

**CHARTER ADVISORY BOARD MEETING  
HELD ON February 22, 2011  
AT 5:30 P.M. IN THE CITY COMMISSION CHAMBERS  
121 S.W. FLAGLER AVE.  
STUART, FLORIDA 34994**

**Chair Joe Capra  
Vice Chair Carol Waxler  
Board Member Nick Blount  
Board Member David Collier  
Board Member Amber Ducote  
Board Member Kevin Henderson  
Board Member Craig Mancuso  
Board Member Sandra Newman  
Board Member Nicala Penna (absent)  
Board Member Carol Waxler**

**Also in attendance were:  
City Manager Dan Hudson  
City Attorney Paul J. Nicoletti  
City Clerk Cheryl White (absent)  
Legal Assistant Alice Lyons**

**1. Approval of Minutes-January 19, 2011**

MOTION: VICE CHAIR WAXLER MOTION TO APPROVE MINUTES OF JANUARY 19, 2011.  
SECOND: BOARD MEMBER HENDERSON

Board Member Blount said the meeting adjourned at a later time and Chairman Capra stated to let the record reflect that the meeting adjourned at 6:15 p.m.

MOTION APPROVED UNANIMOUSLY

**2. Review of Proposed Charter Advisory Board By-Laws 2011**

City Attorney Nicoletti stated he just tried to cleanup and modernize the language, also to make it more user friendly. He noted for the record that Mr. Collier had arrived.

Board Member Sandra Newman asked about 1.2, where it states; "The City Commission to recommend changes to the 1991 City Charter, should it read; "Updates in 2001 with the current updated dates?"

Chairman Capra asked about the adjournment to a time certain, and if that was necessary.

City Attorney Nicoletti stated yes if you don't adjourn to a time certain then re-noticing is necessary.

Board Member Collier asked about adequate notice rather than the specific numbers that were in the Charter before.

Attorney Nicoletti stated he thought it was too complicated. He said by doing away with the emergency meeting, "I figure we need some flexibility." He felt the reasonable notice requirement was sufficient, and must be adhered to. "This comes out of State and Federal law."

MOTION: VICE CHAIR WAXLER MOTION TO APPROVE THE CHARTER ADVISORY BOARD BY-LAWS 2011 AS AMENDED.

SECOND: BOARD MEMBER BLOUNT  
MOTION APPROVED UNANIMOUSLY

### **3. Review of Sections 1.01 through 7.11 City Charter**

City Attorney Nicoletti stated his intention on this section was to clarify things that staff knows about, that needed to be resolved, and most are fairly minor. He noted those changes.

1.) Change language as to the number of Commission Meetings to be held monthly.

Board Member Henderson said he knew that subject to be controversial in the past.

Board Member Collier asked where you state who calls for another meeting, and if they only hold one a month.

Attorney Nicoletti anticipates that he will rewrite the administration section of the code to more clearly delineate rules of procedure, for the Commission and Manager.

Board Member Collier asked if the Charter Advisory Board have an appendix to their recommendation to deal with their recommendations to the Code.

Board Member Blount asked if the suggested language implied that a second meeting would be considered a "Special Meeting."

Vice Chair Waxler stated that the City Manager does propose the agenda. "The Commission has the flexibility of revising it if the City Manager said I don't think we have the need for a meeting. The City Manager would bring that suggestion to the Commission and they would decide whether or not to not have a meeting or to have an extra meeting.

Board Member Collier said that is his suggestion, and wanted to make sure that is the responsibility and action of the Commission.

Board Member Henderson suggested: "The Commission decides otherwise."

Chairman Capra noted the recommended language will remain. He asked if the City anticipates televising Commission Meetings in the future that would require additional information for this item.

City Attorney Nicoletti: "Currently the Charter requires that Commissioners cannot vote by video conferencing or telephone, they must attend in person in order to vote on any item."

Board Member Collier asked if there needed to be a reference to the Statutes being the document that controls situations like that. This is a standalone document, and felt that citizens need to be able to understand the document.

Chairman Capra asked about the amended language to Sec 3.05, regarding non probationary.

Attorney Nicoletti stated that probationary subordinate employees can be removed by their Department Head. He only amended language that is in red.

