

**MINUTES OF THE TOWN OF SOUTHLINGTON  
2009 CHARTER REVISION COMMISSION**

**September 16, 2009**

The Charter Revision Commission of the Town of Southington held their regular meeting on Wednesday, September 16, 2009. Chairman David Zoni called the meeting to order at 7:00 o'clock, p.m. with the following in attendance:

Dennis P. Conroy, Kenneth J. Paradis, Richard Post, Sandra E. Feld, Andrew Meade, David Derynoski, Joseph Landrie and James Michlewski

Staff: Mark J. Sciota, Town Attorney

A quorum was determined

Summary Minutes – meeting recorded on audio and video tapes.

The Pledge of Allegiance to the American Flag led by Chairman Zoni was recited by everyone in attendance.

**Approval of Minutes**

Chairman Zoni called for a motion to approve the September 3, 2009 minutes. Mr. Meade made a motion to approve the Minutes. Mr. Derynoski seconded. Motion passed unanimously on a voice vote.

**Commissioner Communications**

There were no commissioner communications.

**Review and Action on Schedule A**

**Water Department's Charter Relationship to the Town of Southington.**

Chairman Zoni stated that a member of the public had come before the Commission at the last meeting and had some concerns with the way the relationship of the Water Department to the Town's Charter currently existed. Also the Town's relationship with the Water Department and how the structure currently exists. Chairman Zoni defers to Attorney Sciota.

Attorney Sciota gave the Commissioners an overview of the Water Department. He stated going back in history the original special act by the General Assembly was in 1882 and this was when a private water department was issued in the Town of Southington. In 1883 the Town of Southington was authorized under a special law to purchase the water department. Approximately in 1901 the actual vote of the citizens occurred wherein the

citizens decided to purchase the water department. The trustees of the water department did not see it the way the residents of the Town of Southington saw and there was a court case that eventually went up to the Supreme Court. The Supreme Court decided that the Town did in deed have the right to purchase all of the assets through a stock purchase of the entity known as the Southington Water Department. The court case came down from the Supreme Court stating that the Town did have the right to purchase it and the Town did in fact purchase it.

Attorney Sciota stated as you look at the Special Acts the powers of the Water Department are defined, what they are suppose to do and how the operations are suppose to be. Somewhere between the Special Act which established the water department and today a couple of changes have been made. Originally there were three water commissioners elected by the people, today we have six. The Charter does state there are six and there can not be more than three from any one party. That is not in the act. That just came through in the original charter or subsequent charter revisions.

The issue that came up in front of this Board are the policies and procedures that the Water Department currently uses per the Town of Southington. He stated from what he could tell although in the Act they are performing things they (the Water Department) are suppose to perform, there really are no documents that he could find other that history and past practices as to where we are now in our relationship with the Water Department.

The administration has always felt and still does have the opinion that the Water Department is a division of the Town of Southington. How the division runs, it is autonomous in essence because there is an elected board and is similar to the Board of Education. The Board of Education is straight funded through the tax payers of the Town of Southington while the Water Commissioners raise their monies in two ways. There is bonding through the Town of Southington and also monies is received through the water users of the Town of Southington. The Water Department is not as close in a relationship as the Board of Education. The Board of Education's budget comes through the government and is reviewed by the Board of Finance, Town Council and approved by those boards. He pointed out that is not the situation with the Water Department.

Mr. Meade questioned if the only way to change that was through a special act. Attorney Sciota responded there are two arguments to that. The issue you have is because we do have statutes; Statute 7188 gives this Commission the most ability to move in a general changing of the structure or the operation thereof. The problem is there is an intervening factor which you do not have in normal special acts; you have a Supreme Court act codifying it. In the past your Charter Revision Commissions have used their powers to at least discuss and propose modifications and management of the Water Board.

Attorney Sciota then mentioned prior Charter Revision Commissions where there was discussion on changing the Board from elected to appointed and changing it from bipartisan to partisan. Those issues have been discussed previously and also proposals that never came forward. At this point the question is if this Commission's hands are tied, past practice is that we have gone down this road previously but it has never gotten

to a point where there has been a vote to move it to the Town Council for consideration. That issue has never been tested but certainly these previous commissions have brought up and discussed issues.

Chairman Zoni reminded the Commission that the spirit of Schedule A was to discuss and decide if an issue was to move forward. He continued in that spirit it should be decided if the Water Department issue should be moved forward to Schedule B.

Ms. Feld questioned of Attorney Sciota about home rule.

Attorney Sciota responded that when we speak of home rule ordinances they are ordinances that are put into effect and we have a Statute that is called the Home Rule Ordinance. This Ordinance stated that anything put into effect (an ordinance or a section) prior to October 1, 1983 or so is still codifiable into our Ordinances and Charters. Post October 1, 1983 we would have to go through the charter system. Section 7188 would give you the next level which discusses how you would modify, codify or amend or possibly revoke special acts. These are called special laws but in his opinion special laws and special acts are one in the same.

Mr. Landrie then commented that one of the issues that was highlighted and he referred to page number 13 of Special Law 468, Section No. 5 and he quoted, “when said town shall have acquired said water works the government and control of same shall be vested in a board of water commissioners”. Mr. Landrie queried of Attorney Sciota if that statement meant it was all encompassing or could it be modified.

