

**TOWN COUNCIL
SPECIAL MEETING
JUNE 14, 2000**

The meeting was called to order at 5:07 p.m. by Mayor Venis. Present were Mayor Venis, Vice-Mayor Weiner, Councilmembers Clark, Cox, and Paul. Also present were Town Administrator Middaugh, legal counsel Mr. Connick and Secretary Alina Medina recording the meeting. Town Clerk Reinfeld was absent.

1. Review of fire investigation conducted by Officers of the Davie Police Department regarding allegations of wrong doing by Fire Chief Donati and Deputy Chief DePaola

Mr. Middaugh stated that the investigation was completed and advised that Council had requested this meeting to make the announcement of his findings and for discussion. He indicated that the allegations had a long history dating back ten or more years and that the whole issue was "charged with a lot of emotion." Mr. Middaugh indicated that the emotional reaction to this issue was deep seeded and, by nature, did not inspire a nonchalant response from most people. He added that some people were obsessed and consumed by the issue. Frustration was understandable because of the length of time these allegations had been around, and the time the allegations had been allowed to go unaddressed. Mr. Middaugh advised that he and the investigators had tried to detach themselves from the emotional issues and had vowed to provide a factual and objective view of the events which had transpired.

Mr. Middaugh explained that there were some things that were important to him and that he thought Council would agree, and these issues, namely the city manager's code of ethics, were what guided him to how he responded and reviewed the various components of this investigation. "Fairness and impartiality matters of personnel" were issues that Mr. Middaugh was bound by and it was "important in this investigation that problems be handled both with principle and justice." Mr. Middaugh indicated that his objective was to serve the best interest of all the people and to take into consideration the Town, the department, and any of the interested parties who were part of this investigation. An important goal was that the investigation be complete, without leaving any unresolved issues. Mr. Middaugh stated that it was an important objective to use this opportunity to provide closure so that other issues, problems, and concerns in the Fire Department could be addressed, which up until now, had not occurred.

Mr. Middaugh advised that he had chosen the Police Department to investigate this issue because of the unsuccessful efforts on the part of the Town working with the fire union in trying to choose a neutral party to undertake this investigation. He added that he had chosen professional investigators who had no involvement with the matter at hand and indicated that he had expressed how important it was to have the involvement of skilled unbiased personnel who could objectively address the concerns. The Police Department's task was to find facts under their own direction, without being told where to look.

Mr. Middaugh introduced Captain Ed Taylor and Detective Ron Marseco and asked them to report on the procedures of their investigation and their findings.

Captain Taylor stated that neither he nor Detective Marseco sought nor requested to be appointed to this investigation, but had been recommended by Police Chief John George. He advised that he and Detective Marseco had over 25 years experience conducting investigations, including, but not limited to homicides, drug trafficking, and internal affairs investigations. Captain Taylor thought it was important that it be understood that their mission was to be fact-finders only. He added that "we would not be making recommendations, we would not be identifying problem areas that need to be addressed,

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nor would we be making any recommendations of discipline that should be brought about." Captain Taylor indicated that no prior discussions or demands were made and that they were to find the facts and report to Mr. Middaugh. He made it clear that they "did not benefit in any way by participating in or conducting this investigation." Captain Taylor stated that they also did not suffer any consequences as a result of performing the investigation. He explained that they followed normal procedures that would be used in any official police investigation: witnesses were placed under oath, sworn, and each received a perjury warning statement. All statements were tape recorded to ensure that no one could be misrepresented in the future. Captain Taylor stated that included in his direction to witnesses was that their testimony not include any hearsay information.

Captain Taylor indicated that the first area he and Detective Marseco investigated was the allegations of firearms in the workplace because this was the most serious allegation presented by the fire union. The second area was two allegations of possible criminal activity which had been presented to the Broward County State Attorney's Office for review and recommendation of criminal charges. Captain Taylor advised that the State Attorney's Office had declined criminal charges in both of those areas.

In discussing the final report, Captain Taylor noted that in perusing the report, a reader might not understand all of it because there were 55 sworn statements taken. He recommended that the statements be read along with the reports so that the information could be put into its proper context, factually and emotionally. Words, gestures, and body language were also noted in the statements. Captain Taylor said that some witnesses had become frustrated and were antagonistic towards him and Detective Marseco because they felt that the investigators "were taking sides or that we were trying to say that the information they were providing was not accurate and not truthful." Captain Taylor explained that this misunderstanding might have occurred because he and Detective Marseco asked clarifying questions which might have been misconstrued as doubt. He stated that he and Detective Marseco had no association with this issue, neither with Fire Department's management and administration, nor the fire union.

Three terms were identified in coming to the findings of each of the allegations: 1) sustained - sufficient evidence or testimony to support the allegations; 2) not sustained - insufficient evidence to either prove or disprove the allegations; and 3) unfounded - the allegation was not supported by evidence or testimony offered. The standards used were standards of preponderance - 51% of evidence or testimony would either support or not support the allegation.

Captain Taylor advised that the Police Department felt that he and Detective Marseco had made a complete, thorough, and timely investigation. He added that the duration of this investigation was such because it was done in conjunction with other duties and around the schedules of the witnesses being interviewed.

Detective Marseco agreed that Captain Taylor had thoroughly explained the events and procedures of the investigation. He added that when their involvement in this case began in August 1999, the fire union was given a deadline to deliver all information they wanted investigated. The investigators had to research the allegations made by the fire union, their contract, the Fire Department's rules and regulations, and the Town's Personnel Rules and Regulations. Detective Marseco stated that this investigation was not criminal in nature so the investigators could not order anyone to participate or testify and added that there were people who chose not to give statements.

