

TOWN COUNCIL SPECIAL MEETING
Jamestown Town Hall
Tuesday, November 14, 2023
2:00 P.M.

I. ROLL CALL

A special meeting of the Jamestown Town Council was held on November 14, 2023. Town Council Members present were as follows: Nancy A. Beye, Mary Meagher, Michael G. White, and Randy White. Erik Brine was absent

Also, in attendance: Town Administrator Edward A. Mello, Solicitor Peter Ruggiero, Finance Director Christina Collins, Public Works Director Michael Gray, Michael DeSisto, Esq. Kathleen Daniels, Esq., and Town Clerk Roberta Fagan.

II. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Town Council President Beye called the meeting of the Jamestown Town Council to order at 2:03 p.m. in the Jamestown Town Hall Rosamond A. Tefft Council Chambers at 93 Narragansett Avenue and led the Pledge of Allegiance.

A motion was made by Vice President Meagher with a second by Councilor M. White to convene as the Town Council Sitting as the Board of Water and Sewer. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; and Councilor R. White, Aye.

III. TOWN COUNCIL MOVES TO CONVENE AS THE BOARD OF WATER AND SEWER COMMISSIONERS

A motion was made by Vice President Meagher to move into Executive Session – Board of Water and Sewer Commissioners with a second by Councilor M. White. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; and Councilor R. White, Aye.

IV. EXECUTIVE SESSION- BOARD OF WATER AND SEWER COMMISSIONERS

The Town Council Sitting as the Board of Water and Sewer Commissioners may seek to enter into Executive Session and/or Open Session for review, discussion and/or potential action and/or vote on the following:

- A) Review, Discussion, and/or Action and/or Vote in Executive Session and/or Open Session pursuant to RIGL § 42-46-5(a) Subsection (2) Pending or Potential Litigation:
 - 1) CLP Trust-2016 v. Town of Jamestown Board of Water and Sewer Commissioners, et al, C.A. No. SU-2022-0268-M.P. (RHODE ISLAND SUPREME COURT)
 - 2) In Re: Appeal of CLP Trust-2016, by and through its Trustee, Joseph R. Paolino, Jr. from a decision of the Town of Jamestown Board of Water & Sewer Commissioners, R.I. Water Resources Board (October 18, 2022).

- 3) CLP Trust-2016 v. Jamestown et al, C.A. 22-cv-0339-JJM-LDA (R.I. Federal District Court for the District of Rhode Island).
- 4) Joseph R. Paolino, Trustee and CLP Trust – 2016 v. Christine Brochu C.A. No. NC-2023-0005.

V. THE BOARD OF WATER AND SEWER COMMISSIONERS ADJOURNS FROM THE EXECUTIVE SESSION AND ENTERS OPEN SESSION

A motion was made by Vice President Meagher to seal the minutes and adjourn from Executive Session- Board of Water and Sewer Commissioners with a second by Councilor M. White. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; and Councilor R. White, Aye.

A) Review of litigation matters, Discussion of risk and liability assessments, and/or Action and/or Vote regarding the following matters, including but not limited to settlement of all claims:

- 1) CLP Trust-2016 v. Town of Jamestown Board of Water and Sewer Commissioners, et al, C.A. NO. SU-2022-0268-M.P. (RHODE ISLAND SUPREME COURT)
- 2) In Re: Appeal of CLP Trust-2016, by and through its Trustee, Joseph R. Paolino, Jr. from a decision of the Town of Jamestown Board of Water & Sewer Commissioners, R.I. Water Resources Board (October 18, 2022).
- 3) CLP Trust-2016 v. Jamestown et al, C.A. 22-cv-0339-JJM-LDA (R.I. Federal District Court for the District of Rhode Island).
- 4) Joseph R. Paolino, Trustee and CLP Trust – 2016 v. Christine Brochu C.A. No. NC-2023-0005.

Michael Desisto, Esq., Interlocal Trust, addressed the Board of Water and Sewer Commissioners summarizing the proposed settlement agreement(s):

- (1) CLP Trust-2016 v. Town of Jamestown Board of Water and Sewer Commissioners, et al, C.A. NO. SU-2022-0268-M.P. (RHODE ISLAND SUPREME COURT)
- (2) In Re: Appeal of CLP Trust-2016, by and through its Trustee, Joseph R. Paolino, Jr. from a decision of the Town of Jamestown Board of Water & Sewer Commissioners, R.I. Water Resources Board (October 18, 2022).
- (3) CLP Trust-2016 v. Jamestown et al, C.A. 22-cv-0339-JJM-LDA (R.I. Federal District Court for the District of Rhode Island).
- (4) Joseph R. Paolino, Trustee and CLP Trust – 2016 v. Christine Brochu C.A. No. NC-2023-0005.

Michael Desisto, Esq. Interlocal Trust requested the Town of Jamestown Board of Water and Sewer Commissioners to (1) approve the application for municipal water line extension for East Shore Road and (2) authorize Nancy Beye to sign the settlement agreement of all claims.

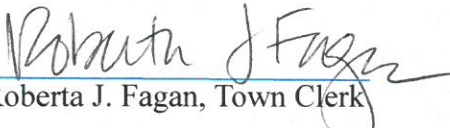
A motion was made by Vice President Meagher with a second by Councilor M. White to approve the application for municipal water line extension for East Shore Road and (2) authorize Nancy Beye to sign the settlement agreement of all claims. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; and Councilor R. White, Aye.

