

February 14, 2020

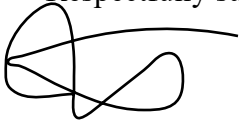
Sean Lyness, Special Assistant Attorney General
Rhode Island Office of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Re: OPEN MEETINGS ACT COMPLAINT – TIVERTON BOARD OF CANVASSERS

1. The Tiverton Board of Canvassers is a public body subject to the Open Meetings Act (Rhode Island General Law § 42-46-2(5); Tiverton Town Charter Section 1202).
2. The number of members of the Tiverton Board of Canvassers is three (Tiverton Town Charter Section 201).
3. A quorum of the Tiverton Board of Canvassers is two, two being a simple majority of a three-member body (Rhode Island General Law § 42-46-2(6); Rhode Island General Law § 17-8-5(b)).
4. Involving a special recall election then pending in Tiverton, a topic of substantial public interest, the Tiverton Board of Canvassers requested that the Tiverton Town Council appoint special legal counsel for such election instead of the Tiverton Town Solicitor, under the following agenda item: “Board of Canvassers - Request Approval to Retain Special Council for Special Recall Election.” This request by the Board of Canvassers appeared on the agenda posted on September 5, 2019, for the September 9, 2019 Tiverton Town Council meeting, at which the request was heard. At the September 9th meeting of the Tiverton Town Council, both Bobby Harris, Chair, Tiverton Board of Canvassers, and DeEtta Moran, Vice Chair, Tiverton Board of Canvassers, attended and participated in the discussion of their request. (Notice and Agenda of Meeting; Minutes.)
5. On September 3, 2019, the Tiverton Board of Canvassers posted an agenda for a meeting to be held on September 6, 2019, including “Discussion and Vote Regarding Legal Representation for Special Recall Election.” Note that this meeting of the Board of Canvassers was held *after* the Board of Canvassers had placed its request on the Town Council’s agenda.
6. Evidence available through review of the minutes (Exhibit A) and the video recording of the September 9th Tiverton Town Council meeting indicates that the request was made by Bobby Harris, Chair, Tiverton Board of Canvassers, and DeEtta Moran, Vice Chair, Tiverton Board of Canvassers, who privately discussed the matter together to make the request, on at least one occasion apparently in the presence of Nancy Mello, Clerk of the Tiverton Board of Canvassers. (Minutes; video available on You Tube (<https://www.youtube.com/watch?v=PnKO4H3BW9A>)).

7. During the September 9 Town Council meeting, Clerk Nancy Mello located the discussion as occurring in her office and stated, regarding the need for special counsel: “I can tell you that the chair raised it with me, and his concern was we didn’t have a solicitor going to that meeting at that time.” This indicates that a quorum of the Board of Canvassers not only discussed their own agenda, but also discussed the substance of the relevant item sufficiently to know the outcome beforehand and took the further action of requesting an agenda item on another body’s agenda, which is substantially beyond simple planning of their own body’s meeting. Note that the board’s item on the council’s agenda was not even qualified by the phrase “possible request,” but instead directly stated “request approval.”
8. By and through a quorum of its members convening outside of a posted public meeting, discussing their interest in requesting special counsel, and requesting that an item appear in their board’s name on the Town Council’s agenda, the Tiverton Board of Canvassers violated the Open Meetings Act, 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Justin Katz', written over a horizontal line.

Justin Katz
189 Cottrell Rd.
Tiverton, Rhode Island 02878
(401) 835-7156

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS COUNTY OF NEWPORT

The Town Council of the Town of Tiverton, County and State aforesaid held a Regular Council Meeting on **Monday, September 9, 2019 at 7:00** at the Tiverton Town Hall, 343 Highland Road.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Council President Coulter called the meeting to order with the pledge of allegiance to the flag.

3. ROLL CALL

Members Present

| | | |
|---------------------------|----------------------|--------------------------------|
| Council President Coulter | Councilor Hilton | Town Administrator Jan Reitsma |
| Vice-President Katz | Councilor deMedeiros | Town Clerk Mello |
| Councilor Driggs | Councilor Cook | Solicitor Cicione |

Members Absent – None

BUSINESS BROUGHT BEFORE THE COUNCIL

President Coulter read the items on the Consent Agenda.

