

**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 23, 2018 at 5:30 p.m.

MEMBERS PRESENT:

Chair Bobby J Harris-absent

Vice Chair DeEtta

Moran-present

Member Paul Amaral-present

Town Solicitor

Anthony Desisto-present

Alternate Jean Veegh-present

Town Clerk Nancy

Mello-present

**Alternate Susan Scanlon-absent
present**

Clerk Lori Roy -

Vice Chair DeEtta Moran called the meeting to order at 5:30 p.m.

1. Minutes

Mr. Amaral made a motion to move the approval of the April 9th minutes to April 27, 2018 meeting. Ms. Veegh seconded. The vote passed unanimously.

2. New Business: Discussion of the Financial Town Referendum (FTR)

Vice Chair DeEtta Moran opened the discussion with the FTR dates. The absentee voting scheduled for May 17th and 18th and the Financial Town Referendum scheduled for May 19th, 2018. She asked Ms. Roy if there were any problems gathering poll workers for the upcoming election. Ms. Roy responded that all poll workers have been contacted and the positions are filled for the FTR. Ms. Moran asked that we consider the Sabitados menu for the FTR at the next BOC meeting.

Ms. Mello explained that the Police Department has been notified and there will be one officer detail for the FTR. The officer will primarily be used closing of the polls at the High School.

Ms. Moran explained that the annual High School voter registration drive went well with approximately 14 High School students registering to vote.

3. Certification of Ballot Budget Proposals and Resolutions

Moved to the end of the meeting to accommodate time constraints.

4. Discussion on ballot order for Resolution with possible Lottery

Ms. Mello explained that there were eight petitioner resolutions from eight different electors and one petitioner Alternate Budget proposal.

Ms. Mello stated that she was given the resolutions in a certain order and Ms. Nancy Driggs and Mr. Jeffrey Caron had no objection to the

order in which they were listed but the Board of Canvassers has the final decision in determining the order in which the 8 petitioner resolutions would appear on the ballot. Ms. Mello opined that when there is an election there is a lottery to determine how the candidates are listed on the ballot but could not recall if there has ever been a lottery to determine the placement of petitioner resolutions.

Attorney DeSisto interjected and stated that before the BOC decided on the order of the petitions on the ballot he wanted to let the board know that they had jurisdiction over the FTR. He continued that ultimately the BOC was the public body responsible for the FTR and that some of the resolutions were in violation of the current Town Charter. Mr. DeSisto stated that any complaints lodged in regard to these resolutions would be lodged against the Board of Canvassers which would be subject to any charter violations. He opined that some of the petitioner resolutions violate the charter. Ms. Moran asked Mr. DeSisto which resolutions violated the charter. Mr. DeSisto stated the #1 proposal by Mr. Coulter which states the voters/electors desire to have the opportunity to vote on all charter amendment proposals violates the town charter. Under the case of “Capone vs Nunes from 1957 which says that these types of resolutions are not appropriate for the FTR”. The second proposals is in regard to all casino funds remaining in the general fund which is by Nancy Driggs.

Mr. DeSisto stated that these types of resolutions are essentially ordinances and violate the charter because they are not budgetary matters. Mr. Katz asked Mr. DeSisto to point out specifically where in

the charter it stated that the resolutions have to be budgetary matters. Ms. Moran asked that Mr. DeSisto complete his discussion on the petitioner resolutions. Mr. DeSisto read the third petition in regard to casino gaming revenue funds received in 2018 in excess should be rebated to citizens of the town submitted by Justin LaCroix, his 1st submission. Mr. DeSisto stated this resolution was a violation of section 42-61.2-7 of the RI general law because gaming revenue is not a tax and is not part of the budget process as set forth in the charter. Ms. Moran asked what the fourth resolution was. Mr. DeSisto replied it is similar to the previous resolution but expands to commercial accounts. Ms. Mello stated that the fourth petition was submitted by Justin Lacroix, his second submission. Mr. DeSisto continued with the fifth resolution which proposed that 10% of any and all real estate conveyance tax funds received 2018-2019 not in conflict with the budget proposal approved at the FTR shall be reserved for open space purposes under the purview of the open space commission submitted by Donna Cook, first submission. Mr. DeSisto stated this resolution was not a violation of the charter. Number six, summarized states that any revenue raised through the pay as you throw program and not in conflict with the budget proposal as approved at the FTR and in excess of the amount estimated within the budget proposal be reserved for the landfill closure submitted by Donna Cook, second submission. Mr. DeSisto stated this resolution was not in violation of the charter. The seventh resolution deals with the sale of the industrial park and 25% of the proceeds being restricted and used for developing the industrial park,

submitted by Jeff Caron. This proposal was not in conflict with the charter. Mr. DeSisto read the eighth petitioner resolution regarding line items within the budget approved at the FTR showing \$1 or less shall not be deemed unanticipated shortfalls or requirements and the Town Council is prohibited from funding or adding to any such accounts unless approved by electors at future FTR's and submitted by Richard Rom. Mr. DeSisto stated that there is a provision in the town charter that allows the town council to shift funds between line items and this resolution prevents that, which violates the terms of the town charter. Ms. Moran summarized that petitioner resolutions 5, 6 & 7 were the only resolutions that were not violations of the charter per the Town Solicitor and opened the floor up to comments by the public.

