



**Town of Amherst
Board of Registrars Meeting
Monday, May 10, 2021 at 2:30 p.m.
Virtual Meeting Minutes**

Complete video is available online:

<https://www.youtube.com/watch?v=BZTUK8UhZys&list=PLcnmFtV6BPFNGyP2aFqgbw4Q-zEx83ttm&index=2>

1. Call to Order and declaration of a quorum

Members Participating Remotely: Jacqueline Gardner, Jaime Wagner, Demetria Shabazz, Susan Audette, Town Clerk and Gregg Corbo, Esquire from KP Law.

Members Absent: None

After confirming all participants could hear and be heard, Susan Audette declared the presence of a quorum, called the meeting to order at 2:33 p.m. and announced audio and video recording.

Note: Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, this meeting of the Board of Registrars was conducted via remote participation.

Demetria Shabazz asked whether independent counsel was available for the Board of Registrars. Susan Audette replied that the Board of Registrars is a Board of the Town, and therefore, uses Town Counsel. Susan Audette did not ask the Town Manager whether the Board could use independent counsel prior to this meeting.

2. Election of a chair for this meeting only

Susan Audette opened the floor for nominations of a Chair for this meeting only. Demetria Shabazz nominated herself. Jacqueline Gardner nominated Susan Audette. Jaime Wagner nominated Susan Audette. Susan Audette abstained.

MOTION: Susan Audette moved, seconded by Jaime Wagner to elect Susan Audette as Chair for this meeting only.

Objection made by Demetria Shabazz on Susan Audette accepting Chair nomination. She felt that as Town Clerk, it was a conflict of interest. Attorney Corbo clarified that there is no conflict of interest in having the Town Clerk chair the meeting and participating in this matter. Not only is the Town Clerk a full member of the Board of Registrars, but is also a full voting member, and in fact has taken no actions in this matter other than in her official capacity.

VOTED: [2-1], Jaime Wagner, Jacqueline Gardner, voted YES; Demetria Shabazz voted NO; Susan Audette abstained. This was a roll call vote. Motion passed.

A motion was made by Demetria Shabazz to have Attorney John Bonifaz and Attorney Carol Gray speak before the public comment section of this meeting. Jacqueline Gardner asked at this point to be able to respond to Attorney John Bonifaz's letter as well.

MOTION: Demetria Shabazz moved, seconded by Jaime Wagner, to have Attorney John Bonifaz and Attorney Carol Gray speak before Public Comment.

VOTED: [4-0] unanimously in favor. This was a roll call vote. Motion passed.

Attorney John Bonifaz discussed how he believes that this situation cannot only be remedied in court. He stated that there is a direct conflict of interest having the Town Attorney advising the Board of Registrars on this matter. He stated that the interests of the Town Clerk, Town Council, and Town Manager are adverse to the petitioners and that if the Open Meeting Law complaint is valid, then the actions of April 21, 2021 would be null and void, therefore, invalidating the certification process.

Said that KP Law has stated that if the Board of Registrars found that the Open Meeting Law violations occurred, then they would not have the power to declare the Board's actions on April 21 null and void. He said that statement by KP Law was false. There is no basis in law to support that statement. He had a conversation with the Division of Open Government of the Attorney General's office staff who confirmed that that is not accurate.

Said there was no quorum at the Board's April 21 meeting because the Town Clerk was on vacation, Dee Shabazz was not present because of a doctor's appointment and Amber Martin was not assigned to be interim town clerk that day so she did not have the power to sit in the Town Clerk's shoes. With only 2 of four members present on April 21, there was no quorum under Massachusetts law.

Attorney Gregg Corbo stated that KP Law has been the Town of Amherst's legal counsel for many years. He further stated that contrary to Attorney John Bonifaz's belief, and that as Town Attorney, it is their right and obligation to provide guidance to Town officials under adverse situations and that the Secretary of the Elections Division has confirmed this. He stated that the law gives the delegation to Town Clerk's Office. Attorney Gregg Corbo stated that Amber Martin stands in the shoes of the Town Clerk for all duties and legal standards when the Town Clerk is not in the office. The authority of the Board of Registrars to give permission to the Town Clerk staff in using a facsimile signature stamp in certifying signatures is a practice that has been done for many years. Votes were not taken in the past for this permission. In his opinion, there is no violation of the open meeting law, nothing improper was done in certifying signatures, and the Board of Registrars has no authority to un-do its decision.

