

**CHARTER REVIEW COMMITTEE
MINUTES
May 16, 2022
Nauset Room and by Zoom**

Date approved:
6/6/22
[Signature]

The meeting of May 16, 2022 was called to order at 5:30 pm by Chair Jon Fuller. Confirmed present by roll call were Mr Fuller; Vice-Chair Patricia Fallender; Clerk Gail Meyers Lavin; Robin Hubbard, Maxine Minkoff, Walter North, and Select Board Liaison Meff Runyon. Mark Berson was unable to attend.

The Minutes of May 2, 2022 were moved by Robin Hubbard, seconded by Maxine Minkoff, and unanimously approved by roll call 5-0-1, Walter North abstaining.

[Signature]
ORLEANS TOWN CLERK

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Public Comment: None
Tracking sheet: None
Resource Page: None

Discussion of Town Meeting Charter Review Article Results: Jon Fuller said that he thought it went smoothly but was surprised that the 2-minute article did not pass. He said he had been hopeful for the Quorum, but there was clearly not support for it. Patricia Fallender noted that the 2-minute article only missed by six votes – and felt that if the CRC articles had been earlier in the meeting before so many people left, it might have passed.

Referring to the quorum, Maxine Minkoff commented that the issue of no quorum on the second night negating the first night's articles was not the case in Brewster. She said that there had not been a quorum on the second day last week, but the previous day's votes remained valid. Members questioned whether Brewster had passed a Charter yet or still operated with Special Acts, and others were surprised about the previous day's votes remaining valid without further information because the Town Moderator, Town Counsel, Patricia Fallender and Gail Meyers Lavin had stated that this would not be possible through state law. Ms Minkoff asked if changing 2-1-4 to delete "to a stated date, time and place" could work. Meff Runyon and Ms Fallender discussed what they had been told by Town Moderator Michael Ford, which was that if a Town Meeting did not have a quorum the next day, it would just keep adjourning and trying to reconvene until it reached one, which, Ms Fallender noted, would simply continue to add expense each time.

Members agreed that the purpose of the lower quorum was to get around the problem of losing the previous votes taken, but a similar article could not be brought up for a year in any case. Robin Hubbard said that in Brewster's case when they had not had a quorum, they decided to indefinitely postpone because there had been only one article left that they felt could be postponed until the next Annual or Special Town meeting. Mr Runyon commented that his understanding was that no article passed one night could be reconsidered the next night, which Ms Fallender confirmed had been an amendment passed during the last CRC round of articles (2-7-8). Ms Hubbard noted that a few years ago the quorum had been called in Orleans for a noise article and the meeting was adjourned to the next night when it did get its quorum.

Members agreed that at this Town Meeting members seemed more interested in just voting and did not seem to mind the length of time. They also concurred that the Committee had tried to speed up Town Meeting as per its charge, but that these two recommendations clearly did not work. Mr Runyon stated that the whole effort of that part of the Charge had been designed to draw more people to the Town Meetings by making them more efficient. Ms Hubbard noted that, ironically, the two articles that did not pass were the ones most survey respondents wanted.

Mr Fuller stated that Town Meeting had spoken for the present and in his opinion, it would be disrespectful to bring them up again during this CRC's work. Ms Lavin thought that the efficient speed with which the audience and the Town Moderator moved actually worked against both articles. Members remarked on having heard complaints before the meeting about such a long Warrant, but there were still 300 or so people there, and Mr Fuller said that he appreciated voters moving the question after speakers started to be repetitive and their being ready to act on all articles without any indefinite postponements except the contractual ones.

Walter North said that he suspected that the Town was just going to have to live with pandemic life, but that he had not realized that some people did not attend Town Meeting for public health reasons and asked if there could be a technological way of letting people vote from home. Mia Baumgarten informed him that it was Massachusetts General Law – not technology preventing it. Members discussed how advocacy could be used and Mr North noted that he also had not realized that the pandemic law allowing anyone to submit an absentee ballot without a “valid excuse” had expired and felt that this was particularly unfortunate. He added that it seemed that the State Legislature was letting its citizens down and wondered how the Committee could make this point. Members mentioned that it could be recommended in the final CRC report.

