



**Appointing Authority Meeting
December 17, 2018
Governmental Center, 115 S. Andrews Avenue
Fort Lauderdale, FL 33301
Room 430, 9:00AM**

Minutes

Members of the Appointing Authority (A.A.) signed in (see attachment)
The Meeting was called to order at 9:06AM.

I. Introductions

Ms. Gretchen Cassini, County Staff Support (Interim Board Coordinator); Mr. Sidney Calloway; The Honorable Jack Seiler; Mr. Randall Vitale; Mr. Colin Polsky; Ms. Bertha Henry; Mr. Dan Lindblade; Mr. Arnold Nazur; Ms. Rocio Blanco Garcia; Ms. Angela Wallace (Board Attorney)

II. Orientation (Gretchen Cassini, Assistant County Administrator)

Presentation to the members included: the role of the Appointing Authority, conflict of interest provision applicable to Oversight Committee, Oversight Committee composition, brief introduction given by Ms. Anthea Pennant, the one specified member in the ordinance (Broward College Director of the Office of Supplier Diversity), Broward County challenges that prompted pursuit of a local option sales surtax, history of the Transportation Surtax Plan, review of the updated website.

At the conclusion of the presentation, Mr. Vitale asked about the definitions of the Oversight Committee's categories, specifically how a professional in the field of finance would be characterized. Ms. Cassini advised the group that staff, attorneys and others had also been in discussions about clarifying the definitions in the ordinance, and that ultimately, the Board of County Commissioners (Board) as the policy body would be acting on suggested changes. Mayor Seiler agreed that clarification, especially for the finance category would be prudent. He asked whether minutes/verbatim could be accessed by A.A. members to review any discussion by the Board that would assist in interpreting intent, to which staff affirmatively responded. Ms. Henry offered her recollection of Board discussion around the finance position being in response to the potential for projects being financed using bonds or other instruments. Having A.A. input on areas that would benefit from clarification will assist County staff in preparing the ordinance updates and explaining suggested clarifications to the Board. Mr. Vitale asked whether those changes would apply only to future appointments, and then summarized the discussion by suggesting that A.A. members would have to nominate and appoint people based on what they believe to be the intent and definition of each category.

III. Sunshine Law (Rocio Blanco Garcia and Angela Wallace, Office of the County Attorney)

Members of the Office of the County Attorney described the conflict provision in the ordinance (limited to Oversight Committee members and employer/contractual relationships) versus those State Ethics laws that would require recusal for voting conflicts that would extend to familial relationships. Ms. Blanco Garcia explained that unlike typical advisory boards, members of the Oversight Committee could be non-Broward County residents and not be registered voters. Mr. Vitale asked whether a candidate would be expected to attest to meeting the ordinance's requirements. Ms. Blanco Garcia indicated that normally candidates would be vetted and asked to complete a standard form signifying eligibility. Staff directed the A.A. members to the specialized conflict form created for the Oversight Committee (located in their binders).

Mr. Nazur then asked whether a person with an employment or contractual relationship to an entity that received County funding of any type— not limited to transportation-related dollars—would be eligible. Ms. Wallace indicated that any entity that is directly a recipient of County funds and that entity's subgrantees would be ineligible. Mr. Lindblade then asked whether there was any expectation that A.A. members vet candidates. Ms. Wallace assured the members that the County Attorney's Office and staff will be vetting potential appointees. Mr. Vitale asked what process a candidate that has a conflict, or potential conflict, could use to become eligible. Ms. Wallace responded that the conflict would have to be removed before the nomination and appointment could be made. Ms. Blanco Garcia added that in normal circumstances, State ethical requirements would allow a person who was appointed and then entered into an employment or contractual relationship that creates a conflict, to seek a waiver of that conflict from the Appointing entity. Ms. Wallace clarified that the authorizing legislation for the surtax (Section 31 ½ -75) does not allow for waivers of any conflicts as it is written. Former Mayor Seiler asked about possible conflicts for a specific nominee. Ms. Henry reiterated that it is within the A.A.'s purview to request ordinance clarifications for Board consideration. Discussion occurred as to whether an interim Board Coordinator would be necessary for the purpose of seating the Oversight Committee, if or until the Oversight Committee determines its support structure. The Assistant County Administrator and Deputy County Attorney were requested to act as the Interim Board Coordinator and Board Attorney, respectively, for the purposes of the Certification of No Conflict form, as well as the preparation of agendas, minutes, etc., for the initial meetings. Ms. Wallace reiterated that the Oversight Board has the autonomy to determine its preferred organizational structure, including requisite administrative support (sunshine notices, agendas, etc.) and recommended that the form contain titles, until such time as the ordinance is clarified and staffing is determined. Ms. Cassini suggested striking the paragraph for the purpose of seating the Oversight Board and then amending the form to contain the requisite information for the annual certification process.

