



## BREVARD COUNTY CHARTER REVIEW COMMISSION

### SYNOPSIS MINUTES

NOVEMBER 19, 2009 6:00 P.M.

Brevard County Government Center

Florida Room, Building C

2725 Judge Fran Jamieson Way

Viera, Florida 32940

- I. Chairman Kendall Moore called the meeting to order at 6:00 p.m.
- II. Jim Rosasco led the Pledge of Allegiance
- III. Roll Call: Kendall Moore, Chairman, District 1; Neta Harris, District 1; Ronald Bobay, District 1; Duwayne Lundgren, Vice-Chairman, District 2; Matthew Nye, District 3; Jim Rosasco, District 3; Sue Schmitt, District 4; Robert Ludwiczak, District 4; Tom Jenkins, District 4; and Martin Lamb, District 5

Commission Members that arrived at 6:05 p.m.: John Porter, District 2; Dale Young, District 3; Frank Zilaitis, District 5; Tres Holton, District 5

Commission Member absent: Bunny Finney, District 2

Staff Members present: Elena Scruggs, Administrative Secretary; Jacob Horowitz, CRC Attorney

- IV. Approval of Minutes of Previous Meetings
  - A. November 5, 2009

Martin Lamb – He would like it to reflect when a member arrives and leaves the meeting, for voting purposes.

Duwayne Lundgren – He noted page three, strike the word constitutional and replace with “county” on Jacob’s comments.

Jacob Horowitz – He also noted on page three, fourth line from the bottom when he spoke should also read “county”.

Sue Schmitt – She noted page 8 on her comments, strike the word was and replace with “were”. She noted page 11 on her comment, strike the word different, and replace with “difference”.

There was a format error when the minutes were sent. Some member’s minutes reflected different page numbers. After discussion the format will be sent in a PDF file; therefore, the vote is as follows:

**Ludwiczak/Lundgren – APPROVED, as amended on pages 3, 6 & 9. The vote was unanimous, 14-0.**

- V. Reports

- A. Chairman
- B. CRC Staff Person

Elena Scruggs – She passed out the final signed attorney contract.

- 1. Updated CRC Proposal Status 2009-10 distributed
- C. Other Members

**VI. Public Comment (Speakers are limited to three (3) minutes after each agenda item)**

Jim Sondey – He resides at 3105 Hield Road in Melbourne, Florida. He commented on having commissioner’s voted in at-large, and that it removes government from the people. He mentioned the problems it would cause having the entire commission centrally located in Viera.

**VII. Introduction of Guests and Their Presentations (if applicable)**

**VIII. Reports and Committees**

- A. Brevard County Charter Review Commission’s Management and Efficiency Proposal Committee Report and Recommendations on Proposal #4 – Brevard County Efficiency Commission.

Kendall Moore – He thanked the committee for their time and information that has been provided.

Robert Ludwiczak – He stated that the committee drafted language for “purpose and accountability” which everyone felt comfortable to serve the needs of an Efficiency Commission. He stated that the committee is at a point where they would like to have a vote.

Duwayne Lundgren – He mentioned the unanimous vote on the agenda report; however, he stated we are all products of our own history. He loves the idea of efficiency, but in the long run it winds up taking a huge amount of staff time, and whether the commissioners vote on it or not, it really doesn’t turn out to be very much.

Sue Schmitt – She asked if this will be a charter amendment or if this will be a suggestion to the commission.

Robert Ludwiczak – He stated that this is a request for a charter amendment. He mentioned that if there is an Efficiency Commission, the idea shall vote up or down on each and every recommendation on or before the County Commissioner’s third regularly scheduled meeting after having received the written report from the Efficiency Committee. He stated that the committee members felt it put the teeth into the Efficiency Committee.

Duwayne Lundgren – He believes if it’s going to be done, the teeth need to be in there. He also believes even with the teeth in there, it’s not going to be anything other than a huge time consumption of staff time.

Sue Schmitt – She mentioned that Polk County and Broward County’s have their way of appointing, and she asked what direction Brevard was suggestion.

Robert Ludwiczak – He stated that the committee felt they didn’t want to address that at this point and time, but look toward the attorney for suggestions, based on Polk and Broward County as to what they did for selections. He is open for suggestions at this point.

