At 4:31pm, Co-Chair Sean-Marie Oller called the meeting to order.

**1. REVIEW AGENDA**

Ms. Oller stated that the Agenda may need to be rearranged. John Shannahan and Eric Petersen were here from the Bennington Downtown Alliance and we may want to go back to section 5 for further review.

Mr. Hurd had distributed the Conflict of Interest Policy for reference and Ms. Oller noted that the Committee acknowledges that it exists. A Committee member may participate in the discussion of a topic where they feel there is a conflict of interest and then recuse themselves from the vote.

Mr. Keane, Mr. Cohen and Ms. Green all cited areas that may present a conflict of interest to them. Mr. Plunkett added that since the Committee is only making recommendations that will be voted on three times, he doesn't think that conflict of interest would even apply to recommendations.

An agenda change is to rename "2. PUBLIC COMMENTS" TO "2. BENNINGTON DOWNTOWN ALLIANCE - JOHN SHANNAHAN AND ERIC PETERSEN".

**2. BENNINGTON DOWNTOWN ALLIANCE - JOHN SHANNAHAN AND ERIC PETERSEN**

Mr. Shannahan stated that the Bennington Downtown Alliance (BDA) is in agreement with all of the recommendations that the Committee has made in SUBCHAPTER 5. TAXATION, §506 Creation of Bennington Downtown Improvement District, §508 Purposes and powers, §509 District Annual budget and §510: District taxes. They are especially in favor of §506 (a) where it gives the Select Board more flexibility and §510 (d) where the District tax is applicable to all for profit properties and excluding only the residential. The BDA is working on creating more 2<sup>nd</sup> floor apartments, i.e., rental properties, in the District, and Mr. Shannahan noted that the BDA does perform most of the duties listed in §508 (b).

The BDA is requesting that the Committee consider "the Tax Assessment District to be the Downtown Improvement District". It has been discussed within the BDA to spread the District tax throughout all Bennington property owners, however, this is not a suggestion of the BDA, just an awareness that there have been comments concerning it.



Mr. Petersen added that “everyone benefits from a healthy downtown, so it makes sense that everyone should support the downtown”. He equated the fact that property owners without children in the school system still pay school taxes.

Ms. Green noted that in 2017 the downtown is not as vibrant as it was in 2005 and a small tax spread among many may be enough to “increase the total pie”.

Ms. Oller reiterated the downtown tax process. The contractor presents a budget to the Select Board, the Select Board votes on the budget, and then the budget is dispersed to the Downtown District. The BDA discussion piece was for the process to remain the same except the budget is then dispersed among all tax payers in Bennington.

Mr. Shannahan clarified that the BDA budget amount would not increase, and added again that this is not a suggestion proposal or recommendation. It is a topic that had been discussed and could only be brought up at charter review time, which is why they are doing it now. The whole town already pays for the flowers and benches. The BDA presents all of their work plans and entire budget to the Select Board with their requested amount to come from the Town for the Select Board’s approval. The current portion of the BDA budget requested from the Town is \$79,000 amounting to \$.15/\$100 tax on the District or \$.0075 tax on the General Fund.

Ms. Oller noted that the BDA budget request is “under more scrutiny” that all of the petitioned dollars that will appear on the ballot after we have been given the Town budget to vote on. Mr. Hurd stated that State Law allows social service agencies to petition for funds on an annual basis. The agencies asking for ≤\$7,500 and were successful last year do not have to petition but do need to provide financial information and people served to the Select Board. The Select Board usually does not review this information. In 2017, all of the social service agencies - those that petitioned and those that did not - totaled ~\$350,000. This includes the first year of the Bennington Rescue Squad for \$207,000, who, Mr. Hurd said will now “be with us forever”.

Ms. Green thought that a small town wide tax would be a way to increase dollars for the Downtown, and Mr. Malmberg stated that this is exactly his argument against doing it. It would start out at \$.015 and then up to \$.02 giving the Downtown much more money, however, this would be difficult to retract if need be.

Mr. Cohen asked if Mr. Shannahan had any knowledge of other Downtown Districts taxing the entire town, and he answered that “multiple communities” do but they are generally much smaller districts. Mr. Cohen also asked what Mr. Shannahan felt they do for the rental properties to justify taxing them, and he answered that they do all of the cleanup from the various events, as well as, provide attractive aesthetics that would increase the value of their properties and the demand for their apartments.

Ms. Oller stated that paying school taxes are part of property taxes, whereas the District tax is a “specific tax”.

Mr. Ebert noted that since we are talking about taxation, to spread the tax among everyone would eliminate the “special assessment district” and just make it “an area of town that the Select Board would want to focus their resources on”.

Mr. Hurd explained that, because the monies would be dedicated to a specific part of town, it would still be a special assessment district. He feels that convincing the entire town to pay a downtown tax would “be a difficult sell”. The Downtown District was specifically established to have a taxing district that would not

76 impact residential property owners, and had to be passed by the voters twice because of the 3-year sunset  
77 provision in the first iteration. "It was a new idea and a difficult sell at the time."

78 **3. REVIEW ANY PUBLIC COMMENTS RECEIVED**

79 Ms. Oller stated that Joey Kulkin had e-mailed her so she told him that the comments he referred to  
80 were just discussion comments and not verbiage to go into the Charter. There was also another public  
81 comment from Ron Alderman.

82 Mr. Ebert felt that it was "inappropriate for the Chairman of the Select Board to be creating  
83 expectations in the Town as to our rate of progress and when we might be done with our work. He's done it  
84 twice now in his capacity as Chair of the Board."

