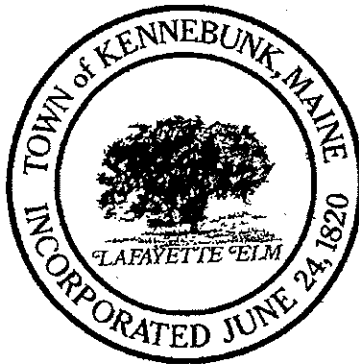


Town of Kennebunk, Maine



Charter Commission MEETING MINUTES

Wednesday, April 12, 2023

In-person meeting, Town Hall, 3rd Floor, 1 Summer Street, Kennebunk

This meeting was held in person and televised on Cable TV Channel 5.
It is available for public viewing at any time at TownHallStreams.com.

Chairman Christian Babcock called the meeting to order at 6:30pm.

1. Roll Call

Secretary Janice Vance called roll:

- Present: Susan Bloomfield, Janice Vance (Secretary), Brenda Robinson, Stephen Sayers, Christopher Babbidge, Christian Babcock (Chair), and Ted Trainer. C. Babcock welcomed new member Durward Parkinson, who was recently appointed by the Select Board to fill a vacancy.
- Absent: Richard Smith (Vice Chair) (excused due to medical).
- Also present: Merton Brown, Town Clerk; Natalie Burns, Town Attorney; Heather Balsler, Town Manager.

2. Public Comments

C. Babcock opened the floor for public comments on non-agenda items. Seeing none, he closed the public comment period, and invited those present to speak as desired as the Commission began discussion of agenda items.

3. Consideration and Approval of Minutes:

C. Babcock moved to approve the minutes of the March 22, 2023 meeting. The motion was seconded by B. Robinson. The vote to approve was 7 in favor, with one abstention (D. Parkinson), and one absent (R. Smith).

4. Guest Speaker – Joel Downs, former Kennebunk Finance Director

J. Downs was not available and so this discussion was postponed to a later meeting.

5. Old Business

- Review Action Items
 - West Kennebunk Committee – B. Robinson reported difficulty in making contact with members, but will continue trying.
 - Lower Village Committee – J. Vance spoke with two former members to get some history, and two current members; at the moment the committee needs additional members and is inactive.

- By-laws Revision
 - C. Babcock reminded members that at the last meeting there was lengthy discussion about changes to the By-laws and that B. Robinson, working with Town Attorney N. Burns, agreed to finalize those changes and circulate the document to members, which was done. C. Babbidge requested discussion on some of the criteria in the by-laws: how to handle absence of members, including who to notify if a member was going to be absent, determining the number of days required to disseminate information, and to clarify the use of the hybrid technology being used for meetings. S. Sayers had minor corrections he submitted to B. Robinson previously, which were reflected in the final document. After discussion, C. Babbidge moved to accept the By-laws as presented. The motion was seconded by T. Trainer. The vote to accept the By-laws was 8 in favor, with one member absent (R. Smith).

- Draft of Recall Article
 - M. Brown directed the public to pick up paper copies of the proposed Article that were available in the room. For future meetings, items for discussion will be included with the agenda posted on the town website. J. Vance noted that a new version sent out to members had no changes to the proposed language, but that the last of the other towns' recall language had been added as references, and the proposed Forfeiture of Office language had been moved to a new document so it can be worked on separately.

6. New Business

- Information Sharing by M. Brown of Previous Recall Attempt
 - M. Brown stated that during the 2022 attempted recall of two School Board directors the language in the charter proved to be problematic, creating what he referred to as a "perfect storm." The dates a petition could be circulated were too general, and there was no specific process laid out. Final certification of signatures required the work of 9 people to double check each decision, with a total of 420 hours of time spent. He referenced the recent meeting he and H. Balsler had with S. Sayers and J. Vance as they worked on the draft of new language and stated that what is proposed for the process meets his needs and will mitigate confusion and additional work.

 - C. Babbidge stated he likes the high threshold of signatures needed, and asked for background on the past attempt regarding "challenges" of signatures. M. Brown

explained the charter's language didn't spell out how to handle this, and that a signee changed their mind was after the deadline, when it was too late to make the change. He also explained that most rejected signatures (about 5% of the total gathered) were because the signees were not registered voters. In some cases, it was very hard to match signatures to those on voter cards, so he personally called those people to confirm they had actually signed the petition.

