

**MERRIMACK CHARTER COMMISSION
REGULAR MEETING
November 8, 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 Courthouse of the Town Hall.

Public Hearing

Presentation-Charter Commission Action to Date - Chairman Tom Mahon noted that the Charter is still a work in progress. The work on the Charter must be completed by December 18, 2005. The Commission has not yet acted upon some sections of the Charter. Section 7 – Finance is still to be completed. Article 10 – General Provisions has not yet been acted upon. The definition section also needs to be completed.

Mr. Mahon introduced the members of the Commission to the members of the public present. He noted that the Commission would like to hear from anyone who wishes to speak once. After everyone has spoken who wishes to speak, the opportunity for a second time before the Commission will be given. Mr. Mahon asked that each speaker state their name and address for the record and give their comments.

Mr. Mahon presented an overview of the work done by the Commission to date.

Public Comment – Nelson Disco, 42 Wilson Hill Road, noted that he is impressed with the work done by the Commission. He noted a concern for the adoption of zoning ordinances. He noted he does not think it is in the town's best interests to have changes in the zoning ordinance resting in the hands of the majority of the Town Council.

Norman Phillips, 18 Edward Lane, noted that no selectman has indicated that they need more selectmen. He noted that the town of Londonderry has approximately 22,000 residents and they have only 5 Town Councilors. Salem, which is a larger town than Merrimack, has a 5 member Board of Selectmen. He noted that the town passed SB2 so that all voters could vote on all issues. He noted the filter process is missing without the Deliberative Session. He noted there are tremendous consequences with the Town Council as the legislative body. He noted that a governing board is not a reliable barometer of voters' reaction. He noted the current proposal takes too much power from the voters.

Jennifer Twardosky, 41 Gail Road, questioned whether there would be additional public hearings on this Charter. Mr. Mahon noted this is unknown at this time. He noted that members of the public are welcome to come to any Charter Commission meeting to give comment.

Ms. Twardosky questioned whether the Town Council under the proposed Charter would be able to decide its own salary. Mr. Mahon noted that currently the members of the Board of Selectmen receive a salary of \$2,400 per year. The intent is to keep this salary, but changes can be made. An increase would need a vote of 5 of the 7 Councilors. If voters are dissatisfied

with any action taken by the Council there is recourse in the referendum petition. If a pay raise were approved only newly elected members to the Council would get this pay rate.

Ms. Twardosky questioned the Personnel Plan. Mr. Mahon noted that this would include policies and procedures, salary scales, etc. The Town Council will be involved in the approval of the Personnel Plan. There is a non-interference section that tries to channel Town Council concerns through the Town Manager rather than to the department heads.

Ms. Twardosky questioned the purchasing policy. Mr. Mahon noted that there is currently a purchasing policy in the Administrative Code. This section would simply move this policy to the Charter.

Ms. Twardosky noted that a lot of signatures are needed for a petition. Mr. Mahon noted that an ordinance goes through 3 stages before the Town Council approves it. He noted that if someone is opposed to the proposal they can begin the petition process in anticipation of the passage of the opposed ordinance. He noted there is a public notice process. Tim Tenhave noted that the idea behind this number of signatures was to make the process not overly difficult. This process could involve a special election.

Ms. Twardosky noted that the people would like an opportunity to vote on the budget and Warrant Articles. She noted that the current proposal does not seem to provide all the people the power.

Greg McCrady, 39 Gail Road, noted that more restrictions are not needed. He noted that taxes are increasing. Mr. Tenhave noted that the proposal includes citizen initiatives and petitions. He noted that currently the people cannot overturn the votes of the Board of Selectmen. Mr. Mahon noted that the proposed Charter further delineates and codifies the responsibilities of the Town Manager. Heather Anderson noted that the Town Manager is analogous to the CEO of a corporation and the Town Council is analogous to the Board of Directors. She noted that the proposed government organization is much like the one currently in existence, but there is more clarification with the Charter.

Andy Sylvia, 28 Merrymeeting Drive, noted that the biggest issue is the Deliberative Session or Town Meeting versus legislative powers in the hands of the Town Council. He noted that none of the options are clear-cut, but this is the biggest issue on the minds of the voters. The Charter is the first step towards change. He noted that the Commission is on the right road.

