

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
THURSDAY, JANUARY 27, 2011
TOWN HALL CHAMBERS**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Thursday, January 27, 2011 in the Town Council Chambers. Chair Quinn opened the meeting at 7:02 p.m. The purpose of the Workshop was to discuss the duties of the Town Council (portions of the Workshop may occur in executive session pursuant to 1M.R.S.A. section 405 (6) (E)).

The following were in attendance:

**Chair Bob Quinn
Councilor Robin Dayton
Councilor Sharri MacDonald
Town Manager Jack Turcotte
Assistant Town Manager Louise Reid
Christopher Vaniotis, Esquire – Bernstein & Shur
Philip Saucier, Esquire – Bernstein & Shur**

Absent: **Councilor Shawn O'Neill
Vice Chair Michael Tousignant**

Christopher Vaniotis, Esquire and Philip Saucier, Esquire of Bernstein & Shur, our Town's legal firm joined the Council this evening on a discussion of Council procedures.

Discussion revolved around the rendition of advice and guidance concerning a legal matter or a procedure or policy of, in this instance, Town Council. The term counsel and advise are frequently employed as synonyms for aid or assisting.

Attorney Vaniotis, who will be retiring at the end of March, gave a short history of the association of Bernstein & Shur with the Town of Old Orchard Beach which began back in the early 1960's with he, himself, coming on board in the early 1980's. During the beginning years the legal firm appeared almost at every planning board meeting and then as time progressed dealt with areas of law in all aspects of town government. He then talked about the role of the Town Council. The Council-Manager government form is one of two predominant forms of municipal government under which the elected body, the Town Council, is responsible for the legislative function of the municipality such as establishing policy, passing local ordinances, voting appropriations and developing an overall vision. The legislative body which is voted into office by public elections appoints a professional manager to oversee the administrative operations, implementing its policies and advising it. The Manager's role is to provide professional management to the Town Council. He talked about recognizing the role as a Councilor and the confusion that does exist where some may see their role as political activists responding to a constituency rather than trustees providing public service to their constituency. All government authority rests with the Council except for certain duties that are assigned by Charter or other law to the Manager; however the

Manager is always employed at the pleasure of the elected body. He pointed out that the Council is a body not a group of individual proponents of their own political cause. They have been elected to serve their constituency but also to consider the best areas of service for the entire community. He talked about the importance of the Charter which grants authority and recognizes the prerogative of the Council to exercise the rights specified. A municipal corporation is the legal term for a local governing body and municipal incorporation occurs when such municipalities become self-governing entities under the laws of the State in which they are located and often this event is marked by the declaration of a municipal charter.

Rules of Procedure – These are the Councils Rules of Procedure establishing rules for regular meetings, special meetings, Postponement of meetings, filing of items for meetings, order of business, executive sessions, priority of business and other very important matters that are regularly dealt with in procedural manner. Rules and orders are not imposed by State law. The Council chooses the rules of procedures and can also suspend them if that should be their choice. They are designed to be a mechanism to do business. He strongly recommended that rules should not get in the way of doing their job. It is not a cumbrance; they are there to define some order of business and procedures. He emphasized that rules are not “carved in stone.” In the discussion of **Robert’s Rules of Order** it was noted that these sometimes can be too structured.

Home Rule – Home Rule permits the Town to do things not forbidden by State law or the Constitution. It is self-government in local matters by a city, county or town that is part of a national government. It is the power of a constituent of a State to exercise such of the State’s powers of government within its own administrative area that have been devolved to it by the State government. It is a common name for the State’s transferring of power to the local government to pass regulations regarding land use and other prominent issues.

Motion to Lie on the Table – This type of motion is not debatable and cannot have any other motion applied to it. It may be applied to any main motion; or to any question of privilege or order of the day, after it is before the Council for consideration. It should be noted that no motion that has another motion adhered to it can be laid on the table by itself; if laid on the table it carries with it everything that adheres to it. It is important to note that the motion cannot be applied to anything except a question actually pending. If a motion to lay on the table has been made and lost, or if a question laid on the table has been taken from the table, it shows that the Council wishes to consider the question now, and therefore a motion made the same day to lay that question on the table is out of order until there has been material progress in business or debate unless an unforeseen urgent matter requires immediate attention. A motion would be – “I move to lay the question on the table.” The purpose of laying something on the table is to enable the Council, in order to attend to more urgent business, to lay aside the pending question in such a way that its consideration may be resumed at the will of the assembly as easily as if it were a new question.

