

Town of Montville Town Council
Special Meeting Minutes for January 15, 2009
6:00 p.m. – Town Council Chambers
Town Hall

1. Call to Order – Chairperson Buebendorf called the meeting to order at 6:00 p.m.
2. Pledge of Allegiance
3. Roll Call – Present were Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Also present were Mayor Jaskiewicz and Town Attorney Lisa Gladke. Absent was Councilor Jones.
4. Remarks from the Public

Lt. Bunnell, Montville Police Department, addressed the Council and stated that the Charter Revision Commission's (CRC) proposed changes to the Town Charter should be sent to Referendum for the public to vote on, and that the questions be separate on the ballot. Further, he believes that this Referendum should be held during the regular election in November in order to achieve the best public turnout possible. Lt. Bunnell stated that he is in favor of the Police and Fire Commissions.

Mr. Paul Lewis, 57 Old Colchester Road Ext., addressed the Council and stated that he is a member of the CRC. Mr. Lewis urged the Council to send this matter to referendum in order to allow the public to vote on it; and he also stated that he would like to see only two questions on the ballot in order to eliminate confusion.

Mr. Chuck Longton, addressed and Council and stated that he is strongly opposed to the recommendation of the CRC to move to a Town Manager form of Government, and he feels that having a Mayor to represent the people is the right choice for the Town. Mr. Longton distributed a hard copy of his viewpoint to the Council members.

Mr. Dick Wilson, addressed the Council and stated that regarding Councilor Beetham's earlier requests that the Town Budget be put forth to the people to vote on, Mr. Wilson reported that the people of Montville had a say at the public meetings that the CRC held, and there was no request by the people to change this section in the Town Charter. Further, Mr. Wilson stated that he is in favor of sending this matter to the public as a Referendum in order to allow the people to make the final decision on the Charter changes and the CRC's recommendations.

Mr. Greg Majewski, 1176 Rte. 163, addressed the Council and stated that he is in favor of sending this matter to Referendum in order to allow the people to vote on the Town Charter changes. His recommendation is that there be three separate questions on the ballot, and that the matter be presented to the public as part of the regular November election in order to achieve the best turnout.

Mr. Dave Rowley, 93 Driscoll Drive, addressed the Council and stated that he is in support of the CRC's recommendations, and would like to see this matter go to Referendum in order for the public to vote on it.

Ms. Shirley Morphis, 1673 Rte. 85, addressed the Council and stated that she is a member of the CRC and a resident of the Town of Montville and is in support of the changes to the Charter proposed by the CRC. She stated that in regards to the Fire and Police Commissions proposed, she stated that this would be a necessary change should the Town Manager form of Government be instituted.

Mr. James Toner, 10 Indian Hill Road, addressed the Council and stated that he is in support of this matter being sent to Referendum in order to allow the voters the opportunity to make the decision. Mr. Toner stated that he is in favor of moving to a Town Manager form of Government, as well as instituting both Fire and Police Commissions.

Ms. Ellen Hillman, 229 Rte. 163, addressed the Council and stated that she is in support of sending this matter to Referendum as part of the regular elections in November in order to give the people the opportunity to vote and make the final decision.

Ms. Donna Jacobson, 467 Kitemaug Road, addressed the Council and stated that she is a member of the CRC, and had joined the Commission after the process had begun. Ms. Jacobson stated that because of growth and changes in Montville, the change to Fire and Police Commissions is necessary in order to keep up and provide sufficient services amidst this growth and the changes. She summarized an incident which occurred on her street in November of 2008 in order to justify her position on this matter. Ms. Jacobson stated that she is in favor of moving to a Town Manager form of government, and that all of these issues should be put forth as one package a presented to the public to vote on.

Mr. Dana McFee, Montville Road, addressed the Council and stated that although he was not in favor of all of the CRC's recommended changes, that he urges the Council to move this matter to Referendum in order to let the voters of Montville make the final decision. His suggestion is that the proposed changes be put forth as individual line items on the ballot.

