

**TOWN OF LAUDERDALE-BY-THE-SEA
CHARTER REVIEW BOARD MEETING MINUTES**

Jarvis Hall
4505 Ocean Drive
Wednesday, May 9, 2012
6:30 P.M.

- 1. CALL TO ORDER - Chairperson David Wessels
- 2. ROLL CALL

Chairman David Wessels called the meeting to order at 6:30 p.m. Vice Chair Susan Delegal, Ken Kugler, Sandra Green, Yann Brandt, Charles Clark, Ronald Piersante and Town Clerk June White were present.

- 3. PLEDGE OF ALLEGIANCE TO THE FLAG
- 4. APPROVAL OF MINUTES
 - a. April 11, 2012

Yann Brandt made a motion to approve the minutes of April 11, 2012. Sandra Green seconded the motion. All voted in favor.

- 5. PRESENTATION RE ROLE, PURPOSE AND SCOPE OF CHARTER REVIEW BOARD - Town Attorney Susan Trevarthen

Attorney Trevarthen gave an overview of the Sunshine Law, the Public Records Law, the Rules of the Charter, and the Charter Amendment process, governed by Chapter 166.021 of the Florida Statutes. She explained the Town Commission would need to authorize two readings of an ordinance. The process usually occurred over a 2 month period. There may also be a situation where the Planning and Zoning Board would need to be involved, which could add another month to the process. Upon adoption the ordinance the question would be placed on the ballot.

Chairman Wessels asked if a Board member engaged in a conversation with a member of the Commission in an advisory capacity would that fall under the Sunshine Law.

Attorney Trevarthen replied that one member of a Sunshine body speaking to a member of a different Sunshine body, such as one member of the P & Z Board speaking to a Commissioner was not a problem. Two or more members of the same body speaking to each other would be a violation of the Sunshine law. Attorney Trevarthen issued a caveat that members should not engage in polling, whereby a person goes from

member to member keeping track of where members stand and as such create indirect communication.

Attorney Trevarthen explained public records were anything that communicated, perpetuated, or formalized knowledge. Making a note to remember to ask a question and then asking that question was an aid to memory. Beyond that there is the potential that there was intention to communicate, perpetuate or formalize knowledge and that was a public record. She advised Board members, where creating public records, to keep them organized in the event they needed to produce them.

Attorney Trevarthen explained the function of the Town Charter was to set out the underlying functions of government. Local governments had home rule with the power to govern, only restricted by specific exemptions in the law. The Board should not overlap with the State Constitution or Florida Statutes.

Attorney Trevarthen said the amendment process was governed by State Statute. The Town Commission listens to recommendations from the Charter Review Board about how to amend the Town Charter. If the Town Commission agreed with the Board's recommendation there must be two readings of an Ordinance to place the question of topic on the ballot. Interaction with other Boards, or the Commission taking summer break would add time to that process.

Chairman Wessels requested clarification regarding the Town Attorney's deadline date of May 2013.

Attorney Trevarthen explained she chose May 2013 for the deadline based on discussion from the previous Board meeting. She believed that allowed ample time to have at least two Commission meetings and one P&Z (Planning and Zoning) meeting prior to January 14th. A more aggressive time line could be set should the Board feel it was necessary.

Chairman Wessels noted Commissioner Mark Brown wished to participate in public comments. There was no objection.

Commissioner Brown believed he was safe speaking publicly to the Board as the Town Charter, Section 7.3 stated that one of the duties of the advisory board shall be to consult and advise with municipal officers. He believed the issue to change the Mayor's term from 2 years to 4 years would be worth accelerating and possibly getting a referendum on the November 2012 ballot, so it would take effect with the March 2014 election. Commissioner Brown said that although there was not an issue with the Town Manager's or the Assistant Town Manager's qualifications today, there could be a problem in the future and therefore believed Section 5.3 should be looked at and come up with clear and enforceable language involving both the Town Manager and the Assistant Town Manager. Commissioner Brown noted the Mayor's term and two of the Commissioner's terms were cut short every 4 years according to the Charter due to Presidential Preference Primary Election. He requested the Board look at that part of

the Charter and set the terms so that their terms could start and end with the same election period. He was not certain whether elections on the same day as a Presidential Preference Primary Election should be addressed in the Charter or by the Town Commission, but he requested the Board look at whether it was worth having a Municipal Election coinciding with a Presidential Preference Primary Election that only consisted of one Party affiliate.