85 Ms. Green disagreed with Mr. Ebert's interpretation of Mr. Jacob's comments and felt that he was just  
86 educating everyone that this would be a good opportunity if we could be done for the March vote and wasn't  
87 a "push to us".

88 **4. APPROVE MINUTES FROM NOVEMBER 15, 2017**

89 *Michael Keane moved and Robert Ebert seconded to approve the Minutes of November 15, 2017 as*  
90 *submitted. The motion carried with P. Lynn Green abstaining.*

91 **5. REVIEW DRAFT FINAL REPORT FORMAT**

92 The Committee will review the Final Report Format Draft as submitted by Mr. Keane and discuss it at  
93 the next meeting.

94 **6. QUESTIONS FOR OR FROM JIM BARLOW**

95 Ms. Oller stated that we will review the comments from Jim Barlow for a ½ hour and revisit Section 5 at  
96 next week's meeting. Mr. Hurd will provide the Committee with the current District tax rate, the District tax  
97 rate that would include rental properties, and the tax rate for the expansion to the whole town.

98 Mr. Cohen will participate in the discussion on the Downtown District tax rate town wide expansion  
99 but will recuse himself from the vote because of his involvement with the Putnam Project.

100 **7. CONTINUE CHARTER REVIEW, CHAPTERS 6, 7 & 8**

101 *"§601. Ordinances continue in effect*

102 *If at the time this charter becomes effective as the charter of the Town of Bennington there is in force in*  
103 *any village or other area of the Town a zoning ordinance, including billboard zoning, such ordinance shall*  
104 *continue in force within the area for which it was originally enacted. Each such ordinance shall be a valid and*  
105 *legal ordinance within such area and the same shall be and become a valid and legal zoned area with such*  
106 *districts as are provided for in said ordinance."*

107 Discussion:

- 108 • Mr. Hurd recommended that this section be deleted because it only applied at the time of  
109 consolidation. Billboards are covered in the State Statutes.

110 **Section "§601. Ordinances continue in effect" will be entirely deleted.**

112     “§602. Ordinance of villages not merging.

113             *The zoning ordinance in force within any village in the Town shall continue within the control of such*  
114 *village and the officials appointed to administer the same within such village shall continue in office pursuant*  
115 *to law until such time as said village ceases to exist and becomes a part of Town.”*

116 Discussion:

117             **Section “§602. Ordinance of villages not merging. leave as is.**

118  
119     

---

*“§603. Administration of ordinance of villages which merge*

120             *When such villages cease to exist as aforesaid, the Town legislative body, Board of Adjustment, and*  
121 *Administrative Officer shall have jurisdiction of and administer zoning in said village area as a separate zoned*  
122 *area in accordance with the provisions of the ordinance in force therein and the general law. If no Town*  
123 *Administrative Officer and Board of Adjustment have then been appointed by the legislative body, that body*  
124 *shall forthwith make such appointment.”*

125 Discussion:

- 126             • Any discussions with North Bennington and Old Bennington have resulted in them keeping their
- 127                 respective ordinances until a merger took place.
- 128             • The Board of Adjustment is now the Development Review Board in Bennington. However, Old
- 129                 Bennington may still have a Board of Adjustment.

130  
131             **The following changes will be made to §603. Administration of ordinance of villages which merge:**  
132             **In “§603. Administration of ordinance of” to “§603. Administration of ordinances of”**  
133             **Line 1, Change “exist as aforesaid,” to “exist,”**  
134             **Line 2, Change “Adjustment, and” to “Adjustment or Development Review Board, and”**  
135             **Line 4, Change “Adjustment have” to “Adjustment or Development Review Board have”**

136  
137     

---

*“§604. Comprehensive Town ordinance*

138             *The billboard zoning ordinance enacted for the area outside the villages in the Town shall continue to*  
139 *be administered by the Town officials having charge of zoning. When such officials acquire jurisdiction of the*  
140 *zoning ordinance in other zoned areas as herein provided, said ordinances, together with said billboard zoning*  
141 *ordinance, shall be deemed to be part of a general town zoning ordinance duly and legally enacted in*  
142 *accordance with a comprehensive plan. Such general ordinance shall be subject to repeal, amendment, or*  
143 *alteration by the Town under the application provisions of law.”*

144 Discussion:

- 145             • As said earlier, there is no billboard zoning ordinance because it is covered by State Law. And,
- 146                 Bennington has a sign ordinance that would cover us should the State Law be repealed.

147             **The following changes will be made to “§604. Comprehensive Town ordinance:**



Delete First Sentence "The billboard zoning ordinance enacted for the area outside the villages in the Town shall continue to be administered by the Town officials having charge of zoning."

Line 4, Delete "together with said billboard zoning ordinance,"

Line 6, Change "Town under the application provisions of law." to "Town."

