DRAFT

MINUTES OF THE
CHARTER REVIEW COMMISSION MEETING

Wednesday, May 20, 2015 – 7:00 p.m.
Mayfield Village Main Conference Room

Present:	Vetus Syracuse James Sheridan Merv Singer Stivo DiFranco Ron DiNardo Paul Fikaris
Also Present:	Joseph W. Diemert, Jr., Esq. Diane Wolgamuth Mary Betsa
Absent:	Tom Piteo Albert G. Hehr, III

The Meeting of the Charter Review Commission was held on Wednesday, May 20, 2015 in the Main Conference Room at the Mayfield Village Civic Center. Chairman Fikaris called the meeting to order at 7:00 p.m.

. Approval of Minutes of Regular Meeting of Thursday, May 7, 2015

Mr. Syracuse, seconded by Mr. DiNardo, moved to approve the Minutes of the Regular Meeting of Thursday, May 7, 2015.

ROLL CALL: Ayes: All Nays: None	Motion Carried Minutes of Thursday, May 7, 2015 Approved as Written

. Discussion with Law Department

Chairman Fikaris thanked Joe Diemert from the law department for coming to the meeting to go over some of the issues that the Commission requested he review.

Mr. Diemert complimented everyone for the great job done. This is one of the most thorough Charter Review Commissions I have dealt with in the 25 years I have been here. It's a pleasure. You have been efficient. Your questions were good. You were analyzing the key issues. You focused on a few clean-up issues and a few serious ones.

. ***Article III – The Council***

- Section 4 - Organization

I took the liberty of having Mary Beth give you a draft of what your legislation would look like once you finalize your language. The first one I did was the easy one changing "Village Hall" to "Civic Center". It's non-controversial. That is what the legislation would look like. It is coming from you going to Council but it is drafted for their passage on to the voters. That's per the Charter and the way we do things. They can of course modify, change or reconsider or reject what's going on and not put it on there. Generally they do put everything forward that comes from the Charter Review Commission. That's why traditionally what you do and recommend is taken very seriously. It's always nice to have at least your Chairman attending the first meeting they are introduced to somewhat explain the process you went through for those who have not read over all of the recommendations.

You are ahead of schedule that I gave you back in March. You have gone through every word. We are in a good place.

- Section 6 – Salaries, Bonds and Compensation

Mr. Diemert stated this is the first time we have dealt with this in a number of years. It's a good thing because they have never really gone to the voters for an increase, yet they are falling behind. They really don't do it for the money. The idea is that the non-elected people in the room, it's probably better coming from a group like us to recommend that this be done because it's not something any elected official really wants to propose for themselves and yet it will discourage some people from wanting to continue or throwing their hat in the ring.

These folks put in a lot of time. I think the numbers you gave me are still very low. It's not something any citizen is going to get upset with in my opinion. In all of the other communities I work in it's very reasonable and modest. What I am thinking of is the language itself that we have changed or at least I did in the draft would make it more plausible or easy for future amendments or modifications to keep up with the times.

As you can see in the draft I gave you, the draft is similar to that for the change in name of Village Hall. Exhibit A is really the nuts and bolts. It would kick into place first of all an approval of a change in pay as of this time. Thereafter it would give them the option through the Council to enact an ordinance provided it is read at three different meanings and no emergency clause which does give the ability for the voters who might be opposed to any increase to do a referendum and stop it if there was strong opposition to it. Again, whether or not they would even exercise this is questionable because people can always criticize them for it if they are running against them or anyone can criticize them for it and it would hurt their chances in the next election.

I tried to glean from what you had discussed on this throughout the last several months. I know you talked about different avenues. I gave some ideas. Everyone had different ideas and input. I tried to glean what I thought would be the consensus of what I read in your Minutes. If I am wrong, scrap this and just tell me what you want to do and that's fine too. I thought you were looking for some ideas. You wanted to make it a recommendation. Just writing them a note in your Minutes and saying we recommend that your pay be increased would then require them still to put it on the ballot and require them to go through the process and require voter approval. This does all that. If you think it's realistic and you spent the time discussing it, it would make sense to incorporate it into an actual Charter amendment. This pay would stay in there forever until it's amended again by ordinance.

Mr. DiNardo asked, by ordinance it would not have to go in front of the people?

Mr. Diemert replied, after this time. If you still want all future ones to go, another thought I had with the first draft I did of this, I had let's review their pay every five years and let the Charter Review Commission make that decision. That's another possibility.

Mr. DiFranco asked, the way it's written right now is that in the future it would go to ordinance for increases?

Mr. Diemert replied, right.

Mr. DiFranco stated, and not through Charter Review. What you just said is perhaps that a better way to do it or a different way to do it is every five years during Charter Review have it be looked at?

Mr. Diemert replied, I am sorry I was unclear. What I did draft was what I thought would work the best. There's very few communities that have to have voter approval of pay increases for their elected officials. State law prohibits them from increasing their pay in term. Even if it's by ordinance, they can't be elected and then vote themselves a pay increase. It would not become effective until their next term. Let's say they are in the beginning of a four year term and they pass an ordinance increasing their pay, it will not become effective until they run again and get elected or the next person comes in and takes their place. That's how ordinance pay raises work. That's why most communities don't have a referendum on pay increases for elected officials because they are not allowed to increase their pay in term anyway.

I took that clause out as you can see. I ran a line through it. I put in the pay raise you were talking about at your last meeting, allowing it to be done by ordinance, but the ordinance could not be passed as an emergency. State law governs when it goes in to place. It could not go in to place while you are in term. Since we have several staggered terms, the people who are elected two years from now would get the pay raise at the end of the two years. After that it would be at the end of the four years for those who voted on it now. That's the next term around. If the voters approve this the way it is, everyone's pay would increase to this beginning January 1 of 2016.

