



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



SHEPARD, SMITH,
KOHLMYER & HAND, P.A.
2300 MAITLAND CENTER PKWY, STE 100
MAITLAND, FL 32751
TOLL FREE: 866.247.3008
OFFICE: 407.622.1772
FAX: 407.622.1884
SHEPARDFIRM.COM



DISCLAIMER:

The information transmitted is intended only for the person or entity to which it is addressed and contains confidential and/or privileged materials protected under the Attorney-Client Privilege. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon,



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

OFFICERS

BILL LENNON, JR.
PRESIDENT/CATTLE/CITRUS

AMY STOTLER
PRESIDENT ELECT/CATTLE

JOHN MADISON
VICE PRESIDENT/LANDSCAPE

MIKE PATTERSON
SEC./TREASURER/CATTLE

BOARD SECRETARY

KRIS STELL

DIRECTORS

GLENN BECK
CITRUS

RYAN BECK
CITRUS

MARK BYRD
FOLIAGE

CHUCK MACK
CATTLE

KATHREIN MARKLE
FLORICULTURE

DAVID WARD
CATTLE

SCOTT WEST
BLUEBERRIES

EXECUTIVE DIRECTOR

BOBBY R. BEAGLES

ADVISORS

DANNY GARNER

ELIZABETH R. JOHNSON

JOSH MCGRIF
INSURANCE AGENCY
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