

**Charter Commission Meeting Minutes
July 26, 2010**

Meeting was held in the Moose Hill Council Chambers. 268B Mammoth Road, Londonderry.

In Attendance:

Chairman Brian Farmer, Vice-Chair Cris Navarro, Secretary Lara McIntyre, Commissioners Al Baldasaro, Marty Bove, Chris Paul, Deb Paul, Kathy Wagner, Steve Young

Meeting was called to order by Chairman Farmer at 7:00pm. Chairman Farmer led the Pledge of Allegiance, followed by a moment of silence for the men & women who proudly serve in uniform.

Public Session:

Commissioner Baldasaro makes a motion to make public a letter from Town Attorney Bart Mayer. Motion seconded by Vice-Chair Navarro. **Motion passes 9-0.** Letter is distributed to members of the audience and media who are present.

Town Attorney Mayer appears before the Charter Commission to address publicly the questions that have arisen from the previous meetings. He first says that the Commission will be creating something of their own, not adopting SB2. He said the statute we would specifically be working with is Chapter 49-D: 3. He then speaks to the issue of a quorum. He said that the Charter Commission is not authorized to call for one for the deliberative session – it would be inconsistent with the law. Commissioner Young asks how does he explain that in 1999, 2000, 2009 (at least three times), the school district has sent its charter for approval from the Department of Revenue Administration, the Attorney General's office and the Secretary of State's office to review. At no time have there been any comments about the issue of a quorum, a lack of response meaning it can be taken as approval. Town Attorney Mayer makes three points - he does not know under what authority the Londonderry School District has written its charter and does not know if they have different guidelines than the town, which follows RSA 49-D. Commissioner Young does say the school district did use RSA 49-D: 3, II-a when creating the charter. Attorney Mayer doesn't quite understand why they used it, as it governs towns, not school districts. The second point Attorney Mayer makes is to not rely on the absence of comment, because it does not technically mean agreement. Finally, he also states that New Hampshire is a delegated state – we can only exercise the authority given to towns laid out by the legislature.

Commissioner Baldasaro asks about the quorum and its constitutionality. Attorney Mayer says the town meeting remains the same whether you go with an official ballot system or not – the deliberative session is just like another meeting. Having a quorum might be depriving individuals of their right to participate. The legislature doesn't seem fit to have a quorum, and sound argument could be made that the Constitution would be violated if you instituted one.

Commissioner Chris Paul asks if the quorum really is out of our realm at this point. Attorney Mayer says yes, it's beyond the authority of the Charter Commission at this point in time.

Continued discussion on the quorum issue.

Attorney Mayer next addresses the Charter Commission's question on whether they can impose any control over the deliberative session. Attorney Mayer says no, they cannot change the internal operation of a town meeting. The moderator and the voters have control. He says that the Charter Commission can only address how they want the citizens to vote. Commissioner Bove asks for clarification about the moderator and asks if it's within their power to restrict reconsideration. Attorney Mayer says that voters can overrule the moderator, but in most towns, most people move to restrict reconsideration. He says you cannot reconsider an item at the same meeting. Chairman Farmer says then that it is not in the Charter Commission's purview to put rules on the deliberative session.

Attorney Mayer next points out that we are not adopting RSA 40:13, we are creating our own change to the town charter.

Commissioner Bove asks when a decision is made later tonight, what should the format of the report be. Attorney Mayer says the Commission should include the specific amendments and changes that it would like to make (e.g. delete _____ insert _____). The Commission would then propose the package at the town meeting in March. The proposal should be very detailed. Attorney Mayer says he sees the report as first a narrative on why the Commission voted the way it did and then have the specific changes it would like to make to the charter. Commissioner Baldasaro asks if we use the text of the RSA, like the school district did? Attorney Mayer says it should more laid out; include all of the dates for when meetings and votes should take place, etc.

Chairman Farmer asks if the March 2010 vote outcome should sway the Commission on how voters were feeling about making a change. Attorney Mayer says no, all the vote did back in March was initiated the process to create a Charter Commission to study the subject.

Commissioner Bove asks how the article would actually read – how does the voter see all the changes that we could propose? Attorney Mayer responds that maybe the proposed changes could be posted with the exactly language or amendments. He said the Commission could also draw up a summary for the voters to read, could have the Commission's report available at the ballots.

Chairman Farmer asks Attorney Mayer about the Budget Committee and whether the Commission could recommend to have one. Attorney Mayer says it's really beyond the Commission's jurisdiction.

