

**MERRIMACK CHARTER COMMISSION  
REGULAR MEETING  
AUGUST 30, 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 7:03 pm in the Conference Room of the Town Hall.

**Announcements**

Chairman Tom Mahon noted that the Commission will hold a public hearing on September 13, 2005.

**Public Comment**

Andrew Silvia, Merrymeeting Drive, thanked the Commission for deciding to create a charter for Merrimack. He noted that the people will vote it down if it does not meet their needs. He noted the agendaless Board of Selectmen meetings in Milford and wondered if such a thing would be possible under a charter. Chairman Mahon noted that these meetings were a decision of the Board of Selectmen in Milford. There is nothing formalized about them. The Merrimack Board of Selectmen could add something like this at any time.

**Discussion with Richard Hinch, Board of Selectmen Chairman**

Chairman Mahon noted that a letter had been sent to Richard Hinch, Chairman of the Board of Selectmen as requested by the Commission.

Richard Hinch noted he appreciated the opportunity to speak with the Charter Commission. He apologized for not being available to speak last week. He noted that he is speaking for himself, not as the Chairman of the Board of Selectmen. He noted that the Board has not taken any official position on the work of the Charter Commission. He thanked all the members of the Commission for their time and work. He noted he hopes that the residents of Merrimack appreciate the work of the Charter Commission.

Mr. Hinch noted that the Town currently does not have a charter. He stated that it is essential that the Charter Commission identify the defects in the current form of government, if there are any. He noted the work of the Commission may be as simple as creating a charter or as difficult as drastically changing the form of the Town's government. The residents of town need to recognize that the creation of a charter does not necessarily mean that the form of government will be changed. The voters will ask why the change is needed, if a change is proposed.

Mr. Hinch noted that the first defect he sees in the current government is the Budget Committee. He noted that this body is elected with a purpose, but it becomes a hindrance to the entities as they go through their budget processes. This Committee makes the budget process unwieldy. He noted this is an unnecessary step. With this Committee, the entities have to start building their budgets for the next year when they are less than 3 months into the current year. Without the Budget Committee, the entities could begin building their budgets in January rather than in August. He noted the departments involved in building their budgets have a clear understanding of the budgets. He noted that the budget is not the mechanism that will bring taxes down, but that other mechanisms unrelated to the budget process will do this. (Heather Anderson arrived at this time.) Mr. Hinch noted that historically the Budget Committee has not found the need to slash and burn the budgets presented to them. He questioned why the budget process is made to be longer than it needs to be. He noted that every step of the budget process is repeated 3 times.

Mr. Hinch noted that regardless of the form of government the Commission recommends, he stated that the representatives of the people should be voted on an "at large" basis rather than on a "district" basis. He noted this will reduce the creation of "fiefdoms" that are often created with district representation. All residents will be served equally by all representatives.

Mr. Hinch noted that currently there is no crystal clear delineation of the town manager position or responsibilities. He noted that if the School Board or Board of Selectmen is unhappy with the superintendent or town manager, they can be removed by their respective governing body. There is no clearly articulated list of the duties and responsibilities of the Chairman of the Board of Selectmen.

Mr. Hinch stated that the Town Meeting needs to be examined. He noted that if there is a change in the form of government, it would still be possible to have a budgetary town meeting.

Mr. Hinch asked that the Commission think before changing appointed boards to elected boards. He noted that the town has been blessed with superb individuals who have worked diligently for the town in appointed capacities.

David Yakuboff noted that Mr. Hinch stated that the town is "on the move". He questioned whether 5 Selectmen have sufficient time to meet the needs of the town. He questioned whether a 7 or 9 person town council might be better. Mr. Hinch noted that he does not feel overworked. He stated he knew what he was getting into when he stood for election. He noted that some boards would prefer to have a Selectman on their board who is more active, but the Selectmen are only required to sit on the Planning Board and the Budget Committee. Mr. Yakuboff questioned at what point change is needed. Mr. Hinch noted that he does not think that the governing body is the trigger for change. He noted that change is needed when the growth is so great that the administration and infrastructure

is not able to keep up. Mr. Yakuboff noted that a lot of people feel that the Board of Selectmen is too small to handle the work it needs to do. Mr. Hinch noted that in the 3 years he has been a Selectman, no one has come to him to say that there is a need to migrate to a larger board because of the amount of work. He noted there is a need to analyze the "defects" of the current form of government. He stated that he did not necessarily mean that a change needs to be made.

