

**Minutes of the Charter Revision Commission Meeting
March 27, 2012
9705 E. Hibiscus Street, Palmetto Bay, FL**

1. **Call to Order:** The meeting was called to order at 6:10 p.m.

The following members of the Charter Review Commission were present:

Beverly Gerald
Warren Lovely
Brian Pariser (non-voting member)
Betty Pegram
Tom Ringel
David Zisman

The following staff members were present:

Ron E. Williams, Village Manager
Eve Boutsis, Village Attorney
Meighan Alexander, Village Clerk

2. **Approval of Minutes of February 27, 2012:**

Ms. Gerald noted that the spelling of the Leanne Tellam's name needed to be corrected, as did the spelling of "Bert", as in Bert J. Harris. In response to Ms. Gerald's concern regarding the lack of detail for a particular discussion item, Clerk Alexander explained that all Minutes of the Village include summary of discussions, not verbatim transcription.

Mr. Ringel moved to approve the Minutes, as amended. Seconded by Mr. Lovely. All voted in favor. The Minutes were approved, as amended.

3. **Review of Ballot Questions to be presented to the Village Council**

Attorney Boutsis explained that the questions were presented to the Council by Ordinance in the past; however, as Ordinances establish law, she provided a draft of the proposed Resolution, which shall be considered following public hearing.

Mr. Ringel asked the number of revisions suggested in the past. Attorney Boutsis replied that she believed there were seven.

Question 1: Attorney Boutsis asked the Commission to review the language of the ballot question. She asked if the Commission felt the question and Section 2.3(D) of the Charter reflected the intent, which is to require each candidate to run independently. All concurred.

Question 2: Technical and Stylistic changes: Mr. Ringel stated that this question should be listed as the first question on the ballot.

Question 3: Increasing Term limits: Ms. Pegram stated that she felt the word “increasing” was misleading, since the term remains four years. Ms. Gerald concurred. Mr. Zisman stated that the language should remain to be clear that the intent is to increase the amount of time someone may serve. Vice Mayor Pariser stated that the word “consecutive” needs to be included in the charter language, as it is stated in the ballot question. Ms. Pegram remarked that “increasing” suggested that the term limit is expanding; however, individuals still will not be able to serve more than two terms in one seat. Mr. Lovely stated that he did not object to the word “increasing.” Ms. Gerald expressed her concern that people may not read the entire ballot question and oppose increasing term limits.

The Commission decided to vote on each question. Mr. Ringel moved to approve questions 1 and 2, as written, reversing the order of the two questions so that question 2 would become 1. Seconded by Mr. Lovely. The motion carried unanimously (5 to 0.)

Regarding question 3, Mr. Ringel moved to approve the title and ballot question as is. Seconded by Mr. Zisman. The motion failed (2 to 3, Ms. Gerald, Ms. Pegram, and Mr. Lovely opposed.)

Mr. Lovely moved to change the title to “Changing Term Limits”, with the ballot question to remain as is. Seconded by Mr. Ringel. The motion carried (3 to 2, Mr. Zisman and Ms. Pegram voting in opposition.)

Question 4: Filing of Vacancies by Remaining Council with or without a quorum—Section 2.5(C)(7): Attorney Boutsis read the language. Mr. Lovely moved to accept the language as is. Seconded by Mr. Ringel. The motion carried unanimously (5 to 0.)

Question 5: Village Employment After Leaving Office-Section 4.2(c): Attorney Boutsis read the question and the language. Discussion ensued. Ms. Gerald asked how this would affect a contracted position, such as a landscaper. Mr. Ringel concurred, wondering about independent contractors and the definition of “village employment.” Mr. Lovely noted that the discussion should be focused on changing the prohibition from one to two. Mr. Lovely moved to accept as is. Seconded by Ms. Pegram. Mr. Lovely and Ms. Pegram withdrew their votes to allow for further discussion.

Vice Mayor Pariser suggested using the word “modify” instead of “increase.” Mr. Lovely moved to accept the suggestion. Seconded by Ms. Pegram. Mr. Ringel opined that if there are individuals with important skills, one year prohibition is sufficient. Mr. Zisman concurred. Ms.

Gerald stated that two years is appropriate and breaks the appearance of influence peddling. Ms. Gerald called the question. The motion passed (3 to 2, Mr. Zisman and Mr. Ringel opposed.)

Question 6: Nonpartisan Elections Defined--Section 5.1(B): Attorney Boutsis noted that "nor campaign literature" was included. Mr. Ringel moved to accept as is. Seconded by Mr. Lovely. Discussion ensued regarding utilizing the word "clarified" rather than "defined". Attorney Boutsis opined that "defined" allowed for legal clarity. The motion carried (3 to 2, Ms. Gerald and Ms. Pegram opposed.)

