

**Town of Norwell
Select Board
Open Meeting Minutes
7/6/22**

TOWN OF NORWELL
TOWN CLERK
2022 AUG 18 AM 10:43

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Present: Ellen Allen, Jason Brown, Bruce Graham, Andy Reardon, Pete Smellie, Peter Morin

Motion; made by Jason Brown, seconded by Pete Smellie, that the board exit Executive Session, returning to Open Session, at 7:05pm. Allen voting yes, Brown voting yes, Graham voting yes, Reardon voting yes, Smellie voting yes.

Motion; made by Jason Brown, seconded by Pete Smellie, to approve the agenda as presented. Unanimously voted.

Motion; made by Jason Brown, seconded by Pete Smellie, to approve the 6/22/22 Open Meeting minutes. Graham voting yes, Reardon voting yes, Smellie voting yes, Allen abstaining, Brown abstaining as both were absent.

Motion; made by Jason Brown, seconded by Pete Smellie, to approve the 6/22/22 Executive Meeting minutes. Graham voting yes, Reardon voting yes, Smellie voting yes, Allen abstaining, Brown abstaining as both were absent

Town Administrator Reports

Mr. Morin announced that the Mass Dept. of Environmental Protection granted the Town's Water Department emergency interest free financing for the remediation project on the Town's water system to remove the PFAS. This will save hundreds of thousands of dollars in interest. Mr. Morin credited both the Board of Water Commissioners and new Water Superintendent Jason Federico for putting this grant application together. This also shortens the timeline for this project by a considerable amount.

As of July 1st, Darleen Sullivan has assumed the duties of Assistant Town Administrator, assisting Mr. Morin in addition to performing the duties of her current job; Finance Director/Treasurer. Congratulations to Ms. Sullivan.

Reappointments, cont'd.

Mr. Brown asked the board to postpone the reappointment of Lois Barbour to the Board of Appeals (ZBA). He added that this is an uncomfortable subject to discuss, as he has always had a cordial and respectful relationship with her. He noted that Ms. Barbour's contributions to the Town have been tremendous.

As a member of the appointing authority (Select Board), Mr. Brown reported that allegations have been made that Ms. Barbour has overstepped her authority as the ZBA Chair on post appellate decisions (at least one of which is under litigation) and other areas where she does not have authority. This information was conveyed to Mr. Brown and other board members, who have not had a chance to investigate these allegations (per Mr. Brown, this is *not* intended as a trial). He asked that the reappointment be

postponed and also not conducted publicly in this forum. He further requested that these issues be investigated by Town Hall staff; Mr. Morin or Ms. Sullivan or their staff, and then allow Ms. Barbour to reply to these allegations. This is not the venue to conduct this discussion. There are a number of people who made these allegations; some of whom do not want to come forward for fear of retribution from the ZBA.

Per Mr. Brown, "I think it is incumbent on this board as the appointing authority to ensure that all residents are treated fairly and equally by investigating such allegations. Residents have two avenues of recourse to address such a situation; they can vote an elected official out of office, or they can pursue a recall through the appointing authority."

Mr. Brown stated that he did receive complimentary letters, emails and phone calls in support of Ms. Barbour. However, additional questions raised by this issue also need to be researched. Specifically, he said that he has been told that Ms. Barbour does 80% of the work and has 80% of the influence, which he considers part of the issue and may suggest that the ZBA is dysfunctional.

Mr. Graham replied to Mr. Brown's comments, noting that, at his work place, he usually asks coworkers to settle issues among themselves. He would like the parties involved to meet face to face and discuss these issues, which has not happened yet. This is hearsay evidence at this point. Mr. Brown would like this to be resolved privately, which also has not happened.

