

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

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 27th day of October 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 – Late arrival
	Denise M. deMedeiros-Vice President	Jay J. Lambert
	James Arruda	Brett N. Pelletier
	Joan B. Chabot	

Town Clerk Nancy Mello just received an email from Councilor Gerlach, running late, tied up in traffic. President Roderick explained the Council would wait for Councilor Gerlach’s arrival to hear the Charter Complaint. Will take the Consent Agenda first.

Town Administrator, Matthew Wojcik and Town Solicitor, Andrew M. Teitz were also present. Special Counsel Matthew Oliverio represented the Council for the Charter Complaint.

Approval of Consent Agenda:

All items listed with “(CA) “are to be considered routine by the Town Council and will ordinarily 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 and the Town Council President permits, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

President Roderick read the items on the Consent Agenda. Councilor Arruda requested removal of item CA3c, Resident Joe Ward – Neighborhood Concerns in William Barton. There were no other items removed.

Councilor Pelletier 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 Regular Council Meeting Minutes September 22, 2014 - No Executive Session Held
- b. Approval of Regular Council Meeting Minutes October 14, 2014
- c. Approval of Executive Session Minutes October 14, 2014
- d. Approval of Special Council Meeting with Budget Committee Minutes February 25, 2014
Councilor deMedeiros and Councilor Gerlach Abstain - Absent
- e. Approval of Special Meeting Minutes of February 1, 2014
Councilor Arruda Abstains - Absent

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

- a. Arts Council
- b. Board of Canvassers (5)
- c. Fogland Beach Oversight Committee (7)
- d. Conservation Commission (2)

A-3-Correspondence – Receive and File

- a. City of Newport Town Council Resolution in Support of Question #5 Bonds for Creative and Cultural Economy

b. United States Department of Education Recognizing Fort Barton School Exemplary High Performing National Blue Ribbon School for 2014

d. Barbara Pelletier – Confirmation of \$50,400 Grant from PetSmart Charities to Conduct a Targeted Free-Roaming Cat Spay/Neuter Project in Tiverton

A-4-Tax Assessor – Approval of Abatements

A-5 Chief Blakey- Proposed Traffic Ordinance Section 78– Through Traffic on Jiley Hill Road – Public Hearing Re-Scheduled for November 10, 2014 for Advertising

A-6-Approval of Petition by Verizon New England Inc. and Narragansett Electric Co. for One New Joint Pole (P.11-1) on the Southerly Side of Hurst Lane for Service to New Condominiums

Response From S. Berlucchi, DPW Director

Copy of Town Stipulations Required for Approval

A-7-Treasurer Denise Saurette - Distribution of September Revenue and Budget Reports

BUSINESS BROUGHT BEFORE THE COUNCIL

CA3c. Resident Joe Ward – Neighborhood Concerns in William Barton

Councilor Arruda questioned getting the surety money back from the developer relative to road conditions. DPW Director Stephen Berlucchi explained this was still under the Planning Board, a subdivision that hasn't been completed. The Planning Board is going through the process of receiving the security, actively seeking \$130,000 and more funds if needed from the developer. DPW cannot do work on a subdivision under construction. The foot deep, four foot wide hole is surrounded by orange cones, perimeter in orange paint. The roads will be taken care of one way or another has been built up to the binder course. Rosemary Eva, Planning Board member and past chair explained acceptance usually done by the recommendation of the Highway Director. Clarified she did not vote to release this surety.

Councilor Arruda made a motion, seconded by Councilor Chabot to Receive and File Correspondence from Resident Joe Ward - Neighborhood Concerns in William Barton. Motion passed unanimously.

OPEN PUBLIC FORUM FOR ANNOUCEMENTS, COMMENTS, QUESTIONS

Barbara Pelletier was working on a form of recognition for area farmers, will have at the late November meeting. Difficult to get an accurate list, some not on tax abatement list or RI Dept of Agriculture. Sign up list on table.

President Roderick went back to the first item as Councilor Gerlach arrived at this point.

TOWN COUNCIL SITTING AS CHARTER MONITORING AND COMPLAINT REVIEW BOARD

Tiverton Home Rule Charter Complaint Filed by James S. O'Dell Under Section 1211

Against Municipal Court Judge James A. Donnelly, Jr.

Attorney Matthew Oliverio was now representing the Town Council sitting as the Charter Monitoring and Complaint Review Board. Attorney Oliverio explained Town Solicitor Andrew Teitz was representing the Municipal Court Judge James A. Donnelly, Jr. Attorney Oliverio gave a backdrop; any citizen can file a complaint under Section 1211 of the Charter. Mr. O'Dell had filed a complaint. The Town Clerk found it to be sufficient, comes before the Council, to hear evidence from the complainant and the respondent. Will start with Mr. O'Dell who will have an opportunity to present evidence. Mr. Teitz, representing the Judge, will be given the opportunity to respond. The Council will deliberate in public, if a violation is found it would normally go to the Municipal Court for a penalty. In this case it would be heard by Probate Court. For a level of appeal this body by a 2/3 vote, at least 4 in the affirmative after deliberations. A synopsis of the complaint against Judge Donnelly was he should have recused himself in effect from hearing another Charter complaint which was heard before the Municipal Court on 8/25/14 because the complaint was against certain members of the Council. The Judge heard the matter, rendered a written decision denying the complaint. On September 24th Mr. O'Dell filed another complaint asserting Judge Donnelly should not have heard the matter in the first instance stating the Judge was a party to or interested in that proceeding. Any documents presented will be marked by the Town Clerk as Exhibits.

