

CHARTER REVIEW COMMISSION

June 9, 2021

A Charter Review Commission (CRC) Meeting was held at the Murdock Administration Center, 18500 Murdock Circle, Room B106, Port Charlotte, Florida at 3:00 P.M. on June 9, 2021.

Call to Order

The Meeting was called to order at 3:00 p.m. by Chairman William J. Dryburgh.

Roll Call

The following CRC members were present:

William C. Abbatematteo, V-Chair
Patricia W. Aho
William A. Akins
Jeffrey K. Anlauf
Donna L. Barrett
Joyce S. Cream
William J. Dryburgh, Chair

Theresa H. Murtha
Donna C. Peterman
Richard J. Pitz
Adam James Riley
William B. Schafer
Cyril F. Schrage
Stephen J. Vieira

Alternates

Colleen C. Palinski-Ferrara
Steve A. Drake

The following members were absent: Donald McCormick and Cherie A. Burnette, Alternate.

Others present: Emily Lewis, Deputy County Administrator and Robert H. Berntsson, Attorney.

Citizens:

David Kesselring.

I. Approval of Minutes:

MOTIONED WAS MADE TO APPROVE THE MAY 12, 2021 MINUTES BY WILLIAM AKINS, SECONDED BY PATRICIA AHO.

MOTION CARRIED 13:0

II. Citizen Input

Citizen David Kesselring was present and spoke for three minutes on the Agenda item "Selection of Legal Counsel". Mr. Kesselring referred to the following sections from the Home Rule Charter as he commented on the language within these sections regarding the powers of the County Commissioners

and the County Attorney and how their authority and actions seems to violate the Constitution of the State of Florida and/or general law.

Article 1. Sec.1.1; "...county and municipal powers of self-government granted now or in the future by the constitution, not inconsistent with general law...",

Article 2. 2.3 D; "There shall be a county attorney selected by the board of county commissioners who shall serve at the pleasure of the board."

Article II. Sec 2.3 E. "an Administrative code shall be prepared..."

Article I. Sec. 1.2 A "The provisions of this home rule charter are not intended, and shall not be construed, to conflict with the constitution of the State of Florida, general law..."

Article II. 2.2 D "The adoption of all ordinances shall require the affirmative vote of a majority of the total membership of the board of county commissioners."

Article II Sec 2.1 "...form of government with strict separation of legislative and executive functions..."

Mr. Kesselring concluded by stating that the County Commissioners do not seem to follow the Charter and too much power is encompassed in the County Attorney, which he feels may require some changes to the wording of the Charter.

III. Old Business

- a. Selection of Administrative Support: Chairman Dryburgh reported that due to the Sunshine Law and the need to publish a Notice of any meeting if two or more of the committee members meet, he made the executive decision to interview the applicants along with Deputy County Administrator, Emily Lewis, and chose and hired the Administrative Assistant, Andrea Yerger. Contact information for Andrea Yerger was distributed at the meeting and the members were asked to notify her of their absence from any future meetings.
- b. Selection Process of Legal Counsel: Chairman Dryburgh reported that the position of legal counsel was advertised through proper avenues. Attorney Robert H. Berntsson of The Big W Law Firm was the only applicant. Attorney Berntsson served as the legal counsel for the previous Charter Review Commission, did an excellent job, and is very knowledgeable. Chairman Dryburgh is pleased to present Mr. Berntsson and recommend that his services be engaged.

MOTION WAS MADE TO APPROVE THE HIRING OF ROBERT H. BERNTSSON AS THE CHARTER REVIEW COMMISSION ATTORNEY BY STEPHEN VIEIRA AND SECONDED BY DONNA BARRETT.