Ms. Allen then read the following statement:

"Approximately 4 ½ weeks ago, fellow Select Board member Jason Brown called to tell me that he had reservations about reappointing Lois to the ZBA. Jason said that he had been contacted by Don Mauch and Brian Greenberg—both members of the Planning Board—with several concerns about reappointing her. These included her opposition to the PB's Accessory Dwelling Unit bylaw proposal (that Mauch and Greenberg had spearheaded), her practice of drafting the ZBA's decisions, and her alleged unequal treatment of a friend (Ms. Joseph) in a ZBA finding in March of 2020 with that of the friend's neighbor (Mr. Nagle) in a purportedly similar case in March 2022. This latter decision overturned a decision of the Planning Board on which, again, Mauch and Greenberg serve. Jason said he had not undertaken any individual review of these cases, but thought we should perhaps not reappoint her.

"At the time, I was also not familiar with these ZBA cases. ZBA proceedings and decisions are not part of the Select Board's job. However I responded to Jason that Lois had every right to disagree with the proposed ADU bylaw and so that was irrelevant. Jason agreed.

"I also explained that Lois has been drafting most of the ZBA's decisions for years. The 3 ZBA members who hear each case all comment on or edit them before the written decisions are voted. This is just like new policies drafted by Select Board members that our Board discusses and amends before adopting. So this second complaint is also irrelevant to whether we reappoint Lois. In fact, Town Counsel has told me many times that Lois saves the Town tens of thousands of dollars drafting findings. He also said

that she has developed genuine legal ability over the past 20 years and writes excellent draft decisions. He noted that very few of our ZBA findings are appealed and that Mr. Nagle dropped his initial appeal of the Joseph case.

"Furthermore, I reminded Jason that Lois doesn't unilaterally make any of the ZBA's decisions, so I didn't see how the accusation that she showed favoritism to Joseph could be true. I encouraged him to call Town Counsel to learn more about the two cases.

"Finally, I told Jason that it would be inappropriate to blind side Lois by not reappointing her without first giving her the opportunity to share her perspective privately. Jason agreed.

"This was 4 ½ weeks ago. Ten days later I called Lois and was shocked to learn that she had not been contacted by the accusers or Jason about any of this. After that I started to do my own due diligence.

I have read the decisions for both the Joseph and Nagle cases and watched the recording that is available for the Nagle hearing at which the decision was voted. The two most noteworthy takeaways that I found were:

- 1) Lois was not on the 3 member decision panel for either case. Let me repeat that...
- 2) Both were variance requests which require a unanimous vote of the 3 member panel assigned to the case. The Joseph variance was voted favorably 3-0. The Nagle variance was denied with two members voting no.

"In sum, I have taken the time to look into this over the past 4 ½ weeks and been unable to find any validity to these accusations, only two likely motivations for the complaints lodged with Jason by Messrs. Mauch and Greenberg, namely Lois did not support their ADU Bylaw proposal (that passed at Town Meeting and she did not speak against it) and they did not like, perhaps, that the ZBA voted differently than the PB on the Nagle decision.

"Beyond the decision to do no fact finding before telling me he was disinclined to reappoint Lois, I am even more troubled by the treatment of Lois. Jason agreed that it would be wholly inappropriate to blind side her. Nevertheless, when I had called her, she was unaware of all this. In fact 3 ½ weeks after speaking to me, Jason had never reached out to Lois. She then initiated a call to him and was reportedly told that he was conducting an investigation.

"Lois forwarded to me an email that she received TODAY (stamped 9:50 am) from Jason describing all kinds of extreme, non-specific accusations he'd heard from undisclosed people. And you just heard them. He said in it, as he did tonight, that the ZBA may be dysfunctional! He opined that we need to have an investigation."

The board made comments on this issue following Ms. Allen's statement, discussing how to handle a situation that rarely occurs.

Mr. Brown responded to Ms. Allen's comments and allegations, stating that he thought this whole issue should be handled privately to determine what is true or not true. Ms.

