

**SPECIAL TOWN COUNCIL MEETING HELD ON OCTOBER 26, 1999: CHARTER
REVIEW COMMISSION REPORT**

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 1:55 p.m. on October 26, 1999, in the Town Council Chambers by President Lesly Smith. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky; President Lesly Smith; President Pro-Tem Allen Wyett; Councilman Sam McLendon; and Councilman Leslie Shaw. Others present for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Human Resources Director William Crouse; Assistant Police Chief Michael Reiter; Finance Director Jane Skittone; Fire-Rescue Chief Vincent Elmore; Public Works Director Albert Dusey; Planning, Zoning & Building Director Robert Moore; Recreation Director Russell Bitzer; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The pledge of allegiance was led by President Smith.

III. APPROVAL OF AGENDA

A motion was made by President Pro-Tem Wyett to approve the agenda. Mr. McLendon seconded the motion. The motion carried 5-0.

IV. CHARTER REVIEW COMMISSION REPORT DATED APRIL 19, 1999 (*Deferred from May 11, July 13, and October 12, 1999*)

President Smith said the Charter Review Commission report would be considered, item by item, with public input as each item was being considered.

(Each item of the Charter Review Commission report will be listed as it was considered.)

- 1.A. Recommendation:** Modify Section 1.02 of the Charter to eliminate the possibility that the general powers provision in Section 1.02 of the Charter might be interpreted as restricting the extent to which they may be exercised or limiting the maximum governmental powers claimed by the Town.

Mr. Wyett made a motion to approve item 1.A. The motion was seconded by Mr. McDonald and carried 5-0.

- 1.B. Recommendation:** Modify Section 3.05(f) of the Charter to empower the Town Manager in conjunction with the Mayor, or in the Mayor's absence, the President of the Town Council, to take temporary emergency measures without legislative approval in matters of extreme emergency involving matters of public health or safety.

Mr. McDonald moved approval of item 1.B. The motion was seconded by Mr. Shaw.

Mr. Wyett suggested adding to the recommendation: "in the absence of either the Mayor or the Town Council President or the Town Manager then the President Pro-Tem can act".

After discussion, President Smith clarified that the Manager can act alone and the makers of the motion accepted the inclusion of the President Pro-Tem.

On roll call, the motion carried 5-0.

- 1.C. **Recommendation:** Modify Section 5.04 of the Charter to allow the Town Council to set the form of election ballot by resolution.

Mr. Wyett made a motion to approve item 1.C. The motion was seconded by Mr. McLendon and carried 5-0 on roll call.

- 1.D. **Recommendation:** The Commission believes the Charter should be modernized by inserting gender neutral language, omitting an outdated reference to the open space charter amendment in the next to the last paragraph of Section 1.03, and correcting typographical errors and inadvertent omissions and ambiguities.

Mr. Wyett made a motion to approve item 1.D. The motion was seconded by Mr. McLendon and carried 5-0 on roll call.

- 2.A. **Recommendation:** The Mayor, elected by popular vote, shall not preside at Town Council meetings but will remain the ceremonial leader in addition to the Mayor's other duties set forth in this report.

Recommended Revision: No Revision to Section 3.05(a) or 3.05(b) (except capitalize The).

Mr. Wyett made a motion to approve the recommended revision, and Mr. McLendon seconded the motion. On roll call, the motion carried 5-0.

- 2.B. **Recommendation:** The Mayor's duty set out in Section 3.05(c) to enforce Town laws should be refined.

Recommended Revision: Section 3.05(c) of the Charter be modified to read as follows:

Sec. 3.05. Mayor: Powers.

- (c) The Mayor ~~shall have the responsibility to see to the faithful enforcement and execution of all Town Ordinances and laws~~ may confer with the Town Manager to oversee the Town Manager's faithful execution and enforcement of the Town Charter and Town ordinances and laws, resolutions, policies, procedures and acts of the Town Council.

Mr. McDonald made a motion to approve Section 3.05 (c). The motion was seconded by Mr. McLendon and carried 5-0 on roll call.

- 2.C. **Recommendation:** Section 3.05(d) of the Charter, which names the Mayor the Town's "ombudsman", should be strengthened by including a "job description" that states precisely what the role entails.

Recommended Revision: Section 3.05(d) of the Charter be modified to read as follows:

This Section 3.05(d) includes both Recommendations C (above) and D (below)

Sec. 3.05. Mayor: Powers

- (d) The Mayor shall act as Town Ombudsman, ~~reporting to the Town Council in writing at each regular meeting on all to:~~ (1) receive, investigate and report the concerns of Town residents; and (2) work to achieve an equitable solution or other appropriate action regarding such concerns. The Mayor may report to the Town Council, at the Mayor's discretion, on any matters of public interest; with his recommendations. Such reports shall include the status of projects of any kind which have been authorized by the Town Council. Including the Mayor's recommendations, if any.

Mr. McDonald made a motion to approve Section 3.05 (d) - the first issue. Mr. McLendon seconded the motion. On roll call, the motion carried 5-0.

- 2.D. **Recommendation:** The requirement in Section 3.05(d) for the Mayor to give written monthly reports on "the status of projects of any kind that have been authorized by the Town Council" should be modified because it is unclear, outmoded, too broad and in practice is disregarded because it is not a viable procedure. This provision subsumes both trivial and significant projects and should be discretionary, not mandatory.

Recommended Revision: Section 3.05(d) of the Charter be modified to read as follows:

Sec. 3.05 Mayor: Powers

(d) The Mayor shall act as Town Ombudsman, ~~reporting to the Town Council in writing at each regular meeting on all~~ to: (1) receive, investigate and report the concerns of Town residents; and (2) work to achieve an equitable solution or other appropriate action regarding such concerns. The Mayor may report to the Town Council, at the Mayor's discretion, on any matters of public interest, ~~with his recommendations.~~ Such reports shall include the status of projects of any kind ~~which have been authorized by the Town Council.~~ including the Mayor's recommendations, if any.

Mr. McDonald made a motion to approve the second issue in Section 3.05(d). Mr. McLendon seconded the motion. On roll call, the motion carried 5-0.

