

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

Approved 2/24/14

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 10th day of February 2014 A.D. at 7:00 p.m.

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

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

Interim Town Administrator/Town Clerk Nancy L. Mello and Town Solicitor Teitz were also present.

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 read the items on the Consent Agenda. Councilor Lambert requested removal of item CA8, Proposed Historic District – Referred to Planning Board for Recommendation on Revised Map and Language. Councilor Chabot requested removal of CA1a, Approval of Minutes Regular Council Meeting January 27, 2014 and CA5, Authorization for Advertisement of Full Time Town Planner. Councilor Gerlach requested removal of item CA7, Kate Michaud, Administrative Officer Report of Activities for January 2014.

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

The Consent Agenda was as follows:

CONSENT AGENDA

A-1-Approval of Minutes of Previous Meetings:

- b. Approval of Minutes Regular Council Meeting January 13, 2014
- c. Approval of Minutes Council Special Meeting January 11, 2014-Councilor Arruda Abstained - Absent
- d. Approval of Minutes Council Workshop January 6, 2014-Councilor Pelletier Abstained - Absent
- e. Approval of Executive Session Minutes Special Meeting January 22, 2014 - Interviews
- f. Approval of Executive Session Minutes Special Meeting January 23, 2014 - Interviews
- g. Approval of Minutes Special Council Meeting February 3, 2014

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

- a.Arts Council
- b. Conservation Commission
- c. Historic Preservation Advisory Board
- d.Wastewater Management Commission (2)

A-3-Correspondence – Receive and File – Receive and File - None

A-4-Mike Zhang, Fu Li Corp., d/b/a Asian Gourmet, 1715 Stafford Road-Approval of Corporate Name Change on Liquor and Victualling License to Fu Bing Nan Corp.

A-6-Barbara Pelletier – Minutes from Newport & Bristol County Convention and Visitors' Bureau January Mtg, Meals & Beverage Tax Report and Info Regarding Bed and Breakfast Establishments

A-9-Department Reports Month of January 2014

A-10-Denise Saurette, Treasurer–Report on Banking, Trust and Other Accounts Requested on January 27th Meeting

BUSINESS BROUGHT BEFORE THE COUNCIL

CA1a-Approval of Minutes Regular Council Meeting January 27, 2014

Councilor Chabot requested amending the minutes on page 3 regarding the Pocasset Hill Cemetery Report. Fifth sentence from the bottom where it says Revenue covers maintenance should be Revenue *does not cover* maintenance.

Councilor Chabot made a motion, seconded by Councilor deMedeiros to approve the Minutes of Regular Council Meeting January 27, 2014 as amended. Motion passed unanimously.

CA5-Authorization for Advertisement of Full Time Town Planner

Councilor Chabot questioned the discussion as a matter of policy, not sure it should be, could change with the next Council, should become part of the Charter, person responsible for staff, all department head positions are in the Charter.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to approve Authorization for Advertisement of Full Time Planner. Motion passed on a vote of 6-1, Councilor Chabot opposed.

CA7-Kate Michaud, Administrative Officer Report of Activities for January 2014

Councilor Gerlach requested the Sea Level Rise Affecting Marshes Model (SLAMM) be presented to the Council on a future agenda, long range issue, would like to discuss. Kate Michaud, Planning Board Administrative Officer noted that was offered, will contact, maps will be available online.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to approve receipt of Kate Michaud, Administrative Officer Report of Activities for January 2014. Motion passed unanimously.

CA8-Proposed Historic District – Referred to P/B for Recommendation on Revised Map and Language

Councilor Lambert proposed having a joint meeting of the Council and the Planning Board (PB). Ms. Michaud noted after this is referred to the PB would go on their next agenda, suggested forwarding dates. Town Clerk will poll for dates.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to have a joint meeting with the Planning Board on the Proposed Historic District, Town Clerk to poll for dates. Motion passed unanimously.

