

February 15, 2006

The Town Council meeting was called to order by Heidi Rogers at the Benjamin Eddy Building 6 South Killingly Road, Foster, RI at 3:35 p.m.

The following members were present:

Heidi Rogers, President
Steven Bellucci, Vice President
Ralph Berkowitz
Colette J. Matarese
Harold R. Shippee, Sr.
Bradford Gorham, Esq., representing Town Solicitors

The Pledge of Allegiance to the Flag was recited.

President Heidi Rogers announced that the purpose of the hearing was on the request of Mr. Mitchell pursuant to section 14.03 of the Charter. President Heidi Rogers reported that Mr. Gorham would represent the Town; Mr. William Bernstein would be advising the council as to procedure and Mrs. Carroll would be representing Mr. Mitchell.

Bradford Gorham provided the court reporter Denise A. Webb of Allied Court Reporters, Inc. , Mr. Bernstein, Mrs. Carroll and the council members with the following documents:

1. A copy of a section 14.03 Removal of Office of the Charter.
2. Copy of the July 14, 2005 town council.
3. Copy of letter from the Council President advising Mr. Mitchell of the meeting on 1-25-06 that his job performance would be discussed.
4. Copy of agenda 1-25-06.
5. Copy of letter to Mr. Mitchell after the 1-25-06 meeting.
6. Copy of letter from Mr. Mitchell requesting hearing.
7. Copy of letter from Town Clerk scheduling the hearing.

Attorney William Bernstein noted that the exhibits would be attached to the transcript.

Attorney Maryann Carroll asked that the following documents be added to the record:

8. Minutes from the January 25, 2006 council meeting.
9. Minutes from the January 5, 2006 council meeting.
10. Subpoena to Anne Irons, keeper of the records.

Due to the overcrowding at the Benjamin Eddy Building the meeting was moved to the Town House at 180 Howard Hill Road in Foster and reconvened at 4:05 p.m.

Attorney William Bernstein explained that the reason for the hearing was due to the section of 14.02 in the town charter. He explained that Mr. Mitchell was appointed an officer for a definite term and that being the case he was entitled to notice of the reasons of the town having the hearing for the removal. Mr. Bernstein noted that Mr. Mitchell was given a notice with the reason the town was having the hearing and Mr. Mitchell is now given the opportunity to give his evidence and to cross examine any witnesses against him.

Maryann Carroll did not believe he was given due process under the town charter. She noted that at the meeting on January 25, 2006 the council voted to terminate Mr. Mitchell and at no time did the council discuss suspension, at no time did the council discuss that he would be given a suspension. Ms. Carroll said that it was after the fact that, he received a letter that he was terminated but it meant suspension and now you have a right to a hearing. Ms. Carroll said that they were proceeding with the hearing to protect his rights however; she objected to the fact that he is given his due process under the charter or the constitution. She said she believed he was given the hearing after the fact and therefore his due process rights were indeed violated and that is why she has an action in Superior Court. She noted that when the temporary restraining order was heard in Superior Court, Mr. Nicholas Gorham indicated to the court that he had been suspended with pay and there was no need for a restraining order at that time; however they still have an action pending in Superior Court regarding the fact that Mr. Mitchell was not given his due process rights. Attorney Carroll stated that they were willing and able to continue with the hearing but they would not agree that he was given those rights.

Town Solicitor Gorham remarked that the charter does not use the word terminate it uses the word removal. Mr. Gorham said it says that the council votes to remove someone and the result of the vote to remove is their position and is stayed until such time, suspended until such time that the council holds this hearing. Mr. Gorham said that terminate and remove are synonymous words in this context and he does not believe anyone has been deprived of any due process.

Attorney Maryann Carroll went over the above documents again after the move to the Town House and asked for them to be part of the hearing. Mr. Gorham did not object.

Attorney Carroll asked that council member Ralph Berkowitz recuse himself from the proceedings as he did the evaluation of Mr. Mitchell and at the January 25th meeting he presented the evidence against Mr. Mitchell that led to today's proceedings. Attorney Carroll said she was under the understanding that someone cannot do an evaluation and then turn around and present the case and vote impartially on the matter. Ms. Carroll again asked that Mr. Berkowitz be removed from voting.

William Bernstein noted that before he made a ruling he wanted to know what the extent the evaluation was and what the extent the investigation was that he did.

Ralph Berkowitz was sworn in and gave testimony.

William Bernstein noted that to him it was clear that Mr. Berkowitz did do an investigation concerning the job performance of Mr. Mitchell and under other case law in Rhode Island that he be disqualified from voting in the matter. Mr. Bernstein advised the council that Mr. Berkowitz was not qualified to sit and vote as he did do the investigation.

Town Solicitor Gorham said he objected on the ruling. Mr. Gorham noted that the personnel policy requires evaluation by a particular council member who is detailed in each department of the town and that was what Mr. Berkowitz was doing. Mr. Gorham asked Mr. Bernstein to ask other council members if they did any investigation prior to the January 25th meeting. Mr. Gorham said he was aware that some of them did do investigations on their own.

Heidi Rogers, President stated that she spoke with the payroll company and Ing representatives regarding annuities.

Steven Bellucci, Vice President spoke up and said that he spoke with Chief Robert E. Coyne and Lt. Rollinson about an incident with the payroll matter.

Mr. Gorham noted that it was the duty of the town council to investigate and find out how departments are run and he did not believe the members shouldn't be disqualified and it would have to be taken up in court.

Maryann Carroll remarked that the only person that was given the job of doing the evaluation and the investigation was Mr. Berkowitz and the council voted on that a week prior to the January 25th meeting. She said the others may have looked into information on their own but she did not see where that in itself disqualifies them. Ms. Carroll noted that Mr. Berkowitz did the investigation, he did the evaluation and he brought that evaluation back to the total council. She said if they did add their information to that meeting that maybe the case but they were not given the job of evaluation and investigation Mr. Berkowitz was given that job.

Mr. Bernstein said that he was not prepared to advise the council that anyone else should be disqualified on the basis of doing an investigation.

Colette J. Matarese, council member said that she would not say she did any investigation but she has been in many of the town officers asking how things are going and what is going on but it was not specific to an investigation. She did note that she did ask Chief Coyne about some concerns he had over payroll but it was within a conversation.