Mr. Ringel and Clerk Alexander suggested that the questions be placed on the Resolution to follow the order listed in the Charter. Attorney Boutsis agreed, stating she would revise her Resolution for final reading.

Question 7: Department Head Selection to be affirmed by Village Council-Section 3.3(1): Attorney Boutsis reviewed the section. Mr. Lovely moved to remove from consideration. Seconded by Mr. Ringel. Mr. Lovely stated that modification is contrary to the Council-manager form of government and the manager's accountability. Ms. Pegram countered that the Manager would remain solely responsible for nominating Department Heads. Mr. Ringel concurred with Mr. Lovely. Mr. Zisman stated that the language assures checks and balances. Vice Mayor Pariser asked if this language came from the City of South Miami. Attorney Boutsis replied that Miami Beach also has this language. Ms. Gerald called the question. The motion failed (2 to 3, Ms. Gerald, Ms. Pegram, and Mr. Zisman opposing.)

Mr. Zisman suggested including "his selection to be affirmed" at the end of line 12. Following discussion, Clerk Alexander explained that the red-lined Charter would be available at Village Hall and could be provided to each precinct.

Attorney Boutsis stated that the ballot language should reflect the charter. She suggested adding on line 12 "may not appoint any department director without first obtaining majority approval of the Council." Mr. Zisman moved to include the language suggested. Seconded by Ms. Pegram. The motion passed (3 to 2, Mr. Ringel and Mr. Lovely opposed.)

Question 8: Interference with Administration Section 4.2(B)(1) and (2): Ms. Gerald stated that the word "Interference" does not express the intent of this amendment; she believes it is a pejorative term. She noted that the resident that suggested the amendment referred to it as "the Power of Inquiry." Attorney Boutsis explained that the current title of the Charter subsection is named "Interference with Administration." Mr. Ringel suggested "Interaction." Ms. Gerald remarked that the section refers to the relationship between the Manager and the Council and their ability to ask questions. Ms. Pegram concurred with Ms. Gerald. Vice Mayor Pariser clarified that the intent was that a Council person may need information and be able to

ask questions, but not direct staff. Mr. Lovely remarked that asking a question may direct someone to research the answer. He opined that this revision weakens the manager's authority and violates the chain of command. Manager Williams noted that, currently, if a department head is asked a reasonable question, they answer.

Vice Mayor Pariser suggested deleting the last clause "and any action taken by a majority of the Council as to modification of policy direction." Mr. Zisman moved to strike the last clause, ending the sentence with "be discussed with the Village Manager" and replacing "Interference" with "Interaction" in the title. Seconded by Ms. Pegram. The Motion carried unanimously (5 to 0.)

Question 9: Composition of Charter Revision Commission--Section 6.2(b): Attorney Boutsis explained the item. Mr. Zisman moved to accept the language as is. Ms. Pegram seconded the motion. The Motion carried unanimously (4 to 0 – Mr. Lovely had briefly left the meeting.)

Question 10: Neighborhood Protection--Section 10.2: Attorney Boutsis reviewed the language and noted that she had provided her written legal opinion. Ms. Gerald asked the resident who suggested this revision to explain this issue. Mr. Ringel asked if there was an opinion as to whether the Council has to accept the recommendations of the Charter Revision Commission. Attorney Boutsis noted that her opinion on that issue was also contained in the memo. Attorney Boutsis opined that the Commission is an appointed body and she believes the Council has full authority. She noted that the Village Council will ultimately make the decision. Discussion ensued.

The discussion returned to "Neighborhood Protection." Attorney Boutsis explained that she is not opposed to the concept; however, the language is unenforceable and can expose the Village to a Bert J. Harris Act. Ms. Gerald stated that the language concerns increase of density. Ms. Pegram asserted that two concerns on the minds of many residents are up-zoning and protection of their neighborhoods. Vice Mayor Pariser remarked that South Miami has a unanimous vote provision for increase of density. Attorney Boutsis added that South Miami also requires a unanimous vote for liberalize land development regulations. She remarked that veto-power by one councilperson could be problematic.

Mr. Ringel suggested that the Council could pass an ordinance that would mandate this intent. Mr. Lovely noted that the Village has not initiated any lawsuit, rather the Village has had to defend itself. He asserted that approximately 92% of ad valorem taxes are received from single family homes; therefore, he opined the property owners who are at risk should be able to decide whether they want to take the risk. Ms. Pegram stated that the Village should not be held "hostage" due to threat of a lawsuit. She added that the next Council can remove any

ordinance. Mr. Ringel agreed with the concept, but believes the legal opinion should be followed. Brief discussion ensued.

