

Sterling Town Government Study Committee

December 2nd, 2009

Members Present: Robert Dumont, Donlin K. Murray, Kathleen Mello, Doris Bennett, Jeffrey L. Donaldson, John Potter, Michael J. Radzicki.

Start Time: 7:00pm

- 1.) November 4th Meeting minutes discussed/amended and approved.
- 2.) Discussed the level of detail to be put into the meeting minutes. Bennett to send Mello web addresses of other towns' Government Study Committee meeting minutes. Committee to discuss which format they would like to use.
- 3.) Discussed the Letter to All Boards, Committee Chairs and Town Department heads. As a committee discussed the questionnaire developed by Bennett. Board members thought it may be too many questions/ too in-depth for an initial questionnaire. Discussed the number of questions that would be appropriate to meet our needs (see attachment for Bennett's proposed questionnaire).

Recommendations made regarding letter/questionnaire:

- a.) Letter: Change paragraph 2 to two meetings.
- b.) Questionnaire: Board agreed on the following questions:
 - What Board/Committee are you?
 - Question 1: What are the primary responsibilities and functions of your group?
 - Question 2: Who reports to your Board?
 - Question 3: To whom does your board report?
 - Question 4: Are there any activities of your board that you need to coordinate with other boards/ committees?

Action: Kathleen to compile all the questionnaires into a folder and send to committee members along with the Committee/ Department link.

Action: Bob Dumont will complete and send the letter and the questionnaire to Mello for distribution to Department Heads/ Committees etc.

- 4.) Review Article 12: Bennett wanted to amend the November 4th meeting minutes to reflect the following: Bennett expressed concern that the wording of Article 12 does not include certain departments but the remainder of the committee did not concur. The meeting minutes were amended as requested.

- 5.) Opening meeting law:

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The Committee discussed the open meeting law and the emails distributed that were in question. It was suggested by some committee members that we attach the emails that may be in violation to our meeting minutes. Committee concluded: If we are going to communicate with each other we cannot deliberate via emails.

- 6.) Organizational Chart (see attached): Mike Radzicki worked with Dick Sheppard, Teri Ackerman etc. to develop the most current town organizational chart.

Some issues discussed:

- Committee discussed straight line vs. dotted line reporting.
- It was a consensus view that the top of the Organizational Chart be the voters and town meeting and that voters and town meeting be aggregated not separated.
- Consensus: The committee recommended two pages vs. one.
- It was suggested we could use footnotes to save space and not always visuals.
- Some on the committee thought the Town Clerk and Human Resources should report to the Board of Selectman (BOS) vs. Town Administrator. It was stated that the Town Administrator states, contracts state they report to BOS through Town Administrator and that the Town Administrator ultimately reports to the BOS.

Action: Radzicki to revise Organizational Chart using stated recommendations.

7.) Tasks:

Bennett questioned time allotted to do our job, what are our tasks? The question was asked, what should we be doing between now and our January meeting?

Thoughts:

- We would like to meet with Dept heads/Chairs and how do we go about this?
- Question, we need to schedule an Open/Public meeting. We need to invite the public to a meeting via newspaper, TV etc. and request feedback.
- Potter suggested we get on the agenda of a BOS meeting.
- Radzicki pointed out all the BOS meetings in the spring will focus on our committee. The committee took this as an opportunity for our committee.
- Potter suggested a committee member meet with Teri.
- It was suggested Bennett prepare a list of questions for the committee to ask Department heads etc.
- Bennett has been in contact with other towns (Study Committees) to see what questions they have been asking. Bennett to distribute this information to committee.
- Action: Set our priorities after we obtain some information from our questionnaire.
- Actions: Bob to meet with Teri. Bennett to research other towns, mass municipal etc.

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- 8.) Administrator stated our committee may recommend the creation of a Charter Commission based on our conclusions. It was noted we could make recommendations without a charter but a charter would make implementing changes easier.
- 9.) Briefly discussed the town meeting, getting people there etc.
- 10.) Radzicki handed out an article on Community Building for those interested.

Meeting Adjourned at 9:03pm.

