

05C



# TOWN OF TYNGSBOROUGH

Government Study Commission

Town Offices

25 Bryants Lane

Tyngsborough, MA 01879

Tel: (978) 649-2300 Ext. 100 | Fax: (978) 649-2320

April 17, 2014

Board of Selectmen  
25 Bryants Lane  
Tyngsborough, MA 01879

To the Board of Selectmen:

This report is respectfully submitted as an interim report of the work of the Government Study Commission.

The Commission has reviewed several documents to familiarize itself with the current organization of the Town, including job descriptions, organizational charts, election results, collective bargaining groups, working hours of employees, and appointed versus elected positions.

The group determined that to avoid a large-scale change that might be met with opposition, it would be better to tackle some issues that would be smaller scale and, presuming success with implementation, would be able to move forward with larger scale issues.

The following are areas we recommend the Board of Selectmen submit articles to the May 20, 2014 Annual Town Meeting:

1. **Collector of Taxes:** we recommend this position become an appointed position, with appointing authority being vested in the Board of Selectmen.
2. **Town Clerk:** we recommend this position become an appointed position, with appointing authority being vested in the Board of Selectmen. The Board of Selectmen is also requested to file Special Legislation regarding the continued employment of the incumbent Town Clerk by the Board.
3. **Cemeteries:** we recommend authority over the Town's cemeteries be consolidated under the authority of the Board of Selectmen, potentially to a consolidated public works department, or to grant the Board of Selectmen the authority of a Board of Public Works.
4. **Tree Warden:** we recommend this position become an appointed position, with appointing authority being vested in the Board of Selectmen, for potential consolidation into a public works department.

*town of*  
*Tyngsborough*  
*massachusetts*



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The intention in making the above recommendations is that, recognizing that the appointing authority is the Board of Selectmen, the hiring process be an arms-length process managed by the Town Administrator, however the Board of Selectmen would have the authority to veto the Town Administrator's recommendation.

The current employees/appointee/elected officials holding the positions above were invited to speak with the Commission and all graciously shared their time. Details on the meetings can be found in the Commission's meeting minutes, which are also attached for your information.

For your information, the following are excerpts of Town Counsel's opinion relative to these recommendations. The full opinion is attached.

### Collector of Taxes

As to the Collector of Taxes, the Town Clerk, Cemetery Commissioners, and Tree Warden, if an Annual or Special Town Meeting votes to have these positions appointed and subsequently at the annual Town election by ballot vote and the Town so votes, then these positions are appointive, subject to any incumbent holding office until his or her term expires.

### Town Clerk

See my above comments under [Collector of Taxes]. Note, however, for your information and not relevant here, that a Town Clerk under the age of 70 who has been elected for not less than 5 years, may hold office during good behavior until he or she reaches the age of 70 if the Town accepts M.G.L. c. 41, §§ 19B to 19C, inclusive. The term granted to an incumbent Town Clerk will not extend to a successor.

### Cemetery Commission

See my above comments under [Collector of Taxes]. The Cemetery Commission could be placed under the jurisdiction of the Board of Selectmen pursuant to M.G.L. c. 41, § 21. Placing the duties of the Cemetery Commission under the jurisdiction of the Highway Department may be problematic.

If the Town Meeting so votes, under M.G.L. c. 41, § 21, the Selectmen will appoint a Board of Cemetery Commissioners to consist of 3 members, under the supervision and control of the Selectmen, to maintain the public cemeteries and appoint necessary employees as set forth in M.G.L. c. 114, § 27. I assume that the Town voted to accept M.G.L. c. 114, § 22, but this has not been confirmed by the Town Clerk. Further research is necessary on this point.





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Note also that under M.G.L. c. 41, §§ 69C and 69D, the Town could vote to establish a Board of Public Works; and such Board would exercise the powers of the Cemetery Commissioners and Tree Warden. A Board of Public Works may also be created by a Special Act of the legislature. I believe that, if by Special Act, the Board of Selectmen could act as the Board of Public Works if the Town so votes.

### Tree Warden

See my above comments under [Collector of Taxes] and [Cemetery Commission].

M.G.L. c. 41, § 106, provides that, if the Tree Warden shall be appointed, the appointment shall be by the Board of Selectmen and the term shall be for 3 years. The Tree Warden shall be licensed and qualified by training and experience.

I assume for the purposes of this opinion that the Collector of Taxes, Town Clerk, Cemetery Commissioners, and Tree Warden are elective positions, because, in the past, the Town so voted pursuant to M.G.L. c. 41, § 1. Therefore, if the Government Study Commission now wishes to have these positions become appointive, it may proceed to do so under M.G.L. c. 41, § 1B, and if approved at a Town Meeting, to present the issue before the voters by ballot at the Annual Town elections.

Note also that a Special Act of the legislature is another method to have certain elected officers become appointed officials. See St. 2008, c. 382 Appt. of Tax Collector and Town Treasurer of Orange. See St. 2009, c. 6, Appointment of Town Clerk in Weston.