Harold R. Shippee, Sr., council member noted that he has been in Mr. Mitchell's office but not on this case it was on other things, other business.

Town Solicitor Gorham asked Mr. Bernstein that if it does proceed to a vote would he take Mr. Berkowitz's vote conditionally in case it goes to court and the court does not agree with Mr. Bernstein's analysis. Mr. Gorham said that if Mr. Berkowitz is allowed to vote conditionally it would save having to convene another hearing.

Maryann Carroll objected and said that if he was going to be recused he needs to be recused. She said that in the event that it does go to court and the court should overrule the ruling and then we need to come back. She said she was not willing to agree to let Mr. Berkowitz in the event that Superior Court overrules.

Mr. Bernstein said that his advice to the council was that he was not qualified to vote and by allowing him to vote would defeat the advice that he gave.

Maryann Carroll also asked that Heidi Rogers recuse herself and gave a copy of printed material from the GOP Website regarding the treasurer. Mrs. Carroll said that according to case law it goes to bias.

Bradford Gorham remarked that of course she was bias and it was only an explanation of her vote on January 25th. He said that they all voted to remove Mr. Mitchell and if any bias was shown and that shows that they are because it is their job. He said that the charter says it is the first step is a vote to remove and then Mr. Mitchell if he wishes to can claim a hearing in order to try and regain his job. Mr. Gorham stated that the website extract was no more than an explanation of her vote.

Mr. Bernstein said the bottom line is whether four members are going to vote and give a fair hearing, listen to the evidence and may set the evidence and then make a decision without any preconceived notion because no evidence has been heard yet and he believes the four members can.

The Deputy Treasurer Lisa M. Mills was sworn in and gave testimony.

Lt. Eric Rollinson was sworn in and gave testimony.

Bradford Gorham submitted a letter from Paychex dated February 13, 2006. Ms. Carroll objected to the letter as it is addressed to the members of the town council

and she asked who requested the letter and what information was given to Paychex before the town council received the letter. Bradford Gorham answered that he requested the letter and he gave them no information he simply said to detail what errors they had for the Town of Foster. Ms. Carroll said that unless the branch manager came in and testify she objects to the introduction of the letter. Ms. Carroll also noted that Mr. Mitchell has gone on record at previous town council meetings and said that there were many errors with the company and that was why he requested a new company. She said that certainly the company who was going to be ousted is going to claim that they made no errors or were not notified of any errors and objected.

William Bernstein said he would make no ruling on that letter at this time.

Jeffrey Wadovick, CPA from James N. Nadeau & Company, LLP was sworn in and gave testimony.

Jonathan Mitchell, Treasurer was sworn in and gave the following testimony.

Jonathan Mitchell stated that he was hired on July 14, 2005 and reported to work on August 1, 2006. He stated he was told that the Interim Treasurer, Darlene Weiss would be there for a while to help him and to tell him what things needed to be done and to help him locate information. He said that she only came 3 times for a couple of hours each time and then never returned his call after that. Mr. Mitchell explained that he learned the job through trial and error through the most part. He said that there were a lot of procedures and there were special arrangements that were done and made in prior administrations and he was not aware of them and specifically was not informed of. Mr. Mitchell said that when he started that numerous bank reconciliations had not been done. He said that the IRS Auditor told him he was sorry that Jonathan was walking into the mess. Mr. Mitchell said that a lot of people told him a lot of things were a mess and the interim treasurer was only there about 10 hours a week and had not done a lot of entries and had not done a lot of things that were required. He said that she had not done the ING payments or the pension payments. Mr. Mitchell said that since the day he started he was playing catch up since back in April. Mr. Mitchell said that he did not get corporation from his liaison Mr. Berkowitz. Mr. Mitchell noted that Mr. Berkowitz came into his office 2 to 3 times in the onset and he did come in the office with Colette J. Matarese but then he did not see him since September until his evaluation. Jonathan Mitchell remarked that overall his relationship with the town council was very good. He said he had a very open relationship with all the members of the town council with the exception of Mr. Berkowitz. He listed the other members of the council saying that they came into his office on occasion and offered him support and was very very cooperative in the onset and was glad to have him there. Jonathan Mitchell explained that there was a problem with a time clock because some members of the council wanted to have a little bit more ...accounted for. He said that he agreed in the beginning because the system that was in place was that different departments kept different methods of keeping time for the work hours. Jonathan Mitchell said that they thought instituting a time clock would make it so everybody's...everybody was using the same type of time device. Mr. Mitchell noted that there was a point in time that all the employees were using the time clock with the exception of Mrs. Irons, who was an elected town official the Town Clerk. Mr. Mitchell said he was informed by Mrs. Irons that because of her position as Town Clerk being an elected official she did not report to the town council and did not have to punch a time clock and was on salary as well. Mr. Mitchell said that he did discuss that with Mrs. Rogers and Mr. Bellucci and they did come into his office and they talked about the time clock situation and when they were both in attendance Mr. Bellucci told him that if anyone doesn't punch a time clock does not get paid. Jonathan Mitchell noted that he did have a discussion with Mrs. Irons that he would not be able to pay her if that was the case. Mr. Mitchell noted that to cover himself he called Mr. Bellucci on the phone and said to him "Mr. Bellucci this is the situation, this is what we have and you have indicated to me that whoever doesn't use a time clock is not to be paid". Mr. Mitchell said that Mr. Bellucci said she was not to be paid and we

will bring the matter before the council. Jonathan Mitchell explained that he did not pay Mrs. Irons and after he did not feel quite right about it as he was not familiar with the law. Jonathan Mitchell said then a big backlash started to happen and he decided to do his own homework and consult some labor laws, consult some things, periodicals and all that and found that it was in fact an illegal act that he was committing by not giving her a paycheck. Jonathan Mitchell said that he subsequently received a letter from Mrs. Irons' attorney who told him that it was in fact illegal to do so and that he should pay her immediately or it would be in court. Jonathan Mitchell said that by taking those things into consideration the next day he issued her a check to be deposited into her account. Mr. Mitchell said that after that incident certain members of the council became very cold to him and he did not have the relationship anymore with Mr. Bellucci and Mrs. Rogers. Jonathan Mitchell said that prior Mr. Bellucci had said to him that he would support him if he did not turn political. Jonathan Mitchell said he had indicated to Mr. Bellucci that he had no intention of being political since he was not from the town and he did not care if he was republican or democrat he only wanted to come to work and do his job. Mr. Mitchell said so he was told that as long as he wasn't political that would not be the case. Jonathan Mitchell said that after this fallout came, a few taxpayers actually visited him and told him that by paying Mrs. Irons he was in fact collaborating with the democrats. Jonathan Mitchell said that he thought that was absurd. Mr. Mitchell said that at that point in time the relationships started to turn very cold.

