

TOWN OF LAUDERDALE-BY-THE-SEA

TOWN COMMISSION

SPECIAL COMMISSION MEETING

MINUTES

Jarvis Hall

4505 Ocean Drive

Monday, June 10, 2013

6:30 P.M.

1. CALL TO ORDER, MAYOR ROSEANN MINNET

Mayor Roseann Minnet called the meeting to order at 6:30 p.m. Also present were Vice Mayor Scot Sasser, Commissioner Mark Brown, Commissioner Stuart Dodd, Commissioner Chris Vincent, Town Attorney Susan L. Trevarthen, Town Manager Connie Hoffmann, Assistant Town Manager Bud Bentley, Finance Director Tony Bryan, Municipal Services Director Don Prince and Town Clerk Vanessa Castillo.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Minnet recognized and thanked the members of the Charter Review Board (CRB) for the time, dedication and effort that they invested in their assigned task, as these were not easy subjects; they required lengthy thought, discussions and decisions. At the end of the day, the aim was to make the Town a better place.

3. PUBLIC COMMENTS

Mayor Minnet opened the meeting for public comment.

Laurence Campbell presented copies of a prepared statement to the Town Commission and read portions of the statement into the record, noting that he was intimately involved in passing the original amendments in 2006. He said that the last page of the statement showed his recommended positions on the 17 CRB recommendations, some of which he agreed with.

Birute Ann Clotey thanked the CRB for their work in the Charter Review process, stating it appeared some Board members thought that their job was to undo some of the past referendums, hence the end result reflected in some CRB recommendations. Some of the proposed recommendations appeared to take the power away from residents and convey to the Town Commission, and that potentially exposed the Commission to undue pressure by developers.

Mark Furth, Chairperson for the Citizens Initiative Committee (CIC), stated the consensus of the CIC was that there was no resident support for the height, zone or

term limits changes the CRB recommended. He elaborated on reasons that he felt the Commission should leave such issues unchanged in the Charter, suggesting they focus on approving the noncontroversial items.

Cristie Furth thanked the CRB for listening to the concerns that were voiced by members of the public at its meetings, adding that the CRB could not come to a consensus on maximizing height limits and transferring zoning powers to the Commission. She disagreed that placing such items on a referendum allowed voters to decide, as the Commission's forwarding the items for a referendum created an impression of support of those items and influenced the public. She read into the record her statement of objections to changes to the Charter as put forth by the CRB, urging the Commission to encourage Town beautification and increased pedestrian activity.

Eric Yankwitt thought it was premature for the Commission to make any decision on the CRB's recommended changes without the results of the marketing survey. The opportunity to take away from residents the ability to change such matters through referendum violated the separation of powers to some degree.

With no one else wishing to speak, Mayor Minnet closed the public comments.

4. CHARTER REVIEW BOARD RECOMMENDATIONS

Vice Mayor Sasser indicated the changes under sections 6.3 and 7.1 appeared to be the most contested of the proposed changes and, were they to go on a ballot, they should do so alone. He preferred to consider those first, as it might affect how he voted on other issues, specifically for items 6.3(2), 6.3(6), and all the 7.1 issues.

Mayor Minnet asked Town Attorney Trevarthen to address the residents' expressed concerns, such as those related to the overlay districts, and whether or not the claims made were included in any of the CRB's recommended Charter changes. These included comments by the public related to "overlay districts", "undoing" past amendments, "unfair", etc. She asked if the Town Attorney thought that there had been any pressure felt by members of the CRB to recommend any of the changes shown in the backup.

Town Attorney Trevarthen answered no. She noted many of the residents present attended the CRB meetings and had firsthand knowledge of those discussions, but that there were some residents present who had not, so she hoped her explanations would achieve a common understanding. She explained The Town's Charter required a Charter Review every 12 years, similar to other cities, some of the issues mentioned in the public comments were topics of CRB conversation, but not all were brought forward to the Commission. On the matter of changes to section 7.1, the CRB looked at the current Charter's prohibitions on Town Commission power, and they felt the present and specific Charter provisions went beyond the background law. She noted that the Charter stated that the Town Commission had no right to create zoning districts, change the uses allowed in those zoning districts, or to change the height limits in the zoning

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districts. Town Attorney Trevarthen stated that after several months of deliberation on the powers issues, including considering what the Commission might use those powers to do, the CRB recommended no changes, so that matter was not before the Commission.

However, she noted, there was a specific CRB change that was before the Town Commission that was related to a comment by a member of the public about the Town Commission not having the power to alter the Charter or to grant variances from the Charter. She indicated the reason the CRB recommended the removal of these statements about the Commission not amending the Charter was that they were true as a matter of law, regardless of whether they were stated in the Charter or not. Thus, they were recommended to be removed as redundant provisions, since they were listed four or five times throughout the Charter, and were felt by some to impede the legibility and ability to follow that section of the Charter.

Town Attorney Trevarthen clarified that the CRB concluded its work after a little over a year, and the end result was to bring forward recommendations; the decision to approve or disregard them was totally at the Town Commission's discretion. Where the Town Commission decided to move a CRB recommendation forward, the next step would be to draft ordinances, and there were specific procedural requirements on how to proceed. She emphasized that the only way changes to the Charter could take effect was if the voters voted them into existence, so any ordinance that supported CRB recommendations was subject to at least two readings and, if approved, it would be placed on the ballot.

