

## MEETING OF THE LONGMEADOW CHARTER COMMISSION

July 23, 2003

7:00 P.M.

School Committee Meeting Room  
Longmeadow High School

### **In attendance:**

*Members of the Charter Commission:* Kathleen Grady, Peter Landon, Susan Altman, Roger Nadeau, Joe Occhiuti, Roger Wojcik. *Absent:* Arlene Miller, Bill Hoff, Rebecca Townsend.

*Also in Attendance:* Susan Wright, Town Administrator and Secretary Pro-tem, Robert Ritchie, Assistant Attorney General for the Commonwealth, Marilyn Contreas, Senior Policy Analyst, Department of Housing and Community Development.

*In the Audience:* Marilyn Slitzky, Irv Slitzky, Louis Raschi, Mary Raschi, John Papale, Dean Kavanagh, Gerry Nolet, Normand Gregoire, Elizabeth Gregoire, Muffie Albano, Eleanor Stoler, Diane Nadeau, Bob Cheritano, Jim Simon.

**Open Comment Period:** Louis Raschi, 669 Laurel Street asked a question regarding who sets the order of articles on the warrant for Town Meeting. He stated that sometimes there is one article that is of importance to those attending and he feels there should be opportunity to bring the article forward earlier in the evening. It was explained that the Board of Selectmen set the order of the articles and that there is a mechanism in place to request Town Meeting to take an article out of order.

Gerry Nolet, Frank Smith Road asked questions relating to the process to be followed by the Charter Commission. Specifically he wanted to know if the Charter Commission was aiming to bring a new charter before the voters in May of 2004 and whether the Commission would be examining alternative forms of government. He also asked if the Attorney General would review the Charter before it goes to the electorate for a vote. Mr. Wojcik answered yes for all 3 questions.

**Old Business:** The minutes of the July 9, 2003 meeting were accepted as presented.

**New Business:** Chair Roger Wojcik introduced the guest speakers for the evening. *Attorney Robert Ritchie* explained his role as the Assistant Attorney General. He explained that the Charter Commission must submit a preliminary report to the Attorney General's Office and that he has 28 days to review if it is consistent with the constitution and laws of the Commonwealth. He may make suggestions and point out areas that while not inconsistent with the laws of the Commonwealth might be something that could be challenged. Both his and Ms. Contreas' informal role will be to make themselves available as technical resources to the Commission should we have any questions during our process.

*Ms. Marilyn Contreas*, Senior Policy Analyst explained that she has a great familiarity with what is done in other towns and is a resource for the Charter Commission. She can provide the

Charter Commission with publications and technical assistance as well as advise the Commission on various charter provisions and procedural responsibilities.

*The Commission then asked the guest speakers the following questions:*

- 1) Kathy Grady asked whether a town can have a “First” Selectmen. Ms. Contreas noted that this doesn’t appear to be consistent with state law, but this is a question. Attorney Ritchie answered that all references in the Massachusetts General Laws (MGL) are to the Chief Executive Body which is a way to ensure that no one individual could be more powerful than another. However he qualified it by saying there is nothing in the MGL that specifically prohibits the town from doing this and in fact, it is done in other states. Traditionally, a board selects a chair to preside over meetings.
- 2) Kathy Grady asked regarding a representative town meeting ... is there a minimum of representatives which must be chosen?” Ms. Contreas answered that the smallest number representative town meeting is in Saugus (40,000 pop.) with 50 members and the largest is Fairhaven (16,000 pop.) with a 400 plus member town meeting. She noted that Dartmouth is 390 members.
- 3) Joe Occhiuti asked if the guests could direct us to where we could find the answers about which towns/cities in the state are run well? Which are not? Ms. Contreas answered that it depends on what people are looking to see; she may think one way and he another. She reframed the question to say “Is there a town that demonstrates what you want for Longmeadow?” She noted that Boston Magazine used to rate communities based on particular criteria like services and that rating might be worth looking at. She stated there are basically four structures: 1) Mayor/Council, 2) Council/Manager, 3) Selectmen-Representative Town Meeting, and 4) Selectmen-Open Town Meeting. A decision on those is a political decision.
- 4) Peter Landon asked for a distinction between the role and activities of a town manager and a town administrator. Attorney Ritchie stated the label is not in any way determinative. First define what functions you want for this position. Then choose the label (administrator, coordinator, manager). We should stress function over label. He suggested examining other towns such as Framingham or Amherst to determine their reporting structure. Management style seems to dictate the number of reports. The discussion ranged to how many departments a Manager/Administrator can supervise and the idea that some department heads reporting to a Manager/Administrator might have several smaller divisions reporting directly to a Department Head.
- 5) Susan Altman asked for a comparison of the Mayor/Council form of government to the Board of Selectmen/Town Meeting form of government specifically as it relates to the ability to manage/control/influence the work and budget of the school system. Ms. Contreas noted that a Mayor sits on the School Committee and sometimes is the Chair and tends to have a working knowledge of what is happening in the school system.

