

**Summary of Discussion
Broward County Charter Review Commission
Land Use Subcommittee
Friday, October 5, 2007- 8:30 AM - 10:30 AM
Broward County Governmental Center
115 S. Andrews Avenue, Room 430
Fort Lauderdale, FL 33301**

Members Present:

Mr. Richard Weiss, Esq., Chair
Ms. Maggie Davidson
Mr. Mark Ketcham
Dr. Irv Rosenbaum

Members Absent:

Ms. Patricia Good
Commissioner Hayward Benson, Vice Chair
Mr. Joseph Maus, Esq.

Others Attending:

Patrice Eichen, Esq., Assistant to the County Attorney
Chedley Etienne, Administrative Assistant, CRC
Ellen Feld, Esq., Water Management Districts
Yolanda Grooms, Administrative Specialist, CRC
Maria Gross, Assistant Director, CRC
Phyllis A. King, Transcriber PKING Consulting, Inc
Commissioner Keith London, Hallandale Beach, FL
Larry Lymas-Johnson, Esq., Deputy County Attorney
Commissioner Hazelle Rogers, CRC-Vice Chair
David Tolces, Esq.
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 8:00 a.m. on Friday, October 5, 2007 at the Broward County Governmental Center – Room 430, Fort Lauderdale, FL.

I. Call to Order/Roll Call

The Chair, Richard Weiss called the meeting to order at 8:46 a.m. and requested the roll call by Phyllis A. King, of PKING Consulting, Inc.

The Chair opened the floor for comments relevant to proposed Resolution 2008-007 Broward County Park Preservation.

II. Discussion of Proposed Draft Amendment entitled Broward County Park Preservation, Resolution 2008-007

- A subcommittee member asked Mr. Tolces if someone wanted to develop a park; is there anything that could be attacked legally.

Mr. Tolces: All the parks are owned by the County; so this puts a restriction on the County's ability to make a decision to sell the property to somebody who would want to develop it. If it is owned by the County, a private developer would not have any legal rights. There is a referendum requirement. If they are persuasive enough to get a referendum placed on the ballot with respect to a specific license or lease for property there is always a possibility that it could get on the ballot and get approved by 2/3 of the voters.

- A subcommittee member stated that they believe the real loophole is in the land classifications. It was advised that the subcommittee's jurisdiction extends to the County Parks and County owned facilities. It was stated that the subcommittee closed the door on changing the use of Parks with the proposed resolution.

Mr. Tolces: Through our conversations with the County Attorney's Office and County staff, we have been able to come up with this comprehensive list of parks so that we have covered all the parks.

- A subcommittee member asked if the parks' actual names will be identified in the Charter.

Mr. Tolces: Correct.

- A subcommittee member stated that they believed the resolution is right on point and reflects what the subcommittee has discussed.

- A subcommittee member advised that they are concerned with the exemption in the resolution; because if a Natural Park area is currently leased to a municipality and is being operated currently as a nature preserve, the municipality would be able to do whatever they wish even though the park is owned by the County. If the park was leased to the municipality with certain restrictive covenants; and the subcommittee made a special vote of the County Commission requiring releasing those restrictive covenants the article does not apply to those parks the subcommittee is not imposing the restrictive covenant on. It was suggested that the subcommittee give more thought regarding the exemption.

Mr. Tolces: Would you like us to find out currently what parks that would apply to; so we can have some concept as far as what we are talking about.

- A subcommittee member asked how Section E-2 would affect parks leased to a municipality in the future.
- A subcommittee member stated that the County should be working its way out of the unincorporated areas; and needs to be a regional government. They added that the County needs to be moved to a more meaningful government and getting out of the municipal service business.

