

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
AUGUST 16, 2005**

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

Chairman Mahon convened the meeting of the Charter Commission at 7:02 pm in the Conference Room of the Town Hall.

Announcements

Chairman Mahon introduced Rita Carlton, the new recording secretary to the Commission members.

Chairman Mahon announced the public hearing date scheduled for Tuesday, September 13, 2005. He also announced that members of the Town's elected boards are invited to the August 23 meeting. This week, the Commission will meet with members of the Town's appointed boards 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 – The Chairman indicated he had spoken with the Chairman of the Board of Selectmen and the Town Manager regarding a budget for the Commission. Both of these gentlemen have indicated that they will support expenditures of the Charter Commission within reason. Chairman Mahon stated that he estimates that the maximum cost for the work of the Charter Commission will be \$15,000.

Vice Chairman – Vice Chairman Anderson noted that the Commission's website is current. She suggested that anyone interested in the work of the Commission should subscribe to the Charter's list serve through it's website.

Introduction of and Dialogue with Guests: Cable TV Advisory Committee, Planning Board, & Zoning Board of Adjustment

Chairman Mahon thanked all of the members of the committees and boards present. He noted to all present that the Commission is looking for advice regarding appointed boards and whether these boards should be elected rather than appointed. He noted the Commission is looking for the personal opinions of the appointed members rather than an opinion of the body.

Planning Board Chairman Nelson Disco noted that a majority of the Planning Board is present at this meeting and the meeting of the Planning Board was posted for this time and place.

Mr. Disco noted that it is his personal opinion that the appointed method of obtaining members for the Planning Board has worked well and this appointed Planning Board has served the Town of Merrimack well. He noted that this appointment process has helped to make the process continuous by having members who have learned the law associated with planning and how to read and deal with plans. He noted that some people who are willing to serve would not be willing to go through the election process. He noted he hopes that the appointment of members to the Planning Board will continue.

Mr. Disco further noted that any change or addition to the Town's zoning law is currently voted on by the people; therefore the zoning law is in the hands of the people. Mr. Disco noted that as the town gets toward build out there will be more pressure to change land use regulations. He noted that the current process may make changes in reaction to what is happening but it allows the public to get the information needed to make an informed decision, rather than a decision based upon an emotional reaction.

Tim Tenhave noted that he has heard that the voting at the Annual Meeting does not react quickly enough. He asked for Mr. Disco's comments on this. Mr. Disco noted that if quicker reaction is needed, then there is a need to change the process. Mr. Tenhave questioned whether the electorate is educated enough. Mr. Disco noted that the electorate depends on the Planning Board a great deal. The electorate is more educated on the larger issues regarding what they want.

Heather Anderson questioned whether voting by the people is an impediment to economic development. Mr. Disco noted he could envision that voting could be an impediment.

Peter Batula questioned how important the Planning Board will be at build out. Mr. Disco noted there would be continued pressure to continue to build and to change the land use. He noted that build out is a theoretical point that is never fully reached.

Tom Mahon questioned whether businesses which move into town talk about the government or what needs to be done. Mr. Disco noted that most of this talk takes place at the Community Development Department's office and with the Town Manager.

Planning Board Member John Segedy urged that the government be made as transparent as possible to the public. This transparency will allow for divergent points of view to be heard. He noted that the Commission should be aware not to put the government too much in the hands of "experts". He noted that some "experts" have been educated by those with their own agenda, which may be at odds with the desires/wishes of the people.

Planning Board and Zoning Board of Adjustment Member Stanley Bonislowski noted that he is coming up on three years with the Planning Board and feels he is just learning what is to be done. He noted he is in favor of appointed boards.

David Yakuboff questioned whether fewer people would be involved if these were elected offices. Mr. Bonislowski noted that he would probably not run for a position on an elected board. He noted that volunteer boards are comprised of people who want to be there. He noted there are many good people who do not want to be involved in the election process.

Planning Board Member Alastair Millns noted he strongly supports appointments to the Planning Board. He noted he is happy to serve and feels it is a privilege to help the Planning Board and the town. He noted there is not an overwhelming volume of people waiting to serve.

Zoning Board of Adjustment Member Tim Dutton noted he would agree with members of the Planning Board regarding the continued appointment of members to the currently appointed boards.

Heather Anderson asked whether voting on zoning changes by the electorate versus boards with this authority is an impediment to economic development. Mr. Dutton noted he does not feel that this is an impediment. He noted that if such decisions were rushed, all of the facts may not be available. He noted that such decisions should be made by the electorate, not an elected board.