Mr. James S. O'Dell, 130 Warren Avenue, was sworn in by Attorney Oliverio. Mr. O'Dell stated he would be brief; his attorney was not able to be present. All he was going to do tonight was to present documents to support his case for record of appeal. Mr. O'Dell presented from RI General Law 36-14-2, Definitions. On page 2, cited 2 definitions (12)- A person "represents" him or herself before a state or municipal agency if he or she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his or her own favor; (13)- A person "represents" another person before a state or municipal agency if he or she is authorized by that other person to act, and in fact does act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person. Solicitor Teitz had no objection to the introduction of the Exhibit; Attorney Oliverio noted Exhibit A was full. Mr. O'Dell introduced his Exhibit B, a copy of RIGL 36-14-5, Prohibited Activities. Solicitor Teitz had no objection to this as being an Exhibit, Attorney Oliverio called Exhibit B as full. Mr. O'Dell read from item (2) - Represent any other person before any state or municipal agency of which he or she is a member or by which he or she is employed. Mr. O'Dell wanted to state for the record, based on these two documents, all seven Councilors should need to recuse or Mr. Teitz should not be representing the Judge. Solicitor Teitz questioned the Chair on speaking now, President Roderick suggested commenting after all documents have been introduced. Mr. O'Dell introduced another Exhibit, 2 Advisory Opinions from 1995, regarding the Solicitor who cannot represent a client before Council. Mr. O'Dell explained these were marked as C. Mr. O'Dell cited the last Council meeting where he said Mr. Teitz advised the Council on how to handle this hearing. Mr. O'Dell had rough copies of a transcript with those responses which were prepared by Mr. O'Dell. Attorney Oliverio noted this was an unofficial portion of a transcript. Attorney Oliverio marked as Exhibit D at the request of Mr. O'Dell.

Solicitor Teitz objected to Exhibits C & D. Objected to Exhibit C on the grounds of relevancy, these were all issues of the Ethics Commission. Solicitor Teitz noted if he did violate, then it is a complaint to the Ethics Commission. Within the past year Mr. Justin Katz filed a complaint against Solicitor Teitz with the Ethics Commission relative to the Solicitor's representation of the Town Clerk. The Ethics Commission found it was unworthy, no finding of cause. Ethics Commission has already dealt with this, the Solicitor is not representing the Judge in a personal issue, is representing in his official Town capacity. Has no bearing to the underlying complaint, objects to C & D. Attorney Oliverio, in reviewing wanted to focus on the complaint, particularly the second paragraph on the second page. Attorney Oliverio read that section from Mr. O'Dell's complaint- Since the majority of the Town Council was cited in the Charter violation, I believe he is an "interested party" to the fact that the Judge's income as a Municipal Court Judge is due to his appointment by the Town Council and that a majority of the Town Council was not only named in the Charter Complaint, but the same Council members voted for his appointment. Attorney Oliverio summarized, in essence Mr. O'Dell claimed the Judge should not have heard it in the first instance, now hearing a new allegation that Solicitor Teitz should not represented the Judge. Should stick to the issue as Counsel to the review board, to find out if the Judge should not have heard the complaint. Mr. O'Dell corrected Attorney Oliverio; the date of that hearing was Tuesday, August 26. It was up to the Council to admit the documents, agreed with Solicitor Teitz, did not know how relevant exhibit C was to the deliberations. Exhibit D is not an official transcript. Attorney Oliverio noted it was up to the Council President to admit the exhibits. President Roderick noted the Councilors could decide whatever credence they wanted to give to these two exhibits, did agree with Attorney Oliverio and Solicitor Teitz. What weight is given is up to each Councilor. Attorney Oliverio noted the objection was overruled, becomes a full exhibit, Council can give whatever weight they deem necessary, C & D are full exhibits.

Mr. O'Dell opined if this was handled by Judge D'Addario it would be fine. Because of how this was handled by the Council and the Solicitor Mr. O'Dell was prepared to file an APRA request to have the videos from this and the previous meeting transcribed. Mr. O'Dell opined the easier way would be to change the Charter to make the Municipal Court Judge elected so there is no room for impropriety. Mr. O'Dell agreed with Attorney Oliverio that a Charter Complaint as it stands now; any complaint heard by the Municipal Court Judge is the normal course. Attorney Oliverio questioned Mr. O'Dell on why his complaint said the Judge was an interested party. Mr. O'Dell explained the Judge is appointed, in his interest not to go against the Council decision. Attorney

