



## Minutes of the Special Town Meeting

### Voting Procedures

Wednesday, December 3, 2014

#### 1. Call Meeting to Order

Vice Mayor Amy Parker called the December 3, 2014 Special Town Meeting on Voting Procedures to order at 3:04pm in the downstairs meeting room of the Slaughter Beach Memorial Volunteer Fire Company. Council members present were Vice Mayor Amy Parker, Treasurer Jackson Gingrich, Secretary Glenn Stieffenhofer, and Councilperson Kathleen Lock. Mayor Bill Krause was absent. Community members in attendance are shown on the attached sign-in sheet.

#### 2. Welcome and Introductions

Vice Mayor Parker welcomed everyone to today's meeting and introduced the Town's Attorney, Barrett Edwards.

#### 3. Discussion on Proposed Town Voting Procedures Ordinance

**Voting Hours** – The Charter is more difficult to change therefore Barrett recommends being less stringent with the Charter and more stringent in the Ordinance, which can be changed more frequently. His suggestion for the proposed Charter is to state that polls should remain open no fewer than four hours, with the thought that we have to keep them open for at least four hours, and in some elections we may want to have them open longer. The proposed Ordinance, until such time as we were to amend it again, would state that the polling place should be open from the hours of 8am to 8pm. The overriding principal is we need to allow all eligible voters a fair opportunity to vote.

**Absentee Balloting** – Barrett has had ongoing communications with the ACLU attorney regarding absentee balloting. The ACLU's concern is there is not adequate opportunity to vote. The ACLU attorney told Barrett that if the Town does allow absentee balloting they would reconsider suing the Town for everything that happened in July. Barrett responded that he doesn't see where this a requirement for absentee ballot voting; he has spoken to attorney for the Department of Elections, and the DOE attorney does not see where there is a requirement for absentee ballot voting. Barrett had someone in his office do some research and generally speaking, case law around the country says that absentee voting is a privilege but not something that is necessarily required. Open issue – if poll hours were extended, could we forego absentee voting? We haven't heard back from ACLU. In the end, Barrett said that he doesn't think there is a legal requirement to do so and responded to the ACLU with this information but has not heard back from them. Alternately, Barrett proposed longer polling hours to the ACLU attorney as a possible solution. Would this create enough opportunity to vote and would they reconsider their stance that we absolutely have to have absentee voting? Barrett said this could be in the Charter and not just in the Ordinance so it was set in stone. This is still an open issue with the ACLU and in the end it will be a decision of Council as to whether or not to allow absentee voting. Barrett's general thought with absentee voting is that anything we can do to allow more people to vote is a good thing. His concern is that it is a cumbersome process for the Town to follow and we could make a misstep somewhere along the way. The statute regarding absentee ballot voting is detailed; it gets into details such as requiring the voter to submit an affidavit, the color of envelopes, what should be printed on the envelopes, there are multiple envelopes, procedures for counting, and you have to make sure the right people are counting, etc. – there are five to seven pages of requirements.

Kathleen Lock noted a concern that we have roadside delivery of mail and there is a larger potential for theft of the ballots out of the mailbox, which would put us in a position of jeopardy. One solution offered is to get a PO box.

*Kathleen and Amy commented that we would be hard pressed to get the appropriate number of people to staff the polls for 12 hours. Amy said she thinks we have a lot to discuss tonight and suggested we come back to this after we deal with everything else and perhaps we should wait for Barrett to hear back from the ACLU. Barrett stated the ACLU would likely sue us if we don't do absentee voting or extend the voting hours. Jackson and Amy expressed their thought that extending the voting hours might be easier than trying to do absentee balloting. Kathleen asked Patti Erisman if she would serve again to which Patti responded "absolutely not", and that she "would not want to be reappointed". Kathleen asked Dan McCarthy if he would like to be a poll worker. Dan responded, "you guys did a fantastic job as far as I'm concerned". He added, "don't talk to me, I'm just here to listen". Barrett reminded everyone that there is no need to be adversarial.*

*Amy said she thinks we should plan on doing 12 hours the first year and see how it works. But what happens if we can't find poll workers? In reference to keeping the polls open for 12 hours, Kathleen said she would be worried that we put something in writing and we don't have a solution (staffing). There was discussion as to whether the poll workers would be able to do shorter shifts or if the poll workers were required to stay the entire time the polls were open. If the polls are open 12 hours, it could be a 14-hour day (or longer) for the people working the polls. If we cannot get poll workers, we wouldn't have time to change the Ordinance at that point.*

