

Summary of Discussion
Broward County Charter Review Commission
Land Use Subcommittee
Friday, September 7, 2007- 8:30 AM - 11:30 AM
115 S. Andrews Avenue, Room 430
Fort Lauderdale, FL 33301

Members Present:

Richard Weiss, Esq., Chair
Commissioner Hayward Benson, Vice Chair
Ms. Maggie Davidson
Mr. Mark Ketcham
Joseph Maus, Esq.
Dr. Irv Rosenbaum

Members Absent:

Ms. Patricia Good

Others Attending:

Maite Azcoitia, Assistant County Attorney
Donald Burgess, EPD/ Land Preservation Advisory Board
Chedley Etienne, Administrative Assistant, CRC
Ellen Feld, Esq., Water Management Districts
Yolanda Grooms, Administrative Specialist, CRC
Maria Gross, Assistant Director, CRC
Bob Harbin, Broward County, Parks and Recreation Division, Director
Jacob Horowitz, Esq., General Counsel
Phyllis A. King, Transcriber, PKING Consulting, Inc
Carol Morgenstern, BC, Parks and Recreation Division, Environmental Administrator
Sue Olson, Broward County Water Resource Division, Aide
Heather Stone, Broward County, District 2, Administrative Coordinator
Patricia G. West, Executive Director, CRC

(A copy of the sign-in sheets identifying those present is filed with the supplemental papers to the summary of this Committee Meeting.)

A meeting of the Broward County Charter Review Land Use Subcommittee "Committee," "Subcommittee," or "LUSC," was held at 8:30 a.m. on Friday, September 07, 2007 at the Broward County Governmental Center – Room 430, Fort Lauderdale, FL.

I. Call to Order/Roll Call

Mr. Weiss called the meeting to order at 8:32 a.m. and requested roll call by Phyllis A. King, of PKING Consulting, Inc. Upon completion of the roll, the Chair recognized the presence of a quorum.

The Chair introduced Bob Harbin, Director, Broward County Parks and Recreation Division.

[Dr. Rosenbaum entered at this time 8:34 am]

II. Discussion of Information Collected by Broward County Staff, Parks and Recreation Department, Regarding Open Space – County owned and operated Parks, and Open Space to Remain Open in Perpetuity

Mr. Harbin provided the subcommittee with a handout entitled Broward County Parks and Recreation County Parks and Natural Areas.

Mr. Harbin: There are 26 Park and Recreation agencies – We have 2 State Parks, Municipalities, and County Parks which total about 14,000 acres that represent 651 Parks in Broward County. Of course this is everything that would be east of the levy; the sheet that we handed out just is on the screen now. Basically, Broward County's Parks are divided into 3 types of parks, those are neighborhood, regional, and natural areas – and I will define them a little bit for you. Neighborhood Parks are basically serving a smaller area in our County, in our case it is all unincorporated areas. At some time in the future as annexation occurs, we would be going to the Cities to Annex the unincorporated area, and of course we are still active in After School Programs and Summer Programs. An example is Delevoe Park – our regional parks have more of large open spaces; a definition of a regional park is 40 acres plus.

- A subcommittee member asked if all the parks shown are owned by the County.

Mr. Harbin: Yes, but there are some exceptions with that and I will get into that momentarily. An example of a regional park would be Trade Winds Park, which is in Coconut Creek, CB Smith which is in Pembroke Pines, and as you see them in the picture they are very active parks.

Our natural area is our third component, which is basically preserved, and there is the environmental quality of these. We do have some passive views such as nature centers, maybe a picnic area. Any time we do any involvement in a natural area, we are careful about protecting the natural environment and try not to disturb it in any way, examples of this are Fern Forest Nature Center, Helen Klein, a brand new Nature Center and in western, Broward, site of the old Kapok Tree Restaurant. It will be called Long Key – this is more an overall picture; we are almost 6,398 acres totaled. Right now we are protecting the natural areas. So that you maybe understand this a little better, there are some natural restrictions on parks. Those parks that have Land and Water preservation and are federally funded must

remain as parks. If you use them for other purposes, we have to reimburse the bonds or replace it with other properties that might have similar value.