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Captain Taylor explained that there were witnesses provided by the fire union who were not given the opportunity to testify. The reason for this was that after interviewing the majority of the witnesses, sufficient testimony and evidence occurred so that a finding could be issued. Captain Taylor advised that "we did not feel that the testimony of one other witness would be significant enough to sway us to change our findings." He indicated that there may be individuals in the Fire Department who felt that they were not given the opportunity to be heard.

Captain Taylor explained that even if an allegation was not sustained or unfounded, it did not mean there were no problems that needed to be addressed. There were areas which needed to be dealt with through the Town's Administration and that the fire union and the Fire Department's administration needed to work together.

Mayor Venis asked Captain Taylor to go through each allegation of the report, the findings, and his recommendations. Mr. Middaugh advised that this would be a part of his comments which would include an overview and specifics for purposes of clarity. He assured Mayor Venis that it would be more effective if he gave his complete report and then addressed particular concerns afterwards. Mayor Venis had no objections.

Mr. Middaugh stated that he had accepted the report and findings given to him by the investigators and praised them for a job well done. He indicated that he did not second guess their expertise. Mr. Middaugh reiterated the fact that these investigators were the only two people in the Town who personally spoke with every one of the witnesses in this investigation and reviewed all the material that had been offered.

Mr. Middaugh advised that "Part One--Allegations" included 22 issues regarding leadership, knowledge skills and abilities. He stated that this section dealt with ongoing disputes between labor and management and were not investigated by Captain Taylor and Detective Marseco. A variety of issues dealing with structure, equipment and work environment needed attention, although did not lend themselves to the investigation.

Mr. Middaugh recommended that the Fire Department be restructured. He indicated that the structure of the Department in its present state would not support the current needs of the Department and its future. Mr. Middaugh was concerned that attention had not been paid to managerial level, roles and responsibilities. The recommended structure would have three new division chiefs, one in each of the major functional areas of the Department: EMS operations, operations of suppressions, and community service. This model was common in fire departments and was similar to that of the Town's Police Department. Mr. Middaugh stated that the success of this model was its ability to provide needed direction and coordination at a senior level that was not now present.

Regarding the issue of equipment, Mr. Middaugh explained that as equipment was critical to the response, it was crucial that sufficient equipment be provided. He felt that this was the Town's one failing. Although three new trucks were in the process of being purchased, there were not enough adequate back up units available to provide proper maintenance to the vehicles. It was his feeling that quality equipment and a quality department were commitments Council needed to make.

Mr. Middaugh reported that the working environment was not spoken well of during the investigation. It was Mr. Middaugh's finding that there was a need to "break the pattern of escalating animosity that's existed historically between the union and the Town management." He denied the media account of his placing blame on the fire union.

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Mr. Middaugh further offered that both the fire union and the Town had a role in the escalating animosity which had contributed to the emotionality of the issue. He believed that change in the management approach would break this cycle.

Mr. Middaugh addressed the specific findings as related to individuals. Firstly, a finding that Fire Chief Michael Donati had failed to thoroughly investigate allegations that had been made by Firefighter Wilson in 1998. He indicated that this allegation was sustained and accepted. Another sustained finding in regard to Chief Donati was in his use of offensive language or conduct toward the public or superior or fellow employee which occurred in 1997.

Mr. Middaugh then addressed the allegations made against Deputy Chief DePaola. The findings included a violation of having firearms on Town property with the last time being in 1997 and four separate violations in the offensive use of language or conduct toward the public or a superior or fellow officer from 1995 to 1997 and once in 1998. Two instances of equal opportunity policy or harassment in the workplace policy were violated in 1997 or earlier. Mr. Middaugh advised that these findings were sustained.

Mr. Middaugh determined that in the area of firearms, there was no danger posed by any of the violations that were cited. He also noted that the evidence introduced in the predetermination hearing with Deputy Chief DePaola that the policy in violation was not available to employees until March of 1998, so this may not be a violation of policy. Mr. Middaugh further provided that other similar infractions existed with other Fire employees having firearms on Town property.

In regard to offensive language (sexist remarks), factual findings showed that this was used in a personal conversation with Deputy Chief DePaola and his significant other and was meant to be private. Mr. Middaugh advised that there were no other allegations expressed in this area, and he added that there were some positive comments in this regard made by female witnesses. It was found that in the use of racial terms, an object of much public attention, the terms were not made to specific minority persons within the Fire Department. Statements indicated that the terms were used in general conversation and that the type of reference used was not uncommon in the Department. Evidence showed that there were not specific discriminatory actions toward persons in the Department. He explained that the event referred to occurred in 1997 and was followed in 1998 by a policy memorandum and diversity training, and no further incidents had been reported since that time. Mr. Middaugh stated that he did not condone or support this practice in the work environment. He advised that the Town was a very diverse community and he felt that it existed as such without race and ethnicity at issue.

It was pointed out by Mr. Middaugh that other issues arising as a result of the investigation included timing and the lack of disciplinary action for improper behavior. Mr. Middaugh explained that not one of the offenses justified termination.

Mr. Middaugh accepted and agreed with the specific findings in regard to Chief Donati. The result was that Chief Donati would be formally reprimanded and would need to make changes. The disciplinary process for the managerial employees of the department included a higher standard than that which was applied to other employees. A letter of reprimand would be followed by termination, if changes were not forthcoming. Mr. Middaugh explained that he would require Chief Donati to undergo training that focused on management style and Chief Donati would need to secure a paramedic certification. The proposed positions of division chief would also require paramedic certification. Mr.

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Middaugh commented that objectivity was important and corrective measures must be tried to avoid developing a negative environment.