Martin Lamb – He stated that we are not legislators, and aren’t creating legislation that will be enforced because we suggested it. We are a collective body filtering through ideas with the help of an attorney to benefit Brevard County, provided this is what the public approves.

Ronald Bobay – He stated that his concern is when you call it Brevard County Efficiency Commission, and who would serve on it. He mentioned contracted group that are neutral which can come in and do studies of local government that could render a report. He would prefer and independent audit of efficiency be done and contracted on an interval. He suggested a legislative office of program policy analysis and government accountability that looks at efficiency of government and render recommendations. They are an independent arm of the legislature. He asked if that would be an appropriate agency, rather than trying to build an internal committee.

Tom Jenkins – He stated that he would like to have a level of comfort regarding the qualifications and the capability of the people that are going to be doing the analysis. He mentioned the reason for hiring an auditing firm is because they have educational credentials and experience. They also have spent many years training and preparing to have the level of sophistication and knowledge. He does not believe that this group of concerned citizens would have the knowledge to understand these specific government regulations. He stated that his concerns are for something like this to be meaningful and effective from a pragmatic standpoint; how is this going to work and succeed, and who are the people that are going to have the expertise and knowledge to understand the regulations of the various functions that exist in county government.

John Porter – He stated that the committee did not finish the entire job, but wanted to bring back what was completed to the entire CRC and see if it was enough to move forward. He stated that past Efficiency Commission was successful with saving money.

Robert Ludwiczak – He concurred with the success of the past Efficiency Commission. He mentioned the questions of why some of the recommendations were not done; therefore, as a result the Efficiency Proposal Committee drafted language for accountability.

Frank Zilaitis – He asked the CRC members if they wanted to see an Efficiency Commission going forward making recommendations which the Commission has to vote up or down. He stated that if the concept of the proposal is going to get voted down then he doesn't think the committee should continue working.

Matthew Nye – He asks that the CRC give the committee a green light on the concept so far, and give them the opportunity to flush out the details discussed.

Kendall Moore – He likes efficiency, but the success of the past processes had a great deal to do with those who were at the table on two levels, which are the qualifications and composition. He stated if there is a way to get there, he thinks it is a great idea. He likes the idea of the teeth and forcing the commission to cast a vote. He stated if the committee goes back and does some additional work to find how we can come up with the right professionals, and assuring the qualifications and composition are there, then he would be able to support this.

Jim Rosasco – He mentioned the discussion of an audit committee. He asked if the internal audit committee goes through the departments and look at efficiencies and how they operate.

Tom Jenkins – He stated that they do, as well as they look at fiscal control safe guards so abuses can't take place.

Jim Rosasco – He stated that this commission would be a complement to the efforts of the internal audit committee.

Duwayne Lundgren – He acknowledge the savings of one million dollars with insurance; however, he was unable to find anyone else on county staff to say that anything else was done. He stated that the most important thing you do in crafting a ballot item is to pick the title. He gave the example of

the “Clean Air Act”. He asked who would vote against county efficiency. He agrees that we’re not the legislators of this; we’re the proposing of this. He stated there are some things you don’t ask the people to vote on.

Neta Harris – She appreciates the idea behind the Efficiency Commission, and thinks it’s in the right ballpark, as far as bringing it forward. She looked at Mr. Ludwiczak’s County Comptroller proposal; she doesn’t agree the County Commission should appoint members to the Efficiency Commission, but looking at the Comptroller, it fits into this proposal. She suggested the Comptroller appointing the Efficiency Commission.

Sue Schmitt – She has a problem with the Efficiency Commission if any individuals are appointed by County Commissioner’s.

Tres Holton – He is not sure if everyone in Brevard County, based on the demographics and ideological truly wants efficiency. He agrees with credentialing and prerequisites. He would like a safeguard from the public’s point of view when it comes to confidence in the people that sit on the commission. He would like to make sure that they file a financial disclosure. He asked Mr. Jenkins if he sees any significant impacts that this could have to charter officers, such as auditing.

Tom Jenkins – He stated that would be a question you would have to ask the attorney. He suspects that some of the charter officers would argue that you do not.

