

**MINUTES**  
**Rockport Select Board**  
**PUBLIC MEETING**  
**Tuesday, April 27, 2010 – 7:00 P.M.**  
**Rockport Opera House Downstairs Meeting Room**  
**Meeting Televised on Channel 22**

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**Present:** William Chapman, Vice Chair  
Alexandra Fogel  
Dale L. Landrith

**Also Present:** Robert A. Peabody, Jr., Town Manager  
William L. Plouffe, Town Manager

**I. CALL MEETING TO ORDER**

The meeting was called to order at 7:00 p.m. by **Vice Chair Chapman**.

- a.** Public Hearing and deliberation relative to compliance with the Town of Rockport Charter Article II, Section 2, by certain members of the Select Board.

**Vice Chair Chapman:** I would first like to make a couple of comments. There is a rumor going around that a new contract between the Town Manager and the Town has been signed. It has not been signed. At the Select Board meeting of April 12, 2010 the Board requested that the contract be reviewed by the Town Attorney to confirm that it complies with the Town Charter. The Town Manager currently has a valid contract with the Town that runs through June 30, 2010. The purpose of this meeting is to investigate whether Select Board members Robert Duke and Thomas Farley are in violation of Article II, Section 2 of the Town Charter, Eligibility and Qualifications: "Only qualified voters of the Town shall be eligible to hold the office of Selectman. Select Board members shall not hold any other compensated Town office or position of employment and shall not have business relationships with the Town for which they receive compensation." If the Select Board finds that one, both or either of them is in violation of the Charter, the Board may wish to determine a result or outcome. At the Select Board meeting of April 12, 2010 the Town Attorney made it clear that forcing forfeiture of their membership on the Board would have to come from a legal authority. The Select Board does not have that authority. In my opinion, they were elected by the people of Rockport and the people have the authority to remove them. However, tonight we are here to discuss whether they are in violation. First Alexandra Fogel would like to make a statement.

**Ms. Fogel:** I was asked at the last Board meeting if I were biased based on an earlier email and I was not allowed to answer at that time because it was not germane to what we were discussing at the time. I would like to answer now and I would like to be able to finish my statement without interruption. Yes, I am biased, but not in the way that you infer. I have served on the Board for four years, three of those years with Bob Duke and two of those years with Tom Farley. I have found that both Board members have

tremendous accumulated knowledge of the Town, having served on almost all the major committees that govern the Town. Bob has provided extremely effective leadership for the Board. He is creative and skilled in moving the agenda forward. Tom has tremendous knowledge about organizational management and roads, plowing, sidewalks and the like, which I do not. He has been enormously helpful to me and I have learned from him and from his leadership in those areas.

We have gone through an especially difficult budget process this year. A lot of questions were asked about each line for every department, but I submit that we have a good budget going forward and Tom and Bob were part of this team that forged that document. As for my bias, I have not made any decision about the conflict of interest charge against Bob and Tom and I will not make any decision until the findings of fact are established in this meeting. I therefore will not recuse myself from the Select Board at this time.

Three further points in regard to this matter:

1. The Board has been accused of running up the Town legal bill. Let's be clear here. The Select Board did not bring this action against the Town, and the Select Board is required by law to consult the Town Attorney when matters of law are being considered. I lay these charges directly at the feet of our accusers.
2. This is the first test of the Charter and it surely will not be the last. I listened with interest and learned from those who wrote and defended the Charter. Although the document is excellent in many ways, no document is perfect and it will take practical application to sort out and amend its deficiencies. Even the incredibly nimble United States Constitution has been amended many times.
3. And finally, for those who used the Freedom of Information Act to get our personal emails, the letter requesting the emails starts out saying, "A group of Rockport residents have been meeting over the last two months." The letter is signed by Chris Shrum as the so-called spokesman for this group. We are never told who the alleged group is, so I ask who is this alleged group that sits in judgment? In the interest of transparency and in the interest of one's legal right to know who one's accusers are, I'd like to know just who this group is. Without that information, this action has turned into an inquisition or a witch hunt.

I refer back to Paul Charbonneau's comment that it is a sad thing in a small town when folks turn against each other for whatever reason.

**Vice Chair Chapman:** I will now address how this hearing will proceed:

1. We will address Robert Duke and Thomas Farley separately in two separate hearings.
2. In both hearings we will take statements and comments from the public that are to the point and address the issue at hand. Statements that are not to the point will be cut off.
3. We will then hear from Robert Duke and Thomas Farley respectively.