Regarding recommendations and issues pertaining to Deputy Chief DePaola, Mr. Middaugh concluded that the findings did not justify a termination, but the next most severe measure was a demotion. Mr. Middaugh indicated that questions had been raised as to whether or not his original promotion was appropriate. Contingent on Council approval, the demotion would be specifically to Division Chief with the assignment to support and community services and with a reduction in rank and pay. Mr. Middaugh further recommended that the position of deputy chief be eliminated.

In summary, Mr. Middaugh stated that the concerns raised by the Fire Department had been heard and the problems acknowledged. Mr. Middaugh advised that the allegations and subsequent investigation were justified, as indicated by the findings. He reiterated the importance of putting an end to the escalating cycle previously in place and making necessary changes.

Mayor Venis opened questions to the public.

Bill Wilson indicated that he was ashamed to admit that he was ashamed that he was a firefighter for the Town. He commented that Mr. Middaugh's report was grossly biased and inaccurate and he was insulted as a man and as a firefighter. Mr. Wilson indicated that Chief Donati had lied and had ruined his work record for the rest of his life and Chief Donati was only written up. He stated that Chief Donati lied and conspired with Ms. Reinfeld and destroyed his record. Mr. Wilson said that Captain Taylor and Detective Marseco had done a lot of good work but there were areas in the report that were factually inaccurate. He stated that the report ignored a multitude of issues that were raised and indicated that he was sent to the hospital because Chief Donati would not take a truck out of service. Mr. Wilson said that he went home with elevated carbon monoxide in his blood because Chief Donati would not fix a truck and this only one issue that was not reported on in the findings. He stated that a reprimand was not an appropriate consequence for a "chief officer" who lied in an official document. Mr. Wilson asked that Council override any recommendation that Mr. Middaugh made and to "take real action" as the investigation only scratched the surface.

Carole Stratman stated that she had nothing to gain from speaking and good or bad, the emphasis of some Councilmembers on some employees appeared to "keep them happy." She indicated that a cohesiveness for all employees needed to be found which would then provide a cohesiveness for the residents. Ms. Stratman said that when somebody did something wrong, it was "not let up on, just hang onto that one thing." She advised that she did not know anyone who would want something continually drug up. Ms. Stratman stated that there was a witch hunt and the Town had nothing on "Salem." She said that Mr. Middaugh was hired approximately one year ago and was handed a problem that was three to four years old. Ms. Stratman stated that Council did not want to think about what Deputy Chief DePaola and Chief Donati had done right for the Town and something had to be done right or they would not have been in their positions. She said that employees were walking on eggshells and they did not know if someone had a hidden agenda.

Dean Alexander pointed out that although each allegation taken separately may not justify termination, the list of incidents and their impact may very well deem this necessary.

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In regard to attitude and morale problems in the department, he reminded everyone that the firefighters had voted 100% in "no confidence," illustrating the depth of the concern in this area.

Jim Hurst addressed Mr. Middaugh regarding the diversity of the community and indicated that it was a source of pride, not a problem. Mr. Hurst commented that Deputy Chief DePaola's racial remarks were slanderous to him and his fiancé and he took exception with the lack of consequence for this action. It was his opinion that termination was indicated. Mr. Hurst's fiancé told of a similar situation in her workplace where the consequence to her supervisor was termination. Concerning the firearms allegation, Mr. Hurst felt that this violation was severe and should be dealt with differently.

Mark Chatlos recognized the need for the operation to function like a business. He cautioned that allowing those in a position for several years to stay in the position, and a management opposed to taking the input of staff, would inhibit growth of the department. Mr. Chatlos offered that those in the department were ready to make changes and recommended that such changes be based on learning from mistakes. He disagreed with Mr. Middaugh's proposed action in regard to the allegations.

Scott McCluskey advised that his concerns regarding the structure of the department and the issue of private EMS were presented to Council years ago. He indicated that Chief Donati overruled others in regard to these concerns resulting in a combined Fire Rescue/EMS Department. Mr. McCluskey felt that any investigation done within the Town would result in biases and that this investigation should have been conducted by outsiders. He further commented that the current leadership of the Town's Fire Department was not adequate, resulting in possible dangerous consequences. Mr. McCluskey felt strongly that any rank and file member charged similarly would have suffered serious consequences through progressive discipline. He disagreed with the fact that Mr. Middaugh chose a department under his control to investigate the issues and that the consequences of the findings were not commensurate with the seriousness of the incidents.

Charlie Bass stated that Chief Donati had a good heart but the department outgrew him 20 years ago. He reported an incident in which he claimed Deputy Chief DePaola circumvented an order during a fire, jeopardizing the life and safety of him and his crew. Mr. Bass indicated that he had heard Deputy Chief DePaola make racial slurs and questioned why he would be demoted to a division chief in charge of public relations and training. He said that he was ashamed to work for the people he worked for. Mr. Bass the equipment on the truck did not work, the department was in a shambles and the morale was in the gutter. He said that the Town would not have an EMS system if it was up to Chief Donati and Deputy Chief DePaola.

Jeffrey Pheterson, attorney for Chief Donati, indicated that Chief Donati had been a firefighter for 34 years and had served the Town well as Fire Chief. He stated that Chief Donati had negotiated approximately ten collective bargaining agreements and that there had only been five or six grievances within 20 years which had gone to arbitration. Mr. Pheterson stated that he was aware that there were some problems within the Department, but felt that those problems should be viewed in their proper perspective. He questioned how all those problems could legitimately be laid at the feet of Chief Donati and stated that neighboring municipalities did not enjoy such a few number of grievances. Mr. Pheterson

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gave a history of the upgrades seen within the Fire Department during Chief Donati's tenure, including the size of the Department and its budget, the changes within the Department, and the size of the Town.

