

CHARTER COMMISSION MEETING  
TUESDAY, APRIL 12, 2011 – 6:30 P.M.

Chair Gombar opened the regular meeting at 6:30 p.m., in Town Hall, Council Chambers. The following members were in attendance:

Jerome Begert  
John Bird  
Jayne Flaherty  
William Gombar  
Tianna Higgins  
Ronald Regis  
Michael Vallante

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

Vice-Chair Bird motioned, seconded by Commissioner Begert, to table the minutes of March 22, 2011.

VOTE: Unanimous.

Commissioner Begert motioned, seconded by Vice-Chair Bird, to table the minutes of March 29, 2011.

VOTE: Unanimous.

Jack Turcotte, the Town Manager, was present to address the Charter Commission with concerns the Department Heads had voiced to him. He said that he had just written it down about “eleven seconds ago”. He said that he wrote down anything with substance as a concern.

Vice-Chair Bird indicated that he felt that this was very late in coming and that it would have been more useful if these concerns had been brought to the Commission earlier in the process.

Mr. Turcotte stated that he wanted to wait until the Commission had finished their work, before bringing them forward. He then passed out his concerns to the Charter Commission.

Mr. Turcotte stated the department heads do not support seven Town Councilors. It is not a legal issue; however, in Old Orchard Beach the department heads work hard at being responsive to the Town Council. The department heads are there to serve, and they do it well. If a Town Councilor needs something, they’re there. If two more people were added, it would be more difficult to meet their individual needs on a regular basis.

Vice-Chair Bird pointed out that the current Charter is against this (meeting their individual needs) and inquired of Mr. Turcotte if he thought the department heads would want three Town Councilors.

Mr. Turcotte responded that he was not prepared to discuss that issue, but that he believes that five is the right number.

Mr. Turcotte referred to his list of concerns that he had passed out to the Charter Commission, and started discussion on the first item:

“409.3 – Section B – Town Attorney

We do not have a Town Attorney and I will argue against an appointment.”

Mr. Turcotte stated that we do not have a Town Attorney. We do not have a contract with a legal firm. The Town mostly uses Bernstein, Shur, but it’s not exclusive. For example, for foreclosure work, Mr. Turcotte has contacted another attorney in Portland.

Vice-Chair Bird said that in the current Charter, it states the Town Council appoints a Town Attorney. He inquired of Mr. Turcotte if it should maybe state, “~~P~~primary Attorney”.

Mr. Turcotte stated that he just brought it up – take it as feedback.

Commissioner Higgins said “O.K., so you don't want answers to these. You just want a statement.”

Mr. Turcotte said “Well, if we have answers, we're going to get into debate.” and he didn't want that environment. If there are questions later on and they'd want to get into a discussion, he'd be more than willing to do that.

Commissioner Vallante, directing his comment to Mr. Turcotte, stated that “We're at a point, now, Jack, where we need to start moving on this document. We have real deadlines that we have to meet and when you say that you would argue against appointing a Town Attorney, I want to be able, while you're here and saying that, to ask you why, so that I can consider your viewpoint and because very quickly, we're going to have to make a decision about this, and so if we delay this, then the sharing of information is going to get stymied until another meeting and who knows if we'll even have enough time at that point, to respond to your concerns. “ He then stated that O.K., now so that he'll know how to vote on this, now as he reads the current Charter it says that there is and should be a Town Attorney. an attorney is appointed by the Town Council. Now you're saying we don't have one and would argue against it. So, help enlighten him as to why.”

Mr. Turcotte stated that was “old-school” language to use a single attorney. There hasn’t been a signed contract in recent years. In today’s world, that would limit the Town. What if there is not flexibility, we have a contract, and the attorney is not familiar with the subject matter? The Town would pay for all his research to find the answer, when another attorney may be familiar with the answer because it’s his primary practice, and the Town would have an answer immediately and

with less cost involved. He further stated that it's a diversified world now. Not in the Town's best interest to be locked into a single person who gives you the cheapest hourly rate.

Commissioner Vallante stated that that makes sense.

Mr. Turcotte said that was a long answer and that's what he didn't want to do. He didn't want to get off on long discussions.

