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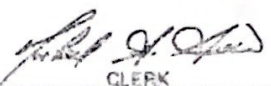
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPT.
Docket No. 24CV574

S/O
returned
MAY
7
2024
2:00p-m
Saxton
720

ROY EPSTEIN, MARK A. PAOLILLO and ELIZABETH DIONNE, Plaintiffs, v. THE BELMONT RETIREMENT BOARD and THOMAS GIBSON, Defendants.

FILED IN THE OFFICE OF THE CLERK OF COURTS FOR THE COUNTY OF MIDDLESEX FEB 28 2024  CLERK

VERIFIED COMPLAINT

This is a civil action brought by the three members of the Belmont Select Board, each of whom is a registered voter of the Town of Belmont, pursuant to the Open Meeting Law, G.L. c. 30A, §§ 8-25 ("OML") and the Declaratory Judgment Act, G.L. c. 231A, §§ 1-9, for a judgment declaring that the Belmont Retirement Board's purported vote to appoint Thomas Gibson as the fifth member of the said Belmont Retirement Board on Monday, February 26, 2024 was done in violation of the OML, and enjoining Mr. Gibson from taking the oath of office for a new term.

PARTIES

1. The following three plaintiffs are the elected members of the Belmont Select Board, each of whom is a registered voter of the Town of Belmont, with their places of residence indicated:

Roy Epstein
 34 Cushing Avenue
 Belmont, MA 02478

Mark A. Paolillo
 42 Pilgrim Road
 Belmont MA 02478

Elizabeth Dionne,
55 Wellesley Road
Belmont MA 02478

2. The Belmont Retirement Board (“BRB”) is a multimember public body in the Town established pursuant to G.L. c. 32, § 20 which administers the Belmont Retirement System established pursuant to G.L. c. 32, §§ 1-28, inclusive. The BRB is a “public body” subject to the requirements of the OML.

3. Thomas Gibson is an individual residing at 170 Watson Road, Belmont, MA 02478, who was appointed to serve as a member of the BRB on or about February 6, 2021 for a term of three years, and who continues to serve as a holdover member of the BRB.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to G.L. c. 30A, § 23(f) and G.L. c. 231, § 1.

5. Venue is proper in this Court under G.L. c. 30A, § 23(f).

FACTS

6. The membership of the BRB is determined by G.L. c. 32, § 20(4)(b), which provides that, in towns with a select board form of government:

[such boards] shall consist of five members and shall be chosen in the following manner ... the ... town accountant or other officer having similar powers and duties who shall be a member ex officio, a second member appointed by the [select board] ..., a third and fourth member who shall be elected by the members in or retired from service of such system from among their number in such manner and for such term, not exceeding three years, as the [select board] ... shall determine, and a fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years. If the fifth member is not chosen by the other four members within thirty days after the expiration of the term of the fifth member, said member shall be appointed ... in a town by the [select board].

7. At all times material to the Complaint, the membership of the BRB has consisted of the Town Accountant, Donna Tuccinardi, acting *ex officio*; Brian Antonellis as the Select Board's appointee; Walter Wellman and Ross Vona, elected by the members in and retired from service; and Thomas Gibson, the fifth member. Mr. Gibson was elected, and continues to serve, as Chair of the BRB.

8. Mr. Gibson was appointed to the position to be elected by the other members (hereinafter "the Fifth Member") to a 3-year term on February 6, 2021, and his term ended on February 6, 2024. If the BRB does not elect a fifth member by March 7, 2024, the power to appoint the Fifth Member will rest with the Select Board.

9. By vote of the Belmont Town Meeting, exercising a local option conferred by statute, BRB members all receive an annual stipend of \$3,000 for their service on the board. Mr. Gibson has a financial interest in the question of his reappointment to the BRB for purposes of the State Ethics Act, G.L. c. 268A, and is disqualified from participating in any proceedings of the BRB with respect to such reappointment pursuant to G.L. c. 268A, § 19.