Tom Mahon questioned the number of hours per week that Mr. Hinch works as a Selectman. Mr. Hinch noted that he averages about 12 hours per week. He noted that his colleagues probably work a little less. He noted this does not include non-public sessions. He noted that if these other obligations were added in the work time would be 12-15 hours per week. He noted that even if the number of Selectmen were increased to 7, this amount of time would remain the same. Mr. Mahon questioned whether there are other items regarding the development or governing of the town that have made it difficult for the Board of Selectmen. Mr. Hinch noted the Selectmen would be further forward with their work if there had been a Town Manager on board a year earlier. He noted that interruptions with the hiring of the Town Manager and litigations have taken time away from the Board's regular work. Mr. Mahon questioned whether there are problems with economic development and the development of a Town Center plan. Mr. Hinch noted that the Town Center issue needs attention, but these issues can be championed with the current Board of Selectmen now that the town has a stable administration.

Heather Anderson questioned whether the Board would have more time for regular business without the budget process. Mr. Hinch noted that this would be the case. Ms. Anderson questioned whether a shortened ballot would also give the Board more time. Mr. Hinch noted that a shortened ballot would expedite issues before the town. Ms. Anderson questioned whether the Board would have additional work if there were a budgetary town meeting with additional items. Mr. Hinch noted that the Board would understand and act on these issues. He noted that the administration and the staff are the workers. This would not make more work for the Board.

Fran L'Heureux noted she has heard from some people who would like to have 7 or 9 Selectmen. She questioned what this expansion would do to the Selectmen's workload. Mr. Hinch noted that in a normal week he helps create, craft, and facilitate the agenda, he has interaction with the Town Manager, and he reviews issues that have come in and need to go before the Board. He noted that in an average week 3-6 residents call him regarding an issue. He helps interview candidates for appointed boards. He spends time making sure that he has a good understanding of what the issues on the agenda mean.

Finlay Rothhaus noted that when the Board of Selectmen moved from 3 members to 5 members, a Town Manager was added also. He noted that the real work load of the town is done by the administration.

Peter Batula noted the valuable testimony given by Mr. Hinch. He noted it is important to see if something is broken before you try to fix it. He noted this Commission was set up to not necessarily fix problems with the current set up, but, rather, to look forward to the future. He questioned whether the current system is adequate for the future. Mr. Hinch noted he agrees with these statements to an extent. He noted he feels that it is more important to identify the defects in the current form. He endorses long range thinking, but feels that the "fix" in the town's government is not necessarily a change, but a support of the infrastructure. He noted the town needs to create a charter for what we have. This charter may need to be revisited in the future. He noted that charters are amended and evolve. Mr. Batula questioned whether there is too much power in the hands of too few. Mr. Hinch noted that the power is given by the people. If the people are unhappy, they can change the way they are governed. Mr. Batula questioned whether the town would be better represented with a Board of 7 or 9 members. Mr. Hinch noted that the population of the town does not directly correspond to the number of members unless the representation is by district, not at large.

Tim Tenhave noted he appreciated the appearance at this meeting by Mr. Hinch. He noted that Mr. Hinch's input has been valuable. Mr. Tenhave noted Mr. Hinch's quotations in the paper paraphrased as stating that the current form of government is the most representative for the individual. He questioned Mr. Hinch's feeling about this. Mr. Hinch noted that he feels that the form with the most individual representation is the current form with the Board of Selectmen under SB2. If the form changes, representation lessens. There are some defects with the current system. He noted he sees a need to remedy some of the needs of the people through the creation of a charter.

Mr. Mahon questioned whether Mr. Hinch would run a business like the town is run. Mr. Hinch noted that in both instances you have to believe that you have hired the best leadership. He stated that he believes that the town has superb staff that knows their jobs. He noted that if a weakness is found, there is a need to address it. Mr. Mahon noted that Mr. Hinch stated that the current form of government provides the greatest level of involvement for the people. He questioned the paltry numbers at the town meeting and deliberative sessions. Mr. Hinch noted that the current form allows for the greatest level of involvement, but there is nothing that can be done if the voters choose not to be involved. Mr. Mahon noted that in each form, the level of involvement is different. Mr. Hinch noted that with a Town Council, the council has more power and is able to move more quickly. Mr. Hinch noted he is not enamored with the SB2 form.

Lon Woods questioned whether Mr. Hinch as Chairman of the Board of Selectmen has had a chance to ponder where the town might take bold steps. Mr. Hinch noted that the Board has not been able to do this as a group. He has, however, thought of this frequently as an individual. He noted the town needs to

put money where appropriate and invest in economic development. It is appropriate for the Board to talk with the Town Manager about economic development. There is a need to map out the action to be taken. He noted this would not be easier with a different number of Selectmen. This has to do with commitment. Mr. Woods noted that the Commission is being asked to develop a charter within a pattern. He noted that tweaking sometimes brings about more change than was originally intended. Mr. Hinch noted the Commission has a huge task. He noted he does not see the remedy as a changing of the numbers on the Board of Selectmen, but rather the changing of other things.