*Barrett said that when dealing with small towns, he always recommends opening the polls for four or six hours, and always recommends against absentee ballot voting. These are unnecessary complications that a small town doesn't need, however, this is a unique situation where we have a threat of a lawsuit. It's unfortunate that we are in this position, but we are.*

*Barrett asked Patti Erisman, as a current BOE member, if she thought it would be more onerous to do absentee ballots or keep the polls open for 12 hours? Patti said it would be a lot of work to do the absentee ballots but if we keep the polls open for 12 hours, we would need at least six people, which will be difficult.*

*Kathy asked if the Ordinance could allow absentee balloting for this year only and choose not to do absentee ballots in the future. It would be required until such time as we amend the Ordinance and we would need to amend the Ordinance again to take away the absentee balloting.*

*Jackson asked what is entailed in provisional balloting? Is that another option? Barrett said he is not sure; under municipal election laws, it just contemplates regular voting and absentee ballot voting. One of the things the ACLU recommended was some type of advanced voting but when he looked into it, he didn't find out anything concrete one way or another regarding advanced voting. Is there a difference between advance voting and absentee ballot voting?*

*Barrett Edwards is waiting to hear back from ACLU to get an agreement that won't get us in a lawsuit if we do not allow absentee balloting. Within the next two weeks, we will publish a notice for a public hearing to adopt the FPO, ZO, Zoning Map, Charter Amendment, and Election Ordinance. We don't have to have everything in final form before the public hearing. The purpose of the public hearing is to get public input and change things if needed.*

#### **4. Discussion on Proposed Ordinance Changes**

*The Ordinance changes, more or less, already received the blessing of the ACLU. Barrett sent it them and to their attorney and he said it looked fine. Basically, the idea would be to:*

- *Use most recent Sussex County property tax records as proof of address*
- *Publish the list – put on website; make a copy available at regularly scheduled Town Council meetings*
- *Then anyone that is not on the list can show proof that they should be listed*
- *Create a supplemental list of property owners. A person would only need to do this once and we would use it in subsequent years.*

*Amy asked if a property is owned by a trust, who gets to vote? The trustee(s) that is listed on the tax record or supplemental list gets to vote, as well as anyone domiciled at the property that meets the requirement can vote too. Corporations wouldn't get to vote, as they are not a "natural person". Amy suggested that examples be included for clarity.*

*The ACLU suggested the notice to inspect the tax list go out with the tax billing. Unfortunately this won't work because the tax bills go out in July. Barrett wondered if the notice could be included in the Town newsletter. The newsletter would need to go out no later than May 1<sup>st</sup>.*

*There was a question on how we would purge the supplemental list. Can we say if you haven't voted in the past five elections, your name will be removed from the list? Barrett said that the way it is worded now, the individuals name and address of the property shall remain on the list until such time as the individual asks to have his or her name removed or until such time as the Town discovers the individual no longer owns property in Slaughter Beach. To that end, Barrett recommends not having language that would purge the list automatically at a specific interval of time. The supplemental list shouldn't be difficult and might only have 10 or 20 names on it. Amy asked if renters would be on the supplemental list. They will not be and will need to show up with proof that they are domiciled on the day of election.*

*Who would be the holder of the supplemental list? Barrett recommends someone who is fixed in the Town that is not going to be changing – the Town Clerk or Tax Collector. The Tax Collector might be a good option since she is more familiar with the properties and the list.*

*There is still a question about absentee voting, but otherwise the only change in the Ordinance is language regarding the supplemental list and how that will be handled.*

## **5. Discussion on Proposed Charter Changes**

*Amy referenced 3.4.1 and said the notice has to go out 20 days before the Friday before the first Saturday in June (the date of the annual Town Meeting). Barrett said under the statute, the notice of solicitation of candidates has to go out 20 days before the filing deadline. So if we make the filing deadline the day before the annual meeting, then the notice for solicitation for candidates has to go out 20 days before.*

*Referencing 3.4.2, Amy stated we might not have a quorum when three seats are open which happens in even years. If all three Council members run again and someone else is running and there is concern that the candidate isn't a qualified (question of crime involving moral turpitude, convicted felon), then there wouldn't be a quorum to vote on it because there are only two sitting Council members eligible to vote. This may never come up, but we should look at it just the same.*