Patrice Eichen, Esq. Assistant County Attorney: Maite is not here, she asked me to stop by. I can maybe answer some of the questions because I sat in with Maite when we had a conversation with Jacob Horowitz, Esq., about some of the revisions here. Some of the issues that were raised were that currently there are neighborhood parks that are in unincorporated Broward County. Hopefully you are assuming as annexation occurs they will be transferred. One thing that Bob Harbin -- and I am paraphrasing -- what he said was:

1. You do not know if everything is going to go by the year 2010. The way the language was crafted you would have to do something and re-categorize those parks as either natural areas or regional; they can't be one or the other because they are not in a natural area and they are definitely not regional by size.
2. There are also issues like transferring -- I believe he mentioned West Park, but some cities do not want the park because it is too costly to run. They were issues that were just addressed with Jacob on the phone. That is why it came to be that the definition of the neighborhood is not included, so you wouldn't be stuck at 2008 or whatever it was, to say

we have a small neighborhood park that is 3 or 4 acres and it is active, not passive and it's not 40 acres. That is the reason why that change was incorporated.

- A subcommittee member suggested that the subcommittee stay away from neighborhood parks and instead send the County Commission a resolution to complete the annexation and clean this up. The subcommittee member stated that they would like for the County to be a regional government to deal with economic development and transportation and all the big-ticket issues, which the County Commission does very well. The subcommittee member referred to the Hester Plan, which was a movement of the County Government and advised that the job has not been finished.
- A subcommittee member stated that they believe that the issue belongs somewhere else on the Charter Review Committee.
- It was asked what the County should do with the neighborhood parks if the municipality does not want them.
- It was suggested by a subcommittee member that, this is an administrative problem not a Charter problem.
- A subcommittee member stated that the Charter should not have the County involved with neighborhood parks.
- A subcommittee member suggested completing the Annexation Program, and stated that they do not wish to add any additional language.
- A subcommittee member advised that they do not wish to have language in the Charter that would allow the County to continue to operate neighborhood parks.

Ms. Eichen: I would recommend maybe changing some of the language or adding something and tie it into the annexation. The way it is being done now, it is creating a possible hardship. What you are going to say to the residents is, "Guess what folks, you don't fit into a region, so now you can do nothing in there. You are passive, and we are going to have to remove all fields; it is only going to be a passive park, for passive recreational uses." However you want to craft it – I mean the County as far as I know – and I am not involved in annexation; but that is a goal that I think the County can't push. From what I know from other attorneys, we are dealing with annexation. It is not just the County that says you are going to get annexed and that is it.

There are Inter-local Agreements and then there are issues; the same thing that I have seen some of the attorneys dealing with now. So crafting it, as whether it is a neighborhood park intended to be conveyed during annexation – I know that 2010 is the goal to do it, but what happens after 2010 if it is not?

- A subcommittee member asked what will happen if the subcommittee does not address neighborhood parks in the resolution.

Ms. Eichen: Then what happens is – just what I said, it says all County parks. So in 2008 or 2009 when this becomes effective, the County is going to have to take that neighborhood park and either call it a regional park which is a misnomer; because it is not 40 acres or more, or make it a passive park. Then you are going to put them in a position of taking five parks or however many are on that list and not having a place for them – they don't fit. That's the only thing that we were trying to address with Jacob and he said, "Oh wow" he didn't realize that.

Mr. Tolces: I think the language actually may facilitate the ability of the County to get out of the park business. If you exempt those neighborhood parks as Patrice explained; then the County Commission isn't required to designate them as either natural park areas or regional park areas. When the annexation issues do come up, they can provide for that and the Inter-local Agreement to most likely transfer the responsibility to the City that is annexing it. Then you won't have to worry about whether or not any of these provisions do apply. In addition, the County Commission does not have to include the park in the resolution where they are going to designate it, as either a natural park or a regional park.

[Ms. Rogers entered at this time 9:05 a.m.]

Mr. Tolces: In listening to what Patrice said and reading it, I think it does facilitate the transfer of the responsibility for neighborhood parks at some point in time from the County to the annexing Municipality.

Ms. Eichen: I know that there have been some funding issues – and I do not know enough about annexation to actually say that you can do that to a city. I can't answer that, I wish I could, but I just know that no one ever thought a city wouldn't want a park. Then all of a sudden you have funding issues; and funding this park became an issue; no one ever thought that would happen. I don't know if you can make a mandate in the Charter to say the city is required to take it.

- A subcommittee member suggested having someone from the Parks Department and someone from the County Attorney's Office that deals with annexation to present before the LUSC.

Ms. Eichen: I may be able to go speak to my supervisor who does deal with that and come back to you.

