



TOWN OF PALM BEACH

Office of the Town Clerk

REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON 4/3/98

I. CALL TO ORDER

Chairman Doyle Rogers called the seventh meeting of the Charter Review Commission to order at 1:35 P.M. on April 3, 1998, in the Town Council Chambers

II. ROLL CALL

Deputy Town Clerk Susan Eichhorn called the roll, and the following Commission Members were found to be in attendance: Chairman Doyle Rogers, Vice-Chairman James McC. Wearn, Rodney Fink, William Guttman, and Jeanne Habicht. Mr. Tom Keresey was absent. Also attending the meeting were Acting Town Manager Peter Elwell, Town Attorney John Randolph, and Deputy Town Clerk Susan Eichhorn.

III. APPROVAL OF AGENDA

Chairman Rogers announced that the Citizens Association of Palm Beach, and the Palm Beach Civic Association had requested the opportunity to make several statements at this time.

Mr. Guttman explained that he understood that the two civic associations had some proposals that they may want to add to the Agenda, as well as discussion of the need for the charter review. Thus, it seemed logical to deal with those proposals or ideas before the two outside experts began their discussion, as it may add value to the opinions they would provide. Mr. Guttman then moved that the statements from the Citizens Association of Palm Beach and the Palm Beach Civic Association precede Item V of the Agenda, approving the Agenda as thus amended. The motion was seconded by Mr. Fink, and carried unanimously.

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IV. APPROVAL OF REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON FEBRUARY 26, 1998

Mr. Wearn identified two minor items to be amended in the Report of the Charter Review Commission Meeting held on February 26, 1998.

Page 1: Item III. APPROVAL OF AGENDA, third paragraph.

The word "not" to be inserted in the first sentence:

Mr. Wearn said he had NOT thoroughly considered his position on any of the items....

Page 4: Item VII. CONTINUED CONSIDERATION OF "REVISED SYNTHESIZED CHARTER AGENDA PROPOSALS," AS REVISED JANUARY 16, 1998, second paragraph, fifth line:

The word "perspective" should be replaced by the word "prospective."

...available to all of the PROSPECTIVE new councilmen...

Mr. Wearn moved approval, with amendments, of the Report of the Charter Review Commission Meeting Held on February 26, 1998. The motion was seconded by Mr. Fink, and carried unanimously.

ADDED ITEM: COMMENTS FROM THE CITIZENS ASSOCIATION OF PALM BEACH AND THE PALM BEACH CIVIC ASSOCIATION

Mr. Alec Flamm, member of the Executive Committee of the Palm Beach Civic Association, addressed the Charter Review Commission, stating that his professional career had been in corporate America, and he had been responsible for strategic and organizational planning for a Fortune 200 company of over 100,000 employees. He advised that both the Palm Beach Civic Association and the Citizens Association of Palm Beach were in favor of the process of reviewing the Charter of Palm Beach, as it had been twenty years since the Charter was last reviewed. Because the community of Palm Beach was unique and most desirable, the Civic Association wanted to be sure that the Charter provided the best opportunity to keep the community unique and a very desirable place to live. He noted that there had been much said about whether there was anything wrong about the current Charter—"if it ain't broke, don't fix it." He agreed with that sentiment regarding cars, air conditioning, or hair dryers, but for organizations there was a somewhat different view. Any well run enterprise had a

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responsibility to look into the future to preserve itself and to prosper, and Mr. Flamm emphasized the support of the two civic organizations. He explained that the two organizations had taken some of the comments made before the Commission seriously, and had gathered twelve members, meeting three times to identify things in the Town that might not be working as well as could be. The group included Eileen Curran, Al Levinson, Carol Merrill, Louis Pryor, Harrison Robertson, Stan Rumbough, Jr., Max Schorr, Hal Scott, Stanley Silken, Rita Taca, Ned Barnes and Alec Flamm. In addition, George Frost had been a special guest. After the first meeting, Mr. Bill Guttman had been invited as a resource to help understanding of the current Charter. The result of the meeting was a list of twenty issues which the group felt could be better handled. The twenty issues were ultimately grouped into eight categories:

1. Personnel Management
2. Council Micro-management
3. Decisions made but not enforced
4. Dearth of qualified candidates for elected and appointed office
5. No clearly perceived political leader inside or outside the Town
6. Ineffective relations with like-minded communities
7. Lack of effective long range planning
8. Need for more creative scrutiny of Sunshine Law limitations

Mr. Flamm explained that there had been no position taken on what needed to be changed in the Charter for any of the above items, or any of the items on the list of the Commission. Until further expertise was heard, there would be no position taken. He noted that at least six of the items named above could be favorably improved by a stronger role for the Town Manager and a clearer sense of the potential of the political leader of the Town. He introduced Stan Rumbough, Jr., Co-Chairman of the Palm Beach Civic Association.

Mr. Rumbough addressed the Charter Review Commission, stating that he had lived in Palm Beach for over 25 years, had been in the business of starting and managing businesses, had served as Special Assistant to President Eisenhower from 1953 - 1956, and had been on the board of a New York Stock Exchange company since 1961. He commented that he appreciated the time and energy of all who had agreed to serve on the Charter Review Commission. Speaking for the Palm Beach Civic Association, he expressed enthusiastic support of a charter review process, noting that it was absolutely necessary for a periodic review of the rules that guide the Town so that the community can remain special. It was believed that a thorough process of self-education was indispensable for the Commission and should precede discussion of the merits of proposed charter changes, which was what was being done. The two civic organizations felt the need to have some additional outside advice as was discussed at the Charter Review Commission Meeting of October 31, 1998, and the Commission should have the advantage of the best experts that could be obtained. He

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mentioned that there had been some concern expressed about the cost of outside experts, and that a precedent had been established in that regard by the Shore Protection Board. He indicated that the two civic groups would offer to pay the expenses of additional experts if expenses were needed.

