

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
AUGUST 9, 2005**

Commission member present: Chairman Tom Mahon, Vice Chairman Heather Anderson, Secretary Fran L'Heureux, Peter Batula, Bob Kelley, Finlay Rothhaus, Tim Tenhave, Lon Woods, and David Yakuboff.

Chairman Mahon convened the meeting of the Charter Commission at 7:07pm in the Conference Room of the Town Hall.

Announcements

Chairman Mahon announced the two public hearing dates scheduled for September 13 and November 8, 2005. He also announced that members of appointed Town committees have been invited to the August 16 meeting and members of the Town's elected boards are invited to the August 23 meeting so that they may provide pros and cons of the Town's current form of government, as well as their input about what form of government Merrimack should operate under.

Public Comment

There was no public comment.

Reports

Chairman Mahon reported that Town Manager Tim Tieperman had received an e-mail from Judy Sylva of the Local Government Center inviting Tim to attend and participate in LGC's Ad Hoc Charter Commission Advisory Committee meeting.

Vice-Chairman Anderson reported that the issue raised by Secretary L'Heureux at this Commission's last meeting regarding the formats of information available on the web site had been addressed. Both the HTML and PDF formats on agendas and minutes are now available on the Commission's website.

Current Form of Town Government Subcommittee Chair Tom Mahon reported that Tim Tenhave had made slight revisions to the government forms template. Their next meeting was directly following this meeting.

City Forms of Government Subcommittee Chair David Yakuboff stated that his subcommittee will be presenting the city form of government in two forms – quick summary and detailed explanations. They met before tonight's full Commission meeting and would be meeting again at 6pm next Tuesday.

Town Forms of Government Subcommittee Chair Finlay Rothhaus reported that his committee went over the items included in the types of town government and will meet again on August 15th at 5pm.

Guest Speakers

Russ Marcoux – Derry Town Administrator
Jack Dowd – Derry Council Chairman
Fred Welch – Seabrook Town Manager
Mark Oswald – Londonderry Council Member
Ed Boutin – Merrimack Town Counsel

Dialogue with Guest Speakers

Mark Oswald, Town Councilor from Londonderry. Londonderry currently operates under the town council/manager with budgetary town meeting form. Mr. Oswald served on the 1995 charter commission that drafted the first charter, where he felt that the decision by the commission to go with a town form over a city form was an emotional decision as the commission did not see Londonderry as a city. He also reported that the Board of Selectman form was too involved in the day-to-day operations of the town and this is too much for a volunteer board to handle. The council/manager form is much more efficient. Londonderry has adopted an advisory budget committee. He felt that there has been a significant improvement in interest and skills on the advisory committee because it is no longer a watchdog but an advisor to the board. A recent change to the charter was the adoption of a Capital Improvement body with broad representation that has significantly improved communication among the town and the school and that has facilitated consensus on a number of key projects. The council votes on land use changes.

Mr. Batula asked if he felt the Commission made “the right decision” and would it meet the needs of the town in 20-30 years when it chose a town form. Mr. Oswald answered in the affirmative to both questions. Committee members queried Mr. Oswald on the relationship between the town and the schools under the charter; the budget approval process, and the level of public participation.

Attorney Ed Boutin, Boutin and Associates. Attorney Boutin serves as Town Counsel to Merrimack, Derry, and several other southern NH communities. Attorney Boutin made it clear that he was speaking for himself and not for any other entity or client. He feels that there are a series of choices the commission needs to make.

The first choice is whether to adopt a city or town form of government. Attorney Boutin feels that the city form is easier to follow than the town form. The city form is much clearer in RSA 49-C than the myriad of statutes that govern town government forms in New Hampshire. He offered that cities seem to have more political clout and can operate more efficiently than towns.

The second decision is how the budget is developed and how to enact other legislation. Having the governing and legislative body in a council enables the council to make more timely decisions. The current town meeting forms are inefficient because of the complexity of legislation governing the operations of towns. The municipal budget act contributes to this, as does SB2, because you are taking a process that may be based on business decisions and running it through a political process.

The transition from a board of selectman/town manager form to the council/manager form was relatively seamless with more responsibility and authority given to the

manager in a council/manager form. The council/manager form provides clear guidance and lines of responsibility and authority that RSA 37 Town Manager does not. The council/manager form without a budget committee removes a lot of the redundancy in the budget process and allows for more long term consideration of a community's needs according to Attorney Boutin.

Local governments have to make business decisions and this is not fostered by the budget act or the ballot act. The council/manager forms allow the community to have a unified budget process so that a community can set a course and stay on it. It is a more forward looking process than what is currently used in many communities.

The last decision is how do you want to legislate? The council is really a representative form and it can meet and solve problems without having to wait for town meeting.