Debra Huffman, 60 Amherst Road, noted she is impressed with the work done by the Commission. She noted it is important that the town have a Charter, but she has a problem with the idea of a 7 member Town Council having the responsibilities given to the Town Council under the proposed Charter. She noted she thinks the town is asking too much of 7 volunteers. She noted the Deliberative Session is an important part of the town government. The town is still working out the kinks in this process.

Chester Symes, 2 Westborn Drive, noted that he objects to having all Town Councilors elected at large. He noted that partial district representation is better than no district representation. He noted that many Deliberative Sessions are controlled by a small number of people. He noted he agrees with a petition presented by minority groups.

Nat Fairbanks, 5 Sandhill Drive, noted it is wrong to make the Town Council the governing and legislative body. He noted that there are between 200 and 500 people at the Deliberative

Session. He noted it is better for these 200-500 people to make decisions than for 7 Town Councilors to make decisions.

Tom Koenig, 1 Danforth Road, noted that he feels that the Town Meeting is an integral part of government in New England. The people need to understand the powers of the Deliberative Session. He noted he would find it a hard task to shoulder the responsibilities delineated for a Town Councilor. He noted that the Commission should be careful about putting things in the Charter and not in the Administrative Code. He noted it is more difficult to make changes to the Charter than to the Administrative Code. He questioned whether the infractions listed in section 3.4.b are the only infractions that can be used for removal. Mr. Mahon noted that this section does not preclude the Town Council from adopting other infractions. He noted that the conviction for a felony calls for immediate removal.

Mr. Koenig questioned the 1-year period for town officials to wait before they can take a paying job with the Town. Mr. Mahon noted this is intended to put some distance between the elected office and working for the people you used to supervise.

Mr. Koenig noted that the 72 hours advance for the posting of agendas seems overly restrictive. Ms. Anderson noted it is okay to amend the agendas during this period of time. Mr. Mahon noted that the Town Council would set up rules for the posting of agendas. He noted the Commission is trying to make this Charter a transparent document.

Mr. Koenig questioned the emergency meeting. Ms. Anderson noted that the Town Council needs to be able to respond in a timely fashion to an emergency.

Mr. Koenig noted the minimum posting time for the first reading of a proposed ordinance. Ms. Anderson noted that this time would need to be extended due to newspaper deadlines.

Mr. Koenig noted that the section on non-interference is very important. Mr. Mahon noted that an individual councilor may address an issue with the Town Manager, but any action would need to be taken by the entire Council.

Mr. Koenig noted that the numbers in Article 9 seem to be arbitrary. Mr. Mahon noted that there was a lot of discussion regarding these numbers. He noted the Commission is trying to provide an achievable process without bogging the Town Council down with petty issues.

Mr. Koenig noted that achieving the required number of signatures within 60 days would be difficult. He questioned whether there is a possibility of breaking this number into 2 stages with a threshold to stay action. Mr. Mahon noted that the concern of the Commission is that there will be someone trying to cause problems for others.

Mr. Koenig noted he has a concern regarding forced special elections. He noted the town could end up with a lot of special elections. He noted that the 60-day window seems too small. He noted a concern regarding section 9.5 about conflicting provisions on the ballot. He noted his appreciation of the Commission's time and interest. He reiterated his concern regarding losing the Town Meeting.

Mike Yates, 40 Back River Road, noted that people get involved. He suggested that the town look at the Deliberative Session and see how more people can become involved. He noted it is best to enhance the Deliberative Session rather than to scrap it.

Dan Bittel, 1 Usher Lane, noted that these changes would have an impact on the town taxes. He noted that the town's portion of the tax rate is about 20% of the total tax bill. He noted he sees the town growing with participation decreasing. He noted a problem with special interest groups. Mr. Mahon noted there is no intent to remove the Planning Board and Zoning Board of Adjustment from the process of creating or revising the zoning ordinance. These proposals would now go to the Town Council rather than to the people for a vote.

Mr. Bittel noted that the budget would be created by the Town Manager and the Town Council with input from the department heads and the Town Council would vote on the budget. Mr. Mahon noted that the Town Manager is appointed by the Town Council, but there is no interference in his job performance by the Town Council.

Mr. Bittel noted that the residents of Merrimack have to give the Town Manager and the elected Town Council their confidence that they will run the town in the best possible way. He noted that the proposed Charter is the best way to run the business of the town.