OPEN PUBLIC FORUM FOR ANNOUCEMENTS, COMMENTS, QUESTIONS

President Roderick reminded the audience was Council policy not to respond but listen during the Open Public Forum, requested comments be as brief as possible. Jim O'Dell, Warren Avenue commented on recent Council decisions regarding the former Town Administrator bad decisions, gas station land purchase bad decision, maintenance employee conduct, lack of Council leadership. Jeff Belli, Birch St., voiced displeasure, reiterated Mr. O'Dell's comments. President Roderick cautioned the speakers, be careful about commenting on people not here. Barbara Pelletier reminded the Channel 6 tourism on Tiverton would be broadcast at 5pm and on Friday morning at 5am. Mike Burk, Durfee Road, Chair of the Tiverton Democratic Committee spoke about the Open Meetings Act (OMA) and Executive Session; this Council had made great strides, OMA very important. Can be open to interpretation to provide the public with information as it relates to executive session, votes taken in executive session are to be disclosed as soon as possible is recommended, within 2 weeks made available. One exception is if it endangers strategy. Would like to have votes from January 27th made public, going forward would like votes in executive session made public as quickly as possible. Shane Gendreau was not happy with the way the Mr. Martin case was resolved. Dave Cabral agreed with Mr. O'Dell, decision should be reviewed again. Wayne Cabeceiras did not agree with Town Council decisions. Heather Martino requested speaking, open forum sheet passed, was unable to sign up to speak. Ms. Martino, a human resources professional, resident and

taxpayer, did not want to disrespect the Council or impugn character. Cited the television report not everyone knows the facts cited in the article with respect to the allegations. Mr. Martin will be allowed to retire on April 22nd, yet is eligible to retire, discharged sick time, a misuse of sick time, will be paid unused vacation and comp time if correct. Whoever negotiated contract on behalf of the Town did a great disservice, speaking in opposition to the Council's action on this matter.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to add Council comments relative to the Open Forum for discussion purposes only. Motion passed unanimously.

Added to agenda – Council comments on Open Forum for discussion purpose only

President Roderick commented, the deal reached was in the best interests of the Town, according to the union contract whether he retired or was fired would still receive that amount. Councilor deMedeiros noted the vote was 6-1, voted against the agreement for several reasons. Thought this to be the fiscally responsible thing to do, at the end was against the so called gag order. Reiterated Mr. Martin would have gotten this money whether he retired or was terminated. A long process of grievance would cost over \$100,000, many facts the public does not have and the Council cannot disclose. Councilor Lambert noted was important to know the Council made decision based on the facts. Received a number of phone calls including from some of the speakers, said to put a list of witnesses, go to the State Police, not one person did that. Councilor Gerlach invited everyone to come to the Council meetings on Budget deliberations, open to the public, done with extreme granularity, tough decisions. Should also attend the Budget Committee meetings on Thursday nights. This is the Town's budget, people should be more versed.

Solicitor Teitz commented relative to the maintenance foreman issue. There is a legal argument the agreement itself is not a public document, this was negotiated, Council wanted to make public, unanimous consensus of Council the agreement was going to be public when signed so the public could see the details, want to make clear. Councilor Pelletier, as a personnel related issue, was difficult for the Council to deal with in a responsible manner. Difficult for people who observe to know what is and isn't true in dealing with these issues. No one on this Council made this decision lightly, no clear path for success. There is no letting people retire; if they have a standing to retire save for termination for cause. Councilor Arruda noted, Council made a very difficult decision, was controversial, not popular. Councilor Chabot noted the Council made the best decision based on the information presented. The maintenance head would have gotten the money anyway, is in the union contract, not a negotiable item, people may disagree, Council did show leadership. President Roderick summarized, trying to do the best thing for the Town, can only go by what proof is at hand, will continue to do what is in the best interests of everyone in Town, to drag out would be more of a detriment.

PUBLIC HEARINGS & PUBLIC PRESENTATIONS:

Evan Smith – Discover Newport – Volvo Ocean Race May 2015

Evan Smith, Discover Newport (Newport County Convention & Visitor's Bureau) handed out to the Council information on the Volvo Ocean Race May 2015. Mr. Smith recognized and thanked Barbara Pelletier the Tiverton representative for tourism for devoting many hours. This is a large event, a sail boat race around the world stopping at 10 different ports. Newport is the only North American stop playing host for this gargantuan event. Volvo uses this as a corporate entertainment platform, will be using virtually all the hotel rooms in the State. Can find more information at volvooceance.com. Mr. Smith offered to be a free resource for deliberations for projected developments involving lodging tax. Councilor Gerlach would like to see a collaborative front to draw people across the bridge, perhaps a subcommittee of the Economic Development Committee. Mr. Smith was available to help with that conversation. The 1% lodging tax for Newport resulted in \$1million dollars in property tax. President Roderick thanked Mr. Smith for the presentation.