*Kathy asked a question regarding 3.1.3 in conjunction with 3.1.4, which requires the candidate, for a period of not less than one year prior to the date of the election been qualified to vote in the Annual Town Election in accordance with §3.5. Does this make it 1 year plus 30 days (13 months)? Yes, the candidate would have to have lived here or had property here for 13 months.*

*Amy said that 3.10 said we need 3 BOE people. Can it be more? Why not say it needs to be at least three? The Board of Election and poll officers said they could have used more people. Amy also feels that the Council should appoint the poll officers rather than the Board of Elections. Barrett said that the Town Council MAY appoint election officers, including the election inspector, when needed to administer the elections. In the absence of the appointment of election officers by the Town Council at least 15 days prior to the election, members of the Board of Elections may either (1) act as elections officers or (2) appoint such number of election officers as deemed necessary by the Board of Elections. So Council gets first crack at it, and then it goes to the Board of Elections.*

*Amy said that we could have potentially 1,000 voters and 3 poll workers may not be adequate. She would like the phrasing to say "at least three election officers".*

*Amy believes that appointing the BOE officers needs to be accomplished by the May meeting, which is sooner than the stated 20 days before election. Barrett will change the Charter to state that the deadline will be addressed in an ordinance, and the ordinance should state "no later than the May meeting". Barrett reminded the Council that the point of the charter is to provide guidance and serve as a reminder.*

*Amy questioned the BOE term of one year. Barrett's opinion is that a term for the BOE is almost completely irrelevant. The purpose for a one year term is that in the event that the appointee is doing a bad job, the Council can replace that individual.*

Amy discussed the section that states that in case of an emergency on day of election – the most senior Council person can appoint someone to serve. Why not appoint alternates up front and spell out the selection of alternates up front. Barrett will change the Charter to incorporate the recommendation, but make it optional.

Amy stated that in Elaine Manlove’s letter she says she wants BOE and Election Officers to be appointed separately. Barrett stated that the only way we wouldn’t have election officers is if the Council and the Board of Elections both think that it is not necessary.

Amy said that in Section 3.11, in the event of a tie it is unclear who flips the coin. Amy feels that the inspector should be the person who flips the coin. Barrett will make the change to clarify that the inspector of the BOE will flip the coin.

Kathy recommended that the Charter be modified to allow for a designated mayoral election. Amy thinks we should address this issue at the public hearing – should the public vote directly for the Mayor? Barrett said that we would need to put language in the Charter and discuss in a public notice. Amy asked how that would work if the Mayor is elected for a year. Kathy believes that that whoever runs for Mayor should be elected for a two year period. Amy thinks we should wait and get this stuff done before diving into the rest of the Charter for potential changes. Barrett said that we could experience a large turnout at the public hearing because of zoning issues. Amy said that on one hand she could see where this could be good for the Town if the Mayor serves for a two year term. Barrett will change the language in the Charter to indicate that starting with the election of 2016, one of the election spots will be designated specifically to a mayoral spot.

Barrett said that during the public hearing we can ask for public input and then the Council can make a recommendation to approve the Charter subject to additions or deletions, specifically as it relates to the election of the Mayor. Barrett will put it in for the public hearing.

Amy alerted Representative Harvey Kenton and Senator Gary Simpson to the Charter change and they will support us. They both asked that we get the language to them as quickly as possible.

## **6. Further and Necessary Discussion by Council and Town Attorney**

*Determine Actions Necessary by Town Attorney, Council, or Committee*

- Longer voting hours or absentee balloting – or a combination of the two is the big open item. Barrett will continue discussions with ACLU and draft options.
- The Annual Town Meeting will be June 6, 2015 (first Saturday in June). The May Council Meeting is on May 11<sup>th</sup>, which is seven weeks before the election.

*Establish Timetable for New Procedures to be in Place for 2015 Election*

*Discussion and Possible Vote on Establishing a New Voting Procedures Committee*

## **7. Public Comment**

None.

## **8. Adjournment**

**Motion:** A motion to adjourn the meeting was made by Jackson Gingrich. Kathleen Lock seconded the motion. Motion carried unanimously, 4 – 0. Vice Mayor Parker adjourned the meeting at 4:48 PM.

Respectfully submitted,

*Glenn Stieffenhofer*

Glenn Stieffenhofer  
Secretary