Another option would be scrap this and just put in the pay raise. Leave it requiring voter approval. Have Charter Review look at it again in five years. Or if they feel they really need to increase it, they could go to the voters any year, primary or general election. There's a lot of options. I settled on the one that seemed to be the consensus I was hearing in your discussions.

Mr. DiNardo stated, I like this. It gets whoever sits on Charter Review off the hook. We shouldn't even be talking about this. This should be just as Joe said by ordinance like every other community around. I don't know how it is going to be worded in front of the voting people. I don't think it is going to be this paragraph.

Mr. Diemert replied, it's the page before at the top. "Proposed Charter Amendment: Shall Mayfield Village Charter, Article III, Section 6, be amended to provide an increase in elected official compensation after 15 years and protective procedures for modifications thereafter." That can be reworked. That was my first shot with this amendment.

Mr. DiNardo stated, it's on the floor for debate. I am in favor of what Joe has presented in Exhibit A.

Mr. DiFranco stated, you are in favor of pay increases being the decision of Council.

Mr. DiNardo stated, by ordinance. As Joe stated, it doesn't go into effect during their term. You are not even giving yourself an increase. You run again, you will get it. If you don't the new person in will receive the raise. You guys have to understand, it's a very very small amount. Is there a percentage? Do we give them a maximum to go by or not? Maybe that's the question.

Mr. DiFranco stated, we had talked about having specific numbers. There are specific numbers in here right now. Although they are large percentage increases from the current, I thought we had talked about incremental increases.

Mr. DiNardo asked, per year? Give a set number?

Mr. DiFranco replied, per year. If you look at this, I think they are 25% increases from what they are getting now. I am not saying they are not worth that. I am not saying that at all. I think in front of the voters that may be difficult to swallow.

Chairman Fikaris stated, what we did not want to do is to set some sort of pattern in the Charter for doing this. Either we feel comfortable revisiting this if the Charter Review Commission feels so obligated to review it every five years, especially with Council's reluctance to do that. I am trying to understand, how is this different than what we have? What we have is the Council votes themselves, right?

Mr. Diemert replied, no. The way it is now the voters would have to approve it. This would be voter approved compliant with our current Charter which requires voter approval of any increase. This is your recommendation but the voters still have to approve it. Once they approve and adopt

it if they do, this would go into place effective January 1, 2016. Thereafter any increase in pay would have to go by ordinance adopted by Council at three public hearings and meetings, wait for 30 days after the last hearing and then it would become an increase for the elected officials the next term after the current.

Mr. DiFranco asked, how would it be brought up through ordinance?

Mr. Diemert replied, Council would have to introduce it.

Mr. DiFranco asked, Council would essentially have to be asking for pay raises for themselves?

Mr. Diemert replied, no, they would pass a pay raise for themselves.

Mr. DiFranco asked, who introduces the ordinance?

Mr. Diemert replied, the Mayor or three members of Council can introduce legislation.

Mr. DiFranco stated, so it's kind of the same scenario we have now, is it not, that in order for them to get increases they have to come forward to ask for increases.

Mr. Diemert replied, but then it has to go to the voters.

Mr. DiFranco asked, as opposed to through Council?

Mr. Diemert replied, right. There's that added step of an election in order to accomplish it, which is unusual. I don't know of any other community that requires voter approval of elected official pay increases. The State Assembly doesn't do that. The Governor does not do that. The County, all municipalities that I am aware of. Voters can always stop it with a referendum. Voters can always do an initiative petition to decrease the pay. There's options available to the electorate if they get angry with their elected officials. There's also the requirement that those who are in office now really aren't going to benefit from it. It's after the next election.

Mr. DiFranco replied, if they don't get re-elected.

Mr. Diemert replied, they don't get it.

Mr. DiNardo stated, there has been a lot of controversy in the local papers in regards to other communities getting raises. They don't know how to do it. They are based on the CPI. We threw some of those articles around at the last meeting. I am wondering to save the debate, Mayfield Heights was having trouble how to give themselves a raise, is it based on the CPI, is it based on something, should we have something here that makes it easy for them to have an ordinance proposed because it gives them the ability to have a percentage raise?

Mr. Diemert replied, that's certainly a good discussion you guys had about that and I think that's a realistic thing to do. You could say whatever the cost of living increase is between the last raise and this raise is automatic that they get it. I have had other communities that have had charter amendments that say the Mayor gets 3% higher than the highest paid department head. That way he gets an automatic raise. I am not so sure I like that one because the Mayor negotiates for those raises. There's somewhat of a conflict in that. People have found that to be problematic.

Mr. DiNardo asked, can we set it at a not to exceed, following the CPI?

Mr. Diemert replied, then you are giving them a raise every year. Do you accumulate the CPI?

Mr. DiNardo replied, I don't know. I am just throwing it out there. I don't know all of the answers. I was trying to make it easy. You are going to go through all of this. It will be all questioned, how did you determine what the raise should be?

Mr. Diemert replied, I am not sure that makes it easier. The easiest is the way I have it because they are accountable to the voters anyway. If they justify it with a CPI basis, then they are justifying their pay increase. Even with that they have not tried to do that. I am not sure that's working. I am not sure this would work. I bet five years from now, the numbers, if the voters pass it, are going to be the same. At that point, charter reviews have done their job. We have given you the change to pass a pay increase for your successors in office.

