



TOWN OF MILTON
TOWN OFFICE BUILDING
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MILTON, MASSACHUSETTS 02186

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April 25, 2013

Dear Town Meeting Member:

Enclosed please find a copy of the Town Government Study Committee report to the Board of Selectmen as requested by a prior Town Meeting. This report contains our recommendations over the past year as well as information on topics considered with no recommendation. Please bring your report to Town Meeting. I expect to make a summary presentation of the report during Town Meeting.

Thank you,

Rick Neely

Report of the Town Government Study Committee

This Committee was reestablished by the Board of Selectmen in November 2011 with a charge to “study the operation and structure of all departments and offices of Town Government with its goal being to recommend changes, if any, that would effect economics or increase efficiency” The Board of Selectmen appointed eight members and the Moderator appointed two members, all of who were appointed for a one year term and whose terms have been extended with the exception of one member who resigned after the first year.

The organizational meeting was held in February 2012 followed in March by a “ brainstorming” or “whiteboard “ session in which the members identified approximately thirty- five topics to consider. The thirty- five topics were consolidated and grouped into eleven major subject areas with members agreeing to conduct research on the subject areas.

The Committee has met with various elected officials and staff of Town Departments to learn about and review the following areas: financial operations; existing and possible increased regionalization of services; revision of the Town’s master plan and an initial visioning study; planning issues related to commercial development and housing; the status of the Town’s information technology; the Town’s governance and alternative forms of government adopted by Massachusetts communities. After conducting its reviews, the committee has come up with a series of recommendations and has in other cases determined no changes are needed at this time. The Committee continues to evaluate ideas and suggestions for improvements. Detailed below please find a summary to date of all general topics discussed and a detailed listing of areas with recommendations.

Recommendations:

1. The Committee has recommended that the Town’s Bylaws be amended to require that the Town Clerk exercise specific efforts to inform the Town’s residents of upcoming elections for Town Meeting membership and to inform residents of the opportunity and requirements for election to Town Meeting membership. This “lead” recommendation is further supplemented by a series of related recommendations detailed in the attachment to this document all of which are designed to improve the effectiveness of our Town Meeting form of governance. The Committee notes that there has been an ongoing lack of candidates or competition for Town Meeting seats as well as absenteeism and an apparent lack of preparation or understanding of Warrant articles by Town Meeting members. The Committee had a spirited series of discussions about changing the current governance of the Town to a different model or even reducing the size of Town Meeting, which has been done in a number of towns to create competition and interest. Our Committee considered recommending a 10% reduction in the size of Town Meeting which is among the largest in size in the Greater Boston area. However, we believe there

is support for the current Town Meeting model and instead have made a number of recommendations for improvement. See the full recommendation attached.

2. The Committee has recommended that the Commonwealth's Department of Revenue Bureau of Accounts provide a financial management review of the Town's financial operations. The current financial management operations are complex and extremely decentralized with no coordinated approach to the setting of financial goals and objectives nor any coordinated approach to operational priority setting. Information technology support for financial management needs strengthening and a coordinated approach across departmental lines. The DOR's Bureau of Local Services has provided these reviews at no cost to over two hundred and fifty cities and towns over the last twenty- eight years. This review will enable the Town to learn about "best practices" and process improvements employed by our neighbors and to consider organizational changes that would benefit the Town. Attached please find the detailed recommendation.
3. The Committee has recommended that the Board of Selectmen and the School Committee solicit consulting assistance in completing both a town- wide Technology Assessment and a Technology Strategic Plan. This recommendation evolved as a result of the Town Government Study Committee's meeting with various department heads and members of elected boards. The Committee observed that the Town and School business operations have not kept pace with the most current technology and that there is a lack of integration and automation in numerous town and school systems. Attached please find the detailed recommendation.
4. The Committee has recommended that the Board of Selectmen develop and implement a program whereby nonprofit organizations in Milton will make regular payment in lieu of taxes (PILOT) to the Town. The Committee notes that a significant number of these organizations in Milton that utilize and benefit from Town services and as a matter of fairness should make reasonable contributions to the Town in return for the services provided. The Committee recommends that the Board of Selectmen report to the annual Town Meeting on its efforts to obtain such payments. See the full recommendation attached.
5. The Committee identified increasing the authority of the Town Administrator with the delegation of certain authorities and duties from the Board of Selectman as something that should be considered to provide for more effective leadership in Town government. The Committee prepared a revised job description with additional responsibilities – that job description will need the consent of the Board and possibly approval by Town Meeting followed by a home rule petition to the Legislature. The Committee nominated Mary McNamara to be our committee's representative on the Town Administrator Screening Committee. Attached please find a copy of the proposed job description.
6. The Committee has recommended that certain "inactive" committees that have completed their objectives, that have not met in the last two years and that have budgets with balances less than \$2,000 should be discharged at the next annual Town Meeting. In