4. CONSENT 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 13th, 2019 for Singing Out Against Hunger Event with Rain Date of September 14th, 2019 (previously approved 9/7/19 – rain forecasted)

Councilor Cook removed Consent Agenda item C. 2. for further discussion.

Councilor Katz motioned to approve the Consent Agenda items with the exception of C.2. Councilor Hilton seconded the motion. The Motion passed unanimously.

Councilor Cook questioned the Tax Collector Monthly Reports regarding Municipal Lien Certificates and the remaining properties on the Tax Sale List, as to whether these numbers represented increases from 2018. Town Administrator Reitsma responded that he would provide this data to her in the near future. Ms. Cook acknowledged an unfortunate DPW Maintenance item regarding Fogland Beach. She relayed a situation

Grinnell's beach where a tree was removed without Tree Warden oversight. Town Administrator Reitsma responded that it would be better that he respond to this inquiry via a memo.

Councilor deMedeiros motioned to approve the removed Consent Agenda item C.2. Councilor Katz seconded the motion. The Motion passed unanimously.

5. PUBLIC PRESENTATIONS/ANNOUNCEMENTS/COMMENTS

A. Public Comment

Renee Jones, Barbara Martin and Bill McLaughlin each requested to speak on the Zoning board appointments. President Coulter noted that it was Council policy to hold off on public discussions until after the candidate interview meetings. All three citizens opted nevertheless, to voice concerns about potential Zoning board appointments. President Coulter reiterated that when there are more applicants than vacancies, it has always been Council policy to hold voting until the following meeting. He assured that there will be an open public comment opportunity at the next meeting when the Zoning board vote would be taken.

6. PUBLIC HEARINGS (ADVERTISED) - None

7. BOARD OF LICENSING - None

8. APPOINTMENTS & 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 1st Alternate to Expire 7/15/2020

The interviews of Zoning Board applicants Lise J. Gescheidt, Joel Bishop and Jennifer Hilton then commenced, with voting to be held until the following Council Meeting on September, 23, 2019.

B. Economic Development Commission – (5) Member Board/(4)Year Terms /(3)Vacancies – None

Renee Jones took an opportunity to speak on behalf and recommend the re-appointment of Elizabeth Carr whose EDC term had expired. Due to late paperwork submission, the request to re-appoint Ms. Carr would be held until the next meeting on September, 23, 2019.

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

Councilor Hilton motioned to the relative appointment of Adam Rapoza to Planning Board. Councilor Katz seconded the motion. The Motion passed unanimously.

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

Councilor deMedeiros motioned to approve the relative re - appointment of Tyler Loomis as Harbor Master. Councilor Perry seconded the motion. The Motion passed unanimously.

9. BIDS AND REQUESTS FOR PROPOSALS

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

Councilor Katz motioned to approve the relative RFP for Specialized Revaluation Services. Councilor deMedeiros seconded the motion. The Motion passed unanimously.

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.

Councilor Hilton motioned to approve the relative Award of Bids 1-5 as outlined per recommendation of DPW Director Rogers. Councilor deMedeiros seconded the motion. The Motion passed unanimously.

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

Vice President Katz noted it is essential, when putting together budgets to have a clear sense of what is needed in order to establish a long term financial plan. He noted the importance of incorporating all of the stakeholders, so that feedback from the relevant departments, public etc., would help to develop the framework.

President Coulter, as co-sponsor, noted that we do not yet have a comprehensive financial plan. He furthered that over time, the goals should be to 1. Identify and address all capital and operational needs of the town. 2. Work to get the tax rate down to at least average of the surrounding communities. 3. Assess and address all of our liabilities. Councilor deMedeiros suggested it would be important to have the Budget Committee and the Treasurer involved in the process. Councilor Hilton added as this would be a complicated matter, it might be prudent to consider outside professional assistance and reach out to other municipalities for ideas. It was mentioned that this discussion would be tentatively carried to a workshop meeting on September 30, 2019.

B. Councilor Katz – Discussion of EEE/West Nile and Municipal Options (public comment permitted)

Councilor Katz noted the heightened EEE/West Nile concerns and opened the floor for discussion/feedback. Town Administrator Reitsma informed we have participated in relative state conference calls. Data collection/lab analyses have been stepped up due to higher than normal occurrences. Specific links to the State offices have been placed on the town website. Any specific implementation strategies (larvacide and spraying) are handled at the state level.