10. On November 21, 2023, the BRB caused to be posted on the Town of Belmont's website and on the Public Employee Retirement Administration's (PERAC's) website a notice that it would accept applications for the Fifth Member position for a three-year term commencing on February 6, 2024. A true copy of that posting is attached hereto as Exhibit A.

11. In response to the posting, the BRB received two applications: one from Mr. Gibson seeking reappointment, and another from a Belmont resident named Chad Onufrechuk. In accordance with the posting, the BRB determined that both candidates were qualified and scheduled them for interviews on January 16, 2024. A true copy of the BRB's minutes describing the interview process is attached hereto as Exhibit B.

12. Following the interviews, the BRB scheduled the “Board Vote for Fifth Member Election” for its regular monthly meeting on January 22, 2024. A true copy of the BRB's agenda for its January 22, 2024 meeting is attached hereto as Exhibit C.

13. At the said meeting on January 22, 2024, Mr. Vona made a motion, seconded by Mr. Wellman voted to reappoint Mr. Gibson. Mr. Vona and Mr. Wellman voted in favor of the motion. Ms. Tuccinardi and Mr. Antonellis, who had expressed support for Mr. Onufrechuk, voted in the negative. With Mr. Gibson not having received a majority of the votes to be appointed as the Fifth Member, the meeting adjourned without the Fifth Member having been appointed. A true copy of the approved minutes of the January 22, 2024 meeting is attached hereto as Exhibit D.

14. On or about February 15, 2024 the BRB scheduled a special meeting for February 20, 2024 for the sole purpose of considering, for a second time, the appointment of the Fifth Member. A true copy of the BRB’s agenda for its February 20, 2024 meeting is attached hereto as Exhibit E.

15. On information and belief, Mr. Gibson scheduled this meeting with knowledge that Mr. Antonellis had planned to be out of state during the week of February 19-23 (the school vacation week), and even though there was another regularly scheduled meeting of the BRB only four business days later.

16. Mr. Antonellis rearranged his plans for the school vacation week so that he could attend the BRB meeting. At said meeting, which was attended by all five members, Mr. Gibson presided over the discussion and vote despite being disqualified from participating in the matter. The four members eligible to vote again split two-to-two, with Mr. Wellman and Mr. Vona voting in favor of a motion to reappoint Mr. Gibson and Ms. Tuccinardi and Mr. Antonellis

voting in favor of a motion to appoint Mr. Onufrechuk. A true copy of the approved minutes of the BRB's February 20, 2024 meeting is attached hereto as Exhibit F.

17. On February 21, 2024, the Chair posted the agenda for the BRB's regular February meeting to be held on Monday, February 26 at 9:15 a.m. The agenda for that meeting contained no reference to any discussion or vote on the appointment of the fifth member of the BRB. A true copy of the BRB's agenda for its February 26, 2024 meeting is attached hereto as Exhibit G.

18. Ms. Tuccinardi was absent from the BRB's February 26, 2024 meeting due to a previous commitment. Near the end of that meeting, Mr. Wellman made a motion to reconsider the Board's vote to appoint Mr. Gibson as the Fifth Member, which had failed for want of a majority on February 20, 2024. Mr. Gibson, despite being disqualified, participated by allowing the motion to be heard and presiding over the vote on that motion.

19. Mr. Wellman and Mr. Vona voted in favor of reconsideration, and in favor of Mr. Gibson's reappointment, and Mr. Antonellis voted in the negative. Mr. Gibson declared the vote to have passed by a two-to-one vote.

20. On Tuesday, February 27, 2024, PERAC sent a letter to Mr. Gibson informing him that it was exercising its authority under G.L.c. 32, § 21(4) to invalidate his appointment as the Fifth Member on the ground that not all four of the other BRB members were present and voting. A true copy of PERAC's letter is attached hereto as Exhibit H. As indicated in PERAC's letter, its decision is subject to appeal.

