

**Charter Review Committee Meeting
October 1, 2020 @ 10:00 a.m.**

In attendance were Committee Chairwoman Barbara Ryer; Committee Members Sharon Brienza, Pat Plocek, Tim Roe, and Town Manager Debbie Botchie; and Town Clerk Matt Amerling.

1. **CALL TO ORDER:** Committee Chairwoman Barbara Ryer called the meeting to order at 10:00 a.m.
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL:** All Committee members were present.
4. **NEW BUSINESS**
 - A. Continue discussions on possible Charter amendments.

Town Manager Debbie Botchie stated she knows the section of annexation wasn't assigned to anyone but Ms. Botchie is glad she glanced at it again because she looked at the Town of Milton's and the first red flag was that currently it has been three (3) Council members sit on the annexation committee. Ms. Botchie stated this makes no sense because the three (3) Council members could all be in agreement thinking an annexation is advantageous, they bring it before Council, but those three (3) have already made their vote and are a quorum, so the two (2) remaining Council members who may not be in agreement are already outnumbered. Ms. Botchie stated Milton's annexation committee consists of two (2) Council members and one (1) Planning & Zoning (P&Z) Commissioner, and Ms. Botchie stated this makes much more sense for Millville to do the same. Ms. Botchie stated after reviewing Milton's section on annexation, Ms. Botchie thought Millville's was too "wordy" so she tried to combine our new language with Milton's. Ms. Botchie stated she is still not finished but her question to the committee is if this is something the committee really thinks the Town needs to go on with, rather than making the change of whom specifically is on the annexation committee. Ms. Ryer and Committee Member Pat Plocek stated this should be continued to be reviewed. Ms. Botchie stated Milton also has some things Millville doesn't such as "if the petitioner petitioned for annexation, agreement is requiring a higher density than a R – Residential, a conceptual site plan is required." Ms. Botchie stated she loves this language and process. Ms. Botchie stated a good example is when Parkside (development) wanted to come in to Town residential with single family homes, but if they wanted a RPC – Residential Planned Community, the applicant would have to come into Town with a conceptual site plan first before a preliminary site plan. Ms. Botchie stated she will continue on with researching for this section, and pass it along to Town Solicitor Seth Thompson for his review. Ms. Botchie stated some things from Milton don't fit the Town's needs because, for instance, Milton has their own utilities and things like that. Ms. Ryer thanked Ms. Botchie for taking on the annexation section.

Committee Member Tim Roe stated he reviewed the section twenty-two (22), the police force, and it is a bit "wordy" regarding the duties of the police but Mr. Roe looked at other charters from towns in Sussex County, which he found on a website he will email the link to the committee members, and saw the chief of police should be the one to come up with the standard operating procedures (SOPs) for the Town police. Mr. Roe stated he didn't cross out items D or E because he didn't know too much about that procedure but he's leaning more toward the

SOPs. Mr. Roe stated he also changed giving authority to not just the Mayor but also the Town Manager, who acts on behalf of the Town Council. Ms. Botchie stated some jurisdictions don't like it but since the Mayor role can change so often, that's why a lot of municipalities have the town manager language in there. Committee Member Sharon Brienza stated where it states in the first paragraph "the Chief of Police and the members of the police force shall be subject to the direction of the Mayor and Town Manager ...," Ms. Brienza doesn't have a problem with the Chief of Police on that part but members of the police force should be taken out as there is a hierarchy there and they fall more under direction of the Chief. Mr. Roe stated his agreement. Ms. Brienza stated to strike out "and the members of the police force." Ms. Brienza further asked if in that sentence the wording should be "on behalf of the Town Council" rather than "in behalf." Town Clerk Matt Amerling stated yes, it should be "on behalf." Ms. Botchie stated she can take what Mr. Roe has submitted and plug them into the master changes of the charter. Mr. Roe stated regarding items C, D and E, those should be covered under the SOPs. Ms. Brienza asked if there are Justices of the Peace in this area. Ms. Botchie stated yes, it was at the Dagsboro Town Hall. Mr. Plocek asked to leave item C but take out D and E just in case the Town does have any dealings with the Justice of the Peace. Mr. Roe stated he was OK with it. Ms. Ryer asked Mr. Roe if he wanted to put anything in like "the authority of the Chief of Police incorporated by reference," to cover the other duties. Mr. Plocek stated it might want to be mentioned in here the Chief would be the only individual appointed by Town Council but the police officers would be through the Chief. Ms. Brienza stated the Chief would recommend to Council who he/she would want to hire and Council would approve of the hiring. Mr. Roe stated he will continue to look through the assessment section.

