



Ogunquit Charter Review Commission

Meeting Minutes

February 10, 2022

This meeting was conducted remotely via Zoom.

1. Welcome and Call to Order

The meeting was called to order at 11.05 am.

Members present:

- William Sawyer, Chair
- Gordon Lewis, Vice Chair
- Robin Millward, Secretary
- Amy Forbes
- Peter Griswold
- Patricia Hussey
- Gary Latulippe
- Wendy Levine
- Terry Ann Lunt

Others present:

- Town Manager Matt Buttrick
- Select Board Liaison Richard Dolliver
- Town Attorney Mary Costigan (Shareholder, Bernstein Shur) [11.46 am – 1.22 pm]

2. Old Business

- 2.1 Moved by Peter Griswold, seconded by Amy Forbes, that the Minutes of December 16 be approved. Agreed unanimously.

3. New Business

- 3.1 Pending the Town Attorney's arrival, the Chair invited discussion on non-legal matters. Wendy Levine expressed her dismay that the legal review of the Charter had not been completed by the deadline. She hoped that the Commission would reach consensus on the final document.

Article V

- 3.2 The Chair opened discussion on Article V. Following the December meeting, he had asked the Town Treasurer for further input. Her preferred approach was to give voters the choice to vote

yes/no on one figure, rather than a choice between the Select Board and Budget Review Committee (BRC) figures where the two bodies disagreed. The Chair proposed to strike the version of 503.5 as it currently appeared in the Charter and replace it with the Treasurer's language. The Secretary recused herself because she is a Board member of a voluntary group which potentially might benefit from Select Board and BRC figures appearing on the warrant.

3.3 Motion that 503.5 be redrafted following the Town Treasurer's recommendations: moved by Peter Griswold, seconded by Wendy Levine, passed by 8 votes with one abstention.

3.4 **ACTION:** the Chair will update the Charter accordingly.

Timetable

3.5 The Chair confirmed that to help the Town Clerk finalise the warrant for the Annual Town Meeting on June 15, the Charter and supporting documents (legal review, summary of major changes, minority report if written) would be submitted to the Town on or before 28 February.

Other discussion

3.6 The only non-compliant provision in the Charter appears in 308.1 C. The Commission had replaced "3/5" with "a majority" of Select Board members present voting to go into executive session but statute specifically requires 3/5.

3.7 Patricia Hussey said that it was critical to recommend that the Town create an Ethics Committee, which she believed was something to be embraced. Gordon Lewis said that although he had proposed wording to say that the Select Committee "may" appoint an Ethics Committee (para 3.13 of the Minutes of December 16 refers), he now took the view that the Charter should not include any reference to the Select Board establishing an Ethics Committee.

Charter – legal review

3.8 The Town Attorney joined the meeting at 11.46. She explained that she had formatted the Charter so that people could see what had been deleted and to be consistent in the way that statutes are referenced. Her recommendations highlighted in yellow were made for clarity.

3.9 Section 203 (Town Elections): added a plurality of votes cast on the item as each warrant item is considered individually. The quorum is only necessary to hold a Town Meeting and thereafter, there is no minimum number required to vote on each item.

3.10 Section 205 (Special Town Meetings): the petitioned Article may be refused if it calls for an illegal act (consistent with Commission drafting in Section 206).

3.11 Section 206 (Warrant article(s) by petition of voters): language inserted to clarify that the Notary may call a Special Town Meeting but does not have power to require an article to be added to an existing warrant. The reference to an illegal act comes from case law as an example of when it is not unreasonable to refuse a petitioned article.

3.12 308.1C (Meetings): 3/5 requirement of members present voting to go into executive session is in statute. Any change would frustrate the purpose of the law and is unacceptable. If only 4 members were present, the percentage would be based on 4.