addition, the Committee has recommended that the Audit Committee have formal standing in the Town's Bylaws. See attached for the full recommendation.

7. The Committee has recommended that the Planning Board be expanded to include one appointed alternate member. The Planning Board has had a marked increase in the number of special permit applications which require a four fifths vote to pass. A member who misses more than one evidentiary meeting may not vote. The Committee believes that authorization of an alternate member will provide for an efficient and effective special permit application process. See the attached for the full recommendation. We have received correspondence from one Planning Board member registering opposition to this recommendation and that other member s may also be opposed.
8. The Committee met with the prior Planning Board Chairperson to review plans for updating the town's master plan, including commercial development incentives, affordable housing , and land use. The Committee expressed full support of the "visioning phase" of the master plan process with wide community involvement and full support for completion of the full master plan.

Additional suggestions:

The Committee has also looked at and considered a number of other ideas or suggestions. Many of these ideas were reviewed with the various department heads and some elected officials who attended our meetings. Detailed below are many of the ideas considered over the past year but not recommended at this time.

- a. Regionalization of 911 Service—The Committee met with Police Chief Richard Wells who reviewed the current Emergency Response system and addressed the ongoing regionalization of 911 service in four South Shore towns. A major issue for Milton would be "who would you regionalize with? " Another question would be: could Milton benefit from improved service delivery at the same or lesser cost? Milton borders two cities with their own large systems and two towns separated geographically by the Blue Hills Reservation whose area and height creates communication problems. The Committee concurred with Chief Wells that it did not make sense to pursue 911 regionalization at this time.
- b. The Committee met with the DPW director as well as the Superintendents of the Park Department and the Cemetery as well as several elected board members of those Boards. The purpose of the meetings was to determine the benefit of consolidation of the maintenance function of these departments, whether in part or in whole. There are communities in the Boston area that operate combined departments under the umbrella of the DPW. The Committee noted that the Cemetery has a singular mission on a year round basis which could be adversely impacted if its staff were diverted to general DPW functions and we set aside recommending any change. The Park Department also is

narrowly focused and the Committee's concern was whether the DPW could handle the additional workload of preparing ball fields and maintaining parks. The Committee may revisit this suggestion in the upcoming year to see if a seasonal approach would work.

- c. The Committee met with Anthony Cichello, Chairman of the School Building Committee and the Consolidated Facilities Committee, and Amy Dexter, Town Accountant and Chairperson of the Capital Improvement Committee, to consider the town's capital planning process and whether a permanent building committee should be established. After review and discussion, the Committee did not conclude that a permanent building committee was necessary at this time nor were any changes recommended to the existing membership of the Capital Committee.

The Committee continues to meet and consider changes for improvement to town government. There are a number of suggestions that the Committee is still considering and we are reviewing our original "white board" list to see if we should revisit some ideas not initially studied or recommended. We encourage Town Meeting Members and residents to submit ideas for consideration. The Committee wishes to thank the Town's staff and elected officials for their cooperation and assistance.