Mr. Syracuse stated, it looks like these are two separate issues but because it's the same section, Article III, Section 6. The two issues are increasing the compensation now and the second one is should we change the procedure for modifications hereafter. My question is does anyone else feel we shouldn't actually separate these out into two different charter amendments so that someone might vote on it saying they want to have these figures of $26,000, $11,000 and $10,000 but they don't want to change the procedures and would that mean that now there is no pay increase?

Mr. Diemert replied, absolutely you could separate those two issues out.

Mr. Syracuse asked, what do you guys think? Does anyone else think we should do that?

Chairman Fikaris stated, I think there's a couple variables here that are going on. That's exactly what you said Vetus. I think what our intent was to help out Council and the Mayor and bring them up into a little more modern times after 15 years. There's a couple different ways to do that. It was a one-time shot that we kind of talked a little about. Maybe a little consensus was the best idea was to address this in 5 years at the Charter Review Commission. However, there's still the mechanism exists that the Council can still vote and if they see fit to do that, they have their methods of increasing their pay in between that five year time. That's what I think. The way this reads, maybe I read too much in to how people are going to feel or think they are going to feel. I agree with Vetus that maybe you want to separate that out. I am writing notes to explain it when

we have the public hearing. It's not an automatic raise, but we took it out of the hands of the voters. Why did you do that? Good question. Why did we do that? Because. Why?

Mr. Diemert replied, it's not a common thing to have where the voters approve it each time. It's not totally out of the hands of the voters. They still have referendum and initiative.

Mr. Syracuse agreed. I see that as a second issue. As I mentioned before, the only thing I could see that would come up is I don't think there would be many people that would vote against a pay raise but also want to vote for changing it and putting it in Council's hands. What I would be concerned with is that no pay raise goes into effect even though everyone on this Commission seems to feel that it should go into effect because some people don't like the change in the procedure so they vote no to the pay increase as well. If we separate these two out, I would recommend both of these going through.

Mr. DiNardo asked, is the wording going to be the first paragraph here from the draft?

Mr. Diemert replied, the wording is going to be what is all caps on the second page, page 2. "Shall Mayfield Village Charter Article III, Section 6 be amended to provide increase in elected officials' compensation after 15 years and protective procedures for modifications thereafter". Those protective procedures would be that Council can't do it in one reading, they can't do it by emergency, that leaves open referendum.

Mr. DiNardo asked, the voters will only see those four lines on Election Day?

Mr. Diemert replied, the whole ordinance will be posted in the voting booth. Our Charter requires a full copy of everything goes to every elector in the community 30 days in advance of the election. They all will have the full text which is in Exhibit A. As Vetus is saying, if you did separate them, we would now change this into two, one would be "Shall Mayfield Village Charter Article III, Section 6 be amended to provide for an increase in elected official compensation after 15 years". That would be one question.

Mr. DiNardo asked, with no set numbers?

Mr. Diemert replied, no, the numbers would be there. If you want I can put the numbers in there. Then you should show what the current numbers are. The second issue then would be "Shall Mayfield Village Charter Article III, Section 6 be amended to eliminate the requirement for voter approval of compensation increase and other protective procedures provided".

Mr. Syracuse stated where it says in here "Shall Mayfield Village Charter be amended to provide an increase in elected official compensation after 15 years", I don't want people reading that and construing it as every 15 years.

Mr. Diemert agreed. There should be a better way to word that.

Mr. Syracuse suggested, for the first time in 15 years or something like that?

Mr. Diemert replied, yes.

Mr. Syracuse stated, I just don't want that to be misconstrued by the voters.

Mr. Diemert stated, this seemed kind of awkward to me too.

Mr. DiNardo stated, I like that suggestion Vetus. Is there a way to put the second part more in line with the way the State of Ohio does things? You said you deal with all these communities and no one has referendum voting.

Mr. Diemert stated, I can put it in the whereas clause, voter approval of elected official compensation. How are they really qualified to evaluate that? They really aren't. You can't put that in the questions.

Mr. DiNardo stated, it's all in the words. Someone reading it will say the rest of the state, they do it this way, we are following suit.

Mr. DiFranco stated, Joe, you said there are communities you deal with or have dealt with that don't do charter amendments for pay raises but that doesn't mean that there are not any other communities in Ohio that do it the exact same way we are doing it now which is through Charter Review.

Mr. Diemert replied, Charter Review doesn't normally handle the pay raises. They handle how they are done. In Cleveland's charter for years they had compensation for safety forces in the charter. Charter Review was actually establishing. Some were done by initiative petition to amend the charter and put it in there. I can't say it's not done.

Mr. DiFranco stated, I can see the voters in this community having a problem with changing the procedure of how the pay raises are given to where it may appear more lax than tight. Charter Review seems the most tight, the most difficult way to get any kind of pay raises because it's through the vote of the people because we are going to make a charter amendment to it. I can see people having issue within the community, but I can see them also appreciating having a pay increase after 15 years. There's value there. My thought is to leave the way the Charter Commission reviews it every 15 years and just put the numbers out there for this time, but not change it to ordinance base.

Mr. Syracuse stated, we separate them into the two separate issues. Your vote would be yes on the pay increase but no as to the change. I like the mechanism that Joe has proposed here with the protective procedures with Council doing it by ordinance. Personally I like that because that is how it's done in most communities. Why not just let that go to the voters? If they shoot it down, they shoot it down.

Mr. DiFranco stated, the pay can go through the Charter every 5 years. It would still be reviewed.

Mr. Syracuse stated, if you voted yes to the pay increase, the pay increase would go through effective immediately at the beginning of January 2016. If they vote yes to the change in the procedure, that would go into effect as well. If they voted no to that procedure only, it would remain as it is now. The new pay increase would go into effect at the beginning of 2016. That's why I like separating those two issues so we don't get voters who say no to vote because they feel they should vote no to one or the other.