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

Councilor Katz had distributed a draft copy of his “Issue Tracker” for review. Members noted that it was not an agenda item; therefore

Councilor Katz motioned to add Issue Tracker progress to this agenda for discussion only. Councilor Coulter seconded the motion. The Motion passed unanimously.

Councilor Hilton began by noting that the presented format was not what she had expected and requested that the format be discussed at a later meeting. Councilor Katz agreed to bring forth the matter as an agenda item at the next meeting.

DPW Director Rick Rogers, updated the Council on Myrtle Way whereas a resident had asked for a light to be installed on a utility pole at the end of Myrtle Way. It was decided that a light installation was not recommended. Instead, signs were recommended and installed to alleviate the misdirected traffic issues.

Town Administrator Reitsma updated Council on the John Duggan Road/farm animal complaint issue, stating that both the Building and Zoning Officials had contacted the property owner to discuss required measures including routine professional exterminator services. At this point, there were no further complaints or issues raised.

Town Administrator Reitsma informed there was no longer a staff available post Labor Day. He acknowledged there have been a few issues with the gates at Grinnell’s beach being closed due to staffing issues and/or the plan to have the police department handle the gate closing schedule. Reitsma also noted that the Recreation Commission intends to discuss ideas to improve lifeguard coverage for the 2020 season.

D. Town Administrator - Request Approval of, and Authorization to Sign Commercial Services Agreement with Cox

Town Administrator Reitsma explained this was an attempt to deal with longstanding phone system issues and the necessity to upgrade obsolete equipment. The Cox agreement would essentially allow for the replacement of outdated equipment at no net cost and consolidate billing.

Councilor Perry motioned to approve the relative request to Sign Commercial Services Agreement with Cox. Councilor deMedeiros seconded the motion. The Motion passed unanimously.

E. Appointment of Special Council for Recall Election

1. Councilor Katz - Discussion of authority, policy and precedent

Councilor Coulter began by noting that the agenda item 10. E.1. indicates *council* (as opposed to counsel) which poses a question as to what specifically was being requested.

Councilor Katz explained the addition of agenda item (10. E.1.) being placed prior to the Board of Canvassers' request (10. E.2.) was due to little precedence in way of a board requesting special counsel; therefore discussion was appropriate regarding policy and precedence.

Councilor Hilton questioned the timing and placement of the BOC's request to add their item to the agenda. She noted that the Council has a history of appointing special counsel, and contended that the items should be heard in the order of receipt.

Contentious discussions continued among the Council members relative to questions of recusals, agenda placement and the matter of authorizing of special counsel for the BOC.

Councilor Hilton then motioned to reverse the order of agenda items 10 E.1 and 10 E.2. Councilor deMedeiros seconded the motion. The Motion failed 3 to 4, with Councilors' Coulter, Katz, Cook and Driggs opposed .

Councilor Katz resumed discussion reiterating the need for a clear policy, criteria and authority for the appointment of special counsels. Councilor's deMedeiros and Hilton offered opinions that special counsel appointments have happened historically and have always been up to the Council to determine if requests were valid.

Back and forth comments continued and several questions were posed about whether Councilor's Coulter and Katz and then conversely, Councilors' deMedeiros and Hilton should recuse themselves prior to taking a vote on item 10. E. 2

President Coulter opened the floor for public comments. Several citizens commented.

Solicitor Ciccone then strongly recommended to the Council that item # 2 not be taken up given information revealed during the 10. E.1. discussion. He believed there was an unintentional Open Meetings Violation by the Board of Canvassers prior to their 9/6/19 meeting; apparently they knew in advance that a decision was to be made. His concern was the Council would exacerbate the matter by taking it from an unknowing violation to a knowing violation, whereas the Town would now be subject to an intentional violation. He recommended three things: 1. BOC revisit this issue at a properly noticed meeting. 2. That the BOC needs to give written explanation with findings as to why they need a special counsel before the TC decides whether they should spend the money as well as set precedence. 3. Council to seek recusal advisory opinions for anyone who was a subject of, or participated in efforts to drive the recall.