Oliverio called for questions from the Council. Councilor deMedeiros questioned why Mr. O'Dell waited until after the Judge heard the complaint. Mr. O'Dell explained he was not familiar with that area of the Charter. Councilor Lambert noted in the complaint Mr. O'Dell objected to the Judge sitting as an "interested party". The Charter itself does not refer to an interested party, with a party or an interest in any proceeding, questioned Mr. O'Dell on what he thought the definition of a party or an interested party. Mr. O'Dell explained a party is anyone who takes part in a proceeding or has an interest in a proceeding. Councilor Lambert affirmed with Mr. O'Dell that by Mr. O'Dell's definition, party, would include the Judge. President Roderick noted the Charter was explicit; in essence Mr. O'Dell disagreed with the Charter, so any Board or Commission member could also be subject as an interested party. Mr. O'Dell explained those people are not paid employees, the Probate Judge is part of the Municipal Court as backup and substitute replacement. In Mr. O'Dell's opinion it should have gone to the Probate Judge. Councilor Pelletier was trying to understand Mr. O'Dell in that the Municipal Court Judge as the position serves today; Mr. O'Dell's opinion the interested party was incapable of an unbiased opinion.

Mr. O'Dell stated when he filed this he would not only be satisfied but appeased if it went to the Probate Judge. Has been assured will have standing in the State courts, could live with the Probate Judge's decision. Mr. O'Dell opined it was proper to have the Probate Judge, an elected official, hear this, prefer to settle this at the Town level. Councilor Pelletier noted Mr. O'Dell was potentially asking the Council to do something it cannot do; to compel the Probate Judge to hear something that has already been heard by the Municipal Court Judge. Attorney Oliverio interjected, according to the Charter if the Review Board votes in the affirmative and directs the Town Administrator to issue a complaint against the Judge normally heard in Municipal Court then it defaults to section 805b and the complaint is heard by the Probate Judge on this complaint, not the original. Councilor deMedeiros clarified; the Council has no authority to send the original complaint. Attorney Oliverio explained the first instance of the Judge hearing this matter, did this violate the Charter? Councilor Pelletier disagreed slightly, Council has to conclude the individual or the body knowingly violated or failed to take action. President Roderick believes a Municipal Court Judge would not be influenced by any Council. Believe Judge Donnelly to be a man of his word, would not be swayed. Councilor Pelletier questioned the salary of the Municipal Court Judge. Solicitor Teitz noted it was \$12,500. Councilor Chabot asked Mr. O'Dell a hypothetical question, if it was a whole new Council who had nothing to do with the appointment of the Municipal Court Judge and there was a Charter complaint against that Council would it still be inappropriate to be heard by that Judge? Mr. O'Dell opined that would be proper. Mr. O'Dell did not have any other evidence but added the procedure was it goes to the Municipal Court not to a specific Judge. Mr. O'Dell did not have anything further to add, thanked the Council.

Solicitor Teitz thanked the Council, had prepared a Memorandum in support of Judge Donnelly, a copy was emailed to Mr. O'Dell as well. The Memorandum sets forth the argument; Solicitor Teitz requested it be marked as Exhibit E. Solicitor Teitz did not think there was an appellate review or appeals court for this. Solicitor Teitz respectfully opined Mr. O'Dell would not be satisfied until he gets the answer he wants. Solicitor Teitz raised three points. The first point, Council has raised interesting questions, a political question with a small p, at heart a dispute between different branches of government. Mr. O'Dell had time leading up to the hearing, did not raise the issue at the hearing or a few weeks later when he could have raised an objection. Either he was or should have been familiar with that area of the Charter but did not raise it. Would have had to object at that point to preserve it. Solicitor Teitz cited court cases when an objection was not raised during trial, no different with this complaint. Had plenty of opportunities to raise before the hearing and during the hearing to say the Judge should not be hearing this because the Council appoints you. Thinks the Council can dismiss on this step alone. The second part gets to the question of interested party and the language of the Charter. The Charter talks to when a Municipal Court Judge is a party to or interested in any proceeding about to be heard in his court. He is not a party to that underlying complaint. The question becomes is he interested in the proceedings. In Black's Law Dictionary found a narrow definition of interested person, looked for a broader definition. Solicitor Teitz referred to another case, involved at that time Superior Court Judge Maureen McKenna Goldberg regarding judicial appointment hearings. The Court ruled the Judge was not a conflict in that setting. If there was a request Judge Donnelly was not required to do it. Finally looking at the plain language of the Charter the authors provided for this to go to the Municipal Court. They had the opportunity to send it to the Probate Judge or other elected

officials. They took other actions to minimize influence on Municipal Court by making the appointment in the off year. Most cities and towns appoint right after the election. For all those reasons especially the first one the Council should find no cause to go forward, should be dismissed.

