

## Ad Hoc Voting Committee Minutes – Dec 12, 2020

### **Patrick Kinney carried out Roll Call**

6/7 Committee Members Present; Nancy Fertig – (joined 8:48AM)

### **Opening Remarks**

Patrick noted process and rationale for requesting questions from the community in writing so that we can review, analyze, and discuss among committee members. This is the first meeting and opportunity for discussion since our last meeting since Nov 14<sup>th</sup>. At the next meeting, we envision to open the discussion to public comment.

We moved to edit the minutes, and a request to obtain data from the 2018 election was made.

### **Comment to Minutes**

Peter Hart reminded everyone, in a response to a question raised at our last meeting, that the vote in 2018 was impacted by harvesting of proxies as it was a close vote and led to counsel review of bylaws and practices. This comment has been added to the minutes of meeting on Nov 14<sup>th</sup> 2020.

### **Corrections to Minutes**

- “Weekapaug – each property gets one vote, with multiple properties, multiple votes
- Watch Hill: each property gets one vote, however multiple properties do Not get multiple votes.”

Rephrase as “Issue 4 - Proxy Issue - As it stands, three is the max number of proxies an individual can bring to the meeting. Is this too many?”

Motion for minutes to be approved subject to these changes– approved, seconded and unimously agreed by committee

### **Patrick discussed a Presentation of the Agenda and turned floor to Paul Eldridge to review presentation on federal, state and local law**

Discussion of RI Requirements to vote on election

- US citizen that is 18, RI resident, and registered to vote
- 13 types of objective evidence to establish you are a resident – address, car reg, tax returns, etc
- Residency means domicile and you only get one
- States and local authorities can exclude non-residents but not in RI except dictated by fire, water or sewer districts.
- **Why would Shelter Harbor give multiple properties more than one vote, than the Rhode Island law?**
- If I have several houses in Rhode Island, I can't vote on behalf of multiple houses.
- Examples given of Hamptons and NYC, and Dartmouth students in Hanover and at home.
- 10 other states allow non-residents to vote.
- CT, if you pay more than 1k, you have a vote, and Colorado which has a home rule charter.
- Mountain Village – right to vote was limited to natural persons who had over 50% ownership, and were over 18 and had owned for over 180 days. One vote per person, regardless of owning more than one parcel. Residents then filed a breach of equal protection, and said the new law was franchise expanding. Court filed there was no breach.
- **Does allowing multiple votes to multiple properties violate equal protection?**
- Supreme court says voting is a fundamental right that is preservative of other rights.
- Reynolds vs. Sims – one property, one vote
- Alabama – every ten years, you have to draw your districts according to population. They had used the 1903 census and population density in Alabama had moved around. Legislators represent people not trees not acres.
- Subsequent cases have applied equally weighted votes in govt elections.
- Kramer – when local government decides to elect person for government function, each voter must be entitled to an equally weighted vote.

- Salyer – one acre, one vote was applied.
- Ball Case – one acre, one vote system in water reclamation district was applied. District was a big business operation, but supreme court said the district was a business enterprise, benefiting a specific group. Narrow and special sort of enterprise.
- **So, which of these lines of voting applies?**
- We resemble more the Avery than the Salyer and Ball case. This means Kramer and Reynolds apply, and each voter is entitled to an equal vote.
- Bush V Gore was discussed.
- Expanding the SHFD to include multiple votes for multiple properties may violate Kramer and Simms.
- Richard Briffault – original conception, each person gets an equal vote. Potency is not dependent on value of property or number of properties.

Patrick noted this is research and not opinion of the committee.

Deming made comments:

- Appreciate Paul's research and did some more research
- Reynolds v Simms – not applicable here
- Referenced water district cases - Voting was based on assessed value of property – court said in these limited district cases that Reynolds v Simms didn't apply.
- SHFD – we were incorporated to provide fire services. We don't provide regulation, education, water. Any other things that are provided by a municipal entity. We come closer to the water cases than the equal protection cases.

Tom suggested we focus on:

- Who gets to vote, & how many times?
- Can we have proxies, and if so how many
- Absentee ballots?
- If we allow proxies, how many?

Livia proposed absentee ballots and electronic voting going forward as a way to heighten efficiency and reduce potential for human error. Now that we have the technology, we should use it going forward.

Proxy – how many? To be determined

Peter thanked to Paul for his presentation and proposes we put forth options:

Option 1:

Option 2:

Option 3:

Further Discussion:

What are we voting for? Voting for a Board that represents the community that makes financial and other important decisions.

If we change to one person, one vote, do we go to state of RI? No, as explained by Deming:

If we amend charter, we do have to go to state of RI. Our charter doesn't reference multiple ownership of properties, it's silent on the matter – this can be addressed in the by laws.

Analysis of 7 fire districts – findings: all fire districts tie voting to property ownership in one form or another. Weekapaug – every owner is entitled to one vote per property, and if multiple owners, one vote per property. In WH, owner of multiple properties, only gets one vote. Another mentioned, everyone who

is permanent resident gets a vote. Proxy voting is approved in 3 out of 7 voting districts, and absentee voting in 1 fire district. Ours allows for more (3) proxy votes per person.

If we change by laws, process is that voters approve those. No need to go to General Assembly.

If we move to electronic and absentee voting, would you need to have proxy? We would for motions that change during live discussion on the floor but not for board elections.

Nancy Fertig:

Do we envision zoom casting the annual meeting going forward? If voting absentee, we would need to zoomcast.

This will depend on the executive orders from the Governor. Currently, we are able to zoomcast by exception. Some feel going forward, if allowed, now that we have the technology, we should always zoomcast and allow electronic and absentee voting on elections. Proxy may be required for matters outside of election of board, as they sometimes change in real time.

