TOWN OF PALM BEACH

Office of the Town Clerk

REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON 10/31/97

I. CALL TO ORDER

Chairman Doyle Rogers called the second meeting of the Charter Review Commission to order at 9:00 a.m. on Friday, October 31, 1997, in the Town Council Chambers.

II. ROLL CALL

Town Clerk Mary Pollitt called the roll, and the following Commission Members were present: Chairman Doyle Rogers, Vice-Chairman James McC. Wearn, Rodney Fink, Yvelyne deMarcellus Marix, Jeanne Habicht, Tom Keresey, and Bill Guttman. Also present were Town Manager Robert Doney, Assistant Town Manager Peter Elwell, and Town Attorney John Randolph. The following elected officials attended all or portions of the meeting: Town Council President Pro-Tem Leslie Shaw, Councilman Allen Wyett, and Councilman Sam McLendon.

III. APPROVAL OF AGENDA

Item X., General Discussion of Individual Commission Members' suggestions of Charter related issues was moved and heard immediately preceding Item VII. The amended agenda was approved unanimously.

IV. APPROVAL OF REPORT OF ORGANIZATIONAL MEETING OF APRIL 17, 1997

Mr. Keresey made a motion to approve the report. The motion was seconded by Mr. Guttman and carried unanimously.

V. ADVICE FROM TOWN ATTORNEY JOHN C. RANDOLPH RELATED TO SUNSHINE LAW AND OTHER PROCEDURAL MATTERS

Mr. Randolph emphasized the importance of the Sunshine Law to the Commission and its relevance as an ad hoc committee. Mr. Randolph cited the example of the Town's Zoning

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Fax No. 407-838-5447

Committee in the early 1970's that was appointed as a cross section of the residents of the Town and had general knowledge of the Town. Mr. Randolph said the plan was to have this committee meet with a consultant hired by the Town to determine the future course of zoning for the Town. He recalled that the group met informally at residences and other informal sessions that were not recorded. The committee was only advisory as is the Charter Review Commission, and it had made a recommendation to the Town Council with the consultant regarding modifications to the zoning ordinance. Mr. Randolph said the Town Council acted upon the recommendation and passed an ordinance. After the passage of the ordinance, the ordinance was challenged and ended up in the Florida Supreme Court. Mr. Randolph said the challenge was that the ad hoc committee had violated the Sunshine Law, and the defense was that the committee was only advisory, and the Town Council passed the zoning ordinance at a public meeting where the public had an opportunity for input. Mr. Randolph reported that the Florida Supreme Court ruled that the committee meetings were a violation of the Sunshine Law; therefore, the action of the Town Council adopting the zoning ordinance was deemed null and void. Mr. Randolph said the Supreme Court ruled that what was conceived in the dark could not be ratified in the sunshine.

Mr. Randolph noted the importance of the Commission members knowing about and abiding by the Sunshine Law because of the risk that all of the work the Commission might do would be for nought if a challenge were mounted, after the Town Council had acted upon the recommendations of the Commission. Mr. Randolph explained violations of the Sunshine Law could result in prosecutions for first or second degree misdemeanors resulting in fines or possible imprisonment.

Mr. Randolph said the Sunshine Law is not difficult to abide by, and the law simply states that two or more people of a committee or a group may not meet together except at a public meeting, duly called, and a meeting at which minutes are taken. He continued that the law requires that when two or more people meet, due notice be given of the meeting, and minutes be taken of the meeting to allow public viewing of the minutes. Meetings can be telephone calls or correspondence (including correspondence to the Town Manager that a commission member would react to--outside of a meeting--prior to the public meeting). After giving examples of specific violations of the Sunshine Law, Mr. Randolph reminded the members they could not have any communications with each other regarding Charter Review Commission business outside of a public meeting. Mr. Randolph offered that perceptions of violations of the Sunshine Law should also be avoided; however, in a community the size of Palm Beach, social contact would be difficult to avoid. Mr. Randolph warned of conversations at public meetings, outside the Town Council chamber area, that could be perceived as violations.

Responding to comments from Mr. Rogers, Mr. Randolph replied that if two or more members of the Charter Review Commission were members of a particular group and attended a meeting where discussion took place regarding the Commission, only one member could remain in the room during the discussion. The other(s) would have to leave.

Mr. Randolph clarified that it was not a violation of the law for a commission member to meet one on one with staff; however, staff may not poll a member on a particular issue. Mr. Randolph cited rare occasions where the courts have determined *one* member violated the Sunshine Law, and cautioned that the Commission should avoid appointing one member to do work or represent the Commission as a whole.

Mr. Guttman asked Mr. Randolph if the Palm Beach Civic Association, at one of its forums, requested that one of the Commission members give a general report on the work of the Commission, would that be allowed?

Mr. Randolph responded he did not think that would be a violation.

