

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNTY OF NEWPORT**

**Approved 3/25/13**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton Town Hall, 343 Highland Road, on the 11th day of March 2013 A.D. at 7:00 p.m.

President Roderick opened the meeting with the Pledge of Allegiance to the Flag.

<b>Roll Call:</b>	<b>Edward A. Roderick-President</b>	<b>William P. Gerlach</b>
	<b>Denise M. deMedeiros-Vice President</b>	<b>Jay J. Lambert</b>
	<b>James Arruda</b>	<b>Brett N. Pelletier-late arrival</b>
	<b>Joan B. Chabot</b>	

Town Administrator, James C. Goncalo and Town Solicitor, Andrew M. Teitz were also present. Attorney Matthew Oliverio acted as Special Counsel during the Public Hearing.

**President Roderick entertained a motion to change the Agenda**

**TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS**

**K4 Stafford Pond – Ordinance Amendments**

**a.Report of Meeting With RIDEM**

**b.Proposed Ordinance Amendments to Protect Water Quality and Establish Advisory Committee – Scheduling of Public Hearing on April 8th**

**c.Proposed Ordinance Amending No Parking From South Intersection of Stafford Road and Old Stafford Road Northerly to a Point 50 Feet South of Pole #943 (Approximately Adjacent to #997 Old Stafford Road) – Scheduling of Public Hearing on April 8th**

Councilor Gerlach made a motion, seconded by Councilor Chabot to continue item K4, Stafford Pond – Ordinance Amendments to March 25, 2013. Motion passed unanimously.

Councilor deMedeiros made a motion, seconded by Councilor Chabot to move items B, Public Hearings & Public Presentations and C, Town Council Sitting As Board Of Licensing to the front of the Agenda and take the Consent Agenda after those items. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to substitute for K4 and add for discussion only Nonquit School. Motion passed unanimously.

**A-9 OPEN PUBLIC FORUM FOR ANNOUNCEMENTS, COMMENTS, QUESTIONS**

Bob Martin, Maintenance Foreman, requested the Council consider maintenance of the Town, need more than one full time and one part time employee, keep cutting money. The Community Center has a leaky roof and may have to maintain Essex Library and the new library.

**B –PUBLIC HEARINGS & PUBLIC PRESENTATIONS**

**PUBLIC PRESENTATIONS**

**Normand G. Benoit, Esquire - Bond Counsel – Resolution Of Town Council Of Tiverton Approving The Financing Of The Acquisition, Constructing, Building, Furnishing And Equipping Of A Public Library And To Issue Bonds And Notes In An Amount Not To Exceed \$7,000,000**

Mr. Normand Benoit, Bond Council, here as a follow up to the Special Election Referendum of 2011 authorizing Bonds of the Town. The Resolution is in the customary form authorizing the Town Treasurer and Town Council President to issue Bond Anticipation Notes. Section 3 of the Resolution refers to the manner of sale, Section 5

refers to the manner advanced, Section 6 authorizes the offering document, Section 7 refers to the continuing disclosure, Section 8 has language that authorizes the Treasurer and Town Council President to insure the Bonds remain tax exempt and Section 9 refers to the reimbursement for capital expenditures in the normal form. Mr. Benoit explained Bond Anticipation Notes are short term notes issued in advance of long term bonds, gives flexibility for timing.

Councilor Lambert made a motion, seconded by Councilor deMedeiros to adopt the Resolution as noted on agenda item B1, Resolution of Town Council of Tiverton Approving The Financing Of The Acquisition, Constructing, Building, Furnishing and Equipping Of A Public Library And To Issue Bonds And Notes In An Amount Not To Exceed \$7,000,000. Motion passed unanimously.

**Resolution attached.**

**Normand G. Benoit, Esquire - Bond Counsel – Discussion of Possible TIF Bond Refinancing**

Mr. Benoit, Bond Counsel was requested to look to see if it made sense to for refinancing. In 2002 issued special Tax Increment Financing (TIF) bonds for the Villages. Money was used to put in a sewer line, TIF bonds are not general obligations of the Town, Town does not put full faith and credit, pledged to pay increases in taxes since then, was construction risk, interest rates higher then. To refund no extension of security. A financial advisor only gets paid if going forward, approximately could cost \$3,000 for an RFP. The advisor would review; find the 10 year basis for interest rates. The State looks for 3% present value savings, net, net. Do not recommend less than the State. With a rate of 6.875% might be able to cut substantially. TIF bonds are rare in the State, have had some refunding mostly with 10 year call backs. TIF is a specialized type of bond, does not make sense to make as a general obligation of the Town.

**Councilor Pelletier arrived, 7:15 pm.**

**NON-ADVERTISED PUBLIC HEARING**

**Town Council Sitting As Charter Monitoring and Complaint Review Board Charter Violation Complaint by Justin Katz Against Town Clerk Nancy L. Mello**

Special Counsel for the Town Council will be Matthew Oliverio, and Town Solicitor Andrew Teitz will be representing the Town Clerk Nancy L. Mello in her official capacity as Town Clerk since he had previously advised her with respect to the underlying action in the previous complaint. Mr. Justin Katz represented himself.

Mr. Oliverio then set forth the ground rules. At the Public Hearing, the Council hears testimony taken from the complainant and the person charged with the violation and evidence can also be presented. Burden of proof is on the complainant, and although it is not set out in the Charter, the standard is fair preponderance of evidence. If the Council finds by a two-thirds vote for the complainant, it would proceed to Municipal Court, and that Court would have jurisdiction. Penalty could be removal from office or fined from zero to three hundred dollars. In this case Justin Katz filed a complaint on February 5, 2013 in effect claiming Town Clerk Nancy Mello knowingly violated the Charter when she investigated a complaint filed by Mrs. Cook, who alleged a violation by influencing elections (Section 1218), and that Mrs. Mello violated her responsibilities when she investigated that complaint. Attorney Oliverio suggested to the Council that testimony should be limited to Mrs. Mello and the complaint relative to her conduct and not to the Cook complaint. Suggest the parties are responsible for presenting evidence, perhaps brief opening statements. Mr. Katz can present evidence and witnesses subject to cross examination, Solicitor Teitz can as well. Suggests not open up for public discussion. At the close of evidence, the Council can deliberate in public. If found by two-thirds of the Council, the Administrator will forward to Municipal Court within ten days, but if found to the contrary it goes no further. Upon request for clarification from Solicitor Teitz, Mr. Oliverio indicates his understanding that the two-thirds of seven members means that five votes in the affirmative were needed in order to forward to Municipal Court.

