



## BREVARD COUNTY CHARTER REVIEW COMMISSION

SYNOPSIS MINUTES  
DECEMBER 17, 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 6:05 p.m.
- II. Tom Jenkins led the Pledge of Allegiance
- III. Roll Call: Kendall Moore, Chairman, District 1; Duwayne Lundgren, Vice-Chairman, District 2; Bunny Finney, District 2; John Porter, District 2; Dale Young, District 3; Matthew Nye, District 3; Jim Rosasco, District 3; Sue Schmitt, District 4; Robert Ludwiczak; District 4; Tom Jenkins, District 4; Frank Zilaitis, District 5; Tres Holton, District 5 and Martin Lamb, District 5

Commission Members absent: Neta Harris, District 1 and Ronald Bobay, District 1

Staff Members present: Elena Scruggs, Administrative Secretary; David Tolces, CRC Attorney

- IV. Approval of Minutes of Previous Meetings
  - A. November 16, 2009 Brevard County Charter Review Commission's County Commission Composition and Qualification Proposal Committee

**Porter/Lundgren – APPROVED, as submitted. The vote was unanimous, 12-0.**

B. November 19, 2009

**Porter/Lamb – APPROVED, as amended on pages 4 and 5. The vote was unanimous, 12-0.**

C. December 3, 2009

**Finney/Porter – APPROVED, as amended on page 6. The vote was unanimous, 12-0.**

- V. Reports
  - A. Chairman

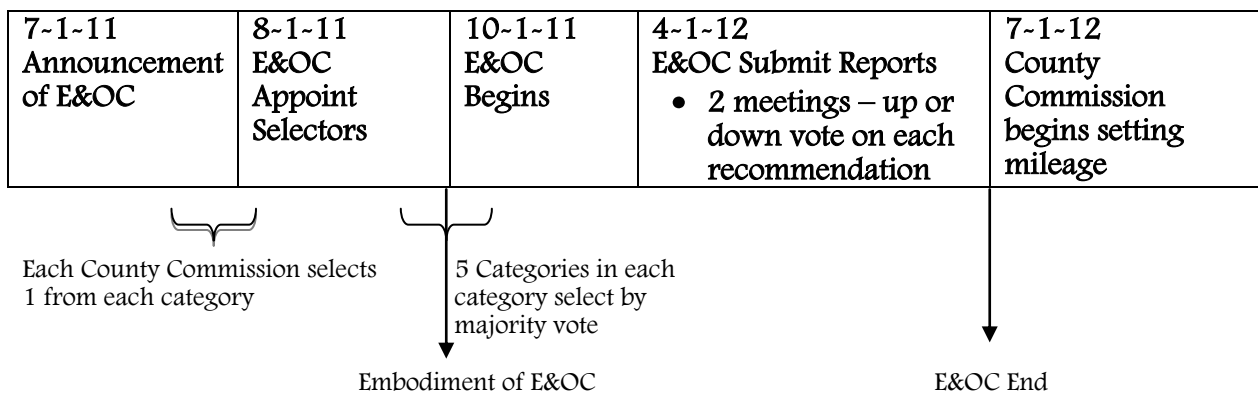
Kendall Moore – He noted there was a letter from Harold Bistline, School Board Attorney, which was passed out to everyone for their review regarding Item X. C.

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

Robert Ludwiczak – He advised the CRC of the actions of the Management and Efficiency Proposal Committee. He stated that they established a name change, which now reflects “Efficiency and Opportunity Commission.” He mentioned that the Commission would meet once every six years.

He explained there are five categories, which consist of Private, Public, Academia, Citizens and Media, and each of the County Commissioners would appoint one individual from each category. That would be known as the Selection Committee, which would appoint the permanent members for the E&OC.

Frank Zilaitis – He explained that the process of the E&OC would be once removed from the political process of selection. He explained the timeline, which is depicted below.



Duwayne Lundgren – He stated that the idea of the County Commission making a selection of 25 people, and then having those people doing the actual selection is considered a double-blind solution to make sure the E&OC is as pure as you can get it with as little political influence as possible.

John Porter – He stated that if the CRC votes in favor of the proposal moving forward then the committee would like to ask for input on how the work is done on the E&OC. He would like to know how they would operate during the six months. He mentioned that every six years the county situation will be different, requiring different needs. He explained the E&OC would work to be flexible with the county’s needs at that time. He also mentioned that they wanted the purpose to reflect the opportunity aspect.