Mr. Al Levinson, Co-Chairman of the Citizens Association of Palm Beach, addressed the Charter Review Commission, expressing appreciation of the Association for the time and effort being spent on the Charter revision process. He reiterated that the process of the Charter review was of paramount importance for future administration of the Town, and requested that due consideration be given of the items in the revised charter agenda proposals, urging that the assistance of experienced professionals be sought.

Max Schorr, resident of Palm Beach for 25 years, stated that he had helped organize the Citizens Association 25 years ago, and had been active for that period of time, and was now counsel for that organization. In addition he was also a Director of the Palm Beach Civic Association. As a resident of Palm Beach, he stated that he felt there were many instances where something was lacking in administration of the municipal government. He praised the Commission for the time and effort devoted in studying the Charter.

Ms. Carol Merrill, Palm Beach resident, addressed the Charter Review Commission, stating that she had recently moved to the area. Her career as a marketing and public relations executive for a number of international organizations involved planning and helping the organizations look forward. She had been asked for input by the Civic Association in regard to the review of the Town Charter, and voiced her support for the review of the Town Charter, commenting that she appreciated the time and effort expended.

Mr. Bob Aronson addressed the Charter Review Commission stating that he had settled in Palm Beach 10 years ago, and had been active in the Citizens Association for approximately 3 years. He endorsed the process of hiring outside consultants to thoroughly, critically, and neutrally review the Town Charter.

V. COMMENTS FROM FORMER CITY MANAGERS RICHARD G. SIMMONS AND RICHARD L. BLACK, RANGE RIDERS FOR FLORIDA CITY AND COUNTY MANAGERS' ASSOCIATION (FCCMA)

Mr. Richard Simmons, former City Manager of the City of West Palm Beach, addressed the Charter Review Commission explaining that the Range Riders were retired city or county managers who donated time, with expenses paid jointly by the Florida City and County

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Management Association (FCCMA) and the International City/County Management Association (ICMA). The program gave the opportunity for advice to be offered to municipal governments.

Mr. Simmons commented that both he and Mr. Black had met and discussed the Town Charter, and that both believed there were several changes that would bring the Town in line with what the majority of the country was doing. Currently, there was a separate elected Mayor with no veto power and no voting authority. They believed that the majority of the people in the country today had either 5 or 7 member councils and the Mayor was elected either through the Council or separately. The President of the Council would be the Mayor, who would have a vote, participate in the functions of government, but would not have the veto power. In addition, they believed that the Town Manager should be able to appoint department heads, who would be responsible to him, and the Council should be out of the process. Generally, they proposed making the Charter as short as possible.

Mr. Richard Black addressed the Charter Review Commission, stating that he strongly supported the council/manager form of government, and although he was not a charter specialist, he was a general practitioner with 35 years of public service at the management level. He had served city and county governments from 1950 - 1985 in six different states, and all of the charters he had encountered had contained certain basic provisions, as well as certain unique and endemic provisions which were particular to the jurisdiction. He had reviewed the comments made to date on the charter review and had found that there were two positions taken: If it was not broken, don't fix it - this position was validated by the fact that the Town Charter had existed, without serious challenge, for a considerable number of years; the other point of view was that the Charter was superannuated, and like most legal documents, needed improvement and updating. Mr. Black noted that he had examined the Town Charter, compared it to several recently adopted charters of comparable jurisdictions, and believed that the Town Charter contained excessive detail, some redundancies, and conflict between certain provisions. He explained that the Town Charter would not pass muster as a basis for a bonafide form of the council/manager plan vis-a-vis the current recognition of the International City/County Management Association. At best, it would be given a "general" classification, but not full recognition. Provisions in the Charter relative to the Mayor, his powers and role, indicate some early misinterpretation of the council/manager plan as it really worked. The plan was more of a parliamentary form than a prototype/tripartite/divided powers plan endemic in this country, mainly at the national and state levels. In a typical council/manager plan today, all law making and policy making authority was vested in the elected legislative body called a Council or a Commission, with executive authority being more apparent than real. Typically, the Mayor was a member of the elected Council and functioned solely as a ceremonial head of the local government, and had no veto power. In some jurisdictions the Mayor appointed members of the local boards. It was interesting to note that today, in the existing forms of local government prevailing

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throughout the country, the veto power for the Mayor existed exclusively in the strong Mayor form of government. There was no chief executive directing day by day operations, but a chief administrator, or town manager, selected by the council, and responsible to execute the policies and directives of the council. The duties and responsibilities in that position were usually set forth in the charter, but dealt with in more specificity in an administrative code or in an employment agreement negotiated between the council and the manager/administrator. He recommended that the Charter of the Town of Palm Beach not be subjected to patchwork change, but be completely re-written to reflect the changes that had occurred since 1920, and to implement a more contemporary approach to the design and substance of the Charter.

Mr. Simmons addressed the Revised Synthesized Charter Agenda Proposals to the Town Charter:

1. Should Section 1.02 be amended? Should municipal powers be expanded?

Comment: Obtain a new model charter that had worked under the new home rule power for suggestions.

2. Should the Charter-provision governing the sale of parks and other open green spaces be strengthened?

Comment: Investigate ordinance regarding protection of unlisted property that may be acquired in the future, and investigate a provision to trade property for other properties.

