



TOWN OF PALM BEACH

Office of the Town Clerk

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

I. CALL TO ORDER

Chairman Doyle Rogers reconvened the meeting of the Charter Review Commission of January 22, 1999, at 9:00 A.M. on Friday, February 19, 1999, in the Town Council Chambers.

II. ROLL CALL

Town Clerk Mary Pollitt 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.

III APPROVAL OF AGENDA

Vice-Chairman Wearn moved approval of the Agenda. The motion was seconded by Mr. Fink, and carried unanimously.

IV CONTINUATION OF CHARTER REVIEW COMMISSION RECOMMENDATIONS

The following is a verbatim transcript of the discussion that took place:

ROGERS: We had left off on the 22nd with Item 19, which was "Removal" under the Town Manager's, chapter 5 of the Charter. Now, since that time we've received the black

lined copy of the Charter with the changes in legislative form by the Town Attorney, Mr. Randolph. I'll ask your pleasure as to how you'd like to proceed on the discussion.

GUTTMAN: My preference would be not to review the Town Attorney's proposed charter language until we've gotten through all of the proposals. My memory is that when we left off at our last meeting we were discussion Item 19, Removal, and Item 38, Town Manager Annual Performance Appraisal, as a joint topic, and that as we concluded we were on Item 38, Town Manager Annual Performance Appraisal, and I'm not quite sure whether we completed that item or not – Item 38, and if we were therefore to return to the Agenda, I think we're then on Item 27, No. 20, Appeal Process, but I would leave that to Mr. Wearn, because I think he still had some ideas about the Town Manager Annual Performance Appraisal, and that's why I had some uncertainty as to whether or not we had concluded that.

WEARN: Mr. Chairman, I concur with Mr. Guttman on the review of Mr. Randolph's legislative revision, and I also concur with Mr. Guttman that where we left off last time was – I was requested, I believe, by the Chair to draft some language on how I would look at the performance review that was presented by Mr. Guttman. Mr. Guttman's is a one sentence performance review suggestion, and I have gone ahead and drafted some language, and I would distribute it for your consideration. There are a couple of parts that I have added to it, and after you have had a chance to review it I'd like to go over those parts piece by piece if I may.

ROGERS: Okay. Just for the information of our audience, why don't I read it, and then we can start discussion.

Performance Evaluation. The Mayor, who has the express authority to confer with the Town Manger to oversee the faithful enforcement and execution of all Town ordinances and laws [per Sec.3.05 (c)], shall continually evaluate the Town Manager's performance, shall receive separately each Town Council member's evaluations, and shall counsel the town Manager on the Town Manager's performance no less frequently than once each year of the Mayor's term. Each Town Council member shall continually evaluate the Town Manager's performance, shall inform the Mayor of such evaluations, and may counsel the town Manager on such evaluations. The Town Council, which is required to act at least annually on the appointment of the Town Manager [per above subsection (b)], shall establish such standards and procedures for its evaluation of the Town Manager's performance as the Town Council may deem appropriate.

WEARN: Those three sentences comprise the three concepts that I'd like to raise for considering on performance evaluation. The first is the Mayor's role in the evaluation. There was, in the performance evaluation originally suggested by Mr.

Guttman, no inclusion of any Mayor's role in the evaluation, and I think it's particularly important for the Mayor to have a role in the evaluation, particularly because he has the express authority to confer with the Town Manager to oversee the faithful enforcement and execution of Town ordinances, per the sections that we have already established, and that language is lifted from that section, and included here, and he has the prerogative now, under the revisions to the Charter that we have incorporated taking out the tie breaking vote provision; he can now receive communications from members of the Town Council, and it would be appropriate for them to keep him informed of their evaluation of the Town Manager's performance, and it would be appropriate for the Mayor to counsel with the Town Manager, in that he is the lead representative of the citizenry for the Town. The second aspect of it is that in the second sentence I've provided for the Town Council members to similarly do a continuous evaluation, and for them to then inform the Mayor of their evaluations, that would be on an as decided basis, on both the Mayor's and their part, and they may counsel the Town Manager on their evaluation. This is the members of the Town Council individually, and I'm not providing for any requirement that they counsel the Town Manager on an individual basis, then they chose to pass it to the Mayor and let the Mayor exercise his discretion on how he treats that matter, and third, and last, I'm addressing how the Town Council looks at the evaluation, which, to my mind, appears particularly difficult to be done during the course of a meeting which is called for the purpose or raised for the purpose of the annual reappointment. But it does provide for the establishment of not only procedures, but also standards for performance, so that there can be a measurement by the Town Council of the performance. And those are, in substance, the suggested revisions that I would raise for consideration.

ROGERS: And they can set those standards and procedures.

WEARN: They can set them as they deem appropriate. They could set them by ordinance. They could set them by resolution, or they could set them by a policy, or they could set them just be establishment, however they deemed fit.

GUTTMAN: I find some of these ideas problematic. The first concept is for the Mayor, in effect, to, I guess, continuously evaluate the Town Manager outside of the Sunshine, and taken in conjunction with the next sentence, the idea seems to be that the Mayor is intended to evaluate the Manager outside of the Sunshine with input from the members of the Town Council. I think, and I am a strong advocate of the Town Manager being held accountable to the electorate through a public performance evaluation procedure, and one that is established by the Town Council. I recognize that conducting performance evaluations in the Sunshine is difficult, but most communities in the State of Florida have found ways to overcome that. This particular community has scheduled a Special Town Council for April 16th of this year, and hired an outside expert in public sector management analysis to speak at

that setting, that workshop, and Mr. Doney has started the process of collecting materials from the ICMA dealing with a public performance evaluation as well as obtaining materials from other Town Managers in the State of Florida, laying out the types of procedures that they have found compatible in the Sunshine for purposes of a public evaluation. Furthermore, the idea of a concept of a continuous evaluation of the Town Manager seems to me, not only to be meddlesome, but also potentially destructive. I find it difficult to imagine how any chief executive could expect to be continuously under the spotlight of potential criticism and praise on each and every thing he does on a day to day basis. I just think that defies human nature. I also think that the provision potentially is inconsistent and violates another one of our Charter provisions that prohibits elected officials from interfering with the operations of the office of the Town Manager. I think the concept of a continual counseling, if you will, of the Town Manager on his day to day activities almost invites violation of that thought. So, for those reasons, I am opposed to it. I might note that we have in the audience today Dr. Abraham Zaleznik, who is one of the nation's leading authorities on leadership. He has taught for many years at Harvard Business School, and if you would like, I have copies of his resume. He is here today, and I think it would be beneficial to the Charter Commission to hear from Dr. Zaleznik as to whether or not there is some potentiality for destructiveness in this procedure that we are considering. My initial thought was that we should just simply adopt a constitutional charter provision that simply required once a year the Town Council to conduct, with or without the Mayor – I mean, the Mayor sits there, the Mayor is always free to speak on any issue. I don't think you necessarily have to include the Mayor's name or position in the charter provision. I really don't care that much. The basis thought is that we ought to constitutionalize a requirement that there be a public performance evaluation once a year, and that the Charter Commission should not get into the business of micro managing or meddling in the Town Council's prerogative, which is the details of what that performance evaluation ought to look like. Thank you.

ROGERS: Thank you Mr. Guttman

DOUTHIT: Nancy Douthit, resident. I just wanted to say that I think it is a fact that now Sunshine, and having evaluations in the Sunshine in the State of Florida – the average term of office of Town Managers ranges from about 2 ½ to 5 years, and I think maybe all of this Sunshine and evaluation contributes to this very unsettling process of a new Town Manager frequently, at best, and it is a very short period. I've forgotten exactly which, but it's someplace between 2 ½ and 5 years, and that's I think opened evaluations to simply contribute to bedlam.

ROGERS: Thank you Mrs. Douthit. Mr. Guttman?

GUTTMAN: I just would like to clarify that the statistic that Mrs. Douthit referred to is not only

applicable to the State of Florida, which does have a very strong Sunshine Law, but is essentially applicable to the Council/Manager form of government throughout the country. We are fortunately unusual in having a history of Town Managers that served for considerable periods of time. The type of statistics that Mrs. Douthit referred to are, in fact, applicable to any community – to most communities throughout America.

WEARN: I seem to recall that we were given the statistic that Florida has a particularly short-lived Town Manager retention. It is extremely different from the rest of the country, and my observation and personal experience has been the same. Perhaps the Town of Palm Beach doesn't suffer from that commonality because it has not engage in extensive performance evaluation of the Town Manager at Town meetings.

ROGERS: I was just wondering what scenario you would have for public evaluation.

GUTTMAN: I don't think, Mr. Chairman, that that's our job. I think the Town Council has scheduled a Special Town Council Meeting on April 16th to figure out just those sort of details. Mr. Doney can speak to the fact that he has addressed letters to Town Managers in other communities in Florida that have had successful experiences with performance evaluations in the Sunshine. I think for us – there was a period when we asked the Town Council for authorization to ask Dr. Larry Gross to come before this Charter Commission and speak to the Commission about performance evaluations and goal setting in the Sunshine in the State of Florida. The Town Council determined that that was their prerogative in terms of the details of a process like that, and I think that they thought that our consideration of those sorts of details amounted to meddling in the Town Council's business, and our business is just simply to assure that once a year there is a performance evaluation in accordance with such procedures as the Town Council may, from time to time, establish. That leaves the Town Council the flexibility to change the procedures over the course of time, as the science of public sector management changes, or as environments change. I think it would be a horrible mistake to try to constitutionalize the details of a performance goal setting, or evaluation process.

ROGERS: All right, but what if the Council didn't want to do it – found out it was not practical to do in an open session?

GUTTMAN: Right now the proposed language that I submitted simply said the Town Council shall once a year – it doesn't say public. It leaves them complete flexibility to do it in a manner that is at once – which will at once hold our chief executive, the Town Manager, accountable to the elected officials, and therefore indirectly to the electorate, the residents of the Town of Palm Beach, and also leaves it to the Town Council to set up whatever type of procedure it wants, whether it be formal or informal, over the course of the life of this community.

- FINK: I agree with Mr. Guttman. I think it's very important that we do establish the fact that there should be a formal evaluation of the Town Manager, but in no way should we try to set the criteria within this commission, of how it should operate. That we should leave to the discretion of the Town Council, but our emphasis, I think, should be that this should definitely take place, and be an important integral part of what we're recommending.
- ROGERS: All right. Mr. Wearn?
- WEARN: One thing that Mr. Guttman said concerns me, and that is that the – I don't remember the exact words, but that the Town Council, under his proposal, could evaluate the Town Manager's performance privately, and I would suggest that the Town Council cannot act on any matter privately.
- GUTTMAN: Mr. Wearn, I believe you read some of the materials that will ultimately be submitted to the Town Manager's office from Town Managers operating in other communities, you'll find that at least one Town Manager in Gainesville, for example, I think it's Wayne Bowers. Mr. Bowers has established a procedure for Gainesville in which once a year he proposes in writing to the Town Council a set of performance goals for himself for the upcoming year. He sends that set of proposals to each and every member of the Town Council, and then invites them to meet one on one with him to discuss areas of expansion, contraction, or modification. At the same time that they come and individually and privately talk to him about his proposed performance goals for the upcoming year, they review in context his performance goals for the existing or current year, so that there is a dialogue that occurs informally and in private. The Town Manager in Gainesville then takes the comments of the various elected officials that have been provided to him in that manner that revises his proposed performance goals, and then submits them again publicly to the City of Gainesville's commission, whereupon they take up the fixing of his performance goals for the upcoming year in the Sunshine, and evaluate his performance under the existing current performance goals. So there are a lot of imaginative ways that communities in the State of Florida have been able at once to have a constructive dialogue with their Town Managers in a private context, and still, in the Sunshine, publicly fix performance goals and evaluate the Town Manager, and that's just one example. I'm sure that when the Town Council gets its arms around this issue at its April 16th workshop, there may be other ideas in addition to this particular one that I'm aware of.
- WEARN: Two things, if I may, I'd like to hear from Mr. Randolph on the concept of private portions of the evaluation suggested by Mr. Guttman, number one; and number two the language that I have placed in front of your for consideration does not do anything different than what I think Mr. Guttman is providing for when he says that he wants the Town Council to adopt its own procedures for the evaluation, however,

it does provide flexibility and ensure flexibility for the private type of evaluation that he mentioned would be involved with the Town Council's actions. So what I'm suggesting is that there is greater flexibility when a provision is made for the Mayor's involvement and for each Town Council member's separate involvement.