Mr. Doney clarified that a report given by a member of any commission at a group meeting is usually prefaced by the disclaimer that the report reflects the ideas of only one member of any commission.

Mr. Randolph said the Commission, as a body, will have to discuss and rule upon the appropriateness of procedures from the standpoint of perception and its affect on the work of the committee as a whole. Mr. Randolph said his remarks were based on technical considerations for violations of the Sunshine Law including several attorneys general's opinions presented to the Commission at the April 17th meeting.

Mr. Fink requested Mr. Randolph's opinion on a commission member's attendance at a group meeting when another commission member might be speaking to the group and asked if the first member should remove himself from the meeting?

Mr. Randolph replied that was a matter of perception, discretion should be used, and if the first member was not part of the discussion, he could possibly remain. After discussion, Mr. Randolph said that opinions have been given regarding that issue. Mr. Randolph mentioned that a difference existed between a member reporting on the *proceedings* of the Commission and expressing his *opinions* of changes to the Charter.

Mrs. Habicht asked Mr. Randolph if each commission member could speak to Town Council members?

Mr. Randolph responded that each commission member could speak to a Town Council member one on one; however, the Town Council members could not be polled by a commission member. The information of one Town Council member cannot be passed on to another Town Council member.

Mr. Randolph said that any document that is produced as a result of meetings of the Charter Review Commission is a public record unless specifically exempted under the Public Records Act. Mr. Randolph said each member of the Charter Review Commission must vote on matters unless a conflict of interest is declared. He explained that a conflict of interest would exist if it inured to an individual's special, private gain; otherwise, a member must vote and cannot abstain because of discomfort or lack of an opinion.

Mr. Randolph reminded the Commission they are acting as a corporate body, and the staff is able to assist and can only react to what the corporate body does. Mr. Randolph said the staff cannot react to a request from one individual that should be directed by the whole corporate body.

VI. ADVICE FROM TOWN MANAGER ROBERT J. DONEY REGARDING HIS MEMORANDA DATED APRIL 30, 1997, AND OCTOBER 21, 1997:

A. PUBLICATIONS FROM NATIONAL CIVIC LEAGUE AND FLORIDA LEAGUE OF CITIES

Mr. Doney reported the publications from the National League of Cities and the Palm Beach Civic Association were distributed to each of the Commission members. He said each member received a copy of the Charter at the time the Mayor wrote a letter to each member advising of appointment to the Commission.

Mr. Doney said his October 21, 1997, memorandum provided a list of speakers who may address the Commission at future meetings. Mr. Doney said he had not spoken directly with the individuals to determine their willingness or availability to appear at any of the meetings. Mr. Doney reviewed the list and the backgrounds and qualifications of each one.

Mr. Doney noted a list was distributed of all of the Elected Officials who served the Town from 1979 to the present time.

Mr. Doney said his October 21st memorandum, based upon the Town Council's request at their September 9th meeting, addressed the issue of the annual appointment of the administrative officials and the Town Attorney. Mr. Doney reported he met with the eight department heads and had some thoughts and concerns regarding potential charter amendments.

B. REPORT FROM PALM BEACH CIVIC ASSOCIATION ENTITLED "PALM BEACH IN THE TWENTY FIRST CENTURY, A CHARTER REVISION PROPOSAL," DATED AUGUST 15, 1996

See comments above.

(Item X. was heard next.)

X. GENERAL DISCUSSION OF INDIVIDUAL COMMISSION MEMBERS' SUGGESTIONS OF CHARTER RELATED ISSUES

Mr. Rogers requested that each of the Charter Review Commission members identify the issues he or she wished addressed by the Commission.

Mr. Keresey's suggestions were:

1. Consideration of the Town Manager's powers relative to hiring and firing certain department heads;

2. Consideration of reduction of the great number of minor issues that are presented to the Town Council and require a considerable amount of time. The structure of the Town's management could be altered to allow the Town Council to prepare policy matters for approval and not be tied up with a great deal of discussion regarding matters that should be taken care of by employees and management of the Town.

Mrs. Habicht's remarks were:

"Re-reading the Town of Palm Beach Charter I find it straight forward in its content. I question how far the Town Council has moved from the original intent. This would be important to review.

"For further review I am especially interested in the job descriptions for the Mayor and the Town Manager and how accurate they may be at this time. Of equal importance is a job description for the President which is alluded to here and there but not specifically addressed."

Mr. Guttman's proposals were as follows:

<u>CHARTER AGENDA PROPOSALS</u>

1. Should the Mayor or the President of the Town Council preside over Town Council meetings?

3. If the Mayor presides, should he also be entitled to vote?

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3(a) Where does political leadership ordinarily dwell in the council-manager form of government?

3(b) And how does political leadership complement executive leadership in the council-manager system of government?