5. Appointments

Chairperson Buebendorf apologized for not re-appointing the following two gentlemen at the January 12, 2009, regular meeting.

A. Motion by Councilor Geary, Second by Councilor Caron to re-appoint Mr. James Toner to the Planning and Zoning Commission, with a term to expire on November 12, 2012. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Motion Carries 6-0.**

B. Motion by Councilor Geary, Second by Councilor Beetham to re-appoint Mr. John Desjardins as an alternate to the Planning and Zoning Commission, with a term to expire on August 11, 2012. **Discussion:** Mayor Jaskiewicz inquired if Mr. Desjardins should be appointed as a permanent member and not an alternate. It was agreed that he should be re-appointed as a permanent member. **Motion** by Councilor Caron, Second by Councilor Beetham to amend the Motion to re-appoint Mr. Desjardins as a permanent, full voting member of the Planning and Zoning Commission. **Voice Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Motion Carried 6-0.** Chairperson Buebendorf then called for a Roll Call Vote on the Motion as amended. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Motion Carries 6-0.**

6. Old Business

A. Motion by Councilor Geary, Second by Councilor Buebendorf to award the engineering services bid to Nathan Jacobson & Associates, Inc.; and further, to authorize the Mayor to execute an agreement for same. **Discussion:** Councilor Radgowski stated that he was under the impression that the Council was to interview the three firms chosen by the committee prior to one firm being awarded the contract. Councilor Beetham stated that he thought that the Council was going to be informed of the term of such contract, and Mayor Jaskiewicz advised him that he was prepared with that information, as agreed upon at the January 12th regular meeting. Councilor Beetham inquired as to the members of the Committee who performed the interviews, and Mayor Jaskiewicz responded that the Committee consisted of Mr. Donald Bourdeau, Ms. Marcia Vlaun, and an Engineer from the Town of East Lyme. Councilor Beetham stated that he did not agree with Mr. Bourdeau and Ms. Vlaun having the final say in who is appointed, and he considers their participation a conflict of interest. Mayor Jaskiewicz stated that the Council had previously agreed to this process, and again reviewed the process as agreed upon by the Council at a previous regular Town Council meeting. **Roll Call Vote:** In Favor; None. Opposed; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. **Resolution Fails 0-6.**

7. New Business

A. Resolution #2009-010. The Town of Montville Hereby Resolves to approve the draft Charter and proposed Charter amendments, as submitted in the final report by the Charter Revision Commission (CRC) on January 6, 2009. **Motion** by Councilor Murphy, Second by Councilor Caron. **Discussion:** Chairperson Buebendorf suggested that the Council review each section individually. Councilor Murphy asked the Town Attorney if she had had the opportunity to thoroughly review the CRC's final report, and Attorney Gladke confirmed that she had reviewed the most recent report in full. Mayor Jaskiewicz stated that the copy of the report that was distributed to the Council was a clean copy of the Charter, incorporating the CRC's suggested revisions. Chairperson Buebendorf requested that Attorney Gladke go through each section in order so that the Council was clear on the proposed changes and would have the opportunity to discuss each. She asked if each Council member had their copy of the CRC's memorandum, and all Council members confirmed that they did have their copy. Attorney Gladke stated that this report was given to the Council for review as a black-lined copy; and reiterated that by Statute, the Council could either accept all the changes, reject all the changes, or reject some of the changes. She noted that the Resolution currently provides for the approval of all of the changes, so if the Council agrees to change any of the Sections, an amendment to the Resolution would need to be made. Councilor Beetham inquired if the Council could add an item, and Attorney Gladke stated that an item could not be added, and that the Council could only reject or accept the changes put forth. Attorney Gladke stated that she has both the Council's memo to the CRC dated December 16, 2008, as well as the CRC's response back to the Council dated January 6, 2009. Attorney Gladke proceeded to review each Section of the CRC's recommendations.