ROGERS: As I see the difference, I think Mr. Guttman thought it was oppressive to the Town Manager to continually–

GUTTMAN: What the first several sentences seem to – this paragraph seems to contemplate one full out of the Sunshine, underline out of the Sunshine, informal, mandatory, continual performance evaluation process undertaken by the Mayor principally, with input from members of the Town Council, and then a second, albeit, formal, possibly formal evaluation conducted under the purview – and that's in the last sentence, where he's picking up my idea – conducted under the purview of the Town Council. The reason I suggested you might want to hear from Dr. Zaleznik is that I find the idea of a continuous evaluation by the Mayor of the operations of the Town Manager's office, to be a humanly destructive concept, and I leave it up to you, Mr. Chairman, as to whether or not you want to hear from Dr. Zaleznik on this issue.

ROGERS: Well, let's ask the commission, because in all instances where we've had experts, we have gotten a consensus as to whether or not we wanted to hear from them. Do you want to make a motion, Mr. Guttman?

GUTTMAN: Well, I'd make a motion, but before I'd make the motion, I think, out of courtesy to my fellow commissioners, I ought to send Dr. Zaleznik's resume around to each one of you so you can see something about his background. It simply contains a listing of books that he has written. I must tell you behind that is a list of about five or six pages of periodicals that he has published, and I decided simply not to copy it. I would move that we ask Dr. Zaleznik to address the issue that a continuous evaluation of the Town Manager's office by the Mayor with input from the Town Council in terms of good management practices.

FINK: I second.

ROGERS: All right. We've had a motion made and seconded. Discussion?

WEARN: Do we need a motion to hear from a resident?

ROGERS: Well, it wasn't presented that way. So I think the expert is qualified by his resume, and I just – by consensus – all in favor say aye.
(All were in favor)

DONEY: As one of the interested participants, I think Dr. Zaleznik is over-qualified. I know

that there are many different issues, and at some time down the road I have a few things to say to you, but I think all of my thoughts too have to come to the Mayor and Town Council, who I report to currently; the Town Council, at the April 16th meeting, so, I can end up in a lot of – and I know the Shiny Sheet is present, and I know that before – what may or may not be reported in complete considerations may be not helpful to the whole process. I just have to keep that in mind. So, if I don't have some overall direct answers – you know, the April 16th, which Mr. Guttman referred to before – I've talked to Dr. Schleckbier, and also the other two city managers who are sending information, to be helpful to this Town Council and Mayor that I report to.

DOUTHIT: I'm astounded. I'm sure that Dr. Zaleznik is totally, totally, qualified, but I was just wondering what coincidence happened to bring him here this very day, at this particular time?

GUTTMAN: There's no secret to that, Mrs. Douthit. When we left off at our last Charter Commission meeting, we were talking about the concept of a continuous evaluation of the Town Manager. I happen to know Dr. Zaleznik personally. The concept troubled me as I was listening to it, and I had an opportunity to chat with him about it, and I asked him if he would come today.

ROGERS: Thank you, Mrs. Douthit. He does seem eminently qualified. I'm sorry we haven't invited him before. We wouldn't have even had to go before the Council for a budget. Dr. Zaleznik, if you'd please address our commission, we'd appreciate it very much.

ZALEZNIK: I'll be brief. I know you have much to discuss. In my experience, which has primarily been in the private sector, I've been the director of a number of companies over the years. I've consulted with corporations, and I'd like to make one observation at the outset. That one of the major problems in corporate life is the politicization of activity in thinking. When politics enters, certainly in corporate life and in the private sector, relationships become contaminated, because essentially what people are trying to do is to preserve and enhance their power base, and they lose sight of the fact that there are objectives and goals to be met. Process overtakes substance, and people lose their ability to think objectively. Now, I suppose in a town such as Palm Beach, and incidentally, I am a resident of this town, and very much enjoy being here, because I think it's a fine place to live; that I think that in a community, it's by its very nature a political body, I mean, that is the essence of the activity, and I've counseled corporate directors, chief executives, and also myself, to be very, very wary of having political motives enter into discourse. Now the question is how does one avoid that in an organization such as the town, that is inherently political? Well, I think that the very idea of having a town manager is an attempt to overcome the problem of interest politics; simply too many things would

have to be done in a community such as this that for goals and objectives to be assessed primarily in political terms would lead to chaos. So, the very fact that you have a town manager; we have a town manager, suggests that it's an attempt to create a professional office to manage the affairs of the Town. This is the attractive feature of a town manager system.

Now turning to the issue of evaluation, it is common nowadays, to have formal evaluations of the chief executive officer, but the purpose of it is really not so much to establish a grade, although I must admit that in corporate life compensation committees enter into this process to a great extent, which is used to determine not only salary increases, but bonuses and other aspects of the compensation package, but the idea that's at work is not so much to provide pass/fail or a grade, but to enter into a discourse, a discussion – what is it that people want to accomplish? It's called goal setting. It's a very useful device, and it's interactive in the sense that it's not simply one person – the chairman of a board or the Town Council telling the chief executive or the equivalent, which should be done. It's a matter of discussing what should be done. The Town Manager in this case would present his views. If he doesn't, he's not doing his job. He ought to present his views about what are the important goals to be established and to be achieved in the coming year, and this discussion, this vehicle, this interchange, provides a very important mechanism for producing a very rationale approach to the management of the town affairs.

At the end of the year, people will look back, the Town Council will look back, and say we established the following goals, and the town manager would enter into this process, and he, himself, would say I've done very well in this goal, but not so well in other ones. This is a forthright, frank, form of discussion, and they arrive at an overall evaluation, and then move on to what do we want to do next year – how are we going to accomplish the goals that we set for ourselves?

If there is a constant, continuous evaluation, and with all due respect to the Vice Chairman, you open yourself to a major problem. You cannot evaluate day in and day out. It's an open invitation to create personality conflicts. Let's assume that Individual A doesn't like Individual B and sets out to undermine that person? It happens. It's in the very nature of the human condition that we are affected by our emotions. We fully expect that to be, and the purpose of creating some sort of structure is to minimize or dampen those kinds of effects. If the evaluation occurs almost continually, then I think it's an open invitation to have a personality conflict, and I think that's what you try to avoid. Town Managers should be evaluated on their performance, based on the goals that are mutually arrived at, and it should be done once a year, in my opinion, and in fact, if its possible to tie some sort of a compensation program into it, I think that's beneficial as well. I don't know how compensation is established, but it seems to me to be a very rational approach to this problem. Therefore, I would suggest, based upon my experience, that you do

everything possible, within the context of a political organization, to eliminate personality conflicts and politicization and attempt to establish a foundation for rationality and objective performance evaluation. If you have any questions that I could help you with, I will certainly try.

ROGERS: You're talking about sort of an interactive meeting at which you discuss performance, then?

ZALEZNIK: Yes, and usually this is done once a year, in a formal setting, and I assume that the Town Council would be the agency that would do this, and arrive at a consensus on what the goals are for the coming year, and then looking back at what has been achieved, and where performance is falling short.

ROGERS: But you see the town manager presenting his goals and the town council perhaps presenting theirs, and if they meld, or just discussion of his goals.

ZALEZNIK: Yes, that it's an interchange, and the town manager should not be passive in this interchange. He is intimately involved in the affairs of the town. He knows what needs to be done. He will have strong opinions, I hope, about what needs to be done, and he should present them, and then they arrive at some conclusions on what it is that they want to accomplish.

WEARN: Is the evaluation that you contemplated for, and that you described, for the corporate world – is that done in the public?

ZALEZNIK: In the proxy statements there is a discussion of the compensation of the chief executive officer and a proxy statement is widely disseminated, and it states the criteria for performance, and again, it's very much tied to compensation, so that the public is aware of – the public reads the proxy statement and is aware of the basis on which compensation – and today everyone is deeply concerned about performance based compensation. You're paid not for being there, but for doing things that people want to have done. As far as the deliberations themselves, no, it's not in a public forum, but it's done within the board context, and the board in turn represents the shareholders and the public.

WEARN: The Mayor that we have is and serves in the nature of an ombudsman – I don't know whether you're familiar with that, but he does not, under the Charter revisions that are contemplated, have any possible vote on Town Council action, and of course it is the Town Council that hires and retains or reappoints the town manager on an annual basis. I assume that you're familiar with all of that. The involvement of the Mayor, then, how would you contemplate that, and I'm particularly interested in that because he is, to a large extent, de-politicized from the situation, so that his view, can perhaps not be as political as the members of the town council.

ZALEZNIK: I assume he is elected.

WEARN: Yes.

ZALEZNIK: And being elected he has to present himself or herself to the public?

WEARN: Correct.

ZALEZNIK: So that by its very nature, that is a political office. It's true that it is largely symbolic, that if the Mayor becomes involved – directly in the evaluation, or becomes the key player in the evaluation, then effectively you have shifted that balance materially. Whereas the Town Council is responsible not only for the appointment of the Town Manager, but also for oversight, and for evaluation of that person's performance. By its very nature the act of once a year appointing, or re-appointing, is itself an expression of an opinion and evaluation of the performance.

FINK: The duties of the Town Manager, among other things, are the faithful execution of all the laws and ordinances and so forth. Your interpretation is a little surprising to me – your interpretation of the evaluation. In other words, the way we understood, or at least I understood, was that the Mayor and the Town Council evaluate the Town Manager on his performance, and has he followed through to see that the laws, ordinances, etc., have been properly taken care of and executed.

GUTTMAN: We agreed, Mr. Fink, I think, to recommend to the Town Council, expanding the role of the Town Manager to include a forward looking orientation, as well as under his duties, an obligation to propose public policy alternatives, and that sort of thing, so that his duty goes far beyond the mere faithful performance of the Town's laws. He is in essence a true chief executive, with the type of vision that you would expect in both the corporate and public sector of that sort of person.

ROGERS: That's Section 4.01 that we revised, you know.

FINK: I understand, and I was coming to the fact that I was just wondering if that is the appropriate time during the evaluation process to have that presentation, or should that be part of goal setting and direction at another time, with the evaluation almost strictly as to how has the job been done, are we satisfied, and do we want to go forward on that level.

