

**NOVEMBER 21, 2013
SPECIAL TOWN COUNCIL MEETING**

The November 21, 2013, Special Town Council Meeting was called to order by John L. Lewis, Jr., President of the Foster Town Council, at the Benjamin Eddy Building, Foster, Rhode Island, at 7:00 p.m.

The following members were present:
John L. Lewis, Jr., President
Pamela Fontaine, Vice President
Denise DiFranco, and
Neal C. Whitelaw.
Roger L. Hawes was excused.

Also present:
Renee M. Bevilacqua, Town Solicitor
Kelli Russ, Treasurer
Patricia Moreau, Tax Assessor
Town Clerk, Carol Sholly

I. PLEDGE OF ALLEGIANCE The Pledge of Allegiance was recited.

II. ANNOUNCEMENTS John L. Lewis, Jr. stated that the notice of the meeting was properly posted on the Secretary of State's web site.

Pamela Fontaine read the notice from the top of the agenda: *The Foster Town Council does not sanction any electronic audio/video recordings of Town Council Meetings made by the public. Any audio/video recordings made by the public are not public records under Title 38 Public Records.*

**III. NEW BUSINESS
Town Hall
Clerk's Position**

Town Council President, John L. Lewis, Jr. asked for a motion. Neal Whitelaw gave a brief history explaining that last July 1st one clerk was laid off and the Town Hall was down to two clerks and that seven to eight weeks ago a second clerk left for a new job which left us with one clerk and this meeting is to immediately recall the employee that was laid off to fill the position. Neal Whitelaw moved, Denise DiFranco seconded, to immediately recall the town hall clerk employee that was laid off July 1st. Discussion:

John L. Lewis, Jr. stated concerns that it was interesting that the meeting was called this week when Mr. Hawes is away on vacation and the Town Clerk is on medical leave. As Mr. Whitelaw said, the position has been vacant since September 1, so we've had approximately seven meetings and no one has asked to put this on the agenda, we wait till Mr. Hawes is on vacation and the clerk is on medical leave. It seems like a cowardly act to wait for this time so as not face the people who would be in opposition. John L. Lewis, Jr. stated that the Town Clerk is the individual who has the authority to determine the number of clerks in the Town Hall and that he would like to hear what she has to say. He asks the Town Clerk if she thinks the position is necessary.

Town Clerk, Carol Sholly, stated that no, she did not, not at all. Mrs. Sholly went on to say that she was familiar with the history that Mr. Whitelaw went through. She was evaluating those positions when one clerk was gone. She found that with two clerks that one was working to capacity and one was not. To her surprise another clerk left and we were down to one clerk. In her opinion she does not need another full time clerk. With one clerk working to capacity most likely everything would be done; however, upon completion of her evaluation she might determine that a part time clerk may be warranted.

Denise DiFranco asked why the council needed to vote in July to get rid of the clerk if we don't need to vote now. Neal Whitelaw said it was because of lack of work. Denise DiFranco said that it wasn't a lack of money issue. John L. Lewis, Jr. stated that they voted on whether to approve a budget. Denise DiFranco stated that she believed it was on lack of work. John L. Lewis, Jr. stated the vote was on whether or not to fund. Denise DiFranco stated she abstained because she wanted more information on what the lack of work was based on. John L. Lewis, Jr. stated that the Town Council voted on the budget. He stated that he voted to cut one-third of the clerk's budget, not on the amount of clerks.

John L. Lewis, Jr. read from Section 4.04 (e) of the Town Charter regarding the Town Clerk's responsibilities (see Exhibit A) and also Section 2.16 regarding the Town Employees (see Exhibit B) specifically that "no action shall be taken by the Town Council except with the written approval of that employee's department head." He asked if anyone at the table had written approval from the department head authorizing the appointment of this position.

**NOVEMBER 21, 2013
SPECIAL TOWN COUNCIL MEETING**

**Clerk's Position
cont.**

Neal Whitelaw stated that we hire policemen all the time without written permission from the police chief. John L. Lewis, Jr. stated that we do appoint the police officers, but I'm not reading from the police chief's responsibilities. Neal Whitelaw stated that the council hires and fires. John L. Lewis, Jr. stated that it is with the approval of the department head. Mr. Lewis further stated that he did not see written approval, just the opposite, and at this point any council action is premature to appoint. A position that's going to cost \$50,000 (salary and benefits) a year. Neal Whitelaw stated it would be \$34,000.

