

Orange County Government

*Orange County Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393*



Charter Review Commission Agenda - Final

Wednesday, February 5, 2020

5:30 PM

County Commission Chambers

2020 Charter Review Commission

CRC Members:

Camille Evans, Chair

James R. Auffant, Vice Chair

Jack Douglas–Russell Drake–John E. Fauth–Matthew Klein–

Jeffrey A. Miller–Nikki Mims–Angela Melvin–Samuel Vilchez Santiago–Soraya Smith–

Lee Steinhauer–Eugene Stoccardo–Anthony (Tony) Suarez–Dotti Wynn

Call to Order**Pledge of Allegiance****I. Public Comment****II. Consent Item**

- A. CRC-20-080 Approval and execution of the minutes of the January 9, 2020 District 2 Public Hearing of the Charter Review Commission (CRC).

Attachments: 2020-01-09 CRC Draft Minutes

III. Chair Comments

CRC-20-082 Chair Comments

IV. Discussion Items

- A. CRC-20-086 Financial Impact Analysis/Statement - Proposed Charter Amendments

Attachments: 2020-02-05 IV. A. 1 Chair Evans Memo to CRC
2020-02-05 IV. A. 2 Comptroller Memo to CRC

- B. CRC-20-075 Proposed Charter Review Topic - Permanent Funding of Green PLACE (Continued from January 9, 2020)

Attachments: 2020-01-09 V. A1 Member Stoccardo New Proposal Topic
2020-01-09 V. A2 Member Stoccardo Proposal
2020-02-05 IV. B General Counsel Memo re Conservation Funding

- C. CRC-20-084 Proposed Charter Review Topic - 180-Day Timeline Limitation Related to the Citizen-Initiated Charter and Ordinance Amendment Process

Attachments: 2020-02-05 IV. C. 1 Member Smith Extended Topic Review
2020-02-05 IV. C. 2 Member Smith Petition Timeline from SOE

V. Subcommittee Recommendations - First Reading (Second Reading on March 4, 2020)

- A. CRC-20-087 Consideration of the Ethics Concerning Lobbyists Committee's recommendation to make no changes to the Orange County Charter with respect to the Ethics Concerning Lobbyists evaluation topic; and further, to make no changes to the Orange County Charter with respect to the creation of an Ethics Commission separate from the Ethics Advisory Board that currently is provided for under the Orange County Ethics Code.

Attachments: 2020-02-05 V. A Ethics Concerning Lobbyists Final Report

- B.** CRC-20-088 Consideration of the Number and Composition of County Commission Districts Committee's recommendation to make no changes to the Orange County Charter with respect to the number and composition of Orange County Districts; and further, to make no changes to the Orange County Charter with respect to whether the Board of County Commissioners are full or part-time officers.

Attachments: 2020-02-05 V. B Number and Composition of Districts Final Report

- C.** CRC-20-089 Consideration of the Rights of the Wekiva River and Econlockhatchee River Committee's recommendation to amend the Orange County Charter with respect to prohibiting pollution of the Wekiva River, Econlockhatchee River and all other waters of Orange County.

Attachments: 2020-02-05 V. C Rights of the Wekiva and Econ River Final Report

VI. Subcommittee/Sunshine Meeting Updates

- A.** CRC-20-091 Split Oak Committee Meeting Held on January 22, 2020

Attachments: 2020-02-05 VI. A Split Oak Committee Summary Report

- B.** CRC-20-085 Sunshine Meeting Held on January 23, 2020 Between Members Fauth and Vilchez Santiago Regarding the Release of Subcommittee Reports to the Full CRC

VII. New Business

Orange County Government

*Orange County Administration Center
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Orlando, FL 32802-1393*



Draft Meeting Minutes

Thursday, January 9, 2020

6:00 PM

District 2 - Wekiva High School

2020 Charter Review Commission

CRC Members:

Camille Evans, Chair

James R. Auffant, Vice Chair

Jack Douglas–Russell Drake–John E. Fauth–Matthew Klein–

Jeffrey A. Miller–Nikki Mims–Angela Melvin–Samuel Vilchez Santiago–Soraya Smith–

Lee Steinhauer–Eugene Stoccardo–Anthony (Tony) Suarez–Dotti Wynn

Call to Order

The meeting was called to order at 6:05 p.m.

Present: 14 - Member Camille Evans, Member James R. Auffant, Member Jack Douglas, Member Russell Drake, Member John E. Fauth, Member Matthew Klein, Member Angela Melvin, Member Jeffrey A. Miller, Member Nikki Mims, Member Samuel Vilchez Santiago, Member Soraya Smith, Member Lee Steinhauer, Member Eugene Stoccardo, and Member Dotti Wynn

Absent: 1 - Member Anthony (Tony) Suarez

Others present:

CRC General Counsel Cliff Shepard
Deputy Clerk Katie Smith
Senior Minutes Coordinator Craig Stopyra

Pledge of Allegiance**I. Invited Guest**

- BCC District 2 Commissioner Christine Moore

Commissioner Moore addressed the CRC and thanked the members of the Charter for their work and service.

II. Public Comment

The following persons addressed the Board:

- Todd Catella
- Sally Baptiste
- Bobby Beagles
- Mary Nesler
- Valerie Anderson
- Jess Kovach
- Bob Sanders
- Peter Herrera
- Julia Hara
- Lisa Ray

The following material was presented to the CRC prior to the close of public comment: Exhibit 1, from Sally Baptiste.

The following materials were received by the Clerk prior to the close of public comment. The materials referenced by the speaker were not presented to the CRC:

- Submittal 1, from Todd Catella
- Submittal 2, from Bob Sanders

I. Invited Guest (Continued)

- City of Apopka Mayor Bryan Nelson

Mayor Nelson addressed the CRC and suggested that the CRC not preempt what a City would like to do and allow the City to establish policies first rather than at the County level. Mayor Nelson asked that the CRC not limit the Board of County Commissioners ability to appoint citizens, whether a lobbyist or not, to advisory boards. Mayor Nelson presented his thoughts regarding the citizen initiative petition process.

II. Public Comment (Continued)

The following persons addressed the Board:

- Chuck O'Neal
- Douglas Soto
- Marge Holt
- Nicole Wilson
- Anh Volmer
- Jim Erwin
- Kimberly Buchheit
- Lynette Scible
- Katrina Shadix

The following materials were received by the Clerk prior to the close of public comment. The materials referenced by the speaker were not presented to the CRC:

- Submittal 3, from Nicole Wilson
- Submittal 4, from Anh Volmer

III. Consent Item

- A. CRC-20-074** Approval and execution of the minutes of the December 4, 2019 District 3 Public Hearing of the Charter Review Commission (CRC).

A motion was made by Vice Chair Auffant, seconded by Member Santiago, to approve and execute the minutes of December 4, 2019. The motion carried by the following vote:

Aye: 14 - Member Evans, Member Auffant, Member Douglas, Member Drake, Member Fauth, Member Klein, Member Melvin, Member Miller, Member Mims, Member Santiago, Member Smith, Member Steinhauer, Member Stoccardo, and Member Wynn

Absent: 1 - Member Suarez

IV. Chair Comments

Chair Evans intends to keep the CRC focused and reminded all that they are here on behalf of all of the residents of Orange County and not just those who share the same interests or ideas of the CRC. Chair Evans indicated that attendance of members at CRC regular business meetings and subcommittee is very important. Final reports from subcommittees will be forthcoming to the full CRC and it is critical for members to attend all CRC meetings.

V. Discussion Item

A. CRC-20-075 Proposed Charter Review Topic - Permanent Funding of Green PLACE

General Counsel Shepard presented the topic of the Proposed Charter Review Topic - Permanent Funding of Green PLACE. The amendment was proposed by Member Stoccardo. The purpose is to provide permanent funding to purchase environmentally sensitive lands in Orange County. In terms of its history, General Counsel Shepard indicated that there has never been a similar proposal for Charter amendment previously. Since 1991, there has been a Public Services Tax and it is currently incorporated in Ordinance 98-33, and it reserves a minimum of \$7,500,000, which "must be expended yearly for parks, recreation and environmentally sensitive lands." General Counsel Shepard outlined perceived pros and cons of the proposal. One in favor of the proposal is that there would be a dedicated funding source to buy environmentally sensitive lands. Alternatively, as it is currently drafted, Member Stoccardo has provided a title, summary and actual amendment for purchases only so that it would eliminate long term leases and the possibility of conservation easements. General Counsel Shepard doesn't know if the proposed amendment is legal to have this kind of budgetary requirement and restriction in a Charter as opposed to allowing the Taxing/Budgeting Authority to meet with elected officials.

A motion was made by Member Stoccardo, seconded by Member Santiago, to have Permanent Funding of Green PLACE established as an evaluation topic for the 2020 CRC. No vote was taken.

Discussion ensued amongst CRC members regarding the proposed amendment, the Public Services Tax and its funding and whether the CRC should wait on establishing it as an evaluation topic for the 2020 CRC until General Counsel Shepard can further investigate the legality of the proposal. General Counsel Shepard contributed to the discussion.

Member Stoccardo was in favor of tabling the proposed topic to give General Counsel Shepard time to conduct legal research on the proposed amendment. Chair Evans indicated that the proposed CRC topic would be tabled and added to the February CRC agenda.

VI. Subcommittee Updates

A. CRC-20-076 Split Oak Committee Meetings Held on December 6 and 16, 2019 and January 6, 2020 (Vice Chair Auffant)

Chair Evans requested an update from Vice Chair Auffant on the Split Oak subcommittee meetings. Vice Chair Auffant thanked General Counsel Shepard for writing the proposal and also Subcommittee Members Drake, Fauth, Mims and Santiago for all their hard work. The next

subcommittee meeting is scheduled for January 22, 2020, and will be to finalize the final report. Vice Chair Auffant requested the final report of his subcommittee be placed on an agenda without any other reports scheduled. Deputy Clerk Smith indicated that the final report of the Split Oak Subcommittee is scheduled to come before the full CRC on the May 6, 2020 agenda.

Member Santiago asked for feedback on the citizen's request to enact a resolution pertaining to Split Oak. Chair Evans indicated that it would be the work product of the subcommittee and it would need to be brought back by the subcommittee to the full CRC for consideration.

B. CRC-20-077 Citizen-Initiated Charter and Ordinance Amendment Process Committee
Meetings Held on December 10, 2019 and January 8, 2020 (Member Smith)

Chair Evans requested an update from Member Smith on the Citizen-Initiated Charter and Ordinance Amendment Process subcommittee meetings. Member Smith indicated that the subcommittee was tasked to review the citizen-initiated charter and ordinance amendment process and see if the petition threshold needs to be adjusted. The subcommittee unanimously agreed not to make any adjustments to the current petition threshold. The subcommittee received data from surrounding counties, input from public comment, and The League of Women Voters as well as historical documents and data provided by the Bill Cowles, Supervisor of Elections. Because of the data and information that the subcommittee received, Member Smith provided concerns of how difficult it can be for citizens to place an amendment on the ballot. Member Smith requested authority from the full CRC to expand the scope of their subcommittee to look at all aspects of the 180-day limitations as it affects the petitioner's ability to proceed in a timely basis with a citizen initiative. Chair Evans commented about the procedure established by the CRC of how to expand the scope of a subcommittee's topic. Discussion ensued regarding work product guidelines, timelines in presenting topics to the full CRC, and deadlines for upcoming CRC agendas. Deputy Clerk Smith contributed to the discussion.

C. CRC-20-078 Rights of the Wekiva River and Econlockhatchee River Committee Meetings
Held on December 16, 2019 and January 6, 2020 (Member Stoccardo)

Chair Evans requested an update from Member Stoccardo on the Rights of the Wekiva River and Econlockhatchee River subcommittee meetings. The next subcommittee is scheduled for January 22, 2020, at 4 p.m., in the Martha O. Haynie Conference Room. Final input will be presented by each member of the subcommittee during the meeting. General Counsel Shepard was directed to work on the ballot summary, title and final report, which will be presented to the full CRC in February.

