TOWN OF LAUDERDALE-BY-THE-SEA

CHARTER REVIEW BOARD

MEETING MINUTES

Jarvis Hall

4505 Ocean Drive
Wednesday, July 11, 2012
6:30 P.M.

1. CALL TO ORDER

Chairman Wessels called the meeting to order at 6:30 p.m.

2. ROLL CALL

Chairman David Wessels, Vice Chair Susan Delegal, Sandra Green, Charles Clark, and Jim Silverstone were present.

Ron Piersante and Yann Brandt were granted an excused absence.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. APPROVAL OF MINUTES

a. June 13, 2012

Chairman Wessels requested that on page 7, third paragraph down the words "and still have back out parking" be struck from that sentence.

Town Clerk White stated she would verify the statement through the recording. If Chairman Wessels did not make that statement, she would make an amendment and strike those words from the minutes. Chairman Wessels agreed. There were no other comments regarding the minutes.

Mr. Silverstone made the motion to approve the minutes as stated. Mr. Clark seconded the motion. All voted in favor.

The statement was later verified by Town Clerk White that the statement was made as written and therefore would not be stricken from the minutes.

5. PUBLIC COMMENTS

There were no public comments.

6. REPORT

a. Follow-up Analysis of Section 7.1 of the Charter

Attorney Trevarthen gave a general overview of her analysis of Section 7.1 of the Charter. To make her analysis easy to follow, she separated the current text of the Charter (left column) from her proposed Plain English version (right column) and comments/issues (middle column). The eleven (11) page document is attached hereto as part of these minutes.

Subsection (1) contains two clauses: the "date clause", March 20, 2006 and the "all other buildings clause". She believed this section could be construed so that the first part of this section applied to buildings in existence on March 20, 2006 and the second part applied to buildings that were constructed after that date. In her plain English version she broke these out with the definition first, and separated each regulation with its own heading; 1) setting the height limits to 44 feet on buildings constructed on prior to March 20, 2006, and 2) setting the height limits to 33 feet to buildings constructed after March 20, 2006. She noted that height was also addressed in sections (8) and (9). For clarity she moved those provisions up to Subsection (1) in the Plain English version to address the topic in its entirety.

Subsection (2) limits use and parking for buildings over 3 stories or 33 feet, and the use of the first story. The plain English version addresses the uses in residential and business zoning districts individually, addresses provisions for underground stories, off-site parking and back-out parking, and addresses the prohibition on Town Commission granting variances or amending by ordinance (page 3).

Subsection (3) of the current Charter (page 4) became part of section (2)(e) of the Plain English version because it was topic related.

Sections (4) and (5) were combined with section (3) Non-conforming buildings of the Plain English version. The first part (3)(a) defines non-conforming and (3)(b) limitations on replacing non-conforming buildings defining "Habitable story", "Habitable square feet", "Replacement building", a term used to describe a redevelopment of a nonconforming building that does not fully conform to current code and charter. The Plain English version of this section also addresses eligibility regarding existing nonconforming buildings destroyed by fire, natural disaster or other act of God, and redevelopment of existing non-conforming building (page 5).

Subsection 6 overlaps with other sections of the current Charter and was not carried over into the Plain English version.

Subsection 7 contains some overlapping, but also talks about resident's standing to enforce the maximum building height limits and maximum allowable square footage, which was carried over into the Plain English version.

Subsection 8 relates back to Subsection 1 and was moved to that section in the Plain English version.

Subsection 9 contains many topics with several subsections addressing Town Commission power to amend land development regulations. The Plain English version addresses the Definition and clarifies when a referendum is required: 1) Changes to residential zoning height limits; 2) rezoning of districts to another use; 3) creation of new categories of zoning; and 4) addition of uses to a zoning category (page 9).

Subsection 10 contains many provisions that limit the power of the Commission. The first three statements of the current Charter are true as a matter of law and need not be included. The limitations on amendments to this section of the Charter by the voters have been incorporated into the Plain English version.

Subsection 11 addresses the preservation of stricter code provisions and were carried over in the Plain English version.

Mr. Silverstone questioned whether any changes to current zoning required voter approval.

Attorney Trevarthen said her interpretation was that you may not rezone from a residential category to a different category. The "zoning for any other use" is only applicable to residential zoning districts. You can rezone the B1 district, change the B1 district, but not the residential district. She suggested not adding uses to residential zoning districts because that would be similar to "re-zoning for another use." She added that voter approval was required to create new categories for zoning.

Under the replacement category for a building demolished by an act of God, Mr. Clark inquired as to whether the height could be increased to conform to the requirement to add a non-habitable first floor.

Attorney Trevarthen confirmed and referred to page 6, subsection (vi) "Height".

Mr. Clark inquired of a zoning map for the various zoning districts.

