

Harvard Charter Commission  
Public Hearing Minutes  
September 13, 2017  
Town Hall Second Floor Main Conference Room

Members present: Paul Cohen (Chair), Sharon McCarthy, George McKenna, Stephanie Opalka, Ron Ostberg, Charles Redinger, Cindy Russo, Peter Warren. Members absent: Rick Maiore. Others present: Tim Bragan, Town Administrator; ~50 town residents.

Paul Cohen called the meeting to order at 7 p.m. After a brief introduction, Paul said that the final Charter is due to the Attorney General's office and the Board of Selectmen October 12. Town residents will vote on the Charter at Annual Town Meeting in May 2018. Paul invited the hearing attendees to ask questions and voice their opinions on each section.

### **Preamble and Charter as a Whole**

Jim Breslauer handed out a copy of his comments on the Charter, which is attached to the minutes as Addendum 1 and 1a.

Joe Hutchinson said that the Charter appears to be more operational than strategic. He also said that more people might volunteer on boards and committees if interactions were less contentious. He asked how long it would take to amend the Charter if it is approved. Paul explained the process, which could take from three months to a year.

Lucy Wallace said she expected the Charter to give a basic overview of how the town works, but she thought many areas were missing, like the Conservation Commission and the Council on Aging. Paul explained that the Charter is a shell that explains who is responsible for administration, finances, and strategy. The detail is specified in the bylaws. Charles Redinger said that the commission reviewed at least 20 other town charters and none was more comprehensive.

Jay Waldron said that if one of the purposes of the Charter is to get more volunteers, she does not think it is encouraging more people to volunteer. Sharon McCarty said the Commission recognizes that the town needs a volunteer coordinator. Cindy Russo said that in early discussions with boards, volunteers were unhappy with their interactions with the rest of town government. The Commissioners were trying to make volunteers feel more part of the team.

### **Quorum – Section 2**

Bruce Nickerson, speaking for himself and his wife, asked the Commission to reconsider the quorum requirement because it has the potential to impose hardship on the town. He said if people do not attend, that constitutes support for the warrant articles. He handed in his written statement, which is attached as Addendum 2.

Erin McBee said that quorum requirements are not working in Ayer.

Debbie Ricci said that she is in favor of a quorum, but that 150 is too high.

Tim Bragan said he does not think a quorum will accomplish what the Commission wants. In one town, the moderator had to call in the fire department to get a quorum. The town of Clinton too two weeks to get an annual meeting started.

Stu Sklar said the quorum calls stop the meeting, which cannot proceed until a count is taken and cannot proceed at all if short of the quorum requirement.

Paul Green said that the Board of Selectmen owns some of the problem because of where it places the articles on the warrant. He suggested encouraging the selectmen to think about placement of the articles.

### **Elected and Appointed Town Agencies – Section 3**

Lucy Wallace said that she is opposed to reducing the number of elected boards; that if cost is keeping people from running for election, then the town can address that; that she is opposed to removing caucus. If the time and date are not convenient, then consider changing them, she suggested.

Tom Philappou said that he is a member of the Board of Health and he supports keeping the caucus and even having a second caucus to get more volunteers. He also said he wants to see the Board of Health continue to be elected. The board needs to remain independent to deal with controversial decisions, he said.

Jay Waldron suggested that text be added to Section 3-1(e)3. – Appointed Agency Positions that volunteer positions be filled by the Select Board only after recommendations are received from the effected committees.

Erin McBee of the Planning Board said that she had originally thought appointing members to the board would be all right, but now she wants them to be elected.

Susan Mary Redinger said that the caucus is good and much easier than getting signatures. She also supports the election of officials and said that people want to be able to elect their representatives.

JC Ferguson said that he is the Tree Warden and he thinks the position should continue to be elected. He said he does not want a small group to make the decision. He also asked for evidence that there is a problem to be fixed.

Connie Larrabee said that she is adamantly against having the boards appointed. Since the selectmen will have control over the budget, she said, the committees would have to get their budgets past them. That way the selectmen can see that their goals are being met. She said she would not vote for the Charter if the boards are appointed rather than elected.

John Lee agreed that elected positions should remain elected. He pointed out that many appointed positions are open and that just because an elected position is uncontested does not mean that people are not interested.

Jessie Panek suggested that to achieve more harmony, the selectmen could propose people for election who would support their vision. She also said that if nobody runs or someone resigns,

the selectmen plus the remainder of the board could appoint. She recommended that residents be educated on how caucus works so they understand it is not Democrats and Republicans like in national elections.

Jennifer Finch said she does not support appointing officials. She would support electing the Finance Committee, which is now appointed.

### **Recall Provision for Elected Officers – Section 3-1(f)**

Stu Sklar said that he does not support the recall. He said that the selectmen have no power as individuals, it is the board that makes decisions. He said that recall is just a way to give people a hard time.