- 2.E. **Recommendation:** The Mayor's power to break a tie vote (Section 3.05(h)) should be removed and the authority to veto ordinances (Section 3.05(e)) should be expanded to cover resolutions.

Recommended Revision: Section 3.05(e) of the Charter be modified to read as follows and Section 3.05(h) of the Charter be deleted:

(e) The Mayor shall have a ~~the~~ right to veto any ~~Ordinance ordinance or resolution~~ adopted by the Town Council. ~~Such in regard to ordinances, such~~ veto shall be in writing and shall be delivered to the Town ~~official which shall be designated by the Town Council~~ Clerk within five (5) days of final passage of such ~~Ordinance ordinance~~. The Town Council may, at a regular or special meeting held within sixty (60) days following such veto, pass or readopt such ~~Ordinance ordinance~~ by a ~~two-thirds (2/3)~~ four-fifths (4/5) vote of the entire Town Council membership, and such ~~Ordinance ordinance~~ shall then become effective. Any veto by the Mayor of a resolution adopted by the Town Council shall be made orally or in writing during the same meeting at which the resolution was adopted and such veto shall be recorded by the Town Clerk during such meeting. The Town Council may, at the same meeting during which the resolution was vetoed, or at a regular or special meeting held within thirty (30) days following such veto, pass or readopt such resolution by a four-fifths (4/5) vote of the entire Town Council membership, and such resolution shall then become effective.

~~(h) the Mayor shall have the right to vote and all regular or special Town Council meetings in order to break a tie vote on any Ordinance, Resolution or Motion, but shall not otherwise vote, except as hereinafter provided in this Charter.~~

The Mayor commented that from the point of view that if the Mayor did not have a tie breaking vote, he could act in consort with other members of the Town Council without violating the Sunshine Law. He questioned if this should be part of the Charter.

Mrs. Smith asked Town Attorney Randolph to comment on a situation where a Town Council member recused himself, leaving a four member Council, where the Mayor would no longer have the power to break a tie?

Town Attorney Randolph replied the issue in front of the Town Council would not carry in the event of a tie vote. He said he thought the issue could come back to the Town Council when there were five members; although in the matter of a recusal, there would never be a full Council on that issue, so the matter would not carry.

Mr. Doyle Rogers, Chairman of the former Charter Review Commission, explained the Commission made this recommendation because they thought the Mayor, as a free agent, would be able to form policy better, interact with intergovernmental conferences and meetings, and also be able to take another member of the Council with him. Presently, the Mayor cannot confer with another Council member, and an opinion was obtained that exempted the Mayor from the Sunshine Law if this were passed.

Mr. Shaw suggested the negatives should be weighed against the ability to go as a group and talk.

Mr. Rogers said the Commission was advised that there were not many tie votes where the Mayor had to break a tie. Secondly, he suggested the change may not be so meritorious if the Mayor could not vote to sway one of the Council members one way or another.

Mr. McDonald said he wanted to clarify that the only time where an issue could not be brought back to the Council would be the occasion of a recusal. He added that if a Council member were just absent and not recused, the issue could be brought back before the full Council.

Mr. Randolph said that although the present Town Council may consider this problematic because it would appear that something is being given up that has existed for so long, the Council should keep in mind that most commissions have five members without a mayor who could break a tie vote, and these commissions are faced with similar situations all the time, and this is not an unusual situation.

Mr. Rogers added that was correct, because many mayors vote as they are members of the Council.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 10/26/99

Mr. Randolph said that many councils appoint the mayor and that mayor would have a vote all of the time.

Mr. Rogers said the Commission's idea was that if the mayor were exempt from the Sunshine Law, the mayor is popularly elected by the vote of the people and could be the policy leader and interact with adjacent communities.

Mrs. Smith replied that she had seen mayors do that, without taking the vote away from them. Some of the mayors were policy makers and their positions were known to the Town residents, and they worked with neighboring communities. Coastal community forums were held where the Mayors and Town Managers met, and these Mayors were not restricted from breaking a tie vote.

Mr. Rogers suggested perhaps the mayors Mrs. Smith was speaking about, served before the Sunshine Law went into effect.

Mr. Doney replied he thought the law became effective in 1970.

Mrs. Smith said if the date was 1970, she was referring to mayors after that date.

Mr. McLendon said it had always bothered him that the Mayor did not have a vote after listening to all of the procedure. He thought that no one should have the power to deal behind the scenes on issues and that they should be discussed openly. He said he was opposed to the suggestion, and he would prefer to see the Mayor have a regular vote with the Town Council.

Mr. Rogers replied that the Mayor does have the veto, and the proposal did not take that away. The veto was extended, not only to ordinances, but to resolutions.

Mrs. Smith said she was afraid that this proposal would take the Mayor out of the loop, and if his only thing is to veto ordinances which are considered early on the agenda, the Mayor could leave at that time, depriving the Council of the Mayor's input for the rest of the meeting. Mrs. Smith said she thought the Mayor's input was invaluable.

Carol Merrill, Vice-Chairman of the Civic Association, addressed the Town Council. Mrs. Merrill stated the view of the Civic Association related to the role of the Mayor, and that was to take a serious look at that role and to strengthen it.

Mrs. Merrill said the Association had hoped that the Commission would recommend merging the positions of Mayor and Town Council President in order to clarify both inside the Town and outside the Town who the public policy leader in the Town is, and obviously the Commission declined to do this. She said that, secondly, on a closely related matter, the Association hoped the Commission would recommend giving the Mayor either an ordinary vote at Council meetings or leave in place the current tie voting and veto scheme. In fact, the Commission recommended taking away the Mayor's right to break tie votes and expanded the Mayor's veto power to include resolutions as well as ordinances.

Mrs. Merrill said the Association was asking the Town Council to please consider, regarding the role of the Mayor, that if the Council decides to retain the Mayor's power to break tie votes, then the Council should consider merging the positions of Mayor and Town Council President.

Mayor Ilyinsky responded that should never happen in Palm Beach.

Mr. Shaw said he did not see that breaking a tie had any correlation to expanding the veto to cover resolutions. He thought that these were separate issues and should be treated separately. He said he did not wish to take away from the Mayor his right to break a tie vote and did think the Mayor should have the right to veto ordinances and resolutions. Mr. Shaw said he thought there were two separate issues here: to take the Mayor's tie-breaking power away and that should be voted on independently and then the vote should be taken on whether or not to expand the Mayor's veto power to include resolutions as it now includes ordinances.