4. Should the Mayor retain his power to veto ordinances (laws)?

5. Should the Mayor be given unqualified responsibility to represent the Town in intergovernmental affairs?

6. Should conducting performance appraisals of the Town Manager be added to the Mayor's list of Charter duties?

7. Should the Mayor be given authority to nominate the deputy presiding officer?

8. Should the presentation of an annual "state of the town" message be added to the Mayor's list of Charter duties?

9. Should the Mayor's Charter-mandated duty to enforce Town laws be deleted?

10(a). Is the Mayor's ceremonial role substantial?

10(b). Is the Mayor's ombudsman role substantive?

11. Should the Charter name the Town Manager the chief executive of the Town?

12(a). Is the power to hire and fire central to the exercise of effective leadership by the Town Manager?

12(b). What role should the Town Council have in the appointment and removal of department heads?

13. Should the Town Manager serve for an indefinite term of years in contrast to the one-year term now set out in the Charter?

14. Should the Charter require the Town Manager to provide the Town Council with a written annual budget message?

15(a). Should the term of office for council members be lengthened from two- to three-year staggered terms?

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15(b). Should the Mayor's term of office be lengthened from two to three years?

Mr. Fink's comments:

Office of Mayor

Review of the Mayor's Right to Vote;

Possible change of length of term from two year to three year;

Should the Mayor be the Presiding Officer of the Town Council?

Town Manager

Should have unrestricted authority to hire and remove all Town appointed personnel;

Discuss changing one year term to an indefinite term;

Town Council

Possible change from current two year terms to three years;

Effort to reduce as much of the trivia that they handle currently.

Mrs. Marix's comments: *(regarding Charter amendments)*

Consideration of an amendment to the Charter to require, or give preference to future department heads, or Town Managers who will become residents; (*not to affect current employees)*

Consideration of an amendment providing for recall of elected officials.

Mrs. Marix also offered the following comments regarding the suggested changes by the Civic Association:

1) "The Mayor has a very important position at this time, especially where it involves a relationship with the residents. Being an OMBUDSMAN is a role in itself, and should be used to the fullest. Taking on the work or the President of the Council, voting at all meetings, working with the Town Manager on the Agendas etc...will destroy that

position, and take away valuable time that should be spent on matters quite apart from Council activities...The Mayor already represents the Town on many Governmental matters...The Mayor is already supposed to report to the Council in writing at every meeting, and I do not see an advantage to reducing it to once a year...In these monthly reports the Mayor can and should provide public policy guidance. The veto power is important, as although it can be over ridden, the very threat of a veto can cause a "rethink" on some sensitive ordinances...The Mayor can most certainly discuss with the Town Manager matters he or she might want on the agenda. I always did!

"I do not believe that the Mayor should conduct the annual evaluation of the Town Manager, but should be part of it. It is too important a matter to give to one person, whose personal relationship could interfere with judgement. I am adamant that the WHOLE COUNCIL AND THE MAYOR should make up the list of items on which the evaluation should be based, and then reply according to their opinions. Under no circumstances should we return to the type of evaluation system which caused the problems with Delano's evaluation.

"For the Council to pick a Deputy Mayor, rather than a "pro tem" is also a mistake. It takes away from the electors part of their right to pick the Mayor, and takes us towards a Council chosen Mayor, and would give the "Deputy" an election edge.

"The two year term has worked out well, and as has been shown, since the Mayoral two year term was introduced, the Mayors have always been re-elected, but the voters still kept the option.

2) "I see no reason to give the Council three year terms either. Nowadays with the number of new residents (by old standards) seeking office it becomes that much harder to really evaluate them prior to the election..more sophisticated campaigning and public relations add to the problem. While most council members get re-elected after two years, I think the opinion should remain with the voter.

"With such a small Town, and bearing in mind that we have only some 8000 voters, five council members are sufficient. The more there are the higher the cost to the taxpayer. Even without a salary, the administrative costs go up.

3) "The Town Manager is appointed yearly. A good Manager does not have to worry, but to have an indefinite term is opening a Pandora's Box of wrongful discharge accusations.

"The Town Manager already can hire and fire all personnel, except department heads, which need Council consent, and with the importance of those positions I would not want to change it. While the Town has been very fortunate in these matters in the past, it could be a risky proposition.

"Most positively I do NOT believe that the Town Manager's duties should be taken from the administrative emphasis, into public policy. Policy must be set by residents, and the Town Manager is not required to be one. Almost all our boards require residency, as they are dealing in policy much of the time.

"I would now like to address some matters that could be looked at for the betterment of the working of the Town (*which would not be involved in a re-write of the Charter).*

"I want to stress that Palm Beach is still a very, very small Town. Much research and writing on municipal governance is more suited to larger municipalities, with very different "problems". While "things change" if one looks back over the past 50 years Palm Beach has had relatively little. We are still a seasonal Town with up and downs of traffic...yes, we no longer take down the traffic lights in the summer...we still face weather threats in the summer...the infrastructure is certainly getting older, and crime is an ever growing worry. However, newer technology and systems are most helpful; all in all we have not been assailed by some of the big city horrors. While I am not a Pollyanna, I do not think we should be looking for major changes.