Jim McSweeney, 63 Turkey Hill Road, noted that this Charter is a positive and progressive step. He noted that the Town Council/Town Manager form of government works. The voters are looking for changes. The creation of an advisory Budget Committee gives him some concern. He noted this looks like an exercise in futility. He noted the Commission should consider the budget process very carefully. This process is a year round process. The Town Council is ultimately responsible for the budget. This Charter will give the public as much, if not more, access to the elected officials than they currently have. In this proposed Charter the elected officials become the policy makers.

Chris Christensen, 27 Greatstone Drive, noted that the Deliberative Session may not be poorly watched. He noted there is discussion regarding the Deliberative Session. He noted there is a lot of discussion even though people did not show up at the meeting. He noted that the voters in voting for the Charter Commission indicated that they want to move forward. He noted that zoning amendments should be on the ballot. The zoning process is lengthy, but important. He noted it is hard to keep track of public hearings. He questioned whether petitioned articles and the budget could be put on the ballot per the Town Council. Mr. Mahon noted that the Commission tried to work this out, but there is no legal way to do this. He noted that if there is an official ballot there must be a Deliberative Session. There is no legal way to get the budget to the voters from the Town Council.

Mr. Christensen noted that currently a voter can collect 25 signatures of registered voters to put a petitioned Warrant Article on the ballot. The proposed Charter requires that the voter collect 1250 signatures. This is a huge change. The one-year restriction on hiring is also a problem. He noted that currently the Selectmen's salaries are set by the Town Meeting.

Norm Phillips noted that the budgets are not created in September because of the Budget Committee, but are created at this time due to the Deliberative Session.

The public hearing was declared closed at 9:15 pm.

(Finlay Rothhaus left at this time.)

Chairman Mahon noted that the Commission appreciates the comments made by the members of the public.

Attorney Krans

Attorney Krans noted that the Charter needs to make the distinction between “terms of employment” and “term of office”. He noted a concern for the mixing of the reprimand and removal from office. He noted that the Charter needs to make these processes as clear as possible. He noted that 90 days for an Acting Town Manager might be too short a time. The oversight by the Town Council of the Personnel Plan should be included in the Charter. In Sections 6.8 and 6.10 there should be some linkage regarding who is in charge of the department heads. The relationship of the Town Manager to the department heads and the input, if any, the Town Council has in this relationship. The department head’s control of the departments may infringe on the Town Manager’s control. He noted there is not much difference between “cause” and “just cause”, but that this is a very high standard.

Reports

Chair – Chairman Mahon noted he met with Tim Tenhave and Finlay Rothhaus. Copies of their proposals were distributed.

Vice Chair – Vice Chair Anderson noted there has been a change made to the front page of the website. The PowerPoint presentation made this evening will be added to the website.

Review Article XI – Transition

A motion was made by Lon Woods and seconded by Fran L’Heureux to adopt Article XI – Transition as follows:

11.1 Effective Date

This Charter shall take effect July 1, 2006. Prior to that date, the Selectmen shall prepare for the transition to the new form of government.

11.2 Council, Town Clerk/Tax Collector and Moderator

A. Those Selectmen whose terms have not expired as of June 30, 2006, shall continue in office as Councilors until the expiration of their terms and until their successors are elected and qualified.

B. The persons holding the following offices as of June 30, 2006 shall continue in offices until the expiration of their terms and successors are elected and qualified: Moderator, Treasurer, Town Clerk/Tax Collector, Supervisors of the Checklist, Library Trustees, and Trustees of the Trust Fund.

11.3 Special Election

The Town shall conduct a special election on the second Tuesday of June 2006 to elect town councilors for the following terms: One (1) for a term to run from July 1, 2006 to the regular town election of April 2009, and One (1) for a term to run from July 1, 2006 to the regular town election in April 2008. Both shall service until their successors are elected and certified as provided in Article 2.7 of this charter.

All election officers holding office prior to and at the time of the special election held under this Charter shall conduct such election and shall have all the powers granted to them under New Hampshire State Law for such purposes and shall have all the powers that are granted to their successors under this Charter which are necessary to conduct properly such election.

