



TOWN OF PALM BEACH

Office of the Town Clerk

REPORT OF THE CHARTER REVIEW COMMISSION HELD ON JANUARY 13, 1999

I. CALL TO ORDER

The meeting was called to order at 1:33 p.m. by Chairman Doyle Rogers.

II. ROLL CALL

Upon roll call the following members of the Charter Review Commission were found to be in attendance: Chairman Doyle Rogers, Vice Chairman James McC.Wearn, Mr. Rodney Fink, Mr. William Guttman, and Mrs. Jeanne Habicht.

III. APPROVAL OF AGENDA

The Agenda was unanimously approved through motion of Mr. Fink, seconded by Mr. Guttman.

IV. APPROVAL OF REPORT OF THE CHARTER REVIEW COMMISSION MEETING ON NOVEMBER 13, 1998

The Report of the Charter Review Commission Meeting held on November 13, 1998, was unanimously approved through motion of Mr. Guttman, seconded by Mr. Wearn.

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

Mr. Elwell commented that the "Thematic Consolidation" list had two items that should have been duplicated on the Town Council list and the Mayor list and they appeared only on the Town Council list. Mr. Elwell handed out the corrected list and identified the two numbers as 28 and 32.

Mr. Ned Barnes said he had some comments to pass along to the committee. Responding to Mr. Rogers who said correspondence was received by the Commission members from the Civic Association, Mr. Barnes said his comments were included in that correspondence, and he did not proceed with any additional comments.

Mr. Hal Scott, Chairman Emeritus of the Palm Beach Civic Association, addressed the Commission and introduced Al Flamm, an Executive Committee member of the Palm Beach Civic Association. Mr. Scott said he was celebrating his seventy-fifth anniversary in Palm Beach this year and had seen Palm Beach change dramatically during that time. He said that it was with gratification he saw the subject of Charter revision being addressed, because the changes in Palm Beach seem to mandate that this subject receive good discussion and positive action.

Al Flamm said the Palm Beach Civic Association and the Citizens Association of Palm Beach issued a joint position paper which discussed several of the core issues that are being considered by the Charter Review Commission. Mr. Flamm offered to provide copies of that paper if the members of the Commission had not received them. Mr. Flamm said the purpose of his remarks was to describe the rationale for the Associations to issue the position paper earlier rather than later.

Mr. Flamm said the Commission invited recognized, outside experts to assist the Commission in deliberations, and that move was strongly supported by the two organizations. The Associations weighed the remarks from the outside experts before internally debating their position on several of the issues that were deemed to be central to the Commission's deliberations. Mr. Flamm said that up to this point, the only comments received from the public have been from a small, vocal group which exercised its democratic right to articulate its views. He said such views were conveyed to the Commission before and during the appearances of the outside experts. Mr. Flamm said the paper was presented now to let the public know that this group who had voiced their opposition to any changes was not the only public group who cared about the Commission's mission.

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Mr. Flamm said that many Palm Beach residents do care and believe the Commission's work can have an important benefit to the future of Palm Beach. Mr. Flamm said the paper addressed two core issues, the roles of the Mayor and the Town Manager.

Former Mayor Yvelynne deMarcellus Marix, 1570 N. Ocean Boulevard, responding to Mr. Flamm's remarks, said the small but vocal group happens to be every previous elected official who spoke in front of the Charter Review Commission and the previous Town Manager. She suggested that Mr. Flamm could have added the words "and highly knowledgeable". Mrs. Marix said to be told that the Associations represent 6,000 people sounds very good compared to the small, vocal group, but she would like to know if the 6,000 people have any idea of what the subject matter and issues are.

Mrs. Marix said the position paper, drawn up by the two Associations, did not indicate who drew the paper up. Mrs. Marix questioned if the authorship included members of the Commission who are members of the Palm Beach Civic Association. She said she had a problem believing that the Civic Association would send out a paper without approval and discussion of the members present at this meeting.

Mr. Guttman responded that three directors of the Civic Association are members of the Charter Commission. Mr. Fink and Mr. Wearn are not directors. Mr. Guttman said he and Mr. Rogers sit on the Executive Committee of the Civic Association, and the Civic Association went to great lengths not to include Mr. Rogers in any discussions relating to Charter issues. Mr. Guttman said Mayor Ilyinsky asked him to serve on the Charter Review Commission in his representative capacity from the Civic Association. He did not think that the other directors of the Civic Association were asked to serve in a representative capacity. He said the Civic Association has gone out of its way to build a brick wall between that inner Executive Committee and Mr. Rogers and Mrs. Habicht.

Mrs. Marix said she would presume, by that, that Mr. Guttman would not be voting on the issues.

Mr. Guttman responded that was not true at all.

There were no further comments from the public at this time.

Mr. Wearn suggested a draft be prepared containing whatever revisionary language might be suggested as discussed at the last meeting. He recalled that Mr. Doney suggested a legislative draft be created by the Town Attorney and Town staff with language stricken, underlined, bolded, etc. as is normally done for legislative action.

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Mr. Wearn said he would initially treat the provisions of Section 1.02, Powers of the Town, by sentences, and the first sentence indicated the Town would have all powers of all self-government and home rule and all powers possible for a municipality to have under the Constitution of the State of Florida. He suggested it could be broader to include the Constitution and laws of the State of Florida and there could be a question raised about a distinction between powers of local self-government and home rule, on one hand, and powers possible, on the other hand. He said the language does not appear to need to be as broad in the granting of powers as it could be and appears to have some ambiguity or question built into it.

Mr. Wearn said the second sentence that states the Town shall have all powers that now or hereafter may be granted to the municipalities by the laws of the State of Florida is somewhat different from what is expressed in the opening sentence. He said it could be construed that this is an additional statement of powers, but it does not express that specifically, and there could be some differences between the first and the second sentences and the concepts that are expressed there. Mr. Wearn said the third sentence seemed to be discussing procedure, and his concern was the limitation on the powers that might be construed to apply by the language of the sentence and the inclusion of concern over procedures. He said the last sentence stated that the powers of the Town should be construed liberally and in favor of the Town which helped the construction.

Mr. Wearn said that if the Town and its electors should consider any revisions to the Town Charter it may be appropriate to broaden the quality and quantity of powers to the maximum allowable amount the powers the Town had the right to exercise. He said that the more power the Town is assured to have, the better the electors will be assured to have their wishes carried out through the elected officials and the Town staff.

Mr. Wearn pointed out language used in other municipalities in Florida and began with the Model Charter at Section 1.01 "Creation of Powers" which states "the city of _____ is hereby created which shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, and render municipal services and may exercise any power for municipal purposes except as otherwise provided by law." Mr. Wearn said he found some possible limitations in that language.

He then referred to the National Civic League Charter, Sections 1.01 and 1.02 and said this may be better. He read: "The city shall have all powers possible for a city to have under the Constitution and laws of this State as fully and completely as though they were specifically enumerated in this charter. The powers of the city, under this charter, shall be construed liberally in favor of the city and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article." Mr. Wearn said those two sentences seem to be very broad and give the broad nature of the powers he was

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raising for consideration by the Commission for recommendation to the Town Council should any items go forward for Charter revision.