Jonathan Mitchell noted that he was very excited when the deputy treasurer first came on. He also noted that he only received 3 resumes for the deputy treasurer; one was with a resource background, the other one he had known in the past and had a sales background and then Ms. Mills who had very good credentials. Jonathan Mitchell said that Heidi Rogers gave him the resume and told him that she was a friend of Ms Mills and had gone to see her at her establishment. Jonathan Mitchell said that he did not think anything of that because he had gotten along with everybody on the council and any help the council can give him would be fine. Mr. Mitchell said the resume was excellent and he came forth to the council with a recommendation of hiring Ms. Mills as Deputy Treasurer. Mr. Mitchell said that he had a few reasons for doing that and one was that he wanted to have someone in there with a CPA background since his background was primarily in finance. Jonathan Mitchell said he wanted somebody as a deputy treasurer who he could bounce things off of, somebody who could be cooperative with him, someone who could help him and give him information that he might not be privy to, especially when it came to tax law. Jonathan Mitchell remarked that he was a quick learner and he wanted somebody he could work with. Mr. Mitchell noted that the deputy treasurer started out very well. He said that she started with updating the pension payments to the State of Rhode Island and completed that project. Mr. Mitchell said that he wanted Ms Mills in the beginning to be somebody who could take care of the big special projects that he had since the interim treasurer had not completed a lot of the tasks and a lot of the pension payments had not been made since April. He said that he wanted Ms. Mills to tackle those project while he got up to speed on the day to day things within the job, whether it would be payroll, purchase orders or getting to know the department heads as he had only been there two and half months when Ms. Mills came on. Mr. Mitchell said that she did start out strong and did a lot of work updating the pension plan and updated the pension plan until October and that it was something understood that she would continue to update that. Jonathan Mitchell said that things started to get a little tricky around November. He said that it had come to his attention that some of the members of the council did frequent Ms Mills's establishment more and more. Mr. Mitchell said that that did bother him as he wanted the treasurer's office to remain apolitical as possible as it has to by the nature of the office. Mr. Mitchell said that they have to work with everybody in the town and it was best for the taxpayers. Mr. Mitchell remarked that Lisa Mills was his confidant and when he did confide in her of his concerns over some of the members of the council turning on him she told him he was paranoid and it was not true. Jonathan Mitchell said he thought that was odd that she did that. Mr. Mitchell noted that her hours started to become a lot less and her

schedule was more static than it had been in the past. Mr. Mitchell stated that he did give her latitude as she was running a business in the Woodland Meetinghouse and was working hard to restore it and get it up to speed. Jonathan Mitchell said that when Mrs. Rogers came into his office she had explained that Ms Mills needed a job just to get some extra money to supplement her income while she was upgrading the facility. He said that was why he thought there was no problem at all. Mr. Mitchell said that Ms Mills became more belligerent toward him and did not listen to everything he had asked her to do. He said that Lisa Mills had decided to take a lot of things upon herself without informing him as the W-9 forms. Mr. Mitchell said she had never mentioned one word to him and he had to actually ask her what she was working on. Mr. Mitchell said that he sent her an email to switch gears and that deadlines needed to be met for the council, as payroll warrants, payroll entries to upgrade the expenditure reports and they were duties in the job description of the deputy treasurer. Mr. Mitchell noted that she knew the deadline and one day she didn't show up for work. He said that it was a Tuesday that was the day that everything was due for the council meeting. Mr. Mitchell explained that he did call her house at 9:30 a.m. and Lisa told him that she would not be in that day because she had things to do and she probably would not be in tomorrow either. Mr. Mitchell noted that she was supposed to work 18 hours and he did give her latitude on that as she was busy with her business. He said that she did come in and work the hours that was best for her. He noted that she did come in very early in the morning because it was easier for her because of her business. Mr. Mitchell commented that from the get go she was getting more cell phone calls in a day than he was getting in a month. He said that her desperado phone ring was very loud throughout the department and she also spent a lot of time on the treasurer's phone running her business to a point when he was getting phone calls from people who were angry because they could not get in touch with him. Jonathan Mitchell also noted that he was informed by the town clerk's office that people were not getting through to him because his line was busy for so long. Mr. Mitchell remarked that there were times when he had to ask her to get off the phone because he was expecting calls. Mr. Mitchell said that Ms Mills knew the deadlines, knew of the things she had to complete and get done for that day and because of that they were not able to get all the work done for the council which included the expenditure reports. He explained that she was updating the payroll on the system which includes expenditure reports, the warrants, and includes purchase orders and things that they all work on together. Mr. Mitchell said that she was not able to complete her portion of the tasks which in fact made it difficult for him to get the work done.

Jonathan Mitchell remarked that he was warned before he started that the tax collector was a problem. He said that since the day he walked into the place the tax collector was extremely rude to him. He explained that at one time he did extend an olive branch to her because at one time she did not speak with him for four and a half months and she reports to him. He said to the tax collector that he was made aware by Mrs. Rogers and Mr. Bellucci that Ralph Berkowitz did not want him in the job he wanted Darlene Weiss in the job. Jonathan Mitchell said that everyone did know that and it was common knowledge. Jonathan Mitchell said that the tax collector got very belligerent to him and said don't say that and you brought it up not me. Jonathan Mitchell explained that after that it got even worse. Jonathan Mitchell remarked that during his tenure there the tax collector would come up to him and say that she was taking the afternoon off. He also noted that on a Friday afternoon at 3:45 p.m. she informed him that she would be out next week to a seminar and would return to work on Friday. Jonathan Mitchell explained that that was before Ms. Mills was hired and the treasurer would have to run both the tax collector's office and the treasurer's office. Mr. Mitchell also said that she had sent out a lot of delinquent notices prior to her going to the seminar made his life very difficult. Jonathan Mitchell also said that she was very insubordinate when she was taking comp time as she would not let him know when she was taking time off.