11.4 Abolition of Certain Boards and Officials

The following Town agencies shall be abolished effective on the dates listed herein:

A. The Board of Selectmen, June 30, 2006

B. The Municipal Budget Committed elected under RSA 32, June 30, 2006

11.5 Continuation of Government

All members of the Town government, elected or appointed, except those abolished by this Charter, shall continue to perform their duties until the expiration of their current term, and until successors to their respective positions are duly appointed, elected and qualified, or their duties have been transferred. The Board of Selectmen and the successor Town Council shall take whatever measures are necessary to effectuate an orderly transition and shall take whatever actions are necessary to enable such transitions in office to comply with the provisions of this Charter.

11.6 Continuation and Compensation of Personnel

A. Until expressly changed after the effective date of this Charter, the compensation of all officers, department heads and employees of the Town shall be the same as that in effect on July 1, 2006.

B. Any person holding an office or position in the administrative service of the Town, or any person serving in the employment of the Town shall retain such office or position and shall continue to perform their duties until provisions shall have been made in accordance with the Charter for the performance of said duties by another person or agency; provided, however, that no person in the service or employment of the Town shall forfeit their pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as it practical.

C. Removal of personnel for such issues as inefficiency, poor performance, violation of policies and procedures, or other disciplinary reasons, in effect at the time of the adoption of this Charter, shall not be prohibited, provided that the continued or interim policies and/or contracts are followed.

11.7 Transfer of Records and Property

All records, property, and equipment of any Town agency, the powers and duties of which are assigned in whole or part to another Town agency, shall be transferred forthwith to the Town agency to which such powers and duties are assigned.

11.8 Effect on Obligations, Taxes, and Other Legal Acts

All official bonds, recognizance, obligations, contracts, and other instruments entered into or executed by or to the Town before its adoption of this Charter; all taxes, special assessments, fines, penalties, forfeitures incurred or imposed, due or owing to the Town shall be enforced and collected; all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the Charter; and no legal act done by or in favor of the Town shall be rendered invalid by the adoption of the Charter.

The motion passed 8-0-0.

Article X - General Provisions

It was noted that the optional language proposed in the draft of this article was not needed in the Charter as proposed. Tom Mahon noted that it is in the hands of the Town Council to adopt rules for their meetings. He noted there was some concern this evening regarding keeping land use on the ballot. There would be a need to amend the proposed Charter to include land use on the ballot.

Approve Minutes

There were no minutes to be approved at this time.

Other Business

There was no other business at this time.

Questions from the Press

It was questioned whether the Commission plans to formally address the issues presented by the public this evening. Tom Mahon noted that the issues would be considered. Heather Anderson noted that the Commission, before presenting the proposed Charter to the Board of Selectmen, would go through each article with a fine tooth comb to make sure that the intent the Commission wants is correctly stated.

Commission Member Comments/Remarks

Tim Tenhave noted there is still a lot to do. He questioned whether the Commission wants to take a break on Tuesday, November 22, 2005. Tom Mahon noted he will not be present at the meeting of November 29, 2005. Mr. Tenhave questioned whether examples of reports from the Charter Commissions are filed with the charters. Mr. Mahon noted he would ask.

David Yakuboff noted he will not be present for the meeting of November 15, 2005. Mr. Mahon noted it would be better if all of the members of the Commission are present for work on Article VII – Finance. Lon Woods suggested that the meeting be recessed until Wednesday, November 9, 2005.

Recess - A motion was made by Lon Woods and seconded by Robert Kelley to recess the meeting of Tuesday, November 8, 2005 to Wednesday, November 9, 2005 at 6:00 pm in the Conference Room of the Town Hall. The motion passed 8-0-0. The meeting was recessed at 10:10 pm.

Reconvene - Chairman Mahon reconvened the meeting of the Charter Commission at 6:10 pm in the Conference Room of the Town Hall. Commission members present included Chairman Tom Mahon, Vice Chairman Heather Anderson (arrived at 6:20 PM), Secretary Fran L'Heureux, Peter Batula, Robert Kelley, Finlay Rothhaus, Tim Tenhave (arrived at 7:10 PM), Lon Woods, and David Yakuboff.

Announcements

Tom Mahon noted he queried the Commission's attorney regarding the recessing of last night's meeting to tonight. He received a reply at 2:10 PM this afternoon. The attorney noted that the recess is permissible.

