



**Diversity Task Force**  
Town Hall  
173 Main Street  
Groton, Massachusetts 01450  
selectboard@grotonma.gov

Raquel Majeski, Chair  
Michelle Collette, Vice Chair  
Gordon Candow  
Amy Degen  
Susan Hughes  
Bhaskar Gupta Karpurapu  
Deirdre Slavin Mitchell  
James Moore  
Fran Stanley

**Regular Session Minutes**

Date/Time: January 27, 2022 at 7 pm  
Location: Virtual Meeting  
Members  
in attendance: Susan Hughes, James Moore, Deirdre Slavin-Mitchell, Michelle Collette, and Fran Stanley  
Referenced  
documents: 2017 Belmont memo on subcommittees; Bystander Intervention Training flyer

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Michelle Collette called the meeting to order at 7 pm.

**Agenda Item:** Discussion – *Groton Matters* show – Inclusion of the Bible on the Town Seal

Susan Hughes introduced the idea of having Deirdre Slavin Mitchell, if she is willing, represent the Diversity Task Force on Jack Petropoulos' *Groton Matters* show to speak about the Town Seal. The group discussed the advisability of committee members speaking up in this way as there is an element of advocacy. James Moore drew a distinction between attending the show which is advocacy versus participating in a debate on the topic. Michelle Collette added that she is planning to speak to the *Can We Talk* forum on this topic on February 28th. Deirdre Slavin Mitchell said that she is willing to speak on the *Groton Matters* how and explain the process by which this committee came to its decision to recommend changing the Town Seal.

*Fran Stanley moved to recommend that Deirdre Slavin Mitchell attend the Groton Matters show on behalf of the Diversity Task Force to speak about the Town Seal. James Moore seconded and the motion carried unanimously (5:0) by roll call vote of Hughes – aye, Moore – aye, Slavin Mitchell – aye, Stanley – aye and Collette – aye.*

*Fran Stanley moved to recommend that Michelle Collette attend the Can We Talk forum on behalf of the Diversity Task Force to speak about the Town Seal. James Moore seconded and the motion carried unanimously (5:0) by roll call vote of Hughes – aye, Moore – aye, Slavin Mitchell – aye, Stanley – aye and Collette – aye.*

Action item: Susan Hughes will reply back to Jack Petropoulos and pass along Deirdre Slavin Mitchell's name for him to contact.

**Agenda Item:** Review Open Meeting Law as it Pertains to Working Groups

Fran Stanley explained that for committees that use subcommittees and working groups as their usual way of business that there is a chance that the Open Meeting Law could be interpreted to apply to meetings of those subgroups. Belmont's Town Counsel wrote a 2017 memorandum on the topic and concluded that it would be best practice for that town to have its working groups and subcommittees follow the Open Meeting Law which entails posting agendas, holding meetings in a location open to the public and taking minutes of those meetings. Michelle Collette added that a subcommittee should not have more than four Diversity Task Force members in attendance which is one less than a quorum. If five or more members show up at a working group meeting, then this would constitute a meeting of the full Diversity Task Force committee.

After some discussion, the group agreed to follow the Open Meeting Law for working group meetings. At a later meeting when the chair and a large set of members are in attendance, then the Diversity Task Force can vote on the matter.

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**Agenda Item:** Working Group Updates

James Moore of the Town Image working group said that he was looking forward to getting moving on a couple of working group meetings to draft the presentation on the Town Seal. He said that we will be meeting as soon as we can. Susan Hughes of the Communications working group, who is working with the Image group on the Town Seal presentation materials, has already synthesized a lot of the material that she received from interested residents and has drafted a presentation. Fran Stanley would like to join the Communications working group.

The Housing working group has not met as such for a while. Fran Stanley reported on the new homeownership project proposed for Cow Pond Brook Road. This 40B subdivision will be called Heritage Landing. Ten of the forty total units will be affordable. Plans for the development include: 28 detached single-family homes, 12 units sited in 6 duplexes, all 3-bedroom with first floor bedrooms, a garage, and a number of units will have accessibility features.

**Agenda Item:** Approve Minutes

Review of the minutes will be deferred to a later meeting.

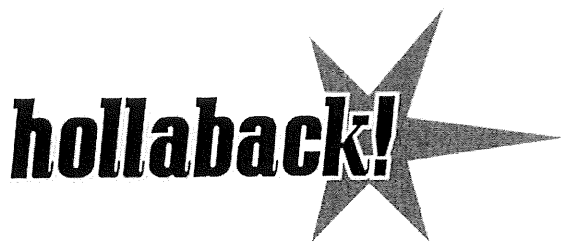
Michelle Collette noted that the Town's three bystander training sessions will be held on February 8, February 24 and March 15. This Committee should probably not meet on a bystander training night which would mean not scheduling a Task Force meeting for February 24. Links to the virtual meetings can be found on the Bystander Training flyer posted on the Town's website. No registration is required.

