

New Shoreham Town Council Minutes
Monday, June 24, 2013
Town Hall, Old Town Road
7:00 p.m.

Present: First Warden Kimberley H. Gaffett, Second Warden Kenneth Lacoste, Town Councilor Sean McGarry, Councilor Norris Pike and Councilor Christopher Warfel. Also present were Town Manager Nancy O. Dodge and Town Solicitor Kathryn Merolla. Town Clerk Fiona Fitzpatrick was present to take the minutes of the meeting.

- 1. Review and act on PUC decision regarding Interstate Navigation Application to Change Rates (Division PUC Docket 4373)** [Although the agenda was posted with the provision that the discussion might be held in closed session pursuant to Rhode Island General Laws §42-46-5(a)(2) for the discussion of litigation, the Town Council did not enter closed session.]

First Warden Gaffett called the meeting to order at 7:00.

The Public Utilities Commission (the Commission) issued a Report and Order on June 20, 2013 regarding a settlement agreement between Interstate Navigation and the Division of Public Utilities and Carriers (the Division). A PUC appeal must be taken within seven days by writ of certiorari to the RI Supreme Court. Town Solicitor Kathryn Merolla worked over the weekend with Special Counsel Lauren Jones to provide a legal opinion to the Town Council which ultimately found the Town had little likelihood of success on appeal to the Rhode Island Supreme Court.

Councilor McGarry said he thought it was inappropriate for Attorney Merolla to coordinate with Lauren Jones. He said he would like an opinion from an attorney who thinks the Town will prevail. Ms. Merolla responded that she conducts Town business with several attorneys who act as Special Counsel for the Town (Daniel Kinder, Lauren Jones, Alan Mandl and Ellen Corneau) in areas of their expertise or when time is short. Mr. Jones is the #1 appellate attorney in the state and is currently assisting Attorney Merolla with the Old Harbor Triangle case. Discussion ensued.

Attorney Merolla discussed some of the issues raised in the opinion, including:

- The court may find the Town did not have standing to appeal because the Town did not oppose the settlement agreement. It may be argued that the Council supported it.
- For the Town to prevail, the Supreme Court must find the PUC's order "unlawful or unreasonable." The standards for "unreasonable" were discussed [clearly, palpably and grossly unreasonable].
- The Supreme Court applies "all but absolute" deference to the PUC's findings of fact and a strongly deferential standard of review to the PUC's exercise of "administrative discretion."
- Attorney Merolla said the Town's expert and Interstate's expert disagreed on the "facts" of the case and the Division, which represents the public, brings the "relevant" facts to the PUC. The Supreme Court will not substitute its own facts by reviewing or reweighing any conflicting facts.

Mr. McGarry said he believed the collaborative opinion was not solicited and had the weight of any public comment. He would have preferred that the PUC's "grossly unreasonable" failure to consider the lifeline service issue be included as grounds for appeal.

The only question before the Commission was the settlement between the Division and Interstate. When the Town asked to be part of the negotiations between the Division and Interstate, the request was denied. Mr. Pike said only way to gain a "seat at the table" for the interest of Island residents and businesses is to create a Port Authority. The concept of a Port

Authority was discussed. Mr. Warfel said he believes appealing and the expected loss would strengthen the case for a Port Authority. Mr. Lacoste said this decision and the testimony behind it would make a compelling case to the General Assembly without appealing.

Councilor McGarry moved to ask the Town's Attorney to file a writ of certiorari with Supreme Court to appeal Public Utilities Commission Report and Order in re: Interstate Navigation Company Docket 4373, seconded by Councilor Warfel.

Ayes: 2 (McGarry, Warfel)

Nays: 3 (Gaffett, Lacoste, Pike)

Mr. Lacoste requested the topic of a Port Authority and a position statement regarding the PUC order be put on the next agenda.

At 9:30 a motion to adjourn was made by Mr. Warfel and seconded by Mr. Pike.

Ayes: 5 (Gaffett, Lacoste, McGarry, Pike, Warfel)

Nays: 0

Minutes approved July 1, 2013

Fiona Fitzpatrick
Town Clerk