D. CRC-20-079 Number and Composition of County Commission Districts Committee
Meeting Held on December 18, 2019 (Member Douglas)

Chair Evans requested an update from Member Douglas on the Number and Composition of County Commission Districts subcommittee meetings. Member Douglas stated that the subcommittee is prepared to submit a final report to be reviewed by the full CRC during the regular business meeting in February.

E. CRC-20-080 Ethics Concerning Lobbyists Committee Meeting to be Held on January 13, 2020 (Member Steinhauer)

Chair Evans requested an update from Member Steinhauer on the upcoming Ethics Concerning Lobbyists subcommittee meeting. Member Steinhauer announced the next subcommittee meeting is scheduled for January 13, 2020, at 4 p.m. Following the meeting, the subcommittee will be prepared to submit their final report to the full CRC during the regular business meeting in February.

VII. New Business

There was no new business discussed.

VIII. Adjournment

There being no further business, the CRC adjourned at 7:57 p.m.

Camille Evans, Chair
2020 Charter Review Commission



DATE: January 29, 2020

TO: 2020 Charter Review Commission (CRC)

FROM: Camille Evans, CRC Chair

SUBJECT: Financial Impact Analysis Request to Orange County Comptroller

Section 702 of the Orange County Charter requires that the CRC prepare a final report, which includes an analysis and a financial impact statement for any proposed amendment, or revision, to the Charter.

Subsequent to a discussion on January 23, 2020, with Chief Deputy Comptroller Eric Gassman, Assistant Comptroller David Rooney, CRC General Counsel Cliff Shepard, Assistant County Attorney Kate Latorre and CRC staff, Mr. Gassman submitted the attached criteria to initiate any applicable financial impact analysis.

During our CRC meeting scheduled on February 5, I will request that the 2020 CRC approve a request to the Comptroller's Office to conduct a financial impact analysis for any Charter amendment, or revision, approved by the Charter Review Commission during the second reading of the subcommittee final report. CRC staff will initiate the formal request and will provide a copy of the subcommittee final report.

CRC Members:

Camille Evans, Chair

James R. Auffant, Vice Chair

Jack Douglas – Russell Drake – John E. Fauth – Matthew Klein – Angela Melvin – Jeffrey A. Miller – Nikki Mims – Samuel Vilchez Santiago – Soraya Smith – Lee Steinhauer – Eugene Stoccardo – Anthony (Tony) Suarez – Dotti Wynn




OFFICE OF COMPTROLLER

ORANGE
COUNTY
FLORIDA

January 29, 2020

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County Comptroller
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Orlando FL 32802
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TO: 2020 Charter Review Commission

FROM: Eric Gassman, Chief Deputy Comptroller 

SUBJECT: Financial Impact Analysis

As the Charter Review Commission (CRC) Sub-committees start to finalize their reports and recommendations on their respective potential Charter amendments, it is my understanding that there have been some discussions about obtaining financial impact statements from the Comptroller's Office. The purpose of this memorandum is to outline the process to initiate a request for our office to conduct any financial impact analysis.

As you may know, Orange County's Charter states:

*"A Charter Review Commission may, during its term, place proposed amendments and revisions of the Charter on the ballot at general elections only, providing a report of the proposed changes has been delivered to the clerk of the board of county commissioners no later than the last day for qualifying for election to county office under general law. The report shall include an analysis and financial impact statement of the estimated increase or decrease in any revenues or costs to the county or local governments or to the citizens resulting from the proposed amendments or revisions. **The Charter Review Commission shall request that Orange County Comptroller or another independent entity or agency prepare such analysis.**"*

Since the Charter requires the request to come from the CRC, any financial impact analysis request of our office should include the following:

1. A copy of the final approved proposed Charter amendment(s), and
2. Consensus of the Charter Review Commission to request the Comptroller's Office to conduct a financial impact analysis of the proposed amendment(s)

We appreciate the important work of the CRC and we are willing to assist. Should you have any questions, please contact my office.

From: [Eugene Stoccardo](#)
To: [Charter](#); [Smith, Katie](#); [Mercado, Anissa](#); [Vaupel, Jessica](#)
Subject: New Proposal topic - Permanent Funding of Green PLACE
Date: Friday, December 27, 2019 4:57:09 PM
Attachments: [PermanentEnvironmentallyEndangeredLandsFundingforOrangeCounty-Version1.docx](#)

Hi Katie

Here is a new proposal for creating permanent funding for the counties land acquisition program, Environmental Sensitive Lands - Green PLACE.

Support Documentation is the Orange County Code Article 2 Division 9 17-243 - use of Proceeds

Sincerely
Eugene

A. Introduction.

To create a permanent fund to acquire Natural Lands for Orange County's Environmental Sensitive Lands program (Program). Acquisition of Nature Lands will include lands for conservation, passive recreation, and environmental education.

B. Title.

Establish a permanent Natural Land acquisition fund for Environmental Sensitive Lands for Orange county.

Ballot Proposal:

The Orange County Board of County Commissioners (BCC) shall budget \$7,500,000 per year to fund the purchase of Environmental Sensitive Lands to be preserved as conservation, passive recreation, and environmental education; shall be preserved forever from development and linear facilities. These lands shall not be sold, leased or taken by any person or corporation, public or private. Renewal by Citizens every ten years by simple majority.

Comptroller estimated financial impact: _____

_____ Yes

_____ No

C. Text Revisions: Article X of the Orange County Charter is created and Section 1000.0? is added.
(Underline text is added to the charter).

1. The Orange County Board of County Commissioners (BCC) shall budget \$7,500,000 per year for funding purchases of Environmental Sensitive Lands within Orange County.
2. Effective Date of the charter amendment shall become effective upon passage and implemented within the new budget year.
3. Environmental Sensitive Lands funding shall be use for only purchasing lands as directed by the Park Land Acquisition for Conservation and Environmental Protections (Green PLACE); appointed citizens committee; managed by Environmental Protection Division.
4. Membership of the Citizens Committee shall include (based on availability): local Environmental NGOs, Government personal with Natural Resource Qualifications, GIS, and up to two interested Orange County citizens. Membership is limited to seven and shall not exceed a two-year term appointment to the Citizen Committee.
5. Lands to be acquire Including Environmental Sensitive Lands for conservation, passive recreation, and environmental education. Acquisition goal shall include creating viable biological corridors for Flora and Fauna to pass through Orange County
6. These lands shall be preserved forever from development and linear facilities. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.

7. The Environmental Sensitive Lands program shall be renewed by the citizens of Orange county every ten years by simply majority vote of orange county voters.
8. Due to some unforeseen need, the BCC requires a suspension of the program, a supermajority vote of the BCC shall be required. The BCC can do an emergency suspension, but it shall go to the voters within 180 days from the BCC suspension vote. Orange county citizens will decide with a 60% vote to continue the Suspension. Suspension shall only be for a period of two years from the date of citizens vote that will be automatically reestablish the program.

D. Definitions

Environmentally Sensitive Lands (ESL) – include creek, stream or river banks, major drainage ways, beaches, shorelines, viable wetlands, floodplains, water resource lands, poor soil areas not suitable for development, wellhead protection areas, prime groundwater recharge areas, parks and recreation areas, and natural systems that contribute to greenway corridors and wildlife habitat.

Linear facilities: include electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances

Green PLACE: The Park Land Acquisition for Conservation and Environmental Protections.



Memo

To: OCCRC Members

From: Cliff Shepard

CC: Katie Smith

Re: Proposed Charter Amendment re: Required Funding for Conservation

Members-

At the January 9, 2020 Charter Review Commission meeting, Member Stoccardo proposed an amendment to the Orange County Charter ("Proposed Amendment") to create permanent funding for a land acquisition program. At the meeting, the Commission tabled discussion and instructed me to conduct legal research on the legality of the Proposed Amendment. This memorandum covers only the legality of the core functions of the Proposed Amendment, and not any other possible improvements.

Ultimately, Florida law governing County budget procedures almost certainly preempts the Proposed Amendment as currently written. Courts have repeatedly held that local laws which prevent county commissioners from exercising discretion over the budget and millage rates conflict with Chapters 129 and 200, *Florida Statutes*. While there may be some method of achieving the basic purpose of the Proposed Amendment, any charter amendment directly addressing the budget and millage process is likely to be held invalid as in conflict with general law. Additionally, due to the state legislature's dominion over eminent domain powers and the Federal government's legal authority to utilize its own condemnation authority, the provision protecting conservation lands from condemnation would only be effective in limited circumstances.

Proposed Amendment

The Proposed Amendment would create Article X of the Orange County Charter. The new Article X would provide as follows:¹

1. *The Orange County Board of County Commissioners (BCC) shall budget \$7,500,000 per year for funding purchases of Environmental Sensitive Lands within Orange County.*
2. *The charter amendment shall become effective upon passage and implemented within the new budget year.*
3. *Environmental Sensitive Lands funding shall be used only for purchasing lands as directed by the Park Land Acquisition for Conservation and Environmental Protections (Green PLACE); appointed citizens committee; managed by Environmental Protection Division.*
4. *Membership of the Citizens Committee shall include (based on availability): local Environmental NGOs, Government personnel with Natural Resource Qualifications, GIS, and up to two interested Orange County citizens. Membership is limited to seven and shall not exceed a two-year term appointment to the Citizens Committee.*
5. *Lands to be acquired include Environmental Sensitive Lands for conservation, passive recreation, and environmental education. Acquisition goals shall include creating viable biological corridors for Flora and Fauna to pass through Orange County.*
6. *These lands shall be preserved forever from development and linear facilities. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.*
7. *The Environmental Sensitive Lands program shall be renewed by the citizens of Orange County every ten years by simple majority vote of orange county voters.*

If, due to some unforeseen need, the BCC requires a suspension of the program, a supermajority vote of the BCC shall be required. The BCC can do an emergency suspension, but it shall go to the voters within

¹ For the purposes of clarity, the original proposal was edited for grammar and punctuation only but with the intent of making no changes to the intent.

180 days from the BCC suspension vote. Orange county citizens will decide with a 60% vote to continue the Suspension. Suspension shall only be for a period of two years from the date of citizens' vote that will automatically reestablish the program.

The Proposed Amendment then includes definitions for “Environmentally Sensitive Lands (ESL),” “linear facilities” and “Green PLACE,” but those definitions are not part of the text revisions.

Legal Background

Preemption

Under the Florida constitution, charter counties have all powers of local self-government not inconsistent with general law. *See* Fla. Const. art. VIII, § 1(g). There are two ways a local regulation may be struck down as inconsistent with state law: (1) if the local regulation conflicts with a specific state statute; or (2) if the legislature has preempted that particular subject area. *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). When evaluating the validity of a charter amendment, courts will presume the amendment to be valid and construe it in harmony with Florida laws if reasonable to do so. *See Charlotte Cnty. Bd. of Cnty. Comm'rs v. Taylor*, 650 So. 2d 146, 148-49 (Fla. 2d DCA 1995).

The Florida legislature can preempt all local laws in a subject area either by express language or by implication. *See Browning*, 28 So. 3d at 886. Preemption is implied when the state legislative scheme is pervasive and the local regulation would present a danger of conflict with that pervasive regulatory scheme. *Id.* In determining whether implied preemption applies, a court must look to the entire law, its objectives and its policy. *Id.*

County Budgeting

Chapters 129 and 200, *Florida Statutes*, set out the procedures by which Florida counties set their budget and millage rates. The final decision on approval of a budget and millage rate ultimately rests with the board of county commissioners. *See* F.S. §§ 129.01(2)(a) (“budget must be prepared, summarized, and approved by the board of county commissioners of each county”) and 200.001(7) (“Millages shall be fixed only by ordinance or resolution of the governing body of the taxing authority . . .”). On their face, Chapters 129 and 200 address separate topics (budget and millage, respectively), but the two chapters are intertwined because the county budget is the basis for setting the millage rate and the county commission must set the budget as part of the process of setting the millage rate. *See, e.g.,* Fla. Stat. §§ 129.03(1)

(“...the figure so certified shall be used as the basis for estimating the millage rate required to be levied”) and 200.065(2) (discussing hearing requirements to set tentative and final budgets). As such, Florida courts routinely address Chapters 129 and 200 as two parts of a single scheme. See, e.g., *Ellis v. Burk*, 866 So. 2d 1236, 1237-38 (Fla. 5th DCA 2004).