*Deirdre Slavin Mitchell moved to adjourn the meeting. James Moore seconded and the motion carried unanimously (5:0) by roll call vote of Hughes – aye, Moore – aye, Slavin Mitchell – aye, Stanley – aye and Collette – aye.*

Meeting adjourned at 7:57 pm.

Next meeting: February 10, 2022

Notes by Fran Stanley



## **Bystander Intervention Training**

The Groton Select Board invites you to join them for a three-part training on Bystander Intervention during February and March. Training will be provided by **Hollaback!** whose mission is to end harassment in all its forms by transforming the culture that perpetuates hate and harassment.

All training will be conducted on Zoom and each can accommodate up to 1,000 participants.

### **First Training - 8 Strategies to Mitigate Implicit Bias with Hollaback!**

**When:** Tuesday, February 8, 2022

**Time:** 6:30 PM to 8:00 PM

**Zoom Link:** <https://zoom.us/j/97350546962?pwd=Y0JCUUdFUmorZ0dFd2VkWFQ5b3pvUT09>

**Passcode:** 996466

**Description:** Everyone holds implicit biases. That doesn't make us "bad people," it just means that we have work to do. This interactive training will teach you how to understand your own implicit biases in order to begin to undo them. We'll start by learning the brain science behind implicit bias and how the part of our brain that is hardwired to assess danger has evolved to hold us back. Through polls, brief thought experiments, and writing exercises, we'll reflect on how implicit bias can show up in our actions and they can have on ourselves and those around us. Then we'll roll our sleeves up and get to work, practicing 8 concrete ways to mitigate implicit bias. You'll leave more confident in your ability to successfully see and undo implicit bias in your own life.

### **Second Training - Conflict De-escalation + Bystander Intervention in the Workplace with Hollaback!**

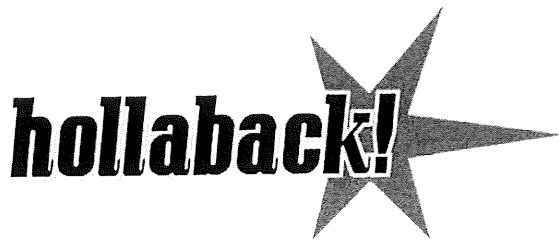
**When:** Thursday, February 24, 2022

**Time:** 6:30 PM to 8:30 PM

**Zoom Link:** <https://zoom.us/j/99948846781?pwd=VlhaZE40L0t3WnQ2VE9aZy91Smk3Zz09>

**Passcode:** 654020

**Description:** If your team interfaces with the public, chances are they will face moments of escalation and will need to know what to do. Conflict de-escalation requires patience, a willingness to listen, and an ability to see the humanity in everyone. Using Hollaback!'s Observe-Breathe-Connect methodology, we'll learn how to identify potential conflict before it escalates using our "pyramid of escalation" and how to assess whether de-escalation is the right action. We'll also learn how to connect with others by



validating and de-escalating their feelings — even if we don't understand them or agree with them. We'll have time at the end to practice using real-life scenarios. Your team will leave armed with de-escalation techniques so that they can navigate these moments as workplace leaders.

When harassment happens at work, people are almost always around and if they aren't around, they can be quickly summoned to show up. Our goal is to reduce instances of workplace harassment by giving employees the tools they need to disrupt those perpetrating the harassment. We will equip your employees with the right information on how to be an effective online bystander in the midst of workplace harassment using our proven 5D's methodology; 98% of employees leave our training committing to intervene next time they witness disrespect or harassment.

**Third Training - Bystander Intervention in Public Spaces with Hollaback!**

**When:** Wednesday, March 16, 2022  
**Time:** 6:30 PM to 8:00 PM

**Zoom Link:** <https://zoom.us/j/96557091890?pwd=Q0pkNExhZ3lQN1cxdWg4NllzQ0tzQT09>  
**Passcode:** 628199

**Description:** We all have a responsibility to do something when we see harassment happening, but too often we freeze. We don't know what to do. Bystander intervention gives us tools to intervene without compromising our own safety. When we intervene, we don't just reduce trauma for the person being harassed. We also start to chip away at the culture that allows harassment to be so prevalent. Alone we can't shift the culture — but together — our actions matter. In this training our goal is to give participants the tools to intervene the next time they witness harassment in public spaces.