Bradford Gorham objected and said that he was talking about the tax collector and not talking about Mr. Mitchell at all.

Attorney Carroll said that it was all directed to Mr. Mitchell.

William Bernstein noted that it did have some relevance but asked Jonathan Mitchell to get to the issues that were raised.

Mr. Mitchell indicated that he did not have the cooperation of the tax collector and needed certain reports from her and he finally received one a month ago after he had asked for it.

Attorney Carroll asked Jonathan Mitchell why the bank statements were not reconciled since July 2005.

Jonathan Mitchell noted that before he was hired in August, the bank statements hadn't been reconciled since January for a period of 7 months. He noted that there was no outrage and no consequences with the interim treasurer with that. Mr. Mitchell explained that Malcolm Moore was hired, after he pushed for it and the liaison Mr. Berkowitz voted against it. Jonathan Mitchell said that the Auditor advised that there was too much work that needed to be done for one person to handle. Mr. Mitchell said that he wanted Mr. Moore to come in since he had worked on the school books and he was familiar with the Phoenix accounting system. Mr. Mitchell explained that Mr. Moore was able with his staff to reconcile the bank accounts up to June 30th. Mr. Mitchell said that at that point in time he had to set priorities and a new deputy treasurer was there. He noted that all transactions through October were in the system and he made sure that every transaction on each bank account was in there. He said that they hadn't physically gone in and done the balancing though all the transactions through the end of October were there. Mr. Mitchell remarked that there was online access and he monitored the town's cash position on a daily bases. He said that never was the town hurting for cash or near a point in time when the town was hurting for cash. Mr. Mitchell remarked that there was among some transactions that occurred in July prior to him and that came from the tax collector's department. He noted that he could not figure out what the transaction were. Mr. Mitchell noted that they were deposits with a dollar amount. Mr. Mitchell said that it was important when you are reconciling statements and especially when it comes to tax collections you have to break out what is principal, what interest is and what delinquent payments are in order to classify them for revenues. He said he verbally asked the tax collector and approached her through email to give him the information so he could start with July and reconcile the statement. Mr. Mitchell said that she never gave him the information. Mr. Mitchell reported that he did inform the town council of the issues with the tax collector but it still went unanswered. Jonathan Mitchell noted that the reconciliation of the bank statements is specific to the job duties of the deputy treasurer according to the town's job descriptions. Mr. Mitchell said that it was not in the specific job description of the treasurer. Jonathan Mitchell said that he had priorities that had to be done. Mr. Mitchell noted that Malcolm Moore helped him more than the interim treasurer did or the finance liaison did. Jonathan Mitchell noted that Mr. Moore was going to see him on January 24th, the day before he was terminated/suspended by the council. He said that they were going to try to sit down and locate the information that the tax collector would not provide to him. He said that they were going to get it into the system and he was going to balance the bank statements on that day. Mr. Mitchell said that he cancelled the meeting because he knew he was going to be fired the next day because he received word from a little bird that the council had made up their mind and was going to fire him. He said that he cancelled because he had to prepare for the meeting he was going to get fired at.

Jonathan Mitchell noted that the expenditure report was a very important report for the council and the department heads to see if the town was spending appropriately and if they are on or off their budget marks for the year. He said that the primary issue for the expenditure reports not being up to date evolves around the salaries not being updated on the expenditure reports. Mr. Mitchell stated that was where he had another beef with the deputy treasurer. He stated that the deputy treasurer

was working on those and had in fact updated the expenditure reports with the entries into the system up to October and stopped. Mr. Mitchell stated that the deputy treasurer was plenty aware of the deadlines and knew of the importance of the expenditure reports and getting those things into the system and the payroll warrants updated for the council meeting. Mr. Mitchell noted that he approached the deputy and inquired why they were not done and was told that she ran out of time. Mr. Mitchell noted that that was the day that they were due to the council.

Mr. Mitchell remarked that it was absolutely ludicrous that he did not communicate with other department heads. He said that he had daily communications with many department heads. Mr. Mitchell said that he spoke with Anne M. Irons, the Town Clerk on a daily basis. He said that he spoke with Chief Robert E. Coyne of the Police Department at least on a weekly basis when it came to payroll or Lt. Rollinson. Mr. Mitchell noted that he saw Mr. Grant on a daily basis as Mr. Grant spends at least 60 to 70% of his day sitting with the tax collector chit chatting in his department. Mr. Mitchell said that Mr. Grant had access to any report that he needed. Mr. Mitchell said that if Mr. Grant didn't get the report that he requested he was told that he would get it to him within 24 hours because he had adjustments to make. Jonathan Mitchell said that anytime he had to get reports to department heads he would always indicate that they would get it within 24 hours or that he was updating accounts and he wanted to give them a more accurate picture. Mr. Mitchell said that he communicated with the recreation director on a bi-weekly or even through emails. Mr. Mitchell remarked that to say he did not communicate with department heads was ludicrous.

Jonathan Mitchell explained how the payroll system works that each department submits a report, either time sheets, time cards. He noted that each department had its own separate way of doing so. Mr. Mitchell noted that he received the information on a Monday and he would review and prepare on a separate sheet of paper and he would then call it in on a Tuesday morning. Mr. Mitchell noted that it was antiquated. He said that he wanted to upgrade the system and he was not happy with Paychex and to say they only made two errors does not make sense since as he has documentation with him. Mr. Mitchell said that he wanted to automate the system and he did get support from every department that he spoke with that was affected by payroll in doing so. Jonathan Mitchell said he wanted it set up that there was a computer based system where the employees could go in and look at their time and approve it, the department head would look at it and approve it and then come to him and he would approve it and send it to a payroll service. Mr. Mitchell said that he received a lot of resistance on it and he was told it was because he was doing it to conceal his own payroll errors. Mr. Mitchell remarked that when he came to the job he thought he was to improve things and set policies for his department. Mr. Mitchell said he did make payroll errors but there were also errors by department heads and Paychex which he has documentation on both.

Mr. Mitchell remarked that it depended upon what you define as an error because when Lt. Rollinson received \$1732 instead of \$132.00 Paychex did admit that it was an error. However, they did not admit it was an error when they calculated using the wrong rates and the town does not provide interest with the rates when the checks are called in. He gave an example of how it was called in to Paychex. Mr. Mitchell noted that Paychex uses the certain rates that they have and the mistakes were they may have used a time and a half rate instead of an overtime rate. Mr. Mitchell noted that he does have them documented. He also noted that Paychex does not consider them errors however; he said he did consider them as Paychex errors as they have all the rates. Mr. Mitchell said that he only called in the hours and that was why he wanted to automate the system and get rid of the human error both on his level, department head and Paychex level.

