

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

The Town Council of the Town of Tiverton, County and State aforesaid held a Workshop on Monday, the 2nd day of March 2015 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

**MEMBERS PRESENT:**

President deMedeiros, Councilor Sousa, Councilor Peter Mello and Councilor Lambert. Councilors Perry, Chabot and Pelletier were absent.

Town Administrator Goncalo, Town Clerk Mello and Solicitor Teitz were also present.

**WORKSHOP AGENDA**

**Call to Order/Pledge of Allegiance/Roll Call**

President deMedeiros called the workshop to order followed by the Pledge of Allegiance to the flag.

**A. Legal Authority to Protect the Public Interest**

**1. Public Interest**

**2. Act Within Your Legal Authority**

**B. Legal Responsibilities**

**1. Due Process**

**2. Open Meetings**

**3. Public Records (2012 Amendments)**

**4. Ethical Behavior**

**5. Appearance of Impropriety**

Town Solicitor Andrew Teitz conducted the workshop. Solicitor Teitz explained necessary for volunteers due to the important work they do. Most people don't have contact with government, for some this is the only contact. The public interest benefits the whole welfare of the public community. For the entire public, the entire Town, have to apply larger standards, ask who will benefit. Adopt Rules of Procedure.

The Town delegates to the public bodies from the State of Rhode Island via the constitution and state statute to the municipality, some employees and staff. With that authority come limitations and guidelines. Many violations happen because someone on a board or commission is trying to help an applicant, maybe a favor because of a personal friendship or think it's the right idea for the Town. Keep in mind your actions have to comply with legal requirements especially for Zoning, Planning and the Town Council. Usually hurts the applicant, may have a criminal sanction. In short don't try to do someone a favor. Solicitor Teitz urged members of the audience to ask questions at any time. Solicitor Teitz law firm represents 5 different towns, some for over 20 years. In other towns have represented applicants from individuals to corporations including Brown University. Solicitor Teitz was involved in drafting enabling legislation for zoning and planning for the General Assembly. Key to legal responsibilities is Due Process. Due Process is the process that protects the rights of the individual includes notice, opportunity to be heard, time limits, procedure and fairness. There are specific components, procedural due process and substantive due process.

Tonight more concerned with procedural due process- meeting notice posted, provided notice, provided an opportunity to be heard concerned about fairness and if any conflict of interest that person has recused. Substantive due process is concerned with fairness and objectiveness of the result, more about applying specific standards. Overall in RI 3 key statutes and sets of laws-Open Meetings Act, Access to Public Records Act (APRA) and Ethics Commissions Rules. May hear people talk about the Freedom of

Information Act, the Federal Act similar to ARPA. Councilor Sousa requested discussion on a Rolling Quorum. Solicitor Teitz explained the basic philosophy is that all meetings are public, then there are lists of exceptions. Unless it fits into an exception is a public meeting or record. Applies to all public bodies, any of the formal bodies like Zoning, Planning or the Council in addition to ad hoc committees. Goes all the way back to the Clinton health care reform initiative, the Supreme Court ruled it was a public body, like the Library Trustees are a public body in RI. All public meetings are open. People have the right to see and hear what happens at a meeting and location must be handicap accessible with ability for all to hear. There is a difference between a public meeting and a public hearing. A public hearing provides some other laws that provide for the public to speak like Zoning or a Council public hearing. All public hearings are public meetings but not all public meetings are public hearings. Workshops, work sessions, charrettes are included as meetings. A quorum of a public body is a meeting, needs notice, is not a meeting without a quorum. Can continue a meeting without a quorum to a date certain. Even if no quorum and not having a vote cannot discuss anything, it's still a meeting.

A Rolling Quorum is a term used when an issue is not discussed by a true quorum but discussed by a quorum of the body over time. Can be emails when someone incorrectly hits reply all, another person replies, becomes a discussion. Any discussion of substantive business outside the public view is a violation. If there are any questions send that to the staff person or to the committee clerk or to your board secretary. The only exception to this is scheduling. Question arose; can you discuss putting an agenda item ahead of time? Reply was yes/no, not a violation of the OMA if not a quorum, in general not a denial of due process. Advise against it, should just put as an item for general discussion. An official like the DPW Director can provide general information but should not discuss with other members, staff members are not a public body. Ex parte communication (outside the scope), essentially is contact with someone with an interest in the decision. Goal is not to be talking about business ahead of time. Question arose if a member has an idea can they send it ahead of time to other members. Solicitor Teitz explained that becomes public, if about a specific issue or person should contact that person. For example draft decisions are sent to opposing counsel. Question arose about a quorum. A quorum is a majority of the group, however the Zoning Board is specific always has 5 members at a meeting, Planning Board decisions are similar. For example if a board has 5 members then a quorum is 3. A vote at a meeting with a quorum of three could pass 2-1 unless there is some other requirement for that board. Zoning and Planning are different.

Social gatherings are fine as long as no business is discussed, have to watch the appearance. If going to another board or commission meeting don't sit together, perception is this could be an unannounced meeting.

Every public body is supposed to keep minutes, don't have to be verbatim. Should list the members in attendance, votes taken, who made the motion, who seconded. Should be available within 35 days or at the next regular meeting. Even if not approved are a public record, can put draft or unofficial document stamp on it. Should be available to the public. Only State agencies have to post their minutes, Towns have to post agendas. If something is presented at a meeting it should be kept with those minutes or attached to them. Town Clerk Nancy Mello explained all Board and Commission minutes received are scanned into Clerkbases. Solicitor Teitz explained whatever received at a meeting is public but does not have to go on Clerkbases. Get any documents to the Clerk so they can be stored in a file cabinet at the Town Hall as they are public records.