Joe Rucci to report on why proxy was envisioned originally at our next meeting as he was not present to discuss.

Livia Carega & Peter Hark – support the notion that going forward we have meetings that are both in person and electronic. Go back to in person meeting with supplemental order to have electronic component.

Patrick – have to work with what the government says – Tom, Peter, Joe will have to review the law following COVID.

Deming – It's conceivable that open meetings law be amended to allow for hybrid meetings

If the government goes down the path of amending open meetings law, we would be open to a hybrid model allowing both in person and electronic.

Nancy – 1) are we discussing the need to decide voting this year and 2) clarification, all other fire districts were tied to ownership of property. It seems 40% implied spousal ownership was on people's minds. Two residents – two property tax payers – would that household have two votes?

Tom clarified that voting this year will be under the existing bylaws, and we are currently discussing 2021 application unless we call a special meeting in May.

The topic of multiple properties, multiple votes, can be addressed without changing charter, just changing by laws.

Suggestion is that Committee writes up proposal options, circulates to committee and we discuss at next meeting.

Conclusion: Everyone writes up their thoughts / proposal and circulates to Co Chairs for circulation to committee and community

### **Paul Reviewed Questions from the Community (See Appendix 1).**

There was a point made in our Nov 14<sup>th</sup> meeting that limiting voting to one vote regardless of number of properties implies make whole to the person who no longer has multiple votes. Our charter is silent on the topic, and this thought was dispelled.

Comments via the Zoom chat are public comment and so will not be recorded in the Minutes, but Tom will share with the committee.

Meeting to be schedule for early January.

Motion to dismiss and seconded.

## **Appendix 1 - Questions from the Community**

1) From Gail Mallard:

Hello Patrick and Paul,

Thank you for setting up this mechanism for community feedback to the Ad Hoc voting committee.

I hope that in one of your upcoming meetings you can focus on and, hopefully, resolve the interpretation of the meaning of “Qualified Voters” in Article 2 of the Bylaws and Section 2 of the Act of Incorporation. This very long and complicated sentence is substantially identical in the two documents. It lays out three pathways to “have a right to vote at any District meeting”. First, a person can have greater than 40% interest in real property in the District. Second, a person can be an authorized representative of an entity that has greater than 40% interest in real property in the District. Third, a person can be a qualified voter in the Town of Westerly and reside in the District. Any one of these characteristics conveys the right to vote at District meetings.

However, being a qualified voter is not the same as having a vote for each characteristic that qualifies one to vote. For example, I have a greater than 40% interest in a piece of property in SHFD and I am a registered voter in the Town of Westerly. Thus, I have two of the required qualifications to vote at SHFD meetings. However, I do not get nor would I expect to get two votes at these meetings. In fact, the simple ending to the sentence is, “shall have the right to vote at any District meeting.” Note that it does not say shall have the right to cast votes (plural) at meetings.

It is unclear when and why SHFD began the practice of giving one vote per property. However, neither the Act of Incorporation nor the Bylaws requires this practice. Thus, it seems that the community could change this practice without changing either the of these legal documents. Every time the topic of multiple votes comes up, there is always a discussion of the difficulties and perils of asking the RI General Assembly for a modification to the Act of Incorporation. If your committee can agree that our current practice is, in fact, not required by the Act of Incorporation, then the discussions of voting procedures can be streamlined. I have heard that taking away multiple votes is in some way taking away property rights granted to owners of multiple properties. However, there is no written documentation giving those rights in the first place.

The practice of allowing proxy voting is easy to change. It may have been appropriate at some point in the past; however, we have all learned in the last year that absentee voting is easy and efficient for those who are unable to vote in person.

Thank you for your consideration of these thoughts.

Regards, Gail Mallard

2) From Jim Stifl:

Jim Stifl sent in the following question.: “ If one family member owns a parcel of land and house and the other owns adjacent parcel of land with dock are they entitled to one vote or two votes”

3) From Sarah and Don Connor:

Regarding the meeting Agenda Section III, item d. Committee Discussion of SHFD Community Written Questions:

In anticipation of the committee meeting scheduled for tomorrow morning, I would like to submit the following questions for your consideration. My understanding is that this is the best way to communicate with the committee members, according to an email with the agenda that was sent out to the community this week.

Here are areas that are of particular interest to us: I realize that some of these questions will have already been covered during the committee meeting as the agenda indicates that SHFD Community Written Questions will be considered only at the end of tomorrow's meeting.

1. What is the current definition of an "eligible voter"? Was this addressed in the most recent bylaws (or charter change?) in 1993?
2. What are the state / federal definitions of voting rights that constrain what SHFD can decide regarding voting rights?
3. Concern about state involvement was expressed at the last meeting. Why?
4. How do other fire districts within the town of Westerly define voting rights?
5. Should proxy voting be allowed at all, regardless of how voting rights are defined? Electronic voting was used at the annual meeting in August, 2020 so couldn't people cast their votes directly in that manner?

(Needless to say this would require a lot of voter education but would allow people to participate who cannot be physically present at the annual meeting. This will no doubt be an issue at the next annual meeting which will most likely need to be virtual once again.)

6. Or does "proxy" indicate votes conferred by ownership of multiple properties? for example, if I own 8 properties, I would have (minimally) 7 proxy votes in addition to my own?
7. If votes are allotted according to property ownership, how is a property right defined if there are multiple owners, one person in a couple, a trust?  
Related question is how is a property defined? For instance, a buildable lot, some minimum number of square feet if not buildable?
8. As this is an appointed committee studying an issue which may affect voting rights, how many of the members are multiple property owners? How many are not?
9. Won't assigning voting rights to property always confer a skewed advantage to multiple property owners when voting on issues that affect the entire Shelter Harbor community?

Thank you for your work on this important issue.  
Sara and Dan Connor  
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