Sections 312B and 314 – The Council's comment back was to modify the new language to allow ordinances and resolutions to be added to regular and special meeting agendas as permitted by the Freedom of Information Act. The change that was made by the CRC allows items to be added the day of the meeting of regular meetings. With special meetings, you cannot add items the day of the meeting; you have to have that at least 24 hours prior to the meeting. Attorney Gladke advised that the way this is drafted, the 3-day rule would apply to special meetings. **Motion** by Councilor Beetham, Second by Councilor Murphy to reject Section 314. **Discussion:** Councilor Beetham stated that 3 business days to submit resolutions for a special meeting is unreasonable, and the 24 hour rule has worked for the Town in the past and this should be left as is. Chairperson Buebendorf stated that she is in agreement with Councilor Beetham's reasoning that 3 business days to submit a resolution may not be in the best interest of the Council as some emergency matters occur and it would be her recommendation to stick with the 24 hour rule. Attorney Gladke explained that the Council could simply reject the statement, "up to three business days before a regular or special meeting of the Town Council, or may be added to the agenda of regular meetings by a two-thirds majority vote." Chairperson Buebendorf stated that the Motion on the floor was to reject Section 314 in its entirety, and the Council agreed to amend the Motion on the floor to only delete the sentence as discussed and not reject the entire Section 314. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Motion Carries 6-0 to amend Section 314 as discussed.** Section 312B will

stay as was revised by the CRC; Section 314 will be amended to reject the wording in the sentence as discussed.

Section 401 – The CRC had accepted the Council’s changes, but they changed the last sentence to provide that “All legal opinions shall be filed with the Town Clerk together with the written request for the legal opinion, except those pertaining to records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship.” Attorney Gladke stated that under the Freedom of Information Act there is an exemption for any items that are communications that are privileged by the attorney/client relationship. She explained that any legal opinion that the Town Attorney would give the Council could be an item privileged by the attorney/client relationship, and stated that the Council has in their procedures Rule 14, what happens with legal opinions. That provision currently provides that the Town Attorney file copies of all written opinions requested by any board, commission or department with the Mayor and the Chairman of the Town Council unless previously agreed upon by the inquiring board, commission or department and the Town Council that copies will not be filed. She explained that what this does is it changes the requirement that certain opinions, those that may have a broader effect, would be filed with the Town Clerk. The concern the Attorney had with this language is that the Council does not want to open the door to say that everything be filed with the Town Clerk, and that almost any legal opinion could be privileged by the attorney-client privilege. This could be very confusing, and the Council would not want a situation where someone could claim that something has to be filed with the Town Clerk but no one ever intended it to be filed with the Town Clerk, so she suggested that the Council consider the implications of this. Attorney Gladke explained that if a document is stamped or marked “attorney/client privilege”, this can always be waived if agreed to by the client, in this case an employee of the Town. There was no further discussion on this matter.

Sections 405, 405A, 405B and 408 – The Commission’s response was, “At the request of Chairman Buebendorf, the Commission recommended in the draft report these sections concerning the establishment of Board of Fire Commissioners and Board of Police Commissioners be placed on the ballot as a separate question. We do not understand why the Council now wants to deny the people the right to vote on this important issue. The personal opinion of each Councilor should never trump the people’s right to vote. The Commission strongly urges Council not to delete these sections and allow the people to decide their own future.” Mayor Jaskiewicz stated that by statute, the main intent of a Police Commission is to run a Police Department. Councilor Caron requested that Mr. Wilson approach and explain the CRC’s objective in adding these sections, and to explain what the benefit to the Town will be should these Commissions be instituted. Mr. Wilson addressed the Council and explained that the institution of these Commissions will prepare the Town for future growth should a Police Department and Fire Department be created. He noted that Colchester, as an example, has Police Commission but does not have a Police Department, so there is precedence for this.