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

Comment: Typically, the Mayor is elected, and the President of the Council is elected from the Council. Then the Mayor does preside over the Council.

Mr. Guttman noted that the 7th Edition of the Model referred to the two methods of selecting a Mayor, and expressed a preference for selection by the voters. He asked Mr. Simmons if he had a viewpoint in this regard?

Mr. Simmons advised that he believed that it worked more smoothly when the Mayor was selected by the Council.

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Mr. Guttman noted that one of the criticisms of choosing the Mayor from the Council had been that many communities resorted to the use of a rotation system. He asked Mr. Simmons for his views in this regard?

Mr. Simmons replied that it was his opinion that it was best for the Council to select the person that they thought could best lead them.

Mrs. Habicht asked if there was a disadvantage to a Mayor allowed to serve only a one-year term?

Mr. Simmons replied that was not a requirement—the Mayor could serve any period of time. Normally a Mayor was elected each year, however, it was up the judgement of the Council.

Mr. Black commented that there was a tradition in each community, however, in the council/manager plan the Mayor was a part of the entire body of power, so he/she did not play the predominate role played in other forms of government.

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

Comment: Leave it up to the Council; not thought to be terribly important.

5. Should the Mayor's term of office be lengthened from two to three years?

Comment: None (discussed above).

6. Should the Mayor be given authority to nominate the deputy presiding officer? (Currently: President Pro-Tem)

Comment: The Council should elect the deputy presiding officer. The Council usually elected a Mayor, and the Mayor Pro-Tem/Vice Mayor.

7(a). Should the powers, duties and functions (job description) of the Mayor be expanded, reduced, or left intact?

Comment: Mr. Simmons noted this issue had been discussed previously.

7(b). Should the presentation of an annual "state of the town" message be added to

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the Mayor's list of Charter duties?

Comment: Should not be part of the Charter.

8. Is the Mayor's ceremonial role substantial?

Comment: Yes, as proposed. It appears to be in the Charter, but it would depend on the individual, as some will have more ceremonial impact than others.

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

Comment: As a member of the council (whether he was elected separately or whether he was on the Council itself) he would vote.

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

Comment: It should be deleted, as there is a conflict currently in the Charter. It was suggested that the Town Manager be given the responsibility to enforce and carry out the mandates of the Council, and if that was done, then the Mayor Charter-mandated duty to enforce Town laws should be deleted.

11. Is the Mayor's ombudsman role substantive? (Also see number 8)

Comment: Typically a council person is approached when a resident has a problem, and each council person then becomes an ombudsman, and a separate role is not needed.

12. Should the Mayor be given the power to veto resolutions and motions in addition to ordinances?

Comment: No, that was not typical anymore.

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

Comment: None, other than as already discussed.

14. Should the Mayor be given authority to delegate responsibility to represent the Town in intergovernmental affairs?

Comment: The Mayor should be the leadership person, however, the appropriate

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person should handle intergovernmental affairs according to individual expertise.

15. Should the Charter provision dealing with the filling of vacancies on the Town Council be clarified?

Comment: No problem seen with the present Charter, which followed what was normally done.

Mr. Guttman advised that the model in Florida provided that if the unexpired term of a vacancy was more than six months, a special election must be called. He asked if Mr. Simmons thought that procedure would be more democratic than just choosing from a pool of former elected officials?

Mr. Simmons replied that it was more likely that a more effective person would come from a pool of former elected officials, however, whether it should be put in the Charter or not was questionable.

16. Should voting on ordinances, motions and resolutions be exclusively by roll call in all instances?

Comment: Ordinances were always roll called; sometimes resolutions were not. Consult with Town Attorney.

Mr. Rogers noted that there could be a voice vote first; all would vote at the same time without seeing how the other person was going to vote, and then the votes could be recorded.

Mr. Guttman asked Mr. Simmons if he had ever seen such a charter provision that designated a first vote by voice vote, and then a vote by roll call?

Mr. Simmons replied that he had never seen that.

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

Comment: Yes. The key thing was that the powers and authority to be the manager must be given.

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Mr. Black commented that he had seen reference in modern charters that referred to the manager as the chief executive, however, he believed this was a little misleading, as he thought the manager was the chief administrative officer. The executive influence in a council/manager plan was more apparent than real. He preferred not to refer to the manager as a chief executive officer.

Mr. Guttman commented that those residents who had corporate experience were somewhat confused, because in their corporate experience they knew that there was a chief executive, and very frequently a chief administrative officer as well, and they were separate and distinct functions. In practical and substantive effect, the real chief executive in the Town was the manager.

Mr. Black responded that the prototype tripartite system of governmental organization used nationally was composed of divided powers, which was different from the council/manager plan, where all power and authority is embodied in the legislative power, much like the parliamentary system.

Mr. Guttman replied that in a parliamentary system, it was absolutely clear that all governmental power resides in parliament. Parliament, in turn, delegates the chief executive function to the prime minister. He explained that he thought of the Town Manager as the prime minister, and the mayor as chairman of the board. He suggested that it was very important for voters and council members to have the proper expectations of those filling these positions.

Mr. Black responded that in governmental organization tradition was very important. The position of mayor in Palm Beach had meant a great deal. He had been discussing the plan in an academic vein, and sometimes that academic suit did not fit all bodies, and he agreed with Mr. Guttman in his explanation of the parliamentary system. He had been using the analogy of the parliamentary system, as the council/manager plan emulated the parliamentary form more closely, although most Americans were not as familiar with it, as they were with the tripartite form.

Mr. Simmons explained that according to the duties designated in the model city charter, the Town Manager was the chief executive officer, however, it was a question of semantics.