Commissioner Flaherty said: "But that is what we need and, unfortunately, had we had that early on, that might have been a moot point."

Mr. Turcotte began discussion on the second concern on his paper:

“409-16 – Section B – “First Offering it to the Original Owner”

This language complicates the ability of the Town to deal with property which is no longer needed for the purpose which led to the original condemnation.

I believe this is very confusing language and the intent is unclear – “an Attorney’s delight.””

Chair Gombar said the reason the Charter Commission developed this language was because of a case in Connecticut. They took the family farm to build a new stadium. When they decided not to build the stadium, they refused to sell the land back to the family.

The Charter Commission then moved on to Mr. Turcotte’s next concern:

“Section 411

The Town Council may request the removal of any person from office –  
Only for cause

I believe there are serious problems with this language. I know it says request, but once the request is made problems start.

Example – only for cause results in an investigation. Who is going to do that? Town Manager or the Town Council?

This would require a public vote – and then the damage control begins. Right or wrong the employer is in a very difficult situation and the Town Manager could be found to be between the Town Council and the employee.

“In case of an emergency.”

The language is a very subjective term – some Councilors have emergencies once a week.”

Mr. Turcotte said there are a lot of issues surrounding hiring and firing. He stated he saw all kinds of problems with this language. Where it says, “May request” opens a can of worms. Who is going to do the investigation and determine cause—the Town Manager? He didn’t make the request. If it’s the Town Council, they would be doing their own investigation, and they are lay people. This would pit the Town Council against themselves, because it has to be a majority, and it also puts pressure on the Town Manager. The Town Council should not be asking for someone to be removed.

Commissioner Regis said the word “not” should have stayed in.

Vice-Chair Bird inquired of Mr. Turcotte what his suggested solution would be. The Town Council represents the people. If someone comes in with just cause to the Town Council, and the majority of the Town Council believes it to be egregious, they should be allowed to have the Town Manager look into it.

Mr. Turcotte responded that “asking the Town Manager to look into something” is different than asking for someone’s removal.

Commissioner Begert stated that now-a-days there is video. Maybe the Charter needs to add “with evidence” to that section.

Mr. Turcotte said that “if I blow that off, then you better get rid of me.”

Vice-Chair Bird said that “Yeah, and we're back to the “Nuclear Option”; it always comes down to “if some thing happens that doesn't work out, well, the Town Council can always fire the Manager and that's a horrible disruption to the Town.” the “Nnuclear Ooption” of removing the Town Manager, and that’s not good for the Town.

Commissioner Flaherty stated she used to be a union-contract member, and understands where the Town Manager is coming from.

Mr. Turcotte stated he is also concerned with “in case of an emergency”. The Town Council declares an emergency, individually, all the time. He can see potential challenges on that word. Everyone’s interpretation of “emergency” is going to be different.

Mr. Turcotte then addressed the next concerns he ~~had~~ ~~has~~ listed on his paper:

“Section 414.2

#### Compensation to the Town Clerk

A very difficult subject. I understand the rationale but addressing salary in the Charter is not a healthy practice. There would be a particular problem initiation this the first time due to impact on other employees.”

Mr. Turcotte stated that addressing the Town Clerk’s compensation in the Charter is dangerous territory. He understands the reasoning, but the issue is the starting up of the formula. Other people are not receiving any raises, and this would have one person getting a major change in compensation.

~~Vice-Chair Bird stated that this would not be a raise. It would be an adjustment in the compensation for the position because it is severely under-compensated.~~

Mr. Turcotte then began the issue of job descriptions being placed in the Charter, stating it’s inappropriate for any job descriptions to be in the Charter. He said it can look very different in five or ten years. He doesn’t understand the concept. He is concerned that if someone isn’t a good employee, they may not do something requested because it’s not in the Charter.

Vice-Chair Bird responded that job descriptions are there for definition. Most of the job descriptions also stated, “What other duties as the Town Council may specify”.

Mr. Turcotte stated that he just wrote a new job description for the Town Planner.

Commissioner Flaherty agreed with Mr. Turcotte that job descriptions should not be in the Charter.