Reconsideration of an Agenda Item – This is a motion to reconsider a vote on action previously taken. Any Council member may propose reconsideration and if the motion prevails, the matter is voted on again. This gives another opportunity to take another vote on an item in question. The motion for reconsideration must be accepted by a majority of the Council present and voting. It can be a written or verbal request requesting that a previously voted item be taken up again. A request for reconsideration, if filed subsequent to adjournment, appears on the next Town Council agenda.

Should we keep notes in Executive Sessions – There is little established law concerning executive sessions – they are not mandated by State law and practices are still revolving. Executive sessions tend to vary widely in content and length. So there are mixed opinions on whether notes should be taken. The basis for Old Orchard’s Executive sessions in the past has been for Councilors not to take notes with the concern that they could be subpoenaed by the Courts in a legal suit. There is real concern about keeping the confidentiality preserved and particularly the details of the discussions. There needs to be sensitivity to striking the right disclosure balance. It should be recognized that anything that impedes candor will make executive sessions less productive. That is one reason why taking notes on topics discussed and who said what may not be appropriate but in fact can be counterproductive. The other side of this argument is that keeping notes in order to protect oneself if there is a lawsuit is a consideration as well. Executive session discussions – who said what and about which issues – should remain private. Mr. Vaniotis spoke to the necessity to properly describe what is being dealt with in an Executive session; a definitive reason for having it in executive session. He stated that an executive session may be called only by a public, recorded vote of three of the five members, present and voting. It is important to realize that matters other than those identified on the motion to go into executive session may not be considered in that particular executive session. An executive session can only be held if public discussion could be reasonably expected to damage an individual, public officials, employee, groups, etc.

The Right to Speak – The question of Good and Welfare was discussed. The Chairman calls on a speaker in the order in which they signify their desire to speak. However, someone should only speak when recognized by the Chair. The Chair may call the person to order if his or her remarks are not relevant to the subject under discussion. A speaker should not be interrupted unless it is a point of order. A discussion of the length of time someone should be permitted to speak showed a difference of opinion upon Councilors. We do have a five-minute rule and it was indicated that should there be a large group in attendance on a given agenda item, then it might be appropriate to not deviate from the five-minute rule.

Council Agendas – The issue of draft copies of the agendas being circulated to Council was brought up and the issue really is the time frame of putting the agenda together and getting feed back from each Councilor. It was indicated that any Councilor can request an item on the Agenda through the Chair.

Determination in Absence of a Rule – In the absence of a rule to govern a point or procedure at a meeting of the Council, it should be determined by a majority of the members of the Council present.

Question of Order – We spent a great length of time discussing “Remove without Prejudice” and “Tabling” and “Tabling indefinitely.” Some time was spent on the memo information below provided by the Town Clerk:

“As you know, the Rules of Procedure are outlined in the Code of Ordinances, Chapter 2, Sections 2-51 through 2-96. Because they are Council rules, and not an ordinance, they can be amended at any Town Council meeting when they’re placed on the agenda.

I have asked the codifiers to remove the word “ord” after each section and replace it with “Policy” to avoid future confusion regarding the ability to amend these sections.

I have spoken with a Parliamentarian, various Town Clerks, and Richard Flewelling, from the legal department at Maine Municipal Association (a free consultation).

Apparently, the term the Town Council has used for many, many years, “Remove without Prejudice” is a court term, but not used in Roberts Rules and Order. It is also not referred to in the Town Charter, nor the Council Rules of Procedure. When the Council is removing an item without prejudice, the Council is removing that item from the agenda. The correct terminology is to “table indefinitely”, which is outlined in the Council Rules of Procedure [2-72]:

“Sec. 2-72. Motion to table.