ZALEZNIK: I would probably lean toward the combining; that is a criterion, you know, observing the ordinances, making sure that they're fulfilled. I would assume that's a criterion, but one among a number, and I think that can easily be folded into this annual evaluation, or so it would seem to me.

HABICHT: Does this once a year evaluation that we're talking about take the form of a report or the status of the Town to the public? Is it something that shows to the public what the goals have been and whether or not they have reached accomplishment?

ZALEZNIK: I would judge, certainly listening to the discussion, that the Town Council would have not only the right, but the obligation, to set certain procedures, and I think it would be a very useful device to have a public document that states what conclusions they have reached about the goals and objectives and so on.

HABICHT: You and I have talked about the fact that you do have like a 5-year plan with goals and so on. During the course of a year is there a process, or are you allowed to report on how some of these goals are being reached, as a matter of course?

DONEY: Well, it's a matter of course, and a matter of practicality, I think, that because most of the goals and objectives that are going to be identified are going to require some funding to implement the goals and objectives. You already take your budget, and our budget is a program style budget, and myself, in conjunction with each of the eight department heads, we try to set forth what we believe are the necessary improvements to the plans for each department, whether it be Police Department, Public Works Department, whether it be storm, sewer, or in the Recreation Department if we have to do a, b, c, d. So each of the department heads have what they believe are the necessary future planning efforts that they feel need to be accomplished in order to keep the levels of service the same within the Town, but nevertheless, we'd like to improve them in certain ways, and make sure that we're pro-active in our protection of the infrastructure, and also for the long range planning of the Town, but we have within our program style budget, we have a 5-year capital improvement program. That 5-year capital improvement program – the first year is adopted by the Town Council, but the 5 years gives us a view toward the future, plus it includes a multi-year equipment replacement program. We know that we need to replace an aerial platform truck every 20 years, because that's about the useful life of an aerial platform truck. The Council just is going through that process now. So, each – you know, it's not a one person operation. It's a collective effort. It's a team effort, so that I think more than anything that I've learned as being Town Manager of the Town is to try to never take anything personal, because I know when the Council votes 3/2, I thank the Council, and you know, I don't have to like it. I can even think it's not a great idea, but we will implement it – the Council, through the democratic process that Dr. Zaleznik referred to before, when the Council has the input of the staff, and also the Town Attorney, and any other professionals, whether it be the water consultant we're meeting with this afternoon – we try to give the governing body, the policy makers, the Town Council and the Mayor, our best advice and recommendations. If the Council says well, we think this is the best course, and we're going to implement that. That is why, from a staff perspective, and I think as Town Manager, what I can't do, because it is a very public process in the Sunshine

Law in Florida, is to try to take anything too personally, because I have to be able to look beyond that and say, even when I'm being criticized, and it's a self evaluation process that I have to do when I'm being criticized, and you know, I just say thank you, and let us do our job, and we'll go back and we'll implement whatever we need to do, and I try to very much, because I pride myself in that, is to work with the department heads, and Peter, as the Assistant Town Manager, and to make sure we have an organization structure that is – and it's a good example – last year, when I had my illness, that I think we have a good organization in place that Peter was able to, through the plans, and we have a long standing planning process that we have – our Comprehensive Plan, Land Use Plan, Zoning, and each of the departmental plans, whether it be the Information Systems Management Plan in Data Processing, or whatever else, we have a lot of ongoing planning efforts that have to make sure that all of them are properly interacting, and that departments are interacting properly. So, I think what you're saying Mrs. Habicht is, you know, I think that our planning process that we already have – we don't need to reinvent the wheel. I would recommend to the Town Council that if they want to have a written evaluation system for the Town Manager, that's up to the existing Town Council. Please understand that my contract is not with the Town Council that I'm currently serving. My contract goes back to December 16, 1987. So, I was reporting to and hired by a Town Council and a Mayor at that time who are not here. So, you know, it's a different ball game, but I have to make sure that every year when I'm available to be appointed again, at the annual appointment process, that hopefully, the Council and the Mayor believe that I, in conjunction with all the staff, and particularly the department heads that interact in this Council chambers, that we're doing a good job, and one of the things is that we are apolitical. You know, just by association you can be judged as being wrong. You don't have to be really truthfully wrong, but you can be judged just by appearance of being wrong. And I'm very conscious of that, believe me, and I try at all times to make myself available to interact. I've never found a Council or Mayor – Mayor Marix, who isn't here today, so I won't be critical of her, but Mrs. Douthit – there was never any – I don't think there was ever any hesitation to come in and say, well, why the hell did you do that; that's a stupid idea. I said, well, thank you, and explained well, this is why we did that. And so you have to have a sense of humor, and you know, just like now, some of the Council members think that it's a great idea to do "a", and I say well, I don't know about that. I said if you think it's such a good idea, and you bring it up at a Council meeting and the Council votes 3/2, the staff will do it, and I'll lead that implementation, so I just try not to take it too personally. I think that is what is healthy for this Town, and healthy for our organization.

GUTTMAN: I think Mr. Doney highlights some of the problematic aspects of a continuous evaluation. I mean, right now, if you had councilman "x" and councilwoman "y" coming in and saying exactly the opposite thing, because that was a particular individual public policy initiative that they wanted, and said to Mr. Doney – your

performance evaluation is going to depend upon it – it seems to me that it politicizes the whole process, much in the same way that Dr. Zaleznik has described.

FINK: I think, and I'm going to ask Mr. Wearn. I think the spirit of this continual evaluation, as it's written, and as some of us are interpreting it, is different. Let me ask you, Mr. Wearn, by your saying continually evaluating the performance, don't you agree there that they are cognizant of what's going on, and want to make sure, but not looking over Mr. "X's" shoulder to continually say this, that, and so forth. Isn't it more the idea of being aware and cognizant of what is happening in Town?

WEARN: I very much appreciate your clarification of the spirit and intent of what I was trying to express, which I failed to express artfully, quite obviously. Yes, it is awareness on a continual basis, by those who are responsive and responsible to their constituency Townspersons, of the Town Manager's performance, and where there is an appropriate comment to be made about that performance, as we heard Mr. Doney express, comment should be made. In other words, if a particular Town Council person believes that, excuse me a moment. While I continue to answer this, I note that our expert, and I hate to have him have to be standing at the podium.

ROGERS: Well, this might be helpful in his comments to us, because you're explaining your position.

WEARN: I did not intend, by my language for everyday, eight hours a day, each Town Council person and the Mayor, to be standing over the shoulder of the Town Manager expressing to the Town Manager approval or disapproval of whether he sharpens a pencil or whether he picks up the phone and makes this call at this particular time, or any of those things. But, what I tried to express in this was more of a codification of what I perceived goes on currently in both the Mayor making an evaluation, and giving the Town Manager comment, and I've asked Mr. Doney if he does receive comment on his performance by the Mayor, other than an annual performance review.

DONEY: I think that's – based upon the dissemination of information, and this is one thing – it's a good time to say this – that I serve the Mayor and each of the five Councilpersons equally. In fact, in the world of a democracy, what I do is I report to the Mayor first. You know, if we're having some major problem in Town – a good example is when we had the sanitary sewer failure up at Royal Poinciana Way and Bradley/Cocoanut. I called the Mayor. I reported that to the Mayor. I reported it to the President of the Council, President Pro-Tem, and then alphabetically, and they all get the same treatment every time I disseminate any information, and we give the same information, and you know, Mr. Wearn, when you were on the Town Council, that before I was Town Manager, that the Town Manager then – it's important to make sure that everyone of the elected officials receive the same

information at the same time. What they do with it; that's their opportunity to do something with it, but it's just in terms of the reporting process, but the Mayor is never, Mr. Wearn, hesitates and comes in to ask me, why did I get this? He says I don't want it. I said well, you don't have to read it, but I'm obligated to give you and the Council members the same information at the same time.

ROGERS: We're talking about the reverse though, I think here.

WEARN: That's correct. That the Mayor comments to you on his approval or disapproval or his evaluation of any given action that you take.

DONEY: That happens, yes.

WEARN: And does that also happen with the Town Council persons at this time?

DONEY: To some degree it happens, depending on the particular issue that arises.

WEARN: Have you found that to be disruptive of your ability to perform as Town Manager?

DONEY: No. Because what I do, and sometimes the Council members, or the Mayor, think that well, why don't you carry this red wagon over the goal line, and I say well, if you think it's such a good idea, please bring it up at the next Council meeting. And that's why I think that by design the democratic process and the voting in the Sunshine is a slow process, but it does require the public exposure of the idea, and then you vote as a Council, and the Council votes 3/2, then the policy is set, and we can move in a particular direction. Staff can implement that policy, and sometimes – believe me, it's particularly helpful when you have the Police Department to be apolitical, because the Police Department – you want the Police Department to enforce all laws, whether the person is the last prime minister of wherever, or the fellow that just walked across the bridge. It has to be enforced uniformly.

ZALEZNIK: Mr. Chairman. Excuse me. Unfortunately, I have to leave for a prior engagement. If I may make just one final comment.

ROGERS: Sure. We've been very disruptive. I'm sorry, but I thought maybe it would help you in further comments.

ZALEZNIK: Yes it is, but I don't want to take up more time than I'm supposed to here. I think in the very nature of human psychology, people evaluate all the time, but the wise person bites his or her tongue, and you don't offer the first reaction or the first comment or the first feeling. We do it all the time. We evaluate things. My question would be why codify it? Why codify this human tendency and create an obligation, not only to do what ordinary people do all the time, but also to act on it. One can

think anything one cares to think. This is the greatest freedom we human beings have – the capacity to think, and it has no consequence, and no costs. But once thoughts go into words, then action has occurred and there are, indeed, consequences, and I wonder if I may be excused. Thank you for your attention.

ROGERS: We thank you very much, Dr. Zaleznik.

WEARN: I'd like to express an answer, if I may, about the codification.

ROGERS: Thank you very much Dr. Zaleznik. Perhaps you'll come and address us again. Thank you. Yes, Mr. Wearn?

WEARN: The reason that I thought that codification of what is done on an informal basis by both the Mayor and the members of the Town Council, was because there was proposed in front of us a codification of a formal requirement for it to be done, and my feeling is that if there is a formal requirement for it to be done, there should also be the flexibility of informal opportunity for other evaluation methods, for lack of a better word, that are less than formal, that occur more than merely once a year, and that allow use of a non-politicized Mayor's position for some benefit in communication. That's the reason for codifying it. If it had been successful that the Town Council considered that it had everything it needed, and could adopt its own procedures to effectively evaluate the Town Manager's performance, which is nothing more than what is proposed to be added, then the Town Council could have certainly done that, because it has other provisions in the Charter that say it can adopt its own procedures, so there is no need for the performance evaluation in Subsection E., because the Council already has all of the empowerment there previously given. If there is to be a requirement for that evaluation, theoretically the way it's presented to us, where it says each year the Town Council shall evaluate the Town Manager's performance in accordance with such procedures as the Town Council shall, from time to time, adopt – as I read that language, that language is susceptible, if nothing different than the reappointment of the Town Manager, which occurs each year. But as I listen to the reason for our discussion about all of this, I heard from Mr. Guttman a very serious concern that an evaluation is not being made, and it is for that reason that I thought that if we're going to have a requirement for a formal evaluation, we should also recognize that informal evaluation can be and should be ongoing. I would come back to my last comment, if I may, very quickly on this, and that is that Mrs. Douthit has expressed very clearly something that I concur in, and that is if the evaluation is done in toto in the Sunshine, in public, at a public meeting, I believe that is to a large extent more disruptive, where negative information is forthcoming, than having the opportunity and the ability to do it partially in private, and the opportunity and ability for the Town Manager to be aware of it immediately, and take action to remedy it.