Mr. Pheterson stated that there were initially 71 allegations made by the fire union which were investigated by the Police Department. He indicated that most of the allegations investigated involved issues that should rightfully be brought up under Title VII, Federal Civil Act or the State of Florida Commission of Human Relations, or the Public Employees Relations Commission, under Chapter 447. He indicated that both of these Chapters had very short statutes of limitations. Mr. Pheterson stated that many of the problems stated by the fire union had occurred years prior to filing complaints and agreed that the Police Department did not have an easy task to complete. He indicated that if "you keep throwing mud on the wall, eventually something would stick." Mr. Pheterson stated that there were only two allegations sustained against Chief Donati - failure to investigate complaints made against Deputy Chief DePaola and unprofessional conduct. He indicated that Chief Donati had investigated the complaints under the direction of former Town Administrator Robert Flatley. Mr. Pheterson advised that Chief Donati had also spoken with John Gronda, the collective bargaining representative and general labor counsel, to obtain guidance in dealing with the investigation. He believed that Chief Donati had completed the investigation in a manner he felt was appropriate and issued the necessary memorandums. Mr. Pheterson believed that Chief Donati had completed the investigation as submitted to him and, had he received additional direction, could have further investigated the allegations made against Deputy Chief DePaola. He indicated that Chief Donati would benefit from obtaining human resource training and advised that Chief Donati had no objections to pursuing the necessary training to properly deal with these types of issues in the future. Mr. Pheterson emphasized that the issues being dealt with had to be viewed in perspective so that a fair conclusion could be obtained.

Mr. Pheterson stressed that the allegations investigated had previously been dealt with; however, it appeared that since the complaining parties were not satisfied with the outcome, the complaints were brought up again as continuing complaints. He indicated that the Town needed closure with these issues and believed that Mr. Middaugh's findings had been just. Mr. Pheterson stated that Mr. Middaugh had used ethics and principle to place Chief Donati on notice that the managerial style in the Fire Department had to be modified to meet the Town's standards. He indicated that the Town's Code specified that the Town Administrator was charged with the hiring and firing of Town personnel, with Council being responsible for issuing policy. Mr. Pheterson agreed with Mr. Middaugh that the issues sustained did not warrant terminating Chief Donati and felt that the Department could move forward with a positive vision. He believed that it would be inappropriate to terminate Chief Donati without giving him the opportunity to prove that he was able to rise to the task.

Tom Truex questioned why the incidents were looked at individually and not by their cumulative affect. He indicated that Council had to share in the culpability as it did very little to deal with these issues. Mr. Truex stated that Council had not properly supported the Fire Department in the past and had never taken the needs of the Department very seriously. He indicated that Council had also not taken the proper steps to ensure that the firefighters had the resources necessary to do their jobs. Mr. Truex expressed his belief that the sustained allegations were inexcusable and that the "punishment" being

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recommended was not adequate. He indicated that part of the problem with dealing with these issues was society's low standards. Mr. Truex felt that the Town had to accept that this conduct was not acceptable and do something about it.

Hayman Nichols, representing the NAACP, stated that he had appeared before Council a few months prior, promising that he would return if he felt that justice had not been served. He indicated that the NAACP had offered to conduct an independent investigation free of charge which had been refused by the Town. Mr. Nichols believed that no city would ever find against itself and indicated that with all the allegations made, terminations should be expected.

George Wetzler stated that he had read some of the Police report and he had testified to seeing Deputy Chief DePaola bringing an assault rifle with load magazines into the station which was not in the report. He also mentioned an incident in which he had to have a Broward County "officer" advise Deputy Chief DePaola that there was an unsafe condition and the firefighters should be pulled out. Mr. Wetzler asked Council to make the right decision, stating that he had full confidence in their ability.

Mike Bender stated that he was deeply disturbed with the incidents that had occurred. He indicated that if the men and women of the Fire Department did not have faith in their leadership, the leaders could not lead. Mr. Bender stated that employees of the Fire Department should not have to worry about their work environment and believed that they should enjoy the best work environment possible.

Denette Jewell stated that her husband had been a firefighter for the Town for 18 years. Mrs. Jewell stated that with all the allegations read, if no action were taken, it would "be a crime against the firefighters."

Jim Bunce, President of IAFF - Local 2315, stated that this was not a happy day for the Fire Department and felt that there were no winners or losers in this situation. He disagreed with an alleged comment Mr. Middaugh had made indicating that this was a victory and the Town could move forward. He stated that the Fire Department was irreparably damaged and found it astounding that out of the large list of allegations made, Mr. Middaugh had only sustained three or four findings against Deputy Chief DePaola and two sustained findings against Chief Donati. Mr. Bunce stated that he could not impress enough that there had been a unanimous vote of no confidence taken on the Fire Department's leadership. He expressed his belief that the progress made in the Fire Department had been in spite of the administration and that the fire union had drug the administration along with it. Mr. Bunce stated that perhaps there were other areas where Chief Donati could do some good, but did not believe he should remain as the Fire Chief. He stated that no one had said that "the Chief was not a nice old man," but felt that the Town should not pay for a nice old man, but rather a Fire Chief.

