



Michael Marcello, Partner  
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Direct: 401.406.3317

March 6, 2020

File No. 47430.2

Mr. Sean Lyness  
Special Assistant Attorney General  
Office of the Rhode Island Attorney General  
150 South Main Street  
Providence, RI 02903

Email: [Slyness@riag.ri.gov](mailto:Slyness@riag.ri.gov)

Re: Justin Katz v. Tiverton Board of Canvassers

Dear Special Assistant Attorney General Lyness:

This letter shall serve as the Tiverton Board of Canvassers' (TBOC) response to an Open Meetings Act (OMA) complaint filed with your office by Mr. Justin Katz (Katz). The TBOC acknowledges that it is a public body as defined by the OMA, and is therefore subject to its provisions.

The Katz complaint alleges that the TBOC, "by and through a quorum of its members convening outside of a posted public meeting, discuss[ed] their interest in requesting special counsel, and requesting that an item appear in their board's name on the Town Council agenda, the [TBOC] violated the OMA, both in terms of the request itself for special counsel and also the related request to be on the agenda of the Tiverton Town Council." (Katz complaint, ¶ 8) For the following reasons, the TBOC denies that it violated the OMA in any way, and requests such a finding by your office.

At all relevant times surrounding the events as stated in the Katz complaint, the Town of Tiverton was in the midst of a recall election of certain town council members, including Katz. The primary responsibility for the management of the recall election rested with the TBOC, a bi-partisan board appointed by the Tiverton town council.

On September 3, 2019, the town clerk and clerk of the TBOC, Nancy Mello, and the town solicitor, received via e-mail, a letter from Robert Coulter, (Coulter) a council member who was also a target of the recall, seeking the invalidation of the recall election based on alleged violations of the Tiverton Home Rule Charter. (Exhibit A). (Mello affidavit, ¶ 3). Significantly, Coulter, in a footnote in his correspondence, stated "if this letter is not acknowledged within one week (i.e. by close of business Tuesday, September 10, 2019), then I will presume it disregarded and resume my complaint with the Rhode Island Board of Elections." (Exhibit A).

Coincidentally, on the same day, the Rhode Island Board of Elections (RIBOE), also posted an agenda for a meeting at 3 p.m. in Providence, R.I. Item No. 4 on the RIBOE agenda noted that "the Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. Katz." (Exhibit B).

Ms. Mello arranged for her and the two other TBOC members, Bobby Harris, chair, and the vice-chair, DeEtta Moran, to carpool to the RIBOE meeting scheduled for 3 p.m. (Mello affidavit, ¶ 4). When Mr. Harris arrived at the Tiverton town hall, Ms. Mello informed him of the Coulter email which she had received that morning. (Mello affidavit, ¶ 5) (Harris affidavit, ¶ 2). As a result of the deadline for a response as set in the Coulter letter, Chair Harris felt it was important to schedule a meeting of the TBOC to discuss the Coulter request seeking to invalidate the recall election. (Harris affidavit, ¶ 3)

In order to comply with the 48 hour notice requirements of the OMA, Chair Harris and Ms. Mello decided to schedule a TBOC meeting for that Friday, September 6, 2019. As was their custom and practice, Ms. Mello prepared the TBOC agenda and the items on it after consultation with Chair Harris or any other member who requested an agenda item. (Mello affidavit, ¶ 7). In light of several controversial TBOC meetings regarding the recall and the signature certification process, Chair Harris suggested to Ms. Mello that the TBOC should consider asking permission to retain its own counsel independent of the then town solicitor. (Mello affidavit, ¶ 10). (Harris affidavit, ¶ 4). Ms. Mello agreed to add such an item to the TBOC agenda.

At some point before the actual RIBOE meeting, Ms. Moran also arrived at town hall for the ride sharing. She too was informed of the Coulter letter by Ms. Mello. Ms. Moran also requested that an agenda item for the TBOC be placed on their agenda to discuss a request for independent legal counsel. (Mello affidavit, ¶ 10) (Moran affidavit, ¶ 4)

Pursuant to those instructions, the TBOC posted an agenda for Friday, September 6, 2019. (Exhibit C). Under new business, the agenda notes "Discussion and Vote Regarding Legal Representation for Special Recall Election."

Because Ms. Mello is the clerk of the town council and knew that the leadership of the town council, including Katz, would be meeting on Wednesday, September 4, 2019, to set the agenda for that public body's next meeting, she informed the TBOC chair and vice chair

that she could place an item on the town council agenda as a placeholder to allow the town council to consider a TBOC request for independent counsel at their regular meeting scheduled for Monday, September 9, 2019. (Mello affidavit, ¶ 4). The reason for the "placeholder" was necessitated by the fact the TBOC was meeting on Friday, September 6, 2019 and that if they voted to move ahead with their request with a formal vote to request legal representation on Friday, it would be too late for it to be placed on the Town Council's agenda which had to be posted by Thursday, September 5, 2019 to comply with the supplemental notice requirements of the OMA. (Mello affidavit, ¶ 12) If the TBOC decided not to move forward with the request for legal counsel, the town council item could be passed off the docket.

The agenda preparation meeting for the town council did occur with Mr. Katz and the then town solicitor on Wednesday, September 4, 2019. (Mello affidavit, ¶ 14). Ms. Mello put forth the "placeholder" request of Mr. Harris and Ms. Moran on the town council agenda. That town council agenda item, under General Business, Item E. notes the request of the TBOC "Request Approval to Retain Special Council for Special Recall Election." (Exhibit D).