Attorney Sciota responded that was one of the arguments that certainly could be made. The way other Charter Revision Boards have handled this is the fact that they did not tinker with the board itself. The Board remained however the question that surfaced was how do we handle “the board”. Presently it is an elected board per our Charter, bipartisan three, three situation. Should the Board be elected, appointed, or some other method. And that is what has been addressed. Concerning your question he responded you are asking if you can do away with the Board and place it under another division of the Town. This issue had been raised at one of the Charter Revision Commissions but never moved forward.

Mr. Michlewski then questioned who had oversight over the Water Company other than the Water Commissioners. The response was just the DPUC. Attorney Sciota then stated the public votes for the water commissioners. Mr. Michlewski responded he was referring to fiscal control. Attorney Sciota then responded again they must respond to the DPUC and he was not sure if there was any other agency. He stated the Water Company is a utility and they have regulations under the DPUC.

Mr. Meade then responded he would like to make a recommendation to the Town Council to take a look into the possibility of what it would take to merge the Water Department but he did not believe it should be in the Charter. As the Town grows we should be working toward a Department of Public Works or something similar.

Mr. Michlewski then stated that he would check with the DPUC to see if the Water Department goes through them concerning rates because if they do not it makes an even stronger argument for the Town Council to get involved simply because the public believes the rates are not what they should be.

Ms. Feld then commented if we knew what other towns do with their water companies.

Attorney Sciota stated they could be private water companies. He referenced when the Plainville Reservoir was purchased and the Town had to deal with the Plainville Water Company they were a separate stock holding company which is different than what we have. There are also private water companies out there. New Britain Water Company he believed gave water to more than one municipality. He did not know if there was any other water company similar to the Southington Water Company.

Ms. Feld commented that she would like to have more information obtained from CCM and look into this further to see what could be done. With that in mind Ms. Feld made a motion that we move this issue to Schedule B, Mr. Derynoski seconded the motion.

Roll call taken:

Mr. Post	yes
Mr. Michlewski	yes
Mr. Meade	yes
Mr. Landrie	yes
Ms. Feld	yes
Mr. Derynoski	yes
Mr. Conroy	yes
Mr. Paradis	yes
Mr. Zoni	yes

**Motion to move to Schedule B approved.**

Attorney Sciota commented that research had to be done with DPUC as well as all other areas prior to going any further with this issue as this is very old information that we are dealing with from a legal standpoint.

There being no other issues on Schedule A, Chairman Zoni moved along into Public Communications.

**Public Communications.**

**Arthur Cyr**, 103 Berlin Avenue. He stated that he had approached the Commission on several occasions to reconsider Section 503 and 503A concerning the Parks Board. He stated that if the news in last week's paper was not enough to embarrass you about our Park and Rec Department then you had to watch or be at this past Monday's Town Council meeting where they discussed the drive in facility. The Park Board is waiting for

the Town Council to take action; the Town Council is waiting for the Park Board to act. He referenced with distain the new sign posted at the former Southington Drive In.

The next issue he addressed was Section 401 and commented that at the last meeting this issue was discussed in great detail concerning the Town Manager and the Town Manager's contract. He continued that although some of the Commissioners felt they would be doing the Town Council a favor by writing pages and pages about how the Town Manager's contract should state, etc. etc. if you restrict them too much with so many changes, those changes will not get out of this room because the Town Council will dismiss it and not send it to the public. He agreed that we do need a Town Manager by contract but he thought when you get into the detail the Commission is being very short sided because there is not a Town Council that will allow a Charter Revision Commission to give that kind of detail and restrictions to their job.

Chairman Zoni asked if there was any other public input. There was none

### **Discussion, Deliberation, Debate and Action on Schedule C items.**

#### **Section 401 Town Manager serves by Contract.**

Chairman Zoni started this item was discussed at great length at the last meeting however no action had been taken. The Commission had spent much time discussing and attempting to formulate a position and the Attorney Sciota had done work as a result of those discussions. Chairman Zoni indicated as a result there is a new codified section of 401 suggesting proposed wording and he was opening the floor to discussion.

Mr. Meade stated that the verbiage was good and was not tying the hands of the Council and he wanted to move the issue forward to Schedule D.

Mr. Landrie commented he had a concern with the last paragraph and recited the verbiage, "at the time of his appointment he need not be a resident of the Town of Southington or State of Connecticut, but during his initial contract period". Mr. Landrie then stated if we accept this language, anywhere from three to five years, if the language is taken exactly the way it is stated, he could move in five years, eleven months, thirty days after he was appointed. He wanted to tighten up the language and stated instead of referring to the initial contract period state "during the first year of the contract he shall become a resident of the Town of Southington".

Attorney Sciota stated that the current wording "during his tenure" means that he could possibly never move to town. He continued that was one of the things he had put in there for discussion purposes because the current wording, if you want to stretch it, "during his tenure" that could be any time. Attorney Sciota stated yes he agreed the wording should not say during his tenure and any language the Commission wanted to insert would be fine with him. He further commented "in his tenure" is not the way to do this because that could be any time.