- Information Sharing by N. Burns of Previous Recall Attempt
 - N. Burns stated she likes the new draft and it seems to have all procedures and expectations clearly laid out. She agreed the old charter language lacked clarity around challenges to signatures, and didn't specify who could actually post a challenge. She said Ogunquit has fairly clear language, as the town has experience in recalls. She questioned whether the term "moral turpitude" in defining reasons for recall might be too subjective.
 - S. Bloomfield added that the old language didn't accurately define the number of days a petition could be circulated.
 - C. Babbidge liked that the new charter was proposed to contain definitions. He felt that reasons for both forfeiture of office and recall needed to be factual; "moral turpitude" could be construed in many ways and wondered if less stringent reasons were better. He also felt "alleged" in front of a reason was a problem. He asked N. Burns if she felt this was a concern. N. Burns felt it wasn't if the Commission was clear on terms, and recommended that instead of using the term "moral turpitude" the document listed the actual behaviors found to be objectionable. C. Babbidge asked what would happen if an elected official accused of a crime pushed back against the accusation.
 - R. Robinson broadened the discussion by asking about which specific elected officials would qualify for recall, given that School Board members and utility trustees were perhaps in a different bucket legally. N. Burns explained her research on the utility Trustees, which was included on the recall document. Kennebunk Sewer District seems to have its own recall provisions but Kennebunk Light & Power and Kennebunk Kennebunkport & Wells Water District do not. The Commission will need language in the charter addressing this. S. Bloomfield noted that the document will need "excruciating" detail – the "who/what/where/when/why/how" – so there is no misinterpretation of intent or execution. N. Burns agreed.
 - D. Parkinson said from his first reading of the document it appears to set a higher bar. He agreed that defining "moral turpitude" (he read aloud a definition that alluded to violation of accepted community standards) was not something we wanted to assign to the Town Clerk.
- Feedback Regarding Recall Revision Draft
 - J. Vance said she and S. Sayers will continue to work on the draft using the comments provided verbally or in written notes from members. She reiterated the goal of providing voters with the ability to remove an elected official for serious behavior while preventing frivolous attempts to do so. She noted that during research they discovered the ability to recall an elected official exists in only 18 or 19 states; in other states the

only recourse for voters is to wait until the next election and vote the official out of office.

- C. Babcock provided feedback by section:
 - 7.01 - Likes the fact it sets out expectations but wants to see less formal language.
 - 7.02 – Would like this section boiled down a bit to reduce redundancies and focus on “any crime” rather than detailing possible crimes.
 - 7.03 – Would prefer a percentage of registered voters, as the number of voters changes and the town is growing. S. Sayers explained that using a hard and fast number here eliminated the need for the Town Clerk to do a calculation. J. Vance added that they looked at State population projections from the Comprehensive Plan and saw that using the “hard” number proposed still provides for a higher percentage than other towns use, even 15 years into the future. C. Babbidge agreed with a hard number, as it takes significant time to get an accurate snapshot of voter registration. Gayle Spofford, a member of the public and a School Board Director, and Erin Nadeau, chair of the School Board, spoke about the eligibility of RSU School Board members for recall, requesting the Commission look at those specifics. C. Babcock noted that this will definitely be discussed as the Commission refines the draft language.
 - 7.04 – Make sure the “designee” is informed by the Town Clerk exactly when the last date of petition circulation is; remove the hours the Town Clerk’s office is open, as that could change; review the last sentence regarding how to handle someone who changes their mind and wants their name removed from the petition. Leslie Trentalange, a member of the public and a Select Board member, asked what should happen if someone does this after the deadline. M. Brown said it would then be too late, that there needs to be a specified end to any changes in the number of submitted signatures. G. Spofford asked how the Town Clerk would find a form submitted as envisioned in the language. M. Brown explained that at that point the certification work has not begun. J. Vance explained she envisioned an actual form someone would fill out at the Town Clerk’s office, and that the Town Clerk would use this to remove the name prior to certification. The form is a trackable proof of the action.
 - 7.05 – Replace “as soon as practicable” with something that specifies an actual time.
 - 7.06 – Re 1% needing a recount – can we define this better. J. Vance asked for suggestions from other members.
 - 7.08 – Include all of the actual language that would appear on a ballot when a replacement candidate is to be voted on at the same time as the recall. J. Vance will pull something used in other towns for consideration.