In paragraph 5 of his complaint, Mr. Katz, states that "this meeting of the Board of Canvassers [9/6/2019] was held after the Board of Canvassers had placed its request on the Town Council" implying that the sequence is circumstantial evidence that the TBOC had illegally met to place the item on their agenda and decide the issue before the TBOC met on September 6, 2019. (Katz complaint, ¶ 7).

Far from a nefarious intent or motive, the sequence of the agenda placement demonstrates that Ms. Mello, the clerk for both public bodies, was well aware of the supplemental notice requirements of the OMA. She wanted to insure that both the TBOC and town council could legally consider and vote on a request for independent legal counsel for the recall election that even Mr. Katz concedes was "a topic of substantial public interest." (Katz complaint, ¶ 4).

Relying solely on statements by Ms. Mello made at the September 9, 2019 town council meeting where the request from the TBOC was discussed, Katz concludes that her statements "indicates that quorum of the Board of Canvassers not only discussed their agenda, but also discussed the substance of the relevant item sufficiently to know the outcome beforehand and took further action of requesting an agenda item on another body's agenda, which is substantially beyond simple planning of their own agenda item." (Katz complaint, ¶ 7).

This conclusion, however, is unsupported by any objective evidence including an affidavit. The undisputed fact is that it was Ms. Mello, and not the TBOC, who suggested that the request for legal counsel be placed on the town council meeting as a placeholder contingent upon the meeting of the TBOC meeting of September 6, 2019. More importantly, the quote from Ms. Mello relied on by Mr. Katz clearly states that it was the chair [Mr. Harris] that raised the issue with her. One person of the TBOC does not constitute a quorum of the

TBOC. Even if both Chair Harris and the Vice Chair Moran raised similar concerns jointly or separately, and requested that an item be placed on the TBOC agenda, such a request does not constitute a violation of the OMA. As noted by the Office of the Attorney General:

The OMA specifically provides that “discussion of a public body via electronic communication. . . shall be permitted only to schedule a meeting. If discussions may occur via electronic communication to “schedule a meeting,” we see no reason why the OMA would prohibit these same communications in-person when such discussions are solely limited to scheduling a meeting and the agenda items.”

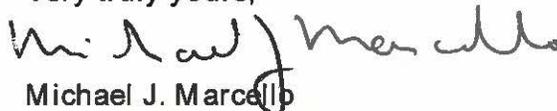
Mudge v. North Kingstown School Committee OM 15-20, footnote 2 (December 31, 2015). (Emphasis added).

Thus, based on *Mudge*, it is immaterial whether Chair Harris and/or Ms. Moran, instructed their clerk, Ms. Mello, either jointly or individually, to place for consideration on their TBOC agenda the request to hire special counsel since doing so does not constitute a violation of the OMA because such action does not constitute a meeting of the TBOC. Mr. Katz offers no evidence that there was any discussion, decision or vote made by a quorum of the TBOC outside of the 9/6/2019 meeting other than the actual language that was used as placeholder on the Town Council’s agenda’s meeting. The town council agenda language of September 9, 2019, was provided by the clerk, and not the TBOC. (Mello affidavit, ¶ 17). Furthermore, the minutes of the TBOC from the September 6, 2019 meeting demonstrate that is was at that validly posted and open meeting that the decision was made to proceed with a request for independent legal counsel to the Tiverton town council. (Exhibit E).

Based on all of the above, the TBOC respectfully requests that your office find that it did not violate the OMA in anyway as alleged by Mr. Katz as the actions of the TBOC do not trigger the requirements of the OMA since no meeting of that body occurred to either set the agenda or request an agenda item be placed on the agenda of the Tiverton town council.

If your office needs any further information, please do not hesitate to contact me.

Very truly yours,



Michael J. Marcella  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
TIVERTON TOWN SOLICITOR

# EXHIBIT A

Corrected

September 3, 2019

Tiverton Board of Canvassers  
c/o Nancy Mello, Clerk of the Board of Canvassers  
343 Highland Road  
Tiverton, Rhode Island 02878

Giovanni D. Cicione, Esq., Tiverton Town Solicitor  
Cameron & Mittleman LLP  
301 Promenade Street  
Providence, Rhode Island 02908

VIA ELECTRONIC MAIL (nmello@tiverton.ri.gov; gcicione@cm-law.com)

Dear Madame Clerk and Attorney Cicione:

Reference is hereby made to the special recall election petitioned for by William McLaughlin reportedly scheduled for Thursday, October 10, 2019.

The purpose of this letter is to inform you that on Tuesday, August 20, 2019, I contacted the Rhode Island Board of Elections to initiate a complaint that action reportedly taken on Mr. McLaughlin's petition does not comply with the Tiverton Home Rule Charter (the "Charter") and must therefore be invalidated. Further, **I hereby make same complaint to your attention and request and demand full compliance with each and every provision of the Charter.**

\* \* \*

Section 1209 of the Charter states (among other things, emphasis supplied):

"Within seven (7) days after receipt of the petition, the Board of Canvassers having certified the petition, the Town Clerk shall notify the official(s) involved by certified mail. The recall vote shall be taken no earlier than fifty (50) days and not later than seventy-five (75) days thereafter."

The word "shall" is mandatory. It is in no way discretionary and therefore the failure to comply with the Charter invalidates the petition *in toto*, and certainly an October 10, 2019 date which could not possibly be between 50-75 days of notice by certified mail.<sup>1</sup>

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<sup>1</sup> Ignoring the clear, plain language of the Charter would not only violate the Charter itself, but also due process and equal protection rights guaranteed by the federal and state constitutions.

