

**Summary of Discussion
Broward County Charter Review Commission
Land Use Subcommittee
Friday, November 30, 2007- 8:30 AM - 10:30 AM
115 S. Andrews Avenue - Room 422
County Commission Chambers
Fort Lauderdale, FL 33301**

Members Present:

Commissioner Hayward Benson, Vice-Chair
Ms. Maggie Davidson
Mr. Mark Ketcham
Joseph Maus, Esq.

Members Absent:

Ms. Patricia Good
Dr. Irv Rosenbaum

Others Attending:

Maite Azcoitia, Deputy County Attorney, Broward County
Chedley Etienne, Administrative Assistant, CRC
Ellen Feld, Esq., Water Management Districts
Matthue Goldstein, Assistant Planner, Broward County Planning Council
Samuel S. Goren, Esq., General Counsel
Maria Gross, Assistant Director, CRC
Bob Harbin, Director, Broward County Parks and Recreation Division
Jacob G. Horowitz, Esq., Assistant General Counsel
Commissioner Kristin D. Jacobs, District 2
Phyllis A. King, Transcriber PKING Consulting, Inc.
Andrew Maroudis, Esq., Broward County Planning Council attorney
Debby Ross, Planner, Broward County School Board
Henry Sniezek, Director, Broward County Planning Council
Lisa Vondrak, News-Abstracts.com
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 subcommittee 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, November 30, 2007 at the Broward County Governmental Center – Room 422, Fort Lauderdale, FL.

I. Call to Order/Roll Call

The Chair, Richard Weiss, Esq., called the meeting to order at 8:31 a.m. The Chair requested roll call by Phyllis A. King, of PKING Consulting, Inc. Upon completion of the roll call, the Chair recognized the presence of a quorum.

II. Approval of Summary of Discussion for 11/02/2007

Mr. Benson MOTIONED to approve the Land Use Subcommittee Summary of Discussion dated November 2, 2007. Mr. Maus SECONDED and the MOTION passed unanimously.

The Chair gave Andrew Maurodis, Esq., Attorney for the Broward County Planning Council the floor.

III. Broward County Planning Council Request for Attorney General Opinion regarding Municipal Road Closures

Mr. Maurodis: Thank you for the opportunity to address you. I'm just here on behalf of the Planning Council as you know an opinion from the Attorney General was requested with regard to the issue of the road closure Charter Amendment. I think you all are familiar with that, having dealt with it. I wrote a letter to the Attorney General requesting an opinion and the Attorney General responded in a phone call to me indicating what the Attorney General's office is directed to do. They responded that without adjoining to the Charter Review Board, they would not opine on that particular issue. So we're just here to inform you of that and the Chair wanted to provide you with the opportunity to see whether there would be a recommendation of the Full Charter Review Board for joining in that request.

The Chair asked the subcommittee if anyone wished to motion to join the proposed request for an opinion. There was no response from the dais.

Mr. Maurodis: If I could just, I believe without speaking directly to the Chairman on this. I think it's his view that he believes that whether this goes on the ballot or not, he thinks it's important

to have this particular information and have an opinion on this issue. I think that should be the reasoning behind it. He thinks it's a poor quality question and he would like to see some kind of resolution.

- A subcommittee member advised that this had been discussed previously and it was the consensus of the subcommittee not to pursue the issue any further.

The Chair agreed.

- A subcommittee member stated that it was already voted on and suggested that there should be no further discussion.

The Chair again asked the subcommittee if anyone wished to motion to pursue the issue.

- A subcommittee member reminded the Chair that the subcommittee previously voted not to pursue the issue any further.

The Chair thanked Mr. Maurodis and moved to agenda Item IV.

IV. Continuation of Discussion of Revised Proposed Draft Amendment, entitled: Broward County Park Preservation, Resolution 2008-007, revised as of 10/25/07 (Review Memorandum No. 2007-24) Park Preservation Proposal Comparison

The Chair advised that he met with Commissioner Jacobs in an effort to develop agreeable language and explained that the Commissioner was concerned that the language would allow people to take pot shots at the language. He apologized for not distributing the draft prior to today's meeting.