Town Counsel offered the following recommendations to the Commission:

If the Government Study Commission determines that the positions of Town Clerk, Tax Collector, and Tree Warden should become appointive positions, the Board of Selectmen or the Government Study Commission needs to place on the Town Meeting Warrant an Article pursuant to M.G.L. c. 41, § 1B. If the Government Study Commission determines that the Cemetery Commission should be an appointed Commission under the supervision of the Board of Selectmen, then the Government Study Commission and/or the Board of Selectmen needs to place on the Town Meeting Warrant an Article as provided by M.G.L. c. 41, § 21.

If the purpose of the study is to make government more efficient, effective, and economical, establishing a Board of Public Works should be considered. In the case of the Cemetery Commission, my view is that having a Cemetery Commission appointed and supervised by the Board of Selectmen is not efficient, effective, or economical; and the cemeteries should be under the jurisdiction of a Board of Public Works, as should the position of Tree Warden.

*Town of*  
*Tyngsborough*  
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In all of the above circumstances, if approved, then a ballot vote will be necessary at a Town election.

A Board of Public Works Warrant Article for a Special Act for the legislature could be crafted for the next or future Town Meeting, specifically for the needs of the Town of Tyngsborough with the Board of Selectmen acting as the Board of Public Works, with a superintendent to oversee the work regarding the roads, trees, parks, sewers, and cemeteries, etc. The Public Works effort may require more time than the Town Meeting Warrant Articles to convert certain elective officials into appointive officials, but the appointive process need not be delayed while a Board of Public Works Special Act is developed.

The Commission also evaluated the timing of Annual Town Meeting and the Annual Town Election. While we will continue to evaluate potential recommendations, including a potential Special Act moving the Annual Town Election to November so as to coincide with the biennial state election, we do not have a recommendation for change at this time.

Finally, in the event the Board of Selectmen were to become the appointing authority of the Collector of Taxes, we recommend the Board of Selectmen create a Finance Director position to oversee the treasury, accounting, and collections. We believe that this will create efficiency of the Town's financial operations, with oversight consolidated under an appointed Finance Director who would report to the Town Administrator and be appointed by the Board of Selectmen.

We thank you for entrusting us with review of the Town's governance structure, and hope that you will consider these recommendations as you formulate the May 20, 2014 Annual Town Meeting warrant. As you have read, action at a Town Election will also be required. We will continue our review of Town government in the coming weeks and months.

Sincerely,

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Karyn Puleo

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Eileen Farrell

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Donald Lampron

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Robert Mercier

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Jacqueline Schnackertz

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Diana Keohane





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Paula Derby

cc: Charles Zaroulis, Town Counsel

Michael P. Gilleberto, Town Administrator

To see if the Town will vote, as provided by M.G.L. c. 41, § 1B, that the position of Tax Collector become an appointed position, or take any action relative thereto.

Explanation.

M.G.L. c. 41, § 1, authorized, by election, the office of town clerk, town treasurer, collector of taxes, tree warden and *“all other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.”*

However, M.G.L. c. 41, § 1B, provides that *“Any office or board ... elected under ... section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters ... at the annual town elections ...”*; and the statute provides the form of the ballot question.

Section 1B further provides that *“... Any incumbent ... shall continue to hold ... office ... until the expiration of [his or her] term ...”* and further provides that if *“... an office or board which becomes an appointed office or board at the same election [he or she] shall hold such office ... until the appointment to said office is otherwise made. ...”*

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To see if the Town will vote, as provided by M.G.L. c. 41, § 1B, that the position of Town Clerk become an appointed position, or take any action relative thereto.

Explanation.

M.G.L. c. 41, § 1, authorized, by election, the office of town clerk, town treasurer, collector of taxes, tree warden and *“all other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.”*

However, M.G.L. c. 41, § 1B, provides that *“Any office or board ... elected under ... section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters ... at the annual town elections ...”*; and the statute provides the form of the ballot question.

Section 1B further provides that *“... Any incumbent ... shall continue to hold ... office ... until the expiration of [his or her] term ...”* and further provides that if *“... an office or board which becomes an appointed office or board at the same election [he or she] shall hold such office ... until the appointment to said office is otherwise made. ...”*

**Draft #1, April 25, 2014 Tyngs/Articles – Special Act**

To see if the Town will vote to authorize the Board of Selectmen to request the state legislature to enact a Special Act to provide:

In the event the Town of Tyngsborough, at its annual Town election in 2015, votes pursuant to M.G.L. c. 41, § 1B, that the position of town clerk becomes an appointive position to be appointed by the board of selectmen, the town clerk shall continue to hold office until the expiration of her term whereupon she shall be appointed by operation of law as town clerk, under the jurisdiction of the board of selectmen.

Notwithstanding any general or special law to the contrary, the board of selectmen may remove, suspend or discipline the town clerk for just cause. The town clerk shall be given written notice at least 14 days prior to the date of removal, which shall specify the reasons for such removal. The town clerk shall, upon written request, be granted a public hearing held by the board of selectmen who shall vote to confirm such removal or to reinstate the town clerk by a majority vote.

The town clerk's written request for a public hearing shall be made to the board of selectmen on or before the date of removal. The vote of the board of selectmen shall occur not later than 7 days after the public hearing. If, after a written request for a public hearing, such hearing is not conducted or the vote fails to meet the standards for just cause, the town clerk shall be reinstated with full pay and benefits retroactive to the date of removal.