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

Comment: It would be more likely that the city manager would request a contract. Another way would be to conduct an annual review of the city manager.

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Mr. Guttman agreed that contracts were being used more often, and ultimately consideration must be given to a severance package, and the ability of the Town Council to fire the manager. Even if there was an employment contract, no manager would be entitled to severance pay if he was fired for cause. The only instance in which a manager would be entitled to money was if he was fired without cause. He suggested that preservation of the power and authority of the Town Council was a reason to preserve the concept of an indefinite term, or employment at will by charter, and still go ahead with an employment agreement.

19. Does §4.02(b) need clarification or elaboration?

Comment: Yes.

Mr. Black suggested the following: that the Town Council, by 4 or more votes, shall appoint a Town Manager who shall serve pursuant to the terms of the city manager's employment contract. The Town Council may, by resolution, and by the majority vote of all Town Council members, suspend, or remove the Town Manager with or without compensation. During suspension the Town Manager shall continue to receive his salary until the effective date of the final resolution of removal. In the event of removal, other than for good cause shown, his salary shall continue in compliance with the terms set forth in the employment agreement for good cause shown. He noted that the compensation section needed no correction.

20. Consider whether the Town Manager should be required to establish and administer an appeal process for the appeal of decisions of staff, to Department Heads, and then to the Town Manager (before coming to the Town Council).

Comment: This was normally set up by a Personnel Manager. Department Heads should be responsible to the Town Manager, and there should not be an appeal process to the Town Council. From a practical standpoint, once an employee was fired, they became citizens and could come before the Town Council anyway. The Town Manager should be able to appoint and remove Department Heads without Council interference. There should be personnel policies for other personnel.

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- 21. Should the powers, duties, and functions (job description) of the Town Manager be expanded, reduced or left intact?**

Comment: Yes, the duties should be expanded to include duties already discussed in comments already given.

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

Comment: Yes.

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

Comment: None.

Mr. Black commented that a good manager always kept the lines of communication going on major appointments with his governing body. It should never come as a surprise.

- 22(c). Should the Town Manager have unrestricted authority to hire and remove all Town administrative appointed personnel?**

Comment: Yes, under a personnel plan that is established.

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

Comment: Probably covered in most charters.

Mr. Black commented that a budget message was a pro forma activity on the part of the administrator. It could be included in a charter, however, he preferred to have broad, sweeping policies without too much specificity.

Mr. Guttman commented that the Florida Model City Charter included a requirement for a written budget message as part of the core provisions.

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- 24. In the appointment of the Town Manager and his department heads, should a preference be given, prospectively, to individuals who are, or undertake to become, residents of the Town?**

Comment: If every employee was required to live in the Town of Palm Beach there would be no one available to work. It could be required to have the Town Manager live in the Town of Palm Beach, but it would be very difficult. A radius of 3-4 miles could be used if desired.

- 25. Should the Charter provision allowing the designation of the form of ballot by ordinance be expanded to allow prescription of the ballot form by resolution?**

Comment: Leave it to the Town Attorney. It may not need to be in the Charter.

- 26. How can the Charter be amended to reduce the Town Council's excessive focus on minutiae and involvement in administrative details?**

Comment: Probably could not be spelled out in the charter. People were individuals, and some would get into more details. One thing that would help would be the election of a strong member of the Town Council to lead discussion. If the Town Manager was allowed to make appointments, personnel affairs would be removed.

- 27. How far has the Town Council's business and operations strayed from the Charter's original intent?**

Comment: Probably not an item that would need to be discussed in the charter.

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

Comment: From a practical standpoint, managers should be knowledgeable, but should not be leading. Often the manager will see a problem, and bring it to the council for discussion, leading to formulation of policy, however, leadership should fall on an elected council.

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Mr. Rogers asked who Mr. Simmons had looked to as the political leader in the Town of Palm Beach when he was City Manager of West Palm Beach?

Mr. Simmons replied that he usually spoke with the Mayor, however, he did talk to others. Generally, political leadership should come from the Mayor plus other council people.

Mrs. Habicht asked how this compared with the Mayor/President/Town Council system; where was the authority between the Mayor and the President?

Mr. Simmons responded that he had not had a great deal of contact with the Town Council. He had spoken with the Mayor, and George Frost, Town Manager. He had not spoken with the President of the Council. If the President of the Council had been the Mayor he would probably have talked to him.

Mrs. Habicht asked what he saw as the President's role?

Mr. Simmons responded that the President usually directed the meetings, and was a member of the Council.

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

Comment: Does not need to be in the charter, but certainly is essential for effective citizen support of the community.

29. Should the Charter be amended to permit the adoption of the tentative and final budget by resolution instead of by ordinance as required by law?

Comment: Usually done by ordinance, however, consult with Town Attorney.

30. Should an educational presentation by the Town Manager, the Town Attorney, and department heads covering the procedures of Town government be required for all candidates or new councilpersons who had not previously served?

Comment: Can be tricky. The Town Attorney could help conduct a meeting. There

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had been instances where elected officials were sensitive to the issue of an appointed official telling them what should be done. Generally, it is a good idea. The Florida League of Cities also runs a session for new council people. The ICMA and the National League of Cities had a series of handbooks for new council people, which should be given to new members.

Mr. Black commented that after a person was elected to an office, there should be an orientation, offered by the Town Manager as to processes, etc. However, it could not be mandatory for candidates.

31. Should a small stipend be considered for members of the Town Council?

Comment: Many cities used a small stipend. Travel expenses were usually paid. People should not be attracted because of the money, but because of the position and service. In the Town of Palm Beach, it may be foolish to use a stipend, however, expenses should be paid.