"I believe that we are becoming too bureaucratic. Whereas, the MONTHLY committee meetings used to provide almost a workshop atmosphere, you could call it a partial "think tank", now they keep to a more formal agenda. Interesting ideas or items were provided, brought up as well as the agenda matters. I recall Ambassador Oehlert always bringing little memos under his tie clip for discussion. Some were kicked around....others followed up. In this community of many exceptional people, as the Council members hear or read of interesting matters that could fit into a committee meeting, there is not really a time for discussion anymore. I was shocked to read in the Daily News recently that the Administration and Personnel committee only met for personnel problems, or words to that effect. Surely there are other matters in administration and personnel than that! The MONTHLY meeting of yore of the Finance and Tax committee seems to be gone in favor of a summer budget review. The whole purpose of two Council members serving on each committee is to enable time for discussions without tying up the entire council, and yet to have time for discussions, not only decisions.

"Rather than burdening the Town Manager with policy matters, I would like to see some of his paper work unloaded, so that he can get out and around the Town; to just drop in on projects and to get to see the Town from the perspective of a resident. It could be a pleasure and pride, and an insight otherwise absent. I can never forget

Town Manager Frost and his moped, showing up most unexpectedly!!!

"It seems that a certain cohesion has been lost since the days when all department headquarters were in Town Hall. While that had to come, and their present headquarters are mostly located in different parts of the Town (and Public Works in West Palm Beach), I feel it is important to bring their programs closer to the elected officials through discussions with the informality of workshops or other discussion groups.

"I would like to see the Town Council Chambers kept free the day after Council meetings, so that the meeting could be closed by "a time certain," and continued the next day, in fairness to the Council members, the staff, and those waiting to be heard. This might be made quite possible, by placing administrative matters at the end of the agenda."

The comments of Vice-Chairman Wearn:

Mr. Wearn said that based upon his observations of success in Town governance since the existing Charter was adopted on February 6, 1979, over eighteen years ago, only minor tuning requirements should be considered at this point. Mr. Wearn identified the following:

Section 1.02, The Powers of the Town could stand some clarification and broadening;

Section 1.03, The Sale of Property - A Referendum Required could stand some clarification and strengthening; *(this referred to the protection of the passive parks in the Town)*

Section 1.04, Casino Gambling Prohibited, since it was adopted by ordinance, consideration should be given to include it in the Charter;

Subsection (e) of Section 3.05, Mayoral Powers, discussion on the right to veto and perhaps broadening to include resolutions and motions;

Subsection (c) of Section 3.06, Filling of Vacancies, discussion of this section;

Subsection (c) of Section 3.07, discussion of the Procedure of Town Council regarding voting on a roll call vote in all instances;

Section 4.02, subsection (b), Removal or Suspension of the Town Manager appeared incomplete or unclear;

Section 4.04, Powers and Duties of the Town Manager, Decisions of Staff and their appeal to Department Heads and their appeal to the Town Manager before coming to the Town

Council was an appropriate process that should be considered under the Duties of the Town Manager;

Section 5.04, Address broadening the form of ballots to include adoption by resolution.

Attorney Randolph, responding to questions from Mrs. Marix, said Ordinance No. 10-86, relating to Casino Gambling could be researched to determine if it went to a referendum.

The comments of the Chairman, Doyle Rogers:

Mr. Rogers said that, as Chairman of the Town Charter Review Commission, it was his duty to impartially preside over the proceedings and give careful consideration to all of the views expressed by members of the Commission and those members of the public that appear before it prior to making a personal decision on the issues. Mr. Rogers said he was appointed to a charter study commission on June 1, 1971, by Mayor Earl E. T. Smith, and the final recommendations of that Charter Study Commission were approved by the Town Council but were rejected by the voters. Mr. Rogers said that his positions on the issues at that time may not be the position he would endorse during the current proceedings. He continued that the Town has operated under three or four charters in two forms of basic, municipal government, and the Charter and the forms of government were changed to meet the needs and requirements of our residents and the changing nature of our Town as well as changes in other areas of Palm Beach County. Mr. Rogers said there would be those who would oppose any change in the status quo in our form of municipal government and others who will favor change for the sake of change. The last Town Charter revision was in 1979 and Mayor Paul Ilyinsky appointed the present Charter Review Commission with the approval of the Town Council to review the current Charter and report its recommendations to the Mayor and Town Council.

Mr. Rogers said there was no assurance the recommendations of this Charter Review Commission would be approved by the Town Council or, if approved, would be accepted by the voters in Palm Beach; however, the Commission must make a diligent and earnest effort to examine the entire Charter with emphasis upon the areas which members of the Commission and citizens of the Town present to the Commission for discussion.