This special act shall apply only to the present incumbent and shall be void upon her death, retirement, termination, or separation; and any subsequent town clerk shall be appointed by the board of selectmen unless provided otherwise by law.

To see if the Town will vote, as provided by M.G.L. c. 41, § 1B, that the position of Tree Warden become an appointed position, or take any action relative thereto.

Explanation.

M.G.L. c. 41, § 1, authorized, by election, the office of town clerk, town treasurer, collector of taxes, tree warden and *“all other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.”*

However, M.G.L. c. 41, § 1B, provides that *“Any office or board ... elected under ... section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters ... at the annual town elections ...”*; and the statute provides the form of the ballot question.

Section 1B further provides that *“... Any incumbent ... shall continue to hold ... office ... until the expiration of [his or her] term ...”* and further provides that if *“... an office or board which becomes an appointed office or board at the same election [he or she] shall hold such office ... until the appointment to said office is otherwise made. ...”*

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To see if the Town will vote, as provided by M.G.L. c. 41, § 21, to have the selectmen act as cemetery commissioners or to vote to have the selectmen appoint the cemetery commissioners, who shall be under the supervision of the selectmen, by the following ballot:

Shall the Town vote to have its selectmen act as cemetery commissioners:  
\_\_\_\_ YES \_\_\_\_ NO.

Shall the Town vote to have its selectmen appoint the cemetery commissioners:  
\_\_\_\_ YES \_\_\_\_ NO.

Explanation:

M.G.L. c. 114, § 27, provides that if the Town votes under M.G.L. c. 41, § 21, by ballot, the selectmen shall appoint cemetery commissions under the supervision of the selectmen or the selectmen shall act as cemetery commissioners.

**CHARLES J. ZAROULIS LAW OFFICES**

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1565 Main Street, Building 1, Suite 1F, Tewksbury, Massachusetts 01876

Telephone (978) 458-4583

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E-mail [charles.zaroulis@verizon.net](mailto:charles.zaroulis@verizon.net)

April 14, 2014

Ms. Karyn Puleo  
Chair, Government Study Commission  
And Board of Selectmen  
Town Hall  
25 Bryants Lane  
Tyngsborough, MA 01879

**File: Tyngsborough**

**Re: Government Study**

Dear Chairperson Puleo, and Commission and Board Members:

This opinion is in response to your letter dated March 20, 2014, in which you present the following questions. No facts, issues, or narratives were presented to me regarding the various official position(s).

**A. ISSUES**

What steps would be required to

1. Change the Annual Town Election to occur after the Annual Town Meeting?
2. Give the Board of Selectmen the authority to appoint a Town Collector of Taxes?
3. Establish the position of Finance Director as an appointment of the Board of Selectmen, and to assign to the position of Finance Director oversight of the Town Accountant and Collector of Taxes?
4. Give the Board of Selectmen the authority to appoint a Town Clerk?
5. Assign oversight of the Town's cemeteries to the Highway Department?
6. Assign of the Tree Warden to the Highway Department?

**B. MASSACHUSETTS GENERAL LAWS AND TOWN BYLAWS:**

1. Annual Town Election:

M.G.L. c. 39, § 9, reads:

*Except as otherwise provided by special law ... the annual meeting of each town shall be held in February, March, April, May or June; and other meetings may be held at such times as the selectmen may order ... or by law prescribe; provided, however, that, notwithstanding the provisions of this section or of any other law, by law ... to the contrary, a town, by the vote of its board of selectmen ... may delay the annual town meeting; and provided, further, that such a delayed annual town meeting shall complete its business on or before June thirtieth. ...*

Town Bylaws Article 1, Section 1, provides that the Annual Town Meeting shall be held on the third Tuesday of each May at 7:00 p.m. The date of election of Town officials is not set forth in the Town Bylaws.

2. Collector of Taxes:

M.G.L. c. 41, § 1, authorized, by election, the office of town clerk, town treasurer, collector of taxes, tree warden and “*all other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.*”

However, M.G.L. c. 41, § 1B, provides that “*Any office or board ... elected under ... section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters ... at the annual town elections ...*”; and the statute provides the form of the ballot question.

Section 1B further provides that “*... Any incumbent ... shall continue to hold ... office ... until the expiration of [his or her] term ...*” and further provides that if “*... an office or board which becomes an appointed office or board at the same election [he or she] shall hold such office ... until the appointment to said office is otherwise made. ...*”

Town Bylaw Article VIII, Town Collector, addresses certain duties of the tax collector but not any issues concerning election or appointment.

3. Finance Director:

I need more information and clarification as to this issue. I assume that the Treasurer will be the person designated as Finance Director. Provide me with any documents concerning the Town Accountant and Treasurer, and I will need to discuss with you any collective bargaining issues. I assume the Treasurer and Tax Collector are not members of any collective bargaining unit.

Town Bylaws do not address the position of Town Treasurer or, for that matter, the Town Accountant.

4. Town Clerk:

See comments in B. 2. above regarding the Collector of Taxes, which also apply to the Town Clerk.

Town Bylaw Article XXIII, Town Clerk, addresses only fees to be paid to the Town Treasurer and not issues concerning election or appointment.