At this time Attorney Oliverio explained the Council could deliberate, discuss and ask questions. Solicitor Teitz noted Judge Donnelly could also answer questions. Attorney Oliverio then swore in Judge Donnelly. Councilor Pelletier relative to the initial Charter Complaint against the majority of the Council wanted to know what punishment exists in the Charter. Solicitor Teitz responded, in the Charter the Judge can remove people from office and fine them up to \$300. Councilor Pelletier noted the other factors, two distinct parts, the party and interested in. Believed the Judge was not a party, he was hearing the case, the other being based on his income. Mr. O'Dell stated for the issue he did raise the issue before the discussion, cited the \$12K as a direct financial benefit. Councilor Pelletier noted none of his questions were answered. Councilor Lambert questioned Mr. O'Dell if before he filed the complaint and before the hearing did he ever consult with an attorney in RI. Mr. O'Dell answered yes. Councilor Lambert questioned if that attorney ever raised the issue of recusal. Mr. O'Dell replied that attorney did not raise the issue with him, was not familiar with the Town Charter. Councilor Lambert at the previous meeting raised points about definitions on what a party is, Solicitor Teitz raised the issue of recusal. Any attorney should have known about the concept of recusal, should have advised you to raise before the hearing, was not raised until well after the hearing. The other point Councilor Pelletier raised was direct financial benefit, a financial benefit to the outcome of the case. Any Municipal Court Judge serves at the appointment of the Council. Mr. O'Dell vowed to have a follow up Charter complaint, the complaint exists has already been filed. Councilor Pelletier questioned Mr. O'Dell, as the Charter exists any case the Judge hears which might potentially have financial gain, is he compelled to recuse. How can the Council determine if the Judge willfully violated the Charter? Mr. O'Dell opined just having the hearing was a violation, he should have recused. Councilor Pelletier added if the Charter does not compel the Judge to recuse he is not in violation of the Charter, President Roderick explained the biggest issue, the Charter is clear in how the process works, as the Judge is impartial and independent. Complaints against the Council whether a majority or not go to Municipal Court. President Roderick personally believed the complaint was unfounded and unjustified.

Councilor Gerlach asked Judge Donnelly why he didn't feel the need to recuse himself. Judge Donnelly explained he took an oath of office to judge all matters. Did not think he had to recuse. Secondly at that hearing at several points suggested to the parties the case was moot, not right for hearing. At that point in time the Council had rescinded the decision to appoint that position. Wrote a declaratory decision saying the Council had certain powers. Councilor Pelletier cited Section 804 of the Charter relative to the Probate Court which is an entirely different court. Solicitor Teitz gave an example of a conflict of interest with Municipal Court. There was a zoning violation regarding a mobile home park which was a client of Judge Donnelly, he recused himself from the case, was then heard by the Probate Court Judge. That's a conflict of interest.

Attorney Oliverio summarized the issue before this body is based on the testimony and evidence presented, have to weigh both as to whether Judge Donnelly knowingly violated any of the provisions of the Charter and should have stepped aside to recuse regarding the Charter complaint on the authority of the Council's appointment of a Planner which was heard on 8/26. Solicitor Teitz, with all due respect to Attorney Oliverio noted this was for a specific violation of 805b, not just any provision. Attorney Oliverio agreed with the Solicitor. Needs a 2/3 vote in order to proceed, since there are 7 Councilors that number would be 5. Need 5 affirmative votes in order to find that this complaint has merit. Councilor Chabot interrupted at this time has to recuse. Just realized a member of her family is a client of Jim Donnelly. Councilor Chabot left the Council table at this time. Attorney Oliverio noted it now has to be 4 votes.

President Roderick opined did not see any merit to the Charter complaint against Judge Donnelly, it should go no further.

The motion is to say the Council is not upholding the Charter complaint against Judge Donnelly and should go no further. Councilor Gerlach stated as a motion, Councilor deMedeiros seconded for discussion.

Councilor Lambert noted at this stage should only be making a finding of fact first to decide whether or not there is a cause, the second is whether or not the complaint has been waived. Attorney Oliverio counseled should decide on the merits, be heard on the merits, not thrown out on a technicality. Whether or not the complaint is appropriate comes from the frames of the Charter, defaults to the Municipal Court Judge. Duties and responsibilities of the Municipal Court Judge very specific described with exceptions. Was there a vacancy, no, was the Judge a party to the proceedings, no it was clear he was not a party since not the subject of the complaint. Was he interested in the proceeding mainly because he serves at the pleasure of the Council and receives a salary, no metes out justice in an unbiased fashion. Attorney Oliverio opined the motion should be whether or not Judge Donnelly, established through the evidence and testimony presented knowingly violated the Charter when he refused to recuse himself on a Charter complaint against the majority of the Town Council regarding the appointment of a Town Planner. Attorney Oliverio restated the motion, did he knowingly violate the Charter when he refused to recuse. A no vote would be you don't agree. Solicitor Teitz requested to be heard thought the motion on the floor was to find there was not a violation. Solicitor Teitz questioned if this motion was to adopt a finding of facts or maybe have a new motion. At this point Councilor Gerlach withdrew the motion, Councilor deMedeiros withdrew the second on the motion.

