

SAUGUS CHARTER COMMISSION
APPROVED MEETING MINUTES
OF
OCTOBER 2, 2008

The thirty-seventh meeting of the Saugus Charter Commission was held on Thursday, October 2, 2008. The meeting was held in the Town Hall Auditorium. The meeting was called to order by the Chairman, Peter Manoogian, at 7:30 P.M.

Completion of STEP 4: SELECT THE BEST POSSIBLE SOLUTION(S)

ROLL CALL OF MEMBERS

All nine members of the nine member committee were present at roll call: Cam Cicolini, Karen Cote, Eugene Decareau, Karla J. de Steuben, Albert W. Diotte, Jr., Joan Fowler, Peter Manoogian, Sr., Debra Panetta and Thomas Stewart

READING OF MINUTES OF LAST MEETING (September 25, 2008)

Minutes were distributed to all Commission Members for review before the next meeting.

ACCEPTANCE OF PREVIOUS MINUTES (September 18, 2008)

Mr. Decareau made a motion to accept the Minutes of September 18, 2008.

The Chairman seconded the motion.

The motion passed **9-0**

The Chairman commended the Clerk for the work she has done on behalf of the Charter Commission and the people that they represent. Mr. Manoogian asked for a motion for an Accommodation.

Mrs. Cote moved to commend Mrs. Davis, for her work on the Charter Commission as Clerk.

The Chairman seconded the motion.

The motion passed **8-0**

PUBLIC COMMENT

None at this time.

CHAIRMAN'S REPORT

On September 26, 2008, Michelle Wendell, Purchasing Assistant, sent a letter to Ms. Saint Andre of Petrini & Associates indicating that she did send the copies of the proposals for consultant services that were requested through Freedom of Information.

TREASURER'S REPORT

The Treasurer, Eugene Decareau, made a motion for the Commission to accept the current balance of \$26,774.80

The Chairman seconded the Motion.

The Motion Passed **9-0**

COMMITTEE REPORT

None at this time.

CORRESPONDENCE

None at this time.

NEW BUSINESS (order to be determined by members)

The Chairman noted that, under “New Business,” the Agenda Items prepared by Mr. Curran should be included. The topics for the current meeting are citizen initiative, recall, referendum, and things of that nature.

- **Input from Mr. Curran**

Mr. Curran stated that, in addition to the material on election related things, he also sent some things on planning. The question had come up at the last meeting, what the National Civic League’s Model Charter proposed, so he sent out the provision from the Model Charter on planning, zoning, land use control, and as an example of the way our statutes are written, he also included one of the sections from the General Laws relating to the powers of a planning board (the things that a planning board are required to do when preparing a comprehensive master plan). Under the laws of Massachusetts that responsibility rests in the planning board. The local legislative body has no input at all under the statutes of Massachusetts. In considering provisions for their Charter, the Members may want to consider including language similar to that in the National Civic League’s Model Charter, which puts the responsibility for land use control in the Legislative body.

Mr. Manoogian stated that Mr. Curran had made it clear that if the Charter is silent on a planning board function, then it is a function of the planning board, and if the Members want, and the community supports, having that function in the Legislative body, then do that.

Mr. Curran explained that, if they do remain silent, then they will be governed by the state statute. If they want to do something different, it would behoove them to specifically include it in their Charter. Mr. Curran went on to say that he had also sent a copy of the provisions of Section 20 of Chapter 43B, which makes clear that the Charter Commission does have the authority to do things that are different from that which is set out in state statute.

Mr. Manoogian asked if it was reasonable to assume, in a community that is conscious of land use and zoning, that such planning is that of policy.

Mr. Curran responded that the master plan sets forth the policy of the community, with respect to where it hopes to be at some point in the future. All zoning, then, is supposed to be consistent with the master plan. The place to make the statement is in the master plan, and the logical place to do that is in the Legislative branch.

The Chairman then questioned, if the Commission retains a planning board that is appointed, not elected, and they are the ones to propose a master plan, in essence, an appointed board is proposing policy. Mr. Manoogian went on to explain that, ultimately, it is up to the Charter Commission to decide whether or not they want master planning to be done by a planning board, either appointed or elected, or

whether they want the master plan function to reside in a legislature that is elected. Those are the Commission's two choices.

Mr. Curran responded that is not necessarily so. The planning board could take a leadership role in the development of a master plan, prepare and submit to the town meeting for adoption, or the town meeting could establish a separate authority; a master planning committee made up of multiple disciplines, not just the planning board, but other interests. He went on to explain that if the function is left in the planning board as it is in the National Civic League's Model Charter proposes, that the powers be spelled out by ordinance or by-law, then the greatest amount of flexibility for the legislative body to determine what will happen will be allowed. The Commission doesn't have to put a specific provision in the Charter dealing with all aspects of planning and land use control, but can, instead, use a general statement and allow some future committee or the legislative body itself, to develop precisely what will happen.

The Chairman asked the Members if they had any thoughts on this issue of planning, master planning, policy, etc., and where it should reside.

Ms. Panetta stated that she sees the current Planning Board as being responsible for what comes before them (individuals, developers, neighborhoods) to make, or avoid making, changes, but does not see them as developing a master plan of what they want Saugus to look like, and stated that she sees that being in the hands of an elected body, maybe working with the town manager. Ms. Panetta does not see that function as being part of the planning board's function.