Commissioner Baldasaro asks about petitions. Attorney Mayer says that petitions are governed by statutes and that there is a process for both initiative and referendum petitions. Chairman Farmer points out that it is not the Commission's place to make any rulings on petitions.

Commissioner Bove inquires about the use of "to see" on articles – are they just for budgetary items? Attorney Mayer says no, and cites a case in Barrington, NH. He says the Supreme Court's emphasis was on the deliberative session, that it has all of the powers of town meeting except for the final vote – there is no difference between the two types of meetings.

Commissioner Young points out that with official ballot, voters are only presented with two choices, but in town meeting, there is infinite opportunity to change the budget. Attorney Mayer notes that there are also infinite possibilities at the deliberative session instead of the town meeting. He also says you are also not only dealing with the budget, there could be special articles about appropriations, etc.

Discussion regarding having multiple articles proposing the same thing and contingent articles. Attorney Mayer said it could happen that an issue is put up on the warrant three times. Commissioner Wagner says that changes could be made at the deliberative session and voters are stuck with what people did during the deliberative. She points out people could wreak havoc on the budget during the deliberative and then voters are stuck – why bother to have a deliberative? Vice Chair Navarro points out the same thing could happen already during the town meeting. Chairman Farmer mentions that the distinction between town meeting & deliberative session is that with official ballot voting, there is a safety valve, that being the default budget.

Commissioner Baldasaro asks whether the minority report is mandatory. Attorney Mayer says is not required, but they can if they would like, as long as it's under 1000 words.

Chairman Farmer thanks Attorney Mayer for coming in tonight. The Commission invites Attorney Mayer to stay during the hearing in case the public has any questions for him.

Public Hearing

Secretary McIntyre makes a motion to open the public hearing. Motion is seconded by Vice-Chair Navarro. **Motion passes, 9-0.**

Chairman Farmer points out that this is the second public hearing the Charter Commission has had.

Pauline Caron, 369 Mammoth Road, asks about the agenda. She says that under "Regarding the Report," Other Topics, section 2-f, it says "Language that requires the ballot to state 'Deliberative Session Recommends...' In the same way as current ballot has TC and BC recommends. Chairman Farmer says that the question has not been answered tonight, but it is regarding on the current ballot, on the bottom of each article it shows whether the Town Council and / or Budget Committee recommends it. Attorney Mayer says that having that

language would be redundant, but you could possibly put “to see” if an article is not recommended at the deliberative. Chairman Farmer asks if you can include on the official ballot how the voting went at the deliberative. Attorney Mayer says he hadn’t thought of that option and that he would have to look into it, but adds it’s a little concerning, because that deals with how the ballot is created.

Bob Napolitano, 14 Currier Drive, asks Attorney Mayer if he knows any of the towns that went to SB2, and then went back to town meeting. Attorney Mayer says that he represents the town of Enfield, which did revert back. He does not know why, however, as he did not attend the hearing. Chairman Farmer points out that Pelham, which is an SB2 town, looked into going back to town meeting, but it was defeated overwhelmingly. Secretary McIntyre asks Attorney Mayer what the population of Enfield was, to which he responded somewhere around 5000-10000. Commissioner Baldasaro mentions that the three towns that did go back to town meeting were very small, and that the town of Enfield has around 3000 residents.

Mr. Napolitano then asks the Commissioners if they have had a chance to look at the percentage of the overall budget of the school versus the town. He wondered whether it has gone up since SB2 was enacted twelve years ago. Chairman Farmer asks if Town Manager Dave Caron can look up the information, to which Mr. Caron says yes. Mr. Napolitano is just looking for the numbers and percentages of the budgets relative to total tax dollars collected.

Mr. Napolitano then says that he has a concern for no quorum, and is afraid a special interest group can go in and make major changes to the budget. Mr. Napolitano believes that the current system of town meeting has worked fine and does not believe it is broken. He goes on to say that people who have been coming to town meeting for a long time have the interests in the town in mind.

Mary Wing Soares, 2 Gail Road, says that she is in favor of keeping town meeting. She feels that town meeting is a positive process and that it would be better to educate voters about town meeting and encourage them to attend. If they don’t participate, it’s their choice. Commissioner Baldasaro points out that with official ballot voting, people who are on vacation, have to work, those in the military may not be able to be part of the budgetary process, but they can have a say with the end result with absentee ballots. Commissioner Deb Paul says that, as a local newspaper owner, she has worked very hard to educate people about town meeting and informing them about the process. She says that despite all of the newspaper’s efforts, she has not seen a difference in the attendance at town meeting. She says it truly is a choice of whether to participate, but for some reason, people don’t make it.