For the record, Solicitor Teitz talked with the School Department (SD) on availability of witnesses, and that SD was not willing to voluntarily make an employee available. Solicitor Teitz reserves the right to issue subpoena to SD employees. Attorney Oliverio suggested those testifying be sworn under oath. Marking of exhibits will be numeric for the complainant and by letters for the respondent.

Justin Katz was sworn in by Attorney Oliverio. Handed out an email from Attorney Oliverio regarding a question from Mr. Katz. Attached to that email was a letter from School Department Attorney advising that School Department will not voluntarily appear at this hearing. Solicitor Teitz, acting as Counsel for Mrs. Mello intended to object, suggested exhibits be presented one at a time, could object. Attorney Oliverio marked that email for identification at this point. Attorney Oliverio noted the rules were already defined in the Charter and either side can provide written and documentary evidence. It was Mr. Katz's burden to establish it was a knowing violation. Attorney Oliverio reminded this was not a civil case, no discovery process, procedure was outlined. The Chair has agreed to follow the process outlined by Attorney Oliverio. Mr. Katz requested a continuance so both sides could prepare according to the rules. Attorney Teitz objected to a continuance, and although he had some questions about the SD employees not being present, Mrs. Mello would like to get started. President Roderick agreed, should proceed, since this has already been continued from an earlier date, without objection by Mr. Katz, there has been sufficient time to prepare case. The motion to continue was denied.

Mr. Katz raised an objection to Solicitor Teitz representing Mrs. Mello, since he had advised the Council on the Complaint from Donna Cook, cited a conflict of interest, and claims that it makes Solicitor Teitz a business associate. Mr. Katz cited ethics advisory opinions 95-108, 98-71 and 96-3, and further that Council Members should all recuse, and the Town Administrator should file this complaint with the Municipal Court. Solicitor Teitz explained, he was not a business associate, but was an appointed official by the Town representing Nancy Mello in an official capacity, not representing a business client or a private client before the Town Council. Attorney Oliverio was not a member of Solicitor Teitz's law firm, but was getting paid separately. There was nothing to prohibit Solicitor Teitz from performing official duties to represent the Clerk. Attorney Oliverio agreed with that interpretation, no basis for Solicitor Teitz to recuse, recommend that motion be denied. President Roderick noted on Counsel's advice was not a conflict, motion denied, no one will recuse. Mr. Katz questioned if anyone on the Council has sought an opinion of the Ethics Commission, cited 99-33, if affiliated with Tiverton First, Mrs. Mello is a member to the Town Democratic Committee, Tiverton First at the center of the complaint. Attorney Oliverio disagreed with Mr. Katz analysis, assuming every member has some affiliation with some public group, recommend proceeding with the hearing, no basis for any member to recuse themselves. Solicitor Teitz agreed ethics deals with business associations.

Mr. Katz requested a bifurcated hearing, deciding first if Nancy Mello had authority to conduct a Charter complaint investigation, and then second if she satisfied the requirement in this instance. Attorney Oliverio noted, no basis to bifurcate, issue before the Charter Complaint and Monitoring Review Board is whether Ms. Mello knowingly violated the Charter in her handling of the Cook complaint. That is the issue, knowingly is defined as with knowledge, knowingly, consciously willingly, intentionally, has to have an element of "scienter," an element of intent. President Roderick agreed, instructed Mr. Katz to proceed. Mr. Katz handed out relevant sections of the Charter, called this a critically important issue for the Town. The Charter specified a direct role, revised in 1999. The question is whether Nancy Mello followed established procedure or whether she fabricated a whole new procedure. On October 29, 2012, Donna Cook filed a complaint with all the necessary elements, cited the section of the Charter, the nature of the violation, against whom the complaint was being made and was "sufficiently set forth". Mr. Katz included word definitions in that packet. Mr. Katz noted what should have been done by Nancy Mello to determine if sufficiently set forth and to schedule a hearing, mainly to check if the documents are in order, to make arrangements. Mr. Katz also includes the definition of Clerk in that packet.

Solicitor Teitz requested for the purpose of the record to go through each exhibit, what page is referred to in the various exhibits. Attorney Oliverio identified the various plaintiff exhibits as follows:

Exhibit 1, dated 3/9/13, email chain letter from Matthew Oliverio, Justin Katz, the two attorneys and the Robinson letter attached.

Exhibit 2, Donna Cook letter dated October 29, 2012 to Nancy Mello along with a copy of Ethics Chapter 36-14-2, definitions of specifics, Coastal Resources Management Council Section 46-23-7.1 and from the General Laws, Perjury and False Swearing Section 11-33-1 as it uses that term.

Exhibit 3, Charter Violation letter dated September 5, 2002, Memo from Hannibal Costa dated September 10,2002, letter from Tracy Connors dated April 8,2004, letter from Town Clerk dated April 13,2004, five page letter to Town Clerk from Deborah Pallasch dated August 10,2004, memo from Town Clerk dated August 11,2004, memo from Town Clerk dated August 16,2004, letter from Michael Burk dated January 8,2011 and a letter from Town Clerk dated January 14,2011 .

Exhibit 4, definition of clerk, RI General Law Clerks of Supreme and Superior Courts Section 8-4-8 and certain provisions of the Charter.

Exhibit 5, memo from the Town Administrator about forwarding the complaint dated February 11, 2013 with copies of relevant Charter provisions.