Mr. Manoogian responded that, the way the statute is now, in the absence of specific language in the current Charter, it is the Planning Board. He agreed with Ms. Panetta. The Town's zoning by-law is dated 1987, and the last time a master plan was proposed for the community was in the early 1990's, and was shot down in Town Meeting, and there have been no initiatives whatsoever. He went on to say that, at this point, land use and planning the Town's future growth and organization languishes. It's not taking place in the Planning Board, their argument probably being that they are overwhelmed with their workload of sub-divisions, and so forth. Speaking for himself, he said that he thinks that is one of those areas of accountability that people in the community should know who's responsible. He went on to state that if the Planning Board is not doing it, although they have the right to, who should be doing it, and he thinks that the Commission needs to be very clear on that in the Charter that they propose, and feels that Mr. Curran has given the Commission the tools they need to make that judgment.

Ms. de Steuben referred to a document that she had printed out regarding Newton's comprehensive / master plan, stating that, in Newton, the Mayor proposes the comprehensive plan (or any modification) and the Board of Aldermen refers the proposal to the Planning and Development Board which reviews it and reports their recommendations back to the Board of Aldermen. She asked if copies could be made for the other Commission Members.

The Chairman confirmed that in Newton it is done by an elected official, not the planning board, and in that case it is an executive function.

Mr. Stewart stated that he would like to see the elected authority at least sanction the plan if the Members left the job of developing a master plan in the hands of a

planning board, if you have a board that has particularized knowledge of that area, then they might be the best ones to develop a plan to be sanctioned by the legislature. He went on to say that he could also see merit, where the Commission has been talking about a rather large legislature, a standing sub-committee to deal with planning.

Ms. de Steuben asked Mr. Curran if there is a downside to having the elected officials do the comprehensive plan, and have it reviewed by the planning board.

Mr. Curran responded that it seems, to him, to be the most democratic and fair way, instead of having an elite body of a 5-7 member planning board making the determination of what Saugus is ultimately going to be. The legislative body in the Commission's current model is 25-35 members, which is a much larger sample representative of the community to make judgments as to what's in the best interest of the community. He stated that, to him, it's all upside. He continued to say that, at best, the comprehensive plan is only a guideline. It is more often honored in a breach than in an observance, but it is a guideline, and believes that the more participation there is in the preparation of the master plan, the more willingness there is to follow it.

Ms. Panetta noted that the School Committee has a master plan for the schools, and when the Superintendent has his annual public performance review, part of his performance appraisal is how well the goals of that master plan are being met. The master plan is determined by the elected five member School Committee.

Ms. Panetta continued to say that, town wide, when she thinks of a master plan, she thinks of many different things; what development is going to be going where, what's going to be kept residential as opposed to commercial, what's going to be B2 versus B1, etc.

Mr. Curran responded that if you look at from Chapter 41, Section 81D, that he sent to the Members, there is a huge list included in it; transportation, communication, everything is in there. The fact that the School Department has a master plan is fine, but all of the departments should have one. The Police Department, Fire Department, Public Works Department, and all others should be looking out five years or more beyond what they are doing in the current year's budget. Some of the things in the individual department master plans would be components in the town-wide master plan, certainly in terms of public buildings.

The Chairman voiced his concern that, if the Commission leaves things the way they are, there is no accountability for those people in the community that feel the town is not using land in a thoughtful, cohesive way. He went on to say that, as he looks at Chapter 41, Section 81D, it seems synonymous with what Ms. de Steuben pointed out in Newton, that they call a comprehensive plan. If you try to think of all the things that would be included in a comprehensive plan; smart growth, transportation, infrastructure, housing, 40B, it's all listed in 81D. So, it makes it simple for the Charter Commission to determine who should be the moving party. They know the adopting party would be the legislature, but questioned who the moving party would be to put the plan before the community, an appointed group, elected group, or an individual. In Newton it's an individual, but the Members haven't resolved what the executive makeup is going to look like yet.

Mr. Curran responded that one of the things about a planning board, as it exists under the statute is that, as they exist right now, they are pulled in two separate directions. The planning board has the responsibility to complete the master plan. The planning board studies proposed zoning amendments that are proposed by individuals, or that it initiates itself, but it has another duty as a sub-division control agency. In most places, they spend 60-80% of their time administering the sub-division control regulations, not the zoning or the planning. It's a technical function, and totally different people are good at sub-division control, and others at planning. Mr. Curran suggested, perhaps splitting the responsibilities of the planning board and excising out the technical function of sub-division control, and putting it in the hands of people that are specifically charged with that responsibility. Then the planning board would have more time to do the master / comprehensive plan, in addition to their more normal duties.

Mr. Manoogian asked, if instead of excising out the technical sub-division control, why not excise out the master planning function, because, if the Commission is going to have an elected official, or officials, propose a comprehensive plan, ideally those same officials would be involved in developing the budget to propose to the legislature, perhaps implementing the budget once it's been adopted, so that the whole process would be more integrated in terms of proposal and resource allocations, follow-through monitoring, and then go right back to the voters, so that they could see it.