Attorney Carol Gray believes that the Attorney General's Office can resolve the complaint by nullifying any actions taken at the 4/21/2021 meeting. In her opinion, an agenda item should be sufficiently specific so much so that a reasonable member of the public can understand the public body's agenda. She wants the Board to vote to certify signatures for the next meeting. She also requested to get the same amount of time to speak during public comment, and also requested to have equal time to speak as KP Law was allowed. Agenda discussed delegation of authority under charter sections 8.2, 8.3, and 8.4. No member of the public would know what that's talking about. Her opinion on the second violation is that you're not allowed to send out emails about the topic to be discussed in advance. That violated deliberation component of the Open Meeting Law. Read Division of Open Government language about what is considered deliberation. Email before April 21 meeting that explained everything was deliberation.

3. Public Comment

Jacqueline Gardner felt the agenda was properly advertised, and that the public had the opportunity to speak during public comment, and no one did. Jacqueline stated that she did not discuss with anyone, before, during, or after the meeting about anything to do with the petitions, nor conduct any deliberations. She stated that she made an independent decision, and was in favor, of having the Town Clerk's Office maintain the records. 950 CMR 55.02 clearly states that a facsimile stamp can be used to certify signatures. She also stated that when she signed on to be a Board of Registrar, she signed a document which authorized the Town Clerk's Office to use her facsimile stamp. She also believes that everyone had an obligation to look up the charter sections specified in the agenda and if there were questions, they should have participated in the meeting.

Sarah McKee – DC Bar for more than 40 years, requests the Town get guidance from AG's Office. References AG case on the Open Meeting Law: Dudley Planning Board imposed \$1,000 fine for deliberation and AG's Office recommended imposing an order for nullification of the vote taken immediately following the improper deliberation.

Nancy Sardeson – Spent half of her life as a voting rights lawyer for the DOJ. 49 Jenks, did not use Street, did not use apartment numbers. Not here about library, a political issue. This is a constitutional issue. Disqualifying Barbara Elkins who used the abbreviation LN rather than writing out "Lane." Lucas put zip code in the address. Signed substantially as registered – it is clear that the discretion was abused and the affidavits state that.

Josna Rege – 96 Fairview Way. Lived in Amherst 31 years. Collected signatures for petition. Those who had their signatures rejected: shocked as they were long time Amherst residents and registered voters. Believes that the petition was certified in haste and many valid signatures were thrown out. 92 Affidavits have been completed confirming they are who they are.

Michael Serduck – 8 Amity Place – An attorney practicing for 40 years in Massachusetts. Statement that the Board does not have the authority to repeal its decision. Cited case law where this happened previously. It involved a sex offender. His signature was one of the ones thrown out, he admitted he has a bad signature, also submitted an affidavit.

Maria Kopicki – lives in south Amherst. Recalled speaker at prior public comment who said he still supported the project, but urged the board to right this wrong and to conduct a review of the rejected signatures. Supports this civil open mindedness; hopes it is able to take root in Amherst and that we can learn to disagree respectfully with each other. April 21 meeting violated Open Meeting Law. Mistakes happen; how we respond to those errors is what matters. Requests the Board rectify the improper signature certification procedure by certifying the signatures that were rejected in error.

Terry Johnson – would like the Board to review the petitions, and nullify the 4/21/21 meeting.

Peggy Matthews-Nilsen – Signatures were mistakenly rejected and believes the Board should nullify the 4/21/21 public meeting and would like the Board to review each signature. Unreasonable to require residents go to court to correct what she believes to be the assistant town clerk's mistakes.

Caller-1213 – Elizabeth Gilbert – One of 92 voters whose signature was rejected. Wants to know in writing why each signature was rejected. No idea what grounds her signature was rejected. Never been informed in the past that her signature was insufficient. Lived in area for 30 years; voted in every election since 1981. Signatures are indicative of identity and intent. The legal rule is unless a statute specifically prescribed a particular method of making a signature, it is legal. All signatures are expected to do is signal that you intend to adopt an agreement.

Caller-7796 – Molly Turner – 19 Old Town Road – Lived in Amherst over 30 years. Has issues with KP Law sitting in this meeting. She doesn't believe they are representing the Town of Amherst citizens. They represent over a third of MA municipalities. She feels disenfranchised.

Anita Sarro – Longtime resident of Amherst. She voted for the Charter; naively believed the Charter was fairly written, that its terms and legal requirements would be interpreted fairly, and that people with integrity would exercise their power fairly. Believes she was wrong on all counts. Handling of petition suggests Charter was designed to exclude rather than include. No desire to give serious consideration to the petition or to adhere to legal processes, unless they serve the desired goals of those in power. Is a lawyer; represented large, influential nonprofit corporations. Urges Board to examine the law and consider obligations it imposes to serve not the town manager or the town council, but the people of this town.

