

MEETING MINUTES FOR
NOVEMBER 18, 2013

A regular meeting of the Board of Selectmen was held on November 18, 2013 in the Conway Hearing Room at 7:00 p.m. Present were Selectman David Gagliardi, Chairman, Selectman Robert Accomando, Vice Chairman, Selectman Michael Rosa, Secretary, Selectman Andrew Deslaurier, Member, Selectman George Simolaris, Member, John Curran, Town Manager, Cathleen O’Dea, Assistant Town Manager

CALL TO ORDER

Chairman David Gagliardi called the meeting to order at 7:00 p.m.

There was a moment of silence for Margaret Ingraham, Town Historian and School Teacher and Edmund A. Mallett, Billerica Schools and Commission on Disability.

OPEN MICROPHONE

George Noel, 2 Locke Road came to the podium to express his gratitude to Town Manager John Curran for his performance as Town Manager and to show his support for him.

David Johnson, 113 Gray Street came to the podium to express his opinion on recycling and how it pertains to Waste Management.

Chris Musker, 12 Fawn Lane came to the podium to express her opinion on the Town Manager’s contract and the “OML Complaint” on the agenda.

Chairman David Gagliardi stated that her concerns would be addressed when that agenda item was reached.

Kelly Sardina, 95 Gray Street came to the podium to express her opinion on the traffic issues in her neighborhood.

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Chairman David Gagliardi asked Town Manager John Curran to look into the traffic issues on Gray Street

Kevin Heffernan, 11 Woodbury Road came to the podium to voice his support for Town Manager John Curran.

At this point, Chairman David Gagliardi stated that anyone in the gallery speaking out will be removed from the meeting.

Dan Burns, 12 Nolte Road came to the podium to express his opinion on the Town Manager's contract.

Seth Oliver, 43 Pond Street came to the podium to express his support for the Town Manager.

Tim Morgan, 33 Woodbury Road came to the podium to show his support for Town Manager John Curran.

ANNOUNCEMENTS

VACANCIES
BOARD OF SELECTMEN

Cable Advisory Committee	1 members to 2016
Cabot Land Re-Use Com.	3 members to 2016
Commission on Disability	3 members to 2016
Elderly & Disabled Taxation Fund Committee	1 member to 2016
Financial & Compliance Audit Committee	2 members to 2014
Historical Commission	1 member to 2016
Open Space & Recreation Com	1 member
Scholarship Foundation Com	2 members to 2016

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**Water Conservation Oversight
Committee**

I member to 2016

COUNCIL ON AGING ACTIVITIES

RESPITE COMPANION CARE ~There's No Place Like Home

The Respite Companion program helps families care for their loved ones, allowing elders to remain at home as long as possible and provides peace of mind and respite for the caregiver. This program, provided by the Billerica Council on Aging, is exclusive to Billerica residents. Respite Companions are available seven days a week. For more information please contact Lauren Gray. 978-671-0916 or lgray@town.billerica.ma to learn how the Respite Companion program can help you.

COA TV Program – “FOREVER YOUNG” -- Check out the Billerica Council on Aging’s BATV program, Forever Young. A new show airs, monthly, on Comcast Channel 8 and Verizon Channel 31.

COA Van Service - The van helps seniors do errands and tend to local medical appointments five days a week. The van will take seniors, age 60+, and the cost is \$1.00 each way.

The hours are:

Monday	Tuesday	Wednesday	Thursday	Friday
8:00 – 3:00	8:00 – 3:30	8:00 – 3:30	8:00 – 3:30	8:00 – 3:00

- Monday and Friday last pick up is 2:30p.m.
- Tues, Wed, and Thurs. Last pick up is 3:00 p.m.

Please call Ruth at 978-671-0916 x229 from 9a.m. to 3p.m. to schedule a ride

Claus with a Cause---Help the COA make a Billerica family holiday a little brighter. A tree with gift tags will be in our lobby. Choose a tag and bring a wrapped item to the Senior Center by December 13th with the name attached to the gift.

Computer Room Hours - Monday through Friday 9:00a.m. to 3:00p.m. (unless classes are scheduled)

Computer Extra Help - by appointment. Wed. 1:00p.m.- 3:00p.m., Thurs. 1:30p.m-2:30p.m. and Fridays 8:30a.m.- 9:30a.m.