Next meeting:

Wednesday January 6th, 2010 at 7:00pm
In Room 201 of the Butterick Building.

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Government Study Committee Emails Oct 2009 – Nov 2009:

1.) Bob and All- My comments are in the order in which the issue appears in your letter.

1. Re. the questionnaire, I confess that I have no recollection of our having agreed too much of anything specific about it. I distinctly remember Don Murray having said that about "5" questions should be enough, which is why I was a bit surprised when I read our meeting minutes and it said 2. I'm not saying Kathleen is at fault here at all...only that I didn't hear it if we agreed on 2 questions. With all due respect, while we could delete #6 & #7 if brevity is driving this, I don't see how we can come up with a meaningful first try at an org. chart if we don't ask the basic questions in #2- #5, which are intended to give us some idea as to what the straight line and dotted line organizational relationships should possibly be.

2. Re. the proposed letter:

a. I think it would be wise to delete the sentence immediately following reference to Article 12, and let the wording of Article 12 speak for itself. Your proposed wording is literally broader than what the words of Article 12 authorize. Everyone knows my concern and recommendation, but Paul S. and certain others don't agree. However, that doesn't mean that someone else who receives this letter might not raise the same concern, which could prove embarrassing if not worse ...it's a legitimate concern, so just a thought.

b. You might want to name the individuals elected to the positions of V. Chair and Clerk in the letter itself, as a first time introduction...a little more personal than relying on them being identified at the bottom of the stationary.

c. I'd recommend that you revise the first sentence of the last paragraph to read something like this: "In order for us to achieve the objectives of this study, we will be meeting with each of you over the next 12 months." I think we should be prepared to commit ourselves to meeting everyone, and for as many times as it takes to get the job done.

That's it from me...hope you're not sorry you asked :-)

Doris

2) Attached are a cover letter and questionnaire (a copy of which you have already received).

We need to get this material in people's hands this week if we expect to have some, if not all, of the response by our next meeting.

Although I think the questionnaire is more extensive than we agreed at our meeting, no feedback about any changes has been shared with the group. If you are all comfortable with it then we will send it as is, except for a change in the due date to Nov. 30th.

If you have any changes/suggestions regarding the letter or the letter head please let Kathleen or me know ASAP.
Bob

3.) Hi Mike- I just read the proposed org. chart but admittedly rather quickly, so I may have additional comments/questions once I've had the opportunity to verify a few facts which may or may not bear on what you've generated.

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1. It's my understanding that all BOS-appointed positions must, as a matter of law in Massachusetts, report *directly* to the BOS. If my understanding is correct, certain Departments and Employees that/who are listed on the org. chart as being direct solid-line reports to the TA e.g. Town Clerk, Treasurer/Collector, Building & Zoning Officer, HR Administrator etc. should instead be listed as additional direct solid-line reports to the BOS. In that case, the box which says "Appointed Boards & Committees" would obviously need to be modified to call for "All Appointed Boards, Committees, Departments and Employees".

2. Insofar as any of the BOS direct reports require the support of the TA (and/or vice versa) to accomplish its day-to-day functions and responsibilities, I'd suggest that there be a separate dotted-line between the TA and each such report, with an arrow pointing *to* one or both of these functions/Depts., depending upon whether one or both need such support from the other. Since you've indicated that the dotted line is intended to focus upon support, I'm hoping the questionnaire will shed some helpful light on whether we've covered all the bases as far as the need for any additional dotted lines is concerned.

3. To what extent any of the Employees and/or Departments can legally report directly (solid-line) to our current TA is an issue that we need to make certain we address accurately. As the chief administrative officer, our TA legally only has the powers of an executive secretary according to the law. As such, she has no managerial authority, at least as far as determining Town priorities and policies without BOS oversight. Hopefully all off the Town's employment contracts with these appointees are consistent with this, because all of those kinds of determinations must rest with the BOS alone.

