

MIAMIBEACH

AD HOC CHARTER REVIEW BOARD

Members:

Stephen Zack, Esq., Chair
Jonathan Beloff, Vice-Chair
Richard Alhadef
Sherry Kaplan Roberts
Rick Kendle
Sarah Johnston
Vacant

Appointed by:

Mayor Philip Levine
Commissioner Joy Malakoff
Commissioner Micky Steinberg
Commissioner Michael Grieco
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

Staff:

Jose Smith, City Attorney
Debora Turner, First Assistant City Attorney
Gary M. Held, First Assistant City Attorney
Rafael E. Granado, City Clerk
Lilium Hatfield, OAV, City Clerk's Office

AMENDED

Meeting Minutes

Monday, March 24, 2014 at 4:00 p.m.
City Manager's Large Conference Room, Fourth Floor, City Hall
Email: CharterReview@miamibeachfl.gov

Special Note: In order to ensure adequate consideration, if necessary, the members of the Ad Hoc Charter Review Board may move any agenda item to another meeting date. In addition, the members of the Charter Review & Revision Board may, at their discretion, adjourn the Charter Review & Revision Board meeting without reaching all agenda items.

Meeting called to order at 4:03 p.m. by Vice-Chair Beloff.

Roll call taken. All Board members are present with the exception of Chair Zack and Member Kendle. Chair Zack had previously communicated that he would be arriving late.

Also present: Commissioner Joy Malakoff.

Rick Kendle arrived at 4:05 p.m.
Stephen Zack, Esq., Chair, arrived at 4:10 p.m.

In response to an inquiry from the Board, Rafael E. Granado, City Clerk, advised that the vacancy left by former Board Member Richard Preira has not been filled.

1. APPROVE THE MARCH 17, 2014 CRB MINUTES.

ACTION: Minutes approved as amended.

CORRECTION TO THE MINUTES:

Member Kaplan Roberts stated that on Page 9, second paragraph from the top, the last sentence should read: Ms. Kaplan Roberts is in support of doing away with the groups and is not in favor of districts. Discussion continued.

MOTION 1:

Motion made by Member Alhadeff; seconded by Member Kaplan Roberts to approve the minutes as amended; Voice-vote: 4-0. Absent: Chair Zack and Member Kendle.

Attorney Turner announced that Gary Held, First Assistant City Attorney, had additional revisions to the minutes.

Motion to reopen the approval of the minutes for further amendment was made by Member Kaplan Roberts; seconded by Member Kendle. Voice-vote: 5-0. Absent: Chair Zack.

New Language to replace language on Page 10, last paragraph

Gary Held, First Assistant City Attorney, stated that when the authority to approve variances is transferred to the DRB and HPB, staff will need to identify what variances appear on the plans. There cannot be a situation where applicants present plans on which variances are not identified, and they argue later that they were implicitly approved by these boards. Each variance needs to be expressly stated in the applications and plans. Discussion continued. There are two standards for variances in the Related Special Acts governing the Board of Adjustment (BOA): one is the variance standard of hardship and the second is the practical difficulties standard. The BOA has been functioning as more of a compatibility board rather than a hardship board. The standard as applied is what impact a proposed variance will have on a neighborhood. The objective is to take the practical difficulties standard adding criteria to it and codifying to provide an alternative. DRB and HPB would be able to use either standard in looking at the variances.

Discussion was held regarding criteria, granting of variances and hardship.

Commissioner Malakoff suggested that the Legal Department work on codifying criteria regarding practical difficulties. **Gary M. Held, First Assistant City Attorney to handle.**

Mr. Held added that the courts are not willing to accept a Board decision based upon practical difficulties, unless there are criteria. More work needs to be done and they are working on it. In addition, it is a Land Development Regulations (LDR) amendment, not a Charter amendment, which goes to the Planning Board first and then to the City Commission.

FINAL MOTION TO APPROVE MINUTES AS AMENDED

Motion to approve the minutes as amended made by Member Alhadeff; seconded by Member Johnston, including the corrections stated earlier by Member Kaplan Roberts and language clarification as reported by First Assistant City Attorney Gary Held; Voice-vote: 5-0; Absent: Chair Zack.