Mr. Wearn said he reviewed all of the charters that were submitted to the Commission by the Town staff and referred to the Town Charter of Manalapan, noting that Section 1.02 had eight different sections of powers enumerated as conjunctive and not intended to be limiting.

Mr. Wearn suggested that the Town's Charter may have some limitations in the language of Section 1.02, first and second sentences, and those limitations or those questions may be procedurally limited by the third sentence.

Mr. Guttman said he thought that Mr. Wearn was absolutely correct and proposed the third sentence in Section 1.02 be changed to read: "Such powers may be exercised to the full extent permitted by law."

After discussing Mr. Wearn's comments and Mr. Guttman's proposal, Mr. Randolph said the language being discussed is general language, and he would hate to see any interpretation made that the Town did not have all the powers that are conferred by the local home rule act. He said if the proposal were to clean up and broaden the language, he agreed with what was being suggested.

Mr. Guttman made a motion that the Charter Review Commission agreed that Section 1.02 could stand some improvement and expansion along the lines suggested by Mr. Wearn and him and requested that Mr. Randolph submit a final Charter language suggestion as soon as possible and that be a recommendation to the Town Council.

Mr. Randolph said that in the event any Charter changes are to go forward, it may very well be that if the Commission did not come up with any substantive changes there may be no need for clean up in the current language of the Charter. Mr. Randolph said he thought that Section 1.02 does what the Town needs, and at some point a determination would have to be made as to whether or not the Commission would want to go forward with that change, absent any other recommendations for change. If it was clean-up language and there will be other substantive changes, Mr. Randolph offered to draft language as had been discussed.

Mr. Wearn said he would not want to recommend clean-up language to the Town Council if no other changes were suggested.

Mr. Rogers said the next item for discussion was the Preservation of Open Space - Section 1.03.

Mr. Wearn suggested tightening up Section 1.03 which implies by its title that it only deals

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with sale of property, however, the subject deals with the use and improvement of property as well, and Mr. Wearn suggested that it be broadened to clearly identify that. He said that the opening paragraph talks about the disposition of certain Town owned green space and any improvement of that by way of placing structures, but it does not talk about buildings or improvements. He questioned if the term "structures" included buildings or improvements.

Mr. Wearn said the section continues mentioning the lease of real property by the Town which limits it to a lease but not to a rental, as a lessor for a period not to exceed 5 years which seems to allow the lease of Town property for a period of four years and 364 days. Mr. Wearn was not sure that was favorable. He added the Charter required approval by vote of Town electors in a referendum. He thought the period of referendum election which is not to occur between the first day of April and the fifteenth day of December seems fine. The nature of the 11 properties addressed in this section is different for each of the properties. For example, the first one - the Palmo Way Nursery - might be identified as being limited to use only as a nursery with a garden house as an appropriate improvement. Boyd Park is a small, passive park that may be limited to use for visual enjoyment only. Par 3 Golf Course is a golf course that has improvements for that use. The Lake Drive Park near the docks has utilities which are landscaped and screened. The park is for visual and pedestrian enjoyment. Bradley Park, similarly, has a use for utilities which is at the far west side of the park and also has visual and pedestrian enjoyment use. Phipps Ocean Park is a recreation park just like Seaview Park, and it has improvements that are consistent with that use. He suggested that the use of each property be attached to each property identified, and that improvements be limited to those which are consistent with the use.

Mr. Wearn said the paragraph following the ten listed properties is perfectly appropriate so that the legal description of the properties does not have to be included with the Charter.

Mr. Wearn said the next paragraph attempts to define the word "sale" but does not tie the term sale to disposal of the property, which could be by rental or other means. He suggested some definition that would include all possibilities.

Mr. Wearn said the next paragraph dealt with improvements and suggested the paragraph could be tightened up.

He said above ground structures were identified.

Mr. Guttman recalled that he had asked about structures previously and had requested Mr. Randolph to recall the issue of a temporary structure being erected as it related to the north Fire - Rescue Station.

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Mr. Wearn said a temporary structure for the north end Fire-Rescue Station was in place for more than a year at Tangier Park while the station was renovated. He said if the Charter has the provision to protect a particular park, he thought the provision should be tightened. If the Charter intended the Town to have temporary public service structures for use, then that should be expressly permitted. He said he was not suggesting that a referendum be scheduled when there would be an urgent or emergency need for a public service structure.

Mr. Fink said he thought there was discussion concerning the water problem that there could probably be some structure on some of these properties connected with the Town's need for water which may require a different treatment than a referendum.

Mr. Randolph responded that presently public utility structures that are deemed necessary are exempted from this provision. This was done intentionally to allow the Town Council to decide if such structures were needed at some time in the future. He pointed out that some discussion should take place regarding whether that should be limited to public utility structures and the definition of a "public utility structure" as opposed to "a public structure" deemed necessary by the Town such as a fire house.

Councilman McLendon said his personal feeling was that he did not think he would agree with Mr. Wearn that uses should be tightened up that are now permitted or contemplated. He mentioned the deed restriction on Bradley Park that requires St. Edward's or the Diocese approval before anything can be done on the site.

Mr. Wearn said he thought the public utility use would be appropriate for some of the parks but may not be appropriate for others. It could be identified as such. He said the Boyd Park would not be an appropriate place for a major public utility where the park has been a passive, visual park for many, many years. Mr. Wearn said the point he was making was that the parks that need or should be protected from a visual and recreational standpoint particularly are protected.

Mr. Guttman said he was not sure that he favored changing this Charter language, because there had been no one expressing concern about the improvement limitation. He said he had no real understanding about the underlying public policy intent behind the public utility exception. He considered it a disservice if the Commission tried to develop public policy without hearing from residents.

Mrs. Douthit said this whole issue came up at St. Edward's church when the Civic Association sponsored the talks with candidates during campaigns and Earl Smith stood up and asked if everyone running would go along with this concept? She said this was a bolt out of the blue and the candidates replied affirmatively, although there was not a vast amount of discussion at that time. Mrs. Douthit said that in 1984 was when the Town opted to put it

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in the Charter so that the Town could preserve the property and green space and would not have the hands of the community tied. Mrs. Douthit said one of the wonderful things about the Town's Charter was the small degrees of elasticity. She said she begged that this elasticity be maintained and heartily recommended that every single little thing not be pinpointed.

Mr. Randolph recalled that the Town Council desired an exemption in the event that the Town determined it needed a public structure, and recommended that in the event if the Charter were amended, consideration be given to language in the last paragraph whether the language should be *public utility structures* or *public structures* deemed necessary by the Town for the conduct of Town business. Mr. Randolph said that was a policy matter to decide if the language should be so tight to deal strictly with public service structures or should the Town be exempted for public structures.

Mr. Guttman said he was reluctant to think that the Charter Review Commission was in a position to deal with the suggestion of Mr. Randolph. He thought that in the abstract it sounded like a good suggestion; however, he was quite impressed with Ms. Douthit's urging retention of as much elasticity as possible. He said he was not in favor of voting for anything of this nature without having heard from residents and others as to the need for this type of elasticity. If the Town Council considered it important to broaden the language, that would be the appropriate place to take it up.

