

**CAPE COD REGIONAL GOVERNMENT - ASSEMBLY OF DELEGATES
CHAMBER OF THE ASSEMBLY OF DELEGATES
FIRST DISTRICT COURTHOUSE
ROUTE 6A, BARNSTABLE, MA 02630**

APPROVED Journal of Proceedings - September 21, 2016

Speaker BERGSTROM: Good afternoon. Welcome to the Wednesday, September 21st session of the Cape Cod Regional Government, Assembly of Delegates.

Is this meeting being recorded by anyone other than our recording units? No.

Okay.

In that case, I'll call the meeting to order. We will begin with a moment of silence to honor our troops who have died in service to our country and all those serving our country in the Armed Forces.

(Moment of silence.)

Speaker BERGSTROM: Thank you. We will now stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

Speaker BERGSTROM: The Clerk will call the roll.

Roll Call (73.78%): Ronald Bergstrom (2.84% - Chatham), Lilli-Ann Green - (1.27% - Wellfleet), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Edward Lewis (4.55% -Brewster), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), Edward McManus (5.67% - Harwich), Brian O'Malley (1.36% - Provincetown), Patrick Princi (20.92% - Barnstable - @ 4:05 p.m.), Linda Zuern (9.15% - Bourne) .

Absent for Roll Call - Arrived Late (26.22%): Christopher Kanaga (2.73% - Orleans - 4:05 p.m.), Teresa Martin (2.30% -Eastham - 4:05 p.m.), John Ohman (6.58% - Dennis - 4:10 p.m.), Julia Taylor (14.61%- Falmouth - 4:10 p.m.).

Left early: Ronald Bergstrom (2.84% - Chatham - 6:00 p.m.), Marcia King (6.49% - Mashpee - 5:55 p.m.), Julia Taylor (14.61%- Falmouth - 5:55 p.m.).

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 73.78 percent of the Delegates present; 26.22 percent absent.

Speaker BERGSTROM: Thank you. You should have in front of you today's Calendar of Business. Any additions or corrections to the calendar?

Ms. MCAULIFFE: Move the Calendar.

Ms. KING: Second.

Speaker BERGSTROM: Okay. All those in favor?

The DELEGATES: Aye. Opposed?

(Motion carried.)

Speaker BERGSTROM: Okay. Now we'll move on to the Journal of September 7th. Any additions or corrections to the Journal?

Hearing none.

Mr. O'MALLEY: Move approval.

Speaker BERGSTROM: You're on. Okay.

Mr. LEWIS: Second.

Speaker BERGSTROM: Moved and seconded. All those in favor? Aye.

Opposed?

Ms. ZUERN: One abstention.

Speaker BERGSTROM: One abstention. Okay.

(Motion carried.)

Communications from the Board of Regional Commissioners

Speaker BERGSTROM: We now have our favorite part of the agenda, which is the Communications from the Board of Regional Commissioners.

Commissioner FLYNN: Wow. Well, thank you. You just made my day. I'm relevant, huh, perhaps? Let's see, today we only had a couple of issues today.

You know, our Resource Development Office really does some good things. They not only work with grants but they do a whole lot to get grants. And recently, Bobbi Moritz was down in Washington, DC, at a grantsmanship training session. And, apparently, these are put on by a local nonprofit group. They're not put on by the government. But because the grants are so important to us because, you know, our finances are limited. I mean in terms of how we can raise additional funds. But one of the things we can do is work with grants, acquire grants, and also give grants at the same time. So the resource development, I think, office does a great job with this. So she spoke to us about her recent meeting in DC and what they were able to learn from grants and how that whole grant sector of the economy continues to grow.

Then we also heard from Sean O'Brien. He was reporting mostly for George Heufelder who was not there today. They received a grant from the Southern New England Estuary Protection which helps them research nonproprietary ways to remove nitrogen on the on-site septic systems.

There's a thrust of wastewater management now is really, I think, moving away from large wastewater treatment plants to how wastewater can be better handled and managed on-site. And that seems to be the thrust of where this is going.

Anyway, our staff is really working on that and seeing how we can, as a County, begin to work with the Commission staff as well and see if we can't find more ways to help homeowners and businesses alike to find ways to improve the way they handled their wastewater.

And Leo.

Commissioner CAKOUNES: Thank you. We did a couple of other things in our general Commissioners' actions, naturally approving minutes. Just an FYI, there was a request from the Massachusetts State Police Wives Association. They want to place some blue ribbons. They asked if we -- we only have control of the courthouse property, which lines Main Street, so I think they're going to also be making a presentation and a request to the Barnstable Village Association. But we did give them an approval to put some ribbons out on the courthouse lawn and left it up to the direction of our facilities director. Obviously, we don't want them tied to the statues that are out there, but somehow displayed in some type of manner or fashion which is going to be okay with the Village Association.

We also approved a Resolution, and it is a customary resolution for those of you, Assembly members, that have been here for a while.

You've probably been waiting with bated breath for this one. Basically, when we do the FY17 budget, we have budgeted about \$50,000-plus dollars in the RDO account, and we wait until the new administration starts with the AmeriCorps, and then we allocate that \$50,000 to a resolution. So, with that, I will hand that in, once I get up, to the Clerk. That will be for your review and approval. Again, it's a pretty customary resolution and most of you have seen it before.

Summary of actions; there were just some simple things that we approved. There really wasn't too much. Probably the biggest one which you should all be probably very happy about -- I hope anyhow.

We did sign the construction agreement for the new dredge. So we now have an agreement on -- we went out for an RFP. We went through those and found a responsive person who won the bid, if you will, and that contract has been signed today. So if everything is going to go well, we can expect the new dredge to be online in 300 days from now.

I did have a discussion with our dredge, Wayne, our dredge operator, and he's probably going to be looking maybe as soon as January when he looks forward into the dredging season about possibly putting this new dredge to work. So hopefully that will - - hopefully the manufacturer will meet all the contract requirements, and we will have our new dredge in 300 days.

Another thing that I, if I may, we, as you know, meet weekly; you guys meet biweekly. So we do have -- I should probably give you a little status on September 14th meeting, which I have not or we have not been in front of you since then.

Basically, it was a pretty cut and dry meeting. There was some small agenda items that needed to happen and some things that needed to be corrected, dissolving of betterments and things like that.

But probably the biggest thing on the agenda, which I see is on your agenda for later on today, I requested a status update, an agreement between the Barnstable County and the Cape Light Compact, and I was looking for some information/guidance, if you will, from my fellow Commissioners. So that was a nice lengthy discussion which ended in a motion to authorize, if you will, our Administrator and Town Counsel to continue working with the Barnstable, I'm sorry, Cape Light Compact and try to bring forward or bring back, I should say, to the Commissioners a resolve of that relationship.

And, basically, I think that's it.

Speaker BERGSTROM: Okay. We'll start with Brian.

Mr. O'MALLEY: If I could just inquire, Commissioner Cakounes; where is the new dredge being constructed?

Commissioner CAKOUNES: Maryland.

Mr. O'MALLEY: Maryland.

Commissioner CAKOUNES: I have the name of the company if --

Mr. O'MALLEY: I don't need to know that. I just wondered where they're building it.

Commissioner CAKOUNES: It's being constructed in Maryland and the ironic thing is, and I asked the question, so I want to tell you the answer. It's going to be delivered to possibly New Bedford/Fall River area because they are the largest dock and

where this will be able to be finally assembled, if you will. It's going to be delivered there by truck and then put together maybe three or four tractor-trailers will bring it and then they'll put it together, and then they'll actually launch it there. And then we will be taking possession of it once it's launched in that area and they have to bring it across from New Bedford to here.

I asked, you know, why wasn't it just brought up -- assembled down in Maryland and brought up by a barge or a tugboat? And I guess it's cost effective to do it that way. So they will be contracting with a harbor, if you will, in the New Bedford area.

Mr. O'MALLEY: Thank you.

Speaker BERGSTROM: Suzanne.

Ms. MCAULIFFE: I don't know if there's a simple answer to this, and I don't want to get into a lengthy discussion. We could discuss it in the future.

But in terms of grants, when you say everyone's good about getting grants, I think that's very great and very helpful but sometimes grants come with strings.

So what is the process for overseeing grant approval? Is it up to department heads? Do they come before Commissioners? I just know sometimes grants have some strings attached that you're not aware of.

Commissioner CAKOUNES: Excellent question. I'll answer it in twofolds. In the past, grants have been kind of just applied for willy-nilly through the -- I don't mean that insultingly to our department heads, but just applied through by the department heads, by certain people. And once they were either achieved or gotten that they would go through the finance department and we would work on allocating them.

Our new Finance Director did not -- does not, and I don't want to speak for her, she's here, but certainly the Commissioners and our new Finance Director do not like that procedure. And we actually are now formulating what's called a Grant Committee. So prior to a department head actually even putting in for a grant, they're going to have to go through this grant committee which looks at all those things that you mention, not only future costs, associated costs with it. Are those covered by the grant? Are they not?

But even the bigger question is once the purpose of the grant is ended, where do we go from there? Are we creating positions that we're going to have to fund later or is this something that, you know, we'll be applying for grants on and on and on to keep on.

So all those questions, I think, are very relevant. And I think I believe my fellow Commissioners agree with me because now we're looking at establishing this grant review panel, if you will, that we'll be doing and answering all those questions ahead of time.

Speaker BERGSTROM: Okay. Yes. Lilli.

Ms. GREEN: Thank you. I have a question for Commissioner Cakounes. Could you give us just a brief background in what precipitated your concern to ask Attorney Troy to write that memo?

Commissioner CAKOUNES: Are you talking in regards to the CLC situation?

Ms. GREEN: I am.

Commissioner CAKOUNES: Well, actually, I just want to clarify that a little bit. I think a memo was a result of some actions that I asked for and did.

Just so the board knows, and if you go back and look at our September 14 meeting, you will see that I specified that the Commissioners because of my reluctance,

if you will, to sign Cape Light Compact contracts as a Commissioner. And because of my personal beliefs that there needs to be more looking at this relationship that the County has with Cape Light Compact.

Back in March of this year, I was kind of instructed or allowed, if you will, but my fellow Commissioners to look into the new service agreement that the County and the Cape Light Compact -- or Municipal Agreement that the County and Cape Light Compact were going to enter into really should have entered into really by September.

For six months or four months, I met with Maggie personally. I met with our Administrator. I met with Mary, our Finance Director. I met with Bob Troy, our Counsel. I tried to bring together a document using the Cape Light Compact's document that they sent us using that as a basis to start from. I went through it and made a lot of changes and implemented changes that I got from the Finance Director and, again, Attorney Troy.

But I came relatively quickly to an impasse. There were things that came up to my knowledge that I, personally, did not feel comfortable with bringing that particular document even amended back to my fellow Commissioners for them to execute.

And sitting down with the County Counsel, he drafted that memo which kind of verified, I guess, my concerns. And it brought me, personally, to an impasse. I could not -- I did not feel that I had the support of my fellow Commissioners to go down a specific road. I wanted to go back and bring it on the table and find out where my fellow Commissioners wanted to go with this.

I certainly could have continued and brought forth a document that one commissioner thought was okay, but I didn't think that that was a proper way to go. So that's why I asked the chair and she gratefully put it on the agenda on the 14th, and we discussed it as Commissioners for the first time, actually, to my knowledge in a long time. And, subsequently, that's why we're here today. We're still trying to figure out what is the best avenue and way to approach this situation that we have.

And I don't want to get into it too much unless somebody wants to know but I, personally --

Speaker BERGSTROM: We're going to discuss it further with him.

Commissioner CAKOUNES: I, personally, as one Commissioner, and I'm sure Attorney Troy will -- and he certainly has my authority to tell him and he can use my name and say that I raised concerns because there were many concerns that I raised that are still even present today. And that's why we need to revamp, if you will, the service agreement.

So I hope that answers your question. Thanks.

Ms. GREEN: Thank you.

Speaker BERGSTROM: Leo, can I ask you a question? A quick one is that was this -- this idea of renewing the Governmental Service Agreement was because a previous agreement had expired or because just simply things came up and you decided as part of an ongoing review? In other words, was the previous agreement an open-ended agreement or did it have an expiration date?

Commissioner CAKOUNES: You know something, you put me on the spot. I'm going to let Attorney Troy answer that specific question.