Councilor Pelletier requested clarification on finding of fact. Attorney Oliverio explained the issue before the Council is whether or not you find there was evidence sufficient to support a finding that Judge Donnelly knowingly violated the Charter on August 26 when he failed to recuse himself involving a majority of the Council on the appointment of a Town Planner. Do you find he violated the Charter; the answer is yes or no. That is really the question and the finding. Do a roll call on the motion to dismiss the complaint. President Roderick noted the motion should be whether or not Judge Donnelly knowingly violated the Charter by failing to recuse himself in the matter heard on August 26. Attorney Oliverio clarified the motion should be whether or not you believe Judge Donnelly knowingly violated the Charter when he failed to recuse himself in hearing the Charter complaint on the majority of the Town Council for the appointment of the Town Planner.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros as read by the Town Clerk. The motion was did Judge Donnelly knowingly violate the Charter by failing to recuse himself on a Charter complaint hearing August 26 against the majority of the Town Council relative to the hiring of the Town Planner. President Roderick asked for a roll call vote, yea or nay. Councilor Gerlach voted nay, did not believe the Judge knowingly violated the Charter, Councilor Arruda did not exactly disagree with some of the findings Mr. O'Dell said, have to fix the Charter, hard to prove the Judge knowingly violated based on the evidence, voted nay, Councilor Lambert-nay, Councilor Roderick – nay, Councilor deMedeiros – nay and Councilor Pelletier – nay. **The vote was 6-0. Councilor Chabot recused not at Council table.**

Councilor Pelletier made a motion, based on the finding to dismiss the complaint against Judge Donnelly. The motion was seconded by Councilor Lambert; the roll call vote was as follows: Councilor Gerlach- yes, Councilor Arruda – nay, Councilor Lambert – yes, Councilor Roderick – yes, Councilor deMedeiros – yes and Councilor Pelletier – yes. Motion passed on a vote of 5-1, the Complaint was Dismissed.

President Roderick called for a five minute break at 8:45 p.m.

Items moved up in the Agenda

Councilor Lambert made a motion, seconded by Councilor Pelletier to move up items K2 and D2 to proceed immediately. Motion passed unanimously.

K-TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:

2. Lawrence Court Status Update on Agreement and Request for Council Direction

Solicitor Teitz explained previously the Council voted on a compromise on Lawrence Court, the Town does not have a legal responsibility to maintain a private road, responsible for the public portion turn around. Was a proposed compromise to maintain minimally, to grade and fill in the usual and customary fashion, the

developer's responsibility for anything else. Several homeowners not willing to sign, back here for direction. Town Clerk Mello noted the Council had before them the signatures of the 5 officers. Kevin Noyes, 144 Lawrence Court, president of the Homeowner's Association (HOA), explained the HOA had 19 members, was formed back in the 1960's because of the well. Several residents own but don't live there, rent out the property; everyone was willing to accept with the 5 officers signatures. Solicitor Teitz was not comfortable with that, wanted notarized signatures of every property owner. Realtors and sellers don't always disclose this; want it to be recorded in land evidence records so they know it's a future obligation. Town Clerk Mello brought up the 20 people on Delano Island who use that road. President Roderick suggested setting a deadline; send the agreement to the HOA and the others. Mr. Noyes explained there were 16 residents on Delano Island, was there before Lawrence Court. Solicitor Teitz agreed with the President's suggestion need to give time. President Roderick suggested sending the agreement to all the property owners, return by a date certain. Councilor Pelletier suggested making clear the agreement is to maintain the status quo, absent the agreement there will be no services. Town Clerk Mello clarified this was only for the homeowners on the private portion of the road, not the Town accepted public portion. Solicitor Teitz suggested having this returned by February 1 for review on the February 9 meeting. President Roderick summarized, need notarized signatures by February 1 and will send a copy of the agreement with a letter making clear. Town Clerk Mello will get a list of property owners from the tax assessor.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to continue this to February 9, 2015 Town Council meeting. Motion passed unanimously.

President Roderick recused, wife is appointment candidate, left Council table.

D - APPOINTMENTS & RESIGNATIONS:

Appointments

2. Personnel Board – Two Expired Terms to 10/15/2015 and 10/15/2016

a. Donna Cook, 192 Hilton Street

b. Janice E. Hughes, 36 Holly Lane

c. Nancy Roderick, 19 Sparrow Drive

Vice-President deMedeiros read the list of names for appointment to the Personnel Board, called for a motion. Councilor Gerlach, as a point of order, was late arriving for the interviews, questioned if he should be voting. Solicitor Teitz explained this was not a hearing, was up to the Councilor if he felt comfortable voting, if not could abstain. Councilor Gerlach had read all the backup material, felt comfortable voting.

Councilor Pelletier made a motion, seconded by Councilor Lambert to Appoint Janice E. Hughes to the Personnel Board to a term expiring 10/15/2015 and to Appoint Nancy Roderick to the Personnel Board for a term expiring 10/15/2016. Councilor Arruda was concerned, questioned if Mrs. Roderick would still be here in 2016. Mrs. Roderick affirmed she would still be here. Councilor Pelletier noted the two names have a lot of Human Resource experience, a unique blend of skills for the Personnel Board at this current time, rare to get such qualified applicants. Motion passed on a vote of 6-0-1, Councilor Roderick abstained, not at Council table.