Sean O’Keefe, 163 Mammoth Road, says that he supported putting this issue on the ballot as a councilor. He says it is difficult for people to get to a meeting. He spoke to his brother, who is in the military, who didn’t like that he couldn’t vote on his own town’s tax rate. He said that with official ballot voting, people do have the final say. Regarding the deliberative session, he believes that attendance for the school district’s deliberative session has gone down because of the quorum and that people don’t feel like they can have a say, make a change. He trusts

voters – he says the world will not end if it changes to official ballot voting. He supports SB2, no quorum, and feels that this change is way overdue.

Dottie Grover, 537 Mammoth Road, says that she believes people have a choice to exercise their right to vote and she is very passionate about this right. She reads a letter she wrote to the Commission as well as gives a copy of an article from the Local Government Center on another option that the Charter Commission could make, which is to change the charter to have Representative Town Meeting (*see attached letter #1*). With RTC, neighborhoods would elect someone to attend town meeting for them. Other members of the public could attend the town meeting, but could not vote there. Ms. Grover also argues that absentee ballots do not include information, and people who vote this way would be uninformed. Commissioner Baldasaro points out that there are many media outlets, newspapers, online or on cable that people can find out about the issues before they vote.

Tom Freda, 30 Buckingham Drive, asks what percentage is needed to pass the charter amendment. Attorney Mayer thinks it is just a simple majority, but he will provide a written response to this question. Mr. Freda goes on to say that he has watched all of the Charter Commission meetings, but he hasn't heard any valid reason to keep town meeting. He thinks it is not fair to the 40 to 50 people who cannot attend for whatever reason. He points out the numbers could be higher in certain years when the band goes to New York to march in the St. Patrick's Day parade. Mr. Freda asks the Commission to go to official ballot voting.

Chris Melcher, 4 Bancroft Road, says that he was against official ballot voting from the start. He didn't think the Council should have put the article on the ballot this year to have a Charter Commission. He thinks if we are going to be examining this issue, why not open the whole charter? He thinks that official ballot voting makes people more lazy. Mr. Melcher then asks who will be writing the report. Chairman Farmer replies that the draft is due August 26. The Commission will not author the complete report – it will work with town staff to figure out what exact changes to the charter need to be made. The final response is not due until October 26. Mr. Melcher then asks about having the deliberative session for the school and town on the same night, as Commissioner Young had brought up at the previous meeting. Commissioners agree that the meeting might be too long.

Dottie Grover, 537 Mammoth Road, asks if there is going to be a minority report written. Chairman Farmer says there is no requirement to do so. Ms. Grover states that she does hope that if one is written, the people who write the report should get the same assistance from town staff at those who write the official report.

Glenn Douglas, 6 Overlook Avenue, says he's all for SB2. He has followed the issue for three to four years now, and he thinks that Londonderry should move forward and let voters have a say. Regarding the topic of educating the voters, he says that he has heard that argument from people all the time, and it drives him crazy. He believes it does not work; voters make the choice not to go. If he had his way, people should attend all the meetings, budget workshops,

etc. He believes that having a default budget provides for a safety valve – if you don't like the changes made at the deliberative session, vote for the default.

Pauline Caron, 369 Mammoth Road, asks about the deliberative session if the town goes to official ballot voting. She wonders if the meeting will be on a weeknight or on a weekend day. Chairman Farmer says that is something we would have to look at.

Commissioner Young asks Town Attorney Mayer if ratified union contracts could be changed by voters during the deliberative session. Attorney Mayer says that all questions would go onto the ballot but a union contract would be a non-binding vote, as it must first be agreed upon by the governing body and the union. He goes on to say that you cannot amend a contract, but the article itself can be amended. It is pointed out that there is usually always a warrant underneath the contract saying that if it does not pass, can there be a special meeting about it.

Reed Clark, 79 Stonehenge Road, notes that when he was in the Foreign Service, he followed what other people of different cultures did (e.g. take shoes off before you go into a house). He says that if you come from another place, you should try out the things here. Look at how New Hampshire has run their towns since the 1700's – it has always worked. He says that with a town meeting, more variety of people can come and speak. He believes that with a deliberative session, you can only vote on what 3 out of the 5 town councilors want to have on the warrant. Mr. Clark also points out that last year, at town meeting, the budget dropped by \$10,000. He thinks you should not change something (i.e. town meeting) without having tried it first. He believes it's wrong for people to change to official ballot voting because only a few people wanted it. He votes no change to the town charter. Chairman Farmer responds to Mr. Clark, noting that the charter has been changed many times. He also points out that the authority is clear that the voters chose the people on the Commission, and they can make a recommendation to have the people vote on the issue in March. Commissioner Chris Paul asks Mr. Clark if he was a taxpayer of the town while he was abroad, to which Mr. Clark responds yes. Commissioner Chris Paul then asks if he voted in every election. Mr. Clark says he voted on anything that he could.