Mrs. Habicht questioned if the Commission should consider the issue of conforming to the EPA rules at this time and was that necessary?

Mr. Randolph responded that the Town had to comply with any applicable rules, and he did not think that it was wise to include that language in the Charter.

Mr. Wearn said it appeared from what Mr. Randolph said that there may be good reason to broaden the language and to assure that it is sufficiently flexible for Town needs. He thought it was appropriate for the Commission to consider those matters.

Mr. Guttman questioned if the Charter should have language as flexible as possible or as rigid as possible, and was the Commission in a position to make that judgement when no one has been heard from?

Mr. Rogers suggested moving forward with the option of readdressing the issue later.

Mrs. Marix expressed concern about making it possible for more than just utilities, because the make up of the Town Council is never certain, and green space could be used for any public use. She said she was worried about leaving it for just public use, which leaves the

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door open.

Mr. Wearn said wireless antenna devices may be installed on public property and requirements may extend beyond and supercede themselves on the Town. He said he was not sure what Town's position is on communication antenna for wire services.

Mr. Rogers said that communications were public utilities.

Mr. Guttman said the Town had a very lengthy telecommunications ordinance.

Mr. Randolph said it would be a policy decision to change the Charter, because it presently deals with exempting public utility structures. He said he could not speak from a policy standpoint if that needed to be changed.

Mr. Guttman said he heard differing points of view, and did not think the Commission is in a public policy position to make a recommendation to either expand or narrow the language, as the public had not been noticed, and the public had not been heard from. He recalled that George Frost was for any tightening up that would restrict the disposal of public property, and the Range Riders suggested that this provision be amended to allow swapping or exchanging of private property for public property. He said that has been the extent of public policy discussion on green space provision.

Mr. Doney said the issue of either a public structure or a public utilities structure would go before the Town Council for an ultimate determination, and the conditions existing at that time would be considered based on justification.

Mr. Randolph said depending on language it may not have to go before Town Council at all, if there was a prohibition, for example.

Mrs. Douthit recalled that a sale could only happen on a referendum vote. It was simply Town use that would be permitted, and that did not take a referendum vote, but dispensing of the property did.

Mr. Wearn said the language *public utility structures* is not applied today the way it was twenty years ago. He said there are fewer regulated public utilities in the historic or traditional sense and significantly more public utilities cover a number of additional services. He said he had the concern that the communication era brings more involvement with those wanting to provide communications, as well as State and Federal regulations on limitations for municipalities in providing use.

Mr. Randolph clarified Mrs. Douthit's statement that the sale of any property required that

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be done by referendum and that was not correct. A referendum is required for a sale of the property or improvement of same by way of placing structures thereon except for public utilities.

Mr. Wearn said *Town* public utility structures would be a significant limitation.

Mr. Guttman offered a supposition if it made public policy sense to this community to use an R-O process to deliver water and placement of one of those treatment plants was considered on property identified in the Charter. If that could be done and the voters did not need to approve that or if it made more sense to privatize the procedure with a public utility sense, the Town needs as much flexibility in this provision as possible.

Mr. Fink said that the experts who spoke to the Commission had almost ignored this particular provision, and no one had any comments that it needed improvements, additions, or deletions.

Mr. Randolph said that out of Town experts would be totally unfamiliar with these provisions.

Mr. Rogers added that North Palm Beach has a very similar provision in its charter.

Mr. Guttman recalled that two people spoke to it: George Frost, whose only recommendation was to be sure that if the Town wanted to dispose of Town owned property it had to go to voter referendum, and the Range Riders recommended consideration of the concept of swapping private property for public property.

Mr. Wearn said he went through the minutes from each of the persons who had commented on the Charter, and Mr. Frost commented that it should not be changed unless change resulted in further restriction. Former Council President Hermine Wiener said tighten.

Mr. Guttman referred to page 4 of the December 1997 minutes where George Frost said he only favored restrictions on the disposal.

Mr. Wearn responded that was correct but disposal is broadly defined as the power to dispose, shall embrace any sale, exchange, rental, lease, pledge, etc . He suggested that may or may not include franchise for a public utility.

Mr. Guttman asked Mr. Wearn if this were an item that he would want to go to the voters all by itself?

Mr. Wearn replied that this provision was drafted 20 years ago, and he was not sure whether

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it fulfills the Town's needs today or into the future. He said his feeling was that it should be raised for consideration. The language for the exception about public utility and other language is not entirely clear and does not seem to provide full protection for the property as originally intended and as needed today. Mr. Wearn said if this were the only section to go forward, he would not advance it to go forward to the voters.

Mr. Guttman said, in the abstract, he would like the Town Council to have the flexibility to decide whether they would want a communications tower on public property. He said he would like to hear from residents about how much flexibility they want the Town Council to have in this respect, and that has not been done.

Mr. Rogers said the Commission had considerable discussion on the item, and the Commission can always come back to this discussion.

Mr. Rogers said the next item was Roman numeral III : The Mayor, and the first item was "Should Mayor preside over Town Council meetings"?

Mr. Fink said the Commission heard from many experts on this topic, but never heard from Mayor Ilyinsky. Mr. Fink suggested the Mayor give his opinion on this.

Mayor Ilyinsky addressed the Charter Review Commission, and the following is a verbatim transcript of those remarks.

"Good afternoon ladies and gentlemen. Paul R. Ilyinsky, the duly elected Mayor of the Town of Palm Beach. There are numerous ways to look at this, but I think what we have to understand, and I think some of our consultants who came down here and talked to us understood it, although they did not want to say it out loud necessarily. I took the liberty of speaking to three of them that I knew about and two of them that I knew quite well personally as to whether or not this should be changed.

"I think there is one thing we have to understand, and that is that Mayors in this Town have always brought their own personalities with them. We operate here somewhat differently than any other Town in the world, and the one thing that must not happen is that the Mayor be placed in a box. Because what happens now is, the Mayor not being a voting member of the Council, it gives him that lovely area between earth and heaven that he operates in. I get phone calls from people who wouldn't dare call a member of the Town Council up. And I get a lot of them, and I enjoy them. That is the kind of Mayor I want to be. But to make the Mayor a voting part of the Town Council, quite frankly would be a disaster. The Mayor needs to have free movement and the fact that he can be approached, he does not have a vote—Let me tell you, the day I became Mayor of this Town I never got another phone call from any lawyers, which is where most of them came from, because they realized that I

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could swing an election possibly by a consensus of opinion which I have done numerous times, and I did last night – twice. The Mayor has to remain in that position.

“The word ‘ombudsman’ is old fashioned, but, nevertheless, the Mayor is still, to a certain extent, an ombudsman. He brings his thoughts, his conceptions, the people he has talked to without violating any Sunshine, groups of people he has spoken to which the average Council member does not get an opportunity to do, and to reduce the Mayor as a voting member of the Town Council or even as its President, in this Town, would be an absolute, unmitigated disaster. To begin with, there are not enough hours in the day for the Mayor of this Town to take over the responsibilities of the Council President and do them both. It takes a lot of time. What Mr. Guttman doesn’t seem to understand is that I spend more hours working at this job than any job I ever had, and I’ve enjoyed it much more than any job I’ve ever had. But to think that the Mayor simply goes out to dinner parties and kisses pretty ladies, which is part of the job and which I have always enjoyed, but I can assure you that the Mayor of this Town has an awesome amount of power, but he brings it with him. If he doesn’t have it, it’s because he doesn’t want it.