The Board discussed various matters of Section 5.06 City Clerk's General Duties.

City Attorney Nicoletti stated he and the City Manager met with Vickie Davis to discuss having her office conduct the City Elections. She agreed to hold the City Elections at cost, and stated would be an effective way to accomplish that task.

City Attorney Nicoletti stated it would be conducted through an interlocal agreement, which has not been put together yet. He stated both he and the City Manager agreed that this is a better way of conducting elections because they are used to doing it every day.

Board Member Blount asked about the current language in the charter regarding the qualifying with the City Clerk and if it could be done with the Supervisor of Elections.

Board Member Collier asked if that calls for a reclassification of the City Clerk's position.

City Attorney Nicoletti stated it may, at some point require an adjustment of her job description, although the Interlocal Agreement comes and it may go. "If the next Supervisor of Elections doesn't like it, then he or she could do away with the Interlocal Agreement."

Board Member Henderson stated that the City may have a Special Elections that may not fit the County cycle, it has happened before.

City Attorney Nicoletti stated that if we have an Interlocal Agreement in place, they would handle those Special Elections.

Board Member Henderson asked if the Supervisor of Elections would handle all elections of the City special or not. "Then we have this issue of the number of precincts and that they have to be staffed.

How do you cost that out verses the City Clerk running one? And in which there are three polling places in the City, and that is where you go.

City Attorney Nicoletti; "We currently have five precincts for our election, which we conducted with the help of the Supervisor this year. We staffed all five precincts, and we pretty much know what that cost is."

Vice Chair Waxler asked if we need that many precincts or is that an area that may need to be looked at.

Supervisor of Elections Vickie Davis stated they are currently looking at reducing precincts. "We are finding with trends and facts, that are showing that people are voting early and voting by mail, but not going out to precincts. This is throughout the entire County."

City Manager Hudson: "That is exactly why the Supervisor of Elections has good expertise in this, which is why it is probably a good idea that she does it."

Chairman Capra said the words "may" in here allow the City to still do it. He expressed concern over the language: Any and all duties if the City Clerk. I feel it should only be relative to municipal elections.

City Attorney Nicoletti stated that on the third line of the existing Charter, it states that one of her jobs is: She is, "The Supervisor of Municipal Elections."

Vice Chair Waxler stated she feels it is appropriate language.

Board Member Blount asked if they had received input from the City Clerk, on this.

City Attorney Nicoletti stated he, and the City Manager spoke with her and she favors the idea. He said she did note some comments on the Charter and he would bring that back at a later date.

Chairman Capra moved onto Section 5.04, Annual Financial Audit.

Board Member Blount pointed out that the language should be clear that, "It shall be made by a CPA or firm".

City Attorney Nicoletti stated that the City Financial Services Director does serve some of those functions but, the State law calls for an independent audit.

Vice Chair Waxler stated there is a committee where proposals are taken and reviewed, and a decision is made by a committee to recommend an accounting firm.

Board Member Collier said they had, in the past, referred heavily to the National Municipal Finance Officers Association for their recommendations on the wording. "How long a term is for an auditor and, the Committee to select an auditor? We thought that was good language and that is what you see here."

City Attorney Nicoletti stated we have done that process once since I have been here.

Vice Chair Capra stated I thought there was a timeline for auditors, but yet you make it sound like here, the City Manager decides when you're going to determine whether the City Commission appoints an auditor.

City Attorney Nicoletti said he can't remember whether it's actually specified in the fiscal policy, but we have in fact done it on a cycle.

City Manager Hudson: "Normally we engage contracts with the auditors, and they are multiyear contracts."

Board Member Collier; "The other thing was, is we were trying to make sure it got done promptly, because a couple of them dragged out for a long time, and the rating agencies look at that."

Board Member Henderson stated that there was something missing in that piece, and that the City eventually adopted saying, "you were going to go out every so often, and look for auditors, and there is the same old pattern of using the same one for 20 years."

Board Member Waxler stated that she thought it was changed, but she could not recall whether they did that or not. She requested that the City Attorney review the Fiscal Policy.