Allen pointed out that he had just made them public by raising them at this meeting. She said he could have addressed this during the prior 4 ½ weeks by requesting an Executive Session. Mr. Brown said the Chair knew of the allegations and could have done. Mr. Graham said that he had spoken to Ms. Barbour and Town Counsel and concluded there was nothing of concern.

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Ms. Allen shared comments from Town Counsel including his belief that Ms. Barbour has done nothing in her twenty years that would merit disciplinary action and his favorable comparison of how Norwell's ZBA functions relative to those in other towns.

Motion: Ms. Allen moved that the Board appoint Lois Barbour to the ZBA for a term expiring June 30, 2025. Mr. Graham seconded the motion.

Further lengthy discussion ensued. Mr. Brown asked if the appointing authority should investigate allegations about appointed board members or just "rubber stamp" reappointments. A lengthy discussion ensued about these topics with Mr. Smellie concerned that he was unaware of these matters and others noting the limitations of the Open Meeting Law.

Mr. Reardon made statements in support of Ms. Barbour and noted that he has not received any information relevant to these allegations as presented and would like to move the question.

Chair Graham reiterated the motion to reappoint Lois Barbour to the Board of Appeals (ZBA) for a term expiring June 30, 2025. Mr. Graham, Ms. Allen, Mr. Reardon-yes, Mr. Brown-no, Mr. Smellie abstained. The motion carried.

Ms. Barbour was invited to respond to these issues. She expressed her dismay and concern over these comments/allegations and cited conversations she had with Mr. Brown to discover the facts. She gave a detailed synopsis of her history on the ZBA, including training she pursued to expand her knowledge of board responsibilities. She outlined ZBA procedures and board members' duties, noting that each member pulls a significant percentage of the weight for board hearings and decisions. She stated that she is 'not the Lone Ranger' when writing the decisions, which are reviewed and edited as needed by Town Counsel Bob Galvin. She has served the Town on this board for twenty years. All thanked her for her service to the Town.

ZBA member Ralph Rivkind spoke in support of Ms. Barbour and expanded on the board members' duties and responsibilities.

Current ZBA member Daniel Senteno is up for reappointment this evening, as noted below:

Motion; made by Jason Brown, seconded by Pete Smellie, to reappoint Daniel Senteno to the Board of Appeals for a term expiring June 30, 2025. Unanimously voted

Norwell Historical Commission Reappointments

Motion; made by Ellen Allen, seconded by Pete Smellie, to reappoint Anne Green and Alan Prouty to the Norwell Historical Commission for a term expiring 6/30/25. Unanimously voted

Norwell Historical Commission Applications

Both Lilly Cleveland and Laurie Detwiler were present to give a summary of their backgrounds and reasons for applying to serve on this committee. The board thanked both for applying and emphasized their excellent qualifications. As there is only one vacant seat, the board will appoint one full time member and one alternate.

Motion; made by Jason Brown, seconded by Pete Smellie, to appoint Laurie Detwiler to the Norwell Historical Commission for a term expiring 6/30/25. Unanimously voted

Motion; made by Jason Brown, seconded by Pete Smellie, to appoint Lilly Cleveland to the Norwell Historical Commission as an Alternate member for a term expiring 6/30/25.

Unanimously voted

The board noted that Ms. Cleveland is most welcome to attend all meetings and also vote if a quorum is needed.

Community Preservation Committee (CPC) Applicant

Planning Board member Brendan Sullivan has served as its Rep to the CPC for the last few years and would like to continue serving on this board as an At Large member. He is well versed in all aspects of the committee's financial obligations and the CPA statute.

Motion; made by Ellen Allen, seconded by Pete Smellie, to appoint Brendan Sullivan to the Community Preservation Committee for a term expiring 6/30/25. Unanimously voted.

Board of Appeals (ZBA) Applicant

Joseph LaFleur gave a summary of his background and reason for applying to serve as an Associate on the board.