TOWN COUNCIL SITTING AS BOARD OF LICENSING

James Carlson-After Glow, Inc., 295 Main Road – Requests Approval of Holiday License - Subject To Meeting All Legal Requirements

Randy Gifford, a partner in this business, explained the prior tenant went out of business, was an existing tanning salon. Town Clerk Mello noted no issues.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve a Holiday License for After Glow, Inc., 295 Main Road, subject to meeting all legal requirements. Motion passed unanimously.

David Lopes - Central Bakery Development Corp d/b/a Central Bakery – 70 Shove Street – Starting New Business – Requests Approval of Victualling License – Subject To Meeting All Legal Requirements

David Lopes explained this business was in Fall River, needed larger facility. It is a family business, makes Portuguese muffins selling them across the country. Town Clerk explained, just wholesale for now.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve a Victualling License Central Bakery Development Corp., d/b/a Central Bakery, 70 Shove Street, subject to meeting all legal requirements. Motion passed unanimously.

Milk and Honey Kitchen LLC d/b/a Milk and Honey - 3838 Main Road – Requests Approval of Holiday License - Subject To Meeting All Legal Requirements

Solicitor Teitz requested this be continued for two weeks, had questions about the letter from Gareth Eames, Building/Zoning Official regarding the R80 zone, not in a commercial zone. Mr. Eames researching backup of letter from the previous building official. An existing use, want to see the full correspondence to see if the Zoning Board ruled on it.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to continue the request for a Holiday License for Milk and Honey Kitchen LLC, d/b/a Milk and Honey, 3838 Main Road to the next meeting. Motion passed unanimously. Town Clerk will contact the applicant.

APPOINTMENTS & RESIGNATIONS:

UNFINISHED BUSINESS:

Leroy Kendricks–Draft Legislation Wastewater District Charter–Cont. from 1/27/14 for Solicitor Review

Leroy Kendricks, Chairman of the Wastewater Management Commission had several conversations with the Solicitor, incorporated in the draft legislation. The copy distributed to the Council contained all the formatting comments, additions and deletions. Solicitor Teitz explained a clean version will be submitted, there is no power of eminent domain in this bill, it was deleted. Mr. Kendricks explained Representative John Edwards was in full support, does not see any issues. Councilor Gerlach questioned if there was a definite list of tangible town assets. Mr. Kendricks had a draft list, will have to deal with the interceptor once it is transferred. Solicitor Teitz was still looking into the effect of the TIF bond, wanted to make sure the assets and liabilities were going to be transferred together. May have to own the interceptor and lease back to the district. Steve Levy who drafted the legislation made arrangements to meet with the Federal Congressional Representatives and Senators seeking support of USDA funding and grants.

Councilor Lambert made a motion, seconded by Councilor Pelletier to approve the Draft Legislation Wastewater District Charter continued from 1/24/14. Motion passed on a vote of 6-1, Councilor Arruda opposed.

FINANCIAL BUSINESS:

Discussion of Municipal Budget FY 2014-15

President Roderick explained, the Council made dramatic cuts, still have more to cut; next meeting is Saturday, February 22nd. The Council has worked diligently to make the least impact. Town Clerk Mello noted the Budget Committee (BC) has agreed to a joint meeting on 2/25. Councilor deMedeiros reminded the BC meets every Thursday at 7pm. This week will be reviewing the Police Department budget. The BC appreciates public input. Discussion followed on whether the next special Council meeting on the budget was on February 15 or 22. Consensus was the special meeting would be this Saturday, February 15th with possibly another special meeting on February 22nd.

NEW BUSINESS:

Discussion on Hiring of New Town Administrator Including Contract Terms

Interim Town Administrator Nancy Mello had distributed to the Council copies of a proposed contract, still in the process of doing background checks. President Roderick explained the Council was looking at the contract in the best interests of the Town. ITA Mello added the language on health insurance, salary; probationary term and life insurance would need to be changed. Councilor deMedeiros suggested adding yearly job evaluation. ITA Mello could add this to the Special Meeting on Saturday giving the Council more time to mark up the contract. Solicitor Teitz noted this would be one of the first using the new model contract. Councilor Pelletier suggested adding the job description that was used in the advertising. Town Clerk will add to the agenda for Saturday, February 15.