Mr. Manoogian expressed his opinion that our current planning board does a yeoman's job at sub-division control, spending 90-95% of their time doing that. They're doing some work on Chapter 90 road acceptance now that the Town Manager has asked them to do, but no one is asking them to do anything on master planning and updating the zoning by-laws.

Mr. Stewart asked Mr. Curran if he had any examples of where this excising out has happened, to which Mr. Curran replied, no, but he has advocated it in several places.

Ms. de Steuben stated that she would definitely like the elected officials to approve the comprehensive plan, and then the question comes, should they be the ones drafting it. If the planning board can draft it and propose it, changes can be made by the elected officials, she would have less of a problem with the appointed board doing the actual work of putting a comprehensive plan together.

Mr. Manoogian pointed out that, in the case of Newton, the Mayor isn't actually drafting out the master plan, but if he wants to see development take a turn, asks the planning board what that would look like. The Chairman expressed his belief that it should initiate with an elected official, and certainly have the planning board involved in process of putting it together, with the last step being adoption by a legislative branch. He stated his concern that, if the Members leave it as it is, the Town could go another ten or fifteen years with a zoning by-law from 1987, and changes being proposed by developers instead of any type of comprehensive approach.

Mr. Decareau stated that he sees the current Planning Board as reactive, not proactive. He believes that there should be a separate committee to do the planning, but a member, or the chairperson, of the Planning Board should be part of that committee. He does not think the Planning Board, as it is today, should be doing the

planning. He believes more individuals from the outside should be involved in working with them to bring a plan to the legislative body.

Ms. Panetta expressed her concern on time, and the current Planning Board possibly feeling overwhelmed if they were asked to come up with a comprehensive plan, and given a timeline to do so. She suggested, perhaps, sending them a letter to get their opinion.

Mr. Manoogian noted that the Charter Commission's Interview Subcommittee had only receive two or three responses from the Planning Board, and that those responding felt that everything is fine the way it is.

Ms. de Steuben stated that the Members seem to be talking about two separate things, one being whether or not the body or person that decides if there should be a master plan and what the end result should be, should be elected or appointed. The second is who would actually put it together. From her perspective, it should be the elected official / officials who initiate it, because they can run on that issue. Then, whatever body the Members choose to put it together would be appointed, and the approval process would be through the elected official / officials.

The Chairman stated that it is almost a three part process; to propose or initiate coming from the elected side, the planning or development coming from the expertise side, and the adoption coming from a legislature. He believes that there has to be someone responsible that the voters have access to, to either confirm or reject that person based on whether or not he / she is making any land use proposals for the town, and whether or not he / she has been successful at it.

Mr. Decareau referred back to something that Mr. Curran had mentioned, and proposed a committee made up of a town manager / mayor, all department heads, superintendent of schools, and chairman of a planning board, to work as a planning committee. You would have the Chief of Police, Chief of the Fire Department, Public Works, etc., all working as a team, and all having certain expertise. He feels it might make a pretty good committee.

The Chairman asked Mr. Decareau if that committee should be in the proposing end or the development end, to which Mr. Decareau responded, the planning end.

Mr. Manoogian asked who should start the ball rolling and be the one to say that the town needs to revamp the zoning by-laws, what should be done on the marsh road, Route 1, etc. He feels it should be somebody that is elected doing the proposing, and then employ a committee for the actual plan. He noted that he is getting the sense that there is a consensus among the Commission Members that the proposal or initiation of a master / comprehensive plan should reside in the hands of elected official / officials.

Mrs. Fowler agreed that it should be started by an elected official, with all the department heads as a committee, as Mr. Decareau had suggested, to actually come up with a plan.

The Chairman asked the Clerk to add to the Apparent Consensus list, that the proposal or initiation of a master / comprehensive plan should reside with elected official / officials.

- **Initiative**

Mr. Curran referred to additional information that he had sent to the Members regarding initiative. He went on to explain that, under the current Charter, under existing law in Massachusetts, as far as initiating a legislative matter is concerned, everybody in the Commonwealth has the advantage of the provisions of Chapter 39. For an annual Town Meeting, any ten voters can petition for the inclusion of a subject matter in the warrant, and for a Special Town Meeting, any 100 voters can petition for the inclusion of a matter, and the matter must be included in the warrant. That gets the matter before the Legislative branch. It doesn't necessarily mean that the Legislative branch is going to act affirmatively on it. The initiative process for State Legislature or the city governments includes recourse if the Legislative body does not adopt the measure that is petitioned for, or adopts a measure that is stated to be in lieu thereof. In the present situation in Saugus, ten voters can put an article in the warrant for Town Meeting, the Legislative body disposes of it, and does not adopt it, that's the end of it. They can come back the following year, or at a Special Town Meeting, and re-submit it, but if the Legislative body is unwilling to act on the matter, the hands of the voter are tied.

Mr. Curran explained to the Members, that they could add a process that, if the Legislature defeats a measure, if the voters get a certain number of signatures, the question would appear on the ballot to adopt the measure contained in the initiative petition. It gives the voters the right to go over the head of their representatives. It is something that other forms of government have available.