“His relationship with the Administration, the Manager, the Assistant Manager, and anyone else is extraordinary. And, Bill, we’re not talking about a Charter for Philadelphia, or Boston, or Baltimore, and when you live here long enough to realize what makes this Town the best run city in the world, then you’ll understand what this government is all about and how it operates.

“I beg you, you’ve had some wonderful ideas and I hope you change them. If you make them, well, it won’t happen, because I’ll make sure it won’t happen because it finally comes up in front of the Council and I assure you that it won’t happen.

“The Mayor in this Town has to remain a little above his fellow Council members. There is a Councilman right there. You can ask him how he feels about it. I would not have the relationship with the Council if I were a voting member of it. By any means. Every time I spoke to them about an issue, I would be violating the Sunshine. Can’t have that, not in Palm Beach. And so when you consider it, consider it very carefully. And you’re an old timer here, so I think you know what I’m talking about, Doyle.

“Thank you.”

Mr. Rogers said he agreed the Mayor should not have a vote, because he should maintain his impartiality. Mr. Rogers did not see why he would not be able to preside over a meeting.

Mayor Ilyinsky said the mayor does not have time, and it would be too much responsibility.

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Mr. Rogers asked that the Commission members discuss the issue of the Mayor presiding over the Town Council meetings.

Mr. Guttman said he wanted to emphasize that this item relates only to the possibility of merging the function of President of the Town Council and Mayor in terms of presiding and does not relate to whether or not the Mayor should or should not have an ordinary vote as a council member. He said it was fair to say that each expert who appeared before the Commission thought it was important for the Mayor to preside as public policy leader. He then reviewed some of those remarks:

Frost: Most municipalities have a Mayor who presides, which puts the Mayor in a good, strong political position.

Casella: Mayor should be presiding officer. He identified the fact that under the current Palm Beach Charter, the Mayor is not the presiding officer.

Svara: Mayor's inability to preside at meetings would be likely to impede the view of the Mayor by other communities as political leader.

Mr. Guttman said that in the meeting with West Palm Beach, the court stenographer put Mayor Ilyinsky opposite Mayor Graham. The President of the Town Council was put at the far end of the table. The perception outside the community is that the public policy leader in Palm Beach is the Mayor.

Mr. Guttman said that Mayor Ilyinsky said the Town of Palm Beach is a very special community and in the early stages of deliberation, he took the time to find out what kind of power the Mayor had in a Council/Manager form of government in communities like East Hampton, Vail, Aspen, the lovely towns in California, and Newport R.I. All of these communities have Mayors who do not get compensated, who work part-time, and who preside at Town Council meetings. All of them also have a vote.

Mr. Guttman said he was also concerned that the President of the Town Council, for many purposes, is the public policy leader in our community, and in the past there had been a temptation to rotate that position amongst the various Town Council members. Professor Svara emphasized the importance of the Town Council acting in a collegial fashion to choose the person who had the best skill to act as leader. A rotation system could put in an unqualified person who did not have the skill to perform that function, and a rotation system is undesirable.

Mr. Guttman said that in 1970 during a Charter Review meeting, Former Mayor Earl E. T. Smith was a strong proponent of the Mayor presiding and having the vote, as was the

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predecessor of George Frost, B. Arnold. Mr. Guttman said that Robert Grace thought the best team he ever saw in the way of a public policy leader and town manager was the one that existed between Claude Reese and B. Arnold.

Mr. Guttman recalled that Mr. Svava discussed the dimensions of Mayoral leadership and said the basic, fundamental, traditional role of the Mayor was acting as presiding officer. Mr. Guttman said he knew that Mayor Ilyinsky believed that presiding would be too much under the present setup; however, there is always the possibility of relieving the Mayor from some of the Charter functions. Mr. Svava's study showed that where there was Mayoral leadership, there was much less minutiae going on in meetings, and better performance evaluation, good public policy leadership, and better long range planning. Mr. Guttman conceived the idea of the Mayor in his role as presiding officer almost being the minimal amount that a Mayor should perform if any public policy leadership is expected.

Former Mayor Marix said she was fully in favor of the system the Town has now, as was Former Mayor Ritchie. If the Mayor presides at meetings, the Mayor would obviously adopt their work, which would change the Town. There is no doubt that people who live in Palm Beach recognize that it is a very different type of Town, and it cannot be compared to anybody else unless there is a definitive problem, and no one has yet come up with a Charter related problem. Palm Beach is recognized as an extraordinary community and the more the Town strives to be like other places, the more the Town will be like other places. The President of the Council should see that those meetings are orderly and do not go on forever. The minutiae should be controlled by the Council President or the Council itself, but not by the Mayor himself. Mrs. Marix said if Mr. Guttman had lived in Palm Beach as long as some others have, he would see how things had developed.

Mrs. Habicht said she respected what both of the Mayors have said, and the fact that Mayor Ilyinsky is doing a fantastic job has a lot to do with his personality, and there is always the possibility that type of Mayor may not show up again. The title of Mayor denotes the leader of a group, and when the Mayor is elected, Mrs. Habicht was sure the people think the Mayor will be the one conducting the meeting, etc. Current jobs of the Mayor should probably be delegated. She found it confusing that two people are in authority in the Town Council, and she considered the Mayor the main authority. Mrs. Habicht asked Mayor Ilyinsky if the vote was the only thing that bothered him if he were the person who ran the Town Council?

Mayor Ilyinsky responded that he did not know. He continued that if anyone believed that by changing the Charter it will make the Town of Palm Beach a better place to live, a prettier Town, a more lovely Town, and a better run Town, the Commission is welcome to do it. The Town is absolutely unique, and he did not want to make the Town un-unique. If for one minute what the Commission does would make the Town a better place to live in, then he was all for it. The Mayor said do not change the Charter just to be changing it.

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Mr. Wearn said when each of the experts addressed the Commission, he heard them express a preference for the Council/Manager form of government, and they were addressing their recommendations for the best kind of Council/Manager form of government. He said he did not hear any of them address specifically the concept or operation of the form of government that the Town has. It concerned Mr. Wearn that the experts comments are not on point.

Mr. Wearn said the second aspect of his comments was that for the Mayor to preside over meetings effectively, he would have to be knowledgeable of all of the items that were on the Agenda as if he was going to vote in order to effectively run the meeting. He said it struck him that the Mayor would be requested to go outside the realm of his activities that are on a much broader policy base and have to do a great deal more homework in preparation of the meetings. He said he was not sure the work was justified.

Mr. Wearn said his third comment was that the only problem he heard raised concerning the Mayor's role is a problem of perception from the outside. He personally did not know what form of government Aspen or Newport has, but he did know what form of government the Town of Palm Beach has. Mr. Wearn said he served under two of the three Mayors who have functioned under this Charter, and each of those two Mayors and the current Mayor have all served as Town councilmen and Presidents of the Town Council. Mr. Wearn said he would support the observations that were made by all three Mayors on how effective the division of responsibility is between the Mayor, the President of the Town Council, and the Town Council. Mr. Wearn said he found it worked well and continues to work well. Without a problem necessitating its change, he had concern about going forward with a change.

