

**TOWN OF PROVINCETOWN – SELECT BOARD  
MEETING MINUTES – EXECUTIVE SESSION – OPEN SESSION  
MONDAY – May 15, 2018 5:00 PM  
JUDGE WELSH ROOM - 260 COMMERCIAL STREET**

Chair Venden convened the open meeting at 5:00 p.m. noting the following attendees:

Board of Selectmen members: Chair Louise Venden, Vice Chair Tom Donegan, Members Cheryl Andrews, Robert Anthony and Lise King.

Excused:

Other attendees: Town Manager David Panagore, Assistant Town Manager David Gardner, Police Chief Jim Golden, Town Council John W. Giorgio, and Board of Selectmen Secretary Elizabeth Paine.

Recorder: Elizabeth Paine

- 1. The Select Board will vote to go into Executive session pursuant to M.G.L. c. 30A, §21(a) Clause (3),**
  - A. To discuss strategy with respect to potential litigation, legal challenges to the adoption of the revised charter, if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares; Roll Call Vote**
  - B. To discuss strategy with respect to potential litigation, to the Town of Provincetown's General Bylaw 9-7-1, Rental of motorized two-wheeled vehicles, if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares; Roll Call Vote**

**Board Member Andrews that the Board of Selectmen will vote to go into Executive Session pursuant to MGL c30A, Section 21(a), Clauses 3:**

**And to convince in open session thereafter.**

**Board Member Anthony seconded the motion**

**Roll Call:**

**Cheryl Andrews: Yes**

**Robert Anthony: Yes**

**Lise King: Yes**

**Louise Venden: Yes**

**Went into closed session – 5:06 pm.**

**Board of Selectmen went into open session at 6:28 pm.**

- 2. Reaffirmation of Board of Selectmen vote taken at the emergency meeting held on Tuesday, April 24, 2018. Votes may be taken.**

**Select Member Andrew moved to table the item 2**

**Select Member Anthony seconded the item**

**VOTE**

**In Favor:** 4  
**Oppose:** 1(ca)  
**Abstain:** 0

**3. Discuss of the results of Ballot Question 1 – Charter Revision. Consider legal remedies. Votes may be taken.**

**Select Member Andrew** – I think the public would benefit greatly with a memo to the public, that if they would like to see any changes to the public, how to go about doing it.

**Town Manager Panagore** – where is the public on the desire to change if the Board is going to go out and say this is how to change it, are they meeting a receptive audience.

**Select Member King** – There are several items that people have expressed a desire to change that I have heard.

**Chair Venden** – have you not talked about doing an ad-hawk committee?

**Town Manager Panagore** – if the board wishes to move in that direction, what I am trying to gauge is what the community’s response might be to issuing this type of memo.

**Select Member Andrew** – I guess it was meant to be implicated in my comment, a third of the public voted against it, and a significant number of people expressed concerned about numinous aspects of the charter, including members of the Board of Selectmen.

**Town Manager Panagore** – I think that is how I would want to phrase anything that went out to the public, “folks have expressed concerned about various aspect and here is how the methods we could go about doing that.”

**Select Member Andrews** – Methods is where we get in trouble, as it is so dense. My thought is you give “here is the easiest way to change”. If you want to add all the others I am fine, but clearly this approach is one of three or four that you taught us about. I think what we are going to hear is I want to change A, what is the easiest way to do.

**Town Council Giorgio** - the easiest way to do any change is a Special Act, which means a home rule petition at town meeting.

**Select Member Andrews** – and that would have to go to ballot?

**Town Council Giorgio** – Not necessarily. It is possible for the legislation to pass a special act without the requirement of going to the ballot question. There are basically three ways to change a charter.

**Select Member Andrews** – what is the easiest?

**Town Council Giorgio** – Special Act.

**Town Manager Panagore** – John why don't you answer the question, "why does the legislation usually want a town wide vote to know they did the right thing?"

**Town Council Giorgio** – Because you are changing the constitution of the Town, your governing document. It is possible if they are relatively minor changes, the legislation would not require a ballot question however if they are at all controversial, or if your changing the charter a month after you elected a charter commission and it passed at the ballot, the legislation may want to include it.

**Select Member Andrews** – I think you may be missing what I consider easy. To me going to the legislation is not easy. For me it is easy to go to the Town Meeting and say, we just want to put term limits back on the selectmen, every one say yes and we put it on the ballot, that is easy.