Mayor Ilyinsky commented there were not enough hours in the day and month to combine the Mayor's job with the Council President. He added the Mayor has a different set of responsibilities and suggested retaining the status quo for the Mayor's role.

Mr. McDonald said he supported the Commission's recommendation.

Attorney Randolph clarified that to divide this item into two separate issues, it would be necessary to place a period after "removed" in the second line and call that item A. Item B would begin with "The authority to veto ordinances...".

Mr. Rogers said that one thing the Commission considered that did not pass was to give a double vote to the President of the Council in case of a tie, and that would still leave the Mayor as a free agent.

Mrs. Smith said she was opposed to taking away the Mayor's power to break a tie and thought it was very important that the Mayor had this right because he was elected by the people who counted on him having full knowledge of various situations.

Attorney Randolph said he understood that Council wanted the Mayor to retain the ability to break a tie vote on variances and special exceptions. He said the Charter does not preclude the Mayor from doing that; however, the ordinances, the way they are written now do preclude the Mayor from breaking a tie vote on variances and special exceptions. Mr. Randolph suggested the ordinances should be amended if that was the Council's intention. Mr. Randolph said the ordinance reads that it has to pass by a 3/5 vote of the Town Council; however, it was not relevant to this discussion.

Mr. William Guttman, former member of the Charter Review Commission, said Attorney Randolph raised an important point, because the present Charter does allow the Mayor to cast a vote in case of a tie. The issue was raised during the Mar-a-Lago matter when Attorney Ray Royce, Mr. Trump's attorney, took the position that the ordinance did not permit the Mayor to cast a vote in that instance. Mr. Guttman said, if it is the will of the Council to have the Mayor cast a vote in the instance of a tie vote on zoning matters, then the ordinances should be amended.

Attorney James McC. Wearn suggested that this issue of the Mayor breaking a tie vote should be broken out as a separate item for the electorate in a referendum to allow the Town electorate to make that decision.

Mr. Randolph said the first issue for the Council's consideration is: "The Mayor's power to break a tie vote should be removed."

Mr. McDonald made a motion to approve that recommendation.

The motion died for lack of a second.

Mayor Ilyinsky said he thought that the Town has been well run and is in good shape, and for the sake of expediency, he did not think anyone was more well suited to break a tie vote than the mayor. He said a mayor probably knows more about an issue than anyone else would, and breaking a tie vote forces a mayor to do his homework. Mayor Ilyinsky suggested leaving the matter the way it is currently.

Mrs. Smith reminded the Council that the issue under discussion was whether the recommendation to have the mayor break a tie vote should be removed. Mrs. Smith asked for another motion.

Mr. McLendon made a motion to have it left in the Charter. Mr. Shaw seconded the motion. On roll call, the motion carried 4-1 with Mr. McDonald casting a negative vote.

Mrs. Smith said the second part of the recommendation would read: "The authority of the mayor to veto ordinances [Section 3.05(e)] should be expanded to cover resolutions."

Mr. McLendon made a motion to approve the aforementioned recommendation. The motion was seconded by Mr. Wyett and carried 5-0.

- 2.F. Recommendation:** The Mayor should be empowered to represent the Town in intergovernmental affairs without the Town Council being able to override that task.

Recommended Revision: Section 3.05(g) of the Charter be modified to read as follows:

Sec. 3.05. Mayor:Powers.

(g) The Mayor shall represent the Town in meetings of, or hearings before, elected officials of other governmental bodies and before Cabinet level officials and heads of bureaus and agencies of the federal and state governments. The Mayor may delegate such authority to any elected or appointed official of the Town. The Mayor and/or the Mayor's delegate shall not take a position at any such meetings contrary to the prior expressed position of the Town Council, except when the Mayor and Town Council shall have designated some other person to act in a particular matter. In case of a disagreement between the Mayor and the Town Council, the will of a majority of the Town Council shall prevail.

Mr. William Guttman, former member of the Charter Review Commission, explained that the present Charter provides that while the Mayor normally represents the Town in negotiations or outside of its borders, the Town Council has the power to override that designation and appoint someone else. He said that one of the benefits the Charter Review Commission believed would accrue by allowing the Mayor to represent the Town or having the Mayor designate someone else would be to enhance the ability of the Mayor to negotiate outside of the Sunshine Law with his counterparts in other governmental entities.

Mr. McLendon made a motion to approve the recommendation for Section 3.05. The motion was seconded by Mr. Shaw. On roll call, the motion carried 5-0.

3. A. **Recommendation:** Section 3.06(c) of the Charter should be amended to provide that former elected officials should be given a preference in filling vacancies on the Town Council, but the person filling it should be disqualified from running for elected office at the next regular election.

Recommended Revision: Section 3.06(c) of the Charter be modified to read as follows:

Sec. 3.06. Vacancies; Forfeiture of Office; Filling of Vacancies.

(c) Filling of Vacancies. A vacancy in the office of Mayor, or of a Town Council member; shall be filled by a majority vote of the entire Town Council in the case of a Mayoral vacancy or by a majority vote of all of the remaining members of the Town Council in the case of a Town Council vacancy; provided, however, that a in the case of a tie vote to fill a Town Council vacancy, the Mayor shall have a right to vote to break the tie. A Mayor or Town Council member so chosen shall serve only until the next regular Town election, at which time any unexpired term of the Mayor or Town Council member whose vacancy was so filled shall be submitted to the electors for the election of a successor; and provided further that the individual so chosen by the Town Council to fill such vacancy shall be disqualified from running for elected office at such next regular Town election. In filling any such vacancy, the Town Council shall first consider former elected officials of the Town as candidates to fill such vacancy.

Notwithstanding any quorum requirements established in this Charter, if at any time the membership of the Town Council is reduced to less than a quorum, the remaining members shall, by majority vote, appoint additional members in the manner provided above ~~and the Mayor shall have a right to vote to break a tie.~~

Mr. Wyett said he thought the Charter had lasted so long because it had leeway and was not so restrictive. He suggested the Town could adopt a policy used by other cities where everyone runs at large, where there would be three vacancies and five people running, and the three highest votes win. In that case, no one is specifically running against another person, and the party who came in fourth, in case of a vacancy, would be the one to succeed for any vacancy. Mr. Wyett said things do change and perhaps it is best left to each council to decide how to make appointments.