Jonathan Mitchell said that he did not conceal any payroll errors and that was absolutely incorrect. Mr. Mitchell said that what Lt. Rollinson said in his testimony was correct. Jonathan Mitchell said the reason he told Lt. Rollinson not to tell anybody was that the Lt. had previously called his department to talk with him on a payroll error and he spoke with the tax collector who he already said he

has significant problems with. Mr. Mitchell noted that the Lt. told the tax collector that he had payroll problems and when the Lt. came in he said to him that the best way to handle it when there is a problem to come to him directly and not to leave a message for everybody to see as they were personnel issues and issues that have to be discussed on a personnel bases and not to get the deputy treasurer or the tax collector involved. Mr. Mitchell said that the Lt. did ask him at that time if he could tell the Chief and he told him of course that was ok that was not his point to conceal it from the Chief it was that he should be very discreet in who he discusses the issue with. Jonathan Mitchell noted that he was also the Director of Human Resources for the Town and not just the Town Treasurer and he deals with matters that are very sensitive and he considered that a sensitive issue.

Jonathan Mitchell remarked that the ING account affected 4 employees in the town. He noted that he had two meetings with Anthony Terversa, the agent for ING. He noted that there was some discussion about a Justin from ING who called him in August and he remembers the message because the Tax Collector took the message and that is the only way anybody could have found out about it is that the tax collector revealed it. Jonathan Mitchell remarked that the message was an introductory call to say Hi and to give him an update that payments had not been made since April and that he would put him in touch with somebody to help get the process going. Mr. Mitchell also said that he had called him because a check had been sent to the Town by ING and he did not know how to apply it because there was no indication why the check was received from ING. Mr. Mitchell stated that he had two meetings with Tony Terversa after that. Mr. Mitchell also mentioned that the state pension was out of wack and because people were retiring from that system that was the priority. He said that the ING account affected 4 employees and he knew what was being collected from them and the employees knew of the situation he was in and knew he was going to correct it. He said that on January 18th he started to log on the system and was putting the dollar amounts in. Mr. Mitchell said that he was going to put them in the next warrant for the February 9th. He noted that no payments were made since April and the interim treasurer did not make any payments either. He said it was not that much of a priority for anyone else and when it became a priority for him he started to address in on January 18th and was terminated on January 25, 2006.

Jonathan Mitchell said he laughs when he hears that the deputy treasurer was not included in the meetings with the auditor. Mr. Mitchell noted that the auditors came in for a two week period and sat in the conference room. Mr. Mitchell noted that for two weeks he was bouncing back and forth with the auditors and getting the town's work done. He said that there were no patricianly set up meetings to sit down. Mr. Mitchell said the auditor would say I need a list of these things and he got them for him and that was the extent of the meetings with the auditor. Mr. Mitchell also noted that the IRS was also auditing the town and that is something you do not want to ignore or put on the bottom of your priority list. Mr. Mitchell said that Lisa was working on that audit because she had a CPA and masters in taxation. Mr. Mitchell noted that the first meeting with the IRS audit was in April and understandably it went by the wayside as the interim treasurer was unable to take care of that audit. Mr. Mitchell noted that he met with Phyllis Burnside from the IRS in August with Jeff Wadovick, the Auditor before Lisa was hired. He said that after Lisa was hired he asked her to work on that audit because she told him that she had worked on IRS audits before. Mr. Mitchell said that when he said he wanted the Auditor to attend the meeting Lisa answered that she was a CPA and she has done many more than he has and she did not need him there. Mr. Mitchell said that he did want the auditor at the meeting as there would have been fines.

Mr. Mitchell said he did not know what it meant that he did not have knowledge about IRS forms and why it was grounds for his termination he had no clue. Mr. Mitchell said that the deputy treasurer was a CPA and if he had any questions on any forms whether it was W-9's, W-2's, W-4's or 5498's he could have asked her and to say he doesn't know any does not make sense to him.

Bradford Gorham asked Mr. Mitchell if he remembered that at the interview he was told that he would be on his own and would not have a staff.

Mr. Mitchell answered that he was told that he would be able to hire a deputy treasurer.

Mr. Gorham also asked if he was told that there would be a probationary period for six months. Mr. Mitchell answered yes. Mr. Gorham asked Mr. Mitchell if he was aware in August that no remittance of the deductions from the employees pay have been sent in to ING. Mr. Mitchell answered yes. Mr. Gorham said he didn't think it was a very complicated thing to see what was held from the employee's pay and send it on to the pension plan. Mr. Mitchell answered that it was not complicated but there was a matter of priorities at the time. He said that Chief Gawel was retiring and if the state pension was not updated he would not have been able to retire. He noted that that took a lot of time that the Deputy Treasurer would allude to and there was other town business to catch up on. Mr. Gorham said that compiling how much has been withheld from the pay and sending it on could not be more than 5 to 10 minutes work. Mr. Mitchell answered that it was a little more than that as you also have to prepare the warrants and the purchase orders. Mr. Gorham said maybe 15 minutes. Mr. Mitchell answered that no it would be a little more than that. Mr. Gorham then said 20. Mr. Mitchell said that if you have 100 projects that take 15 minutes you have to prioritize and that was what he did. Mr. Gorham asked if he had 100 projects. Mr. Mitchell answered that he had projects every day and he did not sit there and twiddle his thumbs. Mr. Gorham remarked that he didn't remit the money. Jonathan Mitchell answered no he did not. Mr. Gorham said that because the money was not forwarded for investment the town will have to make up the investment earnings on those accounts. Mr. Mitchell said he would like to see that because he was not aware of that because they were variable accounts that were invested into and was not aware of any law that says that. Mr. Gorham asked Mr. Mitchell if he understood that if the money was in the hands of ING it would have been earning interests or dividends or something like that. Mr. Mitchell answered or losing money as it depending upon the market.