Motion; made by Jason Brown, seconded by Pete Smellie, to appoint Joseph LaFleur to the Board of Appeals as an Associate member for a term expiring 6/30/25. Unanimously voted

Fire Department Memorandum of Understanding (MOU) approval

Mr. Morin reviewed the highlights of this new agreement (through 2025) with the Fire Fighters Union, Local 2700. COLA's are 2% per year, paramedic stipends will increase by \$2K this year and \$2K next year, which will help make Town salaries more competitive. Education incentives were increased. This agreement is trying out a pilot program of shift differentials for evening and weekend shifts. Hopefully this will reduce both the number of forced shifts and accompanying overtime expense. Other measures tried have not had satisfactory results. If this pilot program is not sustainable, the chief can rescind the differential payments, which will serve as a reopener for negotiations with the Town.

The union has been excellent to work with and the chief has taken an active role in these negotiations. This contract will continue the positive relationship between the union and management. Mr. Morin respectfully requested that the board approve this contract.

Motion; made by Jason Brown, seconded by Pete Smellie, to approve the Memorandum of Understanding between the Town of Norwell and the Norwell Fire Fighters Union, Local 2700, as presented to the board. Unanimously voted

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Solar Credit Proposal – Hampshire Power; Darleen Sullivan, Christine McCarthy

Ms. Sullivan reviewed the proposal for this program. The new library and the police/fire department, whose combined energy bills total about \$100K per year, were reviewed as candidates for this trial of a renewable energy program, which could save the Town about \$20K per year with its 20% discount. The company's website has good reporting to monitor the Town's progress. This work in progress will be voted on at a future board meeting.

ARPA Spending Request

Ms. Sullivan recapped the Town's receipt of these CLFRF grant funds (Corona Virus Local Fiscal Recovery Fund) and proposed a spending plan to purchase the Class V ambulance/pumper truck instead of borrowing money. She would like a board vote to support this (although a vote is not required).

The ARPA funds reimbursement for this purchase under the Public Safety/Health Services, capital expenditures category, will be requested through Plymouth County (using interfund borrowing). Per Ms. Sullivan, this is actually using the Town's cash in anticipation of receipt of the ARPA grant proceeds.

Motion; made by Jason Brown, seconded by Pete Smellie, authorize the Town Accountant and/or Town Administrator to request up to \$850,000 from the Plymouth County ARPA Program to purchase a Class V Ambulance/Pumper Truck. Unanimously voted

Questions were asked about the temporary use of the Town's Free Cash funds to make a payment now, before receipt of the grant money. Mr. Morin noted that the Town just received more than this amount in the most recent CARES Act payment.

Mr. Morin complimented both Ms. Sullivan and Ms. McCarthy on their due diligence in finding and applying for this grant, which will save the Town enough to fund the increase in operating costs approved in the Fire Department MOU. Kudos to both!

Motion, made by Jason Brown, seconded by Pete Smellie, pursuant to MA Gen. Law 44, section 7.1, or any other enabling authority, I move to authorize the Treasurer/Collector to issue an advance of funds in lieu of borrowing in the amount of \$726,508. Unanimously voted

Town Hall Lease RFP

Mr. Morin reviewed the lease template reviewed by Town Counsel with the board for an outright purchase or long-term lease of commercial space within the Town. The preference for space would be within a short distance of either Main Street or Washington Street.

A minimum of 11K square feet with ADA accessibility for entrance and restrooms would be a priority. A modest amount could be spent to make the new space accessible if needed. Basic criteria includes: 1000 sq. ft. of storage space, 45 parking spaces, clear title, no procurement issues with the state, etc. There will be a time limit set for the closing to allow for a Special or Annual Town Meeting. Mr. Morin is eager to get this RFP on the street to explore available options. The current Town Hall would be prohibitively expensive to renovate, so hopefully this RFP will provide a cost-effective solution. The board discussed a shortened time limit of less than the 10 months proposed in the draft RFP. Mr. Morin would actively negotiate for a desirable property.