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Games for Your Brain—Stay mentally alert. Billerica COA offers many opportunities to Challenge your Brain. Join us for Scrabble, Party Bridge, Cribbage, Hearts, Whist, etc. If You are interested in playing any of these please call the Senior Center at 978-671-0916 we will connect you with others who have the same interest and add new games to our schedule.

Scrabble Anyone? Join us for Scrabble every Monday at 10:00a.m. Sign up at the front desk. Two to three players needed for each game.

Decorating The Senior Center---Mon. Dec. 2nd Join us at 9:30a.m. and help decorate the center for the Holidays. Call Linda at 978-671-0916. Pizza will be served as a thank you.

Computer training Beginners 2-----Tues. Dec. 3rd starting at 10:30a.m.

Tai Chi---Tues. Dec. 3rd ,10th & Dec. 17th at 10:15a.m.

Caregiver's Support—Wed. Dec. 4th & 18th at 10:00 a.m. This is facilitated by Mary Coakley.

Sen. Donnelly Office Hours— Wed. Dec. 4th at 9:30 a.m. Bring issues and concerns.
The Senator's office number is 617-722-1432

Facebook Computer Class—Thurs. Dec. 5th at 10:30a.m.

Reiki Clinic—Thurs. Dec. 5th & 26th at 9:30 a.m. Reiki Master, Rosemarie Bass and her staff facilitates. Please call for an appointment.

Shine Appointments—Thurs. Dec.5th & the Dec.19th at 9:30a.m.with the SHINE counselor Sherry Palo.or Mon. Dec. 9th & Dec. 23rd at 8:30a.m. with Margaret Frazier, our new SHINE Counselor.They will provide free confidential counseling on all aspects of Medicare and related health Insurance Programs. Please make an appointment 978-671-0916.

Choral Group—Thurs.in Dec.5th, 12th. & 19th at 10:30a.m.. “Just Sing, Sing a

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Song” **Choral Group-Singers needed** -- Do you like to sing? Join the “Forever Young Singers” No experience necessary. Call Linda at the Billerica Senior Center for more information.

Men’s Group—Thurs. Dec. 5th at 12:00 Noon at Billerica Marriott.

Podiatry Appointments—Tues. Dec. 10th starting at 9:00 a.m. Dr. Timothy Downs is the Podiatrist. Please make an appt. at front desk. Cost is \$25.

Grief and Healing—Wed. Dec. 11th at 11:00 a.m. Facilitated by Susan Bailey, Chaplain at the Merrimack Valley Hospice.

Pharmacy Clinic and Blood Pressure Reading—Thurs., Dec. 12th at 10:00 a.m. Dr. Chin will be here to give Blood Pressure readings and a free Pharmacist consultation.

Basic Digital 2 Photo Class---Thurs. Dec. 12th at 11:00a.m. Alex Shure, local photographer and technician will look at how more advanced cameras work and will explore some photo- retouching. This will be about a 90min. class.

Billerica High School Orchestra---Tues. Dec. 17th at 9:00a.m. Mark your calendar It will be held at the Billerica Senior Center. Enjoy a Holiday performance of the talented Billerica High School Orchestra.

Hearing Screening ----Wed. Dec. 18th at 1:00 p.m. conducted by Mass Audiology. They will conduct hearing screening, and will clean & check your hearing aids.

Meditation—Wed. Dec. 18th at 10:15 a.m. facilitated by Marion Goddard.

Christmas Day Dinner---Wed. Dec. 25th at 12:00p.m. for senior citizens. Please join us on Christmas Day for a FREE, Turkey luncheon. Please contact Jeanne Teehan or Mary Coakley to RSVP or for more information.

Follow the Council on Aging on social media: Like us on **Facebook**, Billerica Council on Aging; follow us on **Twitter** @BillericaCOA; on Nextdoor.com see posts from Billerica Council on **Ag**ing; and on the Town’s website under town departments.

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MERRIMACK VALLEY LEAD PAINT REMOVAL PROGRAM

Secretary Michael Rosa stated that for information on the Lead paint removal program to contact the Billerica Board of Health at 978-671-0931.