Courts have repeatedly held that county laws limiting their commission’s discretion over the millage rate or tax revenue conflict with Chapters 129 and 200.² See *Bd. of Cnty. Comm’rs of Dade Cnty. v. Wilson*, 386 So. 2d 556 (Fla. 1980) (declaring invalid voter-initiated ordinance capping millage rate at four mills); *Bd. of Cnty. Comm’rs of Marion Cnty. v. McKeever*, 436 So. 2d 299 (Fla. 5th DCA 1983) (invalidating ordinance which placed millage rate cap on specific trust fund); *Charlotte Cnty. Bd. of Comm’rs v. Taylor*, 650 So. 2d 146 (Fla. 2d DCA 1995) (invalidating charter amendment prohibiting board of commissioners from setting millage rate such that it constituted a greater than 3% increase of ad valorem revenues as compared to the previous year); *Ellis v. Burk*, 866 So. 2d 1236 (Fla. 5th DCA 2004) (invalidating charter amendment prohibiting county from increasing ad valorem tax revenue by greater than 3% or the previous year’s CPI).

The reasoning has been the same in each case: Chapters 129 and 200 place discretion over county millage rates and budgeting solely in a county’s board of commissioners, and thus any local restriction of board discretion is in conflict with Florida statutes. One line of reasoning is that Section 200.001(7) states that millages “shall be fixed only by ordinance or resolution of the governing body of the taxing authority in the manner specifically provided by general law or special act,” and that a voter initiative thus cannot set the millage. See *Wilson*, 386 So. 2d at 561 (citing what was then Section 200.191); and *Taylor*, 650 So. 2d at 149 (reasoning that revenue caps cannot stand because they would interfere with commissioner discretion to set millage rate). Similarly, the court in *McKeever* noted that the setting of the millage rate and budget must occur on an annual basis, and thus they cannot be pre-set by law. See 436 So. 2d at 302.

² Note that it does not appear to make any difference whether the regulation comes from a charter or non-charter county. Compare *Ellis*, 866 So. 2d at 1236 (invalidating home rule charter amendment) with *McKeever*, 436 So. 2d at 301 (invalidating non-charter county ordinance). Having the voters approve the regulation also does not change the analysis. See *Taylor*, 650 So. 2d at 149.

Note that while Chapters 129 and 200 have changed since the last court decision adopting this reasoning, the portions which vest discretion in the board of commissioners remain.

While no court has specifically addressed a county regulation of the budget itself, the Attorney General has stated that such a measure would be invalid. In AGO 2001-04, the Attorney General was asked whether Hillsborough County could amend its home rule charter to place a cap on the annual increase in the budget, with the board allowed to override the cap through a supermajority vote. The Attorney General opined the amendment would be invalid as an improper limitation on the county commission's discretion to set the annual budget. In response to the issue of whether the supermajority provision might save the measure, the Attorney General rejected that idea as follows:

The cases discussed above recognize that the Legislature has specified the manner in which county budgets are to be established and provided the exclusive manner by which countywide millage rates are to be set. Nothing in Chapter 129, Florida Statutes, regarding establishment of a budget, or in Chapter 200, Florida Statutes, regarding the establishment of a millage rate, provides for a cap on the budget that may be overridden by a supermajority vote of county commissioners. To impose such a cap would appear to be contrary to the scheme established by the Legislature in Chapters 129 and 200, Florida Statutes, which places the discretion and decision-making authority in the board of county commissioners. As the court stated in *Charlotte County Board of County Commissioners v. Taylor*, "[i]f the voters are not satisfied with the commissioners' actions in this regard, they have a remedy through the ballot box at the next popular election."

The court in *Ellis*, while not addressing the matter directly, did cite this 2001 AGO with approval. See 866 So. 2d at 1239.

Eminent Domain

The power of eminent domain is inherent to the state,³ and the state legislature may delegate that power to local governments, private corporations and state agencies. See, e.g., Fla. Stat. §§ 127.01(1),

³ Separately, the Federal government has its own powers of eminent domain which may not be circumscribed by state or local law.

166.401(1); *Clark v. Gulf Power Co.*, 198 So. 2d 368, 371 (Fla. 1st DCA 1967). In some cases, Florida statutes empower agencies and corporations to condemn even public lands. See, e.g., Fla. Stat. § 348.759(1) (“[T]he Central Florida Expressway Authority may acquire private or public property and property rights . . . by gift, device, purchase, or condemnation by eminent domain proceedings . . .”).

Analysis

As written, the Proposed Amendment would most likely be invalidated for conflicting with state law by restricting the discretion of the Board of County Commissioners by compelling the board to (1) budget a minimum amount to a specific subject matter; and (2) spend those specific funds as directed on a specific subject (land acquisition). Additionally, the provision protecting conservation lands from being taken would be unenforceable except as applied specifically to municipalities within the County.

Required Funding and Citizens Committee Provisions

A requirement to spend \$7.5 million on a specific subject matter probably conflicts with Chapters 129 and 200, *Florida Statutes*. There is little reason to believe that requiring a minimum funding level, even if specific to one subject, would be approved when a maximum funding level would be invalid, as discussed in AGO 2001-04. In both cases, the requirement restricts the ability of the Board to set its desired budget. The requirement would also restrict the Board’s ability to set the millage rate, as the Board will need to accommodate for the additional \$7.5 million in setting the rate. Nothing in Chapters 129 and 200 or any of the relevant court decisions indicate that a county ordinance or charter amendment may push its commissioners in the direction of spending or taxing more when the opposite has been held to be prohibited.

Courts would likely strike down the requirement that funds be spent as directed by a separate committee for similar reasons. If the board did intend to spend \$7.5 million on purchasing environmentally sensitive lands in a given year, nothing prevents it from doing so on an individual project basis, just as Orange County’s current budget allocates the parks budget on a park-by-park basis. See *Orange County FY 2019/20 Budget* at p. 266-67. Therefore, because the Proposed Amendment would result in a body other than the Board (the committee) having discretion over where to budget conservation funds, the Proposed Amendment is likely an invalid restriction on the Board’s discretion in setting the budget.

The provision allowing the Board to suspend the program by supermajority vote would not save the measure, as discussed in AGO 2001-04. The Proposed Amendment’s provision is less defensible than the

one discussed in the AGO, as it subjects the Board's supermajority vote to a referendum of electors—thus depriving the Board of ultimate say over the millage and budget, even when voting by supermajority.

Florida regulations on land purchases by counties may also prevent the intended operation of the Proposed Amendment. Section 125.355, *Florida Statutes*, requires counties to obtain two appraisals for land purchases of over \$500,000. If the purchase price exceeds the average of the appraisals, the county may only purchase the property with the extraordinary vote of its governing body. This Section would likely be read to vest discretion over such real property purchases in the County's governing body, and thus could not be placed with a separate committee as provided in the Proposed Amendment.

While there may be some method of achieving the basic purpose of the Proposed Amendment, any charter amendment directly addressing the budget and millage process is likely to be held invalid as conflicting with Chapters 129 and 200, *Florida Statutes*.

Takings Protection Provision

Section 6 of the Proposed Amendment, which seeks to protect conservation lands from takings, would be unenforceable in many scenarios. Any valid condemnation of a public land by a state agency or utility would necessarily be authorized by general or special Florida law, and thus would prevail over the Charter amendment. To the extent the taking is not authorized by statute, Orange County can contest it through existing law, and the Orange County charter amendment would typically not have effect on the matter.

However, the amendment may operate to prevent Orange County municipalities from condemning designated conservation lands, as the County can preempt municipal regulations through its Charter. See Fla. Const. art. VIII, § 1(g); *Seminole Cnty. v. City of Winter Springs*, 935 So. 2d 521, 529 (Fla. 5th DCA 2006) (discussing that the Florida constitution allows counties to preempt municipal regulations by single county-wide vote).

MEMORANDUM

To: 2020 Charter Review Commission (CRC)

From: M. Soraya Smith, Chair, Citizen Initiated Charter and Ordinance Amendment Process Committee

Re: Approval for Extended Topic Review

Date: January 24, 2020

ORIGINAL OBJECTIVE

Evaluate citizen-initiated charter amendments & repeals to lower the petition threshold (currently 10%)
Evaluate citizen-initiated amendments, enactments, and repeals to lower the petition threshold (currently 7%)

BACKGROUND

Members of the CRC Committee on Citizen Initiated Charter and Ordinance Amendment Process convened on January 8, 2020, 4:00 p.m., to further discuss findings from a variety of resources surrounding the study of lowering the petition threshold for citizen-initiated Charter and Ordinance amendments, enactments and repeals. Following the review of submitted data, historical documents (Supervisor of Elections, League of Women voters) proposal summary review from member Vilchez Santiago, CRC Legal Counsel, and public comment, the committee has moved to not make any changes to the existing threshold percentages outlined in the current Citizen Initiated Charter and Ordinance Amendment Process.

The provided historical documents, legal summaries, data, and citizen input did subsequently highlight the limiting components of the currently outlined 180-day processes/timeline in Orange County Charter (Article VI Section 601) available for Orange County citizens. Therefore, the Citizen Initiated Charter and Ordinance Amendment Process Committee moves to continue its work to ensure this process in no way limits citizens from successfully carrying out a citizen-initiated charter or ordinance amendment petition including tolling considerations given the multiple county departments required to move forward in this petition process (Supervisor of Elections, County Board of Commissioners, Comptroller's Office and the appointed Legal Review Panel).

ACTION REQUESTED

The Citizen Initiated Charter and Ordinance Amendment Process Committee of the 2020 CRC requests authority from the full CRC to look at all aspects of the 180-day timeline limitation as it affects the petitioner's ability to proceed in a timely basis with a citizen initiative petition.

For your quick reference, I have attached a copy of the Petition Timeline as provided by the Supervisor of Elections Office-Bill Cowles on December 2, 2019, extracted from Attachment H page 6.

/Attachment

Petition _____

Ballot Title _____

Sponsoring Political Committee _____

Petition Timeline-

Initiative petition sponsors must register as a PAC and, prior to obtaining any signatures, shall submit the text of the proposed petition to the SOE, with the form on which signatures will be affixed, and shall obtain the approval of the SOE of such form. **Text Submittal Date-** _____

SOE shall make a determination regarding the approval of the form within fifteen days. **SOE Approval Date-** _____

The date of approval by the SOE marks the beginning of the 180 day time frame for the petition drive, after which the petition drive shall terminate. **180 Day Termination Date-** _____

If sufficient signatures are submitted, the SOE shall within thirty days thereafter verify the signatures therein and submit a written report to the board. **SOE Written Report Submittal Date-** _____

The sponsor shall submit all signed petitions gathered by petition gatherers during a month or otherwise received by the sponsor during such month to the SOE for signature no later than the fifth day of the following month. The SOE shall verify the validity of signatures for each signed petition within thirty days after submittal.

Upon reaching the 1% threshold, the SOE shall notify the board. The board shall render its decision within twenty days after notification. **SOE Board Notification Date-** _____ **Board Decision Date-** _____

After notification by the SOE regarding the 1% threshold, the comptroller shall, within twenty days after notification, prepare and transmit a financial impact statement. The sponsor of the petition shall then submit a revised petition form containing the financial impact statement to the SOE. The SOE shall, within fifteen days after submittal of the revised petition containing the financial impact statement, render a determination.