TOWN COUNSEL BOB TROY: Open-ended.

Commissioner CAKOUNES: It was open-ended.

Speaker BERGSTROM: Okay.

Commissioner CAKOUNES: However, there were things that we, the Commissioners and the Assembly, have been asking for a number of years to be addressed, things like real simple things like complete and total reimbursement for the cost of all the employees.

When the Cape Light Compact moved from their existing space --

Speaker BERGSTROM: You've answered my question.

Commissioner CAKOUNES: There were things that triggered the review.

Speaker BERGSTROM: Okay.

Commissioner CAKOUNES: Important things that triggered the review.

Speaker BERGSTROM: Jim.

Mr. KILLION: Thank you, Mr. Speaker. Good afternoon, Commissioner Flynn and Commissioner Cakounes. We have an ordinance before us today 16-08 relative to the Fire Academy.

Can you give us a little bit of detail on what this transfer will be for, specifically, maybe a brief update so we don't have to suspend the rules later.

Commissioner CAKOUNES: Absolutely. This, basically, is a transfer of funds from two reserve accounts that already exist, and what we are trying to do through our administration is create a, yet again, another fund that is specifically allocated to the cleanup costs, if you will, of the Fire Training Academy.

So in order to do that, we thought it was best to transfer some monies -- instead of continuing to pay legal fees, for instance, from our legal reserve account, more specifically, the Fire Training Academy Legal Services, we thought it would be better and easier tracked if we took a sum of money out of that account, put it into this reserve account and were able to track it better.

I just don't want to go away today by you looking at that and seeing that there are two transfers and those two transfers are going to be limited for those specific purposes. Because we're taking money from the Special Legal Reserve account, a hundred grand, and I believe the other hundred thousand is coming from Special Projects account.

I, personally, don't believe that once that \$200,000 gets moved into this new Fire Academy Reserve Account that those funds will be limited to be expended on those particular items, specifically. Once that \$200,000 gets into this account, they will be limited to be expended on strictly Fire Academy related expenses, both capital, if you will. We're looking right now of digging out and removing some soil and transporting that soil off-site and then bringing in some clean soil to fill the hole. So that is one of the capital expenditures that you may see being spent out of this particular Reserve Fund.

And, again, consolidated legal expenses, whether it be -- I think you all know that we hired Attorney Cox, if you will, to represent us in the matter that we're facing with the Town of Barnstable.

I hope that answered your question.

Mr. KILLION: It did for the most part. Do you anticipate another transfer in the future or --

Commissioner CAKOUNES: I anticipate other funding in the future. I, personally, and I'm going to speak personally, because, again, the Commissioners have never really discussed this. But we absolutely will be looking for future funding of that

account.

Now whether that includes another transfer or that may include some bonding or that might include some other way of funding it; yes, we are going to be looking to fund this reserve account in the future. There's no doubt in my mind, personally.

Mr. KILLION: Thank you.

Speaker BERGSTROM: Yes, Chris.

Mr. KANAGA: Yes, just briefly. I was just wondering -- I don't know if this is appropriate or not, but we've heard from Commissioner Cakounes with regard to his view. We've read the document before us, which is, I guess I would say in legal terms a sort of a scathing indictment of the relationship and the entity or non-entity.

Speaker BERGSTROM: That's an editorial comment.

Mr. KANAGA: Yes. Sorry about that. And is there another opinion because he also mentioned that the other Commissioners would pursue whatever roads he was asking for.

So I'm just asking if there's another -- any other input on that that we could get from Commissioner Flynn?

Speaker BERGSTROM: Well, we can ask Attorney Troy what his instructions have been from the Commissioners and what his charge has been. I mean I don't know if you guys want to answer that. I tend to think that the Commissioners speak with one voice even though they don't.

Commissioner CAKOUNES: If I may? Again, I will be more -- I gave my background and personal input on why I asked this item to be put on the agenda. And I will tell you that the Commissioners voted the following, "That the administration and County Counsel shall work with the Cape Light Compact board towards a potential resolution to create a new memorandum of understanding or dissolve the fiscal agent relationship, whichever is an acceptable direction agreed upon by the Cape Light Compact board."

That's the action that the board of Commissioners voted September 14th, 2016. And I'll leave it up to -- Commissioner Flynn would like to add to that.

Commissioner FLYNN: My question, was that the issue that you were questioning? I thought it might've been the Fire Training Academy because that's the last thing we were talking about.

Mr. KANAGA: No. I was talking about --

Mr. LEWIS: CLC.

Ms. MCAULIFFE: CLC.

Commissioner FLYNN: Okay. Yes. No. I don't have anything further to add on that.

Speaker BERGSTROM: All right. Well, hopefully, you'll stick around for the future discussions. We have an interesting Open Meeting Law -- there will be an interesting discussion that affects all of us, you know, especially you guys; there's only three of you. Anyway. Okay.

Communications with County Counsel Robert Troy

Speaker BERGSTROM: So now we have communications and discussions with County Counsel Robert Troy regarding a number of bullet points. This first one being

the Open Meeting Law and communications between members. Welcome.

County Counsel TROY: Welcome. I have a handout here.

Speaker BERGSTROM: That would be good.

County Counsel TROY: Janice may have already given it out. So that's included there.

Clerk O'CONNELL: Yes, this was an item that I sent to you electronically with your packet, not separately, but I'll still pass it out.

Speaker BERGSTROM: Go ahead.

County Counsel TROY: Good afternoon, Mr. Speaker, and members of the Assembly.

My instructions with respect to today's presentation as far as the Open Meeting Law were to key on the issue of communication between the members, and it segued into a concern about emails. That's what I was asked about.

The handout that I gave you today focuses -- it focuses in on that issue of deliberation, when a communication constitutes a deliberation.

But the second part of the inquiry concerned the Public Records Statute and the recent revisions. And I believe that the concern that I am to address, and you can correct me if I'm wrong, is how do email communications between members of the Assembly -- how do they impact the Open Meeting Law and the Public Records Statute?

So let me give a brief kind of summary because I want to make it simple in terms of what I am focusing on. And then if you have questions other than that about other parts of the Open Meeting Law, we can address them now or if they're complicated we could do it at a different time.

So my conclusion, because I want to try to speak outside of legalese; I've been told by many people, and Janice is one of them, that my presentations are too heavy on legalese and not communication-friendly in terms of understanding.

So, I'm going to conclude that there is an overlap between concerns that you might have about email communications between the Open Meeting Law and the Public Records Law.

But your chief concern should be the Public Records Law with respect to that. And the reason for that is the Open Meeting Law pretty much focuses on the issue of deliberation. When you have communications, when did they constitute deliberation? And I think it's pretty simple.

I think the answer is that any medium of communication, whether it's verbal, electronic, written, any communication is triggered or triggers the Open Meeting Law if it is between or among a quorum of the board. And that is the key criteria.

So if three people are talking about something under the Open Meeting Law of the Assembly on an email communication that is exempt. That is not a violation of the Open Meeting Law unless, there's one exception to that. If there is an attempt to evade the Open Meeting Law by three people communicating with somebody else and then talks to another three. But the basic principle is unless you were dealing with a quorum, you're not subject to this provision of the Open Meeting Law.

And I think that the Speaker is correct when he has observed that that is a much more difficult problem when you have a small body, something like the County Commissioners of only three because you've got two and then you've got a problem. Your problem is much less because the Assembly has so many members.

There's one other exception which is very interesting that I think triggers a lot of inadvertent violations of the Open Meeting Law. And that is if some member of a body expresses an opinion about an issue and it's not intended to be sent -- it's just sent to everybody, even if no one responds to that, even if it's just a single person sending out something, "This is the way I feel," that is a deliberation and so you have to watch that. And we have public officials who do that from time to time. Some say, and I see it different times, this is not a deliberation, but I think X. Well, that's a violation.

And so the process by which the Open Meeting Law violations are adjudicated is a complicated one. And because of that -- I think the Open Meeting Law unless there is a kind of communication amongst the majority of members of the Assembly is not your chief concern.

But that segues into the Public Records Statute and that is a concern. Because the Public Records Statute even prior to the amendment says that every record that is made or received by a government entity or employee -- now it uses the word employee, you know, I believe that it probably applies. The definition probably includes elected members of bodies. Every communication is presumed to be a public record unless it's within this list of exceptions. And I'm not going to go through them all of the exceptions or exemptions because most of them are not pertinent.

As a matter of fact, it's interesting. As you know, the legislature when it passes these laws exempts itself and many times exempts a lot of state agency and state employees. And that would be an interesting conversation if you ever have your elected representatives here to focus on why there is different standards for state employees than other employees.

Because in a lot of the statutes specifically provide -- the exemptions in the statute provide protection to state employees but not to other employees. But if you look at the exemptions, most of them concern things, for instance, Exemption C is privacy. That's personnel and medical files or materials or data; you would expect that to be exempt.

I think my conclusion is that almost every email communication that you have is subject to -- is a public record. And somebody can get it. It is an expedited process for that and the balance is tilted on the government agency not to produce those records because there are fines and there are punitive damages now imposed or allowed to be imposed on entities to try to expedite this.

And I'm sure you all read this was going to the legislature. There was a lot of the back-and-forth between the public interest groups and the media that wanted access and then other forces, including government agencies, who said this is going to be very onerous. This is a lot more responsibility on the government.

So one of the things I thought of is if I were a member of the Assembly, how would I kind of process this information? And I think that, you know, my conclusion in nonlegalese is I don't think I would be very worried about violating the Open Meeting Law unless it was a deliberate effort to do so and I've never seen anything like that happen here in Barnstable County. So I don't think my concerns will be about that.

But I would be very concerned about the Public Records Statute and your emails. Which leads to the other point and that is does the Public Records Statute or is there any statute that requires individuals who are "employees" and subject to the law to keep these records? And there's no requirement in the law.

And I'm not saying -- and I want to make this clear, nobody should destroy or delete anything, obviously, particularly if it's been requested. If you have it, you've got to produce it. But it seems to me that since there is no requirement to maintain the emails if you don't have an email when it is requested that, obviously, the email is not available. So I mean I think that's the other side of it.

If you do keep records then you must produce the email. And the government agency probably, if you're dealing with the government as opposed to each other, you're probably are required to preserve the emails.

And, for instance, if you emailed me as County Counsel, I'm going to keep that email. It's protected by attorney-client privilege, and I know that's there's some dispute about the extent of that. But my opinion is the attorney-client privilege protects that information but we keep everything. I have a server system that takes all of that and saves it.

But to each other, it seems to be there is no requirement in the law that says that you have to maintain that record as an individual. So that, I think, is the best practical advice I can give you.

Speaker BERGSTROM: Yes, Julia.

Ms. TAYLOR: Some years ago before we were completely onto the Barnstable County email system, I did get a request from Mr. Beaty for some particular kind of email that might have been part of my regular JuliaCTaylor@Comcast.net, and I really didn't have any way convenient to respond to that because I couldn't, you know, it was very -- a lot of years he wanted covered.

So in the end, I said I could do but it would take me X amount of time and blah, blah, blah, and it sort of got dropped.

I now have been under the impression though that by only using the Barnstable County system for anything that had anything to do with County business that someone in IT would take care of this for me if it should come up again.

Is that -- I mean I don't particularly -- I mean you kind of have to delete things at some point at some times but I'm not trying to get them erased from my computer. But I'm assuming now that I can -- I only work on that email and the IT people will take care of it if I were asked; is that a reasonable position?

County Counsel TROY: Well, I can answer part of that. I think that under the newly amended law which has not yet gone into effect but will at the beginning of next year, each government agency is required to have a records access officer, and that person has to produce whatever is requested within a certain amount of days.

But you ask a very good question that I don't know the answer to and IT or maybe the County Administrator would know. I don't know what -- how that works. I don't know whether if you send an email on your Barnstable County address to Ed McManus on his, I don't know whether they keep that. I don't know how that works. You probably should know it because I mean that's just as important as what I'm telling you. The law is one thing but how it's preserved is another and I don't know the answer to that. I'm sorry.

Speaker BERGSTROM: Well, yes, that was an issue that I brought up. But I brought it up in a different context. I was worried about the security of those emails. I said, "Who has access to it?" Let's say I got into a dispute with the County Administrator or with Leo or somebody and I was discussing it with Chris or somebody

else; Leo got word of it.