Mr. Whitelaw further stated that presently we're paying two people to do that job. One is collecting unemployment. They have hired someone on a full time basis to work for the town through a contractor. John L. Lewis, Jr. stated that if he had bothered to actually ask questions of the Town Clerk—and that he didn't believe Mr. Whitelaw had spoken to the Town Clerk at all, that he just went off to do what he wanted to do—that he would know that when the Town Clerk is on medical leave, the Deputy Town Clerk steps in, and a temporary person was hired to fill the Deputy's position, and that had nothing to do with what you're talking about. The temp is doing what the Deputy Clerk always does.

Pamela Fontaine stated that she didn't know any of this until this week. First of all she did not know who gives who authority to do anything. All of a sudden we have a temporary person. A full-time, not a part time, for two to three months. That being said, all of a sudden this week we have a temporary person in there, whatever, who gave the authority? It would have been nice to include all of us regardless of the situation. I've also gotten numerous phone calls about a person, I keep hearing a name. This is about a position, regardless of whether you like a person or not, you specifically did this to save money. You said that if we needed to readdress this and hire more people that we would. Now you have a vacancy, it's time to fill it.

John L. Lewis, Jr. it's time to study whether or not it's needed. The town clerk is not recommending it be filled at this time. Pamela Fontaine asked if they were going to wait another five weeks. John L. Lewis, Jr. stated that when the Town Clerk has completed her study, then it will be on the agenda. He further stated that from what he was hearing, these council members are saying we don't need to know what the department head wants, well let's just hire 15 more teachers then. We're just going to throw somebody in there and say "you need this". This body does not have the authority to override the authority of another elected official. You're trying to usurp the Town Clerk's authority and the Town Charter.

Pamela Fontaine asked then why do we have a contract with the clerks? Where does that come into play? We have a contract and in the contract it says to fill that position. You've had plenty of time to evaluate this. You've had seven weeks to evaluate this. John L. Lewis, Jr. stated the contract is there so that if there is a vacancy there is a process on how it is to be filled.

Pamela Fontaine asked then why don't we just close the Town Hall another day? John L. Lewis, Jr. stated that if that's a motion you want to make on a future agenda we can do that.

Neal Whitelaw stated that you cannot be taking work away from a clerk. The person who was hired sure sounded like a clerk to him. John L. Lewis, Jr. asked Mr. Whitelaw what he thought the Deputy Town Clerk does. Mr. Whitelaw replied, so you're telling me that this person is for the Deputy Town Clerk? Because this is clearly what the clerks do. John L. Lewis, Jr. stated that according to the Charter and by past practice the Deputy Town Clerk has been performing these duties since time immemorial as a non-union position. What Mr. Whitelaw is trying to do is say that this is a Union position. Mr. Lewis stated that he didn't know why Mr. Whitelaw would want it to be. It's not. It's what Deputy Town Clerk does every day, and what the Town Clerk does, too. Should we say we don't need them because only union people can answer the phone?

**Clerk's Position
cont.**

Pamela Fontaine asked why it (the temp position) wasn't advertised. She stated that we could have gotten somebody from town to do it part time. John L. Lewis, Jr. stated that the advantages are that if you have a part-time temp through an agency, you do not have an employee. What you have is a contractor coming in to do a job. No different than when the DPW brings in half a dozen snow plow drivers to do a job. They are not employees. They are subcontractors. There's no workmen's comp, no FICA all that is avoided. It is \$14 an hour and you don't own them. They come in, do the job, and they work for the temp agency. There are tremendous financial advantages to have it be a temporary individual and there are limited liability obligations. If you hire someone from town, they are on payroll and that includes all other expenses. Pamela Fontaine stated that you could have hired somebody part time temporary. Denise DiFranco asked if this person was working 35 hours a week. John L. Lewis, Jr. replied that the temp is not there 35 hours a week. And it has only been 4 days. How many total hours?

Deputy Town Clerk, Jane Christopher, stated that it has been 9 to 2, roughly 20 hours. Neal Whitelaw stated that the agreement says from 8:30 to 5:30 till at least December 5th. John L. Lewis, Jr. stated that in actuality it is as needed. That's not what's been needed. Why would you want to pay more? Neal Whitelaw said we're still paying unemployment for the laid-off clerk. So we're paying two people for the same job. John L. Lewis, Jr. no, you're paying someone as Deputy Town Clerk and we're obligated to pay for a laid off employee.