Mr. Goren: I'll take responsibility for that. I received it from Maite after a conversation. Forgive the interruption, to the extent that I've offered up this morning. It is the last element of what I believe was the exchange you might have had with staff.

The Chair advised that the County Attorney document presented contained a proposed amendment to what the LUSC did. He explained that Commissioner Jacobs felt that the proposed resolution was getting too much into the day-to-day operations of the parks. The

Chair suggested that the subcommittee review the proposed language step-by-step to ensure everyone's understanding and to gain consensus.

The Chair recognized Maite Azcoitia, Deputy County Attorney, and requested she join the dais. He then referred to Resolution No. 2008-007 and Comparison Memo 2007-24 from General Counsel. The Chair explained for the record that he does not think it's anybody's fault that resolution No. 2008-07 was not ready for distribution prior to the LUSC.

The Chair advised that there are three things currently being reviewed.

- Exhibit A.
- Comparison Memorandum
- Also a two-page Amendment that might get drafted

The Chair asked Ms. Azcoitia to provide input on Exhibit A-1.

- The Chair advised that it was agreed by the subcommittee that there were no concerns or changes to Exhibit A-1.

Mr. Goren: Mr. Chair, the possibility exists that when you were having your conversation that you might have been working with an earlier draft and not the draft that's before the Board this morning. The substance of which, however, is not significantly different, and is workable this morning with some conversation.

The Chair referred to Exhibit A-2

- A subcommittee member expressed confusion and requested clarification. They asked if the suggestions by Commissioner Jacobs were formed after the comparison.

The Chair explained that the LUSC will review proposed Exhibit A. He stated that Commissioner Jacobs' changes were intended to be made to Exhibit A. He also advised that the earlier draft Ms. Azcoitia was working with did not include some of the language used in the most recent draft. The Chair asked Ms. Azcoitia if she had a copy of the latest draft.

Ms. Azcoitia: Yes I do, in the packet that I received this morning.

The Chair asked if the following sentence should be removed, "There shall be no private commercial advertising directed in natural area park."

Ms. Azcoitia: I believe so.

The Chair stated that he agreed that the second sentence should be eliminated. He suggested eliminating the language "used for commercial purposes."

- A subcommittee member asked what the basis was for eliminating the language, "used for commercial purposes."

Ms. Azcoitia: At the last meeting she (Commissioner Jacobs) mentioned tightening budgets with cities and counties, and as long as it's used for park purposes, she thought that future County Commissioners should be able to get some revenue from the Parks.

The Chair advised that Commissioner Jacobs' basic feeling was to preserve the parks as parks. He added that she stated that there needed to be flexibility and ensured funding availability.

The Chair suggested deleting the words "commercial purposes" in the second sentence of paragraph two.

- A subcommittee member suggested defining the phrase commercial purposes.

The Chair advised that the words commercial purposes are being deleted. He also confirmed that sections A-1 and A-2 had been approved.

Mr. Goren: If I may, so A-1 is as drafted and A-2 would then delete from the second sentence the words, "There shall be no private commercial advertising erected in a natural park area." The next sentence continues with – "natural area parks may not be sold, transferred, or used for purposes other than as a natural park, etc." and that would stay the same with those changes.

The Chair moved on to section A-3 of the current draft.

- A subcommittee member stated that they were confused as to which document is being addressed.

- A subcommittee member confirmed that Exhibit A of the latest LUSC iteration of the proposed resolution provided by General Counsel is the document being addressed.

Consensus from the dais was that items A-3 and A-4 will remain the same.

Commissioner Kristin Jacobs: I'm extremely confused. The draft that you all are working on is the draft that you created and gave to us. Now we've gone back to the original, and if you keep A-3 the way it is, then you are still using language that is absolutely not what we talked about. We talked about your draft.