Exhibit 6, Tiverton 1<sup>st</sup> Tiverton Proud, appears to be minutes from Tiverton Town Council Meeting November 26, 2012, emails and a letter from Nancy Mello dated November 19, 2012.

Mr. Katz cited Exhibit 4 showing duties of the Clerk. Exhibit 3 are copies of Charter complaints filed with the Clerk after the 1999 Charter change. Some in detail, others state the three things to be specified in the complaint, not one has ever been dismissed by the Clerk particularly after 1999. Mr. Katz cited “sufficiently set forth” in letters from Hannibal Costa, filed correctly to go to Council, no reference to investigate. Referring to Exhibit 6, Mr. Katz noted upon receiving the complaint, Mrs. Mello went to Ft. Barton School, continued investigating, and went to Pocasset School. The Clerk was operating outside the Charter, no process of appeal. What was done was never supposed to be done.

Exhibit 7 has some examples of what “knowing” mean, some legal precedent. The plain language of the Charter, the history of prior Charter complaints, argues the result of this case is evidence of incompetence. Mr. Katz did not agree with Attorney Oliverio’ s interpretation of “knowingly”, included sentence diagrams in Exhibit 7. Solicitor Teitz objected, while not strict rules of evidence, objected to sentence diagrams being admitted for consideration. Attorney Oliverio recommended to Chair, determined was admissible. President Roderick understood what Mr. Katz was trying to say, urged to move on. Mr. Katz did not have any witnesses.

Solicitor Teitz cross examined Mr. Katz. Solicitor Teitz introduced part of Mr. Katz email as a separate exhibit, marked Respondent Exhibit A. At the top of the email the first line reads “Not knowing the process of the investigation, I just wanted to let you know what I know”. The email was dated November 5, 2012. Solicitor Teitz asked Mr. Katz if he believed the Clerk was doing the right thing? Mr. Katz thought that was part of her job. Solicitor Teitz referenced Respondent A, email time of 7:11 pm, asked Mr. Katz if he knew about the buttons before reading the story on Patch? Mr. Katz affirmed. Questioned if Mr. Katz asked Mr. Nelson to come forward to the Clerk? Mr. Katz did not. Questioned that if Mr. Katz knew Nancy Mello was conducting an investigation, did Mr. Katz suggest to Mr. Nelson to come forward? Mr. Katz anticipated the Clerk would conduct a full investigation. Solicitor Teitz questioned the reports of other buttons at Ranger.

Solicitor Teitz noted Mr. Katz listened to the recording of Dave Nelson but took no action to get the recording to Mrs. Mello. Mr. Katz sent a note to tell the Clerk where she could get it. Solicitor Teitz introduced as Respondent Exhibit B a portion of the Council minutes from November 26, 2012. Attorney Oliverio asked if there were any objections to the Complainant’s exhibits in full. Solicitor Teitz did, Attorney Oliverio noted the rules of evidence have been applied loosely.

Solicitor Teitz questioned Mr. Katz about the tape from Dave Nelson, audio or video, what kind of tape? Mr. Katz explained it was a video tape but only the audio portion was clear, thinks it was taken from a cell phone. Solicitor Teitz questioned if Mr. Nelson made known to other parties he was recording? Mr. Katz did not know, did not recall. Solicitor Teitz cited exhibit B, page 7 of 10 the first full paragraph in the middle "Solicitor Teitz noted this was not summarily dismissed. If you have other evidence then you can refile with further evidence", asked if Mr. Katz recalled that part and that Mrs. Cook was offered the opportunity to refile? Mr. Katz affirmed.

Mr. Katz did not have any objection to Respondent's Exhibits A & B as full. Solicitor Teitz had no objection to Exhibit 1 or 2, but does not agree with the characterization. Solicitor Teitz objected to Exhibit 3, prior Charter violations, on relevancy grounds, withdraw the objection to the last part of Exhibit 3 by this Clerk (Mrs. Mello), he maintained the objection to the records of the previous Clerk, don't think is binding. Attorney Oliverio would admit as full, the thrust of the argument is a matter of interpretation, the Charter provides some relevant evidence if this was a knowing violation, not binding. Exhibit 3 was marked as full. Solicitor Teitz had no objection to Exhibit 4 or 5, wanted to clarify that in Exhibit 5 the pages labeled "Katz v Clerk 52" and "53" were from the Charter in effect in 1994. Solicitor Teitz had no objection to Exhibit 6 or 7. Marked as Exhibit 8 full, various sections of the Code of Ethics and some advisory opinions.

Solicitor Teitz opening statement noted two issues here; one was the language of the Charter. If the citizens wanted the Clerk to do nothing, it would say "put it on next agenda." Solicitor Teitz then referred to Exhibit 5, Katz v Clerk page 52, "Complaints by Citizens subsection (b) Action by the Town." The old process stated the Clerk will place on the next agenda. The Charter was amended so the Clerk now has a role to find out if sufficiently set forth. The current Charter does provide a role for the Clerk. In November, both Mr. Katz and Mrs. Cook thought the Clerk did have a role to investigate; Mrs. Cook's letter requested an investigation and hearing into the violation of the Town Charter. The second issue was did the Clerk conduct a sufficient investigation. This was already shown by some of the Exhibits. The Clerk went to the Schools, talked to the Superintendent, came before the Council, in public, and requested if there was more evidence, it should come forward. The Clerk did more than her duty; then she invited further information. Solicitor Teitz at this point asked for a decision on the question of this investigation, based on Exhibit 5 there is some investigative role, move for a decision on this part. Mr. Katz objected. Attorney Oliverio requested Solicitor Teitz proceed and then ask the body to deliberate, President Roderick agreed, should consider the entire matter.