ROGERS: All right. Very good. Well, perhaps somewhere between these two positions we can arrive at some language. Mr. Wearn acknowledges that continually might not be the right word, because it's invasive, and yet, you have, Mr. Guttman, really called for performance and standards, and it's true that what we have said here is little more than voting each year to reestablish, to re-hire.

GUTTMAN: Well, I disagree with that, Mr Chairman. Each year, right now, the practice has been to reappoint the Town Manager outside of a rich context of performance goals for the preceding year, and trying to establish in an interchange way that Dr. Zaleznik described, performance goals rooted in the operating and capital budget for the upcoming year. There's just none of that, and there's been no attempt at any type of formal performance evaluation of the Town Manager that pivots off of this concept of management by objectives, which in turn is rooted, to some degree, in the operating capital budget, or in the goals that the Town Council and the Town Manager want to achieve for the upcoming year. I think this addition to the Charter requires that there be such an evaluation, in addition to the appointment of the Town Manager, and I think it leaves to the Town Council complete flexibility to use the Council's ingenuity. After hearing from other Town Managers in the State of Florida, who have had constructive experiences with evaluation in the Sunshine, and after having heard from an expert that the Town Council has hired for this purpose, as sensitive as Mr. Wearn is, and as sensitive as each and every other of my fellow commissioners are, to the problems associated with a performance in the Sunshine, I just don't think it's either/or. We don't have to say we want performance evaluation and it must be 100% in the Sunshine, without- or, if we don't want to be in the Sunshine, then there should be no performance evaluation. I don't think that dichotomy really exists. I think as I described the practice in Gainesville that there are ingenious ways to at once be constructive in private and also in public.

ROGERS: Okay. All right. Well, we can discuss that further. I notice Mr. Al Flamm wanted to address the commission. Mr. Flamm?

FLAMM: Thank you. It sounds, sitting down here that the commission is in agreement that there should be an annual evaluation. That doesn't seem to be in contention. I would just like to comment on Mr Wearn's point. This continuous evaluation - if I'm aware that I will participate in the evaluation of an individual over a 12-month period, I think I can assure that I was being apprized of how he is performing on incremental pieces that constitute the whole year, without giving him the feeling that I'm looking over that person's shoulder. But when I finally do evaluate, it's not going to be the evaluation of the twelfth month; it's going to be an evaluation of the goals that have been set for the entire year. So, you can see the language that you have there - you can see within your own commission there is a misunderstanding, and a clarification is required. So why gamble on putting language in there that can intentionally or unintentionally be misconstrued. What we want to do, I think, or

what you want to do, I think, is to make a recommendation to the Town Council, and mandate it in the Charter, that an evaluation take place, and let them judge what the most effective way of performing such an evaluation to the Town Manager.

ROGERS: Thank you. Well, our language that we had discussed is set forth – now the question is do we add or subtract or change that language? I mean, we're down to that, really.

GUTTMAN: I agree, Mr. Chairman. I must say, on behalf of myself, that I could not find myself going beyond the language that Skip Randolph wrote, which I think reflected essentially my proposal, and nothing more, and the reason I feel that way is I think if we try to construct the process, we are in fact, meddling in the Town Council's domain and their purview. I think that it has all of the negative destructive potentiality that Dr. Zaleznik referred to, and I think it potentially is inconsistent with the other Charter provision, which prohibits elected officials from ordering the Town Manager to do things. I mean, right now, as Mr. Doney has stated, there are occasions in which an elected official will come and suggest a particular policy, and Mr. Doney has felt the freedom, because of the non-interference provision, to say, look, that's a good idea, bring it up in the Sunshine. Presumably, if Mr. Doney *really* thinks it's a good idea, as Town Manager, he will probably pro-actively suggest it himself to the Town Council. So, it doesn't seem to me that there is any benefit; in fact it would be destructive, in trying to create a process in which one is every moment being evaluated by somebody.

WEARN: Three points if I may. First, the word evaluate that I used – I also used in the language I placed in front of you the word "counsel" and I distinguish in my mind an differentiation between the word "evaluate" which is making an assessment of a performance internally, and "counseling" being a communication of that assessment. I think there should be a responsibility to continually make the internal mental assessment of the performance, but not always to counsel or communicate that assessment. I'm happy to take out the word "continually" because it is causing so much consternation. That's the first point.

The second point is that I would respectfully suggest and inquire of Mr. Randolph whether he put the revised language of performance evaluation "e" in the legislative draft, based upon, perhaps, a misconception that had been finally approved by the Charter Commission, because it has not been at this point.

RANDOLPH: Ya. I had put that in just by picking it up from the notes that I had made. If it had not been finally approved, that was my error in incorporating it in this draft.

WEARN It wasn't something that you were recommending necessarily?

RANDOLPH: No. I was simply picking up the language that I thought had been suggested at that meeting.

WEARN: Thank you. That's all I have.

HABICHT: I think that – I'm positive that the Council and the Mayor know that they have accountability and responsibility to the Town and to the goals that they have set for themselves, as well as the Manager does. I would think that there would be a continuing counseling, critique on the part of each one of them during the year, and I especially endorse the fact that there should be an evaluation, and I now am convinced, which I wasn't in the beginning, that an evaluation which takes the form of a report, and an analysis of the goals, and how they've been reached, along with whatever things the Council wants to hear, is important. I think that's wonderful. I think that should be done once a year. I don't think we should try to control it. I think that the Council, in their infinite wisdom, and the Mayor, along with the help of the Manager, can structure the way they want it done. The important thing that it is done once a year.

RANDOLPH: I am uncomfortable with incorporating any provision in the Charter which attempts to codify a process by which individual Council members would meet with the Town Manager to evaluate him. That can happen now, without incorporating anything within your Charter, and indeed, does happen now. It seems to me that if you're going to codify anything relating to this issue, that it should be whether or not there is going to be an annual evaluation, without saying that it's going to be by individual Council members, or by individuals reporting to the Town Mayor. Quite frankly, from the Sunshine Law aspect I have a concern with each of the proposals. The proposal of each Town Council member meeting with the Mayor, giving the opportunity, at least, for the Mayor to be polling the Town Council in regard to how they feel about the Town Manager. In addition, in regard to the item which I incorporated within item E, I would hesitate to include the word "individually" and if that were to be proposed, I would suggest that you strike the word individually, and just say the Mayor and Town Council shall evaluate. So, I don't think, if you're going to continue with the idea of keeping up what is now happening, that you need to codify it. But, if what your intent is, that you don't care how the Town Council does it, but that you want them to evaluate him in some way each year, then you can codify that, but don't cause a situation where it might lead them to believe that you are mandating that they individually meet with the Mayor or that they individually meet with the Town Manager.

ROGERS: All right. Are you happy with that; with eliminating individually?

GUTTMAN: Well, Mr. Chairman, I would move that the Charter Commission recommend to the Town Council a performance evaluation process with language essentially identical

to the one I originally submitted to Mr. Randolph, which did not have the phrase "individuals" in it. I'd be happy to refurnish a copy of that language, or read it again, if you'd like me to, but I think we all know what I said earlier.

ROGERS: I don't, but why don't we just leave out individually?

GUTTMAN: Well then, let me read it. One second. I think you'll see. I got it here. It would simply say – I don't care whether it says at least once a year or each year – it would say at least once a year or each year, whichever way this commission wants to go. Each year the Town Council shall evaluate the Town Manager's performance, in accordance with such procedures as the Town Council shall, from time to time, adopt. End of story.

ROGERS: What about the Mayor. You left out Mayor. See, I think he should definitely be in there. Even though he doesn't have a vote.

FINK: You left out Mayor.

GUTTMAN: That's fine. Each year, or once a year, the Town Council and the Mayor shall evaluate the Town Manager's performance in accordance with such procedures as the Town Council shall, from time to time, adopt.

WEARN: May I suggest that the words "in accordance with such procedures as the Town Council shall, from time to time, adopt" is surplusage and duplication of their already having the prerogative to adopt their own procedures, and suggest that it end with the word "performance."

GUTTMAN: The only reason – I think it would be beneficial to keep that language in there for a few reasons. One, to make it plain that the Charter does not envision in the abstract one singular type of performance evaluation process, and that it, in fact, contemplates that whatever the process is, it is to be established by the Town Council and even once it's established by the Town Council, it can be periodically changed, as the environment, and the science of public sector management changes.

DONEY: I was going to suggest too, that to try to – just as a matter or process. What happens is – it used to be until 1982, that the Town Manager was appointed at the February Town Council Meeting. That was when you had potentially three new elected officials, three new council members being seated, who may or may not ever have interacted with the manager, but who had the opportunity to appoint or not appoint that individual who was holding the Town Manager seat. In 1982, it was changed until September, and I think that was very good procedurally. But, what I wanted to suggest was that because – and I think Mr. Flamm triggered something that was certainly from my practical day in and day out service to the Town and interaction

with the Mayor and Town Council, it's an ongoing process – that when we do the budget preparation process, we're just about ready to start the FY2000 budget preparation process. What we do is – the Mayor and Town Council have every opportunity to interact with me to tell me that we need to have this program that we need to implement within our Town for next year. Then, I, in conjunction with the appropriate department heads, we can form what should or should not, in our opinion, be done, bring it back to the Council for policy deliberation, with the Mayor present. But what Mr. Guttman is saying here, you know, in terms of what's being suggested by way of language – you know, it's going to be ultimately, I think need to be what Mr. Randolph said before – it's going to have to be such that any existing, sitting Town Council has the ability – you know, if they feel they want to do it in writing, then they can do it in writing, and have the written evaluation in September or August, right before the annual September appointment, but it can be styled in number of different ways, but to try to over – through codification, identify how that shall take place, I think it's very dangerous, I agree, and you know, I'm sitting now as Town Manager, but who knows? I know it's a – you know, I serve at the pleasure. Any day may not be my day, but I have to accept that.

ROGERS: Right. Yes, Ms. Marix, would you come to the microphone, please?

MARIX: Mr. Rogers. Actually I appreciate what Mr. Doney said about the September reappointment. That was my idea, as I thought it was extremely unfortunate for three new guys to get elected today and appoint him tomorrow, and I'm glad that he appreciated that fact. I'd like to ask whatever makes anyone think that he is not normally evaluated somehow, and he is. Even if it's only proven by the fact that every once in a while he gets a pay raise. It obviously means the Town has evaluated him, somehow, before giving extra money out. I don't believe we have a Council who would just simply say, yes, give him more money, I don't know what he's doing, so it is already an evaluation process, and it has, I think, worked very well heretofore, and I agree with Mr. Randolph completely that if we codify every single thing that we do we're going to ourselves into a straight jacket. It's also pretty bad because it could entice people not to think very hard. They'll just go by that book. So I think what we've got now is working, and if it's a little bit elastic it can be handled the way they see right. Believe you me, he does get evaluated. Thank You.

