

**TOWN OF NEWMARKET, NEW HAMPSHIRE
CHARTER COMMISSION
JULY 8, 2013**

Commissioners present:

Chair Clay Mitchell, Vice Chair Phil Nazzaro, Secretary Chris Hawkins, Bruce Hawkins, Sr., Toni Weinstein, Al Zink, John Badger, Leo Fillion, Kevin Cyr

Chair Mitchell called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.

PUBLIC FORUM

Bert Allen of 56 Smith Garrison Road referred to 2 emails he had sent to the Commissioners, and asked that his letter and email of July 5th be read into the record along with his email of July 2nd. (The email will be italicized and the letter will be underlined.)

"I am writing this letter to object to the following points put forth by Don Jutton at the June 24th 2013 meeting. 1. He spoke about using the charter to make changes in the school district. This is not allowed as the school district is independent. 2. I object to the town of Newmarket being used in Mr. Jutton's terms as a guinea pig for experimental changes for pushing the roles of what is allowed by the charter on the grounds that it will incur extensive litigation costs not savings which we need. 3. I am also objecting to Mr. Fillion's suggestion that we change from a 7 person Council back to a 3 person Selectman format. The original change was for transparency in the local government that was why it was started. 4. I am in agreement with Kevin Cyr's statement that there needs to be accountability and a process to remove persons who cannot follow the rules and the current budgetary process which is cumbersome. 5. I recommend a line-item veto for the Council to streamline the budget process and actually save taxpayer dollars.

July 5:

I have attached minutes from 2011 that shows Don Jutton doing consulting work in the past for the school district. I believe this makes his current consulting for the town of Newmarket in a direct conflict of interest. Because the school district has been declared by the state as an independent corporation. This has been decided his continued insistence on this matter is uncalled for and wastes time and money with future litigation.

July 2:

This is a letter That was placed on file with the state of New Hampshire, and backs up the Tax paying public by the state of what Kevin Cyr said in public To the rest of The charter members on June 24 please add to my list of needed commissions, One conduct and ethics committee That state Rep Doreen Howard of Newmarket filed. for

NEWMARKET — State Rep. Doreen Howard, D-Newmarket, has been moved by recent events to suggest that a special committee be formed to monitor the activities of the town council.

Howard wrote a recent letter to the editor to the Exeter News-Letter recently expressing this opinion. "By using a voter approved independent conduct and ethics committee's recommendation to be included in the town charter, rather than rules developed by each newly elected board or council, real and perceived conflicts of interest and conduct should be minimized," she said.

Howard said that as a state representative she is required to submit to the Secretary of State any potential conflicts of interest. She said when state representatives perceive a conflict of interest, they are free not to vote in the matter. Howard said this could bleed down into the local level as well. She said she had seen a conflict of interest in the matter of Councilor Rose-Anne Kwaks voting against Riverworks Tavern owner Jennifer Jarvis to be a part of the Heritage Advisor Committee, allegedly based in part on her personal opinions of Jarvis.

"As private citizens, we're allowed to have our opinions. But as public servants, when we're in our role as a public servant, it's inappropriate to personally attack members of the community and act as though you've done nothing wrong," she said. She also said Councilor Michael Ploski had allegedly committed the same infraction when he publicly called Jarvis "the anti-Christ of Historic Preservation" in another meeting. Ploski later apologized for the remark.

Howard added that she wasn't interested in being the leader of an ethics committee or even a member of the committee, but that there was an interest in town.

"It's obvious by the dissension that there are many people that are upset and believe that things are being done improperly," she said. "This would give them a voice and a means to (do something about it)."

Jarvis, who submitted a petition for an investigation into Kwaks removal from the council, agreed with Howard. Jarvis believes the committee was a good idea and would be popular if it were put into action by voters at the ballot box. "I haven't given a lot of thought to the logistics of how that would work, but I would certainly support anything that held the town council accountable for their actions. Pretty much, what they said at the last meeting is that it doesn't matter if they break the town charter," she said. "At this point, there is no accountability."

Jarvis believes councilors are acting as they want without fear of retribution because "it's always a 4-3 vote in their favor." Therefore, she believed that some kind of a check on the power of the Town Council was necessary.

Kwaks disagreed with both Jarvis and Howard.