Mr. Dinardo asked, do you allow for any increase at all in the next 5 years or go with one number and be done?

Mr. Diemert replied, if we take Vetus' recommendation and the second proposal fails, then it will always require voter approval in the next five years but it can be brought by Council any time during the next five years for another increase.

Mr. Syracuse stated, exactly. It would be the same procedure as we have now. It would not change anything. I still like the proposal of the second issue which is to change the procedure. That would probably be a better way to go than what we have in place now.

Chairman Fikaris stated, in discussion before the vote, that would be something people would be concerned with. This is a hot topic. We could explain our rationale thoroughly. The one is very good, that there has not been a raise in 15 years. We have to prove this before the vote. This may raise a lot of questions. People read one thing and say, what are you guys trying to do here?

Mr. Syracuse stated, our job is to see if there's something we can do to make the Charter better. If the voters feel that's not something they want to do, then they will speak through their vote and we will go on the way we have. Separating those issue is probably the way to go. Proposing both of these as long as we have the rationale that Joe has mentioned and you discussed Paul that this is how it is done through most communities and this is a procedure that we should try to adopt. We would have the ability to explain to the public that it wouldn't be people increasing their own pay effective immediately. It would be for whoever is elected in their place.

Mr. DiNardo stated, good discussion.

Mr. Diemert asked, are you voting on this now?

Mr. DiNardo stated, we are going to vote on it on June 4th.

Mr. Syracuse stated, that's on the final for everything.

Mr. Diemert stated, if you could make the decision tonight, then you can vote on the actual language I give you for the June 4th meeting.

- **Motion to separate the two proposed issues amending Article III, Section 6, one being the actual pay increase and the second being automatic mandatory voter approval being substituted for Council ordinance.**

Mr. Syracuse, seconded by Mr. DiNardo, moved to separate the two proposed issues amending Article III, Section 6, one being the actual pay increase and the second being automatic mandatory voter approval being substituted for Council ordinance.

ROLL CALL: Ayes: All	Motion Carried
Nays: None	Issues amending Article III, Section 6 Separated

Mr. Diemert stated, I will draft those up and have them ready for the next meeting. I will try to get them to you ahead of time to have you look at it. The ballot language is somewhat discretionary the way I word it. I am going to try to word it so it looks positive. The Secretary of State of Ohio has final say so. He looks at all ballot language. If he thinks we are trying to pull one over on the voters then he will say no. He might even come back and tell me we want to see the actual numbers of the increase in the language of the ballot. Even though he knows the ballot language is going to be hanging on the voter booths and everyone is getting one at their house, they still want to make sure the language is fair. I want you to think it is fair before I send it to him.

- ***Article V – Administrative Departments, Boards and Commissions***

  - Section 6 – Architectural Review Board

Mr. DiNardo stated, I am a proponent of this since I chair the Architectural Review Board.

Mr. Diemert stated, I gave you language on it in my last e-mail. It is certainly doable. I saw arguments both ways among the Commissioners and I could not really come up with a draft until I knew how the vote would be going on that.

Mr. DiNardo stated, there was a lot of debate at the last meeting. My feeling is pass it along to Council. Make a recommendation. Let them make a decision whether it should move to the voters. Ultimately they will have debate on the floor. It should be looked at. It should not be discarded. That's my opinion.

Mr. Diemert asked, is this a recommendation from the Commissioner?

Mr. DiNardo replied, it is and me being the Chairman because we have had times where we have had applicants come in, not many, that may be the issue because if it is is just one or two a year that we didn't have a quorum, so we would have to do a work session and have them come back. At one meeting we kicked it around, why doesn't the Building Commissioner have the ability to

vote? They could vote on a tie or lack of quorum. I said, I am going to be sitting on Charter Review, let me throw it on the table for discussion. That's where it is.

Mr. Syracuse stated, Ron, I don't disagree with you but Joe you corresponded to us in something where you mentioned it could give the appearance of there being a conflict even if there is none. That's my concern, whether or not the Building Commissioner voting at these Architectural Review Board meetings, even if there is no conflict, that it could appear that there is. I would not be for that. I would be against that. I don't know if you can clarify it a little bit Joe on the conflict.

Mr. DiNardo asked, can we separate commercial and residential applicants? Normally when a commercial applicant comes in, we have them come back two to three times until they get it right. Nothing gets approved on the first shot. Usually they come back with materials. But the ability for a resident to come in with an addition, to save them from coming back for 5 minutes at another meeting and gathering everyone together, is that even an option?

Mr. Diemert replied, sure. Architectural Review Board is mostly for commercial, but you do get a look at new construction and new additions on residential. You could do it that way. I looked at this more as a procedural convenience for the Village. It's not a conflict because no building commissioner makes any decisions on architecture. The applicant really isn't going to be turned down by the building commissioner. It's one of the requirements that he has to go to ARB. Building commissioners are usually at all the meetings, Planning Commission, Board of Zoning Appeals and Architectural Review Board, so he is always going to be in the room. There will always be that thought that the boards are going along with him because he knows what he is doing. Most of our boards are volunteer and are learning from him. Could it look like a conflict? It could look like it, but in actuality, it isn't, so if one of the citizens or architects that are bringing their plan in says why does your building commissioner have a vote, it's not a conflict. He's not voting on something he did, he is voting on what you did. It's a discretionary decision. I looked at is as a convenience for the Board, the Commissioner and maybe some applicants. That's all it boils down to.

Chairman Fikaris asked, did you ever think about modifying the Charter to allow for off-site voting?

Mr. DiFranco asked, is it a public meeting?

Chairman Fikaris replied, yes.