Mr. Mahon questioned Mr. Hinch's preference regarding voting; whether the voters should vote on bond issues or the governing body. Mr. Hinch noted that an amount level should be delineated; above this level, the voters should vote, below this level, the voters should trust the elected body to vote. Mr. Mahon questioned the voting on land use issues. Mr. Hinch noted these issues should be handled by the governing body unless they are brought forward by a protest petition. A protest petition would come from an adversely affected area. Mr. Mahon questioned the making of appointments. Mr. Hinch noted that the Town Manager should be fully empowered with the confidence of the governed. The responsible Town Manager would want to share this responsibility with the governing body. Mr. Mahon questioned whether a supermajority would be needed to remove the Town Manager or for any appointment. Mr. Hinch noted he has not read any charter that requires a supermajority. He noted a simple majority should be needed for appointment. Mr. Mahon questioned budget caps and exclusions. Mr. Hinch noted he is not an advocate of budget caps. He noted that good budgets can be created if clear directions are given and understood by the administration. Mr. Hinch noted that the tax rate in Merrimack has been stable; increasing about 5% every year for the last 10 years.

Mr. Mahon thanked Mr. Hinch for coming in. He noted that the information given by Mr. Hinch was very informative and the Commission members appreciate his appearance. Mr. Hinch thanked the Commission for the work already done and for the work to be done.

### **Introduction of and Discussion with Attorney Allen Krans**

Attorney Allen Krans was introduced by Chairman Mahon to the members of the Charter Commission. Mr. Mahon noted that Attorney Krans worked with the Charter Commission of the City of Dover. Attorney Krans noted that recommended changes for the Charter for the City of Dover will be voted on in November.

Mr. Mahon asked Attorney Krans what the Commission has to look forward to and what they should try to avoid. Attorney Krans noted the Commission will fashion a charter in response to the needs of the voters of Merrimack. The Commission needs to figure out what is good for Merrimack. He noted the City of Dover Charter Commission found it helpful to put things in writing. He noted it

is important to have the key players in the current government talk to the Charter Commission.

Heather Anderson noted the advice of the Town's current attorney to first decide whether a charter was necessary and then to decide whether that charter should be a town or city charter, which the attorney felt was based in emotion. The decision to create the charter has been made. The Commission must now make the emotional decision of whether the Charter will create a town or a city form of government. She questioned whether this question is answered simply and straight-forward or whether the Commission will make functional decisions and back into the appropriate form for Merrimack. Attorney Krans noted that any decision made should be simple. He noted the Commission should look at the big picture. He suggested that the Commission pick a community and model from that to start. He stated the Commission should keep it simple and expand and refine their ideas as they progress. Attorney Krans noted it is a question of the elements to be accentuated.

Robert Kelley questioned the pitfalls to avoid. Attorney Krans noted that strong consensus is needed, close votes are not helpful. He noted the process in Dover was very civil. He noted that the vote on the final report was unanimous.

Peter Batula questioned whether there will be a group against the charter and a group for the charter when it is presented to the voters. Attorney Krans noted that people will look at the process to see if all of the issues of importance to them were thoroughly examined. The voting should not be contentious.

Lon Woods noted that he feels that consensus will come to this table. He questioned whether there is a mechanism to take the temperature of the electorate as the process goes on. Attorney Krans noted that the City of Dover Charter Commission created a web survey as the process went on for information. There were some surprises, but the Commission found that it was good to be informed. The City of Dover Charter Commission held a lot of public hearings.

David Yakuboff questioned whether a lot of people came to the public hearings. Attorney Krans noted that 8 to 10 people came per public hearing. This input was very helpful. The Commission also had a dedicated reporter from the local newspaper to cover their meetings. This was also very helpful.

Mr. Mahon questioned whether there is an ethics provision in the Charter for the City of Dover. Attorney Krans noted there is an amendment for a 5 member ethics commission. He noted that ethics commissions have come and gone in the City of Dover.

Attorney Krans noted his appreciation to the Merrimack Charter Commission for having him present.

## **Next Steps**

### **Review of Government Forms Matrix**

### **Discussion of Any Outstanding Research/Remaining Questions**

### **Discussion of Public/Elected & Appointed Officials' Comments**

### **City or Town Form?**

Chairman Mahon noted the Government Forms Matrix. He noted that eventually this matrix will appear on the Charter Commission's website. He noted that the current form is an old form that was created layer by layer. There is no definitive document for this form. There is a need to go to many places to find legislation related to it. A charter would give the town a definitive document.

