

**MERRIMACK CHARTER COMMISSION  
REGULAR MEETING  
SEPTEMBER 6, 2005**

Commission members present: Chairman Tom Mahon, Vice Chairman Heather Anderson (arrived at 8:05 PM), 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 next week. This will give the public an opportunity to address the Charter Commission regarding the Commission's actions to date. He urged the public to come to this hearing with their thoughts.

**Public Comment**

Andrew Silvia, 28 Merrymeeting Drive, asked why the poll spoken about at the last meeting was not on the website. He noted that the Commission has made a lot of progress. He noted the Commission should choose the government the town wants and the one that works best for Merrimack.

**Reports**

**Chair** – Chairman Mahon reported that he received a reply from the NH Department of Revenue Administration and there is no distinction between the forms of government for how money is distributed. He provided a list of the most common provisions contained within the charters that he has reviewed. This list is not exhaustive. A list of Charter Decision Points was also distributed. This list contains decisions to be made by the Charter Commission. Again this is not an exhaustive list. This list contains the main issues that the Charter Commission should look at as they go forward.

**Vice Chair** – There were no reports from the Vice Chair at this time.

**Review Charter Contents**

Chairman Mahon noted that most of this information comes from the Londonderry charter. He noted that the common items include incorporation, form, and intergovernmental relations.

**Identify and Discuss Decision Points**

Chairman Mahon noted that these points include the governing body, the number of people on the governing body, how they are elected, etc. Some items are independent; some are combined with other items. The Charter needs to determine bonding and note majorities. The thresholds for referendums and initiatives are higher than those for petitions. The Charter needs to state how the transition from the current government

will be made, how the election and appointment of boards will be handled. Recall will need to be addressed.

David Yakuboff questioned whether all of the decision points except the form of government are to be determined as the charter is written. Mr. Mahon noted that this would be the case. He noted that this list is also a check list to make sure that all of the pieces of the charter are included.

### **Begin Charter Development**

David Yakuboff noted that it appears that the people want more than 5 people on the governing body.

A motion was made by David Yakuboff and seconded by Peter Batula to begin to write the Charter for a town council with at least 7 members.

Finlay Rothhaus noted that he doesn't know that it is necessary to increase the number to 7 members. He noted he would prefer to hold off on the number.

Robert Kelley questioned whether 7 is more representative than 5. Mr. Yakuboff noted that many people felt there is a work issue problem. He noted if the town is on the move, the Commission needs to plan for the future, and it is not unrealistic to ask for a council of 7 members.

Tim Tenhave noted he has thought about this number in the past. He noted he was thinking about this number in terms of representation. He noted that the current board could pass a measure with 3 members voting in the affirmative. He noted he feels this is not adequate. With a 7 member board 4 members would have to vote in the affirmative to pass a measure. He felt that this would be more representative.

Peter Batula noted he supports 7 members. He noted the people of Merrimack have charged the Charter Commission to look to the future.

Lon Woods noted the Commission has to look at what is gained and what is lost. He noted this number does not seem to lose the town anything. He noted he agrees with Mr. Tenhave. He noted that 15 members would be too large, but somehow a change to 7 members would give the town a stronger base.

Fran L'Heureux noted that people who have spoken to her indicate that 7 is the perfect number, 5 are too few, and 9 are too many.

Tom Mahon noted that 7 is a workable number. It would be easier to manage the workload with 7 members than with the current 5 members. He questioned whether the time commitment with 5 members turns some people off from running.

The motion passed 8-0-0.

Mr. Woods noted there should not be any panic if the vote is not unanimous. He noted there may be reasons for a negative or abstaining vote. Mr. Mahon noted that all members of the Commission are entitled to their opinions.

A motion was made by Peter Batula and seconded by Robert Kelley that the terms of the 7 councilors be staggered, 3-2-2. The motion passed 8-0-0.

A motion was made by Robert Kelley and seconded by Lon Woods to elect the councilors "at-large".

Mr. Tenhave noted he is torn about this issue. He noted a part of him likes the idea of districts. He suggested that 2 councilors be elected from each of 3 districts with one at large councilor.

Mr. Yakuboff noted he likes a mixture of district and at large representation.

Mr. Batula noted he could live with either decision, but he felt that a mix would be best. He noted that the last time a district representation was discussed the voters voted against it. He noted he prefers that the Commission press for a mixture of representation.

Mr. Kelley asked if he could withdraw the motion and move to create a council with a mixture of district and at large representation. He noted the Charter can be amended.

