

CHARTER COMMISSION MEETING
TUESDAY, FEBRUARY 8, 2011 – 7 P.M.

Chair Gombar opened the regular meeting at 7:02 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert
John Bird
William Gombar
Tianna Higgins
Ronald Regis
Michael Vallante
Jayne Flaherty [excused absence]

The members of the Charter Commission stood for a Pledge to the Flag.

Motion made by Commissioner Vallante, seconded by Commissioner Higgins to accept the minutes of January 22, 2011.

VOTE: Unanimous.

Motion made by Commissioner Vallante, seconded by Commissioner Regis to accept the minutes of January 25, 2011.

VOTE: Unanimous.

Chair Gombar stated the Charter Commission would begin the workshop by discussing Section 901.

Commissioner Higgins stated she didn't feel the need for staggered terms for the Planning Board, or the need for the Planning Board and the Zoning Board of Appeals to conform to each other.

Vice-Chair Bird said there is a need for staggered terms, and also asked the Charter Commission if they wanted to change the word "alternate" to "associate" for the Planning Board, since the term "associate" is in state law for the Zoning Board of Appeals and can't be changed.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 901 by adding the underscored language and deleting the strikethrough language as follows:

~~“There shall be a~~ Town Planning Board shall be composed of five (5) members and two (2) alternates which shall be appointed by the Town Council, and have such powers and perform such duties as are provided by laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council. Each member of the Planning Board and each alternate shall be appointed for a term of two (2) years and shall serve until a successor has been appointed and qualified.”

VOTE: Unanimous.

Vice-Chair Bird motioned to add the following language to Section 901:

“The Planning Board shall direct the Town Planner and other Planning Department staff in assisting it in its duties.”

Commissioner Higgins felt the language wasn't necessary because it goes without saying that the Planning Department staff will assist the Planning Board.

Commissioner Begert then seconded Vice-Chair Bird's motion.

Commissioner Regis stated it was the other way around.

Commissioner Higgins commented that the Planning Board can ask the Planning Department to help them with projects. She said it is an unnecessary statement and the word “direct” is too harsh.

Vice-Chair Bird stated that the word “direct” can be toned down, but the Town Planner does help the Planning Board.

Commissioner Vallante was concerned that the language as presented could mean a Planning Board member could direct the Planner.

Chair Gombar replied that it did not.

Commissioner Vallante then inquired if a motion would be made at a meeting to direct the Planner as whole group.

Commissioner Higgins replied that it could be in the form of a motion, but usually the Board just says to the Planner, “Can you ask the sewer department this question”, [as an example].

Commissioner Begert said the Planning Board does not run amok. If they need something, they inquire through the Town Planner.

Commissioner Higgins suggested changing the word “direct” to “require”.

Commissioner Begert withdrew his second, and Vice-Chair Bird withdrew his motion.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to change the word “direct” to “require” and add that sentence to Section 901:

“The Planning Board shall require the Town Planner and other Planning Department staff in assisting it in its duties.”

VOTE: Unanimous.

The Charter Commission then began discussion on Section 901.1.

Commissioner Higgins motioned, seconded by Commissioner Vallante to break down the last sentence in 901.1, stating as it is currently written in the Charter, it may be confusing to someone

who believes the Town Planner and Code Enforcement Officer have to both attend each meeting of the Planning Board and Zoning Board of Appeals.

[current language]“The Town Planner and Code Enforcement Officer shall attend all meetings of the Planning Board and the Zoning Board of Appeals, or send a designee or request the Town Attorney to advise and assist these Boards, when they are unavailable.”

[Proposed language]”The Town Planner shall attend all meetings of the Planning Board, and the Code Enforcement Officer shall attend all meetings of the Zoning Board of appeals, or send a designee or request the Town Attorney to advise and assist these Boards, when they are unavailable.”

VOTE: Unanimous.

Chair Gombar stated that at the last discussion regarding Section 902, a prefatory statement as added, but the other recommended changes were tabled until Commissioner Higgins could review and be present to comment.

Commissioner Higgins referred to the following recommendation that Vice-Chair Bird had made:

“This Board serves as an independent, quasi-judicial Board to hear and rule on appeals from decisions or actions of the Code Enforcement Officer or to grant variances from standards laid down in the Zoning Ordinance, etc.”

Commissioner Higgins stated that miscellaneous appeals and variances are important, but the wording makes it sound like granting variances is their only task. It gets very specific.

Commissioner Regis felt the recommended wording was accurate.

The vote to add the above recommended language was made on 01/25/11, and the Commission agreed to let the vote stand, and moved to Section 902.

