

**MINUTES: REGULAR MEETING OF THE KILLINGWORTH BOARD OF SELECTMEN
Monday, August 9, 2021, Parmelee Farm, following Town Meeting**

Members Present – C. Iino, L. Annino, E. Blewett

Visitors Present – R. Regolo, R. Rimmer, K. Zandi, A. Stirna, D. Venuti III, W. Shipman, and others

1. Iino called the meeting to order at 7:29 PM.
2. Public comment: none
3. Department/Board of Education reports: Building and Health Dept. reports were distributed. Zandi reported on the appointment of a new superintendent and on the success of RSD17 summer programs, supported by COVID funding.
4. Approval of minutes
Blewett moved to approve the minutes of the July 26, 2021 meeting as presented. Iino and Blewett voted aye; Annino, who had been absent from the meeting, abstained. Motion passed.
5. Refunds and abatements.
Annino moved approval of the following abatements; Blewett seconded. Motion passed unanimously.

	<u>Name</u>	<u>Address</u>	<u>Amount</u>	<u>Reason</u>
1.	Paul G. Ward	47 Keith Circle	\$41.87	Overpaid COC#10039M
2.	Douglas Garrett Jr.	55 Running Brook Drive	\$16.57	Overpaid COC#10043M
3.	David T. Lacoss	38 County Road	\$11.12	Overpaid COC#10050M
4.	Janice B. Bolduc	10151 N Lake Drive	\$17.66	Overpaid COC#10040M
5.	John B. Rochette	54 Running Brook Dr.	\$12.29	Overpaid COC#10065M
6.	Yvonne R. Furth	1213 School House Rd.	\$16.81	Overpaid COC#10082M
7.	Gary A. Cota	644 Route 81	\$124.52	Overpaid COC#10057M
8.	Barbara A. White	45 Iron Works Rd.	\$21.45	Overpaid COC#10103M

6. Appointments
Iino moved to appoint Bruce E. Dodson (D) to the Historic Review Committee, to fill the seat vacated by Rachel Schemmerling, expiring 12/31/2022. Annino seconded. Motion passed unanimously.

Iino moved to appoint Tom Hogarty (D) as liaison to the Regional Housing Plan Committee, to fill the seat vacated by Annie Stirna. Annino seconded. Motion passed unanimously.
7. A. Revision of Overexpenditures in FY 20/21 Operating Budget. After the selectmen, at their July 26 meeting, approved the list of overexpenditures exceeding \$20,000 in the FY20/21 operating budget, it was determined that the taxes due on the Beaver Dam Road property sold by the town could be accounted for without recording it as an overexpenditure. The list of overexpenditures can therefore be revised.

lino moved to fund, from the underexpended lines, overexpenditures in FY 2020-21 in excess of \$20,000 for the following line items:

Selectmen – Office Expense – Other	\$20,704 *
Selectmen – Office Expense - COVID Related	\$41,002
Town Counsel	\$32,199
Compactor Operations	\$51,729
Tax Refunds	\$29,875

Annino seconded the motion, which passed unanimously.

B. Charter Revision Commission. lino distributed a memo (attached) from the town attorney concerning the statutory requirements for the makeup of the commission. Currently, five of the seven members are town officials; state law says that no more than one-third of the members may be. The selectmen will consider the best way to remedy the situation.

8. A. CCAP Cycling Event.

lino moved approval of the request from the CT Cycling Advancement Program to hold a cycling event on certain town roads on October 2, 2021. Annino seconded. Motion passed unanimously.

B. Personnel Manual revisions. lino noted that the manual has not been revised in some time. It contains some provisions that are inconsistent with current practice, and some that should be reconsidered. She asked the selectmen to review the document and see if they have any changes to recommend.

C. Acting Building Official appointment.

lino moved that the Board appoint Gerald Russ as Acting Building Official, starting August 10, 2021. Annino seconded.

In response to a question from Annino, lino confirmed that this is a temporary appointment; the town continues to seek a permanent building official.

Motion passed unanimously.

lino moved that a citation for an Eagle Scout be added to the agenda. Blewett seconded. Motion passed unanimously.

lino moved that the Board of Selectmen congratulate Cameron Lee Beaudoin on attaining the rank of Eagle Scout with gratitude for his service to the town. Annino seconded. Motion passed unanimously.

9. First Selectwoman's comments. lino presented the question of whether mask mandate should be issued for the town. Masks are currently required of all visitors to Town Hall; a large business in town requested that a general mandate be issued. lino reported that no other towns in the area are currently contemplating a general mandate, and that she is not inclined to do so. Annino and Blewett concurred.

10. Selectmen's comments. Blewett asked for clarification on one of the FY22 truck purchases.

11. Adjournment. **Annino moved that the meeting be adjourned at 8:06 pm; Blewett seconded. Motion carried unanimously.**

Respectfully submitted,

Catherine Iino



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TO: Catherine Iino, First Selectwoman
Robert Rimmer, Killingworth Charter Revision Commission
FROM: David J. Tycz, Esq. and Jonathan Porzuc, Esq.
DATE: August 7, 2021
RE: **Charter Revision Commission Composition**

You have asked whether the current membership of the Killingworth Charter Revision Commission (the “Commission”) meets the requirements of the Connecticut Statutes regarding the composition of such commissions. Our research indicates that, at the date of this memo, the Commission is not in compliance with the statutory restriction regarding the number of public office holders who may serve on such a commission.