It is beyond dispute that the Board of Canvassers received Mr. McLaughlin's petition *at the very latest* on Tuesday, August 6, 2019.<sup>2</sup> To date, I have not yet received any notice by certified mail, which is a mandatory directive of the Charter.<sup>3, 4</sup>

The Charter, being adopted in 1994 which is fairly recent against Tiverton's history going back for centuries, is the only avenue in law to convene a special recall election and therefore following its plain and unambiguous language is paramount and non-waivable. The law is well-settled that state statutes (among which the Charter, being ratified by the General Assembly, is one and equivalent) are interpreted in their ordinary meaning and with each and every word<sup>5</sup> construed to be intended and given effect.

To underscore the well-settled legal authority, one can simply look to the recent holding from our Supreme Court involving none other than Mr. McLaughlin himself. In *McLaughlin v. Tiverton*, 186 A.3d 597 (R.I. 2018), Mr. McLaughlin prevailed on appeal against the Town of Tiverton because the Town failed in his case to provide proper notice as required by law (even though he had actual notice of the matter at issue). Our Supreme Court said:

“Process is important, and even though McLaughlin received notice and an opportunity to be heard,<sup>6</sup> the town's failure to comply with § 45-24-62 in obtaining

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<sup>2</sup> Of course, the Clerk of the Board of Canvassers received Mr. McLaughlin's petition before Tuesday, August 6, 2019, but there is no question that the Board itself received the petition, at the very latest, at its meeting held on August 6th. At or before such meeting, Mr. McLaughlin apparently also declared that he had completed all of his signature gathering. While it is arguable that the mandatory seven-day clock during which the Board of Canvassers must both certify the signatures and provide notice by certified mail began to run before August 6th, it certainly did not begin later than that date. In any event, in order to comply with the Charter, the responding elected officials must have been notified by certified mail before or on – at the very latest – Tuesday, August 13, 2019.

<sup>3</sup> My understanding is that Councilor and Vice President Justin Katz is also subject to the same petition by Mr. McLaughlin and that Councilor Katz on Monday, August 19, 2019 received a letter by certified mail, requiring signature for receipt, dated and postmarked Friday, August 16, 2019. Either date – August 16 or August 19 – without question misses the August 13 mandatory deadline required by the Charter.

<sup>4</sup> As an aside, I was away on business or personal travel from Friday, July 26th until Tuesday, August 13th; Wednesday, August 21st until Saturday, August 24th; and Tuesday, August 27th continuing to date. Such travel, and being at work away from home during what days I was in Rhode Island, made it impossible to receive any letters sent requiring signature receipt, which is how Councilor Katz's late certified letter was sent, and presumably mine. The Charter requires “certified mail” and says nothing about requiring a personal signature upon receipt. That Town officials might have on their own preference insisted on a signature requirement not mentioned or required in the Charter does not excuse noncompliance with the language in the Charter, such language being what the people of Tiverton voted for and the General Assembly ratified.

<sup>5</sup> Not only have I not received official notice by certified mail of the petition or apparently pending special election, I have also received no notice of: any opportunity to challenge the process or signatures gathered by Mr. McLaughlin; a delineation of the recall process in general; the right to be heard, with counsel if I choose, before the Tiverton Board of Canvassers; or the possibility of requesting recusal from members of the Tiverton Board of Canvassers who are, or whose family members are, interested in the petition and are conflicted in the matter or have otherwise exhibited bias or hostility.

<sup>6</sup> Note that our Supreme Court held it was irrelevant whether Mr. McLaughlin may have had actual notice (just as I was aware of Mr. McLaughlin's boasted efforts working since January to gather signatures and eventually force

permanent injunctive relief on April 7, 2014, is fatal. To uphold that order would permit, not prevent, manifest injustice.”

*McLaughlin v. Tiverton*, 186 A.3rd at 610, citing *Bailey v. Algonquin Gas Transmission Co.*, 788 A.2d 478, 482 (R.I. 2002). This case is no different, other than there it was Rhode Island General Laws § 45-24-62 which was not procedurally followed, and here it was the Tiverton Home Rule Charter.

As our Supreme Court held for Mr. McLaughlin in his lawsuit against Tiverton, “process is important.” As then, now in the case of his recall petition, because the process required by law was not followed, the noncompliance is “fatal” and Mr. McLaughlin’s petition must be invalidated.

\* \* \*

On Wednesday, August 28, 2019, after extensive “phone tag” I was able to speak with the Executive Director from the Board of Elections who instructed me that action on my complaint must in the first instance be first directed to the local board of canvassers and the Town Solicitor before the Rhode Island Board of Elections can take up the matter. Accordingly, I respectfully request all of the following:

- (1) Your prompt acknowledgment of receipt of this letter<sup>7</sup>;
- (2) That the pending petition be invalidated as nonconformant with the Charter;<sup>8</sup> and
- (3) Sending of the notice required by the Charter by certified mail through the United States Postal Service. I might suggest sending the proper notice without return receipt requested so that I may actually have the letter delivered even though I am traveling or away from home during business hours.<sup>9</sup>

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a recall vote). But whether it be from rumor, taunts from Mr. McLaughlin, or an informal “heads up” matters not; the only salient question is was the plain language of the Charter followed, and in this case it has not yet been.

<sup>7</sup> In light of an apparent election set for October 10, 2019, if this letter is not acknowledged within one week (i.e., by close of business Tuesday, September 10, 2019), then I will presume it disregarded and resume my complaint with the Rhode Island Board of Elections.