Mr. Michlewski also stated the wording was good but he wanted a clarification concerning the third paragraph. He was looking for language, whether it was after the Executive Session of the Town Council, concerning the extension of a contract, the idea that there is an affirmative vote by the Town Council and the public is aware of how each member felt about how the Town Manager was doing the job. Attorney Sciota questioned if he meant during a meeting concerning the extension of the contract. Mr. Michlewski responded yes.

Attorney Sciota then stated there are times where you may not give the manager an extension every time you review him; therefore, the following language, "The town council, in open session, shall give a summary of his annual review." This means that any time the Town Manager gets an annual review, the Town Council comes out and they have to give it in open session, a summary by the chairman. Second part, "and a summary of his review prior to voting on any extension of the contract" Mr. Michlewski then stated he wanted each Council person to voice a decision. Attorney Sciota then commented well they would have to vote yes or no on a contract and you need five votes on the Town Council so therefore when a roll call is made each Council person would express his voice vote. He stressed each Council person would not have to express why the vote of yes or no. Mr. Michlewski then stated that was what he was looking for, which was transparency. He believed it was important for the public to know how the Town Manager is doing and how the Town Council thinks the Town Manager is doing.

Chairman Zoni interjected this would have to be a roll call vote because it is a contract. Attorney Sciota responded of course. Contractual votes are roll call votes.

Mr. Conroy then commented that they should not be tying the hands of the Town Council and he did not have any objection and he in fact agreed that there should be a contract for the Town Manager but he was not in favor of the wording that referred to a minimum of three years. He further stated he would prefer to have wording that stated the Town Manager should be under a contract not to exceed five years and then let the Town Council negotiate the contract. The term of the contract is a major negotiating point in any contract. The Town Council may have other options they want to exercise in relation to negotiating a contract, i.e. terms, salary, etc. He requested that we eliminate three years minimum and put wording in that states "not to exceed five years". He did not have any objection to the remaining verbiage.

Mr. Landrie then stated this issue had been "beaten into the wall" at the last meeting and it was his major contention that all of the Commission would be looking for qualified people and if you can't offer a perspective Town Manager some minimum number of years (and we are talking about the possibility of one) we are going to eliminate many good prospects. He did not believe it should be opened up to state a maximum of five years and we should put some type of minimum in there to make it attractive to the most qualified persons.

Mr. Derynoski then stated that he disagreed because the way it was worded he interpreted it that you would constantly have a three year term. Each year with a progression, the

person would never get below three, four or five years. He stated that he was in agreement with Mr. Conroy's wording, "a term not to exceed five" which gives some latitude with the Town Council who is going to be doing the interviewing. He continued the Council might be able to offer a three year contract or even a five year initially. He did not believe the Council would be able to talk to anyone that would accept a one year contract. He ended by stating having a minimum was not something he was in favor of.

Ms. Feld then stated they were starting to have the same discussion as the last meeting referring to Mr. Derynoski who was not at the meeting last time. She continued we had done this, beat this up, we spoke on three years at first, then five years and to come to some compromise we made it between three and five years, no less than three, no more than five. She continued she did not want to have this discussion again as they had agreed upon the language at the last meeting.

Mr. Michlewski then stated he agreed with Mr. Conroy as the language did give the Town Council some flexibility to fine tune the employment contract to the skills of the applicant.

Mr. Meade commented he believed it would be very difficult to lure someone if that person was not getting at least a three year contract and he felt it should stay three to five years. He further stated that he did like what Mr. Landrie had stated about the residency requirement.

Chairman Zoni then stated that he believed what Mr. Conroy's point was that the Council knows what it needs to do, you do not have to tell the Council what it needs to do to attract individuals, the Council will know that so why take away their ability to negotiate whatever they feel is good for the Town.

Ms. Feld then stated that she really meant no disrespect (speaking to Mr. Michlewski) but he had missed the last meeting also and we had this discussion. She suggested that we go with what we agreed to at the last meeting. She also felt that no one would come here for less than a three year contract so she did not believe it would be an issue.

Mr. Post then stated he initially wanted three to five years for the contract but there might be a situation that after the initial contract they might not want to keep the Manager around for a year or two if it is not working out well and if you keep it three to five years their hands would be tied. Furthermore if you add more language it only makes it more complicated.

Mr. Landrie stated we are not proposing to have an automatic renewal, have a standing three-year contract which is sort of standard practice with the Superintendent of Schools. We addressed this issue that it would not be an automatic renewal, year after year, his first review might not take place until two years into the contract, and it is not going to be automatic that it is every single year. That language gives the Council flexibility we are not talking about a standing three-year contract year after year after year. He stated he

was in favor of the three to five year tenure and it is worded right and he did not feel they would be tying the hands of the Town Council

Attorney Sciota then stated, for clarification, he gets the annual review every year. The review for a contract extension may not be on a year to year basis. Mr. Landrie responded that is correct. Attorney Sciota continued he will get a review but the review for the contract will be up to the Council somewhere between three and five years.

Mr. Michlewski then stated here is my problem with going three to five (and stated it did not matter if he was at the last meeting or not he still would not have liked three to five) simply because what if you have a Town Manager that for the first three years, people like, but has some growth issues. He continued, right now the way this is written you either have to get rid of him at the end of three years or give him another three year contract to guaranty that if he doesn't perform at the end of the first year he has another two years. He stated this language did not make sense to him in terms of a contract. He continued that he liked the idea that the Town Council could initially give a person a three year contract but then if there were some issues, the Town Council could then say okay you are getting a one year contract to improve and if that person did not then he is gone.