- 3.13 308.1E Meetings): paragraph amended to reflect that new legislation (Title 1 Chapter 13 §403-B) had been passed to permit remote participation and statute cited. Patricia asked if this applied to other Boards / Commissions; the Town Attorney said that although under the new statute, the Town could adopt a policy which applies to all Committees, Boards or Commissions, the Town of Ogunquit requires that each body adopt a remote participation policy individually: this provision can be added to Article VIII if needed.
- 3.14 310.15 (Powers of Select Board): “an annual” added for clarity. In answer to Peter’s question, the Town Attorney said that if voters didn’t receive this Information Packet, they could complain about this as for any other violation of the Charter.
- 3.15 309.2 (Forfeiture of office): Para C refers to the Recording Secretary and Patricia asked who, in practice, is the Recording Secretary for the Select Board. Records kept by the Recording Secretary are key to determining attendance and possible eligibility for forfeiture. Article IV names the Town Manager as Recording Secretary. In practice, the Town Manager’s Administrative Assistant records attendance so records are kept through the Town Manager’s office. The Town Attorney said that the Commission could, if it so wished, amend the wording to read “The Town Manager or their designee”. The Chair noted this.
- 3.16 503.5 (Budget process): the Chair confirmed that the Commission had voted to adopt the Treasurer’s recommendation and this section would be replaced with her proposed wording. He will send the revised drafting to the Town Attorney.
- 3.17 505 (Borrowed funds): divided into two paragraphs for clarity. The bullet point list of borrowings only applies to the second paragraph.
- 3.18 801 (Town boards, committees and commissions): provision for boards, committees and commissions to meet remotely to be added to 801.1 B (Procedures). The Town Attorney advised that the state law reference was sufficient, but Boards were required to adopt a remote participation policy and legislation would then guide what happened in remote meetings, whether all members or only one member participated in that way.
- ACTION:** The Chair will draft and send to the Town Attorney.
- 3.19 804.1 D (Petition for recall): requires that the recall petition not be left unattended. It must either be requested or, if in view of the public, someone must watch it and witness any signatures.
- 3.20 804.2 (Examination of petition): the Town Attorney included language to say that the procedures for considering a challenge to a petition should follow the procedures for considering a challenge to nomination papers. She recommended that the specific reference to signatures remain in the Charter as the Town Clerk’s knowledge and expertise related only to the validation of signatures.
- 3.21 905 (Oath of office): The Town Attorney had added wording which members of the Commission found confusing as it suggested that different positions required different oaths of office. She confirmed that this was only a recommendation which the Commission did not have to accept.

- 3.22 Positions chart: Patricia asked if the Town Attorney were a required position. The Town Attorney was not aware of any statutory provision, but any appointment should be made by the Select Board. "Required" may be deleted from the post description in Chart 1.
- 3.23 Definition of "Property owner": the Town Attorney had suggested "the owner of land in the Town" rather than "the owner of a residence or business in the Town". Terry Ann Lunt asked whether a condominium owner, who would not own land, would be a property owner. The Town Attorney suggested "owner of real property in the Town" and this would apply only to businesses which owned the property where the business was sited.

4. Process

- 4.1 Title 30-A §2103 5D sets out the documents which the Charter Commission must submit to municipal officers. These can include a minority report not to exceed 1000 words. All reports and the legal review must be made available to voters with the proposed new version of the Charter.
- 4.2 There was considerable discussion as to whether sections of the Charter could be presented to voters separately. Statute refers to this provision in the context of "minor modifications". The Chair was supported an up and down vote since changes had been made to every article except Article VII (Tax Administration). Terry Ann spoke against having an up and down vote and revisiting areas of the charter where consensus had not been achieved. Patricia said that excluding the requirement to establish an Ethics Committee on a 5-4 vote was very tough.
- 4.3 The Town Attorney advised that the initial decision was whether the changes to the Charter were minor modifications. There were two options under statute: to ask voter approval for modifications in separate questions or to ask approval for the charter amendment, i.e., the whole document.

5. Questions to the Town Attorney

Note: several questions appearing in the list had been covered in prior discussion.

