TOWN OF PALM BEACH

Office of the Town Clerk

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REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON 3/19/99

I. CALL TO ORDER

Chairman Doyle Rogers called the meeting of the Charter Review Commission to order at 9:05 A.M. on March 19, 1999, 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. Also attending the meeting were Town Manager Robert Doney, Town Attorney John Randolph, and Deputy Town Clerk Susan Eichhorn.

III. APPROVAL OF AGENDA

The Agenda was approved as written.

IV. CONTINUED DISCUSSION AND DECISIONS REGARDING RECOMMENDATIONS TO MAYOR AND TOWN COUNCIL (UTILIZING "THEMATIC CONSOLIDATION" AND "SYNTHESIZED LIST" DOCUMENTS)

Chairman Rogers referred to **Item No. 31: "Should a small stipend be considered for members of the Town Council"?**

Mr. Fink commented that Dr. Svara had noted that "It was unusual for a community of the size of Palm Beach for there to be no pay at all for Council members. Remuneration was more of a symbolic gesture of the service being provided and is commonly offered." He advised that he had heard it mentioned that some of the elected officials may appreciate being able to participate in the Town employee health insurance plan.

Mr. Guttman asked him what he based his information on regarding elected officials looking favorably upon a compensation scheme?

Mr. Fink responded that he had heard the comment regarding the health insurance plan.

Mr. Guttman recalled that during Mrs. Wiener's testimony she had made statements to the effect that when she became a Town Councilwoman she did not think she was entitled to health benefits, because of the current provision in Section 3.08 that prohibits compensation, only to learn that the Town Attorney interpreted that prohibition to, in fact, allow health insurance. He questioned what the correct facts were.

Town Manager Doney responded that there were no currently serving elected officials that were receiving any health benefit or any other benefit. He noted that there was a specific change made approximately 4 years ago, saying that elected officials were prohibited. Only one prior elected official continues to participate and continues to pay for the premium to participate in the plan.

Assistant Town Manager commented that, historically, elected officials had received it during the period they were serving, and then when they became former elected officials had the option to continue at their own cost, and then that stopped.

Mr. Guttman commented that there was nothing in the Charter that necessarily prohibited health insurance for elected officials, if the elected officials, by way of legal means, decided that they wanted to move forward with that.

Town Attorney Randolph advised that when this had come up in the past he had given a written legal opinion, although he could not remember specifics, however, it did center on the term compensation, and whether or not, for purposes of Federal Income Tax, that type of thing would be considered compensation. There had been some confusion at the time, which had caused him to write the legal opinion. He was not sure if the opinion was determinative of the issue, and believed at the time that he had argued that insurance benefits were not necessarily compensation.

Mr. Guttman commented that the Range Riders opposed compensating elected officials in Palm Beach, but favored reimbursing them for expenses, which is permitted under Section 3.08. He noted that the State regulates the available compensation structure that was available to public officials; therefore, he now assumed that the State Statute 112.061 would preempt local prerogatives to reimburse public officials.

Town Attorney Randolph responded that as far as per diem expenses, and such things, State law would be followed.

Mr. Fink mentioned that younger people may be attracted to run for office if there was some type of compensation.

Mr. Guttman commented that he believed the reason that younger people and people with careers did not run for office in the Town was because of the enormous amount of time involved in serving as an elected official, and not necessarily the money.

Mr. Guttman moved to leave the Charter as it was regarding Items No. 31 - "Should a small stipend be considered for members of the Town Council?", and 34 - "consider the improvement of language in Section 3.08 regarding compensation for the Mayor and Town Council," of the Revised Synthesized Charter Proposals. The motion was seconded by Mr. Fink, and carried unanimously.

The next items considered were **Items 33 - "Consider the equalization of voters' strength throughout the Town by creating one member districts," and 36 - "Consider the elimination of artificial designation of seats."**

Mr. Guttman commented that Dr. MacManus had said that if this type of approach was to be adopted, it would be unconstitutional.

Mr. Fink commented that he believed Dr. MacManus discussed the fact that there could be a system which was an at large system, and not by position, which he considered had merit for discussion. The highest number of vote getters would be elected, and it would eliminate running against any particular individual. It had also been expressed that one of the reasons potential candidates may be discouraged from running was that it was difficult to run against an incumbent, and Palm Beach was a small community. In a general at large, however, they may be interested.

Mr. Guttman noted that both Dr. MacManus and Mr. Cassella had referred to that as popular electoral schemes or procedures.