Attorney Sciota stated the language was proposed because the issue came to a vote on this language. Attorney Sciota gave the example: It is year two of a three year contract and the Town Council owes the Manager his contractual extension review and then they come out, explain their decision and offer an extension. The Manager still has one year left under this contract so under the terms as stated here, they would have to offer him a two-year contract. He continued a two year addition to make his contract between three and five years. Attorney Sciota then stated that could easily be changed if you do not want that then he could just put in "initial" contract for three to five years and then the Town Council could do whatever it pleased. He stated but that was not the intention of this Commission unless it has changed. He added he could modify it any way they wanted.

Mr. Conroy wanted to make a motion to amend the third paragraph of Section 401 to read, "he shall serve under a contract for a period not to exceed five years", seconded by Mr. Derynoski. Chairman Zoni calls for any further discussion.

Mr. Conroy commented any professional town manager is not going to be looking through a professional publication for a job opening that states for a minimum contract of three years. That is not his focus. This individual is looking for a place where he can go, grow, earn a decent living and have a long time career. His ability to negotiate the term of his contract rests with him and the hiring authority. He once again used the example that if the Town Council offered a person \$1million a year he will take it even if it is for six months. The initial term of three years is not something we want to have as being the basis of a negotiation. What you want is if the Town Council wants to give someone for example a two year contract, the perspective individual will banter back and forth until both parties agree on what the term of the contract will be. Also what the salary will be.

All of the terms and conditions, review of contract term, etc., those are all part of the negotiating process when we put it into the Charter that is one point of negotiation leverage that is taken out of the hands of the Town Council, the hiring authority. He stated that was the point he was making. If an ad is run in a professional magazine that ad will state, Town Manager, salary between such and such, contract to be negotiated, so on and so forth.

Ms. Feld stated that she appreciated Mr. Conroy's opinion but did not agree and like Mr. Landrie stated no one will come here with less than a three-year contract. She indicated that she felt very strongly about this issue, it was discussed, voted on at the last meeting and she could not understand why it was coming up once again.

Chairman Zoni then stated it was coming up again because no action was taken on the issue to move it to Schedule D which leaves us in a position wherein the language is still open to discussion. Attorney Sciota then interjected yes it was open for discussion but we can do it anyway you want and this area was battered around quite a bit and the Chairman felt to insure that it was somewhat clear this language was inserted into paragraph three. He added this can be changed to whatever you all would want. Chairman Zoni further indicated that the language that Attorney Sciota had proposed was dramatically different than from the last meeting. He added there was a lot of time taken to discuss this section. He further stated now we are in the position where we are actually fine tuning the language so we can move it to Schedule D. He added he believed in this fine tuning process the Commission was still a few points away from total agreement.

Mr. Post then added what if we left it to read the initial contract for three to five years and thereafter no more than five years, he questioned if that would help move it along at all.

Mr. Landrie stated he liked Attorney Sciota's idea of the wording of initial contract. He stated in other words initial contract not to exceed five years but then what? Attorney Sciota responded then it is up to the Council. He then stated what if I bend a bit and use Attorney Sciota's language, initial contract not to exceed five years and remove a mention of three years. We have a motion with the person who made the motion (Mr. Conroy) perhaps to amend the motion. Chairman Zoni indicated Mr. Conroy was the author of the motion.

Mr. Conroy then queried Attorney Sciota with that proposal it does not mean that the Council can't go for a renewal for another five years correct? Attorney Sciota then responded all it stated was "under contract for a period" and there is no reference to initial terms or anything. The manager, therefore, could never serve under a contract that is more than five or less than three years. Furthermore when he stated "extension periods" it would have to fall within that time frame. Also by using the term "initial" contract whether it states three to five or up to five after that initial contract is over or an extension thereof it is up to the Council. Mr. Conroy then stated that becomes a negotiating point and he had no object to that language.

Mr. Post stated he would have an objection if the subsequent contracts were left totally up to the whim of the Council. He would like to see some time limit, i.e. and subsequent contracts must be no longer than five years. Attorney Sciota then stated you would not need that all you would have to state is “under a contract for a period not to exceed five years”. He continued to state this just means that the initial contract could be less than five and any extensions can not be more than five.

Chairman Zoni asked Mr. Conroy to amend his motion. Mr. Conroy responded that that was his original motion. Attorney Sciota responded that is his motion and you are not talking about initial you are just changing it to state “under a contract for a period not to exceed five years” and therefore any extensions can not exceed five years either.

Chairman Zoni clarified so that the word initial is not part of this motion, correct? Attorney Sciota responded yes you do not need the word. Chairman Zoni then asked Attorney Sciota to recite what he believed the wording would be per the motion. Attorney Sciota responded, **“Under a contract for a period not to exceed five years. He shall receive an annual review by the Town council prior to any extension of the contract period. The Town council in open session shall give a summary of his annual review** (step one, that does not have to be with a contract) **and a summary of his review prior to voting on any extension of the contract.** He then stated no extension can exceed five years total so if he is in year three that person can only get a two year extension. Chairman Zoni called for a voice vote, all in favor with one no vote from Ms. Feld.