Ms. Contreas stated that MGL C.71 is highly prescriptive and sets out the responsibilities of the School Committee. She thought we might want to look at MGL C.71, section 37M allows for a

sharing of administrative functions between municipalities and school systems. Ms. Altman asked if it were easier for a Mayor, Ms. Contreas replied that she doesn't think it is easier, since the Mayor, is only one vote and the sphere of influence may not be that great. She also noted that under Education Reform, the Town Manager has to be consulted on collective bargaining agreements, which is a big step forward in considering the town side of some financial questions. The Mayor is a single individual with, high visibility, and may appear to have more influence than he or she actually has

Attorney Ritchie stressed that the structure of the government facilitates but does not assure that the community will be well run. Having a vote on the school committee will permit but not assure that it will work well together. By far the more significant feature is whether the town officials and the school officials communicate effectively. The right people, with the right attitude, is more important. Structure is helpful, the actual people and personalities make the difference.

6) Roger Nadeau asked if there were any issues or models of town organizations or structures the visitors would suggest the Charter Commission examine. Ms. Contreas suggested that the Charter Commission check out a couple from each of the options to know what variety is available. Our decision has to do with what is acceptable to the town. Find a community that looks and feels like Longmeadow. Attorney Ritchie warned to stay away from too large a town meeting if a representative town meeting is considered because you want to assure that there is adequate interest to participate. He suggested looking at the smallest number of people based on a realistic expectation of how many would regularly attend and participate.

7) Roger Wojcik asked if the Commissions overall plan for development of the charter was feasible. Ms. Contreas stated that if we want to proceed on a one-year schedule, we will want to have made our decision on a government plan before October of this year. She said you need time to build up momentum for the ideas being put forth. It is really hard, she noted, to try to do this in 4-5 months. In recent years, she said more have been using the 18-month schedule, but many still use the one-year schedule. Only a one-year schedule was available until 1978. She suggested that after Labor Day, the Commission should decide if they are ready to make decisions about the form of government, whether we have seen some charters that might serve as models. However, if the Commission were still exploring options in September it would be wise to plan on the 18-month track. The worst thing a Charter Commission can do, she advised, was to truncate the process and not allow enough time for each of the steps. A minimum of 6 months is needed for a public education process.

8) Kathy Grady asked the question about MGL C.39, section 10, which spells out the process by which a Special Town Meeting can be called. Specifically she asked whether the town, through by-law or charter can require a petition from 20% of the registered voters and eliminate the 200-voter option. The answer was no.

9) Joe Occhiuti asked if elected boards or commissions could be restricted to policy matters with the hiring, firing and management of town employees done by a town manager or administrator. Ms. Contreas stated that state law sets out what certain boards can and can't do and that would set the parameters for each elected body would have for powers. She stated you can't change the

statutory duties of a board but you can take away the hiring and firing authority. She noted that in Barnstable the Town Manager is allowed to hire all personnel in consultation with the members of an affected board for which the employee would be working.

10) Peter Landon asked about setting up a process within the Charter that would allow for regular review of the charter. Ms. Contreas stated it is common to have Charter Review Commissions at 10-year intervals, and some have 5-year intervals. She also informed the Commission that after a charter is adopted, a by-law committee is appointed to bring the town by-laws into conformity with the charter within a year of the charter adoption. We could specify in transition provisions that one or more members be on the by-law committee to provide continuity, and if the board of selectmen appoint the Charter Review Commission we could specify that one or more be a Charter Commission member elected in 2003. We could specify that the commission be comprised of one school committee member, one selectmen, etc, or leave the composition up to the selectmen or the Manager. We may want to include people with ongoing familiarity with town government function and some familiarity with how the charter is implemented. This by-law review committee does not have the authority of a Charter Commission, Attorney Ritchie said, and we cannot provide for that. Any formal amendment to the charter, either proposed by the Charter Commission or an amendment to an existing charter must be approved via Town Meeting and town ballot (MGL C.43B s.10).

