

September 5, 2002

**CHARTER VIOLATION**

Pursuant to Section 507 Non-Interference by the Council

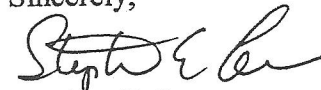
The Council or any of its members, shall not direct or request the appointment of any person to, or their removal from office by the Town Administrator or by any of his subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the Town Administrator, and neither the Town Council nor any member thereof shall give orders to any subordinates of the Town Administrator, either publicly or privately.

At a special Town Council meeting that took place on August 6, 2002 by a vote of 4 to 2 (with 1 abstention), the Town Council directed the Town Administrator, James Towers, to submit another name, for approval by the council, for the position of Tax Assessor at the council's next meeting. The Councilors voting in the affirmative to direct the administrator are Councilmen Bollin, Carroll, Fagundes and Hart.

According to section 507, no member of the council shall direct the administrator in appointing anyone to office. It is my contention that by taking that vote, these members of the Town Council have violated the Town Charter.

I ask the violation be submitted to the Town Administrator, in accordance with the Charter, under section 1211 (b) Action by the Town.

Sincerely,

  
Stephen E. Lane

Hannibal F. Costa  
Town Clerk

Phone 625-6700  
FAX 624-8640

**TOWN OF TIVERTON, RHODE ISLAND  
TOWN CLERK'S OFFICE  
343 HIGHLAND ROAD**

September 10, 2002

MEMORANDUM FOR THE MUNICIPAL COURT CLERK

From: Town Clerk  
Subject: Charter Violation Complaint

Gene,

Enclosed herewith is a Charter Violation Complaint dated September 5, 2002 which was presented to me at the Town Council meeting held on September 9, 2002. The complaint alleges a violation of Section 507, Non-Interference by the Council. It was filed against a majority of the Town Council by Mr. Stephen Lane relative to an action between the Council and the Town Administrator concerning the appointment of a Tax Assessor.

Charter Section 1211 directs that a Charter Complaint against a majority of the Town Council be filed by the Town Clerk in the Municipal Court within ten (10) days of its receipt.

Please place this item on the Court calendar for September 17, 2002 and advise as to the time it will be scheduled so that I may inform the participants. Thank you.

Sincerely,

Hannibal F. Costa  
Town Clerk

cc: Town Council  
Town Solicitor

# TRACY D. CONNORS

9 Wilcox Street • Fogland Point, Tiverton, RI • 02878-4907 • 401-624-3823 • E-mail: tdconnors@earthlink.net

April 8, 2004

04 APR -8 AM 9:51

Mr. Hannibal Costa  
Town Clerk  
Town of Tiverton  
Town Hall

Dear Hannibal:

The purpose of this letter is to fulfill the guidance of the Tiverton Town Charter, Section 1211 that outlines the process to be followed when the integrity of the Charter is being challenged.

Town officials are sworn to uphold the Tiverton Charter. The voters who passed this town constitution did not provide any latitude for any of us serving under this Charter to decide whether to obey the Charter or which of its provisions we could disregard or ignore. We are sworn to uphold the entire Charter. If a particular provision is so burdensome to us as individuals that we cannot support it or agree to its provisions, then we should leave office rather than break our sworn oath. If a particular provision is one that we believe should be changed, the proper and honorable course of action is to work to see that it is changed or removed by using the Charter Revision process. We are not allowed to simply ignore a Charter provision simply because it does not suit us.

Ultimately, we as elected and appointed officials work for the voters. Our individual preferences and in some cases, judgments, are subordinate to the expressed will of the voters. If the voters have created a rule or made a decision, it is our duty and obligation to follow it to the best of our ability. It is a fundamental tenet of our Democratic form of government.

When an official or a town employee begins to take action that contradicts the Charter, and continues in that course of action after being reminded that such action is counter to Charter provisions, we then have a situation in which the individuals are, in fact, making up their own rules. For them, upholding the expressed will of the voters is no longer the objective, but that of pursuing a personal agenda. That is not democracy, but something else entirely.

The facts and circumstances of a probable violation of the Town Charter as I know them are as follows:

Many months ago, Mr. Kenneth DeCosta became a town employee. As a member/Chairman of the Recreation Commission, he was required to resign his affiliation with that town body as required by Section 1005 that states, "no member shall be an elected official or employee of the Town."

