

**Town of Uxbridge
Charter Review Committee
January 4, 2021**

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The thirteenth meeting of the Uxbridge Charter Review Committee, held on the Zoom platform, was called to order by Chair, Patrick Stephan at 6:32 PM, Monday, January 4, 2021.

Present were Chair, Patrick Stephan, Vice-Chair, Melissa Desmarais, Clerk, Ray Talke, and committee members, Barry Desruisseaux, Rob Knapik, Joann Lindenmayer, and Michael Potaski. Absent were committee members Jeffrey Lourie and Ron Parsons. Former Member of the Board of Selectmen, Susan Franz and Director of Public Works, Benn Sherman were also in attendance.

No members of the public were present for Citizens' Forum.

Due to a change in the schedule of meetings for the Board of Selectmen, the next meeting of the Charter Review Committee will be held on Monday, January 18, 2021 at 6:30 PM.

The Uxbridge Charter Review Committee interviewed Susan Franz, a former member of the Finance Committee and Board of Selectmen. Ms. Franz is a retired college professor who taught technology and design courses. Prior to that, she worked for a large technology company in Boston.

Ms. Franz expressed a desire for civility and decorum to be more prominently displayed in the Uxbridge Home Rule Charter. She believes committees are much more productive when civility is the norm.

Other issues addressed by Ms. Franz include:

For several years, Town Meeting has been held on two separate nights. Ms. Franz suggested that a structural change be made for a two-night Town Meeting, with the duration of each night limited to three or four hours. The town should consider weekend Town Meetings, since some individuals have longer commutes, family commitments, or other factors which preclude timely attendance at weeknight Town Meetings. She stated the Charter should include provisions for electronic notifications of special Town Meetings.

Ms. Franz has the same concern that professional responsibilities may prevent some individuals from attending board or committee meetings that begin at 6:30 PM. Individuals who work until 5:00 or 6:00 PM, then have long commutes, may find themselves unable to serve on these committees.

Ms. Franz suggested the Charter Review Committee consult with Town Counsel to perform a technical review of the Charter to ensure it is not in conflict with current legislation or case law and that it encompasses best practices.

Ms. Franz favors a gender-neutral Select Board designation. The commonwealth and the Massachusetts Municipal Association are now using the terms, "Select Board," to replace "Board of Selectmen," and "Select Board members" to replace "Selectmen."

Ms. Franz observed the "financial crisis and court cases related to that" made it clear that aspects of the town's financial condition were not being addressed by the Board of Selectmen, the Finance Committee, or the Town Manager. She stated the Charter does not provide for good monitoring of Uxbridge's finances. Audits have not been complete. There is no requirement that audits be included in the town Annual Report or presented to Town Meeting, the Board of Selectmen, or the Finance Committee. Ms. Franz believes there should be a Charter or By-Laws change to require this reporting.

In addition, Ms. Franz believes the town should not combine several positions, particularly when they are mission-critical positions. She cited a former Town Manager who had previously been the town Treasurer and then Budget Director, and who retained those positions when he assumed the role of Town Manager. Combining these roles in a single individual violates good accounting practices and prevents essential oversight of financial decisions and practices.

In extension of the above comments, Ms. Franz believes vacant town positions should not be left open. There has been a tendency for the Town Managers to leave certain positions vacant for town budgetary purposes.

In order to alleviate potential financial improprieties, the Charter should require some form of annual reporting, such as requiring the status of audits to be included in the town's Annual Report or presented to Town Meeting or the Board of Selectmen and the Finance Committee. Last year, the town funded a forensic audit, which has not yet been completed. The money allocated to the forensic audit rolled into the capital accounts. Although the Finance Committee learned of this problem, a more robust reporting mechanism should be included in the Town Charter.

Ms. Franz maintained the "town tended to put regulations at a higher level than totally necessary." Many times, things are included in the By-Laws, when they'd be more appropriate as regulations, ordinances, or policies. She pointed out there are three levels of regulation in Uxbridge:

The Charter operates as the town constitution – it is a framework, or structural, document. The town is divided into two branches of government, with Town Meeting constituting the legislative branch and the Board of Selectmen the executive branch. The town Moderator is an officer of Town Meeting (the legislative branch). The Finance Committee is a body of the legislative branch.

One of the issues with including regulations in the Charter is that the Charter has to go through several layers of approval, including approval by the Attorney General and State Legislature. This can take eighteen months or more.