Commissioner Brown was concerned with Broward County's new ethics code and Section 6.6(2) of the Town Charter, Forfeiture of Office. He said he and other volunteers were offered water from the Town's trash collecting vendor, who sponsored the beach cleanup event they participated in. He rejected the water out of fear that had he taken even a sip of that water he would have been in violation of the new Broward County Ethics code, and would have been subject to forfeiture of office as per Town Charter. Commissioner Brown requested the Board look at a clear standard of where to draw the line before a Commissioner could be evicted from office.

Commissioner Brown said he was not advocating an increase in height limits. He was interested in making the Town more energy efficient and technology adept, such as with solar power, wind power or placement of a Wi-Fi antenna. He was not certain how those items would fit into height limits and/or defined as what could be placed on the roof.

Commissioner Brown asked the Board to create a procedure that would allow anyone wishing to place those items on their roof, or other items that may evolve with future technology, to come before the Commission for a review of their request. He asked the Board to think about what may need attention in the future.

6. OLD BUSINESS

a. Discussion and Approval Of Board's Rules and Procedures - Draft Attached.

Vice Chair Delegal questioned whether a unanimous vote of all seven members of the Board was required in order to pass an item to the Commission for consideration. She suggested a majority vote of the full Board, at least four votes.

It was the consensus of the Board to require a vote of a least four members of the Board in order to submit a recommendation to the Town Commission for consideration.

Mr. Brandt requested Public Comments be placed on future Charter Review Board agenda following Approval of Minutes. He suggested Commissioner Brown request that the Town Commission submit items they wish to add for the Charter Review Board to review and to request that the public bring their input to the Board.

b. Discussion of Schedule and Approach to Discussion of Charter Amendment Topics Identified By Town Commission (Grouped Below by Current Charter Article):

Commissioner Wessels requested the Board member's suggestions for prioritizing topics for discussion.

Vice Chair Delegal suggested that the Board members identify the subjects they wanted to discuss, group related items together and devote a certain amount of time to those topics prior to moving on to other topics. She suggested beginning with a topic that would not require a great deal of research or was not very complicated, such as the Mayor's term, the timing of elections and/or Town Manager and employee qualifications.

Mr. Kugler believed the Board should focus their attention on one article at a time. Begin with Article VI - Elections, and look at other topics within that Article before moving on to another Article.

Mr. Brandt recommended the Board first address topics that required a lot of time, such as any P&Z (Planning and Zoning) issues. Some P&Z topics may need recommendation by the P&Z Board, as well as the Charter Review Board before going to the Commission. He noted some topics begin with the word "clarify". Mr. Brandt believed that some of those items may need a presentation from the Town Attorney's office with clarification as to what it is the Board is being asked to clarify and potentially change. He questioned if the people voted not to extend the term to 4 years, how and when would the Mayor's term end. Mr. Brandt believed the answer to that question would determine whether the Board should consider this item as a priority topic, explaining that an ordinance required two separate Commission meetings for public hearings. He thought the height limit topic would require two to six Commission meetings. Mr. Brandt believed the Mayor's term and the height limit topics were priority items due to the time required to process.

Mr. Piersante believed the Town no longer needed districts. He believed people in the south should be able to vote for someone in the north and vice versa. Mr. Piersante believed addressing districts was an important topic and needed to be clarified.

Mr. Clark stated if the Mayor's term was to be on the November 2012 ballot it would need to be addressed immediately. The deadline to get the referendum to the Supervisor of Elections office was June 8th. He agreed the next topic of importance was P&Z. That topic would require much time and probably receive a lot of public input. Mr. Clark believed the Board should tackle the easier things first then move on to the P&Z topics.

Ms. Green agreed the Mayor's term should be addressed immediately if the Board intended it for the November 2012 ballot. She believed a 2 year term was too short a period of time to be able to accomplish anything. Ms. Green was interested in addressing the qualifications and ethics of personnel. She liked the idea of grouping topics together and thought that addressing the easier topics first would help the Board move the items along and in the right direction.

Chairman Wessels thought the Mayor's term would be a difficult item as it would generate a lot of public comment and may take a couple of meetings to get through them. He felt the topic of sun setting districts was not a problem as the Town was built out and the chances of a large increase in population was doubtful.

Chairman Wessels asked for clarification regarding the required meeting date for the election of the Vice Mayor. Attorney Trevarthen stated currently it was the second meeting following the election. It changed this year and came earlier, due to the Municipal election coinciding with the Presidential Preference Primary Election in January.

Chairman Wessels questioned whether the procedure for candidates to withdraw was addressed by State law. Attorney Trevarthen said State law allowed the municipalities to amend their Charter to address it, but currently the Charter is silent on that issue; it only addressed vacancies of those in office. Attorney Trevarthen said if less than two people were on the ballot, the State Statute allowed the municipality to address it locally. That was not currently addressed in the Town Charter.