Mr. Diemert replied, normally they have their plans laid out on the table.

Chairman Fikaris asked, if someone is up to speed and you don't have the vote that night, and they would vote yes,

Mr. Syracuse asked, can you call a special meeting?

Mr. DiNardo replied, we do. Sometimes emergencies happen. You will get a last minute that something happened.

Chairman Fikaris stated, the intent is one of convenience. We are not deciding the rule, we are just deciding whether it should move forward. I am torn on this.

Mr. Diemert suggested that the Commission take a straw poll of whether they are for amending the Charter or not because if the majority are not in favor of amending it this way, I have another idea unless you feel there is enough consensus to put it on.

Chairman Fikaris asked, what is your other idea?

Mr. Diemert replied, we just have Council change the ordinance establishing that the Board can allow proxy voting or it can allow the Building Commissioner to break a tie. It's not in here now where it's prohibited or where he's prohibited from being on the Board. It's maybe something we can put into Ordinance Review and change it at that level.

Mr. Syracuse replied, I am happier with that.

Mr. DiNardo stated, that's where it should be.

Mr. Diemert will make sure this gets referred to Ordinance Review. Is that okay?

Mr. DiNardo replied, yes, that's fine.

Mr. Diemert stated, I don't want to take something you have considered so many meetings out of your hands.

. <u>Section 6 – Civil Service Commission</u>

Mr. Diemert stated, I drafted some sample language for you. Did that pass?

Mr. DiNardo asked, we just never brought it to a vote?

Mr. Diemert stated, I know the Fire Chief wanted it to apply to lesser ranks than the chief only, but he doesn't have any at this time.

Mrs. Betsa replied, the Commission stated they were comfortable with the language you proposed and will be voting on recommending that language be submitted to Council for consideration.

Mr. Diemert asked, you are okay with the language I gave you?

Mr. DiNardo replied, yes.

Mr. Diemert stated, I will put it into Ordinance form.

- Section 6(B)(3)

Mr. Diemert stated, I wanted to make sure that the department heads are not included in Civil Service. I sent you a separate e-mail on May 6th. Article V, 6(B)(3) should be amended to include Clerk of Council which is already there, all department heads and commissioners except as set forth in Section B which puts the Chiefs in Civil Service. Right now, the Service Director, Building Commissioner is not spoken to. It should be all department heads are not in Civil Service They don't have that kind of protection and they shouldn't because they serve at the pleasure of the administration.

Chairman Fikaris stated, we agreed on that.

- Section 12 – Board of Appeals

Mr. Diemert stated, this carries over to other sections. I would make sure they are correct.

Mr. DiNardo stated, I don't remember if we had a consensus. There was a ton of debate over this.

Mr. Diemert agreed. I couldn't decipher from the debate exactly how the majority felt.

Mr. Syracuse, I am the one who sort of initiated this conversation. Ron brought up the idea of revisiting referendum zoning. It came up first when we were reviewing some of the zoning code through the Planning and Zoning Commission. Paul and I were present at the meetings where we were talking about different options. Diane Calta was at that meeting as well. I asked why we can't allow use variances and she forwarded a memo to me that you prepared at the time regarding it. It's in the Charter that use variances are not permitted by Mayfield Village. I feel that would be a good mechanism to have in place to allow changes in non-residential areas.

My part of the discussion that I question myself on is if we were to do this, the standard you recommended maybe being modified from the unreasonable hardship to practical difficulties. I am not sure we have the authority to do that. Even if we do, is that something that should be done by ordinance or something we should amend here in the Charter. I want to have the mechanism in place and if Council by ordinance says they will change the standard, I know it will be difficult to pass because as I understand it, the test is if the Board of Appeals were allowed to grant a use variance and an applicant came in and applied for one, if they didn't grant the use variance, would that deny the economically viable use of his or her land? That's the standard under unreasonable hardship that would make it difficult for anyone to ever get a use variance granted. Changing it to practical difficulties might make sense, but is that a discussion

we should be having here or a discussion that should be had after this mechanism is in place if it gets voted through?

Mr. Diemert stated, only someone who has researched this will be able to have this discussion. It is a tough discussion for lay people to have because it is pretty much a legal issue and practical difficulties and unreasonable hardship have always been terms of art that have been defined over the years by the courts. If you leave unnecessary and unreasonable hardship in, which is what it is now, you would never be able to get a use variance because those standards are very high. If it is Beta Drive which is where we think this would focus on, but it could be in the commercial areas around here too, but someone comes in and instead of a conditional use permit they want to get a variance so they can put a medical center on Beta Drive, there's no unusual hardship that you could ever prove you have. The topography of the land, the location is all suitable and conducive to commercial uses other than medical and there's plenty of other places you can go and put your medical. What would be the practical difficulty? It's a much lesser standard so the owner of the building could come in and say, look, I have had this on the market for 15 years, I can't fill the space. I have a good medical group here that doesn't use up a lot of parking, they fit in just perfect and I can fill my space and without it I am having a terribly difficult time getting this rented. That's a practical difficulty and the Board could grant it. But under the unusual hardship it has to be unusual, like a cliff behind their building.

Mr. Syracuse stated, something unique about the property that prevents it from being used any other way.

Mr. Diemert stated, you hit it on the head. It would never qualify. So if you want to give them the right to get a use variance, you have to make it under the standard.

Mr. Syracuse stated, I am not opposed to that. I think that would be a good idea.

Mr. Diemert asked, you are saying you looked into that, you are not even sure we can do it? I have not researched that yet.