Mr. Nazur asked whether there would be any need to include information about related parties (to the form) since it speaks specifically to the individual under consideration. He explained that in his accounting practice you would look to see whether a related party (e.g., husband/wife or child of a nominee) has a large contract with the County or other entity that would normally create a conflict for the nominee; and that conflict of a related party would extend to act as disqualifying for the nominee. Ms. Wallace indicated that we normally do not include related conflicts in the vetting process. Ms. Blanco Garcia explained that the Oversight Board would still be subject to the Florida Code of Ethics and members would not be permitted to do business with related parties (example was given of purchasing products), but that for the purposes of determining Oversight Board (O.B.) eligibility related parties are not typically reviewed.

Ms. Wallace assured the group that the many types of conflicts which can arise, including voting conflicts, will be taught, in detail, to O.B. members during their orientation and carefully monitored by support staff. Mr. Nazur sought an explanation of when, exactly, the Conflict Form would be submitted, as he believed it was after a person was appointed. Staff clarified that the form is a requirement to be considered eligible, and Mr. Vitale affirmed the A.A.'s understanding that the attestation is a prerequisite for candidacy. Mr. Calloway suggested removing all language on the form after the initial three statements, recognizing that members must comply with local and state ethics laws. Mayor Seiler interjected that because the O.B. will not be elected officials or perhaps very familiar with ethics laws that having some statement requiring a member's affirmative duty to avoid and/or disclose potential conflicts had value. Mr. Calloway reasserted his recommendation based on the certification language in the first paragraph of the form. Mr. Vitale expressed concern about the firms for which many of the candidates work having conflicts arise, and the importance that the individual O.B. member understands his/her duty to engage in ongoing conflict reviews. Dr. Polsky suggested that the scale and scope of projects contemplated (based on a brief view of the GIS map during the presentation) would necessitate a full-time conflict review for the members, and that an aggressive enforcement of the conflict provision in the ordinance would result in people cycling in and out, off the O.B.

Mr. Vitale stated that the A.A. had the responsibility to select individuals who were unlikely to experience conflicts over their four-year terms, emphasizing the value of retirees, who may have the same skillset with a lower risk profile. Mr. Nazur weighed-in to bolster the notion of using retirees to maintain continuity on the O.B., since employees of large firms that do government work or have contracts with government would be disqualified, as would anyone who serves on a non-profit Board that receives money from the County. Mr. Vitale asked whether volunteer board members of a non-profit, would be disqualified. Staff explained that disqualification would result from receiving compensation. Mr. Nazur then suggested that if O.B. members were making decisions about what projects would be occurring and when, that vetting for related conflicts would be very important, since O.B. members could recuse themselves from a voting conflict but still influence other O.B. members. Mayor Seiler asked whether a motion was needed.

Ms. Cassini offered that the ordinance creating the Oversight Board specifically allowed exceptions to the normal board requirements, specifically because the conflict requirements for this board are more stringent than others. Members do not have to be residents, other than the consumer of public transportation, in order to expand the pool of eligible candidates beyond just retirees, because the Board anticipated the difficulty in meeting the conflict provisions.