Mr. Tolces: We would probably need a list to see what County parks are currently operated and maintained by municipalities so we know what we are dealing with.

The Chair called for public comment.

- A subcommittee member advised that exemption number 1 is still going to have to be explained carefully to members of the public.
- It was suggested to circulate the proposed resolution around to see if the public will respond. It was also suggested to pass the resolution to the Parks Advisory Board and the Land Preservation Advisory Board, which are County Boards that deal with open space and green space.

Larry Lymas-Johnson, Esq. – Deputy County Attorney: Patrice briefly told me what the interest is and what the concern is in terms of, if a park is in an unincorporated area and is annexed; is there the ability of the Charter Review Commission or the Charter to require a city to accept ownership of the park? I can't say that I know the answer, what I can say is that areas of concerns that I would have, would be whether the Charter itself can compel a city to do....

- A subcommittee member asked what role the County Commission has in annexation.

Mr. Johnson: The County Commission does not set the rules in terms of how annexation occurs; we have to follow the state procedure.

- A subcommittee member asked if the County Commission votes on annexation.

Mr. Johnson: The Commission does not.

Mr. Tolces: They would approve an Interlocal Agreement that is typically entered into between the city and the County to arrange for transfer of services.

Mr. Johnson: That is not a requirement of the general law, I think that the programs that the County established ...

- A subcommittee member stated that the Broward County Charter cannot mandate the cities but the County Commission can.

Mr. Johnson: I think at this point, considering how far the County has come with respect to getting unincorporated areas annexed; many cities are not interested in annexing.

- A subcommittee member advised that it could be recommended to add language to the Interlocal Agreement to protect the neighborhood parks from other uses.
- A subcommittee member stated that there are not a lot of takers for these unincorporated areas and to burden them further by imposing on the annexing body the responsibility to take the park, is making the annexation more difficult.
- It was stated that the neighborhood parks need to be protected.
- It was stated that it is amazing that after 25 years, people are still having conversations about areas people **do not** wish to take.

Mr. Johnson: I am not sure if I fully understand what you mean by protecting the parks and areas of annexation. I can say though, that my understanding is that the legislative delegation has agreed that it would not force any cities to annex any unincorporated areas; and those would have to occur voluntarily. What the legislature will do is when a city says that they are willing to take an area, they put it to vote and this is all part of a special act; the special act requires the County and the city to enter into an Inter-local Agreement. This is intended to provide for a smooth and orderly transfer of the area in the event that the area is annexed.

- A subcommittee member asked if the special acts require an Inter-local Agreement.

Mr. Johnson: The special acts do require an Interlocal Agreement.

- A subcommittee member asked if the County is required to enter into an Inter-local Agreement.

Mr. Johnson: Yes, the County and the cities. What we do as a matter of practice is when there's a part to be transferred to the municipality, we include in the deed a requirement that the land be used as a park in perpetuity.

- A subcommittee member stated that the issue is whether the subcommittee can include language in the Charter that says that the County may not enter into an Inter-local Agreement pursuant to annexation legislation unless such Inter-local Agreement provides that the parks will be transferred to the annexed municipality.
- A subcommittee member questioned how many parks are included and what their names are.

Mr. Tolces: County owned neighborhood parks are:

- Boulevard Gardens

- Reverend Samuel Delevoe Memorial
- Franklin
- Lafayette Heart
- Roosevelt Gardens
- Sun view

Mr. Tolces: I don't know where they are.

Mr. Johnson: If it is okay, I need to comment with respect to any requirement that the County continues to operate neighborhood parks. I think you are going to run into a legal issue with that. There was litigation in the 1970's with respect to whether the County can spend ad-valorem dollars to operate a neighborhood park. The ruling in that decision was that we cannot; and that becomes the problem with respect to neighborhood parks.

- A subcommittee member asked how the parks are operated now.

Mr. Johnson: We do not – I think the only one that we are dealing with and we recognize that it is a problem, is the one in the area of West Park. When the area was annexed the park is now within an unincorporated area, and the County does not operate the park. I don't know if many of you would remember a couple of years ago. We had this issue with Oswald Park that was in an area that was annexed by the City of Fort Lauderdale; and it happened that the city did not want the park because of the size and the expense of the park. Most neighborhood parks are about 10 acres or so, sometimes less – Oswald is about 30 acres.

