

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**MERGER TASK FORCE  
ESSEX/ESSEX JUNCTION  
MEETING MINUTES  
June 7, 2006**

**MEMBERS PRESENT:** Hugh Sweeney, Hans Mertens, Linda Myers, John Lajza, Deb Billado, Irene Wrenner, Barbara Higgins, Rene Blanchard.

**STAFF PRESENT:** Charles Safford, Village Manager; Pat Scheidel, Town Manager; Todd Odit, Assistant Town Manager, Bill Ellis, Town Attorney.

**OTHERS PRESENT:** Chuck Lloyd.

**BUSINESS AGENDA**

**Public Input on Agenda Items**

There were no public inputs.

**Approve Minutes of May 24, 2006**

Ms. Wrenner requested a revision be made to line 601 of the May 17, 2006 minutes to change Mr. Lajza from abstaining to voting a “half for each”. Ms. Higgins clarified with Ms. Wrenner that she wanted to make a correction to the corrections of the minutes from May 17, 2006 that were in the May 24, 2006 minutes.

**LINDA MYERS MOVED AND DEB BILLADO SECONDED A MOTION TO APPROVE THE MINUTES OF MAY 24, 2006 WITH THE FOLLOWING CORRECTIONS:**

**Line 23: Replace “FOLLWING” with “FOLLOWING”. Line 307: Strike “according”.**

**THE MOTION PASSED 7-0-1. (Deb Billado abstained as she was not present at the last meeting).**

**Discuss Legal Review of Proposed Town of Essex Junction Charter**

Mr. Mertens invited Mr. Ellis, the Town Attorney, to join the discussion. Mr. Mertens asked Mr. Ellis if he was representing both attorneys, and Mr. Ellis replied that he was representing himself that night. It was determined that even though Mr. Ellis, Mr. Barra (the Village Attorney) and the Managers had a meeting to discuss the legal issues, Mr. Barra did not provide any feedback on the memo that the members received. Mr. Mertens asked Mr. Ellis to present each item and whether there were any urgent issues. Mr. Mertens stated that he understood that Mr. Ellis could not speak on Mr. Barra's behalf.

Mr. Ellis began his presentation by stating that there were not any items he or Mr. Barra perceived as urgent or illegal.

48

49 In section 103 (b), regarding the transmittal of municipal property, he explained that this section as  
50 written may be unintentionally restricting the new municipality from taking steps that were  
51 otherwise in accordance with existing law. He pointed out that the State statute section 1061(c)(1)-  
52 (3) of Title 24, Vermont Statutes Annotated (V.S.A.), required public notice of proposed  
53 conveyances and a municipal vote of five percent (5%) from the legal voters if petitioned, but also  
54 authorized the legislative body to convey municipal real estate without public notice if the  
55 conveyance was directly related to highway or utility projects or urban renewals. Mr. Ellis argued  
56 that the way section 103 (b) was written, contradicted the state statute, and therefore, the charter  
57 controlled, by requiring a vote from the electorate in order to a transfer of a small parcel of land for  
58 highway purposes. Mr. Safford suggested referencing the state statute in section 103 (b). Mr.  
59 Sweeney thought the members had addressed those adjustments in the language in section 103 (b).  
60 Mr. Safford stated that the issues regarding easements and boundary lines were addressed, but this  
61 was a separate issue. Mr. Ellis agreed that he still had a concern with the proposed language in  
62 section 103 (b). Mr. Lajza recalled the intent from the members' discussion being to keep the  
63 language simple, but he felt that Mr. Ellis' concern was important enough to address and wanted a  
64 recommendation from Mr. Ellis on how to address it. Mr. Ellis suggested adding after "easements",  
65 "and conveyances as authorized by Title 24 V.S.A. Sections 1061 (c) (1)-(2)", but was unsure about  
66 including (3), which referred to urban renewal projects. He confirmed with members that (c) (1)  
67 and (2) addressed transfers and directly related to highway and utility projects.

68

69 Mr. Mertens wanted confirmation that there would still be a public vote required for a situation  
70 where a developer or developers wanted to purchase municipal property for purposes of a large  
71 development, such as a shopping mall. Mr. Ellis reassured Mr. Mertens that unless the developer  
72 was participating in a highway or utility project, there would be an opportunity for a vote. Mr.  
73 Mertens commented that Mr. Nye had also raised that concern. Mr. Lajza felt the adjustment was to  
74 simply add Mr. Ellis' recommendation to the language in section 103 (b). Mr. Mertens was in favor  
75 of the members taking some time to reflect on Mr. Ellis' recommendation and making a decision  
76 after it was further discussed. Ms. Higgins, who did not recall the original discussion, questioned  
77 whether section 103 (b) was necessary, since the issue was already addressed in a state statute. Mr.  
78 Mertens asked, if they remained silent in the Charter, did the state statute allow the legislative body  
79 to sell property with or without a municipal vote? Mr. Sweeney felt Mr. Ellis was of the opinion  
80 that the Charter language would over ride the State statute. Mr. Ellis explained that under State  
81 statute, 1061 (f), State statute was not to be construed to impair or effect the provisions of a  
82 municipal Charter. Section 103 (b) of the proposed Charter could be construed as prohibiting the  
83 legislative body from conveying municipal property for highway and utility projects.

84

85 Mr. Sweeney clarified with Mr. Ellis that his recommendation was to add an additional sentence  
86 that referenced the state statute. Mr. Ellis confirmed that his recommendation would solve the  
87 problem of potentially hamstringing the new municipality's ability to provide essential municipal  
88 services in a timely manner. Mr. Sweeney confirmed that the additional sentence would be, "to  
89 authorize the legislative body to convey municipal real estate without public notice if the  
90 conveyance was directly related to highway or utility projects." He confirmed that Mr. Ellis was  
91 referring to section 1061 (c) (1) and (2) of the state statute, and Mr. Ellis agreed. Mr. Ellis stated,  
92 however, that there were many scenarios that raised further questions on this issue. For example,  
93 what if the council wanted to sell property for purposes of raising money or municipal dollars?

94 Would that require a vote to sell that parcel? Mr. Ellis explained that there were a whole range of  
95 options for editing the language that the members could consider, but that it was a policy decision  
96 as to which option the members wanted to choose. Mr. Mertens recalled that issue being previously  
97 discussed among members. Mr. Ellis emphasized that the current language would potentially  
98 hamstring the new council and that in the end it was a policy decision.  
99

100 Mr. Mertens asked if there were any further comments. He asked the Managers whether they had  
101 any advice on this issue. Mr. Scheidel recommended striking section 103 (b) and referring to state  
102 law. He believed that the State statute provided enough due process to prevent Mr. Mertens'  
103 concern, regarding developers, as it required public notice and accountability to the local  
104 government. Mr. Mertens asked Mr. Safford for his opinion. Mr. Safford stated that he agreed with  
105 Mr. Scheidel's opinion and felt that the current language might further restrict the Council with  
106 regards to policy decisions. He felt that there was public protection in the State law with public  
107 notification and the right to petition if desired. Mr. Mertens asked Mr. Odit if section 103 (b) in the  
108 proposed Charter was developed from the 1999 Charter? Mr. Odit replied that some of the language  
109 came from the 1999 Charter and then was edited. Mr. Ellis stated that the current Town Charter  
110 stated that the municipality had the power to sell and buy property without voter approval. Mr.  
111 Mertens confirmed that Mr. Safford was in favor of keeping section 103 (b) in the Charter and  
112 adding the sentence that was recommended by Mr. Ellis. Mr. Safford clarified that his  
113 recommendation would be to refer to state law. Mr. Safford was in favor of striking section 103 (b)  
114 but raised a concern about the language regarding the right to acquire property, which might not be  
115 addressed in the state statute. Mr. Safford recommended including specific language that the  
116 legislative body had the right to acquire property, but he deferred his opinion to legal counsel as to  
117 whether this issue was already addressed in state law. He understood that section 1061 addressed  
118 conveying, but did that cover the issue of sales or acquisition as well? Mr. Scheidel stated that local  
119 government had the right to set their own policy as it related to the disposition of property. In  
120 Essex, there was a policy that required the Selectboard to allow public process on the acquisition  
121 and disposition of property and reminded them of the vote that occurred for the proposed purchase  
122 of land for the new Town Offices. He argued that the Selectboard and elected officials were very  
123 open about the transactions related to acquisitions and dispositions of properties. Mr. Safford stated  
124 that the Town Charter was very similar to the Village Charter and that the State law provided  
125 flexibility to the Council, but still gave petition power to the public.  
126

127 Ms. Myers wondered if the state statute referred to conveyance, and Mr. Safford replied that it  
128 referred to purchase. He wondered if it would solve the problem to say, "The legislative body may  
129 acquire real property within or without corporate limits for any municipal purposes, in fee simple or  
130 any lesser interest or estate by purchase, gift, devise or lease." and then to add a reference to section  
131 1061 in regards to conveyance of real estate. Mr. Ellis needed more clarification as to the problem.  
132 Mr. Safford asked Mr. Ellis whether the State statute addressed the acquisition of property or  
133 whether they needed to provide language in the Charter about acquiring the property? Mr. Ellis  
134 suggested placing a period after "devise or lease" in the third line, adding that the legislative body  
135 may acquire real property and then referring to the State law for conveyance. Ms. Myers confirmed  
136 that they could just remain silent on the issue and include language that the State law would prevail.  
137 She was in favor of at least deleting the first sentence, and, along with Mr. Mertens, she recalled  
138 that last sentence was an important issue for Mr. Nye. Mr. Sweeney felt he would have had a  
139 different opinion originally had he been aware of the State law and the potential restriction to the

140 new government caused by the proposed language in the Charter. Mr. Mertens, with regards to the  
141 last sentence in section 103 (b), confirmed with Mr. Ellis that it was not an issue, and members  
142 deliberated on Mr. Mertens' comment. It was determined that the problem with the last sentence in  
143 section 103 (b) was that the sale required a vote because it superseded state statute. Ms. Billado  
144 recalled that Mr. Nye was interested in the legislative body not conveying or purchasing property  
145 without consent of the voters. She added that the Charter mandated a vote and that the state law  
146 stated that 5% drove the vote. Ms. Higgins clarified that the legislative body could still choose to  
147 have a vote even without a petition of 5%, and Ms. Billado stated that, in the end, the Charter  
148 mandated the vote. Mr. Mertens confirmed that the last sentence was not a problem because the  
149 legislation had control, and members disagreed. Mr. Ellis pointed out that the problem was that in  
150 the State statute, under section 1061(f) nothing shall be construed to impair or effect any provisions  
151 in the Charter. Mr. Sweeney clarified that the last sentence superseded the state statute. Mr. Ellis  
152 interpreted this statute to say that if the Charter says something different than state law, the Charter  
153 would supersede. In section 103 (b), the language mandated a vote in every situation, which was  
154 restrictive to the new government in regards to highway and utility projects.