MOTION CARRIED 13:0

- c. Sub-committees: Chairman Dryburgh reviewed the duties of the sub-committees. Each committee will be given the questions from the last two Charter Review processes to help develop their questions for their current committee. All meetings are open to the Public and must be Noticed to the Public. Each sub-committee needs to elect a Chairperson. Committee Chairs need to work with our Administrative Assistant, Andrea Yerger to set up meeting times,

locations and to follow the procedures for proper Public Notice. Andrea will attend all meetings to record minutes and set up future meeting schedules between all committees. William Schafer raised the question regarding dissemination of information from the separate committees and whether it goes to everyone or just stays within the committee? Chairman Dryburgh instructed that all discussions and interviews are within each committee until they complete their interviews and make their recommendations to the full Commission. This process takes several months due to arranging everyone's schedules.

William Abbatematteo questioned the role of the attorney as it applies to the sub-committees. Attorney Berntsson reviewed his role as it pertains to this Board. He would be willing to assist the Commission in moving forward and answering questions, as needed. He will attend all Board Meetings and will attend as needed, any of the sub-committee meetings. Attorney Berntsson reminded them of the Sunshine Law and the implication for the subcommittee groups, that they cannot discuss anything outside of the published regular meetings. He asked that any communication to him for assistance go through the Board Chairman or the sub-committee Chairpersons. Donna Barrett questioned how he charges for his services. He is available as needed via phone and email but reminded them to be fiscally responsible as he charges \$225 per hour, based upon a quarterly hour. Attorney Berntsson remarked that this is his third time to act as Attorney for the Charter Review Commission and he has not had any issues with billing for his time previously.

William Schafer asked whether the sub-committees are considered public meetings? Dryburgh responded affirmatively to every single one. He also asked if we bring the person here or interview them at their office? Dryburgh reviewed the process on how to invite Constitutional Officers. Schafer asked if a subordinate would appear but Dryburgh indicated that the Constitutional Officer, with proper notice, would happily appear. Attorney Berntsson advised the members to check the scheduling with their administrative staff before assigning appointment times. Schaefer asked does the attorney attend all subcommittee meetings. Attorney Berntsson replied only if necessary, as there may not be much substance in the agenda to require his services, however it was up to each committee if he should attend.

Stephen Viera questioned if this is the only room available or if there are other spaces that could be used simultaneously? Deputy County Administrator, Emily Lewis, responded there are several meeting spaces in the community, but the main objective is making sure they are accessible to the community, large enough to accommodate the public and are ADA accessible. There is some flexibility within the county to accommodate meeting spaces. Chairman Dryburgh reminded the Commission that Administrative Assistant Andrea needs to attend these meetings so two meetings cannot be scheduled at the same time. Chairpersons need to coordinate their meeting requests through her as she will maintain the meeting schedules for all committees.

IV. New Business

Review of Charlotte County Home Rule Charter: Chairman Dryburgh noted that we are a Home Rule Charter and then asked Attorney Robert Berntsson to review the history of our Charter. Attorney

Berntsson described how a Home Rule Charter sets up how a county should be run as opposed to state statutes telling non-Charter counties how they are to be operated. The Legislature allowed local counties to become Home Rule Charter counties back in the 1970's/1980's with Our Charter being established in the 1980's. It is required that every six years a Charter Review Commission is formed to review the Charter and make recommendations for changes. Ultimately, the proposed amendments are presented to the voters who decide whether to make those changes at the next election. Attorney Berntsson noted that adoption of those prior changes is located under each section of the Charter that was changed showing the date amended and the effective date. Chairman Dryburgh reviewed the rest of the Charter, giving background information and pointing out sections on which the different sub-committees would focus their attention and make recommendations. In the section explaining the Charter Review Commission process, Dryburgh noted how several of the actions have already been completed and highlighted what to expect in the upcoming months.

Attorney Berntsson added that each committee reviews their portion of the Charter and makes suggestions for possible changes and brings their issues to the full Commission for discussion. All suggestions will be voted upon. Those proposed amendments given the majority vote will be given to him to draft the language for the amendment per Florida statutes. The committee will then vote again on the new language for each question presented to the voters. By July of 2022 all approved amendments will be presented by the Charter Review Commission Chair to the Board of County Commissioners who approve and send it to the Supervisor of Elections for placement on the November 2022 Ballot. The Ministerial duty of the Commissioners is to approve what this Commission submits to them. Cyril Schrage asked if County Commissioners must approve our recommendations? Attorney Berntsson replied, "Yes, they cannot override your decision".