County Counsel TROY: Right.

Speaker BERGSTROM: Who would have -- who could walk into -- in other words, who could go and actually get those records? You know, are they available to anyone who walks in the door and asks for stuff? Obviously, they're saying now is that a communication between two of us on an issue that relates to County government is a public record and anybody can ask for it.

County Counsel TROY: Correct.

Speaker BERGSTROM: The other question is is that, and it goes to what Julia said, is sometimes people will pop up and ask for voluminous -- anything we've ever said about, you know, the Cape Light Compact or the Commission or something. You know, how do you deal with blanket requests like that? Is there any provision in the law for that?

County Counsel TROY: Right. The newly amended law provides -- and it actually it places a burden on the government agency to -- their for instance is and this is kind of an interesting -- there is no fee for the first two hours or less for employees of the government agency. In other words, any person requesting a record can ask, for instance, whoever's the keeper of the records or anyone that has to look for something in the government, you get two hours free. And this is what I think the Mass. Municipal Association -- a lot of people have concerns about the stress point.

And there is a procedure, in which you may ask for an extension of time to get this information, but it is very, very -- it's kind of pressurized in terms of the responsibility of the government agency to respond. But you do have to do research.

But I do want to answer one thing that I think that you said that is very important is that in order to really make this conversation make sense, we need to know -- I don't, I'm sorry, but you need to know what does Barnstable County do, for instance because if they are keeping all of your emails, if they do that, and I come in and I want them, I'm going to get them and you need to know that. You need to know how that system is working.

Is that a system -- if one person -- if John Ohman calls Linda Zuern or emails Linda Zuern about a matter, it's not going to be an Open Meeting Law violation. There's no deliberation unless he's suggesting something. He's within that kind of arcane exception saying I feel such and such. If Barnstable County is keeping a copy of that email, anyone -- it doesn't matter whether it's Leo or the County Administrator, anybody can come in and get it under this law unless you're within one of the exemptions, which, frankly, are not pertinent to most of the discussions you'll be having.

Speaker BERGSTROM: The other point while I'm on this is that we had a back-and-forth with -- I think it was the Cape Light Compact and some people who were digging into their workings. And the back-and-forth consisted of someone saying, "Well, I want this information on the Cape Light Compact." I'm just using them as an example. We only respond to specific. You have to tell us exactly what you want. So they say, "Well I want all the records that you had of meetings with so-and-so." And they'd say, "Well, no. You have to tell us, you know, again what the specific records are. So how generalized can a request be before it becomes too general?"

County Counsel TROY: I think that approach, which you're describing, was one of the reasons why people wanted to amend the law. And it kind of -- to some people it

was perceived as stonewalling. In other words, we're not going to give you anything until we know exactly what date, what letter you're looking at. The new amendment disfavors that strongly. It puts the onus on the government agency to produce the documents, to look for them. There are some procedures, you know, as for payment, you know, when it gets onerous.

But, actually, one of the parts of the law which I was surprised at the new law is it says it uses a word that if it's readily accessible it uses -- when it's freely available are the words, which is kind of an amorphous legal term, you have to give it right away and there's no fee, no copying charge. So this law it may not be onerous on you as individual members is going to be onerous on all the cities and towns and all government agencies.

I've said in advising other clients, municipal agencies, that you're going to have to put something in the budget. You're going to have to have somebody do this. It can't be just the town clerk because it's been many times done or somebody in the town administrator's office or the manager's office. You're going to have to get somebody and you're going to have to pay them to do this. It's going to be a lot of work.

Speaker BERGSTROM: Well, just one quick editorial comment. I had this discussion with the MMA, and we also had in the Selectmen's Association -- I think Ed was there and we had the same discussion. The answer seemed to be that rather than hire somebody to dig through the files, you could simply put in a system by which you could get that information. If I want to buy a vacation in Bermuda, I put Bermuda in the computer and boom everything pops up.

County Counsel TROY: Right.

Speaker BERGSTROM: So with keywords you could probably access information but it means people do go into their IT Department and setting up to do that. Yes, Ed.

Mr. LEWIS: Just a question with regard to the Open Meeting Law. In your -- I guess page 2, to be a deliberation, the communication must involve a quorum of a public body. And then you say a quorum is usually a simple majority of the members of the public body.

However, that is different for the Assembly. We are not a quorum based on the number of members. We are a quorum based on the percentages of each member. So can I make the assumption that a quorum here you could have 5 members out of 15, that is a quorum because if it's the right five, it adds up to 51 percent. That's a quorum.

Is there a way to make sure that that's in one of the documentation that comes out?

County Counsel TROY: I think -- that's obviously an interesting argument but it's one that I think that would fail. I think that the state is going to take the position that a quorum -- they're going to do it by the number of members. So if you have five members of a board, they're going to say three selectmen are talking to each other that are a violation.

And so I commend you on that. That would be a legal argument but I don't think it would work.

Mr. LEWIS: I would disagree with you because it's a quorum here, when anything is voted or when a quorum -- if we -- we could have eight people here or nine people here, if the right nine people aren't, then we don't have a quorum.

County Counsel TROY: Well, the other side of that would be that if you had the three or four of the most populous towns talking to each other and the rest of the Assembly is left out of it, that would, you know, I guess you could argue that that's a violation that you're talking to the right people, and that's a very good point.

I don't know there's any -- I don't think there is a ruling. It says it's usually a simple majority but I think that's a very good question and that I owe you an answer, and I am going to make an inquiry and I'll send it back to Janice.

Speaker BERGSTROM: Okay. Chris.

Mr. KANAGA: Just a quick question on this whole quorum issue and the public document issue. Let's say the esteemed Delegate from Dennis calls me and says he wants to discuss an ordinance and I take notes of the conversation; public document?

County Counsel TROY: Yes.

Mr. KANAGA: Yes, so the quorum issue doesn't follow into the public document on anything we do with each other if it has to do with County business is, in fact, whether it's handwritten memos or notes or emails is a public document.

County Counsel TROY: And that's correct. And that's why I'm kind of -- I'm concluding and advising you that I think the thing that you need to be concerned about is the Public Records Statute. In your day to day -- I mean I do the same thing, all my writing all kinds of emails all the time, and, you know, I am an attorney so I have some privilege issues. But I'm also conscious every time that I write any that it's not going to be just between me and whoever it's going to be. And so I'm careful and, obviously, that's commonsense.

Speaker BERGSTROM: Omertà, that's the word, Omertà.

Mr. KANAGA: So I just want to ask this question and I understand that you may not be able to answer it. But it would be interesting to me to know if the same thing happens by email with the Delegate from Dennis on the county server? And by the way, I'm grateful to know that even at the lowly County level there are people who use only the government-approved servers.

That aside, I would like to ask if I do that by email -- I mean John asked me if I'm going to be at the Finance Committee meeting and I answer, "Yes" on the County server and then delete it, is it gone? Have I deleted a public document or is that --

Speaker BERGSTROM: We don't know.

County Counsel TROY: We don't know because we don't know about the server.

Mr. OHMAN: It's in the Cloud.

Ms. MCAULIFFE: It's in the Cloud.

Speaker BERGSTROM: Anyway. Yes, Teresa.

Ms. MARTIN: I actually want to follow up on that question on my colleague from Falmouth's question and actually request through you, can we actually get an answer on that? Because I'm assuming it's an entity email server managed by the entity who is responsible for responding to request for data on that server. We don't -- as members of the Assembly, we in no way can touch that server. We just have a little window to look at one portion of it. But I would like to have that answer confirmed, please. Could you make that request?

Speaker BERGSTROM: Yes. Well, I have to ask IT these questions. But the other question is if I had -- if I had an email with Chris and somebody requested that

from the County, would we be aware of the request? In other words, would I be aware that that document was requested?

County Counsel TROY: There's no requirement, no. You probably would not be.

Speaker BERGSTROM: So if somebody walked into the County offices and said, "You know, I hear that Bergstrom has been talking to Chris, you know; I want to know what they said."

Ms. MCAULIFFE: They could get it.

Speaker BERGSTROM: They could get it. So we know that.

Mr. LEWIS: Not if it's a telephone conversation.

Speaker BERGSTROM: And we would be aware of that.

County Counsel TROY: Right, you wouldn't be aware of it. But we need to know what the process is in terms of IT and what the County keeps. And I'm sorry, I don't know that. I email -- when I email public officials, I actually, for instance, when I email the Commissioners, I use their County address and their personal one because I want to get the message to them and I don't know which one they use. So I use them all.

But you're correct. If you send it to your personal and somebody asks for your personal thing, you've got it. And you know when someone's asked for it because they've asked you. Because the other thing is if the government agency is requested to produce public documents, they then have to go -- that's part of it. They have to go to the individuals and the have to say, "Do you have these records? And if you do, you've got to give them to me because the government has to supply them."

So it's a very -- it's an issue, and it's going to be an issue that requires vigilance on part of people who have devoted themselves to public service to make sure that they are careful of what they do.

Speaker BERGSTROM: Okay. Well, I guess we -- thank you. Now I guess -- oh, you have a question? Yes.

Deputy Speaker MCCUTCHEON: Isn't it true that about 99.99 percent of all the public documents that are generated every day are like not going to be controversial, put it that way?

I mean, you know, somebody's who's looking for a particular document is looking for a particular issue and there may be thousands of documents that respond to, you know, who got notice of a meeting and who was -- it strikes me as there are so many that are going to be responsive and yet not relevant that, you know, you've got a long way to go in searching a computer.

County Counsel TROY: But on the other hand when you think about it, the law that that perception might be correct. But then you could find, for instance, someone, a political dispute that somebody has with an elected official and they decide to go digging, it's kind of like somebody listening onto your phone in a way. I mean you have a record of everything and I can come in and I want to say, you know, I would like to see your emails for the past year to see what you've been talking about.

So I think the key to it is is exactly what we focused on is what is the maintenance system for the documents? You all have control over your own just like I do with my email system. But if you're using the government's server as it were, are they keeping a record that you don't know about?

Deputy Speaker MCCUTCHEON: Well, in that vein and with respect to the

question that Chris asked; I'm the chair of the committee in Truro that issues written decisions. And I have a file that they give to me. You know, everybody gets copies of the documents and I make notes like I make notes here. Then there's a final, you know, when the decision's narrowed and issued by the commission, I throw my file away because my file has no relevancy at that point to the commission because we've issued a decision.

That's been my practice for 12 years. Is that -- am I required -- is there something that requires me to keep anything that I -- you said there's no requirement that you keep --

County Counsel TROY: Not for an individual but the government is required to keep records. And, obviously, if you're a commission of the town, they have to keep it. The town clerk --

Deputy Speaker MCCUTCHEON: Because they both keep their records.

County Counsel TROY: Right.

They have their records, right.

Deputy Speaker MCCUTCHEON: They have their records and my records are never a part of their --

County Counsel TROY: Right. But what I just said too was that if you didn't do what you do and at the end of them decide that you no longer need them and you have them and the government -- and you had maybe some records the government doesn't have, under the new statute, the new amended statute, the government is going to ask you for the documents and you have to produce them and they're going to produce those.

So, I think that your concern is appropriate.

Deputy Speaker MCCUTCHEON: Okay. Thank you.

Speaker BERGSTROM: Well, yes. We have one more here? Ed.

Mr. LEWIS: Has there been any discussion regarding -- you brought something up before and we see it all the time in local government, individuals decide that they go on a digging expedition for whatever reason and they can request a thousand documents. They can say, "Send me everything that anybody ever said that has this word in it." And in this new Public Records Law, it looks like the government entity has to produce this or has to go to produce it.

And in the past, the government got around it to a certain degree because they charged so much that people didn't want to do it. So since the state in their infinite wisdom since they were exempted themselves, they'll put it on towns and counties and this could be very, very costly over a period of time when you look at what has to happen because most towns don't have the money to hire individuals to do this type of stuff.

So I'm wondering whether the legislation -- legislators -- legislation -- legislators have put any kind of a sunset clause in there so that at some point they can say what is this costing us? What are we finding out? What are we preventing?

Because the media is, you know, they were proponents of expanding it because this is their business. They didn't want to spend money, that they could get stuff for free. But it's going to be very costly in the long run.

County Counsel TROY: There's no question the statute has made it much easier for somebody to request a lot of documents. They've increased the burden on the

governmental agency to produce them. They made it cheaper for the person who's requesting the documents to get them. And, obviously, that cost has to be transferred.