City Attorney Nicoletti directed the Board to Section 6.01, Fiscal Policy. It states; "April 1<sup>st</sup>, and I left that open." He said he spoke with the City Manager this morning, who is fine with April 1<sup>st</sup>. "If the Board wants to leave it that way. In my mind it can either be March or May. It just depends what is going on in the budget cycle."

City Manager Hudson stated that just for a very practical basis the significance of April 1<sup>st</sup> is the end of six months on our fiscal calendar so; the City can have that data. I have also been conducting a workshop in April as a practice."

Board Member Henderson: "I thought the date was in here because in theory the staff should bring the City Commission the history of expenditures, and revenues, and the forecast of expenditures and revenues, and talk about it with the City Manager. This is before the City Manager begins the budget process. Otherwise, you are making up the budget without direction from the City Commission. That policy discussion needs to happen early enough, to give the City Manager time, and staff time to produce a budget that is consistent with what the Commissions sets as a Fiscal Policy, for that year."

Vice Chair Waxler stated there are quarterly reviews of the budget, and the first quarter does not show much, but the six month review really shows trends.

City Manager Hudson suggested leaving April 1<sup>st</sup> date alone. "This gives us plenty of time to work on the budget."

Vice Chair Waxler stated that the budget adoption process is pretty smooth.

Chairman Capra: asked about the qualifying area.

City Attorney Nicoletti stated that this issue came up this past year, and we all knew what the current language meant, that it meant immediately preceding the election, but it did not say that.

The Board agreed to clarify the language.

Board Member Blount asked about the language regarding the Supervisor of Elections conducting the elections.

Board Member Henderson stated that the way it stands not the City Clerk, before she takes your application requires you to submit paperwork with proof they are a resident.

"We had a County Commissioner who lived in Sewall's Point but had an apartment in Stuart. Does this somehow prevent this from happening, or can this happen anyway?"

City Attorney Nicoletti stated it can happen and I know that it has in the past. You are required to sign an affidavit to qualify. That in fact you do reside. As a matter of fact the situation you are describing was kind of cured by some of this language.

Chairman Capra asked if the language included that you must maintain that residency during your term of office.

City Attorney Nicoletti: I will have to find that for you, it may not be in the sections you have in front of you. He also noted that coming down to the form of the ballot. "The way it reads today it has the City Commission prescribing the form of the ballot by Ordinance, which is cumbersome, and because we may have an Interlocal Agreement with the Supervisor of Elections I have changed it to have the City Clerk shall prescribe the form of the ballot, including the method of listing candidates for City Commission Election, in compliance with Florida Law. Then of course if the Supervisor does it, she will do it in compliance with Florida Law. That is pretty well prescribed."

City Attorney Nicoletti stated he did not touch any language below. Most of that is guided by statutes as well.

Chairman Capra asked who would then be responsible if the ballot language is incorrect, the City Clerk or the Supervisor of Elections.

City Attorney Nicoletti stated there would be an Ordinance with the specific language for any Charter Amendment.

Board Member Collier asked if that section is there would it be likely to be in State conflict which may get more complicated. "Would it be better to just state more specifically, "As provided by Florida Statutes?"

Board Member Henderson stated he felt like it was still going to create a conflict. "If someone goes to a judge and he says; no, this is not clear enough or yes, this is clear enough, then you will have that extra delay in having the judge decide."

Vice Chair Waxler: "You could have a City resident say the same thing."

City Attorney Nicoletti stated this language is State Law.

Board member Collier suggested adding a reference to State Law Statutes number at the end.

City Attorney Nicoletti stated he would add that reference.

Chairman Capra moved forward to Section 7.05, Schedule.

City Attorney Nicoletti recommended looking at holding the City's General Election on the Primary date, which is the Tuesday, 10 weeks prior to the Regular Election. "If a runoff was required, it would be held on the General Election Date in November." He noted that all of the non partisan races are already held on the primary date. "The City's elections are all non-partisan, so it would be a good fit. If we do that, we have to

adjust the terms of office for a couple of years, until it works itself out. Under current Florida law, we are allowed to do that without requirement of a referendum. So far we have not talked about anything that would require a referendum. We could actually amend this, so far by Ordinance.”