Mr Runyon added that our legislators used to come every year, but that this had not happened since the pandemic, although State Representative Sarah Peake had recently spoken to the Select Boards’ organization, albeit remotely because she had COVID herself. He thought that absentee balloting should be easy, but Town Meeting would be much harder. Ms Hubbard commented that she had participated in a Democratic Party Conference remotely with 2,000+ people across the state and they had voted remotely. Remarks were made regarding disenfranchisement, truth, and justice, and whether, if it meant being able to vote or not, people would probably make up an excuse to get an absentee ballot more to their convenience.

Finally, Ms Fallender expressed her unhappiness with the lack of communication for those citizens who had been reluctant and/or afraid to come to Town Meeting because there had been no mandate for masks, mentioning two deeply involved long-time residents who did not attend for that reason. She and Ms Lavin spoke about the decision made by the Board of Health not to mandate masks or decide to move the meeting outside as Harwich had done on 48 hours’ notice. Ms Lavin added that Ms Fallender and she had both contacted the Health Agent and she the Chair of the Board of Health early the day of Town Meeting, and only learned then that the Town was in fact planning to restrict the back room of the gym to those with compromised immune systems; but there had been no formal notification and the Town did not plan to have anyone directing people to that room or monitoring it. Ms Lavin said the worst part for her was that a notice of the special room had not been sent via the new announcement system but finally went via Sarah Eaton’s email only two hours before the meeting started, despite the number of people who had been asking for information before and those calling from early that day. Ms Hubbard added that a further piece of disorganization was that those who were immunocompromised had to walk through all the unmasked people in the main hall to get to the “safe room.”

On another topic, Mr North asked to put the Capital Improvements Plan (8-5) on a future agenda to re-visit the CIP’s time frame and to consider extending it to more than the current five years. Mr Runyon said that this had been under discussion with the Select Board for a long time to change it to 10 years or even longer and to make the Plan available in a more user-friendly format than the existing spreadsheet. Ms Lavin noted that the original length of the CIP was 6 years, but town officials had convinced an earlier CRC that it needed to be lowered to 5 years, which passed; so she was pleased to hear about the recognition that it should be extended even further. Members discussed the process for updating the Plan, questioned whether it was updated every year, which was not clarified completely, and spoke about how there were timelines for medium and long-term goals and updated percentages shown to indicate how far along each project was.

Review of Chapter 9: Ms Minkoff commented that there had been very little feedback, but she reported comments on 9-2-3 under the Orleans Comprehensive Plan where it stated that after a public hearing, the Planning Board “*may revise it following such hearing. Such portions of the Plan may be amended on the floor at Town Meeting.*” She said that the question raised was whether, after all the work done by the Planning Board and the public hearing, Town Meeting should be able to revise it. Mr North remarked that he could understand that the Planning Board might not like it, but on the other hand, people on the floor should have the same opportunity for amendments as they did for other articles. Ms Minkoff suggested changing it to “suggest changes to be considered.” Ms Fallender remarked that if a Plan was presented at a Public Hearing, then revised based on comments, it was no different than the Charter process, but she noted that at that point, people did not generally do that.

Section 9-2-3 reads:

The Planning Board shall present such proposed updated Plan at a public hearing and may revise it following such hearing for presentation to the Town Meeting for adoption. Such portions of the Plan as are considered ready shall be presented to the Town Meeting for adoption. The revisions may be amended on the floor of Town Meeting."

Ms Lavin provided the historical context that prior to the Charter being voted into existence, the Comprehensive Plan did not exist so it had not yet been brought to Town Meeting, and the Cape Cod Commission, which would ultimately be reviewing each Town's Comprehensive Plan if asked to do so, was still not in existence either. Mr Runyon and Ms Fallender recalled the start of that Comprehensive Planning Committee, and Ms Lavin explained that the second sentence referring to "Such portions of the Plan as are considered ready shall be presented to the Town Meeting for adoption" was the Charter Commission's decision to give the Plan enough of a framework for future action if the Charter – and a Comprehensive Plan – were subsequently passed.