Vice-Chair Bird motioned, seconded by Commissioner Vallante, to amend Section 902 by deleting the strikethrough language and adding the underscored language as follows:

“There shall be a Zoning Board of Appeals created in accordance with the provisions of 30-A M.R.S.A. section 2691 and composed of five (5) members and two (2) associate members which shall be appointed by the Town Council, have such powers, responsibilities and perform such duties as are provided by the laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council. The members of the Zoning Board of Appeals shall serve staggered three (3) year terms and shall serve until a successor has been appointed and qualified.”

VOTE: Unanimous.

Vice-Chair Bird motioned, seconded by Commissioner Begert, to add that the Chair of the Zoning Board of Appeals designates which associate member takes the place of an absent member.

VOTE: Vice-Chair Bird and Commissioner Begert, yes; Chair Gombar and Commissioners Higgins, Regis and Vallante, no. Motion fails 4-2

Vice-Chair Bird asked to take a poll from the Charter Commission as to whether it would like to have State Statutes referred to. He said half the Commission doesn't seem to want to repeat anything that's in state law; however, he said that it's easier for people to know something if it's in the Charter before them, instead of trying to find it in state statutes. He asked if there was any interest in this.

Commissioner Vallante stated if it's in state law, they can reference the state statutes, but he is against repeating the language.

Vice-Chair Bird stated that state law seems to indicate that it should be in the Charter. The Town should govern itself as much as is allowed.

Commissioner Higgins stated the Charter is supposed to be a major outline for the Town's procedures.

The Commission then moved on to Section 903.

Commissioner Higgins read the new prefatory statement in 903, as well as all the amendments made in previous meetings:

Sec. 903. Conservation Commission.

The function of this Commission is to serve as an advisory commission to all parts of the Town Government in matters affecting the environment of the Town.

There shall be a Conservation Commission composed of five (5) members, and two (2) Alternates who shall be appointed by the Council. Members of the Conservation Commission shall serve staggered three (3) year terms under 30-A M.R.S.A. § 3261 and shall serve until a successor has been appointed and qualified. The Conservation Commission shall be responsible for the care and superintendence of the municipal trees, public parks, Town-owned open and/or undeveloped spaces and significant natural resources, and shall have such powers and perform such duties as are provided by the laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council, including the powers and duties of tree wardens. The Conservation Commission shall have the power to form subcommittees and/or advisory boards as they deem necessary."

Vice-Chair Bird inquired if they should outline the duties and powers of the Conservation Commission as indicated below.

"Sec. 903.1. Duties of commission. The commission shall:

A. Keep records of its meetings and activities and make an annual report to the municipality;

B. Conduct research, in conjunction with the planning board into local land areas;

C. Seek to coordinate the activities of conservation and other bodies organized for similar or related purposes;

D. Keep an index of all parks and open areas within the municipality, whether publicly or privately owned, including streams, creeks, rivers, open marshlands, swamps and other wetlands, for the purpose of obtaining information relating to the proper protection, development or use of those open areas. The commission may recommend to the municipal officers or any municipal body or board, or any body politic or public agency of the State, a program for the better protection, development or use of those areas, which may include the acquisition of conservation easements; and

E. Oversee and monitor any Conservation Easements known to or held by the Town.

Any department, commission, board, committee or agency of the Town conducting planning operations with respect to trees, parks or open areas as mentioned above, within the municipality, shall notify the conservation commission of all plans and planning operations at least 30 days before budgeting for or implementing any action under that plan.

Sec. 903.2 Powers of commission. The commission may:

A. Advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which it considers necessary;

B. Have the care and superintendence of the municipal trees, public parks and Town-owned open areas, and, subject to the approval of the municipal officers, direct the expenditure of all money appropriated for the improvement of those trees, parks and Town-owned open areas;

C. Acquire land in the municipality's name for any of the purposes set forth in this section with the approval of the municipal legislative body;

D. Receive gifts in the municipality's name for any of the commission's purposes and shall administer the gift for those purposes subject to the terms of the gift; and

E. Initiate, provide for and be a repository for the results of any environmental testing for the Town.”

Commissioner Vallante motioned, seconded by Commissioner Regis, to leave Section 903 as currently voted on at the January 25, 2011 meeting.

Commissioner Regis felt the recommended language at tonight’s meeting equates to a job description.

Commissioner Higgins inquired what is in state law.

Vice-Chair Bird stated that in Section 903.1, A-D are in state law.

Commissioner Higgins stated she was not opposed to “E” being added as 903.1.

Commissioner Regis stated that he didn’t like 903.2(C), stating that is similar to eminent domain. He further stated that the Commission is adding a job description, and it doesn’t need to be in the Charter.

Commissioner Begert stated that committees that are formed through State Law should be outlined; however, those committees that are local and are temporary, like the Ballpark Commission, have nothing to do with state law and shouldn’t be in the Charter.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to add the following underscored language as the new 903.1:

“E. Oversee and monitor any Conservation Easements known to or held by the Town.”