Article X – General Provisions

10.1 Agreements with Other Municipalities

Tom Mahon noted that section 10.1 allows the town government to enter into interlocal and mutual aid agreements. It is an extension of section 1.4.

A motion was made by Robert Kelley and seconded by Fran L'Heureux to adopt the following language:

10.1 Agreements with Other Municipalities

The Council is authorized, as provided by New Hampshire State Law, to enter into agreements and regional compacts with neighboring cities and towns, state agencies, or private nonprofit corporations for the purpose of resolving their common problems for the mutual advantage and benefits of the town and its neighboring cities and towns.

The motion passed 7-0-0.

(Heather Anderson arrived at this time.)

10.2 Authentication of Charter: Copies to be Kept on File

A motion was made by David Yakuboff and seconded by Lon Woods to adopt the following language:

10.2 Authentication of Charter: Copies to be Kept on File

A. Authentication of Charter

Upon adoption, the official Charter, duly authenticated by affixing the signatures of all members of the Charter Commission and the Board of Selectmen, the Town Clerk and affixing the Town Seal, shall be filed with the Town Clerk and remain in the Town Clerk's office as the official Charter of the Town of Merrimack. At its first meeting, the Town Council shall affirm the validity of the Town Charter

B. Amendments

All amendments to this Charter shall be authenticated by the Town Council and be filed with and remain a part of the official Charter.

C. Maintenance

The Town Clerk shall be responsible for the proper maintenance of the Charter. Copies of the Charter shall be available to the public, and the Town Clerk may charge a fee to defray printing costs.

The motion passed 7-0-1.

10.3 Charter Amendments

A motion was made by Heather Anderson and seconded by Robert Kelley to adopt the following language:

10.3 Charter Amendments

Amendments to this Charter may be initiated either by the Council or by initiative petition, public hearing, and voter election pursuant to New Hampshire State Law.

Tom Mahon noted that the number of signatures needed for an initiative petition is different under New Hampshire State Law than under this Charter. Lon Woods noted that the town would have to live under the state laws that govern the process of amending the Charter.

An amendment was made by Finlay Rothhaus and seconded by Fran L'Heureux to adopt the following language:

10.3 Charter Amendments

Amendments to this Charter may be initiated pursuant to the provisions of New Hampshire State Law.

The amendment passed 8-0-0.

The amended main motion passed 8-0-0.

10.4 Indemnification of Town Officers, Board Members, and Employees

Tom Mahon noted that state law allows the town to indemnify Town Officers, Board Members, and Employees if the Town adopts such language. Such language has been adopted in the past.

A motion was made by Heather Anderson and seconded by Lon Woods to adopt the following language:

10.4 Indemnification of Town Officers, Board Members, and Employees

All town officers, and members of town agencies shall be deemed to be public or municipal officers or officials. The Town shall indemnify any such officer or member for expenses or damages incurred in the defense or settlement of a claim against the officer or member which arise while acting in good faith within the scope of official duties or employment, but only to the extent and subject to the limitations imposed by New Hampshire State Law.

The motion passed 8-0-0.

10.5 Land Use Ordinances

Tom Mahon noted that as the legislative body the governing body would adopt the zoning ordinances and amendments. The town would not have to wait until the annual election to act on any addition or amendment to the zoning ordinance. Mr. Mahon noted it is not the intent of this section to have the Town Council craft the zoning ordinances, but to keep the current process and have the ordinances brought before the Town Council for a vote. He noted that state law defines part of this process, but the remainder of the process can be explicitly delineated. Mr. Mahon noted that additional language could be crafted to delineate this process.

A motion was made by Heather Anderson and seconded by Lon Woods to find appropriate language to describe the current process. The motion passed 6-1-1.

10.6 Municipal Budget Law Repealed

A motion was made by Robert Kelley and seconded by Heather Anderson to adopt the following language:

10.6 Municipal Budget Law Repealed

By adoption of this Charter the voters and the Town of Merrimack expressly repeal and rescind the previous adoption of the provisions of the Municipal Budget Act.

The motion passed 8-0-0.

10.7 Public Records and Meetings

Tom Mahon noted that this section confirms the Right To Know law.

A motion was made by Peter Batula and seconded by David Yakuboff to adopt the following language:

10.7 Public Records and Meetings

All records of the Town and all meetings of the Council, boards, committees, commissions, authorities or other municipal bodies shall be open to the public, and their minutes and other records shall be available to the public in accordance with the provisions of New Hampshire State Law.