---

*Robert Ebert moved and Michael Keane seconded to accept the following changes in SUBCHAPTER 6.*

**ZONING:**

*"§601. Ordinances continue in effect*

*If at the time this charter becomes effective as the charter of the Town of Bennington there is in force in any village or other area of the Town a zoning ordinance, including billboard zoning, such ordinance shall continue in force within the area for which it was originally enacted. Each such ordinance shall be a valid and legal ordinance within such area and the same shall be and become a valid and legal zoned area with such districts as are provided for in said ordinance."*§601. Ordinances continue in effect"

*Delete in its entirety.*

-----  
*"§602. Ordinance of villages not merging.*

*The zoning ordinance in force within any village in the Town shall continue within the control of such village and the officials appointed to administer the same within such village shall continue in office pursuant to law until such time as said village ceases to exist and becomes a part of Town."*

*Leave as is.*

-----  
*"§603. Administration of ordinance of villages which merge*

*When such villages cease to exist as aforesaid, the Town legislative body, Board of Adjustment, and Administrative Officer shall have jurisdiction of and administer zoning in said village area as a separate zoned area in accordance with the provisions of the ordinance in force therein and the general law. If no Town Administrative Officer and Board of Adjustment have then been appointed by the legislative body, that body shall forthwith make such appointment."*

*"§603. Administration of ordinance of" to "§603. Administration of ordinances of"*

*Line 1, Change "exist as aforesaid," to "exist,"*

*Line 2, Change "Adjustment, and" to "Adjustment or Development Review Board, and"*

*Line 4, Change "Adjustment have" to "Adjustment or Development Review Board have"*

-----  
*"§604. Comprehensive Town ordinance*

181        *The billboard zoning ordinance enacted for the area outside the villages in the Town shall continue to*  
182 *be administered by the Town officials having charge of zoning. When such officials acquire jurisdiction of*  
183 *the zoning ordinance in other zoned areas as herein provided, said ordinances, together with said billboard*  
184 *zoning ordinance, shall be deemed to be part of a general town zoning ordinance duly and legally enacted in*  
185 *accordance with a comprehensive plan. Such general ordinance shall be subject to repeal, amendment, or*  
186 *alteration by the Town under the application provisions of law."*

187        *Delete First Sentence "The billboard zoning ordinance enacted for the area outside the villages in the*  
188 *Town shall continue to be administered by the Town officials having charge of zoning."*

189        *Line 4, Delete "together with said billboard zoning ordinance,"*

190        *Line 6, Change "Town under the application provisions of law." to "Town."*

191        Ms. Green doesn't feel that the billboard ordinance reference should be removed from the Charter  
192 should the State repeal their law, and Mr. Monks stated that the billboard ordinance doesn't exist and we are  
193 still covered by the Town's sign ordinance.

194        Ms. Oller added that an explanation bubble could reference the State law that covers this.

195        *The motion carried with P. Lynn Green opposed.*

196

197        "SUBCHAPTER 7. WATER SYSTEM

198        §701. Town powers

199        *The Town may make, alter, and repeal ordinances relating to management, operation, maintenance,*  
200 *replacement, and extension of a Town water system and may fix, and from time to time alter water rates,*  
201 *insofar as such ordinances and water rates are not in conflict with the deeds of gift to the Village of Bennington*  
202 *and Village of North Bennington."*

203        Discussion:

204        Ms. Oller inquired as to why we didn't have a stand-alone Water Board and Mr. Hurd explained the  
205 history of the Water System:

206        When Henry W. Putnam deeded the water system to the Village of Bennington, he created a Water  
207 Board to administer the water system. He set the rates at ½ of 1912, and the water board could not change  
208 that rate.

209        By the 1970's, the water department was deep in debt, and the water commissioners at that time  
210 "were so full of themselves" that they couldn't see that they were going under. The Town Manager and Select  
211 Board went to court to change the Deed of Gift so they could change the rates. A number of Water Board  
212 members quit, and "the rest were simply removed".

213        *Robert Ebert moved and Robert Plunkett seconded to leave "SUBCHAPTER 7. WATER SYSTEM*

214 *§701. Town powers" as is. The motion carried unanimously.*

215

216        "SUBCHAPTER 8. MISCELLANEOUS



217 §801. Severability

218 *If any provision of this charter is for any reason held invalid, such invalidity shall not affect the*  
219 *remaining provision which can be given effect without the invalid provision. To this end, the provisions of this*  
220 *charter are declared to be severable.*

221 §802. Merger of municipalities within Town

222 *(a) Any municipality with the Town of Bennington which votes to surrender its existing charter and*  
223 *dissolve under this charter, shall cease to exist as a corporate body and political entity on the January 1<sup>st</sup> next*  
224 *succeeding, unless such vote becomes final or after October 1<sup>st</sup> in any year, in which event the municipality*  
225 *shall cease to exist as a corporate body and political entity on the March 1<sup>st</sup> next succeeding.*

226 *(b) All assets of any municipality which surrender its existing charter or dissolves under this charter shall*  
227 *become the property of the Town of Bennington on the day such municipality ceases to exist under subsection*  
228 *(a) of this section.*

229 *(c) All liabilities of any municipality which surrenders its existing charter or dissolves under this charter*  
230 *that are outstanding obligations of such municipality on the day it ceases to exist under subsection (a) of this*  
231 *section, including the bonded indebtedness of such municipality shall become liabilities of the Town of*  
232 *Bennington on the day such municipality ceases to exist under subsection (a) of this section.*

233 §803. Method of adoption; time; voting

234 *(a) A majority of the qualified voters of the Village of Old Bennington voting by ballot at a meeting duly*  
235 *warned for the purpose, may at any time vote to surrender the charter of said Village and merge with the*  
236 *Town of Bennington under the terms of this charter by voting in the affirmative on an article substantially as*  
237 *follows:*

238 *"To determine by ballot whether the Village of Old Bennington will surrender its existing charter*  
239 *and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled an Act to*  
240 *Provide a Charter for the Town of Bennington".*

241 *(b) A majority of the qualified voters of the Village of North Bennington voting by ballot at a meeting*  
242 *duly warned for the purpose may at any time vote to surrender the charter of said Village and merge with the*  
243 *Town of Bennington under the terms of this act by voting in the affirmative on an article substantially as*  
244 *follows:*