Zoning Board of Adjustment Member Bill Barry noted that volunteer members of the Planning Board and Zoning Board of Adjustment should be appointed. He noted that the process for appointment includes an interview by a two members of the Board of Selectmen along with the chairman of the respective land use board. He noted there are no politics involved in the Planning Board or Zoning Board of Adjustment. The members want to be on these boards. He feels that these appointed boards are not an impediment to development. There has been some very heated discussion, along with various opinions at Zoning Board of Adjustment meetings. He noted that the Planning Board and Zoning Board of Adjustment are elected only in major cities. He noted that members can be removed by the board which appointed them.

Peter Batula questioned whether Mr. Barry could envision electing someone who doesn't want to be on the board. Mr. Barry noted someone could see such as election as a political stepping stone. He noted that an election would eliminate many of those currently serving.

Zoning Board of Adjustment Member Ross Hall suggested that an election of members should be based on the four villages of Merrimack plus one member at large. He feels strongly that the members of the Planning Board and Zoning Board of Adjustment should be elected. If the members are to be appointed, then a time frame for appointment should be considered. He noted that Merrimack is basically a bedroom

community and that most of the electorate votes on zoning changes based upon the recommendations of the Planning Board.

Finlay Rothhaus noted that an elected board can be very political and that a political board could cause the breaking of laws. Mr. Rothhaus noted that elections are not just name recognition, but are also based on the electorate's trust in the candidate's past decisions.

Planning Board Member Pete Gagnon noted that he has served with the town since the 1970s. He became involved through a desire to be involved with the town and the townspeople. He noted that even if individuals have an agenda, they are able to work as a group in public sessions. He noted that state law structures how zoning amendments are to be made. He noted it is important that people who serve are encouraged to serve. It is important that the electorate has a say. The methodology of allowing groups to work together and giving the electorate a say should be maintained whether the members of the boards are elected or appointed.

Cable TV Advisory Committee Chairman Rich Morrissey noted it is important to keep the appointed committees. He noted the town may not get a lot of interest in people running for the Cable TV Advisory Committee.

Heather Anderson noted that the Cable TV Advisory Committee often has to ask the Board of Selectmen to meet in a special session at the last minute due regulatory timeframes. Vice Chairman Anderson asked Mr. Morrissey if there was a better, more efficient way to meet the timeframes? Mr. Morrissey agreed that there are times when the Cable TV Advisory Committee is required to respond in a short timeframe and suggested that it would be better if the Cable TV Advisory Committee could be the franchising authority. Ms. Anderson noted this cannot be done under current state law; however, understand that the ability to be reactive is important to this committee. Mr. Morrissey noted that if this committee was more independent, it would be a better use of the Board of Selectmen's time.

Tim Tenhave noted that the current Board of Selectmen has stated that they are reluctant to give more power to appointed boards. Mr. Morrissey noted that he can see this point, but it may not be possible to fill all of the positions via elections.

Finlay Rothhaus noted that members of the Cable TV Advisory Committee are well versed in their field. This is a plus for the committee and the town. There is a major problem with appointed boards having too much power. Ms. Anderson noted that the cable regulations are created on the federal level. She noted that these regulations must be well understood by members of the committee. Lon Woods suggested that the town be patient since cable TV is relatively recent, but land use issues are not new to the Planning Board.

Tom Mahon thanked all those who came before the Commission for their frank input and opinions. The Commission appreciates this input and these opinions.

Commission Attorney

Chairman Mahon noted again that the Chairman of the Board of Selectmen and the Town Manager have given their consent for the anticipated expenses as described by Chairman Mahon for tending to the duties of the Charter Commission. He directed the Commissioners to the spreadsheet analysis of the responses received from the four attorneys who responded to the Commission's inquiry for services. Chairman Mahon stated that all of these attorneys are well qualified. He recommended that the Commission accept the proposal of Attorney Krans of Dover.

A motion was made by Tim Tenhave and seconded by Finlay Rothhaus to accept the recommendation of Chairman Mahon and accept the proposal of Attorney Krans. The motion passed 9-0-0.

Fran L'Heureux questioned how often the Commission will need to meet with the attorney. Chairman Mahon stated that the attorney would not attend every meeting, but may attend some of the public hearings. He plans on conducting all communication with the attorney in writing, not via telephone calls, so that he can share the context of those discussions with the full Commission. He noted that the range for the cost of the attorney should be between \$7,500 and \$12,000. The Commission will have questions about how things can be done legally. Mr. Mahon noted he wants the attorney present for the public hearing in November.