Commissioner Vallante suggested, for salaries, that the Charter Commission may want to look at comparative positions in other Towns.

Mr. Turcotte said that he would have a very difficult time if there were a major pay raise for one person and not others.

Vice-Chair Bird stated that this would not be a raise. It would be an adjustment in the compensation for the position because it is severely under-compensated.

Vice-Chair Bird stated that the Town Clerk’s ~~salary compensation~~ is being defined in the Charter to take the politics out of the position. The Town Clerk’s Office is a value to the Town on par with the ~~P~~police, ~~F~~fire, ~~R~~recreation, ~~P~~planning, etc. This change would not take place for over a year. He hoped that other people would not be jealous or envious if the compensation for an important Office is brought into line with other departments.

Mr. Turcotte said that he would hope so too.

Mr. Turcotte then read the next concern on his paper:

“Section 415 Without Excuse

Excuse is an undefined term. Perhaps you would want to say they need to notify the Chair of their intended absence – what’s an excuse?”

Commissioner Higgins commented that “without excuse” is currently in the Charter.

Vice-Chair Bird stated it should be a judgment call by the Town Council. The Charter Commission did not change the wording.

Mr. Turcotte then read the next concern on his paper:

“Section 501 – Resident of the State

I know you want to improve the language but this type of language is not in the best interest of attracting candidates. It is simply uninviting and not necessary. There is more harm than good that can develop from this language.”

Mr. Turcotte commented that the Charter Commission had amended this section positively, at the last meeting. It works much better. His comment is that this type of language is not too terribly inviting to candidates. This is one of those potentials. There are not always a lot of applicants for a position. Interviewing can go both ways. If they’re a competitive candidate, they will look at the Charter, and it will have a flavor of unfriendliness to employees.

Vice-Chair Bird inquired of Mr. Turcotte if he thought it was unreasonable to ask an employee to be a resident of the State.

Mr. Turcotte responded, “No”, but it is setting up the potential opportunity to lose a candidate. What if the Town Manager cannot meet the requirement because his house in another state didn’t sell when it was supposed to? He’s a great Town Manager. What do you say? I’ve always been a Mainer, but you’re squeezing details that may work against the Town.

Mr. Turcotte then read the next concerns on his paper:

“Section 502.1 Appoint or re-appointment by July 1<sup>st</sup> of each year.

This is the most dangerous language of the document – all the procedures set forth in the document or individual contract, etc., can be circumvented by simply not appointing.

Disciplinary Action – appeal able.

This is a potential nightmare. Disciplinary Action is a weekly activity. To have the council involved is a political nightmare – then the contest begins.

The outcome of this – no more discipline. Who would subject themselves to this particular practice?

An employee could say anytime they are spoken to could result in Council review.

The word “hearing” has legal connotations. Therefore the Town Manager may want to involve Council. The council may want to involve council. This language would present any Manager or Supervisor from wanting to work in Old Orchard Beach.

I, for one, would consider an early exit if I had to go to the Town Council every time I disciplined an employee; and an angry employee who was just disciplined and had friends on the Council would do just that.”

Mr. Turcotte was concerned that if an appointment is not made, it could eradicate every other piece of the process of employment. ~~with other issues.~~ If the Town Council decides not to appoint, does that conflict with other processes, contracts?

Chair Gombar commented that the Commission had clarified this at the last meeting. It is the Town Manager's responsibility to appoint. ~~this is ambiguous.~~

Mr. Turcotte responded that this is a conflicting document. What if the Town Manager doesn't re-appoint an employee?

~~Commissioner Vallante then inquired of Mr. Turcotte if there is a policy in place for removing an employee.~~

Vice-Chair Bird commented that everyone is an at-will employee with the Town Manager, if they do not have a contract. If the Town Manager says he doesn't want an employee any longer, he can do that, as long as he doesn't violate EEOC laws.

Mr. Turcotte gave the Commission an example of his choice not to re-appoint a school official at the end of the school year, stating the Courts determined it was a contract because he didn't have cause.

Commissioner Vallante stated that in education people receive tenure. That is not the case for municipal employees.

Mr. Turcotte recommended that a phrase be placed in this section that states that it would not conflict with State hiring and firing practices.