TOWN OF BILLERICA MERCURY RECOVERY PROGRAM

Secretary Michael Rosa stated that for information on the Mercury Recovery Program to contact the Billerica Board of Health 978-671-0931.

WATER CONSERVATION REBATE PROGRAM

Secretary Michael Rosa stated the Town of Billerica has a Rebate Program for the replacement of toilets, urinals and clothes washers with water conserving features. The “Water Conservation Fund” was established to mitigate the demands on the Town water supply and allows the DPW to offer these rebates. To qualify for the rebate, Billerica water customers must be in good standing and own the property where the fixtures will be changed out. Tenants may participate with written permission from the property owner. Toilets, urinals and clothes washers must be specific models to qualify for rebate. Go to www.billericadpw.org or contact the DPW Director’s office for list of qualifying models. Qualifying toilet rebates are \$100.00. Qualifying urinal rebates are \$25. Qualifying clothes washer rebates are \$225.00. All rebates are \$100. All rebates will be applied as a credit on your water bill. Rebate applications can be picked up at the DPW Director’s Office at Town Hall or at the Water Treatment Facility located at 270 Treble Cove Road. Applications must be submitted to the DPW within 90 days of purchase.

SUNSHINE GALS KITCHEN-MEALS PREPARED AND SERVED FOR NEEDY FAMILIES LIVING BILLERICA

Secretary Michael Rosa stated the Sunshine Gal’s Kitchen prepares and serves meals on the fourth Saturday of each month between 12:00 Noon and 1:30 p.m. for needy families living in Billerica. This luncheon is homemade and prepared and served at the First Parish Church located in Billerica Center. If you have any questions, please call Jo Leary at 978-270-4509 or go to sunshinegals@yahoo.com.

MERRIMACK VALLEY HOUSING PARTNERSHIP, PROJECT GENESIS, HOME BUYER TRAINING CLASSES 2013 SCHEDULE

Secretary Michael Rosa stated the Merrimack Valley Housing Partnership, Project Genesis, is hosting Home Buyer Training Classes to promote responsible and sustainable home ownership. They will have classes in English, Spanish and Khmer. Classes will be held at Middlesex

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Community College in downtown Lowell. You can register online at 222.mvhop.org or call 978-459-8490.

BILLERICA FALL YARD WASTE

Secretary Michael Rosa stated that the Billerica Fall Yard Waste collection will be November 4 through December 6, 2013. It will be the same day as your trash and recycling collection. Please use bio degradable paper bags or barrels marked "Yard Waste". Place yard waste curb side. No yard waste in plastic bags will be collected. Go to www.billerica.dpw.org for a map of collection areas or call 978-671-9171 for more information.

TRASH AND RECYCLING – SCHEDULE FOR THE WEEK OF THANKSGIVING

Secretary Michael Rosa stated that due to the Thanksgiving Holiday on Thursday, November 28, trash and recycling will be delayed by one day starting on Thursday. Regular Thursday collection will be delayed until Friday November 29. Regular Friday collection will be delayed until Saturday, November 30. Please refer to the collection schedule in the Annual Residential Recycling and Trash Collection Guide or on the DPW website at www.billericadpw.org.

BILLERICA PUBLIC LIBRARY'S "13 IN '13 READING CHALLENGE", FINAL EVENT OF THE YEAR ON THURSDAY, DECEMBER 5, 2013.

Secretary Michael Rosa stated that Celebrate a Year of Great Reading at Billerica Public Library's "13 in '13 Reading Challenge" final event of the year is on Thursday, December 5, 2013 at 7:00 p.m.

Please join us for refreshments, activities, and a lot of fun! The winner of our Historic Grand Prize getaway at Concord's Colonial Inn will be drawn, and there will be lots other prizes as well.

If you haven't joined the challenge yet, it's not too late. To sign up, log on to our website at www.billericalibrary.org or stop by the library. And be on the lookout for "14 in '14 Reading Challenge beginning on January 14.

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NEW BUSINESS

MIDDLESEX 3 – COMMUNITY INNOVATION CHALLENGE GRANT

Stephanie Cronin, Economic Development Director for the Town of Billerica came to the podium to speak on the Middlesex 3 Community Innovation Challenge Grant that the Communities of Bedford, Billerica, Burlington, Chelmsford and Lowell are applying for. This grant will assist in establishing a shared transportation network among the five communities it in order to provide more efficient and consistent regional transportation services in the future.