4. The Board may ask questions of the public and of Robert Duke and Thomas Farley, and it will be up to their discretion whether they wish to answer those questions. If they do not choose to answer, we will not hold that against them.
5. The Board may vote to go into Executive Session with the Town Attorney, but we will not make any decisions in Executive Session, but will come back to the public hearing and continue the meeting.
6. Once all testimony has been heard, the Board members will discuss the matter among ourselves in public and move on what needs to be done.
7. If it comes to a vote and we find that they are in violation of the Charter, we will discuss it and move on where to go with that.

The questions will be voted on separately for each individual. Because there are only three Select Board members present, and the quorum for the Select Board as provided by the Charter is three and all decisions must be by three affirmative votes, even though a two to one vote would be a majority of the Board members sitting tonight, that vote won't carry. Even if we find that they are in violation of the Charter, we will not take action, as specified by the Town Attorney. We will address the matter of Robert Duke first and take comments from the public.

**Gordon Best (179 West Street Extension):** I was the one who raised the question about Alexandra Fogel's bias because it was in an email, and her use of the word "hardball" raises the question. As far as the question about the group, I had been gone since December and came back in March. I came because I thought the Board was misguided in its attempt to cut 20% from the budget. Employees of the Town have families and bills to pay. I am explaining how I got involved.

**Vice Chair Chapman:** Your comments are off point. That is a matter we have passed beyond.

**Gordon Best:** I am answering Alexandra Fogel's question. Robert Duke has served the Town in a variety of positions at both the County and Town levels. He has done a lot of work for the Town, which is why this particularly distresses me. All the Board members took an oath to uphold and honor the provisions of the Charter and the State of Maine, etc. Robert Duke served on the Charter Commission. When Tom Farley came onto the Board, Robert Duke was already on the Board and knew there was a possibility of a violation. This whole discussion should have taken place then, two years ago.

**Vice Chair Chapman:** Are you questioning Mr. Duke's eligibility to sit on the Board because of that?

**Gordon Best:** No. When Tom Farley took a seat on the Board, Robert Duke knew there may have been a violation, and he also knew that the Charter is self-policing, so it was up to the Board members to bring it to the Board's attention and it was not the responsibility of the citizens to do so. You all made a promise to all the citizens that you

would honor the Charter. If you have a conflict, it is your responsibility to tell the rest of the Board, because Robert Duke knew he was taking jobs with the Town.

**Robert Duke:** Can you clarify "jobs?"

**Vice Chair Chapman:** No, not at this time.

**Gordon Best:** Robert Duke knew he would bid on certain jobs, and when he got the job, he immediately knew that he had a conflict with the Charter, and this pattern of behavior repeats itself. On March 28, 2010 you have an email from Robert Duke: "I know some people are trying to get me and Tom Farley because we have a conflict with the Charter." He admitted it, he wrote it down.

**Ms. Fogel:** It doesn't say that.

**Gordon Best:** It does say that. There has been some concern about an effort to amend the Charter and because of a technicality the Board decided not to do it. To me that's not the issue. Robert Duke had the Town Manager put it in the news on April 7, 2010, but the Board didn't take a vote until April 12, 2010. So either the Board members had a secret meeting or he did it on his own, both of which are in violation of the Charter and State law.

**Vice Chair Chapman:** We are talking about eligibility and qualifications to serve on the Board.

**Gordon Best:** That is what I am talking about. You took an oath to follow the provisions of the Charter. The Board members may not act alone or call a meeting without public notice, an agenda and a public meeting. If you violate any section of the Charter, you forfeit your seat.

**Vice Chair Chapman:** Are you accusing Robert Duke of deliberately violating the Charter?

**Gordon Best:** You had a vote during a workshop to put \$19,000 back into the budget.

**Vice Chair Chapman:** You are wandering off the subject.

**Gordon Best:** The Charter says you can't make decisions in a workshop.

**Vice Chair Chapman:** Virtually the whole budget discussion is held in workshops.

**Gordon Best:** I am talking about a vote that took place in a budget meeting.

**Vice Chair Chapman:** Then all of the Board members should step down.

**Gordon Best:** Robert Duke is the Chair of the Select Board. I am talking about the Charter and how people fit into the Charter. If you followed the Charter, we wouldn't be having this meeting and it would have been dealt with by the Board.