Comptroller Financial Impact Statement Date- _____ **SOE Revision Determination Date-** _____

Within sixty (60) days after notification of legality by the Legal Review Panel, the board shall hold a public hearing on the petition. **Public Hearing Date-** _____

Referendum

Charter- After the requisite number of signatures have been verified by the SOE, a referendum shall be held on the question of adoption of the proposed petition at the next primary, or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the SOE.

Ordinance- Within thirty (30) days of the requisite number of signatures have been verified by the SOE, the board shall notice a public hearing on the proposed petition and vote on it. If the board fails to adopt the proposed petition, the board shall notify the SOE a referendum shall be held on the adoption of the proposed petition at the next primary or general election occurring at least one hundred fifty (150) days after verification of sufficient signatures by the SOE.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

January 13, 2020

Committee Recommendation

Ethics Concerning Lobbyists Committee

Committee Members:

Lee Steinhauer, Chair
Camille Evans
Matthew Klein
Jeffrey A. Miller
Samuel Vilchez Santiago

Background

On July 10, 2019, the 2020 Charter Review Commission (the "CRC") initially considered whether to establish as an evaluation topic the establishment of ethics rules concerning the appointment of lobbyists to advisory boards and commissions established by the Orange County Board of County Commissioners (the "Commission"). The CRC voted to table the issue.

On August 7, 2019, the CRC renewed its consideration of whether to establish as an evaluation topic whether there should be ethics rules concerning the appointment of lobbyists to advisory boards and commissions. The CRC received a proposal from Member Eugene Stoccardo in favor of establishing an evaluation topic and a memorandum from General Counsel concerning current and forthcoming restrictions on lobbyists under state law and the Orange County Code. The CRC voted 7 to 4 in favor of establishing Ethics for Appointing Lobbyists to Advisory Boards and Commissions as an evaluation topic. The CRC also voted 10 to 1 in favor of creating a separate committee to explore the topic and report its findings back to the CRC.

Summary of Recommendation

Beginning on August 22, 2019, the Ethics Concerning Lobbyists Committee (the "Committee") held six public meetings to hear public input and consider proposals regarding ethics rules restricting registered lobbyists from serving on advisory boards or commissions. Additionally, on October 2, 2019, with the approval of the CRC, the scope of the Committee's area of inquiry expanded to include consideration of whether a separate Ethics Commission should be established in Orange County. The Committee considered and analyzed the current Orange County Ethics Code, which provides for the creations of an Ethics Advisory Board by the Commission by resolution, as well as current Orange County restrictions concerning lobbyists, state ethics regulations and restrictions on lobbyists, and the ethics codes of a number of other jurisdictions. The Committee also reviewed public records showing registered lobbyists who have been appointed to serve on advisory boards from the years 2009-2019, as well as reports, recommendations and ordinances resulting from the Orange County Ethics Task Force in the years 2007-2010, which led to the establishment of the

current Orange County Ethics Code and a code provision for the establishment of an Ethics Advisory Board by the Commission by resolution. The Committee further heard from the Orange County Comptroller's Director of Audit, Chris Dawkins, regarding the role of the Comptroller under the Orange County Charter and from Assistant County Attorney Kate Latorre concerning annual ethics training provided to advisory board members by the Orange County Attorney's Office and the number of ethics complaints filed in Orange County. The Committee also heard from members of the public as to their respective concerns and proposals relating to registered lobbyists serving on advisory boards and the possible creation of an independent ethics commission with investigation and enforcement authority.

After careful consideration of the information presented, the Committee voted 4 to 1 to recommend to the full CRC that no amendment to the Orange County Charter be made with respect to the Committee's evaluation topic.

Although some members of the public expressed concerns regarding registered lobbyists serving on advisory boards and commissions, and some members of the public were in favor of the creation of an independent ethics commission, the information reviewed by the Committee fails to establish a need for a prohibition on registered lobbyists from serving on advisory boards or commissions, or for the creation of an independent ethic commission, separate from the Ethics Advisory Board option currently available by resolution under the Orange County Ethics Code, to investigate and enforce the Orange County Ethics Code. The information reviewed by the Committee reflects that no ethics complaints have been filed in the past several years, only a minimal number of registered lobbyists have served on advisory boards or commissions since 2009, all without any indication that such service was related to their private lobbying activities, and Orange County currently has a robust Ethics Code. Accordingly, the Committee recommends that no amendments to the Orange County Charter be made with respect to the Committee's evaluation topic.

Reasons for Recommendation

1. Orange County has an Ethics Code.

As a result of an Orange County Ethics Task Force established by the Commission in the years 2007-2010, which spent considerable time and effort analyzing the issue, the current Ethics Code was created. The current Ethics Code establishes standards of conduct, procedures and due process for handling ethics complaints. In addition, the Ethics Code provides that the Commission may establish by resolution an Ethics Advisory Board at any time.

2. Florida Law and the Orange County Charter Regulate Lobbying.

The Committee reviewed memorandums prepared by General Counsel detailing the substantial regulation of lobbyists that currently exist under Florida Law and the Orange County Charter. Thus, new regulations or prohibitions on lobbyists serving on advisory boards or commissions may be duplicative or conflict with such laws.

3. No Substantial Evidence of a Problem.

No ethics complaints have been filed in recent years. No information was provided to the Committee indicating that any of the very few registered lobbyists who have volunteered to serve on advisory boards or commissions since 2009 did so inappropriately or at the behest of their principals. Furthermore, existing laws and regulations appear to cover any such inappropriate conduct. Prohibiting Orange County citizens from serving on advisory boards or commissions simply because they are employed as a lobbyist may have a chilling effect on those few citizens who are willing to serve in the future.

Arguments Against Recommendation

1. Conflicts of Interests and Public Perception of Lobbyists.

Some members of the public expressed concerns that without a prohibition on lobbyists serving on advisory boards or commissions there will be inherent conflicts of interests in our government. The public perception of lobbyists is that they serve the interests of their principal. In order to avoid that perception and the appearance of impropriety, lobbyists should be prohibited from serving on advisory boards and commissions in Orange County.

2. Other Jurisdictions Regulate Lobbyists and Have Strong Ethics Commissions.

Some of the largest counties in Florida have supplemental regulations for lobbyists and strong Ethics Commissions with investigative and enforcement powers. As Orange County is one of the fastest growing counties in Florida, it too should have supplemental regulations for lobbyists and a strong Ethics Commission.

3. Public Perception Indicates there is a Problem in Orange County.

Some members of the public expressed the view that despite the fact no ethics complaints have been recently filed in Orange County under the Orange County Ethics Code, there are real ethical problems in Orange County which are not adequately addressed by the current code.

Committee Recommendation

After careful consideration of the information presented, Member Chair Evans made a motion that the Committee recommend no amendments to the Orange County Charter be made with respect to the Ethics Concerning Lobbyists Evaluation Topic. The motion was seconded by Member Miller. The Committee voted 4 to 1 in favor of the motion. Member Miller also made a motion that the Committee recommend no amendments to the Orange County Charter be made with respect to the creation of an Ethics Commission separate from the Ethics Advisory Board that currently is provided

for under the Ethics Code. The motion was seconded by Member Steinhauer. The Committee voted 5 to 0 in favor of the motion.

Accordingly, having carefully considered the comments and proposals of the public, the comments and information provided by invited guests, the memorandums and information provided by General Counsel, the reports provided by staff, and otherwise being fully advised in the premises, **the Committee recommends that no amendments to the Orange County Charter be made with respect to ethics concerning lobbyist or with respect to the creation of an Ethics Commission.**



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

December 18, 2019

Committee Recommendation

Number and Composition of County Commission Districts, and Full Time/Part Time Commissioners

Committee Members:

Jack Douglas, Chair
Russell Drake
Matthew Klein
Anthony (Tony) Suarez
Dotti Wynn

Summary of Recommendation

Beginning on July 24, 2019, the Number and Composition of County Commission Districts Committee (the "Committee") held five public meetings to hear public input and consider proposals relating to expanding the membership of the Orange County Commission. Additionally, on November 6, 2019, with the approval of the 2020 Orange County Charter Review Commission, the Committee's area of inquiry expanded to include analyzing whether the charter should be amended to expressly provide that county commissioners are full-time county officials. The Committee reviewed the work of a similarly-tasked committee of the 2016 CRC, historical population information, and anticipated costs of implementing proposals for expansion. The Committee further heard from county officials in writing and as invited guests, including Mayor Jerry L. Demings, Commissioners Betsy VanderLey, Maribel Gomez Cordero, Christine Moore, Emily Bonilla, and Mayra Uribe, County Administrator Byron W. Brooks, Supervisor of Elections Bill Cowles, Orange County Chief of Staff Roseann Harrington, and Office of Management and Budget Manager Kurt N. Petersen. The Committee also heard from members of public as to their respective concerns relating to the responsibilities, representativeness and responsiveness of current county commission districts.

Although some members of the public expressed concerns regarding the ability of Commissioners to perform their work with the growing population of Orange County, none of the Commissioners reported that they had difficulty or were unable to fulfill their duties. Mayor Jerry L. Demings also reported that he was unaware of any Commissioner being unable to manage their present duties and he advised the Committee that pursuant to Section 202 of the charter the County is required to reconsider and adjust its districts in response to the 2020 census. In response to Committee questions regarding whether Commissioners had the appropriate number of staff, Mayor Demings reported that they did, but if additional staff are needed, those issues may be addressed through the normal budgetary process. Thus, although the population of Orange County continues to grow, the vast majority of the evidence reviewed by the Committee does not indicate that there is an immediate need for additional districts or to expressly designate the Commissioners as full or part time County officers.

Committee Recommendation

After careful consideration of the information presented, Member Dotti Wynn made a motion that the Committee recommend no amendments to the Orange County Charter be made with respect to the number and composition of Orange County Districts. The motion was seconded by Member Matthew Klein. The Committee voted 5 to 0 in favor of the motion. Member Dotti Wynn also made a motion that the Committee recommend no amendments to the Orange County Charter be made with respect to whether the Board of County Commissioners are full or part-time officers. The motion was seconded by Member Russell Drake. The Committee voted 5 to 0 in favor of the motion.

While the population of Orange County may be growing by as many as 1,000 people per week, and there are a large number of residents per district, the majority of the evidence received by the Committee demonstrates that the growing population has not negatively impacted the ability of the Commissioners to perform their duties nor resulted in racial or demographic underrepresentation. Thus, having carefully considered the comments of current Commissioners, Mayor Demings, other county officials, members of the public, and the estimated cost of increasing the number and composition of districts in 2020, as well as other data presented, **the Committee recommends that no amendments to the County Charter be made with respect to the number and composition of commission districts or to the Commissioners' full or part time status.**



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

January 22, 2020

Committee Recommendation

Rights of the Wekiva River and Econlockhatchee River Committee

Committee Members:

Eugene Stoccardo, Chair
John E. Fauth
Anthony (Tony) Suarez
James R. Auffant
Nikki Mims

Background

On July 10, 2019, the 2020 Charter Review Commission (the “CRC”) considered a proposal from Member Eugene Stoccardo in favor of establishing an evaluation topic the Rights of the Wekiva River and Econlockhatchee River. The CRC voted 7 – 5 to establish the evaluation topic and 12 – 0 to create a separate committee to examine the issue and report its findings back to the CRC. Thereafter, on November 6, 2019, the CRC voted 8 - 4 to expand the evaluation topic to include all bodies of water in Orange County, as the basins of the two rivers comprise a huge portion of Orange County.

Summary of Recommendation

Beginning on July 25, 2019, the Rights of the Wekiva River and Econlockhatchee River Committee (the “Committee”) held 12 public meetings to hear public input and consider proposals regarding the creation of “Rights of Nature”¹ for the Wekiva and Econlockhatchee Rivers, the violation of which would be actionable by citizens of Orange County and by Orange County itself. On November 6, 2019, with the approval of the CRC, the scope of the Committee’s area of inquiry expanded to all bodies of water in Orange County.

