

**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 Monday, April 27, 2018 at 5:00 p.m.

MEMBERS PRESENT:

Chair Bobby Harris-absent Town Clerk Nancy Mello-present

Vice Chair DeEtta Moran-present Clerk Lori Roy-present

Member Paul Amaral-present

Alternate Jean Veegh-present

Alternate Susan Scanlon-absent

Vice Chair DeEtta Moran called the meeting to order at 4:59 p.m.

1. Approval of Minutes:

a) April 9, 2018

Mr. Amaral made a motion to accept the meeting minutes as written. Ms. Veegh seconded the approval of the minutes. The motion passed unanimously 3-0-0.

2. Financial Town Referendum (FTR) May 19, 2018:

a) Certification of FTR Mail Ballots Applications

The Board certified four mail ballot applications for the May 19, 2018 FTR and the June 2 possible runoff.

b) Certification of Final Canvass

Ms. Moran asked for the summary sheet of the voters registered and eligible for the FTR. Ms.. Roy stated that the summary sheet would be available at the next meeting for the members. Ms.. Mello stated the 30 day deadline had passed and no one contested the list. Ms. Moran asked about the polling places and their status. Ms. Mello stated the May 17th and 18th will be absentee voting at the Town Hall and on May 19th the FTR will be at the High School. Ms. Moran asked if there was a sufficient amount of poll workers. Ms. Mello stated there were eight Supervisors, two Clerks and one or two Moderators. There may be a Police Officer present and the equipment arrives on Wednesday, May 16th. Ms. Roy stated that there were 12,905 active voters in the Town. The Board certified the Final Canvass.

c) Discussion of Menu for Meals for FTR

Ms. Veegh stated that she had reviewed the menu for Sabitado's and would like to suggest Chicken Tenders, Chicken Parm with Spaghetti, Baked Fish, Fish and Chips and Grilled Chicken Salad. Ms. Roy was given the meals to be offered and will make copies for next meeting. Ms. Mello stated that the Town Clerk's office will take care of picking up food for the poll workers on the Thursday and Friday and the BOC

members would take care of delivering the food to the High School on the Saturday.

Ms. Mello stated that the changes to the Open Meeting Posting does not include weekends anymore so when planning the next meeting of the board that would need to be considered to meet the 48 hour prior posting requirement. Ms. Mello explained that a day meeting should be all that is needed for the certification of mail ballot applications and from now until the FTR weekly meetings will be necessary for such business. Ms. Moran asked Mr. Amaral what days were available for him and the only day available was Friday. Ms. Moran explained that Bobby Harris will be back for May 9th. Ms. Mello will hold Friday night for a meeting as well as May 2 during the day and she will cancel if there is nothing to be done. She further stated that she and Ms. Roy certified the ballot and proofed the sample and it had to be delivered to the BOE to be printed because the mailing of the ballots was slightly behind.

d) Financial Town Hearing May 3, 2018

Ms. Moran asked about the Financial Town Hearing (FTH) on May 3rd.

Ms. Mello explained that the Financial Town Hearing is not handled by the BOC the scheduling is handled through the Town Clerk's office. The usual attendees are the Budget Committee, Town Council President, the Town Administrator, and the School Committee Chair. Anyone who has a resolution and wants to speak on it may. Mr. Katz

who has a petitioners budget will have a seat to explain their budget if they chose to. We would introduce everybody starting with the Budget Committee and so forth. The meeting is on May 3rd and will start at 7:00 pm and the meeting will be on video.

3. Town Solicitor's Memorandum Regarding Resolutions on Ballot

Ms. Moran moved to the next item of discussion, the memorandum given by Solicitor Desisto. Ms. Mello interjected that there was a third correspondence in the members packet she received today by email from Mr. Robert Coulter who is also a petitioner of a resolution. It was confirmed that correspondence was given to the BOC from Mr. Coulter, another from Mr. Katz and a third which is a recommendation in writing from the Solicitor. Mr. Amaral also brought attention to the fourth piece of correspondence from a group of four people: Nancy Driggs, Robert Coulter, Richard Rom and Justin Katz.

Ms. Moran was happy to receive the memo and felt that it would have been helpful to have this before the last meeting. The memo helped solidify the actions that were taken and the decision made on April 23rd.

4. Correspondence Received

a) Justin Katz Regarding Resolutions Submitted for Ballot at FTR

Mr. Katz was asked to approach and identify himself. Mr. Katz stated

that when reading the memo from Mr. Desisto he makes it clear that the board is receiving spectacularly bad advice. He further stated that it read like a document that has a conclusion that has to be met. He opined that Mr. Desisto's findings were egregious and that the board should reconsider their vote to illegally block the resolutions. In 1999 the FTM created this arrangement that part of the stamp tax goes to open space automatically off budget. That's not a tax, it's a fee another revenue. In 2010, tax payers petitioned with 50 signatures to put a rebate on the docket for the car tax if the State reimbursed more for the car tax than we had estimated at the FTM there would be a rebate given. He stated that it almost mirrored one of the resolutions that the members voted down as illegal. The people voted it down but nobody suggested it was improper to be listed on the docket. In 2011 pay as you throw, Mr. Teitz who was the solicitor at the time had the Council take a separate vote to put that pay as you throw on the ballot at an FTM specifically because he said that the Council didn't have the authority to restrict that line item. Mr. Katz read from meeting minutes, the Solicitor said in Section 1214 page 37 this is a fee. It may have the effect of a tax but it is a fee and therefore had to go to a FTM in order to be restricted. He then references the Home Rule Charter that was in effect at the time. The mechanism that put, for example, the rebate on the ballot was specifically, you are allowed to put on any proposal for the expenditure of money. When we changed to the FTR and they revised the Home Rule Charter there was language that limited your resolutions to budgetary matters and that language was taken out completely. Mr. Katz continued by