Ron Ricci said he does not like the recall, but it is the voters' way to have some control. It is an important tool for voters, so he supports it.

Nick Browse said that he support the recall.

Lucy Wallace said that she is opposed to the recall provision. She said it is not civil and will make the selectmen nervous. She said it the object is to have a consolidated vision, then she supports an all-boards meeting to go over the goals.

Ken Swanton said he does not like the idea because all the people are volunteers. He could see it for paid positions, he said.

Debbie Ricci said that there needs to be some way to remove someone from a committee.

### **Town Moderator – Section 3-4**

Currently the Moderator appoints the Finance Committee (FinCom).

Lucy Wallace suggested that FinCom members be elected rather than appointed. She also suggested that the Capital Planning and Investment Committee (CPIC) be a sub-committee of FinCom.

Wendy Sisson said she would like to see CPIC be part of FinCom. Now other committees have to go to both to get approval for spending.

### **Town Administrator – Section 4**

Connie Larrabee said that it appears that the Town Administrator would be supervising all town employees and she questioned whether that meant jobs such as police officers. The Commission agreed to relook at that.

Wendy Sisson said that this section sounds like a job description. She thought it would be more flexible to take out some of the detail and cautioned the Commission about putting it all in the Charter. She also said that for regular citizens the selectmen seem more accessible. She said that since the Town Administrator is an employee, that person could be in the job for life, adding that it is a lot of responsibility and that it is the day-to-day decisions that make the town.

Joe Hutchinson questioned the placement of the Community and Economic Development under the Town Administrator's Duties and Responsibilities. He thought it should be in the Administrative Organization in Section 5. Paul said that the Commission did not want to mandate a financial decision. Joe said that he thought the Charter was a governing model, but it does not say anything about Devens or regional planning.

### **Administrative Organization – Section 5**

Ken Swanton suggested that the commissioners look at what the new Director of Public Works is doing before putting into place Section 5-5 Building Inspector/Facilities Manager.

Libby Levison recommended that the commissioners talk to the staff at Town Hall to better understand the heavy workloads and lack of resources, especially in information technology.

### **Financial and Fiscal Procedures – Section 6**

Ken Swanton said, "I think there's real wisdom in this one." He said that no one has been pulling together the long-term financial strategies.

Joe Hutchison said he seconds what Ken said about the strategic budget, the five-year budget, and the annual budget.

### **General Provisions – Article 7**

Lucy said that there needs to be a definition of excessive absences in 7-7.

### **Transitional Provisions – Article 8**

Marge Darby said there was no provision in the Charter for bringing the bylaws, which have been created over time and proposed, amended, and voted on at Town Meeting, to the town for approval. She and her husband prepared a written statement, which was given to the commissioners and is attached as Addendum 3, 4, and 4a.

The next meetings are scheduled for September 19 at 6 p.m. with the Board of Selectmen in the large Town Hall conference room and 7 p.m. in the small conference room.

Paul adjourned the meeting at 9:35 p.m.

Laura Andrews, recorder

Attachments:

- Addendum 1 - Bresnauer page 1
- Addendum 1a - Bresnauer page 2
- Addendum 2 - Nickerson
- Addendum 3 - Darby Bylaws
- Addendum 4 - Darby Charter page 1
- Addendum 4a - Darby Charter page 2

Addendum 1 Jim Breslauer 9/13/17

## Comments on Preliminary Charter Report 8/14/2017

**General question:** How does this document help us integrate and govern the historic Devens area should the Town vote to re-assume jurisdiction?

**Statement of Intent** says current bylaws, procedures are ... "Neither comprehensive, nor reliably consistent."

**Section 1-7 Precedence of Charter Provisions** and **8-5 Time of taking effect** holds that until the next Annual town meeting after adoption the current bylaws remain in effect unless they conflict with the Charter. Who will know what the controlling bylaw is. Will generate even more confusion. Current bylaws should remain in effect until new bylaws adopted – could even have a special town meeting. Should be no more than 6 months after Charter adopted, 3 months better. No reason the Moderator couldn't conditionally appoint the special committee prior to the vote on adoption – they could then start work immediately after adoption.

**Preamble** 2<sup>nd</sup> paragraph about equal opportunity is excellent.

**Summary of Remedies provided by this Charter** 2<sup>nd</sup> bullet states that the legislative branch is Town meeting and Town elections. **Section 1-4 Division of Powers** and **2-1 Town meeting** state that the legislative powers are only Town Meeting. What happened to elections?

**Section 1-2 Short title** This instrument shall be known and cited as the Harvard Charter or the Charter. Long name if mean either or need parenthesis around the charter.

**Section 2-2 and 3-1 (f) 2 and 3 and 5-4 (b)** use the male pronoun, even though 7-4 later specifies that it could refer to the feminine gender its use is unnecessary.