Several months ago, when Mr. DeCosta rose to speak before the Council, he did so as the "Chairman" of the Recreation Commission. Until just before that meeting, I was unaware of his not having resigned after becoming a town employee last year. When I questioned Ms. Linhares regarding this apparent conflict of the Charter, she attempted to gavel me down, refused to pursue the matter further, and allowed another member to speak on the matter.

Hannibal F. Costa  
Town Clerk

Phone 625-6700  
FAX 624-8640

**TOWN OF TIVERTON, RHODE ISLAND  
TOWN CLERK'S OFFICE  
343 HIGHLAND ROAD**

April 13, 2004

MEMORANDUM FOR:

Town Council,  
Town Administrator,  
Town Solicitor,  
Mr. Kenneth DeCosta and  
Council President Claudette Linhares

From: Town Clerk

Subject: Charter Violation Complaint

Enclosed herewith is a Charter Violation Complaint dated April 8, 2004 filed by Town Councilor Tracy D. Connors. His complaint alleges a violation of Sections 1005 "Recreation Commission" and 1211(2) "Enforcement", copies of which are also enclosed. It was filed against Mr. Kenneth DeCosta, simultaneously a Town employee and a member of the Recreation Commission in violation of Charter Section 1005 and Town Council President Claudette Linhares in violation of Charter Section 1211(2) for her failure to take any action relative to the Mr. DeCosta matter.

Charter Section 1211 directs that the Town Clerk review the complaint to determine whether or not the charges are "sufficiently set forth" i.e., that the sections of the Charter which are charged to have been violated are identified, the nature of the violation is stated and the person, persons, or body charged with having committed the violation are identified. I find that the complaint is sufficiently set forth; that the appropriate Charter requirements for the filing of a complaint have been met.

Charter Section 1211(1) provides that "if the Town Clerk determines that the charges are 'sufficiently set forth', he or she shall schedule a public hearing before the Town Council acting in its capacity as the Charter Monitoring and Complaint Review Board, such hearing to be held no later than 30 days from the date on which the charges were filed." I am therefore scheduling a public hearing before the Council at its meeting on April 26, 2004.

The Charter further provides that, at the public hearing, the Review Board (Town Council) shall receive testimony from the complainant and from the official, board or commission against whom the charges were made, and from such witnesses as either

party may bring forward. In the event the complaint is against a member of the Town Council, such member shall not take part in the review of the complaint.

If, following the hearing, the Review Board, by a two-thirds vote of those present—but in no event fewer than four (4) affirmative votes—concludes that the charges have been supported by the testimony and evidence presented, it shall direct the Town Administrator to cause a complaint to be filed within ten (10) days of the hearing against the alleged violators in the Tiverton Municipal Court.

Sincerely,

Hannibal F. Costa  
Town Clerk

cc: Town Administrator  
Town Solicitor  
Ms. C. Linhares, Council President  
Mr. K. DeCosta, Recreation Commission Chair

Enclosures

August 10, 2004

RECEIVED  
TOWN OF TIVERTON

04 AUG 10 AM 8:59

Hannibal Costa  
Tiverton Town Clerk  
343 Highland Road  
Tiverton, RI 02878

Dear Mr. Costa,

In accordance with Section 1211, Enforcement, of the Tiverton Town Charter (the "Charter"), this letter will serve as notification of our formal charter violation complaint against the following members of the Tiverton Town Council: Claudia Linhares, Lori Doyle, Manuel Cabral and John Fernandes (the "majority members") for actions taken at the Special Meeting held on August 2, 2004, at 7:00 p.m. at the Tiverton Town Hall. In accordance with Charter Section 1211, in the event that a "sufficiently set forth" complaint is against a majority of the Town Council members, then the Town Clerk, within ten days from the date on which the charges were filed, shall file the complaint in the Municipal Court.

### **Introduction**

The meeting was noticed in the agenda as "Town Council Charter Amendments" and in the public hearing notice as "proposed additions/amendments" to the Town Charter. As a result of public discussion and comments, the meeting was split into three parts: the first part a public hearing on the proposed amendments (during which 3 council members recused themselves on the grounds that they would not knowingly participate in a meeting that potentially violated the Town Charter); the second, a recess during which ballot questions for the proposed amendments were written; and the third, a vote on said ballot questions to be submitted to the Secretary of State the following day. The deadline for submitting ballot questions to the Secretary of State was August 4, 2004. Background material included is a videotape of the August 2<sup>nd</sup> meeting and 2 newspaper articles. Documentation for our complaint includes the notice for the meeting ("Exhibit 1"), meeting agenda ("Exhibit 2"), memo from the Town Clerk to the Town Council ("Exhibit 3"), the proposed amendments to the Town Charter ("Exhibit 4") and the final ballot questions ("Exhibit 5").

