

TAB 1



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WILLIAM E. ROBERTSON, JR.  
DAVID M. SILBERSTEIN COA\*\*\*  
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THOMAS D. SHULTS  
JULIE A. HORSTKAMP  
CRAIG P. COLBURN, JR.  
BRADLEY W. HOGREVE\*  
LESLIE W. LOFTUS

SCOTT E. RUDACILLE  
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ZACHARY L. ROSS  
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\* ALSO ADMITTED IN NEW YORK  
\* ALSO ADMITTED IN ILLINOIS

## MEMORANDUM

TO: The Charter Review Commission  
FROM: Mark P. Barnebey, City Attorney *MB 5/28/2010*  
RE: Updates  
DATE: May 28, 2010

Attached to this Memo is the updated Charter with the proposed changes based on the Charter Review Commissions last meeting. There were also changes made for clarity purposes. One set of changes were suggested by the staff of the Florida Ethics Commission which will be discussed below. Substantive changes in the draft are as follows:

Section 10. It is clarified that the Vice Mayor when sitting as acting Mayor does not have veto power.

Section 17. An issue recently arose regarding a Commissioner who was involved in the appointment of a family member who is an Appointed Official. Because of the existing language of the existing charter that the Mayor "nominates" the Appointed Official and it is "approved" by the Commission, this created a possible Ethics Code violation for the Commissioner. To resolve this issue, the staff of the Ethics Commission suggested changing the language such that the Mayor "appoints" the Appointed Officials and the Commission "confirms" the appointment. The language in this most recent draft was amended to reflect this concern.

The proposed language changes have a subtle impact on the power of the Mayor and the Commission, but as a practical matter on how Appointed Officials are selected. If the Charter Commission would prefer to leave this language as it reads in the current Charter, it may do so.

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## KIRK · PINKERTON

The Charter was also clarified that appointments of less than one year also need confirmation by a Majority Vote of the Commission. The current Charter requires such vote for a one year appointment.

Section 21. The current Charter language provides an oath of office which appears to require elected officials to "support, protect and defend" the Constitution of the City of Palmetto. The City has no Constitution. This has been clarified that the elected official will support, protect, and defend the Charter and the Government of the City, as well as the Constitution and Government of the United States and the State of Florida.

If you have any questions, please do not hesitate to contact us.

cc: Scott Rudacille, Esq.



## CHARTER

- I. General Provisions §§ 1 - 6
- II. Legislative Branch §§ 7 - 14
- III. Executive Branch, §§ 15 - 19
- IV. Miscellaneous Provisions, §§ 20 - 27

### I. GENERAL PROVISIONS

#### Section 1. Creation and powers.

The City of Palmetto in Manatee County, Florida, created under and by virtue of Chapter 11059, Laws of Florida, as Amended, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes as set forth in Article VIII, Section 2, Florida Constitution, Chapter 166, Florida Statutes, and as otherwise provided by law.

#### Section 2. Headings.

The headings ascribed to each section of this charter should not be deemed a part thereof.

#### Section 3. Definitions.

As used herein, the following terms shall have the meaning set forth. All defined terms shall be in *italic type* when used herein:

*Appointed Official* means such unelected official of the City as shall be provided for by ordinance.

*City* means the City of Palmetto.

*Elector* means a person who is a registered voter as prescribed by general law, and is a *Legal Resident* of the City.

*Legal Resident* means a person who has established a permanent residence, as defined as that place where a person has his or her true, fixed and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning, within the corporate limits of the City of Palmetto. A person may have only one permanent residence at one time and, once a permanent residence is established outside of the City, it is presumed to continue until the person shows that a change has occurred.

*Majority Vote* means greater than fifty percent (50%) of the Commissioners present and voting.

*Majority Vote of the Commission* means three or more votes for or against the proposition.

*Organizational Meeting* means the first regular meeting of the Commission after a General Election, or the second regular meeting in November in years where no General Election is held. At such meeting the Commission may perform such business of the City as may be allowed by law in addition to any duties required herein.

*General Election* means the statewide general election as defined by general law.