Robert Ludwiczak – He asked for clarification of whether or not the CRC was ready to move forward with the recommendations, or if there were still some more work that needed to be done.

Duwayne Lundgren – He explained that the E&OC would operate in a lot of the same ways the CRC operates.

John Porter – He thinks with one more meeting the committee could come up with the framework of how the commission works. He mentioned that with an opportunity commission, it provides a funnel for proposals to be brought forward for discussion, requiring an up or down vote to send to the County Commission.

Jim Rosasco – He wonders if it is necessary to have two generations of categories when it could be sufficient to only have one. He suggested having the Efficiency Commission appoint subcommittees for target projects.

Kendall Moore – He hopes to have a proposal after the January 6<sup>th</sup> meeting to consider.

Martin Lamb – He asked if it was appropriate to submit information to the committee through Elena, as well as attend the meeting.

David Tolces – He stated that you could certainly attend the meetings, because they are noticed and opened to the public. You would be attending as a member of the Board and not as the committee. If you are presenting any information it would need to be submitted to Elena for distribution.

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

No general public comments.

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

A. Lisa Cullen, Brevard County Tax Collector

Lisa Cullen – She introduced herself. She stated that she took office in January of 2009. She thanked the CRC for their work to make Brevard County a better governmental place. She noted that she received a letter from the CRC inviting her to the meeting. She mentioned that she does not have any specific items to speak to, but is hear to answer any questions the CRC may have.

Frank Zilaitis – He congratulated her on taking office. He asked her if there was anything that needed tweaking in the Charter for the CRC to address.

Lisa Cullen – She feels that one of things that has been a hindrance is predecessor signed contracts to abide by up to 2014, which is beyond the term she will fulfill. She stated that she will not sign a contract encumbering her office beyond her term of 2012.

Kendall Moore – He mentioned that letters were sent out to all the Charter Officers, County Commissioners and many others at the request of the CRC.

Robert Ludwiczak – He asked how she would craft an amendment to include the term for not encumbering on a contract.

Lisa Cullen – She stated that she believes she will answer to the public in 2011 elections. She thinks there should be some leeway, like six months to a year, because you can't renegotiate every contract you may be dealing with. She may not have the opportunity to serve that second term; therefore, taking the timeframe into account is important.

Matthew Nye – He asked about the 2014 contract, and when that was entered into.

Lisa Cullen – She stated it was 2002. She finds that she can renegotiate a contract for a better price today, than a few years ago.

Frank Zilaitis – He asked Mr. Tolces if this would be in the purview of the County Charter. He stated that his concern for the correction might be in the statutes.

David Tolces – He would agree with the respect to the Tax Collector, Property Appraiser, Supervisor of Elections and Sherriff, and that the Florida Statutes provide the guidance for the operation of their office, budget, how they get approved, and how they get funded. He would have to do some research, but he thinks it is not something that would go in the Charter. It typically is governed by State Statute.

Matthew Nye – He mentioned the problem with the contract entered into with AT&T and the County, and that it is a three year contract. He also mentioned the County Commission seats coming up for election next year, and their hands being tied with that contract.

Duwayne Lundgren – He referenced the Charter's ability for the CRC; "The office of the Tax Collector shall be directed by the tax collector and shall be responsible for carrying out all functions, duties and requirements prescribed by the constitution and laws of Florida for the Office of the Tax Collector, subject to the exceptions provided in this Charter, and with the additional powers and duties that may be conferred in this Charter." He stated that the CRC could do something.

Martin Lamb – He wanted to know if Proposal #25 County Comptroller would move forward for discussion.

Kendall Moore – He stated that the CRC would.

Frank Zilaitis – He stated that he announced to the committee, yesterday about a proposal he was considering, which was to come up with an algorithmic approach to controlling expenditures by way of referendums.

Dale Young – He would like researched labor contract and leases to see if there are conflicts in those areas.

Jim Rosasco – He would like the CRC to look at all the constitutional officer's contracts.

#### B. Scott Cuthbert, Property Owners (Code Enforcement) Bill of Rights

Scott Cuthbert – He stated that there are various citizens that have problems with Code Enforcement. He would like the CRC to propose a referendum to put before the voters for a Property Owners (Code Enforcement) Bill of Rights to prevent abuses. He gave some examples of what would be included in the amendment. He passed CD copies of the Code Enforcement Workshop with the County Commission. He also passed out his proposed Bill of Rights.

