

**MINUTES OF THE REGULAR MEETING
OF THE
CHARTER REVIEW COMMISSION**

**Wednesday, April 28, 2010 – 7:00 p.m.
Mayfield Village Main Conference Room
Mayfield Village Civic Center**

The Regular Meeting of the Charter Review Commission was held on Wednesday, April 28, 2010 in the Main Conference Room at the Mayfield Village Civic Center.

Chairman Caticchio called the meeting to order at 7:00 p.m. and asked for a Roll Call.

Present: **Pat Caticchio
Eric Jochum
Paul Fikaris
Merv Singer
Jim Farmer
James Mason
Shirley Shatten
Randy Hyde**

Absent: **None**

Also Present: **Mayor Rinker
Diane A. Calta, Esq.
Mary Betsa
Diane Wolgamuth
Ted Esborn**

Approval of Minutes of Regular Meeting of Wednesday, April 14, 2010

Mr. Farmer made a motion that the Minutes of the Regular Meeting of April 14, 2010 be approved as written. Mr. Jochum seconded. The motion was unanimously carried.

ROLL CALL: AYES: 5	Motion Carried
NAYS: 0	Minutes Approved

Chairman Caticchio stated that we have asked Mayor Rinker and Diane Calta to be here because there are a couple of questions that we could not resolve on our own. We sent a list of issues we had to Joe Diemert. He did a very good job of responding to the questions by letter dated March 23rd. We received good answers and know how to proceed from there. We just have a few more things we would like to clear up.

Chairman Caticchio stated, last week we finished reviewing all of the Charter. We went all the way through to the end.

. **Mayor Rinker**

Chairman Caticchio stated that at the last meeting he requested the Commission to write questions that we could specifically ask. Who would like to start?

Mr. Jochum stated he does not have any specific questions other than he thought maybe we would be getting into questions regarding referendum zoning. Chairman Caticchio replied, we are going to do that. Mr. Jochum added, his questions would be related to that.

Chairman Caticchio asked if anyone else had any comments to address to the Mayor. There were three we discussed that we would like to discuss with the Mayor. The three things we came up with that we would like the Mayor's opinion on had to do with:

- . Zoning – Going back to Council
- . Regionalization – clarification of what we did last time
- . Charter Review Commission being held every 10 years instead of every 5 years

. Zoning – Going Back to Council.

Chairman Caticchio thinks we pretty well decided unanimously regarding zoning being done by referendum, especially in light of the 2020 Vision Plan that the Village has worked so hard on and is trying to implement. He has a problem picturing implementing the 2020 Vision with every parcel that needs adjustment in zoning or needs new zoning going back to the people. How's that ever going to happen?

Mayor Rinker reviewed some of the Minutes. Anyone who's had any experience working with any development proposal knows that referendum zoning is kind of an impediment. He compares it with term limits. It comes from the same sense that we don't trust government, but there's an illogic to it because if we don't trust government well enough to elect officials to represent our interests, that means we're not smart enough to choose the right people. Some people say there's never a good enough choice, but he doesn't agree with that. The same thinking then is we need a referendum because we can't trust these elected officials to make sound decisions even though they are working on a more regular basis with these issues. If the voters weren't smart enough to elect good officials, how are they going to be any smarter with a referendum issue? How are they going to learn more? Typically the psychology with referendum voting is that, oh, they're coming to us, that means they have to or there's something unusual.

A lot of people get the impression that if they're going to vote on a referendum issue, there's something provocative or ulterior. As a mechanism, it's both cumbersome and often is conflicted unnecessarily. The process almost trumps the product we've been trying to deal with.

Mayor Rinker gets a certain consensus from a lot of you that referendum zoning really creates unnecessary steps, but the question is, okay, how do people react if you tell them we are going to take away your right to control this issue and almost like a referendum issue, because that's what it's going to take is a referendum. People have to be convinced that somehow removing this is a

better thing. That is so personal and often driven by particular issues or experiences. It's a challenge. As with any proposal, if you believe in it and you feel that you have evaluated it well and you articulate that straight up and just say this is why we think, we have looked at it, this is our charge, this is our responsibility as a Charter Review Commission, Mayor Rinker thinks that is how you present it. If you have a consensus, you figure a way to present it and then stand by it.

Historically, a few of you were involved a number of years ago when in the year of the Charter Review there were a couple of other zoning issues that came up rather quickly. Mayor Rinker remembers the discussion then was, we want to get rid of referendum zoning. Mayor Rinker's reaction then was, whoa, one, we are in a provocative time right now and two, that's a provocative issue.

The thing that Mayor Rinker finds awkward about the Charter Review process is that by the time you all have gone through what has historically always been a very methodical review process, in his experience there hasn't been a single Charter Review Commission that hasn't taken this charge seriously and have been very thorough about it, by the time you get to where you can announce it within five months from the time that you start, it usually gives you precious little time to advertise to get out to the voters. Mayor Rinker's response back then was if it's important enough, there's no reason that this same group of people can't meet and then do this the following year or the year after. The psychology is it gets out of sight and it's out of mind because it really does take going out and letting people judge for themselves and giving them good reasons to judge for themselves. Basically if he could do without referendum zoning in a community, he would much prefer it. That's having represented a lot of different interests in doing it. A lot of times as an administrator, he finds it very awkward. We have had few referendum issues. In every one of them, we have not been shy about either saying we are for or against the issue. In that regard, flipping to the other side, the referendum process can be viewed as an opportunity for everyone to get on board with a particular issue and really work the crowd. Mayor Rinker is not saying that in a spin sense, he's saying that it really gives everyone a chance to dig into it. If there's a salutary goal for referendum voting, it's that. It really forces the community to look at this issue collectively and make a decision.