Chairman Wessels agreed the P&Z topics were very important and time consuming requiring public discussion, testimony from the Town Planner, and review by the P&Z Board. He believed it would require more than one meeting per month for those issues.

Chairman Wessels requested that the Board at least identify a topic to begin with. Specify whether that topic would require back up and support documents, which would allow the Town Clerk the time necessary to gather the information. He suggested beginning with a non-complicated item and then identify one of the more difficult issues that may require time to produce documents, receive presentations from the Town Planner and/or obtain a legal opinion from Town Attorney, such as one for height limits.

Vice Chair Delegal thought the Board should also consider how they wanted to set public input. Should there be set meetings for public input on specific items and instruction on how to tackle the hard issues, such as whether the Board wanted the Town Planner to provide input. She believed organization, scheduling and a plan on how to approach the topics was the key.

Chairman Wessels agreed it could save time if a schedule was set that considered an approximate amount time that may be needed for public comments.

Attorney Trevarthen believed that if the Board worked through the list chronologically that type of scheduling would help the public plan on when they can offer their input. She suggested working through the Charter Article by Article, beginning with the first two or three Articles; they would not require a lot of time. Article IV controlled popular imitative and referendum such as when the voters wished to bring forward ordinances. It was not identified in the Charter and there may be discussion about that. Article V related to education requirements for Town officers and employees. She added that if the Board felt more time was needed, the Board could adjust the schedule.

Mr. Clark believed the Board needed to decide on whether they wanted to consider the Mayor's term for the November 2012 ballot.

Mr. Kugler believed the Town Attorney needed to clarify whether the term would be a procedural change or would be retroactive. If it was retroactive it would not matter for purposes of the next election. He asked what the urgency of moving forward was.

Attorney Trevarthen stated the timeframe was of issue. It could not happen without a special Town Commission meeting as there was not enough time to adopt an ordinance on second reading before June 8th.

Mr. Kugler asked if a change in the Mayor's term was made from 2 years to 4 years, would it be retroactive. Attorney Trevarthen said it depended on whether it was drafted with an effective date. She preferred to research that question.

Vice Chair Delegal did not believe it was wise for the Board to go forward without any public input.

Mr. Brandt asked whether the Board's decision was that they wanted the voters to choose whether the Mayor's term should be 2 years or 4 years, or was Board's decision to be that the Board agreed the change should be made. He believed public input would occur at the Town Commission meetings during the first and second reading of the ordinance, not under the Charter Review Board. He suggested if the Board believed this was a valid issue for the Commission to consider, and due to the time limitation, they should move in favor of giving the Commission the opportunity to move this issue forward. Allow the Commission to decide whether this item was important enough to place on the November 2012 ballot.

It was the Consensus of the Board to consider the Mayoral term as their first issue.

Chairman Wessels inquired of other issues the Board wished to schedule for June 13th meeting.

Mr. Kugler asked whether the Board wished to follow the Town Attorney's suggestion to consider the Articles in chronological order. An option would be to address the Mayoral Election, leave Articles I, II, and III for a later time, and move forward with Articles IV through VII, in whatever order the Board wished to address them. He stated his preference was to complete an entire Article, no matter what order the Board deemed appropriate, before moving on to another topic.

Chairman Wessels requested the Board members thoughts regarding forwarding Mayoral term question to the Commission.

Vice Chair Delegal expressed her concern with rushing through, regardless of time constraints. She did not feel this was a good way to get started. Ms. Delegal said the

Board was delegated a responsibility to discuss and give opportunity for public input. She felt the Board needed to be able to provide that opportunity whether the public participated or not.

Mr. Kugler said the Mayor was another Commissioner and a Commissioner's term was 4 years. It made no sense to have a 2 year exemption. Mr. Kugler shared the concern with rushing due to a deadline and the precedent that may be set or the message portrayed to the public.

Mr. Brandt was willing to move it forward to Commission for policy decision.

Mr. Piersante agreed with both Vice Chair Delegal and Mr. Brandt.

Mr. Clark was concerned with the time restraint. He favored a 4 year Mayoral term and did not object to sending the item to the Commission to decide whether it should go forward for the November 2012 ballot. Mr. Clark agreed the public should have the opportunity for public input and they are given that opportunity.

Ms. Green favored a 4 year Mayoral term. She said if the Board was to have public hearings, then the item should be pushed to next election. Otherwise, he favored forwarding to the Commission. The people will have the opportunity to express their opinion during the Commission meetings.

