

MINUTES OF MEETING  
2020 CHARTER REVIEW COMMISSION  
MAY 14, 2020

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Members Present: John Urban, Pat Roberts, Trevor McAleer, Bill Brink, Tony Bucaro,  
Steve Polly, John Lanning, Michael Coyne

Presence Noted: Andrew Bemer, Law Director  
Michael O'Shea, Assistant Law Director

Administration: Mayor Pamela Bobst

Council Members Present: Jim Moran, City Council President  
Christopher Klym, At-Large Council Member  
Christina Morris, At-Large Council Member

Guests: Rich Snyder, Director of Public Safety-Service  
Eric Pempus, Chairman, Board of Zoning and Building Appeals  
James Ulchaker, M.D., Parks and Recreation Commission Chairman  
Bob Holub, Director of Recreation

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Mr. McAleer began by welcoming Rich Snyder, Director of Public Safety-Service to this VIRTUAL meeting, via Cisco WebEx Meeting, and thanked him for attending. Mr. McAleer said that Mr. Urban is having connectivity problems and will join the meeting when those issues are resolved. Tonight's discussion will cover the remainder of ARTICLE IV – ADMINISTRATIVE DEPARTMENTS, Section 1. General Provisions, Section 4. Department of Public Safety Service and Section 2. Department of Law, and the discussion leader is Tony Bucaro. Discussion will then move to ARTICLE VI – BOARDS AND COMMISSIONS. The Discussion Leader for that Article is Pat Roberts and the Chairman of the Boards and Commissions are the invited guests for that review.

Mr. McAleer asked if the Commission members have any changes to the minutes of the May 7, 2020 meeting. Mr. Lanning moved to accept the minutes as presented. Mr. Brink seconded. Motion was passed by unanimous acclamation.

Mr. Brink said that he would like to say a few words of apology to the other Members of the Commission for some of his comments toward the end of last week's meeting and that he didn't mean to upset anyone by anything he said. Law Director Bemer said that there is a saying about dissent and debate, in that they are the paths toward finding the truth. Mr. McAleer said he does not think anyone should be offended by any of the discussion comments and that the reluctance to have the Mayor join them again was more of a timing issue. They look forward to hearing more from Mayor Bobst regarding her position on terms of office when all members are present.

Mr. Bucaro began by saying that Article IV – Administrative Departments, Section 1, General Provisions establishes a Department Law, a Department of Finance and a Department of Public Safety-Service, with a director for each department who is appointed, with the exception of the Director of Law, which is an elected position.

Mr. Bucaro continued by reviewing Section 4 of Article IV, which covers the Department of Public Safety Service. He would like to highlight the word, “enforcing” all police, safety and sanitary regulations that may be prescribed by ordinances or rules of the City or the general laws of the State of Ohio. The Director of Public Safety-Service is also in charge of public works and the reason he wanted to highlight the word, “enforcing” is because the Charter reads that the Director shall make all necessary rules and regulations for the operation of their department and that seems to conflict with the idea of enforcing and it actually seems like an executive versus legislative responsibility. It also seems to potentially conflict with Article V, which indicates that the Civil Service Commission has the authority to make certain rules, and if the Director has the responsibility of making all necessary rules, then it would be a conflict.

Mr. Bucaro said that Article IV, Section 2. The Department of Law, he would like to propose that they not discuss the term of service for the Law Director until the time when they discuss the terms for the Mayor and for City Council. He said that there is a time limit for the Mayor to appoint a successor for the elected positions with the exception of the Director of Law.

Law Director Bemer said that regarding Mr. Bucaro’s concern about the duty of the Director of Public Safety-Service enforcing all police, safety and sanitary regulations as may be prescribed by ordinance, that is the second half of the home rule authority and the first is local government control. That language was not intended to conflict with Civil Service rules and regulations.

Mr. Rich Snyder, Director of Public Safety Service came forward and said that he works a lot with both Chiefs, providing guidance where possible and helping them when it comes to their contract negotiations. Based on the way he interprets the Charter and in talking with the Chiefs of Police and Fire, he feels very comfortable with the way things are.

