

**CHARTER REVIEW COMMISSION**  
**Minutes of Meeting**  
**November 19, 2009**

A meeting of the Charter Review Commission (CRC) was held at the Administration Complex, Room B-106, Port Charlotte, Florida.

Roll Call:

The following members were present:

*William Dryburgh, Bill Folchi, Maureen Garrard, Joseph Goggin, Suzanne Graham, Paula Hess, John Hitzel, Julie Mathis, Donald McElroy, Thomas Rice, Kevin Russell (Vice-Chairman), Johnny Vernon, Frank Weikel.*

Alternates present: *Michael Grant, Connie Kantor*

Members *Andy Dodd* and *Ken Doherty (Chairman)* were not present. Alternate *Bill Weller* was not present. *William Dryburgh* arrived at 4:20 p.m.

Call to Order:

The meeting was called to order at 4:05 p.m. by *Vice Chairman Kevin Russell*. *Mr. Russell* noted that the beginning of the meeting had been delayed a few minutes pending the arrival of several members. *Vice Chairman Russell* noted that *Chairman Ken Doherty* would not be present.

Agenda Items:

Upon the suggestion of membership, the order of the Agenda items was changed in order to accommodate the attorney applicants by moving up the interview process.

*Vice Chairman Russell* began the meeting by talking about the voting procedure. He pointed out that each voting member had received a ballot in their hand-outs and that voting would be done by the voting member indicating his or her choice next to the name of the attorney. *Vice Chairman Russell* indicated that with a full voting membership of fifteen (15) present a majority would be eight (8) votes, but at the time there were three (3) voting members absent and there was discussion about the votes needed for a majority. *Vice Chairman Russell* also pointed out that accepting the stated attorney's fees (per their respective resumes) was part of the selection process.

( NOTE: Prior to the following personal interviews, and as reflected in the Minutes of a special meeting held on October 27, 2009, each applicant had submitted answers to a set

of questions and the CRC members had been previously provided these answers for their review).

All of the respective attorney applicants elected to wait outside of the meeting room, although they had been advised that this is a meeting open to the public and they could view the proceedings from inside if that was their choice.

I. **Interview** of the four (4) attorney applicants began with **Mark Barnebey Esq.** of the firm Kirk Pinkerton P.A. in Bradenton, Florida. Mr. Barnebey was invited into the meeting room and *Vice Chairman Russell* introduced him and thanked him for coming. *Vice Chairman Russell* briefly outlined the selection procedure and invited Mr. Barnebey to make his introductory presentation. After Mr. Barnebey finished speaking *Vice Chairman Russell* opened the interview for questioning by the Commission members. *Paula Hess* asked him to confirm that he would not be charging for travel time and Mr. Barnebey indicated that he would not. He also re-stated his hourly rate. *John Hitzel* asked him his opinion on the structure of County charters, whether he preferred a Charter which was detailed and included many rules and regulations or “cleaner” where not everything is spelled out. Mr. Barnebey replied that it was the decision of the CRC as to which direction to go, but his feeling was that as a general rule a more general charter was the way to go unless there is a very specific item that CRC wants to spell out that cannot be changed except by referendum. *Tom Rice* inquired about Mr. Barnebey’s association with the City of Palmetto and asked why Manatee did not become a Charter county. Mr. Barnebey mentioned several reasons including the fact that the Constitutional Officers preferred to keep their autonomy and also that depending on the driving force the cities may or may not have enough control. He then reiterated that a general charter would be harder to pick apart. *Paula Hess* asked Mr. Barnebey to explain the value of being Board Certified in City, County and Local Government Law, and he responded that he found that certification to be very important as it proves that you are tested and knowledgeable in a wide variety of areas. He further explained the certification criteria. *Maureen Garrard* asked if there was a way that as their attorney he could prevent the CRC from expending considerable effort and then not having their proposals allowed. Mr. Barnebey indicated that he thought careful review, examination of the consequences upon those affected and careful drafting were all important. He responded to another question about his involvement in the process by saying that he would speak up if at any time he saw a major problem or thought there could become a problem. At the conclusion, Mr. Barnebey thanked the Commission and left the meeting room.