Mr. Guttman said the Commission did consider the concept as presented by Mr. Wyett. He said it was important to recognize that the experts who were familiar with practices across the country said the Town's existing practice of looking to former elected officials as a potential pool to fill any vacancy was the sort of practice that is followed fairly regularly throughout the country. The way the Charter language is drafted does not require the Council to do that.

Mrs. Smith questioned the need to put this language in the Charter at all. Mrs. Smith noted that in Section 3.06, the language should be "to fill" not "to file" a Town Council vacancy. (This language was taken out in the recommendation but would be left in after a previous vote.)

Attorney Randolph said two issues should be looked at by the Town Council: Section 3.06 (c) should be amended to provide that former elected officials should be given a preference in filling vacancies on the Town Council, and the person filling the vacancy should be disqualified from running for elected office at the next regular election. Mr. Randolph said the argument was whether the Town Council wanted to make the second issue to remain a Town policy or something that can be done by ordinance as opposed to making it part of the Charter.

Mr. McDonald made a motion to approve the recommendation, including both of the issues as stated by Attorney Randolph, Section 3.06(c). The motion was seconded by Mr. Shaw.

Attorney Randolph said he would like to take back the statement that the Town Council could call an election if they chose. The Charter states, as it is worded now, that a vacancy in the office of the Mayor or Town Council member shall be filled by majority vote of the entire Town Council, and it may be required that the Town Council do that rather than call a special election.

On roll call, the motion carried 5-0.

- 3.B. **Recommendation:** The Charter should be amended to permit the adoption of the annual budget by ordinance or resolution, but budget amendments adopted after the annual budget should be approved only by ordinance.

Recommended Revision: Section 7.01 of the Charter be modified to read as follows:

Sec. 7.01. Annual Budget.

The annual budget of the Town may be adopted by ordinance or by resolution, as determined by the Town Council. However, budget amendments adopted subsequent to the annual budget shall be adopted only by ordinance.

Mr. Guttman, responding to a question from Mr. Wyett, said the Commission recommended this item because the State law governing the adoption of budgets (TRIM) requires the municipalities to hold two special meetings to adopt the budget, so it doesn't matter if it is done by ordinance or resolution. That was the reason the recommendation was made to broaden the language. He said it has been the Town's practice to have a substantial contingency right in the original budget document to cover unforeseen events that might accrue during the year, and the Town's budget basically has a 15% contingency built into it. It was the feeling of the Charter Commission that if the Town Council wanted to amend the budget and go beyond the 15% contingency amount, then in fairness to the community, there ought to be two public hearings.

Mr. Wyett made a motion to approve the recommendation for Section 7.01. The motion was seconded by Mr. McLendon and carried 5-0 on roll call.

- 3.C. Recommendation:** The Town Manager should be required to arrange an orientation session relating to the operation of Town government for public officials elected to office for the first time.

Recommended Revision: Section 4.04(i) of the Charter be modified to read as follows:

Sec. 4.04. Powers and Duties of the Town Manager.

- (i) **Arrange, at least annually, within sixty (60) days of the Mayor and/or Town Council members having been installed in office, for an orientation session relating to the operations of Town government and related matters, to be attended by at least newly, first time elected officials of the Town.**

Mr. McDonald made a motion to approve the recommendation.

Mrs. Smith expressed concern having the Town Manager responsible for educating people who perhaps should not have been elected in the first place.

Mr. McDonald responded that whether they should have been elected or not is not the issue, because they need to be educated.

Mrs. Smith said this was not the type of thing she would expect to see in the United States Constitution. She said the Charter is on a local basis but a similar document to the Constitution and did not think this issue should be included in the Charter; however, the newly elected officials should meet with the Town Manager prior to the election.

Mr. Wyett suggested tightening the time period of the meeting with the Town Manager.

Mrs. Smith asked if there were a second for Mr. McDonald's motion? There was none.

Mr. McDonald said he would like to withdraw the motion and make a new motion.

Attorney Randolph clarified that the meeting Mrs. Smith mentioned was discussed by the Charter Review Commission, and they thought, rather than making it a policy matter that may happen from time to time, it should be part of the Charter so as to require the Town Manager to arrange to have such a meeting after each election. He said the time period of sixty days would allow the Town Council to have it within ten days if they wished.

Mrs. Smith said she thought that within sixty days, the Mayor and Town Council members installed in office would have an orientation session; however, her impression was that only the Town Manager would be meeting with the members. She suggested wording be added to specify a special Town Council workshop.

Town Manager Doney said for any election in the future, as a practical matter, it would be advisable to have this on the agenda to set a special Town Council meeting at the February meeting.

Mr. Randolph said that this recommendation was placed under the Powers and Duties of the Town Manager, and it would almost have to be removed from that section and insert it some place else in the Code. He said the idea was to put the responsibility on the Town Manager to arrange this meeting each year. Mr. Randolph said he did not find the present wording confusing; however, if the Town Council wanted to keep it under the Powers and Duties of the Town Manager, the wording could be: "The Town Manager shall arrange at least annually within ____ days of the Mayor and Town Council members having been installed in office for an orientation session of the Mayor and Town Council."

Mr. McDonald said he thought the Commission wanted to give the administrative responsibility to the Town Manager so someone would be responsible for setting the meeting. Mr. McDonald made a motion to approve the Town Manager being responsible to schedule an orientation meeting for new Council members prior to their being sworn in for the office to which they have been elected.

After discussion, Mr. McDonald withdrew his motion.

Mr. McDonald made a third motion to approve the item as recommended.

Mr. Wyett said he did not think the motion could be made, because the Town Manager did not have the authority to call a special Town Council meeting.

Mr. Shaw said he did not think it belonged in the Charter as it was a policy issue.

Mr. McLendon made a motion to leave the recommendation out of the Charter.

Mrs. Smith said if the Town Council wanted to make a special workshop to orient the new people elected to the Town Council, it should be a policy issue.