**Section 2-6 Initiation of Warrant Sections** states that the Select Board shall receive petitions, it doesn't say what happens after that. Can they ignore them after receiving them or must they put them on the warrant?

**Section 3-1 (a)** Omits Planning Board as an elective office – must be changed.

**Section 3-1 (c)** runs counter to the **Overview** statement about a desire to increase volunteer participation. This Section makes it more difficult to run for office by eliminating the Caucus.

**Section 3-1 (f) recall** 2 questions, how does this not lead to more divisiveness within the Town and why is there no community input available to recall/fire an employee? Recall of elected officials is a bad idea and there should be the ability of Town residents to provide input in the annual evaluations of town employees.

**3-1 (f)6** should be revised to include on the recall ballot the reason stated in the affidavit. A simple yes/no on recall doesn't help those who haven't been paying attention but still vote.

**Section 3-2 Select Board** (b)1 iv. Does not include the Open Space plan in items to be considered in a strategic plan. Real confusion (for me) in sections iv and vi. Section vi. Says The Board is to submit a budget at town meeting which includes articulated policy goals. Town meeting is to be held between February and June. Section iv. Says that within 60 days after town meeting the select board is to do a planning process resulting in a statement of goals. So the budget submitted by the Select board at town meeting incorporates goals set almost 1 year before. Makes no sense. The Planning process should commence well before town meeting so that goals can be set a couple of months before town meeting. Also why is it not specified that the Planning Board and any Town Planner are to be part.

**Section 3-2 (b) 2 iii** Takes the votes of 4 select board members to appoint members to certain committees. Questions – 1) what happens if there is a vacancy on the 5 member select board and the remaining 4 can't agree? No appointments can be made.  
2) Other committees only require 3 votes – why the different (conservation commission)  
3) Employees, except for the Town Administrator, can be hired with a vote of 3 members (section (e)) why harder to appoint volunteers than the people the taxpayers pay?

**Section 3-8** Chairperson term limits. Why those committees specified and others not included? The whole idea bad.

**Section 4-1 Town Administrator** Should have added that the Administrator is given clear goals each year with the public able to review progress and petition for removal if not met.

**Section 5-3 (a)** Specifies that the finance department is managed by the Finance Director/Town Accountant. Is that 1 person? Must that person be a CPA? If so should be specified.

**Section 5-4 (b)(3)** states that the DPW director can supervise agencies including the Conservation Commission – how is that person qualified to do so. I don't know about the current DPW director but our previous one certainly wasn't. In addition to supervision the director assists the various commissions (in both (3) and (4)), is somewhat redundant.

**Section 5-5 Building Inspector/Facilities Manager** Built in conflict. Must be 2 individuals.

**Section 6-5 CPIC** Reiterate my comment at a previous public meeting that CPIC should be a subcommittee of the finance committee so that there is one finance report to the town that includes both long term and short term financial planning, once committee people can contact if questions/concerns. Also this requirement that all town agencies must submit anticipated capital projects to CPIC by October 15 gives no leeway for unanticipated expenses or land purchases. Some allowance must be included for such items.

**Section 7-7 Loss of Office, Excessive Absence** I understand the rationale but some mention of a possible reasonable accommodation for individuals with disabilities must be included.

Addendum 2  
Nickerson  
9/13/17

TO: Town of Harvard Charter Commission  
FROM: Fran and Bruce Nickerson, 212 Stow Road  
DATE: September 13, 2017  
RE: Town Meeting Quorum Requirement

The purpose of this memorandum is to urge the Charter Commission to reconsider the proposed provision requiring a continuing quorum of 150 voters at all times during any Town Meeting. We suggest that, for the reasons discussed below, this requirement has the potential to impose significant harm upon this community.

We start with the observation that attendance at Town Meeting depends, to a significant extent, on whether the Warrant includes articles about which there is a significant divergence of opinion. When people disagree, both proponents and opponents will attend and a quorum requirement becomes unnecessary. On the other hand, when few (if any) citizens are concerned with the proposals on the Warrant, their lack of interest in disrupting other plans in order to attend a Town Meeting actually constitutes a vote of approval.

Even when there are controversial issues up for consideration, initial attendance is high; as each such issue is decided, attendance dwindles. By the end of a two-day meeting, there may not even be enough voters remaining to dissolve the Meeting! More importantly, there may not be a quorum remaining when the last few (almost always uncontroversial) articles are up for consideration. At this time, any quorum call would bring the meeting to a halt (completely? at least for the night!).

At times, a Special Town Meeting is necessary to deal with one or more "technical" problems. We can largely name the core of conscientious volunteers who will show up. In the absence of any controversy, however, the absence of less involved citizens is, we suggest, not a problem, but a good thing. By not being motivated to disrupt their other plans, other members of community are affirming their approval. However, the absence of a quorum of 150 to convene – or to maintain – such a meeting could have serious practical consequences for the Town itself.