The next applicant to be interviewed was **Robert Berntsson, Esq.** of the firm Berntsson, Ittersagen, Gunderson, Waksler & Wideikis, LLP in Port Charlotte, Florida. This interview was conducted in exactly the same manner as described above. During questioning period *Paula Hess* brought up the issue of a Charlotte County attorney possibly having a conflict of interest and asked Mr. Berntsson if he saw this as an issue. He replied that he did not foresee that as being an issue. He represents his clients before the County Commission but the County Commission is not his client - the CRC would be

his client. He also pointed out that he had previously disclosed that his firm handles real estate and non-real estate title matters for Charlotte County so they do have an employment contract with the County but he does not foresee that as a conflict and if anything unforeseen were to arise he would handle it in accordance with the guidelines of the Fla. Bar. *Paula Hess* also asked him the value of Board Certification in City, County and Local Government Law and he responded that such certification shows a commitment to this area of expertise and that more people should have it, especially when representing government agencies. *Frank Weikel* questioned Mr. Berntsson about suits against the County by either his firm or Moore and Waksler and he responded that he was not aware of any suits pending by Moore and Waksler and that it was the policy of his firm to not bring suit against the County. *Tom Rice* noted that some of the CRC members had served before and some were new to it, and asked Mr. Berntsson how important he thought it would be to have an attorney with previous CRC experience. Mr. Berntsson replied that he thought the most important issue would be selecting counsel that they can easily work with, whether or not that person had served in that capacity before. Mr. Berntsson indicated that he did not feel he was at a disadvantage by not having served before and that most of the issues that arise will be local government issues and he is very comfortable handling those issues. *John Hitzel* asked Mr. Berntsson how he saw the role of legal counsel in representing this Commission and Mr. Berntsson replied that he would not insert himself unless he saw that the CRC was veering from course. *Don McElroy* referred to a previous question by *Tom Rice* and asked Mr. Berntsson what experience he had that was similar to this position as counsel for the CRC which would make the members comfortable selecting him. Mr. Berntsson cited his previous positions and knowledge of local government, as well as being well versed in the Sunshine Law, and indicated that all of this would make him comfortable responding in a public forum so that the Commission could go forward and not wait while he researched an answer. *Maureen Garrard* asked Mr. Berntsson how he could keep the Commission from wasting time on proposals that have a negative precedence judicially, and he responded that could be prevented by doing full legal research for all questions going on the ballot. He also pointed out his experience with writing ordinances and resolutions, etc. At the conclusion, Mr. Berntsson thanked the Commission and left the meeting room.

The third applicant to be interviewed was **Michael McKinley, Esq.** of the firm Wotitzky, Wotitzky, Ross and McKinley of Punta Gorda, Florida. This interview was also conducted in the same manner. During the questioning period *Paula Hess* asked Mr. McKinley the value of Board Certification in City, County and Local Government Law and Mr. McKinley responded that he felt it was entirely possible to fill the position properly without that certification, saying that having the right person for the position was equally important. *Paula Hess* also asked if Mr. McKinley felt there might be a conflict because of his being counsel for the School Board but Mr. McKinley responded that he did not think so. Although there might be a possibility it would be very unlikely as the Charlotte County School Board is not really within the purview of the CRC to

make changes. *Maureen Garrard* asked Mr. McKinley how he could help the CRC from wasting time on something that would be overturned and he said that he could simply do research and point out as an attorney where a similar issue in another charter county was overturned previously. He indicated that as a previous CRC member he generally supports a restrained use of powers of the CRC . He further said that in some cases a change can be salvaged by proper drafting language but in other cases they are overturned because an issue is outside of the scope of the Commission. At the conclusion Mr. McKinley thanked the Commission and left the meeting room.