Respectfully submitted,

Richard B. Neely, Chairman
Kathleen Conlon, Secretary
John A. Cronin
Annemarie Fagan
Robert Gatnik
Marvin Gordon
Ewan Innes
Michael C. Joyce
Mary McNamara
Leroy Walker

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RECOMMENDATION 1

Issue:

Should Chapter 2 of the Town's Bylaws be amended to require that the Town Clerk exercise specific efforts to inform the Town's residents of the upcoming election for Town Meeting Membership and to inform the Town residents of the opportunity and requirements for election to Town Meeting Membership?

Discussion:

The Committee has determined that there is support for the continued existence of Town Meeting and representative town government. While the Committee rejected the extreme position of abolition of Town Meeting, there was discussion of a modest reduction of approximately 10% in the number of Town Meeting Members. Smaller town meeting membership has been vigorously pursued in several other Towns in the Commonwealth. A reduction in TM size may allow for more insightful discussion of the issues; greater opportunity for questioning; a higher level of accountability to constituents; improved management of Town Meeting Member participation.

However, even before recommending a reduction in the size of Town Meeting Membership, the Committee recommends that the following issues be addressed in an effort to improve the effectiveness of Town Meeting and the quality of representation provided to residents of the town:

- an insufficient number of candidates for Town Meeting Membership;
- absenteeism (or early departure) from Town Meetings by Members;
- a lack of understanding of the Warrant Articles, and lack of preparation for discussion of those Articles, among Members at the time of Town Meeting.

The Committee has examined the results of the 2011 and 2012 Town Meeting Member elections and has determined a pattern of disinterest in seeking the office of elected Town Meeting Member. In 2012, seven of the ten precincts had an insufficient number of candidates on the ballot for the available seats; in an additional precinct, there was no contest. In 2011, four precincts had no contest; one precinct had fewer candidates than available seats.

In addition, there appears to be a broad lack of understanding among the general population as to the role and the need of Town Meeting.

Currently serving Town Meeting Members and town-wide elected officials should make a greater commitment to Town Meeting by (1) strongly and publicly advocating that more residents seek membership in Town Meeting; (2) reinforcing the need for Town Meeting Members to be accountable to their constituents; (3) reducing absenteeism from Town Meetings.

In furtherance of these goals, the Committee recommends that the Town and its elected officials take positive steps to strongly market the need for citizens to run for election to Town Meeting. It is believed that this responsibility rests most heavily upon the Town Clerk who should take steps to inform residents of Town Meeting Membership election through the use of the town's website, the local newspapers, Milton Cable and its public service programming, etc. All town residents need to be educated to the importance of Town Meeting and this will require creative marketing which will reach into all households; young residents should be educated to the importance of Town Meeting within the school system. To this end, the Committee offers the attached Exhibit B "Proposed Bylaw Amendment".

The Committee also recommends consideration of the following steps to improve the effectiveness of Town Meeting:

1. A "Warrant Review Meeting", similar to a "mini town meeting", organized by the Town Moderator, should be held prior to the Annual Town Meeting. This will provide the opportunity for the town-wide elected officials and the Warrant Committee Members to explain any remarkable or contentious issues on the warrant to Town Meeting Members before bringing those issues to Town Meeting.
2. A general campaign to encourage TM Members to carefully prepare for Town Meeting by reading the Warrant and discussing the Articles and town issues with other residents prior to the Town Meeting.
3. The issue of Town Meeting Members who are chronically absent from Annual or Special Town Meeting, or who leave TM before adjournment, should be addressed to the membership at the opening of Annual Town Meeting. All Town Meeting Members should be reminded that absence from Town Meeting results in a lack of representation for their constituents. Improved attendance might be encouraged by publication of names of absent TM Members in the local newspaper or on the Town's website.
4. In order foster greater accountability by Town Meeting Members to their constituents, it is suggested that town elections be held each year after the Annual Town Meeting has concluded. Mass. Gen. Law Ch. 39, §9A specifically allows the election of town officials to occur before, or after, the Annual Meeting, provided that the annual meeting and the elections are held in the months of February, March, April or May. The Town of Falmouth has altered their Town Election schedule in this way with good success. It is argued that elected officials will be held to a higher level of accountability if their performance at the Annual Town meeting is fresh in the minds of the voters.