Mr. Fink said he was interested in a comment that Svava made: "The Mayor can rise above the differences in the Council and does not have to take a position on every issue. The Mayor does not have to provide his opinion on all questions as do other members of the Council and the Mayor is then viewed as having an insulated role." Mr. Fink said perhaps that better helps the Mayor become the focal point of a cohesive Council that operates that way. Mr. Fink said he thought the system worked well in that regard, and he was on the fence concerning the issue. He said the Mayor in his own spot has more status than if he were just another Council member.

Mrs. Douthit said the President of the Council and the Mayor have remained apolitical as far as political parties go. There has been no bickering, arguing, or someone trying to take control. She said she was afraid if one person is empowered or expected to do everything, that would not be good, and shared responsibility is a very good thing that maintains a proper balance that could very easily be tilted otherwise.

Mr. Rogers said it was very difficult to make a decision about changing what the Town now

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has, in view of the fact that it has been successful; however he thought there was an advantage in having a person who is recognized as a political leader of the Town. He said it seems that the more trapping of office a mayor is given, he will be looked at as a political leader and can deal with other communities which the Town deals with more now than previously. He said he thought that presiding over the Town Council would not be that much more of a burden, but apparently Mayors Ilyinsky and Marix feel that would be a burden. Mr. Rogers said he believed it was not necessary for a person presiding to know all details of development reviews in order to handle the duties of presiding officer. If the Mayor was given the authority to preside, he would not be in favor of the Mayor having a vote. The presiding officer should be impartial and should not have to cast a vote. The Mayor should not have a vote because people would hold things against him/her, and be irritated about a vote against them. Mr. Rogers said he was reluctant to change that position until he heard further discussion.

Mr. Al Flamm said consideration being given to modifying some of the structural changes in the Mayor or Town Manager is not at all changing the lifestyle in the Town, and he viewed it as exactly the opposite, as moving into the 21st century with the complexity of intra-municipality communications. A change of the sort being described of identifying a clear, unambiguous leader would substantially enhance the ability to maintain the unique lifestyle that is maintained in Palm Beach. He said if the Town is not prepared to have this type of dialogue in an effective way, that could change it. Not knowing who the political leader is in Town does not put the Town in a strong position to have dialogue with others on very important issues that are important to the well being of the Town residents.

Mr. Scott said he wanted to make a sharp rebuttal to some of the comments of Mayor Iyinsky particularly the sharp criticism directed at Bill Guttman. He said that Bill Guttman is the CEO of the Palm Beach Civic Association who has worked long and hard to bring the Citizens Association of South Palm Beach and the Palm Beach Citizens Association into one body. The Charter Review paper submitted to the Commission was unanimously approved by Executive Committees of both organizations and was not Mr. Guttman's. Mr. Scott said it is the organizations who are asking for change. Mr. Scott said Palm Beach was unique compared to the many communities in which he lived, and this was one area where he was quite surprised that politicians do not appear to listen. He requested that the Mayor listen to the people who have asked that change be considered and asked that this Commission act reflectively and be responsible to listen to the people who have already said they believe change is necessary.

Max Schorr, Counsel to the Citizens' Association, said he has continued to have a strong interest in the way Palm Beach operated. He said the Town has a reputation as being unique, but questioned if the Town was not receptive to improvement? He said he was shocked at the time the Town Council spends on minutiae—things that should be handled by other

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personnel in the Town. The Town Manager and Town personnel should have the responsibility of conducting the day to day business affairs of the Town, not the Council. This Town should be improved in its management, and can be improved. The Mayor is a very wonderful personality, and we all love him, and he has taken the position that he is adverse to any changes, and he does not want the responsibility that may be imposed upon him. Mr. Schorr said that Mr. Ilyinsky is not going to be Mayor forever, and there will be different personalities and attitudes, which should be a consideration.

Mrs. Marix said she was extremely concerned with this Town. Mrs. Marix said she wanted to take exception to some things that were stated previously, and if the Mayor is running the meetings, he must make the agenda and will have an extra number of jobs. She said if the Mayor does not have the time to take care of the extra jobs, communication with other communities, etc., a worse problem will be created. Presently, the Mayor or the President of the Council can represent the Town at meetings, and one person will not be able to do everything. She said she disagreed with Mr. Schorr that the Town is not looking to the future. She reminded him that the Mayor had run for the third time in a row without an opponent. There is no dissatisfaction with the form of government by the regular residents of the Town.

Mr. Rogers asked Mrs. Marix if she would have run for Mayor if she had the additional duties of presiding over the Town Council?

Mrs. Marix responded she believed very honestly that she did not realize how important a Mayor's job could be until she really got into it, and if she knew how time consuming it was, she may or may not have done so. The Mayor's job is what the individual makes it, and that is the most important part of this whole thing. Mrs. Marix cited examples of Mack Ritchie and Earl E. T. Smith who were very different and brought certain strengths to the office.

Mr. Rogers recalled that Mayor Smith thought that the Mayor presided over the meetings and had a vote before he ran for office the first time. Mr. Rogers said that was one of the reasons he wanted to have the Charter changed, so he could have a vote.

Mrs. Marix said it was very, very important when citizens run for office that they attend the meetings from beginning to end to see what is involved.

Mrs. Marix said the issue of too much minutiae in the Council meetings has nothing to do with the Charter whatsoever. If the Town Council members do not cut off the discussion and grant more and more minimal variances, more and more people will come to the meetings with requests. She said a time limit was given to applicants for presentations when she was on the Town Council, and within reason, the applicants were reminded when the time ran out. Mrs. Marix said this Town Council could cut the meetings seriously if the applicants

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were reminded prior to the presentations that they would have time limitations and if they exceeded the time, they would have to return the next day or the next month.

Mr. Guttman said he would like to make the observation that a popularly elected presiding officer might well find themselves campaigning on the issue that Mrs. Marix addressed, namely that they are going to try to reduce the amount of minutiae that comes before the Town Council and try to run a much tighter agenda before the Town Council.

Mrs. Marix responded a popularly elected president that would mean the presidency would not be rotated within the Council, and she thought that would be a very serious mistake. She said a Council President could not be elected as a President; the President is elected as a Council member. By their activities, what they do, and how they handle themselves, are the determining factors.

Mr. Guttman said he and Mrs. Marix obviously disagree philosophically. He said if a rotation system is implemented, the person who has the best skills to lead the meeting will not be in place.

Mrs. Marix said the rotation system is currently in place, and responding to Mr. Guttman's statement about the current President, Lesly Smith, said the Town Council members have voted on this yearly and there is nothing to stop anyone else on the Town Council from nominating anyone else for President. Mrs. Marix said one of the reasons President Smith is re-nominated is because she does an excellent job. She said it is up to the Town Council to elect her.

Mrs. Marix said the members with whom she served were all excellent members and they usually let someone remain as Council president two to four years or the President Pro Tem would be elevated to the Presidency. Mrs. Marix said she thought that was something for the Town Council to decide on totally.

Mr. Fink asked Mrs. Marix did she feel her administration as Mayor would have been enhanced if she had been the presiding officer?