Mr. Rogers said the review of the Town Charter may be a long and arduous process; therefore, he appealed to those opposed to change and those favoring change to present their cases before the Commission with reason and logic and refrain from making personal attacks on those who hold opposite view points.

Mr. Rogers said at the conclusion of the proceedings and after the preparation of a document, which the Commission would believe is in the best interest of the citizens of the community, the Commission should be prepared to publicly promote its passage by Town Council and thereafter by the qualified electors in Palm Beach. If the Commission concludes there is no need for changes in the Charter, the Commission should be prepared to defend status quo.

Mr. Rogers said he would like to consider a specific time for comments from the public. Mr. Rogers suggested comments from the public could be heard under "Any Other Matters" on the agenda, and the Commission members agreed with that.

VII. CONSIDER REQUESTING WILLIAM N. CASSELLA, JR. TO SERVE AS A NON-PAID ADVISER TO THE COMMISSION AND TO PROVIDE IT WITH THE NAMES OF RECOGNIZED EXPERTS ON LOCAL GOVERNMENTS (SEE ATTACHED NOTE)

Mr. Rogers identified Mr. William Cassella, Jr. as the author of The Guide for Charter Commissions, fifth edition, New York National Civic League, 1991; a former executive-director of the National Civic League; and a national advisor to the Department of Community Affairs in connection for the preparation of the publication entitled "Model Charter for Florida Municipalities". Mr. Rogers reported he contacted Mr. Cassella who indicated willingness to serve as an unpaid advisor to the Commission to provide direction.

Mrs. Marix suggested the Commission should first decide if the Charter required revisions before the Commission sought direction from outside consultants. Mrs. Marix said many of the items and suggestions from the Commission members may be dealt with by amendment, and problems should be identified for specific areas before outside people are brought in. Mrs. Marix said that individuals who have worked under the current Charter should be heard from first.

Mr. Guttman said that social scientists can provide a great deal of empirical evidence relating to how the model has worked in similar communities across the country--similar in size, demographics. Mr. Guttman suggested the Town could benefit from those experiences, because none of the Commission members were political scientists by training or had empirical knowledge of what is going on across the country. Mr. Guttman said Mr. Cassella could recommend people who had skills in those areas who could then inform Commission members.

Mrs. Marix, advised that she has a political science degree from UCLA and reiterated her opinion that the Commission should first decide if any serious problems exist and identify same before going outside to bring in speakers.

Mr. Guttman cited the example of devolution of federal responsibilities to State and Local governments which prohibits Palm Beach isolation and requires the ability to carry on intergovernmental negotiations including West Palm Beach, i.e. water negotiations. Mr. Guttman said confusion exists outside the Town of Palm Beach regarding the political leader of Palm Beach--is that the Mayor or the President of the Town Council? Mr. Guttman said he thought political and executive leadership need to be clarified for outside communities, and it would be a mistake to wait for a crisis to occur when the trend is clear.

Mr. Guttman said that the Town has not had performance evaluations for the Town Manager for the last several years. He said he was sensitive to doing evaluations with the Sunshine requirements; however, it is important for the Manager to be evaluated because that is the only way that the Manager is indirectly accountable to the electorate. Mr. Guttman noted that while each and every elected official has to stand for election, the only way the Town Manager is held accountable is by the Board of Directors or the Town Council holding him accountable. He said a process in theory exists to do that, but it has not been occurring because of the problems associated with the Sunshine Law.

Mr. Guttman said he believed a regime could be developed in which the Mayor was empowered to carry the lead or do the evaluations on a "one on one" basis--outside of the Sunshine. He said those are the issues he would like to explore with the Town Attorney, experts in the State of Florida, and experts who bring their empirical knowledge to the table.

Mrs. Marix responded, when she was Mayor, performance evaluations were done yearly. She cited an example with a previous town manager and the problems that occurred. Mrs. Marix said a list was prepared with items relating to the Town of Palm Beach and that was the way it should be done--the Council, in the Sunshine, agrees to a list of items for evaluation of the Town Manager. Mrs. Marix said each individual could meet with the Town Manager and discuss specific issues, with a vote to retain or not retain the Town Manager coming at a Council meeting after the individual meetings. Mrs. Marix stated the responsibility for evaluation of a town manager cannot be put in the hands of one person such as the Mayor.

Mr. Guttman replied he would like to hear from experts to provide an evaluation system that is compatible with the Sunshine Law.

Mrs. Habicht said she would appreciate someone with Mr. Cassella's expertise to at least help the Commission structure an approach to reviewing the Charter.

Mr. Rogers said Mr. Cassella could be provided with the minutes from this meeting to provide a background before Mr. Cassella would be invited to attend a meeting.

Mr. Wearn said he understood that Mr. Cassella would be serving as an unpaid advisor to the Commission and would be in a position to provide additional names of recognized experts on local governments to address specific problems. Mr. Wearn said it was a good idea to have expertise to advise the Commission, specifically on the solution to identify problems; however, he expressed serious reservations regarding someone coming in to review the Charter and giving an opinion if it was a good or not so good charter.