11) Susan Altman asked for advice about a consultant for the Charter Commission, including the consultant's role, cost and other issues. Ms. Contreas stated that consultants help prepare legal, concise, defensible charter language from the Charter Commission's policy deliberations. Someone who has experience in other communities can bring some of that knowledge, Ms. Contreas noted. The basic point, she cautioned, was to get a defensible document. At a minimum, she added, we would need a review for consistency, with their fees may run for \$12,000 to \$20,000. Supplementing the money would come from Town Meeting. The following dialog occurred regarding Attorney Ritchie's recommendation:

[RR=Robert Ritchie; MC: Marilyn Contreas. The { symbol indicates where comments overlapped one another.]

RR: My recommendation is to make the same decision you would choose if you were in the Amazon and you wanted- you could choose between a guide that's read the maps-

MC: Right!-

RR: walked the trails

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MC: been there

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RR: walked the trail or simply buy a compass and look around. I honestly think the consultant that has done it before and has experience is well worth the money. The long-term benefits of getting somebody who's been there done that in this area is enormous.

12) Roger Nadeau asked the guests to characterize a smooth running municipal government. Attorney Ritchie a government that has the right structure and the right people, and is one that finds out and lives what the spirit of the law is. One that spends time to establish good communication is important. He suggested that a town that "lives the spirit" of good

communication and goes the extra mile to communicate will fare much better. He used an example of the City of Gloucester that has all town officials, boards and committees meet every six months for an all day retreat. Four hours are spent discussing how they work well together. He says that people get a sense from that retreat that they are working together. He suggested that the Open Meeting Law, Public records Law, and Conflict of Interest Law are good guides for minimum standards for behavior. If you go beyond the minimum, it generates less scrutiny to ensure that the minimum is followed. Follow the spirit of the law, not just the minimum was his advice.

13) Roger Wojcik asked what the guests thought of the criteria that the Charter Commission had established for their ideal government. Attorney Ritchie noted the difference between what should go into a charter and what should be done by by-law. He suggested that the Commission was on the right track. He suggested that the Charter should serve as the “Constitution” for the community providing the principles and basic architecture or skeleton and that the town’s by-laws provided the flesh. Town meeting decisions add the details. He suggested the Commission ask itself What is best left to the legislative body of the community after the charter is adopted? He also stated that all charters have transitional provisions that provide for the transition from the old to new government.

Ms. Contreas stated in her review of our criteria that she was concerned about the cost effective delivery of core services. The charter can set up coordination mechanisms, and consolidated departments. But cost effectiveness depends in part on decisions by personnel and state procurement laws.

There was then discussion about a “protest referendum,” and it was explained that the Charter Commission was interested in provisions in other charters that allow for town residents to change or overturn decisions. Ms. Contreas would caution us about these provisions, since many do not work as intended. Attorney Ritchie differentiated between a referendum and an initiative petition; a referendum focuses on something that was done at the legislative level, while an initiative petition is something that emanates from the people.

14) Kathy Grady asked a question on town meeting decisions having a final vote at the ballot box (referring to Town Meeting Time rules used by Hamilton and Manchester by the Sea). Numerous towns, Attorney Ritchie answered, have a provision that measures adopted at Town Meeting are subject to referendum procedures laid out in the charter. There is a five-day waiting period to finalize decisions, for them to come into full force and effect. If a certain number of petitioners file with the Town Clerk, that petitioning suspends the effectiveness of the by-law until the voters have voted at the ballot box on that measure. The citizens have to act quickly. The process will manifest itself in a separate ballot--local election--on the measure. It is not done often but the mechanism is there, Attorney Ritchie noted. It is the ultimate check on a town meeting run amok, he explained.

