

## Select Board Meeting 1/12/23

### Respectfully submitted by Sophie and Dan Dennis

Town Meeting in Marlboro is a 250-year tradition of direct Democracy. However, we're not here to defend Town Meeting over Australian Ballot- that should be up to the voters of Marlboro. We are here to discuss, for the record, what the *process has been* which caused Marlboro to get to this unprecedented moment in which in Dec. 2021 Town Meeting was ended.

In addition, we would like to scrutinize how this change from in-person voting to Australian Ballot has been communicated to the voters of the town.

- The clear intent of the SB to change TM to AB for one year (2022) only is not what happened
- The clear intent of the voters at the specially warned TM in Dec. 2021 to move to AB for 2022 only is not what happened
- The communication to the town following the Special TM regarding future voting methodology was incorrect and (to our knowledge) has not been corrected publicly
- Clear – and correct- information about TM 2023 and *why* it is being held by AB has not been presented to the voters by its SB or TC causing confusion

In speaking to neighbors, there is confusion among voters about what is happening with Town Meeting this year, and what last year's special meeting (Dec. 18, 2021, in consideration of TM 2022) means moving forward. In looking to our Select Board and Town Clerk we find a dearth of basic information heading into this TM season. In addition, voters- *and the select Board itself at the SB meeting on this topic*- were provided with contradictory information about what last year's Special Town Meeting vote would mean for voting methodology moving forward.

In an effort simply to understand the process thus far we turned to the written and taped record. After reading all of the SB minutes from 2021 and 2022 on the topic of TM and Covid, and listening- carefully- to the recorded meeting(s) on the topic from 2021 (*frustratingly no recordings for Oct-Dec 2022 are available as of this writing* and the minutes are short) there are several concerning issues related to the changing of the Town Meeting system of in-person voting that we wish to bring to light at this critical moment in our town's history, in an effort to be provided with clear and accurate information both about the process and the result.

### Select Board Discussion of Nov. 11<sup>th</sup>, 2021?

This is the date that the TC brought the question to the SB about what to do about TM for 2022 in consideration of ongoing Covid concerns. **They were concerned for 2022 specifically.** This may turn out to have been the most consequential decision ever made in the history of the Town of Marlboro- especially if owing to their decision we have lost our 250-year tradition of in-person Town Meeting without informational meetings and people casting a vote one way or the other - which was not the SB's intention **as is clear from the recorded discussion.**

Of most concern, in listening to the 15 minute discussion on the topic of TM 2022 (13:50-33:31 on the tape) is that it is clear that there was confusion among members of the SB and others in the room at this very critical meeting about what the SB was ultimately tasking the TC to do regarding warning a Special

TM, and *especially what the repercussions to our future voting methodology would be* should the question of switching to Australian Ballot from in-person voting pass on Dec. 18<sup>th</sup> (which it did).

The TC asked the SB whether they feel that it makes sense *to do the same thing as last year in considering 2022-* however what the TC is actually recommending in this meeting diverges from the 2021 change made to Town (**Act 77**) -in which towns (in our case the SB) were empowered by the state to choose Australian ballot *for that year only*. What was actually being recommended to the SB on 11/11/21 turns out to be a different option- a permanent suspension of in-person voting methodology (other than by reversal by Australian Ballot). That this was unclear to the SB is obvious from the discussion (see below). The written minutes on this discussion state: *“Review and discussion of upcoming Marlboro Town Elections with Forrest. Due to the ongoing Covid-19 situation, Forrest introduced the possibility of **handling Town Meeting 2022 in the same way as the 2021 meeting was handled**, with the issues being handled via Australian Ballot”.*

The TC pitches the question to the SB at 14:18 on the recording like this: *“Do you all feel as though running the Town Meeting election **as we did last year** by Australian Ballot and not having an in- person meeting... feels like the right move in this moment?”* The SB discusses the topic in such a way as it seems that they are deciding on a one-year change- and this confusion continues throughout the conversation.