Mrs. Marix responded that it would not and the reason was that the presiding officer is not meant to entertain their opinions initially, and when all the opinions are gathered together, the Council President gives his or her reason and calls for a vote. As Council President, they cannot keep interrupting with an opinion. As Mayor, she said she had the best opportunity to direct a lot of opinion of the Council, because if some discussion was going on between a council member and a person or applicant, she could address Mr. Randolph for confirmation and/or direct what was happening from past experience, etc. As presiding officer she would not have been able to do that.

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Mrs. Marix said the Commission had mentioned the relationship between the Catholic Diocese and the use of Bradley Park. She said it was correct that the Diocese of Miami did control the rights over Bradley Park, and the Town had the use of it as long as it was not used for buildings. If the Town does build on it, the Park would revert back to the Diocese.

Mr. Rogers asked Mrs. Marix if she thought she was the political leader of the Town when she was Mayor of the Town?

Mrs. Marix responded that she never considered that she was a politician, but she considered she was the Mayor and, as such, the leading elected official of the Town. Mrs. Marix said she would represent the Town when it was in the best interests of the Town; however, it was important to be able to delegate this to the highest qualified person. This issue was normally discussed with the President of the Council and the Council.

Mrs. Habicht said she had come to the conclusion that a lot of authority, more than any other single individual, is placed in the President's hands. This person is elected by the Council, but she did not believe the average person in the Town realizes that all of this authority will be placed in the hands of someone that is elected by the Council. Mrs. Habicht found it very unusual that there was no job description of the President, other than in the case of an emergency. She questioned if it would be more democratic to limit the time that one person could serve as President?

Mrs. Marix responded it would not be more democratic, because that would be taking the rights away from the Council members. Mrs. Marix said it was important to realize what "President of the Council" means. The president is the person who presides at Council meetings. In addition, the President of the Council does work with the Town Manager and the Town Attorney on the agenda. The reason only one at a time meets with the Town Manager is because of the Sunshine Law. The main job of the President is to preside, and the reason that Lesly Smith is re-elected is because she does preside very effectively and pleasantly.

Mr. Guttman said that it was not working that way right now, and Mrs. Marix said she felt at liberty to interject her own ideas at whatever stage of the proceedings she felt were appropriate. At the moment the President of the Town Council does not voice an opinion until the end, but neither does the current Mayor. When you look at intergovernmental activities one of the hallmarks of leadership is the power to delegate, and the Mayor did not delegate to the President of Town Council the role of negotiating with the City of West Palm Beach over water. The Council tried to pick that person who had the most political clout to negotiate. What the Town Council was looking for, in terms of intergovernmental negotiations, was that person who really had the public policy clout in the community, and that happened to be the President of the Town Council and not the Mayor.

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Mrs. Marix said that may well be, and it was either right or it was wrong. She said that has nothing to do with changing the Charter. If the Town Council picked the right person for that job, that was fine.

Mr. Guttman responded that the only reason the Town Council picked the right person was because that was the person who both internally and externally, within West Palm Beach, was perceived as being the public policy leader.

Mrs. Marix said that this incident has nothing to do with the question of the Mayor presiding at the Town Council meetings.

Mr. Guttman said when the Mayor or the Mayor's delegate goes to negotiate, if the perception is that this person has a meaningful public policy role in the community, Mr. Guttman stated that person has more clout when dealing with their counterparts in other communities than they would if they did not have that role.

Mrs. Marix disagreed and said if the person is representing the Town in front of another body, the person is not going to complete a deal but will return to the Town Council with the possibilities.

Mr. Guttman replied that one possible exception is that the Mayor is the ceremonial leader of the Town of Palm Beach much in the same way that the President of Germany is the ceremonial leader of Germany and nobody in the Town Chambers would know his name. He said when politics count, it is the Prime Minister (of Germany) who goes to the Group Seven meetings. He continued that in Israel, the President is not the political leader. It is the Prime Minister who is the leader. He added that it is true also in France and nearly every parliamentary democracy that one can think of. He said that the Town of Palm Beach's form of government is patterned after that sort of government.

Mrs. Marix said she thought (the group) was getting very far away from what was trying to be done. Mrs. Marix said the Town of Palm Beach is a very lovely community, and no one has shown a problem with the Charter. The only problem she heard presented at these meetings was a personality problem, and the people in other communities may not recognize the Mayor as the most important person. Mrs. Marix said it is a personality matter and thought that the real issue is not being addressing when the Town of Palm Beach is being compared to Israel's form of government. The real issue is what is being done in the Town of Palm Beach and what, if any, are the problems connected to the system? She mentioned that neither the experts or members of the Commission have produced real reasons that previously elected officials or Town Manager said had any bearing on the Charter. Mrs. Marix said a great number of other matters could be addressed that are not Charter matters, but to change the Charter to cure how West Palm Beach looks at a delegate is not the answer.

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Mrs. Marix said she could not support that.

Mr. Flamm said he agreed with Mrs. Marix when she spoke of delegating the deep well project. He said when the discussion was about the Mayor in the presiding role and being the chief political leader and the indication is that the Mayor would be too busy. He said the Mayor had better learn to delegate. Also, during the discussion, the comment was made that if one presides one better have in depth knowledge about the subject matter. Mr. Flamm suggested that anyone with the veto power should be knowledgeable in depth on the subject matter.

Mr. Rogers said he thought if the Mayor presides, he obviously would have to know a lot about what is going on, and a lot of what is on that agenda is not so much internal Town business. It is other people's business. Mr. Rogers said he would not think the Mayor should have a vote so on those items, he could preside as an impartial chairman. In the stances when he is conducting the Town's business and is representing the Town before other communities, he needs to know what is going on in the Town government. Mr. Rogers suggested other duties could be delegated to other people on the Town Council.

Mr. Rogers asked Mr. Doney how long does it took for the President of the Town Council, working with the Town Manager, to formulate the agenda?

Mr. Doney responded that he met with the Town Attorney, the Building and Zoning Officials, and staff in the Town Manager's office. The Town Council acts as the Town's Building Board of Adjustment and Appeals, so half of the day, on a monthly basis, is consumed with development review matters. Approximately 3-4 hours are devoted to administrative matters. Mr. Doney said he spent about an hour with the Town Council President, who approves what is on the Agenda. The Town Council approved a policy about submitting matters for the agenda by other Town Council matters.

Mr. Rogers said that was his point, that it really does not take that much additional time just to set the agenda.

Mr. Doney said that each person brings his or her own personality to preside over any meeting, and many issues are reviewed on their own merits.

Mr. Wyatt said he heard a few things discussed that are really not true. Policy is not set by the Mayor, or President of the Town Council, but by Town Council itself. The Town Council determines policy, by vote. The Mayor meant to say earlier that he would use his position to influence the public that his ideas should prevail as the role of the Mayor, but he is not threatening from a legal point of view to veto any policy matter in this regard.