Councilor Pelletier thanked all 3 applicants for their applications.

President Roderick returned to the Council table at this time.

B-PUBLIC HEARINGS & PUBLIC PRESENTATIONS:

1-Public Hearing Regarding Proposed Resolution for the Renewal of the Re-designation of Enterprise Zone to Extend the Program for Five Years and to Remove Census Block 417.02 (South Tiverton)

Town Administrator Wojcik explained this still designates a portion of Portsmouth and Tiverton in the Enterprise Zone, incentivizes to create new jobs. Only for C corporations, not for sole proprietorships. Done for economically distressed areas, program not designed to support historic villages. The program fits North Tiverton

and the central part of Town. President Roderick called for comment from the public 3 times, hearing none closed the public portion.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to adopt the Proposed Resolution for the Renewal of the Re-designation of Enterprise Zone to Extend the Program for Five Years and to Remove Census Block 417.02 (South Tiverton). Motion passed unanimously.

Adopted Resolution attached at end of minutes.

2-Public Hearing Amendments to Town Code Chapter 38 – Environment, Article III; Earth Removal, Division 1 – Generally and Division 2 – License – Continued From September 8, 2014

a.Solicitor Memorandum on Town’s Authority to Regulate Earth Removal/Quarry Operations

b.Planning Board Memorandum c.Draft Legislation

Solicitor Teitz explained the Memorandum had been provided previously, were concerns with the ordinance. The Planning Board had concerns the changes should be done through enabling legislation. This is a first draft, has not been reviewed by the Planning Board. Enabling act done 40 years ago, made changes to include rock and granite, groundwater protection. If the Council is so inclined suggest referring to the Planning Board for comment and recommendation. Solicitor Teitz noted this was not an ordinance, not presenting one at this time. President Roderick requested comments from the public. Bob Toolin, Linda Road, neighbor to one of the quarries. Did not see the draft, commented on the 100 foot hole, heard the Town hired a hydrologist. Suggested having all the reports in hand. Concerned about Stafford Pond, the gas line, suggest a \$2million dollar bond for licensing. President Roderick again called for comment 3 times. Lawrence McCarthy requested clarification on whether the proposed ordinance was still on the table. Solicitor Teitz explained it was not; would have to readvertise. Councilor Gerlach had questions about the draft legislation, wanted to know the rational for running on Saturday and limiting to 5 days. Solicitor Teitz was concerned with limiting, left as is was originally, no earth removal on Sunday, only with a special exception of the Council. Councilor Gerlach was concerned if anyone but a professional engineer can determine the distance to groundwater or whether that should be part of the discussion going forward. Solicitor Teitz explained just trying to get information at this point, did not put a specific number.

Councilor Arruda questioned in the Planning Board memo the last paragraph that David Petrarca substituting for Peter Ruggiero stated his office had not consulted with Mr. Teitz. Solicitor Teitz explained he had been in contact with Mr. Ruggiero all along. Councilor Pelletier questioned what was going on with licensing requirements for surety or other avenues. Solicitor Teitz was conferring with the Clerk on renewal of the licenses, licensing authority is limited. Hoping to get adopted by the General Assembly early in the session.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to forward the Draft Legislation as presented in item B2c to the Planning Board for an opinion. Solicitor Teitz suggested saying as presented and amended by the suggestions. Councilor Pelletier noticed a typo on page 3, last line of (a), should be spelled out as fifteen inches not three. Motion passed unanimously.

President Roderick closed the public hearing.

**C-TOWN COUNCIL SITTING AS BOARD OF LICENSING
NON ADVERTISED LICENSES**

1-D’Ercole Construction, Inc., 2800 Plainfield Pike, Cranston, RI – Request Approval of Street Excavators License – Subject to Meeting All Legal Requirements

DPW Director Berlucchi explained this was for a project for the North Tiverton Fire District (NTFD on Fish Road, will also include some sections of Kenyon Road and Doris Avenue, required to come before the Council. Get special permits for State roads, need Excavator license for Town roads. They have a 100% performance bond with NTFD; recommend using that bond to guarantee the work.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to approve the Street Excavators License for D'Ercole Construction, Inc., 2800 Plainfield Pike, Cranston, RI subject to meeting all legal requirements which includes the Town assuming the bond. Some discussion followed. President Roderick noted the term would be recognizing the Town. Councilor Pelletier explained that would not protect the Town. Director Berlucchi explained the project is already bonded, backed by the NTFD, can call the bond. Would have to be bonded a second time. Solicitor Teitz suggested making the Town named as an additional insurer under the bond. Councilor Pelletier amended the motion, seconded by Councilor deMedeiros to approve the Street Excavator License for D'Ercole Construction, Inc., 2800 Plainfield Pike, Cranston, RI Subject to Meeting All Legal Requirements one of which is getting them to add the Town as an additional insurer in the 100% performance guarantee bond. Councilor Lambert questioned if there was a claim on the NTFD from the Town. Solicitor Teitz explained essentially would be suing the rate payers. Director Berlucchi noted those roads were not being done immediately, would let the Council know. Motion passed unanimously.