Recommendation:

The Town Government Study Committee recommends that the Town's Bylaws be amended to require that the Town Clerk exercise specific efforts to inform the Town's residents of the upcoming election for Town Meeting Membership and to inform the Town residents of the opportunity and requirements for election to Town Meeting Membership. (See attached Exhibit B: Proposed Bylaw Amendment)

EXHIBIT A

Existing Bylaw

Town of Milton General Bylaws

Chapter 2: Town Meetings

Section 2. The annual meeting for the election of Town officers shall be held upon the last Tuesday of April, the polls to be open from seven o'clock in the morning until eight o'clock in the evening for the election of such Town officers and the determination of such matters as by law are required to be elected or determined by ballot. All such offices shall be voted for and all such matters shall be determined on official ballots.

EXHIBIT B

PROPOSED BYLAW AMENDMENT

Town of Milton General Bylaws

Chapter 2: Town Meetings

Section 2. The annual meeting for the election of Town officers shall be held upon the last Tuesday of April, the polls to be open from seven o'clock in the morning until eight o'clock in the evening for the election of such Town officers and the determination of such matters as by law are required to be elected or determined by ballot. All such offices shall be voted for and all such matters shall be determined on official ballots.

**Prior to the Town Election, the Town Clerk shall publicize the upcoming election of Town Meeting Members by issuing media releases, placing advertisements, and utilizing the Town's website, the Town's local newspapers, the Town's local access cable television programming, including but not limited to its public-service programming, to publicize the importance of town meeting membership and the process to be nominated and elected Town Meeting Member. Further, it shall be the specific responsibility of the Town Clerk to raise awareness of the importance of Town Meeting Membership by working cooperatively with the Town's public school system to educate the Town's students of this form of Town governance.*

* *Proposed Bylaw amendment language.*

RECOMMENDATION 2

Issue:

Would the Town enjoy more effective and efficient financial management with consolidation of certain municipal and school financial management operations and are there proven process improvements that should be employed by the municipal and school financial units?

Discussion:

The Town Government Study Committee has met with the Town Accountant, Town Treasurer and Assistant School Superintendent for Business to understand and conduct a preliminary review of their operations. The Committee has also met with Information Technology staff who provide support to the financial management units. The financial management for the Town of Milton is extremely decentralized and only partially under the authority of the Board of Selectman and the Town Administrator. There is no coordinated approach to the setting of goals and objectives for the finances of the town and the priority setting within financial operations is fragmented. The information technology support for finance is also fragmented and needs more attention and a coordinated approach. In the course of its review, the Committee has also utilized information provided by the Commonwealth of Mass Department of Revenue regarding financial management governance and operations in other towns. Many towns have made organizational changes, process improvements and implemented “best practices” after utilizing the DOR for a “Financial Management Review”. The review would enable Milton to understand changes and improvements made in other towns that could be effective in Milton. The DOR has provided well in excess of 100 of these reviews at no cost to the cities and towns.

Recommendation:

It is recommended that the Board of Selectmen and the School Committee request the DOR Bureau of Local Services provide a Financial Management Review utilizing a team approach to interview with our Town Finance and information technology officials along with the elected boards they report to. The review team should prepare a written report that contains: documentation of existing organizational structures and workflows; an examination of potential options and opportunities for achieving operational efficiencies or process improvements “best practices” in municipal finance; an assessment of the benefits or efficiencies associated with consolidation or restructuring of the town and school finance operations.

RECOMMENDATION 3

Issue/Discussion:

The Town Government Study Committee (TGSC) met with various Town Department Heads in its reviews of key departmental objectives, processes, degree of coordination between departments and resource needs. The Committee was struck by the common themes that emerged from these discussions. One of the most important deficiencies (and resulting needs) was in the area of technology. The Town and School Business Operations have not kept pace with the most current technology. Specifically, there is a lack of integration and automation in numerous Town and Schools systems including but not limited to payroll, accounting, budgeting, bill payment and collections. These deficiencies not only affect overall efficiency of operations, the quality of data and the ability to effectively share data but the quality of customer service and the amount of staff time required for day-to-day tasks.