Sections 409, 410, 411, 412, 413, 414, 415 and 415A - The Council’s comments were to delete the new language as to any commission, board or authority already existing by ordinance; or in the case of the housing authority by resolution or the health district by contract. Attorney Gladke stated that the Commission responded in each section why they thought such provisions should be in the Charter. Councilor Geary asked for the CRC’s explanation of why they felt that adding these sections would make the Charter more user-friendly. Mr. Wilson stated that the CRC felt that since these boards and commissions currently exist by ordinance, but have never made any changes to such, it makes sense to add them to the Charter as a permanent record of the Town. He also stated that trying to find each ordinance is a difficult task, and it would be easier for the public to reference the Charter as opposed to having to search for each individual ordinance. Chairperson Buebendorf requested that Mr. Wilson give more explanation regarding Section 410, and why the CRC is proposing language that would allow for the Economic Development Commission (EDC) to hire an outside consultant to assist. She explained that the actual language in the Charter revision states that the EDC “shall” hire a consultant. Chairperson Buebendorf asked Attorney Gladke if the word “shall” means that the EDC is compelled to hire a consultant versus being allowed to hire one, and Attorney Gladke confirmed that Chairperson Buebendorf is correct, and this could cause future conflict as far as budgeting for such a consultant. Mr. Wilson argued that whether or not the term “shall” or “allow” is used, it will still be up to the Council to approve such an expense in the EDC’s budget. Councilor Geary suggested that a better approach might be to create a directory in which the public could easily find the information they are looking for in regards to each ordinance. He explained that by putting such provisions in the Charter would require a Charter revision in the future; whereas amendments to the individual ordinances would allow the Council more flexibility should changes be necessary in the future. **Motion** by Councilor Geary, Second by Councilor Beetham to delete Sections 409, 410, 411, 412, 413, 414, 415 and 415A be rejected. **Roll Call Vote:** In Favor; Councilors Beetham, Caron, Geary and Radgowski. Opposed; Councilors Buebendorf and Murphy. **Motion Carries 4-2 to reject Sections 409, 410, 411, 412, 413, 414, 415 and 415A.**

Section 417 – Attorney Gladke provided brief clarification on the changes made by the CRC. There was no discussion on this matter by Council members.

Section 419 – Attorney Gladke explained that the original revision by the CRC provided that the Town Manager “shall” supervise the daily activities of all personnel of the board, commission or agency. The Council recommended that the word “may” replace the word “shall” in order to provide that there be written explanation as to why the Town Manager is being directed to supervisor the personnel of such board, commission or agency. This change was made by the CRC, and the word “may” has been put in, and the word “shall” has been removed. Councilor Geary stated that with the “may” being used, it implies that the

commission, board or agency has the authority to hire, fire, bring forth disciplinary action, etc. upon its paid employees; which would be hard to do if the members of the commission were not present on a daily basis to supervise such employees. The Mayor agreed that giving the authority to the commission, board or agency is not the right choice as the employees may then argue that they do not have to follow the direction of the Mayor or Town Manager unless directed to do so by the commission, board or agency. Councilor Murphy stated that the word "may" is sufficient as if there were a problem that needed to be addressed by the Town Manager, the commission, board or agency would simply direct the Town Manager to intervene.

Section 501 – Attorney Gladke explained that if the Town Manager was removed from the position, the Charter provision specifies that this person will receive one month salary no matter what is outlined in the employment contract. Councilor Beetham stated that he takes exception to the language that the Town Manager shall be the Chief Executive Officer of the Town. Attorney Gladke explained that Connecticut General Statute § 7-193 states that the Town must have a Chief Executive Officer, and in the case of the Town of Montville, that person would either be the Mayor or Town Manager, or someone appointed by the Mayor.