By-Laws are roughly equivalent to federal government laws passed by Congress. By-Laws may be changed twice a year (during Town Meetings), but its contents must still be reviewed by the Attorney General of the commonwealth.

Policies may be made at any time by any policy-making Board or Committee. Policies are roughly equivalent to the regulations created by Executive Branch departments of the federal government.

The town should be careful "not to overmanage people who may be experts in their fields."

Ms. Franz indicated that changing regulations grows more difficult as one climbs the hierarchical pyramid. Changes to town policies may be made after two meetings of the Board of Selectmen. By-Law changes must be approved by the state Attorney General and a vote at Town Meeting. Changes to the Charter require approval by Town Meeting, the state Attorney General, and the Commonwealth's legislators.

Ms. Franz believes the names of committees, their general responsibilities, the limits of their powers, and the number of members of each committee should be enumerated in the Charter. However, she pointed out that former Town Manager, David Genereux, defined committees in the By-Laws.

Ms. Franz stated the Charter Review Committee may develop good ideas, which are not appropriate for inclusion in the Charter. She recommends the Charter Review Committee make recommendations to the appropriate body whenever this occurs.

In her elaboration of the subject of civility and decorum, Ms. Franz pointed out the Charter provides for no disciplinary actions for people who violate its terms. While there is a provision that committee members may be removed for excessive absenteeism from meetings, there is no provision to discipline or remove members with ethical violations or who violate basic standards of civility.

Ms. Franz believes modest stipends should be provided to board and committee members, and recommends stipends be withheld from people violating the terms of the Charter. Censure is another method of disciplining a rogue committee or board member. Ms. Franz believes, overall, the current recall provision is appropriate.

Ms. Franz stated the Attorney General ruled that the process by which an individual takes office (elected or appointed) must reflect the process by which they are removed and Uxbridge “seems to have a mis-match where there is no minimum number of signatures to win an office, but a very high number of signatures to begin the process for removal.”

Ms. Franz’s recommendation would be to cut the number of signatures in the second step of the removal process from 20% to 10% of our voters from the prior May Town Election and allow 30 days for those signatures to be gathered rather than two weeks. She thinks the bar is too high to begin that process and does not reflect the direction given by voters at Town Meeting when the recall provision passed. In addition, the time frame to gather recall petition signatures should be extended. A recall petition must have a lower threshold than currently exists, but it must not be so low that individuals are removed from office due to petty politics.

Ms. Franz also suggested a minimum number of votes a write-in candidate must receive in order to take an elected position. She feels that many resort to write-in campaigns in order to avoid meeting the electorate, which is an essential part of seeking office. However, establishing a minimum numbers of write-in votes for certain positions may dissuade otherwise qualified and beneficial individuals to perform services for the betterment of the town.

Ms. Franz maintained that human resources (HR) functions are lacking in Uxbridge and need to be defined within the Charter. She believes the town needs a human resources department. She doesn’t believe the Board of Selectmen should be involved in the interviews of prospective employees or in contract negotiations. She stated, “a tangled chain of command is not helpful.” Ms. Franz said state law requires the Board of Selectmen confirm the selection of a Treasurer. Yet, this confirmation “didn’t keep us out of trouble.”

The Town Manager has more than enough responsibilities. Ms. Franz revealed there were certain resources, such as comparative salary information, available from the Massachusetts Municipal Association when a town has a human resources professional. According to Ms. Franz, Uxbridge currently employs 250 individuals. If a conflict arises between an employee and the Town Manager, Human Resources can function as an arbiter. Currently, when such a conflict arises, Uxbridge relies upon the Town Counsel, who charges the town extra because this is not a typical town counsel function. Ms. Franz indicated that labor law is tremendously complex and that personnel issues arise weekly in Uxbridge.

Many towns have elected Treasurers. According to Ms. Franz, the Massachusetts Division of Local Services discourages this practice in favor of

appointed Treasurers. "A lot of problems they have seen, fraud or incompetence, come out of towns with elected Treasurers."

It is simpler to provide oversight over an appointed employee than an elected position, and an appointed individual may be dismissed more easily if there is a problem.

From a statutory perspective, Boards of Health are independent of Boards of Selectmen and Town Managers. According to Ms. Franz, Boards of Health "tell people things they don't want to hear" in order to ensure public health. This independence makes it more appropriate to have Boards of Health be elected, rather than appointed, positions.

In response to a question about establishing a nominating committee, Ms. Franz stated "volunteer management in non-profit organizations is an HR function." The functions of a nominating board would be redundant to the responsibilities of a human resources professional.