Mr. Conroy then made a motion to take the amended Section 401 (withdrawn)

Attorney Sciota commented that the Commission wanted to change verbiage in the last paragraph. Chairman Zoni deferred to Mr. Landrie.

Mr. Landrie commented in the last paragraph it stated during his tenure, change the wording to state but during his initial contract period within the first year he has to be a resident of the Town. Attorney Sciota then stated the terminology would be within twelve months of his employment.

Mr. Conroy then stated it is a good thing that you have a specific time period however just think about today’s economy and twelve months may not be enough, therefore, if you are going to use twelve months perhaps a provision should be inserted that allows the Town Council to extend that 12-month period at least once, under special circumstances. He further stated he would suggest 24 months.

Mr. Landrie then stated he believed 12 months was plenty of time, he did not care about the economy. People that we attract to this job if they can not sell their home the person could probably afford to cover the costs. The individual might not purchase a new home but his residency should be in Southington. He did not feel it was unreasonable to require residency within the first year. Ms. Feld asked if that was a motion, and stated “so moved”.

Chairman Zoni then asked Ms. Feld if she would like to make a motion to leave it as. Ms. Feld commented **a motion within twelve months of employment**, seconded by Mr. Landrie. Chairman Zoni asked if there was any discussion.

Mr. Derynoski then stated you should remember when you are going nationally to advertise, the cost of relocation is usually considered as part of the negotiations and that could be part of the package. He continued to start putting limitations on a move, the individual will know that up front and he stated he believed that was fine. I do agree the Town Manager should be a resident of the Town but that person will want coverage for those moving costs. Ms. Feld responded it would not be any different if it was 24 months those cost reimbursements would still be part of the negotiating package.

Mr. Meade then referred to the paragraph concerning the hiring of a Town Manager where the Town Council could waive any or all of the aforementioned qualifications by affirmative vote of not less than two thirds. He questioned if that language should be added in if there was a real hardship to the end of the last paragraph or moved down. Attorney Sciota responded he would add the two-thirds majority vote to the end of the last paragraph and not move the second paragraph down.

Ms. Feld **amended the motion to have one extension by the Town Council up to twelve months**, seconded by Mr. Post and Mr. Michlewski. Some confusion, Mr. Landrie had made the original motion. Mr. Conroy asked for clarification. Attorney Sciota stated the motion was modified so you are voting on the motion that states “**within twelve months of employment and the Council by six (two-thirds vote) can extend it up to twelve months for an additional time period.** Chairman Zoni called for a roll call vote.

Mr. Post	yes
Mr. Meade	yes
Mr. Michlewski	yes
Mr. Landrie	yes
Ms. Feld	yes
Mr. Derynoski	yes
Mr. Conroy	yes
Mr. Paradis	yes
Mr. Zoni	yes

**Motion approved.**

Mr. Conroy then made a **motion to move Section 401 to Schedule D as discussed and amended**, seconded by Mr. Derynoski. Chairman Zoni called for a voice vote, all in favor with Ms. Feld voting No. **Motion carried and moved to Schedule D.**

Chairman Zoni was to address next Section which was 1107. Commission called a five minute recess at 7:50 p.m.

Meeting reconvened at 7:55 p.m.

After the meeting reconvened, Chairman Zoni commented that Section 402 had been inadvertently skipped over. Chairman Zoni called for a motion to move Section 402 also to Schedule D.

Mr. Conroy made **a motion to move Section 402 (Powers and duties) to Schedule D**, seconded by Mr. Michlewski. Chairman Zoni asked for any discussion, there being none, called for a voice vote. All in favor none opposed, **Motion carried to move Section 402 to Schedule D.**

Chairman Zoni opened discussion for **Section 1107 to comport with Section 2-204 of the Code of Ethics.**

Attorney Sciota explained that what was before the Commission was Section 2-204. He explained the discussion was that Section 1107 was the original definition of conflict of interest from 1966-1967. What was discussed initially was to work off of what was done in 2006 which is 2-204 of the ordinances. Mr. Conroy asked if that would be incorporated into the other section. Attorney Sciota commented that would be the intention. Chairman Zoni specified it is only 2-204 as 2-203 is not applicable, correct?

Chairman Zoni stated we will be discussing Section 2-204 using that language to replace Section 1107 in the Charter. Chairman Zoni directed the Commission to section (a) wherein the words union or non union was added. No issue, moved on to (b) no issue, moved on to (c) and cited what was taken out was “the town planner, assistant town planner, town engineer or assistant town engineer, building inspector or zoning enforcement officer” and was replaced by “town officials and members of his or her household, including a domestic partner or spouse; and his or her dependents or the employer or business of any of these people”. Chairman Zoni stated we are defining the universe with conflict of interest.

Attorney Sciota then indicated that there was never any input from other Commissioners except Mr. Post to him so this was not his language this is input he had. His suggestion was to take Section 2-204 and put it into 1107. He stated that he had received input from Mr. Post and made changes based upon that input. Again he stated it had not gotten to the Commission level so he gave them what he had. Chairman Zoni called for discussion. Attorney Sciota commented that this is under the caption of town employees and if you are going to discuss the other things perhaps another section should be added. He commented it gets pretty confusing if you have a definition of town employees under a paragraph and you start adding everything else into the paragraph.