155

156 Mr. Sweeney clarified Ms. Myers' suggestion to keep the first sentence of section 103 (b) and to  
157 delete the rest of the language. He proposed adding a second sentence that stated, "Conveyance in  
158 real estate shall be governed by Title 24, section 1061 V.S.A.", or whatever the correct language,  
159 and members agreed. Mr. Safford asked if Mr. Ellis agreed. Mr. Ellis added that he felt that the  
160 issues were addressed in section 103 (a) and the state statute. Mr. Mertens asked for a definition of  
161 conveyance in the first sentence. Ms. Myers responded that in the first sentence of 103 (b) it stated  
162 "may acquire", which means to purchase and that conveyance meant selling, and Mr. Mertens  
163 understood. Ms. Higgins pointed out that Mr. Ellis was suggesting there was already the power to  
164 acquire, and Mr. Ellis clarified that they needed to include the first sentence, and Ms. Higgins  
165 understood. Ms. Myers commented that State statute dictated that if the municipalities decided to  
166 sell property, they had to warn it and allow 5% of the legal voters to petition for a vote within 30  
167 days and felt that this language provided the public with the vehicle to voice concern if they  
168 wished.

169

170 **LINDA MYERS MOVED AND BARBARA HIGGINS SECONDED A MOTION THAT**  
171 **SECTION 103 (B) OF THE CHARTER TO READ, "THE LEGISLATIVE BODY MAY**  
172 **ACQUIRE REAL PROPERTY WITHIN OR WITHOUT ITS CORPORATE LIMITS FOR**  
173 **ANY MUNICIPAL PURPOSE, IN FEE SIMPLE OR ANY LESSER INTEREST OR**  
174 **ESTATE, BY PURCHASE, GIFT, DEVISE OR LEASE."**

175

176 Ms. Myers added that the rest of the language would be stricken. Mr. Sweeney asked Ms. Myers if  
177 she would accept a friendly amendment sentence he proposed adding to the first sentence in order  
178 to provide clarification and quoted, "The conveyance of real estate shall be governed by state  
179 statute.", or whatever language would be appropriate to convey the intent, and Ms. Myers agreed.

180

181 **LINDA MYERS MOVED AND BARBARA HIGGINS SECONDED A MOTION THAT**  
182 **SECTION 103 (B) OF THE CHARTER TO READ, "THE LEGISLATIVE BODY MAY**  
183 **ACQUIRE REAL PROPERTY WITHIN OR WITHOUT ITS CORPORATE LIMITS FOR**  
184 **ANY MUNICIPAL PURPOSE, IN FEE SIMPLE OR ANY LESSER INTEREST OR**  
185 **ESTATE, BY PURCHASE, GIFT, DEVISE OR LEASE. THE CONVEYANCE OF REAL**

186 **ESTATE SHALL BE GOVERNED BY STATE STATUTE.”**

187

188 **THE MOTION PASSED 8-0.**

189

190 In regards to section 109, Mr. Ellis felt the language conflicted with the provision of 24 V. S. A.  
191 section 1973 governing permissive referendum. He felt that there was redundancy and confusion in  
192 the language in section 109, but that it was not illegal. Mr. Sweeney recalled discussing this issue in  
193 depth with the members and asked if Mr. Ellis had noticed that they changed the threshold from 5%  
194 to 10%, and Mr. Ellis understood. Mr. Safford recalled that there was a discussion regarding the 44  
195 days that the public had the right to rescind an ordinance, and members felt that topic was  
196 addressed in another section of the Charter. Mr. Safford clarified Mr. Ellis' point that if the issue  
197 was already addressed in State statute, it could cause confusion. Mr. Mertens asked Mr. Ellis if he  
198 had a recommendation in regards to section 109. Mr. Ellis responded that in his opinion, section  
199 109 (a) was unnecessary and the issue could “ride” on state statute. Mr. Odit pointed out that the  
200 members wanted to keep the threshold to 10%, and members agreed. Mr. Odit suggested adding  
201 language that addressed the 10% and then referring the rest to the state statute. Mr. Mertens  
202 confirmed with Mr. Odit that the 44-day allowance to rescind an ordinance was part of the state  
203 statute. Mr. Sweeney recalled that the Task Force did not want the public to come back several  
204 times in a year, which was why they changed the time period to annually. Mr. Ellis stated that the  
205 time period change was not illegal and was consistent with the Town Charter so that the only issue  
206 was the change to 10%. Mr. Mertens clarified that the State statute and the original language in the  
207 Charter provided a 44-day time period to rescind an ordinance and a 5% threshold. He clarified that  
208 currently in section 109, there was a time period of annually and a 10% threshold as to avoid a  
209 “revolving door” for Charter changes. Mr. Mertens paraphrased Mr. Ellis' comments as being that  
210 there was a discrepancy between the State law and the proposed Charter language in section 109  
211 and that if members felt the time period of annually would be more manageable and 10% a more  
212 fair approach, then it should be left the same. He asked for further comments.

213

214 Ms. Myers, in her opinion, paraphrased Mr. Ellis' comments as saying that what was currently  
215 written in section 109 with regards to the threshold of 10% with an annual allowance to rescind an  
216 ordinance did not in any way refute or change state statute, but rather just clarified the preference of  
217 the new town, and Mr. Ellis agreed. Mr. Ellis replied that it added more than what was in the state  
218 statute, and Ms. Myers agreed and stated that there was nothing wrong with that if the legislature  
219 agreed. Mr. Mertens pointed out that it superseded the state statute, and Ms. Myers understood but  
220 reiterated that it was not negating state statute, just providing a more difficult process to petition in  
221 Essex. Mr. Ellis pointed out that in section 304 of the proposed Charter, it stated that at any time,  
222 10% of the voters could petition at least once a year to appeal an ordinance. Mr. Odit summarized  
223 the differences at the state and local level. In State statute, the ordinances became effective 60 days  
224 after adoption. In the Town Charter, the ordinances became effective upon adoption unless  
225 otherwise stated. Mr. Mertens clarified that in section 109 of the proposed Charter, an ordinance  
226 was effective upon adoption but the public could petition at any time with a 10% threshold  
227 annually. Mr. Blanchard was in favor of keeping the language in the proposed Charter as currently  
228 written. One member reminded the other members that it was not illegal. Ms. Higgins stated that  
229 they had not limited the frequency of the public filing a petition. Ms. Myers responded that the  
230 ordinance would go into effect upon adoption, but six months after, there might be a problem with  
231 the ordinance that warrants a change. Mr. Scheidel referred to the example with the sewer

232 allocation and zoning ordinance where there was a potential move by initiative, and Ms. Myers  
233 agreed that the process would be moved by initiative in which anyone could place any issue on the  
234 ballot at any time, and Mr. Scheidel added, with the right number of signatures. Mr. Mertens  
235 pointed out that it was only the petition that needed 10% of the signatures and that the vote still had  
236 to pass. Ms. Higgins argued that every 12 months, 10% of the legal voters could petition, and Ms.  
237 Myers agreed. Mr. Mertens argued that the Town still had to pass it by vote. Mr. Ellis pointed out  
238 that only 5% was needed for the vote to be approved. Ms. Myers felt it was ironic that you needed  
239 10% to petition, but only 5% to pass the vote. Mr. Mertens clarified that 10% placed an issue on the  
240 ballot and then at the Town Meeting, it would be voted on by Australian ballot with those present.  
241 It was determined that only 5% was needed to pass the vote. Mr. Sweeney explained that the  
242 majority would rule, but there was a minimum threshold of 5%. Ms. Billado provided an example  
243 that if there were 10,000 voters in the community, 1,000 signatures were needed to place an item on  
244 the ballot, but that only 500 votes were needed to approve it. Ms. Higgins felt that it was not a  
245 difficult accomplishment. Mr. Mertens confirmed that 5% was just the voter turnout. Ms. Higgins  
246 stated, no, 5% of the voters needed to be in favor of the change. It was determined that there  
247 currently were 12-14,000 registered voters in the community and that 500 voters, for example,  
248 would need to vote in favor of an item for it to be approved. Ms. Wrenner asked Mr. Safford how  
249 often he saw petitions occur? Mr. Safford stated that he was in municipal management for 18 years  
250 and had never seen the public rescind an ordinance. Ms. Higgins stated that in the past, it had been  
251 restricted to within 44 days by State statute to rescind an ordinance and that in section 109, the  
252 public had 12 months. Ms. Myers stated that theoretically, they provided an on-going process for  
253 petitioning. Ms. Billado felt that they had not given the public anything other than expediting the  
254 inception of zoning the ordinance into local law, but Mr. Sweeney disagreed. Ms. Billado explained  
255 that upon passage, ordinance became law. Mr. Sweeney stated that by State law, a person had to  
256 rescind an ordinance within 44 days and it could not be challenged at a later date, but that under this  
257 proposed language in section 109, a person could rescind an ordinance at any time. Mr. Ellis  
258 referred members to section 105 (b), which followed State Law, Chapter 117, and pointed out that  
259 building ordinances could not be petitioned at any time and therefore the examples from the  
260 members did not apply in cases of land development.

261  
262 Mr. Sweeney asked Mr. Odit why the members eliminated the 44 days? Mr. Blanchard was in  
263 favor of adding a restriction so it was not open-ended, which could jeopardize a lot of hard work.  
264 Ms. Myers pointed out that if they eliminated section 109(b), the issue automatically returned to  
265 State statute, and members agreed. Mr. Odit stated that they would still have to change section 109  
266 (a) because it stated, "After final passage" which could be at anytime and suggested changing it to  
267 "44 days" or some other time period. Ms. Higgins summarized the discussion, in her opinion, as  
268 being that the language would follow State statute with the exception of increasing the threshold  
269 from 5% to 10%. Ms. Myers felt that was correct because everything else followed state statute.  
270 Mr. Sweeney agreed with Ms. Higgins and felt that the 5% to 10% was the only issue and did not  
271 think they had had a solid reason for striking 45 days. Mr. Mertens asked Mr. Ellis if there was a  
272 benefit to allowing a 10% threshold for a petition. Mr. Ellis replied that it just made it more difficult  
273 because it was a higher threshold. Mr. Mertens clarified that by changing it from 5% to 10%, they  
274 were limiting the opportunities for the public to change an ordinance, where as at the present time,  
275 none of the ordinances could be changed. Ms. Higgins clarified that within the first 44 days of  
276 adoption, the public could rescind an ordinance, which was perhaps the reason the members had  
277 decided to change the threshold to 10%. Ms. Myers asked Mr. Ellis on a recommendation for

278 changing section 109 (a). Mr. Sweeney suggested one option as being to strike it and revert to State  
279 law. Ms. Myers recalled Mr. Lajza having raised the issue of 10% originally. Mr. Lajza stated that  
280 he was questioning that decision. Mr. Mertens reminded the members that Mr. Safford had not even  
281 seen a petition in his 18 years and asked Mr. Scheidel whether he had seen a rescission of an  
282 ordinance in his 19 years. Mr. Scheidel stated that he had not seen a rescission of an ordinance in  
283 Vermont, but had in other states. Mr. Safford felt the decision was to refer to the State statute or to  
284 the Town Charter. Mr. Ellis suggested referring to section 304 of the Town Charter and section  
285 1973 of the State statute by saying, "All ordinances shall be subject to decision by a special annual  
286 town meeting as follows: if within 44 days after final passage you get 5% you could petition." One  
287 member suggested changing the threshold to 10% in that sentence. Mr. Mertens asked if there was  
288 any further discussion. He stated that he would entertain a motion to substitute the current Town  
289 Charter language in this section and to change the 5% threshold to 10%. Ms. Wrenner was in favor  
290 of 5% because it makes for a more democratic process. Ms. Billado stated that she would support  
291 5%. Ms. Myers was in favor of 10%.