- 5.1 If the Charter is approved without a mandate for an Ethics Committee and a Citizens petition is approved adopting one, an Ethics Committee would be created outside the Charter. The Charter does not have to include it if the voters create one outside it.
- 5.2 Positions in the Municipal Code not appearing on Chart 1: they can be added.
- 5.3 Influence: interpreted as the term is commonly used.
- 5.4 Maintenance of all town physical assets and properties: any long list updated annually should be outside the Charter, which is only updated every five years.
- 5.5 Property owners right to vote on town budget items: the Town Attorney will check again.
- 5.6 Legal challenges to petitions: provisions are pre-empted by State statute.
- 5.7 School Committee: heavily governed by statute.
- 5.8 Note: other questions answered in prior discussion.

5.9 Moved by Terry Ann, seconded by Patricia, to add two new sentences to Article I, Section 104:

“The Town of Ogunquit shall establish an independent Ethics Committee consisting of five voters of the Town elected at the Annual Town Meeting to serve a three (3) year term.

That Committee will create educational programs on the Code of Ethics established by the Select Board, provide a safe place to seek advice and counsel, and hear and investigate potential violations where appropriate, resulting in a report for the Select Board’s review and resolution.”

In favor: 4; against: 5; the motion failed.

5.10 The Town Attorney left the meeting, which had been scheduled to end at 1.00 pm, at 1.22 pm.

6. Next steps

6.1 Peter said that the Sub-Committee had spent a great deal of time looking at an Ethics Committee and it was hard to have 5 people decide not to put it in the Charter. Commission members have agreed most of the sections except on this issue. This should be a separate warrant issue and the voters should decide.

6.2 The Chair said that the Commission was unable to do that although an individual could raise a petition as a private citizen.

6.3 Moved by Gary Latulippe, seconded by Gordon Lewis, that there be an up and down vote on the Charter. Patricia rejected the motion and asked for one more meeting, with public comment, to review Mary’s input. Wendy did not feel comfortable voting without a final document to hand. The motion passed 5 – 2 with 2 abstentions.

6.4 **ACTION:** The Chair will ensure the document is amended to incorporate points agreed at the meeting and will send it to all Commission members. These include: reference to the remote attendance policy; deleting words proposed by the Town Attorney at the beginning of the Oath (agreed unanimously without a formal vote); and amending the definition of “property owner”: the Town Attorney had suggested the owner of “land” in the Town: “a taxable parcel” could be an alternative.

6.5 Amy Forbes left the meeting, to deal with matters arising from her house having been flooded, at 1.39 pm.

7. Public comment

7.1 Points raised:

- When does a zoom meeting take precedence over in-person meetings?
- Who makes the final determination regarding a conflict of interest?
- Is the Charter any different to the Comprehensive Plan?
- If there are questions, how will they be answered before the June Town Meeting?
- The Charter is a time to set accountability in motion.
- Does the Commission vote on the content of the minority report? [*Chair – no; it is approved by the minority who choose to write it*]
- How do we educate the public and help people reach a common understanding?

8. Closing remarks and adjournment

- 8.1 In response to a question, the Chair said that a minority report was the proper way to document disagreement and he would ensure that it was submitted with the other papers. The Select Board does not have to agree with the Commission's work but is required to place it on the warrant.
- 8.2 Wendy asked whether the vote would appear on the ballot: the Chair will speak with the Town Clerk.
- 8.3 Peter said that the up and down vote was one decision; another would be, once members had seen all the documents, whether to send this to the voters.
- 8.4 The Chair again confirmed that he would send the updated Charter to all members.
- 8.5 Moved by Gary Latulippe, seconded by Wendy Levine that the meeting adjourn. Agreed 8-0. The meeting ended at 1.58 pm.

Respectfully submitted,

Robin Millward

Ogunquit Charter Review Commission Secretary *Note: these minutes are not a transcript.*