The Chair responded that the draft being reviewed broadens the use of the language.

Commissioner Jacobs: I'm frustrated that we didn't discuss this. We discussed the draft that was given and I thought we had some consensus. So, I don't agree with the majority of what's here and we have not had a discussion about this draft. If you would like to start over again because that appears to be what we're doing, I'll be happy to do that. I wouldn't want the group to think that we have reached consensus on what you're now discussing because there was no discussion about what you're discussing now.

The Chair explained that the subcommittee did not get the redraft of the language until this morning. He invited Commissioner Jacobs to participate as the subcommittee went through the draft so that it could be completed today in order to avoid another meeting.

Commissioner Jacobs: I would suggest then that we go back and copy the three-page document that is so much easier than forgetting what you're substituting and just say this is the new model. Does anyone have any issues with the way it is written?

The Chair advised that the draft provided by Ms. Azcoitia does not cover every paragraph.

Ms. Azcoitia: I think that A-1 is the same as what we worked off of. The only thing that the subcommittee did not discuss, which we discussed at our meeting on Monday was including some language that would capture if any of these properties had a name change. Commissioner Jacobs' concern was to ensure that these restrictions continue to apply to the property notwithstanding a name change.

Commissioner Jacobs: Just for the subcommittees' information, my concern there was that a name could be changed today. I don't think we should be so specific by names. We all should just address the parks by their category and their description and leave it at that. That if a park had a different name then and it was not listed here, that there might be an argument at some point 20 years down the road, that it isn't a park that is contemplated. So, then the discussion evolved to well then, lets add language that says should you ever change the name... – so for example, if five years from now Quite Waters Park is renamed, I don't know, Mr. Smith Park and now it's been 20 years and everybody knows this park by Mr. Smith Park, then you could see that the Charter made the challenge because the name would have been different and would have been different for such a long time. So, there are two options; go back and make it more simplistic and just go by descriptions of the parks. That way no matter what name or any parks that come along, they're covered by their use of description, or if you're going to continue to name each individual park, add language that says, "should the park names change or additional parks be added to the list of parks."

The Chair asked the subcommittee if anyone had a problem adding Commissioner Jacobs' proposed language.

- The subcommittee agreed to add Commissioner Jacobs' language.

The Chair directed Legal Counsel to incorporate Commissioner Jacobs' language into the resolution.

Ms. Azcoitia: With A-3, if you remove the commercial uses from two, I don't know that the underlined language is necessary because there is no restriction for weddings or parties already. That would make it consistent with what we had discussed on Monday.

The Chair stated that the problem is that in A-2 Natural Area Parks is not defined.

Ms. Azcoitia: I was talking about the underlying language; regarding weddings and things like that. If we remove the commercial language from A-2, then we don't need that; it would be consistent with what we discussed.

The Chair advised that the reason for the wedding language was to liberalize it. He stated that this language is not needed since commercial use is being removed.

Mr. Goren: So to be consistent, Mr. Chair, you would delete the underlines from paragraph 3, as that would be redundant.

Ms. West: The underlined language in number 3 is out; it's just the first part of the second sentence regarding disturbed area that stays in.

Ms. Azcoitia: Are we still having, for the purposes of this article, passive recreation?

The Chair stated that a period would be added after the word *areas* and the new language would be deleted. He advised that there were no changes to A-4, and that A-5 has a suggestion from the Commissioner that as long as the lands are preserved as parks, then there is no need to get into the day-to-day operation details.

Commissioner Jacobs: If I may Mr. Chair, the reason for that in my opinion is that a Charter is a Constitution and as the guiding principles a constitution should not get into the day-to-day management of parks. That means, to take particularly, if changing this is set at a super vote required at 60 or more percent, you would see that this is very cumbersome for the maintenance and operation of a park system as best described against parks. So, trying to keep it as simple as possible and having the other language farther along, and previous to this, and farther along in the item that protects the parks. The purpose was to ensure that those parks the public has purchased for the purpose of recreation passive use, will remain so long into the future, but not to micro manage the day-to-day operations and maintenance efforts of the parks and staff.

