



SELECT BOARD MEETING

Meeting Minutes
September 26, 2023
7:00 P.M.

APPROVED: **October 11, 2023**

PRESENT: Kristin Hilberg, Chair; Wesley Fowlks, Member; Priya Sundaram, Clerk; David McKiernan, Member

ALSO PRESENT: Town Administrator Mike Johns; Rajon Hudson, Assistant Town Administrator; Kelley Price, Administrative Assistant; Alec Wade, Town Planner; and Kirby Dolak, BXBTV

The documents discussed herein have been included with the file copy of the agenda packet for the above referenced date and are hereby incorporated by reference.

Call the Meeting to Order & Roll Call

At 7:04 PM, Chair Hilberg called Select Board meeting to order, via a hybrid meeting pursuant to the procedures noted.

ANNOUNCEMENTS

Chair Hilberg read the announcements.

BOARD & ADMINISTRATOR COMMENTS AND REPORTS

Town Administrator Johns explained that he will be away at the annual ICMA conference for the next few days. Assistant Town Administrator Hudson will be in charge while he is away.

Member McKiernan stated that, if something is said during a Board meeting that should not have been said, he will address it with a point of order.

Member Sundaram stated that she recently attended a Rec Com meeting and there was lively discussion regarding how to schedule the pickleball courts.

Member Fowlks apologized to Mark Barbadoro for language used toward him at the last meeting. He stated that he will work to do better. Most of his frustration was directed toward the wrong person during that meeting.

Town Administrator Johns stated that Citizens Academy has been well and is ongoing.

Chair Hilberg stated that she sat in on her first Building Committee meeting recently. She also apologized to Mark Barbadoro for the discussions had at the last meeting.

PUBLIC INPUT

John Markiewicz, 71 Patch Hill Road, asked the Board to support the recommendations of the Town Administrator regarding the hiring of an Assistant Town Accountant.

Diana Lipari expressed concern regarding the appointments made to the Economic Development Committee (EDC) at the last meeting. There were three potential candidates applying, and the Board chose to grill only one of them, Mark Barbadoro – the most overly qualified candidate presented to the Board for this appointment. The questions asked of Mark and the comments made by Board members and members of the public were personal and totally inappropriate for an appointment of a volunteer to a Town committee. Mark Barbadoro has served for four years on the Zoning Board of Appeals. Until recently he served a three-year elected term on the Planning Board, including two years as its chair. Mark also was the Planning Board voting representative to the Water Resources Committee. During that service on these multiple Town organizations, Mark never lied or otherwise misrepresented issues or facts to his fellow committee or board members or to members of the public. During numerous presentations regarding rezoning issues at Town Meeting, Mark never acted unethically. Regarding any situation or any issue presented to him in his capacity as a Town officer, Mark never used his official position inappropriately to affect an issue or advocate for a candidate for Town office or any other State or federal offices. Mark never disclosed information he received in his capacity as a Town official that was confidential. Mark never put the Town at possible financial risk through inappropriate actions or public disclosures or assertions. Mark

never disparaged his fellow committee or board members during meetings or otherwise disrupted in any way the business of those committees or boards. Mark never attended meetings unprepared or uninformed and he was always ready to do the hard work required. She stated that a candidate failing to abide by any of the above conditions would be real grounds for non-appointment but also removal from a committee or board. Instead, the Select Board decided that Mark's personality, methods of expression...
It was noted that Diana Lipari reached the two-minute limit for public comment.

Mark Barbadoro stated that he endured 25 minutes of abuse from the Select Board while offering his services as a volunteer to the Town. Chair Hilberg treated him the same way she treated him when she was on the EDC, and he reached out to them. He asked Chair Hilberg if he could discuss what has happened in this Town regarding preference for a specific group of people. Mark Barbadoro stated that a member of the EDC has told Select Board members that will not abide by the charter of the EDC. He has been maligned by the Select Board twice during public meetings and is now only being allowed to speak for two minutes. This is an Open Meeting Law violation. Chair Hilberg's response and apology during this meeting is another Open Meeting Law violation. He will be filing two for the next Select Board meeting in order to have a discussion with the Board regarding this deplorable behavior.
It was noted that Mark Barbadoro reached the two-minute limit for public comment.