Bradford Gorham asked Mr. Mitchell why he didn't ask him when he had the problems with Mrs. Irons pay. Jonathan Mitchell said that he did not know where to turn at that point. He said that when he spoke with Mr. Bellucci and to Mrs. Rogers about it he did.....Bradford Gorham said he would have told him that he had to pay her. Mr. Mitchell commented that it was 20 20 hindsight. Mr. Gorham answered no it wasn't it was exactly what the labor laws require and I would have given you an opinion like that. Mr. Gorham commented to him that he did not ask him, you asked several other people but not him. Mr. Mitchell answered no he did not and that he asked his own attorney and he had a discussion with Mr. Bevilacqua, who was representing Mrs. Irons at that time.

Bradford Gorham commented that Mr. Mitchell talked about members of the town council going to Ms. Mills's establishment and asked how did he know about that. Jonathan Mitchell answered that even Ms. Mills had told him that they did that. Mr. Gorham said to him that you said it bothered you that people would go to her establishment and why would that bother you. He then asked if he went there. Mr. Mitchell said no but he had wanted to go to check the place out. He said that at that point in time he felt very uncomfortable. Mr. Mitchell noted that Mr. Berkowitz did not care for him and wanted him out of the position because he wanted somebody of his own liking and that was told to him by Mr. Bellucci and by Mrs. Rogers. Mr. Mitchell said that they had a discussion with Mr. Berkowitz and said to him that he has to get over that. Mr. Mitchell said that he feared political retribution and that is exactly what he got. Bradford Gorham asked if he feared political retribution by Mr. Berkowitz. Mr. Mitchell answered yes and some of the other members of the council absolutely. Mr. Gorham commented that Mr. Mitchell said it was her responsibility to do the W-9's form. Mr. Mitchell answered that he did not say the W-9 forms. Mr. Gorham then asked if he knew

what the W-9's form was. Mr. Mitchell answered that he did not say anything about the W-9 form.

Attorney Carroll said that he did not testify that, he testified that she took it upon herself to do the W-9 forms and that it was not something he directed her to do.

Bradford Gorham asked what the W-9 forms were. Attorney Carroll answered that Ms. Mills already testified to the W-9 forms being something that has to be given to a vendor over \$600.

Mr. Mitchell answered that a W-9 form was issued to a business or a corporation or any body that you do business with to verify the social security or the tax id number.

Mr. Gorham asked if that was what she was doing. Mr. Mitchell answered that W-9 forms have to be sent out to every vendor that the town does business with.

Mr. Gorham remarked that she was actually doing the 1099 in January. Mr. Mitchell answered that he did not know as she did her own thing.

Mr. Gorham commented that Jonathan Mitchell said he was warned before he started about people who would be difficult for him and asked who warned him. Mr. Mitchell answered that he could not count on two hands. He said that he does not live to far and word gets around about Foster and the how difficult it was to work here. He said it was given to the fact that so many people were not reappointed when the new council came in and given to the fact there are a lot of inter relationships that it would be a very difficult place to work and party lines are right there. He said and you work in town hall you have democrats on one side and republicans on the other side and that is the way it is. He said that he heard it from so many people. Mr. Gorham asked him to give him a name. Mr. Mitchell answered that some people he went to church with and it was a well known thing. Mr. Gorham said that was not a name but he would let it pass. Jonathan Mitchell said his own Dad, Reverend Bob Mitchell he read it in the papers. Jonathan Mitchell said a lot of people told him not to work here as they read the papers. Mr. Gorham asked him why he took the job then.

Attorney Carroll objected.

Bradford Gorham mentioned that Malcolm Moore reconciled the bank statements to June 30th. Mr. Mitchell answered that it was Malcolm and his staff. Mr. Gorham asked then after that he did nothing about them. Jonathan Mitchell said he did not reconcile them but he had put in the transactions up until October into the system making sure that cash receipts and other things that needed to get into the system were in there. Jonathan Mitchell said that he had scheduled a meeting with Malcolm Moore for the 24th of January to work on doing those statements and not at tax payers expense but because he was a confidant of his, a friend of his and a professional. Mr. Gorham said so you had done anything to get them reconcile since the end of the audit through July 1 up to January 24th. Mr. Mitchell noted that the audit was finished in December and he couldn't actually reconcile from July 1 until the audit was done and the audit was concluded in November-December and that was about a month and half ago. Mr. Gorham questioned why he could not reconcile the statements until the audit was done. Mr. Mitchell answered that it was like balancing any checkbook as you need a beginning date and a start date to reconcile. Jonathan Mitchell said that he was not going to reconcile any statements when he had no idea if the statements in the prior months balanced. Mr. Gorham answered that he had to go back and reconcile. Jonathan Mitchell remarked that Malcolm Moore was hired to do that. Mr. Gorham then said then you didn't do it after he did. Jonathan Mitchell answered that no because the audit was not finished until November-December. Mr. Gorham believed that he gave him a starting point if he reconciled them. Mr. Mitchell answered that he did do it for the purpose of the audit and when the audit was finished that would have given him the starting point on June 30th to make sure the books were up to

date. Mr. Mitchell noted that he had not been there since then and they were an absolutely mess before he got here. Mr. Gorham said he had to get this straight and it was Malcolm Moore that brought them up to what date. Mr. Mitchell answered that it was up until June 30th and that was finished in November. Mr. Gorham answered that in November Mr. Mitchell did have a starting point. Mr. Mitchell said that he choose to wait until the audit was finished and that was November-December. Mr. Gorham then said that he had a starting point then. Mr. Mitchell answered yes about a month and half from then.

Mr. Gorham noted that Jonathan Mitchell had problems with the tax collector and asked if he had made the town council aware of that. Mr. Mitchell answered that he let each member aware of that but he did not bring it to the town council officially because he feared political retribution. Mr. Gorham asked who he talked to. Mr. Mitchell said he spoke with Mrs. Matarese, Mr. Shippee, Mrs. Rogers, and Mr. Bellucci and Mr. Berkowitz knew through a phone conversation. Mr. Gorham asked Mr. Mitchell that he told each one of them that he had a problem with the tax collector individually you called them up on the phone. Mr. Mitchell answered absolutely or they visited him in person and Mr. Bellucci said to him that he had had problems with her previously ten years ago when she worked with the town and he was not going to go through with it again and that is the truth. Mr. Gorham answered he hoped it was because he was under oath.

