

**CHARTER REVIEW COMMITTEE
DRAFT MINUTES**
March 7, 2022
Nauset Meeting Room, Orleans Town Hall
and via Zoom

Date approved:
3/21/22
Gail

The meeting of March 7 2022 was called to order at 5:30 pm by Jon Fuller, Chair. Present at Town Hall were Mr. Fuller, Patricia Fallender, Robin Hubbard and Maxine Minkoff. Gail Meyers Lavin and Walter North were present via Zoom. All confirmed attendance by roll call. Mark Berson joined the meeting after the Minutes were approved (5:40 pm). Meff Runyon, Select Board Liaison, was not in attendance. **This meeting was convened at Town Hall, with remote participation, real time public access in person and provided by Channel 18 on the town website and cable television.**

The Minutes of February 7, 2022 were moved by Robin Hubbard, seconded by Patricia Fallender, and approved unanimously by roll call 6-0-0.

The Minutes of February 11, 2022, the Public Hearing, were moved by Ms Fallender, seconded by Gail Meyers Lavin, and approved as revised unanimously by roll call 6-0-0.

The Minutes of February 14, 2022 were moved by Jon Fuller, seconded by Ms Fallender, and approved unanimously by roll call 6-0-0.

The Minutes of March 2, 2022 were moved by Ms Lavin, seconded by Ms Hubbard, and approved as revised unanimously by roll call 6-0-0.

Public Comment: None

Tracking sheet: Ms Fallender mentioned a letter she had received from Ginny Farber but thought they should come up under item # 7.

Resource Page: Ms Lavin would like to put up the statistics received from Sarah and also Kelly Darling's email stating the results of her survey of zero quorum towns in the Commonwealth. She will bring the statistics next time, noting that she could definitely see a big bump on the date of the Public Hearing, Feb 11th.

Input from Select Board Meeting: Mr Fuller noted that the Quorum article seemed to have had the most discussion, and there was approval of Kevin Galligan's suggestion to change the word "newspaper" to "news outlet." Ms Fallender commented that she had been pleasantly surprised at the positive feedback on the Quorum article, having thought that there might be some changes suggested; but she said that while the CRC should want to present the unchanged Article at Town Meeting, she recommended that the Committee might want to prepare for some back up and potential amendments in case there was a groundswell of objection from the floor. Maxine Minkoff said that it was interesting that two of the Select Board had moderated their initial concerns about a zero quorum after hearing the Rationale. Mr Fuller remarked that his support for it was to gain more participation at Town Meeting rather than not enough, and Ms Fallender added that to finish in one night without the expenses of a second night would be an excellent outcome.

Ms Lavin asked if Mr Fuller could clarify who would be preparing the Charter article summaries, saying that she would like the CRC to be able to review them, and commenting that the CRC had not been thinking of the summaries as the Rationales were written, and, if they were to be utilized, the CRC should see them before the Warrant closed. Mr Fuller thought that the Town Administrator's office wrote them but said he would check. Mark Berson added that the most persuasive argument to Town Meeting was the fact that the zero quorum had

resulted in greater participation in other Cape towns, and that mention should be made of the specific towns in question. Members discussed whether the points should be in the Rationale or added to the floor discussion at Town Meeting. Ms Lavin suggested that after the Article was moved and seconded Ms Fallender could name those two towns. Mr Fuller said he wanted the cost savings mentioned but wanted it in the summary and not have the Committee speak except in answer to questions. He said that he would follow up with John Kelly to ensure that the change would be included the CRC's rationale, and Ms Fallender asked that the CRC see a proof.

Members discussed the other Select Board comments:

Section 4 – Warrant: Andrea Reed suggested that in the Rationale for the use of “news outlets” rather than “newspapers,” a point should be made that Orleans would be lessening its carbon footprint, which was agreed.