The motion was seconded by Mr. Shaw.

Mr. Randolph clarified that the motion was denying the recommendation with the knowledge the Town Council can do this by ordinance or by policy.

Mr. McDonald suggested Mr. McLendon's motion should be to deny.

Mr. McLendon accepted the suggestion and moved to deny the recommendation of the Charter Review Commission. Mr. Shaw accepted the clarification. On roll call, the motion carried 5-0.

The following is a verbatim transcript of the discussion following the motion.

Mrs. Smith: But I think this would be the time to say that we feel that the policy should be that there should be a Special Town Council Work Shop for newly elected officials with the Town Manager and all the department heads as soon as physically possible after the election.

Mr. Doney: And especially the Town Attorney, because of quasi judicial.

Mrs. Smith: Especially the Town Attorney.

Mr. Wyett: Could I make a recommendation to put that on the next agenda to establish formal policy because we can't do that today?

Mrs. Smith: We can do that.

Mr. Doney: Mrs. Smith? Does the Town Council want this to be an agenda item for November 9th?

Mrs. Smith: Does the Town Council want this to be an agenda item for November 9th? That this be a Special Town Council Work Shop to be held as soon as physically possible after the election for the newly elected members of the Town Council and the Town Attorney?

Mr. McLendon: Yes.

Mr. Shaw: Let's just move it that that becomes the policy. That there be a special work shop within thirty days.

Mr. McDonald: Second.

Mr. Doney: It will be on the agenda that whoever is the Council President

Mrs. Smith: Mr. Doney, if we pass it today, it doesn't have to be on the agenda.

(Roll call, passed unanimously)

Mrs. Smith: It's done, Mr. Doney. It's policy.

- 4. A. Recommendation:** Section 4.01 of the Charter which embraces the concept of a professional manager, and Section 4.02 of the Charter which deals with the appointment of the Town Manager, should be amended to include a precatory statement regarding the proactive, chief executive-like aspect of the Town Manager's job in Section 4.01 and a statement of qualifications in Section 4.02.

Recommended Revision: Section 4.01 and 4.02(a) of the Charter be modified to read as follows:

Sec. 4.01. Town Manager

There shall be a Town Manager who shall be the chief administrative officer of the Town. He ~~shall~~ As chief administrative officer, the Town Manager shall head a unified administrative structure and shall have ultimate management responsibility for the Town. With an outlook that is forward-looking in perspective, the Town Manager shall offer informed strategic vision and advice to the Town Council on policy development, shall suggest public policy alternatives, and shall be responsible for making sure that approved policies and procedures are implemented. The Town Manager shall also be responsible to the Town Council for the administration of the day -to-day activities of the Town and for all Town officers and employees placed in his the charge of the Town Manager by or under this Charter or by any action of the Town Council.

Sec. 4.02 Qualifications; Appointment; Removal; Compensation; Performance Evaluation

~~(a)~~ (a) Qualifications; The Town Manager shall be required to bring, among other things directed by the Town Council, technical competence in public administration, and professional management skills to the task of running the Town.

- 4.B. Recommendation:** Section 4.02 should continue to specify that the Town Manager will serve for renewable one-year terms, but language should be added to this Section to clarify that the Town Manager need not reside within the Town unless the Town Council directs otherwise.

Recommended Revision: Section 4.02(b) of the Charter be modified to read as follows:

~~(b)~~ Appointment. The Town Council shall appoint by a majority vote of all Town Council members, a Town Manager for a period of one (±) year. The Town Manager may be reappointed to an unlimited number of one year terms. year terms. The Town Manager need not be a resident of the Town, but may reside outside the Town unless the Town Council shall otherwise direct.

After discussion, Mr. McDonald moved denial of the recommendation. The motion was seconded by Mr. Wyett and carried 5-0 on roll call.

- 4.C. Recommendation:** The provision in Section 4.02 dealing with the removal of the Town Manager should be amended to make it clear-cut that the Town Manager may be removed from office by the Town Council at any time with or without cause.

Recommended Revision: Section 4.02(c) of the Charter be modified to read as follows:

~~(b)(c)~~ Removal. The Town Council may, by majority vote of all Town Council members, suspend or remove the Town Manager at any time with or without cause prior to the expiration of his or her term. During any suspension, the Town Manager shall continue to receive his or her salary until the effective date of a final resolution of removal. In the event of removal other than for good cause shown, his the Town Manager's salary shall continue until the end of the term.

Mr. McDonald made a motion to approve the recommendation of the Charter Review Commission. Mr. Shaw seconded the motion. On roll call, the motion carried 5-0.

- 4. D. Recommendation:** Section 4.04(a) should be amended to provide that the Town Manager has unrestricted authority to hire and fire personnel, regardless of their position.

Recommended Revision: Section 4.04(a) of the Charter be modified to read as follows:

Sec. 4.04. Powers and Duties of the Town Manager

The Town Manager shall:

- (a) ~~Recommend to the Town Council the appointment of, and when he deems it~~ Appoint and, when deemed necessary for the good of the Town, the suspension or removal of all suspend or remove all Town employees and appointive administrative officials officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted by ordinance or resolution, and the Town Manager or by Town Council ordinance; the Town Council may accept or reject

~~such recommendations and may make appointments in the absence of such recommendations;~~

Mr. Shaw said he did not disagree with the concept but disagreed with the fact that there were no controlling issues. He did not believe the Town Manager should have that express authority without any control coming back to the Council, and the Council had an excellent working situation presently. Mr. Shaw said it was a dangerous change to make and if it is considered, the Council should have some control either by a negative vote, a 4/5 majority vote that states if the Council does not agree with the Town Manager, the Council has the right at a 4/5 vote to turn down his opinion.

Mrs. Nancy Douthit, former Town Council President, 330 Cocoanut Row, said she would like to back up Mr. Shaw's comments. Mrs. Douthit said the management of the Town has traditionally been the responsibility of Council, and Council members are perceived as representatives of the citizenry. The Charter re-writes all of the above and simply replaces Council responsibility with political mayhem.