### **Alleged Charter Violations**

Section 1202, Open Meetings, requires the Town Council to conduct all business in accordance with the provisions of the Open Meetings Legislation of the State of Rhode Island. In addition, Section 1205, Amendments of Charter, requires a valid public hearing for any proposed amendments to the Charter. Section 1205 also requires that when any question is to be submitted to the voters, the Town Council shall approve the statement of the question, as it shall appear on the ballot. Specifically, we believe Section 1202 and Section 1205 were violated as proper notice was not provided to the public of the specific nature of the business to be discussed at the meeting and that said meeting was so procedurally flawed that these items, taken in their totality, rendered the first part of the Special Meeting invalid. In addition, it is our opinion that the third part of the meeting, ballot question vote, did not meet legal or procedural requirements. While the majority members took a vote on the Charter amendment ballot questions, it is our opinion that the vote was improper and invalid and, therefore, did not satisfy the Charter requirements of Section 1205. Finally, it is our contention that the Town Charter was willfully and knowingly violated by the majority members who failed to properly postpone the public hearing, as was necessitated by the circumstances.

Our complaint is organized as follows:

1. Established laws for proper public notice were not adhered to;
2. A proper and orderly hearing process was not followed;
3. Decisions did not meet legal, procedural or due-diligence requirements;
4. The majority members willfully and knowingly violated the Town Charter.

## 1. Proper Public Notice

Rhode Island General Law (R.I.G.L.) 42-46-1: *It is essential to the maintenance of a democratic society that public business be performed in an open and public matter and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.*

The Open Meetings Law was designed to protect the public right to observe and participate in the workings of government and to prevent the deliberate exclusion of the public from the government process. A public hearing, versus a public meeting, clearly goes one step further in that it is intended to encourage citizenry to speak and comment on a topic with the expectation that the local board will factor the public comments into their decision-making process. On August 2, 2004, the majority members of the Council denied Tiverton's citizenry these basic rights. Proposed amendments to Tiverton's governing document, its Charter, were to be presented to the public for the first time in a public hearing. It became clear that the majority members intended to not only present their Charter amendments, but then to later that evening cause those proposed amendments/additions to be framed into questions to appear on the November, 2004 ballot. The public was not noticed that ballot questions were to be discussed (See exhibits #1 and #2). The ballot questions themselves were not at any time prior to the hearing provided to the public or to the Council members themselves. In fact, the questions were not prepared prior to the hearing, at the start of the hearing or even during the hearing. Instead, they were hastily formed at the end of the confusing three-hour meeting (See exhibit #5). Citizens cannot comment on, debate, or otherwise be informed on something as crucial as the actual Charter amendment language to appear on the ballot when the questions were not even formed until the "11<sup>th</sup> hour".

R.I.G.L. 42-46-6 requires a statement specifying the nature of the business to be discussed and Tiverton's public hearing procedures (as stated in the published Public Notice) require a copy of proposals to be posted in Town Hall. Nowhere in the notice language was information provided that ballot question language discussions were going to take place and nowhere in the documents available at Town Hall was the specific ballot language, as it would appear in November as forwarded to the Secretary of State, made available before the hearing (See exhibit #4). While Tiverton's Charter allows for substitution of the full text of an amendment by "any question which substantially expresses the purpose, or identifies the subject matter of an amendment to be printed on the ballot," we believe IT DOES NOT allow for exclusion of the ballot question from the public hearing and notice requirements. If it was the majority members' intent to place a question on the ballot "in proxy" of the full text of a proposed Charter amendment, then the ballot language/question must, at a minimum, meet the same criteria as those required for the proposed amendments themselves. Which, by Charter, is to be presented at a public hearing.