32. Should the Charter give the Mayor a little more leeway than the Council members in terms of dealing with giving orders publically and privately?

Comment: If the Council/Manager form of government was adopted as it should be, the Mayor should not be giving orders publically or privately. The Manager would be the chief executive carrying out these sort of things.

Mr. Fink asked who ultimately was responsible for the enforcement of laws?

Mr. Simmons responded that the Town Manager was the chief administrative officer and should be responsible. If there was currently some doubt, proper lines of authority should be included in the Charter to direct the responsibility to the Town Manager.

Mr. Black commented that there could not be two quarterbacks on the field at the same time.

33. Consider the equalization of voters' strength throughout the Town by creating one member districts.

Comment: Palm Beach does not have the minority/speciality groups that exist in

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some other towns. The disadvantage of single member districts was that people tended to be interested only in that district instead of the Town as a whole.

34. Consider the improvement of language in Section 3.08 regarding compensation for the Mayor and Town Council.

Comment: Discussed above.

35. Consider redrafting the language in Section 3.05(f), Emergency Powers, to have one responsible individual.

Comment: There were two phases of an Emergency–Declaration of Emergency, and following the plan. Once the declaration was made, the plan was usually carried out by the Manager, or the designated emergency director. Currently, the Mayor, the Town Manager, and the Town Council President are to meet together, which could be a violation of the Sunshine Law.

Mr. Guttman explained that currently it was a tripartite group, consisting of the Mayor, the President of the Town Council, and the Town Manager. He did not think the Sunshine Law would be violated if an elected official and the Town Manager made a decision. He suggested that the current provision was directed at an emergency of such enormity that the Town Council could not act, and police powers were needed. In that set of circumstances, the political leader and executive leader would be making decisions.

Mr. Simmons replied that if the Town Council was available, it ought to meet and make decisions. He had referred to the Sunshine Law violation in the instance of the President and the Mayor only voting on such measures. He suggested that it be clarified, and that if the political leader was not available, there should be a subsequent person designated to make the emergency declaration.

Mr. Black commented that the political head of government should make the announcement. When the Mayor made an announcement it carried importance.

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36. Consider the elimination of artificial designation of seats.

Comments: When candidates run at large, there has to be some designation.

37. Consider the elimination of the caucus procedure.

Comments: The caucus was not necessary, however, it was a wonderful tradition in Palm Beach and should be kept forever.

Mr. Wearn asked if Mr. Simmons or Mr. Black had ever served under a strong Mayor form of government?

Mr. Simmons replied that he was an administrative officer in a community where there was a strong Mayor, however, they had been in the process of adopting the council/manager form of government. Many city managers were now serving in strong Mayor forms of government.

Mr. Black commented that he had served in the State of New Jersey as the first business administrator under the Faulkner Act, which was a home rule, optional government type statute. For all practical purposes the plan was a strong Mayor form. He explained that he did most things as an administrator that he did later on in his career as a manager. The trouble was, that as time went on he became politicized, in the sense that he was so close to the Mayor, that when the Mayor left, the appropriate thing to do was to also leave. He advised that the continuity was lost that was available in a plan that did not associate the administrator with politics.

Mr. Wearn stated that the Mayor in the current form of government had specific executive functions and power by the Charter, which seemed to be somewhat parallel to the Federal system. He asked if there was a particular reason why Mr. Simmons thought that local government should not have an elected chief executive?

Mr. Guttman asked Mr. Wearn to identify the executive power belonging to the Mayor under the present Charter?

Mr. Wearn replied that the Charter §3.05 referred to the powers of the Mayor, and subsection (c) said that the Mayor shall have the responsibility to see to the faithful enforcement and execution of all Town ordinances and laws, which he considered to be an executive responsibility.

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Mr. Guttman expressed that this needed to be debated so that all would understand it. There was a point when Bob Grace suggested that perhaps the Mayor should be empowered to give executive orders to employees, because it was hard to imagine that the Mayor had the resources or the authority to actually carry out the Charter mandated function of enforcing the laws, if he could not tell anyone what to do, including the Town Manager.

Mr. Wearn advised that he had understood Mr. Grace to be saying that there was an inconsistency, which should be clarified, by ensuring that the Mayor could carry out his executive responsibilities under the Charter, without vagueness or inconsistency.

Mr. Simmons stated that there did appear to be an inconsistency, and it should be clarified.

Mr. Wearn asked Mr. Simmons to recall circumstances where he had dealings with the Town of Palm Beach and the government of the Town of Palm Beach when he was City Manager of the City of West Palm Beach, and identify any problems that he had observed in the function of government that could be addressed in the charter review.

Mr. Simmons responded that there are always the “have nots” who are mad at Palm Beach, and they want open beaches and free parking, and he was sure that there would not have been a fine museum in West Palm Beach if the citizens of Palm Beach had not supported it. Mr. Simmons said he was happy when Rubenstein appeared at the Auditorium, and he could sit in the “peanut gallery” for \$5.00 that nobody else had. Palm Beach offered an awful lot to this area, and West Palm Beach was a support community for that—West Palm Beach had the Rolls Royce dealer but Palm Beach residents bought the Rolls Royces. That was okay. People in West Palm Beach were hired. Generally speaking, Palm Beach is a unique community—there are very few communities like Palm Beach. Winter Park—to a small extent—was like to Orlando as Palm Beach is to West Palm Beach. Winter Park did not try to annex the world. They wanted their oak trees. They wanted their art festival, and they wanted things like that—that were very important to them. Palm Beach is different.