We will equip you with the right information on how to be an effective bystander in the midst of public space harassment using our proven 5D's methodology, our five strategies for intervention. Then we will practice so you leave our training feeling more prepared to successfully and safely intervene.

# ANDERSON KREIGER

## MEMORANDUM

To: Phyllis Marshall, Interim Town Administrator

Cc: Ellen O'Brien Cushman, Town Clerk

From: George A. Hall, Jr.

Re: Open Meeting Law: "Working Groups" and Subcommittees

Date: October 13, 2017

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In view of the Open Meeting Law (OML) complaint now pending in the before the Attorney General's (AG's) office relative to the meetings of "working groups" in connection with the Belmont Day School project, I have been asked for further clarification on when two or more members of a board or committee, not constituting a quorum, may meet to discuss a matter pertaining to that board's business without being considered a "subcommittee" subject to the OML. I am responding to that request in a more formal memo to you, because there appear to be a number of committees where this kind of activity occurs, with more or less regularity, and because the Selectmen and the Town Clerk's office have received several inquiries about that practice.

### Definition of a "Subcommittee"

The OML defines a "public body" subject to the OML as "a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, *however created, elected, appointed or otherwise constituted*, established to serve a public purpose ... [emphasis supplied]."<sup>1</sup> In Nigro v. Conservation Commission of Canton, 17 Mass. App. Ct. 433, 434 (1984), the Appeals Court held that a 3-member subcommittee of the 7-member Canton Conservation Commission, engaged in making findings of fact and formulating recommendations to the full Commission on a matter pending before it, was subject to the OML. The 2009 amendments have cemented the Nigro decision in place by changing the phrase "subcommittee of any ... town" to "subcommittee within any ... town," and by adding the word "created" to the italicized phrase in the sentence quoted above. These amendments make abundantly clear that any multiple-member entity "created ...

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<sup>1</sup> Before the 2009 amendments, the OML used the term "governmental body" rather than "public body."

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appointed or otherwise constituted” by a town board or committee – i.e., by *another* public body – is a subcommittee subject to the OML.<sup>2</sup>

Despite the apparent clarity of this ruling, there remains a circular quality to the definition of “subcommittee” (i.e., it’s only a “public body” if it has been constituted somehow as a body). If it were assumed that any non-quorum of a board, getting together on board business, were constituting themselves as a “body,” then extending that principle to its logical conclusion would negate the need for a quorum as a prerequisite for an OML violation.

The Attorney General’s office, however, has resisted an overbroad reading of the words “created” or “otherwise constituted” so as to preserve the quorum requirement where appropriate. In the decisions issue by the AG’s office to date, a non-quorum of a board’s membership is only “created” or “constituted” as a subcommittee if *the board or committee as a whole* makes a decision to create or constitute them as such, especially for the purpose of making findings and recommendations on matters that would otherwise be the responsibility of the full board.<sup>3</sup> In the AG’s analysis, whether a “subcommittee” has been created “hinges on the Board’s action and whether it intended to create a multiple-member body.” In OML 2017-111 (Brookline Board of Selectmen), the AG found there was no intent to create a “multiple-member body” because the Board clearly sought to assign the task in question to a single member. Even though another member volunteered, at the meeting, to assist in that task, the AG did not find the subsequent conversations between those members to be the work of a subcommittee because there was no decision by the Board to constitute them as such. By contrast, in OML 2016-59 (Billerica Board of Selectmen), the AG, noting that the Board had voted to create a subcommittee to consider proposals for medical marijuana dispensaries pursuant to an agenda item entitled “Form Board of Selectmen Sub Committee to Consider Medical Marijuana Proposal,” found the resulting subcommittee to be subject to the OML.

### Analysis and Recommendations

The key distinction between the two AG decisions cited above is obviously that, in Brookline, there was no vote or record of board “action,” and that in Billerica, action was

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<sup>2</sup> A subcommittee appointed to advise a single official, such as a school superintendent or mayor, who is not himself subject to the OML in making the decision on which he/she is seeking advice, is not considered a “public body” under the OML. See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).