Mr. Katz approached and stated that the BOC was determining whether or not a resolution was a qualified elector petition and that is spelled out in the charter by the number of signatures and so on. It does not state whether it is in violation of the charter. Mr. DeSisto explained that if the BOC allowed a resolution on the ballot that was a violation of the charter then, in his opinion, the board would be exposed to a possible charter complaint. Mr. Katz agreed that the board had jurisdiction to follow the process of the charter for qualified resolutions. If the board does not allow the resolutions on the ballot then Mr. Katz believes that is a reason for one to file a charter complaint. Mr. DeSisto read from page 6 of the charter, FTR section f-1, the FTR may order any tax which lawfully may be ordered,

make appropriations and transact any other business pertaining to the affairs of the town which may legally come before such referendum be it budget proposals and/or resolutions. Mr. DeSisto stated that the fact of the matter is that the FTR is for the budget and the resolutions go beyond that. He stated that he has an obligation to advise the board and that is what he is doing.

Mr. Katz asked the solicitor how the FTR can say what happens to the pay as you throw revenue but the gambling revenue is not a tax or if the line item is a dollar then the Council cannot create that line item. He further commented that the content is not this board's purview and will create a direct Charter Violation. Mr. Katz advised the board approve any resolutions that come before them and let a judge decide if it is in violation. By not accepting the contents you are disenfranchising the voter.

Ms. Moran confirmed with Solicitor Desisto that most of the resolutions in question have case law.

Mr. Desisto agreed and this included not only case law but the Charter as well. Charter sec 407 sub section 14 which are the powers and the duties of the Town Council that states order such budget reductions or transfers of funds within the municipal budget as may become necessary to meet unanticipated requirements and shortfalls during the fiscal year as recommended by the Town Administrator. He stated that one of the resolution countermands

that existing provision of the charter and that is why he says violates the charter. Mr. Katz asked the Solicitor if he had reviewed prior resolutions and did he know how many other resolutions that the BOC has rejected on content ground. Mr. DeSisto stated that there hadn't been any but his job was to advise the board and he will continue to do so.

BOC member Jeannie Veegh asked the solicitor if there was less risk if we disallow these resolutions on the ballot. Mr. DeSisto replied he could not say there was less risk. He felt this would end up in court either way.

Mr. Katz interjected stating that these resolutions are nonbinding and by disallowing you will be setting a precedent when balancing an even risk.

Solicitor Desisto states that allowing these would set a precedence by allowing violations on a ballot. Sec 408 (14) is violated by Mr. Roms resolution. He has been a solicitor and studied law for many years and never has he heard of ballot resolutions that would be in direct violation of the Town Charters or State Law.

Audience Member Louise Durfee spoke regarding the "pay as you throw" resolution passed in 2010 which states that 100% of the revenue less administrative expenses shall go into a restricted account of landfill closure fund. She stated that Ms. Cook resolution

conflicted with that existing ordinance, that if you look at the financial statements of the town there is always a footnote, she recalled it as footnote 9, which says the Town Treasurer has collected and has placed in a restricted account all of the revenues of pay as you throw.

Ms. Durfee stated that in her opinion Ms. Cook's resolution undercuts that resolution that has been in effect for many years.

Audience Member Nancy Driggs stated that the board was receiving for the first time advice from the Solicitor that something may or may not be held up in court. She stated that if the board does not follow their mandated charter job which isn't to look at the substance but do what is required by certifying signatures, there will be a charter violation.

Audience Member Trisha Hilton explained that as a resident of the town she found Mr. Katz's desire to express their wish to be heard on charter proposals is the beginning of the resolution but if read thoroughly part two states that the BOC, Charter Review Commission, Town Clerk, Town Council and all other town officials shall take all necessary actions within their powers to ensure that the voters electors have the opportunity. Ms. Hilton agreed that the BOC should follow the advice of our Solicitor and put forth things that are legally valid on the ballot.

Audience Member Mike Decotis, Budget Committee member, wanted to inform the Board that Mr. Katz is speaking for a group that he

clearly is involved in and representing but as an elected budget committee member he never brought up any of these resolves to the budget committee that he stated are so important.

Audience member Richard Rom explained that if the resolutions are not allowed the board will be setting precedent and that the board should allow the resolutions on the ballot and let a judge decide. Mr. Rom stated that Mr Desisto is not a judge.