The Chairman noted that there is also one other piece that is included for Town Meeting. The citizens can call a Town Meeting with 200 signatures, and compel the Legislature to be seated. It has been seen from time to time in Saugus.

Mr. Curran stated that those are things that are standard in the statute, but that the Members could set a lower number, with the minimum standard being set out in Chapter 39.

Mr. Manoogian stated that, if the Members go with a model that doesn't have the restrictions of Town Meeting, those statutes would not apply because the Commission wouldn't be referring to it as a town meeting as they presently know it. The question the Members then have to resolve is, do they want to have a way for citizens to initiate legislation, and if they are not successful, should there be an opportunity for them to put it before the Town at large on a ballot. The Chairman then asked the other Members how they felt about voters being able to initiate legislation, and then being able to appeal the action of the legislature to the voters at large.

Ms. de Steuben asked if it would be possible to keep ten voters get to put something on the agenda, but also have a separate initiative provision where, with a certain number of signatures, they could get subject considered by the legislative body, and if the legislative body votes it down, then it goes on the ballot. She asked if the Members could have two different processes.

Mr. Curran explained that it would be two separate processes, because the legislation has to be adopted in the form that it was submitted, and it gets complicated. He went on to state that, city councils often have a provision that anybody can file a petition at any time, and the councilor can automatically file it, or you have a process where ten or twenty signatures are required and then the council

must act on it, must hold a public hearing, and must vote it up or down. If that doesn't work, the citizens get another petition and go on the ballot with it.

The Chairman asked about a process, because the Members are considering a mix of at large and precinct specific representation, where if a registered voter wanted something to go before the council, either their precinct representative or at large representative would have to put it before the council, on request of a voter.

Mr. Curran responded that, in Massachusetts, any voter has the right to file a bill in the State Legislature. Therefore, it wouldn't be asking too much for voter to be able to put something before the legislative body of the town.

Mr. Manoogian explained that was his point, and questioned if the Members would even want to require the ten signatures, or give a citizen the right to make a proposal to the legislative body. He asked the Members if they wanted an initiative process in the Charter where citizens can propose legislation.

Ms. de Steuben asked, even if one person goes through the legislative representative, would it still have to be in proper form, and if there is some procedure where the form would have to be approved by Town Counsel, or is that not even necessary.

Mr. Curran stated that he has always felt that people make a little too much out of being in proper form. We are bound by the traditions that, whatever is acted on, must be within the four corners of the instrument that was originally suggested. He noted that, as Town Counsel, he with people to take their ideas and put them in a form that Town Meeting could act on, and although not every town approaches voter initiatives that way, the Members could put in the Charter, that proposals must be in a form that the legislative body can act on.

The Chairman stated that the restrictions of Town Meeting are such that, once the article enters the warrant, the warrant is posted for 14 days, advertised in a newspaper, you've give notice to the public that "this is what's coming up before Town Meeting," and you can't change it the night of Town Meeting outside the scope. It has to be inside the four corners, but that assumes that the Members are going to keep the restrictions of a town meeting. If they went to a larger body that didn't have the restrictions of Town Meeting, you have many other options, such as referring things to a rules committee or drafting committee, so that a citizen with an idea of what they want wouldn't be punished because they didn't put the right thing down on paper. He noted that many times he has seen, if someone didn't write an article the right way, it gets accepted but, by the time it hits the floor it's so flawed that it can't be acted upon, because there are opinions from Town Counsel and the Finance Committee, and everyone says that they don't know what it means. The Chairman noted that he has seen this particularly with by-laws. Citizens should not be punished for not being crafty enough to write something within the four corners.

The Chairman asked the Members if there was anyone that didn't want an initiative process. All Members were in agreement to add an initiative process to the list of Areas of Apparent Consensus.

- **Referendum**

The Commission moved on to discuss referendum, with Mr. Curran explaining that is when a body does something, and the people want to overturn it. He noted that

he is not familiar with Saugus' referendum procedure, but generally, in putting referendum procedures in a charter, it is written very broadly, so that anything the council adopts can be the subject of a referendum except collective bargaining agreements and the budget as a whole. You can, however, take sections of the budget. Internal operations, electing and appointing people to office, are usually the subject of a referendum, as well as floating bonds for a new school, fire station, sewer treatment plant, etc.

The Chairman clarified for the Members, that Saugus does have a referendum procedure now, and thinks it is quite strict. It has been a source of confusion in the past, where in five days the person must come up with the signatures. The idea being, if an action of the legislature is detrimental to certain people, or they feel it's detrimental, they have an opportunity to appeal that to the voters at large. There should be an opportunity for the legislature to act in between, to re-think itself. He questioned, however, if Town Meeting gets adjourned, and the town's referendum process is after adjournment, how can Town Meeting re-think itself, because they are not going to call a special session to reconsider a vote. You are limited, under the town meeting form of government, on the referendum process.

Mr. Curran explained that with the town meeting form of government, the referendum goes forward, because there is no opportunity for the council to reverse itself. In the normal municipal referendum, the council gets a petition and then votes on whether or not it will consider the matter, and if it doesn't, then it goes to the ballot.