<sup>8</sup> Without waiving any rights to insist on strict, proper performance in compliance with the Charter, one might think to comply with the Charter at the barest minimum the Tiverton Board of Canvassers must insist that any special recall election must be scheduled within 50 to 75 days of when a certified mail notice is actually delivered, as evidenced by ordinary course records of the U.S. Postal Service. On that line, for example, if a letter were dispatched today and actually delivered on September 5, 2019, then an election must occur between October 25, 2019 and November 18, 2019.

<sup>9</sup> Certified mail through the U.S. Postal Service is tracked in the ordinary course of postal business to evidence delivery even if no personal signature is required, requested, or obtained.

Sincerely yours,

/s/

Robert Coulter

cc: Rhode Island Board of Elections  
c/o Robert Rapoza, Executive Director  
50 Branch Avenue  
Providence, Rhode Island 02904

# EXHIBIT B



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS  
50 Branch Avenue  
Providence, RI 02904  
(401) 222-2345 Telephone  
(401) 222-3135 Fax

**POSTED: AUGUST 29, 2019**

**REVISED AGENDA**

The Board of Elections will meet in their offices, 50 Branch Avenue, Providence, R.I. as follows:

**Tuesday, September 3, 2019 at 3:00 P.M**

1. The Board may vote to approve the minutes of the meeting held on Wednesday, August 14, 2019.
2. Robert B. Rapoza, Executive Director may discuss the modems for the DS200 voting machines.
3. The Board may discuss and vote on the combination of polling places for the Special Elections in East Providence, Tiverton and the Primary and Special Election in Providence
4. The Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. Katz.
5. The Board may vote on the appeal of fines by Roy Bolden pursuant to RIGL § 17-25.
6. The Board may vote on the appeal of fines by Dennis Gallagher pursuant to RIGL § 17-25.
7. The Board may vote on the appeal of fines by David Arthur Fisher pursuant to RIGL § 17-25.
8. The Board may vote on the appeal of fines by Samuel J. Tassia pursuant to RIGL § 17-25.

9. The Board may vote on the appeal of fines by Gail Cardin-Dean pursuant to RIGL § 17-25.
10. The Board may vote on the appeal of fines by Stephen A. Furtado pursuant to RIGL § 17-25.
11. The Board may vote on the appeal of fines by Jenny Rosario pursuant to RIGL § 17-25.
12. The Board may discuss and vote upon the matter of Mark J. Sullivan, Jr. and address the fines imposed and voted upon during the Board's February 7, 2018 meeting and may vote on the referral of Mr. Sullivan to the Rhode Island Central Collections Unit for collection of fines
13. The Board may discuss and vote upon the matter of Stephen N. Rawson and address the fines imposed and voted upon during the Board's May 7, 2019 meeting and may vote on the referral of Mr. Rawson to the Rhode Island Central Collections Unit for collection of fines.
14. The Board may discuss and vote upon the matter of Lynn M. Palin and address the fines imposed and reduced administratively upon appeal to Campaign Finance Supervisory Staff and may vote on the referral of Ms. Palin to the Rhode Island Central Collections Unit for collection of fines
15. The Board may discuss and vote upon the matter of Richard L. Garrepy and address the fines imposed and reduced administratively upon appeal to Campaign Finance Supervisory Staff and may vote on the referral of Mr. Garrepy to the Rhode Island Central Collections Unit for collection of fines.
16. The Board may receive a report from Campaign Finance concerning all fines waivers and appeals approved by Board staff from January 1, 2019 through June 30, 2019, with a summary of all appeals, all waivers granted, and all waivers denied, showing the name of the individual or entity requesting the waiver, the amount owed, the amount waived, whether a waiver was denied and the reasons for granting or denying each waiver request.
17. The Board may vote to meet in executive session pursuant to RIGL § 42-46-5(a)(4) and 17-25-5(a)(7)(i) to discuss and/or vote on possible violations of campaign finance laws in four (4) campaign finance matters.
18. The Board may vote to meet in executive session to discuss and deliberate on the final terms of a lease with Dean Warehouse Services Inc. and Berkeley Acquisition Inc. for the Board's consolidated administrative and warehouse space located at 2000 Plainfield Pike, Cranston, RI, pursuant to R.I. Gen. Laws § 42-46-5(a)(5).

19. The Board may vote to meet in executive session, pursuant to R.I. General Laws § 42-46-5(a)(2) for an update from the Attorney General's office on the results of the August 16, 2019 hearing on Plaintiffs' motion for a temporary restraining order and current status of litigation, including the September 16, 2019 Defendants' motion to dismiss regarding the lawsuit pending in Providence County Superior Court, captioned, *Mutual Properties 14 Thurber LLC, et al. v. Rhode Island Department of Administration, et al.*, C.A. No. PC-2019-7276.
  
20. The Board may discuss the terms of and vote to execute a lease with Dean Warehouse Services, Inc. and Berkeley Acquisition Inc. for the Board's consolidated administrative and warehouse space located at 2000 Plainfield Pike, Cranston, RI.

All meetings of the Board are open meetings and all interested parties are invited to attend. Any questions concerning the agenda should be directed to Robert Rapoza, Executive Director, at 401-222-2345. Anyone wishing to attend this meeting who may have special needs for access or services such as hearing assistance or interpreter services please contact the Board at least 48 hours in advance of the meetings.

STATE OF RHODE ISLAND  
BOARD OF ELECTIONS

Robert B. Rapoza  
Executive Director

# EXHIBIT C

# TOWN OF TIVERTON, RHODE ISLAND

## BOARD OF CANVASSERS

343 Highland Rd  
Tiverton RI 02878  
P (401) 625-6703

In accordance with the Open Meeting Law, Section 42-46-5, notice is hereby given that the BOARD OF CANVASSERS will hold a Meeting on Friday, September 6, 2019 at 6:00 p.m. at the Tiverton Town Hall, 343 Highland Road, Tiverton, RI 02878.