"I think just about every person in politics uses their opinions to make decisions," she said. "Basically we have a conduct of officials already in our charter." She said that the town charter didn't state that politicians couldn't state their opinions. She also added that the council didn't need to have a check on its power, and that Jarvis' view was inspired by her own opinions.

"How would she feel if there were people in her corner that were voting (that way)?," she said. "Does it bother anyone that the three are voting the same way all the time?" She said that they were "just grasping for straws. If things don't go their way they're just looking for ways that it can."

MINUTES OF THE JUNE 24, 2013 MEETING

Discussion: Page 1, Mike Giffernham is presently with MRI, and formerly was with Oyster River; page 2, correct the name Harkins to read Hawkins; page 3, paragraph 3, change the word distributes to distributed. A motion was made and seconded to approve the minutes as amended. Motion carried unanimously, 9 – 0.

PUBLIC FORUM

Chair Mitchell read the following letter to the Commission from Cliff Chase of the School Board:

"My comments are my own opinions, not necessarily those of the school board. Now in my 9th year on the school board, experience with several superintendents and board members certainly has influenced my point of view, in addition to working with the budget committee, the town council and other town committees.

Thanks to all for your thoughtful approach to the task ahead of you. As with all elected officials you are doing what you believe is in the best interest of our community. I certainly don't have the answers, but have some thoughts and feedback from you last meeting.

Don Jutton has once again raised some compelling concepts. Surely there are opportunities for economies of scale, both within Newmarket and through cooperation with our neighbors. There is no magic here though. These economies can help, but will not fundamentally change the problem.

'Rearranging the deck chairs' on how we deliver services would perhaps save some money, but the ever increasing expectations and ever decreasing state funding (whether we agree with these or not) cannot be remedied by continuing to cut expenses (i.e. staff) without dramatically lowering the quality of education and other town services. Chief Cyr discussed increasing demands on the PD; education is no different. The changing demands and expectations of education are staggering.

It seems the best opportunities to savings are through regionalization. However recent rejection of this concept by Newfields regarding police services illustrates how difficult this is.

Having to touch 7 keys rather than 4 for the superintendent to call the town administrator is not a barrier to communication. Can we work toward having one phone system/contract? Yes, is this a barrier to communication? Absolutely not. I assert that communication and cooperation between the Town and SAU has been improving since I have been paying attention and are excellent and at an all-time high.

I'm in support of joint town council and school board meetings. In my experience, past joint meetings have been limited in their effectiveness I think largely because of the challenge of having a coherent agenda. Without focused purpose it can become a meeting for meeting's sake. I am not at all opposed to institutionalizing more 'cooperation' between the town and school district. There are creative ways to accomplish specific goals without fundamentally changing our government's structure. Appropriate shared personnel arrangements and memoranda of understanding come to mind. Our government's structure should promote specific goals and outcomes.

In some ways towns and school districts match the 'business world'. In other ways they are very different, e.g. revenue sources; a fee-for-service model doesn't work when you are talking about services including public education or firefighting. As with business, it isn't all about the expense side of the ledger. The revenue side is equally important. Newmarket has done a great deal to become a very attractive place to live. I'm very proud to live here. Of course there is more that we can do here. Further, much of the revenue problem needs to be addressed at the state level, and beyond state borders to reverse the 'greying' of the northeast.

From my experience, businesses and elected governing bodies are both most effective when they have an empowered administrator, with policy and big picture guidance from a 'board of directors', the administrator has the authority and responsibility to sweat the details. For example, the 'CEO' should be doing or delegating such tasks as filing small claims court documents or purchasing trucks. The expectation is that the CEO will seek direction from the board and be held accountable.

We have a town of about 9000 residents. As mentioned at your last meeting, often (we) have difficulty having enough candidates to fill a ballot. I worry that the demands of city councilor type positions would make this problem worse in our busy SB2 world. Comments of 30+ hours of work to be a town councilor illustrate the demands of service. Clearly the TC has enough on its plate, adding to these expectations on councilors would be too much.

Long service of councilors (or school board members) doesn't necessarily mean better service to the community. Certainly, it is important to have experienced members and it takes most folks a couple of years to hit their stride. But being a councilor shouldn't be a life sentence, nor should it be a 3 years and out. The level of effort necessary to do a good job can't be overstated. We should be talking about how to make community service not so all-consuming, which just might encourage more residents to get involved.