Mr. Jochum stated to Mayor Rinker, if he recalls correctly, the last time we brought it up, you supported what we were talking about, but there was at least one, maybe two, elected officials that were opposed to it.

Mayor Rinker replied, they were. That was a Council that was really, with the Mayor and the Council, we were at odds on a lot of issues. That summer, Council came up with the idea that anything the Village owns, we are going to just change it to residential zoning. The referendum vote supported that because most people identify residential as nice. Mayor Rinker thought it was a huge mistake, but again it was a provocative enough issue. Oftentimes provocative issues need to be met head on. Then the question is do you have time to do it, can you choreograph what you really want to do to present an issue? Most of the issues we have had referendum, we have had that time. Mayor Rinker does not think it's been a problem. What we can't speak to were the other times when there may have been a development, someone might have pursued it, or looking at

Mayfield Village and have said, you know what, we are not going to try here because it's referendum. Mayor Rinker can only speculate. It adds time and time is money.

Mr. Jochum stated, quite frankly, we don't know what we've missed. Mayor Rinker stated, that's a good way to put it. Mr. Jochum added, because there may have been developers that just never brought anything up because of it.

Chairman Caticchio stated, one of the serious problems that developers have in this situation is the fact that they come to the Village of Mayfield and they have to settle on conditional zoning with a two year limit. When they go to the bank and the bank says, okay, is the land zoned, you can't go for loans obviously. Mayor Rinker stated we have had those discussions on many occasions.

Ms. Calta stated there are a few banks that didn't hesitate. Chairman Caticchio asked, they didn't hesitate? Mayor Rinker replied, no. In a way, they almost have you over a barrel. The guy from Arthur Murray who was over at Highland Heights and all of a sudden he signs the deal and then he finds out he has to come to Mayfield Village and he goes, oh, whatever. But the first thing he is saying is, well, but I've got a lease, I've got all these other, and who here wants to say, well that's too bad, you're good for two years with us. That's a problem with the current set up we have with conditional use permits.

Mr. Jochum asked, are we going to tell Hilton Garden that it doesn't work anymore after their time is up? We use the two years, but realistically – Chairman Caticchio stated, realistically you are not going to do it, but the banks don't live in the real world. They live in the world of paper.

Mayor Rinker understands what Chairman Caticchio is saying. Here's the mechanism for conditional use permits which is sort of contract zoning which is unconstitutional. Contract zoning is different from entering into a development agreement. It's just by agreement and you have effectively avoided Council and you have effectively avoided the electorate.

Mr. Jochum stated, the problem is at the end of the day you have a potential hodgepodge. Mayor Rinker stated that's very much at issue. It's hard to get a comprehensive zoning scheme. If he understands from the Minutes, you are saying, well, how do we change that? If we have to go out to a referendum vote and some of the discussions have been we have overlay districts. What's an overlay district? We have form based zoning. You start getting into some pretty abstract discussion which are the kinds of things that your Boards and Commissions should be dealing with and then when you want to go out and tell the voters this is what we are going to do, it's often a challenge. Mayor Rinker does not disagree. Referendum zoning will make that a far more complex process.

Chairman Caticchio stated it's not so bad here in the Village of Mayfield because we are such a small village as compared to larger cities. Take the City of Cleveland, it's a horrible example, but who cares what the west side is doing for the zoning on the east side? Mayor Rinker agreed.

Chairman Caticchio stated, it has to be a sales job to the people to get them to accept a change in the Charter. Mayor Rinker stated, it always is.

Chairman Caticchio asked, when you started speaking, you mentioned the fact that we don't have time until November 4th to sell this thing. We have to have it ready by July. Mayor Rinker stated, then Council has to get it to the Board of Elections by August. Typically the time for debate with Council is they are getting a short trip. By transfer, so are the voters.

Chairman Caticchio asked Mayor Rinker's opinion of Council agreeing to put this on the ballot. Mayor Rinker does not know. We have not talked about it. He is sure there are going to be differences of opinion. This would trigger that reaction. It's the kind of issue where you want that debate. Mayor Rinker does not think there's a simple answer.

Mr. Jochum is not sure of the success the first time we put it out, but that doesn't mean we shouldn't try. Chairman Caticchio agreed.

Mr. Jochum thinks it's important. It's an important issue to move the 2020 forward. He does not know how else you do it. He agrees. He doesn't know if you can take bit by bit. Chairman Caticchio stated, you can't do it.

As a way of footnoting, Mayor Rinker took the most significant and recent example with Judge Krenzler's property, the six acres right next to Mt. Vernon. Remember the Mt. Vernon pump station used to be there and then a gravity sewer came in? That opened up the property but it was split zoning, fronting on SOM Center Road, single family residential, half acre zoning for about four acres and then the back two acres essentially landlocked commercially zoned. From zoning, it was a remnant piece of property. It's kind of what was left over after you baked the pie. When he came forward, he wanted to change it, but the step procedurally first was to create the zoning district itself. We had no cluster zoning. He was very patient, but he spent a better part of a year and a half just working on what turned out to be the zoning classification. On the referendum vote, what sold it to the voters was people liked what they saw as the development. The irony is the voters are being called to vote upon in theory, should we apply this new zoning to this piece of property. That's the way our Charter works. You can enact the legislation. We can have tons of zoning categories on the books. The question is then is where does it land? If it lands on a property that isn't zoned that way, you have to rezone. That's the referendum issue. Typically people look to the developer because it's eye candy, it's a point of reference and in this instance a lot of people probably envisioned a lot of different things from what they saw actually built. Some of the feedback Mayor Rinker has gotten from some people on Planning and Zoning and others, those are big puppies, those things are like 2700 square feet. Had that been voted differently by referendum, Mayor Rinker is not sure that there would have been more flexibility, but that's probably as good a case study of the pros and cons of the referendum process that we have. Thankfully we are not Solon. Solon has ward-specific zoning. They have had three different issues that city-wide have passed over 60% plurality and the ward votes it down and it shoots down the whole thing.