Mr. Potaski raised the issue of the Worcester Board of Health expanding their scope by arguing that social justice is a public health issue. Ms. Franz argued that issues like social justice would "ring differently" in urban communities with large minority populations than small communities "in the woods." She stated, "Worcester is going to be Worcester, Cambridge is going to be Cambridge, and Uxbridge is going to be Uxbridge."

Ms. Franz maintained that five "is a workable size for a board." She stated she has served on seven-member boards and five-member boards, and meetings of five-member boards are half as long as meetings of seven-member boards.

As a member of the Board of Selectmen functioning as a Water and Sewer Commissioner, Ms. Franz felt the information they received "was incomplete and definitely one-sided." The Selectmen were seeing what the enterprise wanted them to see. As non-specialists, there are limits to what a Water and Sewer Commissioner can get to when information is presented by an entity seeking funding. A separate Water and Sewer Commission, comprised of experts, acting as an advisory board, and selected by the Board of Selectmen, would be preferable to Board of Selectmen members also functioning as Water and Sewer Commissioners.

Ms. Franz added that fees are essentially taxes, and she is concerned about granting a low-level committee taxing authority. A Water and Sewer Commission should be an advisory board, whereas the setting of fees should remain with the Board of Selectmen.

The Uxbridge Charter Review Committee then interviewed Benn Sherman, the Uxbridge Director of Public Works. Mr. Sherman has been the Director of Public Works

since September, 2009. Prior to that, he worked as a consultant in a number of private and public sector jobs. Utilities and hydrology are his primary forte.

During his interview, Mr. Sherman raised the following points:

Mr. Sherman believes the town falls short in the way it deals with human resources "from start to finish." The complexity of labor issues and labor law makes it difficult to effectively manage without a human resources professional. According to Mr. Sherman, "having a more defined HR structure...would help out in a variety of respects."

Having access to a human resources professional would help out in the hiring process and provide consistency across the board. Well-defined employee policies would be beneficial to everyone, particularly in having expectations fully-defined.

Mr. Sherman believes there would be a benefit to having a separate entity overseeing water and sewer. He said he has sought to establish a common ground on water and sewer issues. He did not see any requests for substantial rate increases until the wastewater treatment plant was brought into the picture.

Mr. Sherman believes a specialized Board of Public Works would be beneficial to the town. Such a board would allow for more discussion and debate, particularly if such a board consists of professionals in the field. Mr. Sherman did concede it may be difficult to find competent individuals to fill a Board of Public Works and to attend regular meetings.

Mr. Sherman believes a Board of Public Works should initially be an advisory board, with the goal of migrating to a policy-making board once it becomes well-established. He doesn't have a strong opinion as to whether this board should be elected or appointed, but believes a three-member group "would be more than sufficient." According to Mr. Sherman, the members of this board should be water or sewer ratepayers.

Mr. Potaski pointed out that Mr. Sherman's responsibilities extend beyond traditional public works functions. Mr. Sherman also functions as the Tree Warden, Fence Viewer, Gravel Pit Inspector, and other town functions which have been incorporated into his department.

Mr. Sherman believes the budgeting and capital planning process has improved recently. The processes have become more standardized and consistent. While these functions have improved substantially, additional improvement is still required. It is often difficult to ascertain when certain issues, particularly as they relate to capital planning, should be raised, and to whom.

Mr. Potaski raised the point of extending the town infrastructure and determining who should pay for it. He believes existing ratepayers have no interest in funding

the expansion of the town water and sewer infrastructure. He believes the Board of Selectmen have been unable to resolve this issue, and that separating the functions of Water and Sewer Commissioners from the Board of Selectmen may help address it. Mr. Sherman added that he does not recall the use of betterment fees since the original sewer collection system was put in.

Mr. Sherman responded that the town's zoning, development, and population have all changed over the years, but there has been little movement on implementing the water and sewer master plan. Funding and developing a financial plan has proven to be challenging. Often, movement towards improvements have been stalled until there has been a need to implement them through consent orders.

When questioned about potential overlap between the Capital Planning Committee and a proposed Public Works Committee, Mr. Sherman admitted there might be some overlap of responsibilities. Mr. Sherman envisions the Capital Planning Committee as an advisory group to the Town Manager, reviewing and addressing specific characteristics and details of capital needs. The Board of Public Works, on the other hand, would work more closely with the Department of Public Works.