PRYOR: Thank you, Mr Chairman. I would question the last statement made by Mrs. Marix, simply because as a resident of this Town, I was not surprised, frankly, when I found out, and I believe I'm correct, Mr. Doney, that Mr. Doney had for four or five years his salary was not altered, and during each of those four or five years he had recommended to the Town Council salary increases and had continued to exercise, as is his right, a pay for performance, that word was not used, system for everybody reporting to him, which had been implemented for each one of those four or five years. The same process had not been applied to him. Am I right?

- DONEY: That's correct, because annually, when the September appointment process came up it seemed to me at the time to be somewhat self-serving to try to say, you know, are you also going to give me a pay increase – whether it be a general pay increase, which was awarded to all Town employees, and an incentive increase? But I left it purely up to the discretion of the Town Council, and I felt that my compensation at the time was something that was purely a domain and prerogative of the Town Council, and then when it did come up the Council did make it retroactive, and I feel that Council, over time, has been very fair with me, and hopefully I've done a credible, professional job for the Town.
- PRYOR: I do agree that the Town Council eventually made it up, but I had a feeling, in fact I would have had a feeling that if I had been the Town Manager, that in some way my performance was not quite up to expectations, because for a number of years successively no change was made in my remuneration, despite the fact that change was applied to everyone of the people who reported to me as Town Manager.
- MARIX: I disagree with Mr. Pryor on that matter, I'm sorry to say. If, indeed, what he said is correct, that the Town Manager may have felt he wasn't up to expectations, maybe that was the way the evaluation worked. He must have tried extra hard and got it retroactively. I do not believe for one minute that the Town Council sits here and doesn't evaluate what they want to do. Now the automatic ones, that's not really an evaluation, but I do believe that the way it's worked has worked out extremely well. I think it's kept him right on his toes, where he always is, and I think if he had a problem he would have expressed it and maybe not stayed. I don't think what we're talking about has anything to do with the fact that evaluations should be codified. I think that should entirely be up to the Council. If they do a bad job and they don't evaluate him he might leave. If they do a good job he will be improved by it or he will be grateful that they appreciate it. I just don't think we can tie the matter down.
- ROGERS: Okay. But in effect, we're not codifying standards, we're just putting it in there so that it's something that the public is satisfied is being done each year. That's the way I look at it, basically.
- GUTTMAN: Mr. Chairman, I'd like to, at this juncture, to renew my motion again, and propose that we recommend to the Town Council a charter amendment, an addition to Section 4.02 of the Charter, that would say at least once a year the Town Council and the Manager shall evaluate the Town Manager's performance in accordance with such procedures as the Town Council shall, from time to time, adopt, and I would ask that one of my fellow commissioners second that motion.
- FINK: Did you mean the Town Council and the Mayor? You said the Town Council and the Manager.

GUTTMAN: I meant the Mayor.

RANDOLPH: So the way I have it reading is: at least once each year the Mayor and Town Council shall evaluate the Town Manager's performance, in accordance with such procedures as the Town Council shall, from time to time, adopt.

GUTTMAN: Would someone like to second that?

FINK: I second that.

ROGERS: Okay, it's been moved and seconded. Is there further discussion?

WEARN: I have a problem with the requirement that it be in accordance with the procedures as the Town Council shall, from time to time, adopt, because it requires them to take that action, and then requires the Mayor to perform in accordance with those, and while I have a problem with the basic, essential requirement for codification of this, when in fact it's clearly implied from the Town Council's hiring and requirement to reappoint on an annual basis. If it is going to be codified, my feeling is that we should codify the procedure that is followed and allow the greatest possible flexibility without any implication of impediment to making the evaluation. That's the only comment I would have under discussion.

ROGERS: Okay, if there's no further discussion, then - want to call the question?

All in favor of the motion, please say "aye."

Rogers, Guttman, Fink & Habicht - AYE

All opposed like sign.

Wearn - NO

Maybe you want to record that vote here. All in favor of the motion, with the exception of Mr. Wearn.

POLLITT: Four to one.

ROGERS: All right. I think this would be a very good time to take a 5-minute break, or even a 7-minute break.

ROGERS: All right, we'll call the meeting to order. Mr. Randolph will be right here, I know. As a reminder, our next meeting is March 18th, which is a Thursday, and it's a 9:00 A.M. to noon meeting, and then there's one the following day on the 19th, from 9:00 A.M. to noon, and then one on the 25th from 1:00 P.M. to 5:00 P.M., and the final one that we have scheduled so far, and which I hope certainly will be a final one, is March 30th, from 9:00 A.M. to 1:00 P.M.

The next item for discussion is Item 30, which is Item 20 on our list, which is Appeal Process. I don't recall who brought this before the Charter Commission.

WEARN: Mr. Chairman, I placed it on our list of items for the Town Manager, and it deals with Section 4.04, the Powers, and more importantly, the duties, of the Town Manager, and the issue raised by that was to consider whether the Town Manager should establish and administer an appeal process for the appeal of decisions of staff, or decisions of department heads through the administration and up the levels of administration before matters before the Town Council. The idea was to try to reduce the number of referrals to the Town Council for it to settle questions that might administratively be settled in the administrative process. For example, there may be a decision made by, let's just say an inspector, and the townsperson may have a problem or a question with that decision in complying with that decision, and instead of that coming before the Town Council or going for a more formal hearing, that perhaps there might be an appeal process whereby it could go to the supervisor, and perhaps the department head, and ultimately to the Town Manager, so that possibly it could be administratively resolved or compromised before there is the necessity of getting it on the Town Council Agenda and coming up for a full quasi-judicial type of hearing.

RANDOLPH: I don't know whether your intent is to codify that provision within the Charter, but that provision does exist from a practical standpoint now in the Town's Procedures Manual.

ROGERS: Under personnel?

RANDOLPH: Under the personnel manual, so that they do, indeed, go – either Peter or Bob could speak to the steps better than I, but there is a procedure for that.

DONEY: That's on personnel issues under Grievance Resolution Board. Is that what we're speaking of?

WEARN: That's internal staff issues, and I'm not talking about internal personnel staff issues, I'm talking about a townsperson, a resident in Town, having a problem with –

RANDOLPH: I misinterpreted it, I thought you were talking about staff problems.

WEARN: No sir.

RANDOLPH: Because it said appeal of decisions of staff to department heads.

ROGERS: For instance, if it was someone that was aggrieved by the zoning department.

WEARN: Yes. Of even the Police Department or Fire Department or Public Works – any of the Departments, so that – and there used to be informally such a procedure that was in place, never codified, however, and I think there should be such a procedure in order to abbreviate the process to solve it administratively, if it can be solved, and to prevent it from coming to the Town Council.

ROGERS: Reduce some of the minutiae.

WEARN: That's precisely the kind of thing –

DONEY: May I ask a question and comment?

ROGERS: Sure.

DONEY: As a practical matter, every department head, before anything comes before the Town Council, gives me the information and the heads up that this is the issue that a person is appealing. I discuss it with the department head, whether or not I agree with them that the matter, you know, if I'm supportive of the department head or not. If I think I need to intercede or interject, and meet with the resident or perhaps it's an architect or an engineer or an attorney that has a problem, I'll intercede. If I feel that I support the department head, then the matter will come to Council. If I don't support the department head it will never get to Council. So, I think, Mr. Wearn, that's my understanding of it. A good example now is where a person thinks that they shouldn't have to pay for burglar alarms. Well, the ordinance says "thou shall." You know, you get six freebies, and on the seventh, it's set up by design to be not appealable or waivable by an administrative official. But, there are issues that come up – a utility issue that is coming up right now that I'm involved with, with Al Dusey and Bob Moore, that is going to another sector, you know, to try to resolve before it comes to Council. But, I understand why – if I can head off any of those issues I try to.

HABICHT: Bob, do some of these requests or complaints go to the commission that deals with that first, before it comes to you? For instance, the Zoning Commission?

DONEY: Well, I think we need to talk about specifics, rather than generalities. Maybe Mr. Wearn can talk about a specific one or two examples that will help frame this issue.

GUTTMAN: I'm heartened by the fact that Mr. Doney says that there are instances in which administratively, if he disagrees with a decision of a staff individual or a department head, he will, in fact, overrule that person's determination, and it doesn't get to the Town Council. So, what that teaches me is that there is an informal process in place. It may not be working as well as some critics might expect, but, that said, there does seem to be an informal procedure in place. My problem is I think it is – would be a mistake to constitutionalize some sort of appeal process. It ought to be left to the informal operation that presently exists with that aspect of the process forming one of the Town Manager's annual performance goals, for example, and the Manager might well get evaluated on that aspect, or, if it's felt that one needs to go further and formalize something, it seems to me that it ought to be left to the Town Council to do by appropriate legal procedures, whether it's the adoption of the ordinance or resolution. I think for us to get into this sort of detail is – amounts to meddling in the Town Council's purview again, and I worry that we could be accused of trying to micro manage things in the same way that we heard some residents complaint to the Town Council.

DONEY: Mr. Chairman, maybe I don't understand Mr. Wearn's context of his issue. Maybe if he could give an example or two, maybe I'd better understand, but –

WEARN: The only examples I'd have were personal examples, and I really don't think it's appropriate, because I was representing clients during the process, but in each instance of that process there was a decision where there was some discretion on a Town staff employee person, and the decision was made in a particular way, and the feeling was that while the client did not want to make a federal case out of it, that maybe that was not the appropriate decision to have been made, as a result of which there was a request to have it considered by the Town Manager, and the Town Manager declined to consider it, and referred it to the Town Council. It is declining to consider it which precludes an administrative appeal process. It should be an informal process, but I don't want to specify or dictate in the Charter how that occurs. I am merely suggesting that there be a requirement for there to be an appeal process, and the issue, as I stated it was: 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 a matter involving a townperson comes before the Town Council.

ROGERS: Could that even be under Town Manager's Powers, Duties and Functions?

WEARN: That's exactly where it would be intended to be. Correct.

ROGERS: It seems to me that that's sort of a notice for something to be done, pretty much as an annual performance.

FINK: Well, I have a different facet of an appeal process. One of the major complaints we hear from the Town Council about prospective candidates to run is, are the hours, and the tremendous minutiae that comes before the Town Council for their consideration. Now, one of our experts, William Cassella, at the April 30th meeting, suggested creation, for instance, of a Zoning Board of Appeals.

ROGERS: Now, we're talking about something different here.

GUTTMAN: Not really.

FINK: I know it's a different fact, as I included in my remark, but should it come up under a different – what I was trying to illustrate was that with the zoning creation of a board like that, which becomes a quasi-judicial board, if that could take that type of thing, a great deal of pressure off of the Town Council to have to discuss the various variances, and hear all that. I'm wondering if this is an appropriate time to discuss that.

GUTTMAN: Mr. Chairman, Mr. Fink's comment emphasizes my concern about trying to write a Charter provision along the lines that Mr. Wearn described, because I can certainly envision alternative appeal processes, other than the one that he described, and they could certainly involve citizen advisory committees, for example, or the creation of new commissions, such as a Zoning Board of Appeals. There are many ways that one can go about trying to reduce minutiae, and I'm certainly in the abstract, in principle, in favor of all of those things, but I think it would be a mistake for us to, in effect, legislate these sort of things. We're talking about the Town's constitution, and it should be kept in mind that both Mr. Cassella and the Range Riders both oppose this type of provision.

FINK: No.