2-1-3 – Quorum article: Ms Fallender said that when she had met with Town Counsel, he had suggested one change to the new wording in the last sentence – to read: *“Once the Moderator has declared a quorum is present and called the meeting to order, the quorum necessary to continue Town Meeting business becomes shall be zero.”* Ms Fallender moved and Ms Minkoff seconded that on the advice of Town Counsel, the language in the last sentence should change from “becomes” to “shall be.” Mr Berson offered a change to the present tense to use the word “is,” but after a brief discussion regarding consistency in Orleans’ Home Rule Charter with many “shall be” and “shalls,” the motion was voted unanimously by roll call 7-0-0. Mr Fuller said that he would advise the Town Administrator of the change.

3-5-3 – Intermunicipal Agreement: Ms Lavin reminded members that Ms Reed had recommended that the CRC consider moving the sentence about protections ahead of the part about losing grant opportunities. All agreed that the language could be finessed a little.

Mr North suggested that it was not necessary to wait until March 21st to vote on edits to the Rationales for that had been discussed tonight because they were supplementary, not substantive, and did not change any of the language of the Articles. It was agreed by consensus to let Ms Fallender and Ms Lavin work on the language and send it to Mr Fuller to forward to John Kelly. Mr Fuller concluded that the work had gone so well that there were not a lot of questions to ask – and few comments. He commented that he hoped people understood the effort that had been made to discuss and evaluate each issue and that none of the results had happened “off the top of our heads!”

Mr North noted that, having listened to more than an hour of discussion prior to the Charter Review Committee joining the Select Board Meeting, he felt that the balance between the Select Board’s policy-making responsibilities and that diving into the details were still not being well navigated would be very difficult for the Committee to resolve. Mr Berson remarked that he had some pretty dramatic suggestions of how this could be achieved – especially within the context of the Water and Sewer Commission and the discussions about rates. He commented that the back and forth between policy and implementation was quite a “wonder to behold,” and members agreed that the rates issue was extremely difficult. Mr Fuller noted that Town Counsel had advised that the CRC not to get into specific operations – and the Committee dropped two potential articles for Town Meeting because of this; and although the Committee would be going back to them, it would have to be very careful.

Ms Lavin noted that until the CRC had developed a job description for a Town Manager and brought it back to the Board for review, members will not know what the Select Board would be prepared to give up. Mr Berson stated that he knew the Committee was concerned about too much detail in the Charter, but a definition of what is policy and what is administration was needed. He added that it was therein the apparent difficulty which caused an unbelievable amount of ambiguity and a huge amount of micro-managing that was still built into the Charter. He added that for an executive whose responsibility it is to run the day-to-day administration of the Town, the only decision the Select Board should be involved in is whether the Town Manager did this or did not do that,” for which he/she could be terminated, and the rest would be policy.

Ms Lavin commented that this (definition of policy vs administration) was exactly the issue that the Charter Commission had wrestled with over 35 years ago at the urging of Sherman Reed; but in that case, the bottom line was that the Commission was well aware that it could not get the Charter passed if it did not put in all those caveats regarding what the Town Executive at the time would be allowed to do. Ms Hubbard noted that that was then, and this was now. Members discussed how the Select Board had told the Committee that it wanted to “get out of the weeds,” and agreed it would be interesting to see how it felt when the Committee brought them a Town Manager job description that clearly separated the roles.

Mr Fuller noted that, despite no general terminology for a Town Manager and no general job description, it was a given that the Select Board should not meddle in town affairs; and if the Board did not like what the Town Manager was doing, it could get rid of him or her. Ms Lavin repeated that the original charter was built on ambiguity to give it the best chance to pass. Mr Fuller said that the Committee would seriously need to get some help from Town Counsel as it proceeds, but he thought that the job description had been pretty closely defined. Ms Hubbard again pointed out that the Town is so different than it was 35 years ago, and Ms Fallender noted that once the sewers went in, no one really knows what the Town would be like. All agreed that researching and spelling out the distinctions between policy and administration was needed.