Actually, the fee for copies is no -- the cap is 5 cents. I haven't got a copy for 5 cents in 20 years. So I mean you can see that -- there definitely is -- and the other part of it, there's an appeal process that you can go to public records if the government agency isn't giving you what you want. And in the statute, it says there is -- if you then go to court and you show that the government agency wrongfully withheld the records, there's a presumption in favor, an actual presumption in the law that the judge should award costs and attorneys' fees to the person who didn't get the documents.

So, I think -- and punitive damages can also be awarded if noted between \$1,000 and \$5,000 per violation. So this is a big change.

Mr. LEWIS: Okay.

Speaker BERGSTROM: Okay. Well, I think that pretty much covers that. Over the weekend, I became aware, as Leo explained, that the commissioners discussed -- a new Administrative Services Agreement. And since I thought that would engender a discussion that went beyond the communications from the Board of Commissioners, I thought I'd put it on the agenda so that we can openly discuss. I'm just hoping you'll just give us an idea on where we stand on that.

County Counsel TROY: Sure. I heard a portion of the conversation between the Commissioners and the Assembly. Let me say this, what the Cape Light Compact odyssey with respect to this Administrative Services Agreement began in the year 2000. And the agreement that is currently in place was signed by the County Commissioners in the 2000. And there have been a lot of changes since that time because I was here in the year 2000 and part of the process with the Assembly and the County Commissioners since that time.

And I think a fair characterization is that the Cape Light Compact has appeared in many different formats. At first, it appeared that they were part of Barnstable County. And then at a subsequent point, there was some assertion of independence. And I remember being here at the Assembly when there were conversations that the Cape Light Compact was not a County agency. And one of the Delegates, I don't remember, could've been Leo, pulled out the County Charter and said, "You've got it right here." This is in your thing. You're a County agency right in your manual.

So there has been confusion, to say the least, about the Cape Light Compact's status. And I will credit the reason why it has come into focus is Jack Yunits, as the County Administrator, and Mary McIsaac, as the Director of Finance, started looking at these issues earlier this year. And the issues were, "Well, how can people who are not part of the County be County employees and receive all those benefits?" And there are organizational issues, how can somebody be part of the County, an employee of the County, but not subject to all the rules about compensation and other employee issues that govern the other County employees?

So these questions were raised. And Leo recited some of the meetings that we had. And I think as a result of that very important analysis and impetus by Jack Yunits and Mary McIsaac that then -- we then received a revised -- a proposed revised Administrative Services Agreement from Cape Light Compact. We had received it previously but then attention was paid to it. And it kind of languished until, as I've said, the two new officials focused on it.

And if you look at it, and it's in the materials, if you look at the current Administrative Services Agreement that was written in 2000 and you look at the new proposed agreement, you see a completely different animal. You have instead an agreement that was intended to provide fiscal services for the Cape Light Compact. You have an entire new set of provisions that kind of say we're independent from the County but we're also County employees.

Incidentally, I take no position about the Cape Light Compact in any way. So my analysis is strictly looking at the legal issues. Whatever and how it shakes out is up to the County Commissioners and the Cape Light Compact. They have to agree. But it has to be legal.

So my only concern was I wanted to look and see, well, let's look at this and can this be done legally? So I went back and I said, well, what are the legal underpinnings of the Cape Light Compact? And it's an intermunicipal but we call it Intergovernmental Agreement under Chapter 40, Section 4A. And I looked at that and what that says is that if Falmouth and Mashpee want Mashpee to do services jointly on behalf of Falmouth, they could do that but the services that are provided -- the town that does the services, you're an employee of that town and the other town reimburses you. That's how it's supposed to work.

So the key point that I came to is you have to be an employee of a governmental unit. But the Cape Light Compact if it is not a department of the County is not part of a governmental unit. And the statute does not authorize the creation of a new governmental unit. And that's what appears to have evolved.

So the answer to the question is, it seems to me that statute can't be used unless Cape Light Compact decides to be part of one of the governmental units, which could be any of the towns or any of the two counties. They have to make that decision it seems to me.

Or, if they decide they don't want to do that, they have to do what every other governmental organization that kind of exists on its own does, and I use the Barnstable County Retirement Board as one of them. It's a separate independent board. They have to go to the legislature and get authority to operate that way. And the legislature, as you know, can do anything it wants. And it can say, "Yes, we're recognizing the Cape Light Compact in its current form, and we are going to allow the employees to be employees of Barnstable County." Just like the employees of the Barnstable County Retirement Association are employees of Barnstable County, even though they're a separate entity. The legislature said that was okay.

I have no dog in the fight about the Cape Light Compact or what happens to it. I'm simply saying there has to be some type of reorganization of the legal status in order to perform its function. And the County needs to have that for its own protection because it needs to know that employees its covering are under, you know, are properly and legally covered. Because as Mary McIsaac has correctly pointed out, there is a huge amount of expenses here that is involved.

Now there's been some reimbursement formula, and that's not my area of expertise; I'm not going to talk about it. I don't know whether it's equitable or not. But the whole idea should be if it is going to be a department of the County, outside of legislative approval, it has to pay back to the County all of the costs, all of them, and that is one of the options.

So to simplify it and to bring us to the point where we are, the chairman, Mary Pat Flynn, convened a meeting and there was a discussion. And, you know, I've been with the County Commissioners -- I've been to a lot of their meetings, and you might have seen some of them. But I have to say I think the County Commissioners work very well together even when they have different opinions. And out of it, it was decided that what we're going to do is we're going to have the CLC and the County Administrator and the attorneys meet and see what can be agreed upon, come back to the County Commissioners and see what can be done. There's one meeting set for October 6 and the second meeting for October 18th.

Now I'm just going to mention one thing in fairness to the Assembly and its jurisdiction. The ordinance procedure that I cited in the memo can also be utilized, so it's not as if the Assembly is out of the conversation. The Assembly can be part of the conversation because the process of defining the relationship between Cape Light Compact and Barnstable County can be done by the ordinance procedure. And it can go then to the County Commissioners for action. So there are a lot of possibilities, but I would suggest that wait until see what the outcome of the negotiations are and look at that outcome before you decide whether or not that outcome meets your approval.

Speaker BERGSTROM: Okay. There can't possibly be any questions for him. Anybody want to jump in here? It's quiet. Well, let me jump in quickly then on my own. Do you feel that there's a spirit of cooperation between the attorneys, now specifically you and whoever is representing Cape Light Compact on the underlying legal issues that you just described. In other words, if I talked to whoever was representing them, they would say that they're in agreement on the legal, I want to call it, the legal issues that have to be resolved?

County Counsel TROY: I don't know that. I don't know that. We'll know that after the meetings. I think that we -- I think that -- there, of course, is one other area that I think kind of needs to be focused on which is going to be difficult and that is who is in charge of the policy and direction of the organization? Because if it is part of the County, in that sense, it really does come under the need if you look at the Charter for County control. So I think that's going to be the issue about who's running the organization and, you know, how that can be done. That, once again, could be achieved through the ordinance procedure or it could be done through legislation.

Speaker BERGSTROM: Just an interesting point. About five years ago I was on a committee that looked into the County government, review of County government, and Julia was also on that. And we had, as part of the presentation, various groups that were connected to the County but which had their own governing boards. Now there's a Workforce Investment Board, there was the Mosquito Control, you know, and various -- the Cape Light Compact was in there and CVEC, and they all had 15 representatives that determined policy for them, but they were also considered employees of Barnstable County. And that same issue that you just described came up. It's like why, you know, we either -- one of two things have to happen as you described. Either they would go on their own, wander off, or they would come under the umbrella of the County so there would be some kind of organizational cohesion and everybody knew who was in charge.

And my feeling, to answer your question, is who's in charge is the guy that writes a check is the guy who's in charge. That's my personal opinion. So I agree with you, defining the relationship -- this happened before Jack and Mary were on board, but

define the relationship between Barnstable County and the governing bodies of Barnstable County and the various organizations that are in some way, shape or form tied to us and we -- is essential if we're going to move ahead.

County Counsel TROY: And the administrative code, if you look at it which you, as the Assembly, and the Commissioners have approved does not include Cape Light Compact within it. So if you look at -- there's all our different agencies; the Cape Light Compact's not there. So you're correct. It's kind of amorphous and that's what needs to be focused. We need to see and, incidentally, I don't have any opinion as to whether they should be independent or not or whether any of that because that's up to the forces that make the decision.

But it seems to me through an ordinance process, the types of things that you're talking about allowing individual agencies, some autonomy, that can be done. It can be done legally. The Assembly can say, okay, this works. We want this and this is how it's going to be formatted and this is going to be the responsibility and we approve it. That's the key point.

If you look at the Administrative Services Agreement that has been proposed, which you have a copy of, I redacted and deleted almost all of it because it was doing through signatures, through a contract something that should be done either through the ordinance process or through the legislature. That's not the way to do business. It's not up to two boards to sign something and say, "This is the way it's going to be."

Speaker BERGSTROM: We had a hand up there; is it Jim?

Mr. KILLION: Thank you, Mr. Speaker. Good afternoon, Mr. Troy. Is this a result of the audit that was done by the state auditors? I know it was kind of tangentially discussed that we look at other parts of the contracts that we've entered into. Was this a result of that; do you know?

County Counsel TROY: I'm sorry; I was not part of the audit, so I told you what my instructions were and my involvement has been recent.

Incidentally, one of the things I also want to add before -- that I should tell you too is because the Cape Light Compact has been considered autonomous; it has been represented by its own lawyers. And because of that, the information flow that comes to the County is a result of what is produced. In other words, I don't have that information. I only kind of dug into this when I was given this document. But I think that issue needs to be looked at too.

In other words, if you're an employee of Barnstable County, do you function under the umbrella that everyone else does and County Counsel is your lawyer or do you have separate lawyers? And that needs to be -- it's okay to have separate lawyers, but that needs to be authorized by somebody, and I don't see that it ever has.

Mr. KILLION: No. And, clearly, this question has come up repeatedly over the years about what kind of an organization they are. But I guess one of the concerns I have is the contracts because, clearly, you said there's ambiguity in contracts that they can enter into. So it would appear that Barnstable County is actually entering into all these contracts for which the Commissioners are signing which, to me, would seem that it puts Barnstable County in a liability chain with any business practice that they may enter into; is that correct?

County Counsel TROY: I think that is a legal issue. I have advised, because Commissioner Cakounes has mentioned this repeatedly, that the County should only

sign as fiscal agents and make that clear. In other words, they're just signing it because they're processing the money. They're not part of the contract. As a matter -- we have deleted that in recent years, that the contracts that have been sent to me, we have revised them and taken Barnstable County out. Well, why is the County -- and it leads to the question, which I think is the legal question, "Does the Cape Light Compact if it is not an independent government entity authorized by the legislature or a department of this County have the authority to enter into contracts?"

Mr. KILLION: It goes beyond simply the contracts that the Commissioners are signing, but what about how purchasing agreements or contracts that they're signing that are beyond the scope? Could that --

County Counsel TROY: Well, they operate under a different statute. They may have authority under, you know, their statutory authority to do certain things, and that's something that we need to lead to the discussions because we need to ferret that out. They may have some integral autonomy that they are allowed to do, and we need to just figure out -- I think the key thing is what is the relationship of this organization to the County?

Mr. KILLION: Thank you.

Speaker BERGSTROM: Any other -- Ed.

Mr. LEWIS: Just following up on what Mr. Killion said. Today, the Cape Light Compact -- the employees of Cape Light Compact, whether it's Maggie or anybody else, are employees of Barnstable County; is that correct?

County Counsel TROY: Correct.

Mr. LEWIS: If for some reason the lawyers and whoever can't work out an agreement and you become at an impasse, and you have I think three months to notify the Cape Light Compact that you are, at least according to what I've read, you are terminating the current agreement.

At that point, does that terminate all employees from being Barnstable County employees?

County Counsel TROY: Well, I think that's one of the issues that the meetings have to look at. And at the end of the meetings, our charge is to go back to the County Commissioners, give them some options that we recommend, and then it will be up to the County Commissioners to make their decision as to whether they approve any of those options.

If they don't, none of them are acceptable to the County Commissioners, then we have to go down the road and look at that whole issue.