Solicitor Teitz called Nancy L. Mello as a witness; was sworn in. Mrs. Mello has been Town Clerk since 2004, has had two Charter Complaints while in office, one from Michael Burk and one from Donna Cook. Mrs. Mello briefly explained the Burk complaint that the Treasurer at the time was no longer living in Tiverton, had she had received notice from the Board of Canvassers through a voter registration change. She performed an investigation, also talked to Treasurer and the Middletown Board of Canvassers. That Treasurer resigned, the complaint was withdrawn. As far as the current complaint, the Clerk recalled Donna Cook brought in the complaint on Monday, October 29, 2012, clocked in at 10:16 am. Mrs. Cook had been to Ft. Barton School, saw some campaign buttons on a secretary's desk, and she wanted action taken, wanted something done about it. The Clerk went to the school on Wednesday, following the hurricane on Monday. Solicitor Teitz requested the Council take judicial notice of Hurricane Sandy. Mrs. Mello further explained the schools were closed on Tuesday, went to Ft. Barton school on Wednesday, October 31<sup>st</sup>, asked the secretary if she had any political pins on her desk, she found one under papers on her desk. When asked, secretary did not know it was from a political action group and threw it in the trash. For the record, Solicitor Teitz asked to identify the secretary as Lexi Souza, Mrs. Mello affirmed. Mrs. Mello spoke to the Principal, explained had received a Charter complaint of pins on a desk at Fort Barton. Intended to go to every school; went to Pocasset School, spoke to the secretary and Principal Blaess. While there, Superintendent Rearick called spoke with him, he said that he was unaware of buttons and would send out an email about the policy, Mrs. Mello was satisfied that the Superintendent was doing what was necessary. Saw no need to go any further.

Solicitor Teitz, referencing Exhibit A and the recording that was mentioned in the email, questioned if the Clerk had any communication with Dave Nelson about that recording? Town Clerk Mello discussed Council business with Mr. Nelson; tape was not raised by either person. The Clerk had seen Mr. Nelson several times since then; he never talked about a tape. Mrs. Cook referred to a tape she had but did not provide. Mrs. Mello made every effort to tell Mrs. Cook that it was going on the agenda, told Mrs. Cook to bring forward the tape or have that person bring it forward. Mrs. Cook specifically stated that Mr. Nelson would not come forward. Solicitor Teitz distributed copies of the Clerk's response letter to Mrs. Cook dated November 19, 2012, referencing Exhibit 2, Katz v Clerk 15, the line about filing a Citizen Complaint. Town Clerk Mello noted Mrs. Cook only made the reference to the secretary when she spoke to her. Mr. Katz objected to the question, leading the witness. Solicitor Teitz asked if the letter of Donna Cook dated October 29, 2012 made any complaint against an individual? Town Clerk Mello said the buttons were on the Secretary's desk. Solicitor Teitz noted the letter said the school department was in violation and the last line was "I'm requesting an investigation." Solicitor Teitz had no further questions for this witness at this time.

Mr. Katz cross examined Town Clerk Mello, asked if she had any legal authority? Town Clerk Mello thought it was her duty to get all the information together. She followed the same procedure as in the Burk complaint. Mr. Katz questioned the Clerk about Exhibit C, the Clerk's response letter to Mrs. Cook. Mr. Katz did not have any further cross examination.

Attorney Oliverio requested Council questions at this time. Councilor Chabot questioned the duties of the Clerk of the Board of Canvassers; the additional responsibilities as far as elections go relative to the Board of Elections and the Board of Canvassers. Town Clerk Mello explained as Clerk to the Board of Canvassers have many other responsibilities.

A brief two minute recess was taken at this time.

Solicitor Teitz closing remarks, noted in Exhibit 1, had an attached letter from Attorney Robinson, dated March 11, 2013, that the School Department would not make personnel available. Noted for the record unable to call them as witnesses. Disagreed with some of the facts stated in the letter from the Fort Barton Principal. Introduced a statement from Superintendent Rearick dated March 7, 2013, while not a sworn affidavit would like to be marked as Exhibit D since no one was available from the School Department to substantiate Mrs. Mello's statements, Solicitor Teitz rested the case for Nancy Mello. There was no objection to Respondent's Exhibits A-D being marked as full.

Mr. Katz asked to put on a rebuttal witness. Attorney Oliverio explained that rebuttal from Mr. Katz would be limited to areas addressed by Solicitor Teitz in Mrs. Mello's testimony. Mr. Katz called Donna Cook, was sworn in as a witness. Mrs. Cook recalled Mrs. Mello came to her house, handed her a dismissal, tried to explain, said the secretary did not knowingly know. Told Mrs. Mello, that she had just received a video in which the secretary said "You're my first customer" to Mr. Nelson. She came and tried to talk to the Council, but it was dismissed. Don't know what was on the video, hard to see. Disputed Town Clerk recollection of meeting with her. President Roderick recalled that Mrs. Cook did not mention a video tape when she was at the Council meeting. Under cross examination Mrs. Cook received the video by email from David Nelson, did not forward to the Clerk and thought it was dismissed.

Attorney Oliverio noted was in order for summation. Mr. Katz's complaint was against the process not the result of the process when questioned by Councilor Lambert.

Solicitor Teitz summarized, in the 1990's the Town Charter stated that the Town Clerk should place complaints on the next Town Council agenda. The Charter was amended in 1999 to provide a role of finding out whether sufficiently set forth. The custom of this Clerk was to investigate. The only other complaint this Clerk had was investigated and found cause to send it on to the Council. The people in this complaint requested an

investigation. Abundantly clear she had the duty to investigate, did investigate properly all the evidence, found no violation, the evidence points to that. Would be a miscarriage of justice to find otherwise.

Mr. Katz contended the Charter does not give the Clerk authority, sufficiently set forth, no mention of investigation or merit until the hearing. The Clerk handled inappropriately. Mr. Katz contended the legal satisfaction of burden was in the illustration of the definition of the words in the Charter, the precedents and the statutory history of the Charter, “knowingly” with descriptions, grammatical context and the logic of Section 1211. Want to correct the record.