### AGENDA:

#### 1. Approval of Meeting Minutes

- August 6, 2019
- August 13, 2019 6:00 p.m. (*Continuation of August 6, 2019*)
- August 13, 2019 6:15 p.m.
- August 19, 2019

#### 2. New Business

- Discussion and Vote Regarding Complaint Made by Town Councilor Robert D. Coulter To Invalidate Special Recall Election
- Discussion and Vote Regarding Legal Representation for Special Recall Election
- Discussion and Vote Regarding September 3, 2019 Board of Election Meeting
- Certification of Tiverton Special Recall Election Mail Ballots

#### 4. Board Member Items and Comments

Nancy L. Mello  
Town Clerk  
Board of Canvass Clerk

A portion of this meeting may be held in executive session pursuant to the Open Meeting Law, Sections 42-46-5(a) of the General Laws of Rhode Island, 1956 (1977 Reenactment), as amended. Individuals requesting interpreter services for the hearing impaired must call 625-6700 three working days in advance of the meeting date

RECEIVED  
TOWN OF TIVERTON  
2019 SEP - 3 P 4: 22

# EXHIBIT D

**TIVERTON TOWN COUNCIL**  
**NOTICE AND AGENDA OF MEETING**

RECEIVED  
TOWN OF TIVERTON  
2019 SEP -5 P 3:51

**Tiverton Town Hall**  
**343 Highland Road**  
**Tiverton, Rhode Island 02878**

**Regular Meeting: Monday, September 9, 2019 at 7:00 p.m.**

**Notice:** In accordance with the Open Meetings Act, Section 42-46-6 of the Rhode Island General Laws, notice is hereby given that the Tiverton Town Council will hold a Regular Meeting on Monday, September 9, 7:00pm at the Tiverton Town Hall at 343 Highland Road.

**Note 1:** Individuals requesting interpreter services for the hearing impaired must contact the Town Clerk's Office at 343 Highland Road or call (401) 625-6704 at least forty-eight (48) hours in advance of the meeting date.

**Note 2:** All matters before the Town Council may be voted upon unless the agenda item specifies that it is "For Discussion Only."

**Date Posted:** September 5, 2019

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **ROLL CALL**

Robert D. Coulter – President / Justin D. Katz – Vice President / Donna J. Cook  
Denise M. deMedeiros / Nancy L. Driggs / Patricia M. Hilton / Joseph C. Perry, Jr.

4. **CONSENT AGENDA**

**Note 3:** All items listed within the Consent Agenda 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 for separate consideration later on the agenda.

- A. Approval of Town Council Minutes
  1. August 13, 2019 – Regular Meeting – Councilors' deMedeiros and Driggs abstain - absent
  2. August 13, 2019 – Executive Session - Councilors' deMedeiros and Driggs abstain - absent
- B. Acknowledge Receipt of Minutes from Boards/Commissions/Committees
  1. Tiverton Historical Cemeteries Commission - Jan 14, Feb 11, March 11, April 8, May 13, June 10, July 8, 2019
- C. Acknowledge Receipt of Reports
  1. Town Administrator – Police and Fire Department Overtime Reports
  2. Town Administrator – Departments' Monthly Reports – August 2019

D. Acknowledge Receipt of Correspondence - None

F. Approval of Tax Assessor Abatements

G. Jane Bitto/Evelyn's Drive In - Request New Date of Friday, September 13<sup>th</sup>, 2019 for Singing Out Against Hunger Event with Rain Date of September 14<sup>th</sup>, 2019 (previously approved 9/7/19 – rain forecasted)

**5. PUBLIC PRESENTATIONS/ANNOUNCEMENTS/COMMENTS**

A. Public Comment

**6. PUBLIC HEARINGS (ADVERTISED)**

**7. BOARD OF LICENSING**

**8. APPOINTMENTS AND RESIGNATIONS**

A. Zoning Board – (5) Member Board/(5) Year Terms/(1) Vacancy / (2) Alternate Vacancies (interviews only)

1. Lise J. Gescheidt, 938 Lake Road - Requests Re-Appointment to Expire 7/15/2024

2. Joel Bishop, 241 Cornell Road - Requests New Appointment

3. Jennifer Hilton, 180 April Lane – Requests Re-Appointment as 1<sup>st</sup> Alternate to Expire 7/15/2020

B. Economic Development Commission – (5) Member Board/(4)Year Terms /(3)Vacancies

C. Planning Board – (9) Member Board/(3) Year Terms/(2) Vacancies

1. Adam Rapoza, 31 Carpenter Street – Requests New Appointment to Expire 7/15/22

D. Harbor Master – (March 2019 – March 2020)

1. Tyler Loomis, 89 John Duggan Road – Requests Annual Re-Appointment with Harbor and Coastal Waters Management Commission Recommendation

**9. BIDS AND REQUESTS FOR PROPOSALS**

A. Tax Assessor David Robert - Request to Approve RFP for Specialized Revaluation Services

B. Town Administrator/DPW Director Rogers - Request Award of Bids as Follows and Per Attached Specifications

1. Crack Sealing (original bid request item #8) - Award to low bidder Sealcoating, Inc., 825 Granite St., Braintree, MA 02184. Crack Sealing for an estimated quantity of 16,000 lineal feet at bid price of \$0.29 per lineal foot

2. Line Painting (original bid request item #9) - Award to low bidder Hi-Way Safety Systems, Inc., 9 Rockview Way, Rockland, MA 02370. Line Painting for an estimated quantity of 100,000 lineal feet. Per attached specifications.