Consensus was to remove the 2nd to last paragraph and modify the final paragraph to refer to the designated Assistant County Administrator and County Attorney. Tabled for action once a Chair is elected (along with several other items enumerated). Mr. Nazur asked whether there should be a limitation requested in the ordinance, for cases where the funding being received (example was a non-profit receiving money from the United Way, which received funds from the County) was completely unrelated to the surtax. Dr. Polsky asked if the conflict extended only where transportation dollars were being received.

Staff suggested that the A.A. provide direction about whether that limitation would be recommended. If so, the ordinance would have to be amended and brought back to the Board. Mr. Vitale suggested a more strict interpretation be maintained, since there will be such scrutiny of the O.B. and surtax expenditures. Mayor Seiler agreed. Consensus of the group was that it was best to leave the ordinance's broad disqualifying language as is.

Ms. Blanco Garcia described the application of the Sunshine Law to the A.A. Mr. Vitale asked whether if the Sunshine Law applies after the A.A. completes its task to appoint the O.B. Ms. Wallace explained that until the entities that designated each member formally act to designate someone else, or an A.A. member formally resigns, the Sunshine Law still applies. Discussion continued regarding how the Sunshine Law operates and whether A.A. members automatically were no longer subject to Sunshine once their business ended (O.B. is seated). Ms. Cassini offered to communicate directly with each appointing entity to determine their intention with respect to designees. Staff opined that since the A.A. could be called up at any moment, should a vacancy occur, knowing the composition of the A.A., long-term, would be necessary.

The Office of the County Attorney members present described record retention requirements, drafts, the use of emails (creating folders), texts, public record laws, and public records custodian. The A.A. members were advised that any communications associated with their role as an A.A. member be maintained. Concern was expressed because several members of the A.A. serve with each other in other capacities and are frequently in meetings together. County Attorney explained that the Sunshine Law pertains only to discussions between members about issues within the A.A.'s scope, not necessarily preventing A.A. members from communicating about all other matters.

One-way communications are also not violative of the Sunshine. Mr. Calloway asked who the custodian is for the A.A. and Ms. Wallace explained that the Coordinator is the custodian and would have to respond to the request, as required by law. Ms. Cassini will coordinate any requests for A.A.-related communications. Ms. Wallace explained that requests and responses are reviewed by the County Attorney for responsiveness and anything unresponsive, exempt or confidential is redacted. Tabled for consideration for formal action.

IV. Next Steps
a. Discussion of Nomination Process

County staff corrected the record regarding the number of nominees and read the number of submissions in each category. The nominations received from AA members or their entities (December 14-16) were compiled for each member as Additional Material and distributed to document control prior to the meeting starting. Members, staff and attorneys briefly discussed existing submissions and the fact that several nominees appeared, on the face of their resumes, to be disqualified under the conflict requirements. Staff explained that the ordinance contemplates that members of the AA or the entities they are representing can bring forward nominations. Mr. Nazur suggested having the largest pool of candidates possible. Mayor Seiler suggested having a finalized Conflict Form, short window for accepting applications, and trying to get the O.B. seated as quickly as possible. Ms. Wallace reiterated that once a Chair is selected, formal votes on all of those recommendations can occur; for now the A.A. is discussing whether an open solicitation is preferable to having A.A. members bring nominees forward. Mr. Vitale asked his colleagues whether, if there were fifty candidates in each category that no one had personal knowledge of, the group would want to invest the time to interview every candidate. Or, if, as it seems to have been the intent of the ordinance, the entities represented on the A.A. were expected to use their extensive community knowledge to bring forward qualified, known candidates for vetting and consideration. Mr. Calloway agrees with Mr. Vitale. Consensus of the group appears to be that having extensive interviews is not preferred. Mr. Vitale expressed that he thought the consensus was moving to having a completely open solicitation, instead of nominating only people for whom A.A. members could personally vouch. Ms. Wallace reiterates that it is the purpose of the Discussion item on the agenda to receive direction and consensus around the process from the A.A. Mr. Calloway suggested selecting a Chair and offered that A.A. members need to be prepared to meet at least one more time, perhaps two, and that expecting A.A. members to be able to proactively seek out eligible (non-conflicted) candidates may not be reasonable given their time demands. He feels that having more people to choose from in each category would be preferable. Dr. Polsky suggested that planning to have several other meetings may be necessary because of the Conflict of Interest requirements. Mr. Calloway believes the Conflict language will eliminate some of the existing nominees (submitted December 14-16, contained in the members' binders).