I am not in support of a city or similar form where the school district is under the jurisdiction of the town council and further separated from the voter."

Chair Mitchell said that any public input to the letter could be made at the next public hearing during the first meeting in August. He wanted to protect individual rights to speak and not encourage dialogue between speakers, to which the Commission agreed. The Public Hearing closed at 7:33.

MAJOR DECISIONS/REVIEW OF MEMBER'S RESEARCH

Commissioner C. Hawkins had prepared a synopsis of ideas that had been expressed at the June 24th meeting. He said he saw 2 developing trends within the 11 items: one that dealt with large, on-going issues that probably could not be fully addressed by the present Commission, but perhaps could be by the formation of a sort of overseeing/ planning body or by having Commissions established more often; the other that would address smaller, more immediate issues, such as tools for the charter that would add accountability or ways in which the budgeting process could be made more efficient and cost effective. He said that in the future, he would break down specific ideas into sets under each theme. Previously, he had distributed a list of the basic themes to the Commission. He also addressed the need to reduce redundancy in operations and decrease the time currently necessary for the decision-making process. Under the second theme, he included looking at the position of the Town Administrator as defined in the charter, to determine whether it accurately reflects the

Charter Commission
July 8, 2013

responsibilities of the position, and the tenure of those serving on boards. The ability for regionalization exists in the charter, but perhaps should be underlined for emphasis. He thought the state could be approached and asked to offer incentives to encourage regional and cooperative services, which could benefit all in the long-run. He added that his document would be part of the findings for the preliminary report.

Chair Mitchell asked if there was anything else that could be added to the regionalization authority given by the present charter and asked for members' comments. The job of the Commission is not to dictate policy, but to provide the structure so that policy may be implemented. Commissioner C. Hawkins saw regionalization as a long-term effort, and felt it was important to elicit state support. Parts of Article 10 concerning regionalization were read. There was no mention of centralizing certain operations with the school, which could possibly be added. Commissioner Fillion spoke about the budgetary process which he felt fulfilled its goal of informing voters. He added that the budget was an authorization to expend, not a requirement to expend, and the Council has no authority over certain expenditures, such as contractual obligations, and he did not feel a veto was necessary. Commissioner B. Hawkins said that the document was a summary of what had been said by Commission members and by some townspeople. Commissioner Badger asked when the Council or School Board had not spent the money it had been authorized to spend. This has actually happened quite often within the last few years, and Commissioner C. Hawkins said he felt that spending all authorized funds was more likely to happen with a tax cap. Currently if a department is overspent on one line item, it has to have Town Administrator approval to move funds from another line item; if a department does not have sufficient funds within its own budget, it must get Council approval to have funds transferred from another department.

Commissioner Zink agreed with Commissioner Fillion's assessment of the budget process being informative, but felt that something could be done within the Charter to reduce its repetitiveness. He felt the Budget Committee, as the only body in the community that looked at the town and the school, should be the repository of budget forecasts. The Budget Committee currently works on an annual budget basis, but he felt it would be much more helpful if it was required to produce 5 year forecasts. Commissioner Fillion pointed out that in the town of Durham, unlike Newmarket, department heads do not go before the Town Council as everything goes through the Town Administrator. He spoke about the efficiency of a 3 member Board of Selectmen rather than a 5 member board. He said the reason they had decided on a town administrator was that they didn't want the restrictions required by statute for a town manager form of government. The town has more flexibility in determining a town administrator's responsibilities. At one point, when it seemed the town wanted to return to a Board of Selectmen, the Council had assumed some responsibilities held by the Town Administrator. Comparing the Town Manager position to that of a Town Administrator, Commissioner C. Hawkins said there was no provision in the current Charter for the Town Administrator to maintain roads or attend Town Council meetings for example. He felt the Charter should reflect the actual responsibilities that the Town Administrator performs, and they are the same as those found in the Town Manager statute.