Attorney Oliverio ruled the evidence was closed. Did Nancy Mello knowingly violate the Charter in the matter of handling the Cook complaint? What is the obligation of Charter Section 1211 which charges an elected official or employee of the Town of a knowing violation and shall specify in the complaint the section or sections violated, the nature of the violation and the person, persons, or body charged with having committed the violation, the thrust of the Justin Katz complaint. In this case the Town Administrator has determined this complaint was sufficiently set forth as specified. The Town Administrator scheduled a Public Hearing before the Charter Monitoring and Complaint Review Board and evidence was presented. There’s been evidence and suggestion the Clerk’s role is perfunctory and has no right to dismiss a complaint. Would suggest to this body that is an inappropriate construction, the Clerk does have the right to dismiss if not sufficiently set forth. In the Charter from 1994, the Clerk’s role was perfunctory. In this case, the Clerk is given a greater sense of discretion. If you find a departure here, have to find it was a knowing violation, has to be a level of intent. The Clerk has investigated; thought it was her responsibility, did so before, have to weight that evidence. If you find the Clerk knowingly violated then it will be heard before the Municipal Court. Have to look at the plain meaning of words, willfully, intentionally violated the Charter. The Council must now weigh the evidence.

Councilor Gerlach noted the Clerk’s service to the Town to be exemplary, cannot fathom she would knowingly violate the Charter, did what she has always done, conducted a level of due diligence. With the evidence presented don’t see there was a knowing violation.

Councilor Arruda agreed not sufficient evidence to find Mrs. Mello in violation of the Charter as worded. Find it hard to believe she would knowingly violate the Charter. Based on her character and how seriously takes her job, the evidence speaks for itself.

Councilor Chabot had an issue when the Cook complaint came before the Council in 2012, asked the Clerk if she had specific examples from Charter complaints, didn’t remember, said she would research. A lot of evidence presented by Mr. Katz now have a basis for complaints between 1999 and 2011. Looked at how Nancy Mello handled Charter complaints, only had the two. The one involving the Town Treasurer voter registration, as the Clerk to the Board of Canvassers (BOC) was notified by the Board of Elections, has added duties by being that Clerk. Investigated as part of her duties as the BOC Clerk. Clerk had a role for elections, can’t separate role of BOC Clerk, Clerk of Council. Clerk of the Town is one person performing multiple roles including Clerk of the Court. Would have expected her to investigate, did her job as she saw her role to be. Believe there was no intent on knowingly violating the Charter.

Councilor Lambert, from the testimony and evidence did not believe there was any evidence Nancy knowingly or unknowingly violated the Charter. The School Department is the named party in the Cook letter, the Clerk has a responsibility to review and investigate the charge. Another issue raised by Mr. Katz was in protecting friends and allies. Mrs. Mello in page 2 of her letter to Donna Cook stated “based on my investigation, the only person possibly guilty of Charter violation would be Ms. Sousa.” Could have been dismissed with just one line.

Councilor deMedeiros agreed, saw no evidence to convince that Nancy Mello knowingly violated the Charter. Did the same thing before, did her due diligence.

Councilor Pelletier noted the timeline, the Cook complaint filed on October 29, 2012. The Council was not going to meet again until mid-November, as a citizen would not want the Clerk to wait, would want to start an investigation. Makes sense to have someone act in the Council's stead. Genuinely do not believe this is a violation.

President Roderick thanked Mr. Katz, Solicitor Teitz, Attorney Oliverio and Nancy Mello. When looking at these things has to look at intent, looking between the old and the new Charter requires more investigation, what level does a Charter violation rise to? As her job as she perceives, investigated, found it did not raise to that level, informed the School Department, boils down to interpretation. Does not rise to the level of a Charter violation.

Councilor Arruda made a motion, seconded by Councilor deMedeiros to dismiss the Charter Complaint against Nancy Mello. The motion passed unanimously.

**A five minute break was taken at this time, 10:45 pm.**

**Approval of Consent Agenda:**

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

Council President Roderick, due to the late hour, requested removals from the Consent Agenda. Councilor Pelletier requested removal of item CA3a, Invitation From Mayor Winthrop, City of Newport to Participate in the March 16, 2013 Annual Saint Patrick's Day Parade and Festivities. Councilor Gerlach requested removal of item CA7, RIDOT Condemnation Plat 2795 Parcel 1A—Authorization Full Release of Town of Tiverton and Councilor Chabot requested removal of item CA8, Town Administrator – Resolution and Approval of Police Pension Funding Improvement Plan.

**Invitation From Mayor Winthrop, City of Newport to Participate in the March 16, 2013 Annual Saint Patrick's Day Parade and Festivities**

Councilor Pelletier wanted to make aware have been invited by the Mayor of Newport to the Saint Patrick's Day Parade. Councilor Pelletier participated in the last couple of years and noted was a good experience.

**RIDOT Condemnation Plat 2795 Parcel 1A—Authorization Full Release of Town of Tiverton**

Councilor Gerlach questioned what the release was for. Town Administrator Goncalo explained a piece of land on Evans Avenue was needed to complete the realignment of the entrance. Solicitor Teitz added, it was once a part of Evans Avenue that the Town owns, offer was for \$1.00.

**Councilor Pelletier recused, related to a retired Police Officer, left the Council table.**

**Town Administrator – Resolution and Approval of Police Pension Funding Improvement Plan**

Councilor Chabot questioned the proposed resolution, the second paragraph, the contribution rate beginning in fiscal year 2012-2013 to 119%, worded inaccurately to be maintained no less than 8 years. President Roderick agreed, the 119% was for 2012/2013 not for going forward. Town Clerk Mello explained that wording was taken from Option 1 of that Financial Improvement Plan. T/A Goncalo explained, the State suggested including that wording on the resolution, would be at \$700,000 over 8 years. Councilor Gerlach suggested a dollar figure would be better than a percentage. T/A Goncalo agreed could be reworded. T/A Goncalo suggested "the Financial Improvement Plan will be maintained as defined".