Over the course of multiple meetings the Committee considered and analyzed several drafts of proposed amendments provided to the Committee and prepared by representatives of a group called the Community Environmental Legal Defense Fund and other local environmental activists

¹ According to the website, <https://therightsofnature.org>, Rights of Nature “is the recognition and honoring that Nature has rights. It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights. Rights of Nature is about balancing what is good for human beings against what is good for other species, what is good for the planet as a world. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined.”

A more detailed explanation of the “Rights of Nature” can be found here: <https://therightsofnature.org/what-is-rights-of-nature/>.

including Chair Stoccardo. The Committee also heard from members of the public as to their respective concerns and suggestions regarding the creation of a charter amendment granting “rights of nature” to the waters of Orange County.

On December 16, 2019, the Committee met to further review proposed Charter amendment language. At that meeting, the General Counsel was directed to assist in drafting the amendment and to attempt to “delete” or “collapse” the scope of the amendment to address some of the legal issues presented by the then current draft.

On January 22, 2020, the Committee met to consider for final vote a draft amendment prepared and submitted by the General Counsel as well as a draft final report. After substantial discussion and careful consideration of the information presented, the Committee voted 4 to 0 to recommend to the full CRC that the General Counsel’s version of the draft amendment to the Orange County Charter be submitted to the voters. The draft amendment attempts to further protect the waters of Orange County from pollution by prohibiting certain conduct by governmental agencies, non-natural persons or corporate entities and by providing a private right of action to every citizen of the County to enforce the prohibitions set forth in the amendment.

Although some members of the public expressed concern that the proposed draft amendment prepared by the General Counsel at the direction of the Committee was not broad enough to provide all of the protections and remedies that should be available to the citizens and Waters of Orange County, the majority of the Committee expressed the opinion that the condensed draft amendment prepared by General Counsel met the intent of the Committee and provided potentially enforceable rights and restrictions versus one that provided broader rights and remedies, but was also more readily subject to legal challenge on the basis of vagueness.

Fundamental to legal enforceability is that a party charged with a violation of law must have been able to clearly identify the prohibited conduct before being so charged. Moreover, where injunctive relief to correct a violation is called for (as opposed to monetary damages alone) the law should set out guideposts for what a violator must do to remedy the situation. For example, if a violator is ordered to “restore” a water body to its pre-violation condition, how would a court or the violator know when that has been achieved? Prior drafts of the amendment contained many terms like “thrive” and “rehydrate” with nebulous and legally problematic definitions. Those terms have been eliminated from the Committee approved final draft. Additionally, the approved final draft adopts existing state law definitions for the critical term, “pollution.” The General Counsel’s memo discussing the vagueness issue is included as an exhibit to this report.

Reasons for Recommendation

1. Orange County Waters Need Additional Protection from Unchecked Growth.

Over the course of the various meetings the Committee was presented with information related to nitrate concentrations, sources and its effects on the Wekiva River and Econlockhatchee River. The Committee was also presented information related to regulatory agencies, cases and studies

regarding toxins and waterways. The general consensus of those who presented to the Committee was that unchecked growth was largely responsible for the degradation of the two rivers and that the State of Florida and the County Commission had not been up to the task of adequately protecting these waters.

2. Federal Law, Florida Law and County Regulations are Insufficient Protection and don't provide an Individual Right to Sue for Enforcement.

The Committee heard from speakers who argued that the current regulatory structure needed to be changed to protect the things that are valued (like air and water) and that creating a private right of action and allowing individual citizens standing to sue would be an important deterrent and better protected these Waters.

3. Protection of Water is Essential to the Health and Welfare of the Citizens of Orange County and its Economy.

Citizens expressed concerns regarding the costs and legal fees associated with pursuing violations or defending implementation of the proposed amendment should be compared with the cost of cleaning up the rivers after the fact. Further information was provided concerning the economic value on tourism and property values of having clean waters throughout the County. Thus, the overall sentiment from the public was that the cost of enforcement or defending the protections afforded by a charter amendment from legal challenges were outweighed by the benefits such an amendment would have on the County, its residents, tourists, and the Waters.

4. "Rights of Nature" is an Emerging Movement which Attempts to Empower Citizens to Protect Natural Resources against Pollution and Degradation by Creating Private Enforcement Rights to Citizens.

A full explanation and discussion of the emerging "Rights of Nature" movement can be found at <https://therightsofnature.org> and is not repeated here. However, fundamental to that movement is the idea that *"we – the people – have the legal authority and responsibility to enforce these rights on behalf of ecosystems. The ecosystem itself can be named as the injured party, with its own legal standing rights, in cases alleging rights violations."* <https://therightsofnature.org/what-is-rights-of-nature/>.

This concept is what the proposed amendment attempts to codify in a legally defensible way.

Arguments Against Recommendation

1. Property Rights not Adequately Protected.

The committee heard concerns expressed by a few members of the public as well as the General Counsel concerning the failure of the proposed amendment to address a number of issues, among them, existing property rights – some of which may already be vested and actionable.

2. Potential Litigation over Preemption, Standing and Property Rights Issues.

There are concerns regarding whether the amendment is (or will be) preempted by state and federal law, whether the broad standing provision will pass legal scrutiny, and whether the law provides adequate protections for existing property rights. Any or all of these issues could lead to costly litigation against its implementation and enforcement, as it has in some other parts of the country where similar initiatives or charter amendments have been attempted. Notably, however, no litigation has occurred in other jurisdictions.

3. Draft Amendment does not go far enough to Protect the Waters of Orange County.

The Chair and some other members of the public have expressed concern that the original version of the amendment and several subsequent versions do more to protect the waters of Orange County than the adopted version. In other words, the amendment recommended by the Committee does not go far enough to remedy the perceived harm. Their argument is that the current system has failed and that a more comprehensive approach is warranted even if it results in substantial litigation costs to the defend its enforceability.

Committee Recommendation

After careful consideration of the information presented, the Committee recommended on a 4-0 vote that the attached draft ballot title, summary and charter amendment be forwarded to the CRC for its consideration.

Accordingly, having carefully considered the comments and proposals of the public, the comments and information provided by invited guests, the memorandums and information provided by General Counsel, and the various other versions of the proposed amendment considered by the Committee, and otherwise being fully advised in the premises, **the Committee recommends that the attached amendment to the Orange County Charter, including Ballot Title and Summary, be made with respect to the Rights of the Wekiva River and Econlockhatchee River.**

Exhibits:

Proposed Amendment, Ballot Title and Summary

All Committee minutes

All legal memoranda provided the Committee by the General Counsel

Letter dated October 9, 2019 from Bobby R. Beagles, Florida Farm Bureau

Letter dated November 15, 2019 from Byron W. Brooks, County Administrator

Ballot Title, Summary and Proposed Amendment – Rights of the Wekiva River and Econlockhatchee River Committee

A. Introduction.

This Charter amendment would provide for definitions, create natural rights for the waters of Orange County, the right to clean water, a private right of action and standing for citizens of Orange County to enforce these rights and injunctive remedies. The proposed amendment prohibits any governmental agency, non-natural person or corporate entity from intentionally or negligently polluting the Wekiva River and Econlockhatchee Rivers, or any other Waters within Orange County.

B. Ballot Proposal: The ballot title and question for Question #__ are as follows:

PROHIBITING POLLUTION OF THE WEKIVA
RIVER, ECONLOCKHATCHEE RIVER AND
ALL OTHER WATERS OF ORANGE COUNTY

Amending the charter by providing charter protections for the natural rights of the Wekiva and Econlockhatchee Rivers and all other Waters of Orange County by prohibiting pollution, providing a definition of Waters, providing a private right of action and standing for citizens of Orange County to enforce these protections against governmental agencies, non-natural persons or corporate entities that intentionally or negligently pollute the Waters, and providing for severability and exceptions.

Comptroller estimated financial impact: _____.

_____ Yes

_____ No

C. Text Revisions: Article 7 of the Orange County Charter is amended by adding Section 704.1. (Underline text is added to the charter).

Section 704.1 – Right to Clean Water, Standing and Enforcement.

A. Natural Rights of Orange County Waters and Citizens.

(1) The Wekiva River and Econlockhatchee River, portions of which are within the boundaries of Orange County, and all other Waters within the boundaries of Orange County, have a right to exist, Flow, to be protected against Pollution and to maintain a healthy ecosystem.

(2) All Citizens of Orange County have a right to clean water by having the Waters of Orange County protected against Pollution.

B. Standing, Private Right of Action.

Orange County, municipalities within Orange County, any other public agency within Orange County, and all Citizens of Orange County shall have standing to bring an action in their own name or in the name of the Waters to enforce the provisions of this Section of the Charter. Such actions shall be filed in the Ninth Judicial Circuit Court in and for Orange County, Florida, or, where jurisdiction exists, in the United States District Court, Middle District of Florida, Orlando Division.

C. Violations.

It shall be unlawful and a violation of this Section of the Charter for any governmental agency, non-natural person or corporate entity to intentionally or negligently pollute the Wekiva River and Econlockhatchee Rivers within the boundaries of Orange County, or any other Waters within the boundaries of Orange County. Violations include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Orange County or unreasonably interferes with or is injurious to the health and welfare of others. This Section of the Charter applies only to violations that occur after the effective date of the amendment as provided in Subsection (H).

D. Remedies.

(1) Remedies for violations of this Section of the Charter shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Waters at issue to the condition as it existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

(2) Attorneys' fees are not compensable unless the court determines that the action brought under this Section of the Charter is frivolous, vexatious, or is brought solely for the purpose of harassing the defendant. If such a finding is made, the Court may also award reasonable attorneys' fees to the defendant as a sanction.

E. Exception.

The provisions of the Section shall not apply to Constructed Wetlands.

F. Definitions.

(1) "Citizen" or "Citizen of Orange County" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year prior to filing an action under this Section.

(2) “Constructed Wetland” means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.

(3) “Flow” shall have the same meanings as in FLA. STAT. § 373.042.

(4) “Pollutant” means any substance or contaminant, whether manmade or natural, that is the source or cause of Pollution.

(5) “Pollution” shall have the same meanings as in FLA. STAT. § 376.031(17) and Rule 62-520.200(15), Florida Administrative Code, and means the non-natural presence in the Waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(6) “Waters” shall have the same meaning as in Rule 62-520.200(25), Florida Administrative Code, and includes, but is not limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other Waters, property or persons within Orange County.

G. Severability and Conflicts.

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

H. Effective Date.

This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

D. Financial Analysis and Impact:

Based on information provided by the Comptroller’s Office, the cost of the proposed amendment is approximately_____, which represents_____.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

July 25, 2019
Comptroller's 4th Floor Conference Room
3:45 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
Anthony (Tony) Suarez
Andrew Hand, CRC Attorney
Katie Smith, Assisting CRC as Staff
Jessica Vaupel, Assisting CRC as Staff
Anissa Mercado, Assisting CRC as Staff

Absent Members

John E. Fauth
Nikki Mims

Invited Guests:

Chuck O'Neal
Steve Myers

Public Comment

The following person addressed the committee: Carmen Torres. Ms. Torres submitted information related to Orange County's Comprehensive Plan and lands located within the Wekiva Study Area.

Background Information and Members Open Discussion

The organizational meeting of the Rights of the Wekiva River and Econlockhatchee River Committee was held to identify related issues and to address any member questions. Chair Stoccardo opened the meeting by summarizing the intent of the committee is to better understand the Rights of Nature issue and how it applies to the Wekiva River and Econlockhatchee River. Chair Stoccardo explained that the invited guests would present their proposal and educate the committee on the issue. Chair Stoccardo expects that at future meetings, additional invited guests will address the committee.

Mr. O'Neal presented information related to nitrate concentrations, sources and its effects on the Wekiva River and Econlockhatchee River. Mr. O'Neal explained the issue is not only about water quality but quantity as well. Mr. O'Neal defined the acronym 'WEBOR' as The Wekiva River and the Econlockhatchee River Bill of Rights, and further, defined the rights of the Wekiva River and Econlockhatchee River. The intent of the Charter Amendment would be to enable citizens to bring action on behalf of the river and to challenge the pollution of the river in court.