Attorney Trevarthen said Article VII indicated when the Town could change their Charter. It had to be during the regular election time, and not at a special election. She acknowledged the Board's concern with a deadline. There was nothing in the Charter that prevented the question of the Mayoral term from coming as a special election. Therefore, the Commission could have a special election sometime between the November 2012 general election and the March 2014 municipal election.

Chairman Wessels favored a 2 year term for Mayor. He said the Mayor was elected at large by all voters in the Town. He said every two years the public was given the opportunity to make a change and create a new majority. Chairman Wessels requested a vote.

Discussion followed regarding whether the vote was to determine whether the Board recommended a 2 or 4 year term or to recommend that an ordinance be adopted giving the people the opportunity to choose whether the Mayor should serve a 2 or 4 year term.

Chairman Wessels stated the Commission requested the Board's advice on these matters.

Mr. Kugler believed it was the Board's charge to make a recommendation and any recommendation the Board made would be put to the voters to make the determination.

Mr. Piersante agreed the Commission put the Board in place to make recommendations to the Commission.

Chairman Wessels called for a motion.

Mr. Kugler made a motion to modify the Mayor's term from 2 to 4 years. Ms. Green seconded the motion. The motion carried 6-1. Chairman Wessels voted no.

Chairman Wessels asked that the minutes of the discussion be transmitted to the Town Commission.

Attorney Trevarthen stated the Board may also want to note in the minutes there were no members of the public present.

Chairman Wessels explained that due to the timeliness of the issue, the decision was made in absence of the public.

Mr. Kugler added that the public would have the opportunity to be heard at the Town Commission meeting.

Vice Chair Delegal noted at this time the Board had a valid reason to make the exception for this particular issue, and would not be making future recommendations to the Commission in this manner. Before items are sent to the Commission, they will go through the entire process.

In consideration of the time restraints and attempting to have this issue addressed prior to the upcoming election, Mr. Kugler made a second motion to recommend that the Charter amendment to amend the Mayor's term from 2 years to 4 years be placed on the November 2012 ballot, if possible. Ms. Green seconded the motion. The motion carried 6-1. Chairman Wessels voted no.

Mr. Kugler made note this was being proposed to the Commission at this time without having the benefit of public input, knowing that the opportunity will be presented to the public when brought before the Town Commission.

Assistant Town Manager Bentley noted the recommendation will be placed on the May 22, 2012 Town Commission agenda, whereby the Commission may request the Town Attorney to prepare an ordinance.

Mr. Brandt believed the only way this could work structurally, would be for the Commission to receive an ordinance at the May 22nd Commission meeting, or have 2 special meetings.

Assistant Town Manager Bentley stated that if the Commission was to be made aware of the Board's recommendation, they may decide to hold a special meeting prior May 22nd, and make a decision as to whether an ordinance should be drafted for

consideration. He also stated that the Commission would have to waive their policy to have the 1st and 2nd reading of the ordinance and the public hearings would be held out of sequence.

Chairman Wessels said the Board will send the recommendation and the Commission will decide whether they wish to follow through. If they reject it, or send it back to the Board, the Board could consider it for the March 2014 Election.

Attorney Trevarthen stated it could be considered either for the March 2014 Municipal Election or there could be a Special Election before that time.

c. Discussion of Schedule and Approach for Board to Review Entire Charter and Identify Any Additional Recommended Changes for Discussion:

Vice Chair Delegal suggested looking at Articles V and VI as their next priority.

Mr. Brandt suggested creating a calendar to publicize what the board was going to do and when they were going to do it. He believed that if the Board addressed height limits in June, it may take the Board two meetings to discuss it, and two P&Z meetings, and two months for the Commission to consider the ordinance. Mr. Brandt thought the earliest the second reading of the ordinance would be considered by the Commission would be February 2013.

Chairperson Wessels stated Mr. Brandt made a good point in relation to timeline. He noted there were items that were more urgent than others. With that in mind, he asked whether the Board was ready to consider Article VII, Planning and Zoning for discussion on how to approach it and to obtain the meaning of the Article. He requested Vice Chair Delegal set a plan. He believed the Planning and Zoning topic was priority due to the length of time it would take to get through it.

Vice Chair Delegal suggested pulling Article VII out of turn as it would probably have to go to the Planning and Zoning Board before it went to the Commission.

Chairman Wessels suggested the Board set the stage on how to proceed with the first step, second step and so on, to determine whether the Town Planner or Town Attorney should be present and what documents the board would like to see.