William Schafer asked if anyone could serve on more than one subcommittee? Dryburgh replied, "No, they are all different". Theresa Murtha mentioned that there are provisions in other county charters that are not in ours, that Charlotte County seems pretty boilerplate and questioned why specific details on how to handle redistricting, term limits and powers of the commission are not included or made clear? Attorney Berntsson replied if it is not written into the Charter (what deviates from general law), then general Florida law applies. Only changes that deviate from the general law are placed into the Charter.

Attorney Berntsson reported that there were 8-9 questions on each of the last two Election Ballets in 2010 and 2016. Many items were raised, discussed, and debated internally within the Commission and sub-committees but either did not make it to the ballet or if it did, the voters turned it down.

Chairman Dryburgh reported that last time at the end of the process he took an up or down vote on each item so no one can say they did not have a chance to give their input. Attorney Berntsson commented that the Commission decides after all the interviews and the public hearings are completed, what amendments to pursue before giving the items to him to draft the language.

Adam Riley questioned whether there was a pre-approved amount for attorney fees? Dryburgh reported that the Commission's total budget is \$35,000; however, an increase can be requested to complete the work of the Commission.

Donna Barrett requested that a list of Ballet items that were presented to the voters in the last two elections be given to the Commission so that they could understand what happened previously.

Donna Barrett ask why agencies such as the Airport Authority or School Board were not listed in our Charter but were in other Charters regarding their residency requirements. Attorney Berntsson answered that the Airport Authority is an independently created government Agency not under the jurisdiction of the county. He stated that we have several independent special districts in Charlotte County like the Englewood Water District and Gasparilla Island Bridge Authority created by the Legislature and that Charlotte County has no authority.

Donna Barrett referred again to our Charter and mentioned the issue from a previous election of someone being disqualified from running for office if not living in the area and that no one seems to enforce this matter. Attorney Berntsson said the issue was discussed between the Supervisor of Elections and County Attorney as to who had standing to pursue the issue. After much debate it was decided that the Charlotte County Commission did not have standing to pursue the issue in court. The person/candidate objecting to the individual must go to court stating this violates the county charter. A sub-committee might want to address this question with the Supervisor of Elections.

V. Discussion:

Absences: Chairman Dryburgh raised the issue of how the Commission wanted to handle the issue when Commission members miss three meetings and when should the Alternate take over? Deputy County Administrator Emily Lewis suggested that this is a discussion the group should have and adopt some rules to govern this Commission. For instance, The Board of County Commissioner's Advisory Boards have a three-absence rule and that is what the alternates should be used for.

William Abbatematteo asked if we have the authority, and can we impose additional rules? Attorney Berntsson replied that we do.

William Schafer spoke to knowing in advance of missing a meeting and not showing up as being two different levels of circumstances.

Donna Barrett spoke to absent members missing too much information if they missed three meetings. Their need to ask many questions to get caught up on the amount of discussion missed may eventually hamper their knowledge in the voting process. Donna commented further that missed meetings can be avoided since the meetings are set in advance.

Patricia Aho asked if we establish the three consecutive unexcused absences rule and dismiss someone, how does that affect the membership numbers going forward? Chairman Dryburgh stated that an Alternate takes the replaced member's place when this happens. Attorney Berntsson said that as long we still have Alternates in reserve, we can continue to operate, and if we run through all three, the County Commissioners will appoint additional Alternates.

Attorney Berntsson read the Charter language from Sec. 4.2 (C) (2) "*The commission may adopt such other rules for its operations and proceedings as it deems desirable.*"

Deputy County Administrator, Emily Lewis stated that when the needs arise, the Board of County Commissioners has chosen the order of the first, second and third Alternate to replace a Commission member with an Alternate.

Cyril Schrage suggested that we adopt a rule that if you missed 3 consecutive unexcused absences you will be replaced. Attorney Berntsson said that this Commission has great authority to set its own procedures but cautioned the use of the word "unexcused" as it places a judgement call on what is or is not excused by putting it to a vote.