A discussion among the Board members took place stating their support of the Grant

Selectmen Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen support the Community Innovation Challenge grant and approve the Town Manager to sign on behalf of the Board.

It was voted: 5 – In Favor
0 - Opposed

MINUTES – NOVEMBER 4, 2013

Chairman David Gaglardi stated that no action would be taken on the Minutes of November 4, 2013 until the vote on adjourning into Executive Session was recorded accurately.

MINUTES 4, 2013 (EXECUTIVE SESSION)

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion to accept the Executive Session Minutes of November 4, 2013 as presented

It was voted: 4– In Favor
0 - Opposed
1 – Abstention (Selectman Accomando)

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PRESENTATION

UPDATE ON THE BILLERICA ALLIANCE

Caroline Catlender of the Billerica Alliance came to the podium and updated the Board on the Alliance's activities.

OLD BUSINESS

TOWN MANAGER REPORT

Town Manager John Curran spoke about the Information Technology Collaborative 4 which is also a CIC grant. The Board would need to delegate authority to Mr. Curran to execute this on behalf of the Board.

This application is a collaborative which includes several communities and has been initiated by the IT Director which basically is an information collaborative portal by which the communities involves would exchange information.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen participate in a Community Innovation Collaborative Grant and authorize the Town Manager to sign on behalf of the Board.

It was voted: 5 – In Favor
0 – Opposed

"OML COMPLAINT"

Chairman David Gagliardi stated that Selectman Robert Accomando left the room.

Chairman David Gagliardi read:

"On November 16, 2013 a complaint was filed by Virginia Musker with the Attorney General's Office claiming that the two member team of the Board of Selectmen charged with negotiating a new employment agreement for the Town Manger under Section 13.8 of the Board's Policies and Procedures violated Open Meeting Laws by not posting that meeting in compliance with the law.

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The complaint further charges the Chairman violated Open Meeting Laws by not making the appointment of his negotiating partner at a public meeting. The complaint also suggests that a new negotiating team, not including present members be appointed in their place.

Upon receiving the complaint, I referred the matter to Town Counsel for his opinion on what course of action would be best.

After reviewing the complaint, Counsel stated in a letter to the Board dated November 14, 2013 several points that needed addressing.

First, he questioned whether or not the complaint was filed within the 30 days of the date of the alleged violation as required on the complaint form. The actual date of the meeting in question was Thursday, September 5, 2013.

Notwithstanding the late filing of the complaint, Counsel suggested and I agreed that the Board should address the substance of the complaint as if it had been filed timely.

As for the alleged violation as to the posting of the negotiating team meeting, Section 13.8 of the Board's Policies and Procedures states "after public review of the Town Manager, the Chairman and one member chosen by the Chairman shall enter into negotiation with the Town Manager concerning, if applicable, an employment agreement, compensation and/or changes to the employment agreement, compensation, etc."

This policy has been in place since 2008 and has been used several times by past Boards in negotiating the Manager's employment agreement.

It also has been consistent past practice of those Boards not to post meetings between the 2 person negotiating team and the Town Manager pursuant to Open Meeting Law requirements. At no time has the issue of an Open Meeting Law violation ever come up during that time.

In spite of past practice, Counsel suggested and I agreed, that we should proceed with an abundance of caution with respect to the Board's policies and practices in this regard.

The proper course of action in response to the allegations of the complaint in his opinion would be to request the Board to vote to void the prior actions of and disregard the work product generated by the two person negotiating team which was presented to the Board in September and begin new negotiations with the Town Manager complying with Open Meeting Law requirements.

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Addressing the part of the complaint that alleges the Chairman failed to appoint his negotiating partner in public session, Counsel stated that in his opinion under Section 13.8 of the Board's Policies and Procedures, the Chairman acting as an individual, with the appointment powers designated in the policy is not required to appoint the negotiating partner in compliance with any Open Meeting Law requirements.

Counsel further states that the request made in the complaint that two different members of the Board be appointed to negotiate the new agreement with the Town Manager does not constitute a violation of Open Meeting Laws and is therefore not binding upon the Chairman.