5. Cemeteries:

M.G.L. c. 114, § 27, reads:

*If a town so votes under section twenty-one of chapter forty-one the selectmen shall appoint a board of cemetery commissioners to consist of three members, to be appointed for the term of three years. The commissioners shall, under the supervision and control of the selectmen, maintain the public cemeteries in the town, and shall with the approval of the selectmen, appoint such employees as are necessary to maintain such cemeteries.*

Town Bylaws do not address cemeteries or Cemetery Commissioners.

The Town Clerk advises that Cemetery Commissioners were designated to be appointed on April 4, 1898. At present, however, they are elected; and we need clarification as to whether the Town subsequently accepted M.G.L. c. 114, § 22, or corresponding earlier laws that authorized the election. Please request the Town Clerk to further review her records to determine whether or not Chapter 114, § 22, or a prior like statute was accepted.

6. Tree Warden:

M.G.L. c. 41, § 1, authorizes, by election, a Tree Warden. See my above comments regarding the Tax Collector, which also apply to the Tree Warden.

Town Bylaws do not address Tree Wardens.

## C. DISCUSSION

### Issue 1: Town Meeting

Town Meeting by bylaw may establish the date of the election; and the Annual Town Meeting. M.G.L. c. 39, § 9, does not require that the election take place before the Annual Town Meeting. I note that section 9 was amended in 2008. Previously, section 9 expressly provided that the election of town offices could take place before or after the Annual Town Meeting.

In my view, this matter may be addressed by an amendment to the Town General Bylaws.

#### Issue 2: Collector of Taxes

As to the Collector of Taxes, the Town Clerk, Cemetery Commissioners, and Tree Warden, if an Annual or Special Town Meeting votes to have these positions appointed and subsequently at the annual Town election by ballot vote and the Town so votes, then these positions are appointive, subject to any incumbent holding office until his or her term expires.

#### Issue 3: Finance Director

I need more information before I can respond. However, if the Collector of Taxes becomes an appointed official, this would generally be an administrative matter under the jurisdiction of the Board of Selectmen. I need to review and discuss with the Commission as to whether any collective bargaining agreements are applicable. Please provide me with a copy of the collective bargaining agreement relative to the Town Accountant and any contract with the Treasurer.

#### Issue 4: Town Clerk

See my above comments under Issue 2. Note, however, for your information and not relevant here, that a Town Clerk under the age of 70 who has been elected for not less than 5 years, may hold office during good behavior until he or she reaches the age of 70 if the Town accepts M.G.L. c. 41, §§ 19B to 19C, inclusive. The term granted to an incumbent Town Clerk will not extend to a successor.

#### Issue 5: Cemetery Commission

See my above comments under Issue 2. The Cemetery Commission could be placed under the jurisdiction of the Board of Selectmen pursuant to M.G.L. c. 41, § 21. Placing the duties of the Cemetery Commission under the jurisdiction of the Highway Department may be problematic.

If the Town Meeting so votes, under M.G.L. c. 41, § 21, the Selectmen will appoint a Board of Cemetery Commissioners to consist of 3 members, under the

supervision and control of the Selectmen, to maintain the public cemeteries and appoint necessary employees as set forth in M.G.L. c. 114, § 27. I assume that the Town voted to accept M.G.L. c. 114, § 22, but this has not been confirmed by the Town Clerk. Further research is necessary on this point.

Note also that under M.G.L. c. 41, §§ 69C and 69D, the Town could vote to establish a Board of Public Works; and such Board would exercise the powers of the Cemetery Commissioners and Tree Warden. A Board of Public Works may also be created by a Special Act of the legislature. I believe that, if by Special Act, the Board of Selectmen could act as the Board of Public Works if the Town so votes.

#### Issue 6: Tree Warden

See my above comments under Issue 2 and Issue 5. M.G.L. c. 41, § 106, provides that, if the Tree Warden shall be appointed, the appointment shall be by the Board of Selectmen and the term shall be for 3 years. The Tree Warden shall be licensed and qualified by training and experience.

I assume for the purposes of this opinion that the Collector of Taxes, Town Clerk, Cemetery Commissioners, and Tree Warden are elective positions, because, in the past, the Town so voted pursuant to M.G.L. c. 41, § 1. Therefore, if the Government Study Commission now wishes to have these positions become appointive, it may proceed to do so under M.G.L. c. 41, § 1B, and if approved at a Town Meeting, to present the issue before the voters by ballot at the Annual Town elections.

Note also that a Special Act of the legislature is another method to have certain elected officers become appointed officials. See St. 2008, c. 382 Appt. of Tax Collector and Town Treasurer of Orange. See St. 2009, c. 6, Appointment of Town Clerk in Weston.

In order to properly address the issues presented, I requested the vote of the Town Meeting that established the date of the election for Town Offices, the date of the Annual Town Meeting, and any Special Acts or Town Meeting action concerning such officials.

See the attached response of the Town Clerk.