The motion passed 8-0-0.

10.8 Reorganization Plans

A motion was made by David Yakuboff and seconded by Finlay Rothhaus to adopt the following language:

10.8 Reorganization Plans

A. Council Initiated.

Except for those agencies established by this Charter or as otherwise prohibited by New Hampshire State Law, the Council may reorganize, consolidate, or abolish any existing town agency in whole or in part or establish new town agencies and prescribe the

functions of any town agencies provided that such action shall not eliminate the statutory duties of town officials. Such reorganization plans shall be accompanied by explanatory messages when submitted.

B. Manager Initiated.

The Manager may prepare and submit to the Council for its approval proposed reorganization plans which may, subject to applicable law and this Charter, reorganize, consolidate or abolish any Town agency in whole or in part, or establish new Town agencies as are deemed necessary or expedient. Such reorganization plans shall be accompanied by explanatory message when submitted.

The motion passed 8-0-0.

10.9 Prohibition

A motion was made by Fran L'Heureux and seconded by Robert Kelley to adopt the following language:

10.9 Prohibition

No Person shall be appointed to or removed from, or in any way favored or discriminated against with respect to, any Town position or appointed Town administrative office because of age, race, color, religion, sex, sexual orientation, disability, familial status, marital status, or national origin.

(Tim Tenhave arrived at this time.)

Tom Mahon noted that this language is already included in Article VIII.

The motion failed 0-8-1.

10.10 Severability

Tom Mahon noted that this means that one section or portion of the Charter can be declared invalid without invalidating the entire Charter.

A motion was made by Heather Anderson and seconded by Lon Woods to adopt the following language:

10.10 Severability

The sections of this Charter and the parts hereof are separable. If any portion or section of this Charter or the application thereof to any person or circumstance shall be held invalid by a court or competent jurisdiction, the remainder of the Charter shall not be affected thereby. If a clause, portion of or section of this Charter is so held to be invalid, then the application provisions of New Hampshire State Law, if any shall govern.

The motion passed 9-0-0.

10.11 Specific Provisions to Prevail

A motion was made by Fran L'Heureux and seconded by Robert Kelley to adopt the following language:

10.11 Specific Provisions to Prevail

To the extent that any specific provision contained in this Charter conflicts with any provision expressed in general terms the specific provision shall prevail.

The motion passed 9-0-0.

10.12 Violations and Penalties

Tom Mahon noted that the courts would enforce these violations.

A motion was made by Peter Batula and seconded by Fran L'Heureux to adopt the following language:

10.12 Violations and Penalties

All willful violations of provisions of this Charter, unless otherwise provided, are hereby declared to be misdemeanors, and all such violations and all violations of town ordinances for which no other punishment is provided shall be punishable by a fine in accord with New Hampshire State Law.

Tim Tenhave noted that a misdemeanor implies legal action.

A motion was made by Peter Batula and seconded by Tim Tenhave to table further action on this section until the opinion of the Commission's attorney is obtained. The motion passed 9-0-0.

Article VII – Finance

Tom Mahon noted that section 5.2 established an advisory Budget Committee.

A motion was made by Tim Tenhave and seconded by Finlay Rothhaus to reconsider the vote on the advisory Budget Committee.

Tim Tenhave noted he is not sure the Commission should include this advisory Budget Committee. Peter Batula questioned the harm done by having more eyes look at the budget. Lon Woods noted that this might cause confusion. He noted such a committee would be too much like the current Budget Committee, but without the power. He noted he sees this as muddying the waters. Mr. Tenhave noted that the advisory Budget Committee can make a statement, but it has no impact. Mr. Batula noted that the 7 members of the advisory Budget Committee could act as watchdogs.

Finlay Rothhaus noted that if the town could do an all day voting with a deliberative session there would be no need for an advisory Budget Committee. Mr. Mahon noted that the Committee has been struggling with getting the budget to the voters without holding a deliberative session.

Mr. Batula noted it is out of order for members of the Commission to have a meeting to discuss issues. Mr. Rothhaus noted that dialogue and discussion should happen. This was a dialogue to try to discuss some issues. He noted he was happy with the proposed solution that came from this discussion. He noted that the currently proposed Charter is doomed to failure. David Yakuboff noted that the voters would decide on the Charter.