Mr. Rothhaus noted he is not set one way or the other. He questioned how the districts would be set up. Mr. Mahon noted that some Charters provide in some detail the wards or districts of the town. These wards or districts must be drawn relatively equal in terms of population. He questioned whether the state representatives would then also be elected from these wards or districts. He noted he thinks that this would be so.

Mr. Tenhave noted he is not enamored of any of the options presented. He noted he would like to get a sense of what the community is thinking. He suggested the Commission hold off on this decision at this time.

Ms. L'Heureux noted she remembers when the town was split into 4 districts. She noted the people like the town of Merrimack rather than 4 districts. She noted she would also like to delay further discussion of this issue.

Mr. Woods noted the Commission should not get too far ahead of the residents. He noted the Charter can start with at large representation and if there is a ground swell for a mixture or district representation the Charter can be amended.

Mr. Yakuboff noted the Commission can always make changes later. He suggested they see what the public has to say.

Mr. Batula noted he is in no hurry to make changes. He noted the voters elected the Charter Commission to make decisions. He noted he would like to move forward and see what happens.

A motion was made by Fran L'Heureux and seconded by Finlay Rothhaus to table this motion. The motion failed 4-4-0.

Mr. Kelley noted that people understand at large representation. This can be changed in the future.

Mr. Mahon noted he favors at large. He noted that at large representatives have the responsibility of keeping the attitude of the entire town in mind when making decisions.

The motion passed 6-2-0.

Mr. Tenhave noted he would like to have a discussion of what is wrong with the current government.

Mr. Batula noted he favors moving forward. He noted there is nothing wrong with the current form, but the town is looking ahead.

Mr. Rothhaus noted there are not generally a lot of flaws with the current form. He noted the Charter allows the community to grow. He noted that scrutiny is important.

Mr. Mahon questioned the residency requirement for running for election. He noted the maximum that can be imposed is 1 year. This requirement would require people to live in town and get familiar with the town and the people.

Mr. Rothhaus noted he doesn't know that this is necessary. He noted if a person is unknown they will not be elected.

A motion was made by Tim Tenhave and seconded by David Yakuboff to require that any elected councilor reside in town for as long as they hold office.

Mr. Woods noted that if there is a residency requirement for councilors than the residency requirement applies to other bodies also.

(Heather Anderson arrived at this time.)

Ms. L'Heureux questioned post office boxes and people with no address. Heather Anderson noted a clearer definition is needed before the Commission can move forward. The Commission agreed that a clearer definition is needed for residency/domicile.

A motion was made by Lon Woods and seconded by Tim Tenhave to table this motion for further information. The motion passed 9-0-0.

A motion was made by Tim Tenhave and seconded by Lon Woods to ask the attorney to clarify residency and domicile.

Mr. Mahon noted he would give the Commission's reasoning for the question. He noted the Commission may not be able to get a satisfactory answer.

The motion passed 9-0-0.

Mr. Mahon noted that some charters do not allow elected official who go out of office to hold another town position. The Commission will also need to consider provisions for removing officials from office.

There are several options with variations regarding voting. The voters can vote on bonds/notes and land use issues or not. There could be a budgetary town meeting which would require voting on appropriations only. The town could continue to vote as it does today.

Ms. Anderson noted it would be helpful to know how many voters vote on specific issues. Mr. Tenhave noted he would like to do this analysis.

A motion was made by Tim Tenhave and seconded by Peter Batula to adopt the official ballot town council form of government.

Mr. Tenhave noted he likes the idea of an official ballot. He noted that all authority should not reside in the hands of the Town Council.

Mr. Woods noted he likes the town council form with the budgetary town meeting. He noted he thinks bonds/notes and budgets draw people to vote. He noted a concern regarding the current cumbersome ballot.

Mr. Rothhaus noted that the difficulty with the budgetary town meeting is that the official ballot can be limited. He wants the greatest opportunity for the largest number of people to participate.

Mr. Mahon noted that the official ballot is a ballot, not necessarily a meeting.

Ms. Anderson noted that the official ballot can be cast without a town meeting or deliberative session.

Mr. Batula noted he did not want to include a deliberative session in the motion. He withdrew his second.

The motion was seconded by Finlay Rothhaus.

Ms. Anderson noted the Town Council crafts the ballot to be voted on by the electorate. The Commission has yet to determine what will be on the ballot and whether there will be a meeting with all of the electorate.

Mr. Tenhave noted the Commission could set forward what constitutes a ballot and then what constitutes a town meeting. He noted he thinks the voters want to vote on budgets and notes, but has no feeling that the voters want to vote on land use issues. He noted it is appropriate to call the all day voting the town meeting. The motion on the floor does not regulate the type of ballot to be voted on.