Mr. Plocek stated he reviewed section fourteen (14), contracts, and under item B(1), he thought the aggregate amount should be five-thousand dollars (\$5,000.00) as opposed to ten-thousand dollars (\$10,000.00). Mr. Plocek stated he also added an item (item 10) which adds to the bidding process any purchase of materials or services greater than five-thousand dollars (\$5,000.00) up to twenty-thousand dollars (\$20,000.00). Ms. Botchie stated she likes putting in "Mayor and" before every Town Council reference here. Ms. Botchie she liked his insertion of an ethics form being required to be on file in Town Hall for each elected and/or appointed official. Ms. Botchie asked about reducing the public bid minimum amount from ten-thousand dollars (\$10,000.00) to five-thousand dollars (\$5,000.00). Mr. Plocek stated from five-thousand dollars (\$5,000.00) to twenty-thousand dollars (\$20,000.00) the Town could solicit three (3) letter quotations, which is on the next page, under item ten (10), and if it's over twenty-thousand dollars (\$20,000.00), it would have to be sent out for public bid. Ms. Ryer asked regarding item B(1), the aggregate amount being not more than five-thousand dollars (\$5,000.00) in a fiscal year, does Mr. Plocek need to clarify it? Ms. Ryer stated what if someone goes out and buys one-thousand dollars (\$1,000.00) worth of pencils, but in another week, they buy another one-thousand dollars (\$1,000.00) worth, and so on, which is called split procurements. Ms. Ryer asked Mr. Plocek if he wanted to clarify the split procurements. Mr. Plocek stated it says in a fiscal year, so someone couldn't split it. Ms. Ryer stated they could circumvent procurement regulations in one year by splitting it up over and over so a person can avoid going over that threshold. Ms. Botchie stated this is for competitive bid and is a bit different than procurement. Ms. Botchie stated the aggregate involved is ten-thousand dollars (\$10,000.00) so anything other than professional fees which is ten-thousand dollars (\$10,000.00) or over, the Town has to go to public bid. Ms. Botchie stated she is not happy with the change to five-thousand dollars (\$5,000.00) because the Town has equipment which goes up every once in a while – like HVAC, etc. – and it would be a pain to have to do a bid every time

for those types of materials. Mr. Plocek stated he should add to this some language excluding emergency contracts. Ms. Botchie stated she has a resolution which states for emergencies, the Town Manager can spend up to five-thousand dollars (\$5,000.00) because of the HVAC going out. Ms. Ryer asked if five-thousand dollars (\$5,000.00) was enough. Ms. Botchie stated it's not in today's world but this resolution was approved a long time ago. Mr. Plocek asked Ms. Botchie to send the language on emergency contracts to him and he will incorporate it in here. Ms. Brienza stated she thinks it should be kept at ten-thousand dollars (\$10,000.00), and Ms. Botchie agreed because competitive bids are expensive to do and it's a long process. Mr. Amerling stated also every time one of these bids would have to go before Council for approval so that would draw out the process even longer. Ms. Botchie stated she has to take more time reviewing this section. Mr. Plocek stated he understands the monetary limit but still thinks there should be language in here regarding emergency contracts. Ms. Botchie stated under item ten (10), regarding the three soliciting letter quotations, such a practice is already in place. Ms. Brienza stated the language of pricing in number ten (10) should be for services greater than ten-thousand dollars (\$10,000.00) up to twenty-thousand dollars (\$20,000.00). Ms. Botchie stated Mr. Thompson also has some other things to add to this bid process section, one of which has to do with the most responsible bidder because the Town doesn't always have to take the low bid but rather the more responsible.