292

293 **RENE BLANCHARD MOVED AND LINDA MYERS SECONDED A MOTION TO**  
294 **ADOPT THE TOWN CHARTER LANGUAGE IN SECTION 304 FOR SECTION 109**  
295 **SUBSTITUTING 5% TO 10%.**

296

297 Mr. Mertens asked if everyone understood the motion.

298

299 **THE MOTION PASSED 7-1-0. (Irene Wrenner opposed)**

300

301 Mr. Mertens understood Ms. Wrenner's position of being in favor of 5% as opposed to 10%. Ms.  
302 Billado confirmed that they would substitute section 109 (a) and (b) for section 304 of the old Town  
303 Charter. Mr. Sweeney confirmed that this section titled section 109 (a).

304

305 With regards to section 204 (d), Mr. Ellis recommended adding that meetings of the Town Council  
306 in the Deliberative Session should also be closed to the public.

307

308 **LINDA MYERS MOVED AND JOHN LAJZA SECONDED A MOTION TO INCLUDE IN**  
309 **SECTION 204 (D) THAT "MEETINGS OF THE TOWN COUNCIL IN A DELIBERATIVE**  
310 **SESSION BE CLOSED TO THE PUBLIC."**

311

312 **THE MOTION PASSED 8-0.**

313

314 Mr. Sweeney asked whether the Selectboard had Deliberative Sessions at the present time , and Ms.  
315 Myers did not think so. Mr. Safford explained that in some cases, such as an appeal to a firing from  
316 the Manager, the legislative body acted as in a quasi judicial manner. He was in favor of Mr. Ellis'  
317 recommendation as it was better to be cautious and give the new Town Council that authority in  
318 times when they find themselves in a quasi judicial position. Mr. Sweeney clarified that, "closed to  
319 the public" meant the public could sit in the room and listen or meant not allowed to be present in  
320 the room. It was determined that "closed to the public" meant not allowed to be present in the room,  
321 similar to Executive Session. Mr. Ellis gave an example of a statutory procedure regarding a  
322 vicious dog situation, when the Town Council might be put in the position of acting in a quasi  
323 judicial manner to decide the fate of the dog. In that situation, with his proposed language, the

324 Town Council would have the authority to discuss the fate of the dog without the public present.  
325 Mr. Sweeney explained his concern was that when meetings were allowed to be closed, it tended to  
326 get confusing and emotional for the public at times. He asked if this conflicted with the State Open  
327 Meeting Law. Mr. Ellis stated that in his handout in regards to this item, he was referencing V.S.A.  
328 section 312(e), which was the State Open Meeting Law. Mr. Sweeney stated that Executive Session  
329 was consistent with the State law and when going into Executive Session, a member needed to state  
330 the purpose for entering Executive Session. He asked Mr. Ellis if there were similar rules for  
331 Deliberative Sessions? Mr. Ellis quoted section 312 (e). Mr. Ellis explained that the State law  
332 defined a Deliberative Session as being out of the public arena. Mr. Scheidel provided an example  
333 of when the Selectboard acted as the Liquor Authority, which was a quasi-judicial proceeding, and  
334 allowed the public to be present in the room. Mr. Sweeney asked whether there were rules to define  
335 when it was and was not allowable to close a meeting to the public. Mr. Ellis explained that the  
336 state law in section 312 (e) stated that when the legislative body was entering into deliberations and  
337 acting in a quasi-judicial manner, it was not a public meeting, and there should be no audience  
338 because they were deliberating on an appeal. Mr. Sweeney asked what the rules were that defined  
339 when the legislative body could enter into Deliberative Session. Mr. Ellis stated that it had to be a  
340 quasi-judicial proceeding. Mr. Sweeney stated that the Selectboard was acting in a quasi-judicial  
341 manner all the time and asked where the limit of entering a closed session was defined. Mr. Ellis  
342 clarified that he was referring to situations of a contested case or appeal. Mr. Scheidel explained  
343 that Mr. Sweeney was asking in what specific circumstances would a body like the Selectboard  
344 enter Deliberative Session without public audience or input. Mr. Sweeney stated that he was  
345 concerned that the legislative body might decide to enter into Deliberative Session all the time.  
346  
347 Mr. Scheidel asked Mr. Sweeney if there were currently rules that the Zoning Board followed when  
348 they were deliberating certain applications? Mr. Sweeney stated, yes, but that it was all in an open  
349 meeting environment. He felt that a reason to close a meeting to the public must be a serious  
350 situation in his opinion. Mr. Ellis reiterated that a legislative body had the authority under section  
351 312 (e) in State law to close a meeting when acting in a quasi-judicial manner. Mr. Ellis added that  
352 he could research some examples to provide Mr. Sweeney, but that the way that the proposed  
353 language was written in the Charter, the meetings were always open, which might be difficult for  
354 the new Town Council when they were acting in a quasi judicial capacity and might want to close a  
355 meeting. Mr. Sweeney felt that it had been the intent of the Task Force at the time as they were not  
356 aware of the State statute. Ms. Myers and Mr. Sweeney argued whether that was the intent of the  
357 Task Force. Ms. Myers stated that had she realized this potential problem, she might have  
358 addressed it at that time. Mr. Scheidel stated that there were many reasons in the past that the  
359 Selectboard needed to enter into Executive Session without the public. Mr. Safford suggested that  
360 the legislative body could just state that they were entering Executive Session. Mr. Sweeney stated  
361 that he had not heard of Deliberative Session before that night. Mr. Scheidel explained that  
362 Deliberative Session was recently developed and that there was a difference between Deliberative  
363 Session and Executive Session. Mr. Safford suggested that Mr. Ellis research some examples for  
364 discussion next week and then the Task Force could base their decision on that information. Mr.  
365 Scheidel pointed out that Mr. Ellis had made the statement that in a Deliberative Session, the  
366 legislative body could open or close the meeting, and Mr. Sweeney raised a concern about the  
367 abuse of power by the legislative body in those situations. He added that even though the public  
368 might be allowed to be present in the audience, they still might feel an abuse of power because they  
369 were not allowed to object. Mr. Sweeney was still uncomfortable with the definition of when the

370 legislative body could close a meeting. Mr. Safford suggested that the staff research some examples  
371 for next week and if that was still not satisfactory, the members could refer to the State statute with  
372 this issue. Mr. Scheidel argued that there would always be those from the public that felt a lack of  
373 power in these instances. Mr. Sweeney agreed that was the present situation with Executive Session  
374 as in his opinion, he felt that there were people who would like to be an audience in Executive  
375 Session. Mr. Mertens agreed with Mr. Ellis returning with some examples. He asked Mr. Ellis if he  
376 had said there were Deliberative Session guidelines similar to Executive Session guidelines? Mr.  
377 Ellis replied no, but that he could provide members with some examples of when the legislative  
378 bodies were going to be acting in a quasi-traditional capacity. Mr Mertens asked if he was aware of  
379 whether or not there were guidelines similar to Executive Session guidelines. Mr. Safford  
380 suggested having the same rights for a quasi-judicial session that you have for an Executive Session  
381 regarding appeals. Mr. Sweeney provided a specific example, and Ms. Billado felt there were a lot  
382 of examples that would fall under quasi-judicial. Mr. Safford suggested that the staff provide a  
383 memo of examples for review next week, and members agreed. Mr. Scheidel reassured Mr.  
384 Sweeney that in the situation where a legislative body acted in a quasi-judicial manner, there were  
385 rules that determined the behavior by the legislative body to avoid the abuse of this power. Mr.  
386 Mertens, with regards to a dispute between the Agency of Natural Resources(ANR) and the  
387 Conservation Law Foundation(CLF) that was settled in a deliberative process at the Supreme Court  
388 level, recalled that CLF was given the documents even though they were claiming to be part of the  
389 deliberative process and asked whether that had any application in this discussion? Mr. Ellis replied  
390 that he would have to research that case but that he did not think it applied to this discussion. He  
391 stated that he thought the dispute between the ANR and CLR was that there were some documents  
392 that were shared between government employees and that it was pre-policy deliberations under the  
393 Executive Branch. It was determined that they were differentiating public meeting versus public  
394 records. Mr. Mertens asked Ms. Myers if she could table the discussion until they had further  
395 information or whether she would like to withdraw the motion. Ms. Myers stated that she did not  
396 make a motion, and Mr. Scheidel thought it was moved, seconded and voted on. Mr. Mertens  
397 concluded that if the members agreed, they would strike any motion and get some clarification on  
398 this issue.

399

400 In regards to section 206 (b), Mr. Ellis explained that he did not understand what “Charters, special  
401 legislation or rules” meant. The Charter was a statute that was approved by the legislature. He did  
402 not think it was legal to state that the Town could derive authority from another municipality's  
403 Charter. Mr. Ellis stated that special legislation was a statute, and he felt it was redundant to include  
404 it.

405

406 **LINDA MYERS MOVED A MOTION THAT THE TASK FORCE CHANGE SECTION 206**  
407 **(B) TO READ, “THE TOWN COUNCIL MAY APPOINT SUCH ADDITIONAL BOARDS,**  
408 **COMMITTEES, AND COMMISSIONS AS THEY FEEL TO BE IN THE BEST INTEREST**  
409 **OF THE TOWN AND ANY OTHER APPOINTIVE OR ELECTIVE OFFICERS**  
410 **AUTHORIZED BY LAW.”**

411

412 Mr. Safford raised a question as to whether the Town Council's authority to appoint committees  
413 was inherent or whether it was authorized by statutes? He understood that statutes were silent on  
414 committees and felt that the Town Council could appoint a committee at any time. He was in favor  
415 or striking “committees” so it could not be questioned as to whether the local legislature could

416 authorize a committee. Mr. Mertens suggested stating, “in the best interest of the Town.” and then  
417 “In addition,.....”. Mr. Sweeney asked who had the authority to appoint commissions and whether it  
418 was authorized by any special rules, Charters or statutes? Mr. Safford replied that a Board or a  
419 Commission often had their own authority, such as the Planning Commission. He felt this was a  
420 serious matter as to whether or not it was authorized by statute or not, along with the appointment  
421 of officers. He suggested striking “committees”. Ms. Myers suggested keeping “committees” in the  
422 language and stating “as they feel to be in the best interest of the town and any other appointive or  
423 elective officers.” and striking “authorized by statute, Charters, special legislation, or rules.” Mr.  
424 Safford agreed that Ms. Myers' suggestion would give a more broad authority beyond statute to  
425 appoint Boards or commissions, etc. Ms. Myers summarized that the intent was for the Town  
426 council to have the authority to appoint a committee, like the Task Force for example, that they feel  
427 was in the best interest of the town and also to authorize any other appointment or elective officers.  
428 Mr. Odit stated that the Selectboard presently had the general supervision of the affairs of the Town  
429 and had broad authority to create committees and the commissions in the statutes. Mr. Mertens  
430 confirmed that Mr. Odit's statement was true even without including the language suggested by Ms.  
431 Myers, and Mr. Scheidel agreed. Mr. Scheidel stated that the legislative bodies Chartered the Ad-  
432 hoc committees and that it was harder to “unCharter” these committees than it was to Charter them.  
433 Mr. Mertens proposed that Mr. Ellis provide legal counsel to Ms. Myers' original motion to review  
434 for next week. There was no further discussion on this issue that night.