Mr. Batula noted that he has been hearing that Deliberative Sessions do not work. They are controlled by the people who are for or against an issue. They are not representative of the town. The people do not like small groups of people making changes. The town is no longer a small group of people. There is no space to have a town meeting of all of the electorate.

Mr. Tenhave noted that the people will have an opportunity to vote on the paper ballot. If the Commission wants to have a meeting before that it is okay, but it is not his

preference. He noted his intent is to have a town meeting that constitutes a paper ballot only.

The motion was clarified by Tim Tenhave and seconded by Finlay Rothhaus to adopt the official ballot/town council form with a town meeting to be the polling only to vote on a ballot created by the town council. The official ballot will include budgetary items, i.e., appropriations.

Mr. Tenhave noted he thinks the townspeople want to look at budgetary items.

Mr. Woods noted he supports this motion. It removes the town from the provision of SB2.

Mr. Mahon noted this is the intent of the motion, but not all issues have been addressed. The Commission is moving along in a process to do this.

Ms. L'Heureux noted a petitioned Warrant Article that wanted to do away with SB2 that was defeated. Mr. Mahon noted this was not done recently.

Ms. Anderson noted that a repeal of SB2 means a return to the old town meeting.

Mr. Mahon noted that the people want an opportunity to have a say. This is done at public hearings held by the Town Council.

Mr. Batula noted that groups still have the option of changing the ballot. Ms. Anderson noted that such a group would have to sway the council to change the ballot or put forward a referendum.

The motion passed 9-0-0.

Mr. Mahon noted that land use issues have to be considered.

Mr. Tenhave noted he would analyze the ballots with votes. He noted there are 4 kinds of articles: elections, land use, budget, and others. He noted his preference is for a budget only ballot. All other issues would be under the purview of the Town Council. Ms. Anderson asked that the analysis include the number of petitioned articles on the ballots also.

Mr. Mahon noted that the current vote required for bond/note approval is 3/5ths. If the charter is silent on this issue the approval needed is 2/3rds.

Mr. Batula noted that could be amended. He felt it should be 2/3rds.

A motion was made by Lon Woods and seconded by Peter Batula to require a 2/3rds vote for the approval of bonds/notes.

Ms. Anderson noted that the voters' biggest concern is taxes. The people need to understand that there are fiscal constraints in place.

Mr. Tenhave noted that Merrimack has been under the 3/5ths rule for some time. He doesn't feel that this is broken. He noted that the 2/3rds vote is overly tying the hands of the community to move forward.

Mr. Mahon noted that research indicated that the 3/5ths requirement has not opened the flood gates for bonding. He noted he prefers 3/5ths to 2/3rds. The town has low bonded indebtedness. The bond issues will go before the people.

Mr. Batula noted that if the 2/3rds requirement becomes an obstacle than it can be changed to 3/5ths.

The motion passed 6-2-1.

Mr. Mahon noted the process for the registered voters to petition the Town Council for something needs to be put in place. Some petitions may require 20% of the registered voters, while others may require 100 registered voters.

A motion was made by Finlay Rothhaus and duly seconded to keep administrative bodies which are currently appointed as appointed.

Mr. Mahon noted this is an issue of continuity, longevity and interest.

The motion passed 9-0-0.

Mr. Mahon noted he will attempt to break up the work of consideration of the provisions of a charter into manageable components and he will try to set up a schedule so that each component can be done in an evening.

### **Minutes of August 23, 2005 and August 30, 2005**

A motion was made by Peter Batula and seconded by Lon Woods to approve the minutes of August 23, 2005 as presented. The motion passed 8-0-1.

A motion was made by Robert Kelley and seconded by Lon Woods to approve the minutes of August 30, 2005 as presented. The motion passed 9-0-0.

### **Other Business**

Tim Tenhave noted he is pleased with the minutes as they are presented. He noted the receipt of an e-mail from Pat Heinrich, Chairman of the Library Trustees, regarding the library/town split. He will forward a copy to all members.

### **Questions from the Press**

There were no questions from the press at this time.

### **Questions from the Public**

There were no questions from the public at this time.

### **Comments from the Commissioners**

Heather Anderson apologized for her lateness due to a work commitment. She noted that the matrices and committee reports have been posted to the website. She noted

the query is not on the site at this time as proper wording should be developed for the questions surveyed.

Fran L'Heureux noted the great job done on the website.

**ADJOURN**

A motion was made by Lon Woods and seconded by Fran L'Heureux to adjourn the meeting at 9:55 pm. The motion passed 9-0-0.

Respectfully submitted,  
Rita Carlton, Recording Secretary