



MIAMI-DADE COUNTY FINAL OFFICIAL MINUTES CHARTER REVIEW TASK FORCE

Board of County Commissioners
Main Library Auditorium, 1st Floor
101 West Flagler Street

January 9, 2008
As Advertised

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Board of County Commissioners

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**CLERKS SUMMARY AND OFFICIAL MINUTES
CHARTER REVIEW TASK FORCE MEETING
JANUARY 9, 2008**

The Charter Review Task Force convened in a meeting on January 9, 2008, at 10:00 a.m. in the Main Library Auditorium, First Floor, 101 West Flagler Street. The following members were present: Chairman Victor M. Diaz, Jr. and members Ms. Lynn Dannheiser; David Dermer, former Mayor of the City of Miami Beach; Maurice Ferre, former Mayor of the City of Miami; City of Miami Gardens Mayor Shirley Gibson; Commissioner Carlos Gimenez; Mr. Robert A. Ginsburg; Mr. Murray Greenberg; Ms. Elizabeth Hernandez; Mr. John Hogan; Mr. Francois Illas; Mr. Richard Kuper; Mr. Jorge Luis Lopez; Mr. H. T. Smith; and Ms. Yvonne Soler-McKinley; (Mr. Miguel De Grandy; Carlos Diaz-Padron, former Mayor of the City of West Miami; Mr. Larry Handfield; Mr. Robert Holland; Raul L. Martinez, former Mayor of the City of Hialeah and Mr. Ignacio Vazquez were absent).

1. Call to Order

Chairman Diaz called the meeting to order at 10:15 a.m. He noted the Task Force was due to issue its final report on January 29, 2008 and he would discuss scheduling of the report at the end of today's meeting.

2. Roll Call

The following staff members were present: County Manager George Burgess; Assistant County Manager Susanne M. Torriente; Assistant County Attorneys Cynthia Johnson-Stacks, Wifredo Ferrer and Craig Collier; Assistant to the County Manager Maggie Fernandez; and Deputy Clerks Doris Dickens and Judy Marsh.

3. Approval of Minutes

A. Approval of November 28, 2007 meeting minutes

Chairman Diaz noted the minutes of the November 28, 2007 Charter Review Task Force meeting should be amended as follows:

Page 5, fourth paragraph from the bottom, the motion should read: "...Charter amendments must be placed on the ballot during a general election."

Page 6, second paragraph, the sentence should read: "Chairman Diaz called for additional amendments to the Charter provisions regarding citizen initiatives."

Page 7, last paragraph, the second line should read: "He noted it was important to define the selection of a body that would be empowered with authority to place Charter amendments directly on the ballot with checks and balances on the power of that body, and whether the checks and balances should originate with the Mayor and County Commission or whether the checks and balances should be in a higher voting requirement of the body."

Page 8, fifth paragraph, should read: "...and the Charter should be the sole governing document setting forth initiative requirements."

Page 9, third paragraph should read: "Chairman Diaz noted further discussion on the foregoing issue was tabled pending a report from the County Attorney regarding the provisions of State law governing citizen initiatives."

Page 11, the first paragraph under Section "C" should read: "...the County Attorney's Office requested clarification on whether it was the Task Force's intent to extend its recommendation regarding the Public Safety Director to include the Department of Corrections."

Chairman Diaz noted at the end of Section "C" (page 11), the minutes should reflect that it was the consensus of the Task Force that it was not their intent to expand the recommendation regarding the Public Safety Director to include the Department of Corrections.

It was moved by Mr. Ginsburg that the minutes of the November 28, 2007 Charter Review Task Force meeting be approved, subject to the foregoing amendments. This motion was seconded by Ms. Hernandez, and upon being put to a vote, passed by a unanimous vote of those members present.

B. Approval of December 12, 2007 meeting minutes

It was moved by Mr. Smith that the minutes of the December 12, 2007 Charter Review Task Force meeting be approved. This motion was seconded by Mr. Ginsburg, and upon being put to a vote, passed by a unanimous vote of those members present.

Mayor Ferre asked that the Task Force consider proposed amendments regarding initiatory petitions, submitted by Stephen F. Rosenthal, Esq., as its first order of business.