Town Clerk Nancy Mello then noted that she believed her position has been misstated. She offered clarification as to why the BOC's agenda item was added as a placeholder.

Councilor Driggs made a procedural motion to not consider item 10.E 2. until completion of - 1. Correct the open meetings act violation whereby the Board of Canvassers holds a properly noticed meeting that Attorney Ciccone can attend 2. That, at that meeting, the BOC provides concrete findings and answer as to why they need special counsel. 3. That all Council members involved in any way, get advisory recusal opinions from the Ethics Commission. Councilor Cook seconded the motion.

President Coulter then opened the floor for public discussion on the procedural motion.

Councilor Hilton disagreed with Solicitor Ciccone's advice regarding recusal opinions, stating she had contacted the Ethics Commission and contends she has no reason to recuse.

Councilor Katz noted that the Town Clerk had acknowledged Chair Harris and Vice Chair Moran, a quorum of the BOC, on Tuesday prior to their scheduled meeting said they didn't feel comfortable with the Solicitor and requested their own agenda item. This was effectively an unannounced meeting and therefore a violation of the Open Meetings Act. He furthered the vague request for special counsel needed clarification as it was not just for Councilor Coulter's complaint, but for the entire election.

Board of Canvasser member Bobby Harris responded that members of the BOC are here to appease everyone in the Town of Tiverton and make sure the elections are held right. Vice Chair DeEtta Moran added that there had been previous times that she questioned the Solicitor's ability to be objective and that she was dismayed to learn that a member of the Council would write an op-ed news article encouraging citizens not to vote in the recall election.

Councilor Coulter wrapped up discussion by mentioning that we should be having good faith discussions on policy and that he sees a BOC Open Meetings concern. In regards to recusals, if the standard is a political one, then everyone is involved. He questioned what the actual concern with the Town Solicitor was and warned that we cannot have a precedent where we create never ending demands for independent counsel.

The Motion passed 4 to 3, with Councilors Perry, Hilton and deMedeiros opposed .

2. Board of Canvassers - Request Approval to Retain Special Council for Special Recall Election

11. OTHER ITEMS/ANNOUNCEMENTS/COMMENTS

A. Town Administrator – Administrator Reitsma briefly updated that there were no qualified applicants for the part time Zoning Officer position so re-advertising will be necessary. There were 14 applications for the Planner/AO position and 5 will be interviewed this Wednesday evening.

B. Town Clerk

C. Town Solicitor

1. Update on Harrop v. Rhode Island Division Of Lotteries, P.C. 19- 5273

Solicitor Ciccone informed there was a bench decision today in Superior Court which concluded there was no standing for the Plaintiff for a number of reasons. He noted at this time, barring future appeals or decisions, the matter is closed and no longer an expense to the Town. He furthered the decision should not disrupt Twin River's gaming operations, therefore, no negative financial impact for the Town. The Solicitor also noted that he had received a media inquiry and was unsure of the Councils' preference on media participation.

Councilor Hilton commented that she had heard today on WPRO a concerning discussion by Mr. Harrops' attorney whereas the Town would potentially be a future Plaintiff. Councilor Coulter noted that he will add this again for discussion to the 9/26 agenda, but until then, the Town would maintain a neutral position.

D. Town Councilors

Councilor Perry noted that Pardon Gray Day was this coming Saturday.

12. CLOSED EXECUTIVE SESSION

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

Councilor Katz motioned to enter Executive Session pursuant to 42-46 -5(a)(2) Litigation – Case No. NC-2013-0443 – Faulker v. Tiverton. Seconded by Councilor Perry, the motion passed unanimously on a roll call vote.

The Council entered Executive Session at approximately 11:25 p.m.

The Council returned to Open Session at approximately 11:40 p.m.

Council President Coulter announced no formal action was taken in executive session.

Councilor Driggs motioned to seal the minutes of Executive Session. Councilor Perry seconded the motion. The motion passed unanimously; 5/0.

13. ADJOURNMENT

Councilor Driggs motioned to adjourn the meeting. Councilor Perry seconded the motion. The motion passed 5/0. The meeting adjourned at 11:45 p.m.

A True Copy.

ATTEST _____
Nancy L. Mello, Town Clerk