Jacob Horowitz – He agrees. He stated that the County Commission does have some governing authority over the Sherriff’s Office and their budget. So their may be some overlapping auditing authority tied into that. He mentioned the Clerk of Courts, Property Appraiser, Tax Assessor and some of the other Charter Officers that may have some safeguards in place preventing the county from getting involved into the operations of those different charter officers and positions. He would have to do some more in-depth research to give a definitive answer.

Kendall Moore – He asked what percentage of the county’s total budget resides in dollars spent on those offices collectively.

Stockton Whitten – He stated that when we talk about the charter officers, we’re really talking about the general revenues. He approximated 50 percent of the general revenues.

Jacob Horowitz – He referenced Section 3049, subsection 3, Florida Statutes “The Sherriff shall furnish the Board of County Commissioners or the Budget Commission its annual budget, subject to review by the County Commission.”

Tom Jenkins – He stated that the County Commission approves the Sherriff’s budget. They fund it. The Sherriff also has to do the financial audit every year.

John Porter – He stated that he hopes the CRC is in support of the basic concept. He mentioned that he walked into the committee with the idea of how can we look up and out of Brevard County government, not down and in. He mentioned that half a billion dollars is spent on gasoline and oil products every year in Brevard County, which travels out to Venezuela, Russia and Iran. What about the idea of trying to figure out how to leverage our county assets here from our people, and keep the half billion in Brevard County. He thinks these are the types of opportunities the Efficiency Committee could look at to add value to the County.

Martin Lamb – He asked Mr. Jenkins if there have been studies done in the past with lots of money spent and no action taken.

Tom Jenkins – He stated he does not know that.

Martin Lamb – He stated that just because you are paying for the service and their experts doesn't mean action will be taken. He mentioned that there has to be something that states the County Commission has to vote on the individual items and do it, ~~regardless of the criteria or not~~. He also mentioned political versus non-political. He stated that it's not a rash argument to say it wouldn't be politicized, and that that political doesn't mean evil.

**Martin Lamb moved, seconded by Neta Harris to have the Brevard County Charter Review Commission's Management and Efficiency Proposal Committee research the County Comptroller and member qualifications, and report back to the full CRC, after discussion.**

Dale Young – He thinks that the reason this is before the CRC is because of the excellent job the Efficiency Committee has done in the past. Before a vote, he would like to discuss a mission, how's it formed and who appoints. He is not in favor of Broward and Polk's rules.

Tom Jenkins – He requested that Mr. Porter reconsider re-labeling the committee.

**Lamb/Harris – APPROVED to have the Brevard County Charter Review Commission's Management and Efficiency Proposal Committee research the County Comptroller and member qualifications, and report back to the full CRC. The vote was 13-1, with Young voting nay.**

John Porter – He wanted to ensure that Mr. Young's issues will be brought up and discussed.

Kendall Moore had to leave the meeting at this point. Duwayne Lundgren will be the chair for the remainder of the meeting.

B. Brevard County Charter Review Commission's County Commission Composition and Qualification Proposal Committee Report and Recommendations on Proposal #12 – Composition and Proposal #13 – Qualifications.

Ronald Bobay – He thanked all of the committee members for their assistance and dialogue. He stated the committee's discussion resulted in ten proposals focusing on the benefits and the negatives associated with each one. Each committee member voted on each proposal, which resulted in proposal numbers four and six as the highest ratings. The committee concluded that there is an interest in changing the structure of the way the County Commission is made up. He stated there were other related issues that were discussed; such as campaign contributions, salaries for commissioners and non-partisan elections. He also mentioned that it was up to the person to make a proposal to the CRC for discussion.

Robert Ludwiczak – He asked what time frame this would be taking effect, and questioned if this would cause an additional election.

Ronald Bobay – He stated that the committee felt it would coincide with the census and that the reconfiguration should come from the districts. The transition issues should be something for the attorney to address.

Robert Ludwiczak – He stated that with the way it's structured now, members cannot serve two consecutive terms. He asked if this would negate that, if this change took place.

Sue Schmitt – She mentioned that was a separate issue.

Martin Lamb – He mentioned that you cannot affect the current election where this is on the ballot. It would have come into effect during the next election cycle. He believes that the county should go

back to an at-large or stay single-member districts. He doesn't agree that there is a benefit to having all the different cycles of election, because it makes it difficult for the public.