Chairman Diaz said he felt it would be appropriate to discuss Mr. Rosenthal's proposed amendments under "New Business" or it could be added to the Task Force's preliminary recommendations. He noted the proposed amendments would be consistent with the letter received from Miami-Dade County Mayor Carlos Alvarez, dated January 8, 2008, and the Task Force's prior recommendation, which requested that the Charter be the only document that set forth the requirements for citizen initiatives. He noted Mayor Alvarez also recommended that the Task Force propose petition form requirements in the Charter.

Chairman Diaz read Mr. Rosenthal's proposed amendments to Section 8.07 (B.1) that the person proposing the amendment shall submit to the Board a proposed petition, in the form specified in section (2) below, and proposed ballot language, including a title. He noted this recommendation would now be to the Clerk, consistent with the Task Force's prior recommendation. Chairman Diaz noted Mr. Rosenthal's recommendation that the Board shall without delay approve as to form a petition for circulation in one or several copies as the proposer may desire, would no longer be relevant, given the Task Force's prior recommendation that petitions go directly to the Clerk to certify the form of the petition. He further noted the proposed amendment to Section B. 4 that within thirty (30) days of the date that a certified petition is presented to the County Commission, the Board shall approve ballot language, including a title, in impartial and concise language which provides a clear understanding of the proposed amendment, would be moot in light of the Task Force's prior recommendation.

Mayor Ferre noted he felt the proposed amendments clarified the petition process, with the exceptions noted by Chairman Diaz, which were previously addressed by the Task Force.

In response to Chairman Diaz' inquiries whether the proposed amendments would create legal issues with respect to petition circulators, and the difference between the proposed amendments and State law, Assistant County Attorney Cynthia Johnson-Stacks asked that staff be given an opportunity to review State law.

Later in the meeting, Assistant County Attorney Wifredo Ferrer advised State law would not prohibit Mr. Rosenthal's proposed amendments from being introduced.

Chairman Diaz noted the proposed amendments would be considered on January 17, 2008.

4. Old Business

A. Discussion of Issue 7 – Study of Balance of Power between Mayor & Board of County Commissioners

- **Review of Procurement Authority**

Discussion ensued among Task Force members regarding who should be the final arbiter of bid protests with respect to procurement.

Chairman Diaz referred to the best practices research conducted by staff on the procurement bid protest and award authority. He noted it appeared that Miami-Dade County was unique because the County Commission was the final arbiter of bid protests versus a Hearing Officer, Senior County Administrator, Purchase Agent or Senior Buyer.

Mayor Ferre deferred to Mr. Ginsburg to explain the procurement system in Orlando. He noted it was important to keep in mind that in Miami-Dade County, the County Commission was the governing body and this could only be changed by State law. Mayor Ferre stated it was his understanding that because the County Commission was the governing body, a final decision on bid protests could not be made by the Mayor or the County Manager.

Mr. Ginsburg pointed out that hearing examiners were not used for procurement issues in Orlando.

Assistant County Attorney Johnson-Stacks advised that staff would research the issue, but indicated she did not believe that the Home Rule delegated the County Commission to be the final arbiter of bid protests.

It was moved by Mayor Ferre that the Task Force recommend to the County Commission that the Charter be amended to provide that bid protests be heard by hearing officers for final determination. This motion was seconded by Mr. Ginsburg.

Discussion ensued on the foregoing motion.

Mayor Ferre and Mr. Ginsburg accepted the friendly amendments offered by Mr. Lopez and Mr. Greenberg respectively, that the existing process set forth under the Administrative Procedures Act (APA) be used; and that the motion be prefaced with the language "that to the extent allowable by law."

Mr. Lopez noted the foregoing motion would allow the political process and debate to be moved to the front end of the procurement process thereby eliminating frivolous bid protests from being filed and embrace existing State law.

Commissioner Gimenez noted the front end of the procurement process was not pure. He stated currently the Procurement Officer and department directors were selected by the Mayor and he felt these positions would be very political in the future and would require checks and balances by the County Commission. Commissioner Gimenez noted oversight by the Inspector General or the Commission Auditor would be necessary to ensure the procurement rules were followed. He indicated he would support Mayor Ferre's motion but wanted to ensure the County Commission's power to establish the procurement rules and to establish oversight were not being removed.