Mr. Harbin: It is mostly on Regional Parks, but there are some exceptions to that – there are exceptions to all of these restrictions here, I don't think you want to get into the whole list. Conservation Easements are in some of our parks in Hollywood and North Beach, bond restrictions last for about 20 years or the life of the bond. We have some deed restrictions, an example is when we lease property to the municipalities that is used for park and recreation purposes in perpetuity, if not it returns back to the County. The Parks and Recreation Division are getting a lot of pressure to do other things with the parks. The pressure can build from a lot of different directions; the School Board, Municipalities etc. The natural areas are probably the most that you would want to protect, the ones that are non-environmentally sensitive which are the most vulnerable.

- A subcommittee member asked why the County still has 86 parks, (this was a mistake-the County has 86 acres of parks) and how many parks are in the unincorporated areas.

Mr. Harbin: About 6 or 7 and as annexation occurs then they will be shifted over to the Cities' responsibility.

- A subcommittee member asked if this occurs even if the Parks are given to the Cities.

Mr. Harbin: Yes, they will have a restriction on the deed as I mentioned before.

- A subcommittee member asked if records of utilization are kept.

Mr. Harbin: Yes we do.

- It was asked what Deerfield Island Park reflects in terms of utilization.

Mr. Harbin: Utilization varies depending on the time of year, but it is primarily a natural area with boardwalks, fishing, and just enjoying nature. The attendance within a year would probably be close to 5,000 for the entire year.

- A subcommittee member asked if Deerfield Island Park is one of the least utilized Parks.

Mr. Harbin: Yes, and it is very unique if I could tell you a little bit more about it. It is not really owned by the County. We leased it from **Florida Inland Navigational District (FIND)** and there are some provisions that restrict the kind of activities there.

- A subcommittee member stated that the purpose of the discussion is to possibly protect the parks in the future.
- It was asked what the procedure is to change the utilization of the Parks.

Mr. Harbin: It would be difficult, but a vote of the County Commission would be required.

- A subcommittee member asked if federal money is used, would it have to be paid back or mitigated in some other way.

Mr. Harbin: Yes.

- A subcommittee member asked if the vote required is already a super-majority.

Mr. Harbin: Yes. We are putting restrictions on the properties right now that the Commission approved several months ago. We are halfway through the process, we have done about 19 parks and they now have restrictive covenants already in place.

After a brief discussion it was determined that it takes 5 votes to remove the 8 vote requirement, then it would take a majority vote to change the restrictive covenant.

Mr. Horowitz: I think what the Chairman said is actually correct, I believe and again I have not seen the restrictive covenants that we are discussing, but a 5: 4 vote will essentially put the restrictive covenants back on the table. The County Commission can then amend the 8 vote requirement that is within the restriction. Currently, in order to do anything, the super-majority of 8 votes is needed unless the Commission takes the action to amend the restrictive covenants, which provides for that 8:1—they can essentially amend that through a simple majority. Technically as it now stands, 8 votes are needed however action can be taken by a simple majority to amend that 8 vote requirement.

- A subcommittee member requested a legal opinion from General Counsel, and offered that for the purpose of this discussion, we will take the General Counsel's recommendation that the Covenants can be removed by five (5) votes.

Mr. Horowitz: I just have one quick question for the County. Are all the restrictive covenants on all the parks in the County essentially the same?

Mr. Harbin: Yes they are.

Mr. Horowitz: So all of them provide for the super-majority?

Mr. Harbin: Right, there are some properties where we own and the State owns part of it; the State at this point has not agreed to put restrictive covenants on it, and we have asked.

- It was requested by a subcommittee member that Mr. Harbin repeat his comment for clarification.

Mr. Harbin: Some of our properties – there are about 10 of the 49 parks that we co-owned with other entities. We have asked whether or not they will accept restrictive covenants and at this time they said no.

- A subcommittee member stated that they believe that this is a critical point and asked if the County could then impose restrictive covenants if the co-owner disagrees.

Multiple responses all replied no.