Ronald Bobay – He doesn't want to get bogged down in the transition issues, but would rather discuss the concept of how it's going to be done. He stated that the "cinnamon" in the committee was the at-large, which had a lot of benefits.

Jacob Horowitz – He stated that the firm would come up with a transition schedule, if the CRC directed them to do so. If the proposal was placed on the November 2010 ballot, it would not have any impact on that election. It would go into effect on the November 2012 election. They would need to ensure that the staggering voting was preserved and the new terms of the elected commissioners were preserved to make sure there were no issues regarding term limits.

Robert Ludwiczak – He mentioned the "no impact" statement by Mr. Horowitz, and stated that the people running in 2010 have a four year term, and then you look at 2012; what ends up happening is you telling them that they may get two years.

Jacob Horowitz – He stated that there may be a situation where a one-time vote would have to extend the terms for a certain period of time so people serving four years may end up serving for five or six years just to preserve a stagger voting. The intent is not to have the entire commission up for election at the same time.

Tres Holton – He stated that no one has made any justification of why the current make-up. He commented that you would have individuals who could afford to run for office, or have people hold office that generally sway the large population.

Jim Rosasco – He stated that he didn't come on this commission to second guess everything that's in the Charter. He is here to tweak and fix what may be broke.

Sue Schmitt – She asked Attorney Horowitz if he made reference at the last meeting on single-member districts to the fact that Broward County; and there being a court case in appeals saying that single-member districts are unconstitutional.

Jacob Horowitz – He stated that he does not recall that. He commented that term limits provision was discussed.

Duwayne Lundgren – He stated that if the CRC decided to put something back on the ballot, and you titled it "County Commissioner operated in a non-partisan manner", and include in the wording that you were getting rid of parties, it would pass, because people want the County Commission to work in a non-partisan way. It's careful crafting of how you're putting something on the ballot.

Frank Zilaitis – He commented that we are fortunate to have been appointed by our County Commission to look at the issues. He does not want to punish anyone or himself for exploring every square inch of this Charter, because he thinks that's the CRC's job. He stated that any idea can get shot down or voted up. He felt, in listening to the body, that there was some frustration of not having someone other than a district member. So that's why he felt it was important to have an at-large component to the Commission. He commented that the committee's votes depicted a change in the composition of the commission.

**Frank Zilaitis moved to take separate votes on proposal #4 and #6.**

Ronald Bobay – He suggested a ranking sheet for everyone, if that was the desire of the CRC. He is prepared to distribute the sheet tonight.

**Frank Zilaitis withdrew his motion in favor of Dr. Bobay comments becoming a motion.**

Martin Lamb – He thought the reason for the committee was to whittle it down to the top two and then have the full CRC vote on those.

Ronald Bobay – He is open to any suggestions. He commented that the top two reflect change in the current composition.

Dale Young – He asked if he could add to the list, by having two at-large commissioners.

Frank Zilaitis – He commented that the committee is entitled to an up or down vote on their work.

**Frank Zilaitis moved, seconded by Ronald Bobay to utilize the ranking sheets prepared for the CRC, after discussion.**

Robert Ludwiczak – He thinks it's second guessing what the committee did. He prefers voting on what the committee recommends to the CRC.

Frank Zilaitis – He would agree, but there were only four members present; a fifth member could have broken the tie.

Martin Lamb – He would like the committee to continue to work with the suggestions that the body would have.

Jim Rosasco – He would only consider proposal #1, and would not rank the others.

**Frank Zilaitis moved, seconded by Ronald Bobay to amend the motion to vote on each proposal one at a time, after discussion.**

Tres Holton – He wished there was a motion to decide whether they want to change the current composition.

Jacob Horowitz – He would like procedural clarification, and what is being asked of the CRC. He understands the objective is to vote on each one these items separately, and the entire commission one vote for each separate item. He asked if the goal is to whittle it down to send it back to the committee for further review, or if the next step to direct the firm to prepare some form of a proposal, or to research the matter further.

Frank Zilaitis – He stated that the motion would whittle it down so that it shows the winning proposal. If the proposal is anything other than what is current, then there will be direction to the attorney.