Bob Napolitano, 14 Currier Drive, asks if the vote goes tonight with official ballot voting, how will the Commission get the word out? Vice Chair Navarro urges people to come out and vote in March – it is their choice if they want it or not. Chairman Farmer points out that once the final report is issued in October, our role as Commissioners ends. As private citizens, they will support or not support the issue.

Commissioner Wagner reads into the record an email from Councilor Tom Dolan, 19 Isabella Drive (*see attached letter #2*).

Pauline Caron, 369 Mammoth Road, points out that those who vote with absentee ballots will not be able to vote during the deliberative session. Chairman Farmer responds by saying those with absentee ballots cannot vote during the process, but they can have their say during the final vote, something that they currently cannot do with town meeting.

Vice Chair Navarro makes a motion to close the public hearing at 10:03pm. Motion is seconded by Commissioner Baldasaro. **Motion passes, 9-0.** A small break is taken.

Charter Commission Discussion

Commissioner Wagner makes a motion to make a decision tonight on the issue of official ballot voting. Motion is seconded by Commissioner Baldasaro. **Motion passes, 9-0.**

Commissioner Baldasaro makes a motion to establish official ballot voting under Londonderry's current Town Council – Budgetary Town Meeting form of government. Motion is seconded by Vice-Chair Navarro. **Motion passes, 6-3.**

Approval of Minutes

Commissioner Baldasaro makes a motion to approve the minutes from July 12, 2010. Motion is seconded by Commissioner Bove. **Motion passes, 9-0.**

Other Business

Secretary McIntyre asks Chairman Farmer about the next meeting being noted on the agenda as "TBD." Chairman Farmer asks Town Manager Dave Caron if he could bring specific language changes that would need to be made for the charter. Chairman Farmer says the next meeting will be more like a workshop-style meeting to start working on the report. It is agreed that the next meeting will be on Monday, August 9, 2010. Commissioner Chris Paul asks if the meeting can be held somewhere else, a place that is more casual. Chairman Farmer says that we will continue to keep the meetings public and taped for viewers.

Adjournment

Vice-Chair Navarro makes a motion to adjourn the meeting. Commissioner Baldasaro makes a quick comment to compliment everyone who came out tonight to speak. Commissioner Bove also mentions that he would like to write the minority report, and asks Commissioners Young and Wagner if they would like to help, to which they respond yes.

Motion to adjourn is then seconded by Commissioner Chris Paul. **Motion passes, 9-0. Meeting adjourns at 10:20pm.**

Next Meeting Date:

Monday, Aug. 9, 2010 at 7:00pm

July 26, 2010

To the Charter Commission,

I have been watching the Charter Commission meetings with great interest. I believe I understand the charge is to advise the Town with regard to the issue of ballot voting. Although you are required to give only give a yes or no recommendation, you are also required to give a report that I expect would explain the reasons for your recommendation.

During this process, with the help of various experts, there has been information presented that was certainly surprising to me and seemed to surprise Commission members as well. For example, I was under the impression that a default budget was generated via a process dictated by state law. To discover that not only is there no set formula in place but that the default budget can also be amended by the School Board even after the deliberative session, was certainly surprising. It was also interesting to hear that a quorum might not even be a legal requirement for a deliberative session.

NH RSAs include a number of forms of government. Of particular interest to me is the RTM or Representative Town Meeting. I had raised this form as a possibility when the Charter Commission was formed and found it quite interesting that the LGC published an article on it recently. I have attached a copy of that article.

I have been attending Town Meetings since I was 10 years old. When growing up in Chester, it was considered a very exciting night out. As non-voters, the children were welcome to sit, quietly, in the balcony at Town Hall. We learned the ins and outs of the process and were fully ready to participate when we were old enough to vote. This is where I fell in love with Democracy. I understood it was my responsibility to participate and be heard on the issues that were important to me.

The RTM is the closest thing to the old town meeting form of government that I am aware of. It has a proven record in a number of NE towns. I think it should be considered in Londonderry.

The goal is to have more involvement in the voting process. The current methods have resulted in fewer people having a chance to ask their questions before they go to the polls. Ballot voting alone means that there are fewer opportunities to engage voters in the discussion.