Mr. Mahon noted there are 2 city forms; a mayor and aldermen or a city council and manager. These are much more defined forms of government. There are 6 choices for town government. These forms are not as rigid as the city forms. All of these town forms provide for initiative and referendum. Regulations are set by the charter. There is no mention of a Budget Committee in any of these forms. In the city forms, there is no Budget Committee. There are 3 Town Council and 3 Board of Selectmen town forms. The Board of Selectmen/Official Ballot is the form closest to the current form of Merrimack. Any transition aspects necessary would be determined. Any charter created would need to be reviewed by the Attorney General and others to make sure that no laws are being circumvented. Mr. Mahon noted that the Commission needs to come to a comfort level based upon the information received. There is a need to have a discussion regarding whether the Commission wants to recommend a city or a town form to the voters.

Tim Tenhave noted he feels he has enough information to move forward. He noted that more information can be provided after the discussion regarding city vs. town form is over. He noted the Commission ought to take the next steps and then look at additional details.

Mr. Mahon questioned the advantages of the city forms. Finlay Rothhaus noted he doesn't think these forms fit with what the people see. He noted these forms are good for the administration of the city as they are more streamlined, but he noted that citizen participation is important to the residents of Merrimack. He noted that the citizens would like to participate in the budget decisions.

Peter Batula noted there seems to be a preference for the council/manager form. He noted that a 5 member board is not enough to run a town of 25,000 to 30,000 residents. He noted a need to look at the council/city manager form.

David Yakuboff noted he agrees with Mr. Batula, however, he is against a strong mayor and aldermen. He noted in this form a mayor could be elected who does not know how to be a mayor. He noted that the weak mayor form could work, but there is the stigma of the word "city". He noted he has no problem with the town council form.

Mr. Mahon noted that people from Londonderry said that it was more of an emotional decision rather than a practical decision to have a town form. People don't want to move to a "city" form.

Mr. Yakuboff noted that if the members of the Commission have the same idea regarding the city forms, then it would be safe to make a decision regarding the form at this time.

Mr. Mahon noted that the town council/manager and the city council/manager forms are almost mirror images.

Mr. Batula noted he would like to have the subcommittee chairmen tell him the difference between "city" and "town". Mr. Yakuboff noted that a city form is more defined. There are only 2 forms and they are less direct representative of the people. There may be more costs associated with these forms. Mr. Rothhaus noted that there are a variety of town forms. The levels of citizen participation vary. Most of the items in the town forms are dictated by the Charter. It may be possible to make the town form fit the town better. Mr. Mahon noted there are trade-offs. He noted that by enlarging the number of positions in the government, the participation in the government is enlarging. Mr. Tenhave noted that cities bring clought. Mr. Mahon noted that cities are centers of population, industry, and finance. Mr. Tenhave noted that Merrimack is a bedroom community; most people who live here do not work here. Mr. Rothhaus noted that while it was true in 1980 that about 80% of the population worked elsewhere, this is not so much the case today. Mr. Mahon noted that Merrimack is still predominately a bedroom community.

Lon Woods noted that the decision of city vs. town is an emotional one. He questioned how far ahead of the voters should the Commission get.

A motion was made by Tim Tenhave and seconded by Finlay Rothhaus to have the Charter Commission start drafting a town charter next week.

Mr. Tenhave noted that his motion is deliberately vague. The movement will be refined as the process goes forward.

Mr. Mahon noted that going down this path does not preclude the Commission from changing its mind in the future.

Heather Anderson noted that the decision of city vs. town is an emotional one since the city council/manager form is essentially the same as the town council/manager form with small differences. The town form keeps the door open to the entire gamut, from what we currently have to the council/manager form.

Mr. Batula noted he wanted to see a discussion between the town and city forms, but he can support a town form.



The motion passed 8-0-1.

### **Minutes of August 23, 2005**

No minutes were available at this time.

### **Other Business**

Fran L'Heureux noted that the suggestion by Attorney Krans of a survey on the website is a great one. This would give the Commission responses from the citizens. Finlay Rothhaus noted that this would be helpful as long as the Commission remembers that any information gathered would be non-scientific.

David Yakuboff noted that the public still has opportunities to voice their opinions. He noted it is important that the public comes to the public hearings.

Mr. Rothhaus noted he hopes that the decision made this evening will prompt input from the public.

Peter Batula suggested that during the Commission's deliberations that the forms being discussed are narrowed down to a couple. He noted he feels that this discussion will move the Commission from 6 forms to 2 forms.

### **Questions from the Press**

The difference between a town manager and a town administrator was questioned. Chairman Mahon noted that the difference between these is how they are defined in the charter. Their duties are more defined and may be broadened in the day to day operations. There can also be differences between the extent to which interference from or by the government body is permitted.

### **Comments from the Commissioners**

There were no comments from the Commissioners at this time.

### **ADJOURN**

A motion was made by Peter Batula and seconded by Robert Kelley to adjourn the meeting at 10:02 pm. The motion passed 9-0-0.

Respectfully submitted,  
Rita Carlton, Recording Secretary