4. It was my understanding that we were going to generate only a preliminary org. chart, based on the fact that our main goal would be to make recommendations to improve upon the Town's "efficiencies and effectiveness" (in Bob's words). In the words of Article 12, these recommendations could be "relative to changing the size, structure, responsibility, function and/or appointing authority of any Board." I think both Bob's letter and Article 12 envision possible/probable changes to this org. chart. So when you say that this org. chart "seems [already] to address everyone's concerns", I'm really not sure what you mean. Would you mind clarifying this a bit? Thanks in advance.

Lastly, based on the minutes, I thought you were only going to be speaking with Terri about this. However, since Dick S. was involved with this, I decided to copy the rest of the Selectmen just to make certain everyone is on the same page....no criticism of you intended.

Nice job!

Doris

4.) Dear Colleagues:

I have been working with Dick Sheppard, Terri Ackerman, and Dawn Michanowicz on a draft organizational chart for the town of Sterling. After about six iterations I've arrived at something that seems to address everyone's concerns.

So -- FYI, I've attached a PDFed version of the most recent draft of the chart. Let me know if you have any feedback.

Cheers.

Mike Radzicki

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5.) I agree with Jeff and Kathleen (who has also emailed me on this subject). At our upcoming meeting we will discuss the org chart and related issues, already on our agenda and refrain from electronic discussion beforehand. That probably applies to some exchanges about the questionnaire as well. We should hold off on sending it out until it is discussed at the meeting. In addition we need to have a discussion about the extent to which the Open Meeting Law restricts our exchanges between meetings. Bob

6.) To all,

Shouldn't we reserve all substantive comments for our meetings so as not to have an issue with the Open Meeting rules? See below excerpt from the AG – I think it is applicable here – not to Mike's original email that attached the chart since it was in preparation for our next meeting, but to any substantive exchanges that followed.

Jeff

7.) Here's my 50 cents for what it's worth, and I'm glad Jeff and Kathleen brought this up.

Based upon what are the duties and responsibilities of this Committee, I don't believe our meetings are covered by the OML. Even though we fall within the definition of being a "governmental body", that in and of itself does not mean we're necessarily subject to the provisions of that law. However, I nonetheless reviewed the OML guidelines before we first got together, and they clearly indicated that the OML is designed to prevent closed door-types of meetings when it comes to discussing *matters of public policy and the making of public business decisions*. As I understand our function, our responsibilities are limited to conducting a town government *study* geared toward "improving its efficiency and effectiveness" However, when I read Jeff's note earlier today, I decided to double check and researched the case which the Guidelines themselves recommend reading in order to understand what "public policy" and "public business" mean as far as the courts are concerned. The case is Medlock v. Board of Trustees of the University of Massachusetts, 31 Mass. App. Ct. 495 (1991), and in pertinent part it reads:

As defined in Section 11A, as amended through St. 1976, c. 397, Section 1, and as here pertinent, a "[g]overnmental body" is a "state board, committee, special committee, subcommittee or commission, however created or constituted within the executive . . . branch of the commonwealth" See also G. L. c. 39, Section 23A. The committees were created by the board, through delegation of their authority to University officers, as required by 7 U.S.C. Section 2143(b). [Note 5] See also 105 Code Mass. Regs. Section 910.010 and Section 910.200. See and compare Gerstein v. Superintendent Search Screening Comm., 405 Mass. 465 (1989), with Connelly v. School Comm. of Hanover, 409 Mass. 232 (1991). Proceeding on the assumption that these committees are governmental bodies, we will accept the premise that, by approving or rejecting research proposals, the committees make decisions of some form. Compare Nigro v. Conservation Commn. of Canton, 17 Mass. App. Ct. 433 , 435-436 (1984).

Even if these committees are decision-making governmental bodies, it does not necessarily follow that they are subject to Section 11A. As we read Section 11A, keeping the purpose of the law in mind, we think more is required. A public policy matter must be under discussion or consideration before a governmental body need meet openly. "Meeting" is defined in Section 11A, as inserted by St. 1975, c. 303, Section 1, as "any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which *any public policy matter* over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program" (emphasis added). The element of "public" is also expressed in the definition of "[d]eliberation" which is a "verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any *public business* within its jurisdiction" (emphasis added).