A Town Manager can make certain decisions without Council involvement, and would have more duties and responsibilities which could streamline the decision making process. Originally in Newmarket, the Town Council had been a policy-making board and the Town Administrator carried out policy and handled operations. Although the Durham Charter has virtually the same language defining responsibilities and authority of the Town Administrator, its Town Council operates differently from Newmarket's, which Commissioner Nazzaro said acts more like a Board of Selectmen. He felt the responsibilities of the Council had shifted, and the Charter should outline clearly the responsibilities and authority of both the Council and the Town Administrator. Commissioner Cyr said the town has hired people who can get the job done within a budget, and the Council should not be involved in deliberating on all decisions. Commissioner Zink said that from his work on 2 Town Administrator Search Committees, he had been told that many Town Managers would not apply for a Town Administrator position because it was considered a lower position. Commissioner Fillion felt that the Council could give additional responsibilities and authority to the Town Administrator if it wanted to, and Commissioner C. Hawkins said that the Council spends many hours on details which take away from its time to make policy and look ahead. He had prepared an overview of the responsibilities and authority of a Town Manager according to state statute compared to those of the Town Administrator in Newmarket's Town Charter.

Commissioner Nazzaro said that there was a trust deficit in Newmarket that demanded an inordinate number of checks and balances, and he felt that had led to the Council getting involved in more day-to-day operations rather than acting as a

Charter Commission
July 8, 2013

policy making and future planning body. Commissioner C. Hawkins said that the Council first has to trust itself to make decisions, and then remove anyone who is not performing a job as required. In terms of the Charter, he added that they first had to determine if they were satisfied with the duties listed for the Town Administrator/Town Manager and then look at the powers and responsibilities of the Council. Commissioner Zink said they could look at the statutory requirements for a Town manager and compare that to the responsibilities and duties of the current Town Administrator to see how close they were, and could find that the title is a moot point. Commissioner Fillion said that, usually, the more experience a Town Administrator has with the town, the more willing a Council is to cede more authority. The Charter should delineate responsibilities more clearly.

Commissioner Nazzaro said he found 5 themes in what Commissioner C. Hawkins had prepared: regionalization/cooperation which was covered by items 9, 10 & 11; agility and efficiency in decision-making covered by items 3,4,5,6 & 8; accountability covered by item 7; participation, item 2 and increasing costs, item 1. He felt the form of government should put them closer to facing the 5 challenges, and the Charter would have to contain accountability measures to be accepted by the voters. Commissioner C. Hawkins thought that perhaps the trust deficit existed in part because roles were not well defined in the charter. Although Commissioner Nazzaro felt this was perhaps based more on history, he agreed that clearly defining roles in the Charter would help. There was further discussion of the trust deficit and accountability and the need for the Commission to consider the public view when preparing the Charter, especially in defining roles of the Town Administrator and Town Council.

Commissioner Cyr said he saw accountability not as an Ethics Board, but as a system for proper management laid out by clearly defined responsibilities. He said the focus of discussions was about money, not services, projects or the future, and that unless services were changed, taxes would go up. Commissioner Nazzaro said that currently there is no recourse for those that step outside their areas of authority or responsibility. Chief Cyr felt that the Town Administrator should have control over the budget once the voters have passed it. In contrast, the Town Council should be looking to the next year and determining what the town would be willing to give up, change or regionalize to keep the tax rate stable. Commissioner Nazzaro felt the Council should have some responsibility in overseeing expenditures on high levels and at least have reports from the Town Administrator to know where the money was going. This is recognized in the present Charter which states that the Administrator must make monthly financial reports to the Council. Commissioner C. Hawkins said that accountability on the micro level should be put in place for a strong Council Chair to set rules and curtail anyone acting outside of authority or responsibility limits of the Charter. On the macro level, rules and responsibilities can be clarified in the Charter. Also, he felt that the voters should be asking forward-looking questions.

The Commission discussed the budget and the tax rate in terms of services that the town might be able to provide in the future, and the need for the Council to have discussions about the future of the town, rather than devoting so much time to short term issues. Chair Mitchell asked how this would translate into the text of a Charter. Commissioner Weinstein said that the goals the Council set for this year were not visionary, but were items to achieve within a certain timeframe during the year. Commissioner Zink said the Charter could require the Town Administrator/Manager to present a 5 year financial forecast to the voters annually, taking into account trends that would affect revenues and costs. He did not feel the Council had the information available to do this. Chair Mitchell thought that the Council should produce annually a 5 year, one-page vision plan for the town. Commissioner B. Hawkins said the current Charter stated that the Town Administrator could be required to do other things not inconsistent with the Charter. It was felt that additional duties should be spelled out more clearly, and the vision for the community should be made the responsibility of the Council. Having a financial forecast and a vision statement assigned to separate areas would further define roles.