Chairman Caticchio asked if there were any other comments regarding this.

Mr. Mason asked Mr. Farmer what his take is on this. Mr. Farmer replied he has not had a lot of experience in referendum. Mr. Mason stated not so much in referendum, but in zoning. Mr. Farmer stated we have done a lot of conditional use. Mr. Mason asked if this has been an impediment. Mr.

Farmer replied, we keep using conditional use permits all the time. Mr. Mason asked if that has been an impediment to developers. Mr. Farmer replied, yes. If you can hodgepodge, you are trying to make it, like Beta for example. Mr. Mason stated we have heard this talk consistently. He has come to the Mayor's meetings on the important issue on Tuesday that he is going to make a pitch for at the end of this meeting to the people who have not voted yet.

Mr. Mason continued to Mr. Farmer, can we fix this? Is it going to be better if we fix it with this referendum zoning in your opinion? What do you think? Mr. Farmer replied, no. We just need to have some of those areas rezoned so a developer knows what he is getting into. He does not have to go through all this. They don't want to delay.

From what Mr. Mason hears of these all the time, if he were a businessman coming in here, to jump through all the hoops, he would go down the street.

Mayor Rinker stated the question of the correct zoning, the mechanism of conditional and special use permit, those have to be addressed independent of whether you do referendum. The only question is who validates, who adopts it?

Mr. Mason stated we have been talking about that for a long time, whether it has been in the 2020 piece –Mayor Rinker asked, are you talking about a referendum? Mr. Mason replied, no, conditional use permit.

Mayor Rinker stated, that's part of the discussion we are having right now about the Planning Development Department and trying to create that as a more independent entity. As he has characterized the research and development, Planning and Zoning is more administering, you have to have something that pushes this envelope and really is the proving ground for just these kinds of issues. If this were procedurally done today, Mayor Rinker would envision that a Planning Development Department says, we think that in Beta this is probably good overlay zoning, or these are the zoning changes we recommend. That would go then to Planning and Zoning who would look at it because Planning and Zoning applies existing law and would say, here are our comments about that. Then it would go to Council and Council would have legislation to adopt, yeah or nay, this is a new zoning district or classification or classifications that we think would apply to Beta. If you have referendum zoning, then Council would in turn have to send this to the Board of Elections and sell it to the voters. If you didn't have that, once Council approves it, it's on the books and it can apply. That's the point where the dialogue then is directly between an applicant and the Village. So the difference with referendum zoning is it adds a step that otherwise would not be there. But it doesn't change the underlying effort and work product that you are trying to get at in terms of what 2020 looks at. It's a more cumbersome process.

Mr. Farmer added, conditional use permits are not a bad thing. It's a good tool to have. But that's not the way you want to do all your zoning. Mr. Jochum stated, it slows it down. Not to say that the voters are uninformed, but he does not know that you can say that we have a good possibility of them all being engaged on the issues.

Mayor Rinker stated a lot depends on the issue. There have been a number of issues that are single focused. Mr. Jochum asked, for example Beta?

Mayor Rinker stated voters get a lot more. It's more incumbent upon the people that are trying to get the voters to understand it. The harder thing with zoning though is we have a hard time agreeing amongst ourselves, what's good, bad or indifferent. It's much more abstract. That's tougher in a referendum issue.

Chairman Caticchio stated the other thing about a referendum issue is it ends up being strictly a local thing. If you were trying put K-Mart in Aintree North, then Aintree North is going to be all upset, but the people on the other side of town say, it's SOM Center Road, what's the difference?

Mayor Rinker agreed. That's what it comes down to, where the rubber hits the road. The elected officials and then the people who are appointed to work with the elected officials, are they looking out for the best interests of their community? Anyone who would recommend putting a K-Mart in Aintree North would not be long for this planet, much less the community.

Mayor Rinker does not think there is an easy answer to this question. The consensus is it's awkward, it's cumbersome, it adds time, but to be able to tell people why you should change it, that's harder.

Mr. Jochum asked about timing. Maybe there's never a better time.

Mayor Rinker thinks you are thinking about it more now. You start looking at getting the word out. We are better at getting information out to the residents. We have a better website. You are motivated to do it. That's a responsibility that public officials should be working to get people informed. What he can't predict and you just have to try it is how Council looks at it. The approach in this is going to be as constructive and subjective, these are the reasons. You stick with your guns.

Chairman Caticchio stated obviously we will vote on it and if we decide to put it on the ballot, we will. From that point on we will see what has to be done. To educate the people.

Mayor Rinker thinks it is worth pointing out, we didn't just come up with this at this Charter Review Commission. The previous Charter Review Commission looked at it. It's come back to the table. There's been a sense of purpose.

Chairman Caticchio stated we will go on to the next issue.

. Regionalization.

Chairman Caticchio stated our Honorable Mayor thought there was some confusion on this issue.

