

# Charter Review Commission

Meeting Minutes

March 17, 2011

7 p.m.

## **Attendees**

Members in Attendance:  
Charles Woodard (Chair)  
Pauline Dillard  
Isaac Diggs  
Brigidanne Flynn  
Tom Murphy  
Jack Penney  
Mary Ann Prokosch  
Barbara Simon  
Barbara J. Smith

Members Absent:  
Decora Sandiford  
Hhans Sandiford  
Susan Smith

## **Consultants:**

Jonathan Drapkin, Director, Pattern for Progress  
Prof. Gerald Benjamin, SUNY New Paltz  
Lester Spellman, Esq.

## **Staff:**

Acting City Manager Richard F. Herbek  
Corporation Counsel Bernis Nelson  
Administrative Assistant Ann Kuzmik

## **Other Guests:**

Alan Gaul, Mid Hudson Times  
Jerry Maldonado

## **Summary:**

Chair Charles Woodard opened the meeting and led the group in the Pledge of Allegiance. The minutes of the 3/3/2011 meeting were approved as written after discussion of Jack Penney's question of whether Isaac Diggs or Mary Ann Prokosch

made a motion to take a straw vote of members.

On the agenda, the commission began discussion of the different forms of Council/Manager government. Tom Murphy noted that he had been around for a lot of City Managers, and that the turnover is often due to a personality conflict or a new Council coming in. One of the serious problems in the City is that there is no continuity in City management. He said he doesn't know how to get around it. A strong mayor could be the answer, but he doesn't think it is right for Newburgh. He asked how the City Manager could be protected from the vagaries of unpopular decisions.

Barbara Smith asked the Commission to review the City of Peekskill Charter to see how they deal with hiring and firing a City Manager. She noted they have the same kind of government as Newburgh, with two more Council people.

Jack Penney said with a five-member Council three votes have control. He said the Council should apply the supermajority rule more often, especially in contracts with City Managers since there are elections every two years.

Pauline Dillard noted that in Newburgh, no matter who is in office, there are a lot of issues that have to do with personalities and opinions that get passed from one administration to another- that it is a historical thing. In this City, people keep taking sides, and this is a hard thing to fix. It's complicated. A lot of this goes back to Urban Renewal, when people destroyed Newburgh. Peekskill and Poughkeepsie went through Urban Renewal but they didn't destroy their downtown.

Regarding Mr. Penney's suggestion about a supermajority, Tom Murphy said that since day one he has felt the City Council should be expanded- that three people being able to run the City is very dangerous. There needs to be protection from emotional decisions, and there must be some way to have professional management with continuity- maybe the supermajority vote on certain issues is a way, or expanding the City Council, perhaps

that would be a step in the right direction. He asked if Prof. Benjamin had any ideas on how other cities deal with this.

Professor Benjamin commented that professional managers are making a career nationally, so they have incentives to move on to bigger and better things. However this is not the case in Newburgh. It is difficult to attract City Managers without giving them some sense of security. He recommended giving the City Manager a longer contract, with the limitation that a contract should not extend beyond the term of the Council who hired him/her. With staggered terms, a contract could potentially last four years. The remedy is potentially in the Council, not the Manager, he said. He said if the group gave him some guidance as to what they wanted him to look at, for example tenures of managers in New York State, he would do so.

Isaac Diggs said there are really no checks and balances in place as far with the City Council/City Manager. One of the checks and balances might be that if the City Manager is fired before a contract expires the City has to pay them thousands of dollars. He asked if it is possible for the City Council to do a search and to come up with a slate of potential hires to be voted on by the public, or is there some way to get some kind of popular vote behind the decision? Professor Benjamin said he is not aware of any referendum to ratify a City Manager's contract, although he knows of search committees broadly represented by the community to find a person, but not to ratify a choice.

Barbara Smith asked again for the group to read Peekskill's charter, because they can't legislate how people feel or act, but can control it by entering into a charter how the process should work.