Section 604 – The Council had requested that the following sentence be removed, "The Tax Assessor shall abide by all decisions of the Board of Assessment Appeals until the next town-wide revaluation of properties, or until verifiable changes are made to properties that received a decision on their assessment by the Board of Assessment Appeals." The CRC's response was that they request the Council to act in the best interest of the tax payers by leaving this language in the section. Attorney Gladke reiterated the Council's explanation on this matter, stating that the Tax Assessor's duties are described by statute, and this provision would be in conflict with what the Tax Assessor is allowed to do under state statute. **Motion** by Councilor Geary, Second by Councilor Caron to delete the sentence, as outlined above, from this section. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary and Radgowski. Opposed; Councilor Murphy. **Motion Carried 5-1 to remove the sentence as discussed.**

Section 610 – The Council's comment to the CRC was to retain the original language in this section. The CRC's response is that the reasoning is that the Town could save money by hiring a full time engineer rather than hiring an engineering firm whose costs cannot be projected and would depend on the amount of time that the firm is retained, nor is an engineering firm directly responsible to anyone within the Town. The CRC strongly urges the Council not to delete this section. Mayor Jaskiewicz stated that the current language allows for the Town to either hire an engineering firm, or to hire an independent consultant. The Mayor explained that if this provision is put into the Charter, the Town is locked into this decision and loses the flexibility of choosing either option until another Charter revision. Councilor Geary stated that the land use departments made a strong argument for hiring a full-time engineer, and the Mayor stated that this would still be an option, but if it is put into the Charter the Town is stuck with the decision. Councilor Caron stated that if the Council has the ability to hire either an engineering firm or a consultant, what is the benefit of putting it into the Charter? Both Chairperson Buebendorf and Councilor Geary stated that by putting this provision into the Charter, it would become mandatory that a full-time engineer be hired. **Motion** by Councilor Murphy, Second by Councilor Caron to reject Section 610. **Roll Call Vote:** In Favor; Councilors Caron, Murphy and Radgowski. Opposed; Councilors Beetham, Buebendorf and Geary. **Motion Fails 3-3.** Section 610 stays in the revised Charter.

Section 1008 – After confirming with the Town Clerk, it was determined that the existing language was adequate in determining effective dates.

There being further discussion or amendments on Agenda Item 7A, Chairperson Buebendorf called for a Roll Call Vote on the Resolution as amended. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Resolution #2009-010 Adopted 6-0 as amended.**

B. To consider and act on a Resolution to approve the date of the regular or special election at which the proposed Charter amendments will be submitted to for a vote. Attorney Gladke stated that once the Council votes on this, as well as the next item, she will prepare all of the official documentation for the Council to approve at the next regular meeting. Councilor Beetham inquired if there were any time limits. Attorney Gladke responded that the next step would be that the Charter would have to be published within 30 days, so by February 15, 2009. Councilor Beetham inquired if the entire Charter would have to be published. Attorney Gladke responded that according to the Statute, either the entire Charter could be published, or simply just the amendments and have all of the documentation available for the public in the Town Clerk's office. Mayor Jaskiewicz inquired if a black lined copy could be published, and Attorney Gladke confirmed that yes, a black lined copy could be published. **Motion** by Councilor Murphy, Second by Councilor Geary to hold the vote at a regular election. **Roll Call Vote:** In Favor; Councilors Buebendorf, Geary and Murphy. Opposed; Councilor Beetham, Caron and Radgowski. **Motion Fails 3-3.** **Motion** by Councilor Beetham, Second by Councilor Caron to hold the vote at a special election. **Roll Call Vote:** In Favor; Councilors Beetham, Caron and Radgowski. Opposed; Councilors Buebendorf, Geary and Murphy. **Motion Fails 3-3.** **This matter will be tabled until the February 9th meeting.**