Recommendation:

In order to rapidly close this gap and to secure cutting-edge expertise, the TGSC recommends that the Board of Selectmen and the School Committee solicit consulting assistance in completing a town-wide Technology Assessment and a Technology Strategic Plan. Recommended text for the Technology Consultant RFP is provided below.

The Town of Milton Board of Selectmen and the Milton School Committee seek experienced Information Technology consultants to perform a comprehensive analysis and organizational assessment of the Town's and Schools technology infrastructure, staffing, hardware and software inventory and to develop a technology strategic plan.

The technology strategic plan must include but need not be limited to:

- 1) A comprehensive inventory and assessment of the existing technology infrastructure and related organizational structure of all town departments including the Milton Public Schools*
- 2) Assessments of each department's current and future technology needs and identify challenges, emerging issues and potential solutions*
- 3) A review of current IT organizational structures and recommendations regarding structures and staffing that improve efficiency, increase effectiveness and customer service, facilitate integration and offer consolidation opportunities*
- 4) A three-year strategic plan based on the above elements (1 through 3) including an information technology vision and mission for the Town and the Milton Schools and projected annual implementation costs of the plan as well as cost saving and cost avoidance opportunities*

Minimum qualifications of the selected consultant will include but may not be limited to:

- *Experience with and ability to offer customized solutions tailored to the municipal government environment*
- *Demonstrated ability to work effectively with town elected officials in performing analyses and crafting solutions*
- *A history of successful engagements of this type*
- *Engagement in Municipal IT Consulting as the principal business for at least the last five years and a license to perform such services in the State of Massachusetts.*

The duration of this engagement may not exceed three months from the date the contract is awarded.

The Board of Selectmen and the Milton School Committee shall be the sole determiners of the relevance and applicability of respondent's qualifications and whether any proposal is in the best interests of the town.

Issue:

PILOT Payments to the Town of Milton

Discussion:

The Committee notes that there are a significant number of entities in the Town of Milton that benefit from town services but are exempt from paying the property taxes that fund these operations. The Committee believes that, as a matter of basic fairness, these organizations should make reasonable contributions to the Town in return for the services it provides.

The Committee reviewed the report of the Milton Selectmen's Ad Hoc P.I.L.O.T. Program Committee that was issued to the Board of Selectmen in 1997. The Committee also reviewed informative studies on P.I.L.O.T. programs, one prepared by the Urban Land Institute (ULI) and a second by the Lincoln Institute for Land Policy.

Communities throughout the Commonwealth have implemented formal programs to this effect. For instance, the City of Boston implemented such a program in January 2011 and witnessed a 28.4% increase in its P.I.L.O.T. payments in fiscal year 2012¹. The Committee recommends that the Board of Selectmen develops and implements such a program to ensure that Milton's non-profit organizations pay their fair share in return for town services.

Recommendation:

It is the recommendation of the Town Government Study Committee ("the Committee") that the Board of Selectmen develops and implements a program whereby non-profit organizations in Milton would make regular P.I.L.O.T. payments to the Town. It is recommended that the Board of Selectmen reports to the Town at each Annual Town Meeting on its efforts to obtain such payments from these tax-exempt organizations. The Board of Selectmen may find it helpful to appoint a committee to assist in conducting research on such organizations and their financial resources.

¹ <http://www.cityofboston.gov/assessing/pilotprogram.asp>, 9/30/2012

Proposed Town Administrators Job description

Summary

The Board of Selectmen serves as the Chief Executive Officers of the Town of Milton. The Town Administrator is the Chief Administrative Officer of the Town. He/She is responsible to the Board of Selectmen for the proper administration of all town affairs placed under his/her charge. The Town Administrator may not hold any other elected office nor shall he/she engage in any other business, occupation or profession during his term. The Town Administrator provides policy recommendations to the Board of Selectmen and implements policies adopted by the Selectmen. This position requires a unique blend of leadership and management experience, financial and budget management expertise and team-building skills.

