

THESE MINUTES ARE SUBJECT TO APPROVAL BY THE CHARTER REVISION COMMISSION

The Charter Revision Commission held a meeting on Monday, January 5, 2015 in the lower conference room at Town Hall South, 3 Main Street, Newtown, CT. Chairman Jeff Capeci called the meeting to order at 7:30pm.

Present: Kevin Burns, Jeffery Capeci, Tom Long, Dan Wiedemann, Eric Paradis, James Ritchie, George Guidera, Robert Hall, Deborra Zukowski, James Ritchie

VOTER COMMENTS: NONE

MINUTES: Mr. Guidera moved to approve the minutes of the regular meeting of 12/9/14. Mr. Wiedemann seconded, motion unanimously approved.

COMMUNICATIONS – Mr. Capeci received an e-mail from Bruce Walczak asking that the agenda to be clearer (Attachment A). Mr. Capeci has now added the charge items that fall under the topic on the agenda. Mr. Capeci also received a letter from the Democratic Town Committee and articles in the Bee from 2008 discussing the increase in the BOE members and the confusion during the last Charter revision (Attachment B).

UNFINISHED BUSINESS

2015 Meeting Calendar – Mr. Paradis moved to accept the proposed 2015 regular meeting schedule, Mr. Weidemann seconded, motion unanimously accepted (Attachment C).

Charter Property Disposition Section: 7-90 – Mr. Hall reported that he and Mrs. Zukowski are making some good process on coming to a new and improved version of the original draft. They are putting a lot of things into it that are drawn in from other parts of the charter that are directly related to land particularly 2-90E.

Reorganization of the Charter – Mr. Burns reported that they have been meeting often and will meet again tomorrow. He would like to get something to everyone for the meeting on the 21st.

Charter Charger Items Categorized under Board Composition – Mr. Paradis reported that they are going through the boards and commissions and have come up with a few snags as to what is to be included and what shouldn't. Specifically around Fiduciary issues, money seems to be a challenge. If they are spending tax payer money, how do they define that in the charter.

There was concerned expressed that the different working groups may be duplicating efforts. Each working group needs to come back and work together to get a final product. It is anticipated that this will happen in early February.

VOTER COMMENT - NONE

ANNOUNCEMENTS – NONE

Having no further business, the meeting was adjourned at 8:09pm

Respectfully Submitted, Arlene Miles, Clerk

Subject: Re: Charter review meeting

From: Jeff@TheCapecis.com (Jeff@TheCapecis.com)

To: bw.reloconsult@snet.net;

Date: Saturday, December 13, 2014 8:57 AM

Bruce,

The agenda items reference items the Charter Revision Commission were given in its charge which is available in the minutes of early commission meetings. I will contact the Town Clerk's office to ask them to post it more prominently on the CRC web page to make it more accessible. In the future, will include a note on agendas such that the public knows to refer to the charge for more information on what the CRC is working on.

The Charter Reorganization group is charged to look at the organization of the Charter and to bring back to the full CRC a recommendation on how to reorganize it to make it more readable. This effort should not make any substantive changes to the Charter language.

The Board Composition Group is looking at which boards, commissions and authorities are included in the Charter, setting criteria for inclusion and standardizing the language describing each. They also consider changes requested by boards in the charge and will bring revised language back to the full CRC for consideration.

I hope this answers your questions, please let me know if you need anything else. I appreciate you bringing your concerns to my attention.

Best Regards,
Jeff

Sent from my HTC One

----- Reply message -----

From: "Bruce Walczak" <bw.reloconsult@snet.net>
To: "Jeffrey Capeci" <jeff@thecapecis.com>
Subject: Charter review meeting
Date: Fri, Dec 12, 2014 6:09 PM

The recent agenda posting gives the public no idea of what is planned for discussion. How can the public decide if they want to attend with no understanding of what is planned for discussion?