The Committee also discussed the last sentence of the section and various iterations attempting to merge the sentences and end with the word "adoption" at the end of the second sentence. Further conversation ensued regarding the existing Plan spreadsheet of action items that had been 100% completed, what other percentages had been done for which, whose responsibility they were, how often they were updated, and what year they related to, with different opinions as to how current it was. Mr Runyon said that the Plan needed a complete review, and Mr Fuller commented that each item had a column for expectations such as mid-term or long-term, and that the spreadsheet was updated annually with additions and subtractions made as appropriate.

Eventually, with thanks to all, it was moved by Ms Lavin, seconded by Ms Minkoff and approved 6-0-0 by roll call that 9-2-3 be preliminarily revised to read: "The Planning Board shall present such proposed updated Plan at a public hearing and may revise it following such hearing for presentation to the Town Meeting for adoption."

9-1-3: Ms Lavin asked the Committee to look back at 9-1-3:

"The Planning Board may make recommendations to the Town Meeting, the Select Board and the Town Administrator on all matters concerning the physical, economic, and environmental development of the Town."

She reminded members that when this CRC first started, Mark Berson expressed concerns that there seemed to be no importance given in the Charter to economic development and planning; but she added that the Town had recently completed an economic development analysis, and members noted that the Town had just voted a new position of an Assistant Town Planner to work on it. Ms Lavin wondered whether 9-1-3 and 9-1-4 provided enough guidance, and Mr Fuller said that he would suggest reversing the order of the recommendations to read "the Town Manager, the Select Board and the Town Meeting."

9-4: Coordination of Activities: Ms Fallender noted that 9-1-4 read: "It shall be the general responsibility of the Town Administrator, in consultation with the Select Board, to coordinate the activities of the Director of Planning and Community Development and all other multi-member bodies, and officials concerned with the physical, economic, and environmental development of the Town." Members added that nothing there talked about the specific development of an economic plan. Mr North suggested going up to the next level – a higher purpose – and mention issues related to the quality of life - of life-sustaining and improvement of the townspeople's quality of life, including economic, cultural, recreation, community life, environmental, and social dimensions." Questions were raised about whether this belonged in the Charter or was it policy? Mr Runyon reminded the Committee that the Select Board had been considering how to enlarge the vision of recreation to that of

community life, so it might be a good thing to formalize this in the Charter. Mr North noted that some parts of the Charter have specificity, but this Chapter was not clear.

Ms Minkoff remarked that the Charter did state in 9-1-4 that the Planning Board “shall cooperate closely with the Conservation Commission, and the Board of Health, and the Board of Water and Sewer Commissioners. Questions were raised about who was charged with what when looking at it from a Planning Board’s point of view, and did the Planning Board and Select Board follow 9-2-5 which stated that *“the Planning Board shall recommend implementation actions from the Plan as part of the development of the annual Operating and Capital Budgets and a six-year schedule of Plan implementation as part of the Capital Improvement(s) Plan updating process?”* Members noted that “six” years was stated here, which was probably another leftover from when the CIP time frame was reduced to five years, and that its broad terms without clear charges could be tightened. Mr Runyon commented that he had never seen 9-2-5 happen that way. Members considered how dependent these sections were on both or either Boards’ memberships, and whether this might offer an opportunity to provide some guidance. Mr Runyon and Mr Fuller indicated that Select Board worked through the CIP budget with the Town Manager and did not come through the Planning Board to their knowledge. Ms Hubbard suggested that the CRC could alter the CIP to 10 years if that were determined before October. Mr Fuller could see the Planning Board making recommendations by Nov 15th, but just recommendations, and then the Select Board in consultation with the Finance Committee would add them to the CIP; but once presented to the Select Board, the Planning Board was done.