At a meeting of the town council, all motions to table, except a motion to table indefinitely, may be amended as to time. If a motion to table indefinitely is carried, the principal question shall be declared lost.”

If a Town Councilor wishes to table an item, the Councilor must make a motion to table to a date certain, i.e. “I make a motion to table this item until the December 7th, 2010 meeting”. If the Town Councilor does not make a motion to table to a “defined date”, the item is lost.

If there is a tie vote on any issue regarding the item, the item is “lost”. In other words, if the Town Council has a tie vote similar to Tuesday night, when an item was a 2-2 vote to remove without prejudice, the item is lost. You cannot take any further action on the item at the current meeting. You cannot make another motion to table, or a motion to grant/deny the item. If an item is lost, it can be placed on any future Town Council agenda by any Town Councilor as long as the normal Rules of Procedure are followed for placing an item on the agenda.

The one-year rule does not exist unless the item is an ordinance. Under the Town Charter, section 410,

“Sec. 410. Public Hearing on Ordinances.

A proposed ordinance may be introduced in writing by any Councilor to the agenda of any regular or special meeting of the Council. Upon introduction of an ordinance, the Town Clerk shall distribute a copy to each Councilor and to the Town Manager, shall file a reasonable number of copies in the office of the Town Clerk, shall post a copy of the proposed ordinance on the bulletin board in the Town Hall, and shall cause to be published in a newspaper of general circulation in the Town the wording of the proposed ordinance or a title descriptive of its contents and purpose, together with notice of the time and place of public hearing thereon. The public hearing shall follow the publication in the newspaper by at least seven (7) days, may be held separately or in connection with a regular or special meeting of the Council and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard. An ordinance shall become effective upon its adoption by the Council or at such other time as it may specify. After the public hearing the Council may adopt the ordinance with or without amendment or reject it, but in no case shall the ordinance be adopted or rejected in less than fourteen (14) days after the public hearing. If an ordinance is amended so as to change substantially its meaning, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedure hereinbefore required for a newly introduced ordinance. The above procedure may be waived only as provided in Section 410.1 dealing with emergency ordinances. The Council may enact rules controlling reintroduction of defeated ordinances, provided that no defeated ordinance may be reintroduced for a period of one hundred eighty (180) days from the date of the meeting at which it was considered.”

The Council continued discussion on this with the understanding that the verbiage in our Rules and Procedures could be changed and that Mr. Vaniotis would address this request after the meeting. It was suggested there be three procedures: To remove without prejudice which means that it can come back any time; to table and it would be on the next agenda; or table indefinitely which means a specific date would be included in the motion. The motion is the key to accuracy in declaring which of the three actions are being done.

Point of Order – a Council may rise to a point of order and the point of order shall be immediately decided by the Chair in accordance with the Rules and Procedures. A Councilor can appeal against any ruling of the Chair. The appeal shall be immediately put to a vote and the Chair’s ruling shall stand unless a majority of the Council present and voting otherwise decide. A Councilor rising to a point of order may not speak on the substance of the matter under discussion. The following motions would normally have precedence in the following order over all other proposals or motions before the Council: (a) to adjourn the session; b) to adjourn the debate on the particular subject or question under discussion; and (3) to close the debate on the particular subject or question under discussion.

Contract with Bernstein & Shur and Records of History

The question was raised why we do not have a contract with Bernstein & Shur and it was stated there never has been a contract for the past forty-some years and that the working relationship has not been based on a limited contract but rather an open communication between previous and current Councils and Town Managers. The suggestion was also made that perhaps a log of historical document maintained by Bernstein & Shur could be shared with the Town. The Council expressed best wishes to Mr. Vaniotis upon his retirement and expressed appreciation for the many years of professional expertise that he has brought to the community of Old Orchard Beach in serving us in this legal capacity.

The meeting closed at 9:20 p.m.

Respectfully Submitted,

V. Louise Reid
Town Council Secretary

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of five (5) pages is a true copy of the original Minutes of the Town Council Workshop of January 27, 2011.

V. Louise Reid