435

436 With regards to section 602, Mr. Ellis stated that this section was overly prescriptive. He explained  
437 that both Managers agreed that there might be some positions in the future that may not necessarily  
438 need to be filled. Mr. Safford added that there might be job titles that needed to be changed or new  
439 positions created and agreed with Mr. Ellis' suggestion that allowed the new manager to have the  
440 authority and discretion as to what positions needed to be filled.

441

442 **LINDA MYERS MOVED AND DEB BILLADO SECONDED A MOTION TO CHANGE**  
443 **THE FIRST SENTENCE IN SECTION 602 TO BE CHANGED TO, “THE TOWN**  
444 **MANAGER SHALL HAVE THE AUTHORITY TO APPOINT WITH THE ADVICE OF**  
445 **THE TOWN COUNCIL.”**

446

447 **THE MOTION PASSED 8-0.**

448

449 In regards to the Transition Section, Mr. Ellis felt it was important to include how terms would be  
450 staggered for the Planning Commission members. He did not think it was the intent of the Task  
451 Force for all the positions to be up for re-appointment at the same time. Mr. Mertens stated that his  
452 recollection was that they were asking the Transition Committee to address the plan. Mr. Sweeney  
453 explained that before the Charter took effect, there had to be a zoning board and planning  
454 commission. Then there would be another commission that would have the job of rewriting the  
455 Town Plan and the zoning ordinance. This commission would dissolve after their work was  
456 completed. Mr. Sweeney confirmed that Mr. Ellis was referring to (f) in the Transitional Provisions.  
457 Mr. Safford asked if Mr. Ellis preferred a matrix similar to the Selectboard. Mr. Odit suggested  
458 stating, “For each of the three member seats, one is for one year, one is for two years, one's for  
459 three, which would be similar for the Village, and the one that was appointed by the council was for  
460 four years.” Mr. Mertens asked if members were comfortable with that approach and confirmed that  
461 Mr. Odit was clear with the intent and thanked him.

462

463 Mr. Ellis stated that his last comment related to the Water and Sewer District, which was a reminder  
464 to him to review all the contracts to determine the impact a merger of municipalities would have on  
465 the Three-Party Agreement on Sewage Treatment between the Village, the Town and Williston.

466 Ms. Myers thought that issue had already been discussed. Mr. Safford clarified that the members  
467 had discussed creating one sewer district, but that he and Mr. Scheidel asked the lawyers to review  
468 some key contracts to ensure that there were no legal issues, more specifically the Three-Party  
469 Agreement and how it would impact the relationship with Williston in a merger. He suggested that  
470 at the next meeting, if requested, the staff could return with some examples of quasi-judicial and  
471 additional comments with regards to contracts for discussion.

472

473 Ms. Myers, with regards to the first page of the Transitional Provisions, asked Mr. Odit whether the  
474 section needed to be numbered. Mr. Odit replied that Legislative Council would address that issue  
475 when the document became a bill, and Ms. Myers understood. Mr. Mertens asked Mr. Odit to  
476 number the pages in the Charter, and Mr. Odit understood. Mr. Mertens asked if Mr. Ellis had any  
477 further comments, and he had none. The members thanked him for his counsel.

478

#### 479 **Review Draft of Final MTF Report to Selectman and Trustees**

480

481 Mr. Mertens pointed out the cover letter that was written by he and Mr. Sweeney for review by the  
482 members. Ms. Myers had some typographical errors to point out, and Mr. Mertens suggested she  
483 provide those comments to him or Mr. Odit separately. Ms. Billado asked Ms. Myers if her  
484 comments were language issues, and Ms. Myers said no. Mr. Sweeney suggested Ms. Myers  
485 address her comments at the present time, and Ms. Myers agreed. Ms. Myers pointed out that in the  
486 first paragraph, third line, she would like to add “a” after “with” and add a comma after  
487 “exceptions”. In the third paragraph, Ms. Myers suggested striking the dash and replacing it with a  
488 comma. Ms. Wrenner suggested changing “Co-Chairman” to “Co-Chairmen”. In addition, Ms.  
489 Wrenner wanted to give Mr. Odit credit for all of his research during this year. Mr. Safford  
490 suggested adding, “we would also like to thank Mr. Odit for his help in organizing the meetings,  
491 research and his assistance in the proposed charter language. Mr. Mertens asked if there were any  
492 other suggestions, and there were none. He moved the discussion to the Final Merger Task  
493 Force(MTF) Report.

494

495 Mr. Sweeney asked Mr. Odit if there were any changes from last week to be discussed this week.  
496 Mr. Odit replied that there were some stylistic changes and sentences deleted, and some language  
497 edited in regards to the review of zoning, etc. Mr. Mertens asked if Mr. Odit recalled any  
498 significant changes, and Mr. Odit replied that there were mostly editing changes. Mr. Mertens  
499 reminded the members that they would have the chance to review this report again next week. Mr.  
500 Sweeney commented that he thought the members had decided on four organization charts and he  
501 only saw three. He thought the chart on the Board of Commissions had been left out and asked if  
502 that was intentional. Mr. Odit replied that it was not intentional and it was agreed to add that chart.  
503 Mr. Mertens asked if the “Reference Materials #:1,2” could include the explanation of the material.  
504 For example, “Reference Material #:1, Organization Chart, and Mr. Odit understood.

505

506 Mr. Mertens asked if there were any further comments and asked the members if they felt there  
507 needed to be an addition planning references included in the letter, and members disagreed. He

508 stated that next week would be another chance to review this letter when Mr. Ellis was present and  
509 hopefully at that time, the members would authorize the Chairs to transmit that document to the  
510 Trustees and Selectboard.

511

512 **Discuss Future Agenda Items**

513

514 Mr. Mertens informed members that Mr. Lajza had a suggestion as to how to end this process. Mr.  
515 Lajza stated that in discussing this issue with Mr. Odit, he recommended that the Task Force  
516 adjourn indefinitely unless recalled by both legislative bodies. Mr. Mertens confirmed with  
517 members that they understood and agreed with Mr. Lajza's suggestion.

518

519 Mr. Mertens confirmed that Mr. Ellis would return with additional information for the next meeting  
520 and asked for other future Agenda Items. Ms. Myers stated that there would be one last review of  
521 the Final MTF report and also a review of the changes to the Charter that were made that night, and  
522 members agreed.

523

524 Mr. Mertens asked if there were any further comments. Ms. Higgins asked if members felt there  
525 would be another meeting after June 14<sup>th</sup> because she might have a conflict on June 21<sup>st</sup>. Mr.  
526 Mertens stated that he could also not attend on June 21<sup>st</sup>. Mr. Blanchard was in favor of spending  
527 extra time next week to finish the process, and members agreed. Mr. Mertens asked staff to alert  
528 Mr. Nye that next week might be the last meeting. Mr. Scheidel stated that he would speak to him  
529 when Mr. Nye called. Mr. Mertens asked Mr. Lajza to speak with Mr. Boucher. Mr. Lajza agreed  
530 that he would call Mr. Boucher to see how things were going and if things were going well, he  
531 would inform him about next week's meeting, but if they were not going well, then he would not  
532 apply any pressure on Mr. Boucher to attend, and members agreed. Mr. Mertens asked for any  
533 further comments, and there were none.

534

535 **Public Input-General Comments**

536

537 There was no public input.

538

539 **LINDA MYERS MOVED AND RENE BLANCHARD SECONDED A MOTION TO**  
540 **ADJOURN AT 8:30 P.M.**

541

542 **THE MOTION PASSED 8-0.**

543

544 **Respectfully submitted,**

545 *Saramichelle Stultz*

546

547 *Saramichelle Stultz*

548 Recording Secretary

549

550

551 (THESE MINUTES ARE SUBJECT TO CHANGE AT THE NEXT MERGER TASK FORCE  
552 MEETING)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**MERGER TASK FORCE  
ESSEX/ESSEX JUNCTION  
MEETING MINUTES  
June 14, 2006**

**MEMBERS PRESENT:** Hugh Sweeney, Hans Mertens, Linda Myers, John Lajza, Deb Billado, Irene Wrenner, Barbara Higgins, Rene Blanchard.

**STAFF PRESENT:** Pat Scheidel, Town Manager; Charles Safford, Village Manager; Todd Odit, Assistant Town Manager; Bill Ellis, Town Attorney; David Barra, Village Attorney.

**OTHERS PRESENT:** Bob Marcotte; Chuck Lloyd; Tim Jerman; George Tyler, Essex Reporter; Cortney Sturtevant, Essex Reporter; Victoria Welch, BFP.

**BUSINESS AGENDA**

**Public Input on Agenda Items**

There was no public input.

**Approve minutes of June 7, 2006**

**DEB BILLADO MOVED AND RENE BLANCHARD SECONDED A MOTION TO APPROVE THE MINUTES OF JUNE 7, 2006 WITH THE FOLLOWING CORRECTIONS:**

**Line 11: Replace “Manager.” with Manager,”**, After “Manager.” add “Bill Ellis, Town Attorney.”, **Line 40: Replace “the Village Attorney” with (the Village Attorney)”. Line 82: After “Charter” add “.” Replace “section” with “Section”. Line 101: Replace “advise” with “advice”. Line 107: Replace “is” with “if”. Line 113: After “law” add “.”. Line 129: Replace “cooperate” with “corporate”. Line 166: Replace “warrant” with “warn”. Line 175: Replace “reminded Ms. Myers of the additional sentence he proposed adding to the first sentence” with “asked Ms. Myers if she would accept a friendly amendment”. Line 192: Replace “dept” with “depth”. Line 252: Replace “or” with “of”. Line 257: Replace “building” with “zoning”. Line 289: After “5%” add “because it makes for a more democratic process.” Line 313: Replace “a repeal” with “an appeal”. Line 409: Replace ““committee related to the local legislature” with “the Town Council’s authority to appoint committees was inherent”. Line 471: Replace “Legislature” with “Legislative”. Line 486: Replace “Myers” with “Wrenner”. Line 486: Replace “She suggested adding, “We would also like to thank Mr. Odit for his help in organizing the meetings,” Mr. Safford suggested saying “ meetings, research and his assistance in the proposed Charter language.” with “ Mr. Safford suggested adding, “We would also like to thank Mr. Odit for his help in organizing the meetings, research and his assistance in the proposed Charter language.”. Line 496: Replace “change” with “chance”.**

**THE MOTION PASSED 8-0.**

**BARBARA HIGGINS MOVED AND IRENE WRENNER SECONDED A MOTION TO**

48 **RECONSIDER THE MOTION ON LINE 306 OF THE MINUTES FROM JUNE 7, 2006.**

49

50 Mr. Sweeney clarified that “reconsider” meant that the Task Force would take it up again by  
51 making another motion, and Ms. Higgins agreed.