Planner Connors said it was available on the Town's website under Town Documents - Development Services, or Mr. Clark could stop by Development Services and get a hard copy.

Ms. Green asked whether changes could be made to increase or decrease density of the residential zoning districts without a referendum.

Attorney Trevarthen stated that the Charter was silent on density, setbacks, landscaping, etc. The Charter only addresses height and zoning issues.

Chairman Wessels understood that there were no zoning changes for residential districts, but there could be a zoning change for the business districts. If the overlay districts were repealed, could they be re-instituted without a vote? Attorney Trevarthen stated that the overlay districts were created and adopted by vote of the Town Commission prior to the addition of this provision to the Charter, and were later repealed by a vote of the Town Commission. Therefore, the question would be whether the overlay districts were a new zoning category.

Chairman Wessels asked whether the previous zoning of RM-50 classification of the Caribe Fountainheads, which were 15 story buildings, were automatically designated RM-50 when they were annexed, as well as the Sea Ranch Club. Planner Connors said they were in the process of researching that issue.

As a starting point from her observations, Vice Chair Delegal would like to establish heights town wide 4 stories not to exceed 44 feet for all properties, whether they were constructed before or after March 20, 2006. She would include "limitations of uses on the 1st story of non-habitable uses". She would also include / adopt the Town Attorney's comment on page 3 regarding "uses of the first stories are limited to whatever non-habitable uses are allowed in that zoning district", as opposed to specifically providing what they are, such as 50% had to be used for one purpose or another. Vice Chair Delegal would delete the detailed provisions to parking, back-out parking and off-site parking. This was something that should be legislatively dealt with in the Town code. Vice Chair Delegal generally favored adoption of the Plain English version, regardless of what the Board recommended to the Town Commission. Keep the nonconformity details and maintain 1st story limitations for non-habitable uses that are permissible with any given zoning district. She agreed with the observation that the limitations placed on the Town Commission were not necessary to repeat, as they were a matter of law and she would delete all the places in the Charter that say that. She would remove the limitations in the Charter regarding what could not be done with the zoning code, but would leave the following areas for Commission decision: uses to be applied in any zoning category; creation of new zoning categories; and assignments of change from a residential category to another category.

Mr. Silverstone agreed with Vice Chair Delegal, except for the intent the people voted for in 2006. He looked at this as more of a housekeeping issue and needed cleaning up. Any material changes should be taken out, unless it prevented the ability to redevelop.

Mr. Clark thought it might be useful to create a new section that spelled out all the issues that required a referendum, and be put in one place.

Attorney Trevarthen referred to page 8, Subsection 5 of the Plain English version. Those were the items that would have to go to referendum as related to the code. She stated that, the Town Commission was powerless to change everything in the Charter, as a matter of law, and required voter approval. She and Vice Chair Delegal suggested it was not necessary to state that repeatedly throughout the Charter.

Ms. Green viewed it as a housekeeping chore and would like to know the legality of it. She was a little uncomfortable with the leading provisions in the Charter but overall she thought an excellent job had been done.

Chairman Wessels agreed with Vice Chair Delegal, that most charters are more general. He also agreed that it was easier to understand the US Constitution than it was to understand the Town's Charter. He summarized "height" as the number one priority and "density" the second priority. Currently, if an existing building wanted to maximize their number of units, they would not have the parking. It was not clear whether those restrictions, on-site or adjacent parking, applied to just residential.

Attorney Trevarthen stated they had studied the issue, and her conclusion was parking restrictions applied to commercial and residential.

Chairman Wessels wanted to find a point where the Board could restore some flexibility that the Commission could use that was economically feasible to adjust to the market, or the market would adjust by going someplace else. He questioned how, with height and density restrictions, they can create reasonable flexibility to accommodate someone interested in spending $4 or $5 million to build or rebuild a property. He thought the Plain English version may need some tinkering, but was a step in the right direction. He also noted it is very clear that a change in the Charter required a vote of the people.

Vice Chair Delegal said one of the reasons a Charter Review Board was created every so often was to take a fresh look at the Charter for antiquity; whether the provisions were still workable and whether the will of the people had changed. The Board needed to be considerate in their approach and allow the public participation process to occur. The Board's duty was to look at the provisions, understand them better. In having a better understanding now, the Board needs to determine whether the changes should be made, and justify their determination in their recommendation to the Commission. The Board should look at flexibility regarding height, but allow the ability for the Town to continue to flourish by creating an environment that would allow people to refurbish their properties and encourage more attractive and useful beachfront properties. The restrictions in the Charter that did not allow changes should be removed.