GUTTMAN: I'll give you the transcript citation.

ROGERS: Oppose what, specifically.

GUTTMAN: When asked to address proposal no. 20, the Range Riders, at page 11 of the April 3rd, 1998 transcript, said that they were opposed to it, and Mr. Cassella on page 16 of the April 30th, 1998, transcript also said that he was opposed to it. What Mr. Fink is recalling is sort of an off the cuff remark by Mr. Cassella that he had seen many communities that had a Zoning Board of Appeals, and that such an appeal process might go a long way in reducing the amount of minutiae. The fact of the matter is those communities that adopt that kind of process do it by way of ordinance. They don't require it in their local constitutions or in their local charter. I happen to think that that's a worthwhile idea for this Town Council to consider, but I don't think it

risers to the level of constitutionalizing that kind of process.

FINK: I just wanted to mention a correction to Mr. Guttman's statement, or an addition, possibly. I quote you, Mr. Rogers, you explained when they were talking about the minutiae, variances, land uses, etc., that these things go to the Town Council in this Town for the Town Council to discuss and Mr. Cassella said that if he were a Council member he would do everything that he could do to keep that out of the Council, and then you discussed the neighboring town in Jupiter and their experience.

ROGERS: The Town of Jupiter Island does have a Zoning Board.

GUTTMAN: Is it in their constitution, Mr. Rogers?

ROGERS: It is in their charter, isn't it? Skip, it's by ordinance?

RANDOLPH: Yes.

GUTTMAN: See, and I think that's the practice in most communities.

ROGERS: So in other words if they get tired of hearing all of these things they ought to eventually do that.

GUTTMAN: That's right.

ROGERS: But so far they're not. People might try to come before the Council than a group of other citizens, because sometimes other citizens become much more vicious, I'll tell you that.

GUTTMAN: And frankly, because that is a highly debatable issue within the community, I would not propose to even constitutionalize that concept, because while it is true it will reduce the amount of minutiae, there is another school of thought that says, we want to be before the Town Council, and I think, in fact, I would hope, that in due course over the course of years the Town Council will actually consider creating a Zoning Board of Appeals, but it will be debated as a public policy issue within the community.

ROGERS: But now I see this matter that Mr. Wearn has brought up in a different light. I look at this as something that we could put into the powers, duties and functions of the Town Manager, as just requiring him to establish an appeal process for administrative items, not zoning or anything else, just administrative items. It could be a simple internal process.

GUTTMAN: I understand. But once you go beyond the personal grievance concept and you start talking about the word "administrative" items, it includes potentially zoning, all land use issues, and every public policy issue, in effect, that the Town Manager is obligated to implement. And my concern is that there may be, in fact, different, better or alternative ways to reduce the amount of minutiae, rather than going through a prescribed procedure laid out along these lines, and if – for this Charter Commission to even consider such a thing, I think we would need to hear from others. It just doesn't seem to me that it's been in the public domain enough for us to be truly informed about all of the ways, potentially, to reduce the amount of matters that come before the Town Council, if that is the goal, in terms of a provision like this.

ROGERS: Let me ask Mr. Randolph if he knows of any provisions in any portion of the ordinances that might address this.

RANDOLPH: Yes. I was trying to find the language, but I think, in addressing Mr. Wearn's remarks, that what he might be talking about is a situation where, in the ordinances, it provides that a person may appeal a decision of an administrative official to the Town Council, and that appeal of the administrative official goes directly to the Town Council, without going through the Town Manager. It may well be that the suggestion here is that the Town Manager have an opportunity to address that appeal first, to avoid that issue coming to the Town Council. Presently, that is addressed by ordinance, and the ordinance that's adopted by the Town allows it to come directly to the Town Council, and indeed –

ROGERS: What issues?

RANDOLPH: Well, the particular language I'm looking at is contained within the Zoning Code, and I've interpreted it as being an appeal of a decision of an administrative official within the Zoning Department, so that a decision that the head of the department of Building & Zoning would make could be appealed directly to the Town Council. Some have looked at that provision and have said that well, doesn't that mean if Mr. Dusey or the Chief make a decision that I want to appeal, that I can appeal that decision directly to the Town Council? And we have held that, no, that that doesn't mean that – it just relates to decisions of the zoning official. So, when people have attempted to appeal decisions of the Public Works Director or other department heads to the Town Council, we have indicated you are not necessarily entitled to a direct appeal on that to the Town Council. If you want to come before the Town Council under "Communications for Citizens" and attempt to do that, you may do so. We can't keep you from doing that. But, we are not going to automatically agenda you as an appeal to the Town Council. So, that's sort of an aside. The main thing I wanted to say is it is codified now that appeals of the administrative official within

the Zoning Department go directly to the Town Council without any intervention by Mr. Doney.

ROGERS: But no others. What about if Al Dusey said, no, you can't build a drain here, etc.?

RANDOLPH: Well, the way we've interpreted it rightly or wrongly, is that that is a decision of the Town. That is an administrative decision of the Town, and we do not have a built in appeal process for you to come automatically to the Town Council. If that individual writes a letter to a Council member and the Council member wants to put it on the Agenda, they can do that, or they can come under "Communications from Citizens," but we do not have an automatic appeal process built in, but let me add that any of that can be done with ordinance, without having to codify it in the Charter.

FINK: In effect, through the 3-minutes Communication of Citizens, they are bringing that to the Town Council in very frequent numbers.

RANDOLPH: That's right. That can happen. I don't know if I would agree with you that those types of appeals come from Communications from Citizens in frequent numbers. Usually under that topic on our Agenda we have one or two people who usually get up and speak, but we don't often have a lot of appeals under that section. Usually, I think those kinds of appeals will get on the Agenda by someone making an appeal to a Town Council member who will put it on the Agenda, or something like that.

ROGERS: This is where your ombudsman comes in. Each Council member and the Mayor – isn't that true? I mean, people complain to their representatives on the Council.

RANDOLPH: Sure, and then the Council members can bring it up.

GUTTMAN: In fact, Mr. Chairman, it would seem to me that in light of the changes we've made in the description of the office of the ombudsman, insofar as it relates to the Mayor, it seems to me that we've put a lot more teeth in it, so that if a particular resident felt aggrieved by a decision of a staffer, and didn't feel that he had an informal appeal process through the administrative system, his next stop ought to be the Mayor, in his role as an ombudsman.

ROGERS: To investigate?

GUTTMAN: To investigate and resolve equitably.

HABICHT: Mr. Chairman, I think that we should seriously consider what Mr. Wearn has presented to us here. When this commission was first formed, I would almost guarantee that everyone of us sitting on this commission were told by citizens one of the things you have to solve is this minutiae that comes up to the Town Council

and the long hours they have to spend deciding it. I think this is a good idea to consider and to use, and one thing I would remind you of is that we're recommending. We are not saying this is the law of the land and you're going to have to accept it. Obviously, the citizens are going to do that, but I think it's important for us to put it in under the duties and powers of the Town Manager in order to show that we are making a big step, hopefully, toward getting rid of all this.

ROGERS: I don't think this addresses the minutiae everyone talks about, like we've been discussing. That's a policy decision, really, for the Council. If they get tired of handling these things and staying for long meetings, then they can change that. Because that's mostly zoning. All of those are development and zoning.

DONEY: Everything after noon.

ROGERS: Everything after noon is, you see. I think what Mr. Wearn was saying, as I understood it, was really small grievances with how they've been handled by any part of the Town staff or management. Is that correct, Mr. Wearn?

WEARN: They could be small or they could be large, but they'll expressly involve zoning matters.

DONEY: Let me suggest this, an example, so you can understand staff-wise where I come from. We have conference call ability on our telephones. I can get Mr. Randolph, Mr. Dusey, myself, and get another party whose the complainant about an issue. An issue had come up previously about storm drainage. Is it fair that the Town Council should have to hear about the requirements to build a catch basin on a particular street and try to act as the arbitrator to the issue that Mr. Dusey, because of our design criteria of storm drainage, that person feels there should be a catch basin here – Mr. Dusey and Mr. Bowser say, no, it shouldn't be. We feel we are properly providing that drainage opportunity. I'm not going to try to intercede and interject my storm drainage knowledge, which is about that much – way down in the totem pole of knowledge of storm drainage. I either trust or don't trust Mr. Dusey and Mr. Bowser to properly administer. If we have to go to Court, then we have to go to Court, but I'm ready to stand behind when I think the department head has made a proper decision. Another good example is the on-street parking regulations and the signage that goes on. There's a manual on uniform traffic control devices that governs how you shall put on placement of signs and all of these other things, and I don't think it's something that should be allowed to be elevated to the Town Council for an appeal process. My opinion and my observation based upon "minutiae" it related to the Town Council considering and acting by choice, and hearing all development review matters, whether they be variances, site plan reviews or special exceptions and hearing all of the criteria of those applications. Some people consider that to be minutiae. Other Council members and mayors can say, no,

it isn't. This is something – were in a 99% developed community; we want to have – because we're elected by the residents of the Town, the voters of the Town, we want to be accountable and knowledgeable of those decisions when they're made, because the Council is, I can tell you this, is the ones, when an issue comes up that a matter has to come up as far as a development review decision – the voter in the Town goes to the Town Council member or the Mayor. That's my opinion.

ROGERS: I'm persuaded we should not try to do anything with solving the minutiae for the Council. That's their problem, and they'll take care of it when they want to. But now this, I've looked at as a different sort of category; it could just be a sort of one sentence item under the duties of –

WEARN: That's all I had contemplated. Just establishment – the need to establish an appeal process – an administrative appeal process.

ROGERS: Other than zoning, maybe.

WEARN: Absolutely other than zoning.

ROGERS: Other than zoning.

GUTTMAN: Mr. Chairman, I think Mr. Doney has just outlined the mischief that such a provision could create. I quite agree with him that if a resident complains to Al Dusey about the location of a drainage system, and wants to follow this kind of administrative process, in fact, what we will be encouraging is more minutiae, rather than less minutiae.

ROGERS: You've got a good point.

DONEY: There's another issue relating to this is the Building Board of Adjustments and Appeals in our Building Department, where you have a code interpretation issue that is heard by professionals in that field be they electricians or plumbers, etc., and so that really, I don't think, has any place to come before the Mayor and Town Council. You know, that type of thing.

ROGERS: That's set up under ordinance.

DONEY: That's set up by ordinance, and by State law, isn't that correct, Mr. Randolph? The Building Board of Adjustments and Appeals allows us to set up that issue. Code Enforcement Board is another good, established by State law, board that allows for the appeal of certain issues. We have a person –

ROGERS: These are local people on our Building Adjustment –

DONEY: Local contractors, you know, they're appointed by the Town Council. I think there's an attorney, a contractor, and others who are on this –

GUTTMAN: Mr. Chairman, if this commission truly wants to try to reduce the lengthiness of the Town Council meetings, they we ought to consider the constitutionalization of a requirement for a Zoning Board of Appeals, because when you look in practice at the way the Council operates, most of the matters that occur after lunch time are land use matters. I am not prepared to propose that now, and I don't think we have done the background kind of work to warrant that kind of proposal. So, since I think that's the only meaningful type of proposal that addresses minutiae, I'm against the present proposal, which I think perversely encourages more minutiae.