Mayor Bobst said that she and the Law Director have had discussions with the current and former Safety-Service Directors about the safety component, because in many municipalities the Mayor serves as the Safety Director. They believe that the structure in our community serves us well and added that Rich Snyder, as Director of Public Safety-Service, serves in an advocacy position and he is very important in the grievance procedure with our collective bargaining agreements, as they all flow through him. That important step allows us to work through many issues at that level and the next stage is that a grievance can be appealed and it would come to the Mayor’s office. Our two former Safety-Service Directors, along with Rich Snyder have done a tremendous job wearing all of those hats. Mayor Bobst began having connectivity issues and the Commission could no longer hear her comments.

Mr. Klym said that over the years, the position of Safety-Service Director gets a little bit confused because we have Chiefs that are so actively running their Departments. The

Public Works service that the Director is doing is substantial, so it is a very big job with a lot involved in doing it. He wonders whether all of those roles are proper for one person to do or whether they could have a separate Public Works Department. We have been fortunate in that we have had very good Safety-Service Directors in the past. Whether it is too much for one individual has been the one piece that has struck him for years.

Director Snyder said that both Chief Lenart and Chief Stillman handle their daily roles very, very well and he does not feel his responsibility is to oversee the day to day operations of their departments. His job is to provide support to them and give them what they need to do their job well and support the communities they serve. This seems to be working very well due to the very good job that the Chiefs do.

Moving on to Section 2. Department of Law, Law Director Bemer said that there was a change made, which was the addition of a qualifier, which was "...with at least 5 years of general attorney experience." That was done at his recommendation because in order to run for Judge, the only qualifier is 5 years of experience, so it seemed to him that it should be enough of a qualifier in order to serve as the Director of Law. Some of the other qualifiers, such as at least 3 years of prior municipal attorney experience are very vague. It was his intention to clarify the qualifiers for Director of Law so that the standards are not so vague and undefined.

Law Director Bemer continued by explaining that we have an Administrative Code, which is our Codified Ordinances promulgated by City Council and all of the different directorships are contained in our Administrative Code. The Director of Law is Chapter 135 and there is Chapter for Director of Finance, which is Chapter 133 and for the Director of Public Safety-Service, which is Chapter 137. He reviewed these for consistency regarding duties and responsibilities contained in the Administrative Code and in the Charter. According to the Administrative Code, which was promulgated in 1955, there shall be an Assistant Law Director who shall be appointed by the Mayor. The provision in the Charter that was adopted in 1960, is that all assistants are appointed by the Law Director. That is something that necessitates councilmanic action to clarify that particular paragraph. The entire Administrative Code probably needs revisions and updates because there are a couple of positions that no longer exist in the City. Mr. McAleer said that they can add that to the list of recommended changes to City Council.

Council Member Klym said that relating to Mr. Bucaro's point about in other sections of the Charter, there is a required period of time specified for an appointment to be made and if it is not made by the Mayor, then the Council has the ability to make that appointment. Likewise, in the Parks and Recreation Commission, if the School Board or Council does not make an appointment in a certain period of time, then another body has the ability to do that. That does not exist in this section, and if the Mayor doesn't act, then City Council would certainly like the ability to do so. On the other side of that is the fact that the position of Law Director is very specific and technical and needs a certain degree. There is somewhat of a limited pool in Rocky River as to who can be a Law

Director, and it is also someone who needs to work well with the Mayor. He thinks that 30 days is a pretty short period of time for the Mayor to make a good choice for a Director of Law to fill the remainder of the term. Mr. McAleer agreed and said that it is a very unique skill set that a person would need to have to be Director of Law and he agrees that 30 days is usually not adequate time to make a choice.

Mr. McAleer said that he thinks they should add the discussion of the length of time to fill a vacancy for the Director of Law to the Master List of Items for Further Discussion and the Charter Review Commission members agreed.

Mr. Bucaro said that before they move on to the Boards and Commissions, he wants to be sure that there is no conflict between the Director of Public Safety-Service's ability to make rules and the Civil Service Commission doing the same thing. The intent is that the Mayor is the conservator of the peace and her appointment to the position of the Director of Public Safety-Service has the duty of enforcing the laws and not promulgating them. Civil Service has to do with the merit and fitness promotions, layoffs, etc. Police, Safety and Sanitary regulations does not invade Civil Service. This provision is a very specific meaning that is consistent with Section 3, Article 18 of the Ohio Constitution, which is the home rule provision for authorities that have created Charters. Mr. Bucaro said that there seems to be a conflict in the language where it specifically says that the Director of Public Safety-Service shall make all necessary rules and regulations, and Article V says that the Civil Service Commission has the authority to make certain rules. The way he reads it is that if the Civil Service Commission can make certain rules, then the Director of Public Safety Service does not make all of the rules. He would just hate to see a conflict somewhere down the line with the Civil Service Commission making a rule, and then the Public Safety-Service Director comes back and tells them they can't do that because he/she makes all of the rules. Law Director Bemer clarified that the Director of Public Safety-Service is in charge of the administrative management of the Departments and not in charge of regulating personnel issues or collective bargaining.

Commission member Urban joined the meeting but said he is still having periodic connectivity issues and would like Mr. McAleer to continue.

Moving to **ARTICLE VI – BOARDS AND COMMISSIONS**, Mrs. Pat Roberts welcomed Eric Pempus, Chairman of the Board of Zoning and Building Appeals and Dr. Ulchaker, Chairman of the Parks and Recreation Commission. Also present is Bob Holub, Director of Recreation.

Mrs. Roberts said that she will paraphrase and bring questions to the Chair Persons in attendance and then turn over the discussion to the Charter Review Commission. She welcomes comments from Mayor Bobst and Law Director Bemer at any time during the discussion.

Mrs. Roberts said that the Charter does not address who assigns replacements for vacancies for Boards and Commissions members and Law Director Bemer said that the language for filling vacancies is stated in the last sentence of the first paragraph, and ultimately it is the Mayor who appoints a person to fill a vacancy. Mayor Bobst agreed and said that the Mayor has appointing authority for members and alternates of all Boards and Commissions. When there is a vacancy with the standing members, then she typically appoints one of the alternates and then seats a new alternate. With the Planning Commission, it is a matter of seating a board that is diverse and represents the interests of the community, so they look for planning professionals and individuals at large who understand construction, have a unique interest and who complement the other members. Mayor Bobst added that the Parks and Recreation Commission is unique because of its genesis. It was created when the schools and the City combined recreation services so when it was included in the Charter, it was to have representation by both the City and the School Board. When the School Board member or their appointee leaves or there is a vacant position on the Parks and Recreation Commission, the School Board are the people who reappoint and not the Mayor.

It was discussed that for the purposes of a Board of Zoning and Building Appeals meeting, there can be a combination of the 5 seated members, or it could be 4 seated members and an alternate, or even 3 seated members and 2 alternates. It is the combination of alternates and seated members that make up a Board for a meeting. Chairman Pempus described some of the types of meetings they have and things that make up the majority of the items that come before the Board of Zoning and Building Appeals. Some are practical difficulties and some are considered unnecessary hardships, and there are different standards that are outlined in the Code as established by ordinance, that they use as a guide to examine the types of appeals. Many times, the Board ends up working out a way to compromise on many of the requests, and negotiates a way for a variance to be granted that is more in line with the Code. The decisions they make can be appealed to the Court of Common Pleas.

Law Director Bemer said that he is the legal counsel for the land use commissions and BZA has an excellent reputation of attempting to explain to the applicants the pros and cons of their variance request, and coming up with a compromise solution. He explained that some of the cases move to the Court of Common Pleas and many are basically neighbor disputes and the City is forced to get involved. Mayor Bobst said that before a lot of applications get to the Boards and Commissions, the Building Department works with the applicants and, as a result, many times variances can be eliminated before they move to the Board of Zoning Appeals. Most of the time, the situations where an applicant needs to request something special because of a practical difficulty or unnecessary hardship are ultimately what ends up before the BZA.

Law Director Bemer said that the Board of Zoning and Building Appeals is a creation of municipal government and there are some cities who give their Planning Commission blanket authority to handle all matters of variances and appeals. The BZA is a quasi-

judicial administrative board and is the board of last resort in administrative remedies, which means they have jurisdiction over any decisions of the Planning Commission or the Design Board that would be objected to or appealed. That must be pursued before there is any legal action on that particular front.

Mr. Urban said that Law Director had indicated to him at some point that he thought a change should be made to this section. Law Director Bemer thanked Mr. Urban and explained that Section 2(b)(1)(B) allows for an appeal to City Council by an objector for a variance that was granted. It is not an automatic appeal in that the City Council will make a decision whether to hear an appeal, and a supermajority is needed to grant a hearing by City Council on an appeal. The language reads that, "A request for review may be granted by Council if it finds and determines that one or more matters at issue in such a request affect or involve a purpose of the City's development code or intent of Council in said Code's adoption and if such request receives an affirmative vote by 5 members of Council." He explained that every chapter in our Development Code has an opening intent provision. This is a guiding provision to give the reader an overview of what the purpose of that particular provision is, or what is to be achieved, which is usually harmonious development. He has a problem with this because there is strong judicial declaration that the purpose or intent clause is not a standard or criteria for granting or not granting variances. It is merely meant to be a guide in applying the Code. He finds that asking City Council to make a decision based on something that cannot be adjudicated (i.e., intent) because it is not a standard, to be terribly inconsistent. He said that we are fortunate that in the last 15 years there has never been an appeal to City Council. The Mayor said that when she was on Council at least 20 years ago, they heard an appeal de novo, which means that they start from the very beginning. The BZA has professional architects and individuals involved in this type of development, and City Council members may or may not have that expertise. It was a very difficult process to go through and it only can be heard on an appeal to Council for a variance that has been granted. It then takes a vote of 5 Council members for a BZA decision to be reversed. City Council has looked over the years at situations they are asked to review, but they have not chosen to take it on and formally review the appeal for many, many years.

Mr. Urban asked Law Director about being able to remove that section as obsolete language since the Courts have ruled against that paragraph. Law Director Bemer said that it is a question of how City Council is permitted to apply a standard that should have no place whatsoever in their adjudication. The standard can be changed to one which can be applied, which is the standard applied to a 2506 Appeal to the Court of Common Pleas. He would recommend that the same standard be applied to this appeal to City Council. There are similar provisions in the Ohio Revised Code that have City Council review variance requests that are granted. He suggests they eliminate that as a standard if we retain this section, and adopt the legal definition or standard that is applied by the Courts instead. The two layers of having the legislative board (City Council) review de novo, a decision of the experts on land use, seems like a questionable exercise in and of itself. Then City Council is applying a standard that has nothing to do with the standard

that BZA uses, which is the *Duncan v. Middlefield* standards, which are whether there is proper finding of the unnecessary hardship standards or practical difficulty standards.

Council Member Klym said he thinks this was originally put into place as a specific response to some variances that had been granted and there was a thought within the community that there needed to be another appeal between BZA and court. He said that it is important that this should be looked at in terms of City Council merely agreeing to hear an appeal and not what standard they apply as a basis for overturning a decision. Law Director Bemer agreed with Council Member Klym and said that the directive should be the same standard for review as BZA applies, which is outlined in the Development Code. Whenever the criteria is not properly identified, there is the potential risk of a claim that what is being adjudicated is an unconstitutional delegation of legislative authority. What is so interesting about this is it is the legislature that is making the adjudication, but they haven't explicitly provided a standard for their own purpose. Law Director Bemer concluded that he has a problem with this paragraph because he sees all kinds of difficulties with it. Mr. McAleer and Mr. Urban agreed that this should be placed on the Master List of Items for Further Discussion, and the other Commission members agreed.

Mrs. Roberts moved to the review of Article VI, Boards and Commissions, Section 3. Planning Commission. When she reviewed past discussions, the same question of whether the Master Plan should be updated every 10 years or as deemed appropriate was discussed, as well as whether the Development Code should be reviewed every 5 years because it is such an enormous task or whether they can do that as it is deemed necessary also. She said that the Planning Commission is very important but the voting members as appointed by the Mayor only have a 4 year term. She questions whether their terms should be 5 years like other Boards and Commission members have. Mayor Bobst said most if not all of the Boards and Commissions members have been reappointed. Regarding the Master Plan, the County has been providing grants to local communities throughout Cuyahoga County and their standard is for communities to update their Master Plan every 10 years to be eligible for funds in the form of grants. She would like to see Master Plans updated more often as a way to measure our progress because the level of community engagement in Rocky River is fantastic and the Cuyahoga County Planning Commission made many comments regarding the citizen engagement in this recent process. Law Director Bemer agreed that the proposition of reviewing the Master Plan more often than every 10 years makes a lot of sense because 10 years is a long time and a lot changes in 10 years. Mayor Bobst said that it is important to review the Development Code to be sure it is poised to help us realize what the Master Plan sets forth. We are now working with the Cuyahoga County Planning Commission to update our Development Code for consistency with the Master Plan so that it helps move forward everything that has been laid out in the Master plan. Mr. McAleer said that 10 year reviews of Master Plans are very standard.

Mrs. Roberts moved on to review of ARTICLE VI – BOARDS AND COMMISSIONS, Section 4, Parks and Recreation Commission. She said that this is the only Board that seems so prescriptive and she thinks it is because they are partnered with the Board of Education. Dr. James Ulchaker, Chairman of the Parks and Recreation Committee, as well as Chris Klym and Bob Holub are present from this Commission. Dr. Ulchaker said that they have no problems with the way anything works and they work well with the School Board and with Mr. Shoaf, who is the Superintendent. As a Commission, they discussed the way things are going, and nobody had anything they thought needed to be changed. He has been the Mayor's appointee for quite some time and it has never been a problem. Mr. Holub said he agrees with Dr. Ulchaker and that things run very smoothly under his leadership. The Commission helps with providing their perspective for programming at the Civic Center when they consider making changes. Mrs. Roberts asked Dr. Ulchaker what he has done during his time on the Commission that he is most proud of. Dr. Ulchaker responded that he was very proud when Sports Illustrated named the City of Rocky River as one of the top 100 recreation cities in the United States, and he believes we still are. He thinks that the communication between the Recreation Department and the Service Garage is as good as anybody can ever ask for. Our parks are better now than they ever have been, which is a credit to the Mayor, the Parks and Recreation Committee, and to Director Holub. He hopes that the Review Commission does not propose to make any changes because they are all very successful in the way things work now. Mr. Urban added that the way things work now compared to when he served on the School Board is great.

The discussion moved to Section 5, Design and Construction Board of Review. Mrs. Roberts said that she has a concern that 2 members can make a decision on a matter and she wonders if they should have 5 members review the matters. She said she does not have a clear feeling for public safety when homes are torn down. In addition, she does not see an element about historical homes in the City and being able to tear them down. Mayor Bobst said that a demolition permit is managed by the Building Department and there are built in safety aspects associated with the issuance of a demolition permit. Regarding historic preservation, Mayor Bobst said that we do not have regulations for that within the City. There are two structures on the National Registry in the City, which are the Westlake Hotel and the other is on Lake Rd., which is the former site of the Cowan Pottery factory. Early in her time as Mayor, Mayor Bobst said that she engaged a consultant to give us a scope of work and a cost for deeming Old Detroit and Tangletown as historic districts. They were concerned at that time that there were too many changes to the facades of the buildings on Old Detroit, but they did feel that Tangletown could be a Historic District. She cautioned that just naming a historic district or a historic structure is not enough, in that there has to be Code that backs up what can be done in that district. It is a recognition but there is no enforcement unless there are commensurate Codes that speaks to that area. She does not have a handle on how many properties would qualify for the 100 plus years of age, but there are many of them.

Mr. McAleer said that this is a good conversation but it is not really Charter Discussion for now. Law Director Bemer agreed and said that Mrs. Roberts suggested that the number of members of the Design and Construction Board of Review should be expanded. There is a practical problem with that because the Board must be made up of residents who are Licensed Architects or Engineers. Mrs. Roberts said that is a reason why 5 members may be a good idea because you can have 3 members who are Architects or Engineers and then have two other members who are qualified other people. Mayor Bobst said that the reviews by the Design Board are very technical where they are discussing materials and architectural design. They have had difficulty identifying alternate members who can serve on this Board and who are residents of the City. They meet two times a month and they see a lot of projects. Mr. Urban said that there is the right to have 2 alternates already and this was discussed at length by earlier Review Commissions. Discussion of Article VI concluded and Mr. Urban said that Law Director Bemer has five items that he needs to provide information on.

The next agenda will consist of:

May 21, 2020: **ARTICLE VIII – INITIATIVE, REFERENDUM AND RECALL**  
Discussion Leader: Pat Roberts

**ARTICLE IX – NOMINATIONS AND ELECTIONS**  
Discussion Leader: Linda Bartolozzi

**ARTICLE X – GENERAL**  
Discussion Leader: Steve Polly

Mrs. Roberts put forth a Motion to adjourn and Mr. Bucaro seconded. The motion was passed by unanimous acclamation.

There being no further business, the meeting was adjourned at 8:15 p.m.

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Date

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John Urban, Chairman

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Trevor McAleer, Vice Chairman

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Kate Straub, Recording Secretary