A charter is a positive document. It is a template that substitutes the minutia of current town form statutes with something that you know. It also allows for a referenda process and provides a clear outline for town administration.

In response to questions from the Commission, Attorney Boutin stated that the city form offered more latitude; that five council members was not an appropriate number because it worked people too hard and that seven to nine are good numbers to shoot for; and he thinks that representative districts are healthy.

Jack Dowd, Council Chair in Derry, explained that Derry has the town council/town administrator form in which the seven member council is both the governing and legislative body. Beginning in 1985, Derry first tried a mayor/council form with an administrator that reported to the mayor. That did not work and the current form was adopted in 1993. There is no budget committee and they do not use SB2 on the town side. He feels that this is a very efficient form of government and allows the town to attract and keep good professional managers because the lines of authority are clearly established in the charter.

In response to several queries from the Commission, Mr. Dowd feels that there are plenty of opportunities for the public to participate and make their voice heard especially during the budget process. The town operates under a budget cap pegged to the Consumer Price Index (CPI) with bond issues outside of the cap. The town has never exceeded the cap.

Russ Marcoux, Town Administrator in Derry, spoke of his experiences in Derry and the other communities he has served in Massachusetts and Rhode Island. He was an alderman in Nashua at one time but cannot recommend the form based on the current situation there. He advised that whatever the commission recommends, the commission has to support the form of government they recommend and the voters have to support it or it won't work. The more you engage the public, the less questions are asked, every item on the agenda has to have a recommendation by the administrator and council. He feels the manager/council form of government that Derry has is the best around because the council focuses on the policy issues and leaves the administration of the day-to-day to their professional staff.

Fred Welch, Town Manager in Seabrook, explained that Seabrook has a five member board of selectmen and the first town charter in New Hampshire. However, the town generally has not adhered to the charter and changes in the law require 11 changes and a special town meeting to cure the defect. Seabrook used SB2 and he is happy with the official ballot. Mr. Welch noted that RSA 37 does not afford the Town Manager the level of authority granted in RSA 49-C and RSA 49-D with regard to administering the operations of a community. Under RSA 37, the manager is subject to the direction and control of the governing body. There is no non-interference language in the law. Mr. Welch also has experience with the Representative Town Meeting form in Massachusetts. Under this form, a meeting can be called at any time. A representative town meeting is an elected body that can make policy. Mr. Welch felt that the best type of government would be one that provided the government enough ability to be creative and responsive in solving today's new problems.

The Commission took a brief recess between 9:20 and 9:30pm.

Commission Attorney

Chairman Mahon distributed a spreadsheet analysis of the responses received from the various attorneys sought to provide legal services to the Commission. Tim Tenhave expressed concern over the ability to pay such legal fees and stated that the item should be discussed with the Board of Selectmen. Chairman Mahon advised that in accordance with State Statute, the Town would pay for such fees and that the \$100 allotted the Commission by the RSA was simply a place holder to establish the line item or account in the Town's budget. Peter Batula suggested a letter to the Town Manager and Board of Selectmen to advise them of our intention to hire an attorney. Lon Woods suggested a meeting between the Commission Chairman, Town Manager, and the Chairman of the Board of Selectmen. A motion was made by Heather Anderson and seconded by Tim Tenhave to authorize Chairman Mahon to provide the Town Manager and the Board of Selectmen with written notification and explanation regarding the Town's planning for a supplemental appropriation to the statutory appropriation to conduct the necessary work of the Commission. The motion carried 9-0-0.

Government Forms Template

Chairman Mahon asked if there were any further difficulties in completing the templates. Vice Chairman Anderson questioned the amount of detail required in completing the templates, stating that the City Options Subcommittee has developed a quick at-a-glance form as well as a much more detailed explanation. Chairman Mahon explained that both sets of information would be much appreciated. Vice Chairman Anderson further asked what the format expectation was for the subcommittee's presentation. Chairman Mahon stated he was not looking for anything encompassing LCD projectors and screens – simply reviewing the information in the templates was enough.

Commission Procedures Modification

This item was tabled.

Other Business

There was no other business discussed.

Minutes

A motion to accept the minutes of August 2, 2005 as printed was made by Lon Woods and seconded by Bob Kelley. The motion carried 8-0-1 (Tim Tenhave abstaining).

Public Comment

There was no public comment.

Questions from the Press

There were no questions from the press.

Comments from the Commission

Finlay Rothhaus stated that he thought the information provided from the guests was very beneficial.

Chairman Mahon stated that he is currently speaking with the Town Manager to hire a clerk to help with the minutes.

A motion to adjourn the meeting was made by Lon Woods and seconded by Peter Batula. The motion carried 9-0-0. The meeting adjourned at 10:07pm.

Respectfully Submitted,
Secretary Fran L'Heureux