With the RTM, we could create as many districts within the town as we wanted. Neighborhoods could elect someone very close by to represent them at the annual meeting. Although only the elected representatives could actually vote at the meeting, other voters would be allowed to attend and to express their opinions in an effort to affect the vote.

I hope that you will include this information in your report. I don't want to break my 50 year record of attendance at town meetings. And I don't want to lose the opportunity to continue this form of government because others have chosen not to attend.

I challenge Londonderry to be the leader once again and thoroughly examine the RTM.



DOTTIE GROVER
537 Mammoth Road
Londonderry, NH 03053

434-5143

Letter from Tom Dolan

To the commissioners:

First of all, thank you for stepping up to serve the community and sacrificing your personal time away from your families.

In 1995, the NH senate voted to adopt a new form of government commonly known now as SB2. It was a political response to the spending seen by many communities to upgrade the education infrastructure (mostly new schools) for the rapidly expanding school age populations at the time in NH.

Londonderry saw that same growth as many flocked here from more expensive states. In short, it was thought that this would slow the spending at local levels on schools. This type of state meddling in local politics by state politicians that feel they know best has always been resented by local citizens.

Some towns that have dumped their traditional town meeting are having regrets and are looking to go back. In Amherst, Jack Kunkel, a member of the town Ways and Means Committee, was quoted in the Nashua Telegraph "SB2 has many good goals, but I've spoken with people who have been in town politics off and on for 20 or 30 years, and most feel that it's downgraded the quality of the conversation and decision-making we had with Town Meeting," Kunkel said.

Proponents of the SB2 government scheme are often excited about the prospects of preserving town meeting discussions at a relatively poor facsimile called the "Deliberative Session." A brief examination of any recent deliberative session in an SB2 town reveals nothing less than dismal attendance (often only a few dozen voters whether there's a quorum or not). This means the very small minority of voters who attend the town-meeting like session have extraordinary power to amend and shape the articles and the budget that the rest of the town will vote on at the polls. Very few voters hear or participate in the debate on warrant articles. As a result, many town officers surveyed by at least one researcher doubted that the voters understood the articles they were voting on. Exit interviews in several towns confirmed that voters had difficulty understanding the language of certain articles. In recent years, we have also seen a dramatic increase in the number of deliberative sessions that amend warrant articles to remove all but the first two words ("to see"), rendering the article essentially meaningless and preventing the wider voting public from having any say on the article at all. For example, this happened last year in Hampton according to Hampton Selectman Jerry Znoj.

Because the voting power at the deliberative session, the first meeting, is not final, the meeting is considered lacking in importance. Data from towns that have SB-2 show a marked reduction in meeting attendance. In many cases the small number of attendees means the quality of the debate is poor and they tend to just go along with the recommendations of the governing body.

We all have experienced some of the weaknesses of traditional open town government where only a few hundred people attend and make significant financial decisions on behalf of the citizens who choose not to attend. However, this situation is even more acute in SB2 governments, where only a few dozen voters are given authority to shape the budget and warrant articles at the deliberative session simply because no one else bothers to attend. In both forms of government, absentee voters are allowed no proxy votes and therefore cannot participate. SB2 does not and cannot fix that.

Moving to SB2 for the town government creates a very different political dynamic for our community. As a community leader for several years, I (along with others) have struggled to maintain community engagement and participation for our citizens. We have taken steps to have both formal and informal community engagement sessions, public hearings, open houses, "coffee with the Councilor", Leadership Londonderry, and the list goes on. I firmly believe that voter participation and engagement are crucial to our social fabric. Any incremental steps to dumb down the political process and further reduce people-to-people interaction in the name of any political movement brings us closer to becoming just another deadbolt town, where people huddle behind their deadbolts and peek out carefully from behind the curtain.

Moving to SB2 consolidates considerable budgetary/taxing power to a majority of 3 Councilors on the Town Council. While flattered that supporters of SB2 in Londonderry have faith in the sitting Town Council to not abuse this shift in power to them/us, I'm not so sure that I'm confident that Councils of the future will be so trustworthy. Theories are nice, but the reality is that taxes will go up as well-meaning Councilors push their tax/spend agenda through the SB2 process right past the voters. The recourse will be to unseat the elected officials, but that may take several years. As one town councilor, I don't want that power. I say keep the control of spending in the hands of the people. One person, one vote. Keep the town meeting and let people vote and control their own tax bills. Respectfully,

Tom Dolan
19 Isabella Drive

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