As to putting off questions to a ballot process, with actual decisions on warrant articles being made on a ballot and town meeting serving as a discussion forum only, Attorney Ritchie noted that he is not familiar with that but MGL C.39 section 15 lays out the authority of the Moderator, who controls such questions.

14) Joe Occhiuti asked if one committee could be elected or appointed to manage both the school system and other town services as well. Ms. Contreas said no. MGL C.43B, section 20 says that the offices of Selectmen and School Committee must be elected. MGL C.71 presumes everyone has a School Committee. MGL C.71 section 37M is the device to use. Attorney Ritchie said there numerous instances in which the business personnel overlap between town and school. There was much discussion about this and Attorney Ritchie did say it is not expressly prohibited in the laws but could be challenged. There is nothing prohibiting the same people from running for the dual offices either.

15) Peter Landon asked about functions of the Council-Manager system. Attorney Ritchie noted that the main arguments for this and for a city form with a council are for continuous existence of the legislative body. When issues come up that require continuous attention, a council has the continuing ability to meet and function. Attorney Ritchie used the analogy of “Brigadoon” for Town Meeting; it goes in and out of existence periodically. The disincentive for councils is that it seems to be less democratic at first blush. He compared it to a representative town meeting with larger numbers than councils. Precinct representation might not carry their constituency’s opinions to their deliberations, nor would they have as much weight. A citizen could possibly leverage opinions more effectively by talking to 5-6 councilors. Complicated communities lean in favor of council forms. Small communities function fairly well with town meeting. The question is what is the nature of the community and consequently whether it has lots of issues that need continuous attention. Barnstable, for example had 2 seaports, a major airport, a big hospital that serves the whole Cape, five villages and 10 water districts, all which required them to change from Town Meeting. He also suggested that the town look at the size of the legislative body as a factor in how quickly and efficiently the legislative body can function. Are there lots of issues that need continuous attention, and if so, consider a council. If issues can be confined to one/two or a few more times a year, town meeting may be a more viable route. Again, Attorney Ritchie advised the Charter Commission to consider function first, form second.

16) Roger Wojcik asked about promoting teamwork and how to build that concept into the Charter. Ms. Contreas noted that we need to bring representatives from communities in to discuss how things work. Attorney Ritchie mentioned Amesbury and Gloucester as communities who are striving to improve.

17) Joe Occhiuti asked about citizens’ right to seek a binding or advisory type of referendum. Attorney Ritchie said that citizens have the right to put questions on the warrant. If it is purely advisory, the question states that. If the question is superceded by state laws, then the question must be advisory.

18) Peter Landon asked about examples of town using a Service Center type of structure. He stated that feedback they have been given shows residents would like one place to get a question answered efficiently and have someone take ownership for a question or concern. Attorney Ritchie stated this could be in a charter. Ms. Contreas is not sure it should go into a charter, and might better be raised in interviews with a Town Manager and with department heads. Attorney Ritchie said that it could be embedded in a charter as a principle, leaving the implementation to someone or some people to create, consolidate and organize the delivery of municipal services.

This is a knowledge management issue; letting the right people know the right things at the right time is very important. The Service Center concept has a way to go in Massachusetts vis-à-vis personnel laws and collective bargaining agreements.

19) Susan Altman asked if it is impossible to form the Charter without a consultant. Attorney Ritchie said that it is legal to frame a charter without a consultant.

20) Kathy Grady asked about the number of Selectmen and the pros and cons of having five Selectmen. Ms. Contreas said that while most communities have 3 members, it is simply because over 100 communities are under 5000 population; once a community gets a little larger, they generally prefer 5 selectmen. She noted with the 3-member Board configuration there is often one odd person out. With the 5-member Board configuration there are usually a greater number of combinations on issues and obviously more dialogue within the community too.

21) Roger Wojcik asked whether Charter Commissions could raise funds for a consultant. Ms. Contreas noted that groups are often created as repositories for donations.

22) Peter Landon asked about efforts to change MGL requirements. It is very difficult to change the MGL, Ms. Contreas noted.

23) Susan Altman asked about having a professional poll of the community to find out what people want in a new government structure. Ms. Contreas noted that Charter Commissions do the work. Attorney Ritchie noted that the public sessions facilitate interaction. Polls are more one-dimensional; you do not know why people chose that box on the paper. The best thing is to go out in the public space as often as you can, be as visible as you can, he suggested. When you convene, share your stories; take notes, and when you convene compare notes. The advice given by the experts was that the Charter Commission has been elected and that is who is supposed to do the “poll” through public sessions and hearings, etc.