The Commission discussed accountability and conflict of interest clauses, and it was felt that the Council has been very cautious in disclosing possible conflicts of interest. However, since someone had brought up the subject of a Councilor who could no longer serve as he was a volunteer fireman, it was felt that the existing clause in the Charter should be clarified, which would allow more citizens to participate in town government. Chair Mitchell mentioned another issue that townspeople had brought up. One was requiring education for town officials about the laws and procedures governing their board, which could be added to the Charter, and perhaps help with the trust issue. Commissioner Zink agreed that the town should provide training for all committee members, and it should be mandatory to prevent mistakes and to keep each committee on track. Commissioner Badger said he would not want making this a mandatory requirement to discourage

Charter Commission
July 8, 2013

anyone from running for office, but he felt that the education was important. He felt that having the classes in Newmarket would help. Commissioner Zink thought that boards could have training as part of their organizational meetings, but Commissioner Nazzaro felt that there would not be time to have substantive training. He supported mandatory and local training. There was a brief discussion of how board members would be held accountable for participating in the training. It was felt that training would help prevent lawsuits, make committee members more productive and help with agility issues.

Commissioner C. Hawkins mentioned another issue that Don Jutton had brought up, that the Charter Commission should be instituted more frequently than every 10 years, or establish a standing committee. Commissioner Nazzaro felt that the down side could be that if the Commission was instituted too frequently, that would open the door to constant changes in government; although he was not against have a Commission meet more frequently. It was generally decided that they could recommend to the voters that a Charter Commission be established every 5 years. Chair Mitchell said he had heard comments that the Town Councilors' jobs were too burdensome, and asked if having to serve on other boards and commissions added to the burden. Commissioner Nazzaro said he felt the burden came from their acting like Selectmen rather than Town Councilors. Commissioner Zink said that the amount of reading and preparation to understand issues before meetings was very time consuming, but Commissioner Nazzaro said that part of that was due to their acting as Selectmen. Councilor Zink said that increasing the frequency of Commissions would allow the opportunity to delve into more substantive issues. Also, he thought it would be helpful to the Commission to have some training in synopsis form of what it can do as well as trends in local government and ideas of what other towns are doing. Commissioner Nazzaro said it would be helpful to get ideas on structuring the Commission to select the type of government that would most closely achieve its goal of solving issues. This was discussed in terms of the allotted time frame and information the Commission already had.

The Commission had identified problems, but not discussed the form of government it thought best. It was thought that this could be discussed at the next meeting, or if more information was needed, there could be a decision to seek more help. Commissioner C. Hawkins said that they could address short term problems with their time frame, but needed to find a way to keep the dialogue going about the future of the community and the larger issues. The subject of increasing participation in government and encouraging larger voter turnout was brought up, and the question of how those subjects could be addressed in the Charter. Chair Mitchell asked Donna to look for examples of other charters that had tried to address the issue. The Commissioners have a list of the various available forms of government in their binders, but Chair Mitchell asked Donna to look for other innovations in government that might exist.

FOR THE NEXT MEETING(S):

Commissioner C. Hawkins will prepare a spreadsheet, and he asked Commissioner Nazzaro to reorganize his handout from this meeting into the 5 themes he had suggested. The Commission has started to identify some larger issues that can be discussed at the next meeting as changes to the Charter. The Chair will prepare a one-page document as an outreach for community input for the Public Hearings. Members of other boards including the School Board and Dr. Hayes will also be invited to attend meetings and the hearings and provide input along with the Business Association and the public. Commissioner Fillion wanted to know when they would see the paper that outlined the sections of the Charter that were out of state compliance, and Chair Mitchell will email the Town and Administrator and Town Clerk on behalf of the Commission asking for the list. Commissioner B. Hawkins said there also were some misprints in the Charter that did not agree with the amendment language. Commissioner C. Hawkins moved to adjourn and Commissioner Weinstein seconded. Motion carried unanimously, and the meeting adjourned at 9:10 p.m.

Respectfully submitted,

Ellen Adlington, Recording Secretary