#### D. RECOMMENDATIONS

If the Government Study Commission determines that the positions of Town Clerk, Tax Collector, and Tree Warden should become appointive positions, the Board of Selectmen

Government Study Commission  
Ms. Karyn Puleo, Chairwoman, Board of Selectmen  
Re: Government Study  
April 14, 2014

Page 6 of 6

or the Government Study Commission needs to place on the Town Meeting Warrant an Article pursuant to M.G.L. c. 41, § 1B. If the Government Study Commission determines that the Cemetery Commission should be an appointed Commission under the supervision of the Board of Selectmen, then the Government Study Commission and/or the Board of Selectmen needs to place on the Town Meeting Warrant an Article as provided by M.G.L. c. 41, § 21.

If the purpose of the study is to make government more efficient, effective, and economical, establishing a Board of Public Works should be considered. In the case of the Cemetery Commission, my view is that having a Cemetery Commission appointed and supervised by the Board of Selectmen is not efficient, effective, or economical; and the cemeteries should be under the jurisdiction of a Board of Public Works, as should the position of Tree Warden.

In all of the above circumstances, if approved, then a ballot vote will be necessary at a Town election.

A Board of Public Works Warrant Article for a Special Act for the legislature could be crafted for the next or future Town Meeting, specifically for the needs of the Town of Tyngsborough with the Board of Selectmen acting as the Board of Public Works, with a superintendent to oversee the work regarding the roads, trees, parks, sewers, and cemeteries, etc. The Public Works effort may require more time than the Town Meeting Warrant Articles to convert certain elective officials into appointive officials, but the appointive process need not be delayed while a Board of Public Works Special Act is developed.

Please call me if you have any questions or if you wish to discuss.

Sincerely yours,

Charles J. Zaroulis  
Town Counsel

CJZ/jrz  
Attachment

cc: Government Study Commission  
Mr. Michael P. Gilleberto, Town Administrator  
Opinion File 2014



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**APPROVED**

### Government Study Commission

#### Meeting Notice

Thursday, January 16, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

#### AGENDA

1. Introductions
2. Review Goals of the Committee
3. Establish Meeting Schedule and Timeline
4. Identify Available Resources



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Members Present: Karyn Puleo, Eileen Farrell, Jackqueline Schnackertz, Donald Lampron, Diana Keohane, Robert Mercier, Paula Derby

Staff Present: Michael Gilleberto

### Introductions

Michael P. Gilleberto, Recording Secretary – Consensus

The Committee voted 7-0-0 on a motion made by Member Schnackertz, second by Member Mercier to appoint Karyn Puleo as Chairman.

The Committee voted 7-0-0 on a motion made by Member Keohane, second by Member Schnackertz to appoint Eileen Farrell as Vice-Chairman.

The Committee discussed a timeline for a final report, which is the end of this calendar year.

The Committee has asked the Administrator to submit the following: Strategic Financial Planning Committee Report, Job Descriptions, Employee Listing with Union contract, Revised Position Listing (Appointing) to the Committee.

There was discussion of having a Town Charter/By-Law versus the existing Massachusetts General Laws.

The Committee asked the Town Administrator for comments, and the Town Administrator commented that consolidating appointing authority under the Selectmen would likely reduce/avoid inconsistency between and among boards, committees, officers, and departments, especially in regards to the management of employees.

There was discussion of timing of the Town Election, which precedes the Annual Town Meeting. This item could be an expedited item for referral to the Board of Selectmen for consideration at the upcoming Annual Town Meeting.

The Administrator will submit the Town By-laws, the election results, and a link to the Town bylaws.

The next Committee meeting is Thursday, January 30, 2014 at 6:30 PM.

The Committee voted 7-0-0 on a motion by Member Schnackertz, second by Member Lampron to adjourn.





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The Committee adjourned at 8:10 P.M.

Respectfully submitted

Approved on January 30, 2014

Michael P. Gilleberto, Town Administrator



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**APPROVED**

### Government Study Commission

#### Meeting Notice

Thursday, January 30, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

#### AGENDA

1. Review/Approve Minutes of January 16, 2014 Meeting
2. Review Information Requested at Last Meeting
3. Discuss Potential Recommendations for 2014 Annual Town Meeting
4. Schedule Next Meeting





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## Government Study Commission

### Meeting Minutes

Thursday, January 30, 2014 at 6:30 PM

Members Present: Karyn Puleo, Eileen Farrell, Donald Lampron, Diana Keohane, Robert Mercier, Paula Derby

Members Absent: Jacqueline Schnackertz

Staff Present: Michael Gilleberto, Town Administrator, Nina Nazarian, Assistant Town Administrator

The meeting convened at 6:36 PM by Chair Karyn Puleo.

The Commission voted 6-0-0 on a motion by Member Mercier, second by Member Puleo to approve the minutes of January 16, 2014 with one note by Member Farrell that the name of the appointed body is the Government Study Commission, not the Committee.

The Commission discussed affordable housing.

The Commission discussed the timing of Town Meeting and Town elections. Currently, Town elections are held before Town Meeting. The Commission began discussing state elections in relationship to Town elections and concluded that the Town Clerk should be invited to the next meeting to discuss Town elections and their timing.

The Commission reviewed the election results. Member Keohane offered to compile the election information for the Commission's review.

The Commission discussed the consolidation of select public works functions, specifically the Highway Department, Cemetery Commission, and Tree Warden. Member Lampron suggested considering including facilities in the potential consolidation.