24) Joe Occhiuti described our process of asking representatives from other towns, and Attorney Ritchie noted that there’s a spirit of helping Charter Commissions, that we should invite others from other towns and cities in to discuss their government forms. The Commission was assured that mayors, town managers and others would be extremely willing to share their experience.

23) Roger Wojcik asked about suggestions about innovative towns based on both structure and land use. Attorney Ritchie discussed the new bill in the legislature that would overhaul zoning and planning; putting more teeth into comprehensive planning. He noted that we would find comprehensive planning very appealing. There are creative proposals for using space; Longmeadow may be interested in tracking innovative land use strategies, he said. Mr. Wojcik noted that the Longmeadow Long Range Planning Committee is working on this. Ms. Contreas noted that the Massachusetts Municipal Management Association has a group that promotes the Town Manager function, and we could talk with them.

24) Peter Landon asked about consolidating the Human Resource function for the town. Attorney Ritchie and Ms. Contreas both suggested that a professional human resource function is often built into a new structure. In many towns, the Assistant Town Manager serves as the

Personnel Manager and works to recruit and retain employees and also assists with benefit administration and collective bargaining. MGL C.71, section 37M gives us the option to share this function with the School Department. Collective bargaining was briefly discussed, but Ms. Contreas suggested that this would take a long time to discuss fully. MGL C.150E is prescriptive for collective bargaining. Attorney Ritchie could provide names of those who could field that question.

24) The floor was then opened to questions from the audience. Diane Nadeau asked about resources available from the state for help with the Charter. Attorney Ritchie stated that the home rule amendment which allows towns to write their own charters was intended to provide autonomy to municipalities, and that it is not the business of the state to get really involved in prescribing home rule issues. Also he noted that the state is in less of a position to tell a town what and how to do it, and the state's financial resources are dwindling dramatically. The decision was made at the state level not to provide communities with model documents. Ms. Contreas noted that she and Attorney Ritchie are the resources available to towns.

25) John Papale raised a question about the state provision for calling a special town meeting. Attorney Ritchie answered by outlining the process. The only way this can be changed is through a Special Act of the Legislature. He stated the Special Act exempting Longmeadow from this state law would need legislative approval, and he wouldn't predict the success of such an effort. The other way to make this change would be an amendment of the MGL; however it is hard to get an amendment of the General Laws. The burden of proof is great, he said, and it is a difficult process purposely to prevent frivolous laws from being made. He added the government wanted to enfranchise the people to bring issues that they thought were important could be brought to their fellow citizens for legislative attention. "Any effort to curtail that entitlement would be an uphill sled in the Legislature, because they don't like to take actions that diminish the rights of citizens."

26) Peter Landon asked about reasons for Charter Commission proposals' failures. Ms. Contreas stated that there are many reasons why a Charter might fail, but the main ones were:

- voters react negatively to a split Charter Commission – if a Charter does not unanimously or close to unanimously support their own effort, it increases the chances it will fail at the polls.
- that there were many controversial provisions
- that the Charter Commission didn't read the community accurately or check in with the voters about their feelings.

She stated that historically, 50% of Charters fail.

Seeing no more questions, Roger Wojcik thanked Attorney Ritchie and Ms. Contreas for coming to the meeting.

#### **Other Business:**

The Commission noted their upcoming meeting schedule:

Monday, July 28 at 4:00 P.M. meeting with Mr. Leclair, Assistant Assessor and at 5:00 P.M. meeting with Harry Reynolds, Parks & Recreation. On Wednesday, July 30 they will be meeting at 4:00 P.M. with Steve Nembrikow, School Business Director and at 5:00 P.M. with Superintendent of Public Works Doug Barron. All meetings are scheduled for the School Committee meeting room. The next regular meeting of the full Charter Commission is scheduled for August 6, 2003.

The motion was made, seconded and voted to adjourn at 8:50 P.M.

Respectfully submitted,

Susan Wright, Secretary Pro-Tem  
Town Administrator

Approved as Amended August 6, 2003