3. Guard Rail Installation (original bid request #11) - Award to low bidder Cosco, Inc., 708 Park East Drive, Woonsocket, RI 02895. Per attached specifications.

4. Septic Tank Pumping (original bid request #12) - Award to low bidder Acme Sanitary Service, 5 Peanuts Lane, Little Compton RI, 02837. Per attached specifications.

5. Onsite Wastewater Treatment System Inspections (original bid request #13) - Award to low bidder Acme Sanitary Service, 5 Peanuts Lane, Little Compton, RI 02837. Per attached specifications.

**10. GENERAL BUSINESS**

- A. Councilor Coulter, Councilor Katz – Initial Discussion of a Long-Term Financial Plan
  1. Goals
  2. Items to include in plan
  3. Relevant stakeholders/decision makers
  4. Time frame for meetings and development
  5. Other
- B. Councilor Katz – Discussion of EEE/West Nile and Municipal Options (public comment permitted)
- C. Councilor Katz – Request for Various Updates on Outstanding Issues
  1. Reflective sign on Myrtle Way
  2. Animal/farm problems (John Duggan Road and Town Wide)
  3. Beach staffing and end of season experience
- D. Town Administrator - Request Approval of, and Authorization to Sign Commercial Services Agreement with Cox
- E. Appointment of Special Council for Recall Election
  1. Councilor Katz - Discussion of authority, policy and precedent
  2. Board of Canvassers - Request Approval to Retain Special Council for Special Recall Election

**11. OTHER ITEMS/ANNOUNCEMENTS/COMMENTS**

- A. Town Administrator
- B. Town Clerk
- C. Town Solicitor
  1. Update on Harrop v. Rhode Island Division Of Lotteries, P.C. 19- 5273
- D. Town Councilors

**12. CLOSED EXECUTIVE SESSION**

- A. Town Solicitor - Litigation – 42-46-5(a)(2) – Faulker v. Tiverton - NC-2013-0443

**13. ADJOURNMENT**

**Note 4:** Pursuant to RIGL §42-46-6(b): Notice – “Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.”

**Note 5:** See also Town Council Governance Policy.

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# EXHIBIT E

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

The Board of Canvassers of the Town of Tiverton, County and State aforesaid held a Meeting at the Tiverton Town Hall, 343 Highland Road on Friday, September 6, 2019 at 6:00 p.m.

**MEMBERS PRESENT:**

Chair Bobby J Harris-present	Vice Chair DeEtta Moran-present
Alternate Andrea Souza-present	Member Paul Amaral-present
Alternate Christopher Borden-absent	
Town Clerk Nancy Mello-present	

Chair Bobby J Harris called the meeting to order at 6:00 p.m.

**1. Approval of Meeting Minutes**

- August 6, 2019
- August 13, 2019 6:00 p.m. (*Continuation of August 6, 2019*)
- August 13, 2019 6:15 p.m.
- August 19, 2019

Clerk Mello requested continuation of the minutes until the next meeting. Vice Chair D. Moran motioned to continue the minutes of August 6<sup>th</sup>, August 13<sup>th</sup> at 6:00 p.m., August 13<sup>th</sup> at 6:15 p.m. and August 19<sup>th</sup> until the next meeting. Member P Amaral seconded the motion. The motion passed unanimously.

**2. New Business**

- Discussion and Vote Regarding Complaint Made by Town Councilor Robert D. Coulter To Invalidate Special Recall Election

Clerk N. Mello explained to BOC one of the reasons for conducting the meeting on a Friday night was because BOC had received a complaint from Councilor Coulter on the recall process. She informed the BOC she had received an email from Mr. Coulter this morning stating he was away on travel but is aware of the BOC meeting this evening. He believes his letter speaks for itself and stands by it. Clerk Mello spoke to Solicitor Cicione on Wednesday when preparing for the Town Council meeting. Atty Cicione stated he was unaware of the meeting and was unsure if he could make it or send someone in his place.

Member P. Amaral questioned if the basis of the complaint was that there had been a violation of Charter and under the jurisdiction of the Town Council. Clerk Mello stated the complaint had been sent to the BOC and to the Board of Elections. Clerk Mello gave documentation to the BOC indicating the certified mail was sent out on August 16<sup>th</sup> (3 days after the BOC certified the petition) and the tracking showing after 3 attempts to deliver the letter to Councilor Coulter's 34 Lawton Avenue address; it was returned today September 6<sup>th</sup>. Clerk Mello informed the BOC she had twice spoken to the Tiverton Post Office and was informed certified mail cannot be sent without a signature response. No signature requirement would be priority mail.

The Clerk had numerous emails including agendas, petition signatures, dates on meetings, etc. sent to Councilor Coulter. The meeting of August 6<sup>th</sup> had been continued until August 13<sup>th</sup> and that was

the date of the vote of certification for final signatures and the petitions. Solicitor Cicione attended both meetings.

Further discussion ensued.

Chair Harris allowed several members of the public to speak.

Vice Chair D. Moran motioned to deny Mr. Coulter's complaint to invalidate the Recall Election. Councilor P. Amaral seconded the motion. The motion passed unanimously.

The BOC directed the Town Clerk to send out by certified and regular mail along with an email cc'd to the BOC notice to Mr. Coulter of the BOC's denial of his complaint. The Town Clerk will also send notice to the Solicitor as to the action taken.

Alternate Member A. Souza requested it be noted the disappointment that Mr. Coulter could not be here to answer questions to the matter he brought forward.