Bradford Gorham questioned how many errors Paychex had with the Town of Foster over the years. Mr. Mitchell said he did find that the interim treasurer had two errors with Paychex. Mr. Gorham questioned how may errors there had been over the past 11 years. Mr. Mitchell answered that he did not work for the town so he did not know. Mr. Gorham asked Mr. Mitchell if he had reported all the errors to Paychex that Lt. Rollinson had mentioned. Jonathan Mitchell answered that he did not report every single one but he did make them aware of certain errors. Mr. Mitchell remarked that the error with Lt. Rollinson Paychex considered it an error when they pay someone a different rate they do not consider that an error. Mr. Gorham asked who provided the rates. Mr. Mitchell said that he did not provide the rates after 6-30. Mr. Gorham asked if he provided the rates at anytime. Mr. Mitchell answered no as they already had them. Mr. Gorham asked if they were incorrect rates. Jonathan Mitchell said that instead of paying someone overtime rate they may pay them time and half instead. Mr. Gorham questioned what the overtime rate was. Jonathan Mitchell answered that it depended upon the individual. Mr. Mitchell explained that there was overtime, double time there is all...Mr. Gorham remarked that some people don't get overtime two times there pay on a Friday just because they worked all work. Jonathan Mitchell explained that there were grants and then worked regular time and maybe shift overtime and they are all paid differently. Mr. Gorham again asked who provided them. Mr. Mitchell answered that they were already in their system and they all change once a year. Mr. Gorham remarked that if he saw that the rates were incorrectly applied what did you do with Paychex. Jonathan Mitchell answered that he notified them. Mr. Gorham answered that the rates were wrong. Jonathan Mitchell answered yes that they were using the wrong rate. Mr. Gorham questioned what did they say. Jonathan Mitchell remarked that he was told that they would correct it with the next pay check. Mr. Gorham asked when was that. Jonathan Mitchell answered he did not know but he does have documentation.

Attorney Carroll noted that there was at least 30 to 40 documentation of errors and they can go over every single error on every single person and will be able to determine whose fault it was. She noted that they can show if it was department head error, Paychex error and some where it was Mr. Mitchell's error. She asked William Bernstein if he wanted to take all that time, they were more than willing to do it. Ms. Carroll said that she purposely did not ask Mr. Mitchell in direct as they were told to move along.

Mr. Gorham said that he was just acquiring when he told Paychex that they had the wrong rates. Mr. Bernstein commented that if Mr. Gorham wanted to go through all that information that was fine. Mr. Bernstein stated he thought the hearing

should be cut off after Mr. Mitchell's cross examination and then redirect and pick another time to reconvene as he knew there was another meeting with the council. He said he wanted everybody to be fresh to be able to give the testimony that is deserved. Mr. Bernstein said that everyone should think about when to reconvene after this testimony.

Mr. Gorham said he just asked one question of when he notified them that they were using the wrong rate. Jonathan Mitchell said that they would have been notified at the point when it was discovered the wrong rates were used. Mr. Gorham again asked when. Mr. Mitchell answered that it depended upon the pay period, the payroll and he could say September 30, October 1 it happened more than once. Mr. Gorham asked if they used the wrong rates every two weeks or so. Jonathan Mitchell answered no not every two weeks there were times....Mr. Gorham asked when did he tell them that they were using the wrong rates. Jonathan Mitchell answered when he talked with them on the phone. Mr. Gorham asked when that was. Jonathan Mitchell remarked that he talked with them every week. Mr. Gorham said to him then you told them every week that they used the wrong rate. Jonathan Mitchell answered no no.

Mr. Bernstein said it looks like we are having trouble answering the question because it is not specific enough to identify a specific error for each employee pay check and then he could answer the question as to the source of the error because there is too much information for him to go through on an open-ended basis.

Mr. Gorham noted that he stated before that they were using the wrong overtime rate and when did you advise them of that.

Jonathan Mitchell answered that he would advise them when it was brought to his attention whether it was the next day and he would make note of it and when he called for the payroll the next time he would make sure that the individual that it affected the time was made up.

Mr. Gorham asked if it was corrected after he called and did he know what date that it was.

Attorney Carroll objected and said that Mr. Mitchell said every time there was an error he would notify them. Mr. Gorham said that he wanted a date but he does not have it.

Mr. Gorham asked why the expenditure reports that he gives to the town council and the department heads are town council are only at a 39% rate of the year rather than 66% of the year.

Jonathan Mitchell answered that he thought he explained that a few minutes ago. He noted that the issue resolves around the payroll because if you look at the officers' salaries or department salaries it should be around 66 or 67%. He said that the deputy treasurer was updating all that and then stopped in October. Mr. Mitchell said that when there were expenditure reports he did indicate to her that they had not been done. Mr. Mitchell noted that it was in the job description of the deputy treasurer. He said that as the head of the department he does delegate responsibilities and when he is given a task to do he does not just stop when he feels like stopping and not continue the job. Mr. Mitchell commented that there are certain responsibilities that need to be kept up and it is not a job where you just stop and do things that you feel like it because there is financial information that has to be updated.

Mr. Gorham questioned Mr. Mitchell if he knew she was not doing the job why didn't he do it. Mr. Mitchell noted that he had his own tasks to do and had plenty of other stuff to do. Mr. Gorham asked what tasks he did. Mr. Mitchell answered that he should look at his job description as he had plenty of tasks to do. Jonathan Mitchell answered that he had purchase orders and human resources issues took at

least 30 to 40% of his time, people went out on workers comp, people came to him and asked about benefits, hiring new employees and that is all things that the treasurer has to do. He also noted that purchase orders take a tremendous amount of time especially when certain department heads had chosen not to submit purchase orders correctly. Jonathan Mitchell noted that the finance department sets the rules that need to be followed for purchase orders for any financial procedure taking in the town. He noted that they are not followed correctly it does hold up the whole department.

Mr. Gorham asked what else was he responsible for. Jonathan Mitchell answered that he did purchase orders, payroll and 5 to 7 visitors showed up un announced who need information, department heads come over, go through the mail daily, apply checks, count all cash receipts and photocopy every single check that comes in including all the town clerk's receipts, enters purchase orders and other expenditures, keep in touch with department heads and during the audit he was responsible that everything was done for the audit. Jonathan Mitchell said that when you go through an audit you have to make sure the auditors get everything they need and you have no time for anything else. Mr. Mitchell went through a daily dairy he had listing people he had phone calls with. He said taxpayers come in, chair people of boards and commissions. Mr. Gorham asked who it was that came in.