Mr. Smith noted he felt the foregoing motion with the proposed amendments was a step in the right direction as the current procurement process was embarrassing.

Mr. Lopez explained the APA process which comprised retired judges. He noted these judges had no reason not to criticize the administrative process and could achieve finality. Mr. Lopez stated the standard of review by the judges was whether the procurement process was properly administered.

Commissioner Gimenez noted sometimes the procurement process was not correctly administered. He noted he would support the motion but it was not always the County Commission's fault.

Chairman Diaz acknowledged the presence of County Manager George Burgess. He noted the County Manager's silence in light of the criticism of the current procurement process, did not indicate his consent or agreement with that criticism.

Following discussion, it was moved by Mayor Ferre that the Task Force recommend to the County Commission that to the extent allowable by law, the Charter be amended to provide that the final arbiter of bid protests shall be the process set forth under the State of Florida Administrative Procedures Act. This motion was seconded by Mr. Ginsburg, and upon being put to a vote, passed by a vote of 15-0, (Mr. De Grandy, Mayor Diaz-Padron, Mr. Handfield, Mr. Holland, Mayor Martinez and Mr. Vazquez were absent).

- **Review of Procurement Authority**

Mr. Lopez noted he felt it was within the authority of the Mayor and the County Commission to establish the threshold for procurement awards.

- **Review Powers of Commission Auditor & Legislative Analysis**

Not presented

- **Review of Budget Process**

Not presented

- **Review of Zoning Authority**

It was moved by Mayor Dermer that the Task Force recommend to the County Commission that the Charter be amended to provide that any projects approved outside the existing Urban Development Boundary (UDB) line must be approved by the electorate before being considered by the County Commission. This motion was seconded by Mayor Ferre.

Following further discussion regarding proposals for development outside the UDB and whether a referendum should be approved by the voters to move the line, Chairman Diaz spoke in support of the foregoing motion. He stated he felt this recommendation, regardless of how it was received by the County Commission, would prove to be a legacy recommendation of this Task Force that would be well received by the community.

Commissioner Gimenez noted he may agree with the concept; however, he was concerned about the unintended consequences. He noted he had consistently voted against moving the UDB line, but his position changed somewhat following an incident in which the line was moved to clean up a dump. This proved to be an excellent decision, Commissioner Gimenez noted. He explained that the line was not currently drawn to any scientific or logical standard. He suggested that proposals to move the existing line require approval by 80 or 90% of the County Commission.

Ms. Dannheiser said she was very conflicted on the issue of the UDB, not because she liked the way moving the line had been handled in the past. She noted she felt there had been a complete disrespect of the community's desires and a complete focus on individual projects. Conversely, Ms. Dannheiser said she was adamantly opposed to zoning issues being approved by referendum and felt these issues should be determined by local government. She also expressed concern that often reactive decisions were made, and she would prefer to have a more thoughtful process in place. Ms. Dannheiser noted Commissioner Gimenez' comments regarding the initial establishment of the UDB line were valid and in an ideal world, it should be studied again and not by any political groups. She expressed concern that if the line was left in the hands of local government, it would continue to be abused. Ms. Dannheiser noted she would support the foregoing motion to allow the line to be moved if approved by referendum.

Mr. Illas said he felt the UDB line should be treated in the same manner as annexations and incorporations. He noted Miami-Dade County was unique in terms of its population, and he felt something a lot more thoughtful should be considered rather than simply engendering the existing process.

Commissioner Gimenez recommended a non-political planning board be established to determine whether the UDB line should be moved and meet every five to ten years to review the line. He stated it would not be project specific, but some logical reasons as to where the line should be and the County Commission would not be able to vote on projects outside of the line once it was established by the electorate.

Mr. Greenberg agreed with Commissioner Gimenez that proposals to move the existing UDB line should require approval by 80 or 90% of the County Commission. He suggested using a process similar to the process used in enacting the executive mayor provision and that this vote and decision-making be done in a year when no applications were considered.