Mr. Desruisseaux mentioned that "eyes glaze over" when detailed infrastructure and capital plans are presented to the Board of Selectmen and whenever the composition of the Board of Selectmen changes, the process repeats. Having a dedicated board with the appropriate expertise in the field might be more appropriate. Mr. Sherman expressed the need to "re-educate" new members of the Board of Selectmen on capital plans whenever members change. Often, the Board of Selectmen have deferred making decisions and have assigned decision-making authority to the Department of Public Works. Yet, a different Board of Selectmen might want to take a more hands-on approach to approving capital plans.

In response to a question about the authority of the Board of Selectmen to operate as road commissioners, Mr. Sherman revealed that Massachusetts General Law, Chapter 84, Section 7 addresses the duties of surveyors and road commissioners.

Mr. Sherman believes he has the appropriate autonomy to manage his department under the current Charter.

In Old Business, Dr. Lindenmayer moved the December 14, 2020 minutes of the Charter Review Committee be accepted. The motion was seconded by Mr. Potaski. The motion was approved with Mr. Stephan, Mr. Talke, Mr. Knapik, Dr. Lindenmayer, and Mr. Potaski voting "aye." Ms. Desmarais abstained.

Board of Selectmen members Brian Plasko and Stephen Mandile are scheduled to be interviewed at the January 18, 2021 meeting of the Charter Review Committee. The February meetings will be dedicated to deliberations.

The meeting was adjourned at 8:31 PM.

Respectfully submitted,

/s/

Raymond A. Talke, Jr.
Clerk

Appendix

The following comments were received by Susan Franz following the January 4, 2021 meeting. They are attached here as received by the Charter Review Committee.

Thank you for inviting me to speak with your members. I appreciate your time and attention to this process. Below is a summary of general recommendations from the Exit Interviews and a few final thoughts. I hope they are helpful to your process.

Kind regards,

Susan Franz

Exit Interviews / Recommendations

Personnel, Roles, and HR Issues

- * Clarify roles including the Town Manager, Board of Selectmen, and other leadership roles.
- * Increase salaries to attract and keep competent, qualified people.
- * More resources for training and education.
- * Consider adjustments and flexibility to work hours

Town Environment

- * Board of Selectmen and Town Manager should set the tone for the community.
- * Other committees, including the Finance Committee, should work to be supportive to the administration and not engage in attacks designed to embarrass town staff.
- * Work collaboratively to achieve a better working environment.
- * Show support for employees on the job and in public meetings.
- * Chairs should maintain decorum in public meetings.
- * Be positive, optimistic, and supportive of staff

I also wanted to include a few final comments beyond our discussion (and which you may have heard from other participants).

Dormant boards should be retired and we may want to consider consolidating boards with similar functions. Recreation has a number of multi-member groups and might benefit with restructuring. It could be time to move some Parks and Rec. functions into a departmental model rather than a volunteer board model.

The Board of Selectmen does not meet all that often. I am not sure that they could be fully responsive if they become more deeply involved in personnel oversight.

Bylaw reviews might be sufficient only on the "5" year instead of on both the "0" and "5" year.

In general, the town works well when there is a collaborative and consensus-building approach between the Town Manager and the BoS. We have a quirk in our charter that limits the ability of the Board members to exercise their supervisory role during the first year of any BoS member's term.

There is one cycle where two members are elected together and that leaves a long period where the Town Manager can remain in office by recruiting a single Board member to their cause, rather than inviting them to build a collaborative relationship with the entire board. This can leave the Board unable to remove them, in case of concerns.

I would suggest shortening the term of a new member not being able to vote on Town Manager employment from one year to three months (or eliminate it entirely). I think it invites an adversarial relationship and, potentially, abuses of power from the TM office. There should be no time when the Board cannot dismiss or correct a Town Manager, especially for cause.

The following comments were received by Benn Sherman following the January 4, 2021 meeting. They are attached here as received by the Charter Review Committee.

During the discussion the other night, there were some questions regarding the BOS authority with respect to roads, water and sewer. The following are various references that are applicable to the above topics that were discussed the other night at the Charter Review Committee meeting.

Road Commissioners:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIV/Chapter82/Section1>
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIV/Chapter84/Section7>
<https://www.mass.gov/info-details/massachusetts-law-about-roads-and-streets>

Water and Sewer Commissioners:

<https://www.mass.gov/service-details/water-commissioners-and-local-boards-roles-and-responsibilities-for-drinking-water>

Benn...

Benn S. Sherman, PE

Director of Public Works

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