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February 9, 2010

VIA HAND DELIVERY

Honorable Mayor and Village Council
Village of Key Biscayne
88 W. McIntyre Street
Key Biscayne, FL 33149

Re: Village Charter Section 4.15

Dear Honorable Mayor and Village Council,

Recently you requested our advice regarding the election requirement imposed under Section 4.15 of the Village Charter referred to herein as the "Charter Amendment." Specifically, you have asked us if the Village electors must approve 1) changes to the Village's Comprehensive Plan/Future Land Use Plan Map, and 2) changes to the Village's Official Zoning Map. For the reasons explained below, voter approval is not required for proposed changes by the Village Council to the Village's Comprehensive Plan/Future Land Use Plan Map, or the Official Zoning Map. Those specific instances where voter approval is required are also explained below.

1. The Charter Amendment, Section 4.15

On June 12, 2007, the following Charter Amendment was approved by a majority vote of the electors:

Sec. 4.15. Approval by Vote of Electors Required for Amendments to Land Development Regulations.

No text amendment to the zoning code or other land development regulations that would create a new zoning district, or that would amend any definition of a term used in the land development regulations, or that would have the effect of allowing a use not currently permitted, increased residential density, additional hotel or other accommodation units per acre, or increased lot coverage, height, or floor area ratio, shall be effective until approved by a majority vote of the electors voting on the amendment.¹

This Charter Amendment was for the express purpose of creating “new limitations on the Village Council’s ability to amend the land development regulations to allow new uses or increased density or intensity of development, or to redefine terms used in these regulations.” (emphasis added). See Petitioner’s Committee Affidavit, attached as Exhibit 1.

2. Charter Amendment Does Not Apply To Changes To Zoning Map/Rezoning

The expressed unambiguous language of the Charter Amendment reveals that it applies to only “text” amendments as distinguished from map amendments. There is nothing within the Charter Amendment which is ambiguous or otherwise would cause any other interpretation and therefore the plain and ordinary meaning must control. A statute’s plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002). Consequently, voter approval is only required for “text” changes. No voter approval is required for any map changes.

3. Charter Amendment Does Not Apply To Changes To The Comprehensive Master Plan

Whether the Charter Amendment applies to changes of the Village’s Comprehensive Master Plan is also an issue governed by the plain meaning approach to legislative analysis. The Charter Amendment on its face expressly states that it relates to amendments to the “zoning code or other land development regulations” (emphasis added). This provision is unambiguous, highly specific and there is no reasonable interpretation of this language which could conclude that any part of this Charter Amendment was intended to apply to the Comprehensive Plan (including the Future Land Use Plan Map). A Comprehensive Plan is made up of goals, objectives, and policies and is a “statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality.” Citrus County v. Halls River Development,

¹ Notably, this Charter Amendment is consistent with Section 163.3167(12), F.S., which provides that “[a]n initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment or map amendment that affects five or fewer parcels of land is prohibited.”

Inc., 8 So.3d 413 (Fla. 5th DCA 2009). On the other hand, the zoning code and land development regulations are the actual regulations that implement the Comprehensive Plan. Id. These are distinctly different documents/laws which cannot reasonably be interpreted to be considered the same for any purposes, in particular the Charter Amendment. Therefore, the Charter Amendment does not apply to changes to the Future Land Use Map or text of the Village's Comprehensive Master Plan.

4. When Voter Approval is Required

Finally, when there is a proposal to amend the text of the Village's zoning code or other land development regulations voter approval will be required where the amendment:

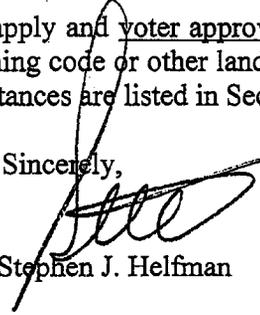
- 4.1 creates a new zoning district;
- 4.2 would amend any definition of a term used in the land development regulations;
- 4.3 has the effect of allowing a use not currently permitted;
- 4.4 increases residential density;
- 4.5 provides for additional hotel or other accommodation units per acre;
- 4.6 increases lot coverage;
- 4.7 increases height; or
- 4.8 increases floor area ratio.

CONCLUSION

The Charter Amendment only applies to text (word) changes to the "zoning code or other land development regulations." It does not apply to any changes to the Official Zoning Map (rezoning) or any change to the Village's Comprehensive Master Plan or the Future Land Use Plan Map within the Comprehensive Plan.

The Charter Amendment does apply and voter approval is required under certain circumstances where the text of the zoning code or other land development regulations is proposed to be changed. Those circumstances are listed in Section 4 of this opinion.

Sincerely,


Stephen J. Helfman

SJH/eo
Enc.

Petitioner's Committee Affidavit

I, Max D. Puyanic, a registered voter of the Village of Key Biscayne, residing at 480 S. Mashta Drive, Key Biscayne, Florida, hereby submit this affidavit for the purpose of becoming a member of the petitioners' committee and commencing the proceedings for submission of an amendment to the Charter of the Village of Key Biscayne, pursuant to section 5.02 (a)(i) of the Village Charter. As a member of the petitioners' committee, I will be responsible for circulating the petition and filing it in proper form.

I) The address to which all notices to the committee are to be sent is:

Preserve Our Key Biscayne, Inc.
c/o Max D. Puyanic
30 W. Mashta Drive, Suite 400
Key Biscayne, Florida 33149
Phone: 305-365-2600 Ext. 26
Fax 305-365-0800
Email: maxp@commodorerealty.com

II) Affiant hereby sets out in full below the proposed Charter amendment. It is proposed to amend Article IV, Legislative, of the Charter of Key Biscayne by creating a new Section 4.15, as follows:

4.15. Approval by Vote of Electors Required for Amendments to Land Development Regulations. No text amendment to the zoning code or other land development regulations that would create a new zoning district, or that would amend any definition of a term used in the land development regulations, or that would have the effect of allowing a use not currently permitted, increased residential density, additional hotel or other accommodation units per acre, or increased lot coverage, height, or floor area ratio, shall be effective until approved by a majority vote of the electors voting on the amendment.

III) The purpose of this petition is to amend the Charter of the Village of Key Biscayne to create new limitations on the Village Council's ability to amend the land development regulations to

allow new uses or increased density or intensity of development, or to redefine terms used in these regulations.

IV) It is the intention that this affidavit may be executed in any number of counterparts, each of which, when executed and delivered shall be an original but all counterparts shall together constitute one and the same instrument.

FURTHER AFFIANT SAITH NOT.

Sworn to and subscribed before me this 22 day of Dec, 2006 by:

M/D R
(Signature of Affiant)

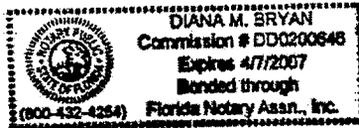
Max D. Puyanic
(Print name of Affiant)

who is personally known by me or who has produced
as identification.

Diana M Bryan.
Notary Public State of Florida

12/22/06
Date

(Seal)



□□□□□□□□