Mayor Rinker stated he was confused at the time. At the meeting he was asking, and it was like, well, your point Mayor? Mayor Rinker thought it was ambiguous enough for the Charter. Here's

what he took from it. The intention was to make sure that the safety service component that is near and dear to Mayfield Village needs to be protected and then regionalism threatened to undermine that. Mayor Rinker's question was well what's the basis for that? Mayor Rinker did not really hear an answer. It seemed to be more an assumption. He thought this was a xenophobic notion. He will give you a perfect example because you can tell him whether or not we have violated our Charter by entering into a three year agreement with Gates Mills providing Gates Mills with EMS and fire services beyond our borders; our workforce paid by Mayfield Village taxpayers. What we have done is entered into an agreement which may not be regional but it is across our border. We get money back for it. It's not a bad revenue stream but it took us probably three years to negotiate what we thought were good points for the service being provided because we felt we owed it to our taxpayers to get a return on that investment. That's an example.

Chairman Caticchio stated from the Commission's point of view, he was on the Commission, there were three of us there. The intent at all times were mutual aid should not come under regionalization. That's what we are going to correct.

Mayor Rinker stated it would be a referendum issue, should the voters in a referendum vote on a contract with the Village of Gates Mills and Mayfield Village. That's how Mayor Rinker looked at it. He thought that was very cumbersome.

Mr. Jochum stated the problem is we really haven't defined "regionalism". Chairman Caticchio replied, yes. Mayor Rinker added, nobody's defined regionalism. Mr. Jochum stated, it's not to say that we can't. If we define regionalism with respect to our Charter, then it answers the question. Mayor Rinker asked, isn't that an oxymoron?

Mr. Mason supports what he did with Gates Mills. Mr. Jochum agreed. He does not think people would object to us contracting with another community like the Mayor in our community has done.

Chairman Caticchio stated mutual aid was never intended to be – Mayor Rinker stated, it's the rule of unintended consequences. Chairman Caticchio agreed.

Mr. Jochum stated what we didn't want to do was to join our trucks with Lyndhurst trucks and – Mayor Rinker stated, that's a bad Charter provision. That's like the Ohio Constitution. To move a lousy casino takes another constitutional amendment. That's all coming from the populism that has driven a lot of State legal history. He's not trying to get on a high horse, he just thinks when you get into this, you are venturing into an area where you were trying to focus on one thing salutary but in practice you are getting into – okay, what if we found out that this issue gets voted down for example, to be blunt if we look around this Cuyahoga County region, every community has to deal with a different police union, a different fire union, many have to deal with different service unions, you've got Teamsters, UAW, you look at schools and how, like 90% of the money they get from the voters is basically earmarked money. It's already under State law or under contracts that you have. If there's been a human cry in all of this regional discussion it's the economics of too much government. Too many overlapping jurisdictions, too many operating inefficiencies.

Everyone has reason to worry that if we open up these borders all of a sudden we are going to be polluted or we are going to lose. We have this tax base that we work hard to develop and all of a sudden everyone else is going to be benefitting and it dilutes it all. That's a legitimate concern. But at some point it's either we all hang together or we all hang separately. The marketplace economics are going to drive this and one of those areas are going to be sharing equipment. We do to a certain extent with our SWAT programs, our bomb squads that we have with 7 communities in the Hillcrest area. Mutual aid is another way to do it. Those are still dancing around the fringes. At some point in order to really find ways to economize, and maybe that's the issue that voters do vote on, what you have provided is something that if it is on a large enough scale, he would expect voters would want to weigh in on it. There's a big gap between the big issues and a lot of the practical stuff.

Mr. Jochum asked Mayor Rinker if his recommendation would be to try to throw that provision out. Mayor Rinker replied, yes. He does not think it's necessary, but you have done it and the Charter Review is a consensus. Mayor Rinker believes that if you want to try, you have to work on the verbiage. That's Mayor Rinker's opinion. This is a consensus. You have to look at it. That's what this process is all about.

Mr. Jochum stated, from your standpoint, even defining that that would be, may not be the answer.

Mayor Rinker agreed. To him, this would have been something that would have made more sense as a piece of legislation, an ordinance for Council, between floor debate and you can be much more specific with your Code provisions. Charters, like Constitutions, should be more general. They should have broad principles. People should be given a framework in which to be able to get into more details which is what the ordinances are for. This struck Mayor Rinker as one that was tinkering more than needed to with the Charter.

Mr. Jochum asked Diane Calta how we would go about reversing something like that.

Mayor Rinker replied, that's a referendum vote.

Ms. Calta added, Joe has suggested in his letter that he can put together some language to recommend. Ms. Calta offers that up for further discussion.

Mr. Mason stated we had one person last time who was very strong on this situation. Mr. Mason was not strong on it. He had experience in other State in Montgomery County in Maryland. Regional government was fine. It worked fine for them and their family. He was President of the Citizen's League. We would never had gotten where we are today if we didn't have public corruption.

Mayor Rinker stated that is what makes it tough. Since World War I, this issue has either been on the ballot or been the source of discussion 16 times.

Mr. Mason stated regionalization in that sense that he experienced in Montgomery County and in Arlington, Virginia and Alexandria, worked fine. It worked fine with Safety Services. We did not have any problems with it.

Chairman Caticchio asked how long that was in place there. Mr. Mason replied, they were there from 1978-1981. It was in existence during that time. Chairman Caticchio asked, how far back in history does it go? Mr. Mason did not know.

Mr. Jochum stated, we did this based on what the leadership was. We knew what the leadership was in our community. We weren't so sure about other communities.

Mr. Mason stated we like what we have in Mayfield Village. We don't want to change.

Mr. Jochum stated people move to this community for a lot of reasons. At the top of the list is our safety forces.

Mayor Rinker fully understood. It is very well intentioned. Mayor Rinker just thinks that it is misplaced. He does not see it as a Charter issue.