Mr. Bunce stated that he had read in the newspapers that this was a union against management issue, but assured Council that this was not a union issue. He indicated that allegations were made by union members, residents, and the Town's elected officials. Mr. Bunce felt it was unfortunate that prior administrators would not resolve these issues and, although he did not fully agree with Mr. Middaugh's final report, he thanked the Police Department for a job well done. He went on to say, however, that the Police Department had dismissed certain claims only because a firefighter could not remember specific details. Mr. Bunce stated that the healing could not begin if Mr. Middaugh's findings were upheld. He indicated that a "strongly worded reprimand" was not sufficient for Chief Donati's case,

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and felt that the recommendation of demotion for Deputy Chief DePaola was not a punishment. Mr. Bunce stated that the fire union had been trying to restructure the Fire Department since it began its EMS program, but felt that the Town's administration was now willing to restructure the Fire Department only to harbor a place to "put" Deputy Chief DePaola. Mr. Bunce stated that Mr. Middaugh's recommendation of demotion, allowed Deputy Chief DePaola's duties to be spread out into three areas, including fire suppression, EMS, and training. He indicated that Deputy Chief DePaola was being considered for training, inspections, and community service, yet Mr. Bunce believed that there was no need for him in that position. Mr. Bunce added that Mr. Middaugh's recommendation would require Deputy Chief DePaola to obtain paramedic training and certification. He indicated that Deputy Chief DePaola would then attend school on the Town's time. Mr. Bunce stated that all other firefighters had attended schooling on their own time.

Mr. Bunce stated that the police investigation was not the only investigation made, stating that the International Association of Firefighters had completed an investigation of its own which found that neither of "these people" should be in positions of authority. He urged Council to take appropriate action as he still had people that felt at risk.

Mayor Venis closed the public input portion of the meeting.

Mr. Middaugh stated that several mentions had been made in the investigative report and whether each incident had been reviewed individually. He advised that each allegation was reviewed individually for severity which was embodied as part of this report.

Vice-Mayor Weiner stated that he had read the entire report and indicated that the part above page 40 of Mr. Bunce's testimony was missing from his packet, as well as pages 112 through 114 of Deputy Chief DePaola's testimony. Vice-Mayor Weiner stated that a copy of Mr. Wetzler's book had not been included as part of the packet and, curiously, he had not received a copy of the transcript and notes from the pre-determination hearings with Chief Donati and Deputy Chief DePaola. He questioned why Council had not been provided with information concerning the pre-determination hearings. Mr. Middaugh explained that a transcript had not been created and that the notes taken at the pre-determination hearings were basically information provided by the respective subject and their attorneys. Vice-Mayor Weiner asked if there were tape recordings of the hearings. Mr. Middaugh replied negatively. Vice-Mayor Weiner stated that during his career as a lawyer, every pre-determination hearing he had attended had been tape recorded.

Mayor Venis stated that he had reviewed the documents and indicated that in going back to the depositions, and relating those back to the investigative reports which was a summary of the main documents, he found the information contained therein very disturbing. He referred to Deputy Chief DePaola and an incident that pertained to a carpet fire and the language used on the scene. Mayor Venis stated that this information was not part of the investigative report. He indicated that there was another deposition that referred to the malfunctions of equipment within the Fire Department which had also not been mentioned in the investigative report. Mayor Venis stated that he could go on and on with the types of comments made in the depositions concerning the pattern of language used by Deputy Chief DePaola and believed that this was reprehensible and intolerable. He indicated that Mr. Truex had stated that Council should have taken more of a role in the investigation and advised that he had previously brought a lot of these same facts to the then administrator to investigate. Mayor Venis stated that he had, at that time, mentioned

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that an early retirement package should be presented to Chief Donati as he did not believe that the department was working efficiently. Mayor Venis indicated that prior to Mr. Middaugh, the Town Administrator ran the Town and always looked to ensure three votes before moving forward with an issue. He thought that if Council had that authority at the time, Council would have been able to accomplish that feat.

Mayor Venis referred again to Deputy Chief DePaola, stating that he was prone to being upset and becoming enraged very easily and he believed that the Fire Department could not move ahead with this type of leadership. He stated that he disagreed with Mr. Middaugh's findings and recommended that Deputy Chief DePaola be terminated immediately. Mayor Venis stated that a letter of reprimand against Chief Donati was insufficient and that a new fire chief should be hired. He indicated that Chief Donati could stay on board until the new chief was hired, when he could then be moved to the head of fire inspections.

Councilmember Paul stated that she had a lot of concerns with regard to the issues brought forward by the firefighters. She indicated that upon visits to the fire stations, she noticed that much of the equipment was in disrepair. Councilmember Paul stated that she had provided testimony on an incident wherein she was approached by Deputy Chief DePaola in a very unprofessional manner. She indicated that if any firefighter had approached her in the same manner, they would have been terminated. Councilmember Paul stated that she had written to the then Town Administrator of what had happened, knowing that Deputy Chief DePaola had problems and that there were many reports and grievances filed against him for his behavior. She indicated that she had refused to meet with Deputy Chief DePaola as he had suggested without someone else in attendance. Councilmember Paul felt that Deputy Chief DePaola could not be placed in charge of community services as he had no personality or person-to-person skills. She felt that Deputy Chief DePaola could not be in charge of training when members of the Fire Department did not trust or respect him.

Councilmember Paul stated that she had read the testimony of one officer whose comments had not been substantiated because she would not take a lie detector test. She indicated that she was offended by the fact that this individual's comments were not believed, stating that this person had taken an oath, yet was still questioned as to whether she was telling the truth.

Councilmember Paul stated that Deputy Chief DePaola was not really being demoted as Mr. Middaugh was eliminating his position and placing Deputy Chief DePaola in another high ranking position. She indicated that Deputy Chief DePaola was still being provided with an opportunity and she felt that he should be terminated. Councilmember Paul stated that Deputy Chief DePaola should be demoted to firefighter, be required to obtain his paramedic certification on his own time, and be required to "cut the pony tail" to improve his personal appearance and provide an air of professionalism. She reiterated her belief, however, that termination would be just in this particular instance.

Councilmember Paul indicated that there had been some talk of providing Chief Donati with a retirement package and expressed her agreement with this method of dealing with the problem. She indicated that Chief Donati was a "nice gentleman," but agreed that he was unable to move the Fire Department forward. Councilmember Paul stated that the Town had to move a long way and heal many wounds that had been evident for many years. She indicated that perhaps, due to his short time with the Town, Mr. Middaugh was

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not aware of the full ramifications of all the incidents in the past. Councilmember Paul expressed her belief that Mr. Middaugh had sincerely tried to do a good job and, although she wanted to respect his findings, she felt that the Town needed to move further in order to heal the wounds within the Department.