Mr. Rogers agreed the Commission should seek specific advice.

Mr. Guttman said he thought that Mr. Cassella should be considering all of the items identified by Commission members and the general public in the list that was being put together from this meeting.

Mr. Rogers said that would be the purpose of sending Mr. Cassella the minutes of this meeting.

Mr. Keresey, who also has a degree in political science, said he thought the Commission should reach out for expertise when it exists and have an opportunity to listen to experts, provided that in advance of any presentation, the expert be advised of what the Commission is looking for. Mr. Keresey said it would be fair to the public to hear experts, whether their advice was accepted or not, and Mr. Cassella should be invited to attend meetings, but he must be given specifics in advance.

Mr. Fink suggested the Commission should proceed further with their meetings and prepare a compilation of particular subjects, and at that time, contact someone like Mr. Cassella to be present at future meetings.

Mr. Doney suggested a list of suggested study items for Charter review be prepared for the Commission by the next meeting, at which time the Commission members could vote on them item by item.

After further discussion (under Item VIII.) the Commission decided to delay contacting Mr. Cassella until a list of items for further review is approved by the Commission.

VIII. ESTABLISH A TENTATIVE TIME FRAME FOR THE COMMISSION TO COMPLETE ITS WORK

Mr. Rogers said he did not think a tentative time frame for the Commission to complete its work could be established until the Commission had a better understanding of the scope of study items. Mr. Rogers recalled that originally the Commission discussed having their work complete for presentation to the Town Council by the fall of 1998 in anticipation of the February 1999 election.

Mr. Wearn said that the first thing the Commission should do in establishing the time frame is to identify the problem areas of the Charter, and to identify those areas beyond what the Commission members identified at this meeting, it would be appropriate to issue invitations to former Town leaders, both from the elected office position and also from the administrative staff level in addition to public comments. Mr. Wearn suggested meetings be arranged for those purposes to hear what problem areas may be identified in an effort to produce a list of study items for submittal to a list of experts for comments and guidance at that time.

Mr. Wearn suggested, as a first step, setting a number of meetings to hear from former Town officials, Town Staff, present officials, and the general public.

Mr. Rogers noted that was the next item to be addressed on the agenda.

IX. DISCUSS AND ORGANIZE A TENTATIVE AND FLEXIBLE SCHEDULE OF COMMISSION MEETINGS TO INCLUDE THE FOLLOWING:

A. APPEARANCE AND ADVICE FROM WILLIAM N. CASSELLA, JR.

After discussion, the Commission members decided to assemble a list of study items before contacting Mr. Cassella.

B. RECEIVE COMMENTS FROM FORMER ELECTED AND APPOINTED (MANAGER) OFFICIALS OF THE TOWN CONCERNING AGENDA TOPICS FOR CHARTER REVIEW AND FROM CURRENTLY SERVING ELECTED OFFICIALS

Mr. Wearn, deferring to Mr. Randolph, said he thought it would be beneficial to hear from the current elected officials and the problems they may have performing under the guidance and requirements of the Charter.

Mr. Guttman said the Commission should distinguish between current elected officials' ideas as to Charter topics deserving study and current elected officials stating their substantive views on a particular Charter topic which may be somewhat inappropriate.

Mr. Randolph said he agreed with Mr. Guttman's comments, and a problem was created when the Commission is the advisory body to the Town Council and then the Town Council is involved advising the Commission regarding the outcome of the Commission's work. Mr. Randolph advised that the Commission should be sensitive to that issue. The Town Council may indicate, as a result of a meeting they would hold in the Sunshine, items that they would like to have the Charter Review Commission consider. Mr. Randolph suggested there may be a way to have the Town Council express problems that might exist in the Town Charter without the Town Council advising the direction the Commission should take on those issues.

After discussion of appearances by former elected officials and Town staff, the Commission suggested that all former elected officials and former Town Manager George Frost be invited to either appear before the Commission and/or write their comments for presentation to the Commission.

Mr. Rogers presented a copy of a letter (given to him by Mr. Wearn) that was sent by the 1978 Charter Commission to former Palm Beach Mayors, Council Members, and Town Managers providing specific meeting dates. Mr. Rogers suggested if meeting dates could be set, he could prepare an invitation letter to that same group of individuals.

Mr. Doney offered to prepare the letters for Mr. Rogers' signature.

After discussion of Mr. Rogers' suggestion that Mr. Guttman prepare a composite list of study items discussed today, Mr. Randolph expressed concern with the delegation of Commission tasks to one member of the Commission. Mr. Doney offered to have the staff prepare a list of study items that would be distributed with the report from this meeting. Mr. Randolph concurred with that plan of action.