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Mr. Wyett said the Mayor does provide leadership and had influenced his vote on the Town Council a number of times, although it is well known that the Mayor and he have differences of opinions. He said he gives the Mayor all of his support and respect as Mayor. Mayor Ilyinsky has a slightly different approach to the job of Mayor than did Mrs. Marix. Former Mayor Marix was a very strong Mayor with very strong leadership skills. Mayor Ilyinsky knows he has the same power but prefers to let the Town Council make most of the decisions, and he supports the Town Council even if he disagrees. Mr. Wyett said Mayor Ilyinsky could be a stronger Mayor, but he does not need to be. The Mayor is experienced enough to know that if he had a weak Town Council, he could exert more control.

Mr. Wyett said there are six elected officers of the Town Council, the Mayor being the sixth without a vote, and the Mayor can sit back and be detached. Not without interest, but detached to the point of judging what is going on. He can look at it differently than Council members who are involved in discussion. Mr. Wyett said Mayor Ilyinsky often and usually represents the Town, especially for the intergovernmental meetings. He is the acknowledged leader and spokesman for the Town of Palm Beach. Mr. Wyett explained the Town Council chose President Lesly Smith to conduct the water negotiations with the City of West Palm Beach with the aid of Mr. Hartman, a consultant hired by the Town.

Mr. Wyett said he had seen all of the Charter Commission members at the Town Council meetings, and until you see the Council in action and how the Council tries to make this Town better, it is hard to judge. To give an example, a very fine restaurant chain, called Houston's, who came to the Town Council last month. There were many concerns and many safeguards that would be considered. The only way for Council members to do that is to hear the applicant, and conduct discussion in the open under the Sunshine Law. When Houston's arrived, they thought that the idea of reservations was not necessary, and were convinced that in this Town they would need reservations to be Town-serving, as well as valet parking. This took two meetings. Parking in Royal Poinciana Plaza was also considered, and the parking problem was also discussed. If this is called minutiae, then he was for it. Mr. Wyett said he believed that the meetings could be shorter; however, that is not a Charter issue. If the six people on this Council want to stay up all night and run a 24 hour marathon, leave it to the Town Council.

Mr. Guttman asked Mr. Wyett if he believed that, although the present members of the Town Council do not mind the hours, the considerable amount of detail that the Town Council gets into discourages other people in Town from running for office?

Mr. Wyett responded he did not really think so. Mr. Wyett said this was just a dry spell where people are not coming forward to run for office, but that too will pass.

Mr. Guttman asked Mr. Wyett if he believed that residents generally should go to the Mayor

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with complaints or problems rather than to Town Council members?

Mr. Wyett responded, if that were the case, the Mayor would need several secretaries.

Mr. Guttman asked Mr. Wyett if it were preferable for public policy perception to go to someone who does not have a vote and who does not preside with those kinds of Town resident problems, because the Mayor is above the fray and can be more detached?

Mr. Wyett replied the Town has roughly 10,000 residents, and there are 10,000 answers to that question. He said anyone who calls him with a concern receives an automatic answer for them to call the other Council people and give them their opinions.

Mr. Guttman asked Mr. Wyett if he ever advised any residents to speak to the Mayor because he is detached?

Mr. Wyett said he often includes the Mayor when he suggests making calls, and this is very effective. Palm Beach is a very small Town and runs pretty close to the New England form of government. The Town Council members and the Mayor try very hard to represent the citizens of Palm Beach. The members are not paid and they do not want to be paid. They are just trying to do a good job.

Mrs. Habicht said one thing seems to be repeated over and over again and that is the job seems to be shaped by the personality of the person who gets the job. But there could be a time when somebody is elected who does not think the way everyone else does. At this time and in the past, the Town has been blessed with great Mayors. Mrs. Habicht asked Mr. Wyett if he were concerned that there are not parameters or controls or a job description?

Mr. Wyett said Palm Beach has been blessed with strong Mayors, including the current Mayor, and Town Councils.

Mr. Wyett said he would like to provide a vision of the future:

The year is 2010, and the most popular person running for office is not a very good moderator and may not be a great leader; however, he is the best liked person in Town. Mr. Wyett said when he voted or nominated someone for office on the Council, he does so out of considering the best qualified person who can lead the Council and help make this place a better place to live. If that person disappoints him, a change could be made the following year. Every year a Council president is elected by the Town Council, and no one buys a vote on the Town Council. The flexibility of the Council to judge who should lead them is necessary.

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Mr. Fink asked Mr. Wyett if he perceived any sort of a problem existing under the Town's present set up as to who is the true political leader of the Town as perceived from the outside of the community as well as the inside?

Mr. Wyett replied that the City of West Palm Beach is aware that the Town's system differs from theirs, and Nancy Graham knows that the Town Council President has the confidence of the Council. The Mayor has negotiated with West Palm Beach in the past, but he is not the best qualified person to negotiate on water, and President Smith understands the issue better. Also, President Smith is a good negotiator. However, if it's just intergovernmental, then the Mayor is excellent, and very well respected in the community. The negotiations with the City of West Palm Beach are unusual and are only on one subject, water.

Mr. Wyett said the Town Council President spends a great deal of time with Town government, and he thought that was more than the Town Manager indicated.

Mr. Doney added that the President of the Town Council also signs letters and other correspondence that go to other agencies after conferring with staff on the contents and form.

Mr. Wyett said all of the Town Council members speak to staff members, and some of the details may be considered minutiae, but he considered that part of his job.

Mrs. Habicht said she thought Mr. Wyett needed to be assured that the Commission was not here to criticize, but to look at the Charter to see how long it can last. Mrs. Habicht said the biggest thing was the worry of "How can (the Town) keep on being so lucky?"

Mr. Wyett said the Town of Palm Beach is blessed because men and women are attracted from the educated walks of life who have chosen to move to Palm Beach because they can afford it, love it, and want to keep it. Mr. Wyett said he thought the ensuing generations will have the same idea. Mr. Wyett said he did not think that anyone will be elected or will stay on the Town Council or will be Town Council President or Mayor without that vision.

Mr. Wyett said that as far as the Mayor relationship—if it's not broken, don't fix it. He said, that in his estimation, the Commission was not moving in the direction of anything superior. Most of the experts who appeared before the Commission had not read the Charter, nor had they seen the Town Council in action. Mr. Wyett questioned how many other municipalities run the way Palm Beach does, or have corruption, favoritism, or fair play ever been issues? Mr. Wyett said Palm Beach was a wonderful place to live.

Mr. Wearn said he thought it would be good for the Commission to digest what Mr. Wyett said, and he would like to go back and make a few more comments before the Commission breaks.

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Mr. Rogers agreed with Mr. Wearn and said he was not prepared to have a final vote at this point.

Mr. Wearn said he thought all of the record that has been established, including that which was heard from a recent Council member, who elaborated and consistently expressed facts about the operation of the Town that were heard from all of the Mayors, Councilpersons, and the Town Managers, all who functioned under the present Charter, who all seem to concur that the issue of the Mayor presiding at Council Meetings and on a question of changing the Mayor's role, they all have consistently said, in retrospect and in present view, that it works and that it works well, and presented with an alternative, that they do not embrace it.

Mr. Wearn said Councilman Wyett indicated that there was no real problem, and this appears to be a single issue problem which is the water issue and perhaps that is a generated issue by those that may view the Town as adversaries.