Sent from my iPad which has a mind of it's own.
Bruce Walczak
Relocation Consultants Inc.
Bw.reloconsult@snet.net
203-364-0616

there has been much discussion about the Board of Education race and the maximum number of seats one Party is entitled to hold on the seven-member Board. Members of the DTC have scrutinized this issue closely. We have consulted legal counsel, and submitted the issue to the highest level of the Democratic Party State Central. After thorough review that includes legal analysis, review of the Charter question, State statutes, the Town Charter, minutes of the Charter Review Commission, and inquiry of 2007-2008 Charter Review Commission members themselves we have concluded that a legal challenge to restore a balance of 4 Republican and 3 Democratic members would likely be unsuccessful. This does not mean we approve or condone the events that led up to this unfortunate outcome that has resulted in the move from an equally balanced 3-3 membership to the present makeup of a 5-2 imbalance. Instead it simply means that circumstances occurred that now need to be corrected through an immediate appointment by the Legislative Council of a new Charter Review Commission to restore the intended balance of no more than one Party holding more than 4 seats on the Board of Education.

Third, the DTC submits that the public has the right to know what transpired, how this unfortunate occurrence resulted, and the reason the DTC believes a legal challenge would be unsuccessful.

In 2007, the Town Charter provided that the Board of Education would consist of 6 members, no one party holding more than 3 seats. The obvious reason for the even balance was to attempt to remove politics from the important position of educating our children, and broadening the scope of ideas and representation. That year saw 3-3 votes that stalemated Board work on important issues. The Legislative Council responded to the issue by appointing a 6 person Charter Review Commission that included two Republicans, two Democrats and two independents/unaffiliated. The Charter Review Commission recommended expanding the Board of Education to 7 seats. The consensus was that no Party would have more than 4 members, or what has been referenced as a "bare majority." The Charter question posed to the voters and passed read:

"Question 7 – Shall the Charter be amended to change the maximum number of members of one political party who may serve on the Board of Education and change the total number of members on the Board of Education to seven (7) members? This modifies 2-30(c) and 2-70(a) [of the Town Charter]."

Unfortunately, unlike other Charter Questions there was no explanation or specification given on the ballots as to the "maximum number of members of one political party". Instead, the *Newtown Bee* requested LeReine

Frampton, a member of the Charter Review Committee and the Democratic Register of Voters to give an explanation as to each of the Eight Charter Questions. The article published in the *Bee* clearly and expressly stated the meaning to be no one Party could seat more than 4 members on the Board of Education. There appears nothing in the minutes of the Charter Review Commission that expressly states the makeup was to include more than 4 members of any one Party. At least 4 of the Charter Review Commission members understood that to be the case. The Chairman of the Charter Review Commission submitted the written amending language to the Legislative Council. There does appear to be some comment by the Town Attorney as to the clarity of the maximum Party membership language. The Chairman did recognize that by including certain statutory citation that one Party might secure 5 of the 7 seats, however, what discussion or public information was provided as to this is unclear. Democratic members assumed that the additional amending language as written provided sufficient clarity that the “bare majority” meant no more than 4 members of any one Party. Certainly, neither the DTC, nor the majority of Charter Review Commission members would have approved a move from a 3-3 to a 5-2 makeup. The language was adopted and the Town Charter was amended accordingly.

It is also questionable whether voters would have approved the Charter Question that shifted the makeup of seats from 3-3 to 5-2. Given that the question posed to the voters did not include reference to C.G.S. Section 9-167(a) – a Section that provides one definition of “bare majority” – were voters aware that this language would eventually be included in the Charter? Query, what the voters were actually voting on. Note, there is an absence of C.G.S. Section 9-167(a) in the Charter Question.

LEGAL ANALYSIS

Town Charter Section 2-30(c) as amended reads:

The number of members of any one political party who may be elected to serve on the Board of Education shall not exceed the maximum of the whole membership of the Board as prescribed by the provisions of Section 9-167(a) of the Connecticut General Statutes, as amended. At each Town Election the number of candidates of any one political party elected to serve on the Board of Education shall not exceed a bare majority of the number of candidates to be seated.