Mrs. Shatten asked, so we should leave this as is? Chairman Caticchio replied, no he wants it changed.

Mayor Rinker stated, the question is if it's important enough to come back before the Council and say, look, we think this is an issue that legislation needs to be adopted to incorporate some of these principles. Even that's going to be a challenge. Theoretically, that's Mayor Rinker's view of the law. That's a better way to distinguish between what goes into a charter versus what goes into ordinances. That's a process issue. That's a mechanism issue as opposed to the substantive issue.

Chairman Caticchio asked if there were any other comments or concerns regarding this issue. There were none.

. Charter Review Commission Meeting Every 10 Years

Mayor Rinker stated you can answer that better than he can because you are in the process. Ten years is adequate. The negative is that there's a tendency that we have to do something to justify meeting this way. On the other hand, you now have had a few people where the continuity and meeting every 5 years in a way gives you a continuity that you wouldn't necessarily have every 10. He's probably neutral on the issue. He's more concerned about what comes out of it and why as opposed to how often. Ten works, but he can see more that 5 may not be such a bad thing after all for the reason he just said, it gives you a sense of continuity that you may not otherwise have. So it's a trade-off.

Chairman Caticchio asked if there were any comments.

Mayor Rinker added, he does not think it's unhealthy. He thinks it's very healthy to have a Charter Review Commission because people tend to get set in their ways. So, it's a mechanism that's designed almost like an audit.

Chairman Caticchio asked Diane Calta what her experience is in other communities. Ms. Calta stated one of the questions actually presented to her by Tom Hanculak, he said, do you really even need to have a Charter Review?

Mayor Rinker stated, he thinks you do.

Ms. Calta agreed. She came back with that. She has been through it. She was not involved as much in 2005, but was back in 2000. The continuity helps the whole process because 10 years is a long time. But, there are other mechanisms during that time period, whether it's 5 or 10, to bring about changes to the Charter. It's not that there aren't avenues.

Chairman Caticchio stated, there are two other avenues out there.

Mayor Rinker stated five years ago he was all for 10 years. Now he is not so sure.

Mr. Jochum stated the compromise is maybe you have it every 5 years, but every other Charter Review has held them out.

Ms. Calta stated you have to wonder why it's high. When she looks at that she thinks there was some hesitation with the voters that they weren't comfortable with the 10 years.

Mayor Rinker thinks part of it is that there is a certain gravitas with the Charter Review Commission that when voters see something come from a Charter Review Commission, and we have never made it provocative, if you look back, he just felt, he may not like this, but as far as he got was that one meeting where he said, why did you do this and what's your point Mayor? Another one was going union. We didn't have to do that as a Village. That was lobbied pretty hard in 1995. Mayor Rinker thought, when are those chickens going to come home to roost? The tradeoff is that the legitimacy of the process is always huge in how the community views its government. Mayor Rinker is a firm believer that your community is your government. The more seamless you can make it, there are people that don't care about it or don't pay attention, but that doesn't change our responsibility which is always to send a message that government should be inclusive and that this process is something that matters. That's why Mayor Rinker thinks Charter Review Commission recommendations, as a rule people will accept them, but presume the validity. Mayor Rinker suspects the 5 to 10 years was, well if Charter Review is saying we don't need to meet that much that's probably why you got the split.

Mr. Jochum stated 10 years is a long time.

Mr. Fikaris asked, did you see Cleveland proposed 20-10 this week? Cleveland's is 20 years.

Mr. Farmer stated people get suspicious of things that they perceive are taking away some power from them. That's probably the reason the 10 year didn't fly. It's like this referendum voting. Same thing. They are going to look at it suspiciously like, what are they trying to pull now? We don't have a say in this anymore?

Mayor Rinker stated, by analogy, the term limits issue. He has always felt you have term limits because you are given a term and that's the limit. But when the movement was afoot, Mayor Rinker said, he's staying away from it, because the last thing a voter needs is for a Mayor to say, you should remove term limits, vote for me. Let the people make that decision.

Mr. Mason stated the Mayor and Diane have had four meetings to explain the need for more revenue in the Village. We have done these and the vote is Tuesday. How many, Diane have we had attend these meetings? Diane Wolgamuth replied, about a dozen at each one.

Mr. Mason added, the Mayor went out of his way. There was a great presentation by the Finance Director and the Mayor. We gave everyone more than adequate time. Someone said we didn't word the issue properly relative to the Commission's 5 to 10 year review the last time around.

Chairman Caticchio replied, Joe thought we could probably get it passed if it was reworded. Mr. Fikaris added, without the phrase "from 10".

Mayor Rinker asked the Commission, have you enjoyed doing this?

Mr. Jochum replied, our first meeting we talked about it and Mr. Jochum said at that time, it really ought to be 10 years, because he really didn't think that we had a whole lot to talk about. But, since we got started we found out that we had a lot more to talk about than we thought. Looking back now after the process this time, 10 years is a long time.

Mr. Fikaris agreed. Things change so rapidly. What if our luck is, let's say we would agree on presenting the referendum and that doesn't fly and sometimes the idea is, we'll get it out there once and then we have to wait 10 years and it will then be 2020. There are other mechanisms.

Chairman Caticchio replied, Council can put it on the ballot themselves.

Mayor Rinker stated the merit in some of these mechanisms is the sense of distrust in government or maybe it's more distrust in human nature. It sort of forces you to come to the table. Charter Review forces you to come to the table. Referendum forces you to come to the table. There's a rationale to each one of these things. You just have to ask yourself, is it worth all that?