C. Resolution #2009-011. The Town of Montville Hereby Resolves to determine the number of ballot questions that will be submitted for a vote at a regular or special election. **Motion** by Councilor Geary, Second by Councilor Caron. **Discussion:** Councilor Caron stated that he would like to see two (2) questions on the ballot; one for the Town Manager, Fire Commission and the Police Commission, and the second for everything else. Councilor Beetham stated that he would like to see four (4) questions on the ballot; one for the Town Manager, one for the Fire Commission, one for the Police Commission, and the fourth for

everything else. The CRC explained that the Fire and Police Commissions would have to be on one question. Councilor Geary inquired as to the CRC's recommendation, and Chairperson Buebendorf stated that the CRC recommends two questions; one for the Town Manager and all other revisions, and the second for the Fire and Police Commissions. **Motion** by Councilor Geary to accept the CRC's recommendation to have two (2) ballot questions; one for the Town Manager and everything else, and the second for the Fire and Police Commissions. There was no Second to this Motion. **Motion** by Councilor Beetham, Second by Councilor Buebendorf to have three questions on the ballot; 1) Town Manager, 2) Police and Fire Commissions, and 3) remaining revisions. **Discussion:** Mayor Jaskiewicz reiterated what Attorney Gladke had stated that if there are three (3) questions on the ballot as proposed in the Motion, there is going to have to be very specific explanatory text to be included. Chairperson Buebendorf stated that she feels that is okay, and that the public should have all of the information put before them in order to make an informed decision. Councilor Caron again stated that he would like to see two (2) ballot questions; one for the Town Manager and Fire and Police Commissions, and the second for everything else. **Roll Call Vote:** In Favor; Councilors Beetham, Buebendorf, Geary, Murphy and Radgowski. Opposed; Councilor Caron. **Resolution #2009-011 Adopted 5-1 in favor of three (3) ballot questions.**

Attorney Gladke stated that now that the Council has accepted the CRC's report with amendments, their charge is terminated and they cannot meet independently going forward. Regarding the Town Manager question, the explanatory text will need to have a lot of information in it. She will draft the ballot question, but the explanatory text should come from the Council; her recommendation is that the Council meets with the CRC at a special meeting or workshop in order to discuss in full what information should be included.

8. Remarks from the Public – None.

9. Remarks from Councilors

Councilor Beetham thanked the CRC and the attorney for their hard work and dedication to this task. He stated that at the public meeting he attended, he wanted to see a provision in the Charter for the public to vote on the budget and the mill rate, and he is disappointed that this provision was not considered and added to the CRC's proposed revisions.

Councilor Radgowski stated that by listening to the public comments early in the meeting, he got the impression that they thought the Council would not want to send this matter to the public to vote on. He wanted to go on record as saying that the Council had no pre-determined opinion on this matter. Councilor Radgowski stated that he is in favor of putting this matter to referendum for the public to vote on and make the final decision.

Councilor Murphy thanked the CRC and the attorney for their hard work and a job well done, and he stated that he agreed with Councilor Radgowski's comments and that he also felt as though the public that spoke tonight felt as though the Council was against this matter going to the public to make the final decision. He reiterated that he is in favor of the public voting on this matter.

Councilor Caron thanked the CRC and the attorney for their hard work, and he stated that he is against the Fire and Police Commissions, and he is against moving to a Town Manager form of government. He feels as though the leader of the Town should be for the people and elected by the people.

Mayor Jaskiewicz thanked the CRC for their hard work, and stated that he recommends the black line copy be published.

Chairperson Buebendorf thanked the CRC for their hard work and diligence on this task.

10. Adjournment – **Motion** made by Councilor Caron, Second by Councilor Murphy, to adjourn the meeting. **Voice Vote:** In Favor; Councilors Beetham, Buebendorf, Caron, Geary, Murphy and Radgowski. Opposed; None. **Motion Carried 6-0. The meeting adjourned at 8:10 PM.**

Respectfully Submitted by:

Sandra Anderson CPS
Minutes Clerk
Montville Town Council