The ambiguity of language occurs because Section 9-167(a) provides that a definition of “bare majority” may be 5-2 on a seven person board. It also provides that a town may restrict that definition to a more balanced number (4-3), if it chooses. If the amendment had stopped there it would be clear

that a 5-2 makeup is permitted. Instead, the language continues – “*At each Town Election the number of candidates of any one political party elected to serve on the Board of Education shall not exceed a bare majority of the number of candidates to be seated.*” One interpretation is that the additional language tightens the balance of 9-167(a) from 5-2 to 4-3. Query, *The question arises – [A]t each Town Election* – does that mean the number of candidates to be seated out of the seven board members to be seated – “bare majority of seven” is a maximum of 4. Or, in the recent election, does this mean of the 5 seats vacant that “bare majority” is 3 of the 5 such that two Democrats would have to be seated. The Town Attorney has opined that in the November election there were actually two elections, one for the 2 year vacancy, a bare majority being 1, and then a separate election for the remaining 4, four year term seats would be 3. This interpretation would permit 4 of the open 5 seats to be secured by one Party, thus in total equaling 5 Republicans and 2 Democrats. It is true that for vacancies, that seat is filled first for purposes of minority representation (9-167(d)). We can find no law or statute that says this constitutes two separate elections though. We would suggest that there was only one election in November, one election for numerous elected offices.

With this analysis in mind, we now turn to whether a legal challenge would succeed in rectifying the issue. A recent case is helpful in understanding the avenue of jurisdiction and likelihood of success. The Connecticut State Supreme Court in Lopez v. Board of Education 310 Conn. 576 (2013) cites “Historically, the writ of quo warranto originated as a device to require [Norman Kings’] barons to justify their claims to power or to abandon them... Today, unless otherwise provided by statute, a quo warranto action is the exclusive method of trying the title to an office... [I]t lies to prevent the usurpation of a public office or franchise ... Thus, *the writ of quo warranto developed and has continued as a limited and extraordinary remedy... to test who the lawful public official is... A successful quo warranto action unseats an illegal office holder and declares the position vacant. It does not place the rightful claimant into the office.*” 590-591. Of note, any taxpayer has standing to bring a quo warranto legal challenge once the office holder has been seated. It would appear the burden to be carried weighs on the occupant of the office, however, the lightest burden of proof of more likely than not applies.

The Town Attorney suggests that the language of 2-70(c) of the Town Charter is of significant ambiguity. The rules of statutory interpretation require that upon ambiguity the intention of legislators (in this case the Charter Review Commission and/or Legislative Council) must be examined.

It would appear that the intent of the language is inconsistent. Despite the absence of such intent by some members of the Charter Review Commission, as well as the silence even after the publication of intention in the *Newtown Bee*, it does appear that the Chairman was aware of the 5-2 possibility, and with the documented comments by the Town Attorney potentially some members of the Legislative Council were aware as well. Resultantly, after much legal consultation including that at the highest level of Democratic Party State Central, we believe given the burden of proof required as to intent, the Court will likely allow the decision of the Town Attorney to stand, i.e. we would not be able to satisfy the burden of proof that it was more likely than not the intention of the framers didn't intend to allow a 5-2 seating. If the Town Attorney had opined differently, the shoe would be on the other foot and the outcome perhaps different.

Finally, the purpose of this Statement is not to cast aspersions or enter into conspiracy theories. It is safe to say that one Party could have been more forthcoming if in fact it was promoting a change from 3-3 to 5-2, especially after the requested explanation of the Charter Question in the *Newtown Bee* went unchallenged. It is also safe to say that our Party could have been more diligent in reviewing the proposed Amendment. When we make these observations we particularly include the DTC. There is no question that all involved in this issue want what is best for Newtown, including what was most likely understood to be the intent of the voters who approved the Charter Question. The most constructive way to dismiss those that would find ill-intent or some conspiracy plot would be for the majority Party led Legislative Council to immediately appoint a new Charter Review Commission to correct the amended language of the Town Charter such that no one Party may seat more than four members on the seven-member Board. The correction would then be implemented in two years at the next election. We hope this is helpful to the public in understanding the issue, and moving forward to correct the matter.