Member Kaplan Roberts asked if a Charter amendment is needed regarding the sharing of FAR. Mr. Held stated that there was a Legal opinion by the City Attorney issued on Friday that goes a long way to resolving that issue; the other issue is the absence of a definition of unified development site, which is in the LDR and requires an LDR amendment to correct. There may be other plans in the works to provide for the sharing of the FAR, such as overlay

districts, but that would require a Code and possibly Charter amendment. Discussion continued regarding transfer of FAR.

2. REPORT ON COMMISSIONER MALAKOFF'S MEMORANDUM REGARDING THE LEGAL OPINION THAT HOLDS THAT COMMISSIONER MALAKOFF'S PROPOSED CHARTER AMENDMENT TO THE PROVISIONS GOVERNING THE HISTORIC PRESERVATION BOARD SET FORTH IN CITY CODE CHAPTER 118 DO NOT REDUCE THE POWERS AND DUTIES OF THE CITY'S HISTORIC PRESERVATION BOARD OR CREATE LESS STRINGENT HISTORIC PRESERVATION STANDARDS AND REGULATIONS, AND THUS DO NOT TRIGGER THE REFERENDUM REQUIREMENT OF CHARTER SECTION 1.06.

ACTION: *No action needed.*

Debora Turner, First Assistant City Attorney, explained that no action is needed because a new power will be added to the HPB to allow that Board to grant variances; no power or duties are being reduced nor is any standard or regulation being made less stringent. This will not require a referendum.

3. TRAFFIC - CITIZENS OF MIAMI BEACH HAVE THE RIGHT TO REASONABLE ACCESS TO THEIR ROADS - Proponent Chair Zack – Jose Gonzalez, City of Miami Beach Transportation Manager, to present.

Chair Zack constantly hears complains of traffic congestion from residents and visitors, and there is frustration driving Alton Road, the Venetian Causeway and the Sunsest Islands. He has been told that, unfortunately, the City does not have control over many of these streets/roads. Chair Zack asked if the City would consider requiring a traffic plan as part of a submission to obtain permits in Miami Beach. Chair Zack had made a motion that the Citizen's Bill of Rights should include language that citizens of Miami Beach should have reasonable access to roads. He asked for input from Jose Gonzalez, City of Miami Beach Transportation Director.

Jose Gonzalez, City of Miami Beach Transportation and Concurrency Department Director, explained that one of the Key Intended Outcomes in the City is to enhance mobility throughout the City. He spoke about safety and signal timing, which may interfere with traffic flow. The City is taking a multifaceted intermodal approach to the problem. Transportation facilities are sidewalks, waterways, public transit, and roadways. In Miami Beach, many streets/roads/facilities are either owned by the Florida Department of Transportation (FDOT) or Miami-Dade County, and therefore out of the City's control. These include: 8th Street, 1st Street, 71 Street, Collins Avenue, Alton Road, the MacArthur and Julia Tuttle Causeways, and Indian Creek in some portions.

Discussion held regarding control of roads.

Chair Zack asked if there is a traffic plan requirement for events held on Miami Beach. Mr. Gonzalez answered that there are for events such as Art Basel and the Boat Show, but other events do not present traffic plans, but the City takes steps to mitigate for those events. Discussion continued.

Member Kendle stated that the City has to coordinate efforts in advance, and is happy to have Mr. Gonzalez dealing with Transportation.

Mr. Gonzalez stated that FDOT reviews plans with the City at different stages. The new Public Works Director has instituted a policy where even FDOT plans will be reviewed as if there were local plans, as if someone was coming in for a permit and City engineers must sign off.

Discussion continued regarding traffic on Collins Avenue and Mr. Gonzalez stated that in a few months the construction in that area will be completed.

Member Kendle explained that other cities have indicated that if there is going to be construction of an arena or casino, the public welfare requires light rail. Mr. Gonzalez stated that concurrency and impact fees are component of all major developments. One of the things the City Manager had done to emphasize the importance he places on traffic issues is to create the Department of Transportation and Concurrency, it is now a standalone department, where they will be updating and revising the concurrency ordinance and making it more realistic; identifying problems and adopting solutions that make sense.