Councilor Gerlach made a motion , seconded by Councilor deMedeiros to approve the change as described, the Resolution of the Tiverton Town Council Tiverton Police Pension Funding Improvement Plan

dated March 11,2013 with changes to the language in paragraph 2, sentence 2, strike that sentence and replace with “The Funding Improvement Plan will be maintained as defined”. The second change will be to the definition of Option 1, Future Funding; the second sentence will be stricken and replaced with the same language “The Funding Improvement Plan will be maintained as defined”. The motion passed on a vote of 6-0-1, Councilor Pelletier recused.

Councilor Gerlach made a motion, seconded by Councilor Chabot to accept CA7, RIDOT Condemnation Plat 2795 Parcel 1A–Authorization Full Release of Town of Tiverton. Motion passed unanimously.

Councilor Pelletier made a motion, seconded by Councilor Chabot to receive and file, CA3a, Invitation From Mayor Winthrop, City of Newport to Participate in the March 16, 2013 Annual Saint Patrick’s Day Parade and Festivities. Motion passed unanimously.

Councilor Chabot made a motion, seconded by Councilor deMedeiros to approve the rest of the Consent Agenda. Motion passed unanimously.

The Consent Agenda was as follows:

**CONSENT AGENDA**

**A-1-Approval of Minutes of Previous Meetings:**

- a.Approval of Minutes Regular Council Meeting February 25, 2013
- b.Approval of Executive Session Council Minutes of February 25, 2013

**A-2-Receipt of Minutes from the Following Boards, Commissions:**

- a.Wastewater Management Commission
- b.Art’s Council

**A-3-Correspondence – Receive and File**

- b. Tiverton School Committee - Resolutions Supporting Legislation to Change the Layoff Notification Date for Public School Teachers, Supporting Legislation to Prevent Tolling on the Sakonnet River Bridge and Supporting Senate Bill S 020 and House Bill H 5137 Preventing RIDOT From Turning Control of the Bridge Over to the RI Turnpike and Bridge Authority
- c.City of Newport – Resolutions Supporting Efforts to Remove Illegal Guns From Our Streets and Supporting Legislation to Eliminate the Dollar Amount That a Local Licensing Authority May Impose for Advertising and Administrative Costs Related to Processing Liquor License Renewals
- d. Charlestown Resolution to Support Repeal of RI General Law 17-19-15 Party Levers or Master Lever Voting
- e. Barbara Pelletier – Report on Meeting in Bristol by RI Small Business Development Center Regarding Bed and Breakfast Seasonal Room Rentals for the Region
- f. Barbara Pelletier, Representative – Report of February Discover Newport Tourism
- g. RIPTA Notice of Meeting for Public Comment Regarding Investigating Options for Reinstating Transit Service to Tiverton and Little Compton on Monday, March 18<sup>th</sup> at 7pm at Tiverton Town Hall

**A-4-Wastewater Management Commission – Approval of RIDEM Project Priority List for Projects State Fiscal Year 2014**

**A-5-Kate Michaud, Administrative Office Planning Board – February 2013 Activities Report**

**A-6-Scheduling a Joint Workshop with Planning Board to Outline Approach for the Comprehensive Community Plan Update – Possible Dates April 8 or April 29**

**BUSINESS BROUGHT BEFORE THE COUNCIL**

**TOWN COUNCIL SITTING AS BOARD OF LICENSING:**

**Robert Vital d/ b/a East Coast Wholesale– Requests Approval of Fireworks Permit at 1560 Bulgarmarsh Road, Rte 177 Flea Market From April 1, 2013 to July 4, 2013 – Subject To Meeting All Legal Requirements – Copied to the Fire Chief**

Fire Chief Robert Lloyd requested this item be continued has been unable to reach applicant to gather more information on the sale and location of the fireworks.

Councilor deMedeiros made a motion, seconded by Councilor Pelletier to continue the request from Robert Vital d//b/a East Coast Wholesale for a Fireworks Permit at 1560 Bulgarmarsh Road, Rte. 177 Flea Market. Motion passed unanimously.

President Roderick thanked Mr. Vital for waiting.

**APPOINTMENTS & RESIGNATIONS:**

**Annual Appointment of Administrative Officer**

**a. Recommendation of Planning Board - Kate Michaud**

Councilor Pelletier made a motion, seconded by Councilor Chabot to reappoint Kate Michaud as Administrative Officer to the Planning Board, doing yeoman's work. Motion passed unanimously.

**Item taken out of order**

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to take out of order item F1, Councilor deMedeiros – Discussion on 2013/2014 Budget, a. Approval of Final Fiscal Year 2013/2014 Proposed Budget and Submit to Administrator, b. Approval of Final Fiscal Year 2013/2014 Proposed Revenues and Submit to Administrator. Motion passed unanimously.

**FINANCIAL BUSINESS:**

**Councilor deMedeiros – Discussion on 2013/2014 Budget**

**a. Approval of Final Fiscal Year 2013/2014 Proposed Budget and Submit to Administrator**

**b. Approval of Final Fiscal Year 2013/2014 Proposed Revenues and Submit to Administrator**

T/A Goncalo explained, incorporated the changes made at the Special Meeting of March 9<sup>th</sup>. On page 2 of the Budget Reconciliation added in the second Defibrillator, restored \$5,000 to the Police Pension, restored \$2,000 to Harbor, Boat Operations, restored \$600 to Ft. Barton Park Maintenance, \$250 to Tree Committee, \$200 to Beach Expenses, \$300 to Summer Recreation Supplies and \$1,650 to Recreation Fertilizer. Removed \$5,000 from Street Lights and \$5,000 from FTR Run-off. Added in all the expenses for a School Resource Officer (SRO). The Treasurer indicated \$7,500 for GASB 45 would be removed from that budget, however after further consideration reduced that amount instead to \$3,750. The revised balance came to \$18,590,664. Councilor Pelletier noted the Council did not vote on the Treasurer's budget which goes directly to the Budget Committee (BC). T/A Goncalo pending a vote of the Council will forward to the BC pending the outcome of the School Committee meeting on the SRO. Councilor Chabot added the T/A has ten days to forward to the BC. The questioned the \$60,000, \$20,000 for a matching grant with the remainder to compensate the EDF for work already done on the financing options, for development of the Industrial Park was kept in the recommendation. Can request a sole source vendor for the preliminary work that has already been done and will be doing until June 30<sup>th</sup>.