On the issue of overlays, the Town Attorney indicated that Mr. Campbell was referring specifically to pages 10 to 11 of the analysis document of the plain English version of the Charter on section 7.1. She said the statement was in the current Charter, and it was not 100 percent clear if that ban on creating new categories of zoning included overlay districts. As the plain English version merely spoke about zoning districts, if there was a desire to clearly state that included overlay districts, the language could be included. The CRB neither questioned nor discussed that issue.

Mayor Minnet asked the Commissioners if they wished to make an opening statement.

Commissioner Brown inquired if there was any time limitation for the Town Commission to act on the CRB's recommendations.

Town Attorney Trevarthen answered no; the Charter Review requirement had been met, and the Commission could choose to do nothing further.

Commissioner Brown questioned if, at the present time, there were differences between the Town Charter and the Town Code when it came to the Town's height limits.

Town Attorney Trevarthen replied that there were and that it was important for people to understand this in the present conversation. It had been a frequent point of confusion

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among members of the public and the CRB, as well as Town staff at various times, but there were differences between Charter height limits and Town code height limits. She mentioned an example of one of the zoning districts that was most frequently discussed was the RM25 zoning district that was mapped along El Mar Drive in the eastern side of the Town. At present, Charter height limits were determined by time; that is, if a building existed prior March 2006, there was a 44-foot height limit, and if it came into existence later, then the building was subject to a 33-foot height limit. She explained that the zoned height limit in the RM25 district was 33 feet regardless of time. Due to the limitations on Town Commission power, the only way to change that zoned height limit of 33 feet would be by a separate vote of the people.

Commissioner Brown asked if the plain English version of the Charter put forth for approval by the CRB would in any way unify the Town Charter and the Town Code when it came to the differences in each as to height limits.

Town Attorney Trevarthen answered no, the plain English version was not designed to accomplish unification of the two. When the CRB first decided to tackle Article VII, in an effort to simplify the language, she was charged by the CRB to bring them a translation. To the best of her ability, the plain English version was worded to preserve the current Charter in a way that made it easier to understand.

Commissioner Brown expressed disappointment in the way the Charter Review process unfolded, though this disappointment was not directed at the CRB, as they worked very hard and held numerous hearings that always included public input. He had high hopes going into the Charter Review process that good things would be accomplished based upon the cooperation and support from the Town residents over the past year for the renovation projects along Commercial. The hope had been for the same type of cooperation to be extended to the CRB, but this had not happened. It was a shame that the public could not support the CRB, as there were problems in the Charter that needed to be fixed. Commissioner Brown mentioned the misinformation that was spread around the Town about the CRB, some of which residents at the present meeting continued to voice, and he received examples of the misinformation via email in recent days. For example, one of the questions asked of him was why the CRB was recommending increases in the height limits, which they had not. The same misunderstanding applied to the public's questions on what they thought the CRB was recommending for term limits and giving zoning power back to the Commission. He said this was all make believe, and putting all that false information out into the community poisoned the "well" as, in the Town, perception was reality. There seemed to be no reason to put any issues up for referendum in 2014, as the situation lacked a serious demonstration of public support for any of the changes recommended by the CRB. Given the fact that there was no sense of urgency for the Commission to approve any of the CRB's recommendations, he was inclined to defer any decisions to a day when a fair and honest discussion about the Charter could be held in the Town. He might be willing to support some of the lesser changes, but he was more inclined to approve none of the changes.

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Commissioner Vincent mentioned attending the last CRB meeting, at which he expressed his gratitude to the CRB members for their work on the Charter review. The CRB was put together by the Commission to define/examine certain issues in the Charter that might require a cleanup via minor changes for clarification, etc. He believed the CRB accomplished that task, noting those individuals who served on the CRB were Town residents chosen through a fair selection process.

Commissioner Dodd echoed appreciation to the CRB for their hard work and diligence, studying the intricacies of the Charter and making recommendations accordingly. He was very disappointed that the CRB was subjected to so much pressure from an organization whose aim appeared to be to stop progress and not to consider certain issues as either relevant or in need of tweaking. A number of persons approached him, asking what were the problems with the heights and term limits, and why the Commission sought to raise building heights, though he never heard any member of the Town Commission voice such a desire. When inquiring residents were given the true explanation and history as to why the Town was faced with a problem, they were unable to understand the irrational fears expressed by a select minority and their seeming opposition to any changes to the Charter. He stated if there were trust issues in the past, he was disappointed that the organization failed to reach out to the Commission or examine the achievements over the last four years before issuing the rallying calls to arms. A unified Town was important and the current situation did not set a good example for anyone thinking about volunteering to serve on Town boards.

Vice Mayor Sasser restated commendations to the CRB for the difficult task they embarked upon in the Charter review process. His reason for requesting that certain changes be taken first in the discussion was due to his belief that there had been significant work done by the CRB that could be completed at the present meeting, as there were a number of recommendations he was prepared to put forward to a referendum. When he ran for office four years prior, height limits were a top priority for everyone, and he realized no one supported raising height limits, so he gave his word that, if he were elected, he would not support raising height limits. He felt it was important for the Commission not to consider issues surrounding height limits at present, due to the controversy surrounding the CRB over the past year. Section 6.3, the Mayor/Commissioner running for Town Commissioner, and the ensuing item that went with it were also very controversial, and they needed further discussion to clarify the reasons they should be changed. Vice Mayor Sasser felt optimistic that if the Town took the right approach and earned one another's trust over time, it was possible to later consider issues that needed to be addressed to ensure that the Town remained a low-rise community as desired, while meeting the demands of change. He thought that neither sections 6.3 nor 7.1 belonged on the ballot with the other changes he supported, as he preferred that the items going to a referendum were changes that the majority of the Town could comfortably support.