Consensus was reached that A.A. will *not* interview every eligible candidate. A.A. members will bring forth candidates for consideration of the body at the next meeting. Limited interviews may be requested at a later time.

Staff reviewed the Discussion items. Mr. Calloway asked about timing for seating the O.B. Mr. Vitale suggested moving as quickly as possible. Ms. Henry agreed that getting them in place in January, dealing with the organizational issues, orienting them, determining their needs, would be most appropriate; recognizing that funds will not be spent right away because they will be budgeted through the 2019 budget cycle. Ms. Wallace reiterated the budget process, the way in which surtax revenues will be distributed from the state, timeline for planning and appropriating funds, etc. Mayor Seiler suggested that trying to explain that to the public is too complicated and asked his colleagues to aim for having the O.B. seated by mid-January.

Mr. Nazur asked staff to remind him which category lacked any nominees. Ms. Cassini responded, "Environmental Science" and he asked whether the O.B. could begin conducting business if the A.A. selected only 5 out of the 8 positions. Ms. Cassini stated that the ordinance is silent on that and clarification may be needed. To further the A.A.'s consideration of timing for seating the O.B., Ms. Cassini described the coordination anticipated between the Metropolitan Planning Organization (MPO) and the O.B., as well as some of the decision points (dates) outlined in the existing ordinance.

Discussion ensued about whether the person had to be professionally engaged in the category now, or at any time in their career. Consensus of the members was that some clarification of the County Commission's intent in creating these categories was needed. County staff agreed to bring back an item to the Board requesting clarification at the January 8, 2019, Regular Meeting.

After discussion of the existing nominations' content, as well as the processes being used, members made a variety of recommendations. County staff asked for discussion of the need for interviews of potential candidates in consideration of the process and length of the subsequent meetings. Recommendations were recorded, but tabled until a Chair was selected to take formal action later in the meeting.

b. Conflict of Interest Certification Review/Discussion

(see above - II. Sunshine Law)

c. Selection of Chair

Opened the floor for nominations: Ms. Henry nominated Mr. Randall Vitale, seconded by Mr. Lindblade, staff asked if there were any other nominations. Closed. A.A. voted unanimously. Chair Vitale then took over the meeting.

ACTION ITEMS:

Discussion items were then brought up for action.

Mayor Seiler moved to amend the Conflict of Interest Certification Form consistent with previous discussion. Seconded by Mr. Lindblade. Unanimous. Mr. Lindblade sought clarification about whether the form would need to be approved by the Board. Staff advised that it would not. He then asked if the updated form would be sent to all applicants who had previously been submitted. Consensus was that it should. Consensus also existed around Mr. Lindblade's suggestions that it accompany all future applications; however, the Chair requested that it be handled as a separate action item. Mr. Nazur requested a separate conflict statement be added. Ms. Wallace advised that voting conflicts will be declared in real time based on state law, but that only the conflicts identified in the ordinance are disqualifying. Mr. Nazur asked for clarification about related conflicts again (family members benefitting from surtax proceeds) and reiterated his concern about how abstentions from voting address conflicts. Discussion ensued. Mr. Calloway asked staff to assure the members that all O.B. members will receive ethics training and be required to submit certifications that they are subject to specific regulations. Ms. Cassini suggested that in addition to completing ethics training and attestation forms, all trainings will be publicly noticed, transcribed and videotaped to comply with Sunshine.