<sup>3</sup> Consistent with that approach, the AG’s office gave some informal guidance to Belmont’s Warrant Committee in November 2010, agreeing with the contention that the Warrant Committee’s Chair, Vice-Chair and Secretary did not constitute a “governmental body” when they got together to set the agendas for the meetings of the full Committee.

contemplated on the agenda and followed by a vote. (See also OML 2014-63, where the Foxborough Selectmen voted to designate two of the five members to meet with a liquor licensee and make recommendations to the Board, and the AG determined that the board had voted to form a subcommittee.) Obviously, the clearest indication of a board's intentions is found in what it votes to do or accomplish. So the facile conclusion one might reach from these decisions is that, as long as a board does not vote to establish a subcommittee, a non-quorum of its members can meet to carry out elements of the board's business without OML compliance. This is the current state of the decisional law on this question.

I think, however, that over-reliance on this principle is ill-advised. The courts and the AG have a history of expanding prohibitory rules whenever it appears that boards and committees have developed intentional strategies to evade OML requirements. The phrase "however created, elected, appointed or otherwise constituted" lends itself to a more expansive reading if the circumstances seem to warrant it. If a board develops a practice of doing significant elements of its business through "working groups" not constituting a quorum of the board, and there is evidence that this approach is accepted by the board as standard operating procedure, I think there is a substantial risk that, on the right set of facts, the AG will infer intent by means other than a vote.<sup>4</sup> Boards should not be looking for ways to do their business without OML compliance. When that's the intention (especially when it's the stated intention), any strategy that appears to be effective is an invitation for expansion of the rules. I do not think it would be wise for boards to assume that the use of "working groups" is a successful "model" for avoidance of OML compliance. The more this gets embedded into the practices of boards and committees as a system, the more likely it is that it will lead to its own demise.<sup>5</sup>

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<sup>4</sup> I am not suggesting that there is any particular example of any board conduct in Belmont that has been brought to my attention that constitutes the "right set of facts" for an AG finding of an OML violation.

<sup>5</sup> See, e.g., McCrea v. Flaherty, 71 Mass. App. Ct. 637, 648 (2008), in which the Appeals Court essentially invented the rule against "serial communications" to foreclose a clever strategy by the Boston City Council, described as follows:

On several occasions the council allegedly posted a guard from the BRA at the door of a private meeting room to maintain a careful headcount and ensure that only a minority of councillors, albeit a rotating minority, were physically in each others' presence at any one moment, despite the fact that the council had been previously ordered to abandon this practice by a judge of the Superior Court.

The rule against "serial communications" was then incorporated into the OML in the 2009 amendments.

With that warning, let me suggest a few approaches for boards to get needed work done by their members outside public meetings without tempting fate under the OML.

- *Give assignments to individuals, not groups.* Most boards rely on individual members to write decisions, conduct research, and attend meetings with staff or other boards. It is better to assign the writing of a decision or report, for example, to an individual member. As OML 2017-111 demonstrates, there is nothing wrong with that member obtaining input from other members, as long as those consultations do not extend to a quorum of the members (as that would raise the “serial communication” issue). The concept of “working groups” should be retired.
- *Clearly differentiate the functions of the board and the functions of staff.* In addition to assigning work to individual members, boards with staff support can assign particular duties to staff, either on a recurring or task-specific basis. For example, a land use board may ask its staff to review each new application for completeness and to circulate a memorandum with preliminary comments for the first hearing; it should not raise OML concerns if one or more board members (again, short of a quorum) interacts with staff to supervise and provide feedback to help ensure the sufficiency of the staff report. But it is critical to that example that the final work product is that of the staff, not the sub-group of board members. If it is confusing to the public whether the work being done outside the meeting is a board function or staff function,
- *When sending multiple members to meetings with other groups, do not assign those members the responsibility to make decisions or recommend further action.* There are several exceptions to the definition of meeting that cover attendance of a subgroup at other meetings. Specifically, members of a public body may (1) conduct an on-site inspection of a project or program, (2) attend a conference, training program or event; or (3) attend a duly posted meeting of another public body provided that they communicate only by open participation. All three of these exceptions are expressed with the proviso that the members “may not deliberate at such gatherings.” It is consistent with that limitation to request board members to attend, participate in, or present at, such conferences and meetings. It is *not* consistent with that limitation to ask the attending members to make recommendations, as a group, on the action that the Board should take in response to whatever transpired at the conference or meeting, because to agree on a recommendation requires deliberation.

Finally, I would note that none of the court or AG decisions regarding subcommittees suggest that an individual member of a board or committee cannot contact another member, or multiple members not constituting a quorum, to push for the inclusion of a new item on the board’s agenda, or to strategize on how to get a majority of the board to



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act, or refrain from acting, on a particular issue. Almost by definition, these kinds of discussions do not occur on behalf of the board as a whole.

If anyone has any particular concern about the manner in which a non-quorum of a board's members can communicate that is not addressed by this memo, I would be happy to address it.