Donna Peterman commented that this position is something we all applied for knowing we would need to commit to being present at the meetings. If you miss, then that ends it, excused or not. If we cannot commit, we shouldn't be on it. Attorney Berntsson remarked that the previous two Commissions did not run through all the Alternates.

WILLIAM SCHAFFER MADE A MOTION THAT WE SHOULD REAFFIRM NEXT MEETING DATE AT EACH PRECEDING MEETING. NO SECOND. THE MOTION DIES.

William Abbatematteo asked if this issue applies to the Commission meetings and/or the subcommittee meeting? Attorney Berntsson replied just the Commission.

WILLIAM ABBATEMATTEO MADE A MOTION THAT ANYONE WHO MISSES THREE COMMISSION MEETINGS RESULTS IN AN AUTOMATIC DISMISSAL. SECONDED BY STEPHEN VIEIRA.

Discussion followed concerning the various disadvantages of missing three consecutive meetings versus missing three meetings total or missing three meetings within a specific time frame.

MOTION FAILS 5 to 8.

MOTION MADE BY THERESA MURTHA THAT ANYONE WHO MISSES THREE CONSECUTIVE COMMISSION MEETINGS IS AN AUTOMATIC DISMISSAL. SECONDED BY DONNA PETERMAN.

Discussion followed with the concern being raised that this may be a free pass as there is a possibility that someone could miss two meetings, come to the next one and then miss two meetings and never get to that third missed meeting threshold. Even if people miss two/three meetings they are missing a lot of information.

Attorney Berntsson cautioned that the Commission should set the Rule at the beginning and then abide by it without exception. William Abbatematteo spoke to what incentive is there to Alternates to attend?

MOTION CARRIED 9 to 4.

Attorney Berntsson raised the issue that Alternates should not be voting. He affirmed that Alternates do not replace someone absent at the meetings. He also noted that unless someone has an ethical reason for abstaining from a motion than everyone must vote. A vote recount was taken.

MOTION CARRIED 8 TO 5.

Continuing the discussion, Donna Barrett address the concern if someone missed 2 meetings should they be put on probation or should someone reach out as to see why they missed? Chairman Dryburgh responded that he could instruct our Administrative Assistant to call this person, if necessary.

William Schafer raised the issue that since Alternates do not affect voting, should they be penalized for not attending? Attorney Berntsson spoke to the continuity of meetings, if you are an Alternate and do not attend meetings you miss out on all the discussion up front, therefore it is important that they be present as well.

Breakout Session: At 3:55 p.m. the Sub-committees of: Administration/Staff, (members Donna Barret, Stephen Viera, Steve Drake, Cyril Schrage, Cherie Burnette); Board of County Commissioners, (members Donna Peterman, Jeff Anlauf, William Abbatematteo, Richard Pitz); Constitutional Officers, (members Patricia Aho, William Akins, Donald McCormick, William Schafer); and Other Boards and Agencies, (members Theresa Murtha, Joyce Cream, Adam Riley, Colleen Palinksi-Ferrara); broke into their sub-groups to discuss the following: To elect a Chairperson, review questions from the previous two Charter Review Commissions for their sub-committees and set their next meeting dates.

The following Commission members were chosen as Chairpersons for each sub-committee:

Administration/Staff – Donna Barrett.

Board of County Commissioners -William Abbatematteo.

Constitutional Officers - William Schafer.

Other Boards & Agencies – Theresa Murtha.

VI. ADJOURNMENT:

MOTION WAS MADE BY JOYCE CREAM AND SECONDED BY CYRIL SCHRAGE TO ADJOURN THE MEETING.

MOTION CARRIED 13:0

Meeting adjourned at 4:16 p.m.

Next meeting will convene on August 11, 2021 at 3 p.m. at the Murdock Administration Center, 18500 Murdock Circle, Room B106, Port Charlotte, Florida.

William J. Dryburgh

William J. Dryburgh, Chair

DATE ADOPTED: 8/11/2021