Under disciplinary action, ~~this that~~ is probably the biggest issue he has with the whole document, and reiterated that he made a strong statement in his notes. He was concerned about all employees having the right to appeal ~~his~~ a disciplinary decision to the Town Council.

Commissioner Regis stated that the Charter Commission gave all the department heads the same rights that the Police and Fire Chiefs have in the current Charter.

Commissioner Begert asked ~~the~~ Mr. Turcotte if he terminates other people than the department heads.

Mr. Turcotte responded that he absolutely does. Regularly.

Commissioner Begert asked Mr. Turcotte “So you don't delegate to the Department Heads to terminate subordinates?”

Mr. Turcotte answered that “It would be a very is rare situation that a Town Manager department head would fire an employee without being in total harmony with the Department Head. support from the Town Manager. The answer to that is 'No.' I would not fire an employee without support of the Department Head.”

Mr. Turcotte stated again that dDdisciplinary action should not be appealable to the Town Council.

Commissioner Vallante then inquired of Mr. Turcotte if there is a policy process in place for disciplinary process removing an employee. and asked Commissioner Vallante inquired if placing a letter in someone's file would qualify as disciplinary action and if he doesn't feel there are reasons that that should be appealable?.

Mr. Turcotte responded, “Yes, that's disciplinary action”, and advised the Charter Commission that they will push department heads not to discipline their employees.

Chair Gombar suggested that it be re-phrased to add “severe” and limit it to ~~a minimum~~ of three types of complaints such as removal, demotion or suspension, before it would be ~~investigated~~ appealable.

After further discussion, Chair Gombar recommended the following changes to the recommended additions to Section 502.1:

“Any Disciplinary action, resulting in including removal, demotion or suspension, taken by the Town Manager, shall be appealable to the Town Council, provided such appeal is made in writing within ten days of the Town Manager's decision. The decision of the Town Council, after notice and hearing, may be appealed to the Superior Court in accordance with M. R. Civ. P. 80B.”

Mr. Turcotte stated he was concerned about cursory action.

Mr. Turcotte then began discussion on Section 702. He thanked the Charter Commission for thinking about this section, but stated the practicality of six months doesn't make sense.

Vice-Chair Bird read the first paragraph of Section 702 in the recommended Charter revision:

“Sec. 702. Preparation and Submission of the Budget.



The Town Council, at least six (6) months prior to the beginning of each budget year, shall notify the Town Manager and each Department Head of an expected budget limit figure within which they should formulate their next budget year's budget. This figure need only be a guideline, subject to changes throughout the budgetary process, but should serve as an expectation of the Council.”

Vice-Chair Bird said that department heads have brought the need for this change out in the budget process because the Town Council hasn't given them any guidance.

Mr. Turcotte responded that he's fine as long as it's for guidance only.

Commissioner Begert inquired of Mr. Turcotte if the budget is the Town Manager's budget or if it is at least half the legislative body's budget.

Mr. Turcotte responded that before it gets to the Town Council it is the Town Manager's budget.

Mr. Turcotte then began discussion on Section 903, the Conservation Commission. He said the recommendations to this section raise red flags. Skills will vary from group to group, but there are expectations that the Commission will pre-approve plans.

Vice-Chair Bird stated it's a notification process, and it's in State Law. State agencies have to notify the Conservation Commission before they plan anything. The Charter Commission is just bringing that to the local level.

Commissioner Regis suggested removing the job description.

Mr. Turcotte then began discussion on Section 1004, reference advertising in newspapers, stating he doesn't use newspapers if he can help it, because it's very expensive.

Vice-Chair Bird stated it's an independent record.

Commissioner Higgins said they had heard from the older residents that don't have a computer, that they want the advertising in the newspapers to remain.

Mr. Turcotte then left the meeting at 8:25 p.m.

Chair Gombar read Attorney Vaniotis's recommendations in his February 18, 2011 letter regarding Section 701 (fiscal year).

“I advise against making the proposed change. If, in the future, circumstances change in a way that would make it advisable to operate on a different fiscal year (a change in state funding formulas or in the schools' budget year, for example), the Council should have the flexibility to establish a different fiscal year. Most charters I have seen allow the Council to determine the fiscal year.”