Supervisory Responsibility

The Town Administrator has direct supervisory responsibility for specified Department Heads as well as staff in the Town Administrator's Office including the Assistant Town Administrator.

Key Responsibilities

Supervises, directs and is responsible for the efficient administration of all town activities placed under his/her control by by-law, by ordinance, or by the Board of Selectmen, including all officers appointed by him and their respective agencies.

Responsible for the supervision and coordination of the activities of all agencies under his/her control, the coordination but not the oversight of activities of other town agencies with elected Boards, e.g., Schools, Library, coordination with other key elected officials and coordination with the Warrant Committee. Coordination of activities may include but is not limited to operating and capital budget preparation, strategic and business planning processes and day-to-day operations.

Serves as the appointing authority (hiring, performance review and termination authority) and appoints, based upon merit and fitness alone, all department heads, officers and all appointed multiple-member bodies for whom no other method of selection is provided except employees of the School Department and of other elected and appointed Boards and subject to the civil service law and any collective bargaining agreements as may be applicable.

Note: Appointments made by the Town Administrator shall become effective upon approval at a public meeting of the Board of Selectmen and subject to the approval of the Personnel Board. Positions at the level of Department Head and their direct reports shall require such approval. All other appointments will be made by Department Heads and shall be effective

upon written approval of the Town Administrator and subject to the approval of the Personnel Board. All such appointments shall be reported to Selectmen on a monthly basis.

Administers all personnel policies, practices, or rules and regulations, any compensation plan and any related matters for all municipal employees and administers all collective bargaining agreements, except school department agreements, entered into by the town.

Responsible for the negotiation of all union and non-union contracts with town employees over wages and other terms and conditions of employment, except employees of the school department and Chapter 13 employees. Contracts shall be subject to the approval of the Board of Selectmen.

Responsible for making sure that all of the provisions of the laws of the commonwealth, the town by-laws, town ordinances and other votes of the Board of Selectmen which require enforcement by him, or by officers or employees subject to his supervision, are faithfully carried out and enforced.

Prepares and submits an annual operating budget and a capital outlay program (annual and multi-year) for those departments under the Board of Selectmen and coordinates the operating budget and capital budget processes with other departments operated by elected or appointed Boards or officials.

Responsible for ensuring that a full and complete record of the financial and administrative activities of the town is kept and coordinates delivery of a complete report to the Board of Selectmen at the end of each fiscal year and at such times as the Board of Selectmen may require.

Executes contracts, subject to such prior Board of Selectmen approval as may be prescribed by statute or by-law.

Supervises a Consolidated Facilities Director (in conjunction with the School Superintendent) and shall be responsible for overseeing the maintenance and repair of all town-owned property, including school or library buildings and grounds except where prohibited by town by-law.

Shall make such recommendations to the Board of Selectmen for action to be taken by it as he/she may deem to be necessary or desirable.

Coordinates publication of an annual report comprised of the complete narrative and statistical record of the operations of every town department, commission and committee for

the preceding year. Such report shall be published annually and made available for distribution to the public not later than 4 months after the end of the period on which the report is based.

Performs such other functions as may, from time to time, be assigned to the Office of Town Administrator by ordinance, other vote of the Board of Selectmen or otherwise.

Qualifications

10-12 years of management experience in the for-profit, not-for-profit and/or government sector(s). Considerable weight will be given to municipal management experience in Massachusetts

Demonstrated success as an organizational leader

A background in financial management and accounting, budget preparation and management and human resources management

Collective bargaining experience

Demonstrated success in leading teams and in managing major projects and initiatives in large, complex organizations

Some experience with information systems and technology related to municipal financial management, purchasing, budgeting and public works

Significant experience with public bidding in Massachusetts is preferred

Bachelor's degree in a relevant discipline from an accredited academic institution is required; an advanced degree in a relevant discipline is preferred

Issue:

Does the Town have non-statutory committees in active status in conflict with the provisions of Chapter 2, Section 13 of the Bylaws (Sunset Bylaw)?