After the Commission members discussed the possible costs related to bringing Mr. Cassella to Palm Beach from New York and the necessity of appearing before the Town Council to request a budget amount for such expenses, Mr. Doney suggested Mr. Cassella's expenses be handled similarly to expenses for Town officials on a per diem basis ($35/day for meals) and the use of a nearby hotel within walking distance of Town Hall. No action was taken on the potential budget request, and this matter will be considered again at a future meeting.

C. RECEIVE COMMENTS FROM TOWN MANAGER, ROBERT J. DONEY, CONCERNING AGENDA TOPICS FOR CHARTER REVIEW

Mr. Doney said that based upon his review of the materials that were made available from the National League of Cities, Florida League of Cities, the Town's Charter, and personal experiences with the Town since February, 1974, and as Town Manager since December, 1987, two issues were suggested for review:

1. Budget adoption process. State Law requires that the budget be adopted by ordinance, and the Town Council may wish to adopt the budget by resolution;

2. The appointment issue regarding the eight department heads and the Town Attorney who are recommended by the Town Manager and appointed by the Town Council. If the process is changed within the Charter, the department heads would like to see the issue of severance and other considerations addressed. *(Mr. Doney said he would have additional comments at the appropriate time.)*

Mr. Doney requested that he be allowed to comment on the issues one by one as they are discussed at future meetings of the Charter Review Commission.

Mrs. Marix expressed her concern with not adopting the budget by ordinance because as an ordinance, the Mayor has veto power. Mrs. Marix said if the budget is adopted by resolution, the Town Council may override the Mayor with a vote, but the Mayor cannot veto a resolution. Mr. Wearn reminded Mrs. Marix that one of his suggested Charter changes was to extend the Mayor's vote power to include resolutions.

Mr. Randolph explained that Chapter 166 of the Florida Statutes, Home Rule Section, states the powers of municipalities and indicates that municipalities have home rule powers and they can, pursuant to this ordinance, do most things by ordinance. Mr. Randolph said that would include many of the items discussed at this meeting and gave the examples of performance evaluations, budget, etc. Mr. Randolph referred to paragraph four on the first page of Chapter 166 which described the things that cannot be done by ordinance but must be done by charter. Mr. Randolph said these are things that affect the exercise of extra territorial powers or which affect an area with lands within and without a municipality or changes within a charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election, except for the selection of election dates, qualifying periods for candidates, and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or rights of municipal employees. Mr. Randolph stated those are the items in a charter that cannot be changed by ordinance.

Mr. Randolph referred to the April 22nd letter from Chip Morrison, Florida League of Cities, that addressed what can and cannot be included in charters. Mr. Randolph quoted Mr. Morrison as saying, "A nine page charter can be just as effective as an eighty page charter." Mr. Randolph noted that Mr. Morrison included several charters from other Florida cities with his letter.

Mr. Randolph said that one of the broad considerations for Commission members was to decide if matters that could normally be dealt with by ordinance be included within the charter or should the charter be restricted to those items normally contained within charters.

Responding to a question from Mr. Rogers, Mr. Randolph replied the Town Council, pursuant to recommendations from the Charter Review Commission, will make a determination if the Charter should contain issues that could normally be addressed by ordinance. Mr. Randolph said the down side of having issues in the Charter is the fact that a referendum of the people is required, and items that could normally be dealt with by the Town Council would be restricted until another referendum would be held.

Mr. Randolph said many items concerning the Charter Commission members relating to Town government do not necessarily have to be included within the Charter in order for the Town Council to make ordinance amendments relating to certain items, i.e. budget, performance evaluations, etc. Mr. Randolph said the Commission needs to decide if issues are so important that the Town needs to include those issues in the Town Charter to restrict future Town Councils from amending them by ordinance.

After discussing the issue of Casino Gambling, Section 1.04 of the Charter, adopted by Ordinance 10-86, Mr. Randolph said the issue of Casino Gambling did not need to be in the Charter, because it could be controlled by ordinance; however, such an ordinance could be changed by any Council from month to month. Mr. Randolph said he believed the Town Council that adopted that Charter provision thought it was important enough that they wanted it incorporated in the Charter to make it binding in the future and allow it only to be changed through a Charter revision. Mr. Randolph said the Charter Review Commission should consider the issues and decide if certain items should be included in the Charter which would keep the Town Council from acting without a voter referendum on those items.

Mr. Randolph said that the Casino Gambling item and the Green Space Requirement for the Town are the only items that are in excess of a bare bones model charter.

Mr. Randolph explained that State Statute 166.031 states the method by which charters can be changed and cannot be pre-empted.

D. RECEIVE COMMENTS FROM RESIDENTS CONCERNING AGENDA TOPICS FOR CHARTER REVIEW

There were none.

Mr. Rogers said that the Commission intends to hear comments from previously elected officials and Town staff at the next scheduled meeting. Mr. Rogers suggested public notice be given to encourage comments from the public at a meeting scheduled after the next one.