Councilmember Clark asked if there were any other instances where a witness was asked to take a lie detector test, with the exception of the one female mentioned by Councilmember Paul. Captain Taylor replied negatively and explained that during her testimony, the witness had indicated that there were approximately 15 other firefighters present during the event she was reporting. However, during the course of the investigation, the witness nor the Police Department could identify any of those individuals. He described the procedures used by the Police Department, stating that a polygraph test was offered to the witness. Captain Taylor stated that if the polygraph was accepted and passed, the accused was then approached and offered the same opportunity to take the polygraph test. Councilmember Clark asked why Deputy Chief DePaola was not offered the opportunity to take the polygraph test. Captain Taylor reiterated that the accused was offered a polygraph test only after the witness or victim agreed to and took the test themselves. Councilmember Clark asked if the fact that this witness did not agree to take the polygraph weighed on the decision to have this incident classified as unfounded. Captain Taylor explained that this incident had not been sustained as there was insufficient evidence to support the allegation either way.

Councilmember Clark indicated that all allegations found to be unsubstantiated or unfounded were not included in Mr. Middaugh's report. She stated that because of the Police Department's recommendation on these allegations, Mr. Middaugh felt it was not necessary to deal with those issues. Councilmember Clark felt this was unfair to the female witness in question.

Councilmember Clark referred to Mr. Middaugh's report and read a portion of the conclusions relative to Deputy Chief DePaola into the record: "Had the various incidents which had been sustained occurred over time under appropriate reporting and with the application of progressive discipline, there would be no question that the termination of Deputy Chief DePaola's employment would be an option. However, as indicated in the previous section, such was not the case and termination was neither appropriate or supportable as a response to the findings relative to Deputy Chief DePaola." She indicated that it was her understanding that if Mr. Middaugh would have investigated these allegations a few years prior, Deputy Chief DePaola would have been fired. Mr. Middaugh disagreed, explaining that if the incidents had been reported and acted upon in a timely manner, there would have been an opportunity for that employee to correct the misconduct. He explained that if the appropriate pattern had been followed and the employee would have been advised of the situation and given an opportunity to correct the conduct, the employee would have been fired if he failed to meet the standards mandated by the Town. Councilmember Clark questioned why the higher managerial standards were not used to review Deputy Chief DePaola's record. Mr. Middaugh replied that it would not have been fair to apply the higher managerial standards for all the allegations as Deputy Chief DePaola was not part of management when the incidents supposedly took place. He explained, too, that Deputy Chief DePaola had not been previously notified that a problem existed and, therefore, he was not afforded with the opportunity to correct his behavior.

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Councilmember Clark stated that the investigative report indicated that perhaps Deputy Chief DePaola had not been properly hired and that adequate training had not been provided for this managerial position. She indicated that although Mr. Middaugh was unsure if Deputy Chief DePaola was the proper individual for the job at the time of his promotion, Mr. Middaugh was asking Council to create a position to give Deputy Chief DePaola another job instead of terminating him. Councilmember Clark stated that hiding a problem would not correct the situation and, she believed, the problem would only just resurface. She indicated that following Mr. Middaugh's recommendation would only be making another error.

Councilmember Clark referred again to the report, stating that Mr. Middaugh did not believe that any derogatory comments were made directly to other employees; however, she indicated that speaking about an employee behind their back was just as improper. She indicated that the Town could not allow Deputy Chief DePaola's behavior to continue. Councilmember Clark stated that she was grateful there was an attorney as a member of Council, indicating that at least she knew that he knew the law.

Councilmember Clark stated that she read Town Clerk Reinfeld's deposition as it pertained to providing medical information to Deputy Chief DePaola when he was the president of the union. She indicated that Ms. Reinfeld had admitted that she had provided the medical information and Councilmember Clark felt that it was not up to the Town Clerk to determine who was entitled to private information. Councilmember Clark asked to be provided with labor laws as she wanted to determine if any labor laws had been broken. She expressed her assurance that Mr. Bunce could not get private medical information from the Town Clerk's Office, despite the fact that Ms. Reinfeld had not spoken to him in years. Vice-Mayor Weiner stated that this type of information should not be disbursed. Councilmember Clark indicated that there was no way Council could not assume that Ms. Reinfeld had given Deputy Chief DePaola the information due to their "binding relationship." She stated that she was offended by the actions of Ms. Reinfeld and stressed that she would not tolerate this type of behavior.

Councilmember Clark recommended that Deputy Chief DePaola be terminated immediately and, if Chief Donati was willing to retire early, fine; otherwise, he should be terminated as well. She indicated that the "old Davie" style of government could not be tolerated.

Detective Marseco explained the process used by the Police Department to complete the investigation. He expressed his belief that a complete and thorough investigation had been done and that a non-biased report had been issued. Detective Marseco felt offended that the Police Department was being questioned as to the work they had performed. He reminded Council that neither he nor Captain Taylor had volunteered for this investigation, but reiterated that a complete and thorough investigation had been done. Detective Marseco stated that no one had been held accountable for what was going on in the Fire Department and it was unfair to blame the Police Department for the outcome.