Discussion:

The Town Government Study Committee reviewed some of the appointed committee titles listed in the annual report, in the context of General Bylaw Chapter 2, Section 13, which deals with 'committee terms'. Sometimes it is referred to as the Sunset Bylaw.

The following committees may have completed their tasks and be ready for discharge. The Town Accountant advises that they do not have balances of \$2000 or more. The Town Clerk that they have not posted meetings during the past two years:

Recreational Facility Committee (Article 38 of the 1977 Town Meeting)

Information Technology Committee (Article 50 of the 1978 Town Meeting)

Senior Center Building Committee (Article 37 of the 1998 Town Meeting)

The Audit Committee was appointed under Article 14 of the 1978 town meeting may have had its term extended, in the opinion of the Town Counsel, by a vote of the 2001 Town Meeting under Article 9. However, if it is Town Meeting's intent to have the Audit a standing committee, it may be best to include it in the General Bylaws.

Draft Articles are enclosed. To preserve the Board of Selectmen's right to act on these matters at the May Annual Town Meeting, these Articles were registered with the Selectmen's Office on January 4, the filing date.

Recommendation:

That the attached articles be included in the Annual Town Meeting and approved by Town Meeting. (Exhibit A and B)

PROPOSED ANNUAL TOWN MEETING ARTICLES FOR INACTIVE COMMITTEES

EXHIBIT A

Article

To see if the Town will vote to discharge, dissolve or continue the following committees, and if continued, what provisions should be adopted relating to the missions, number of members and terms of appointment:

Recreational Facility Committee (Article 38 of the 1977 Town Meeting)

Information Technology Committee (Article 50 of the 1978 Town Meeting)

Senior Center Building Committee (Article 37 of the 1998 Town Meeting)

And to act on anything related thereto.

(Similar to Article 9 of the 2001 Town Meeting warrant.)

EXHIBIT B

Article

To see if the Town will vote to amend the General Bylaws by adding a new Section 18 to Chapter 4 "Finance and Property":

Annual Municipal Audit

The Moderator shall appoint a Committee of five citizens to study and employ the services of a Certified Public Accountant, subject to ratification of the Selectmen, and to report on their findings.

And to act on anything relating thereto.

(From Article 14 of 1978, as voted.)

Issue:

Should the size of the Planning Board be increased in light of State law requirements governing evidentiary hearings and action on special permit applications?

Discussion

Under M.G.L. c. 41, §81A, a planning board shall consist of not less than five (5) and not more than nine (9) members.² Members may be elected or appointed “in such manner as an annual town meeting may determine.” The term of at least one member must expire each year. Members are to be elected or appointed for terms of three (3) or five (5) years as determined by the town meeting. Chapter 11, Section 1, of Milton’s General Bylaws (attached as Exhibit A) provides that the Planning Board has five members, each of whom is elected to a five-year term.

Most matters decided by the Planning Board require only a majority vote. However, when the Planning Board acts as a special permit granting authority for certain zoning matters (typically large projects such as planned unit developments), a four-fifths vote is required.³ See M.G.L. c. 40A, §9.

Under a 1983 Appeals Court decision, in order to be eligible to vote on a matter in an adjudicatory proceeding, planning board members were required to attend all sessions of the hearing. Mullin v. Planning Bd. of Brewster, 17 Mass.App.Ct. 139 (1983).⁴ In 2006, the Legislature enacted M.G.L. c. 39, §23D,⁵ which provides that a member of a board shall not be disqualified from voting on a matter that is the subject of an adjudicatory hearing due to his or her absence from a single session of such hearing at which the board receives testimony or other evidence.⁶ However, a member who misses more than one evidentiary session is not permitted to vote on the matter.

² This requirement applies to towns such as Milton that have a population of 10,000 or greater.

³ In towns with planning boards having more than five members, a two-thirds vote is required.

⁴ In Krafchuk v. Planning Bd. of Ipswich, 453 Mass. 517, 532-534 (2009), the Supreme Judicial Court, applying the Mullin rule, held that a planning board’s approval of a subdivision plan was not valid because several board members who voted to approve the plan missed sessions of the evidentiary hearing (and some members were elected to the board after evidence was presented).