Counsel further states that the discretion to choose the negotiating team member under the Board's policy remains with the Chairman and the Chairman can select any member.

I also want to make it clear to the public why I removed the Town Manager's contract discussions from tonight's meeting agenda. Due to the fact the above mentioned complaint alleges that a violation of Open Meeting Laws has occurred with respect to the preliminary negotiations of this agreement and the fact that we don't know how the AG's office will rule on this issue, I could not allow further discussions or debate on this matter which would have placed the Board in the position of potentially further and intentionally violating Open Meeting Laws until the matter has been resolved.

Under the Open Meeting Law, when a complaint alleging a violation is served upon the local body, that local body has a duty to review the allegation of the complaint and take such remedial action as it may deem appropriate to resolve any potential Open Meeting Law issues. That is precisely what I will request the Board to do this evening. Until these Open Meeting Law allegations are satisfactorily resolved, I believe that it is imperative that the Board defer any further negotiating discussion on the Town Manager's agreement to avoid placing itself in the position of further possible non-compliance and that we commence the negotiating process under Section 13.8 anew assuring full compliance with the law at every step in the process. Counsel agrees that this course of action is not only appropriate but prudent for all parties involved.

I will request that Counsel draft and send a letter to the Attorney General's Office detailing the steps we have taken to address and resolve this matter with the assurance that the Board will prospectively conduct these Section 13.8 negotiations in full compliance with any applicable Open Meeting Law Requirements."

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Chairman Gagliardi stated he would entertain a motion that the Board nullify all prior actions of the Town Manager's Agreement Negotiating Team undertaken to date pursuant to Section 13.8 of the Board's Policies and Procedures and to disregard any and all work product and any and all recommendations produced by the two member negotiating team presented to the Board in September.

Secretary Michael Rosa inquired why the Board would vote to rescind an item on which no action or vote was taken.

Town Counsel Patrick Costello came to the podium and explained that any information that has been produced as a possible violation of the Open Meeting Laws could taint the whole process.

The Attorney General's Office has the right to void any action taken by a Board where there is any violation of the Open Meeting Law involved.

In this instance, the Board has received an agreement with revisions that were probably prepared by the negotiating team; and the Board would most likely be voting based upon the recommendations in that document. In Counsel's opinion, that is enough to warrant voiding the interaction and begin again with a clean slate.

Selectman George Simolaris discussed the matter and inquired of Town Counsel if the Board had to have the contract seven days prior to the meeting before voting.

Selectman Simolaris further stated for the record that he never stated that he would not vote for Mr. Curran's contract, he just did not like the way the situation unfolded.

Town Counsel stated that Selectman Simolaris was correct on receiving the contract seven days prior to the voting meeting.

Town Counsel further elaborated . The issue is whether the two person negotiating team in question constitutes a sub- committee. Town Counsel explained that the definition of a sub-committee in the Open Meeting Law as defined by the Attorney General's Office is any multi member body that advises or makes recommendations to a larger body.

Attorney Costello further stated that in this particular instance the Board of Selectmen adopted their own policies and procedures where the Chairman is charged to appoint another member of the Board to enter into negotiation with the Town Manager. That is a function that would

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normally be carried out by the Board. The policies and procedures does not specify that they are a sub -committee but it is the Chairman and one of his appointees.

Attorney Costello cited other communities where the Attorney General has referred to them as “sub- committees”. He felt it was prudent to err on the side of “abundance of caution”

Selectman Simolaris stated that he hoped in the future this would be talked about and everyone would be aware of it.

Town Counsel Costello responded that is what the Chairman is attempting to do this evening. The slate would be wiped clean. The work already done would be negated and meetings of the two person negotiating team would be posted.

Selectman Simolaris took issue with the timing of the Manager’s contract because of the Collective Bargaining Agreements being negotiated.

Chairman Gagliardi responded to Selectmen Simolaris regarding the timing issue. He stated the proposed contract was in the Selectmen’s packets for review to be voted on at the following meeting to give the Board the required seven days for review.

Chairman Gagliardi further stated that he conducted the negotiations in compliance with Section 13.8 of the policies and procedures the same as it had been done since 2008. He followed the same procedures as had been done by previous negotiating committees. He further stated that there still has been no ruling by the Attorney General’s Office. He also said he had contacted Town Counsel and providing the Charter and procedures he asked if this should be submitted now or should they wait. Town Counsel’s ruling that this was the proper time to be doing it.