Board Member Henderson “If State parties were to shift an election date to a different Tuesday, but we have already specified all of our stuff as being an exact Tuesday, what would happen?” Wouldn’t it be easier if State in some sinc fashion as the same Tuesday as the National Primaries or State Primaries or both, and follow it up with the same Tuesday, or whenever, just in case they change one date on us, and now were....

Vickie Davis, Supervisor of Elections: “That is a good idea because historically, when you look at Florida Legislature, for many years held the primary the Tuesday after Labor Day. And because there was such a poor turnout, they then changed it to the last Tuesday in August. It could change, and that is a very good point.”

City Attorney Nicoletti stated that the statutes today are very specific. It states; “The Tuesday 10 weeks before the regular Election. That is how it describes the primary date. But, what if they decide 11 weeks?”

Board Member Collier stated he understood the direction to be to use the description of the State Election, the Primary Election or the General Election, and say you follow whatever the state does than; you don’t have to worry about that.

City Attorney Nicoletti stated then as they shift it is already taken care of. That is really a valid point.

Board Member Collier asked if there was a provision in there that off years match the on years, as far as the dates are concerned.

City Attorney Nicoletti: “If you all agree to the concept of shifting it to the primary and then having a run-off in the general, that’s really the key here. We will write it, I am going to have to rewrite this extensively to make sense.”

Board Member Collier: “That is what you do on the on years, and on the off years you use the same dates. If you can write that in and make it look legalese.

Board Member Blount: “Unless we change the term limits and eliminate....

City Attorney Nicoletti state he was going to ask the Board to think about not so much make a decision on that tonight. If we do that, than it does require going to a referendum. I think if there is a homework assignment, then you should actually talk to people about the idea of going to a four year term. I can tell you it was rejected in 1984, 1998 and in 2002.

Vice Chair Waxler: The atmosphere is this is the new normal. Elections are very expensive.

City Attorney Nicoletti stated that in 1994 the vote almost doesn’t count because it was a record low vote.

Board Member Henderson suggested waiting another 10 years to ask again.

City Attorney Nicoletti encouraged the Board to speak with people and get their feeling on where they might be. That may help you considering the issue.

Chairman Capra wanted to clarify if what were proposed were terms or term limits.

City Attorney Nicoletti stated the question before the Board was terms from 2-4 year terms not term limits. He noted that the board would see a substantial rewrite of section 7.05.

Chairman Capra moved onto Section 7.06.

Vice Chair Waxler asked if the holdover was addressed in section 7.06.

City Attorney: "You are elected until your successor qualifies in as elected, and if that was not clear I will look at that."

City Attorney Nicoletti noted that added language for an Interlocal Agreement will be added to Section 7.06. "I say in here the Canvassing Board of Martin County, but what we are going to say is "a Canvassing Board composed of, a County Court Judge, City Commissioner, whose name is not on the ballot, and the Supervisor of Elections."

Board Member Blount asked why there was not included a member at large from the community on the Canvassing Board.

Vickie Davis, Supervisor of Elections stated that it is spelled out in the Statutes who serves on the Canvassing Board.

Chairman Capra wanted to assure the language specifically called for a City Commissioner to serve on the Canvassing Board, so it is clear.

Chairman Capra: Moved onto Section 7.07, Recall.

City Attorney Nicoletti stated that this section is prescribed by law.

Chairman Capra: Moved onto Section 7.08, Quorum Requirements.

Board Member Henderson asked if the City still rotates the vote so the same person does not get asked last all the time.

City Manager Hudson stated they do.

Chairman Capra: Moved onto Section 7.09, Mayor.

City Attorney Nicoletti stated that is the second Monday in December question. I really think that even if we do change the dates that should remain the same. If you have a runoff you're going to want the new Commission to be able to vote for the Mayor, which we did not have this year. We had a situation where the sitting Commission was electing a Mayor, but there were two new Commissioners coming in in January. He deferred the Board to the top of page 20. He said he added language; "Or any other duties provided by Florida Law." He stated that in an emergency situation the Statutes

directs the Mayor on what to do. He said there were other statutes that spell out duties and responsibilities for various City Officials.

Chairman Capra: Moved onto Section 7.10, Vacancies in Office.