Ms. Veegh asked if this matter could be continued as to be able to further review the contents validity. Ms. Mello along with Ms. Moran explained that the ballots are on a time line and they must move forward in order to meet the print deadlines.

Solicitor Desisto explained that as legal counsel to the board he does not take this position lightly due to consequences. He does not believe this has been done before and he agrees that this will set precedent as I suspect these resolutions are setting a precedent.

Mr. Amaral stated that he heard an audience member mention that if the board voted a certain way that they win. He stated that he was not looking to win he was looking to do what is best for the town.

Solicitor DeSisto addressed the board stating that the board did not want the FTR to become a forum for issues other than the budget.

Ms. Moran asked if this will put the FTR in jeopardy. Solicitor Desisto explained that if these resolutions are the route to take then, as an extreme, there could be an ordinance next on how the town plows the streets.

Mr. Katz explained that he is not here for any one group and that anyone can offer an argument in front of a board in the interest of the good operation of the town. As far as Ms. Durfee she is not qualified to determine whether the Solicitor's arguments are legally valid. Mr. Katz stated that Ms. Hilton's role is not to determine the legal language of the resolutions. He stated to the board that their authority was the process of getting on the ballot and if they did not allow every petitioners resolution that went through the process correctly they would be disenfranchising the petitioner, those who signed, and the voter.

Solicitor states that this is Mr. Katz opinion and that he himself was citing the town's charter. Ms. Moran stated that the procedure is that the board put things on the ballot that they can stand behind.

Mr. Katz again reiterated that the board should put things on the ballot that are qualified elector petitions that have gone through the process appropriately, it is not your place to interpret the charter or to judge the content of the resolutions.

Audience member John Edwards explained that the solicitor is paid

to protect the body from making illegal decisions and his is the only qualified opinion that the board should listen to. Mr. Edwards asked Ms. Moran if she went around collecting signatures for these resolutions. Ms. Moran replied in the affirmative. Mr. Edwards asked Mr. DeSisto if this was a conflict of interest. Mr. DeSisto stated that Ms. Moran has agreed to not certify any signatures on the resolutions that she had collected. Mr. Edwards expressed his agreement.

Mr. Katz wanted it clear that Ms. Moran should not be involved with any voting on the ballot matter because she expressed personal interest in the petitions and therefore had agreed to the content which shows a bias. Mr. DeSisto reiterated to Ms. Moran that on the resolutions that she had collected signatures on she should not certify.

Ms. Veegh asked if we are going to disenfranchise the voter. Solicitor Desisto explained that the BOC will be in violation of the charter if they allow the resolutions to go forward and if they don't allow it to go forward there might be a charter complaint.

Mr. Amaral made a motion to include resolutions 5,6,7 and exclude the resolutions based on advice of counsel.

Ms. Moran wanted to clarify with the solicitor that she could vote on the resolutions. She stated that she had collected signatures on all of them but did not sign all of them just some and that Ms. Veegh had

signed some of them also. Solicitor DeSisto asked for a two minute recess. Solicitor Desisto explained that they would invoke the “Rules of Necessity” or the board would not have a quorum. Mr. DeSisto advised the board to vote.

Motion seconded by Ms. Moran. Voting in favor were Ms. Moran and Mr. Amaral. Voting against was Ms. Veegh. The motion passed 2-1-0.

Mr. Amaral made a motion to subject resolutions numbered 5,6, and 7 to a lottery to determine their place on the ballot. Seconded by Ms. Moran. All in favor. The motion passed unanimously 3-0-0.

Ms. Mello stated that the board had to certify the ballot proof for the Budget Committee, the Elector’s Petition Budget Proposal, Resolutions 5, 6, and 7, the Budget Committee resolutions and Town Council resolutions.

Ms. Mello and Ms. Roy drew by lottery the order of the petitioners resolutions. First drawn was #6 Donna Cook’s second proposal, followed by #7 Jeff Caron’s proposal, and finally #5 Donna Cook’s first proposal.

Ms. Moran called out the certifications as they were completed starting with Budget Committee’s Budget Proposal, Budget Committee’s Resolutions, Elector’s Petition Budget Proposal, Elector’s Resolutions numbered 5, 6, and 7, and Town Council

Resolutions.

Mr. Amaral made a motion to accept the Elector's Alternate Budget Proposal. The motion was seconded by Ms. Moran. All in favor. The motion passed unanimously 3-0-0.

Mr. Amaral made a motion to accept the Budget Committee, the Petitioner's Alternate Budget Proposal, Resolutions 5, 6, and 7, the Budget Committee resolutions and Town Council resolutions. Ms. Moran seconded the motion. All in favor. The motion passed unanimously 3-0-0.

Ms. Mello stated that the remaining items on the agenda would be continued to the April 27th meeting of the board which will be at 7:00 p.m.

After signing all petition certifications.

Ms Moran adjourned the meeting at 7:10 p.m.