**Thomas Murphy (566 Main Street):** I want to speak about the issue of private emails sent by Select Board members to each other and the Town. We all took the Freedom of Information Act training and these emails are public documents, not private. If you are taking care of business in those emails, they are in violation of the Charter. I am addressing how this issue started.

**Vice Chair Chapman:** That is not the issue under discussion. The emails have been found and have been disseminated.

**Robert H. Nichols (36 Roxmont Road):** If you have a copy of the agenda, please read it.

**Vice Chair Chapman:** "Public Hearing and deliberation relative to compliance with the Town of Rockport Charter Article II, Section 2, by certain members of the Select Board."

**Robert Nichols:** I would like to address the agenda matter. Article II, Section 2 is only two sentences long: "Only qualified voters of the Town shall be eligible to hold the office of Selectman. Select Board members shall not hold any other compensated Town office or position of employment and shall not have business relationships with the Town for which they receive compensation." The last part is what I believe is under discussion – they shall not have business relationships with the Town for which they receive compensation. I went to the Town Office and got copies of bids from Floor Magic to the Town as well as invoices and check stubs. The bids were signed by Robert Duke as owner. I would like to submit these copies for the record. I believe these make crystal clear that Robert Duke had a business relationship with the Town and received compensation, and is therefore in violation of the subject under discussion.

**Vice Chair Chapman:** There is an invoice dated September 19, 2009 for the installation of new parquet flooring in the Opera House. There is paperwork for damage from a water leak. There is a proposal dated June 8, 2009 for \$14,537.52 for recarpeting the library, although that work has not yet been done. There is a proposal dated August 27, 2009 for \$583.61 to refurbish the Opera House meeting room. These documents go back through November 22, 2008 for a \$6,135.00 proposal for the flooring in this room. All the proposals and invoices were submitted by Robert Duke.

**Christopher M. Shrum (34 Camrock Drive):** I would like to make a general comment responding briefly to Alexandra Fogel.

**Vice Chair Chapman:** No, we are not dealing with that.

**Christopher Shrum:** On November 8, 2005, Article II on the ballot was shall the Town of Rockport approve a new charter. It was passed by a vote of 1,106 yes to 181 no, about 85%. If that isn't pretty much a mandate, I don't know what is. The vote was very clear cut.

**Vice Chair Chapman:** We will accept that the Charter was approved and is in effect.

**Christopher Shrum:** I want you to recognize that the vote was overwhelmingly in favor of the Charter.

**Vice Chair Chapman:** It doesn't matter if it passed by 10,000 votes or by one vote. It is in effect.

**Paul Charbonneau (96 Pascal Avenue):** I tend to agree and disagree with a lot that has been said. It is up to the Select Board to police themselves and enforce the Charter and they should do so. There is at least an appearance of conflict of interest and it was bound to hit the fan sooner or later, and it was naïve to think it wouldn't. They are guilty only of that, as I don't think what happened was evil or malicious. It happened in conjunction with service to the Town. What needs to happen now is for the Select Board to make whatever judgment it wants to and go on and be the wiser for this experience.

**Robert Iserbyt (40 Pleasant Street):** Having read and listened to everyone speak, it is more than obvious to me that the Charter has been violated. It is unfortunate how we have arrived at things. There has been too much emphasis on the personal. We have all worked together on boards and committees and have respect for each other. The further we dig and try to find a way out without damaging ourselves, we are not getting to the point of repair.

**Helen Chapman (77 Pascal Avenue):** For the sake of clarity, according to the documents submitted by Robert Duke, how many contracts are there with the Town?

**Vice Chair Chapman:** In the interests of full disclosure, Helen Chapman is my wife. There has been one contract since Robert Duke has been on the Board, for a total of two contracts with the Town. There being no further comments, Robert Duke may take this opportunity to present his side.

**Robert Duke:** In thirty years of public service, I have never been so embarrassed. I will try to keep my emotions in check. I have served with dozens of people on boards and committees, including the Select Board, the Budget Committee, the Fire Department, the County Commission and the County Budget Committee, and would ask anyone if they have ever seen even a glimmer of some underhandedness on my part. The anger I feel among townsfolk is unhealthy and I don't know how I can move on. Bill Chapman,

as Vice Chair, and I have been going over the budget for the last few months and I am feeling like I have had enough.