Member Kaplan Roberts stated that the language "Miami Beach residents have the right to reasonable access to roads," may cause unwanted litigation; as what may be reasonable access to one person may not be the same to another. Chair Zack is concerned about the potential litigation as well.

Chair Zack asked Mr. Gonzalez what the CRB members can do as a Board, since he is the expert, to improve the traffic congestion on Miami Beach, whether it is by Charter or by ordinance.

Mr. Gonzalez, with respect to the Charter, stated that he does not know if the proposed statement would be able to give him any more power than what they already have; they have the comprehensive plan, with many aspirational traffic objectives, including working with other agencies, transit and making streets "complete" for pedestrians, cyclists, and motorists.

Mr. Gonzalez explained that "Complete Streets" are streets for everyone. They are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists, and transit riders. "Complete Streets" make it easy to cross the street, walk to shops, and bicycle to work. Creating "Complete Streets" means transportation agencies must change their approach to community roads. By adopting a "Complete Streets" policy, communities direct their transportation planners and engineers to routinely design and operate the entire right of way to enable safe access for all users, regardless of age, ability, or mode of transportation. This means that every transportation project will make the street network better and safer for drivers, transit users, pedestrians, and bicyclists.

Discussion continued. Member Alhadeff's proposed Declaration of Fundamental Rights language regarding "Transportation" was considered.

Discussion continued regarding Hop-On Hop-Off buses, and Mr. Gonzalez explained that the Transportation and Concurrency Department is drafting an ordinance to regulate these buses to regulate the industry, including specifying where the buses can stop and providing loading areas. Mr. Gonzalez added that the Transportation and Concurrency Department is drafting resolutions and ordinances adopting "Complete Streets" policies.

Member Kaplan Roberts asked if there was an educational component for this plan.

Discussion continued.

Chair Zack at this point withdrew his motion to further discuss this issue due to legal implications. **Item withdrawn.**

Mr. Gonzalez added that there are three critical projects to improve traffic: the “Beach Corridor Transit Connection” study with off-wire new technology, which is more aesthetic and respects historic neighborhoods, this project has a great deal of momentum behind it; the Trolley System; and the South Beach Local. They will be launching a North Beach Trolley this summer and a system called ITS, Intelligent Traffic System, which consists of a system of cameras, and cellular signals, similar to the system used in London to alleviate congestion, and using smart phones to find where parking is available. Discussion continued regarding ridership statistics. This is a City led effort which started as a pilot program during Art Basel.

Chair Zack thanked Mr. Gonzalez for informing them and addressing their concerns and if there is anything, the Board can do to help, to let the Board know.

4. PROTECT U.S. COAST GUARD FROM ENCROACHMENTS – Proponent Rick Kendle.

Member Kendle explained that the Coast Guard base is an industrial facility, and every two to three years developers want to develop the land across from the facility. He is concerned about someone slipping in a commercial ferry without notifying or disclosing the materials on the ferry. Harvey Hernandez of Newgard Development came before the Land Use & Development Committee to talk about a 30-40 story building that would overlook the base, which would encroach upon their operations. Mr. Kendle spoke to the Governor’s Office, and the Governor set up a Task Force that has a list of bases that have a potential to be encroached on, and the Task Force is going to recommend to the Legislature that the US Coast Guard in Miami Beach be placed on that list. At this time, Mr. Kendle withdrew the item as it is something that the Legislature is handling. **Item withdrawn.**

5. DISCUSS WHETHER CHARTER QUESTIONS SHOULD BE PLACED ON PRIMARY ELECTION BALLOT OF AUGUST 26, 2014 OR GENERAL ELECTION BALLOT OF NOVEMBER 4, 2014.

ACTION: By acclamation, the Board unanimously agreed to recommend placing the suggested ballot questions on the August ballot. Approved: 6-0.

Chair Zack explained that the Board’s jurisdiction ends May 2. He suggested that all the members be present at the City Commission Meeting.

The City Clerk suggested that a Time Certain be given for the Chair’s presentation to the Commission at the April 23, 2014 Commission Meeting. Chair Zack suggested a time certain of 1:30 p.m. **Rafael E. Granado to handle.**

Commissioner Malakoff explained the importance of placing ballot questions on the August Primary Election ballot rather than on the November General Election ballot, because the voters need to be educated, whether it is on the issues of term limits or other items discussed. The November ballot will have many questions and offices, and it may be difficult to educate our voters for such a busy election.