Mr. Plocek stated the next is section thirty (30), Town Budget, of which the first amendment was adding the specific dates (month and day) to the language. Mr. Plocek stated he omitted item C(2) because he doesn't see that type of audit as being needed. Ms. Brienza asked under item B if the language should be changed from Town Manager or designee, to Town Manager and Finance Director. Ms. Botchie stated yes and she would like to review this more in depth with Finance Director Lisa Wynn. Ms. Brienza stated under item D, does the Town have public hearings on its Town budget. Ms. Botchie stated no, and she's been here almost fifteen (15) years, and just one (1) person has attended the budget meetings. Mr. Plocek asked if legally the Town has to give notice of having a budget review and approval. Ms. Botchie stated no, but it doesn't bother her if they would like to make the budget meetings public hearings. Mr. Plocek and Ms. Brienza stated they would like to have it as a public hearing. Ms. Botchie stated she will mark up item D with the appropriate language.

Mr. Plocek stated for section thirty-two (32), Streets, most of the corrections are simply adding "Mayor and Town Council." Ms. Brienza asked Mr. Plocek why he changed five (5) property owners to one (1) in item B(1). Mr. Plocek stated the number was just a recommendation he saw from Millsboro's charter but they can leave it at five (5). Ms. Brienza stated she would like to keep it at five (5). Ms. Botchie stated in the same item, in the middle, it states there will be a committee composed of no less than three (3) of the elected members of the Town Council, and it should be changed from two (2) members of Town Council and one (1) member of the Planning & Zoning (P&Z). Ms. Brienza stated for the majority vote of Council it should state majority vote of the entire Council. Ms. Ryer stated item two (2) should have the same language regarding two (2) Council members and one (1) P&Z member. Ms. Botchie stated on page two (2), under item two (2), instead of saying "Town Council including the Mayor," she would suggest saying "Mayor and Town Council" because the Mayor doesn't have a separate vote. Ms. Brienza stated she thinks it should just be "three-fourths (3/4) of the Town Council" rather than saying "Mayor and." Ms. Botchie stated she sees Mr. Plocek took out the number of postings as five (5) places and brought it down to four (4), but five (5) seems "to be the magic number." Ms. Brienza asked if the Town has five places to post. Mr. Amerling stated only going

to the Giant Food store or post office, that's it. Ms. Botchie stated she would like to leave it at five (5). Ms. Ryer asked if the one (1) week before posting for a public hearing needs to be changed to fifteen (15) days. Ms. Botchie stated yes. Ms. Botchie stated property owners should be changed to residents because property owners could be people who this is their second residence, but residents means people who live here year-round. Ms. Ryer asked about the three (3) residents and two (2) non-residents of Town appointed to a commission by a judge if the owner is dissatisfied with Council's decision. Ms. Botchie stated she will have to look more into this language.

Mr. Plocek stated section thirty-three (33) is originally entitled Curbing and Paving but Mr. Plocek added sidewalks and paths to the title because the Town has paved paths along the outside of subdivisions, which aren't really sidewalks, so he felt they should be added. Ms. Ryer asked if sidewalks and paths by the road are handled by DelDOT so you can't alter or change anything without DelDOT's approval. Ms. Ryer stated if the sidewalks or paths need to be repaired, the Town needs to repair them and DelDOT directs how the Town repairs them. Ms. Botchie stated this is something the Town has usually never had to dabble with. Mr. Plocek stated this could also refer to more interior paths as well. Ms. Brienza asked if the Town is responsible for maintenance. Ms. Botchie stated the property owners are; specifically, whichever portion of path or sidewalk is in front of a property owner's property, they are responsible for that portion's maintenance. Ms. Botchie stated the Town tried to get the transportation enhancement grant from DelDOT about maybe ten (10) years ago and the first street was Cedar Drive, which is mostly residential, and DelDOT was going to pay eighty percent (80%), but if one (1) homeowner says, "I don't want a sidewalk in front of my house because I don't want to take care of it," it squashes the whole project and that's what happened. Ms. Botchie stated the Town wanted sidewalks along Cedar, Atlantic Avenue and Windmill Drive, but one (1) person can end it. Mr. Plocek asked if the "Town Manager or designee" should also be changed here to "Town Manager and Finance Director." Ms. Botchie stated yes, and she will review the items and replace the language where necessary. Mr. Amerling stated he likes Mr. Plocek put in "may" instead of "shall" at the end of item A because the Town may not know someone's circumstance for missing paying the bill and having "shall" is a forced action whereas "may" gives leeway if the circumstance demands it. Mr. Amerling stated he does question taking out the word "delinquent" because collecting the fees after they are due should be handled the same way as when taxes are delinquent. Mr. Plocek stated he will put "delinquent" back in. Mr. Plocek stated with regards to section thirty-four (34), Collection of Charges Due the Town, Mr. Plocek added "rentals of Town facilities," in the charges due sentence because the Town will have the park community center building to rent out and he worded it this general way because he wasn't sure which terms the Town had for any kind of Town facilities. Mr. Plocek stated the other change would be at the bottom of the section, with "Town Manager and Finance Director."