21. On Wednesday, February 28, 2024, Mr. Gibson filed a notice of appeal with the Division of Administrative Law Appeals challenging PERAC's decision to invalidate his

appointment as the Fifth Member. A true copy of Mr. Gibson's notice of appeal is attached hereto as Exhibit I.

COUNT I: OPEN MEETING LAW

22. Pursuant to the Open Meeting Law, G.L. c. 30A, § 20(b),

Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format ***and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.*** [Emphasis supplied.]

23. Where a public body posts the meeting agenda to meet the requirement of including a listing of topics to be discussed at the meeting, the agenda must list those topics with "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(1). The interest of "reasonably advis[ing] the public" necessarily includes advising the board's own membership.

24. A public body is prohibited from discussing an item of business from a previous meeting, let alone voting to reconsider that item, when the reconsideration vote is not listed on the agenda or meeting notice and the possibility of reconsideration was reasonably foreseeable more than 48 hours in advance.

25. Reconsideration of the Board's previous votes to appoint the Fifth Member could have reasonably been foreseen by the Chair or Mr. Wellman on February 21, 2024, when the agenda for the February 26 meeting was posted.

26. The reconsideration vote was not an emergency which could be taken up despite not being listed on the agenda. The question of reconsideration was foreseeable, and electing the Fifth Member is not an emergency. Also, there were ten days before the power to appoint the

Fifth Member would transfer to the Select Board. This would have been ample time to schedule and notice a new meeting; Mr. Gibson had previously scheduled the February 20 special meeting to vote on the appointment of the fifth member with only five days' notice.

27. The motion to reconsider the appointment of Mr. Gibson was made when Ms. Tuccinardi was absent, without notice to her or to the public, was made for the purpose of breaking the impasse that occurred at the BRB's January 22 and February 20 meetings, and to thwart the statutory design of allowing the Select Board to appoint the Fifth Member in the event of an impasse extending beyond a date 30 days after the expiration of the Fifth Member's term.

28. The BRB's purported vote to reappoint Mr. Gibson as the Fifth Member without notice and without all of the members of the BRB present violated the OML.

COUNT II: DECLARATORY JUDGMENT

29. The plaintiffs restate the allegations in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. There is an actual controversy between the plaintiffs and the defendants as to whether Mr. Gibson was lawfully reappointed as the Fifth Member of the BRB. The resolution of that controversy is necessary to determine whether the Select Board has the authority to appoint the Fifth Member if the other four members of the BRB do not make the appointment by March 7, 2024 (thirty days after the expiration of Mr. Gibson's term).

31. The BRB's purported reappointment of Mr. Gibson as the Fifth Member was tainted by his unlawful participation in the deliberation and vote on the motion and was made without notice in violation of the OML.

32. The BRB's purported reappointment of Mr. Gibson as the Fifth Member was unlawful because not all four of the other members of the BRB were present and voting.

WHEREFORE, the Plaintiff requests this Court:

1. Issue an order of notice scheduling a hearing not later than 10 days after the filing of this Complaint, as provided in G.L. c. 30A, § 23(f), to determine what action to take to effect the speediest possible determination of this action;
2. Declare that the BRB violated the OML by voting on the appointment of Mr. Gibson on February 26, 2024 without notice to the public;
3. Annul the BRB's vote to reappoint Mr. Gibson as the Fifth Member;
4. Issue an order compelling immediate and future compliance with the OML, and compelling attendance by the members of the BRB at an OML training session authorized by the Attorney General;
5. Grant such other relief as the Court deems just and proper.

ROY EPSTEIN, MARK A. PAOLLILO, AND
ELIZABETH DIONNE,
By their attorneys,


George A. Hall, Jr. (BBO #544493)

ghall@andersonkreiger.com

Paul Kominers (BBO #703581)

pkominers@andersonkreiger.com

Carlos Rosende (BBO #713611)

crosende@andersonkreiger.com

ANDERSON & KREIGER LLP

50 Milk Street, 21st Floor

Boston, Massachusetts 02109

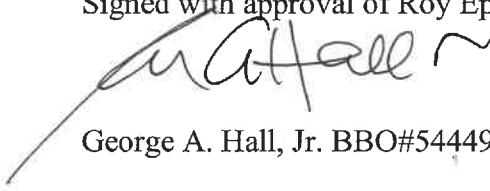
(617) 621-6582

Dated: February 28, 2024

VERIFICATION

I declare under the penalties of perjury that the factual allegations in this complaint are true to the best of my knowledge.