VOTE: Chair Gombar, Vice-Chair Bird, Commissioners Begert, Higgins and Vallante, yes; Commissioner Regis, no. Motion passed 5-1.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to add the following underscored language after the main body in Section 903:

“Any department, commission, board, committee or agency of the Town conducting planning operations with respect to Town trees, parks or open areas as mentioned above, within the municipality, shall notify the conservation commission of all plans and planning operations at least 30 days before budgeting for or implementing any action under that plan.”

VOTE: Chair Gombar, Vice-Chair Bird, Commissioners Begert, Higgins and Vallante, yes; Commissioner Regis, no. Motion passed 5-1.

Vice-Chair Bird motioned to add a new Section 903.2:

“E. Initiate, provide for and be a repository for the results of any environmental testing for the Town.”

Commissioner Regis stated that Public Works currently does the environmental testing.

Vice-Chair Bird said that the Conservation Commission should at least be the repository.

Commissioner Higgins stated they should at least get a copy.

Commissioner Begert stated that he was concerned with only having one copy. There should be more than one copy in case a building burns down. He then inquired who would conduct the environmental testing.

Commissioner Higgins was concerned about the Conservation Commission “initiating” the testing.

Commissioner Begert then seconded Vice-Chair Bird’s motion to add a new Section 903.2.

VOTE: Vice-Chair Bird and Commissioner Begert, yes; Chair Gombar and Commissioners Higgins, Vallante and Regis, no. Motion failed 4-2.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to remove the newly created Section 903.1 and modify Section 903 to read:

“Sec. 903. Conservation Commission.

The function of this Commission is to serve as an advisory commission to all parts of the Town Government in matters affecting the environment of the Town.

There shall be a Conservation Commission composed of five (5) members, and two (2) Alternates who shall be appointed by the Council. Members of the Conservation Commission shall serve staggered three (3) year terms under 30-A M.R.S.A. § 3261 and shall serve until a successor has been appointed and qualified. The Conservation Commission shall be responsible for the care and superintendence of the municipal trees, public parks, Town-owned open and/or undeveloped spaces and significant natural resources, oversee and monitor any Conservation Easements known to or held by the Town, initiate, provide for and be a supplemental repository for the results of any environmental testing for the Town, and shall have such powers and perform such duties as are provided by the laws of the State of Maine, this Charter and ~~the~~ ordinances duly adopted by the Council, including the powers and duties of tree wardens. The Conservation Commission shall have the power to form subcommittees and/or advisory boards as they deem necessary.

Any department, commission, board, committee or agency of the Town conducting planning operations with respect to Town trees, parks or open areas as mentioned above, within the municipality, shall notify the conservation commission of all plans and planning operations at least 30 days before budgeting for or implementing any action under that plan.”

VOTE: Chair Gombar, Vice-Chair Bird, Commissioners Begert, Higgins and Vallante, yes; Commissioner Regis, no. Motion passed 5-1.

Chair Gombar stated the Commission will now start discussion on Section 904.

Commissioner Higgins read the current Section 904, stating that if it’s not broken, they shouldn’t fix it:

“Sec. 904. Recreation.

There shall be a Recreation Board composed of five (5) members who shall be appointed by the Town Council, with representation consisting of one (1) resident of the Town over age 55, one (1) representative of the Old Orchard Beach School Department, one (1) student enrolled in a public school operated by the Old Orchard Beach School

Department, and two (2) community members at large. Members of the Recreation Board shall serve staggered three (3) year terms, excluding the student who shall be appointed annually, and shall serve until a successor is appointed and qualified. The Recreation Board shall be responsible for recommending, overseeing, and maintaining recreation programs. The Recreation Board shall be responsible for the maintenance of recreation equipment and facilities.”

The Charter Commission then agreed that the references to the school department were broken and needed to be fixed.

Vice-Chair Bird motioned, seconded by Commissioner Higgins, to amend Section 904 by adding the underscored language and deleting the strikethrough language as follows:

“Sec. 904. Recreation.

There shall be a Recreation Board composed of five (5) members who shall be appointed by the Town Council, with representation consisting of one (1) resident of the Town over age 55, one (1) representative of the teachers from the public schools operated in Old Orchard Beach ~~School Department~~, one (1) student enrolled in a public school operated in by the Old Orchard Beach ~~School Department~~, and two (2) community members at large. Members of the Recreation Board shall serve staggered three (3) year terms, excluding the student who shall be appointed annually, and shall serve until a successor is appointed and qualified. The Recreation Board shall be responsible for recommending, overseeing, and maintaining recreation programs. The Recreation Board shall be responsible for the maintenance of recreation equipment and facilities.”

VOTE: Unanimous.

Vice-Chair Bird inquired from the Commission if they wanted to add the Finance Committee to the Charter.

Commissioner Higgins stated it’s not currently in the Charter, and felt there was no need to add it.