Referring to the Town's Charter, the Chairman noted that "If within the said ten days, a petition signed by not less than 10% of the registered voters of town, containing their names and addresses as they appear on the list of registered voters, is filed with the Selectmen, asking that the question / questions involved in such vote must be submitted to the registered voters of the Town at large, then the Selectmen after the expiration of five days shall forthwith call a special meeting, for the sole purpose of presenting to the registered voters, that question. So, it's 10% in 10 days. Mr. Manoogian asked Mr. Curran if that was strict or liberal in terms of opportunity.

Mr. Curran noted that it took 15% of the voters to form the Charter Commission, and asked how long that took, to which the Chairman responded, a long time.

Mr. Curran then stated that 10% in 10 days is pretty short, but if it's a hot button issue, you get them overnight. You certainly don't want to make it easy, but you don't want to make it so difficult that it never happens. The Chairman asked what the norm was, and Mr. Curran replied that 10% in 10 days is a pretty good number. It's certainly not impossible, with the Town's population, and approximately 16,000 registered voters, you are talking about 1600 signatures.

Ms. de Steuben noted that, the provision the Town has now, if you get the signatures, you automatically get an election. There's no circuit breaker that allows the legislature to re-vote based upon the overwhelming popular opposition to it, whereas, the alternative would be a referendum provision that says the voters present their petition with the signatures to the legislative body and then the legislative body can reconsider their vote.

Mr. Curran responded that they can wait until a regular election, they can defer the date of the legislation that they adopted until the next regular election, or if they think

it's important, they can call a special election and let the voters decide it. They have the option if it's a sitting legislative body.

The Chairman asked the Members if there was consensus that they wanted to continue with a referendum process in the proposed Charter. All Members agreed, and the Chairman asked the Clerk to add it to the Apparent Consensus list.

- **Recall Provision**

Mr. Curran explained that prior to the Home Rule Amendment of 1966, there were very few places in Massachusetts that had a recall provision, and as the charter commissions began to reduce the number of elected offices and put the appointing authority, generally, in the selectmen's office, for offices that had previously been elected, more and more people wanted a recall provision so that if the power of appointment was abused, the voters would have a recourse.

Mr. Manoogian noted that Saugus has 25% in 25 days which is a very high threshold. There are very few communities that have it that strict.

Mr. Curran responded that, for a period of time, Saugus had recall elections all the time, and he suspects that the act was amended to make it more difficult because there had been so many. The way that recalls are written in Massachusetts, the subject of the recall automatically appears on the ballot, and all of the people going to the polls to vote against the recall, vote for that subject, and all of the other votes are divided up between the other candidates, so the person being recalled can end up getting the highest number of votes, thereby getting recalled and re-elected, causing the town great trauma because the same people are still serving in office. The way to avoid that is to make it so that if the person is recalled, he / she is recalled, and then the question is on filling the vacancy. The person is not automatically a candidate for the office that he / she was just recalled from.

The Chairman then asked what type of procedure would be employed to fill the vacancy.

Mr. Curran responded that if he / she is recalled, you count the votes of the other candidates, and the person who is the subject of the recall is not a candidate.

Ms. Panetta asked if the Commission could put in a provision that, if for example, it was for Selectman, and the person was recalled, if the person with the 6th highest number of votes could fill the vacancy, instead of having another election.

Mr. Curran explained in filling vacancies for office, we do use runner ups. There has to have been a contest in the office that the person is recalled from, and the runner up has to have received some significant number of votes.

Ms. Panetta noted that in the current Charter, if for any reason one of the Selectmen cannot complete his / her term, then the next runner up steps in if they had 1500 votes. But, for the School Committee, there is no provision for filling vacancies.

Mr. Curran stated that the Members could give parody to the School Committee.

Mr. Decareau stated that he didn't think that provision included recall. It's a separate issue, and personally, he wouldn't want to see the next in line get it. When there's a recall, it's for a very specific reason, and when it gets out to the public, people that normally may not run, because of the recall may decide to run. If you have the stipulation that the 6th person jumps in, that is eliminating the opportunity for

someone else to run. He believes that if there is a recall, everyone else should have to re-run.

Ms. de Steuben asked for clarification, because as she understood it, you wouldn't have to have a second election. On the recall ballot, you would have the person who is up for recall as a separate question, and then in addition to that, you would have the candidates that are running for that position, but not including the incumbent.

Mr. Curran agreed, stating that if the person is not recalled, there is no need to count the candidates votes. It is one election, and one ballot with two separate questions. Although, some places have one ballot with just the recall question, and if the person is recalled, they have a separate election to fill the vacancy.

The Chairman noted that there is no provision in the current Charter for recalling a Town Meeting Member, and if the Members maintain a large legislative body that has precinct specific members, asked what recall would look like there, and if the election would be held just in that one precinct.

Mr. Curran responded that the election would only have to be held in that one precinct, and a relatively small number of people would be required to file the papers asking for the recall.

Mr. Decareau suggested that, since the members had reached consensus on maintaining a recall provision, they should settle the percentage issue, suggesting that they reduce the percentage required from 25% to 15%.

Ms. de Steuben asked if the 15% would apply to the precinct question. The Chairman noted that with approximately 1600 voters in a precinct, it would take 225 voters to recall a precinct person. He also mentioned that you can get elected in a precinct with about 185 votes.