Points from Conservation Commission Chair Ginny Farber’s letter: Ms Fallender referred to the points in the letter she had mentioned early and said that she thought they were more policy than Charter issues but felt that the CRC should discuss them and advise her. The first was a recommendation that term limits for the Conservation Commission be extended to at least three terms. Ms Farber noted that the Massachusetts Association of Conservation Commissions recommended that or no term limit. Members discussed the Select Board policy to a limit of two terms, but if no one stepped up, terms could be extended, and that it had been an issue of wanting to encourage “new blood” in some bodies. Mr Fuller recalled that when he had been on the Select Board the term limits were left up to each committee to choose, and he remembered the Finance Committee choosing two terms. Ms Lavin mentioned the examples of Bob Rich and Judith Bruce who had been on particular bodies for years because their experience was basically irreplaceable.

Mr North recalled a shift in the Select Board’s approach a few years ago, trying to be more conscientious about encouraging two-term limits, but said that this was truly a police decision, not a Charter issue. Mr Berson maintained that there were two very distinct bodies – statutory and other – and that one required a level of expertise and training that some of the others do not. He said that the Water and Sewer Board is one, where one must not only learn the vocabulary but also the regulations. He added that the question is that if the Town wanted to concentrate on getting more participation, there might not be residents with the diligence to stick with their terms. **He suggested that it might make sense to leave the regulatory boards without terms and give people more opportunities by having term limits for the others.** Ms Hubbard commented that she seemed to remember a Town Meeting discussion on term limits in some of the bodies, and that in restricting term limits, people felt that the Town was having too much trouble finding people to volunteer. It was agreed by consensus that **Ms Fallender should recommend that Ms Farber bring the issue of the Conservation Commission up with the Select Board.**

Ms Fallender said that Ms Farber’s second topic was on consistency regarding the Conservation Commission and the Board of Health having sentences in the Charter’s Chapter 6 and 5 respectively saying that each “shall cooperate closely” with each other and with the Planning Board, but that it was not present in the Planning Board’s section in Chapter 6. **Ms Fallender noted that in Chapter 9-1-4, the Charter did say that the Planning Board should meet with the other two bodies, but it was missing in Chapter 6, and could be added to the agenda to recommend that language as Chapter 6-6-2.**

Ms Fallender said that the third topic Ms Farber raised was that of multi-member body meeting attendance, about which there was nothing in the Charter. Mr Fuller stated that there is already a Select Board policy, but it is not well-enforced – and recommended that Ms Fallender suggest that this should also be referred to the

Select Board. Members discussed the pros and cons and past experiences of attempting to determine how to limit or extend term limits, the roles of associate members, and the ebb and flow in Orleans and in other towns when there are few or many applicants for vacancies. Mr Fuller recommended that this issue be brought up again when Chapters 5 and 6 are discussed.

Ms Fallender distributed fresh copies of the updated Charter and arranged for the Zoom attendees to pick them up outside Town Hall.

Future Agenda Items:

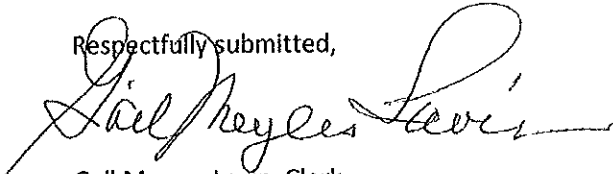
March 21: Summaries; Consider fallback amendment language to be written ahead of time for Quorum article. Strategies to provide rationale.

May 2: Final preparation for May Town Meeting

To review: Chapter 9, 10, 5,6; Input from Chapter 8; Code of Conduct; Emergency Plan; Town Manager. Make sure there is nothing else in Chapter 7. Check for others.

It was moved by Mr Berson, seconded by Ms Hubbard and voted unanimously by roll call to adjourn the meeting 7-0-0 at 6:39 pm.

Respectfully submitted,



Gail Meyers Lavin, Clerk

The next CRC Meeting will be held in the Nauset Room as a hybrid meeting (via Zoom) on MONDAY, March 21, 2022 at

5³⁰ pm!