Commissioner Regis responded that it’s a committee like the Recycling Committee, and felt it didn’t need to be in the Charter.

Vice-Chair Bird then read excerpts from the current Finance Committee Ordinance.

Commissioner Regis stated that an ordinance can be revised, but if it’s in the Charter, it can’t be changed for ten years.

Commissioner Begert felt a compromise would be to command that it exist in the Charter, but then refer to an ordinance for details.

Commissioner Vallante stated that it’s advisory anyway. The Town Council can choose to ignore them if they wish.

Commissioner Begert motioned, seconded by Vice-Chair Bird, to add a new Section 905 as follows:

“Sec. 905. Finance Committee. There shall be a Finance Committee and the Town Council shall establish by ordinance its composition and responsibilities.”

VOTE: Chair Gombar, Vice-Chair Bird, Commissioners Begert, and Vallante, yes; Commissioners Higgins and Regis, no. Motion passes 4-2.

Commissioner Higgins read the current Section 1001:

“Sec. 1001. Repealing clause.

Upon the effective date of this Charter, all acts and parts of acts of the private and special laws of Maine relating to the Town of Old Orchard Beach, inconsistent in whole or in part with the provisions of this Charter and all previous charters of the Town of Old Orchard, are hereby repealed.”

Commissioner Regis motioned, seconded by Commissioner Higgins, to accept Section 1001 as currently written in the Charter.

VOTE: Unanimous.

Commissioner Higgins read the current Section 1002:

“Sec. 1002. Separability clause.

If any portion of this Charter shall be held to be invalid, such decision shall not affect the validity of the remaining portion thereof.”

Commissioner Regis motioned, seconded by Commissioner Higgins, to accept Section 1002 as currently written in the Charter.

VOTE: Unanimous.

Commissioner Higgins read the current Section 1003, stating the first half is all set, but the second half is all over the place:

“Sec. 1003. Conflicts of Interest.

No elected Town official shall hold appointed office in the Town unless the law or ordinance creating the appointed office so requires or allows. Any elected official, employee or member of a Town board, commission or committee who violates or causes a violation of state law relating to conflicts of interest shall be guilty of malfeasance in office or position and shall forfeit said office or position. Violation of this section with the knowledge of the person or corporation contracting with or making a purchase or sale to the Town shall, at the option of the Town, render the contract or sale voidable.”

Commissioner Regis motioned, seconded by Commissioner Vallante to accept Section 1003 as currently written in the Charter.

Vice-Chair Bird stated he would like to change the word “creating” to “regarding”, and add the words “or this Charter”.

Commissioner Begert thought the word “creating” should be changed to “relevant”.

Commissioner Vallante withdrew his second, and Commissioner Regis withdrew his motion.

Commissioner Regis motioned, seconded by Vice-Chair Bird, to amend Section 1003 by adding the underscored language and deleting the strikethrough language, as follows:

“Sec. 1003. Conflicts of Interest.

No elected Town official shall hold appointed office in the Town unless the law or ordinance regarding ~~ereating~~ the appointed office so requires or allows. Any elected official, employee or member of a Town board, commission or committee who violates or causes a violation of state law or this Charter relating to conflicts of interest shall be guilty of malfeasance in office or position and shall forfeit said office or position. Violation of this section with the knowledge of the person or corporation contracting with or making a purchase or sale to the Town shall, at the option of the Town, render the contract or sale voidable.”

VOTE: Unanimous.

Commissioner Higgins read the current Section 1003.1:

“Sec. 1003.1. No appointed department head shall hold any other elected or appointed office, or position of employment with the Town.”

Commissioner Regis motioned to accept as currently written, but there wasn’t a second.

Chair Gombar felt there may not be a reason to have Section 1003.1 in the Charter.

Commissioner Begert felt it should be two sentences. He then motioned, seconded by Vice-Chair Bird, to amend Section 1003.1., as follows:

“No appointed department head shall hold any elected office. No appointed department head shall hold any other appointed position or employment with the Town other than as specifically allowed by this Charter”.

Commissioner Vallante stated department heads need flexibility.

VOTE: Vice-Chair Bird and Commissioner Begert, yes; Chair Gombar, abstain; Commissioners Vallante, Higgins and Regis, no. Motion failed 3-2-1.

Commissioner Higgins motioned, seconded by Commissioner Vallante, to amend Section 1003.1 to add the underscored language and delete the strikethrough language as follows:

“Sec. 1003.1. No appointed department head shall hold any other elected or appointed office, ~~or position of employment with the Town.~~”

VOTE: Unanimous.

The Commission then agreed to start the next meeting, February 22nd, at 6:30 p.m.

Meeting adjourned at 9:22 p.m.

Respectfully Submitted.

Kim McLaughlin
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of eleven (11) pages is a true copy of the original Minutes of the Charter Commission Meeting held February 8, 2011.

Kim M. McLaughlin