**SB Discussion shows SB wanted any change to TM 2022 to be for one year only and may not have had all the facts needed regarding future reversal and changes to voting methodology**

People in the room for this discussion included all SB members. They are concerned about in-person meetings owing to Covid, however several express that they want any change to TM to be for **“...this year again”**, **“...for this 2022 year”**, and **“...okay I’ve got to do it but I like my little town [meeting]”**. They indicate through their questions that they are confused by the implications to future voting methodology and are explicit in their comments about the importance of reversal of the decision should things change to Australian Ballot. **One SB member explicitly states that any permanent change to our system of voting should include town-wide discussions.**

Much of this discussion revolves around reversal taking place in 2022 (one person suggests August, another December) & that they would plan to regroup to reverse it if Covid becomes less of a threat: **“If things [Covid] quiet down then we could put it on the warning next year at Town Meeting to change it”** **To which the TC responds: “Yes, exactly”**. Shortly after, a SB member states: **“So we have another meeting next Dec. 18<sup>th</sup>... ok Covid’s gone and we’re back in the Meeting House”** **to which TC responds: “We have to do it by Australian Ballot because we just changed the methodology... whatever, we’ll just deal with it.”**

So, which is it, Town Meeting, or Australian Ballot for future reversal? And more **critically which did the SB think they were voting on when they empowered the TC to go ahead?** This is a very important question. (Transcribed portions of SB meeting recordings below answer it).

It seems that in this meeting, nobody knew what the statute named in the question being called would exactly do to voting methodology moving forward, including the Town Clerk (as evidenced by the explanation to the town on Dec. 22, 2021). The SB members have indicated by their questions that they want any change to be for one year and then have the opportunity to decide again. This is clear from the

SB conversation, however that is not what was ultimately warned to voters at the Special TM, where it seems we voted to overturn in-person TM and voting from the floor forever (not just 2022) or until a vote by Australian Ballot reinstates it.

We have looked up this statute, 17 V.S.A 2680(c)(d)- and spoken to an attorney in the VT Secretary of State's office- election division office- and once you invoke it in your question to move from in-person to Australian Ballot voting, it can only be reversed with a vote using Australian Ballot. ***No Special Town Meeting can ever be called again to put the question of in-person or AB to the voters.***

### **Marlboro "Jumps the Gun"**

The attorney in Montpelier at the VT State Attorney's Office expressed that "Marlboro jumped the gun" and that on January 14, 2022 Act 77 was renewed allowing towns to act for just one year (again). In fact, according to the Jan. 10· 2023 edition of VT Digger it is stated that "Some 80% of communities in 2021 and **almost 75% in 2022** used the temporary laws to replace shoulder-to-shoulder decision making with mailable ballots, while most of the rest tapped the legislation to reschedule proceedings until residents could open windows or move outdoors in warmer weather." And: "...most of the 219 communities with smaller populations traditionally hold some sort of Town Meeting, which must be warned at least 30 days in advance — or by Feb. 5 this year for those seeking to take municipal action on the traditional first Tuesday in March." There would have been ample time to get this done in Marlboro.

Why did Marlboro not join the nearly 75% of VT towns in 2022? This would have allowed us to potentially do so again for 2023.

### **Transcription (partial) from 11/11/21 SB Meeting**

14:18 TC: Do you all feel as though running the TM election as we did last year by Australian Ballot and not having an in-person TM... did that feel to all of you like the right move in this moment?

16:00 Aaron: I tend to Agree... in this moment right now... I would support that this year again.

20:50 TC: ...that's what the court says, hey *do you want to add an article to the TM warning that says from this point forward we're back to the floor vote...* but just running a special meeting doesn't seem that hard.

***\*This is an incredibly important moment; why was an article not added to make it for the 2022 year only?***

21:07 Evan: If things quiet down [Covid] then we could put it on the warning next year at Town Meeting to then change it.

21:19 TC: Correct. Exactly.