The Commission discussed the elected offices of the Town Collector and the Town Clerk and concluded that they would like to invite both elected officials to the Commission's next meeting.





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The Commission discussed the Board of Fire Engineers and Constables as a potential for review under the Government Study Commission.

The next Commission meeting is Thursday, February 20, 2014 at 6:30 PM.

The Commission voted 6-0-0 on a motion by Member Lampron, second by Member Puleo to adjourn.

The Commission adjourned at 8:18 P.M.

Respectfully submitted,

Approved on February 20, 2014

Nina Nazarian, Assistant Town Administrator on behalf of Michael P. Gilleberto, Town Administrator





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**APPROVED**

### Government Study Commission

#### Meeting Notice

Thursday, February 20, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

#### AGENDA

1. Review/Approve Minutes of January 30, 2014 Meeting
2. 6:35 PM - Discussion with Town Collector
3. 7:05 PM – Discussion with Town Clerk
4. Review Previous Town Elections Results
5. Continue Discussion on Potential Recommendations for 2014 Annual Town Meeting
6. Schedule Next Meeting





## TOWN OF TYNGSBOROUGH

Government Study Commission

Town Offices

25 Bryants Lane

Tyngsborough, MA 01879

Tel: (978) 649-2300 Ext. 100 | Fax: (978) 649-2320

Members Present: Karyn Puleo, Paula Derby, Eileen Farrell, Diane Keohane, Jacqueline Schnackertz

Absent: Donald Lampron, Robert Mercier

Staff Present: Nina Nazarian

6:48 PM meeting convened by Karyn Puleo

Introductions

The Minutes of January 30<sup>th</sup> were approved 4-1-0 on a motion by Diana Keohane, and second by Eileen Farrell, Jackie Schnackertz abstains.

Collector – Pro's and Con's with elected vs. appointed. Mr. Spickler has been the elected collector for the last 22 years.

The Advantages – 1) closest you can get to the people; 2) town resident (must be) as elected those that don't have investment may not be dedicate as much.

“Recall” vote at Town Meeting did not pass.

MS. Keohane asked if #2 was from being elected or a town resident. Mr. Spickler said resident.

Ms. Puleo asked if Mr. Spickler could provide some information regarding appointed employees in past (good & Bad). Were they appointed by the Board of Selectmen?

Ms. Keohane asked if it were to change would it be something to bring to the Board's authority under the recommendation of the Town Administrator.

Mr. Mercier joined the meeting at 6:58PM.

Mr. Mercier – in Burlington the Town Administrator was strong and had appointing authority. Super majority to reject. Billerica was strong manager also. Town Meeting appointed all (strong Charter). Burlington – special act of legislature.

Mr. Spickler – chance of politicizing the position.

Mr. Mercier – you can strengthen language – BOS has to have a reason.

Ms. Schnackertz – legal issue?

Mr. Mercier - never happened to me.

*Town of*  
*Tyngsborough*  
massachusetts



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Ms. Puleo – do resumes go to BOS?

Mr. Mercier – best way, no

Ms. Puleo – could you come in today without tax collector experience?

Mr. Spickler – yes – good systems in place, state groups, read the law book. Computer systems are better, had someone who worked for me for 6 years in the department.

- Had FC and BOS request waive fees
- Good and bad to both

Mr. Spickler - if I was the manager, yes, I would want to appoint. You have to get the person who can do the best job.

Mr. Mercier – it is more complex today.

Ms. Farrell – elections can make it difficult to manage the person.

Mr. Mercier – I agree with Mr. Spickler, the job is “learnable” but accountability goes away.

Mr. Spickler – goes both ways, always bad apples in the barrels. My opinion is I can see both sides, my position on joint treasurer/collector would always bring in a strong assistant.

Ms. Schnackertz – you are under mid-managers CBA?

Mr. Spickler – no, I have no personnel obligations I follow mid=managers, respectful to the Town.

Slightly prefer elected – more and more are going in appoint.

Discussion – should collector be under treasurer/collector; Board of Assessors? Appoint? Elect? All Finance under one person? Kerry? Accountant.

Mr. Mercier – In some towns BOS appoints Accountant for segregation (check and balances) keeps full financial control from being under one appointing authority.

Where do we want the “check” to be?

Discussion ensued – Finance Director (TA Appt.); Assistant Collector/Treasurer (TA Appt.); Assessor; Accountant (Board of Selectman Appt.); Assistant Treasurer, Assistant Collector.





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Michael?

Next Meeting – MG's vision of a finance office (should we det. that the collector).

Discussion on the complied election information.

Reconsideration to dissolve the Cemetery Commission – who digs graves? Consider rolling under public works.

Tree Warden recommendation – certified arborist (reg. by M.G.L. (stipend)

8:25PM Jackie Schnackertz left the meeting.

Next meeting 03/13/2014 at 6:30PM, ask Joanne Shifres if she can make the 3/13/2014 meeting.

\*speak to Doug Latulippe and Bob Pelletier re: public works.

The Committee voted 5-0-0 on a motion by Diana Keohane, second by Eileen Farrell, to adjourn.

The Committee adjourned at 8:30PM.