245 *"To determine by ballot whether the Village of North Bennington will surrender its existing*  
246 *charter and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An*  
247 *Act to Provide a Charter for the Town of Bennington."*

248 *(c) A majority of the qualified voters of the Bennington Fire District No. 1, voting by ballot at a meeting*  
249 *duly warned for the purpose may at any time vote to dissolve said Fire District and merge with the Town of*  
250 *Bennington under the terms of this charter by voting in the affirmative on an article substantially as follows;*

251 *"To determine by ballot whether the Bennington Fire District No. 1 will dissolve and merge with*  
252 *the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter*  
253 *for the Town of Bennington."*



254 (d) A meeting to consider an affirmative vote under any of the foregoing sections shall be held only  
255 upon petition of not less than five percent of the qualified voters of the municipality filed with the legislative  
256 body thereof within 20 days after such affirmative vote requesting a meeting to vote on an article substantially  
257 as follows:

258 "To determine by ballot whether the (insert municipality) will confirm its vote of (insert date) in  
259 favor of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington."

260 (e) If any municipality votes under subsection (d) of this section to reconsider an affirmative vote, such  
261 municipality may at any time thereafter hold a meeting in accordance with subsections (a), (b), and (c) of this  
262 section to vote again on this charter.

263 (f) An affirmative vote by any municipality shall become final and conclusive when a petition to  
264 reconsider is not filed in accordance with subsection (d) of this section or when a meeting to reconsider is held  
265 under subsection (d) of this section and the vote at such a meeting confirms the affirmative vote.

266 (g) Early Voter Absentee Balloting. Voting by early absentee ballot shall be permitted at any meeting  
267 held under this section.

268 §804. Notice to Secretary of State

269 The Clerk of the Town of Bennington shall notify the Secretary of State of the vote of any meeting held  
270 under section 803 of this charter within 10 days after the meeting.

271 §805. Existing water systems; succession by Town

272 If the Village of North Bennington ceases to exist in accordance with this subchapter; the Town shall  
273 succeed to all the rights, title, interest, privileges, duties, and obligations of said Village under a deed of gift  
274 from Laura H. Jennings, dated March 3, 1924.

275 Discussion:

- 276 • Mr. Hurd recommended that no changes be done for §801 through §805.  
277 • Laura Jennings owned the water system.  
278 • There should be "bubbles" referencing No. 83 of the Acts of 1966 for §802 through §805 as part of the  
279 original Act providing for the charter.

280 **There were no changes recommended for §801 through §805.**

281

---

282 "§806. Charter Review Committee

283 The Select Board may appoint a Charter Review Committee of not less than five nor more than nine  
284 members of the inhabitants of the Town, said Committee to review the charter and recommend such changes  
285 therein as it finds necessary or advisable for the purpose of improving the operation of Town government. Said  
286 Committee shall prepare a written report of their recommended amendments to the charter in time for same  
287 to be submitted to the Select Board for review no later than one year after the appointment of said Committee.  
288 At the discretion of the Select Board such amendments may be warned for ballot vote at an annual or special  
289 Town meeting to be held no later than one year after the submission of the report. The Select Board shall  
290 provide in their budget for any year when a Charter Review Committee is appointed, a sum of money for said  
291 Committee."

292 Discussion:

- 293 • The Charter Review Committee should be a standing committee that meets more frequently with the  
294 particular idea to review new legislation.  
295 • The Committee shouldn't be appointed too often but definitely more frequently than every 12 years.  
296 At least every 3 or 5 years, for example.

297 *P. Lynn Green moved and Robert Ebert seconded to accept all changes for SUBCHAPTER 8.*

298 *MISCELLANEOUS as follows:*

299 *No changes to §801. Severability, §802. Merger of municipalities within Town, §803. Method of*  
300 *adoption; time; voting, §804. Notice to Secretary of State, and §805. Existing water systems; succession*  
301 *by Town.*

302 *§806. Charter Review Committee*

303 *Line 1, Change "The" to "At least once every 5 years, the"*

304 *Line 1, Change "may" to "shall"*

305 *Line 1, Change "less" to "fewer"*

306 *Line 2, Change "inhabitants" to "residents"*

307 *Line 2, Change "Town, said Committee to" to "Town. The Committee shall"*

308 *Line 3, Delete "therein"*

309 *Line 4, Change "Said" to "The"*

310 *Line 4, Change "their" to "its"*

311 *Line 5, Change "recommended amendments o the charter" to "recommendations"*

312 *Line 5, Change "same" to "those recommendations"*

313 *Line 6, Change "said" to "the"*

314 *Line 7, Change "amendments" to "recommendations"*

315 *Line 9, Change "their" to "its"*

316 *Line 9, Change "a sum of money for said Committee." to "funding for the Committee."*

317 *The motion carried unanimously.*

318

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319 **8. FIRE DEPARTMENT LANGUAGE**

320 Bennington Fire Department Assistant Chief William LaTour stated the main concern of the Fire  
321 Department is the autonomy of the group with mixed feelings within the Department on the volunteer vs.  
322 paid changes within the Charter. It isn't clear among the volunteers what exactly this would mean to the  
323 Department and they do not want to see the Town take over the Fire Department.

324 Deputy Chief Jeff Berry added that the volunteers range from 5 to 60 years of service with their  
325 families also vested. We govern ourselves and elect our own officials. We're concerned that if the Chief  
326 position becomes a paid position how that will affect our election of that person and impact our existing  
327 Bylaws.