President Beye read the statement of the Board of Water and Sewer Commissioners regarding a settlement between CLP Trust-2016 v Town of Jamestown Board of Water and Sewer Commissioners. (attached)

VI. ADJOURNMENT

A motion was made by Vice President Meagher with a second by Councilor M. White to adjourn at 3:48 p.m. Vote: President Beye, Aye; Vice President Meagher, Aye; Councilor M. White, Aye; and Councilor R. White, Aye.

Attest:


Roberta J. Fagan, Town Clerk

STATEMENT OF BOARD OF WATER AND SEWER COMMISSIONERS REGARDING SETTLEMENT

In May of 2021, the owner of 68 East Shore Road filed an application to the Jamestown Board of Water and Sewer Commissioners (the Board) requesting that the municipal water main be extended to her house. The Board voted to deny the applicant's request following a hearing in June 2021. The Board filed a written decision reflecting its denial of the request on October 18, 2021.

In March of 2022, an amendment to RI General Laws §46-15-2: An Act Relating to Waters and Navigation-Water Resources Management was put before the General Assembly. The explanation provided by legislative counsel states: "This act would provide the standards for reviewing applications for plans or work for the extension of supply or distribution mains or pipes. This act would also add an appeal of a denial by a public water supply facility pursuant to the administrative procedures act §42-35-15." It was passed by the RI House on May 26, by the RI Senate on June 7 and signed by the Governor on June 15, 2022.

On June 30, 2022, the owner of 68 East Shore Road re-applied to the Board for the same relief, offering essentially the same facts as had been advanced in the first application. The Board declined to hear the new application, relying on the concept of "administrative finality."

The applicant thereafter brought the following legal actions challenging the Board's decisions denying her requests:

1. **A petition for review by the Rhode Island Supreme Court** (entitled CLP Trust 2016 v. Town of Jamestown Board of Water and Sewer Commissioners CA No. SU 2022-0268 MP, Rhode Island Supreme Court.)
2. **A civil complaint in the United States District Court for the District of Rhode Island** (entitled CLP Trust-2016 v. Town of Jamestown et al. CA 22-CV-0331-JJM-LDA, Rhode Island Federal District Court for the District of Rhode Island.) The Federal case lists as defendants the Board of Water and Sewer Commissioners in both their official and individual capacities as well as Jamestown's Financial Director, Christina Collins.
3. **An appeal to the Rhode Island Water Resources Board** (entitled In re: Appeal of CLP Trust 2016 by and through its Trustee, Joseph R. Paolino, Jr. from Decision.)
4. **An action against Jamestown's Tax Assessor** (entitled Joseph R. Paolino, Jr, Trustee, and CLP Trust 2016 v. Christine Brochu, NC-2023-0005 in Newport Superior Court.)

The Board and the Commissioners have been represented by both Peter Ruggiero, Esq. as well as legal counsel for the Interlocal Trust, Michael DeSisto, Esq. and Kathleen Daniels, Esq. Our lawyers have periodically provided the Board with developments, insights, and frank legal advice as these cases have progressed in their respective jurisdictions. The Rhode Island Supreme Court agreed to hear the applicant's challenge to the Board's decisions, and arguments were expected in the relatively near future. The exchange of discovery had been ongoing in the case in Federal District Court.

We recognize that the newly revised §46-15-2 of the Rhode Island General Laws, has the potential to have a material impact on the Board's decisions in this matter. Included in amended §46-15-2 RIGL are standards by which applications for plans for the extension of supply or distribution mains are to be

reviewed. The property owner in this matter contends that the new provisions of §46-15-2 entitles them to an extension of water service.

The amended provisions of 46-15-2 RIGL did not exist when the Board heard and decided the merits of the 2021 request. The Commissioners wholeheartedly believe, as does our legal counsel, that the Board's decision to deny this water service extension was sound, prudent, and sustainable on its own. After conferring with legal counsel, the Board has realized that the introduction of this untested new general law into the mix of considerations for judicial review in the pending cases creates legal uncertainty and potentially significant liability risk to the sustainability of our decision. The financial risk is significant- possibly in the millions of dollars. Even if the Commission is ultimately successful, the financial costs of defending our actions and litigating issues related to the interpretation of the new statute would be similarly significant. Either way, the water system users would have to bear these costs.

Under these circumstances, this Board is faced with a classic Hobson's choice, which Merriam-Webster defines as either "an apparently free choice when there is no real alternative" or "the necessity of accepting one of two or more equally objectionable alternatives". The Board's "choice" is either to continue to litigate the matter, which we are told by our legal counsel involves risk and financial liability or settle the matter and allow the water extension. The Board has a fiduciary duty to our water users. A decision to further litigate this matter would be legally perilous in this uncertain legal landscape, and the Board has therefore made the difficult decision to settle this case, which we have determined to be in the best interests of the water system and its users.

The Board is now in the process of rewriting our state mandated Water Management Plan . We will now act to review and amend our local water service rules and regulations, clarify the limits of the water district and the processes by which service is granted . The Board will also seek to improve the flawed newly amended general law to prevent intrusion into the affairs of our Town's water system by the state.