After further discussion that raised more questions than answers, Mr Fuller suggested that members each review Chapter 9, consider what changes or recommendations might be appropriate, and send them to Ms Minkoff, giving her enough time to work on them before the next meeting. More questions ensued – where does Community Life fit – should it say something like “including but not limited to recreation, economic growth, environment, etc.?”

Mr North asked why the Chapter was entitled Planning and the Environment. Ms Fallender suggested that the Committee might find more clarity by looking at the bylaws. Mr North and Ms Minkoff referred back to Section 6-6-1 – where the appointed Planning Board’s membership was identified and wondered if it should state a vision or make a statement about constantly thinking and committing to forward-looking planning to ensure the highest quality of life for the Town of Orleans, or does something like this belong in Chapter 9.

Mr Fuller suggested considering whether people believe it would be helpful for the Planning Board to be more clearly defined in relation to other bodies. Mr North mentioned an integrated plan to capture all the citizens, and Ms Hubbard noted that the 2019 Comprehensive Plan status report on the Planning Department site had a lot of information – near term, far term delineations, not that one would want it in the Charter, but somewhere the Charter could indicate that all of it should be integrated and coordinated.

5-3-1: Alternate hearing officer for Town Moderator: Members remembered that the CRC had unanimously passed an amendment 7-0-0 to the language of both 4-9-4 and 5-3-1 (d), but Ms Fallender reminded the Committee that as a courtesy, David Lytle was to be contacted to seek his thoughts. Mr Fuller agreed to notify him – and members agreed that Mr Berson, who proposed the language, should be at the meeting also. It was agreed to put it on the agenda for June 27th. Ms Lavin agreed to send Mr Fuller the draft – and he will also notify Finance Committee Chair Lynn Bruneau that Chapter 8 will be on the agenda on June 27th.

With regard to the Town Manager job description proposed for the next meeting, Ms Lavin noted that the draft sent by Mr Berson did not bear much relationship to the structure of existing Chapter 4, and asked Mr Fuller if he could be contacted and asked to fit what he had written into the existing structure of the Chapter to avoid changing as few sections as possible. She agreed to send Mr Berson’s email job description, Mr Fuller’s 4th version job description, and the Mr Berson’s Town Moderator voted language to all members. Ms Lavin also reminded the Committee that it will have to review Chapter 3, the Select Board chapter, to ensure that the two chapters mesh.

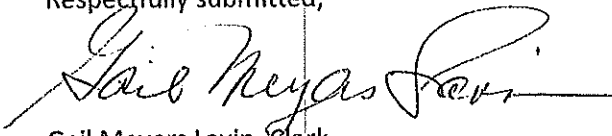
Mr North asked about the process for the Charter articles after Town Meeting. Ms Fallender explained that the ten articles that passed would be sent by the Town Clerk to the Attorney General, as she would do for any bylaws and zoning bylaws. She said that the AG then had four weeks to inform the Town whether or not they conflict with the laws of the Commonwealth, which, if they do not conflict, will go onto the ballot the following May. She added that the same process will occur in the Fall, with those that are not in conflict put on the Town's next ballot in May 2023. Mr Fuller confirmed that they must be put on a local election ballot – cannot be tacked onto the state ballot.

Future Agenda Items:

- June 6:** Mr Berson - Formalize Code of Conduct
Mr Berson and Mr Fuller – Formalize Town Manager's Job Description
Ms Minkoff - Continue Review of Chapter 9 – members to send recommendations in time to work with
Mr Fuller – Formalize Emergency Preparedness Plan
- June 27:** Town Moderator David Lyttle to come in to discuss neutral hearing officer
Chapter 8
Chapter 10
Ms Lavin – bring in consolidation of 7-7-1, 6-1-8, 8-1-2 for consideration

It was moved by Ms Fallender, seconded by Mr North, and voted unanimously by roll call 6-0-0 to adjourn the meeting at 6:50 pm.

Respectfully submitted,


Gail Meyers Lavin, Clerk

The next CRC Meeting will be held in the Nauset Room and as a hybrid meeting (via Zoom) on MONDAY, June 6, 2022, at 5:30 pm.