ROGERS: Well, can you put it in the form of a motion, or can you just –

WEARN: My suggestion, again, was for an administrative appeal process, not to supplant any requirement for zoning, or any other requirement of a board to consider any matter, and merely to provide an outlet for a town resident, an inhabitant, to be heard before taking the matter to the Town Council.

ROGERS: Or to his attorney.

WEARN: Or to his attorney.

ROGERS: And file a suit.

WEARN: That's correct.

ROGERS: That's what it is. Cut down on litigation.

WEARN: Well, all of those things, yes.

ROGERS: Okay, Ms. Marix?

MARIX: I agree with a lot of the items you brought up, including not to do anything right now. I would like to also add, however, that if someone would call me on these different things, that someone had been unruly to them, I would have said, well, you should talk to the Town Manager. And that was always the first thing that I did. Number one, the Town Manager does have a great deal to do with the Agenda, and it would have to go through him anyway, and I do see his point in not wanting to become the chief person to look into the storm drain. And I also realize that if he knows this much about it, the Council knows that much. So, getting it to the Council doesn't help. The other thing I wanted to say, we talk about minutiae all the time, and then say land use, and get rid of this minutiae, land use, variances. I'm one of

the ones who believe that the land use is the most important issue we have, and if you turn it over to some other board who is not elected, we can find ourselves in serious trouble. I consider it far more important than a great many items on the Agenda. When I don't always come to meetings, believe you me I read Agendas, and sometimes it's really quite humorous some of the things on the Agenda, but the Council has it on there and they don't think it's minutiae. However, the other thing also, is they wanted to shorten these meetings. If they wanted to there's two things, and I've told them this already that they should do: enforce the time limits shown on these applications – you have three minutes or five minutes to present the case. If they wanted to shorten the meetings, they would enforce that, and this person couldn't do his things within that time, and at the next meeting it would get short pretty quick. The other thing is what they can do likewise, is to not give so many of those variances, that causes other people to rush back for 1 ½ inches. I mean, if they knew that was a really strict Council. And I'll never forget Bob Warwick, where is your hardship and the thing is out the door – the whole issue. So, they can control the length of their meetings and, as you said, if they want to do this, let them do it, but I don't think it belongs with us. But the fact people can go to the Town Manager, many of them know they can. It's something we don't want to overlook, because many do and can and are told to. Thank you.

ROGERS: Thank you, Ms. Marix. I believe it sounds good if they had an appeal process, but I sort of see his point, that he's got experts that head each department, and when they make a decision it is pretty tough for him to overrule them or to get any one of the three people in the department to overrule him, because they are the ones that really are the most knowledgeable.

WEARN: May I pose a question? Mr. Doney, when you support the department head in a decision, such as you indicated, do you then tell the resident that he has then the prerogative to bring it up to the Town Council?

DONEY: Under "Communications from Citizens." You know, there are certain things that are non-appealable that I'm not going to, based upon what Mr. Randolph described earlier. I don't think it's fair to have the Town Council have every issue like that be appealable to the Town Council, whether it be a catch basin, or the fact that either Chief Croft or I determined that we should have certain on-street parking regulations on a particular block. We want to make it up for a popular opinion, just because 90% of the residents of that street think that it should be this. Well, maybe for reasons of law enforcement and the Police Department we feel that the permit parking program in this particular street is appropriate. So, it does by Town Code, by Ordinance, direct that the Town Manager or the Chief of Police shall regulate on-street parking, and on-street signage – that type of thing. And we try to do that so that we then don't put the Town Council in the position of having to be the ones who are trying to regulate popular opinion. I mean, you know, just because 90 residents come in and

are supportive of an issue doesn't mean it's the right thing to do. A good example, I can think of one, about the tennis over at the Seaview Park Commission. We had a Tennis Commission. We had a group of members who wanted to be involved with a certain usage of the tennis court, and Mr. Bitzer said no, and I said no, and we said, you know, that's it, and you know, you can appeal under "Communications from Citizens" to the Town Council, and then the individual said, well, I don't think I want to do that. Well, maybe that's a good reason that we tried to do the right thing. We have to be accountable for what we do, and if we're not accountable administratively, we have to be accountable in court, and not that I want to defer the matters to Mr. Randolph, but there's not a shyness of having an attorney contact myself or any department head on an issue. We need to confer, when we're contacted by an attorney, with Mr. Randolph, and we do. We try to do that, and do it prudently – to do what's in the best interest of the Town.

ROGERS: Okay. Well, unless I hear a motion, I'm going to move on to further items. No motion? All right, we'll strike that item then, or we can come back to it, but strike it for now.

The next item is 21 - Powers, duties and functions. And they are set out in our current Charter pretty well too, aren't they? Who had introduced that item?

HABICHT: That was mine, and what I was questioning was do they need to be more specific than what they are, and give the Manager the right –

ROGERS: Powers and duties? Section 4.04.

GUTTMAN: While Mrs. Habicht is looking at the Charter, I just wanted to observe that the only expert who spoke about this particular proposal were the Range Riders, and what they said was that as far as they were concerned, Section 4.04 should be expanded along the lines described in the Charter Proposals dealing with the role of the Manager. So, in effect, they had seen the other Charter Agenda Items dealing with the role of the Manager, and as I think we all would recall, for the most part they supported the implicit changes in Section 4.02, that are set out in the Agenda Items.

ROGERS: It seems to me that we were discussing under those powers, Ms. Habicht, that he should prepare and deliver an annual budget at the beginning of the budget process. It seems to me that was one of the items we had discussed.

HABICHT: Yes. And one of the others was down under "I" in the Chart – was to prepare a Five Year Plan, or whatever, with commissions to recommend, you know, to work on it too.

DONEY: Mr. Chairman and Mrs. Habicht, what item was that on what page?

HABICHT: It's on page – these pages are not numbered, but it's under 4.04.

ROGERS: That would 4.04(I).

HABICHT: I don't think it's specific. I keep trying to find it. I don't think it specifically addressed the need for a plan – a Five Year Plan or Ten Year Plan or whatever you want to have, and I guess that's what I was suggesting to be as specific.

ROGERS: But under these powers and duties, of course, is the provision – we discussed under this one whether the Town Manager had the right to hire and fire.

HABICHT: Yes. Exactly.

WEARN: That's a subsequent item.

GUTTMAN: Mr. Chairman, I think the intention behind Section – the intention may be different than implementation, but the intention behind Section 4.04(f), which says prepare and submit the annual budget and capital program to the Town Council in the form provided by Ordinance. The reference to capital programs, I believe, in the language of public sector financing, refers to a multi-year capital improvement concept, so that, I think that language is supposed to impart, embrace Mrs. Habicht's concerns, it may need some amplification, but I do know that that is generally what is intended by the reference to capital program; that there be a document that in effect is a capital budget, and a multi-year one. Is that correct, Mr. Doney?

DONEY: We have that on our planning process right now, in our budget preparation. We have a Five-Year Capital Improvement Program, and only the first year the five is adopted by Town Council, but it sets forth what we plan to do in the subsequent four years after that too, the year that it's adopted, so that it shows how we're doing it. But, you know, overarching all of this is our Town Comprehensive Plan, and the Comprehensive Plan has a ten-year planning horizon to make sure that we're looking out ten years into the future, and making sure that we have that. Plus we have the multi-year equipment replacement programs, when you know that the useful life of a piece of equipment is longer than ten years. So we try to look as far out into the future, and right now, a good example is the Information Systems Management Plan. You better not plan more than 3-5 years on computers, because you don't know what's going to happen one year, because it changes so rapidly in terms of the technology and the hardware and software. So we try to plan ahead as well as we can, realizing there are a lot of technological changes that may cause us to be able to react to those.

ROGERS: Are we ready for 1/1/2000?

DONEY: We're ready internally. We believe the year 2000 will not be a problem, and that's what Mr. Wilson – Spencer Wilson, our Information Systems Manager has advised us, so we think we've handled it all, but there are so many issues that we interact with, and other agencies and other programs, that, you know, may affect us, that we have to try to prepare ourselves to have a problem.

GUTTMAN: Mr. Doney, is the overarching long range plan that you referred to, the Ten Year Comprehensive Plan required by the State?

DONEY: Yes. The Comprehensive Land Use Plan.

GUTTMAN: Thank you.

HABICHT: Mr. Chairman, also under "a" that particular statement sort of hedges the power of the Manager to hire and fire. I mean, it's –

ROGERS: Well the last sentence –

HABICHT: Yes. The last sentence does. The Town Council may accept or reject.

ROGERS: We just discussed that generally it seems to me. Now we need to get down to the brass tacks.

HABICHT: I think so. Because I think you handicap his powers by putting that last sentence in.

ROGERS: All right. I think on this, since we are under powers and duties and functions, there is no reason why Item 22 couldn't be discussed right along with 21. Do you see any reason why it should not?

GUTTMAN: Twenty-one could be considered along with 22. Frankly, I would think it could be considered along with 22 and 23.

ROGERS: Twenty-four is a little different.

GUTTMAN: Twenty-four is done and 38 is done.

ROGERS: All right, well, I think we might as well start our discussion with 4.04(a).

GUTTMAN: Well in view of the hour, Mr. Chairman, I wonder whether it's productive to – it's apt to be fairly lengthy – debate whether we should address that now, or possibly consider item 23, which is the annual budget message, which might take up a tad less time, and still give us an opportunity to be productive.

WEARN: I'd suggest we do 23 also.

FINK: I agree.

ROGERS: Should we do all three of those things?

WEARN: No, that we do 23 now, as Mr. Guttman has suggested.

ROGERS: Okay, and put off 21 and 22 until our next meeting?

All right on the annual budget, we're talking about under the powers and duties of the Town Manager, we can discuss about preparing and delivering a narrative annual budget.

GUTTMAN: And that was my proposal, as you may recall, Mr. Chairman, and just to review the record first, George Frost and the Range Riders supported this proposal, and so did Mr. Cassella, noting, and I think importantly, and I'm quoting him: "many people are turned off by reading figures, but they understand when it is in a message." And importantly enough, one of the core provisions in the model Florida Municipal Charter, which we all have copies of, and periodically turn to. The Florida model says, and I quote: "The City Manager shall prepare and submit the annual budget, budget message, and capital program to the Council in a form provided by ordinance." So that, in effect, the model language almost identically tracks our current language, but it includes a reference to an annual budget message. And the same concept holds true in the National Model City Charter, which we also have copies of. And finally, I'd like to review the requirements of the Government Finance Officers Association, which has a program that encourages the use of user friendly budget documents. And I think Mr. Doney has described that since 1994 the GFOA has been giving its award for distinguished budget presentations, and that the Town, in fact, participates in this program, but the program requires, in order to make an award to Palm Beach, or for any other community, that a GFOA budget focus on at least 26 separate items, including a mandatory requirement for a budget message that anticipates and now I'm going to quote: Budget message should "anticipate priorities and issues for the budget for the new year. The Budget Message should describe significant changes in priorities from the current year, and explain the factors that led to those changes." In effect, that interrelates with Mr. Cassella's observation that many residents are turned off by a bunch of numbers, and it's very helpful in the initial phase of the budgetary process in this community, which starts with, what I call, the preliminary budget, which then leads to the statutorily required tentative budget, and ultimately to the statutorily required final budget in the initial stages of the budgetary process it would be helpful to residents to have a budget message, along the lines described by the GFOA, namely one that sets out the priorities, and public policy initiatives and goals for the community for the upcoming

year, and to the extent that there are new capital program items. It is my believe that they should also be included in that document at that time. I have prepared, for the commission's consideration, this is typical of me. My little computer. I'll read it, since there are some people in the audience who don't have it. "The Town Manager shall prepare and submit the annual budget, written budget message," and if I had my druthers, it would read "in the initial stage of the annual budgetary process, and capital program to the Town Council in a form provided by Ordinance." This language is identical to the Florida and National model language, with the exception of the material you see in brackets, namely in the initial stage of the annual budgetary process, because it has been my experience that by the time the final budget actually comes to Town Hall, everybody is out of Town. There is very little interest by anybody at that stage, and it's much more helpful to have it in the initial stage of the process.