Chair Hilberg reiterated that, if a member of the public needs more time than two minutes to speak, they can send an e-mail to the Select Board which all members will review, and a member will respond as needed. As a reminder, Board members cannot comment or engage in discussion on topics not on the agenda.

Cindy Markowitz expressed displeasure at the Board reducing the amount of speaking time per member of the public. This was not indicated on the agenda and is a change in policy. She addressed her recent complaint to the Board regarding its conduct during Mark Barbadoro's potential appointment to the EDC on September 11th. 1) the Board mistreated a member of the public by disparaging him instead of evaluating the merits of his application. 2) the Board violated its own policy of conduct dealing with members of the public. 3) two members of the Select Board voted not to appoint Mark Barbadoro without giving any reason for that decision. 4) the Board allowed itself to be pressured by others to not appoint Mr. Barbadoro, else those people indicated that they would not serve. 5) the Board discussed Mr. Barbadoro's behavior yet did not identify the behavior of those serving on the EDC at that time. 6) the Select Board has never discussed personality nor behavior of any other candidate during the public appointment process, nor has anyone ever in her 30 years in Town ever been denied appointment for such behavior. She expressed concern that Town officials are abusing their authority to appoint. There appears to be unofficial criteria that apply to some and not others. The First Amendment stresses the right to petition government for redress of grievances and that is what the Board is current receiving. It is receiving fair requests for dissent and then petition for grievances. Both Mark Barbadoro and Keith Lyons ran for elected office in 2023 and lost. Since that time both have offered to serve on other committees. Both have been vocal about their concerns about Town politics and Town behavior. Both have been turned down from serving on the Finance Committee and the EDC. In all instances, reference to their communication style and escalation of communication have been used as reasons for being turned down. It feels that residents are being marginalized by Town officials for speaking up. The Board's unwillingness to appoint members who dissent brings no bounds to boards that you appoint. She asked the Board to please reconsider its behavior. This is a travesty and will not be tolerated.

Member Fowlks stated that this is a slight departure from the three minutes allowed for public comment in the past. He cautioned people being cut off at two minutes, as this could be seen as a change for the Board. Chair Hilberg explained that Staff met and discussed a time limit for public comment. She previously wanted to let people speak as much as they wanted. Member Fowlks explained that a change to past practice needs to be noted on the agenda ahead of time. Chair Hilberg asked Board members how long the time period should be. Member McKiernan stated that he is okay with moving back to three minutes for the next meeting.

Member Fowlks stated that Citizens Concerns is not what makes these meetings last for long periods of time. Chair Hilberg stated that the intention is to allow for public comment only at the beginning of the meeting, in order to keep the Board business moving through the rest of the meeting. Member Fowlks expressed concern regarding members of the public only being allowed to speak for two minutes to all topics on and off the agenda at the beginning of the meeting only. He suggested leaving public comment as open ended as it previously was, and limit people speaking during the rest of the agenda items to a couple of minutes each.

Member Sundaram stated that it is unclear what can be changed and what is within Open Meeting Law. Town Administrator Johns stated that he sat in on a meeting regarding the legality of limits on time for public comment. This should be defined at the beginning of the meeting, and the suggestion was either two or three minutes. There was also a suggestion regarding placing a total amount of time on the public comment session. This is at the discretion of the Board Chair. This does not need to be placed on the agenda. It was announced by the Chair at the beginning of the meeting, which is not an Open Meeting Law.

Chair Hilberg asked if the Board can discuss this item, as it was not previously on the agenda. Member Fowlks stated that the Board can discuss procedure and policy during meetings. It is a falsehood to assert that public input is the reason these meetings are lasting five hours. Chair Hilberg stated that there needs to be a limit on all public discussion, as a way to keep meetings moving forward.

Cindy Markowitz noted that Mark Barbadoro has a point of order. Mark Barbadoro stated that he is allowed to interrupt the Chair under Robert's Rules of Order and has been holding up a sign asking to speak for some time. Chair Hilberg stated that she did not see the sign. Mark Barbadoro stated that someone needs to be called upon when they raise their hands, as they may have a point of order. The Board badgered him for 25 minutes to apply for a board. It was the most terrible and wrong behavior he has seen from the Board. The Board is now trying to curb discussion in order to hide what has occurred. He noted that he was invited to this meeting, via text message, to discuss these issues, but was not told his comment period would be stifled. He disagreed with Town Administrator Johns regarding there not being an Open Meeting Law issue. He will continue to bring this up until the Board treats its constituents with respect. The Board is made up of Political Action Committee affiliates and this is clear from their behavior. Most boards use a code of order, such as Robert's Rules. He asked what rules the Board is following, aside from stifling questions and degrading him during a public meeting.