- Discussion and Vote Regarding Legal Representation for Special Recall Election

On Tuesday BOC Chair B. Harris along with Vice Chair D. Moran requested the Town Clerk place on the BOC meeting agenda an item for possible hiring of independent legal counsel to represent them for the Recall Election. Clerk stated she would put a place holder on the Council agenda should the BOC vote to proceed. The BOC stated their disappointment legal counsel wasn't present tonight to assist them with this issue. D. Moran motioned to keep the request on the Town Council Agenda requesting Independent Counsel and Legal Representation on this issue if it arises. D. Moran amended her motion to include independent of the Solicitor's law firm. P. Amaral seconded the motion. The motion passed unanimously.

- Discussion and Vote Regarding September 3, 2019 Board of Election Meeting

The BOC informed the public and Board Members that weren't in attendance as to why they were called to the BOE meeting held on Tuesday, September 3rd. The BOE referencing articles written in the Newport Daily News were under the impression and concerned the BOC was not supporting the Recall Election appropriately. The Town Clerk and the BOC assured the BOE they are following the Charter and doing no less than the normal election process. The next Board of Election's meeting is scheduled for September 17<sup>th</sup>.

- Certification of Tiverton Special Recall Election Mail Ballots

The BOC certified one Category 1 Certification Sheet with 6 Applications for Mail Ballots. The BOC certified one Category 4 Certification Sheet with 5 Applications for Mail Ballots.

### 3. Board Member Items and Comments

The next Board of Canvasser's meeting will be tentatively held on Tuesday, September 12, 2019 to certify any additional Mail Ballot Applications that may come in.

Poll Workers are in place with Moderators, Clerks and Supervisors. Poll worker training will be held on September 30<sup>th</sup> at 5:00 p.m. at the Public Library. The BOE will be conducting the training. In 2018 General Election the Poll Worker payroll had been increased. The Clerk's Office will be using the increased rates (\$190 for Moderators, \$180 for Clerks, and \$160 for Supervisors).

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D. Moran noted she thought it was appalling a Town Council Member would write a letter to the editor in the Sakonnet Times undermining the Recall Election and telling people not to vote. The BOE reinforced on Tuesday the BOC's job is to promote elections.

There being no further business, Chair Harris called for a motion to adjourn the meeting. A motion was made by Member P. Amaral and seconded Vice-Chair D. Moran. The motion passed unanimously. The meeting adjourned at 7:15 p.m.

Bobby J. Harris, Chair Bobby J. Harris

DeEtta M. Moran, Vice-Chair DeEtta M Moran

Paul Amaral, Member \_\_\_\_\_

Andrea Souza Alternate Andrea L Souza

Christopher Borden, Alternate \_\_\_\_\_

A True Copy:

Attest Nancy L. Mello  
Nancy L. Mello, Town Clerk

# AFFIDAVITS

**Katz v. Tiverton Board of Canvassers**

**AFFIDAVIT OF NANCY MELLO**

I, Nancy Mello, understanding the duty and obligation to tell the truth under the pain and penalties of perjury, hereby swear as follows:

1. I am the Town Clerk of the Town of Tiverton and have served since November 2004.
2. As the Town Clerk, I am also the Clerk to the Tiverton Board of Canvassers (TBOC)
3. On September 3, 2019, I received, via email, correspondence by Robert Coulter, requesting that the TBOC invalidate a recall election of which he was a subject.
4. On the same day, September 3, 2019, I had agreed to drive two members of the TBOC, Mr. Bob Harris, Chair, and Ms. DeEtta Moran, Vice Chair, to a Rhode Island Board of Elections meeting in Providence.
5. When Mr. Harris came to the town hall, I informed him of the correspondence from Coulter, and Mr. Harris instructed me to schedule a meeting of the TBOC to address Mr. Coulter's issue as soon as possible.
6. Based on the OMA 48 hour supplemental notice requirements, it was decided to hold the TBOC meeting on Friday, September 6, 2019.
7. It was my usual and customary practice to consult with the Chair of the TBOC when preparing their agenda.
8. Mr. Harris asked me to also place on the September 6, 2019 agenda meeting, an item which would allow the TBOC to consider a request to retain legal representation for the upcoming special recall election.
9. At some point after Mr. Harris's arrival, the Vice Chair of the TBOC, Ms. Moran, arrived at town hall and I also informed her of the Coulter letter as referenced in paragraph 3.
10. Ms. Moran also suggested that the TBOC consider the need for legal representation for the upcoming special election.
11. I do not recall whether both Mr. Harris and Ms. Moran were together when the need for an agenda item for legal counsel was discussed at anytime, but I do know that neither of them discussed the merits of the request in my presence.
12. Because the BOC was meeting on Friday, September 6, 2016 to discuss and possibly vote on the need for legal counsel, I informed the BOC members that if they voted to request such representation, it would be too late to have the Town Council consider their request for its next meeting on Monday, September, 9, 2019 since their agenda would have to be posted by, Thursday, September 5, 2019.
13. In order to comply with the OMA, I suggested that a placeholder be set on the Town Council agenda for September 9, 2019 to allow the Town Council to consider the TBOC request if they actually voted to make such a request at their September 6, 2019 meeting.