City Attorney Nicoletti noted no change in section 7.10.

Chairman Capra: Moved onto Section 7.11, Oath of Commissioners.

City Attorney Nicoletti stated the Oath is set by Statute.

#### **4. Public Comment regarding existing Charter.**

Ron Rose came forward and suggested the Board consider Commission Districts. He felt the current Commission is at large, and is not a fair representation of the entire City.

City Attorney Nicoletti stated that it is not uncommon in the City Manager form of government to have Commissioner's elected from Districts, at-large. It is a relatively common form in Florida and elsewhere.

Mr. Rose said that as a past candidate for City Commission he spoke with residents of the Pines who expressed unfair representation from the City. People north of the bridge felt kind of different. He said you could theoretically have three Commissioners in one condo district running the show. As the City gets bigger it may create a problem in the future.

City Attorney Nicoletti noted a new issue this past year. "It has to do with discrimination. Fair Voting Rights Act, violations can exist where you have districts, because it may disenfranchise, depending on how the districts are drawn, it may disenfranchise folks. It's like the two edged sword that you have to really look at. There are some recent case where the Justice Department has come in, and actually required complete redistricting of a jurisdiction."

Mr. Rose: I just wanted to bring this to your attention. I don't think that was the case years ago, because the town was smaller, and now it is bigger.

Vice Chair Waxler said she at first agreed and then thought about it. "Really the way the City is set up now is the residents have five people looking out for their best interest, not one. Logically, if you have a district you're stuck with that Commissioner, where as now the resident can go and pick anyone of the five. As far as the people feeling disenfranchised I think that is a geographic thing. The Fire Rescue situation does not help, but they do get their services, and the City is very much aware of either providing the services necessary as residents of the City as well as entering into Interlocal Agreements to provide those services, when it is not feasibly efficient for the City to do so. The City is just too small.

Mr. Rose suggested a designated Commissioner because it just keeps it from having three Commissioners from the same neighborhood or the same condo complex, which really can cause problems down the road.

Board Member Collier: That has really happened. It has happened at least two terms. I never saw it have any effect as far as the governing. "I worked in all the systems. He

noted a situation in Maryland. He said that he thinks the problem in the County, even though they are elected at large when you give them a District, Title, and a map, it produces someone who considers themselves a District Commissioner, and then you get all these battles going on such as you have more money for sidewalks than I do. I personally think it works now, but at the same time, I always felt the area north of the bridge has had a big of complex that we've had when we look at the County for support. That is a big enough issue to do something but, there are allot of different ways to do it.

Board Member Mancuso stated he very rarely hears complaints from residents of the Pines, but when he does its response time complaints. He said in discussions with residents over Green River Parkway they still reject connection, even if it gives them better response times. He stated he has been in from of the Commission himself, numerous times, he is thrilled with the City's response to his concerns or comments.

He stated the vast majority of the Board of Pineapple Plantation certainly feels the City is looking out for us and backing us. He stated the City is not that that large, where he felt the Commissioners are not in touch with all areas of the City. "I think the Green River Connection would get my vote."

Board Member Henderson noted the Bahama Terrace neighborhood was always remote. "I think a number of City Commissioners has served from that area over the years. He felt it was a matter of how much time needs to go by before citizen's move to new communities and learn the culture of the town, and want to serve." He suggested a group of citizens come forward with a proposal to say "They think there is a better way to do this, and we want you to think about it."

Chairman Capra suggested publishing where the Commission Candidates are so that people can raise their hands and say I want to be a candidate.

City Attorney Nicoletti stated the Stuart news already does that.

Board Member Collier stated that many areas of the City have subdivisions. He said many of the neighborhoods did not even know what their subdivision names were. He thinks it reflects well on the fact Government has not ditched anybody bad enough that they form up and says: "We are being ignored, and we need to have our own representation, and I think that is a real compliment, structured the way it is now."

City Attorney Nicoletti suggested the members talk with the Community on this matter, just like the four year terms.

**SCHEDULE NEXT MEETING:**

Chairman Capra noted the next meeting will be held March 15, 2011 at 5:30 p.m.

**ADJOURNMENT: 6:46 P.M.**