Chairman Zoni questioned why the grouping of town planner, assistant town planner, etc. was being removed as they were in the Code currently. Attorney Sciota responded under town officials. Mr. Michlewski thought the way it was done prior it did not include everyone in the Town. Attorney Sciota stated that was not correct as those particular people are all land use individuals and what we did was now state all town officials. He

did state as they got further into this area there could be some problems. What you are now saying all town officials can not be involved in the aspects of land development, etc. Attorney Sciota then stated he would work on language suitable for this section.

Mr. Conroy asked Mr. Post what was his intent when he said town officials. Mr. Post indicated it was to cover all officials and he thought reference to the land people was too limiting and the additional mention of his or her household was meant so that those individuals could not influence their related town officials. Chairman Zoni questioned if he was referring to elected officials as well in referencing town officials. Mr. Post commented that he thought town officials, would mean elected or hired. Attorney Sciota then stated if you have specific offices you are concerned about than he would rather list them because someone else is going to have the same discussion as to what the definition of a town official is. Attorney Sciota then commented if you are talking about land use people or elected people then he would list all areas to cover all bases.

He further went on to say if they were concerned about someone in the land use division who has a family member in the development field in Southington what this specifically states is that they are exempt. Attorney Sciota commented the reason being because if the planner and engineer owned a development company and they recused themselves and gave the plan to an assistant the engineer is still the boss of the assistant and that is why the language was put in there. Everything else is covered by other sections. For example, if an official takes an action that his son is benefiting from that is covered in other sections. He stated you have to figure out what you want to achieve and he would create the words.

Mr. Conroy (speaking to Mr. Post) commented if he was attempting to expand the definition thinking that section was the only section concerning town officials getting involved in conflicts then that paragraph was just singling out a small group. He commented that is not the case and Attorney Sciota has explained it well in that what it is referring to is land deals. He referred Mr. Post to the first paragraph which stated what a conflict of interest was and how it related to family interests.

Attorney Sciota commented it is difficult dealing with a definition of a conflict of interest in a Charter. He stated all we are dealing with here is what is the definition of a conflict of interest? His point was if you have a more liberal definition of a conflict of interest in 1107 then you do in Section 2-204. Chairman Zoni interjected 1107 being the current Charter. Attorney Sciota responded you have an Ethics Ordinance which is 2-204 which is the definition of conflict of interest. His concern is that someone could say you found me guilty under Section 2-204 of a conflict of interest; however, the law states that the Charter supersedes ordinances so under the more liberal reading of a conflict of interest the person is not guilty.

Attorney Sciota continued you have two choices, (one) you work with Section 2-204 and perhaps modify it and make it 1107 and the Council could then subsequently change their 2-204 or (two) get rid of 1107 and define it in your conflict of interest. Those are the two choices you have and currently you chose to work with 2-204 modify it the way you want

and make it the new 1107. He continued what Mr. Conroy is referring to definitions and how the Ethics Board is going to work that is not in the Charter that is in the ordinance. He stressed the point you do not want two different things in your Charter and your ordinances. If the current decision is to work with 2-204, modify it the way you want and make it the new 1107, then my recommendation to the Town Council would be to have a public hearing and change it to match 1107.

Mr. Michlewski then stated the way he read 1107 it was basically set up for stock corporations, mostly contracts, etc., not some of the other possibilities that are out there. He continued that we discussed incorporating some of the Code of Ethics into the Charter to close a very open possibility of a conflict of interest just the way the Charter is written currently. He questioned if he was wrong. Attorney Sciota responded no you are correct and that is why he stated the definition of conflict of interest in 1107 was drafted in the 1960's and things have happened since then. Again I agree, in my opinion you have two choices, you take Section 2-204, keep it as it is or improve it and make that 1107 or take 1107 out and the law of the land is now not under your Charter it is under your ordinance.

Attorney Sciota then stated the current direction the Commission was taking was looking at Section 2-204 improve it and make it 1107. He stressed you do not have to do that you can simply make a motion to eliminate 1107. Mr. Michlewski then commented he thought the Commission was taking Section 2-204 and 1107 combining them and putting the combination into the Charter. Attorney Sciota responded if you want to improve Section 2-204 by adding things from 1107 that is fine but he would need guidance on what sections you want to add. Section 2-204 is now three years old but it is the model that was used for the state at the time. Chairman Zoni also commented that there was an Ethics Review Board that reviewed the entire ethics code and changes were made as was needed. Chairman Zoni further indicated perhaps it could be made better or we could do what Attorney Sciota has suggested and that is to eliminate from the Charter and defer to Section 2-204 in the Ordinances.

Mr. Post commented he would be against the elimination of 1107 because currently a violation of the Code of Ethics has to come before the Ethics Board if there is some type of conflict of interest and it is still an important board. If the key conflicts of interest are in the Charter then it gives it automatic teeth. He believed when speaking of town officials the verbiage should be moved to Section 2-204 (a).