- A subcommittee member asked if once a park is within an unincorporated area, the County can't spend money.

Mr. Johnson: It is not to that point – and this is going to be a quick summary of the case. It is *Alsdorf vs. Broward County* (the Minnet Decision). It was a group of Mayors for cities in Broward County that sued the County with respect to its expenditure on a number of items that the cities believed were in violation of a constitutional provision. The constitutional provision essentially says that Counties can not tax properties within municipalities to provide for services that exclusively benefit residents or properties in unincorporated areas, by Charter, it is vice versa. So the Mayors were challenging whether the County could use monies raised Countywide, i.e. ad-valorem dollars to support various operations that the County was spending on. Among those was a challenge to the County's Park System, and the ruling was that – at the time the County operated regional parks. There was another level of parks referred to as urban

parks; then there was a category of neighborhood parks, which were described at approximately 10 acres or less. The judges' ruling was that regional parks provide a benefit Countywide because it attracts people from throughout the County. Urban parks also were ruled valid; but with respect to neighborhood parks, the ruling was that they are designed to serve just the local community, the local area, and therefore the benefit is only to those residents that live in close proximity to the park.

- It was asked if the County currently spends any money on the neighborhood parks.

Mr. Johnson: Those neighborhood parks that have been annexed into cities we do not spend money on.

Ms. Eichen: I believe he mentioned something about that on the phone call yesterday; and of every single neighborhood park that was listed – If I recall, the majority of them are operated by the County but you could have an agreement with the city to operate it. I am not sure, but I believe most of them are still operated by the County.

- A subcommittee member asked if the parks located in unincorporated areas are managed and funded by the County.

Mr. Johnson: That is correct.

- A subcommittee member advised that they wish to see this issue moved forward to the full Charter Review Commission.

Mr. Tolces: You can certainly recommend that this move forward to the full Commission and you still have the opportunity to amend it at that time, if that is what you want to do.

- It was stated that this is an important issue and needs to be moved along.
- A subcommittee member suggested the language as follows “any property purchased with any tax dollars should remain in perpetuity.”

Ms. Eichen: The conversation yesterday – I just wanted to not characterize it that the County did not care about the parks or the preservation of it. The issue that arose was merely from the language that was presented; and it wasn't like, “what can we do about them?” The issue that we spoke to Jacob about was the – and I was not part of the subcommittee; Maite was saying that she thought the subcommittee wanted certain restrictions. It would strangle the County to have to deal with it if annexation did not occur to pigeon hold it one way or another and that was

impossible. So no one really addressed, “Well why don’t we recommend language to protect these areas if annexation occurs.” That was not even a discussion at that moment. I did not want to characterize that the County didn’t want to protect these areas, because that was not true.

Dr. Rosenbaum MOTIONED to have general counsel draft language that protects neighborhood parks.

Mr. Johnson: It sounds to me that it potentially could be a problem, and one that might be insurmountable. If a city is annexed and the city does not agree to accept the park; the park now is surrounded by an incorporated city. The County cannot pay to operate it, the city has refused to accept it; and we have a dilemma that I do not know how you get to solve that.

- A subcommittee member suggested inviting individuals that are involved in these negotiations.

Mr. Johnson: There are instances – we did manage to solve the issue with Oswald Park; but again if you followed it in the paper it dragged on for a long time. At some points, it appeared that it would not get done.

Restatement of the motion

Dr. Rosenbaum MOTOINED that the LUSC attorney draft language that protects the neighborhood parks that have been purchased with public funds, Mr. Ketcham SECONDED and the motion passed unanimously.

Mr. Tolces: I recognize the potential legal limitations that may arise as well.

- A subcommittee member suggested that the subcommittee send the proposed resolution to the CRC 400 mailing list.
- Staff was directed to communicate with Commissioner Kristin Jacobs.
- A subcommittee member requested that neighborhood parks be named in the resolution.

The Chair thanked Mr. Johnson and Ms. Eichen for they’re assistance.

III. Discussion of Proposed Draft Amendment entitled: Broward County Environmental Policy Statement, Resolution 2008-008

The Chair opened the floor for discussion regarding the Broward County Environmental Policy Statement, Resolution 2008-008.