- S. Bloomfield provided feedback by Article:
 - 7.01 – Would like it to start with “It shall be the policy of the Town of Kennebunk to...”
 - 7.02 – Second bullet point – separate out the various clauses into new bullet points; what’s here is chunky. Also avoid any “nebulous” language in favor of more accessible language. She also asked about use of social media as criteria for recall. S. Sayers noted that he and J. Vance had discussed this, and decided

that was something to be considered for forfeiture of office, which is an internal process as opposed to a public process. Art Leblanc, a member of the public and a School Board director, spoke about the required Statement of Facts, and explained that a core issue in the 2022 recall process was that signees were often verbally misled about the reason for the recall, didn't read the reasons stated on the form, and there was no accountability for petition designees who misrepresented the truth. He referenced the recent resignation of an Arundel School Board director after inappropriate social media posts were made public, and that if there had been no resignation that voters there had the option of initiating a recall. He asked that Kennebunk work with the other two towns in the RSU in creating a standard procedure for all school board members, no matter whether it included recall or didn't. He liked the very specific reasons for recall to avoid any way of having a Town Clerk or anyone else have to pass judgment on the validity of charges; he noted that crimes are public records so can't be made up to slander someone. He also liked the ability of a signee to remove their name if they changed their mind, or discovered they were misled.

- D. Parkinson asked to comment more fully at the next meeting because he had only begun his review, but questioned the language around an elected official being able to continue to serve while a recall was in process. There were a few things he felt solved one problem but created others. He too advocated using precise language.
- B. Robinson said most of her comments had already been raised, but wanted to ensure that S. Bloomfield's "who/what/where" language was in each section. She was concerned about the amount of time and pressure a recall attempt put on the Town Clerk's office, and wanted the overall process to be fair and do-able.
- C. Babbidge said that structurally, recalls are a result of longer terms of office. If someone was in office only a year, there would be little need to recall them. He read aloud draft language he wrote for the beginning of Article 7 that set out general principles and expectations. He discussed the "convictions" and behavior laid out in Article 7.02, and proposed there be a public hearing 10-14 days prior to a recall election. Such a hearing would allow the media to report on it, to provide public education instead of allowing rumors to circulate. He asked if the focus of the recall election should be simply to recall an official, without also requiring a vote on a candidate to replace that official. A new candidate could be elected at a subsequent election, although he acknowledged it does cost the town money to run an election. The only downside he saw was that a board would run with (probably) one member short for a time, which he felt would not impede the ability of that board to continue working. M. Brown said his concern would be that if no replacement was named at the recall election, it might be a long time before one was named. J. Vance asked if the position could be filled temporarily with an appointed member until the next logical election. M. Brown agreed that could potentially be an option.
- T. Trainer, because it was getting late, agreed to defer most of his comments until the next meeting, but he posed questions for G. Spofford regarding the status of School Board directors and the separation of the RSU from the respective towns, in an effort to get more clarity. She explained the law currently says towns have the right to oversee

recalls of school board directors. The current State legislature is considering bills that may change this. The responsibility of the school board is to educate students, although members certainly take the needs of the overall community into consideration. Election of school board directors is handled through the towns because the RSU itself has no legal jurisdiction to set up and run elections, both to elect directors and to handle a recall. She acknowledged it is a somewhat confusing set-up. Like A. Leblanc, she would prefer for all three towns to have the same recall policy. T. Trainer noted that the Commission and the school board directors, who have attended the Commission meetings, will need to work together closely to think through the rather complicated legal and political issues that surround the charter, to find a balance that works for all parties, and seek as much public input as possible.

Next Meeting(s):

C. Babcock will see if former Town Finance Director Joel Downs can attend to discuss budgets. Discussion on recalls will continue as well as Forfeiture of Office. A MMA training may take place.

Action Items:

J. Vance and S. Sayers will make suggested changes to the document and re-send to members.

6. Adjourn

A motion to adjourn the meeting at 8:50pm was made by B. Robinson and seconded by S. Bloomfield. The vote was unanimous.

Respectfully submitted,
Janice Vance (Secretary)

A handwritten signature in cursive script, appearing to read "Janice Vance". The signature is written in black ink and is positioned below the typed name of the secretary.