stating in the current Home Rule Charter the word budget appears before the word proposal 35 times but never appears before the word resolution and the word resolution appears 24 times without reference to the budget. Mr. Katz continued by stating that these are examples of the shotty work on the advice that the Solicitor had given to the board because he felt the board does not have the authority to rule on these matters and no authority to block resolutions even if they are illegal. He asked the board to reconsider their vote on the resolutions stating that the Solicitor will have opportunity to explain to voters that this is probably not enforceable and might create a lawsuit. Mr. Katz brought to the boards attention a paper from Attorney Skwirz citing a case from 1957 arguing that the FTM cannot create a new office because it was limited to taxpayers which reason was ultimately made moot by the 1973 constitutional amendment. He further stated that with or without the Solicitor present the board has the right to reconsider their vote and allow the people to vote on them.

Nancy Driggs approached the board and stated the Solicitor had miss cited the Larkin case because it was not allowed on the ballot for procedural error not the timing as suggested by the Solicitor. Secondly, Ms. Driggs emphasized that Article 3 that deals with elections is what Mr. Katz was talking about regarding budget proposals. The only bridge is that the resolution may not interfere with the docket line items. She further stated that not once did anyone hear that there was a procedural issue with the resolutions.

Ms. Driggs asked the board to review their duties which are primarily located in Article 3, nowhere would they find the language that they had to certify that procedural things are met but also make sure that the resolution is legal. It was absolutely inappropriate. Ms. Moran asked why the resolution was not offered to the budget committee. Ms. Driggs asked why would it have to be?

Denise DeMedeiros approached the board and stated that it was not on the agenda for the board to reconsider their vote on the resolutions and in order for that to happen it would have to be put on the agenda and advertised so that the public could speak on the matter.

Richard Rom approached the board and stated that the board could rescind the vote without it being on the agenda if the vote was unanimous. He further stated that he felt the board was ambushed by the Solicitor who did not provide the board proper information before the meeting and that the Solicitor should have spoken about this matter at the Financial Town Hearing. If illegal items were to get voted in at the FTR, it is the job of the Solicitor at that point to argue them. Mr. Katz approached again and stated that the Town Solicitors memo regarding resolutions is on the agenda. The Attorney General's handbook on Open Meeting Act is clear that they are guarding the attempt to deceive. The vote was not advertised or on the agenda and the board voted on the resolution. The Solicitor mentioned that there was a time constraint and that the board was

under rules of necessity and the same situation stands here.

Ms. Veegh stated that she felt she was ambushed and wasn't properly informed at the last meeting. She read from her notes, "A vote is an expression of opinion, desire of preference. It's hard to imagine the act of voting on something to be illegal in United States of America. The question of legality may become an issue if and when the results of such a vote are acted upon. Also, a vote can be binding or nonbinding. It would certainly behoove anybody of representatives to give great weight to the wishes of the electorate. For a General Assembly to oppose the wishes of the electorate would chip away at its own legitimacy, by definition." She further stated that the vote should be reconsidered. Ms. Mello stated that a vote to reconsider has always been made by the prevailing side and be on the agenda. She stated that the board could listen to Mr. Rom's advice and that she did not feel ambushed. Ms. Moran reiterated that she did not feel ambushed.

Town Administrator Jan Reitsma approached the board and stated that he did not feel there was an ambush and that the advice of the Solicitor was his opinion. That the Solicitor did not ask the board to find the resolutions were illegal he asked that the board not allow the resolutions on the ballot.

Ms. Driggs stated she appreciated Mr. Reitsma's opinion and wanted to let the board know that she was an attorney and so was Mr.

Coulter. She clarified that the discussion was about the board of canvasser making a judgement as to whether or not they like the resolution, their job was procedural.

Mr. Katz stated that if the April 23rd meeting was properly noticed and there was a possibility that resolutions would be blocked from the ballot on content ground, Mr. Coulter may have not absented himself from the Town this week. The Solicitor is absolutely saying that you are passing judgement by saying that the board is judiciary and the board did judge by vote.

Ms. Moran asked for any comments from the board members. Ms. Mello reviewed the agenda to be sure all matters were covered and mentioned next Wednesday's meeting to certify ballots at 12:00 p.m. and 5:00 p.m. on May 4, 2018.

There being no further business. Chair Ms. Moran called for a motion to adjourn the meeting. Mr. Amaral made a motion to adjourn. Ms. Veegh seconded the motion. The motion passed unanimously 3-0-0. The meeting was adjourned at 5:55 p.m.