Ms. de Steuben suggested having 20% for a precinct recall, and 15% for town wide. Some discussion followed regarding the number of days. The Chairman stated the consensus for the Clerk: Retain recall in the Charter lowering the percentage to 15% for town wide elections in 25 days, and for precinct specific offices, 20% of registered voters in that precinct.

- **Conflict of Interest**

Mr. Curran noted that he had also sent information on conflict of interest to the Members. He explained that he had included some of the language from the Plymouth Charter that specifically relates to the voting of representative town meeting members there who are town employees. He also included some provisions from a town council type charter that talked about the restrictions on a elected officer not being eligible to serve in any other municipal office during the term for which elected or for one year following the period for which elected. The material offers some alternatives for the Members to consider when including their own conflict of interest provisions, and the language could be modified accordingly.

Mr. Manoogian asked what the State's stand on Selectmen, for example, or councilors taking a job in the community, and asked if was 18 months or two years.

Mr. Curran explained that the Conflict of Interest Law actually has a 60 day limit. You can resign from your office and take a position by vote of your fellow board members.

The Chairman asked, what if they conclude their term of office, and thought it was two years, to which Mr. Curran responded that the Conflict of Interest Laws only stipulate 60 days. He continued, stating that the language used in the charter provision that he sent to the Members, comes in large part from the National Civic League Model Charter, and provides for at least a year after term of office.

Mr. Stewart expressed his thought, that if the Members go to staggered elections, the one year seems sufficient.

Mr. Decareau stated that he wanted to see a conflict of interest provision that a town employee may not bid, or do work for the town, while he is employed by the town.

Mr. Curran responded that he thinks that a special municipal employee can be hired by a board or agency that he / she is not involved with.

Mr. Decareau explained that there are times when people are working for the community on a 1099, and even though they are not technically a town employee, they are in charge of inspections and can also bid on jobs within the community, and he feels that is a direct conflict of interest, and he would like to see language in the charter that would eliminate it.

Mr. Curran responded that some of the general language that he sent out, that came from one of the city or town charters, would prohibit that. If someone holds an elected office, they cannot do any business with the town whatsoever, during the time that they hold the office and for a period thereafter, for example, 12 months.

Ms. Cote asked if Mr. Curran was referring to just elected officials, not appointed officials, to which Mr. Curran responded that the Members could have it apply to appointed as well.

The Chairman referred to information from the town of Amherst, basically a statement on ethical standards, reading "Officers and employees are expected to recognize that they act always as agents for the public, that they hold their offices and positions for the benefit of the public, that the public interest is their primary concern, and that they are expected to faithfully discharge the duties of their offices regardless of personal considerations."

Mr. Curran explained that the paragraph was designed to set an ethical tone for the charter, and is included in the general provisions. It was drafted first for Amherst, but has been in a number of charters since. There is also a paragraph on diversity, setting a tone that the people who serve the town would look like the people that live in the town, and everyone would be represented.

Mr. Manoogian noted that there were two issues: conflict of interest for elected and appointed individuals, and then the issue of when an elected official can take a position in the town after their term is over, or they resign. The suggested amount of time is one year, but he is not sure that is strict enough. He asked if 18 months would be sufficient and if two years would be too strict, or would the Members prefer to be silent on that issue.

A discussion followed to determine a fair amount of time, but consensus was not reached at this time. Consensus was reached on barring an elected official from obtaining a town position after their term has ended, or after they resign, for an amount of time to be determined.

A recess was called at 9:12 P.M.
The meeting resumed at 9:19 P.M.

- **Conflict of Interest (Continued)**

The Chairman asked the Members to share their ideas on conflict of interest.

Ms. Cicolini doesn't believe that any town employees, or any affiliation with the families involved, should serve on Town Meeting.

Mr. Diotte stated that he was a town employee for many years, and was a Town Meeting Member for 32 years, and felt that he voted his own mind. He feels that town employees can serve on Town Meeting, but if the Commission wants to restrict their vote on their own salaries, as far as their own department goes, but he doesn't have a problem with them voting on other issues.

Ms. de Steuben agreed with Ms. Cicolini. Whether it's a town meeting or other legislative body, she thinks there should be a prohibition on town employees serving in that role. There is a conflict, because their vote affects their personal financial interests. In addition, she is concerned about the perception of the public. When there is a perception there, she feels it undermines the credibility of the legislative body. Ms. de Steuben went on to say, that her ideal situation would be, if the State Ethics Code applied to the governing body that the Commission decides on, realizing that would depend on the nature of what they finally end up with. The State Ethics Board has some enforcement ability, and hopes that they could fashion the governing body in such a way that the State Ethics Law would apply.

Ms. Panetta stated that she is somewhat conflicted, because it is the public that puts these people in office, and the same public that feels there is a conflict of interest, yet they still keep voting these people in, knowing that they work for the town. She does not have a problem with town employees being on Town Meeting, but is concerned about them voting on their own budget.

Mr. Decareau stated that the majority of the people he has talked to, do not want town employees serving on the legislative body, and he feels it is a direct conflict of interest. If you have watched the Town Meeting, if the town manager (either he / she) wants something, and these employees work directly for him / her, the town employees stand up and vote that way every time. They are not voting what they think, but what's going to keep their job, and they don't want conflict with their boss. It's a direct conflict of interest, its intimidation, and Mr. Decareau does not feel that it is the American way.