Member Auffant questioned whether the Charter gives standing to this issue. Member Suarez questioned whether a precedent exists giving an inanimate object rights as if it were an individual and whether the proposal collided with state sovereignty. Discussion ensued.

Mr. Myers addressed the committee and presented information related to regulatory agencies and cited cases and studies related to toxins and waterways. Mr. Myers explained that he and Mr. O'Neal were presenting the proposal to the committee in order to get feedback and work together on the proposal. Member Suarez provided remarks regarding the specifics of the proposal and explained that the objective should be to draft a proposed amendment that would stand scrutiny. Discussion ensued.

Chair Stoccardo provided remarks regarding the committee's agreement of the concept but that the concept needs further work. Chair Stoccardo asked that the invited speakers attend the next committee meeting.

The following person addressed the committee: Melissa Martin.

Future Action Plan

After the discussion, it was suggested that the invited speakers provide examples of cities that have incorporated Rights of Nature Laws and applicable court decisions. Chair Stoccardo requested Members Auffant and Suarez prepare any examples of proposed language prior to the next meeting if possible.

The next scheduled committee meeting will be held on Thursday, August 8, 2019, at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

August 8, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Clifford Shepard, CRC Attorney
Katie Smith, Assisting CRC as Staff
Anissa Mercado, Assisting CRC as Staff

Absent Member

Anthony (Tony) Suarez

Invited Guests:

Jane Goddard Durocher
Chuck O'Neal
Steve Myers
Nicole Wilson

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further identify related issues and to address any member questions.

Public Comment

The following person addressed the committee:

- Trini Quiroz

Ballot Language vs. Charter

CRC Attorney Clifford Shepard explained three components to a Charter amendment which includes the ballot title, ballot question, and Charter amendment textual language. Ms. Smith advised the committee members that the 75 word limit ballot question will include the financial impact statement. Ms. Smith further shared that in the past, the Chair of the CRC has typically formed a Ballot Summary Committee to examine the proposed ballot language and questions. Discussion ensued.

Rights of Nature Presentation and Members Open Discussion

Chair Stoccardo explained that the invited guests would present their proposal and educate the committee on the issue.

Mr. O'Neal presented information related to the Rights of Nature Laws and court decisions. Mr. O'Neal cited communities and countries which have enacted "community rights" laws prohibiting environmental threats.

Ms. Goddard Durocher presented on the legal history of the Rights of Nature movement. Ms. Goddard Durocher asked the committee to think about the law as a tool that protects the things that are valued and as something that can be changed.

Mr. O'Neal and Mr. Myers each presented to the committee members an updated draft copy of the proposed amendment to add Sections 704.1 and 704.2 to the Charter. Member Auffant provided remarks regarding the updated textual language which now addresses his concern with permitting. Member Auffant further expressed his concern with the one subject rule and the language indicating that Orange County has the authority to issue criminal charges. Discussion ensued.

Mr. Myers addressed the comments made regarding cost and fees associated with the violation of the proposed amendment by comparing the cost of litigation to the cost of cleaning the rivers. Mr. Myers further referenced the economic value on tourism and property values. Ms. Wilson presented information related to the Ohio State study regarding the economic impact in relation to Lake Erie. Discussion ensued.

Member Auffant expressed concern with the proposed amendment being limited to only two rivers. Member Fauth recommended the invited speakers review Article XIV of the New York State Constitution which Protects New York's Forest Preserve. Member Fauth further addressed broadening the language to include more than one element such as other tributaries and habitats, and to consider New York State's threat of the wild clause. Discussion ensued.

Chair Stoccardo encouraged the committee members to individually work on the proposed language with the invited speakers prior to the next committee meeting. Discussion ensued. Member Mims suggested expanding the view to be inclusive of all waterways of Orange County to address the health, safety, and welfare of all of Orange County. Discussion ensued.

Member Auffant questioned whether this committee would be the appropriate conduit to introduce a new related topic. Ms. Smith explained that the new topic would have to follow the written submittal process. Discussion ensued.

Future Action Plan

After the discussion, it was suggested that the invited speakers work further on the proposed language prior to the next meeting.

The next scheduled committee meeting will be held on Wednesday, August 21, 2019, at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

August 21, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Clifford Shepard, CRC Attorney
Katie Smith, Assisting CRC as Staff
Jessica Vaupel, Assisting CRC as Staff

Absent Member:

Anthony (Tony) Suarez

Invited Guests:

Steve Meyers
Chuck O'Neal
Nicole Wilson

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further identify related issues and to address any member questions.

Public Comment

The following persons addressed the committee:

- Camille Evans
- Trini Quiroz

Committee Chair Comments

Chair Stoccardo reminded attendees to provide comments during the appropriate time at the committee meetings and advised the public that CRC staff and legal counsel direction is provided by the Chair and committee members. Chair Stoccardo thanked the members and the public for their attendance.

Rights of Nature Presentation and Members Open Discussion

Based upon member input from the committee meeting held on August 8, 2019, Mr. O'Neal presented a revised Charter amendment draft which he explained contained more concise language and broader scope. Mr. O'Neal noted the revised Charter amendment now includes

other aquatic ecosystems such as lakes. Mr. O'Neal provided remarks regarding the Clean Water Act and the costs associated with the proposal as well as the costs associated with inaction.

Member Mims raised concerns regarding the safety of tourists and/or residents who may be unaware of contaminated waterways. Member Fauth provided remarks regarding the four key elements defined in the New York State Constitution regarding the Adirondacks: criteria, boundary, government responsibility and standing, and further, offered textual changes to Mr. O'Neal's revised Charter amendment language. Member Auffant provided remarks regarding costs associated with cleaning waterways. Discussion ensued.

Mr. Meyers addressed member comments regarding standing and referenced three Florida court cases concerning standing and single-subject rule in his letter to the committee and legal counsel dated August 20, 2019. Discussion ensued. Member Mims suggested that the committee look to protect the waterways from future pollution as opposed to try and fix issues from past pollution.

Member Auffant questioned whether he needs to submit a new proposal for Split Oaks. Chair Stoccardo and Ms. Smith advised the new topic would need to follow the written submittal process.

Future Action Plan

After the discussion, Chair Stoccardo suggested that the committee use Mr. O'Neal's revised Charter amendment language, redline the document and bring it to the next committee meeting. Ms. Smith recommended that the committee seek the input of the CRC Attorney regarding the topic.

The members agreed the next committee meeting will be to review the language and make the necessary textual changes. Ms. Smith offered that the members may submit their individual textual changes to CRC staff to be included as back up to the next agenda.

The next scheduled committee meeting will be held on Wednesday, September 18, 2019, at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

September 18, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Anthony (Tony) Suarez
Clifford Shepard, CRC Attorney
Jessica Vaupel, Assisting CRC as Staff
Anissa Mercado, Assisting CRC as Staff

Absent Member:

Nikki Mims

Committee Chair Comments

Chair Stoccardo thanked the members and the public for their attendance. Chair Stoccardo advised the purpose of the meeting was to review the proposed Charter amendment language. Chair Stoccardo advised the public that if there was time left at the end of the meeting, the public would be permitted to provide remarks concerning the discussion.

Public Comment

The following person addressed the committee: Trini Quiroz.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion concerning the proposed Charter amendment language and advised the committee members they would be working from Member Fauth's red line version. Member Fauth provided remarks concerning his red line version which focused on past committee discussions as well as used established language from sources such as the Econ Protection Act, Outstanding Florida Waters and the Clean Water Act.

Member Suarez expressed concerns regarding standing and questioned whether any citizen would have the right to bring forward a lawsuit. Member Auffant proposed that any citizen would have the standing to inform the County of its noncompliance with its regulations. Discussion ensued. Citizen Steve Meyers contributed to the discussion.

Member Suarez requested clarification on whether citizens can enforce the rights of waterways as a nonhuman entity. Discussion ensued. Chair Stoccardo requested CRC Attorney Shepard provide the committee members with the standing language from the 3rd DCA case.

Member Suarez asked CRC Attorney Shepard if the Charter is amended to create Rights of Nature, will the Charter be in conflict with the State Constitution. CRC Attorney Shepard advised the State Constitution provides for the adoption of laws in any area not preempted by the Constitution or state legislature. CRC Attorney Shepard provided remarks concerning his findings regarding undefined terms in Member Fauth's red line version. Discussion ensued.

The committee members and CRC Attorney Shepard reviewed Member Fauth's red line version and offered suggested edits. CRC Attorney Shepard provided remarks concerning the "constructed wetlands" language in Member Fauth's red line version of Section 704.1 A4 and how one would determine what the constructed wetlands are in Orange County. Member Fauth advised County GIS supplies the information, and further, Member Fauth advised he will research the proper definitions and references. Discussion ensued.

Future Action Plan

Following the discussion, Chair Stoccardo advised that the purpose of the next committee meeting will be to review the work prepared by Member Fauth and CRC Attorney Shepard. Ms. Vaupel reiterated that CRC Attorney Shepard will provide the committee members with the standing language from the 3rd DCA case.

Public Comment

The following persons addressed the committee:

- Bobby Beagles
- Wayne Rich

Member Suarez requested that Mr. Beagles provide his concerns in writing for the committee members to review.

- Chuck O'Neal

Future Action Plan (Continued)

Member Auffant suggested to CRC Attorney Shepard that the committee include language in the draft Charter amendment stating that a citizen must put in writing, to the County, their complaint prior to filing a lawsuit. CRC Attorney Shepard advised he would look in to the language.

The next scheduled committee meeting will be held on Thursday, October 3, 2019 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

October 3, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Anthony (Tony) Suarez
Clifford Shepard, CRC Attorney
Jessica Vaupel, Assisting CRC as Staff
Anissa Mercado, Assisting CRC as Staff

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

No members of the public addressed the committee during public comment.

Committee Chair Comments

Chair Stoccardo thanked the members and the public for their attendance. Chair Stoccardo advised the purpose of the meeting was to review the proposed Charter amendment language. Chair Stoccardo advised the public that if there was time left at the end of the meeting, the public would be permitted to provide remarks concerning the discussion.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion concerning the proposed Charter amendment language and advised the committee members they would be working from Member Fauth's and Counsel's version. Legal Counsel provided remarks concerning the revised draft which focused on past committee discussions as well as definitions pulled from sources such as statutes, reports, and other authoritative sources.

The committee members and CRC Attorney Shepard reviewed the draft and offered suggested edits. Discussion ensued.

CRC Attorney Shepard provided the committee members with a memorandum containing standing language from the 3rd DCA case and from the Florida Wildlife Federation case. CRC Attorney Shepard clarified that the language used in the draft is from the Supreme Court case rather than the 3rd DCA case. Discussion ensued.

Member Auffant addressed the cost of litigation. CRC Attorney Shepard advised the committee that he has arbitration language which was not included in the current draft. Discussion ensued.

Public Comment

The following persons addressed the committee:

- Bobby Beagles
- Mike Dennis
- Chuck O'Neal

Future Action Plan

CRC Attorney Shepard encouraged the members to review the definitions provided and to bring any suggestions to the next committee meeting.

The next scheduled committee meeting will be held on Thursday, October 17, 2019 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

October 17, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Anthony (Tony) Suarez
Patrick Brackins, CRC Attorney
Anissa Mercado, Assisting CRC as Staff

Absent Member

Nikki Mims

Invited Guest:

Chuck O'Neal

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

No members of the public addressed the committee during public comment.

Committee Chair Comments

Chair Stoccardo thanked members for working on the committee's proposed Charter amendment language revisions. Chair Stoccardo advised the public that if there was time left at the end of the meeting, the public would be permitted to provide remarks concerning the discussion.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion concerning the proposed Charter amendment language and advised the committee members they would be working from CRC Attorney Shepard's version. Chair Stoccardo suggested the next version of the draft include a draft number.

Members provided remarks concerning their findings regarding undefined terms and language. Discussion ensued. Mr. O'Neal contributed to the discussion.