52

53 **THE MOTION PASSED 8-0.**

54

55 **BARBARA HIGGINS MOVED AND JOHN LAJZA SECONDED A MOTION TO TABLE**  
56 **RECONSIDERATION OF THE MOTION ON LINE 306 OF THE MINUTES FROM JUNE**  
57 **7, 2006 UNTIL THE LEGAL REVIEW DISCUSSION ON THE AGENDA.**

58

59 Mr. Sweeney confirmed that tabling the motion was the correct action. Mr. Mertens suggested  
60 discussing it at the present time with legal counsel available. Ms. Higgins was impartial about when  
61 to discuss it, and Ms. Myers preferred discussing it later in the meeting that night.

62 **THE MOTION PASSED 8-0.**

63

64 **Discuss Legal Review of Proposed Town of Essex Junction Charter**

65

66 Mr. Sweeney invited Mr. Ellis (the Town Attorney) and Mr. Barra (the Village Attorney) to join the  
67 discussion. He welcomed them and thanked them for all their work on the proposed Charter. Mr.  
68 Sweeney recalled from last week's discussion that the members had reviewed concerns with the  
69 language in the Charter with Mr. Ellis and asked Mr. Ellis and Mr. Barra how they would like to  
70 continue the discussion.

71

72 Mr. Barra stated that there were only a couple of points to discuss. He felt he could present one and  
73 Mr. Ellis could present the other, and the Chairs agreed. With regards to section 206 (b), Mr. Barra  
74 presented new language to address some of the concerns previously raised by him, Mr. Ellis and the  
75 Managers. The new language would replace the entire section 206 (b), and he quoted, “The Town  
76 council may appoint any other appointive or elective officers allowed for by law not specifically  
77 enumerated in this charter. The Town council may also appoint such boards and commissions as  
78 authorized by state law not specifically enumerated in this charter. In addition, they may appoint  
79 any committees they feel are in the best interest of the Town.” The new proposed language was  
80 circulated to members, and Mr. Barra confirmed that this language would replace section 206 (b) of  
81 the proposed Charter. He explained that the original language contained three different concepts  
82 combined into one sentence and it was unclear, which could lead to contrary interpretations. He and  
83 Mr. Ellis, having different interpretations of the original language at first, felt it was best to separate  
84 the three concepts and develop three separate sentences for clarity, without any significant change  
85 to the intent brought forth by the Task Force members in the original language. Mr. Sweeney asked  
86 if “elected officers” was addressed in the new language, and Mr. Barra referred to the first sentence,  
87 which stated, “elective or appointive offices”. Mr. Barra stated that the second sentence addressed  
88 “boards and commissions” and the third sentence addressed “committees”. Mr. Sweeney asked  
89 whether the Staff was in agreement with the new language from Mr. Barra. Mr. Safford agreed that  
90 the new language was clearer than the original proposed language in section 206 (b), which could  
91 be subject to varying interpretations. Mr. Barra commented that the work completed by the Task  
92 Force members was well done and had made his review much easier and apologized for raising  
93 such minute details. Mr. Sweeney appreciated the work from the lawyers and felt they were

94 addressing exactly what the members had intended, which was to alert the members to any potential  
95 problems in the language of the Charter. Mr. Sweeney asked if there was any further discussion on  
96 the new language proposed by Mr. Barra and stated that, in his opinion, the new language conveyed  
97 the intent more clearly.

98

99 **JOHN LAJZA MOVED AND BARBARA HIGGINS SECONDED A MOTION TO**  
100 **REPLACE THE EXISTING SECTION 206 (B) WITH THE NEW LANGUAGE**  
101 **PROPOSED BY DAVID BARRA, ESQUIRE.**

102

103 Mr. Mertens suggested replacing “they” to “Town council” in the last sentence of Mr. Barra's  
104 proposed new language. Mr. Barra agreed and suggested also replacing the second “they” in the  
105 third sentence with “it”, and quoted a final edit as, “In addition, the Town council may appoint any  
106 committees it feels are in the best interest of the Town.” Mr. Sweeney asked Mr. Lajza if he  
107 accepted this friendly amendment. Ms. Myers confirmed that the third sentence would read, “ In  
108 addition, the Town council may appoint any committees it feels are in the best interest of the  
109 Town.”and Mr. Barra agreed. There was no further discussion.

110

111 **THE MOTION PASSED 8-0.**

112

113 Mr. Ellis discussed the next item and reminded the members that last week they requested  
114 clarification on the issue related to deliberative sessions, section 204 (d) of the proposed Charter.  
115 He referred to his memorandum of June 12, 2006, which described when deliberative sessions were  
116 appropriate and provided a definition of “Quasi-judicial proceeding.” He recommended striking  
117 section 204 (d) and referring to State law, which stated clearly that meetings of the public body  
118 were open to the public unless there was an Executive Session or Deliberative Session. The Town  
119 council can enter Deliberative Session when it acts in a quasi-judicial role. Mr. Sweeney confirmed  
120 that this item related to section 204 (d) of the Charter. Ms. Myers clarified Mr. Ellis' opinion as  
121 being to strike section 204 (d) and remain silent in the Charter because State statute made a  
122 provision. Mr. Ellis stated that State statute defined the meetings of the Town council. Mr. Ellis  
123 explained that there was an open meeting law, where everyone was entitled to attend, unless in the  
124 case of an Executive Session or Deliberative Session. Mr. Sweeney asked Mr. Ellis if referencing  
125 the State law in section 204 (d) would be restrictive? Mr. Ellis felt that as long as the ability to go  
126 into a Deliberative Session was referenced, the vote was unnecessary and the meeting did not need  
127 to be warned because it was not a public meeting. Ms. Myers suggested, “All meetings of the Town  
128 council shall follow section 312 of Title 1 V. S. A. concerning the open public meetings.” Mr. Ellis  
129 explained that section 312 only addressed public meetings and that section 313 addressed Executive  
130 Sessions. Mr. Sweeney felt more comfortable including both statutes for clarity and suggested  
131 adding to the end of section 204 (d), “executive session in accordance with V.S.A., Title 1 section  
132 313 or deliberative session in accordance with V. S. A., Title 1 section 312(B). Ms. Myers felt she  
133 had suggested the same idea last week and adding at the end of section 204 (d), “Additionally,  
134 meetings of the Town council in deliberative session, Title 1 V. S. A. section 312 (E), should be  
135 closed to the public.” She was in favor of referencing state statute in section 204 (d) and was  
136 impartial to how they referenced it and asked Mr. Sweeney if he preferred “or” or “in addition”.  
137 Mr. Sweeney felt either option was agreeable with him. Mr. Lajza preferred “or” and adding the  
138 new language. Ms. Myers requested the exact language. Mr. Sweeney stated, “or deliberative  
139 session consistent with V. S. A. Title 1, section 312 (E). Ms. Higgins pointed out that in past

140 discussions, the members were reluctant to refer to the specific Statute number because of changes  
141 at the State level that may require a Charter change. She recommended using “State Law” and not  
142 the specific statute, and Mr. Scheidel agreed. Mr. Barra suggested after “ executive” in the third  
143 line, adding “or deliberative” and after “Vermont” adding “law” and striking “Statutes Annotated,  
144 Title 1, section 313”. Ms. Myers clarified, “or deliberative session in accordance with Vermont  
145 law.” and Mr. Barra agreed.

146

147 **BARBARA HIGGINS MOVED AND IRENE WRENNER SECONDED A MOTION TO**  
148 **TAKE RECONSIDERATION OF SECTION 204 (D) OFF THE TABLE.**

149

150 Mr. Blanchard was concerned with how this section might be explained to the public by not  
151 referencing a specific State statute. Mr. Mertens pointed out that it said, “in accordance with  
152 Vermont law.” Ms. Myers agreed that the language referenced the law. Mr. Lajza felt it was clear  
153 and that Mr. Ellis had explained Deliberative Session as a body acting as a jury or court in certain  
154 instances. Mr. Blanchard was concerned about questions from the public. Ms. Myers reminded him  
155 that the Selectboard and Trustees would receive questions from the public, not the Task Force.  
156 Members from the Selectboard and Trustees, who were members on the Task Force, reassured Mr.  
157 Blanchard that they could explain this section clearly to the public. Ms. Higgins clarified that the  
158 motion at the present time was only to allow the members to vote on the issue, and Mr. Sweeney  
159 confirmed that the motion was to take the issue off the table. There was no further discussion.

160

161 **THE MOTION PASSED 8-0.**

162

163 **BARBARA HIGGINS MOVED AND LINDA MYERS SECONDED A MOTION THAT THE**  
164 **TASK FORCE ACCEPT SECTION 204 (D) TO READ, “ALL MEETINGS OF THE TOWN**  
165 **COUNCIL SHALL BE OPEN TO THE PUBLIC UNLESS, BY AN AFFIRMATIVE VOTE**  
166 **OF THE MAJORITY OF THE MEMBERS PRESENT, THE TOWN COUNCIL SHALL**  
167 **VOTE THAT ANY PARTICULAR SESSION SHALL BE AN EXECUTIVE OR**  
168 **DELIBERATIVE SESSION IN ACCORDANCE WITH VERMONT LAW.**

169

170 **THE MOTION PASSED 8-0.**

171

172 Mr. Ellis, with regards to his June 12<sup>th</sup> memorandum, commented that the second issue, regarding  
173 appointed or elected bodies, was recently addressed and voted on by the members. The next topic  
174 he raised was related to the Planning Commission and Zoning Board in the Transition section of the  
175 Charter. Mr. Ellis explained that Mr. Barra suggested clarifying that during the Transition Period,  
176 the Village plan and by laws would be applicable within the Village geographical area and the  
177 Town plan and by laws would be applicable within the Town, outside the Village, geographical  
178 area. Mr. Mertens felt that was the intent of the Task Force and asked whether it was not clear in  
179 the draft language. Mr. Lajza felt they should adopt Mr. Ellis’ language.