Town Counsel stated that there was a big difference in the eyes of the Attorney General between intentional and unintentional violations of the Open Meeting Law. That is why he counseled the Chairman to take this action this evening. He felt that taking this corrective action would resolve the issue.

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Secretary Michael Rosa stated that regarding the delivery of the Town Manager's contract, the Chairman did say that he was presenting it seven days in advance, that it was not the initial intent. He felt that the initial intent was to vote on it at the meeting since the date on the contract was September 23, 2013. He felt the intent was to vote on it at that meeting and have the contract start on that night.

Chairman Gagliardi responded that was not the intent. The Town Manager put that date on it, not knowing that the Board needed seven days to review it.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen nullify all prior actions of this agreement negotiating team undertaken to date pursuant to Section 13.8 of the Board's Policies and Procedures and to disregard any and all work product and/or remediation product by the two member negotiating team presented to the Board of Selectmen in September.

It was voted:

4 – In Favor

0 – Opposed

1 – Abstention (Selectmen Accomando)

Selectman Robert Accomando returned to the room.

COMMUNITY FUNDS

Chairman David Gagliardi stated that they had received applications for the Community Funds .

Town Manager John Curran stated that there were four companies in addition to E-Ink. There is \$110,000, but \$25,000 is already committed.

Chairman Gagliardi stated that the remaining four companies would be divided up among Board members.

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Resident Dave Johnson came to podium and stated one of the things the Board of Health could ask for was for Waste Management to apply for a Site Assignment. A Site Assignment reviews all aspects of the operation relative to the Town's By-Laws and could enforce operational constraints on the facility.

Mr. Johnson said a Site Assignment was necessary due to the fact that Waste Management processed 600 tons of recyclable materials per day which exceeds the maximum 250 tons per day.

Building Commissioner Mark LaLumiere came to the podium and stated that he was not familiar with the Board of Health regulations pertaining to public meetings or Site Assignments. He said he would answer any questions the Board had relative to zoning issues or the temporary occupancy permit.

Chairman David Gagliardi asked Commissioner LaLumiere what authority the Board of Selectman have over this matter.

Commissioner LaLumiere stated that he did not believe that they had any.

He further stated that the site has been on line and operational full stream for the last two months and his office had not received any complaints thus far.

Commissioner LaLumiere spoke about the zoning designations of light manufacturing of the facility and reviewed the history of light manufacturing as it applies to these types of facilities in Town.

Commissioner LaLumiere then stated that the only item holding up the occupancy permit as temporary was that Waste Management was completing some sprinkler work and some grading of the door. Once that work is completed he will be obligated to issue a final occupancy permit.

Selectman George Simolaris asked the Commissioner again about an open meeting and a Site Assignment.

Commissioner LaLumiere again stated that he was not familiar with Board of Health procedures and was not qualified to comment.

Town Manager John Curran stated that he would take Mr. Johnson's letter and meet with the Board of Health Director relative to this issue and report back to the Board.

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APPOINTMENTS – BOARD OF SELECTMEN

HIGH SCHOOL BUILDING COMMITTEE

KEVIN HEFFERNAN

Kevin Heffernan, 11 Woodbury Road, came to the podium to be interviewed by the Board.

There were questions and discussion from Board members.

RICHARD COLANTUONI

Richard Colantuoni, 5 Marlyn Road came to the podium to be interviewed by the Board.

There were questions and discussion from Board members.

Selectman Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion that the Billerica Board of Selectmen appoint Kevin Heffernan, 11 Woodbury Road to the High School Building Committee.

It was voted: 3 – In Favor
2 - Opposed

Chairman David Gagliardi thanked both candidates for applying.

Selectman Michael Rosa stated his concern that the Executive Session agenda item was put on after the deadline for submission of items for the agenda pursuant to the Board of Selectmen Policies and Procedures, Section 6.2 and that it was filed in the Town Clerk’s Office less than the 48 hour requirement.

Town Counsel Patrick Costello came to the podium and stated that as long as the Agenda had the Executive Session item on it and the agenda was posted within the 48 hour time frame, it should be fair game.