Member Auffant addressed the language he asked CRC Attorney Shepard to include in the draft Charter amendment regarding injunctive relief brought by a citizen. Discussion ensued. Chair Stoccardo advised the members that the section pertaining to the new language would be discussed in detail at the next committee meeting.

Member Fauth addressed the Orange County Farm Bureau letter which was forwarded to the members. Discussion ensued.

Public Comment

The following person addressed the committee: Wayne Rich.

Future Action Plan

Following the discussion, Chair Stoccardo reiterated that Member Fauth would define the terms referenced during the committee's meeting and the CRC Attorney is charged with addressing the concerns the Orange County Farm Bureau has with the draft Charter amendment.

The next scheduled committee meeting will be held on Thursday, November 7, 2019 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

November 7, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Clifford Shepard, CRC Attorney
Jennifer Lara-Klimetz, Assisting CRC as Staff

Absent Member

Anthony (Tony) Suarez

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

The following persons addressed the committee:

- Chuck O'Neal
- Steve Meyers
- Nicole Wilson

Committee Chair Comments

Chair Stoccardo thanked members for working on the committee's proposed Charter amendment language revisions.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion concerning the proposed Charter amendment language. Members provided remarks regarding the 'Definitions' and 'Rights of People and Orange County Waters' in the proposed Charter amendment. Mr. Meyers and Mr. O'Neal contributed to the discussion.

Member Mims suggested removing the definition for 'Guardian' from the amendment language. The committee members agreed. Discussion ensued.

Member Auffant addressed comments by members of the public regarding suggested changes to the Charter amendment language. Discussion ensued.

Chair Stoccardo asked Member Auffant and Mr. Meyers to work on the language regarding the County's enforcement section.

Member Mims encouraged committee members to focus on the committee's purpose when drafting the amendment language. Chair Stoccardo agreed with Member Mims and requested that all the committee members regroup to define the committee's purpose at the next meeting. Discussion ensued.

Chair Stoccardo discussed the timeline for the committee's final report. Discussion ensued.

Public Comment

The following person addressed the committee: Bobby Beagles.

Future Action Plan

Following the discussion, Chair Stoccardo reiterated that Member Fauth would continue to work on the definitions discussed during the meeting.

The next scheduled committee meeting will be held on Monday, November 18, 2019 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

November 18, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Clifford Shepard, CRC Attorney
Katie Smith, Assisting CRC as Staff
Jennifer Lara-Klimetz, Assisting CRC as Staff

Absent Members:

Nikki Mims
Anthony (Tony) Suarez

Other Present:

Kate Latorre, Assistant County Attorney

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

The following persons addressed the committee:

- Chuck O'Neal
- Kathleen Fitzgerald

Members Open Discussion

Chair Stoccardo opened the floor for member discussion concerning the proposed Charter amendment language. Member Fauth requested that the committee first look at the definitions included in the language. Committee members and CRC Attorney Shepard offered suggested edits. Discussion ensued. Committee members agreed Member Fauth and CRC Attorney Shepard would review the existing proposed definitions prior to the next committee meeting.

Chair Stoccardo inquired as to whether the committee should contact an environmental attorney. Deputy Clerk Smith questioned whether it would be appropriate to invite the County's subject matter experts to address the committee. Assistant County Attorney Latorre advised that the County Attorney's Office has several environmental attorneys, and County staff has been

monitoring the work of the committee. Discussion ensued. CRC Attorney Shepard contributed to the discussion. Deputy Clerk Smith and Assistant County Attorney Latorre will work together on scheduling a Sunshine meeting between committee members, CRC General Counsel and County staff.

Committee members and CRC Attorney Shepard discussed the remaining sections of the proposed Charter amendment language. Discussion ensued. CRC Attorney Shepard contributed to the discussion. Committee members agreed Member Fauth and CRC Attorney Shepard will work on language related to a provision advising an individual or entity what is unlawful.

Public Comment

The following person addressed the committee: Chuck O'Neal.

Future Action Plan

Member Auffant requested that the meeting with County staff be scheduled first, prior to the next committee meeting. The committee members agreed that Mondays and Thursdays were acceptable meeting days, with the exception of Thursday, December 12, 2019.

Deputy Clerk Smith reminded members that the committee's deadline to staff for their final report and recommendations is January 24, 2019. The committee is scheduled to present their first reading to the full CRC on February 5, 2020.

The next scheduled committee meeting will be determined at a later date. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

December 16, 2019
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Anthony (Tony) Suarez
Patrick Brackins, CRC General Counsel
Jennifer Lara-Klimetz, Assisting CRC as Staff

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

The following person addressed the committee: Chuck O'Neal.

Chair Comments

Chair Stoccardo provided remarks regarding his submittal of a new draft amendment.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion. Member Mims inquired as to whether the committee was going to review the whole draft or only certain subsections of the new draft. Discussion ensued.

Member Auffant voiced his concerns regarding the new draft amendment and requested the committee enlist the help of General Counsel in drafting the amendment. Discussion ensued. General Counsel Brackins contributed to the discussion.

Member Auffant asked General Counsel Brackins to provide a legal opinion regarding the new draft amendment and provide additional amendment language as necessary. Member Mims contributed to the discussion and agreed to have General Counsel review and opine on the new draft amendment. Discussion ensued.

General Counsel Brackins requested committee direction regarding the new draft amendment. Discussion ensued. Member Auffant requested General Counsel Brackins provide an opinion regarding legal standing and preemption issues. Member Fauth contributed to the discussion.

Member Auffant requested injunctive relief be added to the new draft amendment. The committee members agreed. Discussion ensued.

General Counsel Brackins stated that the deadline for the final report is on January 24, 2020. Discussion ensued. Member Suarez contributed to the discussion.

Following the discussion, the members agreed to set the next committee meeting for Monday, January 6, 2020 at 2:00 p.m.

Member Mims asked General Counsel Brackins if he thought any of the issues within the new draft amendment should be deleted or collapsed. Discussion ensued.

The committee members discussed the definition for pollution of the waters.

Public Comment

The following persons addressed the committee:

Chuck O'Neal
Bob Olsen

Future Action Plan

The next scheduled committee meeting will be held on Monday, January 6, 2020 at 2:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

January 6, 2020
Comptroller's 4th Floor Conference Room
2:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Anthony (Tony) Suarez
Clifford Shepard, CRC General Counsel
Jennifer Lara-Klimetz, Assisting CRC as Staff

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to further review proposed Charter amendment language.

Public Comment

The following persons addressed the committee:

Chuck O'Neal
Nicole Wilson

The following material was presented to the committee during public comment: Exhibit 1, Nicole Wilson.

Committee Chair Comments

Chair Stoccardo provided remarks regarding his submittal of new Draft Charter Amendment v 1.10.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion. The committee members provided remarks regarding the Draft Charter Amendment v 1.9 and v 1.10 as presented during the meeting. General Counsel Shepard clarified that the Draft Charter Amendment v 1.9 was provided by general counsel and Draft Charter Amendment v 1.10 was provided by Chair Stoccardo. Discussion ensued. General Counsel Shepard contributed to the discussion.

Public Comment

The following person addressed the committee: Chuck O'Neal.

CRC General Counsel Update

General Counsel Shepard provided an overview of Draft Charter Amendment v 1.9 and addressed Member Auffant's question regarding permits. Discussion ensued.

General Counsel Shepard addressed the comment Mr. O'Neal made regarding the Draft Charter Amendment v 1.9 Section F. Definitions (1) "Citizen" or "Citizen of Orange County."

Committee Vote

AYE (voice vote): Chair Stoccardo

NAY (voice vote): Members Auffant, Fauth, Mims and Suarez

Action: The committee moved to proceed with the Draft Charter Amendment v 1.10. The motion failed on a 1-4 vote.

AYE (voice vote): Members Auffant, Fauth, Mims and Suarez

NAY (voice vote): Chair Stoccardo

Action: The committee moved to proceed with the Draft Charter Amendment v 1.9. The motion passed on a 4-1 vote.

General Counsel Shepard will prepare the draft ballot title and summary prior to the next meeting.

Future Action Plan

The next scheduled committee meeting will be held on Wednesday, January 22, 2020 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Rights of the Wekiva River and Econlockhatchee River Committee

January 22, 2020
Comptroller's 4th Floor Conference Room
4:00 p.m.

Committee Members:

Eugene Stoccardo, Chair
James R. Auffant
John E. Fauth
Nikki Mims
Clifford Shepard, CRC General Counsel
Jennifer Lara-Klimetz, Assisting CRC as Staff

Absent Member:

Anthony (Tony) Suarez

The Rights of the Wekiva River and Econlockhatchee River Committee meeting was held to vote on a recommendation to the full CRC and to discuss the subcommittee final report.

Public Comment

The following persons addressed the committee:

Nicole Wilson
Chuck O'Neal
Steve Meyers
Samuel Vilchez Santiago
Russell Drake

CRC General Counsel Update

General Counsel Shepard provided an overview of the Final Report, Ballot Title, Summary and Charter Amendment.

Members Open Discussion

Chair Stoccardo opened the floor for member discussion. The committee members provided remarks and changes to the Final Report, Ballot Title, Summary and Charter Amendment. Discussion ensued. General Counsel Shepard contributed to the discussion.

Committee Vote:

Motion/Second: Members Auffant / Fauth

AYE (voice vote): Chair Stoccardo; Members Auffant, Fauth and Mims

Absent: Member Suarez

Action: The committee moved to approve the amended Final Report, Ballot Title, Summary and Charter Amendment.

Public Comment

The following persons addressed the committee:

Chuck O'Neal

Nicole Wilson

Future Action Plan

General Counsel Shepard will make the approved changes to the Final Report, Ballot Title, Summary and Charter Amendment.

Clifford Shepard

From: Jacob Schumer
Sent: Wednesday, October 02, 2019 1:34 PM
To: Clifford Shepard
Subject: RE: Standing Language

Here's the statute language from **Florida Wildlife Federation**:

(a) The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:

1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;
2. Any person, natural or corporate, or governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.

Here's the charter language from **Herbits** (note the actual language from the Charter has since changed):

(A).2. *Truth in Government*. No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

3. *Public Records*. All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public.

(C). *Remedies for Violations*. A citizen may bring a cause of action alleging a violation of this Article filed in the Dade County Circuit Court pursuant to its general equity jurisdiction and if successful, shall be entitled to recover costs as fixed by the Court.

(D). *Construction*. All provisions of this Article shall be construed to be supplementary to and not in conflict with the general laws of Florida.

JACOB SCHUMER | ATTORNEY AT LAW



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Memo

To: Rights of the Wekiva River and Econlockhatchee Rivers Subcommittee

From: Patrick Brackins

CC: Katie Smith and Cliff Shepard

Re: Vagueness – Generally and as Raised by The Orange County Farm Bureau

Date: November 7, 2019

At the October 17, 2019 Rights of the Wekiva and Econlockhatchee Rivers Subcommittee meeting, I was tasked with reviewing concerns raised by the Orange County Farm Bureau (the “Bureau”) in its October 9, 2019 correspondence to Mayor Demings and the Board.¹ The Bureau raised concerns similar to those raised in the Lake Erie Bill of Rights litigation now proceeding in the Northern District of Ohio, *Drewes Farm Partnership v. City of Toledo*, No. 3:19-cv-434 (N.D. OH. Feb. 27, 2019), such as vagueness, equal protection, standing, and state and federal preemption. Since it is not possible to address all potential causes of action or claims that may arise from the provisions of a draft charter amendment which is still in the initial drafting stage, this memorandum addresses vagueness standards generally and as applied to the current draft at a high level. It is not intended to address all potential vagueness issues that may be raised, but highlights threshold areas that may be of concern to the subcommittee and the Commission. Equal protection, standing, and state and federal preemption issues may be addressed in separate memorandums based on direction from the subcommittee at its next meeting on November 7, 2019.