180

181 Ms. Higgins and Ms. Myers asked Mr. Lajza, what language? Mr. Sweeney pointed out the  
182 language on page 14. Ms. Myers understood the discussion related to the language on page 14, but  
183 wanted to know what particular language was being proposed. Mr. Mertens referred them to page 2  
184 of the June 12<sup>th</sup> memorandum and the paragraph beginning with “Dave”, and members reviewed  
185 this paragraph. Ms. Myers asked if there was proposed language. Mr. Sweeney stated that he did

186 not think there was new language and asked Mr. Ellis if there was new language. Mr. Ellis  
187 explained that he was just paraphrasing what was in the memorandum. Mr. Sweeney suggested, “to  
188 apply in their respective geographical areas until the comprehensive rewrite is accomplished.” Mr.  
189 Mertens asked why the first paragraph of the drafted language in the Charter was unclear. Mr. Ellis  
190 referred to Mr. Barra who raised this issue. Mr. Sweeney agreed with clarifying the members'  
191 intent. Mr. Barra felt it made sense to clarify the language and felt that Mr. Sweeney's suggestion,  
192 which was based on Mr. Ellis' memorandum, addressed his concern. Ms. Myers confirmed with Mr.  
193 Barra that he was referring to Mr. Sweeney's proposed new language. Mr. Sweeney stated that the  
194 language he proposed did not cover the issue raised by Mr. Barra regarding amendments, which he  
195 and Mr. Barra agreed was not addressed just yet.

196  
197 Mr. Barra reminded the members to also include language about staggering the Planning and  
198 Zoning Board members' terms. Ms. Myers felt the terms were addressed already in the third  
199 paragraph of (f) Zoning and Planning. Ms. Higgins suggested replacing “shall become the plan and  
200 bylaws of the Town.” with “shall remain in effect in their former geographical districts until  
201 otherwise amended.” Mr. Sweeney stated that “rewrite” needed to be included, and Mr. Safford  
202 pointed out that the plan and by laws would be amended from time to time. Mr. Sweeney argued  
203 that they were not amending the old documents. Ms. Higgins suggested using “amended” or  
204 “rescinded”. Mr. Sweeney explained that in this instance, there were two documents that would not  
205 be amended but would be rewritten into one document. Ms. Higgins argued that at first, the  
206 documents would be amended, and Mr. Sweeney agreed, but stated that eventually the Transition  
207 Committee would rewrite the two ordinances into one ordinance. Ms. Higgins agreed and  
208 suggested, “shall remain in effect in their former geographical districts until amended or rescinded.”  
209 Mr. Sweeney preferred the word “rewrite is accomplished” as stated in the June 12<sup>th</sup> memorandum.  
210 He suggested adding, “rewrite is accomplished” after “until amended”, which was language used in  
211 Mr. Ellis' memorandum. Mr. Lajza was in favor of “or amended” and then “until the rewrite”  
212 because eventually the rewrite would occur. He suggested “amended or the rewrite is adopted.”  
213 Ms. Higgins argued that the process was to either amend it to apply to the whole community or  
214 amend it in part or to rescind it and adopt a new plan. Mr. Lajza thought every so many years, a  
215 new document was developed for the community. Mr. Odit clarified to Mr. Lajza that the Town  
216 Plan was newly developed for the community every five years. Mr. Sweeney clarified that the  
217 present discussion involved three documents: 1) the zoning ordinance, 2) the subdivision  
218 regulations and 3) the Town Plan. He was uncomfortable with just “amended” and felt it should be  
219 made clear there would be a new document that was not just amended. Mr. Blanchard asked for  
220 clarification. Mr. Sweeney stated that the documents could be amended, but eventually it would be  
221 rewritten into a new document. Ms. Higgins argued that with a rewrite, it could be rescinded and  
222 adopted as a new plan. Mr. Sweeney suggested using language to make it clearer. Mr. Lajza  
223 suggested that this would be a challenging job and proposed that they include an amendment option  
224 for both existing documents, and Mr. Sweeney agreed. Ms. Higgins pointed out that one document  
225 may be rescinded and the other amended to complete the work for the entire district. Mr. Ellis  
226 explained that Mr. Barra's concern was that while the Transition Committee was working on the  
227 comprehensive rewrite, they would need to make amendments to the existing documents. Mr.  
228 Sweeney clarified his concern to be related to the second part of Ms. Higgins' proposed language.  
229 Ms. Higgins asked if Mr. Sweeney was referring to the word, “rescind”. Mr. Sweeney stated that  
230 there could not be rescinding without a new document. Mr. Lajza referred the members to the  
231 language proposed by Mr. Ellis, which stated, “adopt, amended or a comprehensive rewrite is

232 accomplished,” and members agreed. Ms. Myers asked for clarification of the new language. Ms.  
233 Higgins and Mr. Lajza summarized the new language as being to replace “become the plan and  
234 bylaws of the Town.” with “shall remain in effect in the former geographical districts until  
235 amended or a comprehensive rewrite is adopted.” Mr. Mertens asked Ms. Higgins to read it from  
236 the beginning of the paragraph. Ms. Higgins stated, “Zoning and Planning. On the effective date of  
237 this charter, the former town plan and village plan, and the former town zoning bylaws and  
238 subdivision regulations and the village zoning bylaws and subdivision regulations (land  
239 development code), shall remain in effect in the former geographic districts until amended or a  
240 comprehensive rewrite is adopted.” Mr. Sweeney confirmed with Mr. Barra that he agreed.

241

242 **BARBARA HIGGINS MOVED AND LINDA MYERS SECONDED A MOTION TO**  
243 **REPLACE, “SHALL BECOME THE PLAN AND BYLAWS OF THE TOWN.” IN**  
244 **SECTION (F) OF THE TRANSITION SECTION WITH “SHALL REMAIN IN EFFECT IN**  
245 **THEIR FORMER GEOGRAPHIC DISTRICTS UNTIL AMENDED OR A**  
246 **COMPREHENSIVE REWRITE IS ADOPTED.”**

247

248 **THE MOTION PASSED 8-0.**

249

250 Mr. Sweeney, with regards to the new language provided by Mr. Odit for the staggering of terms,  
251 asked Mr. Barra whether they should include language on the length of terms. Members felt that  
252 language was already included. Mr. Sweeney pointed out that subsequent to the terms described in  
253 the revisions made by Mr. Odit, all the members would be on a three-year term. He reminded the  
254 members that in the section regarding the councilors' terms, the Charter explained that, after the  
255 initial period, all members were on a three-year term. Ms. Higgins suggested using the same  
256 language as in the section on the terms for councils. Ms. Myers stated that the Planning  
257 Commission terms were four years, and Mr. Sweeney was in favor of including the length of terms  
258 for clarification in the language. Mr. Odit suggested it be under the Planning Commission section.  
259 Ms. Myers clarified that Mr. Odit was suggesting it should be added to the Charter sections, not the  
260 Transition section. Mr. Sweeney agreed to whatever appropriate location. Mr. Odit stated that the  
261 length of terms was already defined in the statutes. Mr. Sweeney confirmed Mr. Odit's statement  
262 that the length of terms was defined in State law and they could remain silent in the Charter or  
263 Transition Section. Members agreed to the fact that State law determined that the Zoning Board  
264 terms were three years and that the Planning Board terms were four years, and members agreed.  
265 Mr. Lajza asked whether a motion was needed on the edited language from Mr. Odit, and Mr.  
266 Sweeney stated that the members would vote on the complete Charter at the end of the process and  
267 that there was already a motion to edit that language from the last meeting.

268

269 Mr. Ellis raised another issue with the members for consideration. He explained that Mr. Safford  
270 had raised the issue of whether or not the creation of a new municipality would qualify, under  
271 section 138 of Title 24 V. S. A., to adopt a local sales or local rooms and meals and alcohol tax. He  
272 suggested that if the Task Force wanted to preserve that right for the new Town, that they include  
273 language in the Charter. Mr. Ellis explained that, currently in the existing statute, a community had  
274 the authority to adopt local option taxes to ameliorate the detrimental effects of the rewrite of the  
275 education tax in 1997. Mr. Lajza was in favor of including language on this issue but wondered  
276 about the appropriate location in the Charter. Mr. Odit suggested it be located in Chapter 8 Taxation  
277 and named as section 805, and members agreed. Mr. Sweeney asked if the wording for the language

278 would be similar to Mr. Ellis' wording in the memorandum. Mr. Ellis stated that he referred to the  
279 new law that was adopted by Burlington but that it only included a sales tax. He recommended  
280 language that would preserve the right to adopt all of the taxes that were enumerated in section 138,  
281 which was a 1% meals, a 1% alcoholic tax and a 1% room tax. He suggested naming it collectively  
282 as the local option taxes and appropriately modifying the language. He emphasized that the option  
283 tax would require a vote before the Town council had the authority to adopt it. Mr. Sweeney asked  
284 if the language in the Burlington charter proposal was needed, in addition to language about the 1%  
285 meals, 1% rooms and 1% alcohol tax, and Mr. Ellis agreed. Ms. Myers did not think an alcohol tax  
286 was included, and Mr. Ellis confirmed that there was a sales tax, meals and alcohol tax and rooms  
287 tax. Ms. Higgins suggested, "The Town of Essex Junction shall have authority to impose any and  
288 all local option taxes as provided by State law." Mr. Barra disagreed because, as written, section  
289 138 would not apply to the new Town because it had to satisfy certain criteria mandated in 1998.  
290 Mr. Barra agreed with, "a local option tax as provided for by 24 V. S. A. section 138 or otherwise  
291 authorized by Vermont law." Mr. Odit pointed out that if the legislature decided to strike the local  
292 option tax from section 138, then there would not be anything to reference. He recommended using  
293 specific language in the Charter to ensure this option to the new municipality. Mr. Barra confirmed  
294 that the staff agreed to using specific language for clarify, and the staff agreed. Mr. Mertens asked,  
295 if the legislature removed this option from the State statute, would it still remain in effect if they  
296 had in the Charter? Mr. Odit added, if it was very specific in the Charter. Mr. Sweeney pointed out  
297 that the Charter would override the legislature. Mr. Scheidel asked Ms. Myers if it had been  
298 proposed at the State level, to remove the local option tax? Mr. Sweeney asked if the local option  
299 tax "sunsetted" next year, and Mr. Ellis replied, as a bill, no. Ms Higgins stated that originally there  
300 was a sunset on that bill. Mr. Odit stated that the legislature just repealed the sunset, but stated that  
301 it could always change. Mr. Lajza was in favor of being specific in the Charter to guarantee that  
302 option. Mr. Sweeney confirmed that Mr. Ellis suggested referring to the Burlington language and  
303 then adding the 1% meals, 1% alcohol and 1% rooms as section 805 in the Charter. Ms. Myers  
304 suggested referring the taxes to a "local option taxes". Mr. Sweeney suggested "local option sales  
305 tax". Ms. Myers disagreed and stated that it should be "local option taxes". Mr. Sweeney suggested,  
306 "local option tax authority", and Ms. Myers agreed. Staff and lawyers deliberated as to the new  
307 language that should be considered by the members. Mr. Ellis offered the proposed language as, "If  
308 the Town council by a majority vote recommends, the voters of the Town may, at an annual or  
309 special meeting warned for that purpose, by a majority vote of those present and voting, assess any  
310 or all of the following: 1) a 1% sales tax; 2) 1% meals and alcoholic beverages tax; 3) 1% rooms  
311 tax." Ms. Higgins suggested adding, "or any and all". Mr. Safford pointed out that it already stated,  
312 "any or all of the following", and Ms. Higgins understood. Mr. Ellis stated that then they would  
313 include how the percentage was split with the State. Ms. Myers confirmed that Mr. Ellis was  
314 referring to the language in the Burlington section where it stated, "Any tax imposed under the  
315 authority of this section shall be collected and administered, etc.", and Mr. Ellis agreed. Mr. Safford  
316 and Mr. Ellis deliberated as to the exact language to use regarding the Burlington language and the  
317 30/70 percentage split.