He continued further that the Open Meeting Law allows matters to be added to the Agenda where the Chairman did not have a reason to suspect that they would be available for a discussion on a particular evening, such as a last minute addition.

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Secretary Rosa stated that this was not a last minute addition because the Dispatcher's Contract was ratified by the Union on Tuesday which would have been more than sufficient time to get it in per the Selectmen's Policies and Procedures, Section 6.2 relative to the Agenda.

Attorney Costello asked if it was on the Agenda.

Secretary Rosa stated it was on the Agenda, but was not on the Agenda as of 12:15 p.m. on Thursday and it was time stamped Thursday at 5:19 p.m. which was after the time frame in the Policies and Procedures.

Attorney Costello responded that it was consistent with the law; and it was 48 hours prior to the meeting. It would be acceptable under the Open Meeting Law.

Secretary Rosa stated that it had to be on file in an open and conspicuous place where the Public has access to it.

Town Manager John Curran stated that these documents were confidential and the public had no right to have access to them.

Secretary Rosa stated that he was not assuming that they had right of access to these documents. His concern was if the document had been date stamped at 5:19 p.m. on Thursday, the earliest it could have been filed at the Clerk's office was Friday morning. It meant that it should not have been voted on until Tuesday.

Attorney Costello again said it has to be on the agenda 48 hours in advance.

Secretary Rosa stated that if the agenda with that particular item came together at 5:19 p.m. on Thursday, it can't be on file in the Town Clerk's office 48 hours prior to the meeting this evening.

Town Manager John Curran stated that nowhere in the Selectmen's Policies and Procedures does it state that packet items have to be in by noon time on a Thursday prior to a meeting.

The important thing was that per Town Counsel the Agenda with the Executive Session item on it was posted 48 hours in advance and the Open Meeting Law requirement has been satisfied.

Mr. Curran stated that he gave the documentation to the Confidential Secretary on Friday, but it was on the agenda that was posted on Thursday within the constraints of the Open Meeting Law. It is legitimate for the Board to be acting on the matter.

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Secretary Rosa read Section 6.2 of the Board of Selectmen's Policies and Procedures and stated that that is where it says that you have to have the supporting documentation in by the required time. He said that his question remained the same; if the documentation did not come in to the Selectmen's Office until 5:19 p.m., it could not have been on the amended agenda until after that. He stated that he had a copy of the agenda as it stood at 12:15 p.m. and that item was not on the agenda.

Town Manager John Curran stated to Chairman David Gagliardi that the Agenda was properly posted within the 48 hour timeframe as it should have been. He further stated that there have been addendums on numerous occasions after the 12:00 deadline in his tenure as Town Manager and probably prior to that.

Mr. Curran said the most important requirement was that it met the 48 hour requirement per the Open Meeting Law.

Secretary Rosa responded that addendums were addressed in the Board of Selectmen's Policies and Procedures and this was not an addendum. It was part of the regular agenda. If it was an addendum it would be a separate document that specified it was an addendum.

Town Manager John Curran stated that he wondered what the reasoning was that Selectman Rosa had for wanting to hold up this item.

Secretary Rosa stated that the Board had just rescinded work that two member had done because of the Open Meeting Law and he felt that this particular item could impact many more people than just two if this became an issue.

Selectman Andrew Deslaurier asked the Town Manager if there was any definitive harm by not voting this item this evening.

Mr. Curran replied that the Board only had the right to reject the contract. The contract will by default be approved within 15 days. It will go into effect before the December 2nd meeting. There is nothing that prevents the Board from voting on it outside of Executive Session.

Selectman Andrew Deslaurier said that the Board should act on this tonight.

Selectman George Simolaris stated that if they did vote on this tonight it could be put in jeopardy because of not following policy.

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Town Counsel Patrick Costello stated that it would comply with the Open Meeting Law as long as it was posed 48 hours in advance with the Town Clerk's Office.

He further stated that the Board is not meeting again until after the 15 day period. Tonight would be the only opportunity to consider rejection of the contract.

Chairman David Gagliardi reviewed the situation. No Open Meeting Laws had been violated. The only thing that had been violated was the Selectmen's Policies and Procedures.

Attorney Costello again stated that the Open Meeting Law was not violated provided the Agenda had been posted with the Town Clerk's Office on Thursday evening prior to 7:00 p.m.