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These terms, "public policy" and "public business" require us to consider the meaning of the word "public" as used but not expressly defined in Section 11A. In so doing, we return to the definition of "[g]overnmental body" which includes not just boards and committees within the executive or legislative branches of our government but also encompasses the "governing board or body of any authority established by the general court to serve a *public purpose* in the commonwealth or any part thereof" (emphasis added). Whether an authority serves a "public purpose" turns on a variety of factors, all having "reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare." *Allydonn Realty Corp. v. Holyoke Hous. Auth.*, 304 Mass. 288 , 292 (1939). See generally Cella, *Administrative Law & Practice* Sections 1141-1144 (1986).

Those factors deemed appropriate and nonexclusive in *Allydonn*, 304 Mass. at 293, for consideration in determining whether an authority serves a public purpose are consistent with the general purpose of open meeting laws. [Note 6] See *Ghiglione v. School Comm. of Southbridge*, 376 Mass. at 72; Note, *Open Meeting Statutes*, 75 *Harv. L. Rev.* at 1200-1201. We can discern no reason for ascribing different meanings or connotations to the word "public" as used in Section 11A, whether the word modifies "business," "purpose," or "policy." See *Arnold v. Commissioner of Corps. & Taxation*, 327 Mass. 694 , 700 (1951); *Plymouth County Nuclear Information Comm., Inc. v. Energy Facilities Siting Council*, 374 Mass. 236 , 240 (1978).

Although the defendant committees determine whether the care and use of animals for research purposes at the University and its medical school are consistent with Federal and State standards, they do not consider or discuss public policy matters in order to arrive at a decision on any public business.

In any event, I'm all for opening our scheduled meetings to the public just in case. However, I personally don't believe that this law applies to us, so long as we stick to our original charter (pardon the pun). I won't be insulted if a second opinion is sought on this important issue, and would in fact recommend it. I will be doing further research on this as well, for our Dec. 2nd meeting, and will refrain from writing any further substantive emails regarding the questionnaire or org. chart until then.

Doris

8) Dear All:

I spoke with Attorney Patricia Smith at the Assistant District Attorney's Office in Worcester this morning, who's one of the designated contact persons as far as the Open Meeting Law. After describing our function and reading the specific tasks authorized in Article 12, she believes that what we have been asked to do is indeed covered by that Law...right down to the org. chart. I'm admittedly quite surprised by this, especially given the Medlock case, but better that we know now rather than later as far as how they intend to enforce this, so that we act accordingly.

Doris

9.) Bob-Weren't we all! At the risk of sounding terribly arrogant, I'm not yet convinced she's correct, but unless/until we confirm otherwise, better to act conservatively than be sorry later.

There's an awful lot of work we need to do and "meeting" only monthly, I now fear the obvious.

A holiday toast to all of us... that we give thanks for our family, friends and good health, and that we be blessed with the brains and energy to figure out how we can get this all done thoroughly and well, within the spirit and letter of the law, and without compromising that for which give thanks...

Happy Thanksgiving!
Doris

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10.) Dear All-

Something I thought of this afternoon, and which you might like to think about as well, for our next meeting... no response needed before then

If we were to make a fairly comprehensive list of what needs to be done in connection with this project in our next open session, we could then pair-off...2-2-3 ..into separate teams-each with agreed upon tasks from that list. The members of each team would then be totally free to "meet" with members of its own team whenever they wanted...and even with a member of another team if needed, so long as the total number "meeting" at any one time never exceeded 3 (because 4 would be a quorum). Everyone would periodically meet in open session to discuss what each team accomplished, get feedback from each other, coordinate their efforts, add to/subtract from the master list etc. and continue from there... The objective would obviously be to avoid being hamstrung as we get things done, but *always* ultimately discussing *everything* we're doing in open session.

I discussed this idea with Attorney John Zinini from the Suffolk County D.A.'s office, and he thought this would be a totally acceptable way to approach this project from the Open Meeting Law perspective.

Doris

FYI- Found a case [McCrea v. Flaherty et. al. 71 Mass. App. Ct. 617 (2008)] which would indicate that these "pairs" could be regarded as subcommittees as well and as such, would be subject to the Open Meeting Laws. No response required or requested.

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