6. FUTURE MEETING DATE AND TIME.

ACTION: The CRB will meet from 4:00 to 7:00 p.m. on April 10, 2014.

7. NEW ITEM FOR DISCUSSION ADDED:

MIAMI BEACH UNITED'S (MBU) FIVE PRINCIPLES FOR RESIDENT CHARTER RIGHTS AND COMPANION LEGISLATION

Discussion was held regarding MBU and the fact that Member Alhadeff withdrew his Bill of Rights Amendment item from the agenda.

Member Kaplan Roberts stated, for the record, that Ms. Liebman is not in favor of having the Citizens' Bill of Rights include associations. Discussion continued.

Chair Zack announced that this item will be discussed at the April 10, 2014 CRB meeting. **Rafael E. Granado to notify Ms. Liebman.**

MOTION TO REQUEST EXTENSION OF JURISDICTION

Chair Zack stated that if the City Commission wishes to extend the CRB's jurisdiction for discussion of specific issues that the Board will be able to review the additional materials without having to reappoint members.

Commissioner Malakoff stated that this is an Ad Hoc committee, but suggested that as issues come up that the City Commission thinks should be considered by the CRB, the CRB should reconvene and not be discontinued, at least for the rest of the year. Discussion continued.

Chair Zack stated that at the City Commission presentation, appreciation will be expressed for giving the Board members the opportunity to give recommendations. However, the Board would suggest that its term be extended.

Attorney Turner stated that if so desired, she can prepare a proposed resolution extending the CRB terms until the end of the year, since Ad Hoc committees are only in existence for up to one year. The City Commission could consider the resolution along with the Board's other recommendations. Discussion continued.

Motion made by Vice-Chair Beloff to have Ms. Turner prepare a resolution for the City Commission to consider extending the Board's term; seconded by Member Kaplan Roberts; Voice-vote: 6-0. **Debora Turner to handle.**

8. INSPECTOR GENERAL WITH SUBPOENA POWERS

Member Kendle does not think that currently there is a need for this.

Chair Zack stated that he acted as Inspector General for the City on a particular investigation many years ago, but nothing can be done without subpoena power.

Member Kaplan Roberts inquired as to where employees go to complaint within the City. Mr. Granado explained that, recently there was an agenda item where the Commission created a hotline where employees could call and inform wrongdoing. There is also Labor Relations and Employee Relations for Union and non-union employees as a resource. Discussion held.

9. STIPEND & TAX REPORTS FOR MAYOR AND COMMISSIONERS

Rafael E. Granado, City Clerk, will invite a representative of the Finance Department to explain the process.

Chair Zack clarified that this was removed because they felt any increase in compensation would not be favorably viewed by the voters. Mr. Granado clarified that this is a taxing reporting issue; thus not to go on the April 10 Agenda. No further action needed as compensation item not to be recommended by the Board.

10. SECTION 2.07 – VACANCIES IN THE CITY COMMISSION

Attorney Turner stated that if the Board's goal is to have a provision that states if there is a vacancy, the Commission will fill such vacancy within thirty days, and if they do not, then they will utilize the closest General Election held shortly thereafter to fill the vacancy. If there is no election within close proximity of the vacancy then a Special Election would be called.

Discussion held regarding appointment for the remainder of the term. Ms. Turner explained the State law requirements. The goal is to clarify the language and proposed language will be presented at the April 10th CRB meeting.

Chair Zack recognized Debora Turner, Rafael E. Granado and Liliam Hatfield for their efforts.

ITEMS TO BE PLACED ON THE NEXT AGENDA:

- ✓ Miami Beach United Presentation
- ✓ Section 2.02 Compensation - Stipend and Tax Reports
- ✓ Section 2.07 – Vacancies in the City Commission

Meeting adjourned at 5:29 p.m.

Handouts or Reference Materials:

1. Declaration of Fundamental Rights – Withdrawn by Member Alhadeff.
2. March 17, 2014 Minute Amendments by Gary Held, First Assistant City Attorney
3. Transmittal Letter to Florida Department of State Re: Charter amendments approved at the November 5, 2013 Election.