Mrs. Douthit said the corporate approach to hiring and firing of the Town Manager is fine, but department heads, as proposed by the present Charter Review Commission, with the exception of one, have not had any municipal management experience. The one exception opposed this corporate approach—that is of the Manager just being able to hire and fire department heads with no responsibility to Council. All available past Council members and George Frost have recommended against this Commission recommendation. She said many of the experts that were called upon by the Commission were leaders of the ICMA and Florida League of Cities, but during the many hours of meetings she attended, the opinions of the department heads themselves were never solicited. Mrs. Douthit said that when responsibility is given away, it is unlikely to be returned. The Council alone stands between the lobbyists and the Town Manager or department heads. Political mayhem ensues when the insulation of Council commitment to setting of policy is abandoned and work time is forcibly expended on lobbyists. She said she did not want lobbyists or non-elected people running the Town.

Mr. Shaw said he thought the present relationship between the department heads and the Town is a one on one, because many of the department heads realize their accountability does not just go to the level of performance as viewed by the Town Manager but is also a level that is viewed by the Council who are elected by the public. Mr. Shaw said he thought there was a greater responsiveness to the public, because to some degree, the department heads agree that the Council is controlling their jobs on an annual basis, and if they are not doing a good job in relationship with the Town and how they communicate with the residents of the Town, the Town Council, as elected officials are going to hear about it. He thought that added another level which is important. Mr. Shaw said he thought the Manager should hire but the Town Council should have the right to override.

Attorney Randolph said that currently the Town Manager recommends to the Town Council, the hiring or the firing, and because it is a recommendation, it automatically comes to the Town Council for some affirmative action. He said Mr. Shaw was suggesting was that the Town Manager be given the authority to hire and fire unless (within a period of time) the Town Council votes by a 4/5 vote to disapprove the Town Manager's hiring or firing.

Mr. Shaw responded that it would not be necessary for the Town Council to hear a full presentation, and the Town Council would be acting in an executive mode.

Mrs. Smith recalled the Town Council went through a three day hearing because the applicant chose to oppose the recommendation. Mrs. Smith asked what changes or recommendations made by the Charter Commission would have affected what occurred three years ago regarding the hearing?

Attorney Randolph replied that a department head would have the opportunity for a hearing which is dependent upon the present personnel rules.

Town Manager Doney responded that it was his understanding a department head would not have the option of a hearing under the changes, because of the way it was recommended.

Mrs. Smith said if the department heads would not have the opportunity to a hearing, she would be opposed to the change.

Mr. Guttman said the Charter Commission discussed the problems associated with giving the Town Manager the power to fire with or without cause and the needs of the department heads. He said the Commission thought there ought to be some remedy for a department head if he or she was terminated by the Town Manager without cause, and it was the collective view that the Town Council ought to adopt an ordinance to supplement the current personnel provision that would provide for severance pay. That severance pay arrangement would only apply to tenured department heads so that someone who was newly hired would not be included.

Mr. Guttman said the Commission suggested supplying the department heads with the exact same package that the Town Manager has under the existing procedures. He said there are ICMA policies, and he thought that would apply. Mr. Guttman urged the Town Council to adopt an ordinance that would provide the department heads with severance pay for tenured positions.

Mr. Shaw questioned this change if the termination of a department head did not meet with the Council's approval. He said he thought that the concerns were related to the possible clean sweep of department heads by a new Town Manager. He added he was also concerned that the department heads not only worked for the Town Manager but had an obligation to the residents of the Town through the Town Council.

Mr. Guttman replied that in an extreme case as described by Mr. Shaw, a new Town Manager would be at an extreme risk before whatever Town Council is then sitting. Mr. Guttman said he was concerned that if Mr. Shaw's suggestion were followed, firing situations would be turned into quasi judicial proceedings that would be awkward. He said the Commission's recommendation had merit but it needed to be augmented by an ordinance as he had described.

Mrs. Smith asked if the Charter Commission had considered leaving the present language in the Charter but recommending an ordinance regarding the tenure and the pay?

Mr. Guttman responded that when the Town Manager does not have the prerogative to hire and fire, it would be inevitable if the Town Council interposed itself between the Town Manager's decision to fire somebody, the end result would be a quasi judicial situation. The Charter Commission proposed that the department heads have some sort of protection through an ordinance, and if a department head felt he or she was wrongly fired, it could end up in a court. The proposed changes would make it possible for the Town Council not to get bogged down in a situation.

Mrs. Nancy Douthit addressed the Town Council, and said she did not want the Town Council to lose sight of the fact that department heads are responsible to the Council members and the citizenry at the present time. She said she did not want to see any changes made that would dilute that.

Mr. Shaw questioned Mr. Guttman regarding what he thought of taking the Commission's recommendation as presented and adding an ordinance to safeguard it, would the Commission object to the Town Council overriding the Town Manager's decision with a 4/5 vote?

Mr. Guttman said he thought that would allow the Town Council to be involved with quasi judicial proceedings. He said it was the view of the Charter Commission if the Town could get out of that dilemma and at the same time offer a safety net to the department heads, that would be the best solution.

Mrs. Smith said she thought there had to be a hearing process somewhere along the way and expressed concerns regarding the safety and security of the department heads and the Town Manager. Mrs. Smith said everyone who was involved in the past procedure several years ago felt badly about it, from the Town Council to the Town Manager.

Mr. Guttman said that former Assistant Town Manager Peter Elwell confided to him that he insisted that Roxbury, New Jersey, have a procedure in place that allowed the Town Manager to hire and fire with a safety net program before he would take the Town Manager position. Mr. Guttman said the Commission tried to create a safety net for the department heads.

Mayor Ilyinsky questioned the handling of firing of department heads under the West Palm Beach form of government.

Mr. Guttman responded West Palm Beach had an entirely different form of government, and the Mayor did the firing.

Mr. Doney said the issue of hiring and firing was not his initiative but was brought up by the Charter Review Commission. He said he thought the Commission was weighing the issue of allowing the Town Council the opportunity to place the responsibility and duty of hiring and firing with the Town Manager. He explained that the intent was to not allow a quasi judicial process to take place before the Town Council. Mr. Doney expressed his support for the recommendation if the Town Council wanted that change with support for any department head who would be terminated.

Mr. Doney cited the part of the Charter that dealt with "Interference with Administration" that prohibited any department head from working directly for the Mayor or any member of the Town Council.