328 Mr. Ebert reiterated his thoughts behind the suggested changes. In his experience in Austin, Texas, he  
329 had seen volunteer fire departments go to "part-paid" to pay drivers so the stations could be staffed 24/7. If  
330 Bennington finds itself in this situation years down the road, the Charter would allow them to do that. The  
331 existing wording in the Charter was "shall be a volunteer" and the change was made to "may be a volunteer or  
332 paid".

333 Mr. Cohen added that "none of this changes what you guys are doing except if you don't want to do it  
334 anymore". The Committee appreciates that the current members can't foresee the time when there wouldn't  
335 be an adequate number of volunteers for the Department to continue on as is, but it may happen someday.

336 Mr. LaTour stated there are presently 56 volunteers from the ages of 18-the 80's which is down from  
337 100 volunteers 10 years ago. He said they are aware of the reason in the drop, and numbers "are on the  
338 uptick now". The Department needs a core group of 20-40 to be proficient which is maintained "most of the  
339 time".

340 Mr. Hurd added that if there were no Charter change to this section and the Bennington Fire  
341 Department disbanded, then the Town could contract with the Rural Fire District and/or the Village of North  
342 Bennington Fire Department.

343 Mr. Berry said that perhaps a "pay per call" would be another way to compensate in addition to the  
344 stipends that are already in place. It was their impression that these changes were to pay the Chief.

345 Mr. Malmberg asked how the Department was volunteer if they were paid stipends, and Mr. Berry  
346 answered that they are reimbursements, not salaries.

347 Mr. Plunkett stated the changes to get the firefighters paid "is already done right now and doesn't  
348 need a charter change" and the catastrophic loss of all of the firefighters "can be dealt with in subsection (2)"  
349 to create departments. Mr. Plunkett doesn't "think we should change the history of our fire department just  
350 for a theoretical, right now".

351 ***Robert Plunkett moved and Robert Ebert seconded to revert to the original language in §303. Further***  
352 ***powers of the Select Board (1).***

353 Mr. Ebert suggested that verbiage addressing that the Fire Department remain in control of their own  
354 destiny should be considered since Mr. LaTour mentioned that would be better received by the firefighters.  
355 Mr. Ebert still feels that the changes made are a good tool for municipal management, but they also need to  
356 be accepted by the Fire Department.

357 Ms. Oller added that Mr. Barlow would be consulted for his comments and suggestions on the issue of  
358 the future for the Fire Department, as well as, maintaining their autonomy.

359 Mr. Hurd stated that the 'contract' the Town has with the Bennington Fire Department is the one that  
360 the Village Trustees and the Select Board signed when the Village Fire Department became the Bennington  
361 Fire Department. They have operated the same for all these years.



362 Mr. Cohen would like to leave the language in this section as is with no further changes. "There's a  
363 consensus that the Department does a great job and I don't see why we should negatively impact that."

364 Mr. Malmborg stated that firefighting has become so technical that you "can't rely on people coming in  
365 off the streets" to do it. Mr. Berry responded that we already have those regulations and the core group that  
366 are certified firefighters with the money in the budget to train the new volunteers. We don't see lack of  
367 volunteers or training as an issue at any time soon.

368 ***Robert Plunket moved and Robert Ebert seconded to amend the original motion to read "to revert to***  
369 ***the original language in §303. Further powers of the Select Board (1) and explore alternative language".***  
370 ***The motion carried unanimously.***

371 The Committee will share the alternative language with Mr. Berry and Mr. LaTour.

372

---

373 **9. OTHER**

374 Mr. Hurd suggested that Mr. Barlow and Mr. Woolmington be consulted as to how to minimize the  
375 impact of the grammatical corrections recommended in the Charter for the voters, and Mr. Plunkett added to  
376 also consult the Legislative Council.

377 Discussion ensued as to the process going forward and the remaining issues to review.

378

379

380

381 ***At 7:22pm, the meeting was adjourned.***

382

383

384

385 Respectfully submitted,

386 Nancy H. Lively

387 Secretary

388

BENNINGTON CHARTER REVIEW COMMITTEE MEETING  
TOWN OFFICE – CONFERENCE ROOM  
205 SOUTH STREET  
BENNINGTON, VERMONT 05201

WEDNESDAY, DECEMBER 06, 2017

MINUTES

COMMITTEE MEMBERS PRESENT: Robert Plunkett; Lynn Greene; Robert Ebert; Sean-Marie Ollner; Jon Cohen; Michael Keane (via phone);

ABSENT: *Dan Malmborg*

ALSO PRESENT: Stuart Hurd, Town Manager; Dan Monks-Zoning Administrator & Assistant Town Manager; Linda E. Bermudez – Recording Secretary;

At 11:45 A.M., meeting called to order and Michael Keane called into the meeting via phone.

**1. PUBLIC COMMENTS**

There were no public comments for consideration.

**2. REVIEW ANY PUBLIC COMMENTS RECEIVED**

There were no public comments for consideration.

**3. APPROVE MINUTES OF 11/28/17 & 11/29/17**

***Motion:** Michael Keane motioned approve both November 28<sup>th</sup> & November 29<sup>th</sup>, 2017 meeting minutes. Sean-Marie Ollner seconded the motion.*

***Discussion:***

Ms. Ollner asked if Mr. Keane felt the minutes reflected what he said at the previous meeting. Mr. Keane felt they did.

***VOTE:** The motion passed unanimously (Dan Malmborg absent)*

**4. ACKNOWLEDGE FINAL REPORT FORMAT:**

Michael Keane stated the format is a work in progress and is open to any suggestions. He felt if they waited too long the Committee would end up scrambling. They needed to start somewhere. The current document is not cohesive. If the Committee had three years, it could really become more a comprehensible document.