Mr. Stewart stated that he would almost say that part of the mandate of the Commission comes from a sentiment in a large part of the community, that there are too many town employees serving in the Town Meeting capacity. He believes the Members have to address it in the Charter. He is torn as to how far they go as to who is banned from serving; the town employee themselves, the town employee and spouse, would the spouse and family members be banned from voting but not from serving. He feels the Commission needs to flush that part out, but at least the employee themselves need to be barred from serving.

Ms. Cote stated that she feels the same way. When she was out getting signatures to form the Charter Commission, that was one of the hot topics. Yes, we do vote them in and we do know what their jobs are, but it's the perception when you are watching

the meetings and see what's going on, and how people are voting. She feels that the Commission does need to address it, but how far does it go, as Mr. Stewart said. She feels they need to be specific on it, and asked if that also includes sub-contractors.

Mr. Manoogian stated that he certainly wants conflict of interest in the Charter, and depending on what the Members come up with, as Ms. de Steuben stated, if they have a legislative body that is not a town meeting, it would be covered by the Conflict of Interest Statute, and the policing of the activity of the members of that legislative body would fall in the realm of the State Ethics Commission. He went on to say that the definitions that they provide in 268A , Sections 19 through 21, are universal standards that are accepted by appointed officials. To the extent that they can capture that legislation, not just the spirit, but the essence of it, and the enforcement that it yields, would be his goal. You would have to have special language to bar any town employee from serving. There are a number of people that come to mind that have voted their conscience over the years as town employees, and the common denominator for those individuals seems to be a strong union representation, insulating them from the wrath of a town manager. The Chairman went on to state that he recalls one incident of a town employee being "punished" because he voted against the interest of a town manager. It's a conflict of roles, and a burden that they bear. The Commission will have to address the issue of how far to go, as far as family members are concerned, but meanwhile they could leave the door wide open for developers and their relatives into town meeting. That's why he likes the idea of tying in the State Conflict of Interest process and the enforcement. The degree to which the Commission can do that will be determined by the type of legislative body that the Members choose. If the Members craft a legislative body that is outside the restrictions of town meeting, then the Ethics Commission would assist the town on this ethical provision.

Mr. Curran agreed that the town would get the advantage of the administrative support of the Ethics Commission and its staff.

Mr. Manoogian noted that there is consensus on having a conflict of interest provision for the legislative body. He does not feel there is consensus on the prohibition of town employees, and that point will be settled later on.

The Chairman noted, that exhausted the items on Mr. Curran's agenda for the evening. He asked to return to the budget.

- **Budget**

The Chairman referred to a document that he had distributed to all of the Members; an example of the Government Finance Offices Association award winning community. He and the Vice Chairman condensed the essential points to one page. He noted that he had spoken to Mr. Curran about the document, and obviously all of the points, The Budget as a Policy Document, The Budget as a Planning Device, The Budget as an Operations Guide, and The Budget as a Communications Device, would be impossible to put into a charter. It would take up pages, and is too much detail for a charter. It would really be a straightjacket. Mr. Curran had suggested a "piggyback" by-law that he had referred to in an earlier document. At the same time

the voters accept the Charter, they could also adopt a by-law specifying the nature of the budget process.

Mr. Curran explained that in the Charter document itself, the material concerning the budget could include a provision that the town manager prepare the budget in accordance with the guidelines adopted by by-law, or by policies adopted by the executive. You might have a transitional by-law or a transitional policy, but the document could be incorporated into a by-law for all practical purposes, and that would exist until the town legislature adopted a new by-law to amend, alter, or appeal this document.

The Chairman noted that Mr. Curran had convinced the Commission that the number one policy of a community is the budget. The Members worked on developing criteria and standards for accountability and transparency, and he feels that whatever the Members adopt for budget criteria, they need to be merged into a document, and there has to be some specificity, and yet the latitude for changing times.

Mr. Manoogian went on to explain what many current Town Meeting Members see as flawed. In a budget that is developed, for example the FY09 Budget that was adopted in May, what Town Meeting Members see are columns, and believes it is specified in by-law: Actual for FY06, Actual for FY07, Voted Budget for FY08, and Proposed Budget for FY09. The Town Meeting Members don't get to see how much of the FY08 has been expended up until May on the night that they are taking the vote, so if \$2,000 was voted for botanical supplies, the Members don't know if the \$2,000 is still there, to give an example. They are also not aware of the discrepancy between and original vote and additional funds that were pumped in at subsequent Special Town Meetings. So, there is not a clear picture. There are a few Town Meeting Members that will have their budgets and special article budgets to be able to do that comparison, but it's a lot of work for them to see, as Mr. Diotte would say, where the money gets hidden. The Chairman continued by saying that, what he hoped the Commission would yield is a specificity on the budget process that would give the elected officials, that need to be informed, the tools they need to make informed decisions, which is accurate information. He asked Mr. Curran what could be included in the Charter to address the budget format.