BIDS AND REQUESTS FOR PROPOSALS:

TOWN ADMINISTRATOR ITEMS AND ANNOUNCEMENTS:

A date of March 31st was set for the joint meeting with the Planning Board discussed earlier in the agenda.

1. IT/A Mello received a call from Steve Hartford from the Governor's Office regarding pension reform settlement. The Governor's office is having a press conference on Wednesday at 5pm for a technical briefing, will be attending.

COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

Councilor Arruda – Reconsideration of Johnathan Cottrell's Appointment to the Comprehensive Plan Advisory Committee Due to Residency

Councilor Arruda explained, back on 10/28/13 voted on members to be appointed to the Comprehensive Plan Advisory Committee (CPAC). Was contacted by a person who said one of the members appointed had another residency, questioned if the process would be to rescind appointment. Solicitor Teitz explained the Council could remove a member but could not rescind the vote. An agenda item at the next immediate meeting would have been necessary to reconsider the vote, basically have a hearing giving an opportunity to state the case, due process. The proper procedure would be to remove that person. Councilor Lambert noted under Title 17, Elections, not possible to say someone is not a resident for purposes of being an elector, prima fascia criteria set out in the statute. Mr. Cottrell has indicated 11 of 13 criteria apply to him for establishing domicile. The Council would have to prove this appointee was not a resident of Tiverton Also checked off the address from which the voter's motor vehicle is registered, address from which the voter filed his last federal income tax return and other criteria for domicile. For decades Mr. Cottrell considered himself to be a resident of Tiverton. The first responsibility is with the Board of Canvassers, they make the decision he is not a resident and established another domicile somewhere else. Councilor Arruda passed out an article by Steve Urban, led to believe Mr. Cottrell resided in another state.

Solicitor Teitz explained the Charter requires members be electors, Council appoints members, has the power to remove people. Dealing with hearsay in a newspaper article, could be misquoted. Have something in writing from Mr. Cottrell that says he meets all of these. It is appropriate to have this tonight. The Board of Canvassers (BOC) would have to remove from the voting rolls. Mr. Jonathan Cottrell was in attendance to answer questions at this time. Councilor Gerlach took Mr. Cottrell's word, was also a member of the EDC, appointed as a member of the public, gives EDC 2 seats on the CPAC. President Roderick thanked Mr. Cottrell for coming. Mr. Cottrell explained he did have several properties in Massachusetts, does stay there. Grew up in Swansea across from Brayton Point, was interviewed from his office in Fairhaven. Moved to Tiverton in the summer of '75, lived on Riverside Drive, raised a family on Cliff St. Mr. Cottrell's residence was 35 Main Road, a mixed use property, a two family is in the rear, a two stall garage and two storefronts. Stays in the two family house. Solicitor Teitz looked through the documents Mr. Cottrell provided, contained a Federal income tax return with the 35 Main Road address, a State income tax return with the 35 Main Road address. Would be subject to greater penalties with these documents. Solicitor Teitz returned documents to Mr. Cottrell; other documents included a driver's license, a contractor's license from 35 Main Road and documents from financial institutions. Town Clerk Mello made clear the Board of Canvassers did what was required to clarify what was being an elector. Saw the DMV information, checked with Swansea to make sure Mr. Cottrell was not a registered voter. Mr. Cottrell has a ten year voting record here, BOC believed if he did not live here would face more penalties, could be election fraud. President Roderick noted Mr. Cottrell stood by the requirements, if not would have State and Federal issues. No action was taken; President Roderick thanked Mr. Cottrell for coming to the meeting.

Councilor Gerlach reminded about the local business forum on Tuesday, February 11th at the Four Corners Meeting House from 6-8 pm.

TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:

1. Status Report on Quarry Licensing

Solicitor Teitz referenced the PB activities for January regarding quarry licensing. Have been meeting with new owners of the prior Douglas Quarry, their attorneys and the Town engineer, looking at the issue of blasting and groundwater. Trying to get that application before the PB, want a contact person. Setting up a future meeting with Viking Stone. Moving forward individually, if legal non-conforming not supposed to be operating, no knowledge of their operating should be before the Council in a couple of months, goes to PB first. There will be a PB recommendation before coming to the Council. Receive the most complaints about Lynch Brothers, clearly operating focusing efforts on this one.