¹ The October 9, 2019 correspondence is attached hereto as Exhibit A.

I. Vagueness – Basic Principles.

The United States Supreme Court has long recognized that vague laws are void because they violate substantive due process rights.² In *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982), the Court succinctly held:

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.

Id. (emphasis added). Thus, laws must be drafted in such a manner that a “person of ordinary intelligence” can reasonably know what he, she or it shall not do, and laws must also provide “explicit standards” explaining how an enforcement agency or court shall apply them. If a law or ordinance fails either of those standards, then it is void for vagueness.

Similarly, the Fifth District Court of Appeal, in reviewing a mandatory injunction issued pursuant to a Putnam County zoning ordinance, held:

Terms used in an ordinance must make reference to determinable criteria and provide context in which a court can determine [whether] a particular regulation is reasonable. No legislative body (County Commission) can delegate to an administrator arbitrary discretion to determine the meaning of a zoning code. If such standards or criteria do not exist, the zoning provision is a nullity.

² Courts in Florida analyze state substantive due process standards in the same manner as federal courts applying federal substantive due process standards.

Henry v. Bd of County Comm'rs, 509 So. 2d 1221, 1222 (Fla. 5th DCA 1987). See also *Everett v. City of Tallahassee*, 840 F. Supp. 1528, 1546 (N.D. Fla. 1992) (applying Florida law and holding “[a]n ordinance which lacks sufficient standards against which the zoning authority’s actions may be measured vests unreviewable discretion in the zoning authority and is void for vagueness.”).

II. Application.

As a threshold matter, the text of the October 2, 2019 draft is missing a critical element. It provides: definitions; a statement of rights; a description of who may bring suit to enforce the rights created therein; an obligation on the County to protect and defend the charter provision; a prohibition on the County issuing or entering into any permit, license, contract, or other agreement with anyone who violates the charter provision; and a pre-suit notice procedure. However, the current draft lacks a clause stating with particularity what conduct constitutes a violation of the charter. While it defines pollutant, pollute, and pollution, there is no provision telling a person or entity precisely what it shall not do. For example, the draft lacks the following: “It shall be unlawful and a violation of this provision for any person or entity to knowingly or intentionally (insert what conduct is prohibited here with particularity). Any person or entity who knowingly or intentionally violates this provision may be subject to (insert penalties here with particularity).” The precise language in the above example does not need to be utilized, but it is recommended that the subcommittee consider adding language explaining exactly what is prohibited and what the penalty or penalties for engaging in such conduct shall be.

Explicit standards for determining whether a violation has occurred and explicit standards governing available remedies should be considered. For example, as we discussed at the past meeting, if it is the intent of the subcommittee to permit courts to enter mandatory injunctions requiring violators to “Restore” the “Waters,” as that term is defined in the current draft, then not only should the charter provision expressly include “Restore” as a remedy for violations, but there should be detailed and precise instructions explaining to a court and an alleged violator exactly what the remedy of “Restore” means and standards for determining whether it is achievable or has been achieved.

If a court orders Company A to “Restore” a body of water, Company A must know how to fulfill that order and a court must be able to explain how to do so based on the terms of the charter provision. Likewise, if a plaintiff wants to challenge whether Company A has, in fact, complied with the Court’s order, there must be an explicit standard answering the question. If the standards are not set forth in the charter

provision and a Court, County, plaintiff, defendant, or some other body or person is able to set the standard arbitrarily, then there is a substantial risk the charter provision may be subject to a successful vagueness challenge.

While this memorandum addresses threshold vagueness issues, if the subcommittee would like further analysis with respect to any particular section, term or condition of the draft charter provision, we will promptly provide it.

The Voice of Agriculture
ORANGE COUNTY FARM BUREAU

Post Office Box 1329 • Christmas, FL 32709 • Phone: (407) 637-7727 • E-mail: Kris.Stell@ffbic.com

October 9, 2019

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MANAGER

Dear Mayor Demings and Commissioners:

On behalf of Orange County Farm Bureau and approximately 5000 members, we ask that you reject *The Right to Clean Water* draft charter amendment. The proposed wording is fraught with vaguely worded phrases that are open to legal interpretation that will undoubtedly become a legal quagmire for Orange County.

The surface and ground waters located within Orange County are under the protection of the United States Clean Water Act (33 U.S.C. §1251 et seq.) passed in 1972. Under the federal directive, the Florida Department of Environmental Protection monitors surface and ground water quality, sets their restoration goals and oversees restoration activities. They accomplish this goal by identifying, verifying and prioritizing pollution problems and require stakeholders to develop strategies to address and resolve the problems; and implementing those strategies with local stakeholders. Adding another layer of legal framework at the local level will not delay the restoration of impaired water bodies but it will create a litigious environment where resources will be spent in court instead of towards furthering restoration priorities.

The wetlands within Orange County are under the protection of the United States Army Corps of Engineers, the Florida Department of Environmental Protection, two waters management districts, and the Orange County Environmental Protection Division. These agencies are charged with managing the natural resources under their purview. Adding this ambiguous language to the charter adds another layer of oversight to an already robust regulatory program within Orange County. The draft language is impossible to scientifically prove or disprove and it would make it impossible for anyone wanting to do any type of development within the County.

Using Florida's Agricultural Lands and Practices Act (§163 F.S.), amended in 2013 to prohibit local governments from adopting regulations and rules already regulated by any other government entity; if the Board of County Commissioners still wishes to approve the draft charter amendment, we request at a minimum, that bona fide agricultural practices be exempted by ordinance from the provisions of the amendment.

Sincerely,
Bobby R. Beagles, Exec. Dir.
Orange County Farm Bureau



November 15, 2019

Mr. Bobby R. Beagles
Executive Director
Orange County Farm Bureau
Post Office Box 1329
Christmas, FL 32709

Dear Mr. Beagles:

On behalf of Mayor Demings, I am responding to your October 9, 2019 letter regarding the Charter Review Commission's draft proposal to amend the County Charter to address the "rights of water." Thank you for communicating the concerns of the Orange County Farm Bureau.

At this time, the Board of County Commissioners (BCC) and County staff are monitoring the work of the Charter Review Commission ("CRC") committee working on the "rights of water" proposal and, as explained below, also maintain certain apprehensions regarding the proposed amendment. However, given the independent authority granted to the Charter Review Commission by the County Charter, the Mayor and BCC are not in a position to reject or approve the draft Charter amendment.

In Orange County, the CRC is separate and independent of the BCC. Proposed Charter amendments are not subject to the approval of the BCC prior to being slated on the ballot for a vote by the electorate. After the BCC appoints the members of the CRC, it has no further authority over the CRC to reject or approve proposed charter amendments. It is the CRC that is solely responsible for placing CRC Charter amendments on the general election ballot.

It is my understanding that the "rights of water" proposal is still under revision by the CRC committee. Once the Charter amendment language is finalized in committee, the proposal will be scheduled for consideration by the general CRC membership. A majority of the CRC members present will be required to approve the proposed Charter amendment before it can be included on the general election ballot.

As previously mentioned, County staff is also concerned about the committee's proposal. It is our intention to communicate those concerns to the committee and to the full CRC prior to the CRC voting on the proposal. Primarily, the County is uncomfortable with the proposed Charter amendment adding an additional layer of regulations to existing federal, state, and local laws. Such additional regulation may conflict with the regulatory and permitting programs of other agencies. These kinds of legal conflicts could very well increase the number of projects resulting in litigation.

Byron W. Brooks, A.I.C.P., County Administrator
201 South Rosalind Avenue • Reply To: Post Office Box 1393 • Orlando, Florida 32802-1393
Telephone: 407-836-7370 • Fax: 407-836-7399
Byron.Brooks@ocfl.net

Mr. Bobby R. Beagles
November 15, 2019
Page 2

Further, while I am unable to list every troubling facet of the proposal in this letter, the following aspects of the proposal are also problematic for the County:

- The proposed amendment contains numerous subjective or undefined standards of measuring water pollution.
- The proposal does not clearly identify what conduct is prohibited or what the County's enforcement responsibilities would be.
- The County could be subjected to continuous litigation by citizens seeking to rectify conduct created by any number of private entities.
- The definition of "clean water" uses Florida's Numeric Nutrient Criteria as a benchmark, which has not been adopted by the County in its water quality ordinances.
- The proposal does not account for environmental changes occurring naturally over time.
- The restoration of certain waters to historical conditions, as required by the proposal, could result in changes in water level, flows, and quality that could adversely impact urbanized areas, agricultural areas, and natural ecosystems.

The County will continue to monitor the work of the committee and will provide additional, detailed feedback to the CRC as this issue progresses. I appreciate your participation in the Charter Review process.

Sincerely



Byron W. Brooks

BWB/kl

cc: Mayor Jerry L. Demings
Commissioner Betsy VanderLey, District 1
Commissioner Christine Moore, District 2
Commissioner Mayra Uribe, District 3
Commissioner Maribel Gomez Cordero, District 4
Commissioner Emily Bonilla, District 5
Commissioner Victoria P. Siplin, District 6
Jeffrey Newton, County Attorney
Kate Latorre, Assistant County Attorney
Roseann Harrington, Chief of Staff
Chris Testerman, Deputy County Administrator
Jon Weiss, Director, Planning, Environmental, and Development Services
Ray Hanson, Director, Utilities
David Jones, Manager, Environmental Protection
Camille Evans, Esquire, CRC Chairperson



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

Committee Summary Report

Split Oak Committee

January 22, 2020
Comptroller's 4th Floor Conference Room
3:00 p.m.

Committee Members:

James R. Auffant, Chair
John Fauth
Nikki Mims
Samuel Vilchez Santiago
Clifford Shepard, CRC General Counsel
Jennifer Lara-Klimetz, Assisting CRC as Staff

Absent Member:

Russell Drake

The Split Oak Committee meeting was held to review the final version of the ballot title, summary and proposed Charter amendment and to discuss the subcommittee final report.

General Counsel Presentation of the Final Report, Recommendation, Ballot Title and Ballot Summary

General Counsel Shepard presented the draft final report with ballot title, summary and proposed amendment language that was distributed to the committee members on January 16, 2020.

Members Open Discussion

Chair Auffant asked the committee members to provide their input. Discussion ensued. Member Fauth offered suggested changes to the final report. General Counsel Shepard contributed to the discussion.

Committee Chair Comments

Chair Auffant thanked the committee members. Chair Auffant provided remarks regarding why he brought this proposal forward to the CRC.

Public Comment

The following persons addressed the committee:

Nicole Wilson
Chuck O'Neal
Eugene Stoccardo
Johana Munoz (phonetic)

Committee Vote

Motion/Second: Members Vilchez Santiago / Mims

AYE (voice vote): Chair Auffant; Members Fauth, Mims and Vilchez Santiago

Absent: Member Drake

Action: The committee moved to approve the package before the committee to be sent to the full CRC with the committee's recommendation that Split Oak be placed on the ballot for 2020, including Member Fauth's amendments.

Resolution

Member Vilchez Santiago provided remarks regarding the resolution he drafted and that was provided to the committee members on January 17, 2020. Member Vilchez Santiago asked that the resolution come from the entire committee when presenting it to the full CRC. Discussion ensued.

Motion/Second: Members Vilchez Santiago / Fauth

AYE (voice vote): Chair Auffant; Members Fauth and Mims

Absent: Member Drake

Action: The committee moved to approve the resolution and send it to the full CRC for the Monday, March 23 meeting as a separate item from the final report.

Member Vilchez Santiago requested General Counsel to present the resolution to the full CRC. Chair Auffant requested General Counsel Shepard to review the resolution prior to the next committee meeting.

Member Vilchez Santiago advised citizen Kimberly Buchheit asked for her email to be read in to the record. Chair Auffant asked for the email to be included in the record.

Future Action Plan

Chair Auffant advised if the committee members have no objections to changes made to the resolution by General Counsel, then the next committee meeting will be cancelled.

The next scheduled committee meeting will be held on Wednesday, February 12, 2020 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.