Mayor Minnet thought the members of the Commission summed things up very well and thanked the CRB for all their work. She went on to open the discussion, as requested by Vice Mayor Sasser, on sections 6.3(2) and 6.3(6).

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Vice Mayor Sasser sought clarification on 6.3(6) that stated: create maximum consecutive term limit of two Commission terms and three Mayoral terms, which he thought went along with section 6.3(2) that sought to allow future Mayor/Commissioners to run for Town Commissioner without a two-year break in service.

Town Attorney Trevarthen affirmed they were tied together, explaining that she interpreted the current Charter to mean that the Mayor/Commissioner could not qualify to run for election as a Commissioner immediately following service as Mayor. The CRB, by a 6-1 vote, recommended that this be changed, so that a Mayor/Commissioner had the same rights as a Commissioner; that is, he/she could run for Commissioner immediately after serving as Mayor. Under the present Charter, a Commissioner could run for Mayor/Commissioner immediately after serving as a Commissioner. It was the recommendation of the CRB that three Mayoral terms plus two Commission terms was sufficient, and at that point, a two-year break in service was needed.

Vice Mayor Sasser restated his objections to putting 6.3(2) and 6.3(6) on the ballot.

Commissioner Brown felt it was unfair for a Commissioner to be able to serve two terms on the Commission and immediately run for Mayor, yet the Mayor could not serve three terms as Mayor and then immediately run for Commissioner. But there appeared to be no public support for the recommended changes, and he had no desire to see a ballot with controversial issues, so he concurred with the views of Vice Mayor Sasser.

Commissioner Dodd commented the recommended change benefited no one presently in office, noting no one thought anyone would run for Mayor without having served as a Commissioner. As all members of the Town Commission were equal, it was only fair that any candidate wishing to serve on the Commission could run for any office up to a maximum of 14 years without a break. He stated the last eligible election should be the one that allowed the member of the Commission to reach the 14 years without exceeding that limit. He believed if it were presented in the correct form that anyone would understand the original intention regarding setting term limits.

Vice Mayor Sasser emphasized that, regardless of the outcome of the subject issue, the current Mayor would not be affected. Thus, Mayor Minnet would be voting her conscience and not her seat.

Commissioner Vincent stated he had heard no public opposition to the subject issue and he received some positive feedback, so supported the recommended changes. When the subject matter was first raised that a Mayor could run for four years, he was vehemently against it, as he felt that it was important to have an opportunity to pull a majority by the voters every two years.

Mayor Minnet quoted from Mr. Campbell's statement that he distributed to the Commission, as she felt it summed up the two items very well. Specifically, she agreed that the proposed changes righted an inequity and allowed for three seats to be voted

on every two years. She recalled when she served on the CRB, this issue was debated, and she recommended the Town maintain elections every two years, and that the Mayor's position remain at two years, so the majority of the Commission was voted on every two years. Mr. Campbell's comment that the change would not violate the existing Charter was significant, as it was all about parity. She supported moving forward with these CRB recommendations.

Commissioner Dodd made a motion to approve section 6.3(2) to allow Mayor/Commissioners to run for Town Commission without a two year break in service, as well as section 6.3(6) to create a maximum consecutive term limit of two Commission terms and three Mayoral terms. The motion was seconded by Commissioner Vincent. The motion carried 3-2. Vice Mayor Sasser and Commissioner Brown voted no.

Commissioner Dodd emphasized that, with the approval of the CRB recommendations and the drafting of the ordinances, the public would have at least two opportunities at the first and second reading to voice their views to the Commission. It was a very democratic process that could prevent the ordinances from passing.

Mayor Minnet reiterated the outcome on these items would not affect her, noting some of the letters she received and some the comments emailed to her were disheartening, but that was evidence of how passionate the Town was and why she loved it. She moved the discussion onto the issue of height limits contained under section 7.1.

Vice Mayor Sasser stated his hope that the Town would choose a longer process, as he felt very strongly that the matter should not be included on the March 2014 ballot. The Town was presently very busy with various capital improvement projects, and it was important that they be done correctly and they needed everyone's full attention. He said the issue of height limits would remain a controversial issue.

Commissioner Brown was unsure what it was that Vice Mayor Sasser did not wish placed on the ballot, as 7.1(1) recommended all options for change considered by the CRB to be sent to the Town Commission. He sought clarification that if it was the Vice Mayor's suggestion that the Commission should not review any of the CRB options as stated in the backup.

Vice Mayor Sasser concurred, stating one recommendation was to send all the options to the Commission for discussion, so that item could not go on the ballot. However, referring specifically to 7.1, 7.1(1), 7.1(1)(d), 7.1(1)(f), 7.1(2)(b)-(d), 7.1(3)(b)(VIII to IX), should not be put forward in any form on the March 2014 ballot. He indicated they were all related to the height limit issue that many were strongly protesting, and so they should be dealt with at a later time.

Commissioner Brown concurred.