Matthew Nye – He thinks this negates the purpose of assigning a committee if you're going to rehash what's already been done.

**Zilaitis/Bobay – FAILED to vote on each proposal one at a time. The vote was 2-11, with Harris, Lundgren, Nye, Rosasco, Schmitt, Ludwiczak, Jenkins, Lamb, Porter, Young and Holton voting nay.**

**Robert Ludwiczak moved, seconded by Frank Zilaitis to vote on proposals #4 and #6, as ranked by the committee, after discussion.**

Martin Lamb – He asked for clarification on the motion.

Robert Ludwiczak – He stated that the committee voted on their work, and it appears that proposals #4 and #6 had a tie. The CRC would vote to send one of the proposals back to the committee, or select one for approval.

Martin Lamb – So he understands the other proposals would be deleted.

Duwayne Lundgren – He asked if the majority voted on proposal #4, then does proposal #6 get voted on.

Robert Ludwiczak – He responded, “No.” He stated that proposals #4 and #6 would be voted on by majority.

**Frank Zilaitis moved to amend the motion to vote that the CRC role call on the proposals and each member respond with 4, 6 or no.**

Jacob Horowitz – Each member must vote on each item. There can't be a bifurcate to disjoint the process.

**Frank Zilaitis withdrew his amendment.**

**Robert Ludwiczak moved, seconded by Frank Zilaitis to amend the motion to vote on proposals #1, #4, and #6 to keep under deliberation only, after discussion.**

Jacob Horowitz – He wanted to clarify that an affirmative vote of 1, 4 or 6, would leave those items on the table for discussion, and the remainder of the proposal are off the table.

Frank Zilaitis – He understand that if a majority votes for proposal #1, then the CRC is completed.

John Porter – He stated that the CRC is voting to keep the three proposals and get rid of everything else.

**Ludwiczak/Zilaitis – APPROVED to vote on proposals #1, #4, and #6 to keep under deliberation only. The vote was 10-3, with Rosasco, Young and Holton voting nay.**

**Martin Lamb moved to send proposals #1, #4 and #6 to the Brevard County Charter Review Commission's County Commission Composition and Qualification Proposal Committee to analyze further for drafting a single proposal, or create more proposals. The vote fails due to lack of a second.**

**Sue Schmitt moved, seconded by Frank Zilaitis to individually vote on proposals #1, #4 and #6, after discussion.**

Martin Lamb – He asked for clarification on the motion.

Sue Schmitt – She explained that if proposal #1 passes, then it doesn't have to go back to the committee. If proposal #4 passes then it would go back to the committee.

Martin Lamb – He mentioned that there could be all three of the proposals drafted and put on the ballot.

Jacob Horowitz – He explained that if there is a motion made on proposal #1, and it passes then the commission is done. He stated they will not present conflicting proposals on the ballot, but can present multiple proposals for the CRC's consideration.

Jim Rosasco – He wanted clarification on whether or not there would be continued research on the proposals.

Jacob Horowitz – He stated that would depend on the maker of the motion and the commission.

Frank Zilaitis – He mentioned that this is a procedural vote. He stated that the commission is voting on how to proceed. He stated that the commission is not voting on proposal #1. The commission is voting on whether to vote on proposal #1, first.

Sue Schmitt – She confirmed Mr. Zilaitis comments.

**Schmitt/Zilaitis – APPROVED, to vote in procedural order of proposals #1, #4 and #6. The vote was 8-5, with Nye, Lamb, Rosasco, Young and Holton voting nay.**

**The vote for proposal #1 was 9-4, with Harris, Bobay, Lundgren and Zilaitis voting nay.**

The board took a recess from 7:50 p.m. to 8:00 p.m.

## IX. Unfinished Business

### A. Discussion regarding Memorandum 2009-02 from CRC Legal Council – (Proposal #14 Terms of Office)

Jacob Horowitz – He referenced the memo he provided for the CRC. He stated that the Firm concluded in their findings that term limits for County Commissioners are unconstitutional, unenforceable and that there is a provision in the County Charter currently which provides for an eight consecutive year term. He stated that their advice, if asked, would be that provision is unenforceable. He referenced the Cook v. City of Jacksonville case, which dealt with term limits for county officers. He also mentioned that case law referenced county commissioners as county officers. He stated given the broad, statewide implication of this conclusion, the Commission may want to consider requesting an opinion of the Attorney General to provide further clarification.