Ms. Brienza stated she was charged with sections fifteen (15), Duties of the Mayor; sixteen (16), Secretary; seventeen (17), Treasurer; eighteen (18), Compensation; and nineteen (19), Town Manager. Ms. Brienza stated she updated the language a bit and put in the Mayor should shall appoint all committees "with advice and consent of Council." Ms. Ryer asked if "consent of Council" meant by majority vote. Ms. Brienza stated yes. Ms. Brienza stated she removed the language about the Mayor receiving complaints as that would go to Town management. Ms. Brienza stated the Mayor shall be empowered to act on behalf of the Town, without prior Council approval only in the event of a sudden emergency. Ms. Brienza stated she removed

item B because she's not sure the Town needs an Alderman, but she has an email into Mr. Thompson inquiring about this item. Ms. Brienza stated with item C, which is if someone is going to be removed from a committee, the person being removed can request a public hearing by submitting a request. Mr. Plocek stated he would recommend the word "fair" from before "public hearing" because all public meetings should be fair. Ms. Brienza stated she will remove "fair." Ms. Brienza stated she also removed the certified mail with receipt within ten (10) days provision. Ms. Ryer asked when it says to submit a request in writing to the Town Manager, shouldn't there be a time limit because the Town needs fifteen (15) days to post the public hearing notice in advance. Ms. Brienza stated it would be notified within ten (10) days after notice of dismissal is given to committee person. Ms. Brienza stated she thinks the Mayor should appoint other committees by resolution approved by Council. Ms. Brienza stated she also added, "All resolutions shall contain the specific purpose of the Committee and the length of time such Committee may be needed; and such Committees will be advisory in nature with no powers to enact regulations or allocate funds."

Ms. Brienza stated with section sixteen (16), Secretary, items A, B, C, and D were taken out and replaced with three (3) new items, such as the one-year term limit, being responsible for recording and providing minutes for executive session meetings, and signing all resolutions and ordinances adopted by Council. Ms. Brienza stated for section seventeen (17), Treasurer, items A through E are more the Town Finance Director's responsibility so she took those out and added the Treasurer will "be responsible for reviewing all vouchers/bills scheduled for payment and shall be the second signatory on all checks"; will meet with the Finance Director and/or Town Manager to discuss/review the fiscal year budget prior to it being submitted to Council for action; and review the budget with the Finance Director and/or Town Manager periodically during the year and to discuss financial issues which may arise during the year. Ms. Brienza stated they could add "Mayor and Town Council" to be consistent with other sections. Ms. Brienza stated regarding section eighteen (18), Compensation, she took out staff because they're covered by the personnel manual, and added Council members may be reimbursed for any funds expended in the operation of their duties, i.e., mileage for continuing education, off-site meetings, etc. Mr. Roe stated this section reads Council members but board and commission members should be included. Ms. Botchie stated she agrees and thinks those board and commission members should be compensated as well. Ms. Ryer asked for Ms. Botchie's recommendation. Ms. Botchie stated they should get twenty-five dollars (\$25.00) per meeting, just like Council, and it should go to the Board of Adjustment (BOA) members as well. Ms. Botchie stated this charter change gives the Town the power to change the reimbursement, but an ordinance will have to be approved to fully make the change in the Code. Mr. Plocek stated he would not put in a specific amount here. Ms. Brienza stated the amount would be put in by resolution.