Ms. Hernandez suggested it would be disrespectful to professional staff and some elected officials to place the decision-making process in the hands of a slick campaign. She noted the process in place must be addressed.

Following discussion, it was moved by Mr. Lopez that Mayor Dermer's motion be amended to provide that a professional, independent group be identified to review the UDB line, recommend changes to be voted upon by the electorate; and to provide that any future changes to the line, must be approved by referendum. This motion was seconded by Mr. Illas.

Mayor Dermer noted Mr. Lopez' proposed amendment was unacceptable.

Discussion ensued on Mr. Lopez' proposed amendment.

Mr. Greenberg recommended that the professional, independent group submit recommendations for changes to the UDB line to the County Commission no later than 2010.

Chairman Diaz noted he was dubious of a professional, independent group that would be studying for the next two years because of the enormous pressure that would be placed on the development process in the intervening two years. He stated he would have preferred an alternative along the lines of Commissioner Gimenez' proposal because if the current process were to remain in place, a much higher threshold was needed to provide that only those issues that were in the best interest of the community could be justification for moving the UDB line. Chairman Diaz noted he felt this issue should be left to an open and vigorous public debate,

including a study commission that could be impaneled; or with the elected officials with an appropriate check and balance. He expressed concern that the proposed independent group would become highly politicized and the referendum would be perceived by the community as a way to move the UDB line for additional development.

Mr. Lopez accepted Ms. Dannheiser's proposed amendments that a moratorium be imposed and all lobbying be prohibited on future development outside the UDB line immediately after the independent group was convened.

Assistant County Attorney Craig Collier advised that hearings for Comprehensive Development Master Plan (CDMP) amendments must go before the County Commission pursuant to State law; that he was uncertain that the Commission could be circumvented in the process. He noted the proposed independent group could make recommendations to the County Commission and applications could be processed in accordance with recommendations forwarded through the State process; however, he felt the group could not amend the CDMP without following State regulations.

Chairman Diaz noted the original motion would comply with State law because it would require a referendum to go back to the County Commission for final approval of projects. He noted it was his understanding that the objection was applicable only to the amendment to the motion, not to the original motion.

Commissioner Gimenez suggested that any proposals to move the existing UDB line would require approval by 80% of the County Commission; that the South Florida Regional Planning Council (SFRPC) be identified as the independent group that would make recommendations to move the line every five years, starting in 2009; and every five years after that, would make recommendations to the County Commission to move the line, which would require approval by the electorate.

Mr. Lopez noted he would not accept the suggestion made by Commissioner Gimenez to appoint the South Florida Planning Council as the body to review the line because it was too political. He noted his intent was to obtain a comprehensive analysis by independent professionals.

Following discussion, Task Force members proceeded to vote on Mr. Lopez' proposed amendment to Mayor Dermer's original motion, with the additional amendments proposed as follows: That the Task Force recommend to the County Commission that the Charter be amended to provide that a professional, independent group be identified and impaneled to review the UDB and to submit recommendations for changes to the line to the County Commission no later than 2010; that a moratorium be imposed on any applications once that group was constituted until such referendum could be held; and that the group may not be lobbied other

than hearing opinions from interested persons at public hearings. This motion failed to carry by a vote of 11-4, (Mayor Dermer, Mayor Ferre, Mayor Gibson, Commissioner Gimenez, Mr. Ginsburg, Ms. Hernandez, Mr. Hogan, Mr. Kuper, Mr. Smith, Ms. Soler-McKinley and Chairman Diaz voted “no;” Mr. Lopez, Mr. Greenberg, Mr. Illas, and Ms. Dannheiser voted “yes;” Mr. De Grandy, Mayor Diaz-Padron, Mr. Handfield, Mr. Holland, Mayor Martinez and Mr. Vazquez were absent).

Upon concluding the foregoing, Task Force members resumed consideration of the original motion as moved by Mayor Dermer and seconded by Mayor Ferre, that the Task Force recommend to the County Commission that the Charter be amended to provide that any projects approved outside the existing UDB line must be approved by the electorate before being considered by the County Commission.