Mr. Farmer said, we are going to have to see. If we came out with, right now it's two things, two or three things where people think we are trying to bring all this power back into the select few, there has to be a theme there as opposed to if you just presented one that you thought was the most important.

Mayor Rinker replied, the opposite is you end up doing, these past couple times there have been 10. They are all housekeeping. One year there were 13. In 1995, there were a ton.

Chairman Caticchio stated, last time we had 11. We had 11 changes and we lost only on the one issue. Mayor Rinker replied, and all of those really were housekeeping issues. Chairman Caticchio replied, a lot of them were, yes.

Chairman Caticchio stated the one thing that bothers him that Mayor Rinker already pointed out is when the Constitution and this is our Constitution, is used for personal gain such as the casinos. Now they are going back and using the Constitution to move the location. Mayor Rinker stated because the first time it was written it was site specific.

Chairman Caticchio asked if there were any other questions to be directed to Mayor Rinker. There were none. Chairman Caticchio thanked Mayor Rinker for coming to the meeting.

Mayor Rinker was excused at 7:52 p.m.

. **Discussions with Diane A. Calta, Esq. – Law Department**

Chairman Caticchio stated to Ms. Calta that one of the issues raised had to do with the questions of electors.

Ms. Calta referred to the recent letter sent by Mary Beth with two questions from the Commission. Chairman Caticchio asked Ms. Calta to respond to that letter.

Ms. Calta referred to the first question which had to do with Article VII, Section 3, *Petition Procedure* and the reference there is “qualified electors”. Ms. Calta took some time and read the provision. She looked at the procedures of the Board of Elections. She also looked at the provisions of a statute in the Ohio Revised Code which somewhat mirrors the Charter provision. It doesn’t apply to us because we have our own Charter. Ms. Calta just looked at the language to see if it had any more detail to it. The language in the Ohio Revised Code states: “Each signer of any such petition must be an elector of the municipal corporation in which the election is to be held.” That gives you a little bit more definition of qualified elector as being in the municipality.

Chairman Caticchio started at the beginning of the Charter and then flipped through it to see where the language changed. At the beginning it started as “a qualified elector of the municipality, the community, etc.” and then that was dropped and the only thing that was left was “elector”.

Ms. Calta stated the one section they were looking at with the Mayor had that same language in the referendum zoning section. There’s a reference there to “qualified electors of the municipality voting in such election.” So, on the one hand, Ms. Calta came to the conclusion that it’s missing, but then in the absence of it, knowing what a qualified elector is, to come to the conclusion that you would have to be a qualified elector of Mayfield Village.

Chairman Caticchio agreed. Who are we talking about other than the Village of Mayfield?

Mr. Fikaris stated, the reason he brought it up is that that specific wording was absent in that section. That’s the only reason why. Chairman Caticchio stated, you brought up a good issue.

Ms. Calta even checked the State sections. It says “qualified elector of the State”.

Chairman Caticchio stated one of the things missing in our Charter and this is not as a condemnation but simply as an observation, we don't have at the beginning like the Ohio Revised Code has, a list of definitions where if the same word applies exactly as it is set forth at the beginning. We are not going to make Diane create a list of definitions.

Ms. Calta stated she knows there was some discussion with Joe about doing some gender neutral language. She does not know if this is something that could also be in that overall clean-up of the language. Anywhere there is a reference to "qualified elector", it's "qualified elector of the municipality".

Mr. Jochum stated that would probably make more sense.

Chairman Caticchio said that's a good way to go. If we are going to make grammatical corrections, etc., then we can do it in one simple paragraph. Chairman Caticchio asked Ms. Calta to make a note of that.

Mr. Fikaris stated, he pointed out that the language includes "residents, electors, registered electors and qualified electors". He does not have an issue with that. If we were going to just straighten this thing out without changing a single thing, we would spend three months just on clarification.

Chairman Caticchio stated, as we pointed out at one of our meetings, if we really wanted to go through this, there would be some sections we would want to rewrite altogether. In other words, it's very difficult to make any changes easily. The paragraphs are just too complex to do that.

Ms. Calta made a note of making the corrections in one simple paragraph. She would suggest "qualified electors of the municipality". Keep that consistent.

Mr. Hyde stated, or of Mayfield Village. Ms. Calta stated there are more references to "municipality" than there is to "Village". The reference is obviously to Mayfield Village.

Mr. Fikaris pointed out that there were four terms that meant the same thing. Mr. Farmer stated that might be a definition for Ms. Calta. There are probably some other terms in there as well if you are going to have a definition section.

Chairman Caticchio stated that is one of the downsides of reviewing this Charter every five years or even every 10 years. Different words for the same definition crawls in.

Chairman Caticchio asked if there were any further questions on this issue. There were none. Chairman Caticchio asked Ms. Calta if those are the two items.

Ms. Calta stated there was another question about measures subject to referendum, Section V, page 22. The first question is, "What is meant by 'required to pass'?" It says, "When the Council by law or under provisions of general ordinances is required to pass more than one ordinance or resolution", the question is "what is 'required to pass'?"

Ms. Calta did not find any Ohio Supreme Court cases that focused on what it means by “required to pass”. You can give it the general interpretation such as if, and this flows into your example of a public improvement, the Village wants to engage in a public improvement, Council has to approve that public improvement whether it’s going out to bid, the contracts, the bonds, whatever it would involve. So, “required to pass” would mean that if they want to move forward with that public improvement they have to pass legislation to do that. So, Council has to vote on it and they have to have enough votes for the ordinance to become effective. That’s just the general idea behind “required to pass”.

Mr. Jochum asked Ms. Calta to include this in the definitions list. Of course, that could be forever. You could be defining everything if you started.