A subcommittee member asked Mr. Tolces if the resolution could be challenged.

Mr. Tolces: The issue would be whether or not that difference of 3 to 6 creates an issue with respect to not maintaining a sustainable environment. If somebody could challenge the ordinance as being inconsistent with this Charter provision, alleging that the ordinance does not protect a citizen's right to a sustainable environment, or if it does not insure clean water or clean air, then it would be up to a judge to decide whether or not that is the case or not.

- A subcommittee member stated that there is a lot of discretion given to the legislative bodies.
- A subcommittee member provided the subcommittee with an example regarding the new boat slips.

Dr. Rosenbaum MOTIONED to approve Resolution 2008-008, SECONDED by Mr. Ketcham and the motion passed unanimously.

Ms. West advised that staff has been attempting to educate members of the other subcommittees; she asked if it is okay to continue to provide drafts of the proposed resolutions to them.

The Chair stated that it would fine.

The Chair called for public comment

IV. Public Comment

Commissioner Keith London – City of Hallandale: There are just two things – I was here a couple of months ago. I spoke about the waterways and the County's open green space. In Hallandale we use our waterways to meet our requirements of 3 acres per thousand residents. I know we are not the only city that does that; but we are one of the large users of using that to facilitate the fact that we are meeting our requirements. I don't know if you have addressed this – but before you guys end up closing out, it might be something to tighten up the rules a little bit. I am blessed because I happen to live on a waterway, but I challenge anybody to stick a picnic basket out in the middle of the waterway and enjoy this open green space. I am on private property so people won't have that opportunity to use those waterways either. The bridge it

says, "No Fishing, No Loitering, and things like that." The people that are adjacent to the waterway get an advantage; but the rest of community really does not have that advantage. So, that was one point.

I wanted to comment on Commissioner Rogers and what she just mentioned a minute ago. Diplomatic Golf Course – I am sure most of you are familiar that this is also in Hallandale. We split it with Hollywood; I don't know if anybody came forth, but just as an informational point they are coming through the County – first they are starting with the city, they want to get a land use designation to change it from commercial recreation to residential recreation. They are trying to get a dash line – I am new at this game so I am not familiar with all the terms; they are asking for 1,388 units, a 400 room hotel, and 200,000 feet of conference space. To build on the golf course you are losing our green space.

This is a long drawn out process, but one of the things I was lucky enough to be able to do was change signage requirements. When people come forth and put signage on properties that it can be anywhere from 350 ft. impact around the property to 1,000 ft. from impacting a property. We went from a little sign that was like 12 x12 and now it is required to be 4' x 6'; because we wrote the rule for small parcels. It is required 2 weeks before it goes to planning and zoning, then planning and zoning's next meeting usually comes to the City Commission. Because the Diplomat is going through a large 2 year land use change – I asked to re-visit our sign ordinance. You are trying to get people notified. There is nothing like somebody driving by a property and seeing a 4' x 6' sign and it says, "Please come to your Commission if you have issues with a land use change;" these are things that are coming to use. I encourage the attorneys and the developers to get the public involved now, instead of a year and a half from now where it comes back down to the city, because you don't want impediments thrown in there. Now there is an opportunity for people to comment on it either at the Planning Council, the County Commission, or any of these other things before it comes back. If you have covered some of these items I apologize, I know you are at the end of the game. I just wanted to throw a couple of things out there because people think that golf courses are beautiful and are going to be there forever. Again, I just wanted to repeat again on the waterways because I mentioned it when I was here a few months ago. Thank you for your time.

The Chair stated that the issue with the signage is really a County Commission level decision. He added that there are provisions in the Broward County Zoning Code that deal with signage. The Chair advised that the proper place to address the issue of signage is to approach the County Commission; because that is done by Ordinance and is not contained in the Charter.

Next Meeting

The Next meeting will be held on Friday, October 19th, 2007 at 8:30 a.m.

V. Adjournment

There being no further discussion or comments the meeting was adjourned at 9:57 a.m. The minutes of this meeting are recorded on CRC-LUSC CD #10.05.07 (BCGV CTR).