Mr. LEWIS: The other part of that is they have, like similar to the Cape Commission, they have a Board of Directors. And if this moves forward in the way that some want it to move forward, then that Board of Directors becomes void, if you will, because then it becomes under the complete guidance of the County Administrator and its three Commissioners, which may or may not be what -- if that's what happens.

County Counsel TROY: I might --

Mr. LEWIS: They might have an advisory board, yes, but they wouldn't have a board that could make decisions and enter into any agreements.

County Counsel TROY: But they would be able to have the board if they followed some legal process to get there, either through the ordinance or through the legislature. The legislature passes -- look at the organizations. It authorizes all the time.

That's not a complicated matter. Getting a Tax ID number, as I mentioned, that's not a complicated method. That's a form.

So we have a situation that there are a lot of issues that need to be addressed. And I think that this discussion is going to be good because I think if the Administrative Services Agreement as proposed were adopted, we would be complicating it by entering into a contract that authorizes certain things that are not permitted under the law.

Ms. MCAULIFFE: Very murky.

Mr. LEWIS: It's very mucky.

Speaker BERGSTROM: Moving right along.

Commissioner CAKOUNES: Can I respond to something that was said, Mr. Speaker?

Speaker BERGSTROM: Yes, but be brief, Leo.

Commissioner CAKOUNES: I will be very brief.

Speaker BERGSTROM: We're running behind.

Commissioner CAKOUNES: In regards to the contracts, I just want it publicly known that although the County's attorney has advised that the contracts be changed and that the language not read, "Cape Light Compact and Barnstable County government." They do, in fact, of today read, "Cape Light Compact and Barnstable County government collectively serving as a fiscal agent." That's the term I have a problem with, "collectively." Because I believe, I'm not a lawyer, but I believe that that clearly puts Barnstable County on the hook for all the contracts being signed. Contracts in which I was being asked to sign them have absolutely no authority to either change them, review them, and as matter-of-fact don't even get to see them until I'm asked to sign them.

So that's one of the problems that we're at today, and I just want that clear. Although, County Counsel has advised that the change be made. The change has not been made a hundred percent to what has been advised to us. Our name is on them with the term "collectively."

Speaker BERGSTROM: Jim.

Mr. KILLION: Just one quick question for Mr. Troy. Do you know if the CLC has a tax exempt status?

County Counsel TROY: I do not know. I assume it is but I don't know. Jack or Mary would know that, I think. But I assume they are, yes.

Speaker BERGSTROM: Deborah, did you --

Mr. KILLION: Yes, I think they would actually have to have a tax exempt ID.

County Counsel TROY: Right. They're using our Barnstable County's tax ID so I think --

Deputy Speaker MCCUTCHEON: If I could ask a question and it might lend a little light on this subject. Everything, as you just said, is reported if there is reporting under the Barnstable County identification number. And if Barnstable County is tax exempt, then Cape Light Compact would be tax exempt.

County Counsel TROY: Correct.

Deputy Speaker MCCUTCHEON: Cape Light Compact is not set up like something like the Mass. Housing Finance Authority where there's a statute that makes it an independent entity; isn't that right?

County Counsel TROY: There is no statute which has authorized Cape Light

Compact in its current form and organization. It does have a statute that allows, you know, authority to do what it is doing. It's operating under that statute. It's more of a question of the organization of how it's operating under the current Intergovernmental Agreement. And what I'm saying is it cannot be a separate entity under that statute.

Deputy Speaker MCCUTCHEON: Under that statute, it's not entitled to be independent --

County Counsel TROY: Correct.

Deputy Speaker MCCUTCHEON: -- of the entities that are creating under foray?

County Counsel TROY: Correct.

Deputy Speaker MCCUTCHEON: Now doesn't -- with respect -- one thing that I would be concerned about in this course of this discussion is Cape Light Compact has no -- even if it were tomorrow to incorporate -- somebody incorporating a corporation that they call Cape Light Compact, that would not be a successor entity to anything. We have no right to the books or records or employee records or anything else that Barnstable County generated while it was fiscal agent; isn't that right?

County Counsel TROY: I'm not sure about that, and I don't want to go too far down that path only because I think we need a little more information from Cape Light Compact which we intend to get at these meetings to see exactly, you know, what they're doing, what their view of what legal authority they have to do it.

So I really don't -- at this point I don't know enough about it. And I'm sure they know a lot. They would have a lot of answers for you about this but I don't have them.

Deputy Speaker MCCUTCHEON: Well, I mean, beside the question whether I would rely on the adequacy or accuracy of their answers, but what I'm concerned about in these discussions is that by making Cape Light Compact either a Barnstable County department or allowing it to go into some kind of rogue, independent existence. What happens to all of the evidence, the books and records of the organization from the time -- from its inception? Because my understanding is it has always been operated through and as part of Barnstable County's fiscal operation; isn't that right?

County Counsel TROY: And, once again, I apologize. I don't know the answer to that question. I think that's something else we need to find out. We need to get some more history. And when we get that, you know, we will report that back to the County, you know, everything that we can determine. But I'm sorry -- I don't have access to the information. I don't actually -- I'm not sure the County does either. I'm not sure how much information. Obviously, the County has access to the fiscal records because it's making all the payments. It's acting as the transmitter of paying the people and the whole thing.

So those are government records. We have those. I don't know what would happen after. I assume any government record is always the property of the government. We're not going to give that up.

Deputy Speaker MCCUTCHEON: Well, that's good. Isn't it true that the Cape Light Compact's eligibility for certain funds like the alternative energy funds are dependent upon any status as a governmental entity?

County Counsel TROY: I'm sorry; I don't know the answer to that question.

Deputy Speaker MCCUTCHEON: I missed an answer to a question. Are you representing the County in this discussion?

County Counsel TROY: Yes. In the discussions, the County Administrator and I are going to meet with the director of the CLC, and I don't know exactly who else is going to be in the conversation and their attorneys. And we're going to try to get some information. Our instructions from the County Commissioner is to -- Commissioners, by their vote, is to give them different options and then they're going to discuss it in a public session.

Deputy Speaker MCCUTCHEON: Well, I hope you get the information as someone whose requested information from them in the past. I found it difficult to do. Good luck.

County Counsel TROY: Thank you.

Speaker BERGSTROM: Lilli, did you have a question?

Ms. GREEN: Yes, thank you, Speaker, and thank you, Attorney Troy, for writing this memo and clarifying some of the questions that the public has been asking since 2010. The Assembly has been asking for that many years. And through their special committee has been asking and the Attorney General's Office, through Martha Coakley, has been asking, and we have not received some of these answers which you did outline which I appreciate seeing.

So from your memo, it's my understanding, just to reiterate what you said, is that CLC is not a County department and it's not fully independent and instead it is a quasi-government agency which is a word that I have had trouble with understanding for many years.

And as a basis, can you assure the Assembly of Delegates as the counsel to the County and the Assembly of Delegates that the way the Cape Light Compact is currently operating is actually not illegal?

County Counsel TROY: Well, I can't say that the way it's operated is illegal. But I can say that the way that it is organized does not comport with Chapter 40, Section 4A in my interpretation. And we need to figure out a way in which it can be organized in a legal fashion. I think we're trying to be constructive and try to problem solve. That's our goal.

Speaker BERGSTROM: All right.

Ms. GREEN: I have more questions.

Speaker BERGSTROM: Okay.

Ms. GREEN: I've waited years. Thank you. So if they're not fully a County department or they're not fully independent, what are they? And are they operating as an illegal entity because they fall into these cracks? Is there --

County Counsel TROY: Well, I think I have to give the same answer. I don't -- I can't say based on the information that I have that they're illegal. But I can say that I believe that the format of the organization is not correct. It needs to be reorganized.

Ms. GREEN: And is there a potential liability to the County if Cape Light Compact is operating in this fashion? And is it your opinion as stated that it's fair to assume that the Cape Light Compact has been operating in this fashion for at least a decade?

Speaker BERGSTROM: Just let me pop in here. Lilli, you're asking --

Ms. GREEN: The same question.

Speaker BERGSTROM: -- our attorney whether we're liable and he may not want to tell us, you know, because he's -- he would be representing us if we're getting

sued. But I'll leave it up to him.

County Counsel TROY: Well, you know, we haven't explored issues of liability yet. I don't actually see any liability in terms of the fact that the -- in terms of its fiscal operations, it seems to be a successful operation.

So, I don't know exactly that. I think that the answer is that the Administrative Services Agreement kind of becomes a vehicle for looking at the issues that have developed not with any acquiescence or agreement but just have developed on their own.

And so the concerns that you have have been brought to the table by the new administration of the County. And I think that's a very important thing for them to look at. They'll look at how it functions and then we'll see.

And, obviously, the other part of the equation is that it's not all within the County's control. We're just raising these issues. Cape Light Compact, you know, has its own options available, which we leave to their attorneys to figure out. But, obviously, there's nothing preventing Cape Cod -- Cape Light Compact, I'm sorry, there's nothing preventing the Compact from going to the legislative and asking for legislative approval. And I am not clear as to why that kind of simple option has never been exercised.

Ms. GREEN: Well maybe because the energy efficiency funds which is -- my understanding from Maggie Downey's last slide presentation she gave in Wellfleet was exceeded \$33 million, which is larger than the whole County budget. They need this relationship with the County in order to administer them.

So I mean I think it would be really important for you to understand that aspect of it in going in to talking with the Cape Light Compact.

And I do have some questions about the competitive contracting that Delegate Killion brought up. It's my understanding that the so-called competitive power supply contract expires at the end of the year. And I also understand that ConEdison has announced their intent to sell the business to Constellation Energy.

Then I also understand that Cape Light Compact does not intend to put out an RFP for competitive bids but plans to review and revise and renew the old contract with ConEdison Solutions and fully acknowledges that this would not be a competitive bid process, and that Cape Light Compact knows that we'll eventually be dealing with Constellation Energy and CLC will be dealing with another entity as well Barnstable County.

So it's also my understanding that the County Commissioners will be asked to sign the contracts for the new power supply contract as they must and since CLC doesn't have any authority because they need the County as the fiscal agent.

If this scenario were to happen, this contract would be worth -- it should be a two-year contract. It will be worth between 50 million to a hundred million, you know, depending on the length of the contract.

I wonder about the liability to the County about something like this. I mean it brings up a whole host of questions. But knowing something about that before going into a meeting with them would be very important. And I think that the Assembly should be discussing this too because it's very concerning to me. And I was wondering if you could speak to anything about that situation?

County Counsel TROY: Well, that matters that you're talking about go to the

core issue. Who is in control of the operations of the Compact? If the Compact is in control, then those issues are within their discretion.

So it goes back to -- what type of organization are they? The County -- if they're independent of the County and they can somehow effectuate that legal status, those issues are going to be decided by Cape Light Compact and not the County. So that's exactly what the discussion is going to be about.

But all of those issues are subsequent to the determination of how Cape Light Compact can be organized and can it work out a relationship with the County?

After that is resolved, those issues can be looked at. And I think you know that the County Administrator and the County Finance Director are very much on top of all of this regarding this, and I don't think there's going to be any adverse consequences to this process of trying to work something out with the Compact.

Ms. GREEN: And I want to thank you, very much, for being here and for writing that memo, and for answering the questions today.

Speaker BERGSTROM: Okay. Well, thank you. I'd really like to move on. So I appreciate your being put on the hot seat here and you've done a terrific job.

County Counsel TROY: Thank you.

Communications from OpenCape Executive Director Steve Johnston

Speaker BERGSTROM: Waiting patiently has been OpenCape Executive Director Steve Johnston. So thank you for your perseverance and now you're up.

Mr. STEVE JOHNSTON: Thank you. Good afternoon, Mr. Speaker and members of the Assembly. I'm Steve Johnston, the Executive Director of OpenCape.

I'm happy to give you a brief overview. For some of you, it may be repetitive but there are personal questions and I can kind of cover a few things and answer your questions as you'd like.

So OpenCape, we are a nonprofit. We're just up the hill in the building at the top of the hill. I'll talk a little bit about the building. If you're not familiar with the arrangement, the building in 2006 when we received our grant from the NTIA, the BTOP Program, part of the requirements was that we had to have a certain percentage of community engagement and part of, from my understanding and I wasn't here at the time; I joined OpenCape last fall in 2015. Certainly Ms. Martin was here and other folks certainly know what was going on.