Mr. Batula noted this outside discussion was a serious violation. He noted that he is most concerned about soliciting support from other members of the Commission over the telephone. The approach used to undo what has already been done was out of line. Mr. Mahon noted that this was an attempt to seek a method to keep the process going. He noted information was sent to all members of the Commission so as to bring it to their attention to give them time to think about the proposal. There was no intent to stifle discussion or prevent anyone from stating their opinion.

Lon Woods noted he voted against the advisory Budget Committee based on the fact that he would prefer to have the members to this committee appointed.

Mr. Tenhave noted that the budget process was not discussed at last Tuesday's meeting. The meeting with Mr. Mahon, Mr. Rothhaus, and Mr. Tenhave was an attempt to put something together for discussion purposes. He questioned whether this was inappropriate or a violation.

Mr. Batula noted that he and other members of the Commission were called or spoken to.

Mr. Mahon noted that he considered this meeting a subcommittee with a posting and minutes. The subcommittee meeting discussed the advisory Budget Committee and the Official Ballot.

Mr. Batula noted he has no problem with the meeting, but the results of the meeting have spiraled out of control.

Heather Anderson noted she has concerns regarding giving legislative authority to the Town Council. She noted she is happy to have some different choices.

Fran L'Heureux noted it was presented to her as a proposal, not a request for support.

Mr. Mahon noted he regrets that action taken to offer an alternate was perceived as something that is not helpful. There was no intent to short circuit discussion or do something out of the public eye.

Mr. Batula noted that phone calls were made to solicit support. Ms. Anderson noted that she would not give support to anything that she had not seen. Mr. Batula noted he saw something distasteful. Mr. Mahon noted that a legitimate concern has been raised.

The motion to reconsider the vote on the advisory Budget Committee was withdrawn.

7.2 Budget Procedure

Tim Tenhave noted that the wording in this alternative allows the Town Manager and the Town Council to work together to create a budget on an appropriate time line. Lon Woods noted there is no direction to include estimated revenues other than those associated with the tax rate. A motion was made by Lon Woods and seconded by Heather Anderson to adopt the following language:

7.2 Budget Procedure

At such time as may be requested by the Manager or specified by the Administrative Code, each officer or director of a department shall submit an itemized estimate of the expenditures and any revenues for the next fiscal year for the departments or activities under their control to the Manager. The Manager shall, based on these estimates and other data, prepare a recommended budget which shall, together with these department estimates, be submitted to the Council on such date as the Council shall establish. In presenting the budget to the Town Council, the Manager shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes, paying particular attention to enterprise departments or activities, and an estimate of the impact on the Town portion of the tax rate. The Council shall review the budget for the following fiscal year and make such modifications and amendments as it desires.

The motion passed 7-2-0.

Peter Batula noted that this language was voted on before it came to this meeting. Lon Woods noted he did not vote on this language before this evening. Mr. Batula noted there is an intent to create a Deliberative Session. There was a vote taken by telephone. Tim Tenhave noted that the solicitation done to ask who would like to be Chairman was done in the same manner.

Mr. Batula noted that this Commission is writing a Constitution for Merrimack. Finlay Rothhaus noted there were no solicitations for votes.

A motion was made by Finlay Rothhaus and seconded by Heather Anderson to table further discussion on Article VII.

Heather Anderson noted that this discussion is emotionally charged and she doesn't see the discussion as productive.

The motion passed 5-2-2.

Mr. Tenhave noted that the Chairman will not be present at the meeting of November 29, 2005. He questioned what still needs to be done. Mr. Mahon noted that the Commission needs to look for conflicts, redundancies, etc. They need to ask if there is better language available. The Commission needs to craft a report with their decisions, reasons, etc.

A motion was made by Peter Batula and seconded by David Yakuboff to take Article VII off the table with the understanding that the document under dispute not be read. The motion passed 9-0-0.

Mr. Tenhave noted that there cannot be all day voting on the budget without the Deliberative Session. He noted that many people want to maintain the ability to vote on the budget.

Ms. Anderson noted she has concerns with the Town Council being the legislative and governing body. She noted there can be no official ballot without a Deliberative Session.