Commissioner Dodd stated his agreement with the statements made in Mark Furth's commentary on height limits and the resulting "big box". He continued to look for an answer as to why 44 feet did not turn out to be 44 feet, and he had been fighting for a long time to maintain the 44-foot height limit, and to go back to the original setbacks, so it would be possible to have views of the ocean. It was still a puzzle as to why Minto was built with a gazebo blocking the side corridor that was supposed to give a view of the ocean. He understood that, in view of such results, there had been a loss in trust by members of the public. He recalled being one of the first during public comments to suggest tearing Oriana down because it was too big and too close to the road. Commissioner Dodd believed there was a problem, and if the videos of most meetings in 2009 were viewed, it would be abundantly clear that everyone on the dais, including the Town Attorney, believed the height limit on beach front property on El Mar Drive was 44 feet. That is, it was three over one, so the bottom floor could be washed out, and this was believed to be due to the flood regulations. He said the state had now lowered the height limit by saying the flood regulations were no longer needed, so the height limit on the ocean front was now 33 feet. It was a question of perception, where the belief was either that if the Commission moved the subject changes forward, the aim was to raise the height limit, or it was believed that the aim was to put the height limit back to where it was agreed on by the voters in 2006, that three over one was an acceptable height limit. Commissioner Dodd stated what went wrong with the overlay districts was the setbacks, the density, using the beach area to calculate the density of the building, and the amount of land that was given away. He did not feel that it was a question of raising height limits, which was what was being told to the public, making it politically unacceptable for the Commission to move forward in its attempt to rectify the problem created by the state changing the flood regulations. This was not the time to go forward with the issue, and he supported postponing it for a finite period, perhaps revisiting it in five years.

Commissioner Vincent recommended the Commission not move forward with the changes recommended under section 7.1, as the level of controversy, confusion and opposition revealed the Town was not ready to tackle this matter.

Mayor Minnet thought it at a wise choice not to move 7.1 forward, though she was unsure a time limit should be put as to when next to revisit the matter. It was better to state that the Commission preferred to take no action on any of the 7.1 items at present.

Commissioner Dodd made a motion not to consider any of the CRB's recommended changes under section 7.1 for the present. The motion was seconded by Vice Mayor Sasser. The motion passed 5-0.

Mayor Minnet moved the discussion to the CRB recommendations under section 5.2: Remove the language that called for the Mayor to vote last on a roll call vote, which the CRB approved with a vote of 4-3. She asked the Commission if they wished to move the item forward.

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Commissioner Dodd was happy either way, as he liked the electronic voting. He supported taking the language out of the Charter, as it was better for members of the Commission to stop, think and press the button to vote their opinion.

Vice Mayor Sasser supported leaving the language as is. After speaking with the Town Attorney, he learned that leaving the language in the Charter did not prevent the Commission from utilizing the electronic voting system. At the last Commission meeting when the electronic voting system failed, the Mayor voted last and everything went smoothly.

Commissioner Vincent stated he was comfortable leaving the language in.

Commissioner Brown remarked if he heard public support for the subject change over the next few meetings, he could approve putting it on the ballot, though he was not inclined to put small changes to a referendum unless they accompanied bigger change(s). This was a very low priority issue.

Mayor Minnet asked for and received no motion to move forward with the recommended change to section 5.2 of the Town Charter. The next item was section 5.3: Provide alternative standards for the Town Manager qualifications, for which there was a unanimous recommendation of approval by the CRB.

Commissioner Dodd asked what action could be taken or what penalty could be imposed if the Town Commission selected a candidate for Town Manager who was not qualified according to the Charter's language.

Town Attorney Trevarthen recalled giving the Town Commission the opinion that the present Town Manager's qualifications satisfied the Town Charter, the difference being between a public policy degree and a political science degree. There might be situations where there was a greater deviation from the listed standards, and the recommended language would remove the need to question it. The CRB felt that it was not helpful in the hiring process to debate whether a person met the qualifications, as a candidate might appear amply qualified in the eyes of the Commission.

Commissioner Vincent believed that the CRB wished to allow future Commissions the flexibility to make the correct decision. He supported the item moving to a referendum.

Commissioner Brown reiterated if over the course of the various public hearings he heard support for the subject change, he would support moving forward to a referendum. At present, he had yet to hear any such support from the public other than Mr. Campbell and, until that time, he did not support moving forward at present. This would be his response for the rest of the items the Commission would be voting on.

Vice Mayor Sasser made a motion to move section 5.3 to a referendum item. The motion was seconded by Commissioner Dodd. The motion passed 4-1. Commissioner Brown voted no.

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Mayor Minnet pointed out the next items were in reference to the residential electoral districts, 6.1(2): The recommendation from the CRB was unanimous to preserve electoral seats in the absence of electoral districts.

Town Attorney Trevarthen noted the Mayor skipped over a recommendation: the removal of the requirement for residential electoral districts. At present, some candidates had to run from the north, while others ran from the south. The recommendation of the CRB was to remove that requirement.

Mayor Minnet received no Commission consensus on 6.1(2). Though she understood Commissioner Brown's stated position, she stated the CRB was charged with reviewing and amending the Town Charter, and nine of their recommendations were unanimous and aimed at improving the Town.

Commissioner Brown concurred with Mayor Minnet in principle, stating he felt bad that he was voting "no" on some of the CRB recommendations, as he supported some of them. He was willing to put them to a referendum, but he wanted to see more public support to justify placing them on the March 2014 ballot.