James Juliano

Chairman, Democratic Town Committee

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Charter Change Would Bring Partisanship To The School Board

Submitted by [admin](#) on Thu, 04/10/2008 - 23:00

Charter Change Would Bring

Partisanship To The School Board

To the Editor:

When you vote on April 22 in the annual budget referendum, you will be asked to vote Yes or No on eight proposed changes to our town charter. Like the Constitution of the United States, the Newtown charter establishes the powers and duties of elected officials and guarantees a voice for all citizens.

Question 7 of the eight proposed changes asks voters to increase the membership of the Board of Education to seven persons, serving four-year terms, from the current six members, serving four-year terms. Why is this a bad idea?

The change would have serious consequences. Should this change be approved, the result would allow either the Republican or Democratic Party to take control of board proceedings and thus control the instructional and financial direction of the school system. This charter change is ill conceived and shows signs of an attempt to gain party control of a vital service. Both political parties are guilty.

Proponents argue it would allow a tie breaking procedure, but the current six-member board forces the six members to find common ground. Presently, the six-member Board of Education must discuss issues in depth, listen and respect the opinion of each other, and find a compromise position that includes the best of all ideas expressed. That's the American way.

I urge everyone to vote on April 22. When you consider the changes requested for our town charter, I trust you will agree to vote No to establishing a seven-member Board of Education. A No vote will support the efforts to find common ground for all divisive and polarizing issues. Vote No on Charter change #7.

Ruby Johnson

16 Chestnut Hill Road, Sandy Hook
2008

April 9,

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Advised Against It

Mr Grogins said when the charter panel was formulating its recommendations back in 2008, he advised the commission that he “did not like the language” of the proposed revision referring to a “bare majority” from any one party on the school board. But the commission kept the language, which was ratified by voters and became effective.

Town Attorney Says 'Bare Majority' Stipulation For BOE Race Excludes Two- Year Candidate

By John Voket

Friday, October 25, 2013

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Registrar Offers Charter Revision Details In Plain Language

Submitted by [admin](#) on Thu, 04/17/2008 - 23:00

Registrar Offers Charter

Revision Details In Plain Language

By John Voket

To help voters in their consideration of the referendum questions that appear on the sample ballot in this edition of *The Newtown Bee*, Registrar of Voters LeReine Frampton sought to refine the elements of those changes into “simple language format.” Ms Frampton said these suggested interpretations only represent her input, and do not represent legal or binding content.

Legislative Council Chairman William Rodgers said he informally reviewed Ms Frampton’s suggestions, thought they were adequately simplified, and did not see any conflict in them.

In the instance of any charter question failing, the original language remains intact until it is taken up again and potentially changed in a future charter revision process. The explanations below appear in the same order as the corresponding passages in the proposed revisions.

Question 4

According to Ms Frampton, the approval of Question 4 would amend the charter to allow the finance director the flexibility to take advantage of savings on Newtown's outstanding bonds. The next amendment requires the Capital Improvement Plan be submitted to the Board of Finance. Since the current charter has many references to "approval by the Board of Selectmen," the next provision clarifies that the first selectman can act only with the approval of the Board of Selectmen.

The following amendment allows for changes to the charter that were requested by the finance director and Legislative Council based on recommendations from Moody's Investment Service. This will make Newtown's charter conform to Moody's guidelines and remove some deterrents for an improvement to the town's bond rating.

The next amendment states that the Legislative Council is responsible for all regulations regarding the capital improvement plan. Since the annual town meeting only receives reports from town departments that have already submitted the same information administratively, the next revision would remove that provision.

Currently any appropriation over \$150,000 goes to a town meeting. The next amendment will change those guidelines: \$500,000 up to \$10 million goes to a town meeting (the voters still have the right to petition for a referendum); \$10 million and up goes to an automatic referendum.

The Board of Tax Review is erroneously referred to as Board of Assessment Appeals — approval of this question will correct that clerical error. By state statute, referenda are only required to be held from noon until 8 pm; the next change would guarantee that all of Newtown's referenda will be from 6 am until 8 pm.

Question 5

The Charter currently requires conflicts of interest be stated and made a part of meeting minutes. Adopting this amendment would release the member identifying a conflict from stating the reason for the record. Attorneys, for example, are often prohibited from

revealing client or case details, and thus are sometimes unable to comply with the requirement to reveal a conflict.