Ms. Calta stated you would be defining everything. She does not know if there is a more formal way. It seems a little informal, the language, but she does not know how else you would change it unless there’s some other suggestions. Does anyone have any ideas? There were none.

Ms. Calta said, the second part of the question was: “Does the language of the section mean that ‘if there’s more than one ordinance passed for the public improvement, only the first ordinance can be contested by referendum’? Is that a referendum issue, could it be a separate referendum? For example, Council passes an ordinance for a \$4 million expenditure to build a fire station. That’s the first ordinance. Then they pass a second one stating that they are going to spend additional funds on the fire station. Does the language ‘the referendum provision shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinance or resolution’ mean that only the first ordinance can be contested?”

Ms. Calta found a 1936 case from the Ohio Supreme Court. It goes back quite a ways. The concept there is you can’t come in in the middle of the movie. When it starts, when Council takes that first action to do whatever it would be, engage in a public improvement, you have to contest that first action that they take. You can’t contest the second half of it.

Chairman Caticchio asked, if anyone wants to contest it, how does that person or group of people know that Council was on the up and up on this whole thing? They had intended to spend \$6 million for that station all the time. They just didn’t want to tell you on the first round. This is based on today’s politics.

Mr. Mason stated you have to trust the local level. That’s why you want to vote next Tuesday on the tax.

Chairman Caticchio asked Ms. Calta, in your opinion and research, etc., this is the usual type of phrasing? Ms. Calta replied, it is the usual type of phrasing.

Chairman Caticchio asked, does it show up anywhere in the Ohio Revised Code? Ms. Calta replied, yes. It does.

Mr. Jochum stated, as Diane has explained it, it made sense because if you started into a project and somebody comes forward after the fact, what do you do, end up killing the project halfway through?

Chairman Caticchio asked, what if the door is closed? It's so simple to do this, it's ludicrous.

Mr. Jochum asked, you can underbid? Chairman Caticchio replied, yes. They pass one for \$4 million, fine. The people say, all they are going to spend is \$4 million. For example, the huge sewer system that cost about \$96 million. It is up to \$180 million now. There's a perfect example. All they kept doing is passing new resolutions to pay all of the extras. Nobody has contested.

Mr. Mason stated, let's take the case in point from Mayfield Village. In 2006, we were going to build a police station next door here. We went out and sold bonds for \$4.5 million. Then the recession hit. Administration and Council waited a while. Then, when they came back the bids were too high. The parcel of land here didn't work at that number. They ended up going down the street and finding a parcel of land that was a little better made. They put a number on it. They will be building it for \$4 million. How does this language contradict that? Mr. Mason does not think it does, does it?

Chairman Caticchio replied, very easily. They have a design for a police station. Mr. Mason replied, and they have a cost on it. Chairman Caticchio continued, and they have a cost on it. So, all of a sudden they wanted to make the building bigger. Mr. Mason asked, what do you mean they want to make it bigger? They have to adhere to their cost.

Mr. Jochum stated, hypothetically. What he is saying is that the way this is is hypothetically what happens is let's say they decide, hey, it's not going to come in at the number that we thought and we need more money and they pass it. This language would not allow a referendum vote. Chairman Caticchio agreed.

Mr. Mason asked, what are we going to do with that language then? Mr. Jochum replied, he does not know that we do anything with it.

Chairman Caticchio stated, we are just raising the issue. That's why we brought Diane here. To ask Diane if this is a usual thing. She is saying it is.

Ms. Calta replied, the Revised Code has a similar provision in 731, the Municipal section. It says: "Whenever the legislative authority of a municipal corporation is required to pass more than one ordinance or other measure to complete the legislation necessary to make or pay for any public improvement, the sections on referendum shall only apply to the first ordinance or other measure required to be passed and not to any subsequent ordinances or other measures related thereto." There's a lot of ways to avoid referendum on ordinances such as if it is an emergency ordinance.

Chairman Caticchio stated it obviously would be passed as an emergency.

Ms. Calta stated that won't be subject to a referendum.

Mr. Mason asked, who does that, the Council can do that? Ms. Calta replied, when you pass something, you want it to go into effect immediately.

Mr. Jochum stated, most communities probably overuse it. Chairman Caticchio replied, some communities pass everything by emergency legislation, even when they have to buy a roll of toilet paper.

Mr. Jochum stated, he does not know that they are thinking of it in the same terms that they are doing it for that reason. Mr. Jochum does not believe they are doing it to avoid referendum. Chairman Caticchio stated, but the point is they can, can't they? Mr. Jochum agreed that they could, yes.

Chairman Caticchio added, anybody who reads this thing would say, hey, let's pass half of this thing now and we will pass the other half later and they can't fight us. They can't contest it. Chairman Caticchio stated, never mind. This is more of a philosophical conversation.

Ms. Calta stated there's a whole process to get to the point where they would authorize a public improvement. We have all seen it, so it's hard for Ms. Calta to argue against it. If you go through the competitive bidding process, you have an engineer put together your project estimate, you go through competitive bidding, you award a contract. Unless the scope of your project changes dramatically or there are some unforeseen circumstances that you didn't contemplate, it really should be very close to the engineer's estimate and what was bid by that contractor. You see change orders all the time though.

Chairman Caticchio stated, that was his issue. If someone deliberately wanted to create something larger but didn't want to show to the people the whole picture at the beginning, this could easily be implemented.

Ms. Calta stated, that is going to be a violation of the competitive bidding. Chairman Caticchio stated, it would be rebid. You could rebid it. Ms. Calta stated, if you rebid it, you could probably say that even if it is the same project, there would be an argument to go for that ordinance that started the second part of the project.