Chairman David Gagliardi asked the Town Manager if it was posted within the required time frame.

Mr. Curran replied it was posted within the 48 hour time frame.

MEETING SCHEDULE

The next meetings will be December 2 and December 16, 2013.

EXECUTIVE SESSION

Secretary Michael Rosa, seconded by Selectman Andrew Deslaurier, made a motion to adjourn at 9:20 p.m. to Executive Session (M.G.L., Chapter 39, S23b, 3) for the purpose of discussing Contract Negotiations, Civilian Dispatchers and BMEA (Public Works), NEPBA A&B.

They will return only to adjourn from Regular Session.

It was voted:	Selectman Andrew Deslaurier	Aye
	Selectman Robert Accomando	Abstain
	Selectman George Simolaris	Aye
	Selectman Michael Rosa	Aye
	Selectman David Gagliardi	Aye

A TRUE COPY ATTEST

Sue Aker, Recording Secretary

**Board of Selectmen
Executive Session
November 18, 2013**

The Board of Selectmen adjourned into Executive Session to discuss negotiations for three (3) Collective Bargaining Agreements, Civilian Dispatch, NEPBA and BMEA. Executive Session began at 9:28pm

Present: Chairman David Gagliardi, Vice Chair Robert Accomando, Secretary Michael Rosa, Selectman Andrew Deslaurier, and Selectman George Simolaris

The Town Manager updated the Board on BMEA contract negotiations. He identified the areas that the Town was interested in pursuing:

1. Eliminating Civil Service
2. Eliminating Sick Leave Buy Back for new employees/Sick Leave Abuse language
3. Mandatory emergency call backs

The Town Manager asked if the Board was inclined to offer the DPW more than 2%-2%-2% for the items above (1-3).

Board members asked for financial information about the cost of a 1% increase.

Various ways of configuring the increase where discussed.

The Board prioritized the proposals.

The Board concurred that 3%-3%-3% would be feasible if all three proposals were accepted by the DPW.

Priorities where set as:

1. Civil Service elimination
2. Sick Buy Back / Abuse language
3. Emergency call back language

Motion made by Selectman Deslaurier to direct the Town Manager to negotiate for increases up to 3%-3%-3% contingent on elimination of Civil Service, eliminating Sick Leave Buyback and Sick Leave Abuse language for new employees, Emergency call back language. Seconded by Selectman Simolaris

Roll Call Vote:

- Chairman David Gagliardi - Aye
- Selectman Michael Rosa - Aye
- Selectman Andrew Deslaurier - Aye
- Selectman Robert Accomando - Aye
- Selectman George Simolaris - Aye

Selectman Accomando left the meeting at 10:01pm

The Town Manager presented an update on NEPBA/A and NEPBA/B negotiations. He reported that negotiations centered on the elimination of Civil Service for both Unions and extending the “Quinn Bill” benefits to new employees.

Selectman Rosa requested that the Town Manager cost out the impact of the “Quinn Bill” proposal.

The Board discussed percentage increase that would be offered in exchange for the elimination of Civil Service.

Motion made by Selectman Deslaurier to direct the Town Manager to reconfiguring the percentage offer to the NEPBA/A and NEPBA/B and to report back to the Board. Seconded by Selectman Simolaris

Roll Call Vote:

Chairman David Gagliardi - Aye
Selectman Michael Rosa - Aye
Selectman Andrew Deslaurier - Aye
Selectman George Simolaris - Aye
Selectman Accomando – Absent

The Town Manager presented a ratified Memorandum of Agreement between the Town and the Civilian Dispatch Union to the Selectman. He provided the Board with a cost estimate for each of the accepted proposals.

Motion made by Selectman Deslaurier to approve the MOA between Civilian Dispatch Union and the Town of Billerica. Seconded by Selectman Simolaris

Roll Call Vote:

Chairman David Gagliardi - Aye
Selectman Michael Rosa - Aye
Selectman Andrew Deslaurier - Aye
Selectman George Simolaris - Aye
Selectman Accomando – Absent

Motion made by Selectman Rosa to adjourn from Executive Session: Seconded by Selectman Deslaurier.

Executive Session adjourned at 10:35pm