20:20 Aaron: You could have another meeting next Dec. 18<sup>th</sup> and say okay Covid's gone and we're going back in the meeting house

21:34 TC: Yes

21:35 TC: The only difference that I thought about today and I asked but then it's Veteran's Day so the State workers weren't there is if we do that vote backwards we have to do it because we just changed the methodology... and whatever we'll just deal with it.

**\*Did this inquiry ever happen after the holiday for clarification from the state?**

24:49 Julia: I do support the idea of moving to the Australian Ballot because of Covid but not necessarily because of participation rates...I think that needs to be a bigger town-wide conversation about how we do it but for this 2022- yeah.

**\*This comment could not be more clear. Where and when is this townwide conversation taking place?**

25:16 Aaron or Nick or Jim (?): Would it make sense ...to be saying okay we're going to do this now, then we're going to schedule in August 30<sup>th</sup>... a TM to decide... 'cause we'll know a lot more then.

27:30 TC: okay well we could change the venue...[Potash Hill]... logistical hurdles.

**\*Why was the Outback not considered?**

29:59 TC: The VT League of Cities and Towns' attorneys have boiler plate language for this for how to change your voting methodologies so I took those pretty much lock stock and barrel but added ... [TC reads the warning using "blah blah blah" for the section of the statute referenced in the question]. **Did the TC use their recommended language? What about this added article?**

33:02 TC: This is reversible...It's not permanent.

33:13 Jim/Nick Aaron?: That was the feedback I got from relatives that okay I've got to do it [suspend in-person meeting] but I like my little town [meeting].

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### **The Vote on Dec. 18<sup>th</sup>, 2021- unprecedented in town history**

In speaking to voters who were there that day- including some in this room- it is agreed that the intention of the voters present was to suspend in-person voting for 2022. This was indicated by Dan MacArthur who asked about having "for one year only" added to the language. **Yes**, the vote rests with this group of voters, however the intention of the group was clear and the statute- and full meaning of the vote to future voting methodology in town- was not explained or clarified during opportune times in discussion.

### **From the Minutes of the Special Town Meeting 12/18/21**

"Discussion. Sophie Dennis ... stated that she worries that if we change voting methodology, we will never go back to a floor vote.

Lister and Assistant Town Clerk Evan Wyse pointed out that this is being done to protect the health of voters **not to destroy a tradition**, and that a **similar vote in the future** could reverse this action"

"Dan MacArthur asked to amend the article to include "for one year only"

"Dan MacArthur asked that we should change back as soon as possible"

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## Communication to Voters

**Information to the town following the special vote as posted by the TC to FPF and FB Dec. 22, 2021 clearly states the purpose of the vote was for the 2022 TM, and that the change to voting can be reversed with another specially warned TM vote -incorrect**

Following the Dec. 18<sup>th</sup> 2021 special meeting, the TC wrote an overview of the special meeting from three days earlier. He explains “The purpose of the meeting was to consider and vote upon the method of conducting both Town and School portions of the Town Meeting on March 1, 2022.” This indicates that the vote was for 2022 only. He further explains the repercussions to Marlboro residents (see post to FPF and FB: Dec. 22, 2021 below) in which he states that a **special Town Meeting vote can reverse the decision to move to Australian Ballot moving forward.**

This turns out to be in direct contrast to the reality of the statute voted on as well as to how the TC (and SB?- unknown without the recordings of the 2022 meetings) is currently interpreting the change to our voting methodology. This is unclear to the voters because there have been no process communications from the SB. The TC’s summary on Dec. 22, 2021 includes: “This change [voting to switch from in-person voting to Australian Ballot] **can be reversed back to our traditional floor vote by another Special Town Meeting vote once conditions improve.**” (Full posting at bottom of document)

Since this is not the case- has this been corrected publicly for the benefit of voters (we’re not aware of it having been)? Has the SB been apprised of the (new) reality of this vote’s impact on future voting methodology? If so, it is not reflected in the minutes, and they have not communicated this to the town through the Mixer or FPF.