D-APPOINTMENTS & RESIGNATIONS: - Continued

Resignations

1-Harbor and Coastal Waters Management Commission Christopher Clarendon

President Roderick requested the Clerk send a letter accepting with regret and deep appreciation.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to accept with regrets and thanks for service to the Town. Motion passed unanimously.

E-UNFINISHED BUSINESS:

There was no unfinished business on this agenda.

F-FINANCIAL BUSINESS:

There was no financial business on this agenda.

G-NEW BUSINESS:

1-Chief Blakey – Request Permission to Advertise for Full Time and Per Diem Police & Fire Dispatchers

Administrator Wojcik explained have a vacancy in the full time Control Center Operators (CCO) position, Chief Blakey was seeking authorization to form a list. The per diem had no benefits, needed to fill shifts.

Councilor Pelletier made a motion, seconded by Councilor deMedeiros to grant permission to Advertise for Full Time and Per Diem Police & Fire Dispatchers. Motion passed unanimously.

H-BIDS AND REQUESTS FOR PROPOSALS:

There were no bids or requests for proposals on this agenda.

I-TOWN ADMINISTRATOR ITEMS AND ANNOUNCEMENTS:

1. Update on Community Center Disposition

Administrator Wojcik explained the FTR resolution authorized the disposition of the Community Center, should sell as is. If done in house would have to have an environmental review, DPW would do the demolition, would need temporary fencing. Suggest try to sell at auction using the appraised value, \$35,000 as a minimum bid price. Solicited the abutters, one has serious interest. Does not have parking on site. President Roderick questioned if a bid requirement could be to rehabilitate or demolish in time, concerned about the property just sitting. Solicitor Teitz explained, was done in the past with the Old Ranger School, could do it either way. Councilor Pelletier suggested offering stabilization, was not opposed to selling. Councilor Chabot questioned if all the committees that use that building were notified. T/A Wojcik affirmed except for Harbormaster, were notified in advance, heat, internet turned off. Just maintain building at a bare minimum.

2. Preliminary Discussion on Town Administrator's Proposed Budget Process

Administrator Wojcik explained the process he would use in the budget. It will remain in the same format, signaled to the department heads to build a budget from the ground up. Should make explicit what is being paid for. Level of qualification for Department Heads, employees, police officers and fire fighters is high. Bringing into the forefront is the general fund balance.

3-Update on Land Use Procedures and Enforcement Ad Hoc Committee

Administrator Wojcik intends to convene the Land Use Procedures and Enforcement Ad Hoc Committee (LUPE). Established some time ago to address complaints from the general public. Waited for the appointment of the full time Code Enforcement Official. Will meet early November, will be publicized, committee fully staffed.

4-Brief Report on League of City and Town Legislative Committee

Administrator Wojcik explained the ad hoc committee addresses initiatives of the municipalities before the General Assembly. Invite feedback from the Council, looking to go after the school housing program to help with school buildings.

J-COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:

Councilor Lambert explained a couple of months ago Gil Fletcher from PawsWatch presented a program for feral cats, a trap, neuter and release program. At the time the Council passed a resolution of support. Pleased to announce a grant was received from PetSmart charities for \$50,400 to sponsor the two year program. Thanked Barbara Pelletier, Mr. Fletcher and PetSmart charities. Mrs. Pelletier suggested donating supplies like cat food to PawsWatch; need an estimated \$20,000 to cover those costs. Councilor Chabot announced the Senior Center Knitting and Quilting volunteers will be conducting a sale at Sakonnet Bay Manor, 1215 Main Road on November 1 and 2 from 9-3. Funds raised last year enable two star kids to receive \$2,000 scholarships.

Councilor Arruda thanked everyone he served with on the Council for the past 2 years. Sally Black, as Council liaison from the School Committee thanked Councilors Gerlach and Roderick for the long hours put in on the budget.

K-TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:

1-Daniel Church Estates Progress Report and Request to Continue for Further Status Report to February 9th, 2015 (Copy of Report from Administrative Officer)

Solicitor Teitz explained Mr. Lou Cabral, Daniel Church Homeowner's Association was unable to attend. Have a memo from Kate Michaud, Planning Board A/O. They are making significant progress in cleaning up the dam. Two properties on Main Road abutting the dam are not within the HOA, unable to clear that area, DEM looking at options. At this point recommend continuing to February 9, 2015.

Councilor deMedeiros made a motion, seconded by Councilor Gerlach to continue this to February 9, 2015. Motion passed unanimously.