The Chair asked for the feelings of the subcommittee.

- A subcommittee member stated that there was no problem with removing A-5.
- The subcommittee agreed to strike A-5 from the language.

The Chair advised that there are no changes to B-1. He stated that B-2 had a suggestion from the Commissioners to be stricter.

Commissioner Jacobs: If I may, the whole reason why I wanted to put something like this before the voters in the first place, was to protect all of our parks, every park purchased either with Non-bond Referendum dollars, 2000 Parks Referendum dollars or any other parks that have been purchased prior to that or subsequent to that. The public has the idea that it's going

to remain so forever. This language allowed the County Commission to do that, which is the current situation, and we are blessed to have a great Commission that put the kind of restrictions on ourselves that we did so by a majority vote,. However, we don't know what future County Commissions might do, so to only take the stringent language for natural areas while leaving out the Regional parks, when in fact it's right now that we are seeing them chip away at our Regional parks. There are Cities that are not setting aside enough open-space and recreational space now and have already started to approach 5 acres here, 2 acres here from our Regional Park system. So protection for the Regional Park system is in fact, if you look Countywide, that's where the large acres, the greatest chunks of open-space in our County is in our Regional Park system. Therefore, I would like to see it protected to the same degree that the Natural Areas are protected. In fact, it's the genesis of the whole issue.

- A subcommittee member asked if it was suggested that Regional Parks could be changed by majority votes.

The Chair explained that the previous draft required a unanimous vote of the County Commission, but the latest draft is consistent with what the Commissioner suggested, which is 2/3 votes.

- The subcommittee agreed to item B-2.

Commissioner Jacobs: The vote to change the Constitution - the State's Constitution is 60%, so the discussion was that this should not trump the State's in changes and that it should be the same.

The Chair stated that the suggestion was that the changes in these parks should not be more stringently controlled than changes of the State Constitution. He then asked for a suggestion from Commissioner Jacobs.

Commissioner Jacobs: (Referring to B-2) - I didn't know if there was a legal phrase for the way the Constitution is framed for the State. Again, my only concern with this issue is that the more that we start throwing out there, we may start raising objections in the community that this is stronger than what the actual Constitution is and I don't want to put anything out there that might become a target.

The Chair asked if the subcommittee had a problem with changing B-2 to reflect what the Constitution states on the Constitutional Amendment.

- The subcommittee agreed to the change of item A-2 and B-2 for both Natural and Regional parks.

The Chair advised that B-3, B-4, and C had no changes. He explained that in reference to D, restrictions were increased to 2/3. The Chair stated that the concern raised by the County Attorney's Office is that certain of the deeds or leases contained language that requires approval by the majority of the County Commission and a change would impair those contracts and can't be reduced to make it easier.

Mr. Goren: Mr. Chair if I can, and what's before you this morning is the added language not to be amended to reduce the majority required to amend or remove the restrictions. That's the proposal from the County.

The Chair stated that Mr. Goren was correct.

Commissioner Jacobs: That too was trying to keep this so that you don't have an objection from a City who was deeded a park years ago, and have certain restrictions on it, and now we would come back later and say to the City "oh, I'm sorry were going to make this a little more difficult for you." To do it retroactively, that may present a challenge to the language and we are trying to avoid any challenges. So, if it would clarify to say that whatever restrictions are in place for past parks it cannot be changed, and going forward all of the existing parks have been rolled over to match or closely match the deed restrictions to changes that the Commission has to have super majority in order for that to happen. So, the new ones that we're currently working on, have these types of restrictions. It's only those long ago given away to cities, to deal with that were already in place.

Consensus: The subcommittee agreed to item D.

The Chair stated that E and F were to stay the same.

Ms. Azcoitia: If you recall at the last meeting, there was also an issue that I had brought up with regard to annexation. I think that way back before the last meeting, I had sent language over to David Tolces seeking a change that would just provide for the Municipality to agree to

the continued maintenance and require that the property continue to be used as a Park. That language didn't make it in here either. So I would request that the subcommittee consider it again.