Mr. Syracuse stated, I would like to find out more about that from you and the law department. Ohio Revised Code Section 519 refers to zoning and the only standard mentioned is the unreasonable or unnecessary hardship. I know that there's case law that modifies that for area variances, but as far as use variances go, I am not sure that can be modified by a community. In the case I am referring to, *Goldberg Companies, Inc. v. Council of the City of Richmond Heights.* The Supreme Court of Ohio case from 1998, 81 Ohio St.3d 207. It cites the *Agins* test. Another case which addresses this issue from the *Goldberg* case is *Phillip M. Hazeley, et al. v. The Mercer County Board of Zoning Appeals*, 3rd App. Dist. Mercer County, 2007 Ohio 6021.

Mr. Diemert stated, what I am thinking is that the differentiation would be from the Ohio Revised Code and a chartered municipality. Under home rule, we have the authority to vary and go against whatever the Ohio Revised Code has unless it's a matter of statewide general concern. What I will do is make sure those areas are not. I don't think they are.

Mr. Syracuse stated, if we are able to do that and change that to practical difficulty standard. If we were to not change that standard, basically there would be no use in granting use variances or having that mechanism in place because it would never be granted by the Board of Appeals as the law stands with the burden of proof that an applicant would need.

Mr. DiFranco asked, what is the best that would come out of this change and what would be the worst that would come out of this change?

Mr. Syracuse replied, the best that would come out of this would be exactly the situation Joe described. I f someone wanted to change zoning on Beta, right now what would happen is they would have to go through and have referendum vote on it. It would go to the public. It would hold things up and become an issue on something that might be as simple as do we want a medical center? We change it to allowing a use variance and they can apply for a permit change to that property specific. Only to that property. It would run with the land for any future owners of that property and parcel. It would at that point allow them to use it for this other use they are asking for. The Board of Appeals would have to vote on and approve it for it go through. The mechanism Joe recommended go in place is that it automatically be appealed to Council. It wouldn't go through as an area variance does where someone has to appeal a decision. There would be an automatic appellate system in place where Council would have to approve that as well through three readings. That would give people a chance to come and voice dissent when the Board of Appeals hears it and again when Council approves it whether or not they do.

Right now all we have in place is the Planning and Zoning Commission is permitted to grant conditional use variances. There's 10 factors to consider in whether or not to grant those, similar to practical difficulties. Those are two-year. They are temporary. They can be renewed but they do not run with the land. You might have someone come in, like Sign-A-rama with conditional use permits. In my view, those are the perfect type of applicant for conditional use permits as opposed to a variance. They are not changing the building altogether to make it use for something else. What we are doing without this mechanism in place is keeping Beta exactly as it is, all the time, unless someone comes in and goes to a vote of the general public to change anything. I think Beta is fine as it is. Everything on Beta is great. We shouldn't have major changes right now. But what I am asking this Commission to look at is to put into place another mechanism by which property owners and potential businesses that might come in to a non-residential area in the Village, it would give them an opportunity to make changes on Beta through the elected officials and their appointed boards such as the Board of Appeals. It's providing another mechanism by which these businesses have an opportunity to apply for a change there so if the market changes and the owners of the buildings can't fill them up and they want to put a medical building in, or the public would love to have a bunch of restaurants on Beta to make it more like Alpha and Wilson Mills, then business owners can come in and apply for this. It's not going to be granted unless they meet their burden of proof, whether it be unnecessary hardship or practical difficulties. They still have to meet the burden to the Board of Appeals and then have Council approve that.

Mr. DiFranco stated, that burden right now is which one of those?

Mr. Syracuse replied, a use variance in Ohio is always the unnecessary hardship.

Mr. DiFranco asked, which is more stringent?

Mr. Syracuse replied, yes. That means that there's basically no other economically viable use for that property and that they are being deprived of the use of that property. If there's a real small parcel that you can't really put a warehouse on that is zoned for warehousing manufacturing and they say we can't use this property unless we use it for something else. Then they would ask for a use variance. That's not the case right now on Beta. I am not saying that should be changed and that I am for changing Beta in any way from how it is right now. I think that down the road by allowing use variances we would have another mechanism in place by which an applicant or property owner could ask for that property to be used differently than it is now. That way the market could dictate what applicants come in. I am assuming we are turning away applicants who look at our ordinances and Charter and see that they can only get a conditional use permit for two years. They are saying let's go somewhere where we can get this granted permanently and we can actually use this.

Mr. Diemert stated, it's pretty expensive these days to change these over.

Mr. Syracuse stated, they would have to hire their engineers and architectural firms, get their plans ready, go to all these commissions, they may have attorney's fees involved. With all of that, if there's empty buildings on Beta that are not getting filled, unless people were to vote on it and say we want to change it for zoning for this, that would be completely rezoned to what they zone it for. This allows one property at a time to be changed if the applicant meets the burdens of proof that they need to.

Mr. DiFranco stated, I understand the benefit you have explained very very well.

Mr. Diemert asked, you want to hear a worst case?

Mr. DiFranco replied, yes.

Mr. Diemert replied, the worst case would be a flea market comes in and they want to use this big warehouse space every Saturday for a huge flea market from around the State where they have people coming in buying booze and selling their stuff. There's been those groups trying to organize around here at DeJohn in Mayfield Heights in the parking lot on weekends, farmer's markets may want to come in and set something up like that. Landlords are going to pretty much control that. They can't get the money from those people that these buildings are costing them. Coming in with Burger King's or McDonald's or building a food court in one of the warehouses. Those are things I see as the worst downside.

Mr. Syracuse stated it would have to be brought before the Board of Appeals. The question you might be hinting at is what is the burden of proof they would have to meet to be able to do that if we are able to modify it to practical difficulties?

Mr. Diemert stated, there's 7 or 8 standards.