Mayor Ferre offered a substitute motion to provide that a study of the existing UDB line be conducted by a group of professionals by 2010; and that a moratorium and the cone of silence be imposed once this group was constituted; that once the line was established, it could only be changed by a 75% vote of the County Commission; and if approved by a majority vote or less than 75% (10 commissioners), a referendum must be placed on the ballot for approval by the electorate during a general election. This motion was seconded by Commissioner Gimenez.

Mayor Ferre accepted Commissioner Gimenez’s amendment that any proposal to move the UDB line must be approved by 75% of the County Commission.

Following discussion on the foregoing motion, it was moved by Mayor Ferre that the Charter be amended to provide that any proposal to move the UDB line on a project basis, must be approved by 75% of the County Commission; that every five years an independent body shall be constituted to conduct a comprehensive and holistic study where the UDB line should be moved; and that if approved by a simple majority vote of the County Commission, the recommendations of the independent body be submitted for approval by the electorate in the form of a referendum. This motion was seconded by Commissioner Gimenez, and upon being put to a vote, passed by a vote of 10-5, (Mayor Ferre, Commissioner Gimenez, Mr. Greenberg, Mr. Hogan, Mr. Illas, Mr. Kuper, Mr. Lopez, Mr. Smith, Ms. Dannheiser and Chairman Diaz voted “yes;” Mayor Dermer, Mayor Gibson, Mr. Ginsburg, Ms. Hernandez and Ms. Soler-McKinley voted “no;” Mayor Diaz-Padron, Mr. Handfield, Mr. Holland, Mayor Martinez, Mr. Vazquez and Mr. De Grandy were absent).

Mr. Ginsburg noted at some point, the Task Force would have to look at the composition of the professional, independent group.

Regarding zoning authority, it was moved by Mayor Ferre that zoning appeals filed through the Zoning Hearing section, would go through the process set forth under the Administrative Procedures Act, which called for zoning hearing officers, similar to the zoning process in Orlando. This motion was seconded by Mr. Ginsburg.

Mr. Ginsburg explained the zoning process in Orlando. He noted the hearing officers were appointed by the City Council and lived outside the City in order to preserve the integrity of the process.

Assistant County Attorney Collier clarified the current zoning procedures in Miami-Dade County. He noted variances and setbacks went directly to Court from the Community Zoning Appeals Board hearings while zoning appeals were heard by the County Commission.

Following discussion, it was moved by Mayor Ferre that zoning applications, including variances and setbacks be heard by Community Councils with appeals to hearing officers (to be appointed by the County Commission), charged with making final determinations on zoning applications; with the exception of appeals on an abuse of discretion standard, which would be heard by the County Commission. This motion was second by Mr. Ginsburg, and upon being put to a vote, passed by a vote of 7-6, (Mayor Ferre, Commissioner Gimenez, Mr. Ginsburg, Mr. Greenberg, Mr. Hogan, Mr. Illas and Mr. Lopez voted “yes;” Mayor Gibson, Mr. Smith, Ms. Soler-McKinley, Ms. Dannheiser, Mayor Dermer and Chairman Diaz voted “no;” Mr. Handfield, Ms. Hernandez, Mr. Holland, Mr. Kuper, Mayor Martinez, Mr. Vazquez, Mr. De Grandy and Mayor Diaz-Padron were absent).

5. New Business

A. Discussion of Workshop and Public Hearing on January 16, 2008

Chairman Diaz noted an interactive public hearing would be held on January 16, 2008 at 6:00 p.m. and the Task Force’s next meeting would be held on January 17, 2008.

B. Discussion of Draft Final Report – January 29, 2008

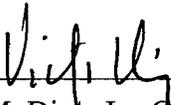
Chairman Diaz questioned whether any of the members wished to participate in drafting the Task Force’s final report. He noted he had asked staff to prepare a draft report and he could review this report and present it at the January 17, 2007 meeting or an interim committee could review the report.

Mr. Greenberg recommended Chairman Diaz review the report.

Chairman Diaz indicated the remaining issues under Issue 7 would be discussed on January 17th.

6. **Adjournment**

There being no further business to come before the Task Force, the Charter Review meeting was adjourned at 12:44 p.m.



Victor M. Diaz, Jr., Chairman
Charter Review Task Force