Attorney Sciota commented he had a serious question if there is no mechanism in the Charter for reprimanding nor do you want one because the purpose of this was the conflict of interest and he was not aware nor does he suggest that a punishment mechanism be placed in the Charter. The point of this is that your Board of Ethics in your Charter can not have a conflict. The Board of Ethics can not serve on any other board if they have a conflict of interest. That is the Board you go to and that is where you have a first hearing on any complaints and then a possible public hearing. That Board takes evidence, they subpoena, they have lawyers representing each party and that is the Board that does your adjudication. There is no mechanism in the Charter that any board can adjudicate their own. The Board of Ethics then sends it to the Board. The

Board of Ethics does the finding and then sends it to the Board for action. The Charter just defines what a conflict of interest is. It does not state what happens if you are guilty or have a problem with a conflict of interest that reverts back to Section 2-204 of your Ordinances. When you speak about where you send the people, you send them to the Board of Ethics is the procedure you have to follow. A signed statement is taken under oath, filed with his office or the Town Clerk's office. There is nothing in the Charter that states that nor should there be because the mechanisms of the Board of Ethics should not be in your Charter it should be in your Ordinances.

Ms. Feld suggested it might be helpful for us as a group to see Section 2-204 without any amendments for the first time and remove 1107. Chairman Zoni interjected we are seeing changes because these changes came from members of this Commission to the Town Attorney's office. In essence he has done some of the work for us. He further stated if the group is concerned with some of these changes perhaps we should discuss the changes and if the changes are not appropriate we can dismiss the changes and leave it the way it was.

Mr. Post commented perhaps if we take 2-203 and 2.204 and eliminate the headings and incorporate them right into 1107. He suggested for (c) a combination of what was highlighted in blue and make it more concise or perhaps include it in section (e) and that may eliminate any issues people here may have. We do have sections (d) and (e) also. Some confusion, some frustration. Group discussion then started off from the top once more.

Mr. Conroy referred to Section 2-203 and Attorney Sciota that was just for a point of reference so that everyone understands where it was coming from and stated the conflict of interest comes out of the Rules of Conduct. This is not part of your Charter it is just for information purposes for all of you.

Mr. Conroy referenced to 2-204 (a) we could replace this with 1107. Attorney Sciota restated his suggestion. If you like 2-204 you can now make it your new 1107 as there have been situations where there may be something in 1107 that is not in 2-204 and that you may want to incorporate the two. Chairman Zoni interjected or augment 2-204 to the Commission's liking.

Mr. Conroy then questioned what the insert union or non union was for in section (a). He questioned why the insertion because the Town can not define what their (union or non union) is as we have no authority over that. Attorney Sciota stated he thought it was a classification of whether someone was union or non union. Mr. Conroy commented it makes no difference union or non union and suggested the elimination of those two words, union or non union. He continued (b) no problem. He continued (c) Town employees he felt it should be left alone based upon the definition as it defines all full time employees, part time employees and then it gets into specifics concerning land activities. He continued eliminate all of the "blue" section. He added he was making these suggestions with the thought that this is going to become the basis of 1107. Attorney Sciota interjected with the understanding that he would be working with Mr.

Post on the “blue” language to move it to another section. Mr. Conroy clarified that the “blue” section should just be eliminated from (c). Moving to (d) he questioned the wording in blue personal versus private. Further questioned is this stating that personal is more expansive than private. Mr. Michlewski commented personal interest is just that and private interest should be defined. Attorney Sciota directed the Commission to Section 2 of the Ordinance.

Attorney Sciota then stated a personal interest is defined as any action taken by a municipality in which an individual will deprive a non financial benefit or detriment which will result in the expenditure of municipal funds.

Attorney Sciota stated a private financial interest shall include a private finance interest of oneself, spouse, minor child or person who is or has been one’s partner or joint venturer within the prior year of the Town official member of board, commission or agency or employee of the town or interest in which the official member or board is a silent partner thereof.

After the reading of the defined definitions all agreed both personal and private should be added. Agreed that personal financial or private interest should be inserted and remove the extra personal.

Questioned the wording is employed by, agreement to remove as it always refers to town official. Mr. Conroy discussed the wording recuse or remove and asked what was wrong with remove from the panel. He had a question if someone removes himself on an issue where that person has to vote does not mean we can restrict that person from making comments or getting involved in a debate as a private citizen. Attorney Sciota commented what happens is that the person steps down from the dais and if it is a 15 second thing the person just says I recuse myself and backs off and then returns.

Under our policy, a person recuses himself/herself, goes out of the room. The person can return, can not come back up to the dais to speak but can return to the room. Chairman Zoni commented that the Code of Ethics had discussed the issue of leaving the room and not leaving the room and it was decided that it would be more practical to just step down.

Mr. Post commented to recuse himself/herself by leaving the room so the blue language and the red language needed to be deleted. Chairman Zoni commented he believed everyone agreed that leaving the meeting site was not practical and the wording should be removed and the discussion now was whether to remove a person from the panel or actually have the person leave the room. Attorney Sciota commented that this issue was debated fully when the revisions were done. He continued the point was is that you can bar someone from being on a panel and voting and bar a person from speaking but you can not bar them from watching like any other citizen because the person is not less than any other citizen. Chairman Zoni clarified the black and the red language will remain and the green and the blue will be removed.