Mr. DiFranco stated, I just don't want a change like this to backfire where we get something undesirable.

Mr. Syracuse stated, the only way that would happen is if the Board of Appeals were to grant it and Council approved the Board of Appeals' decision. If there's that much outcry from the public, as long as the practical difficulty standard isn't so low that they could take legal action against the Village to force us to grant their variance, the citizens should be able to trust their elected council and appointed committee members on the Board of Appeals to be able to make a correct decision on those. I just feel it gives us another option as a Village to allow other things. The market could then dictate what Beta could become without their having to be uniform zoning change across that entire street.

Mr. DiFranco stated, what I am hearing you say is the benefits far outweigh the potential negatives because there are controls on the negatives that can prevent them from happening.

Mr. Syracuse replied, that's what I feel. I propose this as an alternative to allowing Council as it was proposed by the last Charter Review Commission allowing Council to make zoning changes without it going to referendum.

Mr. DiFranco asked, that was Village-wide?

Mr. Syracuse replied, yes. If we did it for just commercial, if they are able to say, yes, let's rezone for this or that, it wouldn't be for one property at a time. It would be pretty much that entire district. This gives another mechanism by which someone can come in and apply. I feel the benefits outweigh.

Mr. DiFranco asked, are we just proposing this for Beta?

Mr. Syracuse replied, all non-residential which would include any commercial.

Mr. DiFranco asked, like Progressive?

Mr. Syracuse replied, yes. That's another thing too to consider. If Progressive were ever to leave here, what is that zoned for, what else would want to come in there?

Chairman Fikaris stated, if one of these people wanted to apply for a conditional use permit, they can do that, so the same mechanism, say they wanted a flea market or something, they would come and do the same thing. They would have to go through the same mechanisms for that

meaning they would have to present their case to the Planning and Zoning Commission and Council to get a conditional use permit.

Mr. Syracuse replied, you are just giving another option for an applicant or property owner. We are not changing what things are going to be zoned right now. We are not going to say Council can change it when they want. Use variances are allowed by Board of Appeals by Ohio law. They are allowed to. Most other cities have these in place. I have been in front of other boards where I was going to apply and asked, do you want a use variance or do you want a conditional use permit for your client? You fill out whichever one you feel you have a better chance of getting or what suits your situation better. Something like a flea market you would probably just want a conditional use permit anyway. Having a bunch of fast food restaurants, things like that, unless they want a use variance, if they were to ask for that, there's no stopping them from still going in and saying we want a conditional use permit instead. They can go for one or the other or get denied one and apply for the other. It gives us options on Beta that we don't have now.

Chairman Fikaris stated, the defensive mechanisms are identical meaning the process that someone is going to have to go through gives us another option and makes us a little more marketable. If you want to do all this, I am not going to make all this investment for a conditional use that you can revoke in two years. I can't go to my investors and say, go for it and we will see. We have that already. That's not the best for the Village for attracting the best uses. We have already seen the changes happening on Beta. This is a good idea. The way people interpret it, is this a green light? No, all the stoplights are still in place that exist today but it's an option that makes it more attractive. It would be advantageous to the applicant and Village as well that we don't have to do this. We are plugging in temporary things. The last time the Charter Review suggested referendum zoning, that really didn't change a whole lot. It was the wrong approach. What's happening now is these guys re coming in. We have to make exceptions which are conditional or special use permits. We have tried to do what we can to clean it up and make it straightforward to an applicant and us so we don't have all this and we can solidify our zoning. This is a great approach.

Mr. Syracuse stated, I was doing research and there's a website the City of Dayton had for the Board of Appeals. It was their handbook. That was a good guide for granting both use variances and area variances. They had a sample on what should be assessed by the board members, the questions they would have to answer. There's 7 factors for an area variance. A use variance is similar for undue hardship standard. It lays it out pretty well. I think that would serve as a good guide.

Mr. Singer stated, I think if we took a straw vote now, it would pass. We would go along with it. I think you are right.

Mr. DiNardo asked, what do you do for mixed use? We talk about specific commercial. Now I want to introduce mixed use. I have a guy who has a building and I want to add a story. I want to put some apartments up there. How does that work with the use variance?

Mr. Diemert replied, if the part below is complying, the variance would be to add on residential.

Mr. DiNardo stated, so the practical difficulty part is probably what I should have said. How does that come in to play? The example you gave for the medical building is perfect. Now I want to introduce mixed use.

Mr. Diemert asked, condos above one of those warehouses?

Mr. DiNardo stated, our 2020 Plan where we introduced quite a bit of mixed use along Wilson Mills.

Mr. Diemert replied, they would have to make their case for why it's a practical difficulty.

Mr. Syracuse stated, the factors included in the standards for practical difficulty are: 1) whether the property would yield a reasonable return or whether there could be any beneficial use of the property without the variance; 2) whether the variance is substantial; 3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance; 4) whether the variance would adversely affect the delivery of governmental services; 5) whether the property owner purchased the property with knowledge of the zoning restriction; 6) whether the property owner's predicament feasibly can be obviated through some other method other than a variance; and 7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. That would be tough to meet even for a mixed use. A lot of people would come out and voice their objections to it if they were against it. Right now it would have to go to a vote. You have people on the Board of Appeals who are there for this exact reason. Why not let them vote on the types of things that other board of appeals can vote on and still have Council to approve or not approve and have those same mechanisms in place? I feel this would be a benefit. For mixed use, if we are able to change the standard, that would be difficult for them to do. I don't think it would be something that would go over so easy. I keep mentioning that I like this mechanism, but the one concern I have is if we were to lower the standard of practical difficulties, could we end up denying a use variance request and having the Village be sued by whoever it was denied to because it was denied based on this practical difficulty language standard when it should not have been? Those are still very difficult standards to meet.