Mr. Harbin: Let me give you one good example. West Lake Park – I know everybody is familiar with West Lake. West Lake is probably 85% owned by the State of Florida, and we own some of it – now when you jump over to Hollywood North Beach, there is 5/6 undivided ownership, it does not really specify where, but Hollywood North Beach had to have a conservation easement on the sand dunes.

- A subcommittee member suggested that the subcommittee needs to look at how to simplify the process.
- It was explained to Mr. Harbin the plan of the subcommittee is to put a provision in the Charter to keep the parks from changing except by the vote of the electorate for natural parks.
- It was stated that the natural park areas is what the County really wants to protect.
- It was suggested that the subcommittee establish a roll back to suggest that the Charter only deal with areas and parks that are solely owned by Broward County.
- A subcommittee member stated that they wish to protect the parks, but is nervous about tying the hands of the Legislators in the future.

The Chair recognized a representative from Commissioner Jacobs's office.

Sue Olson – Aide to Commissioner Jacobs

Ms. Olson: I appreciate you all taking up this issue and dealing with it so thoroughly and considering it so seriously. Commissioner Jacobs was the author of the Legislation that asked for the covenant to be in place and requiring the super-majority vote to overturn the covenants. She remained concerned that a change in direction of a different set of folks on the Board could re-work the language and take that ability away. That is why she asked for some consideration, by asking the voters to determine whether

or not the County owned environmentally sensitive land in parks would be sold for any other purpose other than a natural area for our park. Your consideration is very much appreciated here because none of us has a crystal ball that allows us to see 20 years into the future. Those parks and natural areas that have been acquired under the Parks Bond of 2000 have to be maintained for the 20-year term of the bond. Other than the covenants that have been placed on those properties that are County owned, when the property is transferred to cities they could have other plans for the property. I don't want to put too many concerns out there, but I think on this week's County Commission agenda is looking at some Land Use changes for co-locations on parks for school board facilities. So, dealing with Land Use in the language of the Charter may not be appropriate as there are some concerns there. So, just in your efforts to keep it as simple as possible, I would agree that listing those areas would be very important for clarity purposes, even if it up takes up a paragraph. In a County that is essentially built out and will be more and more advanced, there is going to be huge pressure – maybe not today because of our real estate cycle, but in the future for buildable space. All of our governmental entities are going to feel that pressure. Maintaining our parks space and our open space and our natural areas is going to be much more difficult to do. If you have any questions for me I will try to answer it.

- A subcommittee member advised that the School Board is considering building homes on school grounds for teachers and other employees of the School District who have no place to live. It was asked what would stop this from happening to the Parks.
- It was stated that every acre available for Parks should remain for Parks in perpetuity and whatever locking mechanism can be put in place should be done.

Mr. Harbin: The natural areas to develop on those, there must be some mitigation done somewhere. We are rapidly, but not close to running out of areas to be mitigated; but we have a number of mitigation properties done in our parks to approve them but those properties are disappearing. The most vulnerable areas are not environmentally sensitive, because to develop on them there would not be any mitigation requirements.

A subcommittee member expressed concern stating that a Land Use lawyer will find a way around the Charter.

A conversation ensued.

Ms. Olson: I think my boss would prefer that the parks be folded into a referendum.

A subcommittee member suggested that there be some restrictions put in place in the Charter so that the restriction can not be changed.

Dr. Rosenbaum MOTIONED, Mr. Benson SECONDED to go with a process where the naturally established areas named and any future acquisition of natural areas be subject to referendum before they could be changed or sold under Category 1 and Category 2, Regional Parks - would require a unanimous vote of the County Commission to change the use of the park or sale the park with a acre for acre replacement of any park land taken out of use.

A discussion ensued.

MOTION passed Unanimously.

- A subcommittee member stated that they would rather wrap the discussion up as opposed to giving the County Commission a task.

A conversation ensued regarding whether the parks should be listed in the Charter.

- It was advised that the ballot language will be created by Legal Counsel.

The Chair MOTIONED, Mr. Ketcham SECONDED and the motion passed unanimously that the Parks be listed.

- A subcommittee member asked what will happen with new Parks.