Mr. Simmons said his relationship, particularly with (former) Town Manager George Frost—George was a real character—but a real good person to draw on. Mr. Simmons recalled that if he had problems, he could call on George. George participated. Mr. Simmons said West Palm Beach did not have a lot of problems with Palm Beach; however, there were problems with the entranceway on the north bridge that were worked out. Those were problems with garbage trucks and public works vehicles. Of course, that was just as bad for the Town of Palm Beach as it was for the City of West Palm Beach. Generally speaking, Mr. Simmons said he had no real problems with Palm Beach.

Mr. Simmons recalled the problem when Palm Beach’s sewage was dumped into the ocean outfall. Palm Beach County gave a grant to the City of West Palm Beach to build a regional

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plant for (other) municipalities in the County. The Town of Palm Beach cooperated with the City of West Palm Beach, and six months before that, the Town of Palm Beach had sued the City of West Palm Beach because the City was going to use an ocean outfall and the EPA changed their mind right through the north end of Palm Beach. Mr. Simmons said that was okay, and he understood the Town had to do that.

Mr. Simmons summarized that he really did not have problems with the Town of Palm Beach. The Town had good relations with the managers, and that is important. Various mayors (like Deedy Marix) attended the Palm Beach Municipal League—getting to know the rest of the people is very important because no one lives by himself. The County depends on the City of West Palm Beach for water, and the roads are used by all people in the County. He said he had nothing but good relationships, and it may have been because of the people – like Ben Oehlert, Mayor Smith, and some of the others that he worked with.

The Commission members thanked both gentlemen for their participation.

***** 10-MINUTE BREAK*****

VII. COMMENTS FROM FORMER ELECTED AND APPOINTED OFFICIALS OF THE TOWN AND TOWN RESIDENTS CONCERNING AGENDA TOPICS FOR CHARTER REVIEW

Mr. Adrian Winterfield, resident of the Town for 25 years, addressed the Charter Review Commission, stating that he regretted that the experts were gone, because they were not present for rebuttal remarks. He stated that he had not heard one word relative to the defects of the present system, in which the Mayor had the veto power. All that was said was that most other jurisdictions adopt the system whereby the Mayor is a member of the Council. With regard to the ombudsman, it was one thing to say that the term will not be used, however, it was quite another to examine the necessity of the function divorced from all politics (elected office). What would happen if a department head had handled things irregularly but the Town Council overlooked it? Without someone independent of politics, serious matters may not be investigated. On the question of the method of election, Mr. Simmons indicated that there had to be some group designation. In a true at-large, where one would run not for a seat, but for Council, one would run against every single candidate. He submitted that the present system was arbitrary, and accomplished nothing other than the satisfaction of running against one person. He suggested that there would be greater interest in the public because there had been council persons against whom no one would ever run because of their popularity, however, it was not at all certain that person would prevail if that

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particular council person had to compete with three or four others for more than one seat. The council persons running for re-election would have to get out and sell themselves more than is done today. Regarding the brevity of a charter, certainly, ideally, the shorter, the better. Unfortunately, there may be cases where change was desired—specifically the practice of Council of considering zoning regulations. In other communities there were other systems, where a Zoning Board initially dealt with the problem, and only those matters which were appealed were brought to the Council. He suggested that duties be spelled out in the charter, and that the word “executive” be avoided, because while the Town Manager had executive authority within the Town, there were considerable doubts as to his ability to take action outside of the Town.

Mr. Rogers responded that it was his impression that Mr. Simmons was sensitive enough to recognize the unique character of the Town, and that he did not try to impose a judgement of whether or not the Mayor should have a veto. He did not think it was because he failed to advise the Commission in that particular instance.

Mr. Flamm recalled that one of the eight categories suggested for improvement was in personnel management, and the most prominent factor that the two civic organizations felt uncomfortable with was the lack of a good performance appraisal of the Town Manager. He encouraged the Commission to consider this as an additional item to the Charter proposals. He commented that the gentlemen from the Range Riders had been very helpful, and had convinced him that a macro view of people who understood the various forms of government was needed.

Yvelyne de Marcellus Marix, 1570 N. Ocean Blvd., addressed the Charter Review Commission. She suggested that Mr. Flamm could review the minutes from the Charter Review meetings when former elected officials and town manager had given extensive comment, if he had not been present at the meeting; he could then evaluate the input. Concerning the evaluation of the Town Manager, she expressed that there was no doubt in her mind that he had been evaluated, since he had received a pay raise. When she had been on the Council, it had been no problem to meet with the Town Manager one-on-one, and when the time came to renew the contract the Council could vote. There was adequate time to give input to the Town Manager, so to say that there was no evaluation was extremely irritating. She would be extremely surprised if the present Council was not doing any sort of evaluation.

Mr. Guttman stated that last September, there had simply been no evaluation of the Town Manager in any systematic, formal way, in the sunshine, for the public. He indicated that Mr. Flamm was suggesting that unless there was a Charter provision requiring it, people would be apt to lapse into a situation where it was not done. He suggested that the Commission would be well served by hearing from experts on performance evaluations;

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doing an ad hoc type of evaluation, with each person individually deciding what the questions or goals were was the wrong way to go about it. The body should collectively agree upon the objectives for both the upcoming year and long term, and have some basis to evaluate the manager.

Mrs. Hermine Wiener, 324 Garden Road, remembered that there was a printed form for evaluation of the Town Manager. Prior to her time on the Council, under the previous Town Manager, there had been a form created for members of Council to use in evaluating the Town Manager. She suggested that there was a certain sensitivity about having it public, as it was part of someone's personnel file.