**Town Manager Panagore** – we do not have the right to do that.

**Select Member Andrews** – that is what I am asking.

**Town Council Giorgio** – Alright let me explain. There are three ways to do it. Next May you could elect a new charter commission and do what every you want to do. That is not what I would recommend. The other two ways you could do it is to have a town meeting article to amend the charter; that requires 2/3<sup>rd</sup> vote of town meeting, hast to be approved by the Attorney General's office and goes on the ballot legally at your next annual town elections, you cannot use that process to change your form of government or distribution of power between the board of selectmen and town manager.

**Select Member Andrews** – Can you use this process to put term limits in or out?

**Town Council Giorgio** – That would affect the...

**Select Member Andrews** – because we did that before. It has been on town meeting

**Town Council Giorgio** – it was a simple charter amendment, I do not think so.

**Select Member Andrews** – Not the first time but when it was on town meeting, it was on town meeting 5 or 6 years ago and it failed.

**Town Council Giorgio** – most of the time I have observed, you do charter amendment through the third processes, which is the Special Act Charter Amendment, that is a majority vote at town meeting, goes right to the legislator and the legislator passed the Special Act with or without a ballot question.

**Select Member Andrews** – who decides whether it needs a ballot question?

**Town Council Giorgio** – you can do that yourself, you can include it in the home rule petition or not. If you don't include it, we have seen the legislation add it in.

**Select Member King** – Just to go back to when the Charter Commission convinced to answer question from the public after the mailing did not happen. The push, as you recall, was to ask everyone to pass the charter with the expectation that folks could come back and ask for changes to the charter. Julia Perry, the chair, was very clear, in her request, that instead of going back and starting the process all over again by rejecting this charter and please pass this charter and then come back and amend. And I believe from my feedback from talking to a lot of voters during the campaign process, that was the expectation, that folks were going to pass the charter with the expectations, that they could come back almost immediately afterwards and ask for amendments or changes based on whatever process was recommended.

**Town Council Giorgio** – That was my understanding from what I heard too. What I am telling you is, the most efficient way to do that, is to call a Special Town Meeting, for a home rule petition to change the charter and you can change anything in that process.

**Select Member Anthony** - could you explain the special act, what would that entail if we went with that option?

**Town Council Giorgio** – It would be a warrant article on a special town meeting warrant to amend the charter. You had one at this past town meeting, which was to change the number of alternate members on the conservation commission once that passed, you sent it to your legislature delegation, and they file the bill to amend the charter. It is an extremely common way that town's go about amending the charter. The legislature has to approve it and the Govern has to sign it. If there is no requirement for a ballot question within the context of that special act, it goes into effect immediately, or there is a provision that says it does not go into effect until it you vote it at the next annual election.

**Select Member Andrews** – And that is up to us, whether or not it goes to the ballot question or not unless the Attorney Generals say, it has to.

**Town Council Giorgio** – no, it is up to you, you put it in or you do not. If you decide not to put it in, we have seen the legislation add as a policy matter to the special act.

**Select Member Anthony** – we go through that process, when does the charter, if it is going to be amended, after that process, than we start talking about the amendments of the charter?

**Town Manager Panagore** – We would somehow come up with what the changes would be, and then we would go to town meeting with proposed changes. Get them voted.

**Town Council Giorgio** - The changes are in the Special Act.

**Select Member Anthony** – ok, so that is included in the third option, so we are going to talk about the changes prior to whatever we decide to do?

**Select Member King** – and what is the process by which we do what Chief Anthony is asking?

**Town Manager Panagore** – that is what you guys need to figure out.

**Chair Venden** – I am going to make a suggestion; there categories of things in this charter and rather than go through item by item, I think it would be better for us to decided what grouping of things are really germane more important. We can set forth at a public hearing.

**Town Council Giorgio** – do you want staff to bring recommendations to you or do you want to appoint an ad hawk committee? If you remember, I spent a lot of time on that legal risks letter. That pretty much covers the gap, you need to look at that and decide which provision are worthy of a charter amendment.

**Select Member King** – There than just the legal risk letter, which was very thorough, and helpful, but there is also the question for example of the change in the date of the town meeting. Which was an issue for a lot of working folks in town, that they would be unable to attend a later meeting because you are already in their high season.

**Town Council Giorgio** - I think the charter commission did a great job, but at that meeting, Julia gave the reason that the reason they wanted it delay is because you could vote a charter amendment in April and then it have it on the ballot in June In fact there is not enough time to do that, so it doesn't accomplish the goal.