Staff requested direction regarding what constitutes a complete application package. The Chair asked the A.A. what, besides the Conflict Form should be required as part of a submittal. Ms. Henry asked for a complete resume detailing the breadth of professional experience be included in any submittal. Mr. Calloway suggested that knowing whether the person was being nominated by an A.A. member or applying independently was important and should be included. Mr. Lindblade suggested requiring applicants to detail transportation experience. Mayor Seiler sought to include infrastructure, as well.

Chair summarized A.A. members' direction: (1) personal statement of interest (including T&I experience), and if/whether the person was asked to apply; (2) resume/CV; (3) Conflict Form. Dr. Polsky wondered whether requiring an applicant to include experience in T&I may dissuade otherwise eligible applicants from applying and asked his colleagues to consider creating a point structure/scoring system. Staff requested whether applications would be open to the public or still brought forth only by the A.A. The Chair stated that he had that highlighted and was ready to hear from the group. Mr. Lindblade expressed concern about being able to solicit and bring forward enough eligible candidates considering the holidays and other commitments. Mr. Calloway agreed. Mayor Seiler suggested that offering public input enhanced transparency and reduced opportunity for criticism; offering that even if a large quantity of public applications were received, the A.A. could still shortlist and appoint quickly (2 meetings). Reiterated need to reduce opportunities for criticism that process wasn't open/public.

The Chair responded to the concern expressed about public participation in the process, sharing that the role of the A.A. is to act for the public. "We are the public." Ms. Wallace suggested that instead of asking an applicant to list the entity or person nominating them to restate the question to ask *whether* the applicant was encouraged to apply—that way the public would still feel welcome. Consensus of the group to do so. Ms. Cassini suggested that to create consistency with the ordinance and in fairness to those submissions already brought forth by A.A. members that applications be centrally vetted, compiled and provided to the A.A. The public can then participate and present themselves as applicants. The A.A. then *nominates* one or more eligible applicants from that group. The Chair summarized the suggestion and Mayor Seiler reiterated the desire for an A.A. member to be permitted to nominate multiple people in a single category. Mr. Calloway suggested that whomever is brought forward must also have a complete application. Consensus from the group. Ms. Cassini asked that the professional category or categories for which the individual wanted to be considered be included. The Chair responded that applicants need to understand that they can apply for consideration in multiple categories. Ms. Wallace asked for a motion.

Mayor Seiler moved that applicant pool should extend to the public (outside Broward) with a deadline for submissions of December 31 with submissions to include all the items previously discussed. The Chair summarized the elements of a complete application: (1) personal statement of interest (including T&I experience), including (2) whether the person was asked to apply; (2) resume/CV; (3) attestation of No Conflict Form on or before December 31st. Mr. Calloway seconded. Discussion ensued regarding how the public would be notified and Ms. Henry suggested that the press is generally helpful in pushing out these types of solicitations. Mr. Nazur asked whether the deadline should be extended to January 5th of the A.A.'s next meeting is on January 15th. Mayor Seiler asserted that the public will not understand why the A.A. hasn't appointed anyone by January 1, 2019 and encouraged his colleagues to keep the December 31st deadline for applications and consider meeting sooner. Emphasized the import of the surtax vote and import of the A.A.'s role and duty. The Chair agreed, adding that while public involvement is valuable, it is the job of the A.A. members to recruit talented, eligible applicants. Discussion occurred relating to how to treat existing applicants who will need to submit additional information. Mr. Lindblade asked whether voting in favor of the motion meant that nothing submitted after December 31st would be considered. The Chair answered affirmatively. The Chair asked whether there would be leniency on the December 31st deadline for those people who have already submitted. Consensus that all applicants, whether new or existing, would have to meet the December 31st deadline. **Unanimous vote.**

The Chair asked that the group act on two additional items: interviewing candidates and the date for the next meeting.

Mayor Seiler stated he did not feel interviews were necessary as they would cause undue delay. Chair requested discussion. Mr. Nazur theorized that if the A.A. does not interview and an O.B. member has an issue that could have been identified during an interview process, wouldn't that be a problem?