Member McKiernan called for a point of order and asked to move to the next public comment.

Robin Lazarow suggested the Board consult with legal counsel regarding Open Meeting Law and be better prepared next time. She expressed disappointment in the Select Board for not fairly and impartially considering all volunteers for committee positions. The Select Board should welcome volunteers who have something to offer, as long as they engage in civil discourse or respectfully commit to participating.

Diana Lipari stated that she chaired this Board during a controversial time. Except for in extreme circumstances, she did not limit the amount of public comment. She ran a tight meeting and kept people on purpose. She is familiar with the Supreme Court decision regarding people being able to say anything they want. The Board needs to find a way to balance people's need to express themselves with the need to maintain order and move a meeting along. Previous boards never limited public comment at any time. If the Board anticipated a large number of people, it limited the number of comments, not the number of minutes each person spoke.

Chair Hilberg noted that the decision left it so that she cannot run a tight meeting and keep people on purpose. The only way to keep a meeting moving is with time limits. She enjoys engaging with people but is having trouble with that format.

Francie Nolde thanked the Chair and Member Fowlks for their apologies at the beginning of the meeting. She is concerned that the Town is setting up a double standard regarding who is allowed to sit on boards/committees. There is a tight group of people working together and that group has become a force for approving and disapproving appointments using different standards. She has never seen anyone turned down due to personality. The Board probably could have worked out an agreement with Mark Barbadoro regarding an understanding as to the way one behaves on a committee. Mark Barbadoro is the most knowledgeable person for this position, and he is not being given a chance to participate. This is to the detriment of the of the Town.

Mark Barbadoro stated that there are a lot of people in Town who are Chair Hilberg's allies who are going to be very turned off by her behavior. They will see that people who want to volunteer may be badgered and badmouthed for 25 minutes. It has been a rich tradition in Boxborough that people were allowed to speak uninterrupted. Board members should not swear at people during meetings. Member Fowlks apologized publicly for his public conduct at the last meeting. Mark Barbadoro explained that Chair Hilberg previously swore at him during a public meeting and asked him to leave Town. The Board will find that meetings are shorter, and people will have more respect for the Board if it allows for public comment.

Cindy Markowitz stated that she is now even more dismayed at the Board's conduct, in cutting off public comment time. One arm of Town Hall is working hard to engage the citizenry to volunteer for positions, but the Board's actions are continuing to have the opposite effect by discouraging volunteers who do not want to be subject to the Board's vague notions of what appropriate behavior is. Tonight was another demonstration of the Board's mismanagement and making people feel completely unwelcome. She cautioned the Board to be much more aware of its behavior and suggested the Appointed Boards Policy be revisited. She asked the Board to do better and be aware that the public needs to have a voice.

APPROVAL OF MINUTES

- Regular Session minutes – 9/11/2023

Member Sundaram moved to approve the regular session minutes of September 11, 2023, as amended. Seconded by Member Fowlks. **Approved: 4-0-0** by Roll Call: Fowlks "aye," Sundaram "aye," McKiernan "aye," Hilberg, "aye."

APPOINTMENTS

- Affordable Housing Trust – Kristin Hilberg (Representing Select Board)

Member McKiernan moved to appoint Kristin Hilberg as the Select Board representative to the Affordable Housing Trust with a term ending date of June 30, 2025. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

NEW BUSINESS

- Action: Open Fall Town Meeting Warrant

Chair Hilberg moved to open the 2023 Fall Town Meeting Warrant. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

- Action: Fall Town Meeting Votes & Recommendations

Town Administrator Johns stated that there are three articles proposed to be included on the warrant. The first is to add is a full-time on-site Finance Director/Town Accountant. The second is the Sargent Road bond anticipation for the interest payment. The third one is an amendment to the Personnel Plan.