Councilmember Cox stated that reading the backup provided a deeper perception of work performed by the Police Department. She believed that the officers had done a thorough job on what was a very politically charged job. Councilmember Cox stated that there appeared to be a pervasive attitude wherein individuals did not come forward when there was a problem. She agreed with Mr. Middaugh that action could not be taken on issues that were not being reported. Councilmember Cox stated that not reporting the

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incidents as they occurred did not give the employee the opportunity to correct the misconduct or, in the alternative, for the Town to deal with the problem in a timely manner. She indicated that if all the allegations were “thrown in a bucket, it was pretty damning,” but reiterated that no one had ever told the employee that he had done anything wrong. Councilmember Cox agreed with Mr. Middaugh that termination was not appropriate at this time.

Councilmember Cox recalled one incident where a firefighter had “gotten in her face” during an event at the rodeo arena. She stated, however, that she would not file charges against the firefighter because she understood that the issue being debated was a very emotionally charged situation. Councilmember Cox stated that she did not condone the firefighters behavior nor hers, for that matter, but understood that emotions could cause situations to appear out of hand. She stated that she respected Chief Donati and believed that he had brought the Fire Department forward. She understood, however, that other Councilmembers wanted to accelerate the process of removing Chief Donati from command. Councilmember Cox felt that Chief Donati cared about the Department and its employees. She indicated that Mr. Middaugh should be directed to discuss an agreement to have the Fire Department turned over to other types of management and management style. Councilmember Cox restated her agreement with Mr. Middaugh that termination was not appropriate, but felt that the Department would not move forward because the “rank and file” would not tolerate it.

Councilmember Cox stated that once again the pervasive silence within the Fire Department did not allow for corrective action to be taken. She indicated that if Deputy Chief DePaola would have been given notice of the offensive behavior, he would have had an opportunity to either correct his actions or be terminated, if necessary. Councilmember Cox stated that perhaps she would have recommended a more severe demotion, but felt that Mr. Middaugh was capable of making the decision. She stressed that she “hated to throw away an employee,” indicating that all sorts of other problems were handled differently with other employees. Councilmember Cox believed that there was “salvageable material” and that Deputy Chief DePaola should be given the opportunity to correct his behavior due to the lack of appropriate disciplinary action.

Vice-Mayor Weiner apologized to Ms. Stratman and anyone else who might have taken offense as tonight’s meeting was about a specific issue. He indicated that he had noticed a lot of people from Town Hall wearing yellow ribbons in support of Chief Donati and Mr. Middaugh and commended staff for supporting each other. Vice-Mayor Weiner indicated that he was not here today to discuss Mr. Middaugh, but rather to participate in the discussion and to review Mr. Middaugh’s findings.

Vice-Mayor Weiner congratulated Mr. Pheterson, stating that he had made an attorney proud to have an attorney speak in front of him. He disagreed with some of the “spins” he put on things, but felt that Council was not here in a legal setting, but “as politicians in the political process”. Vice-Mayor Weiner stated that Chief Donati had a heart of gold and was a wonderful person, but felt that time had passed him by with regard to the status of fire rescue systems. He indicated that Chief Donati was dedicated to his job and put his “blood, sweat, and tears” into it and that perhaps this was the reason Chief Donati yelled, raised his voice, and lost his temper. He felt that Chief Donati did these things in a good intentioned fashion to ensure that people were safe. Vice-Mayor Weiner stated, however, that he was here to support the people that “stand the wall.”

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Vice-Mayor Weiner commended Detective Marseco and Captain Taylor, stating that they had done the best job they could. He understood that these officers had been drafted for this job and that the job had been a difficult one. However the officers had limitations and, essentially, an actual investigation had not been completed. He indicated that statements had been taken, but no further work had been done. Vice-Mayor Weiner indicated that logs had not been pulled and verifications of statements had not been done. He understood that the direction given was to find facts, but felt that an outside investigation would have been more thorough. Vice-Mayor Weiner stated that he needed to be careful as to what he said since he use to be an attorney for the firefighters, but felt that these issues had been raised with Chief Donati. He indicated that he was aware that Mr. Wilson had for years put in for public records requests to review Deputy Chief DePaola's personnel file, but never found any write-ups in that file.

Vice-Mayor Weiner stated that there was a "battered employee syndrome" where the political climate was extremely hostile to at least one group of employees. He indicated that unfortunately, for some politicians, it was the group of employees that had the most time to become active in politics. Vice-Mayor Weiner indicated that during his election in 1997, he had questioned Mr. Flatley as to why these things were happening to the firefighters; however, Mr. Flatley had indicated that there were "other people" who had influenced what was going on. He indicated that his suspicions were that it had more to do with the fact that the Deputy Fire Chief was cohabitating with the Town Clerk. Vice-Mayor Weiner indicated that he had hoped that Mr. Middaugh would have spoken to him prior to the pre-determination hearings as he had additional facts he could have discussed with him. He stated that "status quo had to be status gone."

Vice-Mayor Weiner stated that he was unwilling to revisit the Town's ugly past. He indicated that this was an emotionally charged issue, but felt that people did not come forward because they were told that nothing would happen.

Vice-Mayor Weiner stated that he had some questions regarding Deputy Chief DePaola's and Ms. Reinfeld's statements regarding the disbursement of medical information on a firefighter he did not wish to name. He indicated that the medical information in question was a confidential psychological examination taken when the firefighter was hired six or more years ago. Vice-Mayor Weiner stated that Ms. Reinfeld's statement showed that she had provided the information to Deputy Chief DePaola who was union president at that time. He confirmed for Councilmember Clark that union representation had absolutely no involvement in the hiring process. Vice-Mayor Weiner indicated that there was no legal reason why confidential medical information should have been disclosed. He provided copies of the relevant statutory sections for 1993, 1995, 1996, and 1999 to Attorney Connick and read portions of the Statute. Vice-Mayor Weiner stated that there were criminal penalties for violating these Chapters and questioned why the medical information would have been disclosed. He indicated that the firefighter was amazed that the information had been disclosed and that he had had no indication that he had waived disclosure for the hiring process, nor that the union president would have access to the information. Vice-Mayor Weiner stated that this was an abuse of public position to benefit another and questioned why the Town would condone this type of behavior. He indicated that he would not stand idly by and he demanded that Deputy Chief DePaola and Ms. Reinfeld be investigated for their conduct in this matter. Vice-Mayor Weiner stressed his belief that the information had been provided to benefit the person they were cohabitating with.