Town resident Lynne Rider stated that she has been going to meetings since 2002 and she has never seen the Town Council appoint any employee without the recommendation of the Department Head. The police chief has always come forward if they needed someone and the council would appoint. Same with DPW. She has never seen anyone appointed if they were not recommended. She thought that this is becoming deliberately murky, are we talking about a temporary person who sits at the Deputy Town Clerk's desk and answers the phone and does filing and does not type minutes or put packets together for other boards and commissions, who is solely there while Mrs. Sholly is out? Or are we talking about a Planning Clerk because the Planning Board has indicated a need for a part time person to help facilitate the planner? These are two separate things. I don't know why it has waited until now. What has suddenly brought this to the forefront? Because you all voted to ultimately to eliminate a position. John L. Lewis, Jr. stated that Mr. Whitelaw voted no.

Lynne Rider stated that the council voted to delete the position. So now we go to the end of August and nothing has been said up until this point. Nothing has been discussed about needs with this council. You people are not talking to each other; these are two entirely different scenarios. We are not getting the truth as to why this is happening now.

Denise DiFranco stated that the reason she wanted the meeting tonight was because this temporary, part-time employee says 8:30 - 5:30 at least until December 5th. To me that's a concern. John L. Lewis, Jr. stated that you aren't as concerned when Davies Tree is called in to cut down a tree.

Lynne Rider asked if the union position was temporary. Would the union allow someone for three weeks? Again you're mixing it up. The Deputy's vacancy is nothing about the union. Ms. Rider further stated that she did not know why they wanted to hire a full time person with benefits to fill a three week position.

John L. Lewis, Jr. stated that not once did any other council members call him and ask to have it on the agenda, and not once did anyone ask the Town Clerk about this position.

Cheryl Hawes stated that she wanted to go on record to say that she thought what they've done is despicable. She stated that they knew her father, Roger Hawes, was out of town and that they called this meeting at the last minute. It proves to her that there are two sides. This is only about while the Town Clerk was out on medical leave. She stated that she believed they have another agenda going on. She stated that she hoped there will be no action taken tonight.

**NOVEMBER 21, 2013
SPECIAL TOWN COUNCIL MEETING**

**Clerk's Position
cont.**

Neal Whitelaw stated that he did not know that Mr. Hawes was away. On the next agenda if Mr. Hawes wants to speak on the subject he is welcome. One part of this is that two people are being paid for one job, and the second part is that on Monday morning there was a grievance filed by the Union.

Ms. Hawes stated that it is not a Union position. She further stated that she works for a Union and that she is a Union person and she totally believes in filling Union positions with Union people. This is a temporary position. My father loves this town; he acts responsibly for what's good for this town.

Town resident Gordon Rogers stated that he understands that Mr. Whitelaw is confusing the position. He pointed out that the Town Clerk has the authority to set the hours. Even if the council does vote to bring her back, the Town Clerk has the authority to say "we don't need you today".

John L. Lewis, Jr. stated that he would actually recommend to the Town Clerk that if this council voted to force someone down her throat to set one clerk at 35 hours a week, the other clerk to zero. These council members are overstepping. They should wait for a recommendation, and then act on it.

Town resident Robert Salisbury stated that there is a Charter where everything is spelled out. The only way we can change the charter is to vote on it.

Lynne Rider stated that if this meeting came about because people were unhappy or didn't know what was going on at Town Hall, it should never have come to an open meeting. If this meeting is about hiring back a full time clerk to support the Planner or whoever, that should have been advertised as such and should have come with a recommendation from the Planner which may have been for part time. I don't know if the Union has a part time position, and full time doubles the cost. It has to go through the proper channels.

John L. Lewis, Jr. stated that he went to the Planning Board to find out what they needed. He stated that he reported this to the Town Clerk and Deputy Town Clerk to take into advisement. Mr. Whitelaw stated that there was a grievance but that it is not on the agenda and therefore cannot be discussed.

Denise DiFranco stated she had a copy of the contract and that the person requesting is Carol Sholly /Kelli Russ and has Ms. Russ's phone number and email. It also says to report to Jane Christopher. She asked why it had all of Kelli's information. John L. Lewis, Jr. replied that he was sure she knew the answer. Denise DiFranco stated that she did not and that was why she was asking. John L. Lewis, Jr. stated because the Treasurer is the Human Resources person. All those things are executed by Kelli Russ as it has been for all Treasurers. Kelli Russ explained the terms of the contract.