The County provided an in-kind donation for use of the building in return for OpenCape spending about \$4 million to take what was, from what I understand, a building that hadn't been used in four to five years, pretty much abandoned building. We spent \$4 million, updated the building right down to the studs inside and out, and currently that is our headquarters. There's a data center in the basement.

And the third floor is currently occupied -- actually, the third and half the second is currently occupied by the Cape Light Compact. So they do not pay any rent to us or anything along those lines. I had no knowledge they pay rent to the County at all.

Speaker BERGSTROM: Let's not revisit that.

Mr. STEVE JOHNSTON: I don't want to get into that at all.

Speaker BERGSTROM: Moving on.

Mr. STEVE JOHNSTON: So moving on. Currently, we have seven employees,

four are full-time, three part-time employees. We have run about 500 miles of fiber that moves from Brockton, across the South Shore, across the Sagamore Bridge, back and forth across the Cape, out to Provincetown, out to Nantucket, back down to Woods Hole. We have a microwave shot out to Martha's Vineyard, back across the Railroad Bridge out to Fall River/New Bedford to Providence.

Currently, we have hooked up in excess of 107 what we call Community Anchor Institutions: libraries, police, fire, schools. We're currently servicing 74 percent of the high schools on the Cape. The two outstanding schools that we have not connected -- and those are high schools, sorry; 74 percent of high schools on the Cape; Bourne and D-Y being the two that we don't. Currently, they are in the final years of contracts with the incumbent provider. So when those contracts open up, hopefully we'll have a chance to compete for that business.

We do power Bridgewater State University off-Cape. We're their primary provider. They have not hooked up their facilities on Cape yet. We have not been able even though we built into Cape Cod Community College, we have not been able to provide service yet because we are not on the ITT 46 State Contract as of yet, and I'll talk a little bit more about that and why that's impacting our performance.

We have a relationship with CapeNet. CapeNet won the IRU. Their goals and objectives were to go out and provide service on behalf of OpenCape for the past three years. I will say when I joined OpenCape, I was a bit dismayed at the lack of performance from CapeNet.

In the last 12 months we have been working urgently with them to improve that performance, something the Board of Directors from OpenCape, the Finance Committee, and I have been doing on a regular basis.

We have taken some action recently to rectify what I characterize as an untenable partnership. I can't really go into it more today because we've just recently taken this action, but I'm happy to come back and talk with you more about it. But suffice to say we are not probably happy with the performance of CapeNet to date. We think more needs to be done, more organizations, more communities need to be hooked up, and I can talk a little bit more about how we're going about that.

Are there any questions so far I can answer or do you want to keep going?

Speaker BERGSTROM: Yes, Jim.

Mr. KILLION: Thank you, Mr. Speaker. Good afternoon, sir. You mentioned about a 4 million upgrade to the building.

Mr. STEVE JOHNSTON: Yes.

Mr. KILLION: How much of that was structurally related versus network infrastructure?

Mr. STEVE JOHNSTON: About 2.7 million was on the building itself. A little bit more -- it was a little bit more than 4 million. The rest of it -- some of it was the preparation for the servers in the data center, but we took the building right down to the - I don't know if you've been in the building since it was renovated.

We took the building right down to the studs, new windows, new doors, new electrical, all the type of things that go with it. So that's the way the breakdown goes.

Mr. KILLION: But it was strictly an interior renovation? There was no exterior?

Mr. STEVE JOHNSTON: There was some interior work done, and there were

windows added to the exterior on the front side, all the shingling, roofing, everything was replaced. I mean the building was pretty much gutted.

Mr. KILLION: Thank you.

Mr. STEVE JOHNSTON: Yes.

Speaker BERGSTROM: Let me ask you a question.

Mr. STEVE JOHNSTON: Sure.

Speaker BERGSTROM: And I know nothing about this so don't think I'm being, you know, any recusatory, but who is CapeNet? Who are they?

Mr. STEVE JOHNSTON: Okay. Excellent question. Let me give you a little bit of the history and then I'll give you the answer there.

When we received the award to build a network the middle mile, we RFP'd for an operator to actually build the middle mile, the backbone of the network, as well as maintain the network, and that is a huge ordeal maintaining the network. You have fiber on the ground. You have a car accident/telephone pole being replaced. DOT moving roads/sidewalks etcetera; fiber has to be moved. The maintenance on the network has to continue.

So, originally, the original RFP was won by RCN. Right around the time that that project was being finalized, RCN was acquired and they ultimately backed out of the contract.

So another RFP was issued and CapeNet which was an entity formed I guess primarily to respond to this RFP. It was a combination of CapeNet and a company called OPTOCORE, which was a fiber network provider.

Over the course of the past three years prior to my arrival here, CapeNet bought out OPTOCORE's position in their relationship, and it's been operating as CapeNet.

Speaker BERGSTROM: Does CapeNet do anything? Do they actually have trucks and people who climb poles and dig ditches or are they simply subcontractor --

Mr. STEVE JOHNSTON: They subcontract that stuff out, as do we. We don't have -- OpenCape doesn't have any trucks. It's more cost-effective to actually contract it out.

Speaker BERGSTROM: I'm talking about CapeNet.

Mr. STEVE JOHNSTON: CapeNet does, yes. They subcontract all that out.

Speaker BERGSTROM: So they only exist as sort of an overall umbrella entity that contracts this stuff out.

Mr. STEVE JOHNSTON: They do.

Speaker BERGSTROM: Do you know if there's anybody -- forgive me for asking this question. Is there anybody connected with OpenCape that is also connected to CapeNet?

Mr. STEVE JOHNSTON: No.

Speaker BERGSTROM: But as an investor or --

Mr. STEVE JOHNSTON: No.

Speaker BERGSTROM: Okay. So they're a total separate entity.

Mr. STEVE JOHNSTON: Completely separate entities, yes.

Speaker BERGSTROM: Okay. Well, go ahead.

Mr. STEVE JOHNSTON: Okay. Any other questions just before I go? Okay. So, when I arrived at OpenCape, one of the things -- besides what I would say the lack of performance or partner, the other part was we had to do a better job of assessing

demand. What would the demand look like across the -- not only the Cape and Islands but the South Shore.

Now I will say that the strategy for OpenCape on the Cape and off-Cape are dramatically different. Off-Cape you have communities that are -- have service from multiple providers. On-Cape you have primarily one incumbent provider that services, and under-serves in some cases, different communities.

So it's a very different scenario. We approach it very differently. One of the things we did initially working through the Cape Cod Economic Development Council, we received a grant for us to implement the CrowdFiber tool which is simply a tool -- many of you may have seen it -- I think we've done some mailings about it to you all, to assess demand. Whether you're a town or business or resident, would you be interested in another solution?

So, so far we're two months into that process. We've had just about a thousand individuals and organizations say, yes, I'm interested in fiber and I'm not. We're sharing all this data with the towns. In most cases, we're talking to almost every one of the towns here about -- they were considering doing their own fiber studies. And as a result of using the CrowdFiber tool, we're getting some hard data on demand we're sharing with all the towns.

So we have an informed decision going forward about what fiber connectivity means to towns versus the incumbent providers.

So those are some of the things we're doing right now. I'm happy to answer specific questions. I could go into the minutia of running a fiber network, which you probably don't want to talk about because that has to deal more with telephone poles than anything else.

Speaker BERGSTROM: See if we can get some intelligent questions. I know I couldn't ask an intelligent question because I know nothing about this. Julia.

Ms. TAYLOR: Well, I did get an email communication from OpenCape that was asking these questions.

Mr. STEVE JOHNSTON: Yes.

Ms. TAYLOR: I guess my thought is how many people got that --

Mr. STEVE JOHNSTON: Sure. So the --

Ms. TAYLOR: -- email and how did you get the email address? How did you get -- I, of course, loved it and answer right away. "I want fiber for my house."

Mr. STEVE JOHNSTON: Sure. So there are a couple different things that happened. We did a direct mail that went out to selectmen in towns -- I call them the influencer groups in towns, selectmen, you know, economic development boards, all the folks in towns that we should be talking to, including the Assembly of Delegates. I think they're on this list as well. It was actually a postcard mailing.

An email subset of that went out. We are growing our list very quickly with the CrowdFiber tools. I'm capturing everyone's email. So we're communicating with them on a regular basis of what's going on.

I wish to say I had a budget for a multi-faceted media blitz. We've been trying to do some things selectively using social media. We have some radio planned. Right now we're in the process of sending electronic press kits to all the towns to talk about how they can promote the CrowdFiber tool in their own communications with residents: stuffers in tax bills, stuffers in water bills, things on the website.

I would point to Provincetown probably, as an early adopter in this facet, they're already Tweeting, using social media, using some email as a tool to alert residents that this is going on. So they're probably ahead of the curve. Wellfleet's closely behind them in that sense; Falmouth as well.

More questions? Come on, there's got to be more questions.

Speaker BERGSTROM: Just one quick one.

Mr. STEVE JOHNSTON: Okay.

Speaker BERGSTROM: Do you hope to service the college there, the Cape Cod Community College at some point?

Mr. STEVE JOHNSTON: Sure. Great question. Yes. I think we're very close to that. One of the issues that -- another issue that originally CapeNet had been asked to get on a state contract called the ITT 46, which is simply just a state contract to provide broadband services to government entities. They didn't get on it. For whatever reason, I'm not quite sure.

Since I arrived here and actually I did find out the key threshold was you had to be, in order to qualify to be on State Contract ITT 46, you had to be in business for three years. We passed that threshold in January of 2016. So for the last nine months I've done nothing -- well, I've done other things, but I've lobbied the OSD, the Operational Services Division of government to see if we can get added to that contract immediately, stating the case that there's really only one incumbent provider here and that's no choice.

And, secondly, I've got seven letters currently from municipalities about projects they want to do and like us added to the contract.

Speaker BERGSTROM: All right. How long have you been in your current position?

Mr. STEVE JOHNSTON: Just about over a year.

Speaker BERGSTROM: Okay. So you're in the same position that our Administrator is. You've gone into an existing organization, looked at their operation, decided that that will be some significant changes.

Mr. STEVE JOHNSTON: Indeed.

Speaker BERGSTROM: And now you're in the process of doing that?

Mr. STEVE JOHNSTON: We are doing that.

Speaker BERGSTROM: Okay. Thank you. John.

Mr. OHMAN: Thank you, Mr. Speaker. So what is your ongoing source of income?

Mr. STEVE JOHNSTON: The ongoing source of income currently is -- so we're a nonprofit organization. The grant money was spent specifically on the building of the middle mile and the associated things with that.

Our sole source of income is what's called an IRU fee. The fee that CapeNet pays us for use of 60 percent of the network. The additional part of the revenue stream there is 6 percent of the revenue. We have a revenue share based on that.

Based on their under-performance, the revenue share is, let's say, nonexistent, and, hence, one of the issues that we were addressing with them.

So in a perfect world, in a world that we hope to shape, we would have multiple partners providing services to different levels of demand. Whether you're an enterprise business, maybe you're a middle-size business, the problem with the Cape -- not the

problem, the challenge is 64 percent of the businesses on the Cape have between 1 and 4 employees. There are only 25 businesses that have more than 250 employees. So the enterprise market, the big business market doesn't really exist. That really is an off-Cape, you know, the window between the Railroad Bridge and Providence and/or up to Brockton. There are more larger businesses we can service.

So having different partners that serve different part of the business will make us much more financially solvent, if you will. Not that we're insolvent but just generating more revenue.

Speaker BERGSTROM: Yes, go ahead, John. Do you want to follow-up on that?

Mr. OHMAN: Yes. The reason I'm asking is I want you to be a viable entity, but I also -- I thought OpenCape was going to be generating jobs here on the Cape, especially for young people. It would sort of start to tip the balance back.

Mr. STEVE JOHNSTON: Well, I would look at -- I mean am I going to be a huge employers?

Mr. OHMAN: Not you, sir.

Mr. STEVE JOHNSTON: No but.....economic development --

Mr. OHMAN: But the ability to use your product.

Mr. STEVE JOHNSTON: Absolutely. So --

Mr. OHMAN: To generate businesses and jobs and export their knowledge.