#### **Section 4. Form of Government, two branches.**

The government of the City shall consist of a Legislative Branch comprised of five elected Commissioners and an Executive Branch consisting of an elected Mayor and such subordinate *Appointed Officials* as shall be provided for by ordinance of the City. All elected officials shall be *Electors* of this City. All officials shall perform such duties and receive such compensation as may be prescribed by this Charter and ordinances of the City.

#### **Section 5. Boundaries.**

The corporate limits of the City of Palmetto shall be as set forth in the document entitled "Boundaries of the City of Palmetto" which shall be on file at City Hall and which may be amended from time to time to reflect annexations and contractions of the corporate limits.

#### **Section 6. Wards.**

The City Commission shall, by ordinance, divide the City into three (3) wards to be designated numerically. The City Commission shall at any time have the power to alter or adjust the boundaries of such wards by ordinance in accordance with applicable law, by *Majority Vote of the Commission*. The City Commission shall examine the need for such alterations or adjustments to ward boundaries at least once every ten (10) years after each decennial United States Census of Population.

### **II. LEGISLATIVE BRANCH**

#### **Section 7. Legislative Power.**

The legislative power of the City shall be solely vested in a City Commission of five elected members. The Commission shall have power to enact such ordinances, resolutions, and policies as it shall deem necessary to carry out the functions and services of the government enumerated in Section 1 of this Charter. The power of the Commission shall not extend to involvement in management of City operations, or any other power granted to the Executive Branch in Part III hereof, unless provided elsewhere in this Charter.

#### **Section 8. Commissioners.**



Three of the five Commissioners shall be elected by the *Electors* residing within the boundaries of the wards established as provided herein. The two remaining Commissioners shall be elected at large by the *Electors* of the entire City.

#### **Section 9. Commissioner Qualifications; Assuming Office.**

The three (3) ward Commissioners must each be an *Elector* ~~and Additionally, the three (3) ward Commissioners shall each have been a *Legal Resident* of the City for a minimum of three hundred and sixty-five (365) consecutive days immediately prior to the last day of qualifying for election to the office being sought and have been a *Legal Resident* of the ward from which they are to be elected for a minimum of one hundred and eighty (180) consecutive days immediately prior to the last day of qualifying for election to the office sought.~~ The two at-large Commissioners must each be an *Elector* and have been a *Legal Resident* of the City for a minimum of three hundred and sixty-five (365) consecutive days immediately prior to the last day of qualifying for election to the office sought. Commissioners shall assume office on the date of the first Commission meeting following their election and shall continue to be a *Legal Resident* and *Elector* of the City during their term of office.

#### **Section 10. Vice-Mayor.**

At each *Organizational Meeting* of the Commission, ~~as referenced in Section 11 herein,~~ the Commission shall elect, by *Majority Vote of the Commission*, one Commissioner to serve as Vice-Mayor, who shall serve a term of one year. The Commission may elect a new Commissioner to serve as Vice-Mayor at any time upon an affirmative vote of four members of the Commission. If the Vice-Mayor seat becomes vacant, as defined in Section 12 below, a substitute shall be elected by *Majority Vote of the Commission*, who shall serve the remainder of that term. The Vice-Mayor shall perform the duties of and have the powers of Mayor during the temporary absence or temporary disability of the Mayor ~~with the exception of the veto power pursuant to Section 14 below.~~ While performing the temporary duties of acting Mayor, the Vice-Mayor shall retain the right to vote as a Commissioner.

#### **Section 11. Commission Meetings; Quorum; Majority Vote.**

The City Commission shall hold such regular meetings and special meetings as the Mayor, Vice-Mayor (when acting as Mayor), or the City Commission, by *Majority Vote*, may call. The presence of three Commissioners shall constitute a quorum for purposes of conducting City business at all Commission meetings. At the first regular meeting of the Commission after the *General Election*, or the second regular meeting in November in years where no *General Election* is held, the Commission shall hold an *Organizational Meeting* for the purposes described in this Charter. Unless limited elsewhere herein, all ordinances, resolutions, policy statements and other acts of the Commission shall be approved by *Majority Vote*.