The Chair asked for Ms. Wallace to opine. Ms. Wallace explained that the O.B. will have its own procedures and laws governing its conduct, but the A.A. is the body that removes O.B. members. Discussion. Chair indicated that as long as potential issues with appointments could be dealt with, he was comfortable with not having interviews. The Chair reserved the right to revisit the need for interviews later, if warranted. **Mayor Seiler made a motion not to conduct interviews. Seconded by Mr. Calloway. The Chair requested a friendly amendment changing terminology to reflect that interviews would not be required, but could be requested, if deemed appropriate. Mayor Seiler accepted the amendment. Mr. Calloway seconded. Unanimous.**

The Chair asked Ms. Cassini to describe the submissions in each category.

Mr. Lindblade then asked whether the process was simply to forward interested applications to Ms. Cassini. Discussion of process around submissions. The Chair asked staff to create a form letter that could be disseminated that specifies the exact process to be used and the elements of a complete submission. Mr. Lindblade also wondered if the clarified definitions of the industries (professional categories) would be available soon. Ms. Henry explained that the first opportunity to bring an item to the Board would be January 8th, but that it would be her recommendation that A.A. members recruit and encourage applicants from those who appear eligible. The Chair agreed that A.A. would act with the best information available and if any input comes from the Board, it will be circulated to the group.

Mayor Seiler suggested meeting on the 10th and did not feel the availability of the room should constrain the decision. Ms. Henry interjected to remind the group that the meetings must be recorded and that only three conference rooms have the requisite capabilities. Staff investigated the potential for booking January 10th. Consensus for the afternoon of January 10th. Discussion of the need for a second meeting resolved in consensus against setting an additional date.

Dr. Polsky requested guidance on the acceptable ways to interact with potential candidates. The Chair clarified that there is no restriction on individual members communicating with potential nominees—Ms. Wallace added that the Cone of Silence does not apply and that it would not be a Sunshine Law violation for an A.A. member to vet candidates. Other members agreed that it would be prudent.

Mr. Lindblade wanted to know when the application packets would be made available. Ms. Wallace described the intended vetting process and 48-hour requirement of the ordinance. Discussion occurred about whether only complete, or, both complete and incomplete packets would be given to members. Ms. Cassini committed to having all materials prepared by January 8th at 1PM and offered to distribute materials as they became available to give members more time to review. A.A. discussed preferred method of receipt. Mr. Calloway and Ms. Henry expressed a preference for receiving everything at once. Mr. Nazur asked if the County had a portal available where materials could be uploaded.

Group agreed that would be preferable, as long as members cannot comment. Staff indicated a portal could be created, without the ability for two-way communication.

The Chair requested dialogue around whether staff should be prompting applicants who submit incomplete information. The A.A. discussed whether there was a need to see both complete and incomplete packets. Mr. Calloway offered the example of someone with an incomplete package, expecting to be considered, and asked how that would be handled. Mr. Nazur asked if Ms. Cassini would be contacting each applicant directly to let them know what else is needed. The Chair responded that direction on that topic needs to be given.

Mr. Calloway clarified his previous inquiry, stating that he just wanted to ensure someone on staff was keeping all applications, whether complete or incomplete, in case they are needed or requested. Ms. Henry responded that all submittals will be handled as public records and maintained accordingly.

Ms. Wallace clarified that what will be publicly noticed and subject to the 48-hour requirement is the pool of eligible, vetted applications that the A.A. will be acting upon, not the final set of nominations. Mr. Lindblade asked if, on the 10th, the Chair will open the floor for nominations. Discussion of the possible processes ensued and the Chair agreed that any A.A. member could put forth multiple nominees in each category, but that closing the floor and then voting on each category would not be his recommended approach. The Chair suggested that “wiggle room, in the end” allows for diversity considerations. Discussion occurred regarding processes used in other forums. Chair suggested ranking candidates in each category, until all positions are filled, and then acting on the full slate of nominees. Consensus on that approach was reached.

d. Next Meeting

Next Meeting will be on January 10th 1-5PM, Room 430

V. Adjournment

The Chair thanked the group for selecting him to serve in that capacity and moved to adjourn at 11:49AM.