## 2. Hearing Process

Time must be spent in advance of public hearings to facilitate proper conveyance of information to the public and provide for an orderly procedure. As is evident from the taped meeting, many of the majority members themselves did not understand what the amendments were supposed to say. Comments such as "It wasn't meant to be that way" and "Who proposed this?" were commonplace. If they didn't know, how could the

public be part of a meaningful and informed hearing? There was considerable discussion, debate and confusion regarding the wording of the ballot questions. If it was the intention of the Council to forward them to the Secretary of State in two days, why were they not prepared? It was pointed out to the Council that, per charter requirements, it must approve the questions prior to them appearing on the ballot. Despite the fact that the ballot language had not been prepared or noticed to the residents, a decision was made by the majority members to recess and write the ballot questions up in 30 minutes at the end of the hearing. When it becomes apparent after a hearing has begun that proper notice was not given and that the hearing itself is flawed, it is the responsibility of the governing body to postpone and reschedule the hearing. Yet the meeting plowed on, only to see three of the Council members recuse themselves from continuing to participate in an improper hearing potentially in violation of the Charter. At one point in the hearing a citizen asked “Under normal circumstances, wouldn’t you normally have a second public hearing where you would have the full correct wording in its entirety as finalized and then people could respond to the actual wording as it would go on the ballot”? The response from Claudia Linhares (the “Chair”) was “There is no time”. However, it was noted in a memo to the Town Council from the Town Clerk approximately **one month** prior to this hearing that the ballot question language needed completion (See exhibit #3). Lack of time is not a valid reason to ignore proper procedures, rules, or regulations with regard to any hearings called and conducted by elected officials to amend our town’s highest governing document.

The 3<sup>rd</sup> part of the meeting (ballot questions) was not a public hearing. The majority members closed debate and the hearing before the questions were read to the public. Therefore, even if all the other violations had not occurred, the public was improperly excluded from debating the ballot questions themselves. The Chair was queried on this very topic earlier in the meeting. A citizen asked “This public hearing is for the purpose of nailing down the language so the we know what’s going to be on the ballot. A public hearing so we can participate. Is that correct?” the response from the Chair was “Yes.”

### 3. Procedural/Due-diligence Requirements

Procedural violations during the 1<sup>st</sup> part of the meeting (public hearing) are as follows:

- No motion or vote was ever taken on the amendment change for Section 1005, Recreation Commission. Consequently no public debate was ever allowed - as required.
- The suggestion to recess at the end of the hearing and to write the ballot language at that time came from the Town Administrator. While the idea was discussed, no formal motion or vote was ever taken by the Council (all seven were still in attendance) to accept his suggestion.

It is important to note that all motions made during the 1<sup>st</sup> part of the meeting were simply stated to forward the amendments to the Secretary of State to be placed on the ballot. The implicit assumption was that the language of the ballot questions would match the language of the proposed amendments.

These all-important ballot questions were hastily put together in approximately thirty minutes without the benefit of formal minutes or the tape of the meeting. Due-diligence to review for conflicting language within the charter or with State law was not performed. In fact, the majority members did not even perform due-diligence on the ballot questions to compare them back to the proposed amendment language before them during their original votes – it was simply Motion, Second, Vote.



The ballot questions were prepared so hastily, that only one of the nine was not in conflict with the earlier votes taken during the public hearing. Discrepancies are as follows:

1. Section 311, Compensation – no discrepancies
2. Section 801, Town Clerk
  - Language added to ballot question: “beginning with the election 2006.” This was discussed during the hearing. Formal vote taken during hearing did NOT AMEND original amendment language.
  - Language added to ballot question: “reporting to the Town Council.” It was discussed during the session that the clerk would report to Town Administrator. The change to “reporting to Town Council” was never even broached, **in violation of the public hearing rules and procedures**. Formal vote taken during the hearing did NOT AMEND original amendment language.
3. Section 1001, Planning Board
  - Language excluded from ballot question: original amendment struck the words “from electors of the Town.” It was discussed that the reason to strike the words relating to electors was redundancy with Section 1011. It was also discussed that it should be kept in for clarity. Formal vote taken during the hearing did NOT AMEND original amendment language.
4. Section 1002, Zoning Board of Review
  - Same as above for Section 1001.
5. Section 1005, Recreation Commission.
  - As noted under “Hearing Process,” this item was not opened up for public debate or voted on during the hearing.
6. Section 1209, Recall
  - Language in its entirety is different than the ballot question proposed and voted on during the hearing. While the language of the State law reasons now included in the ballot question was discussed, there was a vote to approve the original ballot language as proposed. Formal vote taken during the hearing did NOT AMEND original amendment language.
7. Section 301, Time and Purpose of Financial Town Meeting.
  - Language removed from ballot question: “Gymnasium”. There was discussion that being so specific may cause a problem if the Gym were not available; however, originator of this amendment didn’t see keeping it in as a problem. Chair stated during hearing then “it will stay as is”. Formal vote taken during the hearing did NOT AMEND to take out of original amendment language.
8. Section 304, Powers of the Electors
  - Language substantially changes the language in the proposed amendment and excludes other critical language: Changes “the Budget Committee sets the order of the docket and its recommendation shall be voted upon first ...” to “Budget Committee sets the order of the docket, which will be the Budget Committee recommendations first ...”. The order of the docket is separate and distinct from the proposed change to the order of the vote. Does not include reference to the fact that this amendment would not be subject to change by suspension of the rule or majority vote by the electors. Formal vote taken during the hearing did NOT AMEND original amendment language.
9. Section 304, Powers of Electors
  - Ballot question section error. Should be Sec. 1101, School Committee. Was correct in original vote.