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

2. Schofield v Tiverton

Solicitor Teitz explained this was a case filed against the Town, is public, provided copies. Do not believe it is a valid complaint; believe it is frivolous, submitted to the Interlocal Trust.

Councilor Pelletier returned to the Council table at this time.

3. DeMello et al. v Bettencourt and Town of Tiverton

Solicitor Teitz explained this suit regarded the two calves at Gray's, Town denies the claim, Interlocal Trust defending.

LAL Site Ready v Tiverton – U.S. District Court

Solicitor Teitz explained, there were two separate cases in Superior Court, Town filed a suit vs Site Ready, Town sought an injunction to prevent Fall River recycling and a transfer station, added to the complaint other current uses including blasting, an illegal use. Entered into a Consent Judgment, TRO, to restrain Fall River recycling

while the case is pending on the appeal of the Zoning Board. They filed a suit in Federal Court essentially saying the Town was picking on them, violation of equal protection. Defended by the Interlocal Trust a motion to dismiss was filed, granted on the grounds it was not right until it goes through the Zoning Board and State Court since it might be approved. The Federal District Judge dismissed the suit which sought financial damage, depositions from former Council members and numerous documents.

TOWN CLERK ITEMS AND ANNOUNCEMENTS:

Town Clerk will contact the PB for a joint meeting on March 31, Solicitor Teitz will attend. DPW Director Berlucchi has returned from vacation, can afford one smaller storm, may be looking for additional snow plowing funds. The secretary in the Administrator's office is on vacation this week, will be in there most of the week.

CLOSED EXECUTIVE SESSION:

42-46-5 (a) (4) and 42-46-5(a) (1)-Approval of Executive Session Minutes January 27, 2014
42-46-5 (a) (4) and 42-46-5(a) (1)-Approval of Executive Session Minutes January 20, 2014

Councilor Lambert made a motion, seconded by Councilor Chabot to enter into Closed Executive Session for Approval of Executive Session Minutes January 27, 2014. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session for Approval of Executive Session Minutes January 20, 2014. Motion passed unanimously. Solicitor Teitz noted both would be pursuant to 42-46-5 (a) (4) and 42-46-5 (a) (1).

The Council entered into Executive Session at approximately 9:20 p.m.

The Council returned to Open Session at approximately 10:25 p.m.

OPEN SESSION:

Councilor Roderick announced following action was taken in closed session.

Motion by Councilor Chabot to accept the Executive Session minutes of January 20, 2014. Seconded by Councilor Pelletier, motion passed unanimously.

Motion by Councilor Chabot, seconded by Councilor Pelletier to approve the minutes of Executive Session from January 27, 2014 as amended with the sentence by Councilor Arruda. Motion passed unanimously.

Minutes had been sealed by vote at prior meetings.

Councilor Roderick announced the releasing of the vote on action taken during the January 20th and January 27th meetings during Executive Session.

January 20, 2014 Motion and vote as follows

Councilor Pelletier motioned to offer Agreement and Unconditional Release to Robert Martin with time line to respond no later than 4pm January 24th; and to authorize the Solicitor and the Interim T/A to make minor alterations to the Agreement. No change in the business terms. Seconded by Councilor Gerlach, motion carried unanimously.

January 7, 2014 Motion and vote as follows

Councilor Pelletier motioned Council supports the termination of Mr. Martin unless agrees to revision of paragraph F, G and H (of Agreement) as discussed. Amended with some discretion of Solicitor and IT/A. Councilor Gerlach seconded. Motion passed 6-1. Councilor deMedeiros opposed.

Councilor deMedeiros motioned to seal the minutes of February 10th Executive Session minutes. Seconded by Councilor Chabot, motion passed unanimously.

ADJOURNMENT:

Councilor Pelletier motioned to adjourn. Seconded by Councilor Chabot motion passed unanimously.

Council adjourned at approximately 10:30 p.m.

A True Copy.

ATTEST: _____
Nancy L. Mello, Town Clerk