Committee members discussed different options for displaying the changes made. Jon Cohen suggested a summary report that outlines the substantial changes (only). Lynn Greene

52 agreed with the idea of an Executive Summary. She suggested having three columns that would  
53 include: *Current Charter, Recommended Change, and Rational behind the change.*

54 Robert Plunkett asked the Manager if he could have someone create this format to work  
55 within. The Manager stated he would.

56 The Committee continued to discuss the idea of a narrative for each change and how to  
57 highlight them. Members agreed it needs to be reader friendly.

58 Robert Ebert asked if there would be a presentation made for the Select Board or would  
59 the Committee just submit the report. Mr. Plunkett stated a presentation would be made. Mr.  
60 Keane stressed the importance of the Select Board reading the report and the suggested changes  
61 carefully. The projected date of submittal to the Select Board is December 26, 2017.

62 The Manager stated that date would be ideal as the changes need to be warned (60) days  
63 before the vote. Additionally, there would need to be (2) meetings/hearings on the changes  
64 proposed.

## 65 66 67 68 69 **5. REVIEW JIM BARLOW'S COMMENTS**

70 Mr. Plunkett stated Mr. Barlow is unable to finish his comments until Friday. There was  
71 a brief discussion on Section 404 (H) based on Jim Barlow's comments. Mr. Plunkett suggested  
72 to leave this section as presently changed. The remaining Committee members agreed.

73 Robert Ebert discussed section 102 in regard to the "powers of the Town to adopt  
74 ordinances". Mr. Ebert would like to have future Select Boards be able to make changes, as  
75 culture is changing constantly. They would be able to respond more quickly. He read and  
76 suggested the Town of Chester's Charter regarding this.

77 Jon Cohen suggested adding similar wording separate, as a "Section F". Lynn Greene  
78 agreed it should be separate.

79  
80 ***Motion:** Lynn Greene motioned to add Town of Chester's language as a bulleted*  
81 *letter for the Town of Bennington's Charter but to change "repugnant" to "not in*  
82 *conflict with" and change "said Town" to "the Town". Robert Ebert seconded the*  
83 *motion.*

84  
85 ***VOTE:** The motion passed unanimously (Dan Malmberg absent)*  
86  
87  
88  
89

## 90 **6. REVIEW CHAPTER 5 – INCLUDING LOCAL OPTION TAX**

91  
92 ***Motion:** Lynn Greene motioned to approve changes made to Section 501 through*  
93 *505. Jon Cohen seconded the motion*  
94

95 ***VOTE:** The motion passed unanimously (Dan Malmberg absent)*  
96  
97

98 Mr. Plunkett noted Jim Barlow suggested keeping the intro sentence for Section 506.  
99 Discussion continued regarding subsections "B" and "C". Ms. Ollner questioned if there needed  
100 to be a whole explanation there. The Manager stated there was too much wording. Ms. Greene  
101 agreed fewer words would be better. Mr. Plunkett suggested condensing "A & B" as just part of  
102 Section 506 (no subsets) and add Mr. Barlow's "Section C" as sentence at the end of Section  
103 506.



104  
105 Motion: Sean-Marie Ollner motioned to accept and approve the new Title of  
106 Section 506 to "Bennington Downtown Improvement District". Jon Cohen seconded  
107 the motion  
108

109 VOTE: The motion passed unanimously (Dan Malmborg absent)  
110  
111

112 Ms. Ollner asked if someone could check with Jim Barlow regarding Section 507 --  
113 Repealed. She would like to see it gone altogether.  
114  
115  
116

117 Section 508  
118

119 Motion: Sean-Marie Ollner motioned to accept and approve Section 508 with  
120 changes. Lynn Greene seconded the motion  
121

122 VOTE: The motion passed unanimously (Dan Malmborg absent)  
123  
124  
125

126 Section 509  
127

128 Motion: Sean-Marie Ollner motioned to accept and approve Section 509 with  
129 recommended corrections. Jon Cohen seconded the motion  
130

131 VOTE: The motion passed unanimously (Dan Malmborg absent)  
132  
133

134 Section 510

135 Mr. Plunkett noted Jim Barlow is good with the language changes. Discussion continued  
136 regarding tax rates of residential vs. commercial/non-residential. Ms. Ollner stated it could  
137 change of the whole tax structure. Ms. Greene would like to know the impact if it were spread  
138 across town (not only in the district). The Manager stated he did not have the information yet.  
139 Michael Keane believes the consequences would be unmanageable. Ms. Greene believes people  
140 are more generous than you think. The Manager stated he would bring the information to the  
141 next meeting. Mr. Ebert noted there would then no longer be "district" and we would have to  
142 completely remove Section 509 and 510. They would no longer apply.  
143

144 Motion: Robert Ebert motioned to accept and approve Section 510 as amended.  
145 Sean-Marie Ollner seconded the motion  
146

147 VOTE: The motion passed (Jon Cohen & Lynn Green abstained; Dan Malmborg  
148 absent)  
149  
150  
151

152 7. DISCUSS / LIST PARKING LOT ITEMS & ANY TOPICS MEMBERS FEEL  
153 SHOULD BE REVISITED

154 Robert Ebert would like to discuss the Mayoral issue. If this is not on the ballot for  
155 consideration, be prepared for the fallout.

156  
157 Robert Plunkett noted the other items to finish as follows:

158 Fire Department  
159 Billboards  
160 First Chair  
161 Local Option Tax  
162

163 Jon Cohen noted it will be important to look at how a Mayor (if approved) would impact  
164 the rest of the Charter.