In the interests of disclosure, when I served on the Charter Commission, my son was on the Select Board at the time and I told him that if there were any committees I could help on, I would be happy to serve. In drafting the Charter there were very lively debates on all kinds of issues and there were some things I was happy were not included. For example, that no one could serve on a committee if a family member were on the Select Board. This is too small a town for that. The Charter was created and while it is an excellent document, it has its flaws. But the notion that I knew about or remembered this article is wrong. After the Charter was created I didn't look at it. Did I read everything in it? No. Should I have? Yes.

Approximately a month ago it was brought to my attention that there could be a conflict with our Town Charter with respect to one of our Board Members and his family's business with the Town. I alerted Tom Farley of this conflict and encouraged him to investigate this matter with our Town Attorney, which he did. Early in this process, I notified this Board of the matter and stated that I may have a conflict under the same provision in that I did one job during my tenure (the meeting room floor repair) with the statement that this will need to be dealt with soon.

Now, to my situation. I have done two jobs for the Town, one while I served on the Budget Committee, installing a new floor in the Harbormaster's Office. The other job was to repair the wood parquet floor in this room as well as some quarry tile by the entrance. This job was awarded by this Board, while I recused myself and spoke as a bidding vendor. Questions were raised as to whether it was a transparent bid. The library proposal is included in the documents submitted by Robert Nichols because the librarian asked me to provide budget numbers for a grant application. I want to make it clear because there have been reports in the papers that I did several jobs for the Town. I was asked by Susan Bates if I could fix the water damage area in this meeting room.

My initial reaction to this was that I served on the Charter Commission and should have remembered about this and that I should step down or be removed by this Board, but two things occurred that changed my position. I exchanged emails with Alex Arau where Alex wrote: "Certainly there is an issue with Tom and yourself if you contracted with the Town. As a member of the Charter Commission, this was not the intent, in my opinion of the conflict of interest. This section seems to be an example of good intentions resulting in bad laws." I went home that night to read the Charter and these provisions. I kept reading the sentence "Select Board members shall not hold any other compensated position within the Town office or employment and shall not have any business relationship with the Town for which they receive compensation." I went to the definitions section to see how the Charter defines business relationship. They don't. So I did a word/phrase searches for business relationship. As you will see in your packet

that I have provided, business relationship is defined as “a formal contractual relationship established to provide regular business services.” Contractual is defined as a legally binding agreement bound by court of law or binding arbitration. That also goes on to say that there is a remedy for breach. Everything I read or know about the definition of relationship, whether it be in business or personally, is that it fosters an ongoing “relationship.” Finally, the last word in the business relationship definition is regular. The definition states regular as “having equal times or space between” or “happening frequently.”

Nothing we did here was regular or frequent or contractual. We did one job. I think I made \$1,000 out this job and then turned around donated a carpet for the foyer. I did it as a service and that’s what is insulting.

After reading these definitions, I know that what I did for the Town was not contractual, and was not regular. I therefore am not in conflict with the Town Charter and should not be removed from the Board.

I do feel that we have a very well written Charter. Our Board members do not refer to it enough, hence the reason why we are going through this matter now. The Board has the authority to clean up certain sections that need housekeeping, so this should be done soon after Town Meeting. I would be happy to answer any questions.

[Applause]

**Ms. Fogel:** One thing you didn’t mention. At the end of the discussion, Public Works Director Stephen Beveridge said yours was the lowest bid and he thought the Board should take it, and the Town Manager agreed.

**Robert Duke:** I do respect the Charter and no one should thumb their nose at it, but the reason the Charter was created was because a lot of folks were not happy with the Select Board and wanted to take personalities out of Town government. In terms of the definition, in my case I did one job, I don’t have a relationship with the Town. In my mind, I don’t have a conflict.

**Vice Chair Chapman:** It is now up to the Select Board to make its arguments and make any determination. Is there any need to consult with the Town Attorney?

**Mr. Landrith:** No.

**Vice Chair Chapman:** I have one question for the Town Attorney. The definition provided by Robert Duke relates to business relationships. Do you have an opinion on that?

**Town Attorney Plouffe:** Giving a definition to the words is really up to you. While there was not a written contract or documentation, there was certainly an offer to perform services and he was paid for services, and that relationship would be enforceable in a court of law. I don't know if the Town's bids are signed.