Carol Gray – spoke to the disqualified signatures. Signature of her neighbor, Barry Brooks, was disqualified for an "S", which is signature, though it was completely legible. A couple signers were disqualified for address because they wrote out their street, Cross Brook though the Voter Rolls abbreviated it Cross BRK. Maud Beeching Low wrote her address clearly, 29 Summer Street, Amherst but added the word, Amherst, and was disqualified. Could have a legal battle that could take months or years or could resolve these issues right now. An issue of conscience. Urges a motion to void the April 21 meeting because of the Open Meeting Law violation.

Krista Rising's comment from the Chat section of the Zoom meeting - Decision about the library is far less important than the ability of Amherst residents to have a voice. I thought we are losing democracy in the nation, now we are losing it in Amherst. This shows that the voters in Amherst truly do not have a voice that we have lost our democracy in Amherst. Urges the Board of Registrars to redo the meeting and show that we in fact do still have a democracy in Amherst.

4. Review of Open Meeting Law Complaint filed on May 4, 2021 by Carol Gray.

Demetria Shabazz spoke to the public's comments and her reasons for joining the Board. She stated that the agenda for the 4/21/21 meeting was confusing to her.

Jaime Wagner asked how many affidavits were there from those who signed the petition but then didn't want their names to be included. Susan Audette stated it was around 25.

Susan Audette spoke to the open meeting law complaint and stated she did not believe there was a violation. Demetria Shabazz disagreed, but did state that she agreed that the Board had delegated authority to use facsimile stamps in the certification process to the Town Clerk's office already. Regarding the agenda wording, Susan Audette asked other members whether they understood the meaning of the posted agenda. Both Jacqueline Gardner and Jaime Wagner stated that they did understand the meaning.

Jaime Wagner stated that as a member of the Board of Registrars with no training in the certification of signatures, she would not be qualified to review signatures. She feels the Town officials are qualified and have the authority to certify signatures as they are trained. She is unsure how to handle this situation as she feels there was no open meeting law violation, but does want to make sure things are taken seriously and dealt with properly, making sure State laws are followed.

Demetria Shabazz wants the Board to be transparent. She discussed open meeting law section 23(b) and the resolution to this current complaint being the declaration of the 4/21/21 meeting null and void and having the power to re-do the certification of signatures.

Susan Audette asked Attorney Gregg Corbo to speak to the review of signatures and the Board's authority to do this.

Attorney Gregg Corbo spoke to the two issues before the Board – the open meeting law complaint regarding the 4/21/21 meeting, and what the remedy could be. In his opinion, the Board of Registrars does not have the authority to extend the deadline under the Charter for certification of signatures, nor does it have the authority to go back in time and re-do this decision. If the 4/21/21 meeting was determined null and void, this would mean that it never happened, and the situation would be that we go back to the status quo that was in existence prior to the date of that vote which is that the Town Clerk's office is unequivocally authorized to certify signatures. Attorney Gregg Corbo also mentioned that the Board's duties and authority don't allow for the picking and choosing which signatures to review.

Demetria Shabazz stated that she didn't believe this opinion to be true, and felt that Attorney Gregg Corbo had a conflict of interest in this matter.

Attorney Gregg Corbo stated he clearly did not have a conflict of interest in this matter, and further stated that the Board cannot unilaterally decide what the rules should be.

Demetria Shabazz asked that Attorney John Bonifaz be allowed to speak and made a motion to this effect.

MOTION: Demetria Shabazz moved, Jaime Wagner seconded, to have Attorney John Bonifaz speak in response to his letter.

Attorney Gregg Corbo asked that Attorney John Bonifaz state whether he had signed this petition before us. He stated he had not.

Attorney John Bonifaz – Gave his perspective on the OML Complaint. He is involved in this matter as he feels this is a voting rights issue.

MOTION: Demetria Shabazz moved to declare the April 21, 2021 null and void and for the Board to put on the agenda for Thursday's meeting the certification of the signatures on the Voter Veto petition. There was no second. Motion failed.

Demetria Shabazz said the Board should look at the 92 signature affidavits against the voter rolls.

Susan Audette would like to look at open meeting law sec. 23(b) before coming to a vote to discuss. This section was put on the screen for all to read.

Attorney Gregg Corbo spoke to what was before the Board today which is the open meeting law complaint. He stated that if we decide there is a violation, then we can take remedial action. However, although we have authority to take remedial action, the scope of the Board's authority is still limited to what is set forth in State statute, and in this case also the Town Charter.

MOTION: Demetria Shabazz moved, Jaime Wagner seconded, to declare the April 21, 2021 null and void and for the Board at its meeting on May 13, 2021 to review its signatures to put on the agenda for Thursday's meeting the certification of the signatures on the Voter Veto petition.