165 Robert Ebert stated some information regarding other Towns in Vermont with Mayors.  
166 There are (9) Towns in Vermont with Mayors. Eight of those towns have both a Mayor and a  
167 Town Manager. Some of those Town Charters are on-line for review and talk about how their  
168 powers are designed (Newport, Barre, and Montpelier).  
169

170  
171  
172 **NEXT MEETING DATES:**  
173


174 Wednesday December 13, 2017 – 11:45am – 1:00pm  
175

176 Wednesday December 20, 2017 – 4:30pm – 7:00pm  
177  
178  
179

180  
181  
182 **Motion:** Jon Cohen motioned to close the meeting. Sean-Marie Ollner seconded  
183 the motion  
184

185 **VOTE:** The motion passed unanimously (Dan Malmberg absent)  
186  
187  
188  
189

190  
191 Respectfully submitted,  
192

193   
194 Linda E. Bermudez  
195 Recording Secretary

**CHARTER REVIEW COMMITTEE MEETING**  
**BENNINGTON TOWN OFFICE – CONFERENCE ROOM**  
**205 SOUTH STREET**  
**BENNINGTON, VERMONT 05201**

**DECEMBER 13, 2017**

**MINUTES**

**COMMITTEE MEMBERS PRESENT:** Sean-Marie Oller-Co-Chair (by phone); Robert Plunkett-Co-Chair; Michael A. Keane; P. Lynn Green; Daniel Malmborg; Jonathan Cohen (left at 1:00pm) and Robert Ebert.

**COMMITTEE MEMBERS ABSENT:** None.

**ALSO PRESENT:** Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Beth Antognioni; William LaTour-Bennington Fire Department Assistant Chief; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 11:47am, Co-Chair Robert Plunkett called the meeting to order.

**1. PUBLIC COMMENTS - FIRE DEPARTMENT LANGUAGE DISCUSSION - ASST. CHIEF WILLIAM LATOUR**

Mr. Plunkett stated that Chief Berry had indicated that the Department would like to bring the language proposed by Mr. Barlow to the membership, and Mr. LaTour concurred.

Mr. LaTour's comments on the suggested language were:

- They agreed with it being set up so that the Department had a vote before a change was in place,
- However, would like to change the wording at the end from "as set forth in a plan for such transition as proposed by the Select Board" to "as set forth in a plan for such transition as proposed by the Fire Department".

Otherwise, Mr. LaTour feels that the Department would be in agreement with the language and can present it to most of the membership this evening. And, if that doesn't work out, they would call a special meeting so this could be finalized before the Committee submits their Final Report to the Select Board on December 26, 2017.

Ms. Oller pointed out that since the Committee discussion on December 20<sup>th</sup> will be finalizing the Final Report, it may be too late to wait for the Department to get back to them with their approval of the language.

Ms. Green added, that there have been multiple opportunities for other groups to contact the Committee with their comments on changes that have been suggested that would affect them, but the Fire Department has been the only one to come forward.

Mr. Ebert commented that the firefighters are the only group that risk their lives to serve and the Committee should extend them as much due diligence as we can. They have offered to hold a special meeting, if necessary, to accommodate the Committee's schedule so their input will be received in time.

The Fire Department language discussion will take place at the December 20, 2017 Committee meeting.



There were no other public comments.

## **2. REVIEW ANY PUBLIC COMMENTS**

None.

## **3. APPROVE MINUTES FROM DECEMBER 6, 2017**

*Michael Keane moved and Robert Plunkett seconded to approve the Minutes of December 6, 2017 amended as follows:*

*Change "Ollner" to "Oller" throughout the Minutes.*

*The motion carried with Daniel Malmborg abstaining.*

## **4. DISCUSS LOCAL OPTION TAX**

The only way that Bennington can implement a Local Option Tax is through a charter change.

Mr. Barlow stated "the charter language should authorize the Town to implement the tax upon a favorable vote of the electorate, without trying to direct, through the charter, how the tax will be spent.". He also submitted St. Albans and Winooski as examples.

Committee discussion:

- It should not be the Committee's decision for what the local option tax should be on - sales, rooms, lodging or alcoholic beverages.
- Previous discussion had considered making the local option tax more than 1%. However, even though we could increase it, it isn't advisable to change what the legislators have already approved.
- A local merchant feels that a higher sales tax will negatively affect his business.
- Conversely, the additional dollars coming into the Town could help promote businesses.
- All local option taxes that have passed in other towns so far have been permanent. If it were to be rescinded, the same process would be followed as was to implement it.

*Robert Plunkett moved and Robert Ebert seconded to add the following to SUBCHAPTER 5.*

### **TAXATION:**

#### ***§511. Local Option Tax***

*(a) If the Select Board by a majority vote recommends, the voters of the Town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:*

*(1) a one-percent sales tax;*

*(2) a one-percent meals and alcoholic beverages tax;*

*(3) a one-percent rooms tax.*

*(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State.*

Ms. Green did not like the language "a majority vote of those present and voting", and it was explained that the voting is not at the Town Meeting but by Australian ballot the next day.

Mr. Plunkett noted that this is the language that has been used in all of the towns that implemented the local option tax through their charters.

Much discussion ensued on the rewording of "meals and alcoholic beverages" to "meals and rooms", as well as, separating the three out to four - sales, meals, alcoholic and rooms. The "meals and alcoholic beverages" grouping comes from the Statute for Local Option Tax, Title 24, Section 138.