ROGERS: And not only that, I think in giving it thought before you form your figures, you'd have to have the priority in mind, and you let the people know what you do have in mind.

GUTTMAN: And importantly enough, to the extent that Dr. Zaleznik was talking about management by objective principles, to the extent that they are highlighted or emphasized operational or capital budgetary goals that are set out in the budget message. It really helps in the process of objectivizing the performance goal process. And clearly, if there are major initiatives being undertaken in the particular budget year that ought to form at least a portion of the manager's performance objectives or goals for the upcoming, and perhaps multi year period, if capital improvement aspects are also included.

WEARN: A couple of observations. First of all, Mr. Guttman said that the timing was very important on when this budget message would be presented, but there is nothing in the proposed language that addresses that. Number one. Number two, I think the budget message coming from the Town Manager puts too much emphasis on the budget being an act of Town staff, as opposed to an act which is at least commensurate with and based upon Town Council action. The Town Council has a Budget & Finance Committee, sub-committee of the Town Council, and it considers the recommendations of the Town Manager for department budget and budgetary matters, and it approves, disapproves, or modifies those. If we have the Town Manager presenting a report, it gives too much weight to that report as a staff report, without considering the Town Council's views, much less it's sub-committee's views on that, because the sub-committee doesn't have input at that point, if it's given at the very initial stages of the presentation. I'm not sure that the form or model charters take into consideration the fact that we have sub-committees of the Town Council, which act in very important areas, and have significant input in them, and that this is really – the budget is really a Town Council matter, not

merely a Town Manager's determination, so a budget presentation by the Town Manager would be preceding consideration by the Budget & Finance Committee, or the Town Council, and without their direct input and isolated too much into an administrative function.

ROGERS: In presenting his, he gives a basis for Council input.

GUTTMAN: That's precisely right.

ROGERS: You know, because he tells what he thinks the Town needs, and then they think about that as they discuss it during the rest of the budgetary process. But, that gets them started. For instance, how soon does this Committee normally start functioning?

DONEY: Usually in late May, early June, and the other thing you need to keep in mind is that by State law all the 300 municipalities are October 1 to September 30th. In 1980 when the Truth In Millage Law was passed by Florida State wide referendum – the truth in millage are on a 100-day cycle, so that by July 1st the Property Appraiser is required to give you a certification of taxable value that tells you this is what your taxable value is, so that you can set your millage for next year – your operating general fund millage, so that starts a process. What we do, and as a practical matter, is bring to the Town Council at either the March or April Town Council Meeting a budget calendar, so that the calendar is something that the Town Council can set and identifies the Finance & Taxation Committee Meetings that happen usually in late May, early June, and then starts each of the processes. What I do as Town Manager, I meet with every department head on what they're going to request for the ensuing fiscal year, and give my opinion as to why they are asking for that – it's not justified or it is justified. So, we try – it's an interactive process, just like it is with myself and each department head – it's interactive with the Town Council and the Mayor to say, well, we don't think that's such a good policy question, you know, policy program we want to continue. A good example last year was lethal yellowing – should we continue our inoculation? Well, it cost blank dollars, this is what we think it provides, and from a policy perspective then the Town Council can focus on programs that it sees coming before it. Should we have a police boat? Or should we have two or three police boats? We've had several residents in the Town who think because we have a 12-mile island we should have multiple police boats. Well, you also need to have multiple people on a 24-hour shift occupying and manning– well, manning's not a good term – but occupying – I know it's non-gender – everything I do needs to be non-gender – but, you know, occupying those boats, so I think we have – and the Council, please remember this; the Mayor and Town Council decided maybe five or six years ago that it was going to have budget hearings during the season, and invited – we had two or three of them on two annual calendar years – and I think it was in February or March – where we had budget meetings that were held during the season to see whether or not there would be people in residence in the

Town who wanted to come in and offer their ideas that they thought should happen by way of budget.

ROGERS: How early could you propose a narrative report of what you expect in the budget?

DONEY: Probably in late May. Not until late May, because I need to interact with each department head to make sure what they're asking for.

GUTTMAN: But Bob, when you say late May, that's before – you can certainly do it at the same time that you submit the long tome of written figures on a programmatic basis to the Town Council – not to the Town Council – to the Finance & Taxation Committee. At that stage, you are certainly in a position to set out the priorities and programmatic activities that you are recommending that the Taxation & Finance Committee approve, because they must be implicit in the numbers that are being presented to the Town Council. It's just simply taking those numbers and to use Cassella's expression, turn them into some sort of plain English summary of what is embodied in the long budgetary document. Am I correct about that?

DONEY: That's correct.

ROGERS: They don't meet until May.

DONEY: Usually about mid-May, because just for example, when we felt – and the chief at the time, Chief Terlizzese, felt that the burglary strike force was the proper program to offer to the Town Council to address the problems we had.

GUTTMAN: And frankly, that's the stage I had in mind that one had the initial draft of the budget message that would accompany the ultimately approved Town budget. Now, true, that budget message may well change, if in the course of the Finance & Taxation Committee hearings and ultimately the Town Council hearings, some of the priorities change, and some of the initiatives change, well certainly, then, the budget message is going to change as well. But there's nothing sacrosanct about that. I think it's the appropriate point to start the budget message process is at the outset of the annual budget process, which, in effect, is May. And that's what I meant when I used the phrase "in the initial stage" of the annual budget budgetary process, but if that's confusing, perhaps we should consider at the outset of the annual budgetary process, which, in effect, is May.

ROGERS: Well the point you made earlier about having it while people are here, though, I thought that was your point.

GUTTMAN: Well, no, there is no way, but what is true is that even in the month of May there are residents here who read about the budgetary process. Right now they get their

summary of the budget out of the Shiney Sheet. It doesn't really come as an official document in terms of what the public policy initiatives are, or what priorities there should be. That doesn't come from the Town Manager's office right now. It's essentially coming from the Shiney Sheet, which calls up, I guess, the Town Manager's office, or somebody, and –

DONEY: Well, as a practical matter, what happens is that what we transmit by way of the program budgets, with the line item detail, if the Town Council doesn't want the line item detail, then we won't give it to them, but they want – the Town Council wants that, but the program, Mr. Guttman, the program style budget that we use, when we transmit that in late May, mid-May, so that in late May, early June, the Finance & Taxation Committee can meet, what we have done is each department has submitted to me, and in turn I've discussed it with them, what their budget requests are for next year, and I don't also – you know, I don't – some things I need to have the Town Council, as elected officials, help me. It's an interactive process, to say, well, maybe this burglary strike force; maybe the Council feels that the \$1 million that was used for that was something that we want to invest, and you know, you need to put it in the big picture perspective, and that is that every – and this is something that is not self-serving, but out of every tax dollar that is paid in this Town, \$.22 out of every dollar goes to the Town of Palm Beach. The balance goes to other taxing authorities; about \$.46 out of every dollar goes to the School Board; \$.23 goes to the County Commission. So, understand that we can only – this Town Council and staff can only control about \$.22 out of every dollar, but I think we have a very open process, where these Finance & Taxation Committee meetings are held and accept any and all. And also we have people through the year, Mr. Guttman, that call me or call a department head and say, I think the Town Council should consider instituting this particular service, and we suggest to them, well, you have an idea, please write a letter to the Mayor and Town Council and we'll offer that to them. We're not going to staff it and spend a lot of staff time, unless the Council thinks it's a good policy issue that should be investigated, and I think that's the proper way to proceed.

GUTTMAN: All I'm saying, I think, is that the GFOA award system pretty much outlines what should be in the budget message. I don't think there can be any debate about that. I assume the Town embraces the GFOA award criteria, because, in fact, we get the award.

DONEY: There are two awards. There's the budget award, and what's called the Comprehensive Annual Financial Report.

FINK: Which do we get?

DONEY: Both.

GUTTMAN: But I'm referring to, when I read the language before about prioritization and highlighting from the GFOA award manual. That is something that we ultimately do. All I'm suggesting is that from a management perspective it is better if that process is initiated at the outset of the budgetary process, so that the Town Council, in considering the very first preliminary rough draft of a budget understands what the Town Manager's public policy initiatives and priorities are. Now, as I envision the way the process is supposed to work, once you get feedback, because it is an interactive process, the budget message may well change. But it's very important at the outset, it seems to me, for the Town Council to know what the public policy initiatives of the Town Manager are, particularly because in other places in our charter review, we have tried to encourage more forward looking activity on the part of the office of the Town Manger, and that sort of thing. So, the budget message, and the budget process, at least at the initiation stage, is quintessentially an executive function.

ROGERS: Like the President of the United States proposed –

GUTTMAN: Exactly. That's exactly right.

DONEY: Well, let me suggest another timing issue for you, that you consider at you next meeting, because I think you're going to meet until 12:00. I was going to have our current Finance Director, James Demming, who isn't going to be as of March 4th, come and address you now about the Comprehensive Annual Financial Report Program and the budget awards program, because timing is a lot in both of these programs. I think what's very helpful though; what Mr. Guttman is saying. I can clarify, because when we submit for the opportunity to be recognized for those programs, it's after we've already adopted a budget.

GUTTMAN: I understand, and that's my problem.

DONEY: And I understand what you want, and we can easily, from a staff perspective, if the Town Council says, I want a budget message from the Town Manager, that they want me to enumerate whatever our major policy programs for next year, I can do that in May.

ROGERS: Or a summary.

DONEY: Or a summary.

ROGERS: That's understandable by the citizens.

DONEY: There are no mysteries in that budget. There is no hidden Agenda in that budget either. There's nothing that is not easily identifiable; that we can point to. I think we

can do that well.

ROGERS: Okay, any further comment?

WEARN: I do have, but I hear the bell toll.

DONEY: The next meeting is?

ROGERS: The next meeting is March 18th.

DONEY: At 9:00 A.M. 9:00 - 12:00.

ROGERS: That's correct, 9:00 until noon. I think we had four meetings during the end of March. Hopefully, we'll be able to conclude. All right.

DONEY: I'll find out more, Mr. Guttman, about the budget message, initially, too, so that we address that up front.

ROGERS: I think we really should adjourn this meeting.

RANDOLPH: Mr. Chairman, you've made only one change today. Do you want me to update this legislative draft for the next meeting, or just wait until I have more changes?

ROGERS: If you would, please, because that's very helpful to have that. Anything further? Is there a motion?

FINK: So moved.

ROGERS: Second.

WEARN: Yes.

ROGERS: All in favor, please say aye.

All say aye.

ROGERS: All right. You're adjourned.

V ADJOURNMENT

The meeting was adjourned at 12:02 P.M.

Doyle Rogers
Chairman

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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