## **Section 12. Commission Members; Vacancies; Replacement.**

The office of a Commissioner shall become vacant upon the Commissioner's death, permanent incapacity, resignation, permanent entry upon the office of Mayor, removal from office in any manner authorized by law, or forfeiture of the office. A vacancy shall also occur in the event no candidate seeks election for office. Forfeiture of office shall occur upon declaration by *Majority Vote of the Commission*, if a Commissioner: (a) lacks at any time, during the Commissioner's term of office, any qualification for the office as prescribed in this Charter or by law; or (b) shall be absent for more than six consecutive regular Commission meetings without the Mayor having been notified. In the absence of such notification, the Commission shall inquire into the absence of the Commissioner prior to considering any motion on forfeiture of office.

As soon as practicable upon the occurrence of a vacancy, the Commission, by *Majority Vote of the Commission*, shall choose a successor to serve the remainder of such vacant term, or until the first Commission meeting following the next *General Election*, which ever shall first occur. If the vacant term extends beyond the next *General Election*, the remainder of such term shall be filled by a person elected in such election, provided, if the vacancy occurs thirty days or fewer before the first date of qualifying for such election, the appointed successor's term shall continue to its end.

In the event no candidate seeks election to fill the vacancy, such Commission seat shall be filled by appointment by a *Majority Vote of the Commission* in the manner set forth above.

If a vacancy occurs in the office of a Commissioner of a ward, the City Commission shall appoint as successor a person who is an *Elector* and who has been a *Legal Resident* of the City for a minimum of three hundred and sixty-five (365) consecutive days immediately prior to the date the vacancy occurred and who has been a *Legal Resident* of the ward from which they are to be appointed for a minimum of one hundred and eighty (180) consecutive days immediately prior to the date the vacancy occurred. If a vacancy occurs in the office of an at-large Commissioner, the Commission shall appoint as successor a person who is an *Elector* and who has been a *Legal Resident* of the City for a minimum of three hundred and sixty-five (365) consecutive days immediately prior to the date the vacancy occurred.

## **Section 13. Mayor to Preside Over Commission Meetings.**

The Mayor shall not be a member of the City Commission, but the Mayor shall preside at meetings of the Commission and shall have the right to take part in discussions of the Commission. The Mayor shall not have any authority to make or to second a motion, or to vote on any motion. The Mayor shall have the authority to veto any ordinance or resolution of the Commission, in accordance with the veto provisions set forth in this Charter Section 14 below.

## **Section 14. Ordinances; Mayor Veto.**

Except as set forth elsewhere herein, all ordinances and resolutions enacted by the



Commission shall be enacted in accordance with the procedures required by Florida law and approval of the Commission by *Majority Vote*. Before going into effect, such ordinances and resolutions shall be submitted to the Mayor for signature. If the Mayor signs the ordinance or resolution, then it shall become effective according to its terms. If the Mayor disapproves the ordinance or resolution, the Mayor shall veto ~~it~~ the ordinance or resolution and post any objections in writing at City Hall, ~~and The Mayor shall~~ present any objections to each member of the Commission in writing at least five (5) calendar days prior to the next regular meeting of the Commission which is at least ten (10) calendar days after the adoption of the ordinance or resolution. The Commission shall cause the Mayor's objections to be entered in full upon the record of such meeting and shall proceed at such meeting to vote upon the vetoed ordinance or resolution. If the City Commission shall pass said ordinance or resolution by four (4) or more votes, the ordinance or resolution shall become effective according to its terms. Any ordinance or resolution which is not signed or vetoed by the Mayor prior to the next regular meeting of the Commission, shall become effective according to its terms.

### **III. EXECUTIVE BRANCH**

#### **Section 15. Executive Power.**

The executive power of the City shall be vested in the Mayor and such subordinate officials as the Mayor shall appoint, as provided herein, who will faithfully execute the ordinances, resolutions, and policies of the City. The executive power shall extend to management of the day-to-day operations of the City.