Mr. STEVE JOHNSTON: And that is why we have to do more to hook up communities. I couldn't agree with you more. I view OpenCape not really as a fiber network but really as an economic development tool. And I mean you name any topic whether it's job creation, economic development, education, healthcare; we impact it so much.

I'll give you an example directly related to your healthcare. The Cape is one of - Barnstable County's one of the oldest counties in the country. Healthcare is a huge issue. So one of the issues we're exploring pretty vigorously is the healthcare pilot where we can connect homes to allow seniors who are on the edge of going into some sort of assisted living or some sort of community stay in their homes with some sort of soft monitoring tools. It doesn't require video. I'm not talking about Big Brother. I'm talking about your feet hit the pillow; you're awake; you're alive, those type of things.

Mr. OHMAN: I've read about this, that they don't want people going back and forth to the hospital. They want to monitor them in place and save significant amounts of money. It's a very specific part of the population that causes most of the health insurance costs.

Mr. STEVE JOHNSTON: That's a whole separate issue. That is, you know, the EMS emergency services responding to the same people over and over, recidivism in those calls.

So I would completely agree with you, and that's the way we view OpenCape, as a giant economic development tool really.

Speaker BERGSTROM: Okay. Patrick, do you have something to say?

Mr. PRINCI: Yes, I do. I just have a question. The constituents in my area are constantly asking me, you know, I'm in Barnstable.

Mr. STEVE JOHNSTON: Yes.

Mr. PRINCI: Why they're going to be able to get fiber? And I mentioned

OpenCape, and I say that you folks are working incredibly hard to help them get it quicker.

But it seems to them because they ask me more often than not that it's a bunch of hogwash that you're not putting in the efforts to serve the average resident out there that might be trying to run a business for their home to pay the bills and so forth. But yet you're more into accommodating the businesses and the major municipalities and so forth and not really focusing as much on the residential, the lower-end type consumer.

What would you say about that? And could you give us any timeline as to when residents in Barnstable can have fiber?

Mr. STEVE JOHNSTON: Sure. I would say that part, that's a fair statement based on the performance per se. Now OpenCape originally was chartered, you know, it was organized to bring CapeNet on board. And CapeNet's job was to primarily, to defend CapeNet here for a moment, to provide enterprise the big business services.

The original kind of goal initially was not residential service right off the get-go because it was expensive. It's shockingly expensive. I mean we're just now looking at 3 or 4 deployments for residential. And the way it only works, and I'll be brutally honest here, is you have to hook up communities of 3 or 400 at a time. I can't do this -- call me I'm Comcast, I come out and I hook you up on one street. I come back and do another street. The only way it works is when you do -- because the fiber's expensive. It costs us \$50,000 a mile to lay fiber and that's access to telephone poles, attachment fees, insurance, all the things that go into that. So to make that economical, to make it work, I have to hook up communities of 3 or 400 at a time at least; if not an entire city.

And I'll give you a perfect example. Provincetown, for example, when you talk about density and this is one of the reasons we're using the CrowdFiber tool. Provincetown has 17 miles of state highway or just a town highway, and 4,363 residents' homes. That's 256 homes per -- for a mile. So it's incredibly dense. So it's an ideal target.

Other towns have 50 or 60 homes per mile. So we're trying to aggregate all that demand with the tool. I'm happy to share the data with you, I can, to show where the demand is because initially Barnstable's a huge, huge town. To build fiber to every home in Barnstable, I don't even have a number for that yet, but I would say \$30 million, maybe more. And that's one of the challenges.

And you look at some of the examples like Google fiber as an example. That's exactly what they're doing. They were following the same model. They're going into communities and trying to aggregate that demand and to hook up everyone they possibly can to make it as affordable as possible.

We're trying to get to that goal. And I would hope that within the next six months we can announce a community that we're going to hook up.

Mr. PRINCI: Okay.

Speaker BERGSTROM: Jim.

Mr. KILLION: Thank you, Mr. Speaker. Just to follow-up on the Delegate from Dennis. If memory serves me through the American Recovery Reinvestment Act, you spent north of 30 million on this self-network in the -- with the premise being that we were going to draw a lot of business to the Cape that we currently couldn't serve because we didn't have the capacity.

Mr. STEVE JOHNSTON: Yes.

Mr. KILLION: So is it safe to say we really haven't had that success story that we were promised, and that we're still years off of realizing that?

Mr. STEVE JOHNSTON: I'd say yes and no. I'd say the fact that Amazon is coming to Fall River. You know, we're currently talking with them about service and that's part of it. I think having a fiber -- a fiber-connected community is essential to tracking any sort of business. It's essential to keeping business. And I can give you -- I don't know if I want to publicly say their name, but there's some large businesses in Hyannis that were considering leaving, and we were working with the state about providing them fiber so that they could stay here on the Cape.

I think there are a lot of challenges. I think we all know this about why companies come to the Cape, whether it's workforce, skill set, and housing. Fiber is one of them. If we can eliminate that fiber checkbox to say that's one reason I can't go there.

But the real scenario is, and I live in Sandwich as well, we don't have a lot of big businesses on the Cape to begin with. But attracting them here, yes, we'll be aided by fiber. I can't point to one large, large business that came here. I can point to some businesses that stayed here because of fiber. Look at Hydroid in West Falmouth, one of our customers expanding, and that wouldn't have happened unless they had fiber connectivity. WHOI is another one.

Mr. KILLION: So you think those businesses would've left the Cape if they didn't have more --

Mr. STEVE JOHNSTON: I think there was pressure on Hydroid. I think parts of the WHOI, you know, we're providing them with 10 gigabits of service right now. That's a big number. Not many people can do that. So I think that's a key important fact.

I think there are other businesses that we're trying to connect. I just connected the Department of Children and Family in Hyannis. They moved and I think that's -- not that they were going to leave the state, but they would have chosen a different place to have their business.

We're working really hard on that. That's the best answer I can give you.

Mr. KILLION: So what percentage of the capacity do you think we're currently utilizing?

Mr. STEVE JOHNSTON: We're using a fraction of the capacity. I could run the entire traffic of the Internet, of the entire planet across our network if we wanted to if we had the right electronics. So we have an infinite capacity and, quite frankly, we're going to need that between you look at -- and I hate to use this word -- the internet of things, but your Nest connectivity for your thermostats and my garage door opener I just got is internet-enabled. All these things are going to put a huge demand on our infrastructure. And the fact that we have such a state-of-the-art network here on the Cape and Islands is a huge plus. We just have to get it to more communities.

Mr. KILLION: Thank you.

Mr. STEVE JOHNSTON: Yes.

Speaker BERGSTROM: Yes, Teresa.

Ms. MARTIN: I have a question that involved the Department of Commerce in terms of the grant. But first, I wanted to just give a little context here.

Mr. STEVE JOHNSTON: Sure.

Ms. MARTIN: Now disclosure before I was involved here in a lifetime far, far

away as an insane volunteer, I spend untold numbers of pro bono hours as one of the founders of this organization.

Mr. STEVE JOHNSTON: Sure.

Ms. MARTIN: So I was there. I can give you pretty accurate information. And the organization originally started out of shared pain in the number of entities across the Cape who couldn't get what they needed in 2000. People started talking and a plan was developed. A nonprofit was formed to be a catalyst to begin this conversation and figure out how to solve it. It started out with a back-hall network.

But it turned out a lot of places were sharing the same pain, particularly rural places and inner city places, places where it was hard to make a certain kind of investment and get a return if you were responding to your shareholders.

And so under the American Recovery and Reinvestment Act of 2011, 8-point-something billion was set aside for something called, "21st Century Infrastructure."

What was largely identified in that was that the piece that people hoped with catalyst actions was this thing called the "Middle Mile." So over the past several decades, lots of money has been put in connecting huge pipes across the world. It's kind of like the interstates were built but there was no Route 6, right, there was no Route 28.

And the feeling at the time was that if these middle mile roads were built, other companies in the private sector would come in and then connect individual houses and housing developments to these missing pieces. Because you couldn't expect anyone to want to pay for these local roads.

So OpenCape was supposed to build middle mile fiber. It was never supposed to operate anything. It was supposed to maintain it and manage the money. The Department of Commerce, which was ultimately a government entity that manages money explicitly, said they wanted to see public/private partnerships. They did not want a nonprofit or municipality running an operation. They were very explicit under the terms of this grant. That was why two separate entities were brought together.

So I know the contracts -- so I'm surprised that you're saying, "We are selling" because the contracts explicitly said, "CapeNet," who was ultimately the winning bidder in all this, "would be the sales and service entity." It would do a build, part 1. And part 2, it would sales and sell. And the nonprofit would hold the assets.

And a portion of the assets, he said 60 percent, unfortunately, assets were intentionally held back in case the private partner didn't perform. That was an intentional strategic decision.

Now any changes to this had to happen with the blessing of the Department of Commerce. So I'm kind of curious now. It sounds like you're making direct sales. It sounds like you're about to boot CapeNet, you pretty much said. What's the Department of Commerce have to say and what are the implications for that?

Mr. STEVE JOHNSTON: So the -- you're a hundred percent right. That was an excellent synopsis of some very tricky issues. The 40 percent holdback was, indeed, for underperformance sale. So we could step in if we had to. And that has just become, and I'll give you an example.

Monomoy Regional School District had signed a contract with CapeNet, and, unfortunately, CapeNet was unable to get that build done as of two months ago. So here's school starting in weeks and they had no internet connectivity. They had canceled their contract. So OpenCape stepped in. We paid for the build. I wrote the

check myself, \$30,000 to make sure that build happened because Monomoy High School -- Monomoy Regional High School, Harwich Elementary, and the Harwich Town Hall for free in providing service to all of them.

So that is not the ideal situation. You're 100 percent right. If a partner change is made, we are not looking to become the owner/operator on a permanent basis. We are looking to make sure the network is running properly until we bring new partners in. When I say we're connecting, it's simply a matter of urgency.

Ms. MARTIN: I have a follow-up question.

Mr. STEVE JOHNSTON: Sure.

Ms. MARTIN: One of the things that, just to further explain, once you buy this middle -- which is this middle mile built in theory, the last mile to where people actually are using this, what's supposed to organically happen is market demand for it. There's a lot of different ways you can do it. You can do it with fiber; you can do it wireless. There's a whole bunch of different ways you can do that.

What was found, however, was that the Cape was still not attractive enough. And to its credit, I know CapeNet tried to bring in other people, other resellers, and the interest in marketing to the Cape wasn't there, which should concern us because it says that the other part of the equation, the equation where we build our economic case store; we invest in use application. It's not about the technology. It's about how do we tell a compelling story so people want to invest here. That has never happened here.

BTOP across the top is kind of a buzz word for these projects that were funded through this \$8 billion core money. Across the country, BTOP's been struggling with the same question. The places where they've been successful have been the places where an equal amount of investment was put in separate of the technology into a cohesive economic development plan with specific action items and funding behind it. That hasn't happened here.

So when we say there's no interest in investing in the Cape, you can't blame the network developers or providers alone. It's a two-part deal to work.

The other place that it has been somewhat successful is in places where they decided it was going to become a municipal service. It was a somewhat different approach.

Mr. STEVE JOHNSTON: Yes.

Ms. MARTIN: You have to have a certain kind of infrastructure to make that happen, human infrastructure. So those are the two scenarios that have worked. Otherwise, there are lots of communities around the country that are struggling with this very same challenging question.

So I don't think you can say OpenCape or CapeNet alone succeeded or failed. I think as a larger community we have to say we've only looked at one part of the equation. The game's not over yet but that question still lingers out there with, you know, 30-\$40 million dollars invested in grant funds have we leveraged it to do anything with it? I think the answer is no, and I find that incredibly deemed sad.

Mr. STEVE JOHNSTON: I would add to your comment. I think part of the challenge was the town program may have been a little bit ahead of demand on the other infrastructure side. And so right now I can tell you I am talking to five, five potential partners who are interested in possibly coming here and offering services. Whether that all will come to fruition, yes or no, we might get one or two, but that would be a step in

the right direction.

I also think as communities themselves have organized against certain towns that have become really efficient at organizing their citizens who want to work from home more often who don't want to commute into Boston.

I mean I was the vice president of a West Coast internet company that ran out of East Sandwich. I ran a New York and a London office. I know the challenges of operating in a technological space. When you're using dial-up or bad cell phone service or, you know Comcast service that goes in and out. I understand the impact that that can have.