Mr. Fink commented that Dr. MacManus had also mentioned that an at large system worked particularly well in a small, homogenous community.

Mr. Rogers commented that there had also been mentioned a system with several districts, with several at large as well.

Mr. Guttman commented that he was very opposed to resident specific districts, and that the counter argument to an at large system was that there was some local interest when there were truly contested elections within districts.

Mr. Wearn commented that the study furnished by Dr. MacManus indicated at Table I, that regarding changes in American City Councils from 1988 - 1996, at large election types were diminishing, single member districts were slightly increasing, and the concept of mixed was significantly increasing.

Mr. Guttman responded that he believed that had to do with urban centers and the desire to empower minority groups in cities.

Mr. Wearn commented that he did not see a problem, and therefore did not see a need for change.

Mr. Guttman moved that Items 33 - "Consider the equalization of voters' strength throughout the Town by creating one member districts," 36 - "Consider the elimination of artificial designation of seats," and 37 - "Consider the elimination of the caucus procedure," be rejected as Charter amendments. The motion was seconded by Mrs. Habicht, and carried unanimously.

Mr. Rogers referred to the next item - **Item 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?"**

Mr. Wearn commented that the form of the ballot was required by the Charter to be set by ordinance, and setting it by resolution should be sufficient. He explained that having public hearings on the adoption of an ordinance just on the form of the ballot seemed to be overkill.

Mr. Guttman asked the opinion of Town Attorney Randolph?

Town Attorney Randolph replied that he did not believe it made any difference, and did not believe there would be any conflict with State election laws.

Mr. Guttman asked Mr. Wearn, who was also a municipal lawyer, whether he was aware of any other Florida municipalities that designate the form of ballot by way of resolution?

Mr. Wearn replied that to his knowledge none did it by ordinance, and did it by resolution or motion. He commented that he did not believe it was necessary to be done by resolution.

Mr. Wearn moved to amend Section 5.04 of the Charter by deleting the word "ordinance," and substituting the word "resolution." The motion was seconded by Mrs. Habicht, and carried unanimously.

Mr. Rogers referred to **Item No. 26 '- "How can the Charter be amended to reduce the Town Council's excessive focus on minutiae and involvement in administrative details?"**

Mr. Fink commented that there had been a concern frequently expressed about minutiae that comes before the Town Council, but there were mixed conclusions, because what some people considered minutiae, the Town Council did not. He explained that he believed much time was consumed with hearing zoning problems, and posed the possibility of creating a Zoning Board of Review that might consider these things before they come to the Town Council, or possibly even have the final say, however, he did not believe that was anything the Town Council was willing or anxious to see happen.

Town Attorney Randolph commented that if the Town Council did want to create a Zoning Board this could be done by ordinance, without an amendment to the Charter. He noted that when that subject had come up in the past, the response that he had heard was that the Town Council did not want to delegate that authority to another Board.

Mr. Rogers commented that he had come to the conclusion that zoning was very important, and should reside with the Town Council; there was hardly anything more important to the Town and its future than the way the zoning matters were handled.

Mr. Rogers also commented that separate meetings could be designated for development reviews if so desired.

Mr. Guttman stated that he actually believed that there was a place for a Zoning Board of Appeals, however, major special exceptions and variances could continue to go to the Town Council. He did see the possibility, at some juncture, of the Town Council considering a Zoning Board of Appeals of some sort to deal with the more routine types of special exceptions and variances. He stated that he thought some work could be done on that, and he would not like to see the community give up thinking about ways to streamline that part of the Town Council procedures.

Mr. Rogers agreed that the major special exceptions, variances, and site plan reviews could be considered by the Town Council, and the smaller development matters be taken out.

Mr. Fink asked if it would be appropriate for any sort of recommendation statement to be made relative to this?

Town Attorney Randolph advised that he believed a previous discussion had been held regarding this matter, and that it had been decided that it was not the function of the Charter Review Commission to recommend to the Town Council what they ought to do in regard to items that do not relate to the Charter.

Mr. Rogers commented that members of the Charter Review Commission could go before the Town Council at a later date, after the report was made, and suggest to them that this matter was discussed, and suggest that they discuss it as well.

Mr. Randolph commented that the Town Council had been attempting to streamline things when forming the Agenda, by addressing minor zoning items differently than the major zoning items.

Mr. Guttman commented that evidence had been heard from Professor Svara that there was a strong statistical correlation between mayor leadership in communities and the absence of minutiae.