Mayor Minnet felt Commissioner Brown had received positive feedback, as the CRB was comprised of residents who studied the Charter and made their recommendations, and all their meetings allowed public input. It was sad that the Town Commission appeared not to be listening to the CRB because some decisions were not easy.

Commissioner Dodd supported the recommended change to 6.1(2-7), as the CRB held lengthy debates, and it was time to recognize that this was one Town, regardless of where one lived, and members of the Commission were representatives of the people.

Commissioner Dodd made a motion to approve the recommended changes to 6.1(2-7) and 3.3, removing the residential electoral districts. The motion died due to lack of a second.

Vice Chairperson Sasser inquired, since 6.1(2-7) died for lack of a second, if this immediately disqualified 6.1(2).

Town Attorney Trevarthen responded it made 6.1(2) moot. However, 6.1(5) was the fallback unanimous recommendation of the CRB that, in the event the Commission preserved the residential electoral districts, the Commission should remove the university study and adopt the current district boundaries into the Charter.

Vice Chairperson Sasser asked, as the Commission chose to preserve the residential electoral districts, if the removal of the required university study were approved, would this prevent the Town from having another study done at a later time? As times changed, including demographic changes, etc., there might come a time when the Town wished to do a study, such as east versus west.

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Town Attorney Trevarthen stated that the Commission's removal of the requirement for a university study would not preclude the Town from doing studies in the future. However, the Commission might wish to consider not putting the current districts in the Charter, as it would require a referendum to change them at a future date if desired.

Vice Chairperson Sasser remarked he was not in favor of moving forward with the subject recommendation, as it would limit the flexibility to take such action in the future.

Commissioner Vincent understood the university study involved taking into account population changes to ensure there was an equitable balance among the districts.

Town Attorney Trevarthen replied the current Charter contained demanding language with regard to the university study and the standard that had to be met. The origin of that standard did not relate to the Town's situation: rather it was the standard that applied when there were single-member districts. When there were single-member districts in a government, the people living in a district voted only for the commissioner of that district. She believed that in that setting, this type of study, this type of rigor, was absolutely essential or the whole system of voting could be stricken by the courts. This was not the Town's situation, as the Town had voting at-large where everyone voted for all candidates, and candidates running for Commission seats, not Mayor, were only required to reside in one of the two districts. The subject issue arose at the time of the recent Decennial Census, and when Phase I of the university study came forward, it showed some significant population changes due to annexations.. At that time, she advised the Commission she felt this standard was unnecessary because the Town did not engage in at-large voting, and that issue was also discussed by the CRB.

Commissioner Vincent concurred with not moving forward the item.

Commissioner Dodd noted the Town abided by the present requirement to do a study and wondered if there would be a future requirement to do a further study, since the Town elected to do nothing when the Commission ignored the results of the last study. The question was whether the debate was about something that might cost more to remove it from the Charter in terms of ordinances and legal fees, or to do nothing if there was no future requirement that the Town do a study. He questioned if it was stated in the Charter when a study had to be done.

Town Attorney Trevarthen commented the Charter's language spoke about first doing it in 2004 and then again in 2012, but it had no other future dates; this was an interesting point that had not come up in the CRB discussions. As a lawyer, it was not good to have obsolete language lying around, but she understood the Town was balancing many concerns beyond these.

Mayor Minnet thought it sounded as though the subject items were moot points.

Commissioner Dodd remarked it sounded as if the Commission preferred to leave it.

No action was taken on the CRB recommendation to eliminate the requirement of the university study and amend the standard for establishing the residential electoral districts in Section 6.1(5)

Mayor Minnet stated the next item was section 6.6 - 6.7, that allowed the Commission to consider penalties other than forfeiture of office for the violation of a standard of conduct or code of ethics established by law or incapacity. It required that due process be provided in hearings under section 6.7. This was a unanimous CRB recommendation.

Town Attorney Trevarthen briefly reviewed the CRB recommended changes to sections 6.6 and 6.7. She noted that this dealt with what happened if a Commissioner either became incapable of performing his/her duties or committed certain acts that suggested they were no longer fit for service. The grounds were listed in the Charter, and a hearing was held before the remaining members of the Commission. The Commission acted as a judge of its own membership as to whether there was a violation and/or if something should be done. Presently, those provisions in the Charter had only one potential consequence -- forfeiture of office. Of the events that could trigger such a hearing included activities such as committing a felony, incapacity for a certain number of consecutive meetings, for example, due to illness. The second issue the CRB singled out was the provision that said, "... violates any legally required standard of conduct or code of ethics." She said the CRB felt it was appropriate to consider lesser penalties, as minor violations could result in a very disproportionate outcome (forfeiture). The CRB's proposal was that, if the basis for a forfeiture hearing was triggered, the Commission should have more options, including a letter of instruction or reprimand to the Commissioner, as lesser penalties than losing one's office. Some of the proposed changes stemmed from the concern that the forfeiture hearing before the remaining members of the Town Commission should be handled appropriately with all due process rights being provided to the Commissioner at issue. The Commissioner should be allowed to present evidence in his/her defense. These were all part of the changes to sections 6.6 and 6.7.

Commissioner Brown liked the subject recommendation, noting he asked the CRB to put the matter on their agenda. The County's Ethics Code had a zero tolerance with regard to accepting free items, such as a bottle of water, and if a Commissioner were to accept a bottle of water, under the current Charter, that presented grounds for removal from office. He doubted this was the intent of the Charter's language.