Attorney Carroll objected and said that it was going far beyond and how much more.

Bradford Gorham said he was finished questioning Mr. Mitchell.

Attorney Carroll said that she had no redirect.

Mr. William Bernstein thought it was a good time to discuss when the next time they could reconvene. Mr. Gorham suggested finishing tonight. Heidi Rogers noted that the planning board would wait until all the council could get to the meeting. Mr. Bernstein asked Attorney Carroll how many more witnesses she had to call. Attorney Carroll answered that she had several more witnesses but she did not know what he wanted to do tonight. Mr. Gorham remarked that the question was did she think she could finish tonight. Ms. Carroll asked how long did she have. Mr. Bernstein noted that they had been going since 3:30 p.m. this afternoon with only a small break but if the council wished to move forward. A five minute break was taken.

Attorney Carroll noted that after speaking with her client she had only one more matter to present. She presented a letter from Darlene Weiss, interim treasurer. Mr. Gorham had no objection.

Steven Bellucci moved, Heidi Rogers seconded that the evidence having been heard and the reasons for removable have been sustained and the decision of the council of the treasurer being removed from office as of this date. Colette J. Matarese said she disagreed that all the evidence was sustained and that there is some doubt within the motion. She said that she has heard evidence on other areas and have heard many things that talk about a process that is wrong within the town. She said that she heard nothing that would justify a termination. Colette J. Matarese continued to say that she felt a termination would be if someone lacked qualifications, if they have a crime or moral turpitude or violated the charter. She said that she has heard none of that here. She remarked that what she did hear was miscommunication, lack of priority setting by the council, an overworked office, things that have not been done but things that have not been done since April of last year on and therefore could not vote.

William Bernstein remarked that there was one item of evidence that was processed, a letter from Paychex which he said he would make a ruling at the closing. He noted that the letter was not admissible, it was hearsay. He noted that the difference between the letter from the auditor was that the auditor was here and

available for cross examination on the letter he submitted. Mr. Bernstein noted that no one was here from Paychex to be cross examined on the contents of the letter. He again said the letter was inadmissible.

Mr. Gorham commented that he knew Mr. Berkowitz was not supposed to vote but he did want an indication on how he would vote if he was permitted.

Attorney Carroll said she already had objected on that. Mr. Bernstein said he already made a ruling on that and he believed that the council would openly expose themselves more by doing that and should abide by the ruling he made. Mr. Gorham said that the only reason he asked for that is the economy of hearings because it looks as the vote is heading for a tie and Mr. Berkowitz's vote would be important and if he is not permitted to record his vote then the whole hearing process has to be repeated. William Bernstein commented that he had not gotten to the rule of necessity and because of the earlier ruling he is not eligible to vote and there are still 4 council members that are eligible to vote in any action, affirmative action by the council under the charter requires three votes. Mr. Bernstein noted that there were 4 voting members and the motion requires 3 votes for passage. Mr. Gorham said he was not talking about the rule of necessity he was talking about the rule of judicial autonomy. Mr. Bernstein said he did not think that he should record a vote and that was his advice to the council. Heidi Rogers said that first the council hired Malcolm Moore to catch things up, hired an assistant and she understood when Mr. Mitchell was hired that the town would be moving forward and when 140 bank statements not reconciled is unacceptable and payments on pension plans not paid is unacceptable. She also said that when the town is now in the position to pay the interest that is lost to the individuals is unacceptable. Harold R. Shippee, Sr. commented that the council is blaming Mr. Mitchell on everything and he only became the treasurer in August. Mr. Shippee said that a lot of the stuff goes back to July and June to the last treasurer and he believed the council was blaming the wrong person because Jonathan Mitchell had a lot to catch up on. Heidi Rogers said she understood that but she believed that was why Malcolm Moore was hired and thought a lot of things went by the wayside and she did not think Mr. Mitchell was accepting responsibility for the things that have not been done but blaming the deputy for a large part of it. She said she believed that he was in charge of that department and she never heard from him that there was a problem with Ms. Mills's performance. She noted that she did hear about the tax collector and Mr. Grant but she was never made aware of any issues of the deputy's performance. Heidi Rogers said she understood that things went well and that they worked well together and it was never brought to her attention. Mrs. Rogers said that as the head of the department he had such insubordination the council should have been made aware of that and they were not aware of any insubordination problems with Ms Mills.

When Heidi Rogers asked for all those in favor Ralph Berkowitz did in fact yell out aye. Mr. Bernstein asked that it be stricken from the record.

The Town Clerk asked for a roll call vote and received the following votes:

Steven Bellucci aye Colette J. Matarese no, Heidi Rogers aye Harold R. Shippee, Sr. no

Attorney Carroll said the motion has failed. Bradford Gorham commented that it was a tie vote as the town charter requires 3 votes to pass any motions. William Bernstein then said the motion failed. Bradford Gorham said that an agreement had been made that pending the presentation to the court about Mr. Berkowitz status and availability to vote the council will continue Mr. Mitchell in his present status suspended with pay. Mr. Gorham then said for the town he will take it to Superior Court expeditiously to get a ruling on Mr. Berkowitz's ability to vote.

Attorney Carroll remarked that due to the fact that the motion has failed and due to the fact that Mr. Gorham has notified her that he intends to appeal the ruling on Mr. Berkowitz to Superior Court she had agreed to Mr. Gorham that Mr. Mitchell

will remain suspended with pay until it is worked through the court system. Mr. Gorham said he did not know how long they would be working through the court system so it was until further agreement or until the council decides whether he should go back into work as the treasurer. Mr. Gorham said that maybe Judge Fortunato would rule that Mr. Berkowitz can't vote and at that point they would be willing to say he goes back as treasurer.

William Bernstein remarked that that was not before the council now. He said that the status is that he assumes his status as it was prior to the hearing because the motion failed. He said however how the parties want to work out his status outside of the hearing is up to the parties.

The hearing was adjourned at 7:25 p.m.

Submitted by,

Anne M. Irons
Town Clerk

An electronic tape is made a part of the record for a complete account of the council meeting and a transcription can be purchased from Denise A. Webb of Allied Court Reporters, Inc. This tape is on file in the vault at town hall.