**Vice Chair Chapman:** Would the relationship have been considered a contract in a court of law?

**Town Attorney Plouffe:** Yes.

**Ms. Fogel:** But there was no relationship?

**Town Attorney Plouffe:** There was apparently one job, but I am just now hearing about this for the first time.

**Vice Chair Chapman:** I see no need to go into this any further. It is our job to determine if Robert Duke is in or out of compliance and I will open the matter for discussion.

**MOTION – Dale Landrith/SECOND – Alexandra Fogel:** To affirm Robert Duke as a qualified member of the Select Board and not in violation of the Charter of the Town of Rockport.

**Mr. Landrith:** I don't see this as an ongoing business relationship. Having read the Charter and listened to the comments tonight, there are conflicting issues with the Charter and its clarity.

**Ms. Fogel:** I agree. The term is very vague and it puts us in the position of having to consider the wording and do something about it, but I certainly don't think Robert Duke is not qualified to be on the Select Board.

**Vice Chair Chapman:** With regard to an earlier comment by Stephen Bowen about a proposed amendment in terms of the Town Manager, the Town Manager has to supervise the performance of all contracts.

**Ms. Fogel:** That is not an issue.

**Vice Chair Chapman:** I think it is an issue here and that we should deal with it. The Select Board has authority over the Town Manager and if a member of the Select Board is doing business with the Town, the Town Manager has authority over us.

**Mr. Landrith:** It comes back to the fact that no one member of the Select Board acts on his or her own. The Town Manager works for the Select Board, and one individual member of the Board can't tell him what to do. That is why I don't see a conflict in what you just said.

**Vice Chair Chapman:** But we all listen to each other.

**Mr. Landrith:** True, but we also listen to the Town and to the Town Manager.

**Ms. Fogel:** If that is a concern down the road, it would be dealt with in amendments to the Charter.

**Vice Chair Chapman:** I don't think that's a concern here because everything went right in relation to Robert Duke's performance under the Charter as a member of the Select Board. We all have an obligation to comply with the Charter. The question is whether Robert Duke is currently in violation of the Charter. He made a proposal on carpeting for the library to help the librarian with a grant application and budget request. This does not meet the requirement for a true bid because requirements were not put out for the proposal as was done with the floor, where the Town asked for a proposal, he provided one and the Select Board chose his as the low bid, although he is a member of the Select Board.

**Ms. Fogel:** I don't think that is germane to this discussion.

**Vice Chair Chapman:** That's what Stephen Bowen said last week. As I see it, we are all partially responsible. We should have understood what the Charter said with regard to what our positions on conflicts are and didn't conduct ourselves correctly. I do think Robert Duke makes a valid point that the term "business relationship" is not well defined. It never occurred to me that Robert Duke's individual contract is a business relationship, as it is not an ongoing regular service. So in the future we need to get a better definition of that. Please read the motion again.

**Mr. Landrith:** To affirm Robert Duke as a qualified member of the Select Board and not in violation of the Charter of the Town of Rockport.

**Ms. Fogel:** I don't think he had a continuing relationship and the Select Board was advised by Town representatives to accept his bid, and we did.

**Vice Chair Chapman:** I think it is clear that Robert Duke is not currently in violation of the Charter. If the issue had been brought up at the time, the answer would have been completely different. I call for a vote and reiterate that all three positive votes are required to pass the motion. But I would first ask the Town Attorney for clarification. We have a motion to affirm that he is not in violation, that he is qualified to serve on the Select Board. If the vote is two to one, it does not pass. Do we then need another motion stating the opposite, or is one motion sufficient?

**Town Attorney Plouffe:** I think one motion is sufficient.

<b>VOTE:</b>	William Chapman	Yes
	Alexandra Fogel	Yes
	Dale Landrith	Yes

**Vice Chair Chapman:** The vote is unanimous that Robert Duke is not in violation of the Charter and is therefore still qualified to serve on the Select Board. After a short break, we will address the matter of Thomas Farley.

## **BREAK**

**Vice Chair Chapman:** We are now back in session. The question has been raised as to whether or not Robert Duke should join the Board for the remainder of the meeting. The decision is that he should not because we should conduct the public hearing the same way for both Robert Duke and Thomas Farley, as if they had been conducted in the reverse order. We will now discuss the matter of Thomas Farley and his compliance with the Charter, and we will hear first from members of the public.