So I think we're in a critical juncture in our development and getting more support from the communities. And I think part of the CrowdFiber tool will help us do that.

And the other part is, quite frankly, prior to my arrival here, I'm not throwing anyone under the bus whatsoever. There wasn't a lot of communication going on between OpenCape and the towns. And I would challenge you to say that has changed pretty dramatically. I'm in constant communication with the towns at a variety of levels. So I think that's improving the process. So --

Speaker BERGSTROM: Thank you. I have to go, so I have to turn this over -- because, obviously, there's more discussion on this. You're in charge. I'm sorry about that. I did my best but what are you going to do.

(Deborah McCutcheon takes the gavel as Deputy Speaker.)

Mr. STEVE JOHNSTON: I broke the Assembly.

Mr. KANAGA: You did. Congratulations.

Commissioner CAKOUNES: They've been trying to get him to leave for years and you finally did it.

Deputy Speaker MCCUTCHEON: Thank you, Mr. Speaker. I won't forget this. Does anybody have any more questions for this gentleman?

Ms. GREEN: I do.

Deputy Speaker MCCUTCHEON: Go ahead.

Ms. GREEN: Thank you. I didn't mean to make the Speaker leave by asking a question. But I, too, when I first heard about the Cape was really excited about the economic development, about the services to business, and I've heard really wonderful things about you and what you've done since coming here.

But somewhere in the interim, there seemed to be a big issue that went to the Attorney General who wrote a report --

Mr. STEVE JOHNSTON: Yes

Ms. GREEN: Oh, you don't know about it.

Mr. STEVE JOHNSTON: I have no knowledge of this whatsoever.

Ms. GREEN: Well, I was going to ask you if you could look into this and see what efforts you have done to address some of the issues that the Attorney General's Office raised, and I would appreciate knowing that.

And I think other people in my community, which is Wellfleet, and the rest of the towns would really appreciate knowing how you addressed this because what I'm hearing from you sounds very positive. And I think that this -- I mean I'm very excited

about that. I'm really -- I'm in a more rural area of Wellfleet and I'm hoping that you're not just going to do downtown where there's a density.

But there are a lot of young people that we're trying to encourage to stay in our community as are all of the towns and this is really an exciting new opportunity.

Mr. STEVE JOHNSTON: So, A, I apologize but I've never heard of an issue with an Attorney General report ever.

Ms. GREEN: I'm sorry; I did say Attorney General.

Ms. MARTIN: Inspector General.

Ms. GREEN: Inspector General.

Mr. STEVE JOHNSTON: Inspector General, okay.

Ms. GREEN: Inspector General; I'm so sorry.

Ms. MARTIN: And about a year ago, actually somebody followed up and the IG's office said there was still an ongoing investigation and we couldn't get any information.

Mr. STEVE JOHNSTON: Okay. Well, I will look into that more. I've never heard of that. But on your particular issue in Wellfleet, first of all, congratulations. You're in second place using the CrowdFiber tool. So Wellfleet is really rallying in terms of I think like 19 percent. So, basically, what we did is we set a threshold of 40 percent of the homes in any community and said if the town can get to that level, they're probably pretty serious about connectivity issues. And you are in -- you're in second place behind Provincetown. This isn't a race but it's a measure, if you will. So you're doing really well.

Now Wellfleet provides a bunch of challenges as other towns do where you have a dense downtown and you have a very rural, you know community.

One of the things we're looking at, for example, I brought the guys from Google out here from the Google Wireless team looking at delivering fiber connectivity wirelessly because in some places building fiber to every home just is not economical without the type of infrastructure investment that Assemblyman Martin discussed.

So we're working on it. We're trying to bring a variety of options and also not wedding ourselves to one technology that can change.

Ms. GREEN: All right. Well I certainly would appreciate it if you'd consider south Wellfleet as well as Wellfleet.

Acting Speaker MCCUTCHEON: I just have one very quick question.

Mr. STEVE JOHNSTON: Sure.

Deputy Speaker MCCUTCHEON: Wouldn't you know all of this stuff about the density of Wellfleet and the density of Truro and the marketability of your product before you started the project? Did your company know all this?

Mr. STEVE JOHNSTON: You would think -- so I'll tell you a little factor that I just found out recently in talking. I have a lot of conversations with NTIA, the governing body of the federal government. OpenCape was initially denied, and I don't even know if Teresa knows that.

Ms. MARTIN: The second round.

Mr. STEVE JOHNSTON: Yes. We were originally denied and only upon appeal did OpenCape get the funding, because of that particular reason, the issue that kind of turned the tide was the fact that they underserved the folks that are truly underserved here on the Cape. And you don't think about it but some people don't have

connectivity depending on where you live.

Ms. MARTIN: Yes.

Mr. STEVE JOHNSTON: They're dealing with either dial-up -- I was recently with George Price at the National Seashore and you talk about, you know, if you're a scientist doing research at the National Seashore, or anyplace else on the Cape for that matter, there are safety concerns.

Unfortunately, I believe a scientist was killed when her ATV rolled over some two years ago and was pinned because she couldn't have -- there was no sort of access for her.

So it is an issue but I think we have to try to move forward. And there is some density we try to take advantage of.

Deputy Speaker MCCUTCHEON: Yes. Well, thank you for coming, Mr. Johnston, and we appreciate your report.

Mr. STEVE JOHNSTON: Sure.

Acting Speaker MCCUTCHEON: We hope to hear from you after you find out about the Inspector General.

Mr. STEVE JOHNSTON: I will. I will look into that.

Acting Speaker MCCUTCHEON: Thank you, very much.

Mr. STEVE JOHNSTON: Okay. Thank you.

Deputy Speaker MCCUTCHEON: Do we have any communications from Public Officials which are next? I see one lonely public official left here. You already heard his report.

Communications from members of the Public? Hearing none.

Assembly Convenes

Deputy Speaker MCCUTCHEON: The Assembly will convene.
I need a committee report from John Ohman; is that ready?

Committee Report

Mr. OHMAN: Thank you, Madam Chair. The Assembly -- the Finance Committee met to discuss approval of Proposed Ordinance 16-08 in a Public Hearing and a regular Assembly meeting to as well.

And we had a long discussion with Jack Yunits and Mary McIsaac about the need to add \$200,000 from two different stabilization accounts, the general funds -- general -- a Legal Reserve and a Project Stabilization Reserve Fund, a hundred grand each.

And it's what we've all been talking about. It's the ongoing difficulties at the Fire Training Academy and the soil degradation over there and the legal options because of that.

After a long discussion, our committee voted 4-0 to positively move forward with this Ordinance 16-08. And as such, I would ask that you vote so now.

Acting Speaker MCCUTCHEON: Would you put the motion on the floor, please, sir.

Proposed Ordinance 16-08: To add to the County’s operating budget for Fiscal Year 2017, as enacted in Ordinance No. 16-06, by making supplemental appropriations for the Fiscal Year two-thousand and seventeen.

Section 1.

In Fiscal Year 2016, the County transferred \$ 232,000 from the General Fund to a Special Revenue Fund for the ongoing water quality monitoring, assessment and remediation at the Barnstable County Fire & Rescue Training Academy. Additional funding of \$ 200,000 is required for legal expenses and remediation efforts that are being undertaken in fiscal year two-thousand and seventeen. There shall be an appropriation in the General Fund to generate fund transfers into the Special Revenue Fund as supplemental appropriations for said purposes. Said funds shall be derived from the Legal Reserve and the Project Stabilization Reserve.

<u>Budget #</u>	<u>Sub-Program</u>	<u>\$ Amount</u>
0019107 5790	General Fund-Transfer Out	\$ 100,000
	<u>Into Special Revenue Fund for Legal Services</u>	
0019107 5790	General Fund-Transfer Out	\$ 100,000
	<u>Into Special Revenue Fund for Remediation Efforts</u>	
	<u>TOTAL SUPPLEMENTAL APPROPRIATION</u>	<u>\$ 200,000</u>

Mr. OHMAN: This is a motion to put 16-08 on the floor for approval.

Acting Speaker MCCUTCHEON: Is there a second?

Ms. MCAULIFFE: Second.

Deputy Speaker MCCUTCHEON: Is there a discussion? All in favor?

Clerk O’CONNELL: No. It’s got to be a rollcall vote.

Deputy Speaker MCCUTCHEON: Oh, okay. Go ahead.

Roll Call (76.06%): Lilli-Ann Green - (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Edward Lewis (4.55% -Brewster), Teresa Martin (2.30% -Eastham – 4:05 p.m.), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), Edward McManus (5.67% - Harwich), John Ohman (6.58% - Dennis), Brian O’Malley (1.36% – Provincetown), Patrick Princi (20.92% - Barnstable - @ 4:05 p.m.), Linda Zuern (9.15% - Bourne).

Absent (23.94%): Ronald Bergstrom (2.84% - Chatham), Marcia King (6.49% - Mashpee), Julia Taylor (14.61%- Falmouth).

Clerk O’CONNELL: Madam Speaker, Proposed Ordinance 16-08 passes with 76.06 percent of the Delegates voting yes; 23.94 percent are absent.

Deputy Speaker MCCUTCHEON: Thank you. The ordinance passes.

Ordinance 16-08: To add to the County’s operating budget for Fiscal Year 2017, as enacted in Ordinance No. 16-06, by making supplemental appropriations for the Fiscal Year two-thousand and seventeen.

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0019107 5790	General Fund-Transfer Out Into Special Revenue Fund for Remediation Efforts	\$ 100,000
TOTAL SUPPLEMENTAL APPROPRIATION		\$ 200,000

Administrator YUNITS: Madam Chair, on this issue on this motion, today we filed the Immediate Response Action Plan with DEP. I forwarded it to Janice and, hopefully, you'll all get a copy tonight.

Deputy Speaker MCCUTCHEON: Okay. Great. Thank you, very much, Mr. Yunits. My understanding is that there is a motion to be put on the floor concerning the Cape Light Compact. And I'd ask everybody to stay. We're going to go as fast as we can here.

Report from the Clerk

Deputy Speaker MCCUTCHEON: Report from the Clerk is next.

Clerk O'CONNELL: Just briefly, I apologize for not having the mileage logs printed for you today. If it is an issue, immediately following the meeting I'll run to the office and print those out for whoever needs them. If not, you'll get them at the next meeting on October 5.

And that's it.

Other Business

Deputy Speaker MCCUTCHEON: Thank you. Under other business, is there any other business?

Mr. Killion.

Mr. KILLION: Thank you, Madam Speaker. I'm just going to submit a Proposed Resolution regarding the CLC matter.

Deputy Speaker MCCUTCHEON: And that will be agendaed for our -- it goes to a committee? What's the procedure here, Janice?

Mr. KILLION: It's a resolution.

Deputy Speaker MCCUTCHEON: It's a resolution so it will be acted upon at our next meeting.

MS. O'CONNELL: Yes.

Deputy Speaker MCCUTCHEON: Is that right and sent to everybody?

MS. O'CONNELL: If the Speaker puts it on the agenda --

Deputy Speaker MCCUTCHEON: Well the Speaker's putting it on the agenda for the next meeting right now.

Mr. KANAGA: Nice.

Acting Speaker MCCUTCHEON: That's what you get. Is there any further business? Is there any further -- hearing any motion to --

Ms. MCAULIFFE: Motion to adjourn.

Acting Speaker MCCUTCHEON: Is there a second?

Ms. MARTIN: Second.

Acting Speaker MCCUTCHEON: All in favor? Aye.

We'll talk about that resolution next time.

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 6:10 p.m.

Submitted by:

**Janice O'Connell, Clerk
Assembly of Delegates**

List of materials used and submitted at the meeting:

- Business Calendar of 9/21/16
- Unapproved Journal of Proceedings of 9/7/16
- Proposed Resolution 16-07 submitted by Commissioners
- Open Meeting Law/Public Records Law handout from Attorney Troy
- Memo from Attorney Troy to Jack Yunits dated 9/13/16 regarding Cape Light Compact
- Attorney Troy draft of Cape Light Compact Administrative Services Agreement
- Cape Light Compact Year 2000 Administrative Services Agreement
- Standing Committee on Finance Report dated 9/7/16 on Proposed Ordinance 16-08
- Proposed Ordinance 16-08
- Proposed Resolution 16-08 submitted by Sandwich Delegate James Killion