Sue Schmitt – She asked Attorney Horowitz if he felt more comfortable if they asked for an Attorney General's opinion.

Jacob Horowitz – He stated that they are comfortable with their opinion given. They spoke with several colleagues, as well as the County Attorney; however with the broad, statewide implications it may be something the board may want to consider.

Jim Rosasco – He stated he wouldn't change the Charter if there is something going through the courts right now, and let the chip fall where they may.

Jacob Horowitz – He stated their research did not find any pending cases. He mentioned the decision of the Supreme Court was made in 2002. In the event the board leaves the language in the Charter, then it leaves it up to the County Attorney's office to interpret it if asked by his elected officials.

Martin Lamb – He asked the attorney if he researched the actions. He mentioned that he was a party in the suit for the constitutionality of the term limits in 1998.

Jacob Horowitz – He stated that based on the research they've done, it showed term limits as unconstitutional.

Martin Lamb – He mentioned that the three legal panel that reviewed this before considered it constitutional.

Jacob Horowitz – He stated that the Supreme Court found that term limits for county officers are and additional disqualification on the right to run for office. He mentioned that there is a bill pending for joint resolution in the Florida Senate, which was proposed by Mike Bennett, which is suggesting a recommendation to change to the Florida Constitution, which would address this issue.

Martin Lamb – It is his opinion the board should not consider term limits unconstitutional.

Sue Schmitt – She referenced the Senate Joint Resolution, dealing with elected county and municipal officers; she asked if that meant city councils.

Jacob Horowitz – He responded, “Correct.”

Sue Schmitt – She asked if that included School Boards.

Jacob Horowitz – He stated that school board did not mean municipal officers.

Sue Schmitt – She stated that would have lots of implications, which are not there right now.

Jacob Horowitz – He stated there is no question this is a highly hot issue, and it will have significant state wide impact.

**Sue Schmitt moved, seconded by Martin Lamb to authorize the CRC Attorney to obtain the Attorney General’s opinion on term limits pertaining to County Commissioners, after discussion.**

Dale Young – He stated that the vote was three to three. Their decision was based on disqualification of candidates.

Jacob Horowitz – He understands the case essentially saying that the constitution clearly defines the disqualifications for an individual to run for elective office.

Dale Young – It is his opinion that these people reached out in left field to get the opinion, because what they said is if the constitution does not tell you can disqualify, then it’s illegal. He stated that you can’t disqualify a commissioner for not being in the district.

Robert Ludwiczak – He referenced the Senate Joint Resolution, page 2 of 4, Article VI (b), and read that into the record. He asked how the constitutionality of two terms differs from three terms.

Jacob Horowitz – He referenced their memorandum page 3, Article VI, Section 4(a) and (b), sets out the disqualifications for elective office, as provided by the Florida Constitution. Mr. Ludwiczak is referring to a proposed constitutional change submitted by Senator Bennett, which is under review in the Florida Senate. The Senate cannot amend the constitution by majority vote. Ultimately, they can adopt a resolution and start the ballot process, but to incorporate the language Mr. Ludwiczak referenced, it would need to go before the Electorate of the State.

Tres Holton – He thinks that what really matters is what the qualifying officer for the candidate is going to do or not do.

Jacob Horowitz – He stated that was an issue that was addressed in one of the cases; where a qualifying officer rejected the filing papers. The court directed the qualifying officer to accept the papers and allow them to run, despite the language in the Charter, which imposed a term limit.

Duwayne Lundgren – He stated that Brevard County still has term limits, unless somebody takes it to court.

Frank Zilaitis – He stated that the Florida Constitution, Section 4, Disqualifications; that there is term limits for US Representation and US Senate. That has been voted federally unconditional, and it's still in our constitution. The de-facto language in the Charter says there are term limits. He votes to not spend any more time on this issue.