Vice Mayor Sasser remarked the need for due process stuck out with him, making this was a good ballot item. He asked why the subject changes might be important; did the County Ethics Code provide no due process.

Town Attorney Trevarthen responded the County Ethics Code was certainly not within the control of the Town Commission. There was an Inspector General (IG) with wide ranging powers to launch an inquiry, not only under the County Code of Ethics, but also any applicable ethics regulation to launch an inquiry. She mentioned that there were some expressed concerns as to whether that process had the full range of due process

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that many Commissioners wished to see. The Town had no power to affect the process provided by the Inspector General's work; the Town only had the power to look at the hearings created under the Town Charter and specify how they were handled.

Vice Mayor Sasser questioned if under the County Code of Ethics, a decision of guilt could be imposed without the Commissioner allegedly at fault being allowed to properly defend himself/herself. This IG decision could then trigger their removal from office, when the Commission might not desire such action.

Town Attorney Trevarthen replied that issue could come up through an IG proceeding. The CRB's recommended change would give the Commission another option other than forfeiture of office.

Vice Mayor Sasser supported the subject item, as it just made sense, knowing that there was no proper due process provided in the County Code of Ethics.

Commissioner Vincent asked when would the Commission be able to move forward with due process on any type of ethics violation, wondering if there was ever a time when the Town had to discuss the matter with the IG first. He questioned where it all started and stopped, as far as who had protocol.

Town Attorney Trevarthen believed that the easiest way to think about the matter was as concurrent jurisdiction. The question presupposed that everything happened in a linear way, but it was not the case, as all the entities had their own sphere of jurisdiction over which they exercised control. The Town could do nothing about the state's Ethics Commission decisions or the County IG's actions or the County's Ethics Code, as these dictates were imposed on the Town from above. Here, the Town was proposing to amend the procedures required by the Charter that could be triggered by a finding under the State or County law. She noted, though it was not stated, the Governor, the Ethics Commission, the IG and all other ethics regulatory regimes had proportionate penalties of a wide variety, including a letter of reprimand, a letter of instruction, a fine, etc. Only the most severe infraction led to the removal from office. She commented the action advocated by the CRB's recommendation was in the spirit of what existed in other ethics regulatory schemes, and it allowed the Town Commission to choose the right penalty for the offense.

Commissioner Dodd felt immediate forfeiture without due process was too harsh, as in many instances an elected official might not be aware that someone that they were speaking with was a lobbyist, for example.. The punishment should fit the crime, and he fully supported putting the subject recommendation forward for a referendum.

Commissioner Dodd made a motion to approve moving forward CRB recommendations under sections 6.6 and 6.7. The motion was seconded by Commissioner Vincent. The motion passed 4-1. Commissioner Brown voted no.

Mayor Minnet noted she skipped an item, section 6.2, changing the time of designating the Vice Mayor after an election, which was unanimously recommended by the CRB.

Commissioner Dodd made a motion to approve moving forward with the CRB recommendation under section 6.2. The motion was seconded by Vice Mayor Sasser. The motion passed 4-1. Commissioner Brown voted no.

Mayor Minnet stated the next recommended change to the Charter was under section 6.10 that dealt with creating a procedure for vacancies and in candidacy. The CRB unanimously approved the proposed recommendation.

Commissioner Dodd made a motion to approve moving forward with the CRB recommendation under section 6.10. The motion was seconded by Vice Mayor Sasser. The motion passed 4-1. Commissioner Brown voted no.

Mayor Minnet indicated the next recommended CRB change was to section 6.11, specifying that the Town's elected officials served part-time and their ability to engage in outside employment and charitable fundraising would be controlled by state law, not the County Code of Ethics.

Town Attorney Trevarthen reviewed the details of this recommendation, noting there were four cities in Broward County to date that took action on the applicability of the Broward County Code of Ethics to their elected officials. Specifically, the municipalities were: Sea Ranch Lakes, Pompano Beach, Hillsboro Beach and Wilton Manors. They asked the voters whether their charters should be changed so the regulation disclosures and limitations of elected officials' outside employment follow state law and not the new County Code of Ethics. She said, in each of those cities, those ballot questions passed, and were now part of their charters. Other Broward municipalities, including the Town, were subject to the Broward County Code of Ethics that had additional restrictions on the type of employment in which elected officials could engage in and the type of disclosures that were necessary. The CRB examined the situation and recommended the Town Commission proceed with their suggested change. Town Attorney Trevarthen added one of the four cities, Hillsboro Beach also asked their voters whether their elected officials could opt out of the County law as it affected charitable fundraising activities, which the County Code of Ethics required to be reported, and that change passed. She noted both versions were offered to the CRB, and they recommended the Commission consider the Hillsboro Beach version with both changes; all other dictates of the County's Code of Ethics would remain in effect for the Town.

Mayor Minnet questioned if the IG gave any indication that the County would in any way pursue the four above-mentioned cities for opting out of these particular regulations.

Town Attorney Trevarthen responded that when the first three cities took this action, the County discussed challenging them and, after several months of discussions, they decided not to act.

Mayor Minnet noted there appeared to be no Town Commission support for this recommendation, so the proposed CRB change to Section 6.11 would be disregarded. She sought clarification on the next step in the procedure.