Mr. Wearn commented that historically, the zoning issues considered by the Town Council, had always been put at top priority by the Town Council, as they have a significant effect on the community, by reason of the precedence that may be established. He stated that he strongly opposed any recommendation to the Town Council to consider establishing a separate board to consider those zoning matters, which oftentimes create conflict, as opposed to preserve direction. He explained that in some instances a Town Council could overrule the Board of Adjustment and Appeal, perhaps fostering litigation as a result of that. He stated that he felt strongly that it was a worthwhile effort for the Town Council to spend half or more than half of its meeting time on those important issues, where the citizens come in direct contact with the Town and Town government. He stated that he understood that the Town Council was beginning to consider that certain non-controversial, or straight forward zoning applications are limited to a 5-minute hearing time, and those that will take in excess of that are being scheduled separately.

Mr. Guttman moved that Item No. 26 be rejected as a Charter recommendation. The motion was seconded by Mr. Fink, and carried unanimously.

Mr. Rogers then addressed **Item No. 35 - "Consider redrafting the language in Section**

3.05(f), Emergency Powers, to have one responsible individual." He recalled that in changing the Mayor's authority to vote, he had been made a free agent as far as the Sunshine Law, and that eased the problem that had presented itself in the emergency powers.

Mr. Wearn commented that Mr. Adrian Winterfield had raised this issue, however, he was no longer in the community to discuss the issue. Mr. Wearn stated that he believed that Mr. Winterfield had been trying to say that there was a situation that could develop under 3.05(f) where there were two people making a decision, and there was no tie break.

Mr. Rogers commented that there could be a violation of the Sunshine Law if any two individuals acted together, for example, if the Town Manager was out of Town and the President of the Council and a member of the Council met, although it seemed as though emergencies would obviate that provision of the Sunshine Law.

Town Attorney Randolph replied that he did not believe that had been written in as an exemption yet.

Mr. Rogers then commented that with the Mayor being free of the Sunshine Law, meeting with another Councilman may not be a problem at all.

Mr. Guttman commented that it could not be assumed that the Town Council would necessarily embrace the recommendations to do away with the Mayor's tie breaking voting authority. He suggested that it would behoove the Charter Commission to decide whether or not the political leader in the context of an emergency, was the Mayor or the President of the Town Council, because if the Mayor ended up with the tie breaking vote there would be a violation of the Sunshine Law.

Mr. Rogers suggested that the language read: "the Mayor, or the President of the Town Council, and the Town Manager, or Assistant Town Manager." That way, there could be no conflict.

Mr. Guttman asked Town Attorney Randolph if there would be a Sunshine Law violation if the language said "the mayor or his designee, and in his absence the President of the Town Council"?

Town Attorney Randolph replied that there would be no violation of the Sunshine Law, as in either suggestion there would be only one person meeting with the Town Manager.

Town Manager Doney explained that there was a Storm Preparedness Plan, and the Town, as well as many other municipalities, were connected to a system called CARE NET, which was an emergency network, so that the National Hurricane Service could relay online information. He explained that when he received evacuation information he would call the Mayor, then the President of the Town Council, and advise them of the emergency advisement.

Mr. Rogers suggested that the Mayor, the President of the Town Council and the Town Manager could work in concert, however, if it came down to a vote only one of the elected officials could vote with the Town Manager.

Mr. Guttman wondered if the provision was necessary at all.

Mr. Rogers replied that it made people a little more comfortable when there was some direction for a temporary emergency.

Mr. Guttman referred to Section 2.14 of the Model Charter, "Emergency Ordinances," and stated that, as he understood it, the State Statute envisioned being able to adopt an Emergency Ordinance in the same way that a resolution would be adopted.

Town Attorney Randolph advised that an Emergency Ordinance could be adopted on one reading, if it was a true emergency. He explained that he did not believe Section 3.05(f) of the Charter contemplated getting together a Council to deal with the situation. It did create a potential violation of the Sunshine Law on the face of it; in the event it was kept in the Charter, two people from the same Town Council should not be involved.

Mr. Guttman moved that the recommendation be made to the Town Council that Section 3.05(f) be amended to avoid a potential Sunshine violation in the event of an emergency, to read as follows: "The Mayor, or in the Mayor's absence, the President of the Town Council, with the Town Manager, acting in concert, or any one of them, if the other is not available, may take temporary emergency measures in matters of extreme necessity, involving matters of public health or safety." The motion was seconded by Mr. Fink.

Mr. Wearn pointed out that there were State Statutes that dealt with emergency powers and the exercise of emergency powers, particularly when the Governor declared an emergency, and he recalled that it provided for those to be exercised by the Mayor, however, he was not sure.