Mr. Goren: Chair if I may, it didn't get put in because it didn't get voted on.

Ms. Azcoitia: What I had requested was that in connection with the future annexation of land by its municipality or County and the annexing municipality shall ensure that any land specifically described or designated in this Article shall continue to be used for the purposes set forth herein. If they're a Regional Park or a Natural area Park, they would continue to be used for that and that I thought, was the intent of the subcommittee - Commissioner Jacobs, to ensure that these properties continue to be used for their purposes.

Commissioner Jacobs: So if they're transferred they maintain the same protections and the same uses that they do under this current Article.

- A subcommittee member stated that he thought that was aimed at the neighborhood parks.

Ms. Azcoitia: There was an issue with the continued maintenance. The language the way it is now, it says the County shall currently provide for the transfer of ownership and perpetual maintenance. It could be interpreted to mean that the County has to continue ...you're right, the neighborhood can maintain these parks. Under the maintenance decision, we're not allowed to maintain neighborhood parks. So, my suggestion was, instead of getting into the whole legal issue of maintenance, allow the County and municipality to work it out in the Interlocal Agreement for annexation. In this Charter, stick to its purpose which is the use of the park, and just leave the maintenance issue out of it.

- A subcommittee member asked if Regional and Natural Area parks were discussed.

Ms. Azcoitia: I said for the purposes set forth herein, so whatever their purposes are; it continues to be used for what they are. In other words, let's restrict the properties to what their purpose is and let's leave maintenance out of it. I think that just brings in a whole other slew of issues that we shouldn't be dealing with here.

The Chair suggested that the language be "provide for the transfer of ownership."

Commissioner Jacobs: This is the language, (read from Memo 2007-025), “ in connection with the future annexation of land by a municipality, the County annexing the municipality shall ensure any land specifically described or designated in this article shall continue to be used for the purposes set forth herein.”

The Chair then asked for consensus.

- A subcommittee member stated that they were not clear on what was proposed previously.

The Chair explained that what they had before was that the County should provide for the transfer of ownership and perpetual maintenance of land to the annexing municipality.

Commissioner Jacobs: The reason for that is that we cannot maintain properties that are no longer County property. If it's a neighborhood park or such, and it's moved into a City, we're not allowed to do that. This would set up an environment where it could be interpreted that; that's what this is challenging us to do to continue maintenance in an environment where we're not allowed to.

- A subcommittee member asked if they were discussing neighborhood parks.

Commissioner Jacobs: I guess the point would be that if in the future something else was transferred to a City. I can't imagine an environment where that would happen.

- A subcommittee member stated that in F it states, “ the following lands shall not be subject to these provisions.” The member then asked if a lawyer would be able to find a loophole in that language.

The Chair suggested the use of A-1 and B-1 to ensure that lands described shall continue to be used for the purpose set herein. This would exclude the neighborhood parks.

- A subcommittee member asked if municipalities were the recipients of the park lands and it is found that they don't have the appropriate revenue to maintain them, and it is found that the parks begin to not look like parks what would happen given the obligation. He asked if the County could take the lands back.

Commissioner Jacobs: I would assume if at any time in the future a city had a park, that in the past it had been acquired through annexation, decided it didn't want to keep that park for maintenance reasons and wanted to give it back to the County, that it would probably present some problems in giving it back to the County because it would be annexed. The County would have to come through and maintain something in the center of a City. That doesn't probably make much sense that the City would do that. I'm not sure...I mean you could apply that to anything that a city has; to at some later point decide they didn't want it anymore and give it back to the County, de-annex it in fact.

The Chair advised that there is a long spectrum of the definition of a park. At some point, it doesn't become a useful park anymore and that would be an issue of what the deed restrictions stated.