#### **Section 16. Mayor - Powers and Duties.**

The Mayor shall have direct supervision over all *Appointed Officials* of the City and the manner of conducting all City business, except as otherwise provided by this Charter, or by law. The Mayor shall be responsible for the proper administration of the City government and all City affairs as provided by or under this Charter or by ordinance or resolution of the City Commission. The Mayor shall:

- (a) See that all laws, provisions of this Charter and acts of the City Commission, are faithfully executed;
- (b) Sign contracts on behalf of the City pursuant to the provisions of ordinance and as authorized by such ordinances and resolutions or acts as may be enacted or approved by the City Commission; and
- (c) Have the power to bid on all property for the City at any and all judicial sales under process of law where the City is a party, up to an amount equal to the maximum amount owed to the City or to such other amount as may be authorized by the City Commission.

The Mayor shall have the power to appoint members of all boards, commissions and committees



of the City, unless otherwise provided by law or City ordinance, and subject to approval of *Majority Vote of the Commission*. No Mayoral appointment to any board, commission, or committee shall extend beyond a term of two years.

#### **Section 17. Appointed Officers - Appointment and Removal.**

The Mayor shall ~~nominate~~ appoint all *Appointed Officials* of the City. If such official is ~~nominated~~ appointed for a term of one (1) year ~~term or shorter duration~~, the Commission shall ~~approve~~ confirm the ~~nomination~~ appointment by *Majority Vote of the Commission*. If the term for such ~~officer~~ *Appointed Official* is more than one (1) year, the Commission shall ~~approve~~ confirm the appointment by four (4) or more votes. No term of appointment for an *Appointed Official* shall extend beyond December 31st following a *General Election* for the Mayor's office. The Mayor may suspend or remove *Appointed Officials*, subject to approval of Majority Vote of the Commission, unless prevented by law or this Charter. The City Commission may suspend or remove *Appointed Officials* by its own motion adopted by four (4) or more votes of the Commission members. Commissioners shall be entitled to request and receive information from all *Appointed Officials* as may be necessary to conduct the duties of their office.

#### **18. Mayor Qualifications.**

The Mayor must be an *Elector* and have been a *Legal Resident* of the City for a minimum of three hundred sixty-five (365) consecutive days immediately prior to the last day of qualifying for election to the office. The Mayor shall continue to be a *Legal Resident* and an *Elector* of the City during the term of office.

#### **19. Vacancy of Mayor.**

In the event that the Mayor becomes permanently unable to perform the duties of Mayor, as confirmed by *Majority Vote of the Commission*, dies, resigns, ceases to be qualified as provided by law, or is removed from office following the issuance of a removal order by the Governor, the Vice-Mayor shall become Mayor at the next regular meeting of Commission which is at least ten (10) calendar days after the vacancy in the office occurs, unless the Vice-Mayor declines the office of Mayor. In the event the Vice-Mayor declines the office of Mayor, the Commission shall elect a Mayor by *Majority Vote of the Commission* from the Commission membership. In the event that the Vice-Mayor and all of the Commissioners decline to serve as Mayor, the Commission may elect, by *Majority Vote of the Commission*, a resident to serve as Mayor until a successor is elected, with such resident being an *Elector* and having been a *Legal Resident* of the City for a minimum of three hundred and sixty-five (365) consecutive days immediately prior to the date the vacancy occurred. Upon becoming Mayor, that person shall not be a City Commissioner under the provisions of this Charter. If one hundred eighty (180) days or more remain in the then-current term of the Mayor, the City Commission shall call a special election to fill the office of Mayor for the unexpired portion of the term, and such election shall be held and completed as soon as practicable following the occurrence of the vacancy.

### **IV. MISCELLANEOUS PROVISIONS**

## **Section 20. Elections.**

Unless otherwise provided by law or in this Charter, the election of officials under this Charter shall be held at the *General Election* during each even numbered year to fill the vacancies that will occur upon the convening of the next regularly scheduled meeting of the Commission.

Elections shall be held and the result determined in accordance with the ordinances of the City of Palmetto, or as otherwise provided by law. All voting shall be by ballot. All *Legal Residents* of the City who possess the qualifications requisite of an *Elector* at general state elections, and who have been duly registered in the manner provided by general law, shall be deemed legal voters at any election of this City.