VOTE: [2-2] Demetria Shabazz and Jaime Wagner voted YES; Jacqueline Gardner and Susan Audette voted NO. Motion failed. This was a roll call vote.

Jacqueline Gardner asked if we can still have a review of signatures. Jaime Wagner had the same question, and wanted to know that even if it was determined that no violation of the open meeting law was made, that there was another way to go back and review signatures. Jacqueline Gardner stated her

understanding was that once signatures were certified, that was it. Any remediation process was through the Courts.

Demetria Shabazz spoke to this saying this would take time and money, and that we as a Board could resolve this today.

Attorney Gregg Corbo stated that the Town Charter stands on equal footing as State law. Open meeting law cannot override these other laws. The power to nullify only applies to circumstances where there is still time to take action. If any action taken today was contrary to law, while it may satisfy a minority of people, there are others who are in favor of the library project that will exercise their rights to litigation as well.

Jaime Wagner asked how they know what they are allowed to do by law. Susan Audette referenced Chapter 51, sections 15, 16A and 17 which defines the Board of Registrar's structure.

MOTION: Demetria Shabazz moved, Jaime Wagner seconded to have Attorney John Bonifaz speak on his perspective of what the Board of Registrars' duties are.

Attorney John Bonifaz states that the meeting should be null and void as there was no delegation of authority on April 21, 2021. The very actions that the Town Clerk's office sought this delegation shows that it wasn't implemented to begin with. He felt that the Town Charter did not override the open meeting law and that the Board has the power to take action.

Attorney Gregg Corbo recommended we vote on the two sections of Demetria Shabazz's motion – the open meeting law violation, and declaring the 4/21/21 meeting null and void.

MOTION: Demetria Shabazz moved, seconded by Jaime Wagner to declare the April 21, 2021 meeting null and void and for the Board to put on the agenda for Thursday's meeting the certification of the signatures on the voter veto petition.

Demetria Shabazz believes that the public is going to have a big problem with this as she believes the Board should vote as she believes there are troubling gaps in the Town government.

Assistant Town Clerk Amber Martin spoke to the reason the meeting was posted in the first place. She stated she had no knowledge of the prior authorization to certifying signatures by the Board of Registrars to the Town Clerk's office, and wanted there to be absolute transparency.

Jacqueline Gardner stated that there was not an open meeting violation from the April 21, 2021 meeting. The meeting was posted on April 15, 2021 so people had six or seven days to ask questions if they were confused and no one did.

Jaime Wagner stated there was no violation of the open meeting law. She isn't sure if this will get resolved.

Attorney Gregg Corbo stated that again, we cannot re-open the signature process once those signatures have been certified under legislature. The only remedy is through the Courts.

Attorney John Bonifaz stated that the Board doesn't have to admit to a violation under the open meeting law, but does need to declare the actions of the 4/21/21 meeting null and void in order to certify in the first instance. He also felt that the Town Clerk should abstain from voting as an ex officio member of the Board.

Susan Audette asked Attorney Gregg Corbo if the statement by Attorney John Bonifaz was valid regarding abstention as an ex officio member. Attorney Gregg Corbo stated that he felt this was not true and that the Town Clerk has every right to vote.

Demetria Shabazz discussed whether the Notice requirement of the Open Meeting Law was violated by the agenda item that discussed a "delegation of authority under 8.2, 8.3 and 8.4 of the Town Charter," Demetria Shabazz said that the public wouldn't know what that meant and that you couldn't assume that all of the public was capable of doing a google search to look up what that meant. Referencing her own first generation family and her mother, Demetria Shabazz said many people would not have the computer skills to do that search, making the point that that agenda item therefore violated the Open Meeting Law. Expressing frustration that such thinking would make her want to leave the Board, Ms. Shabazz noted that those kinds of assumptions being made by the Board were like arguments used to disenfranchise African Americans.

Susan Audette stated that the Board has until May 24, 2021 to take this topic up again in a public meeting.

As no decision was arrived at in the 3 hours and 10 minutes duration of the meeting, Attorney Gregg Corbo suggested that we take a motion to adjourn this meeting.

5. Any other topics that may come before the board within 48 hours of the meeting

None.

6. Adjourn

MOTION: Susan Audette moved, seconded by Jacqueline Gardner, to adjourn the meeting.

VOTED: [3-1] to adjourn. Susan Audette, Jacqueline Gardner, and Jaime Wagner voted YES; Demetria Shabazz voted NO. This was a roll call vote. Meeting adjourned at 5:43 p.m. on May 10, 2021.

Respectfully submitted,

Susan Audette
Town Clerk