The Board members agreed unanimously.

Vice Chair Delegal requested an overall presentation by the Town Attorney as well as the Planning and Zoning director as to what Article VII provided; a general overview of that Section, how it related to the Town code and the comprehensive plan. They could point out the areas of concern that required clarification. Other situations may arise that the Board may want to look at following the presentation.

Chairman Wessels agreed they could present the issues they have been working on and the Town Attorney would be available for legal representation.

Attorney Trevarthen agreed a presentation would be necessary to allow the Board a clear view of the code before they actually changed it. She said the Town previously hired a Planning Consultant that analyzed the Charter and the Town code and with direction from the Board staff could request Planning Consultant Cecilia Ward give a presentation on Article VII in June.

Mr. Piersante recalled at one of the Commission meetings one of the Commissioners mentioned something to the effect of 33 feet from the grade and 42 feet from the crown of the road. Nobody seemed to understand that and it should be clarified in the Charter so that a developer would know what it is.

Attorney Trevarthen indicated Ms. Ward had experience working with the Charter previously.

Chairman Wessels believed Ms. Ward would be the first person the Board would want to hear from and asked whether Attorney Trevarthen would be able to present an overview of Article VII.

Attorney Trevarthen said she would do the presentation.

Chairman Wessels requested Assistant Town Manager to coordinate with the Town Planner and Ms. Ward for the June 13, 2012 Charter Review Board meeting.

Assistant Town Manager confirmed that both Town Planner and Planning Consultant Ward would be available pending confirmation from Ms. Ward. He added that Ms. Ward had done an in depth study of the Town Charter, the Comprehensive Plan and the Town code. Her attendance would be beneficial to the Board.

Chairman Wessels requested the PowerPoint presentation provided by Planning Consultant Ward and the minutes of the Town Commission discussion regarding the points made in the presentation.

Mr. Brandt recalled verbatim minutes of the Planning and Zoning Board on that presentation.

Town Clerk White said she would provide both sets of minutes.

Chairman Wessels asked whether the Board wanted to do monthly or bi-monthly meetings in light of the issues to be discussed and the length of time they may require. He stated that should there be a delay in obtaining the information they requested, the Board may want to plan to discuss another issue as a backup.

Yann Brandt suggested the Board create list. If something falls off the Board could bump up the next issue. The Board members agreed.

Ms. Green suggested Article 5, Town Officers and Employees to consider broadening qualifications for the Town Manager as the secondary item, and perhaps take on an additional two items as backup items.

Chairperson Wessels and Mr. Clark agreed.

Mr. Piersante suggested looking at districts in Article VI Elections.

Mr. Brandt believed, that besides Article VII, it would be worthwhile to a least read through Articles III and IV.

Mr. Kugler expressed his preference to start with Article VII, and then discuss Article VI, then Article V down to Article 1. If there was a delay in addressing VII, then go to VI.

Mr. Brant believed there was a referendum that caused overlay districts. He believed that was a worthwhile subject to talk about. There was a restriction on zoning changes the Commission had, even by ordinance that the board may want to discuss, whether or not the Town has changed.

Vice Chair Delegal agreed with the suggestion to start with Article VII, then VI, then V and then decide where to go from there.

Chairman Wessels suggested looking at Article VII first, and then look at Articles I, II and III, followed by Articles IV, V, and VI. He added that if there was a delay in attendance or backup materials regarding Article VII the Board will consider Article I.

There was no objection from the Board members.

Attorney Trevarthen believed the Board could take on Articles I, II and III in one meeting. Chairman Wessels agreed. She requested clarification that at the June 13th meeting the Board will consider Article VII, and if for some reason the scheduling would not work, the board would do Articles I thru III. In July the Board would consider the opposite, either VII or I, II, III.

Chairman Wessels agreed. There was no objection from the Board.

Mr. Kugler asked whether the Board wanted to schedule two meetings per month on the 2nd and 4th Wednesdays and then cancel them if not needed.

The consensus of the Board was to make a determination on the frequency of meetings at the June 13, 2012.

Assistant Town Manager Bentley asked if the Board would consider moving the Planning Consultant's presentation to June 26th if Ms. Ward was not available for the June 13th meeting.

It was the consensus of the Board to make the determination at the June 13th meeting.

Mr. Kugler suggested the Board prepare to discuss Articles I, II, and III in the event that the Planning Consultant would not be available.

The Board members agreed.

7. NEW BUSINESS

There was no new business.

8. ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Chairman David Wessels

ATTEST:

Town Clerk, June White. CMC

Date