Any City employee who qualifies to run for office of the Mayor or City Commission shall be placed on unpaid leave of absence until the day after the election provided, however, the employee may utilize any unused vacation days before being placed on the unpaid leave of absence. If the employee is unopposed for the office as of the last day to qualify for election to that office, then the employee may return to work on the day following the last day to qualify for the office.

## **Section 21. Terms of Office; Elections; Oath of Office.**

Each Commissioner and the Mayor shall be elected for a term of four (4) years, except as may be provided in this Charter. All elected officials of the City shall hold office until their successor are elected and qualified, except as otherwise provided for under this Charter. The election of the Mayor and the Commissioners shall be staggered such that the Mayor and the At-Large Commissioners are not elected in the same *General Election* as the Ward Commissioners. The election of the Mayor and At-Large Commissioners shall be held concurrently with *General Election* for the United States Presidential Election. *General Elections* shall be held concurrent with statewide *General Elections*.

Unless otherwise provided in this Charter, each elected official shall assume the duties of office at the first regularly scheduled meeting of the Commission following the *General Election* in which the official is elected.

Each elected official, before entering upon office, shall take and subscribe to the following oath or affirmation:

I, \_\_\_\_\_, do solemnly swear/affirm that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida and the Charter and Government of the City of Palmetto; that I am qualified to hold office under the Constitution and laws of the State of Florida, and under the Charter and Ordinances of the City of Palmetto; that I will well and faithfully perform at all times the duties of the office of City Commissioner/Mayor on which I am now about to enter, so help me God.



## **Section 22. Recall.**

The *Electors* of the City shall have the power to recall and remove from office, any elected official of the City, pursuant to the procedures prescribed by law.

## **Section 23. Amendment; Referendum.**

A referendum shall be authorized whenever there shall be presented to the City Commission a petition signed by ten percent (10%) of the registered *Electors* of the City as of the last *General Election of the City*, proposing an amendment to this Charter, or to any ordinance or resolution of the City. Such petition shall clearly set forth in full the proposed amendment, and the amendment shall be limited to a single subject. Upon receipt of a petition meeting the requirements of this Charter and of general law, the proposed amendment shall be submitted to a vote of the *Electors* of the City at the next *General Election*. The simple majority of the votes cast at such election shall be sufficient for passage of the amendment submitted to referendum. The City Commission may amend this Charter by ordinance or referendum, as provided by general law.

## **Section 24. Effect Upon Existing Rights and Ordinances.**

All ordinances in effect upon the adoption of this Charter, to the extent not inconsistent with it, shall remain in force unless amended as provided herein.

All rights, claims, actions, orders, contracts, and legal or administrative proceedings involving the City shall continue except as modified pursuant to the provisions of this Charter.

All ordinances and parts of ordinances and resolutions in conflict with this Charter are hereby repealed to the extent of such conflict.

## **Section 25. Interpretation.**

Any doubt that may arise in the construction of this Charter or any ordinance hereafter passed by the City Commission shall be construed and applied in the manner most favorable to the City. Any ordinance hereafter passed shall be consistent with this Charter and, to the extent of any inconsistency, this Charter shall control.

In the event any section, or part of a section of this Charter shall be declared illegal or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of any other or the remainder of the sections of this Charter.

## **26. Charter Review.**

This Charter shall be referred to a Charter Review Committee for review upon the occurrence of one of the following:

- Passage of five years from the date of the most recent amendment to this Charter ;
- Resolution of the City Commission; or
- Referendum pursuant to Section 23 of this Charter.

**Section 27. Effective Date.**

This Charter shall take effect on ~~November 3, 2010~~ the day after the General Election of 2010.

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**CITY OF PALMETTO  
CHARTER REVIEW COMMITTEE**

March 11, 2010

7:00 p.m.

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Chairman Ron Witt called the meeting to order at 7:08 p.m.

**Roll Call.**

**Present:** Ron Witt, Chair, Frank Brunner, Vice Chair, Bill Belle, Ray Dielman, Cynthia Fobbs, Robert Rotondo,

**Absent:** Bob Anderson, Robert Smith, Beverly Varnadore, Darrell Woodie

**1. APPROVAL OF AGENDA**

**Motion:** Mr. Dielman moved, Mr. Brunner seconded and motion carried unanimously to approve the March 11, 2010 agenda.

**2. APPROVAL OF MINUTES**

**Motion:** Mr. Dielman moved, Mr. Brunner seconded and motion carried unanimously to approve the December 3, 2009 minutes.