Commissioner Jacobs: I would think the residents of that City who enjoy the park and use the park would have issues with their City for not properly maintaining the park that was rightfully belonged to a City, however, long ago it may have been in the County. Shortly there will be nothing remaining that's unincorporated, other than County-owned properties and our large parks.

The Chair advised that at some point he thought they would put a fence around it depending on any deed restrictions. He asked if the problem was solved by doing A-1 and B-1 only.

- A subcommittee member asked if F was included to cover the neighborhood parks.

The Chair stated that they are not covered.

- A subcommittee member stated that they wanted F to be included. They then explained that when the neighborhood park is annexed to a municipality, they would want them to continue keeping it as a park.

Ms. Azcoitia: By A-1 and B-1 what you're expecting them is for the use restrictions. E would continue to apply to make a request; because where it says, *shall not be subject to*, in the proposed languages A-1 and B-1. So, the only part of this Charter language that would not apply to neighborhood parks are the restrictions in A-1.

The Chair explained that because it says should not be subject to sections A-D. He stated that by specifically leaving E in ensures that continued use as a park is covered for neighborhood parks.

The Chair called for a motion to approve the amendments.

- A subcommittee member asked a question about the language being put in.

The Chair stated that the lands listed in F would be subject to the E restrictions.

- A subcommittee member asked if F was a subsection of E.

The Chair advised that E would apply to the parks listed in F.

- A subcommittee member stated that inherent in E is that the properties maintained pursuant to A-D.

The Chair clarified that in the current draft, E says “in connection with future annexation of land by municipality”, and F says, “subject to restrictions in A-D.” He then stated that the suggestion is to change the language in E. He advised that since F only exempts the properties from the A-D restriction, it is clear that the restriction contained in E applies to them.

- A subcommittee member asked why they are being exempt from A-D.

The Chair stated that they are neighborhood parks that should not be subject to those restrictions.

Commissioner Jacobs: If I could, these parks have uses for example, that are not consistent with the descriptions for Regional Parks or Natural Area Parks. In the case those kids have to go to the different parks which have tot lots, they have uses that are different than what’s been described. They’re not a Regional Park in an unnatural area, so they were transferred.

Ms. Azcoitia: Maybe some of the confusion also is because the neighborhood parks don’t have a restriction. So, when it says to the uses described herein, really this language doesn’t provide what those uses are; I guess that’s where you’re coming from.

Mr. Benson MOTIONED to approve CRC Resolution No. 2008-007 as amended, Ms. Davidson SECONDED, and the MOTION passed unanimously.

The Chair then thanked Commissioner Jacobs for attending.

Commissioner Jacobs: Mr. Chair, I'd like to thank you and the subcommittee very much for bringing this work through. I think it's really a great process that we've taken and I'm looking forward to seeing the ballot question which hopefully will not leave anybody confused about what the intent is.

The Chair stated that the ballot question is located on page 3. He then read it for Commissioner Jacobs.

Commissioner Jacobs: That's great – Thank you all very much. I truly appreciate your efforts.

V. Public Comment

Ellen Feld, Esq., South Florida Water Management District

Ms. Feld: I'm going to give you fair warning, my son got his permit Monday, so drive safely on the streets of Broward.

Bob Harbin, Director, Broward County parks and Recreation Division

Mr. Harbin: Very good job.

Debbie Ross, Planner Broward County School Board

Ms. Ross: Good morning Mr. Chair and fellow members. At the last meeting the School Board stated their opinion that we thought was in violation of the growth management legislation, and staff will be sending a letter today stating this to the subcommittee Chair.

The Chair suggested sending the letter to the Chair of the Charter Review Commission and the General Counsel in light of the Sunset of the LUSC.

The Chair thanked Ms. West and her staff as well as Ms. King and PKING Consulting staff for all their help and support of the LUSC.

The Chair acknowledged the Sunset of the LUSC.

VI. Adjournment

There being no further discussion or comments the meeting was adjourned at 9:23 a.m. The minutes of this meeting are recorded on CRC-LUSC CD #11.30.07 (BCGV CTR).