318

319 Mr. Ellis stated that the next part of the language would be, "Any tax imposed under the authority  
320 of this section shall be collected and administered by the Vermont department of taxes in  
321 accordance with state law governing the state sales, meals and alcoholic beverages and rooms taxes.  
322 Seventy percent of the taxes collected shall be paid to the Town and the remaining amount of the  
323 taxes collected shall be remitted to the state treasurer for deposit in the PILOT special fund first

324 established in Sec. 89 of No. 60 of the Acts of 1997. The cost of administration and collection of  
325 these taxes shall be paid 70 percent by the Town and 30 percent by the state from the PILOT  
326 special fund. The tax to be paid to the Town, less its obligation for 70 percent of the costs of  
327 administration and collection, shall be paid to the Town on a quarterly basis and may be expended  
328 by the Town for municipal services only and not for education expenditures.”

329

330 Mr. Mertens asked Mr. Ellis if the 70/30 percentage split applied to all three of the taxes, not just  
331 sales, and Mr. Ellis agreed. Mr. Ellis explained that the 70/30 percentage generally addressed all  
332 taxes authorized under section 138 except in 1999 where it was an 80/20 percentage, later changed  
333 to a 70/30 percentage. Ms. Wrenner asked whether it should be limited to 1% for the future? Mr.  
334 Safford clarified that the intent of the new language was to preserve the option to participate in  
335 local option taxes in the new community and not to lose that authority, which was already an option  
336 in the Town and the Village, when they merged. Mr. Lajza suggested that the new Town council  
337 may determine a local option tax of 2%, if they chose. Mr. Safford commented to Ms. Myers that a  
338 2% local option tax would be favorable to communities. Ms. Myers stated frankly that she had  
339 never been in favor of local option taxes for the Town of Essex, so that if she agreed to vote in  
340 favor of this option, she would be going against her original opinion. Mr. Safford reminded her that  
341 the new language only gave that option to the community and that a vote was needed before  
342 adoption of local option taxes. Ms. Myers understood, but stated that she was not in favor of local  
343 option taxes.

344

345 Mr. Lajza confirmed that Essex was the only community in Chittenden County not participating in  
346 local option taxes, which he did not feel was appropriate at the present time. Ms. Myers stated that,  
347 with all due respect to their fellow Towns in Chittenden County, she did not see the need for Essex  
348 to have local option taxes at the present time. Mr. Sweeney felt that might change when Lowe's  
349 moved into the community and stated that he would entertain a motion. Mr. Mertens asked about  
350 the opening sentence, “Upon affirmative vote of a majority, etc.” Mr. Ellis and members pointed  
351 out that Mr. Ellis changed that opening sentence to, “If the Town council by a majority vote  
352 recommends, the voters of the Town may, at an annual or special meeting warned for that purpose,  
353 by a majority vote of those present and voting, assess any or all of the following: 1) a 1% sales tax;  
354 2) 1% meals and alcoholic beverages tax; 3) 1% rooms tax.” Mr. Mertens confirmed with Mr. Ellis  
355 that when the residents went to vote on the Charter, they were not approving the option for local  
356 option taxes and that this new language was just giving that option for the new Town Council to  
357 pose that question to the public at some future date. Mr. Ellis agreed and added that the question  
358 would have to be presented by the new Town council at a future annual or special meeting to a  
359 public vote and that this new language was preserving their authority to do so if desired.

360

361 **JOHN LAJZA MOVED AND IRENE WRENNER SECONDED A MOTION TO ADOPT**  
362 **MR. ELLIS' NEW LANGUAGE RELATED TO THE LOCAL OPTION TAXES.**

363

364 **THE MOTION PASSED 8-0.**

365

366 Mr. Sweeney asked if there were any other questions from the Task Force members for the  
367 attorneys. Ms. Higgins, with regards to the Transmittal Letter, wanted to be sure that the first bullet  
368 of page 4 of the Charter was changed since there was a change in the vote, but was willing to wait  
369 until they reviewed the Transmittal Document, and members agreed.

370

371 Mr. Sweeney, with regards to the last sentence that was changed in section 103 b, asked if “law”  
372 should be used instead of “state statutes”. Ms. Higgins suggested, “State law”, and Mr. Lajza  
373 suggested, “Vermont law” because “law” was a broad term. Mr. Sweeney reminded members that  
374 the motion specifically changed it to “state statute”. Mr. Lajza understood, but felt “law” was too  
375 generic and that last week they had decided on “Vermont law” rather than “statute”. Ms. Higgins  
376 suggested being consistent throughout the document and where ever there was “state statute” to  
377 change it to “Vermont law, and Mr. Lajza agreed. Mr. Barra agreed to using “Vermont law” instead  
378 of “law” in section 103 b and stated that the difference between “statutes” and “Vermont law” was  
379 that a statute was specific and restrictive, whereas “law” included the concepts of judge-made law,  
380 which could rise out of case law that had not become a statute yet.

381

382 Mr. Sweeney confirmed with the lawyers there were no further issues and thanked them for their  
383 diligent work.

384

385 Ms. Myers pointed out a typo in (h) Personnel of the Charter that had two spaces before “pay”, and  
386 Mr. Odit took note of that change. Mr. Sweeney moved the discussion to the next Agenda Item.

387

388 **Review Draft of Final MTF Report to Selectmen and Trustees**

389

390 Ms. Higgins suggested that the word “Junction” in section 101 of the Charter be stricken from the  
391 sentence to read, “The inhabitants of the Town of Essex, within the corporate limits as now  
392 established, shall be a municipal corporation by the name of the Town of Essex Junction.” Ms.  
393 Myers agreed because they were all the inhabitants of the Town of Essex presently and then they  
394 would become the inhabitants of the Town of Essex Junction. Members agreed to strike “Junction”  
395 in the first part of the sentence in section 101.

396

397 Mr. Sweeney noted that just before the meeting that night, Mr. Odit circulated an updated version  
398 of the Cover Letter, which was not in their packet for this week. Mr. Lajza confirmed that the  
399 updated Cover Letter was dated Wednesday, June 14, 2006, and members agreed. Mr. Sweeney  
400 asked if there were any comments or changes for the Transmittal Document? Mr. Lajza asked if  
401 section 104 had always been absent in the Charter? Mr. Mertens asked Mr. Scheidel if the absence  
402 of section 104 was acceptable, and Mr. Scheidel agreed that it was not a problem. With regards to  
403 the Cover Letter, Mr. Sweeney asked for comments.

404

405 Mr. Scheidel raised an issue regarding retirement benefits for employees of the new entity. He  
406 asked the Vermont Municipal Employee Retirement System whether new employees, who were not  
407 current members of the Vermont Municipal Employees Retirement Plan (VMERS), would have the  
408 option to keep their ICMA retirement plan or join VMERS? Mr. Scheidel explained that he had  
409 been in communication with the new Chair of the VMERS Board, Mr. Steve Jeffrey, as to whether  
410 VMERS would provide this option to the new employees of the Town of Essex Junction, however,  
411 the Board had not had a meeting to discuss this yet. As a result, Mr. Scheidel felt it was important  
412 to address this issue in the Charter. He was in favor of including language that agreed, irrespective  
413 of the vote from the VMERS Board, that the employees of the new entity be given the same  
414 retirement benefits as those currently in the Town of Essex, when the Town joined VMERS in  
415 2004. The agreement at that time gave those employees the choice to join VMERS or to stay with

416 their current 457 and 401 plans, but still reserve the right to join at some time in the future. Mr.  
417 Scheidel stated that hopefully, VMERS would include the new employees, even in a new entity of  
418 the Town of Essex Junction, but he felt it was important to guarantee this opportunity to the Village  
419 employees that would become employees of the Town of Essex Junction because it was a good  
420 retirement plan, and he believed they should be offered that choice. Mr. Scheidel commented that  
421 he thought that in the past there had been mergers in the State of Vermont where this had not been  
422 an issue, but he was not sure what the decision would be with a new VMERS Board.

423

424 Mr. Sweeney asked whether that option was the decision of VMERS or whether it would cost the  
425 Town to allow that option? Mr. Scheidel replied that it would not be a cost to the Town and felt it  
426 would be a shame if the option was not offered to the new employees. Mr. Sweeney confirmed with  
427 Mr. Scheidel that he wanted the new employees to have the opportunity to join VMERS. Mr.  
428 Sweeney asked if the retirement plan option for new employees required new language in the  
429 Charter or the Transition Plan or whether it just needed approval from the VMERS Board? Mr.  
430 Scheidel replied that if VMERS approved it, there would not be a problem. However, if they did  
431 not approve it, then the option would be guaranteed to the new employees if the members included  
432 language in the Charter. Mr. Sweeney confirmed with Mr. Scheidel that he was in favor of  
433 including language for the option of VMERS retirement plan for new employees in the Charter.  
434 The members deliberated on where to include this topic in the document.