Mr. Landrie commented he did not believe the language would make anyone less of a citizen by requesting that the person leave the room. This is during the period where the person has the conflict. He believed it had more of an effect on the other participants if the person who has a conflict is not physically there in the room. He did not believe the person with the conflict was being treated like a secondary citizen. It is not unreasonable to go stand in the hallway until the issue is decided.

Attorney Sciota then commented if you think broader and you are on a board that is voting let's assume there is a planning and zoning zone change that is next to your house and you serve as a member on a board in town. If you have a matter, you step off the dais and remove yourself. He continued now does that mean if you are only a voting member of that board. If you are speaking of removing yourself from the room is that going to be any public official with a conflict or is that going to be the public official that has a conflict just for that board. Attorney Sciota stated he wanted to make sure everyone was on the same page. He continued under that theory that if you have a conflict you have to leave the room then you have a conflict because you are serving on a board that is handling this one issue or you are a Town Council person who may appoint, i.e. ZBA members who are deciding a ZBA matter and that Town Council person is not allowed to speak or stay in the audience. He stated this is a broad issue and this was not an issue that was discussed lightly.

Mr. Conroy gave the example of when he did a lot of work at the State Legislature. The Hall of the House had a rule that stated when a person had a conflict of interest that person was required to leave the chambers, that was the Hall of the House. It did not prevent a person from walking up the stairs and going into the balcony, watching and listening and he believed that was the issue that was being discussed.

Mr. Post then clarified he believed someone to recuse himself/herself meant for voting purposes. It did not mean that person could not be in the audience. Mr. Post asked Attorney Sciota if this language should be clarified. Attorney Sciota then stated this is how the language will read, "And refrain from any comment or vote on the matter and remove him or herself from the panel until the matter has been dispensed".

It was agreed that the language "and violators shall be publicly censored by the panel they serve and his/her vote will be disqualified" will be stricken.

Attorney Sciota further commented the Commission still had to review 1107 to see if there was good verbiage that should be added to 2-204. Chairman Zoni then commented that Attorney Sciota can now rewrite Section 2-204 as they had discussed today. Attorney Sciota indicated it is back to the way it was.

Mr. Conroy stated if the intent of this panel is to recommend to the Council that they adopt this section of the Charter which is more restrictive and we are indicating it is the ordinance section then do we leave it up to Attorney Sciota to review 1107 where you find it to be less liberal. Attorney Sciota's response was no. Attorney Sciota then stated

that he would review 2-204 and he would put next to 2-204 sections that are in 1107 that are not in 2-204 and you as a Commission can choose.

Motion made by Mr. Conroy to table the issue, seconded by Mr. Michlewski, all in favor, no opposition. Motion to table passed.

Chairman Zoni then moved to Schedule D and stated that pretty much the language was set but he was leaving it open if there were any further comments but further stated that pretty much the language had been agreed to. He further stated that he knew of one change that had been discussed and it dealt with the Modification of Section 746 (a). He added that the Commission had not received the modified language for Section 746 (a) and referred to the requested change from the public wherein the super majority should be changed to seven votes. Attorney Sciota commented it had been modified but not sent out.

Attorney Sciota also added that there was one more additional modification and that was the modification of the budget timetable. Chairman Zoni then stated that after the last meeting he was not sure if the timetable was correct and he had sat down with Attorney Sciota and reviewed the calendar again and it turned out that the Commission's intent really was not in the last version. We now have a new version that basically moves the timetable up allowing for the public hearing on the Council one meeting before its original meeting which would be the first meeting in April.

Attorney Sciota then stated at the last meeting there was a discussion about the Board of Finance submitting the budget to the Town Council on the first Monday in April which is fine and that is the way we kept it. The problem that we had after Chairman Zoni and I met was we set up the public hearing for the Town Council on the same night when addendums were going offered. What we did was make the public hearing for the Council with their first meeting in April. The budget comes to the Council on the first Monday in May, they have a public hearing the second Monday in May. (confusion) He started over, the Board of Finance gives their budget to the Town Council on the first Monday in April. The Town Council will have their required public hearing on the budget on the second Monday in April which is their first meeting in April. The second meeting in April is what we had talked about that is where all parties of the Town Council could then bring up addendums to the Town Budget. Those amendments then will be debated at the first meeting in May and if there are no amendments made in April, the Town Council could actually act on the budget on the second meeting in April. If there are amendments then those amendments will be debated in May and then a vote could take place. The stipulation is that amendments that are not raised at the second meeting in April (the fourth Monday in April) are barred from being raised at the first meeting in May.

Ms. Feld made a motion to accept the amended language above stated, seconded by Mr. Meade, all in favor, no opposition. Motion passed.

No further discussion as related to Schedule D.

**Miscellaneous**

Mr. Conroy asked at what point should we be getting down to voting on a report to send to the Town Council.

Attorney Sciota responded unless anything else is raised in Schedule A, he had two issues left, the issue of the conflict of issue and the water issue. Those are the only two issues left and once those two issues happen then you have a Schedule D meeting and a final vote will take place on all issued on Schedule D and that will be the report.

No further business.

**Adjournment.**

Mr. Conroy made a motion to adjourn, seconded by Mr. Meade. Motion passed by voice vote. Meeting adjourned at 8:50 p.m.

The next commission meeting date is October 7, 2009.

David Zoni, Chairman  
Charter Revision Commission