Mr. Diemert replied, they are. And winning a 2506 administrative appeal from the decision of a Board of Zoning Appeals and then a Council are not easy to win if it had the discretion of the Board and then the full Council. I wouldn't worry too much about the litigation part of it.

Mr. Syracuse asked, if we are able to make the change to practical difficulty standard, would that be something that's done by ordinance under the Board of Appeals' duties or is that something that would be in the Charter?

Mr. Diemert replied, the prohibition on the use variance is going to have to be eliminated in the Charter. I would want to put the reference to what the standard will be. Let me take a closer look at it.

Chairman Fikaris asked, today if someone came in with a mixed use proposal, the only mechanism after it went through all machinations, it would wind up having to go to a referendum to change the zoning of a parcel? We may encounter that.

Mr. Diemert replied, if they want to tear a warehouse down and put condominiums in there in addition to a commercial strip center of some kind back here which is not unforeseeable to do that, they would have to likely get a rezoning of the property and go through the normal process because it will be a great substantial change to the character. BZA would say no. Council would say no or one of them would say no. People would be left with no other recourse other than to try to rezone it.

Chairman Fikaris asked, what is the zoning for Crocker Park?

Mr. DiNardo replied, probably PUD mixed use.

Mr. Diemert stated, Beachwood Place has that. There's a whole lot of them around. It's a popular thing to do now. I would guess if someone came in here and took the first three buildings on Beta Drive and came in with a huge plan to tear it all down and turn it into a mixed used of shopping and hotels and condominiums, it might sound pretty good, especially since we have so much square footage that is vacant. The idea might be, office, building, condos.

Mr. DiNardo stated but they couldn't do it without the vote of the people.

Mr. Diemert agreed. That would have to be rezoned. But it might be something we would all support. But yes, it would have to be rezoned by the people.

Mr. DiNardo stated, the last time what was in front of the voters was Council was going to make that decision with any zoning change throughout, right? Do we limit it to BZA or do we let Council do it? We allow BZA to grant the variance or let Council make that decision?

Mr. Diemert replied, I think BZA should get a first crack at it. The hearing would be at BZA. Council would review it *de novo*.

Mr. Syracuse stated, we could put something in there in the ordinance listing the standards of review for the practical difficulties. Maybe have one of those considered as a factor in line with the 2020 Vision. That would probably be by ordinance. I don't think our Charter should have it.

Mr. DiNardo said, okay. Can we vote? What are we voting? To move it to the next step?

Mr. Diemert stated, I did not hear any opposition to the language I proposed. It's just a matter of

me refining that language and making sure we are covering all the basis and do some research on making sure we are doing it within the guidelines of the existing case law. You will vote on the actual legislation.

. ***ARTICLE XII – MISCELLANEOUS PROVISIONS***

- Section 9.1 – Distribution of Revised Charter Copies

Mr. DiNardo asked, do we need to do something on this? When we make a change to the Charter, we literally have to make copies and give a printout to every resident. We wanted to refine the way we approach that.

Mr. Diemert replied, I would eliminate the whole first sentence if it were up to me. That's a pretty big cost nowadays.

Mr. DiNardo asked, so do we draft something in front of the voting public?

Mr. Diemert replied, yes, you would have to amend that.

Mr. DiNardo stated, okay, Joe, do you want to draft something on that last item?

Mr. Diemert replied, yes if you are all in agreement I think I would say that whenever the Charter of the municipality is amended, copies of the revised Charter shall be kept at the Civic Center and made available upon the request of any resident.

Mr. DiNardo asked, digital format?

Chairman Fikaris stated, I don't think you have to go into detail.

Mr. Diemert agreed. It will be posted on-line as it is now. Plus we will have hard copies available here for those who don't go on-line.

Mr. Syracuse asked, is anyone opposed to that change?

There was no opposition.

Chairman Fikaris stated, this is our green issue.

. **Any Other Matters**

Chairman Fikaris asked, is there any other business this evening? Chairman Fikaris thanked Mr. Diemert for being in attendance.

Mr. Syracuse asked about the next steps. Between now and then Joe will provide us with the language we will be voting on. Do we vote at the next meeting?

Mrs. Betsa stated, in previous reviews, Pat Caticchio would have the Commission vote Article by Article and Section by Section and then any revisions to be made. Right now, everything is preliminarily approved.

Mr. Diemert suggested everyone look at the list before the next meeting. If there's anything else you want to amend, you can bring it up. Right now, I have 7 pieces of legislation.

Mr. Syracuse asked, then we would have to approve anything preliminarily approved?

Mr. DiNardo stated, no, let's make a motion that everything that is preliminarily approved is approved.

Mr. Syracuse asked, then we would vote individually on the sections that have revisions to them at that time?

Mr. Diemert replied, yes.

Mr. DiNardo asked, do you want to send out a version prior to the meeting to take a peek at so we come prepared?

Mr. Diemert replied, absolutely.

Chairman Fikaris asked, everyone is good with June 4th at 7:00 p.m.?

There was no conflict.

. **Adjournment**

Chairman Fikaris stated, if there is no further business, I will entertain a motion to adjourn.

Mr. DiNardo made a motion to adjourn the meeting. Mr. Syracuse seconded. There was no opposition.

The meeting concluded at 8:35 p.m. The next meeting is scheduled for Thursday, June 4, 2015 at 7:00 p.m. in the Main Conference Room at Mayfield Village Civic Hall.

Respectfully submitted,

Mary E. Betsa, Secretary
Charter Review Commission