Signed with approval of Roy Epstein

A handwritten signature in black ink that reads "G. A. Hall, Jr." with a stylized flourish at the end.

George A. Hall, Jr. BBO#544493

Roy Epstein,
Chair, Select Board
Town of Belmont

EXHIBIT A

**RECEIVED
TOWN CLERK
BELMONT, MA**

DATE: November 20, 2023

TIME: 2:14 PM

BELMONT RETIREMENT BOARD

Appointment of Fifth Member

The Belmont Retirement Board will accept applications for the Fifth Member position for a three-year term commencing on February 6, 2024. Interested applicants should submit a statement of interest and qualifications electronically to rhoran@belmontretirement.org, or by mail to the Belmont Retirement System, 90 Concord Avenue, 3rd Floor, Suite 3, Belmont, MA 02478, not later than 4:00 p.m. on December 15, 2023. Qualified candidates in the judgment of the Board will be interviewed at the Special Board Meeting on January 16, 2024, at 9:15 a.m.

The Belmont Retirement Board is responsible for overseeing the operations of the Belmont Retirement System as fiduciaries to the members and beneficiaries of the System. The Belmont Retirement System consists of 477 active members and 367 retirees and beneficiaries. The Retirement Board is responsible for the investment management of \$150 Million in assets. The Board meets one day per month and at other times as needed. The annual stipend is \$3,000.00.

Board Members are required to complete 18 hours of educational training during the three-year term, and to file Annual Statements of Financial Interest with the Public Employee Retirement Administration Commission. Board Members must comply with G.L. c. 268A, the State Ethics Law.

Prohibitions

Massachusetts General Law Chapter 32, s. 20(4)(b). The Fifth Member shall not be an employee, a retiree or official of the Town of Belmont or the Belmont Housing Authority.

Massachusetts General Law Chapter 32, s. 20(47/8E). No employee, contractor, vendor or person receiving remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from a person doing business with a retirement board shall be eligible to serve on a retirement board; provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which the person is employed; and provided further, this subdivision shall apply only to individuals who first become members of a retirement board on or after April 2, 2012.

840 Code of Massachusetts Regulations 1.03. No individual who has been convicted of robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of state or federal law defined in Section 102(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape,

kidnapping, perjury, assault with intent to kill, any crime described in Section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of Section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of Chapter 63 of Title 18, United States Code, a violation of Section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18 United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes, or a crime in which any of the foregoing is an element or has been found by the Public Employee Retirement Administration Commission or any court to have violated his/her fiduciary duty or has been found by the Ethics Commission or any court to have violated M.G.L. c. 268A, shall be permitted to serve as a member of a retirement board.

Posted on the Town of Belmont Website and PERAC's Website on 11/21/2023.

EXHIBIT B

Belmont Contributory Retirement Board

Minutes of Special Meeting of January 16, 2023

Meeting Conducted Pursuant to Section 40 of Chapter 2 of the Acts of 2023

Board Members Present: Thomas Gibson, Chair; Walter Wellman; Brian Antonellis, Donna Tuccinardi, Ross Vona. Staff Present: Ryan Horan; Joseph Martin.

Guests Present: Chad Onufrechuk, Interviewee for Fifth Member.

Identified Public Attendees: Michael Pelrine Jr. (remote), Ted Pendergast (remote), Conor McEachern (remote), Tom O'Brien (remote), Melissa Morley (remote).

Mr. Gibson called the meeting to order at 9:12 am and introduced the Board Members and guests.

Mr. Gibson explained the purpose of the special meeting and the interviews that will be held for the board's fifth member position.