Perhaps the most pernicious consequence of a continuing quorum requirement is the power it would give to a minority determined to oppose the will of the Town. If, for example, an article were to require 2/3 approval and a quorum of 180 were present, then 61 negative votes would be required to defeat the article. BUT – if only 31 opponents of the article were to leave the hall, while another were to stay and make a quorum call, then the article could not pass. Moreover, repeated quorum calls (which are not debatable but require a count) can extend a meeting and encourage less passionate proponents to go home. Even the potential of such abuses of a quorum requirement could bring serious harm to the polity of our town.

We have serious concerns about other provisions of the draft charter – especially the elimination of elected committees and the resulting concentration of power in three members of the Select Board. We have heard these concerns well expressed by other members of the community, and we anticipate that you are, or will become, well aware of these concerns. But we have heard no one address the quorum requirement – an idea which, on its face, sounds like a good (or at least benign) idea. We strongly urge you to think carefully about its potential for harm, and eliminate the proposed quorum requirement.

Addendum 3  
Darby Bylaws

Comment for the Charter Commission  
September 13, 2017 Hearing

Codifying the Bylaws is a good idea. Every bylaw was once placed before the town for its approval. Once the bylaws are codified, I believe that document should be placed before the Town Meeting for acceptance, amendment or rejection. There is no provision for that in the Draft Charter, other than to bring the bylaws into "conformity with this Charter."

Marge Darby  
8 Ayer Road

September 13, 2017

To the Charter Commissioners:

You have undertaken an enormous task – writing a charter for the Town of Harvard after more than 200 years of government centered at the Town Meeting. After so many months of hard work, it is no wonder the Commission feels it can recommend to the townspeople that this Draft Charter be accepted. (Implicit in the Commission's recommendation for acceptance is the understanding that the draft may receive some recommendations for changes from the Attorney General of Massachusetts.)

As citizens of long standing, and two of the town's elderly residents, we write with the conviction that you will understand our heartfelt concerns about a document that proposes some sweeping changes to the traditional way the business of the town has been conducted up until now.

Whatever your rationale for the proposed Charter, there are many reasons we cannot support your recommendation.

The proposed Charter diminishes the Town Meeting by proposing changes without setting those changes before the town for its approval. Despite the ballot vote to accept or reject the proposed Charter, within the Charter are provisions that have been left subject to change after the ballot vote.

- The bylaws have never been codified and that task would be welcome. Every recorded bylaw has been accepted by vote at a Town Meeting. The Charter implies that a transition team appointed by the moderator will undertake the task of codification. This transition team will review the existing bylaws and recommend bringing them into conformity with the Charter. No mention is made of having any revisions or changes approved by the Town Meeting. Nor is it clear that there are any bylaws in the Charter. As the town originally voted the bylaws, they should have the right to vote to accept or reject the changes.
- The Select Board has been charged with the creation of a town vision, policy goals, strategic planning among other responsibilities. There should be recognition that everything the Select Board does is on behalf of the Town and the town has the right to accept or amend that vision.

What is a community that is not geographically based as the Charter says?

We do not like the removal of the Town Caucus as a method for people to announce or be nominated for positions.

The idea of the Select Board appointing so many town positions will increase the perception that appointments are for friends and like-minded people. Having so few positions appointed rather than elected by the townspeople separates the town from its connection to the process of local rule and local responsibility.

A recall process that is as unwieldy as the one recommended will only serve to add to the contentiousness within the government. There should be a provision for mediation or reconciliation of differences that would stop short of a recall.

There are towns within the Commonwealth that have successfully adapted a management style that creates departments by dividing agencies or committees into logical groupings. An example would be a Department of Development with all the planning and development entities under the one umbrella. Department heads would be professionals subject to contractual requirements.

Harvard manages to make the requirement (over 6,000 residents) to allow for adapting a representative Town Meeting form of government. There seems to have been little discussion (based upon the minutes of meetings) about this form of government that has enjoyed success in other towns.

The idea that the Charter will increase volunteerism has no basis in real fact when it has long been known that volunteers feel they face a contentious atmosphere without the support of professional assistance and legal advice.

When volunteers must pay the cost of running for office, the likelihood is that only those who can afford that cost will undertake to do so - there are mechanisms for alleviating that and it has not been taken into account other than by the appointment process.

The draft Charter is rife with confusing language and too many open-ended caveats such as "where needed," or "if necessary." Gender based language can easily be removed by the simple use of non-gender based language: people, persons, the moderator and so on. There is no need for convoluted explanations of why this is appropriate.

Once again, we thank you for your hard work. It took 75 years for the residents of the Town to incorporate as a community. We may not need 75 years, but we do need to take the time to get this right.

Marge and Steve Darby  
8 Ayer Road  
Harvard, MA