Mr. Wyett commented that he would have supported the Town Manager in the vote taken three

years ago, and if the Town Manager had not received a vote of support he would have automatically voted a lack of confidence in the decision. Mr. Wyett said he had to support the recommendation for the Town Manager's right to hire and fire department heads. He added that it is not unusual for a new Town Manager to want to make some changes, and the Town Council should support a new Town Manager; however, if they did not want to support him, they should not have him here.

Mr. Doney recalled that a practical situation occurred when the Town Council overruled his recommendation that a department head be terminated from employment with the Town resulting in many employee relations issues.

Mrs. Smith said from her point of view, the best recommendation was the approval and support of the recommendation plus the installation of an ordinance to protect the tenure and salary for the department heads.

Mr. Doney suggested that the opinions of the department heads be heard.

Responding to questions from Mr. Shaw, Attorney Randolph replied that a Town Council hearing may not be a quasi-judicial procedure, but it does not necessarily eliminate the opportunity for that department head to lobby the Town Council member to overturn the decision or to make a presentation at a meeting where an agenda item would be considered regarding voiding the decision of the Town Manager. Mr. Randolph said he did not think there was necessarily an obligation to hear the employee. Presently, the Town Manager recommends an action that comes before the Town Council, and the Town Council has an opportunity to hear it, and the employee has an opportunity to appeal to the Town Council.

Councilman McLendon said he agreed with the Charter Commission's recommendation and would like to move approval of it. Mr. Wyett seconded the motion.

President Smith requested the department heads give their opinions before the question was called.

Public Works Director Al Dusey (14 years) said he had worked in a strong mayor form of government; a council-manager form of government where the manager had the authority that is being discussed; and the (Town of Palm Beach) form of government where the Town Manager recommends with Council approval or disapproval. He said that none make a difference from his perspective, and the security of the job is in the job that it is done. Mr. Dusey said the players were more important rather than the form of government. He added that the severance package would be nice to have.

Director of Planning, Zoning & Building Robert Moore (18 years) said it is the team that makes the difference. He said the current system should be taken into consideration before a final decision is made. Mr. Moore said he worked for two other governmental organizations, Palm Beach County and the City of West Palm Beach, before coming to the Town of Palm Beach. Mr. Moore brought out the point that if an appointment was not approved by the Town Council in September, the employee would be dismissed immediately; however, if an employee were let go in October or November, after being appointed, a questions arises if the employee would be entitled to wages for the remainder of the year.

Mr. Moore pointed out that Mr. Wearn objected to the recommendation, and said the Town Council must understand that when the right of the department head to hide behind the Town Manager is given up without having to be responsive, then the Town Council is giving up one of the rights the Town Council currently enjoys.

Assistant Police Chief Michael Reiter declined to speak for Chief Croft.

Fire-Rescue Chief Ken Elmore (18 years) said he could not add anymore than what was already said, but if he were a Town Manager, he would want the ability to hire and fire. As a department head, he said he had more assurance in the current system, because it is easier to keep three people happy than one.

Human Resource Director Bill Crouse (21 years) said he agreed with the others who had spoken, and from a management standpoint, the recommendation is the appropriate recommendation. An organization should be run by the chief executive officer, but that officer is accountable to the Town Council. He said the severance question is a legitimate concern.

Recreation Director Russ Bitzer agreed with the other comments that were made.

Attorney Randolph noted that a provision under Section 6.03 of the Charter states: "Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are Town officers or employees at the time of adoption." Mr. Randolph

said that may mean that this particular change would not affect the right of people who came in under the old language.

On roll call, the motion carried 3-2 with Mr. McLendon, Mr. Wyett, and Mrs. Smith casting affirmative votes, and Mr. McDonald and Mr. Shaw casting negative votes.

Mrs. Smith asked that Town Clerk Pollitt and Finance Director Skittone address the issue that was just approved.

Town Clerk Mary Pollitt (11 years) said she concurred with the remarks of both Chief Elmore and Mr. Dusey. She added that she respected the fact that the Town Manager needed to have the right to hire and fire.

Finance Director Jane Skittone said she had worked with a strong Mayor form of government where an incumbent Democratic Mayor lost and she was reappointed by a Republican Mayor. She said she was not really worried one way or the other.

Mrs. Smith said the questions of the severance package and the ordinance should be put on the November 9th Town Council meeting agenda for discussion.

- 4.E. Recommendation:** One of the Town Manager's specific duties listed in Section 4.04 should be to see to the faithful enforcement of all Town laws.

Recommended Revision: Section 4.04(d) of the Charter be modified to read as follows:

Sec. 4.04. Powers and Duties of the town Manager.

~~(e)~~(d) Administer all laws, provisions of ~~the~~ this Charter and acts of the Town Council subject to enforcement by ~~him~~ the Town Manager or by officers subject to ~~his~~ the Town Manager's supervision.

Mr. McDonald made a motion to approve the recommendation. The motion was seconded by Mr. Wyett and carried 5-0 on roll call.

- 4.F. Recommendation:** Section 4.04(f) of the Charter should be amended to require the Town Manager to provide the Town Council with a written annual budget message at the outset of the budgetary process.

Recommended Revision: Section 4.04(e) of the Charter be modified to read as follows:

Sec. 4.04. Powers and Duties of the Town Manager.

~~(f)~~(e) Prepare and submit the annual budget and capital ~~programs~~ program to the Town Council in a form provided by ~~Ordinance~~; ordinance and, at the outset of the annual budgetary process, prepare and submit a written budget message to the Town Council;

Mrs. Smith asked what this recommendation would do that is not being done within the Finance & Taxation Committee meetings?

Mr. Guttman explained that the Town participates in the Government Finance Officers Association's award program which contemplates that the Town Manager's budget message be given at the outset of the budgetary process and not as part of the budget book or long after the budget had been adopted. Mr. Guttman said that the GFOA believes that it is important to have a document like that at the beginning of the process and many communities are requiring as part of the charter fiscal provisions to have a provision similar to this recommendation.

Mr. McLendon made a motion to approve the recommendation. The motion was seconded by Mr. Wyett and carried 5-0.

- 4.G. Recommendation:** The Charter should contain a mandatory requirement for the Town Council to evaluate the performance of the Town Manager, at least once a year.