Mr. Gibson exited the office at 9:15 AM.

The First interview was held with Chad Onufrechuk at 9:16 AM. The board members introduced themselves and Mr. Onufrechuk then introduced himself to the board and gave himself an introduction, he discussed his career and why he would like to apply for the open position. The board members then asked him about his experience with retirement plans and he indicated he was limited in his exposure with public pension plans but has extensive experience when it comes to investment style retirement plans and is a Chartered Retirement Plan Specialist. He was then asked about his opinions on the investment portfolio and said he sees some inefficiencies which he feels could be corrected. He felt that we were paying fees twice in some cases. When asked about his opinion on moving to PRIM he said he feels we should either be 100 percent in or 100 percent out of PRIM. Mr. Vona asked him some questions about his opinion on our COLA base. He said he would have to look at the numbers before deciding but is a fan of doing what is right. Mr. Onufrechuk was asked about any experience that he has with Chapter 32 of the MGL and he indicated he does not but is a quick learner. Mr. Onufrechuk explained his position on how he feels about investments and why he feels there are inefficiencies in how our money is invested. He used Rhumblin as an example and how he feels that they have not provided the value of what the board is paying them in fees as opposed to a normal S&P 500 index fund. He emphasized that his philosophy is to control what you can control and worry about costs that you can control.

Mr. Onufrechuk exited the meeting at 9:50 AM

Mr. Gibson returned to the office.

The second interview began with the incumbent candidate Thomas Gibson at 9:55 AM. Mr. Gibson gave his opening statement and reviewed what he has offered as the 5th member of the board over the course of his career on this board, which dates back to 1997. Mr. Gibson discussed his relationships at PERAC and PRIM and how he has used those through his time with the board to assist the current and past administrators with running the system and making sure any issues that arise are fixed properly and quickly.

Ms. Tuccinardi asked him about how and how often he assists the board of administrators. He said it would be best to ask the administrators but that he does usually answer questions or assist with responses on a weekly basis. This helps answer questions quickly and more importantly does not generate additional legal fees for the Board. Mr. Wellman asked if Mr. Gibson had any opinion on how the money is invested with the board. Mr. Gibson discussed the System's favorable long term and short-term returns, in comparison to PRIM and other public funds, and the System's expense ratio. He noted the System is approximately 70% funded and on track to be fully funded by 2031. He explained that the Board needed to be ready for changes in the future if necessary and how our long-term relationship with NEPC has been a benefit to the board.

Mr. Gibson exited the office again at 10:15 AM.

The board members then shared their opinions on the candidates and how they felt that they had answered their questions in the interviews. They went over their feelings on the matter and indicated that a vote in the election will take place at the January 22nd meeting.

Mr. Gibson rejoined the meeting at 10:20 AM and discussed with the Board the need to review the Executive Session Minutes at reasonable intervals and suggested that it should be done in January of each year going forward.

Mr. Gibson indicated that he and Mr. Horan have reviewed the executive session minutes for the past 6 years and identified those that should be released at this point as the need for secrecy no longer exists.

Motion by Mr. Vona, seconded by Ms. Wellman, to release the reviewed Executive Session Minutes which are deemed to no longer need to be held secret.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Ms. Tuccinardi	Yes
Mr. Vona	Yes

The Motion passed.

Motion by Mr. Vona, seconded by Ms. Wellman, to adjourn the Meeting.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Ms. Tuccinardi	Yes
Mr. Vona	Yes

The Motion passed.

The meeting adjourns at 10:24 AM.