**Stephen G. Smith (12 Beauchamp Street):** I arrived late, so I don't know what the format is, but I would like to make a general statement.

**Vice Chair Chapman:** We are discussing Thomas Farley's eligibility to serve on the Selection Board under Article II, Section 2 of the Town of Rockport Charter.

**Stephen Smith:** Can I make a general statement?

**Vice Chair Chapman:** Within reason.

**Stephen Smith:** I will preface it by saying that I don't think we should throw the baby out with the bath water. I first bought real estate in Rockport in 1976 and have been living here for 35 years. I have had no contracts through my construction business with either Robert Duke or Thomas Farley since I have been here, so I am speaking totally objectively. Having served on Boards and Committees for the Town for thirty years, I find it interesting that we are challenging two people who were born and brought up in this area. The Charter was initiated because some people didn't approve of the new Town Manager and some members of the Select Board, so the whole thing is based on bias. Having lived here for 35 years, I find it almost appalling and incredible that this has gotten to this point. I think both Tom Farley and Robert Duke are admirable people. Two years ago no one wanted to run for the Select Board. There is no reason to think they ran to advance their own business interests. They were trying to help out their community. This process is fine in terms of following the Charter, but the reality is that very few people want to serve on the Select Board. If they do and we then hang them out to dry, we will end up with a retirement community Select Board serving their own personal interests. I think Robert Duke and Thomas Farley should be commended for what they have been doing rather than chastened.

[Applause]

**Margaret K. Carleton (205 Mystic Avenue):** It is obviously a tragedy that this involves individuals from two very well known families who have dedicated a lot of time to our community, but it does remind one of the discussions about immigration. Fine people get caught up in legal turmoil and we have to decide what we need to have for regulations. We do have and need to comply with the Charter and it is very sad that inadvertently two members of the community got tragically caught up in this situation while innocent of any intentional wrongdoing. While I hope the Board will take this into consideration, the Board does need to live by the regulations and not make exceptions for the people involved because we know them and because they have done a lot for the Town that we would not make for others who are not as popular. We need to move ahead with a process in the future no matter what is decided tonight.

**Robert Nichols:** The way the format of this meeting is set up, there is no opportunity for rebuttal. The definition I found of personal connection or association or involvement doesn't say anything about an ongoing relationship, so I guess you can find any definition you want to support a position. There is \$109,000 worth of business during Thomas Farley's time on the Board, and I am submitting bids and check stubs. There is a lot of emotion here and I voted for both of them when they ran for the Board. When I joined the Planning Board, I was told that I would have to make decisions based on the Ordinances and not on whether I liked a project or an applicant. Decisions on these matters should be based on the Charter and not based on whether we like Robert Duke or Thomas Farley. That is the definition of unbiased.

**David Farley (550 Main Street):** I am the President of Farley & Son. I used to be the "Son" and it is still that way. As President, I make all the decisions. Tom may sign the contracts, but I make all the decisions and the buck stops here.

**Helen Chapman:** May I ask Robert Nichols a question?

**Town Attorney Plouffe:** The question should be addressed to the Vice Chair of the Select Board.

**Helen Chapman:** I understand that Thomas Farley came onto the Board as a write-in vote and that Robert Nichols voted for him?

**Vice Chair Chapman:** Yes.

**Helen Chapman:** If Thomas Farley is not qualified to be on the Board, why didn't Robert Nichols raise the issue when he voted for him?

**Vice Chair Chapman:** That is not under discussion, so I will not ask Robert Nichols to respond here.

**Lisa J. Farley (27 Pine Brae Lane):** I am Tom Farley's wife. The company Tom works for is a corporation. As an individual, he is not an employee of the Town or a major stockholder. Does the Charter say that no employee of any corporation can serve on the Select Board?

**Vice Chair Chapman:** There being no further comments, Thomas Farley may make a statement.

**Thomas Farley:** As everyone knows, I have no problem stepping on toes, but not in a business context, but usually on behalf of the taxpayers. When the Town Clerk told me that I received a number of write-in votes to serve on the Select Board, I had to really think about it. I sat on the Planning Board for quite awhile, but heard that serving on the Select Board could be painful. I represent fiscal responsibility and value for the taxpayers, and when you play a game of unnamed people who do not expose themselves, it's a different matter. I do not receive financial compensation for anything I do with the Town. I bid on behalf of Farley & Son and my father finalizes the bids. The company's relationship with the Town started before me, and the company has won and lost the cemetery bids over the years. I don't think there is any instance when Farley & Son did not respond to a Town request. When I go to the Town Manager, I think he knows I am presenting just my opinion as an individual and not as a member of the Select Board.