Jim Rosasco – He asked what organization he was affiliated with.

Scott Cuthbert – He stated he's a property owner in Brevard County, and also a member of FACEOFF.

Robert Ludwiczak – He asked Mr. Tolces if he was correct in stating that there are three processes for submitting a proposal. One being that the CRC would accept his proposal. Second, the County Commission to accept his proposal. Third, he would have to have so many signatures on a petition to have it put on the ballot.

David Tolces – He stated that would be correct, plus the State Legislature would have to amend the statutes that govern Code Enforcement.

Martin Lamb – He wanted to specify that a private citizen would be able to submit a proposal for the CRC to consider.

Scott Cuthbert – He stated that he is completely unsatisfied with what happened in the workshop with Code Enforcement and the County Commission.

Bunny Finney – She stated that the discussion is not germane to the Charter, and the CRC does not have authority over this.

Tom Jenkins – He asked about his proposal and if the theme is public danger.

Scott Cuthbert – He doesn't believe there should be code violations for aesthetics.

Tom Jenkins – He gave an example of a rundown house with broken windows and the grass not being cut. He asked Mr. Cuthbert if felt that was a problem.

Scott Cuthbert – He felt it would be a public nuisance; however, if there was someone there trying to maintain it, but couldn't, there should be some kind of help through the County government. He mentioned several problems with Code Enforcement. He thought the CRC had the authority to place something on a referendum.

Frank Zilaitis – He stated that there have been three times that people have come here seeking remedies for Code Enforcement. He asked if the CRC can act on his remedy, or if not, then advises the gentlemen where he can seek action on the remedy.

David Tolces – He stated that the County’s ability to use Code Enforcement as a tool for remedying violations of it’s code come from Chapter 162, Florida Statutes. The statute provides specific methods and procedures by which a county can establish and process Code Enforcement and violations. As a result that it’s in a statute, it would preclude you from adopting any charter provisions that would attempt to supersede or be inconsistent with what’s in the statute. It is his opinion that anything related to Code Enforcement, or the ability to enforce, the ability to process, notice provision, how the special magistrate or the board operates, or how the County Commission goes about adopting it’s ordinance concerning Code Enforcement, should not be in the Charter. He feels their remedy is with the County Commission by adopting ordinances to amend their specific process, or, if they can through the State Legislature to amend the state statute that regulates Code Enforcement.

Martin Lamb – He wants clarity that the CRC does not have authority to address these issues. He mentioned to Mr. Cuthbert that they need a better public campaign. He stated that he would be glad to help with the campaign. It is his understanding that it would be unconstitutional for the CRC to do something to change the problem with Code Enforcement.

**Frank Zilaitis moved, seconded by Duwayne Lundgren to go to the next agenda item, after discussion.**

Matthew Nye – He is not in favor of the motion.

John Porter – He would like everyone to be heard before moving on to the next item, out of respect.

**Frank Zilaitis withdrew the motion.**

Dale Young – He stated that this came up in discussion as Item 14, in 04’, as Bill of Rights. He stated it was considered by the CRC. He mentioned that there is also a property rights issue, which was Item 42 in the same Charter. He stated that it sticks in his mind that Broward County has a Bill of Rights in their Charter. He thinks there is a legitimate stance for someone to take this up if they feel.

David Tolces – He stated that Broward County Charter has a Bill of Rights. He mentioned that the issues that Bill of Rights addresses are issues that are general to County government, and not specific to how the Code Enforcement division operates.

Matthew Nye – He asked if it is possible for the Charter to restrict the county – you can only do what is explicitly defined in the Florida Statutes and no more.

David Tolces – He stated that the Charter must state that all actions shall be consistent with Florida Statutes.

Scott Cuthbert – He stated that Code Enforcement, as it operates does not provide people with a statutory notice required by Chapter 162, Florida Statutes. He asked what good is the law if the county is not going to recognize the right of the citizens. He is asking for a statement that Code Enforcement follow constitutional and statutory rights and the citizen’s fundamental rights to due process.

**Martin Lamb moved, seconded by John Porter to have the CRC Attorney research if the CRC has authority to review Code Enforcement, after discussion.**

John Porter – He stated that it will boil down to how the proposal is worded.

Robert Ludwiczak – He stated that if the CRC votes this up, it will establish precedence for everybody who comes before the CRC to have the CRC Attorney research whether or not their proposal is valid. He stated that we don't know what this gentleman's proposal is.

