



# Town Administrator's Office

343 Highland Road, Tiverton, Rhode Island 02878 (401) 625-6710

## *Memorandum*

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Date: January 15, 2014

To: Ad Hoc Land Use Procedures Improvement Committee

From: Matt Wojcik

RE: Minutes of the December 15, 2014 meeting of the LUPI Committee

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The following are the proposed minutes from the LUPI Committee meeting of December 15, 2014.

Chairman Matt Wojcik, Town Administrator, called the meeting to order at 6:35 PM in the Town Council chamber of Tiverton Town Hall, 343 Highland Road. The following Committee members were present: Code Enforcement Official, Chris Synnott, Town Councilor Brett Pelletier, Town Administrator Matt Wojcik, Town Solicitor Andy Teitz, Planning Board Chair Steven Hughes, and Planning Board Administrative Officer Kate Michaud. Assistant Solicitor Gina DiCenso joined the Committee at the meeting table for purposes of briefing the Committee on her recommendations.

The first order of business was the acceptance of the minutes of the November 14, 2014 meeting of the Committee. Mr. Hughes suggested the minutes be amended to correct the spelling of "H-u-g-h-e-s." With that amendment, Mr. Hughes moved acceptance of the minutes, seconded by Mr. Pelletier and voted unanimously in favor.

The Committee engaged in a discussion regarding item #2 of the agenda, regarding draft rules of procedure for the Municipal Court when land use matters are brought before it. Ms. DiCenso noted that no rules of procedure exist now. She noted her draft borrows from District Court rules that in her professional opinion would be useful for the Municipal Court. She noted further that her draft also attempts to put into writing a number of the Court's existing practices.

A discussion by all members ensued which outlined the following issues arising from the divide of criminal vs. civil designation of land use cases:

Treating cases as civil matters:

- Court charges fees
- Most courts in RI handle land use cases as civil matters
- Goal is compliance, not punishment

- Civil law allows for attachment of assets
- Civil law provides for attempt at resolution before bringing matter to trial
- Rules for service of process easier to work with
- Zoning Code allows for use of Court's equitable powers
- Civil rules allow for setting milestones for compliance and regular updates to the Court

Treating land use matters as criminal cases:

- Requires following criminal rules of procedure, which give rise to a number of defenses
- Burden of proof is harder to reach (reasonable doubt versus weight of the evidence)
- Question as to whether Court is required to provide counsel for indigent defendants
- Criminal law focuses on the person, not the property, making compliance harder to reach

In additional discussion, Ms. DiCenso noted that the rules she is suggesting to the Municipal Court will not apply to motor vehicle cases.

Solicitor Teitz noted that adopting the suggested rules would require an Ordinance by the Tiverton Town Council. There was discussion amongst members regarding the process for moving the rules along. Upon a motion by Mr. Pelletier, seconded by Mr. Teitz, the Committee voted to send the draft rules to Judge Donnelly for review, with the Committee's recommendations. Passed unanimously.

Discussion proceeded to item 3 of the agenda regarding priorities for the Committee and the comments received by the public process from 2012 regarding land use procedure complaints. There was conversation regarding cross referencing of license applications to the Code Enforcement Official for review before issuance. There was discussion regarding the issuance of building permits during appeal periods; it was determined that this item should be removed from the list of Committee activities since the Town can do nothing to change appeal periods and legal conventions. However, a member of the audience noted that the issue really was the issuance of building permits before zoning decisions were written or filed in land evidence, giving rise to building permits being issued for structures / uses that were not actually approved by the Zoning Board. Discussion ensued where this item was noted as an internal issue of management in the Code Enforcement office and would not be repeated.

The Committee set the time of the next meeting as 7:00 pm on Monday, January 19, 2015 at Tiverton Town Hall by a motion for adjournment until the next meeting made by Mr. Hughes with numerous seconds and unanimous adoption. The meeting was adjourned at 8:41 pm.