Connecticut General Statutes § 7-190 provides, in pertinent part, that charter revision commissions shall consist of “. . . not fewer than five nor more than fifteen electors, not more than one-third of whom may hold any other public office in the municipality and not more than a bare majority of whom shall be members of any one political party. . . .”

As we understand, several current members of the Commission hold other public office in the municipality, including members of the Board of Finance, Planning and Zoning Commission, Regional Board of Education, Conservation Commission, and the municipal Highway Foreman. With a seven-member commission as currently constituted, the maximum number of Commission members who may hold other public office within the municipality is two.

The critical inquiry into whether a person “hold[s] any other public office in the municipality” is guided by Connecticut case law. To qualify as public office, “two conditions must exist: (1) it must have its source in a sovereign authority speaking through the constitution or legislation; and (2) its incumbent, by virtue of his incumbency, must be invested with some portion of the sovereign power which he is to exercise for the benefit of the public.” Carleton v. Civ. Serv. Comm’n of City of Bridgeport, 10 Conn. App. 209 (1987). Courts have held that a “sovereign function” of the municipality is the exercise of legal authority delegated to the municipality by statute. *See, e.g., Murach v. Plan. & Zoning Comm’n of City of New London*, 196 Conn. 192 (1985).

Further, “[t]he failure of a position to be enumerated specifically in a city charter does not require the conclusion that such position is not a public office. All that is required is that the powers and duties of the position have their source in sovereign authority and that such position be invested with some portion of such sovereign power to be expended for the benefit of the public.” *Carleton v. Civ. Serv. Comm'n of City of Bridgeport*, 10 Conn. App. 209 (1987).

In sum, if a person elected to or appointed by the municipal government is able to exercise a power expressly granted to the municipality, that person will almost certainly be deemed to hold public office. For example, the Connecticut Supreme Court has held in several instances “that members of a local board of education are officers of the town they serve” because such members “are invested with the powers of their office by municipal action” and maintaining “the control of all the public schools within its limits” is a power specifically delegated to municipalities via General Statutes § 10-240. *See, e.g., Town of Cheshire v. McKenney*, 182 Conn. 253 (1980).

Members of the Planning and Zoning Commission hold public office because General Statutes § 8-1 *et seq.* empowers the municipality to create and enforce zoning regulations through such commissions. Members of the Conservation Commission hold public office because General Statutes § 7-131a empowers the municipality to create such a commission for the development, supervision and regulation of natural resources of the Town. The Board of Finance and Highway Foreman exercise powers granted to municipalities under General Statutes § 7-148. Case law dictates that even certain types of municipal employees, for example, police officers, regardless of rank (*Bartlett v. Rockville*, 150 Conn. 428 (1963)) and public school teachers (*Cheshire v. McKenney, supra*) are holders of public office.

Connecticut courts have also held that the following municipal positions constitute “public offices”: fire marshal (*Beccia v. Waterbury*, 192 Conn. 127 (1984)); appointed members of a municipal fire department (*McDonald v. New Haven*, 94 Conn. 403 (1920)); fire chief (*State ex rel. Gaski v. Basile*, 174 Conn. 36 (1977)); director of public works (*Burrell v. Bridgeport*, 96 Conn. 555 (1921)); and municipal board members in general (*Murach v. Plan. & Zoning Comm'n of City of New London*, 196 Conn. 192 (1985); and *State ex rel. Giusti v. Barbino*, 170 Conn. 113 (1976)). This list of municipal positions deemed to be public officials is not exhaustive, but is meant to highlight the broad variety of positions which may be deemed public offices.

Using the criteria set out above, as currently constituted, there can be no dispute that more than two of the members of the Commission hold other public office separate from their role on the Commission. Even if it is debatable whether a particular person holds other public office, we recommend a conservative approach because of the

important nature of Charter revisions and the fundamental impact it has on Town governance.

To bring the Commission in line with the statutory requirements, either a sufficient number of members holding other public office may resign from the Commission, or more electors who do not hold other public office may be appointed to the Commission to reach the proper threshold, or a combination of both approaches.

Charter § 5-4 sets forth procedures for filling a vacancy on the Commission , which includes: that a resigning member should submit their resignation to the Town Clerk in writing; that the vacancy must be filled within 45 days by the Board of Selectmen; that the replacement appointee should be a member of the same political party as the resigned member, if at all possible; that the Town Committee representing the party of the vacated appointed member shall have 30 days in which to propose an appointee to the Board of Selectmen; that there be compliance with minority representation rules¹; and a person appointed to fill the vacancy must be properly sworn into office.

¹ The statute that specifically addresses Charter Review Commissions, General Statute Section 7-190, provides that “not more than a bare majority of [the electors appointed to the Commission] shall be members of any one political party”.