**Martin Lamb withdrew his motion. John Porter withdrew his second.**

**Frank Zilaitis moved, seconded by Duwayne Lundgren to go to the next agenda item. The vote was unanimous, 12-0.**

Kendall Moore – He recommended that Mr. Cuthbert meet with Ms. Scruggs to get the agenda report form so he can submit his proposal.

## VIII. Reports and Committees

### IX. Unfinished Business

Tres Holton arrived at 7:20 p.m. just before Item X. A.

### X. New Business

#### A. Proposal #25 County Comptroller (Ron Bobay)

Kendall Moore – He asked if someone would like to speak on this item since Mr. Bobay was absent.

**Young/Ludwiczak – POSTPONE DEFINITELY, until January 7, 2010. The vote was unanimous, 13-0.**

#### ~~C.~~ B. Proposal #26 Election of School Superintendent (Dale Young)

Dale Young – He stated that out of the 67 counties, 44 have elected school superintendents. He stated that elected school superintendents generally make less than appointed superintendents. He mentioned that there are examples throughout the state as how the elected superintendent operates. He stated that it doesn't interfere with the statutory duties.

Robert Ludwiczak – He asked if there would be certain criteria and educational experience for the seat.

Dale Young – He mentioned that the other elected school superintendents come from a wide variety. He noted that in the other counties, there are school nurses, business administrator, etc. running for the seat. He is not certain if a referendum was done for the school superintendent.

Duwayne Lundgren – He thought it was before 1992.

Dale Young – He doesn't remember that happening, and if the event ever occurred. He stated that Mr. Bistline didn't make his case in his memo. He can't agree just because the constitution does not include it, that it prohibits it. He thinks it would be allowed as the tenth amendment.

Jim Rosasco – He is not in support of an elected superintendent.

Matthew Nye – He stated that Mr. Young stated that there were 44 counties that have elected superintendents, but there are letters from five attorneys telling us it's not possible. He is looking for guidance from Attorney Tolces.

David Tolces – He stated that under the Florida Constitution, Article IX, Section 5, which relates to superintendents of schools; it does state in each school district there shall be a superintendent who shall be elected at the general election in each year, multiple of four years, or when provided by resolution of the district school board, or by special law approved by the vote of the electors, the

district school superintendent in any school district shall be employed by the school district board, as provided by general law. He stated that he has not done the research, but there could have been a referendum or a special law passed, which provided for the school superintendent in Brevard County to be appointed. He stated that the constitution uses the word “shall”, and doesn’t give you the ability to vary the process of electing the school superintendent.

Matthew Nye – He stated that it would take another referendum to undo the first referendum.

David Tolces – He also stated that as provided in the constitution, it has to be a resolution of the district school board or by special law.

Duwayne Lundgren – He would like to get the evidence from Mr. Bistline showing that there is a referendum.

Tres Holton – He mentioned that the correspondence from Mr. Bistline was from his law firm, dated December 17, 2009. He disclosed that he communicated with each member of the School Board. He communicated via e-mail and asked their opinion, and the majority of the Board did not support this.

**Frank Zilaitis moved, seconded by John Porter to defeat Proposal #26, after discussion.**

Martin Lamb – He stated that in 1998 the CRC met and a letter was received exactly like the one tonight, with the exception that Mr. Bistline was stating we could not create in anyway a situation where school board members were elected, single-member district rather than countywide. It was found that was incorrect. He believes Mr. Bistline is also incorrect in his recent memo. He stated that having an elected superintendent could be a benefit. He also believes removing the school board members would be a plus. He mentioned that it should be the public’s choice to vote whether they want an elected school superintendent.

Tres Holton – He commend Mr. Young and his concerns of the cost to personnel. He encourages the body to continue to make the county as fiscally conservative as we can; however, he disagrees with the proposal.

John Porter – He mentioned that the School Board has the power to hire and fire. He also mentioned that Brevard County has the number one school district in the state. He stated that if it’s not broke, let’s not try and fix it.

**Zilaitis/Schmitt – APPROVE, to call the question. The vote was 11-2, with Young and Lamb voting nay.**

**Zilaitis/Porter – APPROVED to defeat Proposal #26. The vote was 10-3, with Young, Lamb and Nye voting nay.**

The next meeting will be held on January 7, 2010, at 6:00 p.m., located in the Florida Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida, 32940.

## **XI. Adjournment at 7:33 p.m.**

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.