Mr. Woodard said that from all things he has read, in a Council Manager government the Mayor is not powerful. The City Manager is the powerful person, and every person who works for the City works for the City Manager. If you compare the organizational chart with the current City charter, you will find that all these people report to the City Manager.

Mary Ann Prokosch said that if a City Manager does something very unpopular with the public, and he is let go, then he would be a rogue City Manager, because the City Manager should not be doing anything that the consensus of the Council does not direct him to do. At that point it would be up to the residents to put the Council out. The problem in the City is that it is not working the way it is supposed to. The Council is not creating the road map for the Manager to follow. They want something to be better, but they want the Manager to fix it, and if he does, and they decide they want something else fixed- the government is not working the way it is supposed to. The Council needs to decide where they want to be in one year, two years, or three years, and the Manager gets them to that point.

Jack Penney commented that he knew every City Manager since Abrams, going back more than 50 years, and that every City Manager is pretty much the same. They know if they got the power of three votes of the Council, they pretty much have a free hand. Unfortunately over the years they always leave out two members of the Council. The next election, those two members get someone else with them and they don't want to work with the manager because he/she did not work with them. When you have to have 3 members of the Council to get information from the City Manager's office or the Corporation Counsel's office- it should not be that way. If a Council member wants something on the agenda, they should get it on the agenda. They should not have to get three people to ask for it. There have always been two obsolete Council members year after year.

Barbara Smith reiterated the importance of imposing a supermajority in the Charter- to have a practice to deal with the Executive branch- whether it was by tweaking existing language or by using what some other City does. Then they can work on the Legislative branch.

Tom Murphy said looking at it from the Legislative side, the system is such that they get re-elected, and there is no real accountability. What has happened in the City with no

continuity, is that the bureaucrats start running the City by default, not the City Manager, not the Council. Departments start running their own show, and are not accountable. For example, years ago the "Times Herald Record" did an article on the increase in overtime in the Police and Fire Departments. When they asked the Chief why a particular individual had so much overtime, they were told it was because he was retiring. The City Manager should have fired the Chief, but the problem is the City Manager is just shuffling papers because he is here for two years and then he is gone. It can't continue like this. He thought the idea of supermajority and stricter language in the Charter might be the way, but perhaps an employment commission that the Council would have to consult would help.

Professor Benjamin said for good or for ill, it is a representative democracy. There are people who get elected, and they are accountable to the public. You can't structure quality people in office, you have to elect them. The issue of management not managing is pandemic in New York, not just Newburgh. Managers allow massive overtime at retirement and we pay the bill forever. In the short term, someone might have to take some hits so in the longer term the right outcome occurs. You want to shelter that person from being fired in the short term so in the longer term you get what you want. You need someone who is appointed but not elected who can take the hits, with confidence that the board is with him. The question is how you get that board- whether it is by a supermajority.

Mr. Steinman said it certainly is a possibility, but a multiplicity of problems have been expressed that would require working through, -if they believe the City Manager is the way to go, they need to look at a way to protect them from the vagaries of three members of the Council.

Prof. Benjamin pointed out that the Peekskill Charter requires a "cooling off" period- which could be helpful. He also said that some municipalities are in financial trouble because of the supermajority provision, so it has to be done thoughtfully.

Mr. Herbek said that some municipalities have a public hearing period built in before firing a City Manager. Charles noted there has been a lot of discussion about a majority of three, and asked if it was possible there were not enough council people-whether a 5-4 judgment is better than a 3-2 judgment.

In regard to Jack Penney's earlier remarks, Prof. Benjamin commented that in the Manager cities that work a City Manager never dismisses a member of a Council- that it is just smart to let everyone have access and to have a say. He said it seemed like rather obtuse behavior, and that it was a remarkable point Jack made.

Isaac said that the Peekskill Charter stipulates the qualifications of the City Manager, and that the Commission should go farther, and outline a defined process to hire a City Manager, whether it is by a search committee or some other way.