***Robert Plunkett moved and Robert Ebert seconded to amend the motion as follows:***

***Change: "(2) a one-percent meals and alcoholic beverages tax" to "(2) a one-percent alcoholic beverages tax"***

***Change: "(3) a one-percent rooms tax" to "(3) a one-percent meals and rooms tax"***

Mr. Ebert asked Mr. Hurd how he felt this would impact the legislators vote because the language had been changed, and Mr. Hurd responded that it would be hard to say because the State does group 'meals and rooms' together.

***The motion failed with P. Lynn Green and Sean-Marie Oller in favor.***

***Jonathan Cohen moved and Daniel Malmberg seconded to add the following to SUBCHAPTER 5. TAXATION:***

***§511. Local Option Tax***

***(a) If the Select Board by a majority vote recommends, the voters of the Town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:***

***(1) a one-percent sales tax;***

***(2) a one-percent meals;***

***(3) a one-percent rooms tax;***

***(4) a one-percent alcoholic beverages tax.***

***(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State.***

Mr. Keane asked Mr. Hurd how he felt the voters would go on this, and Mr. Hurd answered that "any of them would be a hard sell, except maybe rooms". It could mean an additional \$750,000-\$800,000 generated/year.

Mr. Keane further asked if an increased sales tax would cause consumers to go elsewhere, and Mr. Monks responded that it doesn't apply to food or the first \$100 of clothing. Mr. Hurd added that it is thought of as "a regressive tax" that will impact the lower income people more than the rest.

Ms. Green stated that surrounding areas all have higher taxes, such as, Albany, Manchester, and Massachusetts. Bennington has been "a bargain".

Mr. Malmberg noted that this will also give those running for Select Board a platform to run on.



*The motion carried unanimously.*

## **5. REVIEW JIM BARLOW'S COMMENTS**

Mr. Ebert was amazed that the Governor was in town and no elected official bothered to show up and that he rarely sees them. Perhaps a small discretionary fund - around \$1,000 - could be given to the Chair of the Select Board to assure that he/she will be in attendance at appropriate events.

Ms. Green and Mr. Keane disagreed in that they see Select Board members frequently at various events.

Ms. Oller agreed with the language that "the Chair shall be the head of the Town Government for ceremonial purposes" so when the Select Board elects its Chair, that person knows what is expected of them.

Mr. Malmborg felt that town mayors attend events for the "photo op", and with our Town Manager/Select Board style of government, we don't have people there simply as "a veneer". Perhaps an additional stipend for the Select Board Chair, and possibly a discretionary budget, would be incentive to perform the additional expected duties. "This answers a call we heard from the public."

Mr. Plunkett is "ambivalent" to the idea since he likes the idea of someone as the "Face of the Town" but also likes the idea of the Select Board members all being equally responsible.

Ms. Green is against the idea of an additional stipend since the Select Board members are all "basically volunteers" and that would put the pressure on the Chair that he/she had to be at every event.

Mr. Cohen is in favor of the idea if it is left up to the Chair as to what events he/she attends. Mr. Ebert and Mr. Plunkett agreed.

***Robert Ebert moved and Sean-Marie Oller seconded to amend SUBCHAPTER 3. SELECT BOARD as follows:***

### ***§304. Organization of Select Board***

***(a) Add a second sentence to read "The Chair shall be the head of the town government for all ceremonial purposes."***

Mr. Cohen asked if saying the Chair was the head of the town government gave the Chair additional powers? Since this language came from several other towns, Mr. Ebert stated "they can't all be wrong".

Mr. Hurd attends events when available and this will not preclude him from doing that. He added that Tom Jacobs, the current Select Board Chair, has taken it upon himself to attend events whenever he can.

Ms. Green stated this opens "a pail of worms", puts all the responsibility on the Chair and the criticism as to why he/she wasn't at this or that event. Things should remain as is with all of the Board members equally responsible.

Ms. Oller feels that people are going to be "critical either way" and the Chair is the only one that has additional duties, such as, setting the agenda.

***The motion carried with Jonathan Cohen, Daniel Malmborg, Sean-Marie Oller, and Robert Ebert in favor, Michael Keane and P. Lynn Green opposed, and Robert Plunkett abstaining.***

Additional Mr. Barlow comments:



- Billboards - take out both sections. It is covered in the Statute and the Town has a sign ordinance.
- Downtown Improvement District - made no difference to the Committee's discussion except that the Town has the power to tax all of the property anyway.
- Constable - do not remove because the Constable has particular powers and there is ambiguity whether or not the Constable was elected referencing Statute - Title 17.

Mr. Hurd added: Bennington hasn't had a Constable in 8 years, we are in violation of the Charter by not having one, and we have two health officers and an animal control officer. The Select Board decided not to appoint a Constable - based on the recommendation of the Town Manager - because we were only using the position for law enforcement at elections and the State had raised the training level of a Constable to the point that it was costing the Town money for what we were getting out of it.

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*Sean-Marie Oller moved and Michael Keane seconded to amend SUBCHAPTER 1. POWERS OF THE TOWN as follows:*

*§104. Recall, (b), Line 5, Change "by a majority of two-thirds" to "two-thirds".*

*The motion carried unanimously.*

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## **6. DISCUSS FINAL REPORT**

Ms. Oller asked everyone to think about rationale to add to the Final Report. There is also a lot of information that we may want to add to the Report, including questions and answers that we had. The Select Board will have "a volume of information" to look through if they so choose.

*The next meeting will be Wednesday, December 20, 2017, 4:30-7:00pm, at the Town Office Conference Room.*

*At 1:07pm, Robert Ebert moved and Daniel Malmborg seconded to adjourn the meeting. The motion carried unanimously.*

Respectfully submitted,

Nancy H. Lively

Secretary