⁵ Milton accepted the provisions of M.G.L. c. 39, §23D, under Article 41 of the 2008 Annual Town Meeting.

⁶ Before a vote is taken, the member must certify in writing that he or she has examined all of the evidence that the board received at the missed session, which shall include an audio or video recording or transcript of such session.

The Planning Board often hears evidence in connection with a special permit application during the course of several meetings. The absence of one or more Planning Board members from one or more meetings presents a risk that the Planning Board may be unable to satisfy the four-fifths vote requirement for the issuance of a special permit. As a result, evidentiary hearings may have to be rescheduled to ensure that all five Planning Board members will be present. This potentially lengthens the process for applicants, the Planning Board and other interested parties.⁷

Like Milton, many towns have a five member elected planning board. Others have larger planning boards and/or appointed planning boards. Many towns also have an alternate or associate member who participates in meetings and sits with the elected board members. However, the alternate member does not vote unless an elected member is recused or otherwise unable to vote.⁸ An alternate member helps to ensure that a planning board will have a sufficient number of members available to act upon a special permit application in the event that a regular voting member misses more than one meeting or has a conflict of interest.

The towns of Scituate and Wellesley have planning boards with five elected voting members plus an alternate member. In Scituate, the alternate member is elected whereas in Wellesley the alternate member is appointed jointly by the planning board and the board of selectmen. When a vacancy in the alternate seat occurs, Wellesley's planning staff advertises the position and interviews candidates. Representatives of the Scituate and Wellesley planning boards advised us that, in addition to being able to vote in the place of an elected member when needed, an alternate member acquires experience that will be valuable to the board if he or she subsequently becomes a voting member.

The Town Government Study Committee recommends that the Planning Board and the Board of Selectmen consider recommending that Town Meeting amend Chapter 11, Section 1 of the Town's General Bylaws to provide for the appointment of an alternate member. A proposed revised bylaw is attached as Exhibit B.

⁷ A new tool that may help the Planning Board ensure that at least four members are eligible to act on a special permit application is the Board of Selectmen's recent decision to allow members of boards and committees to participate in meetings via telephone, internet or video conferencing in certain limited circumstances.

⁸ The alternate member is subject to the same restrictions and requirements that apply to elected members of a board. In order to be eligible to vote on a special permit application in place of an elected member, the alternate must have missed no more than one evidentiary session (and, if he or she did miss a session, comply with the requirements of M.G.L. c. 39, §23D, for reviewing the evidence).

Recommendation

The Town Government Study Committee recommends that the Town's Bylaws be amended to allow for the appointment of an alternate member to the Planning Board.

EXHIBIT A

EXISTING BYLAW

CHAPTER 11 PLANNING BOARD AND BOARD OF APPEALS

Section 1. A Planning Board is hereby established under the provisions of General Laws (Ter. Ed.), Chapter 41, Section 81A (Acts of 1936, Chapter 211) and any amendments thereto, with all the powers and duties therein and in any existing bylaws of the Town provided, to consist of five members to be elected by ballot at the annual Town Meeting in March, 1939, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years and thereafter in accordance with the statute.

EXHIBIT B

PROPOSED BYLAW AMENDMENT

CHAPTER 11 PLANNING BOARD AND BOARD OF APPEALS

Section 1. A Planning Board is hereby established under the provisions of General Laws (Ter. Ed.), Chapter 41, Section 81A (Acts of 1936, Chapter 211) and any amendments thereto, with all the powers and duties therein and in any existing bylaws of the Town provided, to consist of five members to be elected by ballot at the annual Town Meeting in March, 1939, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years and thereafter in accordance with the statute, and one alternate member who shall be a resident of the Town and shall be appointed by the Planning Board and the Board of Selectmen in joint session.

Whenever an elected member of the Planning Board is absent, unable to participate because of a conflict of interest or otherwise unable to participate in the consideration of a particular matter, the alternate member shall participate as a voting member of the Planning Board.