From the numerous inconsistencies noted between the original vote taken (using the amendment language) during the public hearing portion and the ballot questions prepared during the 30 minute recess, it is clear that substantial questions arise as to the actual intent of the majority members. No votes were taken to reconsider or amend the original votes and there was no discussion by the majority members as to why the language was changed in the ballot questions. We therefore challenge the validity of the ballot questions and the adequacy of the August 2, 2004 special meeting to fulfill the Charter requirements for a Town Council vote on the actual statement of the question, as it shall appear on the ballot.

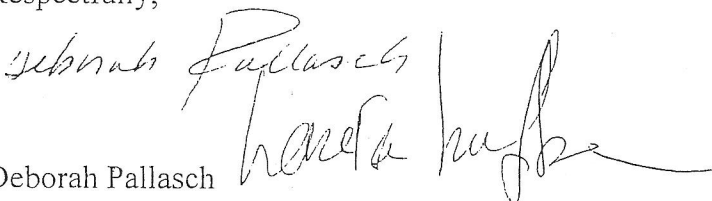
#### 4. Willful and Knowing Violation of the Town Charter

Clearly the meeting was to satisfy the letter of the law by holding a public hearing; however, the intent by the majority members was, as a result of this meeting, to forward ballot questions to the Secretary of State despite the fact that it was not noticed as such. The meeting date was August 2<sup>nd</sup>; the cutoff date to submit ballot questions to the Secretary of State was August 4<sup>th</sup>. As documented by the memo from the Town Clerk to the Town Council, the Chair's statements to the press, and the numerous statements made during the meeting, the majority members knew that the language to be forwarded to the Secretary of State was not prepared before the meeting. When it was pointed out that the Town Council may be in violation of the Charter by not having the specific language available, the majority members continued the meeting – even after 3 council members recused themselves on the grounds that they would not knowingly participate in a meeting that potentially violated the Town Charter. The fact that the majority members, after being made aware of the Charter requirements, caused the proposed amendments to be framed into ballot questions (without a motion and vote) and then vote them forward (without a proper public hearing) substantiates our position that the majority members willfully and knowingly violated the charter in order to get the proposed Charter changes to the Secretary of State by the August 4<sup>th</sup> deadline.

One or two of the items outlined above may not in itself invalidate the public hearing or constitute a knowing violation of the Charter, but taken in their entirety it is evident that the public business of August 2, 2004 did not meet the legislative intent of R.I.G.L. 42-46-1, as stated above. The public hearing was not performed in an open and public matter. No citizen could have possibly intelligently prepared for and participated in this hearing without proper notice and without proper procedural due process. No citizen could possibly have come away advised of and aware of the deliberations and decisions that surrounded the Charter amendments and resulting ballot questions. It was the responsibility of the majority members to postpone and reschedule the hearing.

Therefore, we ask that the majority members be found in violation of Charter Section's 1202 and 1205 as stated above. Because of the egregious nature of the violations, we ask that the remedy for such finding be that any and all actions taken by the majority members during the public hearing be invalidated, a \$300 fine be assessed, and that the Town of Tiverton be reimbursed by the majority members for all legal fees incurred by it to defend this complaint.