Ms. Gerald asked Ms. Tellam to provide her input. She stated that she would wait until Public Comment. The Commission concurred to return to the issue later in the meeting.

Question 11: Annexation—Section 10.3: Attorney Boutsis explained the section. Ms. Pegram stated that the language should be reversed, a super majority vote of the Village Council first. Attorney Boutsis concurred, noting that she will reserve the language. Mr. Zisman suggested that a percentage of the area's electors should be considered. Mr. Lovely suggested adding the language, "with a petition meeting County requirements." Mr. Ringel moved to include the language, "a petition for annexation in accordance with County requirements" and reversing the language to have Council vote first. Seconded by Mr. Lovely. All voted in favor (5 to 0.)

Question 12: Enforcement of Charter by State Attorney-Misdemeanor Charge-Section 10.4: Attorney Boutsis reviewed the language, noting that she spoke with the State Attorney's office and the enforcement does not have to be criminal, it can enforce on a civil action. Discussion ensued.

Attorney Boutsis suggested the following language, "A judicial determination of a violation shall be grounds for removal from elected/appointed office or employment with the village and subject the individual to a fine not to exceed \$500 per willful violation." Discussion ensued regarding the monetary penalty. Mr. Zisman moved to modify the language, "a fine up to \$1,000 per willful violation, and not to exceed a total \$10,000." Mr. Lovely seconded. The Motion carried.

Mr. Zisman suggested including a charter amendment that would state that in the event of the lawsuit, the prevailing party would be awarded attorney's fees. Following brief discussion, Attorney Boutsis opined that such language would not be enforceable.

Discussion began concerning Question 10. Resident Leanne Tellam came forward and provided her background. She opined that the charter language is proposed in order to enforce the basis of why so may want to live in the "bedroom community" of Palmetto Bay. She stated that Attorney Tucker Gibbs had assisted with drafting the language. She provided research that she believes notes that the need to preserve residential areas is a right of the public and the public should be allowed to include it in the Charter.

Mr. Ringel asked if the Council has the authority to draft this type of ordinance without it being included in the charter. Attorney Boutsis applied that the Council did have this authority. Ms. Tellam stated that ordinances can be changed by vote of the Council and including the charter

language mandates the concept. Attorney Boutsis opined that the language is subjective. Ms. Pegram asserted that this language does not concern re-zoning, only protecting neighborhoods.

Following discussion, Mr. Ringel stated that it will be more difficult to change the charter than to change the ordinance. Mr. Lovely and Ms. Gerald responded that Mr. Ringel's statement proves the point that the charter language should be included. Mr. Ringel opined that it limits elected officials. Mr. Zisman concurred, adding that the matter is "anti-business." Attorney Boutsis noted that all commercial development is adjacent to some type of residential area in Palmetto Bay. Mr. Zisman suggested that if the residents are unhappy with the actions of their elected officials, they should use their voting right, not bind the government with the charter.

Discussion ensued.

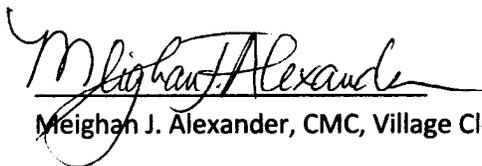
Ms. Pegram moved to accept the language provided. Mr. Lovely seconded. Attorney Boutsis asked for the opportunity to conduct further research and meet with interested parties. The Commission concurred, allowing Attorney Boutsis to return at the next meeting. Mr. Zisman moved to table the matter. Seconded by Mr. Ringel. The motion carried (3 to 2, Ms. Pegram and Mr. Lovely voting in opposition.)

Following brief comment, the Commission directed the Clerk to place public comments on the Agenda, following approval of minutes.

4. Public Comments: The following individuals addressed the Commission: Leanne Tellam, 14625 SW 83 Avenue; Tim Schaffer, 7600 SW 164 Street; Gary Pastorella, 6940 SW 142 Terrace; Jerry Templer, 8120 SW 182 Street; Simon Ferro, attorney, 100 SE 2 Street, Miami; Beatriz Herrman, 17251 SW 86 Avenue; and Mayor Shelley Stanczyk.
5. Adjourn: The meeting adjourned at 9:40 pm.

Respectfully submitted:

Approved by the Charter Revision Commission
this 9th day of April, 2012.


Meighan J. Alexander, CMC, Village Clerk


Beverly Gerald, Chairperson