**Martin Lamb withdrew his second. There was no additional second. The motion fails due to lack of a second.**

**Martin Lamb moved, seconded by Jim Rosasco to TABLE INDEFINITELY, Item IX. A. The vote was 8-5, with Bobay, Schmitt, Lundgren, Nye and Jenkins.**

Sue Schmitt – She asked Attorney Horowitz if term limits was not removed from the Charter, what the liability of this Commission is.

Jacob Horowitz – He responded, “None.” He stated that the provision in the Charter is valid until challenged.

B. Discussion on Proposal #15 Candidacy and Election

Jacob Horowitz – He mentioned that this item was the reevaluation of the actual proposal to address term limits. They were lumped together for purposes of discussion. There's no procedural issue.

X. New Business

A. Proposal #17 Meetings (Ron Bobay)

Ronald Bobay – He stated that there may be particular commissioners who would prefer being a Chair rather than those who wouldn't want to be one. He stated that it takes flexibility away from the commission to make their own self determine designation of a chair.

Robert Ludwiczak – He asked what Mr. Bobay's intent was for the proposal.

Ronald Bobay – He thinks it's a common sense approach to having a body meet, and why would we impose a provision that would dictate how they select a chair.

Matthew Nye – He stated that this is self-explanatory, and in the interest of time, he asks for somebody to make a motion or move forward on to the next item.

Tres Holton – He stated that he thinks this was put in the Charter so there isn't a king maker.

**Frank Zilaitis moved, seconded by Ronald Bobay to vote up or down on proposal #17-Meetings, after discussion.**

Dale Young – He asked if this rises to an electoral ballot, it's expensive.

Martin Lamb – He doesn't see the value of putting it on the ballot due to the expenses.

**Zilaitis/Bobay – FAILED, to vote up or down on proposal #17-Meetings. The vote was 2-11, with Harris, Porter, Young, Nye, Rosasco, Schmitt, Ludwiczak, Jenkins, Zilaitis, Holton and Lamb voting nay.**

B. Proposal #18 Authority and Jurisdiction (Ron Bobay)

Ronald Bobay – He stated that his perception now is that there are independent offices that present their budget, and the county has to fund it.

Tom Jenkins – He stated that state law dictates how the tax collector and the property appraiser do their budgets. The Property Appraiser submits their budget to the Department of Revenue. The County Commission has the ability to appeal that budget to the Department of Revenue. The Tax Collector's budget is formulated by a formula based on how much money they collect. They get a certain percent of what they collect in tax dollars. He is unsure if you could have a conflicting charter.

Jacob Horowitz – He agrees with Mr. Jenkins. They would have some procedural issues.

Ronald Bobay – He asked if there are constitutional offices that do, in fact, have to go to the County Commission for funding.

Tom Jenkins – He stated that the Sherriff, Supervisor of Elections and a small portion of the Clerk.

Ronald Bobay – His concerns are that the County Commission is having significant shortfalls, and it appears to have little or no authority in certain of the constitutional offices, and yet their required to fund them.

Tom Jenkins – He stated that he thinks you have to change state law.

Jacob Horowitz – He stated that there was a highly contentious case between the Broward County Sherriff and the Broward County Commission this past budget cycle that resulted in some very high press issues related to the County Commission directing the Sherriff to cut his budget. There was significant public safety component to do those budget cuts.

Jim Rosasco left the meeting around 8:35 p.m.

**Ronald Bobay withdrew his proposal.**

C. Proposal #19 Limitation on growth in ad valorem tax revenues (Ron Bobay)

Ronald Bobay – He stated that he wants to remove limitation on growth in ad valorem tax revenues.

Martin Lamb – He thinks that the citizens requested this amendment to the Charter, and not through the CRC process.

Ronald Bobay – He asked how old the citizens' requests were.

Martin Lamb – He stated that there were approximately nine years.

Duwayne Lundgren – He stated he thinks the current language, once the Supreme Court said it was unconstitutional, the State Legislature passed a special act to put it on the ballot in the last election, wording in a way that almost nobody could understand what it was except that it was lowering taxes.

Martin Lamb – He said that's taxation without representation. He stated that all constitutions and charters are to protect the people from government, and not to give the government what they think we need.

Ronald Bobay – He stated that it’s a matter of perception. He mentioned that we want a dollar’s worth of service for less than a dollar. He sees the pressure on the elected bodies that are there to try and respond to community needs that have defined limits, and can’t respond. And then people wonder why they can’t have the roads they need.