Town Attorney Randolph replied that he believed that was correct, but was not sure either.

Mr. Wearn added he was not sure this would then cause a conflict with that.

Mr. Doney commented that as a practical matter, if the Mayor was out of Town, he would call the Town Council President. If the Council President was out of Town he would call the President Pro-Tem, and then alphabetically the Council members.

Town Attorney Randolph commented that there was no question, in his mind, that without the suggested language the Town Manager could call the Mayor to alert him of an evacuation notice, and to obtain agreement.

Mr. Rogers commented that he still believed it was important to have it as a comfort level for people to know someone was in charge; also, this was indicative of the political leadership of the Mayor.

Mr. Wearn concurred, and withdrew his concern.

Mrs. Habicht asked Town Attorney Randolph if there was an exception in the Sunshine Law for a true emergency.

Mr. Randolph explained that the probable reason was that from a practical standpoint there had never been a controversy over this kind of an issue. The only reason there would be an exemption was if an issue came up and it became a case dispute, and the legislature looked at it and made changes.

The motion to amend the Charter at Section 3.05(f), as previously stated by Mr. Guttman, carried unanimously.

Mr. Rogers thanked everyone for their hard work, their ideas, comments and patience. He noted that Mr. Randolph would distribute a black lined copy of the Charter for review at the next meeting. He then delegated Mr. Guttman to outline the report to the Town Council.

Mr. Guttman asked how the Charter Commission felt about registering the fact in the report that there were dissenting votes in some instances?

Mr. Rogers replied that it was his idea that Mr. Guttman would give an update on the report at the next Charter Commission Meeting. Once the report was completed, the Commission would review it, and put it in final form.

Mr. Randolph noted that the Zoning Commission, when making its recommendations to the Town Council, did report the vote of the Zoning Commission, and that he believed it would give some idea to the Council as to where the Charter Commission sat in regard to a particular issue.

REPORT OF THE CHARTER REVIEW COMMISSION MEETING HELD ON MARCH 19, 1999

Assistant Town Manager Peter Elwell commented that it may be helpful to provide a narrative description of the work of the Commission to be attached to the legislative draft, to explain how it arrived at the final legislative draft.

Mr. Guttman commented that it seemed important to indicate where there was a dissent from the rationale, which was the type of format he had regularly seen done in other similar reports.

Mr. Doney suggested that comments could be provided along with the legislative draft prepared by Mr. Randolph.

Mr. Rogers explained that the black lined Charter could be put on the computer of Mr. Guttman, with space under each provision change recommended, with the reasoning and how it was voted.

Mr. Guttman noted that it was typical in reports such as this to have one or two paragraphs describing the predicate for some of the recommendations.

Mr. Wearn suggested that it would be helpful to see some of the comments for the first one or two changes at the next Charter Commission Meeting.

Mr. Guttman replied that he could probably furnish that at the meeting following the next meeting.

The entire Charter Commission approved of the delegation of Mr. Guttman, who accepted the delegation.

Mr. Randolph advised that the legislative draft that he had prepared had been prepared by scanning the old Charter, and making only those changes that had been designated by the Charter Commission. There were obviously other changes that would need to be made to bring the Charter up to date, for instance, antiquated dates within the Charter. He would attempt to go through that and clarify those in the next draft for the next Charter Commission meeting.

Mr. Guttman noted that there were inadvertent typos in the printed form of the Charter, and he suggested that a secretary read one against the other to pick up those tiny little mistakes.

Mr. Randolph advised that he should be able to have a draft ready by the Tuesday or Wednesday prior to the meeting scheduled for Thursday, March 25, 1999.

Mr. Rogers noted that he would like to review the draft provided by Mr. Randolph before Mr. Guttman completed and submitted his report.

Mr. Guttman recalled that a discussion had taken place earlier about the format of the recommendations to the Town Council, and the approach that had been suggested would envision a restatement of the Charter in contrast, in trying to put to the voters proposal by proposal, and he wondered if there was agreement?

Mr. Guttman added that the major substantive change would be described as specific ballot items, and go on to say that in addition there were several procedural or administrative types of changes that had been made in the charter to clean up typographical errors, etc.

Mr. Doney noted that each time an update package had been provided to the Charter Commission, a copy had been provided to the Mayor and Town Council, so that they had the chance to read along with what had happened at the meetings, and could see what the lists contained.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 10:10 A.M. on Friday, March 19, 1999.

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Doyle Rogers
Chairman

Prepared by:
Susan Eichhorn
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