Dr. Rosenbaum MOTIONED, Mr. Benson SECONDED and the motion passed unanimously that when the County acquires land in the future it will be designated as natural or regional.

Ms. Olson: A lot of the Cities have benefited from the 2000 Bond which was a County-wide bond, and deeds have been transferred to Cities with that bond money and the restrictions on those properties and with the bond the Cities could do whatever.

- A subcommittee member advised that the Charter would not interfere with the Cities.
- It was suggested that the subcommittee go to the next step which is addressing the restrictive covenants.

A subcommittee member suggested language for the Charter that Broward County cannot release restrictive covenant from City parks unless by unanimous vote or a super-majority.

- A subcommittee member stated the bond covenant will run for another 16 years and the scenario prescribed by the previous members would kick in after that.

- The Chair added that per Bond Counsel, two things would need to be done. First is the money would have to be reimbursed, and second there would have to be a swap out for equal first and federal land. He added that they are considering prohibiting it without a very high vote of the County Commission.
- A subcommittee member asked if the document they had in hand was the actual Dade County Charter ballot language that the voters approved, the Chair advised it was the actual Charter but not the ballot language. Ballot language is not included in Charters.
- A member stated their concern for possibly placing too many resolutions forward.
- The Chair suggested placing all of the areas they want to umbrella under this resolution, into one under Title of Protection of Parks.
- A member suggested making it one question, and then added the additional protection for the already bonded parks, to keep it from being complicated.
- The Chair suggested, in cases where restrictive covenants run in favor of the county, those restricted covenants can only be lifted by a unanimous vote of the County Commission.
- Another member suggested posing all 3 into one question, in order to have one policy in place to save our parks in the Charter.
- A subcommittee member asked how they would draft a question to include all 3 concerns.
- The Chair advised that their General Counsel would be handling that.

Mr. Benson MOTIONED to add a third provision, SECONDED by Dr. Rosenbaum passed unanimously.

- A member asked another member if they could foresee anyone being against this proposal.

Mr. Harbin: I think it will be a very popular issue. Let me give you an example of our bond issue. We tracked a 120 bond issues across the United States in 2000, and our bond issue is one of the largest in the entire country, passed by 74% voter approval. I personally think it will be popular.

- The Chair suggested reviewing the proposals at the next meeting.
- The Chair asked the subcommittee if they would want to see the language of the draft before passing on it, or is there a general consensus to draft it and pass as a recommendation.
- The subcommittee agreed to have it drafted and passed as a recommendation.
- The Chair suggested moving to the next order of business.

III. Discussion of Proposed Amendment to Charter Section 1.04 Citizens' Bill of Rights of Broward County Charter entitled: Right to Protection of Our Natural Resources and Environmental by Commissioner Kristin Jacobs

- A member advised the subcommittee of the memo in their packets regarding the proposed amendment.
- A discussion ensued amongst members in regard to what the purpose of the memo was and whether there was any language in the Charter that addressed this concern, and it was determined that there was not.
- A member suggested inserting a new item entitled *Rights to Protection of our Natural Resources and Environments* under Charter Section 1.04 Citizens Bill of Rights.
- A member questioned whether language in the Charter would make the County liable.
- A subcommittee member gave an example in regards to the question asked, for clarification.
- The Chair stated that the County already has the ability to set minimum standards in regards to Environmental protection, as prescribed by Section 11.01 of the Charter.
- A conversation ensued amongst members in regards to the role of the County, and whether there needed to be more specific language in regards to accountability and responsibility.
- The Chair suggested possible language to use in the Agenda that would cover the questions posed during the conversation regarding accountability and responsibility of the County.

Mr. Benson MOTIONED, SECONDED by Ms. Davidson to recommend the proposed language suggested by the Chair. MOTION passed unanimously.

IV. Where Do We Go From Here

- A member stated that a copy of the Resolution will be sent to each member once completed by General Counsel, for review.

V. Public Comment

None

VI. Adjournment

There being no further discussion or comments the meeting was adjourned at 9:59 am. The minutes of this meeting are recorded on CRC-LUSC CD # 09.07.07 (BCGV CTR).