Jonathan Drapkin said as a former County manager, his contract lasted 4 years and the current legislature decided by local law to extend it one year to allow incoming legislators to review his performance. He also said that because legislators were part time, he had to speak with all nine of them. Many votes would be 9-0, then closer to election, 6-3, 5-4.

Barbara Smith asked if he was saying there should be a probationary period- if so, then six months seems adequate. Jonathan said it seemed that way, but he would not call it that, and that a performance report was built into the Charter that would be made public.

Lester Steinman pointed out that there is a principle in Municipal Law that prohibits legislators from binding future boards.

Jack Penney asked Corporation Counsel if it is true the Charter does not allow term limits. Corporation Counsel Bernis Nelson agreed, and Prof. Benjamin said they could be put in, but it has its ups and downs.

Tom Murphy asked Mr. Drapkin about the process for hiring in Sullivan County where there is a Citizen Legislative Board that is non-binding and non-mandated, saying that perhaps something similar, a public “vetting” could be used in Newburgh in firing a City Manager as well as hiring them. Prof. Benjamin noted that this is what the public hearing is for- that if all of a sudden 200 people show up, it could make a difference. Jack Penney asked if a manager could request such a public hearing, or would it have to be mandated. Prof. Benjamin said he thought it could be put in the Charter, or it could be conditional.

Lester Steinman pointed out they had not yet discussed firing for cause. This would be another protection for the City Manager- that once they had been hired they could only be terminated for cause. This could be put in the Charter. Bernis Nelson pointed out that the process could be a hybrid as well, that in some places the City Manager can decide when coming into office whether they want a two year contract, or to work at will, with their firing requiring a public hearing process.

She said that according to the Charter, contracts in the City of Newburgh for a City Manager are not legal unless there is money in the coffers- since the Charter states the City must have a City manager, there must be money both to pay the outgoing one, as per their contract, and the incoming one. The Charter would have to be changed if the Commission decided to change the termination provisions. Prof. Benjamin asked if you could just have a contingency account. Mr. Steinman added that “for cause” has drawbacks because ultimately you are putting it in the hands of a judge.

Mr. Woodard asked if there were a performance description and the City Manager were aware of it, and there was a negative performance, would the City be bound by the contract? Mr. Steinman said it depended on how you draw the contract, that it could be a condition of a contract to maintain satisfactory performance.

Isaac Diggs said that he was reflecting on what Mr. Herbek said previously that if he were 20 or 30 years younger, he would have reservations about taking the City Manager

job in Newburgh. He said having a probationary period could restrict the candidate talent pool. If this is a nationally advertised job, a young, energetic City Manager may have reservations about uprooting his family knowing that in six months he could be fired. He said that does not mean that they want to be stuck with someone doing a poor job for four years, but these things have to be weighed. The Commission needs to imagine what an ideal City Manager would be, and not put obstacles in their way.

Barbara Smith suggested that perhaps the contract with a probationary period could exempt people from uprooting themselves until that period is over. Isaac responded that again it could be six months or a year before someone would make a commitment to being here. You want someone who is going to be committed to the community, not just jetting in and out. Mary Ann Prokosch said she agreed with Isaac, and that a candidate may have a young family and would not want to move away from them or uproot the whole family and find out they could be sent packing, in six months.

Ms. Nelson commented that her take after 30 years of working with City Managers was that you want someone who is going to hit the ground running. She said that she does not think a City Manager will do that if he or she knows she could be fired in six months or a year. They need to do something to give that City Manager confidence.

Mary Ann Prokosch said there should be a professional interviewer for City manager candidates, and maybe that requirement could be put in the Charter. She said she suggested it to Council in the past, and they were very resistant. Jack Penney noted that in the last search, an agency was hired who interviewed the candidates before the Council did.

Prof. Benjamin asked Mr. Steinman if he was aware of any structure in a charter or processes to provide for an inclusion of citizens or other means to choose a City Manager.

Mr. Herbek spoke of interview processes he was aware of that included bringing in candidates to meet community leaders, as well as a recruitment he had done in a municipality that did not want to use a public process.