435

436 Mr. Blanchard wanted to know the greatest advantage of having VMERS for the employees? Mr.  
437 Scheidel explained that the Village employees currently had 457 and 401 plans through the  
438 International City Manager's Association (ICMA). These plans were defined contributions, which  
439 meant what an employee contributed and what an employee earned was the resulting sum of money  
440 when an employee retired. With VMERS, the plan was a defined benefit, which meant the  
441 employee's highest paid three years after 20 years of employment was averaged by a formula and  
442 contributed as a fixed amount of dollars. Additionally, a member of VMERS preserved the right to  
443 be a member of a 457 or 401 plan as well. Ms. Higgins questioned that there wasn't a cost to a  
444 defined benefit plan. Mr. Scheidel stated that the cost was the same as the cost for ICMA. Mr.  
445 Safford clarified the intent was to allow the Village employees the same retirement plan option as  
446 the Town employees. Ms. Higgins did not understand why the Village employees would not have  
447 the same option as the Town employees if they were silent in the Charter. Mr. Scheidel explained  
448 that it was because VMERS may decide against providing that option and that the Charter would  
449 over rule the VMERS Board and guarantee that option for the new employees. Mr. Odit stated that  
450 the intent was not to require that Village employees join VMERS but to allow the option. Mr.  
451 Sweeney asked if the staff had some proposed language for them to consider. Mr. Scheidel stated  
452 that he did not have proposed language at the moment as he had hoped a decision would have been  
453 made from the VMERS Board to give him direction on this matter. Members deliberated whether  
454 VMERS would be more costly because it was a defined benefit. Mr. Scheidel explained that  
455 because it was a municipal retirement plan, the municipality would avoid some of the mistakes  
456 made in the private corporate sector. Mr. Scheidel explained that the municipality would have the  
457 actuary review almost every year. He stated that the employer and the employee costs, had not  
458 changed since 1992 and that the fund was funded at 110% in terms of its cash value and its ability  
459 to meet its demand from its retirees. He added that this percentage fluctuated from 110% to 125%.  
460 Mr. Sweeney cautioned Mr. Scheidel not to confuse funding with costs because the plan might be  
461 funded, but it might be twice as costly as another plan. Mr. Scheidel argued that the costs were split

462 between the employees and the employer and that the employer's cost of participation had not been  
463 increased since he started. Mr. Sweeney stated that there was a general move in the private  
464 industry, such as IBM, to eliminate defined benefit plans and to move towards defined contribution  
465 plans because defined benefit plans were so much more costly. Mr. Scheidel emphasized that the  
466 staff was interested in preserving the opportunity for the new employees to join if they chose. He  
467 pointed out that the salary structure at IBM was phenomenally higher than that of the future Town  
468 of Essex Junction and wanted to preserve this opportunity for the employees of the new entity.

469

470 Mr. Safford suggested language that would explain that the Village employees would have the same  
471 rights and option as the current Town employees. It would then be an issue for the new Town  
472 council to have future union negotiations or personnel amendments. Ms. Higgins was not sure that  
473 was Mr. Scheidel's intent. Mr. Scheidel explained that VMERS was presently mandatory for those  
474 employees in the Town who were employed after 1/04, but that VMERS was an option for those  
475 employed before 1/04. He clarified the issue to be whether VMERS would include the new Town  
476 of Essex Junction in the current contract with the Town of Essex. Mr. Lajza felt that Ms. Higgins'  
477 edit in section 101 addressed the problem because it renamed an existing municipality. Mr. Safford  
478 stated that the staff did not want to take that chance, however, and Mr. Lajza understood. Mr. Lajza  
479 felt Mr. Scheidel might have some proposed language and suggested, "All employees shall have the  
480 option to join VMERS". Mr. Mertens felt this issue might be one that should be deferred to the  
481 Selectboard and the Trustees and asked Mr. Scheidel to clarify why he believed the topic should be  
482 in the Charter, which he assumed would be inserted on page 15. Mr. Sweeney thought it should be  
483 under Personnel on page 12, and he clarified that Mr. Scheidel wanted it to be in the Charter, not  
484 the Transition section, and Mr. Scheidel agreed. Mr. Scheidel, in response to Mr. Mertens,  
485 explained that if the VMERS Board did not approve the option for the new employees, he was in  
486 favor of guaranteeing that option in the Charter. Ms. Myers reminded Mr. Mertens that the  
487 Transition Committee was not in existence until the Charter was approved and because of that was  
488 in favor of including it in the Charter. Mr. Sweeney asked if the staff had some proposed language  
489 for members to consider. Mr. Safford suggested inserting language under Personnel in the  
490 Transition Provisions, and that Mr. Scheidel had some proposed language. Mr. Sweeney asked  
491 whether the staff suggested it be in the Transition Section or the Charter? Mr. Odit replied that  
492 because it was a one-time issue, it would be better to insert language in the Transition section and  
493 members understood. Mr. Odit confirmed that even though the language would be in the Transition  
494 section, it would still be law, but it wouldn't be codified.

495

496 Mr. Scheidel proposed that on page 15 of the Transition section (h) Personnel, a new paragraph  
497 before (i) Contracts be created that would read, "Former employees of the Village shall have the  
498 ability to remain in the retirement plan they were participating in prior to the effective date of  
499 merger." Mr. Safford added, "or join VMERS". Mr. Sweeney suggested, "Former Village  
500 employees shall have the option to join VMERS or remain in their current plan." Ms. Higgins  
501 disagreed with "former" because it might imply any former employee of the Village and thought  
502 that they had referred to a specific date on other topics related to this issue in the Charter. Ms.  
503 Myers stated that the time the Charter became a document, there would no longer be employees of  
504 the Village. Mr. Safford suggested saying, "Employees of the Village as of x,y,z date", and Ms.  
505 Higgins agreed. Mr. Scheidel stated, "Employees of the Village as of June 30, 2008, shall have the  
506 option to remain in their current pension plan or join VMERS." Ms. Higgins suggested inserting,  
507 "existing." Mr. Odit stated that Legislative Council could change it. Mr. Scheidel asked members if

508 they felt the proposed language was clear, and members agreed.

509

510 **IRENE WRENNER MOVED AND JOHN LAJZA SECONDED A MOTION TO ACCEPT**  
511 **THE NEW LANGUAGE, “EMPLOYEES OF THE VILLAGE AS OF JUNE 30, 2008**  
512 **SHALL HAVE THE OPTION TO REMAIN IN THEIR CURRENT PENSION PLAN OR**  
513 **JOIN VMERS.”**

514

515 **THE MOTION PASSED 8-0.**

516

517 Mr. Scheidel thanked the members for addressing the issue. Mr. Sweeney asked if there were any  
518 further issues regarding the Charter and moved the discussion to the Cover Letter and Transmittal  
519 Document.

520

521 With regards to page 5, Ms. Higgins suggested putting a period after “10%” and striking the rest of  
522 the sentence, and members agreed. She also suggested striking the second bullet because it was  
523 already discussed in bullet nine, and members agreed. Mr. Odit suggested adding information about  
524 the local option taxes, and members agreed. One member suggested putting it as a bullet item on  
525 page 5. Mr. Mertens felt it was not an issue that the members had changed since the Town and  
526 Village presently had that right to the local option taxes. Mr. Sweeney stated that the local option  
527 taxes was an additional topic to the Charter. Mr. Mertens asked whether the Village and the Town  
528 presently had the local option taxes, and members stated, no, that it had never been in the Charter.  
529 Mr. Safford stated that the enabling authority was in state law, and Mr. Mertens understood. Mr.  
530 Sweeney stated that Williston, South Burlington and Burlington included the local option taxes in  
531 their Charters. Ms. Higgins noted that Town of Essex did not put it in their Charter.

532

533 There were no further comments on the Transmittal Document or the reference materials. Ms.  
534 Myers and Mr. Sweeney thanked the Mr. Odit for including the extra Organizational Chart. Mr.  
535 Mertens suggested the Charts be in color for the final document to the Trustees and Selectboard,  
536 and staff agreed.

537

538 **RENE BLANCHARD MOVED AND HANS MERTENS SECONDED A MOTION TO**  
539 **APPROVE THE CHARTER AS AMENDED THAT NIGHT.**

540

541 **THE MOTION PASSED 7-0-1 (Irene Wrenner opposed).**

542

543 **BARBARA HIGGINS MOVED AND DEB BILLADO SECONDED A MOTION TO**  
544 **APPROVE THE TRANSMITTAL DOCUMENT AS AMENDED THAT NIGHT.**

545

546 **THE MOTION PASSED 8-0.**

547

548 Mr. Sweeney asked if there was any further business to discuss before moving to the next Agenda  
549 Item. Ms. Wrenner suggested discussing how members would address changes to the minutes.

550

551 **LINDA MYERS MOVED AND BARBARA HIGGINS SECONDED A MOTION TO**  
552 **AUTHORIZE THE CHAIRS TO REVIEW & APPROVE THE FINAL DOCUMENTS AS**  
553 **APPROVED THAT NIGHT.**

554

555 Mr. Blanchard commented that the Task Force could reconvene in the future if necessary, but did  
556 not see the need at the present time.

557

558 Mr. Lajza made a friendly amendment to Ms. Myers' motion that after review, the Chairs had the  
559 option to recall the Task Force, and Ms. Myers accepted his friendly amendment. Ms. Higgins  
560 emphasized, as long as there was a significant reason to reconvene, and Mr. Sweeney understood.  
561 Ms. Wrenner suggested this process be followed for the minutes as well because the members  
562 would not have a chance to review them. It was decided that the minutes would be e-mailed to  
563 members for feedback to the Chairs.

564

565 **THE MOTION PASSED 8-0.**

566

567 **IRENE WRENNER MOVED AND LINDA MYERS SECONDED A MOTION TO SEND**  
568 **THE MINUTES AROUND VIA E-MAIL AND THEN SEND ANY CORRECTIONS AS**  
569 **WELL BY E-MAIL.**

570

571 **THE MOTION PASSED 8-0.**

572

573 It was determined that the minutes would be circulated by the following Tuesday morning with  
574 feedback due by the end of Thursday. In addition, the changes to the document would be ready for  
575 review and approval of the Chairs on the following Monday.

576

577 Ms. Wrenner wanted to elaborate as to why she opposed the Charter. She is still optimistic about  
578 the merger, as she was when she joined the Task Force. She spoke this spring with a number of  
579 residents in the Town and Village. The input she received from Town-outside-the-Village residents  
580 was that they are deeply concerned about one or more of the following: 1) the name change, 2) the  
581 tax increase, and 3) renovating Lincoln Hall. Ms. Wrenner stated that, as a Citizen Representative  
582 for the Town on the Task Force, she felt she must voice citizen concerns and vote as she believes  
583 they would. Right now, many TOV residents oppose merger, given these three provisions in the  
584 Charter.

585

586 **Public Input-General Comments**

587

588 **MR. LAJZA MOVED AND RENE BLANCHARD SECONDED A MOTION TO**  
589 **PERMANENTLY ADJOURN UNLESS THE TASK FORCE MEMBERS WERE CALLED**  
590 **TO RECONVENE BY THE CHAIRS OR THE LEGISLATIVE BODIES.**

591

592 Mr. Marcotte expressed his opinion that the Task Force should provide an estimate on the  
593 renovation of Lincoln Hall for the administrative offices between now and the time the Charter  
594 went to vote. He felt that this issue could be enough to defeat that Charter and that the Task Force  
595 had four to five months to complete that assessment. Members replied that this issue belonged to  
596 the Trustees and the Selectboard.

597

598 **THE MOTION PASSED 8-0.**

599

**MERGER TASK FORCE**

**June 14, 2006**

600 Mr. Sweeney thanked all the members for their work, and the members thanked the Chairs for their  
601 leadership throughout their charge.

602

603

604 **Respectfully submitted,**

605 *Saramichelle Stultz*

606

607 *Saramichelle Stultz*

608 Recording Secretary

609

610

611

612 (THESE MINUTES ARE SUBJECT TO CHANGE AT THE NEXT MERGER TASK FORCE  
613 MEETING)

614