Councilor Gerlach made a motion, seconded by Councilor Arruda to approve and instruct the Town Administrator to forward the FY 2013/2014 Municipal Budget and the FY 2013/2014 Proposed Revenue Projections submitted in the March 9, 2013 Council packet to the Budget Committee. President Roderick noted the motion should be qualified with a remark concerning the SRO. Councilor Gerlach amended the motion, seconded by Councilor Arruda to reflect the Revenue projections may change based on the discussion of the School Committee regarding the SRO. Motion passed unanimously.

**UNFINISHED BUSINESS:**

**Town Administrator – Discussion and Approval of Revised Model Contract**

President Roderick requested the discussion on the Model Contract be continued to the next meeting.

Councilor Chabot made a motion, seconded by Councilor Arruda to continue item E2, Discussion and Approval of Revised Model Contract to March 25, 2013. Motion passed unanimously.

**Town Administrator – Approval of Advertising and Job Description for Position of Town Planner Planning Board Memorandum As To Role of Town Planner**

Planning Board Chairman Steve Hughes discussed the role of the Town Planner. PB discussed list of qualifications provided to the T/A. Planner should work well with Department Heads, have good communication. PB had different ideas, is a decision for the Council. Planner should keep PB aware of any changes, have a good give and take, could be a part time consultant to work closely with the PB. Should be a probationary period. There was some discussion of perhaps a board to oversee the Planner, review his job performance as it relates to the PB. T/A Goncalo affirmed, the Planner would be subject to the Model Contact. Councilor Pelletier questioned if the issue is an organization issue or a strictly management issue as the Planning Board reports directly to the Council, the Planner reports to the T/A, is unanswerable to the PB. T/A Goncalo noted if there is an issue should be brought to his attention. The Personnel Board will do the initial interviews recommending three candidates to the T/A. Could have the Chair of the PB in on the interview. Councilor Gerlach suggested additional language, demonstrated experience working with the public. Councilor Pelletier noted a BA or BS in planning was a very specific degree; usually see urban planning or city planning as well. Councilor Gerlach suggested urban design or related degree. President Roderick suggested the T/A speaks with Portsmouth, Middletown or Newport to see what they used for language. Suggest Council review additional language for next meeting, thanked Chairman Hughes.

Councilor Pelletier made a motion to request the Town Administrator review and finalize qualifications and sample advertising with a specific list where it will be advertised. The motion, seconded by Councilor Arruda passed unanimously.

**TOWN ADMINISTRATOR ITEMS AND ANNOUNCEMENTS:**

**Distribution of Town Owned Vehicle List**

T/A Goncalo had supplied a previously requested Town Owned Vehicle list.

**ANNOUNCEMENTS:**

1. Senior Center hosting Words of Wisdom on 3/12 at 10:30 am, on 3/19 a Shingles Vaccine Clinic, need an appointment, call 401-490-0942.
2. RIPTA Hearing on 3/18 at 7pm at the Town Hall, to consider transit service to Town of Tiverton.
3. On Mark Marine in CA for \$500 from Council Contingency will check out the Pump out Boat, start engines, go through the mechanics.
4. February recycling 127 tons versus 142 last year.

**COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:**

**Councilor Chabot – Approval of Resolution Supporting Lights Off for Earth Hour on March 23<sup>rd</sup> Requests of Ms. Kelcie Andrade and Miss Bridget Travers**

Councilor Chabot read a Proclamation supporting Earth Hour. Councilor Chabot requested Council adoption.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to accept the Proclamation resolution as read. Motion passed unanimously.

### **EARTH HOUR PROCLAMATION**

WHEREAS; Earth Hour is recognized in over seven thousand cities and towns, one hundred and fifty two countries and seven continents, and

WHEREAS; Our cities and towns are already facing the staggering costs of weather driven to extremes by climate change resulting in power outages, flooded roadways, shuttered businesses and damaged homes more and more frequently, and

WHEREAS; On Saturday, March 23, at 8:30 p.m. thousands of cities around the world will go dark for one hour during Earth Hour, WWF's annual campaign to raise awareness of the environmental challenges we all face, such as climate change, and

WHEREAS; Climate change worsens dangerous weather events making them more frequent and severe,

WHEREAS; Tiverton community has a commitment to protect our planet, and

THEREFORE, BE IT RESOLVED, that the Tiverton Town Council does hereby proclaim Saturday, March 23, 2013 at 8:30p.m., in the Town of Tiverton, as: "**EARTH-HOUR**"

and urges all citizens to participate by supporting efforts to protect our planet by turning off all non-essential lights in and around our community.

**Adopted by the Town Council of the Town of Tiverton, Rhode Island this 11th day of March, 2013.**

**FOR THE TIVERTON TOWN COUNCIL:** Edward A. Roderick Town Council President March 11, 2013

Councilor Chabot announced the Arts Committee was holding a reception on March 17<sup>th</sup> from 2-4 pm for the Pastel Art Show with art from Arlene Cabral, Tina Pacheco, Dennis Broadbent and Valerie Rousseau. The public is invited.

### **TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:**

**Town of Tiverton v. LAL Construction Company, Inc. et. al. – Case #NC-2013-0087**

**a.Tiverton Motion For Temporary Restraining Order and Preliminary Injunction**

**b.Defendants' Objection To Plaintiff's Motion For Temporary Restraining Order**

**c.Defendants' Cross Motion to Continue Plaintiff's Motion for a Tro/Preliminary Injunction or in Alternative To Set An Expedited Discovery, Motion and Trial Schedule On The Plaintiff's Claims and Forthcoming Defendants' Counterclaims As To Existing Uses of The Property**

Solicitor Teitz had provided copies of litigation materials, the Town had motioned for a Temporary Restraining Order and Preliminary Injunction, Defendants' Objection to the Temporary Restraining Order and Defendant's Cross Motion, Town Clerk has the complete exhibits.