Mr. Rogers asked Assistant Town Manager Elwell if the form was still in use?

Mr. Elwell replied that he was not aware of a form that was in use; the current system was more of an ad hoc, one-on-one situation, where the individual elected officials provide feedback to the Town Manager on an on-going basis, as well as at a time when a pay increase was considered. He suggested that the Commission needed to weigh the pros and cons of accomplishing the process in public. Traditionally, it had been handled privately.

Mr. Rogers agreed that there should be some uniform list of questions or areas/goals that each person should address with the Town Manager.

Yvelyne de MarcellusMarix clarified that former Town Manager Doug Delano had presented a questionnaire to fill out, however, she felt that the questions were absolutely appalling, because, for example, how would she know how he treated his subordinates? The items were public, however, the results were not public. She did her best the first year; the second year she refused to fill the form out, suggesting that a different system be used. She had suggested that the Council itself determine what questions should go on the evaluation form. She explained that she did not believe that Mr. Delano was extremely happy about it, because he had turned in his resignation an hour later. She suggested that there could be an evaluation form that the Council could use in the sunshine, based on what the Council thought was important, i.e., was it important that the manager come in on time, etc.

Mr. Guttman asked if any consultants or experts had been hired to help fashion suitable questions with which to rate the performance of the Town Manager?

Mrs. Marix replied negatively—she believed that they were all perfectly intelligent people, and knew what the Town Manager was supposed to be doing.

Mr. Guttman asked Assistant Town Manager Elwell what percentage of Town Managers in the State of Florida received performance evaluations in the sunshine.

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Mr. Elwell responded that he did not know, however he could obtain the information if desired.

Mr. Guttman replied that according to information he had received from the ICMA, 98% of the council/manager forms of government in the country evaluate the Town Manager annually. He stated that was not terribly helpful in considering the State of Florida. He offered that doing evaluations privately was very problematic, which was his opinion at this stage, absent from hearing from an expert in this regard.

VIII. CONTINUED CONSIDERATION OF "REVISED SYNTHESIZED CHARTER AGENDA PROPOSALS," AS REVISED FEBRUARY 26,, 1998

Mr. Guttman proposed through motion, that the provision in the Charter requiring an annual performance evaluation of the Town Manager, without specifying the mechanics, be added back to the Revised Synthesized Charter Agenda Proposals as Item 38, under §4.02. The motion was seconded by Mrs. Habicht. The motion carried unanimously.

Mr. Rogers noticed that the guest speakers had not been perfectly clear on several of the charter proposals, and suggested that when experts comment on them an explanation should be offered to them beforehand, as to how it relates to the Town Charter.

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

The next meeting of the Charter Review Commission was scheduled to be held April 24, 1998 at 1:30 P.M. in the Town Council Chambers.

A subsequent Charter Review Commission meeting was set for May 13, 1998 at 1:30 P.M. in the Town Council Chambers.

X. ANY OTHER MATTERS

Mr. Guttman suggested that this was an appropriate juncture to reintroduce the thought of asking Mr. Cassella to appear as an unpaid advisor, principally to direct the Commission to other experts who could give a macro overview of the types of problems that had been

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discussed. He noted that he had phoned a Professor of Public Administration at Florida Atlantic University, by the name of John DeGrove, (who, not incidentally, had been one of Bob Doney's professors when he was going for his Master's Degree in Public Administration) to request expert advice, and he had also recommended Mr. Cassella, noting that he had a national reputation. Mr. Guttman requested that Mr. Cassella be contacted, and asked to attend the April 24th meeting of the Charter Review Commission, with the May 13th meeting being an alternative.

Assistant Town Manager Elwell replied that he would be happy to do that.

Mr. Rogers mentioned that Mr. Cassella was not going to charge anything for his time, but believed that his expenses should be paid.

Mr. Elwell responded that the Town did not have a budget for that purpose, however, he had heard an offer earlier today from the two civic associations.

Mr. Rogers questioned the possibility of requesting reimbursement from the Town Council?

Mr. Elwell responded that was possible, and explained that regarding the precedent of the Shore Protection Board, many out of town people had come in and shared their expertise over a period of a year with the Board, and each had come at their own expense.

Mr. Rogers replied that he did not think Mr. Cassella should be asked to do that.

Mr. Louis Pryor, speaking for both the Palm Beach Civic Association and the Citizens Association of Palm Beach, read the following statement approved by the Executive Committees:

“Pending approval of any public funding for any expenses that might be involved, our associations stand ready to advance such funds or to underwrite them completely.”

Mr. Guttman noted that during the last budget season, almost a year ago, he had written a letter to the Town Council suggesting that they might want to budget some money for out of pocket expenses for experts. The response of the Town Council, at that point, had been that it was premature at the time, with the suggestion that when an expert was asked to come in, Mr. Rogers could come before the Town Council to request budgetary approval.

Mr. Elwell responded that there was a Town Council meeting on April 14th, if the Commission wished to make that request, and suggested that an estimate of funds be provided.

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Mr. Guttman suggested that requests should be made on an ad hoc basis. He proposed, through motion, that at the next Town Council meeting Mr. Rogers ask for budgetary authority to pay Mr. Cassella's travel, hotel expenses and meals in accordance with whatever guidelines the Town had for that purpose; no additional budgetary requests would be made at this juncture, until it was heard from Mr. Cassella as to the types of other experts that the Commission ought to hear from. Once that was known more funding could be requested if appropriate. Mrs. Habicht seconded the motion.