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Vice-Mayor Weiner discussed his testimony and the incidents he had experienced and stated that he could understand why employees did not come forward. He indicated that it was unacceptable for an employee to make open comments about a Councilmember in front of his subordinates. Vice-Mayor Weiner stated that this action, in it of itself, was grounds for termination. He believed that a position should be made for Chief Donati in fire inspections, giving him the opportunity to generate a plan to implement a fire inspection program. Vice-Mayor Weiner stated that anything short of terminating Deputy Fire Chief DePaola was unacceptable. He indicated that Deputy Fire Chief DePaola was free to go before the Personnel Board, although Vice-Mayor Weiner thought that the composition of that Board was a bit curious. Vice-Mayor Weiner indicated that if anyone wanted to sue the Town, they should move forward; however, he could not allow someone who had acted in this manner to be a part of one of the Town's department.

Vice-Mayor Weiner made a motion, seconded by Councilmember Paul, to direct Mr. Middaugh as Town Administrator to immediately terminate Deputy Chief Leonard DePaola and to demote Chief Donati to Fire Marshal within the Fire Inspection Bureau and to review whether or not Sid Marchant, the Town's training officer, should be installed as interim Fire Chief. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes; Councilmember Cox - no; Councilmember Paul - yes. (Motion carried 4-1)

Mayor Venis asked Mr. Middaugh if he would discuss Council's vote with Deputy Chief DePaola and Chief Donati. Mr. Middaugh responded that he would first need to seek advice from the Town Attorney, indicating that he felt that Council had exceeded its authority. Mayor Venis stated that Council had formalized its opinions by a vote. Councilmember Clark stated that the action taken by Council was called "direction."

Vice-Mayor Weiner made a motion setting a policy that conduct of our senior management officials with regard to racism, sexism, or obscene language was unacceptable and results in immediate termination. Councilmember Paul stated that this issue was not on the agenda. Vice-Mayor Weiner stated that he would bring it up at the next Council meeting.

Councilmember Clark stated that hearing Detective Marseco speak further validated her opinion that she did not believe that Mr. Middaugh made the right decision by giving this investigation to the Police Department. She felt it was unfair to the officers and, although they had done a wonderful job, showing that they had emotions on the issues was unfair and a bad decision on the part of the administration. Councilmember Clark agreed with Mr. Nichols that an organization could not investigate itself. She indicated that she had heard that there were many offers for investigators; however, she only knew of Mr. Nichols' offer and that of Ellen Christopher. Councilmember Clark questioned if the Town had actually offered additional investigators that were turned down by the union. Mr. Middaugh replied that there were at least a dozen investigators that were considered and rejected. He indicated that included in the list of individuals offered was a retired judge who obviously could perform an unbiased investigation. Mr. Middaugh stated that in view of the rejected offers, it had been deemed hopeless in obtaining an outside investigator with the same credentials to perform the investigation. He explained that this had been the reason why the Police Department had been chosen for this task.

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Mr. Bunce stated that Council did not approve of Mr. Middaugh's results and had offered its own direction. He questioned what would happen when the next shift started and indicated that this was a "bad situation getting worse." Mayor Venis stated that Council had given its direction and formalized it in the form of a vote.

Councilmember Clark made a motion, seconded by Vice-Mayor Weiner, to reject Mr. Middaugh's report. In a roll call vote, the vote was as follows: Mayor Venis - yes; Vice-Mayor Weiner - yes; Councilmember Clark - yes; Councilmember Cox - no; Councilmember Paul - yes. (Motion carried 4-1)

Mayor Venis stated that Council had given its recommendation to Mr. Middaugh as a matter of policy and, upon Mr. Middaugh's discussions with the Town Attorney, he did not believe any legal issues would be a problem. Mr. Connick stated that subject to further review, his preliminary thoughts were that Council had the right to hire the Fire Chief and, under the Charter of the Town, the Town Administrator was in charge of terminating employment. He indicated, however, based on Section 2-42, his opinion was that Council's actions were in no way an interference with administration. Mr. Connick stated that having the public hearing provided Mr. Middaugh with an opportunity to come to his final decision while considering Council's recommendations.

Mr. Bunce again stated that leaving this situation without resolution made a bad situation worse. Mr. Connick stated that there was no reason to push a decision, indicating that it was obvious that a resolution was forthcoming. Mr. Bunce stated that it was not his intention to push; however, he still felt that there may be some issues to deal with in the morning upon arrival of the new shift as Deputy Chief DePaola would be Acting Battalion Chief.

Vice-Mayor Weiner stated that Mr. Middaugh was aware of Council's recommendation and felt that Mr. Middaugh was also aware that Deputy Chief DePaola would be Acting Battalion Chief at the start of the new shift. He indicated that he was sure that Mr. Middaugh should immediately make his decision known to Deputy Chief DePaola and then obtain another Acting Battalion Chief.

Councilmember Clark asked if, in the interest of safety and how Deputy Fire Chief DePaola would feel tomorrow, Deputy Fire Chief DePaola could be suspended with pay to avoid further inflaming the situation. Mr. Middaugh replied that he would take this recommendation under advisement and would make a decision prior to leaving the office this evening.

There being no objections or further business, the meeting was adjourned at 8:55 p.m.

APPROVED _____

Mayor/Councilmember

Town Clerk