3-Viking Stone Blasting Permit Update

a.Blasting Permit

b.Viking Stone October Letter 2014

c.VSC Abutter Letters

d.Solicitor Memorandum Regarding Abandonment Dated February 7, 2013

Solicitor Teitz explained received a copy of permit for blasting. Seismic Solutions sent letters to the neighbors notifying them of the blasting. Was determined to be by Viking Stone. The 2/7/13 memo sets forth the history of Viking Stone. Viking Stone was shut down by the Town for repeatedly flooding Fish Road. There was a question if the use was abandoned. Solicitor Teitz determined they had a legal right to continue, had not abandoned the legal non-conforming use. The law requires several things for a license to operate, so far none of those things have been done. Viking claimed they could not afford a survey. Councilor Pelletier questioned why they were blasting. Solicitor Teitz explained, they were not. Spoke with Robert Mowry in charge of blasting permits at the

State Fire Marshall's office, set forth the Town's objection. The blasting permit is going to be rescinded. Prepared an action in court to go forward if needed. Will meet with Mr. Mowry, hoping to talk about other blasting problems in Town. Viking's permit was revoked in 2007.

4-Seaside Gas Station Report

a.Account Activity Detail

b.Purchase and Sale Agreement

Solicitor Teitz explained, this closed in February, Purchase and Sale signed a year ago, now being made public under the terms of the agreement, was confidential. The Town was under no obligation if the funds were not available. Cost \$447,813.66 including the tank removal, received a \$200,000 DEM grant for the easement and \$3,459.50 for partial reimbursement costs. The Open Space Commission committed up to \$100,000, have returned \$55,000 to their account.

5-Alcohol Service – BYOB Potential Ordinance – Request for Council Direction

Solicitor Teitz explained, at the request of Chief Blakey, issued a memorandum; may be some problem with Bring Your Own Booze (BYOB) in Town. Not is State regulations, the Town would have to do ourselves. Would be similar to a liquor license, looking for Council direction. President Roderick suggested continuing when the Chief is available.

Item added to the agenda for discussion only.

Solicitor Teitz requested adding an item to the agenda for discussion only regarding McLaughlin vs the Tiverton Zoning Board.

Councilor Pelletier made a motion, seconded by Councilor Arruda to add to the Agenda for discussion only McLaughlin vs Tiverton Zoning Board. Motion passed unanimously.

Solicitor Teitz explained, have filed a motion in Superior Court to adjudge Mr. McLaughlin in contempt for failure to remove the structure in an illegal location and to for failure to pay the fines. Set down for November 14, 2014 in Newport County Superior Court.

6-Fire Department Investigation – Attorney DeSisto Report

Solicitor Memorandum

Redacted Investigative Report of Tiverton Fire Department

Solicitor Teitz had provided a memo explaining the Council in spring of this year engaged Attorney Mark DeSisto to conduct an investigation of certain allegations on issues in the Fire Department. The investigation included interviews with every current member of the Fire Department, some former members. Found some allegations not relevant, some too old, some relative to management conduct, others found to be true and provable. Discussed with the Fire Chief and his attorney in Executive Session. Council, in Executive Session directed the Solicitor to come up with redacted report, redacted personnel information. Left with overall conclusions. Went from 66 pages to 25 pages, left the headings.

L-TOWN CLERK ITEMS AND ANNOUNCEMENTS:

1-Poll Locations for General Election November 4, 2014 with Map

Town Clerk Mello reminded November 4, 2014 is the General Election, the Warning has been posted in areas across the Town, included a color map of the voting districts. Published polling locations in 3 local newspapers without the map, can always call the Clerk's office at 625-6703.

CLOSED EXECUTIVE SESSION:

1. Brian Janes, Co-Chair Open Space Commission – 42-46-5(a) (5) - Possible Property Acquisition

2. Solicitor – Potential Litigation - 42-46-5(a) (2) – Viking Stone

3. Solicitor – Litigation - 42-46-5(a) (2) – Quarterly Litigation Report

4. Personnel - 42-46-5(a) (1) – Town Administrator Six Month Performance Evaluation –Notice Given

Councilor Lambert made a motion, seconded by Councilor Chabot to go into Closed Executive Session pursuant to 42-46-5(a) (5) - Possible Property Acquisition - Brian Janes, Co-Chair Open Space Commission. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a) (2) -Potential Litigation – Viking Stone.

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a) (2) – Litigation – Quarterly Litigation Report.

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to - 42-46-5(a)(1) -Personnel– Town Administrator Six Month Performance Evaluation –Notice Given. Motion passed unanimously.

Solicitor Teitz, for the record noted Town Administrator Matthew Wojcik was provided with Notice to have in Open Session, elected to have in Closed Executive Session.

The Council entered into Executive Session at approximately 10:30 p.m.

The Council returned to Open Session at approximately 11:35 p.m.

OPEN SESSION:

In open session President Roderick announced action was taken in Closed Executive Session on items #1, 2 & 4.

On item #4, the six month performance evaluation on the Town Administrator was completed. Council unanimously voted to increase the Administrator's salary to \$90,000 per contract terms.

Councilor Pelletier motioned to seal the minutes of Closed Executive Session. Seconded by Gerlach, motion passed unanimously.

ADJOURNMENT:

Councilor Pelletier motioned to adjourn. Seconded by Councilor Arruda the motion passed unanimously.

Council adjourned at approximately 11:40 p.m.

A True Copy.

ATTEST: _____
Nancy L. Mello, Town Clerk