Town Attorney Trevarthen summarized the proceedings of the CRB's recommended changes to the Charter and the Commission's decision on whether to move those recommendations forward to a referendum:

- Section 5.3 - approved by the Commission by a vote of 4-1
- Section 6.2 - approved by the Commission by a vote of 4-1
- Sections 6.3(2) and 6.3(6) - approved by the Commission by a vote of 3-2
- Sections 6.6 and 6.7 - approved by the Commission by a vote of 4-1
- Section 6.10 - approved by a the Commission by a vote of 4-1

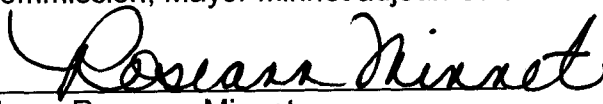
Town Attorney Trevarthen said the next step would be to bring these matters back to the Town Commission in the form of an ordinance. This ordinance would show what the changes would like in terms of putting it on the ballot. This process would take some time, as they had to devise ballot questions that appropriately presented the recommended changes. Then the ordinance would go to first and second reading. She noted the process needed to be complete by mid to late fall in order to make the deadline set by the Supervisor of Elections to make it onto the March 2014 ballot.

Town Manager Hoffmann said that the deadline was January 9, 2014, but the ordinances had to be adopted by December.

Town Clerk Castillo confirmed the ordinances had to be adopted by the Town Commission's last meeting in December 2013.

5. ADJOURNMENT

Commissioner Dodd made a motion to adjourn. With no further business before the Commission, Mayor Minnet adjourned the meeting at 8:45 p.m.


Mayor Roseann Minnet

ATTEST:


Town Clerk Vanessa Castillo

8/21/2013
Date

EXHIBIT 1

SUMMARY OF LBTS CHARTER REVIEW BOARD RECOMMENDATIONS	
Recommended Change	Vote
Section 5.2: Remove Mayor voting last on a roll call vote	4-3 (5/7/13)
Section 5.3: Provide alternative standard for Town Manager qualifications	Unanimous (5/7/13)
Sections 6.1(2)-(7) and 3.3: Remove residential electoral districts	5-1 (1/9/13)
Section 6.1(2): Preserve electoral seats in the absence of electoral districts	Unanimous (1/9/13)
Section 6.1(5): If Commission preserves residential electoral districts, remove requirement for university study and adopt current districts in the Charter	Unanimous (1/9/13)
Section 6.2: Change time of designating the Vice-Mayor	Unanimous (1/9/13)
Section 6.3(2): Allow future Mayor-Commissioners to run for Town Commissioner without a two-year break in service	6-1 (2/7/13)
Section 6.3(6): Create maximum consecutive term limit of two Commission terms and three Mayoral terms (14 years)	5-1 (3/21/13)
Sections 6.6-6.7: Allow the Commission to consider penalties other than forfeiture of office for (i) violation of any standard of conduct or code of ethics established by law and (ii) incapacity, and require that due process be provided in hearings under Section 6.7	Unanimous (1/9/13)
Section 6.10: Create a procedure for vacancies in candidacy	Unanimous (1/9/13)
Section 6.11: Specify that Town elected officials serve part time, and that their ability to engage in outside employment and in charitable fundraising will be controlled by state law (and not the County Code of Ethics)	5-1 (1/9/13)
Section 7.1: Adopt the plain English version of this section	Unanimous (1/9/13)
Section 7.1(1): Charter height limits – Send Town Commission all options for change considered by the Board	4-3 (5/7/13)
Section 7.1(1)(d): Amend plain English version to allow solar panels to exceed four-foot rooftop structure height limit	Unanimous (1/9/13) (1 abstention)
Section 7.1(1)(f): Amend plain English version to remove redundant provisions that are true as a matter of law	Unanimous (1/9/13)
Section 7.1(2)(b)-(d): Amend plain English version to allow any nonhabitable use allowed under the zoning on the first floor	Unanimous (3/21/13)
Section 7.1(3)(b)(viii)-(ix): Amend plain English version to allow nonconforming buildings to be replaced with the original setbacks	5-1 (1/9/13)

Statement of Laurence Campbell

To the LBTS Commission Special Meeting, June 10, 2013

Ten of the recommendations are narrowly stated, specific to a problem, easily understood, and *don't overturn the intent of the original charter amendments*. I recommend that the Commission support these. I'm including a marked up version of the "Summary of Recommendations" indicating a position on each: YES for support and NO for oppose.

Specifically, I recommend that the Commission **SUPPORT** the recommendations to: remove the Mayor voting last on a roll call vote (Sec. 5.2); provide an alternative standard for Town Manager qualifications (Sec. 5.3); adopt the current electoral districts in the Charter (Sec. 6.1.(2)); change the time of designating the Vice Mayor (Sec. 6.2); allow the Commission to consider penalties other than forfeiture of office (Sec 6.6-7); create a procedure for vacancies in candidacy (Sec. 6.10); and specify that Town elected officials serve part time and that their outside employment and charitable fundraising will be controlled by state law, not the County code (Sec. 6.11).

I recommend that the Commission **SUPPORT** direct amendments to the Charter that would: allow solar panels to exceed the four foot rooftop structure height limit (Sec 7.1.(1)(d and allow nonconforming buildings to be replaced with the original setbacks (Sec. 7.1(3)(b)(viii)-(ix).