Chairman Wessels expanded on the non-allowable uses for a habitable and non-habitable on 1st floor. Restrictions were put in place, such as: you could not put in a fitness gym on the first floor. He believed non-habitable use should have been put in place. Given the age of the properties, it was inevitable that updating will occur. He liked the idea of a zoning map. It would avoid confusion as to where people can build and what they could build there. More work was needed regarding what to adjust and what needed to be adjusted to make the Town user friendly. He suggested continuing this discussion at the next meeting; incorporate board members points and suggestions, and come up with something more definitive to give to the Commission.

Vice Chair Delegal indicated if the Board wanted a change, it needed to pass by a majority vote. Once the Board made their decision, the recommended language would be drafted by the Town Attorney and a justification statement could be drafted for the Commission.

Chairman Wessels requested members submit their proposed changes at the next meeting to narrow them down for input and justifications.

Attorney Trevarthen recapped the Board's suggestions. She identified those that had no change, or very little to existing law, and grouped them separately:

1) Place a plain English version of the Charter on the ballot
2) Take the listing of uses for 1st floor uses and change that to just the concept of non-habitable
3) Remove all the references that were already true as a matter of law.

The other changes were more substantive in nature.

1) Change height town wide to 4 stories, 44 feet for all properties whenever constructed
2) Delete the subject of parking regulations from the Charter; leave it in the Code
3) Delete the limitations on how the Town Commission can change the zoning code by dropping "zoning for any other use", the "creation of a new zoning category" or "add another use to a zoning district". Those items would no longer be subject to referendum.

Attorney Trevarthen stated the other proposal was to create a zoning map to depict height. If the Board decided the height for the whole town was 44 feet, or it was another simple rule, a map would not be necessary. If the rule varied across different parts of Town a map would then be desired as a useful interpretation tool, but would not added as part of the Charter.

Chairman Wessels agreed, in the case of variable zoning, the map would give better understanding.

In order to refine Article VII, Chairman Wessels asked the Board to give thought as to what they wanted and create a list of their suggestion for the next meeting. Attorney Trevarthen believed it would be useful if the Board members had something to provide to present it a week ahead of the meeting, so she and staff could come to the meeting prepared.

Chairman Wessels instructed the Board to send their suggestions to the Town Clerk who would forward them to Planner Connors.

b. Charter Case Study

Planner Linda Connors presented 2 scenarios of a vacant lot to be developed as was requested by the Board at the last meeting. Town owned property abutting A1A was selected for both scenarios. The parameters were RM-25, medium-high land use, lot size 125' x 150', (just shy of ½ acre). Scenario 1 was new construction on a vacant lot and scenario 2 was the replacement of an existing 5 story building, 20,500 sq. ft. ground floor units and back-out parking onto AIA. In scenario #1, the code would allow a three story building that did not exceed 33' in height. In the 2nd scenario, a six story building would be allowed to replace the five story building. This is because Charter Section 7.1 (5) (e) allowed additional height necessary to meet the parking requirements (1st floor parking) and still provide the same number of habitable stories that was contained in the non-conforming structure. Scenario examples 1 and 2 are hereby attached as part of these minutes.

Mr. Clark questioned the density on 2nd scenario. Attorney Trevarthen explained the Charter did not address that issue, so it did not apply. Density would be subject to the County's land use plan, the Town's land use plan and the code.

Mr. Silverstone asked if back out parking was not allowed would they be required to use the first floor for parking. Planner Connors stated that back-out parking would not be allowed, the first floor would be required to be non-habitable under scenario 2. It would be up to the creativity of the designer to determine where the parking would be.

Attorney Trevarthen explained the Charter currently states that at least one half of the square footage of the first story must be for parking. If there was not enough parking, adjacent offsite parking was required.

Chairman Wessels inquired of the square footage available for actual parking. Planner Connors said the standard parking size was 19' x 18'. She added that in scenario 2 the first floor envelope would be available for parking, but the total 2,989 sq. ft. setback area was required to be open and landscaped. The remaining area, just under 9,000 sq. ft. would be where the pool, parking spaces, or other non-structural purposes would be located.

Attorney Trevarthen stated for the record that this was a hypothetical exercise.

Chairman Wessels wanted to ensure that the parking spaces could be located under the building. He asked whether all of the 25' setback area was required to have landscaping.

Planner Connors said there were restrictions on vehicular use areas where landscaping was required. There was also requirement for landscaping in the parking lot. There were variables.

Chairman Wessels believed the number of units would be determined by the number of parking spaces; lower density and larger units. The map for 3 over 1 would be A1A. He asked if that was state law.

Attorney Trevarthen explained the Charter said, if for any reason under federal or state law additional space was needed to have the same amount of habitable square footage, it was allowable.

Chairman Wessels asked if an owner came in and asked what he could put on his particular piece of property, would he be able to obtain the information. Attorney Trevarthen said he would be given regulatory constraints. All development standards would have to be taken into consideration. They could be more or less efficient depending on the creativity. Despite the creativity, they could not exceed the density requirements.