He will fine tune the draft and re-send it to the board for a final review.

Motion; made by Jason Brown, that the board approve an RFP for a draft for a Town Hall lease or purchase. Unanimously voted

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Concept for St. Helen's (potential purchase), Simon Hill, Carleton and Town owned land; next steps

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Mr. Graham turned the meeting over to Ms. Allen to discuss the above topics. Ms. Allen recapped the current events happening at St. Helen's and other properties, using a Power Point presentation, which is attached to these minutes.

Next steps would include appraisals, if available, for some or all of these properties. She noted many committees could work together, encouraging residents to join committees to participate. She reminded all that direct abutters to any of these properties may not hold a voting role on a committee. Any or all of these activities would be a great deal of work, so she is just offering ideas for next steps.

The board feedback focused on the large amount of funding required for new property purchases, which would need Town Meeting approval. Discussion ensued about the various properties, the potential asking prices and proposed uses.

Mr. Graham said that the two St. Helen's parcels are assessed for about \$900K, noting that the buildings would have to be razed. Any CPA funding has both use and resale restrictions.

Mr. Morin noted that the Select Board really controlled the purchase of the Carleton property and would probably do so this time. Additionally, the Town has reached out to the archdiocese for years, in good faith, with no success until their response last week. He is very pessimistic that they will even give the Town the opportunity to have a chance at a purchase although the Town has demonstrated the ability to purchase property in an advantageous way to a seller. It has been incredibly frustrating to try to move this forward.

All discussed next steps and a theoretical number for an offer. Mr. Reardon mentioned that the archdiocese has plans to use the St. Helen's sale proceeds to fund a new church in Hanover, which will drive the asking price of this property. Mr. Morin noted that a Town Meeting wouldn't even be scheduled until an estimated price to make an offer was available, which wouldn't happen until there is a signed P & S. He added that there is not time to do a formal appraisal, as previously done for the Carleton property purchase. All talked about potential funding for a right of first refusal. Ms. Allen suggested adding an extra meeting to cover any potential breaking news on this project. The board will meet next week, 7/13/22, at 7pm. All would like to absorb this plan and talk next week. If there is nothing to discuss the meeting will be cancelled.

Select Board Reports

Ms. Allen read the following statement:

"I was absent from our last meeting and understand it was announced that the Town prevailed in the lawsuit against us from 10 Wildcat HOA residents. They sought to compel the Town to place into conservation two town parcels abutting their neighborhood based on the passage of their citizens petition at the May 2021 TM.

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"I want to add some further comments about the significance of this win because, as I've previously noted, the actions taken by Brian Carroll and Tim Wall in particular have damaged the town by creating distrust of town leadership and driving away volunteers who don't want to be subjected to bullying.

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"As we all know, they have led an expansive effort, including this lawsuit, over the past 17 months to create this distrust of Norwell town government and leaders. Their claims have now been discredited by the two dismissed filings against me at the State Ethics Commission and now—most significantly—by this Land Court ruling.

"This court decision finds that the Town has accurately followed municipal law. The Court found that the unanimous 2004 TM vote for the the Selectmen's article to use this land for affordable housing still stands. The key reason cited in the ruling to support this decision is that the Town (through the CHT) has **been diligently and persistently pursuing this objective for many years.**

"This court ruling not only said that the May 2021 TM article did not compel the Board to put these parcels into conservation...**it found that the article did not even empower the Board to do so.**

"So in an effort to restore faith in our Town government, I want to underscore first, that we can rely on our Town Counsel and Town Administrator and that we are willing to confirm their views on high profile matters with other municipal attorneys. And second, Town Meeting did not compel the Wildcat parcels to be transferred to conservation. I hope those residents who have believed this misinformation will realize it's time to start trusting our municipal leaders about factual matters even when they don't like our opinions.

"If residents want to be heard, I can assure you that for me—and I suspect for other Board members—that respect is far more effective than personal, unsubstantiated attacks.