Respectfully submitted

Nina Nazarian  
Assistant Town Administrator

Approved on March 13, 2014





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**APPROVED 4-3-2014**

### Government Study Commission

#### Meeting Notice

Thursday, March 13, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

#### AGENDA

1. Review/Approve Minutes of February 20, 2014 Meeting
2. Discussion with Town Clerk
3. Discussion with Highway/Tree Warden/Cemetery
4. Discussion of financial offices
5. Continue Review of Previous Town Elections Results
6. Continue Discussion of Potential Recommendations for 2014 Annual Town Meeting
7. Schedule Next Meeting





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Members Present: Karyn Puleo, Jacqueline Schnackertz, Donald Lampron, Robert Mercier, Paula Derby, Eileen Farrell

Absent: Diana Keohane

Staff Present: Michael Gilleberto

The meeting was convened at 6:33 PM by Karyn Puleo.

The Minutes of February 20<sup>th</sup> were approved with corrections 5-0-1 on a motion by Robert Mercier, and second by Eileen Farrell. Donald Lampron abstained.

Ms. Joanne Shifres, Town Clerk, joined the meeting to discuss the merits of an elected and/or appointed town clerk position.

Ms. Shifres recommends that the position be elected to keep it an independent office. 66% of clerks in Massachusetts are elected. There are pro's and con's on both sides; appointed might not be resident and their community loyalty could be a question. The clerk reports to the Town and State and certifies the election results, and works for the electorate and not the Board of Selectmen or Town Administrator. Removal would be by virtue of a recall.

Ms. Farrell asked why it needs to be independent.

Ms. Shifres stated that the office does not integrate with other town hall departments.

There was discussion of payroll, review of the Town Meeting warrant; and some discussion of the relationship between Collector and Clerk and Mid-Managers Union.

The Clerk's position from the surrounding towns on which is appointed/elected: Dracut – tenured; Westford - appointed; Chelmsford - appointed; Dunstable – elected.

There was more discussion.

Ms. Shifres, Town Clerk left the meeting at 7:10PM.

There was more discussion.





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Time was 7:30 PM. Mr. Bob Pelletier, elected Cemetery Commissioner; Mr. Doug Latulippe, elected Tree Warden; and Mr. Jim Hustins, Senior Highway Foreman, Highway Department, joined the meeting to discuss their positions and potential coordination/consolidation.

The Tree Warden, if appointed, has statutory requirements, Mr. Latulippe has had Arbor Culture Certificate since 2004. Population requirements were discussed. And being appointed vs. elected does not matter to Mr. Latulippe.

Mr. Latulippe works the following rates as a contractor: \$30.00 per hour with a saw, \$50 without a saw, and \$75 in a storm. There was discussion of a potential conflict.

The Cemetery Commissioner presently has no quorum, and the one member acts as an employee and is paid by the hour. He hires a contractor who is a Town employee but works with his own backhoe while off duty.

Time was 8:35PM. Ms. Kerry Colburn-Dion, Finance Coordinator/Town Treasurer, joined the meeting.

The Administrator outlined a vision for the potential consolidation of the Collector's office with the Treasurer's office. A Finance Director would oversee the operations of Accounting, the Treasury, and the Collector.

Ms. Colburn-Dion outlined the differences of Assistants vs. Clerks as defined in Clerical Union contract. The Town Collector has significant financial implications and the Town could have trouble if the wrong person were elected.

Looking at: Collector, appointed; Clerk, appointed; Cemetery -; Tree Warden -: Financial Director with/Collector.

The Committee voted 6-0-0 on a motion of \_\_\_\_\_ seconded by \_\_\_\_\_ to send a letter signed by the Chair to Town Counsel with the following questions:

1. What steps would be required to change the Annual Town Election to occur after the Annual Town Meeting?
2. What steps would be required to give the Board of Selectmen the authority to appoint a Town Collector of Taxes?
3. What steps would be required to establish the position of Finance Director as an appointment of the Board of Selectmen, and to assign to the position of Finance Director oversight of the Town Accountant and Collector of Taxes?





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4. What steps would be required to give the Board of Selectmen the authority to appoint a Town Clerk?
5. What steps would be required to assign oversight of the Town's cemeteries to the Highway Department?
6. What steps would be required to assign oversight of the Tree Warden to the Highway Department?

The Committee will meet next on 3/27/2014 at 6:30PM.

At 9:15PM, the Committee voted 6-0-0 on a motion by Eileen Farrell, second by Jacqueline Schnackertz, to adjourn.

Respectfully submitted

Michael P. Gilleberto  
Town Administrator

Approved on: \_\_\_\_\_





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**APPROVED ON APRIL 17, 2014**

Government Study Commission

### Meeting Notice

Thursday, April 3, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

### AGENDA

1. Review/Approve Minutes of March 13, 2014 Meeting
2. Continue Discussion of Potential Recommendations for 2014 Annual Town Meeting with Town Counsel
3. Schedule Next Meeting



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Members Present: Karyn Puleo, Jacqueline Schnackertz, Donald Lampron, Diane Keohane, Eileen Farrell, and Paula Derby

Absent: and Robert Mercier

Staff Present: Michael Gilleberto, Town Administrator, and Town Counsel Charles Zaroulis.

The meeting was convened by Karyn Puleo at 6:35 PM.