Town Administrator Johns explained that the first article on the warrant is for payment of prior year bills, totaling approximately \$65,000. The Finance Committee changed a few words in the article and voted 6-0-0 in favor of this item.

Member Fowlks moved to recommend Article 1 for payment of the prior fiscal year bills, for a total of \$65,535.71 from Free Cash. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Town Administrator Johns noted that Articles 2 and 3 are Planning Board articles. The Select Board does not typically make a recommendation on other board’s articles. Article 2 deals with the zoning bylaw and changing definitions within the usage table. Article 3 is for a comprehensive Town-wide traffic study. The Finance Committee believes that this is an item to come forward at Annual Town Meeting instead and voted 0-6-0 against it at this time.

Town Administrator Johns stated that Article 4 deals with joining the regional dispatch center. The Finance Committee is unanimously in support.

Member Sundaram moved to enter into a regional emergency communication center agreement with Nashoba Valley Regional Dispatch District. Seconded by Member McKiernan.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Member Fowlks stated that the Board should be making a decision based on its own thoughts, not based on the recommendation of another board/committee. He questioned bringing up the Finance Committee’s vote prior to hearing from the Board. He wants to give the appearance of open discussion among the Board before hearing from another entity. Chair Hilberg stated that the Finance Committee is not influencing the Board in any way. The Finance Committee decision is only an additional point of information for the Board to consider.

Cindy Markowitz stated that, if the Board needs to understand financial complications, then it should ask the Fin Com direct questions, but to provide the Fin Com’s vote or opinion as part of the warrant and use this as part of the Board’s discussion is not appropriate. The Board should evaluate the warrant article on its base. The Fin Com’s decision may be opinion based, not just finance based. A draft article should not reflect other committees’ decisions at this time, as the Board has not yet made its decision.

Town Administrator Johns stated that Article 5 is a Finance Director/Town Accountant position. An additional article would bring the Personnel Board forward to place an Assistant Accountant position onto the non-union account plan. The Finance Director would be part of the recruitment process for that position. The request is for \$55,000 in Free Cash to fund this recruitment, hiring, and retention for Article 5.

Member Fowlks stated that he would advocate to allocate money for both positions at this Town Meeting. He advocated for this to be in one article, but would support two, if so decided. Maria Neyland stated that the Finance Committee agreed with supporting a Finance Director position but is unsure how the Committee will vote if one article is presented with both positions. If both positions are placed in this article, the Finance Committee will pull its recommendation of this item.

Chair Hilberg moved to add an Assistant Town Accountant position and funding to the existing language in Article 5. Seconded by Member Fowlks.

Discussion:

Member Sundaram stated that it is important to consider that the public likes to see cooperation and unanimous support from boards/committees on articles. A good argument can be made for both positions if placed in separate articles.

Failed: 2-2-0 by Roll Call: Fowlks “aye,” Sundaram “nay,” McKiernan “nay,” Hilberg, “aye.”

Chair Hilberg moved to recommend a full-time, on-site Finance Director/Town Accountant position with a \$55,000 appropriation from Free Cash. Seconded by Member Sundaram.

Approved: 3-1-0 by Roll Call: Fowlks “nay,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Member Fowlks moved to add an article to fund a full-time Town Accountant and a part-time Assistant Accountant position. Seconded by Member Hilberg.

Discussion:

There was discussion regarding a Town Accountant title versus a Finance Director title. Maria Neyland stated that the Finance Committee would prefer an Accountant. Town Administrator Johns stated that he believes a Finance Director title will attract more interest, but he could advertise the position either way.

Member Fowlks amended his motion to add an article to fund a Finance Director and an Assistant Accountant position. Seconded by Chair Hilberg.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 11, establishment of a K-9 unit. Chief Szewczyk stated that the article will help to establish the unit. Much of the funding from this article will likely be returned to Free Cash, as there will likely be funding raised through private fundraisers and donations. There is a need for this service in Town, instead of relying on mutual aid. A year end cost could be approximately \$27,000, with most of that being an hour paid of service each day.

Chair Hilberg moved to recommend Article 11, Establishment of a K-9 Unit, with a \$26,300 appropriation from Free Cash. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Maria Neyland explained that the Finance Committee voted 5-1 in favor of this article.