Commissioner Higgins read Section 701, with the previously voted upon changes to the section:

“Sec. 701. Fiscal Year.

The fiscal year of the Town government shall be from July 1<sup>st</sup> of the current calendar year to June 30<sup>th</sup> of the next year established by ordinance. Such fiscal year shall constitute the budget and accounting year as used in this Charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.”

Vice-Chair Bird stated this change was voted upon to set stability in the fiscal year.

On March 4, 2011, Attorney Vaniotis e-mailed reference Section 701, stating, “I do not think the charter can remove the statutory authority of the Council set the fiscal year. A possible middle ground is that the charter sets the fiscal year initially, but reserves to the Council the authority to change it. That is what Freeport has done. I am attaching the language from the Freeport Charter.” He then attached a copy of the section in Freeport’s Charter:

## ARTICLE VI - FINANCIAL PROCEDURES

### 6.01 Municipal Fiscal Year

The fiscal year of the town shall begin on July 1 and shall end on June 30 except that the council may by ordinance change the fiscal year to conform to general municipal practice in the State.

Commissioner Higgins motioned, seconded by Commissioner Flaherty, to amend Section 701 as follows:

“Sec. 701. Fiscal Year.

The fiscal year of the Town government shall be from July 1<sup>st</sup> of the current calendar year to June 30<sup>th</sup> of the next year, except that the council may by ordinance change the fiscal year to conform to general municipal practice in the State. Such fiscal year shall constitute the budget and accounting year as used in this Charter. The term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered.”

VOTE: Commissioners Higgins, Regis, Vallante, Flaherty and Chair Gombar, yes; Vice-Chair Bird and Commissioner Begert, no. Motion passes 5-2.

Chair Gombar began discussion on Section 702, stating they discussed this with Mr. Turcotte.

Commissioner Vallante stated that Mr. Turcotte stated this section was fine.

Chair Gombar read Attorney Vaniotis’s recommendation from February 18<sup>th</sup>, 2011, stating the Charter Commission has already hashed this out:

“Section 702 (Preparation and Submission of the Budget).

The proposed new first paragraph turns the budget process somewhat upside down. I wonder what data the Council would have available six months prior to the beginning of the budget year to be able to set a target figure. The current budget process contemplates that the Manager undertakes the research and analysis necessary to prepare the proposed budget, so that the Council has facts and figures upon which to base its budget discussions.

I also think the second proposed new paragraph is not necessary. The Charter currently makes the Manager responsible for putting together the budget. In order to do so, the Manager, already has the authority to require department heads to submit whatever information the Manager deems appropriate.”

There were no recommendations for further changes to Section 702.

Chair Gombar read Attorney Vaniotis’s recommendations in his February 18<sup>th</sup>, 2011 letter, reference Section 707:

“Section 707 (Work Program, Allotments).

The proposed change requiring a submission to the Town Council, even for “informational purposes,” is inconsistent with the concept that the Manager is the chief administrative officer and that the Town Council deals with the administrative service only through the Manager. The Manager always has the option of sending material to the Council, and the Council can always request it of the Manager. I do not think that it is appropriate to put a requirement in the Charter that department heads must communicate directly with the Council.”

Commissioner Higgins stated this would only occur at the Town Manager request.

Chair Gombar stated that the Charter Commission wanted the Town Council to have the information to know what is going on.

Vice-Chair Bird stated that Sections 703, 706 and 708 are linked. In Section 706, it talks about expenditures and Departmental revenue. The Town Council makes the gross appropriation each Fiscal Year. Section 703 establishes the appropriations, and Vice-Chair Bird read Section 703:

“Sec. 703. Budget Establishes Appropriations.

From the date of adoption of the budget, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies, departments and purposes therein named.”

Vice-Chair Bird further stated that he believes Sections 703 and 706 are in conflict. The Town Council makes the gross appropriation for each department. In Section 703, it starts individually, but Section 706 ends up with the gross appropriation, which is different than Section ~~706~~ 703.

Vice-Chair Bird made a motion to amend Section 706:

“Sec. 706. Expenditures and Departmental Revenue.