Chairman Caticchio asked, as a separate ordinance, that could go to referendum? Ms. Calta replied, she would say you could.

Mr. Jochum replied, the reality of it is, in a community in this size, it probably would never happen.

Ms. Calta stated, the other thing is, say you couldn't have the opportunity for a referendum, you could still go through the initiative petition. You could have something on the ballot that opposes it. You wouldn't actually have a referendum against the legislation, but you could have an initiative petition that opposes it. You would have to gather signatures.

Chairman Caticchio asked, what is the difference is between an initiative petition and a referendum?

Ms. Calta replied, the way that she has always distinguished them in her mind is an initiative petition is something that is initiated by petition by voters that go and circulate petitions for a proposed ordinance to be placed on the ballot. It could be a charter amendment too. It's separate and somewhat like term limits. They were by initiative petition. Referendum is challenging what is being done through the legislative process. Council has taken some action and you are taking action against that.

Chairman Caticchio asked, isn't that the same thing? Aren't they doing exactly the same thing? Ms. Calta replied, the end result could be the same thing. The process is different.

Mr. Jochum asked, so procedurally, the referendum, where does it start? It doesn't start with the petition? Ms. Calta replied, no. It starts with Council taking some kind of action that is then subject to referendum.

Chairman Caticchio asked if anyone else has any more comments.

Mr. Farmer stated, this is really confusing reading this the way we have it written. Some of the ways Ms. Calta has read it is better, but it still seems like it should be worded a lot more simpler so people know that a public improvement has been authorized.

Mr. Mason stated no one has touched this for a very long time.

Mr. Farmer stated to Ms. Calta, some of the language you have read is easier to understand. Even then, it's the initial proposal that gets passed to do a public improvement. Once that's passed, you can't kibosh it with subsequent proposals. That's not very clear. There are several ordinances and you can only vote on the first one.

Mr. Jochum stated it is and we kept reading it over the last time. Mr. Mason stated, 1994 was the last time this section was rewritten.

Mrs. Shatten asked Ms. Calta if she can just rewrite that without having to go to referendum.

Ms. Calta replied, no. The meaning would be the same, but that wouldn't be a change that you couldn't go through the process with or put in the catchall clean up.

Mr. Farmer stated this is good, but right after the initial ordinance required to be passed if they would qualify that and tell you what it is, you are passing an ordinance that authorizes the project? The first one's the reference point. That's the project. All this other stuff is related to it. They don't want you to be able to kibosh the legislation for the project itself.

Ms. Calta stated the 1936 case gives more definition to the later ordinances than it does the initial. It talks about later ordinances incidental to and in furtherance of the project.

Chairman Caticchio stated, but that doesn't change the meaning. Ms. Calta replied, no. You still have your initial one. Mr. Jochum stated, but it makes it easier to understand.

Mr. Farmer stated, our job isn't to change the Charter. It's to review it. We don't want to rebuild it. The less you do it the better. But this is confusing. Mr. Singer asked, who reads it to be confused?

Ms. Calta asked if the Commission would like her to put together some language to look at relative to the two points.

Mr. Farmer stated this is the kind of thing if people look at it, they should not have an issue with it. He would have a very hard time reading this and explaining it to someone.

Mr. Singer stated, even if the language were changed, you would still have a hard time explaining it to somebody.

Ms. Calta stated, you want to keep it general. You don't want to get too specific. Like the casino amendment of the Ohio Constitution. The flaw with the general is that there's not enough detail there to gather an understanding.

Chairman Caticchio suggested that the Commission prepare a list of the items that we wish for the Law Department to create the language for to be sent to Council. We have gone through the entire Charter. Now it's time to make the list, us vote on it, pass it, get it over to Joe and Diane.

Chairman Caticchio asked if anyone had any other business.

Mr. Jochum thanked Diane Calta for being present. Ms. Calta replied, thanks for having me.

Chairman Caticchio stated the next meeting is Monday, May 10th. It will be a work session. We will list all of the issues that we have to vote on so that Mrs. Betsa can type up a final list that we will forward to Joe.

Chairman Caticchio asked Ms. Calta how specific we are to be with this list. Last time we just gave Joe a list of the items that concerned us and what we wanted to do. He prepared everything.

Ms. Calta said, that's fine. Include all the discussions from the Minutes and the background on it with the discussions you have had.

Chairman Caticchio stated we will outline the sections we are concerned with. You know what the time period is so that it gets to Council. We have plenty of time yet. Chairman Caticchio asked Mrs. Betsa about the timeline.

Mrs. Betsa replied that all recommendations should be provided to the Law Department for drafting no later than June 15th. Everything should be available for Council's consideration by Caucus in July.

Mr. Farmer suggested we keep moving at this pace because we have the summertime coming up.

Ms. Calta stated that the Commission is on schedule, in fact a little ahead.

Chairman Caticchio asked if there were any other matters to discuss.

Mr. Mason will only say it for the third time. He knows most everyone has voted. He came from Chicago – you can vote often and early. If you haven't voted, and even if you have voted, vote again on Tuesday. We have a very important issue for our Village. It has been explained thoroughly to all of the voters several times through fliers and Town Hall meetings.

. **Next Meeting**

Mr. Hyde, seconded by Mr. Farmer, made a motion to adjourn the meeting.

There being no further business, the meeting concluded at 8:28 p.m. The next meeting of the Charter Review Commission was scheduled for Monday, May 10, 2010 at 7:00 p.m. in the Main Conference Room of the Mayfield Village Civic Center.

Respectfully submitted,

Mary E. Betsa, Secretary
Charter Review Commission