The Board discussed Article 12, to amend the FY24 Personnel Plan. Assistant Town Administrator Hudson explained that this is to place two positions proposed for funding on the Personnel Plan, the Assistant Town Accountant, and the Local Transit Operator. The article also changes the Police Lieutenant position to non-exempt status.

Chair Hilberg moved to recommend Article 12, Amend the FY24 Personnel Plan, the Classification and Compensation Schedule. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 6, replacement of Fire Department Tender 65. Town Administrator Johns noted that it is not likely FEMA funding will be awarded for this item, as the FEMA funding is almost all spent. The proposal is to move this bonding authority forward at this time. Captain Gray explained that the Town currently only has one tanker, which is often used for mutual aid.

Chair Hilberg moved to recommend Article 6, Replacement of Fire Department Tender 65 (Tanker), by bonding \$532,000. Seconded by Member Fowlks.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 7, paying the interest on the Sargent Road bond.

Chair Hilberg moved to recommend Article 7, Sargent Road Bond Anticipation Note Payment of Interest, funded with \$11,000 from Free Cash. Seconded by Member Fowlks.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Finance Committee voted unanimously to support this article.

The Board discussed Article 8, reimbursement of interest charged to an employee upon retirement. This was based upon a mistake made by the Town many years ago.

Chair Hilberg moved to recommend Article 8, Retired Town Employee Deductions: Reimbursement of Interest Charged to Employee Upon Retirement, funded with \$3,740.73 from Free Cash. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 9, to transfer \$2,500 from the DPW budget to the Police Department budget.

Chair Hilberg moved to recommend Article 9, Fiscal Year 2024 Inter-Departmental Operating Budget Transfer, to transfer \$2,500 from the DPW budget to the Police Department budget. Seconded by Member Fowlks.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 10, a proposal from the Water Resources Committee, to hire a consultant to initiate development of a Town-wide Water Resource Plan, to be funded by repurposing money from previously approved articles. This item will not increase the tax rate. Les Fox, Water Resources Committee, explained that the original articles were conceived to start a long-range plan, but this turned into a larger project.

Chair Hilberg moved to recommend Article 10, Water Resources Committee, Consultant to Initiate Development of a Town-wide Water Resource Plan. Seconded by Member Fowlks.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 13, funding for a transit operator. This includes \$7,200 to fund the first month of the position. The Town will then get to choose the route to establish.

Chair Hilberg moved to recommend Article 13, Funding for a Transit Operator, with \$7,200 allocated from Free Cash. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

The Board discussed Article 14, a non-binding resolution to change the State flag and seal. Member Fowlks stated that the current State seal and flag do not seem to be inclusive, which is why the Board seemed to agree to place this on the Fall Town Meeting.

Chair Hilberg moved to recommend Article 14, Non-Binding Resolution to Change the State Flag and Seal. Seconded by Member Fowlks.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

- Action: Close Fall Town Meeting Warrant

Chair Hilberg moved to close the 2023 Fall Town Meeting Warrant, as edited this evening with the proposed additions and removals of articles. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Chair Hilberg moved to authorize the Fall Town Warrant as amended, subject to any review of Town Counsel, and final proofreading for textual or typographical errors. Seconded by Member Fowlks

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

- Action: Authorization of the 2023 Fall Town Meeting Warrant Mailing

Member Fowlks moved to authorize the constables to post the Fall Town Meeting on November 6th and to distribute it to every registered voter in Town. Seconded by Chair Hilberg

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

ADJOURN

Chair Hilberg moved to adjourn at 10:35pm. Seconded by Member Sundaram.

Approved: 4-0-0 by Roll Call: Fowlks “aye,” Sundaram “aye,” McKiernan “aye,” Hilberg, “aye.”

Item#

Exhibits

Agenda September 26, 2023

Draft Meeting Minutes 9/11/23

Email from Keith Lyons to Select Board, RE: Appointments to the EDC, 9/16/23

Statement from Cindy Markowitz to Select Board, 9/12/23

Letter from Mark Barbadoro to EDC, 11/6/2019

Email from Mark Barbadoro to Rich Guzzardi, RE: letter to EDC and Planning Board,
11/17/19

EDC meeting minutes 11/14/19

Kristin Hilberg appointment to Affordable Housing Trust

Fall Town Warrant