**Town Manager Peabody:** That is true.

**Thomas Farley:** Most of my work is out of town. You people on the Board know what I'm all about and I represent the taxpayer.

[Applause]

**Vice Chair Chapman:** Is there any Board discussion or any questions of the Town Attorney either here or in Executive Session before we move forward? We have heard both sides of the case and it is our responsibility to determine if Thomas Farley is in violation of Article II, Section 2 of the Charter.

**MOTION – Dale Landrith/SECOND – Alexandra Fogel:** To affirm Thomas Farley as a qualified member of the Select Board and not in violation of the Charter of the Town of Rockport.

**Mr. Landrith:** Thomas Farley does not receive direct compensation for work Farley & Son does for the Town.

**Ms. Fogel:** And David Farley has direct responsibility for any contracts with the Town. His company has done business with the Town for 25 years on and off, including way before Thomas Farley was involved with the company.

**Mr. Landrith:** I think it is also worthwhile bringing up the email with regard to the mowing contract. In my two years of involvement with Town politics, I have seen nothing but the epitome of Tom Farley taking the high road. He would not even enter into discussions regarding votes on these contracts, including recusing himself. There is an email to Executive Secretary Stacey Parra dated June 12, 2009 from Tom Farley directing her to contact David Farley, so that relationship had nothing to do with him.

**Ms. Fogel:** And he has always recused himself.

**Vice Chair Chapman:** The issue is whether he is currently in violation of the Charter. The question raised is whether a company is somewhat different from an individual. I think it goes back to the relationship of that individual with that company, and Thomas Farley is a principal of Farley & Son.

**Mr. Landrith:** Based on what? Does he participate in contracts with the Town?

**Vice Chair Chapman:** I think we need to clarify that.

**Thomas Farley:** I am listed as a Vice President of the company and receive a salary.

**Vice Chair Chapman:** Do you negotiate contracts?

**Thomas Farley:** No. We have a design foreman, Michael Ames, who does all the bids for mowing. We have two contracts, one for Pascal Avenue that at one time was done through the State.

**Vice Chair Chapman:** Is that work currently ongoing?

**Thomas Farley:** I am not the head of that. I did have a meeting with the State, but I turned it over to our manager.

**Mr. Landrith:** I think we should confirm Thomas Farley based on language directly out of the Charter: "Only qualified voters of the Town shall be eligible to hold the office of Selectman. Select Board members shall not hold any other compensated Town office or position of employment and shall not have business relationships with the Town for which they receive compensation." Thomas Farley has stated with clarity that he does not receive direct compensation for the relationship of Farley & Son with the Town.

**Vice Chair Chapman:** I want to bring up the issue of perception in the relationship between the Select Board and the Town Manager, and how the Town Manager would

feel or perceive how he should proceed if a public citizen came in and said he or she didn't like the way the cemetery was being mowed.

**Mr. Landrith:** I think the Town Manager would address that with the people the Town contracted with. They would either abide by the bid specifications or not. If a member of the Board were an employee of that company, he is not the Town Manager's boss. The Select Board is the Town Manager's boss. If it becomes an issue between a single Select Board member and the Town Manager, it is up to the rest of the Board to deal with it, which is why I don't believe there is a conflict in this case.

**Thomas Farley:** May I answer?

**Vice Chair Chapman:** No. If we have a question, we will ask.

**Mr. Landrith:** The motion is to affirm Thomas Farley as a qualified member of the Select Board and not in violation of the Charter of the Town of Rockport.

<b>VOTE:</b>	William Chapman	No
	Alexandra Fogel	Yes
	Dale Landrith	Yes

**Vice Chair Chapman:** The motion does not pass. Effectively, both Robert Duke and Thomas Farley are retained as members of the Select Board by our action tonight.

## II. ADJOURNMENT

**MOTION – Dale Landrith/SECOND – Alexandra Fogel:** To adjourn the Rockport Select Board meeting at 8:45 p.m. The motion was passed 3-0-0.

Respectfully submitted,

Nancy Ninnis  
Recording Secretary