Respectfully,



Deborah Pallasch  
Laura Epke

Hannibal F. Costa  
Town Clerk

Phone 625-6700  
FAX 624-8640

**TOWN OF TIVERTON, RHODE ISLAND  
TOWN CLERK'S OFFICE  
343 HIGHLAND ROAD**

August 11, 2004

MEMORANDUM FOR THE MUNICIPAL COURT CLERK

From: Town Clerk

Subject: Charter Violation Complaint

Enclosed herewith is a Charter Violation Complaint dated August 10, 2004 which was presented to me on that date. The complaint alleges a violation of Section 1202, Open Meetings, Section 1205, Amendments of Charter and Section 1211, Enforcement. It was filed against a majority of the Town Council by Ms. Deborah Pallasch and Ms. Laura Epke relative to action taken by Councilors Claudia Linhares, Lori Doyle, Manuel Cabral and John Fernandes, a majority of the Council at its Public Hearing on Council Charter Amendments conducted on August 2, 2004.

Charter Section 1211 directs that the Town Clerk review the complaint to determine whether or not the charges are "sufficiently set forth" i.e., that the sections of the Charter which are charged to have been violated are identified, the nature of the violation is stated and the person, persons, or body charged with having committed the violation are identified. I find that the complaint is sufficiently set forth; that the appropriate Charter requirements for the filing of a complaint have been met. Section 1211 further directs that a Charter Complaint against a majority of the Town Council be filed by the Town Clerk in the Municipal Court within ten (10) days of its receipt.

Please note that the video tape forwarded herewith was submitted with the complaint. It does not appear to be an exhibit as such but is forwarded since it is referred to in the complaint.

Please place this item on the Municipal Court calendar and advise as to the date and time it will be scheduled so that I may inform the participants. Thank you.

Sincerely,

Hannibal F. Costa  
Town Clerk

Hannibal F. Costa  
Town Clerk

Phone 625-6700  
FAX 624-8640

**TOWN OF TIVERTON, RHODE ISLAND  
TOWN CLERK'S OFFICE  
343 HIGHLAND ROAD**

August 16, 2004 (Corrects Notice dated August 12, 2004)

Complainants:

Deborah A. Pallasch, 432 Lake Road, Tiverton, RI 02878  
Laura L. Epke, 532 Neck Road, Tiverton, RI 02878

Defendants:

Claudette Linhares, President, Town Council, 343 Highland Rd, Tiverton, RI 02878  
Manuel Cabral, Vice President, Town Council, 343 Highland Rd, Tiverton, RI 02878  
Lori Doyle, Member, Town Council, 343 Highland Rd, Tiverton, RI 02878  
John Fernandes, Member, Town Council, 343 Highland Rd, Tiverton, RI 02878

Re: Charter Violation Complaint – Section 1202 “Open Meetings”, Section 1205  
“Amendments of Charter”

Dear Sir or Madam:

Enclosed herewith is a Charter Violation Complaint dated August 10, 2004 which was presented to me on that date. The complaint alleges a violation of Section 1202, Open Meetings, and Section 1205, Amendments of Charter. It was filed against a majority of the Town Council by Ms. Deborah Pallasch and Ms. Laura Epke relative to action taken by Councilors Claudia Linhares, Lori Doyle, Manuel Cabral and John Fernandes, a majority of the Council, at its Public Hearing on Council Charter Amendments conducted on August 2, 2004.

Charter Section 1211 directs that the Town Clerk review the complaint to determine whether or not the charges are “sufficiently set forth” i.e., that the sections of the Charter which are charged to have been violated are identified, the nature of the violation is stated and the person, persons, or body charged with having committed the violation are identified. I find that the complaint is sufficiently set forth; that the appropriate Charter requirements for the filing of a complaint have been met. Section 1211 further directs that a Charter Complaint against a majority of the Town Council be filed by the Town Clerk in the Municipal Court within ten (10) days of its receipt.

This is to advise that the above Complaint will be called for **hearing on Tuesday, the 21st day of September, 2004 at 4:30 p.m.** in the Court's hearing room, Council Chambers, 343 Highland Road, Tiverton.

Re: Charter Violation Complaint – Section 1202 “Open Meetings”, Section 1205 “Amendments of Charter”

Thank you.

Sincerely,

Hannibal F. Costa  
Town Clerk

Enclosure

Copies to:

Town Council  
Town Administrator  
Town Solicitor

Copy w/o enclosure

Judge, Tiverton Municipal Court