The agenda was read.

The Minutes of March 13<sup>th</sup> were approved 5-0-1 on a motion by Eileen Farrell, seconded by Donald Lampron. Diana Keohane abstained.

The Town Administrator outlined the process to get answers to questions submitted to Town Counsel. In responding to Counsel's follow-up questions, the Town Clerk's index was the source of data and not annual reports.

Town Counsel outlined his opinion on the scheduling of the annual election. There is no prohibition against election occurring after Annual Town Meeting.

Town Counsel asked why the Commission was considering changing the election.

Karyn Puleo noted it is to eliminate issue of brand new Board of Selectmen members and other elected officials at Annual Town Meeting.

Town Counsel stated that a bylaw would be required to change the Annual Town Meeting.

Town Counsel was asked his opinion. He stated that it likely makes no difference, but could result in political forum at Town Meeting.

Town Counsel presented options for making Collector appointed, and for changing the order of the Meeting and Election. town meeting followed by annual town election. Regarding the Town Clerk, there was an option to provide the position to the incumbent and to provide for dismissal for just cause. This would occur through a special act.

A Cemetery Commission needs to be 3 members. Special legislation could create a Board of Public Works (which would actually be the Board of Selectmen) overseeing Highway, Cemetery, Tree Warden, and Sewer.





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Karyn Puleo stated that there may need to be further discussion with the Sewer Commission.

Diana Keohane expressed some concern with costs.

The Town Administrator indicated the cost would likely be neutral or could be a savings.

Town Counsel stated that a DPW Superintendent can save long term costs because things like new developments can be addressed consistently.

Town Counsel stated that the town is a multimillion dollar corporation.

Karyn Puleo indicated that residents have customer service issues dealing with multiple boards

There was some discussion of election. There are pluses and minuses to the current order. Consensus was not to recommend an immediate change, but to continue evaluating in future.

The Commission voted 6-0-0 on a motion by Member Keohane, second by Member Schnackertz for the Town Collector's position to go to the Board of Selectmen, Town Meeting, and then annual election (Chapter 41 section 1B). The incumbent should stay until current term ends.

Whereas the Finance Director issue is an administrative matter, no action would be taken by the Commission.

There was further discussion as to the options for the Town Clerk's position.

The Commission voted 6-0-0 on a motion by Member Keohane, second by Member Paula Derby to make Town Clerk appointed by the Board of Selectmen either by Chapter 41 Sec 1B or Special Act. Appropriate protections would be put into place for incumbent.

The Commission voted 6-0-0 on a motion by Eileen Farrell, second by Donald Lampron to recommend the Board of Selectmen appoint the Cemetery Commissioners and the Tree Warden.

The process dictates that the Tree Warden would have to become a certified arborist.

The Government Study Commission would next meet on April 14 or 17 for discussion.

The Commission voted 6-0-0 on a motion by Diana Keohane, second by Jacqueline Schnackertz, to adjourn at 8:31 PM.

Respectfully submitted





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Michael P. Gilleberto, Town Administrator





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**DRAFT**

### Government Study Commission

#### Meeting Notice

Thursday, April 17, 2014 at 6:30 PM

Meeting Room 1, Town Offices, 25 Bryants Lane

#### AGENDA

1. Review/Approve Minutes of April 3, 2014 Meeting
2. Continue Discussion of Potential Recommendations for 2014 Annual Town Meeting
3. Review Draft Interim Report to Board of Selectmen
4. Schedule Next Meeting



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Members Present: Karyn Puleo, Jacqueline Schnackertz, Donald Lampron, Diane Keohane, Eileen Farrell, and Paula Derby

Absent: Robert Mercier

Staff Present: Michael Gilleberto, Town Administrator

The meeting was convened by Karyn Puleo at 6:34 PM.

The agenda was read.

The Minutes of April 3, 2014 were approved 6-0-0 on a motion by Jacqueline Schnackertz, seconded by Eileen Farrell.

There was discussion of items discussed with the Board of Selectmen on April 14<sup>th</sup>.

The Commission may potentially review the election of the Finance Committee and changes to the Capital Asset Management bylaw. The Commission may also potentially discuss a strong Town Administrator or Town Manager.

On a motion by Diana Keohane, seconded by Paula Derby, the Commission voted to sign a letter to the Board of Selectmen with its recommendations. The Commission will attend the April 28<sup>th</sup> Board of Selectmen meeting.

The Commission will next meet on May 29<sup>th</sup> at 6:30 PM. Potential items for discussion include: continued election of Finance Committee; Capital Asset; DPW; a charter; and the timing of election.

Town Counsel will be consulted regarding the authority for a November election.

The Town Administrator outlined the process to get answers to questions submitted to Town Counsel. In responding to Counsel's follow-up questions, the Town Clerk's index was the source of data and not annual reports.

Town Counsel outlined his opinion on the scheduling of the annual election. There is no prohibition against election occurring after Annual Town Meeting.

Town Counsel asked why the Commission was considering changing the election.





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The Commission voted 6-0-0 on a motion by Jacqueline Schnackertz, seconded by Eileen Farrell, to adjourn at 7:20 PM.

Respectfully submitted

Michael P. Gilleberto, Town Administrator