Ms. Brienza stated in regards to section nineteen (19), Town Manager, she believes if there are a few people on Council who decide they want to get rid of the Town Manager, the Council vote should have to be two-thirds (2/3) the vote of the entire Council, not just who is present that night, and not just a simple majority. Ms. Ryer stated she agrees. Ms. Brienza stated she added language the Council may suspend the Town Manager from duty but shall "in any case cause to be paid any unpaid balance of his or her salary for the next three (3) calendar months following the adoption of the preliminary resolution." Ms. Brienza stated she believes if Council is going to get rid of an administrator, the administrator should be paid for at least three (3) months. Ms. Botchie asked if it was different than her contract. Ms. Brienza stated she thinks it is different

which is why she included it here and it will have to be changed in the manager's contract. Ms. Ryer stated she thinks the language should be clarified to say the manager is dismissed with cause because if it is with cause, Ms. Ryer would vote for no compensation. Ms. Botchie stated if/when the next Town Manager comes in, they may negotiate something different with Council, so it should say "as negotiated in the Town Manager's contract." Ms. Brienza agreed. Ms. Brienza stated in item D, with the disability of a Town Manager, she added Council may designate a qualified person who may be an elected or appointed Town official to perform the duties of Town Manager during an absence or disability "in a temporary capacity not to exceed ninety (90) days from the date of his or her appointment." Ms. Brienza stated she took out item I because the Town Manager is always at meetings, and took out item K because it was the same as item G.

Ms. Ryer stated she has section eleven (11), Rules and Minutes of Council, and added a first paragraph stating Town Council, commissions and boards shall generally follow either Robert's Rules of Order or The Standard Code of Parliamentary Procedure, and the Town Solicitor shall serve as Parliamentarian. Ms. Ryer stated she will have to check with Mr. Thompson with relation to the Council policies and procedures manual and including it by reference, because if it changes by resolution, it'll automatically be covered in the Charter. Ms. Brienza stated she has an issue with the part stating, "Council shall determine the agenda, prepare agenda items and submit to the Town Manager in a timely fashion" because what goes on the agenda is really an administrative duty. Mr. Amerling stated Council can request something to be put on a meeting agenda, but the wording in the sentence sounds like it's saying only Council can come up with the agenda items. Ms. Ryer stated she can change that language. Ms. Botchie stated she will come up with the proper language as it shows in the Council policies and procedures manual. Ms. Botchie stated the commissions and boards should also adhere to the Council policies and procedures manual. Ms. Ryer agreed. Mr. Amerling stated he has issue with the very first sentence of Council shall generally follow Robert's Rules. Ms. Botchie stated the Town can follow them but it has not adopted those rules and the Town Solicitor advised against using those rules because you're held to that standard every time. Mr. Amerling stated the word "shall" means you have to do so and he's concerned someone reading this section will hold the Town to it. Ms. Ryer stated she will change "shall" to "may." Mr. Plocek stated he would like to see the title of the section amended to include Commissions and Boards. Ms. Brienza stated the last line of the paragraph stating minutes of all meetings shall be reviewed and approved at the next scheduled meeting, Ms. Brienza would like to add on "or as soon thereafter" in case something comes up and the minutes can't be reviewed or approved at the next meeting. Ms. Ryer stated she made sure to add on "and resolution" behind every ordinance mention. Ms. Botchie stated the last paragraph has mention of votes on any ordinance or resolution may be by voice or written vote and asked if Council takes a written vote. Ms. Ryer stated she included it to cover all possibilities. Mr. Amerling stated with regards to the written vote, you have to think of the "other side of that coin" in that a Council member can see this and argue they can vote via a written vote because it's what is said in the Charter. Ms. Brienza stated she would like to add language mentioning who votes for something and who votes against. Ms. Botchie stated she's talked to Mr. Thompson who thinks Mr. Amerling should call out whether a vote is carried or denied, and that way, Mr. Amerling will know who approves and who denies an item. Ms. Brienza stated she likes Mr. Amerling's comment about the written vote and the Committee agreed to take out the written votes part. Mr. Amerling stated the new language would say, "Votes may be by voice and the vote of each Council member shall be entered on the record."

Ms. Brienza asked if the sections the Committee has done should be sent to Mr. Thompson. Ms. Botchie stated the Committee members can send them to Ms. Botchie and she'll pass them along to Mr. Thompson.

5. **CITIZENS PRIVILEGE**

There were no comments.

6. **ANNOUNCEMENT OF NEXT MEETING – NOVEMBER 5, 2020 AT 10 A.M.**

7. **ADJOURNMENT**

Ms. Brienza motioned to adjourn the meeting at 11:32 a.m. Mr. Plocek seconded the motion. Motion carried 5-0.

Respectfully submitted and transcribed
by Matt Amerling, Town Clerk