The budget for all departments, ~~including the Department of Education,~~ shall include all proposed expenditures. The Town Council shall make ~~a gross line item~~ gross line item appropriations for each department, ~~including the Department of Education,~~ for the ensuing fiscal year. The gross line item appropriations for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section 708. ~~The Department of Education budget shall be expended under the direction and control of the School Board.”~~

Commissioner Higgins stated that the gross appropriation lays out how they got to that amount, but if you force the line item process on the department heads, there will not be any flexibility.

Commissioner Vallante felt the line item process would be hard to do.

Vice-Chair Bird said that Section 708 answers that question, allowing money to be transferred.

Commissioners Vallante and Flaherty both commented that it’s micromanaging.

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

Vice-Chair Bird stated this will reconciled it with Section 703.

VOTE: Commissioners Higgins, Regis, Vallante, Flaherty and Chair Gombar, no; Vice-Chair Bird and Commissioner Begert, yes. Motion fails 5-2.

Chair Gombar read Attorney Vaniotis’s recommended changes to Section 708 in his February 18<sup>th</sup>, 2011 letter:

“Section 708 (Transfer of Appropriations).

For the same reasons described in connection with section 707, above, I advise against the proposed change that allows the Council to transfer appropriations on its own initiative.”

Commissioner Begert pointed out that, upon a vote, the Town Council has initiated transfers.

Chair Gombar stated that it’s rare that they do that without the request from the Town Manager.

Commissioner Regis motioned, seconded by Commissioner Flaherty, to go with the attorney’s advice, and move back to the original Charter wording.

VOTE: Commissioners Vallante, Regis, Flaherty, yes; Commissioners Begert, Higgins, Vice-Chair Bird, and Chair Gombar, no. Motion fails 4-3.

Chair Gombar read Attorney Vaniotis's recommendations to Section 709 from his February 18<sup>th</sup>, 2011 letter:

“Section 709 (Appropriations Lapse at End of Fiscal Year).

I am not sure what the proposed changes add to the existing Charter language, or what the intent of the proposed changes is. To the best of my knowledge, there has not been a problem in applying section 709 as written”.

Vice-Chair Bird stated the reason is to support the idea of continuing funds.

Commissioner Begert pointed out that TANs, GANs, and BANs, do not revert back.

Chair Gombar then began discussion on Section 901, by reading Attorney Vaniotis's comments from his February 18<sup>th</sup>, 2011 letter:

“Section 901 (Planning Board).

I do not think the changes proposed to section 901 are appropriate in the Charter. The functions of the Planning Board are governed by state statute and by the Town's ordinances, both of which are subject to change from time to time. As an example, several years ago the Town of Freeport, by ordinance, divided the function of its Planning Board into two separate boards – the Planning Board to perform the planning functions, and a new “Project Review Board” to perform the review functions. That has worked out quite well, but the Town would not have been able to do that without a charter change had this kind of language been in the Freeport charter.”

Commissioner Vallante motioned, seconded by Commissioner Higgins, to delete the second and third sentence of Section 901:

“Sec. 901. Planning Board.

This Board has both advisory and quasi-judicial functions.

~~It serves as an advisory committee to the Town Council to develop plans, draft ordinances and review and approve subdivision plans to guide the present and future development of the Town. It shall request input and advice on such plans, ordinances and sub-divisions from the Conservation Commission, Director of Public Works and The Waste Water Treatment Department Superintendent at least 30 days prior to considering such plans, ordinances and sub-divisions.”~~

Commissioner Vallante stated that from the get-go, he believed the Charter is supposed to be a skeleton. When the Charter Commission talks about duties, they're micromanaging. Mr. Turcotte and Attorney Vaniotis both are against this being in the Charter.

Vice-Chair Bird stated he doesn't see how this is so offensive. It's what the Planning Board does and should do. It is placed in the Charter to lay down what duties the boards, departments and commissions have, to be consistent. These are the attorney's opinions only.

Commissioner Flaherty re-iterated Commissioner Vallante's comment about the Charter being a skeleton.

Commissioner Begert stated that he appreciates the flexibility of not placing employee job descriptions in the Charter, but the Planning Board is a citizen panel.