Mr. Curran responded that he could send some sample language. The budget recommendations that were used, are based on the National Civic League's Model provisions for budget proposals, and talks about actual estimated amounts for the current fiscal year. Maybe you need some type of footnote on the budget indicating what's actual and what's estimated.

Ms. Panetta stated that she thinks it would be advantageous, before the Town Meeting Meets, to have a column that says where they think they are going to be at the end of the fiscal year, so that there are no surprises. What you truly need to do is come up with a brand new forecast, for example, of 2008 and where you think the funds are going to come in, and how close they are to the budget, and why there are variances.

Ms. de Steuben stated that, in looking at the fiscal process of other town charters, she noted that some towns have procedures that, for example, will require a budget message that will include a number of items, such as the revenue and expenses for the

previous year. Amesbury requires that the Mayor provide quarterly reports to the Council on Financial Issues and Future Needs. She believes that the current Charter for Saugus requires, in either general or specific terms, that they provide information for past and current expenses and receipts, and the problem is that, apparently it isn't done. That problem is really a function of how much authority the Commission gives to the legislative body or the body that the town manager is reporting to, to insist that be included in the budget message if it's required by the Charter.

Mr. Curran responded that the language in the existing Charter just talks about the budget as adopted for the current fiscal year. It doesn't talk about actual expenditures, and that's something that could be tightened up.

The Chairman asked Mr. Curran if he could provide the Commission with some examples of language from Massachusetts Charters that are as detailed and specific as possible on the budget, that give clear, specific direction and will yield maximum accountability and transparency for the budget process.

Mr. Diotte brought up another problem, when at Town Meeting, the Members are told that there is no more money, and then something comes up that the manager or powers to be needs money for, and all of a sudden they come up with all of these unexpended articles from the last four or five years, that have never been brought up at Town Meetings.

Mr. Curran stated that they should be part of the revenue forecast that the manager starts off the year with, so that everyone is on the same page. If there are unexpended balances in appropriation accounts, that are not going to be used, and are going to be closed, that information ought to be available to everybody. That's part of the forecasting method that's used to determine what's going to be available to the people that are concerned about drafting budgets.

Ms. Cote asked Mr. Curran if he was talking about 5 year forecasting or quarterly forecasting within the current year's budget. She would like to see, once the budget is adopted, a quarterly report going to the legislative branch, showing the estimates and actual figures.

Mr. Curran responded that they have had provisions on that in charters so that everyone knows where they are going, and departments don't get into trouble. Everybody ought to know, at all times, where they are in their spending process. There should be some forecast as to how they are going to spend their budget, and every month evaluate their estimate against what they are actually spending, so that if anyone is in trouble, you begin to see it at the earliest possible date. Mr. Curran will send some language on that as well.

The Chairman noted that the Commission already has an auditing function within town government as an area of consensus, and that will dovetail with however the Members establish the budget, and what role it would play in monitoring spending over those quarters, etc. He then asked the Members if they would be comfortable with having more information next week, so that they can develop some consensus on the budget process, and what should be included in the budget, to which the Members agreed.

- **Need to change location for October 30th**

The Chairman announced that there is a conflict with the Town Hall Auditorium on October 30th, and Sue Dunn has asked if the Charter Commission meet someplace else that evening. He asked the Clerk to let Ms. Dunn know that she will try to get the School Committee Room, because of the cable accessibility.

MEMBERS ANNOUNCEMENTS / MOTIONS

Mr. Diotte informed the Commission that he is going to be out of state next Thursday.

Mr. Manoogian thanked Mr. Garabedian for providing the Members with CD's if they do miss a meeting, and noted that the Members have all been very diligent about watching those CD's. He felt he would be remiss if he didn't remind the public of the Members dedication to the process that has been going on for almost a year now. The attendance has been fantastic, and all Members have proven themselves to be good representatives of the public. He thanked all Members for how conscientious they are.

Ms. de Steuben had a copy of the Newton Comprehensive Plan. The Chairman asked the Clerk to make copies for the Members and include them in next week's packet.

Ms. Panetta thanked Mr. Manoogian, on behalf of all Members, for all of the work he has done. They realize how time consuming it is, and appreciate how dedicated he is to the Charter Commission.

PUBLIC FORUM

None at this time.

ADJOURNMENT

Cam Cicolini moved to adjourn at 10:00 P.M.

The Chairman seconded the motion.

The motion passed **9-0**

APPROVED ON _____

SUBMITTED BY _____

Areas of Apparent Consensus

A professional administrator with the title of Manager

A screening committee to be used in the process of hiring a manager

Having policy reside in the hand of elected officials

An auditing function within the structure of town government

Auditing enhanced financial oversight of the School Department

25 to 35 member legislative body

Keeping quantity of 10 precincts

A mixture of at large and precinct specific representatives

Appointments to policy making boards would be by elected officials

Staggered terms

Provision for ethics or conflict of interest

The proposal or initiation of a master / comprehensive plan should reside with elected official / officials.

An initiative process

Continue with a referendum process

Retain recall in the Charter lowering the percentage to 15% for town wide elections in 25 days, and for precinct specific offices, 20% of registered voters in that precinct.

Barring an elected official from obtaining a town position after their term has ended, or after they resign, for an amount of time to be determined.

Having a conflict of interest provision for the legislative body