Recommended Revision: Section 4.02(e) be added to the Charter to read as follows:

Sec. 4.02. Qualifications; Appointment, Removal; Compensation; Performance Evaluation.

(e) Performance Evaluation. At least once each year, the Mayor and Town Council shall individually evaluate the Town Manager's performance, in accordance with such

procedures as the Town Council shall, from time to time, adopt.

A motion was made by Mr. Wyett to approve the recommendation. The motion was seconded by Mr. McDonald and carried 5-0.

- 4.H. Recommendation:** Section 4.04(h) of the Charter should be amended to require that the Town Manager will periodically advise the Town Council about the Town's long-range planning needs.

Recommended Revision: Section 4.04(i) (h) of the Charter be modified to read as follows:

Sec. 4.04. Powers and Duties of Town Manager.

- (i)(h) Keep the Town Council fully advised as to the financial condition and initiate long term planning for the future needs of the Town and make such recommendations to the Town Council concerning the affairs of the Town as ~~he deems desirable~~; the Town Manager deems desirable.

Mrs. Smith requested an explanation of what this recommendation covered.

Mr. Doyle Rogers replied this should be in the Charter so future Councils would know what their goals should be.

Mrs. Smith responded the Town has had a long range plan since the first plan in 1929.

Mr. Doney recalled discussion taking place at the Charter Review Commission meetings regarding the five year capital improvement plan that takes place yearly during the budget process. He added the Town has a Comprehensive Plan which has a ten year plan into the future, and particular departments have particular needs for multi-year replacement programs.

Mr. Rogers replied this recommendation is "memorializing policy".

Mr. McLendon made a motion to approve the recommendation. Mr. McDonald seconded the motion and the motion failed with a 2-3 vote. Mr. McLendon and Mr. McDonald cast positive votes. Mr. Shaw, Mr. Wyett, and Mrs. Smith cast negative votes.

Mrs. Smith said she thought that recommendation referred to things that were already covered, and the implication was that the Town Council does not do long range planning. Mrs. Smith said it was a question of policy.

Mrs. Smith said this finished the initial report of the Charter Review Commission.

V. ANY OTHER MATTERS

Mr. Wyett asked Attorney Randolph if he could recall the details of how the Park Avenue Park was formed and are there any restrictions on it other than the fact it cannot be sold through the Charter?

Mr. Moore said he recalled it was a donation to the Town and the conditions would have to be researched.

Mr. Wyett said Park Avenue would seem to be a street ready for redevelopment and questioned leaving the Park Avenue Park in the Charter where it would take an referendum to remove it from the Charter if it had to be relocated.

Mrs. Smith said she understood Mr. Wyett's concerns; however, she was 100% opposed to tampering with the green space amendment.

Mr. Wyett questioned if the Internet use in the Town was covered by the wording in the Charter prohibiting gambling.

Mrs. Smith said the wording was on the bottom of page 3, Casino Gambling Prohibited, Section 1.04 and asked Attorney Randolph how the Internet could be restricted?

Attorney Randolph replied that State laws deal with gambling, and he was not sure any language would need to be included in the Charter.

Mr. Guttman said many important Constitutional issues are involved regarding the Internet.

Mr. Shaw said the Mayor and Town Council expend much time and energy doing their jobs. He said he was not proposing a Charter revision for any form of compensation at this point, but he was surprised that the Charter

Review Commission did not consider this further. He suggested it was time for this Council to consider some of the discretionary expenditures that are incurred as members of the Council and perhaps expense accounts, approximately \$6,000/year, should be considered.

Attorney Randolph replied nothing in the Charter prohibited expense accounts.

Mr. Shaw said there has been an unwritten policy of not having this policy.

Mr. Rogers said it was addressed as a policy issue by the Charter Review Commission, and after hearing and discussing it, the Commission decided it was not wise to have salaries for councilmen. Expenses were discussed also, and legal counsel said expenditures could be set for councilmen.

Mrs. Smith suggested this item could be discussed by the Town Council as a policy issue, and it was not appropriate to be included in the Charter discussion.

Mr. Rogers asked if Attorney Randolph would be preparing the recommendations that were approved at this meeting?

Mrs. Smith said she wanted to thank the members of the Charter Review Commission and Chairman Doyle Rogers for the years that were put into the process.

Mrs. Smith asked what Attorney Randolph would prepare and how it would be handled? She said it could be a referendum for the February or March election.

Mr. Randolph said he would prepare the recommendations in the form of an ordinance and bring it back to the Town Council for first and second readings. If the Town Council wanted to have a referendum in February, he would have it for the first reading in November or December.

Responding to Mr. Randolph's comments, Mrs. Smith said it would be a question of the Council deciding whether it should go to the February election or do a special election in March and possibly tie it into something regarding the Shore Board. Mrs. Smith said if the choice is the February election, Mr. Randolph would have to prepare something for the November 9th meeting.

Mr. Randolph replied it could possibly be done in December and January, but he would like to do it in November in the event there would be changes.

Mr. Rogers said he thought there should be time to educate the voters before an election and would encourage action as soon as possible.

Mr. Randolph said the question was if the proposed changes should be put in a single question on the ballot, i.e. shall this be adopted? Otherwise, the voters would vote on each individual question.

Mr. Rogers agreed with the Council members that it should be in the form of one question on the ballot.

Attorney Randolph explained ten days were needed between readings to allow for legal advertising, and a second special meeting could be scheduled for the second reading.

Responding to questions from Mr. McDonald, Mr. Rogers said it was difficult to judge if there would be opposition to the Charter changes. He mentioned the Civic Association will have the issues as part of its forum and perhaps some ads would appear in the Shiny Sheet.

Mrs. Smith said the main issue would be to turn out voters in greater numbers.

Mr. Doney asked Mrs. Pollitt the cost of holding a special election.

Mrs. Pollitt replied the cost of any election is approximately \$6,000.

Mr. Doney said he thought a fact sheet could be available from the Town listing the proposed Charter changes, and a news release could be prepared.

There were no other matters.

VI. ADJOURNMENT

The meeting was adjourned at 5:05 p.m.

Mary A. Pollitt, Town Clerk