Sub-Committee Report Presentations

David Yakuboff noted that the subcommittee looking at city forms of government consisted of David Yakuboff, Heather Anderson, and Peter Batula. The subcommittee presented two different city approaches: major/alderman and city manager/city council. The subcommittee presented the requirements and abilities of both types of government. There are public hearings involved in the budget processes in both of these types of government.

Finlay Rothhaus noted that the subcommittee looking at town forms of government consisted of Finlay Rothhaus, Fran L'Heureux, and Lon Woods. The subcommittee presented four different town approaches: council/administrator, council or selectmen with budgetary town meeting, council or selectmen with official ballot town meeting, and the representative town meeting. Mr. Rothhaus noted that due to a mis-communication, they had only hard copy reports for the council/administrator and the council or selectmen with budgetary town meeting. The council/administrator form involves a council of up to 15 members plus a town administrator. The council or selectmen with budgetary town meeting form involves a town council plus a ballot for the budget. Very similar to that form is the council or selectmen with official ballot form. Any lastly, there is the representative town meeting form. Lon Woods noted that there is a lot of latitude for determining the charter in any of these forms.

Tom Mahon noted that the subcommittee looking at current form of Town government consisted of himself, Bob Kelley, and Tim Tenhave. Chairman Mahon went through the areas of the template citing all of the relevant statutes and whether it was covered in the Administrative Code. Tim Tenhave shared a lengthy presentation on the Administrative Code and the discrepancies between the Administrative Code and how the Town presents itself on the Town's web site and its annual report.

Tom Mahon noted that the purpose of this work by the subcommittees is to give the Commission a framework for understanding as they go forward.

Heather Anderson noted the great job done by all the members of the subcommittees. She noted that all of the information given to members of the Commission will be made available on the website once she receives it electronically.

Mr. Mahon noted he envisioned putting together a summary of the summaries. This will give the members of the Commission and people who access the website the ability to compare the forms at a glance.

Discuss Possible Modification of Commission Procedures

Chairman Mahon suggested that any votes should have a supermajority of 6 affirmative votes to pass. He also suggested that any motions to be made should be prepared in writing to give the other members an understanding of the motion and to give the recording secretary the correct wording of the motion. This will help to frame the issue more clearly and to provide more structure and clarity. Peter Batula remarked that he did not see a current need for written motions and suggested that this issue be visited at a later date. Finlay Rothhaus noted that if a motion is preplanned it should be in writing. He noted this may not be needed as an absolute procedure.

A motion was made by Peter Batula and seconded by Robert Kelley to require that a supermajority vote of 6 be needed to pass any motion made by the Charter Commission.

An amendment was made by Tim Tenhave and seconded by David Yakuboff to require that a majority plus one vote of members in attendance and voting be needed to pass any motion made by the Charter Commission. The amendment passed 9-0-0.

The amended motion passed 9-0-0.

Other Business

There was no other business discussed.

Questions from the Press

Nashua Telegraph Report Patrick Meighan questioned whether the supermajority is needed for all votes or only for votes regarding the change in form. Chairman Mahon noted that this would be needed for votes associated with developing something. Mr. Meighan questioned the number of attorney proposals received. Chairman Mahon

noted that four proposals were received and the Commission recommended that the services of Attorney Krans of Dover be used. Mr. Meighan questioned whether there is a cap on the spending of the Commission. Chairman Mahon stated that the numbers given are a goal, not a cap.

Merrimack Journal Report William Mackie asked which of the forms of town government that were not reported on during the meeting. Finlay Rothhaus stated that all town forms were reported, but two were not presented in hard copy. These forms were the representative and the official ballot forms.

Finlay Rothhaus questioned a clarifying question regarding how the Commission will communicate with the attorney. Tom Mahon noted that all questions to the attorney should be in writing and that the Commission will need a majority plus one vote to send a question to the attorney.

Comments from the Commission

Tom Mahon noted that he has invited the Board of Selectmen to appear at 8:00 pm at the next meeting.

A motion was made by Heather Anderson and seconded by Robert Kelley to table the minutes of August 9, 2005 until the next meeting of the Commission. The motion passed 9-0-0.

A motion was made by Lon Woods and seconded by Tim Tenhave to adjourn the meeting at 9:55 pm. The motion passed 9-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary