

Minutes of a Meeting of
2022 CHARTER REVIEW COMMISSION
Held May 2, 2022

Present: Clete Miller, Vice Chair Scott Dwyer
 Brian Cruse Lynn Linder
 Law Director Barbour Peter Petto
 Jennifer Lesny Fleming Tara Wendell

Chairman Mike Young (illness) and Jim Strunk (vacation) were excused.

Also Present: Dwight Clark, President of Council, Peter J. Winzig, Councilman, Ward 4, Michael Greco, Councilman, Ward 3, Warren Remein.

The sixth meeting of the 2022 Charter Review Commission was called to order at 5:00 p.m. on May 2, 2022 by Vice Chairman Clete Miller.

Mr. Miller called for comments, changes or corrections to the minutes of the Meeting of the Charter Review Commission held April 18, 2022.

Motion by Mr. Cruse, second by Ms. Linder, to approve the minutes of the Charter Review Commission meeting held April 18, 2022.

Motion carried.

CORRESPONDENCE

A revised memorandum dated Tuesday, April 19, 2022 from Law Director Barbour regarding write-in candidates was noted as received. The revised version of the March 3, 2022 memorandum includes Westlake’s City Charter Article VII, Section 7, regarding write-in candidates. Mr. Barbour’s memorandum notes the concern that a write-in candidate could possibly circumvent the primary election process, and, for background, includes the following:

- Minutes of March 4, 2014 and March 24, 2014 Ad Hoc Committee Meetings
- Minutes of May 19, 2014 Council Committee Session
- Legal Opinion of August 29, 2013 to Brent Lawler, Cuyahoga County Board of Elections from Gary Ebert and Andrew Bemer.

Mr. Miller stated that the Charter Review Commission will try to get to that section this evening.

AUDIENCE COMMENTS

Mr. Miller called upon the members of the audience for comments. There were none.

Discussion began regarding the next item on the agenda for review:

Article VII Planning Commission.

Section 7.1 Membership

The Planning Commission shall consist of the Mayor or a person appointed by him to act in his stead as his deputy, one (1) member of Council to be selected by the Council for such term as it shall determine, and five (5) electors of the Municipality not holding other municipal office or appointment. The present members of the Planning Commission other than the Mayor and Councilman shall continue to serve until the expiration of their respective terms. Their successors shall be appointed by the Mayor for a term of five (5) years with the concurrence of a majority of the total number of Councilmen provided for by this Charter. The term of one member of the Planning Commission appointed pursuant to this amendment shall expire on August 18, 1963, and the term of the other member appointed pursuant to this amendment shall expire on August 18, 1965. A vacancy occurring during the term of any member of the Planning Commission shall be filled for the unexpired term in the manner authorized for an original appointment.

(Ord. 62-158; approved by voters 11-6-62.)

Mr. Miller noted the sentence reading: "The term of one member of the Planning Commission appointed pursuant to this amendment shall expire on August 18, 1963." He asked how relevant that reference is at this point, or should there be different terms now.

Mr. Cruse stated that when this was originally established this was the method for staggering the terms. It sets the baseline for the tracking of everything historically. Mr. Cruse suggested not rewording the section, and to capture the essence of what they were doing at that time, because everything tracks back to that baseline. Rewriting to explain how the terms stagger and the measuring point to start in would result in the wording being much lengthier than the existing language.

Mr. Petto stated that he does not believe it has been an issue, and any change has to be worthy of importance to change.

SECTION 7.2 - POWERS AND DUTIES OF THE PLANNING COMMISSION.

It shall be the function and duty of the Planning Commission to act as the Platting Commissioner of the Municipality and as such it shall have control of planning and shall provide regulations governing the platting of all lands within the Municipality or within three miles thereof, so as to secure the harmonious development and to provide for the coordination of streets with other streets and with the official municipal plan and to provide for open spaces for traffic, utilities, access of firefighting apparatus, recreation, light and air, and for the avoidance of congestion of population. It shall make such regulations as it deems necessary as to the manner in which streets and other public ways shall be graded and improved; the manner in which and the extent to which water, sewer and other utility mains, piping or other facilities shall be installed, or establish any other conditions precedent to the approval of a proposed plat. The Commission shall make plans and maps of the whole or any portion of the Municipality and of any land outside the Municipality which, in the opinion of the

Commission, bears a relation to the planning of the Municipality, and to make changes in, additions to, and estimates of such plans or maps when it deems the same advisable. It shall have such powers as may be conferred on it by ordinance of the Council concerning the plan, design, location, removal, re-location and alteration of any public building or structure or those located on public streets or property, the location, relocation, widening, extension and vacation of streets, parkways, playgrounds and other public places, the zoning and re-zoning of the Municipality for any lawful purpose and such other powers as now or may hereafter be conferred upon it by ordinance of the Council or the general laws of Ohio.

Mr. Dwyer asked why the first sentence states that the Planning Commission shall provide regulations governing the platting of all lands within the Municipality, **or within three miles thereof**. He noted that the City of Bay Village does not have control over the boundaries, and how does the Planning Commission have responsibility for something within three miles of the lands within the municipality.

Ms. Lesny-Fleming stated that if there is a street on the edge of a community, the Planning Commission can consider how it impacts the going forward three miles.

Mr. Miller noted that the Planning Commission oversees utilities which includes sewer systems, e.g., the Rocky River Wastewater Treatment Plant, and Columbia Road as a designated state highway. Clague Road went to four lanes in the late 90's. Mr. Cruse noted that this was definitely important when the City of Bay Village was in joint development of Walker Road Park with the City of Avon Lake. All that property was in Avon Lake, but it certainly impacted the west end neighborhoods.

Ms. Wendell asked if three miles is enough.

Mr. Cruse stated that three miles would be the extent of any drainage impact, or land run-off impact.

Mr. Miller noted the matter of water service as well, commenting that in the past there was discussion about partnering with Westlake and Avon Lake for water service.

Mr. Dwyer asked about the sentence stating that the Planning Commission shall have powers concerning the plan, design, location, removal, re-location and alteration of any public building or structure, noting that the Board of Education owns school buildings. There is no definition of public building in the Charter. Is it just assumed that there is clarity of ownership between the City and the Board of Education? This becomes an issue when thinking about the old library, Glenview, and the conversations between the City and the Board of Education. How does that come into play with the Charter, if at all?

Mr. Cruse stated his frame of reference is when the Bay Middle School was built all of the plans went through the Planning Commission.

Mr. Miller noted that the St. Raphael's Church expansion came before the Planning Commission in the mid 2000's, looking at water retention, parking, etc.

Mr. Dwyer stated that Section 7.4 says that anybody else has to come before the Planning Commission. Is the Board of Education part of Section 7.4, without being explicitly stated?

Mr. Miller stated that he considers anything the public has access to, other than a private home, is a public facility, regardless of ownership. If the United States Government owned the property, that may have different consideration. We would hope they would work with the City.

SECTION 7.3 - FUNDS.

A sufficient sum shall be appropriated by the Council each year to carry out the planning provisions of this Chapter.

Ms. Lesny-Fleming asked if there are any sums appropriated for the purpose of paying the members of the Planning Commission.

Mr. Barbour stated that there are no sums appropriated for paying the members of the Planning Commission, but there are sums appropriated for any expenses that may arise. Most of that goes to the Building Department for copies, etc. If there were expenses by the Planning Commission, e.g., requesting a review by an outside engineer, it would have to be appropriated. The Planning Commission does not incur much expense; the costs are absorbed through the departments because they are clerical in nature.

SECTION 7.4 - MANDATORY REFERRAL.

No public building, street, boulevard, parkway, park, playground, harbor, dock, wharf, bridge, tunnel, publicly or privately owned utility or part thereof shall be constructed or authorized to be constructed in the Municipality, nor shall any street, avenue, parkway, boulevard or alley be opened for any purpose whatsoever, nor shall any street, avenue, parkway, boulevard or alley be widened, narrowed, relocated, vacated, or its use changed, or any ordinance referring to zoning or other regulations controlling the use or development of land, be adopted unless and until it shall have been submitted to the Planning Commission for report and recommendation. Any matter so referred to the Planning Commission shall be acted upon by it within sixty (60) days from the date of referral unless a longer time be allowed by Council. If the Planning Commission shall fail to act within the time allotted, it shall be deemed to have approved such matter. Any provision or any resolution, ordinance or order disapproved by formal action of the Planning Commission shall require a two-thirds (2/3) vote of the total number of Councilmen provided for in this Charter for adoption or authorization. If any plan, design or other proposal concerning the character, extent, location or use of any public improvement or public property or change thereof within the territorial limits of the Municipality does not, under the law or Charter provision covering same, fall within the province of the Council or other official or agency of the Municipality, then the submission to the Planning Commission shall be by the State, County, district, school, Township or other official body, board, or commission having jurisdiction over such public improvement or property in accordance with the provisions of the general laws of the State of Ohio. The Planning Commission's

disapproval may be overruled at any time after seven (7) days' written notice by the excepting body to the Planning Commission stating the reasons for such exception. Such overruling disapproval must be adopted by at least two-thirds (2/3) of such excepting body.

Mr. Petto asked for further information concerning Section 7.4.

Mr. Miller stated that there are ordinances that affect zoning, e.g., Multi-Family Housing. The Bay Creek Development was being redrafted for the acreage. At one point it was five acres, and there was debate about what size it should be. That debate started at Council, went to Planning Commission and then back and forth between Council and the Planning Commission. There was finally a draft of the ordinance that was supposed to be reviewed by the Planning Commission for the final acknowledgement and then they would take it to the voters.

Mr. Petto stated that the point is if there is an ordinance that affects what is going to come before the Planning Commission, the Planning Commission should review the ordinance and say if they like it or don't.

Mr. Miller agreed with Mr. Petto's statement, noting that the Council ultimately has veto power over the Planning Commission's vote, but they are supposed to pass it on to Planning Commission to review it first.

Ms. Lesny Fleming noted the sentence reading: The Planning Commission's disapproval may be overruled at any time after seven (7) days' written notice by the excepting body to the Planning Commission stating the reasons for such exception. She asked if "excepting body" has been defined.

Mr. Barbour stated it is not defined.

Ms. Lesny Fleming stated that the understanding is that it is just the City Council that can overrule the Planning Commission.

Mr. Barbour stated that Ms. Lesny Fleming is correct. The ordinance that supports this sets up the procedure for the referral. Codified Ordinance 115 is for zoning; if Council wants to make a zoning change it is the process that is used. The process used can be adjusted but the Charter provides that it must be referred to Planning Commission and the Planning Commission can be overruled. Theoretically, a process could be enacted that has a different body, other than City Council. In the future it could be decided that the Board of Zoning Appeals would send things to Planning Commission, creating a different process. By use of the word "excepting" it means that the body takes exception to the decision of the Planning Commission.

Ms. Lesny Fleming stated that the way it is written makes it sounds like it is much boarder. There could be other excepting bodies that are undefined. It is doubtful that this could create an issue, but possibly in the future there could be some body that comes forward and claims they have the right to overrule the Planning Commission.

Mr. Cruse stated that would have to be controlled by City Ordinance, to give that second group that authority.

Mr. Barbour added that it would also be controlled by state law. When you read the entirety, it talks about state, county, district, school, township, or other official body or board having jurisdiction over the public improvement. Something like a joint water board that would be able to perform some function, and they would have to submit to the Planning Commission and could take exception to the action. Nothing like that has happened, but it is written to create that opportunity so an appointed board is not making a final decision on a planning matter; it gives an elected official some input, or some other board that is authorized to do so.

Ms. Wendell asked where the authorization is given, and how is it decided what that is. In the phrase about state, county, district, school, township, if St. Raphael's had submitted their plans to the Planning Commission and the Planning Commission said no, and St. Raphael's claimed to be an excepting body and disagreed, would that be an example?

Mr. Barbour stated that it would not give just anybody that authority.

Ms. Lesny Fleming stated that she thinks the section is worded poorly, but probably does not require our change.

Mr. Barbour noted that the language is sixty years old.

SECTION 7.5 - ZONING ORDINANCES.

Council shall pass such zoning ordinances and regulations as it deems necessary in the premises, and create a Board of Zoning Appeals, at least three (3) members of which shall be public members who are not members of the Planning Commission, and such members shall be appointed by the Mayor with the concurrence of a majority of the total number of Councilmen provided for in this Charter.(Ord. 62-158; approved by voters 11-6-62.)

Ms. Wendell asked if the size of the Board of Zoning Appeals was something that the Charter Review Commission had touched on earlier in a previous discussion and said this is something they would come back to when they got to Section 7.5.

Mr. Barbour stated that the size of the Board of Zoning Appeals is set forth by ordinance. Section 7.5 requires a Board of Zoning Appeals. This is to prevent a Council in the future from abolishing the Board of Zoning Appeals. They can set the size, but at least three members are not members of the Planning Commission.

Mr. Miller noted that the Village of Moreland Hills recently did a combined review for his firm, where the Planning Commission and Board of Zoning Appeals were essentially one body, having the same discussion at the same time, which can make those discussions very dynamic because they think about things differently.

SECTION 7.6 - VOTER APPROVAL OF ZONING CHANGES.

An ordinance or resolution, effecting a change in the zoning classification or district of any property within the City of Bay Village shall not become effective, after the passage, thereof, until Council submits such ordinance or resolution to the electorate at a regularly scheduled election, occurring more than 60 days after the passage of the resolution or ordinance, and such ordinance or resolution is approved by a majority of the electors voting thereon, in this Municipality and in each ward in which the change is applicable to property in the ward.

An ordinance, or resolution, effecting a change in the uses permitted in any zoning use classification or district of the City of Bay Village, shall not become effective after the passage thereof, until Council submits such ordinance or resolution to the electorate at a regularly scheduled election, occurring more than 60 days after the passage of the resolution or ordinance and such ordinance or resolution is approved by a majority of the electors voting thereon, in this Municipality and in each ward in which the change is applicable to property in the ward.

All ordinances, resolutions, proclamations, motions and Charter provisions inconsistent with this amendment are hereby repealed.

This amendment shall be severable and if any section, sub-section, part, word or application thereof is held invalid for any reason, such holding shall not invalidate or affect the force and effect of any other section, sub-section, part, word or application thereof. (Ord. 74-12; approved by voters 5-7-74.)

Mr. Barbour stated that this section was proposed in 1974 and approved on the ballot at that time. It came in the wake of the Knickerbocker Apartments, the senior housing, which was not universally accepted. At the time the Knickerbocker Apartments were approved, the City did not have referendum zoning, where zoning changes need to be put on the ballot and approved. There was the Knickerbocker, and then there was a large parcel on the west end that somebody quoted the idea of having it be for some kind of recreation purpose. This was a year or two after the Knickerbocker, and some motivated citizens used the referendum section that is coming up at the end of the Charter, and got enough votes to have Section 7.6 put on the ballot, giving the voters the final say-so on changes. The minutes from that time are interesting. That is how this come about, the dissatisfaction about the then City Council decision on some land use.

Ms. Wendell asked if Ms. Lesny Fleming would like to have some discussion on pay for the Planning Commission members.

Ms. Lesny Fleming stated that other communities do pay the Planning Commission, e.g., another city pays \$50 per meeting. It makes sense. Not only do members attend the meeting but sometimes there are hours of preparation in advance to check out the properties. There is a lot of time involved. If the City decided to pay their Planning Commission members, Ms. Lesny Fleming would be in favor of that decision.

Ms. Wendell asked if this is something that could be done by ordinance. There is in existence Section 7.3 about funding. Is the compensation something that would have to be specifically laid out in the Charter?

Mr. Barbour stated that the compensation for the Planning Commission members could be done by ordinance.

Ms. Wendell noted that Section 7.3 states “a sufficient sum.” Could a sufficient sum includes stipends for Commission members?

Councilman Greco, from the audience, commented that other cities do pay per meeting. The amount is under the Public Employees Retirement System (PERS) threshold so it wouldn't be a retirement matching for it, there would just be a social security tax which is minimum. Mr. Greco expressed that he also thinks the members should be paid.

Mr. Miller asked if the Board of Zoning Appeals members would be paid as well.

Ms. Lesny Fleming stated that it could be a nice reflection. If there is ever consideration for increasing Council salaries, to think about what other citizens are also supporting the government of Bay Village. That may be the time to make a change.

ARTICLE XI - NOMINATIONS AND ELECTIONS

SECTION 11.1 - MUNICIPAL ELECTIONS.

Regular municipal elections shall be held on the first Tuesday after the first Monday in November in the odd numbered years. Primary elections, if necessary, shall be held on the second (2nd) Tuesday in September prior to the general election date in the odd numbered years. All municipal elections shall be conducted by the election authorities prescribed by the general laws of the State unless the Council shall otherwise ordain, and the provisions of the general election laws of the State shall apply to all such elections unless the Council or this Charter shall otherwise provide.

(Ord. 11-44; approved by voters 11-8-11)

Ms. Lesny Fleming asked about the use of the word “shall” in reference to “shall be held” in the case of a pandemic.

Mr. Miller noted that the procedure of absentee voting can be used in that case.

SECTION 11.2 - NOMINATION.

Any qualified person may be placed in nomination for any elective office created by this Charter or by Council by:

(a)

A petition or petitions, in the case of a candidate for ward Councilman, signed by the registered voters of the Municipality residing in such ward in a number not less than three per cent (3%) of the vote cast at the last regular municipal election in such ward.

(b)

A petition or petitions, in the case of a candidate for any elective office other than ward Councilman (including, without limitation, a candidate for Mayor, for President of Council, or

for Councilman at large) signed by the registered voters of the Municipality in a number not less than three per cent (3%) of the vote cast at the last regular municipal election in all of the precincts comprising the Municipality.

Such petition or petitions when filed must be accompanied by the written acceptance of the nominee. Each signer of a petition shall sign his name and after his name shall designate his residence. A registered voter may sign as many nominating petitions for different candidates for a particular elective office as there are elective positions to be filled in that office at the election for which the petition is filed.

(Ord. 73-13; approved by voters 5-8-73.)

Mr. Petto asked the number of petitions a resident can sign for each particular race. He was informed that any number of petitions can be signed, noting the sentence “A registered voter may sign as many nominating petitions for different candidates for a particular elective office as there are elective positions to be filled in that office at the election for which the petition is filed.”

Mr. Barbour stated that the Board of Elections applies the City of Bay Village Charter provisions to Bay Village petitions. If there is a question they contact the municipality, for example, the part that is inconsistent with the general law of Ohio, or if we have a provision for which there is a conflict with state law. In our City’s case, they check to make sure the signature is valid; the signer is an elector. The City of Bay Village Charter allows an elector to sign as many nominating petitions for different candidates for particular elective offices as there are elected positions to be filled in that office.

Mr. Petto asked if a voter signs two different petitions for Mayor, would one of those signatures be disqualified.

He was informed that a voter can sign as many petitions as he wishes.

SECTION 11.3 - NONPARTISAN BALLOTS/PRIMARY ELECTIONS.

Commencing with the year 2009, primary elections shall be held for the selection of candidates for the offices of Mayor, President of Council, Council-At-Large, and Ward Councilperson. The two candidates receiving the greatest number of votes for a particular elective office in the Primary Election shall be selected for the election in the Regular Municipal Election. In the event that no more than two candidates file petitions for the aforesaid offices, then there shall be no primary election for these offices, and these candidates shall be designated candidates for the Regular Municipal Election. The ballots used in the elections shall be without party mark or designation of any sort. The names of all candidates shall be placed upon the same ballot and shall be rotated in the manner provided by the general laws of Ohio.

(Ord. 07-78; approved by voters 11-7-07.)

Ms. Wendell stated that this is the section that the Charter Commission should discuss prohibiting write-in candidates. The issue came up in the election in 2013 when there was a write-in candidate who eventually withdrew his name. There were several meetings of Council

and an Ad-hoc committee for discussion, and the League of Women Voters were very invested in the issue and very much against allowing write-in candidates because they felt it was contrary to having a primary election. The whole idea of a primary election is that when you get to the general election there are only two candidates and the winner will have at least fifty percent of the votes. If you allow a write-in to come in after the primary, but into the general election, while they have a very small chance of actually winning as a write-in candidate, they do have a chance of impacting that general election and creating a situation where neither of the top two vote getters reach the fifty percent threshold. That was the whole idea of having a primary, that our elected officials are elected by at least fifty percent of the votes. That was the League of Women Voters' position at that time. Ms. Wendell stated that she reviewed everything Mr. Barbour submitted, and went back through her emails from 2014 as a member of the League of Women Voters at that time. The League was very engaged in the issue and were willing to put the weight of the League behind any initiative that would go onto the ballot, including paying for distributing information to residents. A lot of the discussion was whether it would be done then while the issue was still in the forefront of everyone's mind, or wait to see if it comes up again and address it, or send it to the Charter Review Commission in 2022. It seems that they decided to send it to the Charter Review Commission.

Ms. Wendell stated that her opinion, after reaching out to some of the current leaders of the Bay Chapter of the League of Women Voters, that same interest is not still there in this issue. Ms. Wendell does not think the League would be willing to advocate very strongly on behalf of this; it certainly hasn't come up again since 2013. But, it is worth discussion because it solidifies what the whole purpose of having primary elections was when it was approved by voters in 2007 by a strong majority.

Mr. Cruse stated that if you look at federal elections and state elections you can have write-in candidates. The purpose of primary elections is for established political parties to determine who their candidates are. In a general election, that doesn't stop an independent, a Green Party candidate, a Libertarian candidate from representing their party in that particular race. We are getting very dangerously close if we go forward with this to putting forward something that is going to be seen as restricting access to the ballot. Mr. Cruse stated that (a) he is against that fundamentally, but, (b) if that is done it would mean the kiss of death on anything the Charter Review Commission would come out with to put on the ballot. In this climate it would not be successful. If someone wants to go out there and file the paperwork properly to be a write in candidate, that is their right in America.

Ms. Wendell stated that she totally agrees with that and having never run for elective office she leans on the opinions of the people that have. There is definitely some work involved in applying in any way to run, but as a write-in that work is a lot lower than pulling the petitions, getting the three percent signatures and participating in "Meet the Candidates" nights in advance of the primary. The write-in candidate just sits back and waits. There is some thought that a write-in candidate is not really engaged in representing the constituency if they don't even go to the door. All they did was sign their name and say put me on the general election ballot.

Mr. Cruse stated that his point is that this is the voter's prerogative to make that decision.

Mr. Barbour stated that a write-in candidate's name is not on the ballot. People have to physically write the name on the ballot. It would be good to discuss further the purpose of a write-in candidate and why is the deadline ninety days for a person whose name is going to appear on the ballot and seventy-two days for a write-in candidate. It is set up on purpose that way so it must be for a reason. The City of Westlake banned write-ins, and previous to that they only allowed write-in candidates if no one had an opponent. In 1996, the then and now current mayor of Westlake had no opponent and two people applied to be write-in candidates. The then Law Director for the City of Westlake filed an appeal with the Board of Elections, lost, and then filed a case with the appropriate court, which in that case got to the Supreme Court, contesting the ability to have write-in candidates. Their whole point was that you could not have two; it only says one. They lost that case and at the next election there was a ballot issue banning write-in candidates.

Mr. Dwyer stated that the intent of the primary is typically political party related. The City of Cleveland does it differently, they put everyone in a big pool of candidates and the top two candidates come out even if they are in the same party.

Mr. Barbour stated that Cleveland has a September election to narrow it down to the top two.

Mr. Dwyer said that he agrees wholeheartedly with Mr. Cruse, but the way that Section 11.3 is written it is not related to political parties, it is related to a majority vote. Mr. Dwyer also agrees with Mr. Cruse about allowing for election access. The intent of Section 11.3 is different.

Mr. Cruse stated that the run-off election process that was repealed was a better way to go for those reasons. Prior to the primary election provision put in the Charter in 2007, a run-off election process was in the Charter. That was repealed. Advocating for the run-off, the thought was nobody gets fifty percent, the argument is valid. Then we get the top two a couple weeks later while everybody is still fresh, then those top two have a run-off election versus a primary. That fits more in line with a non-partisan set-up. And, it also accounts for the write-in candidates who have to through that general election and be one of the top two at that point. That argument was lost and that is why we have the primary election. You come out of the primary with the top two.

Mr. Dwyer stated that the whole desire is to have the winner have at least 50.1%, but that is not a requirement, just a desire because of a difficult circumstance a number of years ago. We have not had a majority in the last several presidential elections. It is not ideal, but it doesn't mean the system has failed. Mr. Cruse agreed.

Mr. Dwyer stated further that the only other option would be to restrict. You can only have write-in candidates at the primary election.

Ms. Wendell stated that was another option that was discussed.

Mr. Dwyer noted that he is not advocating, but just talking out loud about an additional option.

Mr. Cruse stated that he worries about portraying the image of restricting access to the ballot.

Mr. Dwyer stated that the assumption is that having less than fifty percent as a winner is bad. That may not necessarily override what Mr. Cruse is talking about; he supports Mr. Cruse's viewpoint.

Ms. Wendell stated that in reading through the minutes of the meetings this seemed to come up a number of times, that voters are going to think we are restricting access to the ballot. This is where the League of Women Voters came in and said not to worry, they would explain it so people would understand what they were doing. They were very into it. There is not any league or any other body that has that same level of interest that would make sure that every voter understood why this is being done, it is not restricting access it is almost trying to make it fairer. Sixty-four percent of the voters passed the primary election. It is a big hill to climb, and no one may be willing to do it now because it hasn't come up again. When it did come up it was addressed well. Even if the write-in candidate hadn't withdrawn the Board of Elections would have taken care of the issue responding to the legal opinions sent to the Board. The space for that person would not have appeared on the ballot. He also filed late.

Mr. Dwyer stated that it feels to him like it is either access to elections or fifty percent of the vote. It feels almost like that kind of decision that is being made, and which is more important. To me, it would be rather to have people have access to an election than require fifty percent of the vote.

Mr. Cruse stated that Mr. Dwyer summarized it very nicely. The structure is to that goal of having a winner with 50.1%, and are we going to do something now that restricts access to the ballot.

Ms. Wendell stated that she takes an issue with restricting access because they all could file by the deadline, pull their petitions and file. Nobody is stopped from doing that. They just have waited too long, or have chosen to wait too long and give themselves an extra two months.

Mr. Cruse stated then why have a primary. You are moving the general election to September and say if nobody gets fifty percent you will have a run-off which is exactly what the voters said they didn't want.

Mr. Dwyer noted the additional cost to the City to go on the ballot.

Ms. Linder stated that to be a write-in candidate is a rough road. Someone has to know who they are and write their name in. It is not an easy thing to win.

Mr. Dwyer stated that it is less that they would win, it is more about could they get enough percentage to have somebody get 49%, somebody else get 48%, and that person gets the rest of it. It comes back to do the 50%.

Ms. Wendell stated that was the crux of the whole argument against write-in candidates, because of the potential to disrupt the intent of the primary to get to 50% plus one.

Mr. Barbour asked why the Ohio Revised Code allows write-ins. What if you have somebody that does not have an opponent and a citizen decides to become an opponent? Even in the case of a primary, a citizen feels he can do a better job and tries to climb the hill. It is hard to get elected. It requires a lot of work. Mr. Barbour stated that he cannot imagine trying to be a write-in candidate.

Ms. Linder stated that even if you threw a lot of money into your campaign you are still relying remembering your name and writing your name down.

Ms. Wendell stated it is unlikely in itself that the candidate would affect someone getting a majority vote, but it is possible.

Ms. Linder stated that it comes back to how much restriction you want to apply in this day and age. If you tell people they can't do something they will be up in arms.

Ms. Wendell stated that after all the discussion, she agrees with Mr. Cruse. Having as many people as possible to participate in the democratic process is more important than the opposite. We owed it our predecessors from eight years ago to have a robust discussion about the matter because that is what they were expecting us to do, and we did.

SECTION 11.4 - RUN-OFF ELECTION FOR MAYOR.

Editor's note— Charter Section 11.4 was repealed by the electors on November 6, 1979, pursuant to Ordinance 79-81.

SECTION 11.5 - VALIDITY OF BALLOTS.

The election authorities counting the ballots shall not invalidate or reject any ballot for any technical error which does not make it impossible to determine the voter's choice therefrom so long as the marking of the ballot complies with the general law or laws of the State of Ohio and the intention of the voter can be ascertained with reasonable certainty, and to the extent that such intent can be determined, the ballot shall be valid and shall be counted.
(Ord. 62-158; approved by voters 11-6-62.)

Mr. Cruse stated that he mis-spoke earlier. There was nothing in place when what is now Section 11.3 came up for discussion to put it on the ballot. In 1979 or 1981 they voted to repeal the run-off. There was a run-off, then there wasn't and now there is a primary.

Ms. Wendell stated that President of Council Clark stated that it seems every thirty years voters change what they want. For right now, we are satisfied with holding primary elections and allowing write-ins.

Ms. Wendell asked Law Director Barbour if Bay Village is allowed to conduct their own Ranked Choice voting, or does all voting have to go through the Cuyahoga County Board of Elections and be administered by them.

Mr. Barbour stated that Section 11.1 of the Charter says that the City of Bay Village shall follow the general election laws of the state, unless the Council or Charter shall otherwise provide. Obviously, you could propose a charter amendment. Mr. Barbour is unsure if Council can pass an ordinance that would allow Ranked Choice voting.

Ms. Wendell stated that the votes are counted by the Cuyahoga County Board of Elections. We are asking them to count, discard people, then count again. We are changing the way they run the tabulation of votes.

Mr. Barbour stated that they would do that for the City if we had the right authority, like the Charter. He does not know if passing an ordinance would be the authority. The Board of Elections will do the process according to how the Charter says it is to be done.

Ms. Wendell stated that this would side-step a lot of what was discussed this evening. If Ranked Choice Voting were done we would not need primaries, it would be one election, reducing the cost of having primaries. It would make the write-in candidate issue relatively moot because there is no primary.

Mr. Barbour stated that the Board of Elections would have to be the authority that conducts the election. There would be costs involved. It is about \$2,700 per precinct for each election. Mr. Barbour stated that he does not know how Ranked Choice Voting works on the street level. If we had more than one vote we would have to pay for it.

Ms. Wendell stated that you just vote once, and it tabulates. Everyone votes one time and whoever is the lowest vote getter is removed, then it tabulates again. It is done in the New York Mayoral race and also in Maine. It totally eliminates the primary election. It could be any number of candidates. Even if it does cost a little more for the tabulation it would still be less expensive than having a whole, separate primary in September.

Mr. Dwyer noted that it requires an educated voter. The educated voter needs to know enough about every candidate to be able to rank them. With a single selection, it requires you to at least know about that individual and one more. We are actually going to the lowest common denominator by doing a single selection vote.

Mr. Barbour stated that would seem to irritate the people who wanted a candidate to have 50% of the vote to be the Mayor.

Ms. Wendell stated that the tabulation would continue until someone reached 50%.

Mr. Barbour stated that it would take a lot of ground work before even being proposed.

Ms. Linder asked what percent of Bay Village is over the age of 65. Mr. Clark, from the audience, stated that about 25% is over 65 years of age.

Ms. Linder suggested that the older voter wouldn't get it or like it. They don't like change. It would be hard sell.

Mr. Cruse stated that if you had enough time going into it and had some kind of group that was doing the ground work, it is quite fascinating when you really boil the science of it down.

Ms. Wendell stated that the year 2023 would be the next municipal elections. You could offer Ranked Choice voting starting with the 2023 elections. It is relatively simple. You go to the ballot box and say one through five, or one through thirty, depending on how many people are on there.

Mr. Cruse stated that there isn't the time right now to get the voters approval for a Charter amendment. Longer time is needed to get people educated and comfortable with the term "Ranked Choice Voting."

It was noted that there is more than one form of Ranked Choice Voting.

Mr. Barbour stated that City Council can put Charter amendments on the ballot.

Ms. Linder stated that she is totally intrigued by it but it would take a lot of education.

Ms. Wendell stated that there are definitely organizations across the country that are advocates for this that would lend help to municipalities trying to get it out there. It would make Bay Village the vanguard of a more progressive City, which would be very cool.

Mr. Miller asked if the League of Women Voters has a position on Ranked Choice voting.

Ms. Wendell stated that the Bay Chapter has not taken a position on it, but she does not know if the National League of Women Voters has. Her feeling is that as a League they are friendly to the idea, but there is so much study involved before the League would take a position.

Mr. Petto stated that a lot of issues with Redistricting are solved by Ranked Choice voting.

Ms. Wendell asked if it would be possible to table this matter for conversation at the end of the review.

It was agreed to table as Ms. Wendell asked.

Mr. Petto stated that he is aware of several national organizations who use Ranked Choice voting.

Mr. Dwyer stated that he would like to learn more about the pros and cons of Ranked Choice voting. There may be reasons why it hasn't been adopted.

Mr. Cruse stated that it is a fairly new concept as well. It is a new thought coming forward, which is why we don't know much about it. The biggest example is the last New York Mayoral election using Ranked Choice voting. There was a lot of information about it distributed before the election.

Mr. Miller asked if the purpose is to diminish the party lines and look for the most popular candidate.

Mr. Petto stated that many of these voting systems are designed when there are situations where there are more than two opinions on how things should be, or when you have more than one issue that is distributed differently across candidates.

Ms. Wendell stated that it can help third parties. Some might not want to throw their support behind one single Libertarian or Green Candidate, thinking they are "wasting their vote." But, if they are ranked second, with the best chance first, you still get to vote your conscience by putting them second and after everything is said and done the person that got the most seconds might actually be the winner because there wasn't somebody that got enough firsts.

Ms. Wendell asked Mr. Barbour if he could speak to the Board of Elections to see if this is a possibility. Mr. Barbour agreed.

SECTION 11.6 - QUALIFICATIONS OF ELECTORS.

Any person may vote as an elector in any municipal election only if such person is a bona fide resident of the Municipality and has registered as a voter with the election authorities in the manner and within the time prescribed by the laws of the State of Ohio.
(Ord. 82-66; approved by voters 11-2-82.)

There were no comments from the Charter Review Commission.

Upon motion by Mr. Cruse, the meeting adjourned at 6:00 p.m.

/s/ Clete Miller
Clete Miller, Vice Chairman

/s/ Joan Kemper
Joan Kemper, Secretary