Mr. Woodard pointed out there are different forms of Council Manager governments and that the Commission had not yet chosen one. Mary Ann Prokosch asked how to include the other members' concerns about this form of government.

Prof. Benjamin said that one of the problems identified by the Commission was establishing continuity in management. Jack Penney said that the power of the manager is too extensive, and they may have to tweak them.

Mary Ann Prokosch said from her work on the Governance Committee they found there was not enough Council accountability. This might be fixed by going to a ward system, or installing a two year term of office rather than four. Another solution is to increase the number of Council people, and perhaps have the Council have approval over City Manager appointments of Department Heads. The City has never decided what it wants to be when it grows up, she said, and until we do that, we will not know how to get there. The Council should also create a yearly plan, and set a direction for where the City is going. She asked what could be put in the Charter to achieve this.

Prof. Benjamin asked if there was a mandate that cities had to have a plan. Mr. Herbek said that where he has worked there usually is a goal setting plan- in Mamaroneck, it was a very extensive process and the Mayor took charge of it. The game plan for the year was developed, and it was presented to the Manager to enact. The way it has to be done, he said, is that the City Council must set the course, and the Manager steer the ship. Further discussion followed about the responsibilities of the City Manager and the Council.

Barbara Smith asked if someone could make a motion to close out the City Manager portion of the discussion, establish a subcommittee to look into it, bring it back as a finished project, then move on to the functions of the Council. Jonathan Drapkin said that

in the manner they took the straw poll they could just ask if there were any further concerns. Tom Murphy wanted to go over “for cause,” again and whether it is better to keep the City Manager’s position “at will.”

Isaac Diggs asked if before the discussion closed out, the Commission could look in the Charter to find relevant passages about the City Manager to see what concerns they might bring up. He said he doesn’t think there is any need to go to a smaller subcommittee for that.

Charles Woodard asked if the Commission had decided they were comfortable using the Council Manager form of government. The Commission reiterated they were. He continued by saying that if you look at the Charter, that the Department Heads all report to the City Manager. They should have an organizational chart of their departments to determine their responsibility, and where the problems are so they can be fixed.

Isaac Diggs suggested the Commission review the City Manager section of the Charter to see if there were specific sections of the charter that deal with the City Manager and his/her relationship with the Council, and the hiring/firing of a City Manager. Brigidanne Flynn suggested that action items for the next meeting include reviewing the Peekskill Charter and the Newburgh Charter, for action items for the next agenda.

Mary Ann Prokosch suggested the Commission go over the City Manager section of the Charter, and communicate with each other about any issues before the meeting. Barbara Smith reiterated that is why she suggested having a subcommittee. Bernis Nelson reminded the group that even with email, if there are six people weighing in on-line in a discussion of public business, then it is considered a quorum and subject to the Open Meetings Law.

Isaac Diggs made a motion that the second agenda item at the next meeting would be a continuation of the City Manager discussion, and that they come to some kind of closure

about the various issues concerning his/her relationship to Council, particularly about hiring and firing. The motion was passed.

In other business, the Commission also voted to approve recommendations for the website. Brigidanne Flynn also moved that anyone who has an agenda item get it to the Chair by Monday of the meeting week.

Isaac Diggs made a motion that as the Commission moves forward with discussion about the power dynamic of the City Manager, they interview Council members and City Manager, and perhaps officials from other municipalities. Brigidanne said they should wait till they get to that point in the conversation, at which time Barbara's subcommittee idea might come in handy. There was no second to the motion.

Mary Ann Prokosch reminded the group she would be gone until May 7.

Action items for the next meeting include:

1. Reviewing Peekskill's Charter
2. Continuing discussion of the City Manager position, particularly its relationship to the Council and discussion of hiring and firing.
3. Structure of the City Council

The meeting adjourned at 9:02 p.m. The next meeting will be on March 31 at 7 p.m. in City Council Chambers, 83 Broadway. April meetings will be on the 14<sup>th</sup> and the 28<sup>th</sup>. The public is invited to attend.

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