Atty. Renee Bevilacqua asked if the Temp Agency is paid directly. Ms. Russ explained that it was and that the fee would go on the warrant. Ms. Russ stated that she evaluated the request with the following criteria: 1) did it affect payroll? 2) was there money in the budget? 2) was it an excessive amount? She stated that for the amount of time the person was employed, it probably wouldn't exceed \$1,500. Those were the facts she took into consideration.

Pamela Fontaine stated that this happened last Thursday, November 14, 2013. She stated that it was not on that agenda. Nothing was ever said. A little heads up about changes in personnel would have been nice. She stated that she also heard there was a change in job descriptions. She said she was not happy with that at all and that now she was being told it's going to be on a warrant. She said she was glad so she will know what it's for. She said she thought it was a lack of communication with the whole council. We do pay the bills.

Denise DiFranco asked if Mr. Lewis knew about this on the 14th. John L. Lewis, Jr. said he did not. He knew about it on Friday. Neal Whitelaw stated his whole intention is to fill the vacant position created eight weeks ago. There are a lot of things that happen in town that people don't communicate and that he doesn't know until he gets his packet. John L. Lewis, Jr. stated that if there is something wanted on the agenda he will put it on.

**NOVEMBER 21, 2013
SPECIAL TOWN COUNCIL MEETING**

Clerk's Position cont. Lynne Ryder stated that a councilmember should never be blindsided by a meeting. Communicate with anyone at Town Hall.

Pamela Fontaine stated that this whole thing is a debacle, whether it be the Town Clerk or the Treasurer. It would be nice to contact the whole council, not after the fact.

Cheryl Hawes asked if it is the Town Clerk's responsibility to call each member, and she asked if any member can call the Town Clerk.

Treasurer Kelli Russ stated that she finds it confusing. It was a 3-week purchase, the money was there. She feels that she is getting contradicting guidance. Atty. Renee Bevilacqua stated that it could be an Executive Session item, but not for now. John L. Lewis, Jr. stated that he thought she was doing a fine job and that she just won the national award for Financial Accounting. There are some people up here who don't want the Treasurer to make decisions or the Town Clerk to make decisions.

John L. Lewis, Jr. asked if they were ready to vote even though they knew they were usurping the Town Clerk's authority and that this was in violation of the Town Charter and State law.

Atty. Renee Bevilacqua asked to have the motion repeated. Deputy Town Clerk Jane Christopher stated the motion was "to immediately recall the employee who was laid off". John L. Lewis, Jr. asked if the motion matched the agenda. Atty. Renee Bevilacqua stated that the standard would be if the description was specific enough to tell everyone exactly what the meeting is about.

John L. Lewis, Jr. asked that Mr. Whitelaw recuse from the vote. Mr. Lewis stated that this was a Union position and that he had it on good authority that Mr. Whitelaw is taking money from the union. Mr. Whitelaw stated that he would have to see it in writing and asked if Mr. Lewis had a check written out to "Neal Whitelaw". John L. Lewis, Jr. replied that he should then bring forward that evidence and read from an October 9, 2012, summary of campaign activity report from Neal Whitelaw, which on page 4 listed a check from the RI Laborers Union. Neal Whitelaw stated that it was for campaign finance. John L. Lewis, Jr. noted that Mr. Whitelaw also had one from the Dispatchers Union. Mr. Lewis asked how Mr. Whitelaw could make unbiased decisions on union matters. Neal Whitelaw stated that these were campaign contributions and that if you looked at everyone's you might find a lot of things. John L. Lewis, Jr. asked Mr. Whitelaw again to recuse.

Mr. Rogers asked if Mr. Whitelaw was on the negotiations for the Dispatchers Union. John L. Lewis, Jr. said no, but that he is on the RI Laborers Union negotiating committee and that this may be called into question.

John L. Lewis, Jr. stated that the vote would be violating the Town Charter, violating the authority of the Town Clerk, and that there are ethical liabilities involved.

John L. Lewis, Jr., no; Pamela Fontaine, aye; Denise DiFranco, aye; and Neal Whitelaw, aye. Motion carried 3-1.

Neal Whitelaw moved, Pamela Fontaine seconded, to adjourn the meeting.

John L. Lewis, Jr., aye; Pamela Fontaine, aye; Denise DiFranco, aye; and Neal Whitelaw, aye. Motion carried 4-0.

XII ADJOURNMENT Meeting adjourned at 8:12 p.m.

A digital sound file is made a part of the record for a complete account of the council meeting.

Submitted by

Jane Christopher
Deputy Town Clerk