Chairman Wessels said he was looking for a maximum number of units that a hotel/motel could ever possibly put on a lot. Attorney Trevarthen said it begins with the architectural designing of a particular property.

Ms. Green inquired if the smaller hotels with back-out parking were destroyed by a hurricane and wanted to rebuild based on their insurance, they would have to build a two story structure to accommodate the parking requirement and not back out onto A1A. How would they accommodate for that under their insurance claim? It appeared to be more difficult to rebuild as a two story with parking underneath, than rebuild the original structure.

Attorney Trevarthen agreed it would create restraints and be more demanding.

Chairman Wessels believed that to be an interesting point as it could create a financial hardship situation.

7. OLD BUSINESS

There was no old business for consideration.

8. NEW BUSINESS

a. Reschedule August 8 and September 12, 2012 Charter Review Board Meetings due to the following:

The Charter Review Board meeting scheduled for August 8, 2012 was re-scheduled for Wednesday, August 22, 2012 at 6:30 p.m., due to Jarvis Hall renovations.

The Charter Review Board meeting scheduled for September 12, 2012 will be re-scheduled at the August 22nd meeting.

Ms. Delegal believed the Board needed to only dedicate one more meeting to work on Article VII. The Town Attorney could be requested to draft the language for the Board to vote on the changes discussed, and then begin discussion on another aspect of the Charter.

Chairman Wessels placed Article VII on the August 22, 2012, under Old Business, to conclude the Board's discussion on that Article.

Chairman Wessels questioned whether the Commission wanted the Board to consider something specific in regards to Article VI, "Elections".

Attorney Trevarthen advised the Commission made a decision to re-adopt the existing boundary of residential electoral districts for the Commission. She said during their discussion, the Commissioner stated they wanted their discussion sent to the Charter Review Board, of which she believed one Commissioner stated he believed it would not be appropriate to make a change.

Ms. Delegal asked whether the Commissioner's statement, "status quo", meant that a change should not be considered by the Board because the Commission liked the way it currently was: two (2) Commissioners to reside in one district and two (2) Commissioners to reside in the other, and the Mayor can reside anywhere town wide.

Commissioner Wessels explained that Commissioner Brown has asked whether that statement would preclude the Charter Review Board from making recommendations, and it was noted that it did not.

Attorney Trevarthen believed the Commission recognized that this was within the Board's interpretation. She added there was not a lot of discussion on the issue and the "status quo" statement was made by one Commissioner.

Commissioner Wessels added the redistricting issue for discussion at the August 22nd meeting.

Attorney Trevarthen stated that the Board had previously spoken about considering an entire article; redistricting was within Article VI, Elections. She suggested the Board could have the information from their discussion this evening regarding Article VII, as well as discuss Article VI, the entire Elections article. The points related to Article VI from the Commission's worksheet were:

- *Consider modifying length of Mayor's term of office -Section 6.1(1).*
- *Determine whether to sunset residential electoral districts in Section 6.1 in 2018 as previously approved, or on another date. If not, address future redistricting needs to be addressed.*
- *Consider changing Section 6.1(5) requirement that university must be used.*
- *Consider not specifying that the Vice Mayor must be selected on a particular date per Section 6.2.*
- *Add a procedure for candidate withdrawal following qualification to Section 6.4, per statute.*
- *Clarify the meaning in Section 6.6(2) "forfeiture of office" with regards to ethics in light of Broward County ethics code.*

Vice Chair Delegal suggested completing Article VII and then work downward, beginning with Article VI. There were no comments or any objections from the Board.

Attorney Trevarthen questioned whether any backup was needed to consider Article VI.

Vice Chair Delegal asked whether there was anything in the Broward Ethics Code that might help the Board work together with that language, and the language contained in the Town Charter.

Attorney Trevarthen stated that the Charter deemed that any violation of any ethical standard would result in forfeiture of office. She said, potentially, the Board could remove that language or modify it.

Vice Chair Delegal believed the Board should spend time discussing that issue.

Attorney Trevarthen stated she would send that ordinance to Board in advance of the meeting.

Mr. Silverstone noted at the last election, other small cities put forth a referendum to have the ethics ordinance less restrictive for small towns, part time employees and part

time Commissioners in small towns. He requested the Town Attorney address easing the restrictions placed in the ethics ordinance. There was too much restriction under the Broward County ethics code.

Attorney Trevarthen believed the County set out to challenge those three Charter amendments, but did not. It was her understanding that the three cities created a charter amendment that said they would follow their own ethics code.

9. ADJOURNMENT

With no further business before the Board, Chairman Wessels adjourned the meeting at 8:00 p.m.

Chairman David Wessels

ATTEST:

Town Clerk, June White, CMC

Date 8/23/2012