If approved, this change would allow the registrar of voters to request a change of district lines without having to wait for a Legislative Council recommendation. Once proposed by the registrar's office, the Legislative Council would still have to approve any changes.

This change would clarify, but does not change, eligibility to run for office.

The current charter has many references to "approval by the Board of Selectmen." This measure would clarify that the first selectman may act only with the approval of the Board of Selectmen as to the enumerated matters.

The charter currently uses he, his, or him with a gender statement (8-80) to clarify that either gender is embraced by those terms. This amendment would remove the gender statement (8-80) and change the charter to read he/she, his/hers, or him/her.

Question 6

This amendment would clarify that the Legislative Council has the authority to pass the budget on to the voters, and would change some of the number of votes by the Legislative Council required for various actions, and to add local questions to the annual budget ballot.

When a motion is filed by the Legislative Council, the time allowed for collecting signatures on a petition to bring the item to referendum begins the same day. This change would prevent a 4:30 pm Friday filing, which would in effect cause the petitioners to lose a weekend for signature gathering.

The change would require posting of notices in a newspaper with a substantial circulation in Newtown, and would increase the term of office for the town clerk from two years to four years.

Question 7

Currently there is a maximum of three members from any party on the six-member Board of Education. This amendment would increase the total number of members to seven, and allow up to four members from any one political party. This vacancy will be filled by the current Board of Education, and the appointee would serve until the November 2009 local election.

Question 8

Currently easements are allowed if necessary to serve that property only; this amendment, if approved, would allow an easement on town property if it is for the good of the town.

Currently appointments to boards and commissions are allowed by an outgoing first selectman with the approval of the Board of Selectmen, until the final eight days in office. This amendment would end that power on Election Day.

Complaints made to the Board of Ethics are currently public information. This amendment would keep any complaint confidential until the complaint is deemed to have merit by the Board of Ethics. This is to protect innocent individuals from any exposure that might be caused by accusations without merit.

This amendment would also empower the Parks and Recreation Commission to appoint ad hoc committees as needed to consider special projects.

The current charter makes many references to approval by the Board of Selectmen. If approved, this amendment would clarify that the first selectman may act only with the approval of the Board of Selectmen.

Passing this amendment would establish a Cultural Arts Commission provision in the charter; there is already a local ordinance permitting this commission.

Party Reactions

This week, both major parties in town also weighed in on referendum questions. Republican Town Committee Chair William Brimmer, Jr, said his party is endorsing Question 4.

Representatives for the Democratic Town Committee also voted to endorse Question 4, saying it contains the language required by Moody's in order for the town to be better positioned for a bond rating increase.

Party Chair James Juliano said via a written statement that an increase in Newtown's bond rating "will save the taxpayers quite a bit of money when you look into the figures in the Capital Improvement Plan."

The DTC also voted against Question 7, members saying they disagreed with a seventh member being chosen by Board of Education members and not the voters. "We would rather it be a democratic process," Mr Juliano said in his statement, which was also signed by DTC officers Sarah Hemingway, Anna Wiedemann, and Alan Clavette.

In regard to the charter questions, Ms Frampton reminded voters to take the time to consider each item and to cast votes on all the proposals because a minimum number of votes must be cast in order for the changes to take effect.

“In order for the charter to be changed, 15 percent, or 2,400 of the 16,000 registered voters, must cast a Yes vote for each of the questions,” Ms Frampton said. “So voters should plan to take their time and carefully consider each question.”

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TOWN OF NEWTOWN

CHARTER REVISION COMMISSION

2015 Regular Meeting Schedule

The Charter Revision Commission will hold regular meetings at 7:30pm in the lower conference room at Town Hall South, 3 Main Street, Newtown, CT as follows:

Monday, January 5
Wednesday, January 21
Monday, February 2
Tuesday, February 17
Monday, March 2
Monday, March 16
Wednesday, April 1
Tuesday, April 21
Thursday, April 30 – Council Chambers, Municipal Building
Wednesday, May 13
Wednesday, May 27
Wednesday, June 10
Wednesday, June 24