Mr. Elwell commented that he would advise the Mayor and Town Council of the intention to appear, and let Mr. Rogers know where it would fall on the Agenda. He would also contact Mr. Cassella to confirm the date, and would obtain a ballpark estimate of the dollar figure.

Mr. Guttman advised that the scope of the proposals having to do with open green space, and filling vacancies on the Town Council had only become clear to him after former elected officials had testified before the Commission. He suggested that it would be helpful to hear from stakeholders in the community as to instances in which the open green space provisions were not enforced, as well as concerns relating to consequences of changing that particular section of the Charter. Similarly, with respect to filling vacancies on the Town Council, he suggested that comment be received from those people that had been there when the vacancy of Mr. Weinberg had been filled. He noted that he would like to understand better what the problems were, as he would find it very difficult to know how to vote on something like this purely in the abstract, unless he understood the factual underpinnings.

Mr. Rogers noted that at that time, they had not used the custom of the pool.

Mr. Wearn comment that was correct, and that was the first time that he knew of that had occurred. He suggested that Mr. Guttman was raising questions that would be appropriate during the discussion of the merits of each and every of these items. Clarification had been requested at the last meeting, and he had tried to give some clarification on those items. He suggested that, for clarification purposes, each member of the Commission take a look at the items with which his/her initials happen to be associated and come up with a revised statement to more clearly identify the subject, so that if an expert was at the next meeting there would be a clear statement of the subject.

Mr. Guttman expressed concern regarding getting the fuller statement into the public area, which was problematic, because the Commission really did not control how that happened. He stated that he felt as though he was in a factual vacuum, and that people who know something about the matters should be present when the merits were discussed; otherwise it seemed to him that the conversation would be rather abstract.

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Mr. Guttman further explained that he believed input was needed regarding the open space proposal. As he understood it, it would be permissible to construct a reverse osmosis plant, for example, on the Par 3 Golf Course property owned by the Town, whereas the effect of the proposal of Mr. Wearn would be that the Town would have to go to the voters for that, or any similar type of project in the future. He commented that it was important for the community to have some input on an issue like that—that kind of question was the quintessential public policy question. It was not a structural question like most of the charter issues discussed. It was one of the few instances, other than gambling, where the Charter got into real public policy issues, rather than the distribution of power.

Mr. Rogers commented that he thought some people were disappointed that a former Council person had not filled the Weinberg vacancy.

Mr. Guttman responded that he believed it was important to hear from them and all residents with such concerns.

Mr. Guttman commented that he had several handouts to distribute, one concerning how Mayor Ilyinsky saw the role of the mayor as ombudsman.

Mr. Rogers mentioned that he understood that Mr. Adrian Winterfield had suggested that the ombudsman be a title, and a separate person, that had no political ties.

Mr. Guttman responded that it was his impression that Mr. Winterfield was trying to argue for the preservation of the ombudsman role allegedly performed by the Mayor. He continued with the distribution of handouts, which included a copy of Lesly Smith's address to Palm Beach Civic Association emphasizing the importance that she placed on intergovernmental activity as being one of the major challenges facing Palm Beach; a letter that the Palm Beach Civic Association (dated March 9, 1998) sent to the Mayor and Town Council dealing with the advice and consent role of the Council in connection with the appointment of department heads; and a grouping of charter proposals from a thematic point of view.

Mr. Wearn moved that the individual whose name was associated as the proposer of each charter proposal on the Revised Synthesized Charter Agenda Proposals, submit to the Town Manager's office, within the next two weeks, any clarifying revisions to the description of the item that the proposer would consider appropriate. The motion was seconded by Mrs. Habicht.

Mr. Elwell clarified that in the case where there was only a single person who had proposed an item there would simply be a change in the wording. Where there were multiple people, and conflicting suggestions it would be brought to the Commission at the next meeting.

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Copies of the appropriate correspondence would be presented, and the Commission would be given the opportunity to clarify the wording.

Mr. Guttman mentioned that the proposal of Mr. Nemec for a single member district philosophically troubled him. He noted that he was aware of a woman by the name of Susan McManus, at the University of South Florida, who was probably the most pre-eminent expert in the country on various election schemes used by the council/manager system, and suggested that the Commission ought to hear from someone like her. He would give Mr. Elwell the information as to how he could contact her to ascertain if she would be willing to come before the Commission at some unspecified date.

Mr. Wearn commented that he thought it would be helpful to have a curriculum vitae or qualifications from both or any other experts that were contemplated, before they were asked to come, and before the Town Council was asked to subsidize their coming.

Mr. Rogers requested that Mr. Elwell could ask for curriculum vitae from Mr. Cassella and Ms. McManus.

Mr. Elwell responded that he would contact Mr. Cassella, suggesting that it may be more appropriate that Ms. McManus, or others that the Commission was interested in inviting, be contacted via a formal request in the form of a letter from the Chairman.

Mr. Rogers agreed.

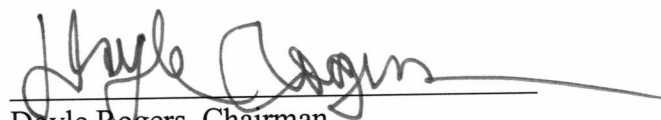
Mr. Guttman commented that he also thought it would be wise to defer the idea of a curriculum vitae for the moment, beyond Mr. Cassella, as any recommendation he would make would carry more weight than studying curriculum vitae.

Mr. Guttman reminded the Commission that he had furnished the commission with copies of the charters of Newport, Rhode Island, Vail, and Aspen Colorado, and East Hampton, N.Y.

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XI. ADJOURNMENT

The meeting was adjourned at 5:00 P.M.



Doyle Rogers, Chairman

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