**a.Westport I. Trust vs Tax Assessor Town of Tiverton -NC-2013- 0090**

**b.Westport Stevens LLC vs Tax Assessor Town of Tiverton - NC – 2013 – 0089**

Solicitor Teitz had provided for the Council's information copies of filings against the Tax Assessor. Town has responded.

### **Memorandum to Wastewater Management Commission regarding Extension of Sewer System**

Solicitor Teitz had provided for the Council's information, copies of a Memorandum to the Wastewater Management Commission regarding Extension of Sewer System.

### **ADDED FOR DISCUSSION- NONQUIT SCHOOL**

Solicitor Teitz was in contact with Cynthia Hanssen regarding the purchase of Nonquit School, proceeding forward with meeting terms of the sale, optimistic to purchase next week. Can put on agenda for March 25th if necessary for new bids.

**CLOSED EXECUTIVE SESSION:**

**Town Solicitor – 42-46-5(a) (2) –Litigation – Town of Tiverton v. LAL Construction Company, Inc. et. al. – Case #NC-2013-0087**

Solicitor Teitz announced no need for Executive Session on this item.

**ADJOURNMENT:**

Councilor deMedeiros motioned to adjourn, seconded by Councilor Chabot. Motion passed unanimously.

The meeting adjourned at 11:55 p.m.

A True Copy.

ATTEST: \_\_\_\_\_  
Nancy L. Mello, Town Clerk

**RESOLUTION  
TOWN OF TIVERTON, RHODE ISLAND**

**RESOLUTION OF TOWN COUNCIL OF TIVERTON APPROVING THE FINANCING OF THE ACQUISITION, CONSTRUCTING, BUILDING, FURNISHING AND EQUIPPING OF A PUBLIC LIBRARY AND TO ISSUE BONDS AND NOTES IN AN AMOUNT NOT TO EXCEED \$7,000,000**

RESOLVED, That:

SECTION 1. The Town Treasurer and the President of the Town Council are hereby authorized to issue up to Seven Million Dollars (\$7,000,000) General Obligation Bonds of the Town to finance the acquisition, constructing, building, furnishing and equipping of a library and the related costs (the “Project”) pursuant to Chapters 086 and 093 of the Rhode Island Public Laws of 2011 and in accordance with the vote of the electors of the Town at the special election held on November 8, 2011.

SECTION 2. The Town Treasurer and the President of the Town Council may issue and refund from time to time up to Seven Million Dollars (\$7,000,000) in interest bearing or discounted notes in anticipation of the issuance of the bonds or in anticipation of the receipt of federal or state aid for the purposes specified in Section 1 hereof.

SECTION 3. The amount, manner of sale, denominations, maturities, interest rate or rates, award and other terms, conditions and details of any bonds or notes issued may be fixed by the officers authorized to sign the bonds or notes.

SECTION 4. The said officers may from time to time apply for, contract for and expend federal or state advances or other grants or assistance which may available for the purposes specified in Section 1 hereof.

SECTION 5. Pending the issuance of the bonds under Section 1 hereof or pending or in lieu of the issue of notes under Section 2 hereof, the Town Treasurer may apply funds in the treasury of the Town for the purposes specified in Section 1 hereof, such advances shall be repaid without interest from the proceeds of the bonds or notes subsequently issued or from the proceeds of applicable federal or state assistance or from other available funds.

SECTION 6. The Town Treasurer and the President of the Town Council are hereby authorized (i) to execute and deliver, on behalf of the Town, such instruments, documents or other papers as either of them deem necessary or desirable to effectuate such borrowing, including, without limitation, a Preliminary Official Statement and a final Official Statement, all in such form and with such provisions as such officers shall deem

advisable; (ii) to amend, modify or supplement the bonds or notes and any and all other documents, certificates or instruments at any time and from time to time, in such manner and for such purposes as such officers shall deem necessary, desirable or advisable; and (iii) to do and perform all such other acts and things deemed by such officers to be necessary, desirable or advisable with respect to any matters contemplated by this resolution in order to effectuate said borrowing and the intent hereof.

SECTION 7. The Town Treasurer and the President of the Town Council are hereby authorized to take all actions and execute all documents or agreements necessary to comply with federal tax and securities laws, which documents or agreements may have a term coextensive with the maturity of the bonds authorized hereby, including Rule 15c2-12 of the Securities and Exchange Commission and to execute and deliver a continuing disclosure agreement or certificate in connection with the bonds or notes.

SECTION 8. The Town Treasurer and the President of the Town Council are hereby authorized to take all lawful action necessary or desirable under the Internal Revenue Code of 1986, as amended (the "Code"), to insure that the interest on the Bonds will remain exempt from federal income taxation to the extent provided in Section 103 of the Code, and to refrain from taking any action which will cause interest on the Bonds to lose the benefit of exclusion from gross income provided by Section 103(a) of the Code.

SECTION 9. This resolution is an affirmation action of the Town Council of the Town toward the issuance of bonds or notes in accordance with the purposes of the laws of the State. This resolution constitutes the Town's declaration of official intent, pursuant to Treasury Regulation § 1.150(2), to reimburse the Town for certain capital expenditures for the Project paid on or after the date which is sixty (60) days prior to the date of this resolution but prior to the issuance of the bonds or notes. Such amounts to be reimbursed shall not exceed \$7,000,000 and shall be reimbursed not later than eighteen (18) months after (a) the date on which the expenditure is paid or (b) the date the Project is placed in service or abandoned but in no event later than three (3) years after the date the expenditure is paid.

SECTION 10. This resolution shall take effect upon passage.

ADOPTED: Town Council Meeting \_\_\_\_\_, 2013