I also recommend **SUPPORT** for the amendment to allow future Mayor-Commissioners to run for Commissioner without a two-year break in service (Sec. 6.3.(2)); and to create a maximum consecutive term limit of two Commission terms and three Mayoral terms (14 years) (Sec. 6.3.(6)); *Some who supported the original term limits proposal may disagree with me.* However, my personal view is that this amendment, if adopted, would right an inequity and preserve the basic feature, which is to force at least three seats to come up for election every two years and defined term limits.

In my view the remaining recommendations involve major policy changes that would overturn the will of the people expressed in 2006. I recommend that you oppose these.

Specifically, I recommend that the Commission **OPPOSE** the recommendation to remove residential electoral districts (Sec 6.1(2)-(7) and 3.3. The existing residential electoral district system is working well. I can see no reason to change it.

I recommend that the Commission **OPPOSE** allowing any non-habitable use allowed under the zoning on the first floor (Sec 7.1(2)(b)-(d). As the analysis states: "...that clarification would broaden the scope of the listed uses for residential zoning districts." (Exh 3, p.3) I don't see any

showing of why that allowed list should be broadened in residential areas , or what it would include.

The Commission should **OPPOSE** any change in the Charter's existing height limits. Proposing any such changes will reopen the rancorous debate over our identity as a low-profile town—the very thing that makes us special in a wall of condo canyons to our south and north. It would divert the Commission from its important work overseeing the complex development projects already underway.

Similarly, the Commission should **OPPOSE** the wholesale rewriting of Section 7.1. Unlike the recommendations I supported, this wholesale change is not narrowly drawn and introduces new policy that goes against the intent of the original charter amendments.

For example, in Section 5, "Limits on Town Commission power to amend land development regulation," the analysis states that "the Plain English Version applies the interpretation that a new category is a regular zoning district and not an overlay district." (Exhibit 3, p. 11) Actually, it was the explicit intent of the original amendments to remove from the Commission the power to create new overlay districts without voter approval because of the potential for abuse.

Similarly, the Plain English Version proposes to delete in several places the statement that "The Town Commission may not increase by ordinance or by variance, the height limits established herein." But these statements were included in the original amendments specifically to prevent any future Commission from ignoring the stated intent of the will of the voters, as had happened in the past.

It is also my understanding that no owner, citizen, or developer testified to the CRB and that no one has requested a wholesale rewrite or a higher height limit. I certainly haven't seen any demand from the people for a change in these areas—in fact—I've seen exactly the opposite. Proposing either of these can only put uncertainty and fear into the hearts of the voters whose approval you will be seeking.

Walking around town in the last several weeks I see lots of redevelopment of properties underway. This tells me, that taken as a whole, the amendments and height limits adopted in 2006 are working, the town is redeveloping, and there is no need to reopen those debates.

If the Commission sticks to proposing narrowly drawn, understandable recommendations I think it will have chance for success without reopening old battles.

Thank you for the opportunity to comment.

Recommended positions from Laurence Campbell

EXHIBIT 1

SUMMARY OF LBTS CHARTER REVIEW BOARD RECOMMENDATIONS		
	Recommended Change	Vote
YES	Section 5.2: Remove Mayor voting last on a roll call vote	4-3 (5/7/13)
YES	Section 5.3: Provide alternative standard for Town Manager qualifications	Unanimous (5/7/13)
NO	Sections 6.1(2)-(7) and 3.3: Remove residential electoral districts	5-1 (1/9/13)
NO	Section 6.1(2): Preserve electoral seats in the absence of electoral districts	Unanimous (1/9/13)
YES	Section 6.1(5): If Commission preserves residential electoral districts, remove requirement for university study and adopt current districts in the Charter	Unanimous (1/9/13)
YES	Section 6.2: Change time of designating the Vice-Mayor	Unanimous (1/9/13)
YES	Section 6.3(2): Allow future Mayor-Commissioners to run for Town Commissioner without a two-year break in service	6-1 (2/7/13)
YES	Section 6.3(6): Create maximum consecutive term limit of two Commission terms and three Mayoral terms (14 years)	5-1 (3/21/13)
YES	Sections 6.6-6.7: Allow the Commission to consider penalties other than forfeiture of office for (i) violation of any standard of conduct or code of ethics established by law and (ii) incapacity, and require that due process be provided in hearings under Section 6.7	Unanimous (1/9/13)
YES	Section 6.10: Create a procedure for vacancies in candidacy	Unanimous (1/9/13)
YES	Section 6.11: Specify that Town elected officials serve part time, and that their ability to engage in outside employment and in charitable fundraising will be controlled by state law (and not the County Code of Ethics)	5-1 (1/9/13)
NO	Section 7.1: Adopt the plain English version of this section	Unanimous (1/9/13)
NO	Section 7.1(1): Charter height limits – Send Town Commission all options for change considered by the Board <i>OPTION D - No change</i>	4-3 (5/7/13)
YES	Section 7.1(1)(d): Amend plain English version to allow solar panels to exceed four-foot rooftop structure height limit	Unanimous (1/9/13) (1 abstention)
NO	Section 7.1(1)(f): Amend plain English version to remove redundant provisions that are true as a matter of law	Unanimous (1/9/13)
NO	Section 7.1(2)(b)-(d): Amend plain English version to allow any nonhabitable use allowed under the zoning on the first floor	Unanimous (3/21/13)
YES	Section 7.1(3)(b)(viii)-(ix): Amend plain English version to allow nonconforming buildings to be replaced with the original setbacks	5-1 (1/9/13)

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