**3. REVIEW: COMMISSION COMMENTS OF DRAFT CHARTER**

Mr. Barnebey led a discussion of the City Commission comments of the proposed Charter. The Commission reviewed the proposed Charter at three City workshops. The Commission sent the Charter back with sections for the Committee to reconsider.

**Section 16: Mayor – Powers and Duties**

Regarding two-year term limits for mayoral appointments to boards, Mr. Barnebey said this provision will require ordinance amendments. Discussion ensued, and it was the consensus of the Committee to retain this suggestion

**Section 19: Vacancy of Mayor**

Mr. Barnebey said the Commissioners wanted the Vice Mayor to become the interim Mayor and be able to continue to vote and keep the Commission seat until a new Mayor is elected. Mr. Barnebey said that language could be crafted and he felt that six months should be the maximum amount of time for that scenario. Mr. Witt said the Charter Committee was trying to avoid a special election.

Mr. Brunner opined that based on months of discussion he feels the Committee covered the bases and gave several options for an unlikely event. Any one of the current Commissioners is capable of fulfilling the role of Mayor. It's not necessary to be in the office forty hours a week. Mr. Witt agreed provisions for succession had been built in.

There was a consensus to keep the language in Section 19 as recommended by the Committee. It is just a recommendation, and the Commission can either accept or reject it.

Ms. Fobbs said she perceives that the Commission wants an interim Mayor to be able to talk to the Commission and retain the right to vote, and this is a conflict. Mr. Barnebey commented that an acting or interim Mayor could not talk to the other Commissioners.

Mr. Rotondo sees that Commissioners might have a problem giving up a Commission seat to become Mayor, but the language gives the Vice Mayor a choice. Mr. Brunner said if nothing

else, this discussion has drawn attention to the real importance of the Vice Mayor and that it really is more than a ceremonial position.

The Committee reconfirmed its position that the Charter must be amended by referendum and not by ordinance by the Commission. (Section 23) By ordinance it can be referred to a Charter Review Committee and then by ordinance to a referendum.

Commissioner Cornwell asked to add a definition for City as the City of Palmetto.

Mr. Barnebey said the topic of the appointment of a second Vice Mayor came up in the Commission workshop. The primary reason was in the event the Mayor and Vice Mayor were absent for a meeting. Following discussion, Mr. Barnebey said it could be handled through their rules of procedure, outside the Charter. The Committee agreed this is a procedural issue. Citizens have voted for the Commission and have confidence in their elected officials. They rejected the idea of a second Vice Mayor.

The Commission agreed with the language in Section 17 that appointed officials terms not extend beyond December 31 following a General Election, just as the Committee suggested.

The members discussed Section 12, which states that in the event of a Commission seat vacancy, the other Commissioners will appoint someone to fill the remainder of that term. There was a question if there should be a special election as up to four years could remain in the term. In answer to Ms. Fobbs' question, Mr. Barnebey said the criteria for the office must still be met. In review however, it appears the Committee had covered the bases by providing, in Section 12, that ...If the vacant term extends beyond the next General Election, the remainder of the term shall be filled by a person elected in such election. No change will be made to this section.

Mr. Barnebey was asked by the Commission to include a definition of "organizational meeting."

The Committee was reappointed by Commission to continue the Charter review. The new appointment expires August 15, 2010.

Mr. Barnebey will add a sentence to Section 14 clarifying that an acting or interim Mayor has no veto power. Only an actual sitting Mayor will have the veto power.

Based on the meeting this evening, Mr. Barnebey will revise the proposed Charter and send it out to the Committee for review. There may be a need for one more meeting.

**MOTION: Mr. Dielman moved, Mr. Belle seconded, and motion carried unanimously to adjourn the meeting.**

The meeting was adjourned at 8:09 p.m.

Minutes approved:

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Ron Witt, Chair