Mr. Batula noted that the other side of the discussion is that there is opposition to the Deliberative Session. He noted that if a Deliberative Session is described that cannot be manipulated there is room for discussion.

Mr. Yakuboff questioned whether it is appropriate to give a number for the quorum at the Deliberative Session.

Mr. Mahon noted that the only town that currently has a quorum is the Londonderry School District, which has a quorum of 500 voters. In Merrimack the average number of voters at the Deliberative session has been 189 with the mean of 162. He noted he thinks that 175 is a good number. This number is achievable, but it will take some work to get this many voters to the Deliberative Session. He noted he heard at the Public Hearing yesterday that the voters want to vote on the budget and they didn't seem to care about the Deliberative Session. He noted that participants at the Deliberative Session are rarely surprised by what happens at the Deliberative Session.

Mr. Batula noted that when people are serious about changing something they come to the Deliberative Session.

Mr. Tenhave noted that larger numbers at the Deliberative Session are not necessarily tied to a budget item. He noted that the type of Deliberative Session that would be described by this Charter would deal with the budget only. Mr. Mahon noted that if a budget issue is hot enough the voters will attend.

Mr. Woods noted that the voters indicated that they want more participation that has been crafted into the proposed Charter to date. The Commission needs to see what can be

improved. He noted that a limited budgetary town meeting with an official ballot is a reasonable tack. He noted he is not interested in a Deliberative Session that allows special interest groups to manipulate it. The mean attendance at the Deliberative Session seems to be decreasing, but the participation at the ballot box does not seem to be decreasing.

Mr. Mahon noted that if a quorum is required for the Deliberative Session this means that if the quorum is not met no action can be taken, although discussion can continue.

Mr. Batula noted that the people have asked for something different. He noted that a quorum of 175 is not different. He noted that this number is too small and he cannot support it. He noted, however, that he could support a quorum of 500.

A motion was made by Peter Batula and seconded by David Yakuboff to require a quorum of 500 registered voters at the Deliberative Session.

Mr. Woods noted that a large portion of the tax bill is not on the town side. He noted he likes the idea of a quorum.

Ms. Anderson noted that 500 is too high. She noted that even with hot issues that many voters have never attended a Deliberative Session. She noted that 175 is too low. She suggested that 300 is a reasonable number. She noted this number has been met once and almost met a second time. This number forces all interest groups to come out.

Mr. Batula noted he is looking forward. He noted the town has asked the Charter Commission for a new vision for the future.

An amendment was made by Peter Batula and seconded by David Yakuboff to change the quorum to 400 registered voters. The amendment passed 7-2-0.

A motion was made by Heather Anderson and seconded by Tim Tenhave to adopt the official Ballot process in RSA 49-D to include only budget appropriations on the ballot to the voters.

Mr. Woods questioned whether the Official Ballot process allows the town to set a quorum for the Deliberative Session. Mr. Mahon noted that the Attorney General's office has accepted the Londonderry School District Charter. Mr. Woods noted that the fall back position may be a budgetary town meeting. Mr. Mahon noted that in a budgetary town meeting there is no all day voting.

Ms. Anderson noted that the ballot would include appropriations, articles that would raise and appropriate, bonds, notes, and Capital Reserve Funds.

The main motion passed 9-0-0.

A motion was made by Robert Kelley and seconded by Fran L'Heureux to reconsider the percentage of voters required to pass bond articles. The motion passed 7-2-0.

A motion was made by Tom Mahon and seconded by Tim Tenhave to require a positive vote of 60% (3/5ths) for passage of bond articles.

Ms. Anderson noted she is torn between 60% and 67%.

Mr. Rothhaus noted he supports 67% (2/3rds). He noted that if the leaders of the move to approve a bond article show a real need for passage the article will pass.

The motion failed 4-4-1.

Mr. Mahon noted that if the Charter is silent on this issue the percentage is 67% (2/3rds).

Next Meeting

Tom Mahon noted that the Commission will meet every Tuesday between now and December 18, 2005. These dates will be 11/15/05, 11/22/05, 11/29/05, 12/6/05, and 12/13/05. The Commission will meet at 6:30 PM on these dates.

Adjourn

A motion was made by Robert Kelley and seconded by David Yakuboff to adjourn the meeting at 10:15 PM. The motion passed 9-0-0.

Respectfully submitted,
Rita Carlton, Recording Secretary