Mr. Randolph responded that a notice could be prepared providing for public comments; however, the public always had the right to speak at any public meeting.

After discussion, Mr. Rogers and the Commission members decided to set a special meeting to hear comments from the general public with the understanding that anyone may be heard at any meeting.

E. DISCUSS THE COMMISSION'S FINANCIAL NEEDS AND SEEK TOWN COUNCIL AUTHORIZATION TO COVER COSTS

Discussed under "B" above.

Mr. Rogers suggested he, as chairman of the Charter Review Commission, should request $1,000 to $1,500 to cover expenses for experts who would appear before the Commission.

Mr. Wearn suggested the request may be premature, and the Commission should wait until the list of items has been identified, comments from the former officials are heard, and the list is amended. Mr. Wearn said the amended list could then be submitted to an expert who may want to suggest another person to address the issue. Mr. Wearn said the funding was not needed for at least one and possibly two meetings, and as a result the list could be adjusted as to the number of experts the Commission may want to invite.

Mr. Guttman said he thought it was important to have some Town Council authorization for Mr. Casella's expenses, as outlined by Mr. Doney.

Mrs. Marix said the decision has not been made at this point to alter the Charter, and the Town Council meets every month. Mrs. Marix said it would be appropriate to postpone this request until further details are available.

Mr. Rogers asked for consensus from the other Commission members, and the decision was to defer this matter until the next meeting.

F. HEAR FROM EXPERTS ON LOCAL GOVERNMENT

Mr. Rogers said these experts will be scheduled at later meetings as the agendas are developed.

X. GENERAL DISCUSSION OF INDIVIDUAL COMMISSION MEMBERS' SUGGESTIONS OF CHARTER RELATED ISSUES

This item was discussed earlier in the agenda--before item VII.

XI. IDENTIFICATION OF DATE AND TIME FOR THE NEXT MEETING OF THE CHARTER REVIEW COMMISSION

The Commission chose December 5, 1997, 9:00 a.m. in the Town Council Chambers as the date, time, and place for the next meeting. The items on the agenda will include the list of study items and any comments from the former elected officials and staff.

Two more meeting dates were scheduled:

Friday, December 19, 1997, 9:00 a.m. - Comments from the General Public

Friday, January 16, 1998, 9:00 a.m.

The Commission decided to extend an invitation to the former elected officials and former Town Manager Frost to appear at <u>any</u> of the meetings but encourage the earliest participation as possible.

XII. ANY OTHER MATTERS

Mr. Rogers asked for comments from the public.

Charles Hickman, Attorney and resident of 242 List Road, complimented the Commission on their efforts at this meeting. Mr. Hickman said the Florida State Constitution is revised every twenty years, and the revision focuses the attention of the people at that time although changes are not always necessary.

REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON 10/31/97

Mr. Hickman said as the Commission is struggling to receive comments regarding any possible revisions, some of the comments indicate they could be handled by ordinance and did not belong in the Charter or a revised Charter. Mr. Hickman suggested the Town Council may be contacted to define the scope of the Commission, and if the Commission was requested to review matters that were strictly limited to the revision of the Charter and not review matters that could be handled by ordinance, that could curb or limit the input of the study items on the agenda.

Adrian Winterfield, resident, suggested the simplest way to approach the review would be to go through the entire Charter, subsection by subsection, where appropriate, and ask for comments. Mr. Winterfield said the direction the Commission was going would be apparent. Mr. Winterfield said if this is an old Charter, but it works for the Town, there is no need to change it or only to the extent that minor changes would be necessary.

Mr. Winterfield said the question to be asked was, "If one were to adopt a different structure, would the result be different with the same elected officials? If it were, would that be a desirable result? .....If there were a new Charter, would the type of individual attracted to public office be different?"

Mr. Rogers said Mr. Winterfield's suggestion was a good one for review, and the Commission was appointed to examine the Charter and make recommendations. Mr. Rogers said he thought the Commission could go through the Charter together in approximately one hour.

Mr. Rogers suggested that after all of the suggested items are assembled, the list be submitted to Town Attorney Randolph for his comments regarding which items could be handled by ordinance--to eliminate the legal confusion.

Mr. Randolph replied he could do that on each item.

Mr. Randolph cited the following examples from this meeting:

1. The issue of the powers of the Mayor. This is clearly a matter that would have to be addressed by the Charter. A decision would have to be made to change or not to change the Charter.

2. The issue of performance review relating to the Town Manager. This is a matter which does not have to be included in the Charter in order for the Town Council to adopt a procedure it sees fit relating to the Town Manager. However, if the Commission thinks this is important enough to be included within the Charter, although the Town Council can deal with the issue by ordinance, the Commission can make a recommendation to include the issue in the Charter.

XIII. ADJOURNMENT

The meeting was adjourned at 12:30 p.m.

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Doyle Rogers, Chairman

Prepared by:

Mary A. Pollitt
Town Clerk
November 7, 1997