**Select Member King** – what it has done is effectively, made it easier for nonresident homeowners to participate when one of them is here and eliminates some of our working folk who are actually here full time to participate because they are already working full time.

**Chair Venden** – it does have other implication as well, in the event there is a 2 ½ override or some other budget issues. There is no time between the end of June and July 1<sup>st</sup> for the staff to do anything about it. I think rather than us pick out which items, I like the idea of an hawk committee that would address the issues in your letter as well as other things that we might propose.

**Town Council Giorgio** – there is also the side by side chart that I did that has a lot of things in there.

**Town Manager Panagore** – Can I give a suggestion as where to contextual this? I think you need to start with the outcome you want to see happen, which is a majority vote a town meeting. So two things, we need to get to a majority vote of town meeting on an agreed upon group of items, which means we need to have a majority of people who show up in agreement with what we are talking about and if I may add one more piece. There is two pieces to that, one is the process by which to reach the majority of consensus in town over a group of issues and the other piece is how you bundle them together. Because you may want to have 5 items at town meeting, you may want to have 1. So I think how you packet it needs to be thought of and how you achieve consensus on a topic. My recommendation is to be engaging the charter commission members and more people ad hawk but some sort of collective that is able to vet it have a conversation in public and have a public hearing. I think there needs to be some sort of community process.

**Select Member Andrews** – Sometimes I think about things and I assume you get the broad context of what I am saying, but I cannot tell whether you did or not. I would anticipate that a certain number of

private voters are going to say to our process, I know what I want to change on the charter. Are they going to need 200 signatures to do this?

**Town Manager Panagore** – if we have a STM, it is a hirer percentage.

**Town Council Giorgio** – it is 200 to call a Special Town Meeting, if you call a special town meeting it is 100 signatures to put an article on the Special Town Meeting, if it is an annual town meeting it takes 10 signatures.

**Town Manager Panagore** – so if you are waiting until March, April, or May, 10, we hold it in the fall, you have a hirer threshold.

**Board Member Andrews** – And that answer, speaks to what I was getting at in my opening comment, the public wants to know how to amend the charter, well 10 of them can do it that way, at the annual.

**Board Member King** – there is one thing that I think is harder to amend once it goes into effect, is if you allow nonresidents the opportunities to sit in on boards and committees, taking that away after having appointed people and having them serve is going to be problematic.

**Board Member Andrews** – Beware we are just about to do that, we elected someone in this election for a Charter Enforcement Commission that thanks to the new charter will cease to exist at the end of June.

**Select Member King** – That is one person, but I am saying we have now opened all 40 something boards. In terms of timing, if we are going to wait until the fall, we are going to have issues.

**Chair Venden** – We cannot have it before then, my understanding is in terms of timing that we cannot call this special town meeting; we do not have the time to do the work through this ad-hawk committee to identify the problems. We need to have a process that makes sense; we just had 2/3<sup>rd</sup> of the voters pass this Charter. We have to do the work to make sure they understand it, what the process is to do the amendment to property allow them to participate in the process and then to educate them on the pros and cons on these amendments might be and organize it. I don't know if we can do that by then.

**Board Member Andrews** – Is it fair to say, the first decision our Board needs to make, we do not have to make it tonight, is whether to call a Special Town Meeting any earlier than April?

**Town Manager Panagore** – I think part of that is what process you wish to follow and how much do you want to chew.

Vice Chair Donegan joined the meeting at 6:54 pm

The Board Members, along with Town Manager Panagore and Town Council continued their discussion on the asking Town Council to come back with legal risks and liabilities that are of concern to the Town Council and come back to the Board at another meeting to discuss it further.

**Select Member Anthony moved that the Select Board authorize the town manager to direct town council to draft a memo priority of legal liabilities and return to the Board at the next meeting with potential changes.**

**Select Member King seconded motion**

**VOTED**

**In Favor:**

**Opposed:**

**Abstain:**

Vice Chair Donegan and Member Andrews stressed having a different method of educating the public on the way for changes to be made. Town Council mentioned a non-legal issue of how the name of the Board.

Meeting can be viewed online: <http://view.earthchannel.com/PlayerController.aspx?&PGD=provincetv&eID=1275>

Meeting adjured at 7:15 pm.

Minutes transcribed by: *Elizabeth Paine*