14. On September 4, 2019, I conferenced with Justin Katz, Town Solicitor, and the Town Administrator to discuss and prepare the September 9, 2019 council agenda of the Town Council.
15. At this agenda preparation meeting, I informed Katz of the possible request of the TBOC for legal counsel that was going to be discussed and potentially voted on at the TBOC's September 6, 2019 meeting.
16. I suggested to accommodate the possible request that a placeholder spot be submitted on the Town Council agenda.
17. I proposed the language on the Agenda under Item 10 E. 2. "Board of Canvassers –Request Approval to Retain Special Council [sic] for Special Recall Election."
18. On September 6, 2019, the TBOC did approve a request to ask the Town Council for special counsel for the upcoming election.
19. Other than the discussion and placement of the request for the agenda item by Mr. Harris and Ms. Moran, I am not aware of any discussion or decision being made by the TBOC regarding the merits of the request other than that which occurred at their duly noticed meeting of Friday, September 6, 2019.

*Nancy Mello*  
 NANCY MELLO

KELLY M. PERRY Notary Public State of Rhode Island Notary ID # 61211 My Commission Expires October 22, 2023
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STATE OF RHODE ISLAND

COUNTY OF Newport

Subscribed and sworn to before me this 6<sup>th</sup> day of March, 2020.

*Kelly M. Perry*  
 Notary Public

My Commission Expires: 10/22/2023

**AFFIDAVIT OF BOB HARRIS**

I, BOB HARRIS, understanding the duty and obligation to tell the truth under the pains and penalties of perjury, hereby swear as follows:

1. I am an appointed member of the Tiverton Board of Canvassers (TBOC) and was serving as a member of the Board at all relevant times as set forth in the Katz complaint.
2. On September 3, 2019, I was informed by the Clerk of the TBOC that a complaint had been filed by Robert Coulter, a Tiverton councilor, who was the subject of a recall election that had been certified by the TBOC sometime in August 2019.
3. As a result of being informed of the Coulter complaint, I asked the Clerk, Ms. Mello, to schedule a meeting of the TBOC as soon as possible to address and review the Coulter allegations that the recall election should be invalidated.
4. Because I was and had been concerned about the independence of the town solicitor, who had served as counsel to our meetings, but who had also been appointed with the votes of two of the councilors who were the subject of the recall, Katz and Coulter, I also instructed the Clerk to place on the TBOC agenda a discussion or vote related to legal representation for the upcoming recall election.
5. I did so because I wanted to ensure that Tiverton voters would have confidence that the TBOC was acting objectively and impartially during the recall process.
6. The Clerk agreed to place the legal representation agenda item on the TBOC meeting for Friday, September 6, 2019.
7. The Clerk also informed me that she would request that Town Council place on its agenda for its September 9, 2019 meeting the agenda item of the TBOC as a placeholder to allow that body to consider the request for legal counsel.
8. Because of the Open Meeting Act's supplemental notice requirements, it was necessary to have the item on the Town Council agenda as a placeholder since the TBOC meeting would be too late for the item to be added to and voted on by the Tiverton Town Council if the TBOC request for legal counsel was approved by the TBOC members at its Friday, September 6, 2019 meeting.
9. Upon information and belief, I did not discuss with anyone other than the Clerk my request for the legal representation item to be placed on the agenda nor did I discuss the merits of the request with anyone including TBOC member, DeEtta Moran, except at the meeting of the TBOC of Friday, September 6, 2019.

10. No votes or meetings with any other member of the TBOC occurred prior to the meeting of Friday, September 6, 2019 concerning the legal representation issue.

Bobby Harris  
BOBBY HARRIS

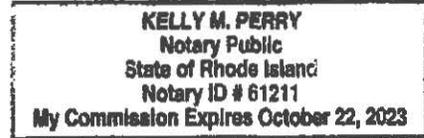
STATE OF RHODE ISLAND

COUNTY OF Newport

Subscribed and sworn to before me this 6<sup>th</sup> day of March, 2020.

Kelly M. Perry  
Notary Public

My Commission Expires: 10/22/2023



KATZ v. Tiverton Board of Canvassers

**AFFIDAVIT OF DeETTA MORAN**

I, DeEtta Moran, understanding the duty and obligation to tell the truth under the pains and penalties of perjury, hereby swear as follows:

1. I am an appointed member of the Tiverton Board of Canvassers (TBOC) and was serving as a member of the Board at all relevant times as set forth in the Katz complaint.
2. On September 3, 2019, I was informed by the Clerk of the TBOC that a complaint had been filed by Robert Coulter, a Tiverton councilor, who was the subject of a recall election that had been certified by the TBOC sometime in August 2019.
3. During the recall hearing process before the TBOC, many members of the public had suggested that the TBOC needed to retain separate legal counsel other than the town solicitor who had been appointed with the votes of at least two of the Tiverton councilors who were the subject of the recall.
4. When I learned from Clerk Mello that Robert Coulter was seeking to invalidate the recall election process by his letter of September 3, 2019, I suggested to her that the TBOC needed to consider hiring separate legal at its next meeting.
5. Ms. Mello informed me that Mr. Harris had made a similar request and that she was making the necessary arrangements to ensure that the request for legal counsel was placed on the next TBOC meeting agenda which was going to be scheduled for Friday, September 6, 2019 in light of the deadline as set by Coulter is his September 3, 2019 correspondence.
6. Upon information and belief, during the period of Mr. Katz's complaint, I do not recall speaking with Mr. Bobby Harris or any other member of the TBOC about the legal representation issue other than that which occurred at the TBOC meeting of September 6, 2019.
7. During the period of Mr. Katz's complaint, no votes, discussions, or meetings with any other member of the TBOC occurred prior to the meeting of Friday, September 6, 2019 concerning the legal representation issue.

DeEtta Moran  
**DeEtta Moran**

STATE OF RHODE ISLAND

COUNTY OF Newport

Subscribed and sworn to before me this 6 day of March, 2020.

Mary Louise Sullivan  
Notary Public

My Commission Expires: 6/14/2022