Martin Lamb – He stated that you need to educate them.

Neta Harris – She asked if there was a study or ordinance that speaks to this.

Duwayne Lundgren – His recollection was that it was challenged by the Sherriff and a couple other people. It was the “cap it” language. It went to the Supreme Court and declared unconstitutional. The State Legislator passed a special act that would allow the County Commission to put a six, eight, or nine percent mileage added onto the mileage rate, but it was written in such a way to make sure everyone was going to vote on not more than three percent, or two percent of the CPI.

Tom Jenkins – He wonders if the CRC should look at the State Legislation that was recently passed, and see if that should be in Charter.

Dale Young – He stated that this trumps over state statutes, and he doesn’t think it would go anywhere. He doesn’t know if it should get to the ballot.

Sue Schmitt – She agrees that if the Florida Legislature has changed since the Charter was originally done, then we need to have what the legislation is showing for Brevard County.

Duwayne Lundgren – He believes the Charter reflects the updated language.

Ronald Bobay – He stated if it is reflected than this proposal is moot.

John Porter – He understands that Mr. Bobay wants to unshackle the County Commission so they may raise taxes when needed to meet the needs of our community. He stated that the people have said no, they want to cap it. He stated that if there is a majority, our County Commission can vote to do things.

Tres Holton – He stated except the 1974 Special Act that applies only to Brevard County.

Sue Schmitt – She asked if it would be worthwhile to know exactly what the law says.

Jacob Horowitz – He stated that this language was implemented in the Charter last year, 08’. He stated that there is language in the section which tracks 193, as amended. To the extent those are sections are amended in the future, this will change with the Florida Statutes as those statutes are amended sub-sequentially. With regards to the impact the new state law has on the special act, as a general concept, a newer state law will always trump a former state law that it conflicts with. He would like an opportunity to research further into the special act and find out if there were any expressed conflicts between the special act and the new legislation.

Tom Jenkins – He thinks that there was a special act in 08’, because it was Brevard County.

Jacob Horowitz – He mentioned if there was a special act for Brevard County which expressly conflicts with a prior special act specific to Brevard County then the newer special act would prevail.

Sue Schmitt – She thinks it would be helpful to know which, and if both special acts are in effect.

**Ronald Bobay withdrew the proposal.**

**John Porter moved to study the issue of emergency taxation by the Brevard County Commissioners.**

Frank Zilaitis – He mentioned the procedures in place, and request that Mr. Porter submit his proposal in writing to allow the CRC time to contemplate.

C. Proposal #20 Audits (Ron Bobay)

Ronald Bobay – He would like to add additional language to include the constitutional officers audited.

Tom Jenkins – He stated that he believes this refers to the annual financial audit, and that does include all the constitutional officers.

**Ronald Bobay withdrew the proposal.**

D. Proposal #21 Creation and General Powers of Home Rule Charter Government (Frank Zilaitis)

Frank Zilaitis – He stated that he read the Constitution of the United States, Constitution of the State of Florida and the Charter of Brevard County. He saw the “We the People” language being the first sentence in Section 1.1, as being substantive law. He doesn’t agree the first sentence is substantive law; it is more in nature of a preamble. He thinks to be consistent with the constitutions, we should have a preamble. He made one change to the arrangement of the words, which are depicted in his written proposal.

**Zilaitis/Ludwiczak – APPROVED to accept proposal #21, and have the CRC Attorney research and draft a proposal. The vote was 11-1, with Lamb voting nay.**

XI. Adjournment at 9:01 p.m.

The next meeting will be held on December 3, 2009, at 6:00 p.m., located in the Florida Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940.

Pursuant to Section 286.0105 Florida Statutes, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she will need to ensure that a verbatim record of the proceedings is made, at his or her own expense, which record includes the testimony and evidence upon which any such appeal is to be based. Such person may provide a court reporter, stenographer, or a tape recorder for such verbatim record. In accordance with the Americans Disabilities Act, persons needing a special accommodation or an interpreter to participate in the proceedings, the County’s Manager’s Office, (321) 633-2001, at least 48 hours in advance.