Mr. Wearn said the Town has in its Charter a separation of powers that carefully established a Mayor and a Town Council, which is given very express, broad, general power with great flexibility. Broad general power and flexibility were two issues that the Commission previously addressed and stated they wanted to perpetuate. Mr. Wearn said that broad general power is set forth in Section 3.07 Procedure. Subsection (b) Rules and Journal. "The Town Council shall adopt its own rules and order of business." He said the rules would certainly appear to include how the conduct of meetings occurs through the management of a President, which is why the President is not expressly mentioned in the Charter. He said there is great flexibility in the Council in ordering and managing how its business is conducted. If the Council found that a President was not working, the Council could ask the Mayor to serve in that role. There is nothing to prohibit it, but there is great flexibility already provided.

Mr. Wearn said he thought the Commission had a very good discussion, which hopefully will end in an education not only for Town persons, but for those outside of the Town as well. Mr. Wearn said he did not see a problem, yet, that needs to be addressed and that can be addressed by making the Mayor preside over Town Council meetings.

Mr. Rogers said Mr. Wearn considered the interpretation of the procedure article, Section 3.07, that the Town Council itself could ask the Mayor to preside.

Mr. Wearn replied that appeared to be flexible and allow a choice by the Town Council.

Mr. Guttman said he did not think that was true because the President has to be elected from the Council members. He said that the important point was after listening to all the experts,

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the Commission is still discussing the separation of powers, and the Council Manager form of government does not have separation of powers although West Palm Beach, the Federal government, and every Civic course taken in school talks about the separation of powers. Mr. Guttman said he thought the Commission needed to ask the fundamental question of, "What is the job description of the Mayor." He said that clearly each and every one of the Town Council members is a grievance handler in an ombudsman sense. Also, virtually no Mayor has ever performed the Charter duty of submitting written reports to the Town Council.

Mr. Wearn said that Mayor Richie did on a regular basis, and Mayor Marix also indicated that she did.

Mr. Guttman reported that he hired someone to go through all of the minutes, and they are not reflected in the minutes. He recalled that the Charter Commission requested that Mr. Doney provide a sample of Mayor Ritchie reports, and the Commission has not received them yet, and he was not sure that they exist. Mr. Guttman said if the Mayor right now is an ombudsman without a role, he can perform a ceremonial function, and he has an intergovernmental function that can be and is trumped by the Town Council. He questioned what the job of the Mayor is in Palm Beach. It seems to him that by folding the Mayor's job into the President of the Town Council who acts as a defacto ceremonial leader, whenever clout matters in intergovernmental negotiation is the one chosen, and despite what Councilman Wyett said, he is the one on the Town Council who has probably the most business experience, the most experience with negotiating. He clearly has nearly equal experience with Councilman McLendon in terms of the details of water. Mr. Guttman questioned why the Town Council chose the President of the Town Council to represent the Town in negotiations? He said the answer clearly is because the President of the Town Council is perceived to be the one who has the political clout to best represent the interests of Palm Beach beyond its borders. Mr. Guttman said that everything indicates that more and more governmental responsibilities are devolving from the Federal level to the State and regional levels, and the need is to look into the future and see what kind of problems this community is likely to face. It begs for someone being able to represent the Town of Palm Beach, albeit with the ability to delegate when it makes sense, with the ability to come to the table with enough stature to adequately protect and defend the quality of life in Palm Beach.

Mr. Guttman said that he noticed that Councilman Wyett talked about how he was willing to support and indeed will support the election of the presiding officer, Lesly Smith. Mr. Guttman said he must say that in his role as Chairman and CEO of the Civic Association, he constantly gets requests from several Council members jockeying for President Pro-Tem of the Council, and they are doing it because they want the stature in the community. He said that was his problem with the rotation system. If it worked ideally, everyone would be able to abstractly sit back and determine who is the person most qualified for the position;

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however, experience teaches that Councils were falling into the mistake of rotating it to people who often were not qualified.

Mr. Guttman said that the Mayor not only needs to be prepared because he has the veto power, there is also a probability factor of over 30% that there may be a tie vote on the Town Council, and any Mayor who does not prepare on the important issues is making a mistake, because casting a tie vote is a real possibility. He said he thought the Commission had to look to the challenges of the future and ask, "Are we equipping a public policy leader to help generate with their fellow Council members good public policy as it relates within the community and develop negotiating positions as we increasingly will not be able to act as an isolated island all to ourselves?"

Mr. Wearn said that only once or twice has he spoken from personal experience being a Town Councilman, and this is one occasion that he wanted to address the question that Mr. Guttman raised regarding the selection of the President of the Town Council. He said that in his experience, both from observation and from inside, the selection is made by the Councilmen, as Elected Officials, for the very best leader of the Council in its legislative function that the Council can select. It is not made on an automatic rotation basis or in a sense of "There ought to be rotation". It is made from the Council persons deciding who is best to lead the Council in its business for the next one year.

Mr. Guttman responded that he can say that there are Council members who lobby both the Civic Association and the Citizens Assoc. to rotate the President Pro-Tem, lobby to have that position, who are not approaching it through the prism that Mr. Wearn described. He said, for whatever reason, not only are the meetings longer than they used to be, but the craving to be the top dog has increased as well.

Mr. Wearn said he did not attribute the length of the meetings to who is the President Pro-Tem of the Council or to the President. He referred to Section 3.07 which states the Council shall adopt its own rules and order of business, and if the Council finds it broken, it has the power to fix it. Mr. Wearn questioned if the Commission had to fix the Charter to designate and demand that the Council have the Mayor as its President? Mr. Wearn said he had not seen a problem that demanded that.

Mrs. Habicht said she served on the Town Council in Cook County in Chicago, and the elected Mayor officiated in all of those things listed in the Charter. Mrs. Habicht said she was just trying to understand how it works.

Mr. Rogers asked how long Lesly Smith had been President of the Town Council?

Mr. Doney replied she had been President since approximately 1994.

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Mr. Doney said he would like to suggest looking at Section 3.05 (g), and he thought that section gives the Town Council and the Mayor the ability to do whatever they want to do, and when the Council feels differently than the Mayor feels on a particular issue, the Council can vote to designate another person.

Mr. Wearn mentioned that the meeting was to adjourn at 5:00 p.m.

Mr. Rogers said the Charter Commission has another meeting this Friday from 1:30 p.m. to 5:00 p.m.

Mr. Doney questioned if the same agenda could be used for the next meeting?

Mr. Rogers responded that another agenda would not be needed, because the Commission was just going down this list.

Mr. Wearn made a motion, seconded by Mrs. Habicht, to recess the meeting until Friday, January 15th at 1:30 p.m.

Future Charter Review Commission meetings were scheduled for:

Friday, January 15, 1999 at 1:30 p.m.
Thursday, January 21, 1999 at 1:30 p.m.
Friday, January 22, 1999 at 9:00 a.m.
Thursday, February 18, 1999 at 1:00 p.m.
Friday, February 19, 1999 at 9:00 a.m.
Thursday, March 18, 1999 at 9:00 a.m.
Friday, March 19, 1999 at 9:00 a.m.
Thursday, March 25, 1999 at 1:00 p.m.
Tuesday, March 30, 1999 at 9:00 a.m.

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