VOTE: Commissioners Regis, Vallante, and Flaherty, yes; Commissioners Begert, Higgins, Vice-Chair Bird and Chair Gombar, no. Motion failed, 4-3.

Chair Gombar then read Attorney Vaniotis's recommendations on Section 901.1 from his letter dated February 18<sup>th</sup>, 2011:

“Section 901.1 ([regarding duties of Town Planner]).

I am comfortable with the grammatical changes in section 901.1, although I would prefer to see those attendance requirements removed from the Charter and left to applicable ordinances or to the control of the Town Manager in job descriptions. However, I recognize that the Charter currently does require the Town Planner and the Code Enforcement Officer to attend meetings of the Planning Board and the Board of Appeals, respectively.”

The Charter Commission did not see the reason to change this Section.

Chair Gombar read Attorney Vaniotis's recommendations on ~~fr~~ Section 902, from his letter dated February 18<sup>th</sup>, 2011:

“Section 902 (Zoning Board of Appeals).

For the same reasons expressed above, I would not add the new first paragraph. The duties of the Board of Appeals are governed by the Town's ordinances and are substantially circumscribed by state law. There is no reason to add additional language to the Charter.”

Commissioner Vallante motioned, seconded by Commissioner Regis, to strike the first sentence of Section 902:

“Sec. 902. Zoning Board of Appeals.

~~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 Vallante stated that when the attorney talks about state law, the Charter Commission needs to take his advice seriously.

Commissioner Higgins recommended leaving the first part in regarding reference the board being a quasi-judicial board, but the rest is too specific and agreed it should be removed.

Commissioners Vallante and Regis rescinded their motion and second.

Commissioner Vallante motioned, seconded by Commissioner Regis, to leave the first part of the sentence intact, in Section 902:

“Sec. 902. Zoning Board of Appeals.

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.~~”

Chair Gombar stated he is not inclined to change what the Charter Commission originally voted upon, unless they legally have to.

Commissioner Vallante said that he is not concerned about being verbose. It just has to be accurate and is right and appropriate, no matter how long the document is.

Commissioners Regis and Flaherty agreed.

VOTE: Commissioners Higgins, Regis, Vallante, Flaherty and Chair Gombar, yes; Vice-Chair Bird and Commissioner Begert, no. Motion passes, 5-2.

Chair Gombar then began discussion on Section 903, reading Attorney Vaniotis’s recommendations from his letter dated February 18<sup>th</sup>, 2011:

“Section 903 (Conservation Commissioner).

The proposed changes to this section go well beyond the state statute, 30-A M.R.S.A. §3261 (copy attached) in terms of the powers given to the conservation commission. However, the Town may do so, since the state statute does not limit the powers a town may give to a conservation commission by charter or ordinance.

Some of the proposed new language is a little vague. I am not sure what it means for a commission, which typically does not have a physical office with the Town Office, to be a “supplemental repository” for public records. I also suggest that some attention be given to the idea that the conservation commission could “initiate” environmental testing for the Town. Typically environmental testing would require engaging the services of experts and consultants, and it could prove problematical to give a volunteer board that authority. At a minimum, I would include after the word “initiate” the parenthetical phrase “(subject to appropriation of funds by the Town Council).”

The proposed new final paragraph expands on language in the state statute, at 30-A M.R.S.A. §3261(2)(D)(1), which requires state agencies undertaking open space planning to notify a conservation commission 30 days before implementing such a plan. The proposed new language imposes that same requirement on Town departments, boards, etc. A problem with the proposed language (which is also a problem with the state statute) is the ambiguity of the term “planning operations.” I would suggest that the Commission may want to consult with the Manager and department heads about what kind of a burden this provision would impose upon them, and whether it would make sense as a matter cost/benefit analysis.”

Commissioner Higgins suggested they just clean up who the primary repository will be.

Commissioner Begert stated that who houses the results should be decided by the Town Manager.

Meeting adjourned at 9:32 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 fourteen (14) pages is a true copy of the original Minutes of the Charter Commission Meeting held April ~~11~~12, 2011.

Kim M. McLaughlin