The fourth applicant to be interviewed was **Alan Prather, Esq.** of the firm Porges, Hamlin, Knowles and Prouty, P.A. of Bradenton, Florida. This interview was conducted in the same manner as the preceding interviews. During the questioning period *Paula Hess* asked Mr. Prather his opinion on the value of being Board Certified in City, County and Local Government Law and he responded that he is strongly in favor of this certification and has even been appointed to the certification committee. He said that certification represents an extra recognition by the Fla. Bar and indicates that you have achieved a level of expertise in this field. *Paula Hess* also asked Mr. Prather if he would be charging travel time and he said that he would not unless a specific request was made of him by the CRC (for instance, if he was asked by the CRC to go to Orange County to review their Charter). He also described charges for “out of pocket” expenses as being things like fees for overnighting documents. *Don McElroy* asked Mr. Prather if he had ever been a Charter Review Commission attorney and Mr. Prather replied that his experience as a city attorney was different as cities are created by their charter, but although he had never represented a specific Charter Review Commission for a county he is familiar and comfortable with the process. *Maureen Garrard* asked him how he could help the CRC from wasting time on something that would be overturned and he responded that as a Commission you make sure that you know what you can and cannot do, and as attorney you make sure that the law is understood and advise your client and protect them. At the end of questioning Mr. Prather thanked the Commission. He inquired if he and the other attorneys should leave or stay and was told that the voting was going to take place but since this is a public meeting they were welcome to stay in the room. Mr. Prather left the meeting room to join the other applicants.

Upon the conclusion of all four interviews some of the Commission members shared their views and observations. *Vice Chairman Russell* then asked if they were ready to **VOTE** and the members responded affirmatively. *Vice Chairman Russell* further confirmed that with the arrival of Mr. Dryburgh a majority of seven (7) votes was the number needed to be elected. The thirteen (13) voting members present then made their selections on their ballots and these ballots were collected for tallying by administrative support. While these were being counted, the meeting continued to the other Agenda items.

**II. Approval of Minutes of October 15, 2009 CRC meeting-**

*Paula Hess* indicated that these Minutes should be corrected to reflect the following:

- A. Page Two, Paragraph One: *William Dryburgh* expressed a preference for staying in the County.
- B. Page Three, Section V: *Paula Hess* expressed the desirability of having the new CRC website modeled after <http://www.smartcharlotte2050.com/>

The motion to approve these Minutes subject to these changes was seconded and approved. *Paula Hess* also added a comment that the Minutes should not be posted on the CRC website until approved.

**III. Sub-Committee Chairpersons Report** – There were no reports at this time as no meetings have taken place.

**IV. Commission Comments** – *Vice Chairman Russell* presented the possibility of having the regular meeting scheduled for January 21, 2010 incorporate an additional Public Hearing. This suggestion received support by the Commission and the motion to do this was made, seconded and approved. There was discussion of making sure that in addition to proper legal publishing this Public Hearing be well publicized and advertised. *Frank Weikel* called for encouraging the Board of County Commissioners to become involved and give their input. *John Hitzel* stated that he was a member of the Curmudgeon Club and planned to promote the CRC and the January meeting through that resource.

*Vice Chairman Russell* then discussed the idea that the four (4) sub-Committees break off to meet during the December meeting to establish their dates for 2010. The issue of recording Minutes could be handled and proper Notices will be posted. *Julie Mathis* reminded everyone to bring their personal calendars to the meeting.

*Paula Hess* asked for a motion on her previous suggestion that the Minutes not be posted until approval. This motion was seconded and approved.

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At this point of the meeting the **Results of Voting** were announced, these results are as follows:

Mark Barnebey, Esq. - One (1) vote  
Robert Berntsson, Esq. - Eleven (11) votes  
Alan Prather, Esq. - One (1) vote

*Vice Chairman Russell* indicated for the record that Mr. Robert Berntsson had been

selected and would be hired at the hourly rate stated previously by Mr. Berntsson, to-wit: \$200/hour to be billed in quarter of an hour increments; no travel charges. The Motion was carried in support of this selection.

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**IV. Commission Comments – continued:** *Tom Rice* asked about Public Hearings being held at different locations in the County and *Vice Chairman Russell* confirmed that these were held towards the end of the process in 2010. *Mike Grant* asked that copies of the Minutes and Reports from the 2004 sub-Committees be sent to the members of the respective sub-Committees. These copies had previously been furnished to the chairpersons only, and administrative support will forward them by email to the sub-Committee membership.

*Vice Chairman Russell* confirmed that the next meeting will be held on December 17, 2009, at 4:00 p.m. in Room 106-B.

**V. Public Input** – None

**VI. Adjournment** - The meeting was adjourned at 5:25 p.m.

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W. Kevin Russell, Vice Chairman