"At our June 8th meeting, I asked my fellow Board members to seek ways to reestablish civil discourse in our town government, restore residents' faith in our Town leadership and their interest in volunteering for committees and boards. I hope this information about the legal decision is a step in this direction and that all four of you will also share this information when you talk to our fellow residents. Our Town is well run. We not only have a AAA debt rating that attests to our financial strength, but also hard working, knowledgeable and ethical leaders."

Mr. Graham noted that Brian Carroll, who was present at the meeting to comment, would not be recognized by the Chair to speak on this topic at this evening. In response to a question from Mr. Carroll, Mr. Graham stated that the policy of the board is that the Chair determines whether or not members of the public will be recognized in a public meeting, as stated in the Open Meeting Law.

Future Meeting Agendas

The board discussed agenda items for future meetings. The next scheduled meeting after July 13th will be July 20th. The board gave a short summary of agenda topics for the 7/20/22 and 8/3/22 meetings.

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Citizen Comments – Brian Greenberg

Mr. Greenberg was present to ask about Citizen Comments and clarification of the 48 hours' notice prior to meetings requirement to discuss a specific topic. Per Mr. Graham, a citizen can always speak to a topic that is on the agenda if they are recognized, which might or might not happen, depending on the topic and nature of the comments.

Mr. Greenberg asked to correct some of the prior comments made during the discussion about reappointing Lois Barbour to the Board of Appeals. He spoke only to his state of mind and motivation regarding this reappointment, noting that his comments were in no way motivated by behavior related to the Accessory Dwelling Bylaw. There are no sour grapes because the Town Meeting Article passed, but he did express frustration to Mr. Graham and others before Town Meeting. He is hopeful that this frustrating situation won't happen again with other proposed legislation. He remains concerned about other things but does not want to comment further at this point in time. He regretted what occurred here tonight as he thought he presented some well-founded and legitimate concerns. In retrospect, Mr. Greenberg regretted that he did not approach Ms. Barbour for a discussion in addition to the appointing authority (Select Board). He does plan to apologize to her on that specific issue. He believes that it is appropriate for a taxpayer/citizen to approach the appointing authority when there are concerns, with the hope that the matter would be handled privately. He again expressed regret about the public manner in which this issue was addressed, but not that he raised what he considered legitimate concerns.

Ms. Allen thanked Mr. Greenberg for his comments and also regretted the public nature of this discussion.

Brian Carroll was recognized by Mr. Graham and again addressed his perceived issues of trust, the "democratic process" with regard to the Wildcat property and voter issues with Town government. He again addressed the board with his perceived issues about the lawsuit and the board actions after Town Meeting. He gave his interpretation of the land court judge's ruling. He noted that it will be appealed to the Supreme Judicial Court if necessary. He scolded Mr. Graham and Ms. Allen for spending additional "taxpayer money".

The board then further discussed agenda topics, the Wildcat topic, Open Meeting Law violations and other issues.

Mr. Morin stated that Mr. Carroll's statements were inaccurate and in cases outright lies. The case was rejected by the land court judge and not seen as relevant. The precedent on which the Town relied was appropriate. This was a clear victory on the merits of the case. For Mr. Carroll to say that it wasn't is an outright lie.

Mr. Reardon asked that the board consider a policy that if a resident wishes to address the board that the office be notified by Monday at noon of the topic to be discussed. That way the board can be prepared. This policy has been adopted already, per Mr.

Graham. The only way around this is to remove Citizen Comments on future agendas. Other towns' citizen comment policies at board meetings include about half who allow them and half who do not. The board discussed this issue and board comments at length. Mr. Graham opined that all board members but the Chair have the right to comment on an unanticipated topic. Discussion ensued about this topic.

Adjournment

*Motion; made by Andy Reardon, seconded by Pete Smellie, to adjourn at 9:20pm.
Unanimously voted*



Bruce W. Graham, Chair