## Confusion among voters

Given that the information voters received on Dec. 22, 2021 from the TC regarding the meaning of the specially warned TM vote and next steps in the voting process is erroneous, and given that the SB has been silent on the subject of their discussions about our 2023 Town Meeting (2022 SB minutes do not enlighten and **recordings are not available**; there was no indication in the SB update in the Jan/Feb Mixer about conversations related to TM 2023 or voting methodology changes/questions, and nothing was posted to FPF on the subject until it was directly pointed out to a SB member last week that there had been no SB information regarding March 7<sup>th</sup> anywhere), **voters are rightly confused at this point owing to a lack of ample, accurate and timely information** regarding voting methodology at this unprecedented moment in Marlboro’s history, and what it means for this year’s Town Meeting- and future Town Meetings. People may have read that we’re using AB again this year but they do not know why. And they do not know what the process was. **Many believe that we are still following Covid year-by-year decisions and that we will back in the town house at some point.**

## Bringing us to the present moment

**Looking for clarity from recent (winter 2022) SB meeting minutes and finding more questions**

Finally, two points about the Dec. 8<sup>th</sup> 2022 SB meeting minutes regarding communication to the community as well as confusing language. The Dec. 8<sup>th</sup>, 2022 SB meeting minutes provide the following: **“Discussion of Town Meeting Methodology. Forrest and the Board discussed voting methodology (in person Town Meeting – Australian Ballot) with Forrest noting that he had put a discussion of this issue in the current issue of the Marlboro Mixer in which he discussed the pros & cons of both methods”.** **What sort of discussion is there to have about voting methodology? Town Meeting/in-person voting has been ended and AB is what we legally have now.**

**Where are we with this now?**- the only statement voters have is from the TC in Dec. 2021 with erroneous information. Also, for what purpose was a “pros and cons” piece being written by the TC? Neither point can be understood without the recording of the discussion. However, it is patently untrue that a pros and cons piece is what the TC actually wrote in the Mixer; in conversation with Forrest a week ago he acknowledged that what he wrote was “absolutely” an opinion piece. Pro Australian Ballot-*his opinion*. Is the SB okay with this biased communication on the subject? Unfortunately, it was also left authorless (doesn’t matter why) which only added to the confusion (some think the SB wrote it).

**In conclusion**, there are a few people here this evening who would appreciate a clear and succinct explanation of what has occurred in our town in 2022 regarding our form of government and what it means for moving forward.

Why did we jump the gun? Why has information been scant? Why has information been wrong? Why are so many voters confused? Why are we not providing community informational meetings, as suggested by Julia at the initial meeting? Why did the question(s) voted on at the special TM not include an article, as suggested by the VT League of Cities and Towns, which would allow us to go back to a floor vote after TM 2022?

**Finally, we’re requesting that a statement be put out by the Select Board explaining the current situation with voting and why.**

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Front Porch Forum Issue No. 1521 • Dec 22, 2021

[Results of Special Town Meeting on Dec. 18](#) Election • Forrest Holzapfel • Town Clerk, Marlboro [Results of Special Town Meeting on Dec. 18](#) Forrest Holzapfel • Town Clerk, Marlboro

#### Election

A Special Town Meeting was held in a light snow on Saturday December 18, 2021 at 12 PM outdoors in front of the Town House at 13 Town Hill Road in Marlboro Center. This meeting followed the floor voice vote format of our traditional Town Meeting. **The purpose of the meeting was to consider and vote upon the method of conducting both Town and School portions of the Town Meeting on March 1, 2022.** With recent COVID-19 infections statewide at their highest since the pandemic started, the Town Clerk & Select Board felt an in-person meeting in our small Town House would be too risky for public health. The Vermont Legislature's 2021 law allowing towns flexibility in how they conduct their meetings ends on December 31, 2021. Therefore, this decision with 32 voters in attendance decided unanimously that all the articles of Town and School business at Town Meeting 2022 shall be conducted as it was in 2021, only by Australian ballot. **This change can be reversed back to our traditional floor vote by another Special Town Meeting vote once conditions improve.** The meeting minutes are at the bottom of the page here <https://marlborovt.us/2021-town-meetings/>