Solicitor Teitz explained all meetings are open to the public unless they fall into the exceptions. Most committees don't have reason to have closed session other than the Town Council. Juvenile Hearing Board is different, those records are closed. Can be closed to the public for discussion of job performance, character, or a person. Not just an employee but a person could be a prospective employee.

That person has the right to have in Open Session, have to be noticed in writing. The person is not legally required to respond. Can also have closed session for Collective Bargaining, Litigation, Security, Investigative Proceedings and for other reasons. Must inform the public if action was taken, don't have to say what it was and can seal the minutes of executive session. Vote to unseal must be done in executive session, also if property is bought must be made public but not for all those minutes during negotiation. Question arose about Open Space Commission minutes once a purchase has been made. That action may have taken place years ago. Solicitor Teitz suggested looking at executive session minutes every year to see what can be unsealed and get those to the Clerk. Adding items to the agenda can be done by a majority vote except for the School Committee which has stricter requirements. An item can be added for information purposes only, can only be voted to refer it to another body if necessary to address an unexpected occurrence to protect the public. Emergency meeting notices are different.

A five minute break was taken at this time. Returned from break at 8:05 pm, discussion started with public records. All records are public except for when they are not, a variety of exceptions (27), personnel or other personal records pursuant to 5 U.S.C 552, Federal statute, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Essentially is a balancing test, private versus public interest. Is the information identifiable with a specific individual, if not it's public. Is there a privacy interest to be protected? If in the public domain not a privacy interest, if someone is deceased there is no privacy interest. Corporations have no privacy expectation. So if there is no private interest what is the public interest? The FOYA sheds light on agency performance of statutory duties, are they doing right by us. Balancing that right of the public interest versus the right of the individual to have privacy. There are other exemptions from public records, any contribution of a bona fide charitable contribution like an anonymous donor. If the board or commission has made a motion to seal the records then that is not a public record. Preliminary drafts while working on a memo are not a public record, part of the work product. Once submitted become a public record, if a request is filed must respond within 10 days. Question arose if site visit notes as part of a Zoning Board petition were public. Solicitor Teitz explained if those notes were referenced at a meeting then they would be public.

Section (M) of the records that are not public relates to correspondence to elected officials. Allows people to write to elected officials, part of the balancing test. There are 3 public records officers for the Town- the Police Chief for Police Department records, the Town Administrator for Administrative offices and Boards and Commissions, and the Town Clerk. The Treasurer falls under the Town Clerk's office with respect to records requests. Those 3 Town Officials have to attend an annual training session or watch on television a seminar conducted by the Attorney General, must be certified they have done so. It is important to respond quickly, have a public records request form but people do not have to use it. If it is identifiable as a public records request, could be by email then get it to the particular party. Have 10 business days, can get up to 30 but have to explain why, could be a large volume of documents. Will face fines, can go against individuals, if it looks like a request, treat it like one. Make sure you follow up, if a record does not exist, have to indicate so in writing within the time frame.

Ethical Behavior by public officials and public employees is governed by RI Code of Ethics. Not supposed to do public action for private gain or revenge to someone, also means the appearance of it. If it looks improper then you should recuse including if a friend comes before your board. An option is recusing, can get an advisory opinion from the Ethics Commission, can request a written opinion which will be considered at an Ethics meeting. Recusal occurs when there is a conflict of opinion or a potential conflict should stop participating in the process. Abstaining is not the same as recusing. Abstaining is not voting, may not have enough information or attended all the meetings. If recusing should get up and leave the table, ideally leave the room or sit in the back. Should state in the minutes why recusing, do have to fill out a form, one copy stays with the record for that board, the other one gets mailed to Ethics

Commission. If you have recused still have the right to speak on it, still have the First Amendment right. There are annual Ethics Financial forms that have to be filed, required to be submitted, easier now that it is online. One interesting note, Zoning Board members cannot abstain, have to recuse. Relates to having 5 members hear a petition. For an Ethics opinion cannot rely on the advice of the Town Solicitor, can only rely on the written decision of the Ethics opinion. The appearance of impropriety usually happens when people tell you how they want you to vote. Council members should listen and also say the same thing, attend a meeting. If receiving an email do not delete, it never really goes away. Goal is to turn it into a public record, send to the Chair or the secretary. Some boards like materials submitted in advance. The Chair may indicate not every item will have public or written comment, needs to be fair. If comment is taken from one person then comment should be taken from all. For site visits be careful when talking to an applicant or a representative, avoid appearance of impropriety.

**C.Benefits**

**D.Open Discussion on Working Together**

The benefits include avoiding fines and jail time. Establishes credibility of for the public body encourages participation, avoids wasting time. Creates an atmosphere in the community in a way that supports the community, lets it be a discussion on the merits and not on the fault of the procedure. Avoids reconsideration of decisions and litigation.

There were no further questions.

**6. ADJOURNMENT:**

Councilor Lambert motioned, seconded by Councilor Mello to adjourn. The motion passed unanimously.

The workshop ended at 8:50 p.m.

**A True Copy. ATTEST:**

Nancy L. Mello, Town Clerk

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