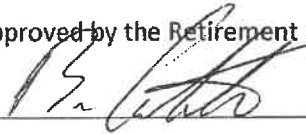
Documents Distributed:

Thomas Gibson Documents
Chad Onufrechuk Documents
Executive Session Minutes to Be Public

Respectfully Submitted,

Ryan Horan
Executive Director

Approved by the Retirement Board:







January 22, 2024

EXHIBIT C

Belmont Contributory Retirement Board
Meeting to be Held on Monday January 22, 2024, at 9:15 a.m.
90 Concord Avenue, Third Floor, Suite 3
Belmont, MA 02478

Pursuant to Section 40 of Chapter 2 of the Acts of 2023, members of the public are invited to access the meeting remotely through Zoom or by telephone, as set forth below:

Join Zoom Meeting:

<https://us02web.zoom.us/j/82164840299?pwd=VDlsZ1gvZG5xNTBoTjVXZE1FdFdadz09>

Meeting ID: 821 6484 0299

Passcode: 524813

Or Telephone:

+13052241968,,82164840299#,,,,*524813# US

1. Call to Order
2. Board Vote for Fifth Member Election
3. Acceptance of Board Meeting Minutes – November 20, 2023
4. November 2023 Investment Update – Scott Driscoll, NEPC
5. Future Meeting Dates
6. Board Counsel Report – James H. Quirk, Jr., Esq.
7. Report of the Executive Director
8. Review of Budget through December 2023
9. Update of Cash Books and Bank Reconciliation
10. Approval of Expense and Payroll Warrants
11. Review of Correspondence Received
12. Public Records Requests
13. PERAC Memoranda and Advisories
14. Applications for Retirement
15. Approval of New Members, Group Classifications, Service Purchases
16. Chair’s Report – Office of the Inspector General Advisory; PERAC Update; Annual Vendor Disclosures; Board Member’s Statement of Financial Interest; PTG Litigation
17. Discussion of Topics Not Reasonably Anticipated 48 Hours in Advance of Meeting
18. Executive Session – Disability Application – *Executive Session under Purpose 7 of the Open*

Meeting Law.

Executive Session under Purpose 7 of the Open Meeting Law: To comply with Exemption (c) of the Public Records Law (G.L. c. 4, s. 7(26)(c)) exempting personnel and medical files or information and other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

RECEIVED
TOWN CLERK
BELMONT, MA

DATE: January 17, 2024
TIME: 2:28 PM

EXHIBIT D

Belmont Contributory Retirement Board

Minutes of Meeting of January 22, 2024

Meeting Conducted Pursuant to Section 40 of Chapter 2 of the Acts of 2023

Board Members Present: Thomas Gibson, Chair; Walter Wellman; Brian Antonellis; Donna Tuccinardi (Remote); Ross Vona. Staff Present: Ryan Horan; Joseph Martin.

Guests Present: James H. Quirk, Jr., Esq., Board Attorney (Remote); Scott Driscoll, NEPC (Remote).

Identified Public Attendees: (In person Attendees) Chris Drinan, Stephen Hodgdon, David Hodgdon, Joseph Baptista Nick Kacoyanis, Joseph Brack. (Remote Attendees) Chad Onufrechuk, Daniel Scannell, Kevin Balaod, Matt Taylor, Angus Davison, Tom Caputo, Judith Feinleib, Gar Chung, Geoff Lubien, Cory Taylor, Dennis Maher, and Scott Driscoll

Mr. Gibson called the meeting to order at 9:16 am and introduced the Board Members and guests.

The first agenda item was the election of the fifth member. Mr. Gibson recused himself from the discussion and passed the meeting to Mr. Wellman. Mr. Wellman opened the meeting to comment. Multiple members asked for the chance to speak and spoke about their experience and the experience that others have had, advocated for Mr. Gibson and the knowledge that he brings to the board. Mr. Vona reiterated his thoughts for people who were not present for the interviews. Mr. Antonellis made his feelings clear about how he feels the pension system has operated and how he feels both candidates are overqualified for this position.

Motion by Ms. Vona, seconded by Mr. Wellman, to reelect Thomas Gibson as the fifth member of the Retirement Board.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Did not Participate.
Ms. Tuccinardi	No
Mr. Antonellis	No
Mr. Vona	Yes

The Motion failed.

Ms. Tuccinardi exited the meeting at 9:45 AM

Motion by Ms. Vona, seconded by Mr. Wellman, to approve the December 18, 2023, Board Meeting and Executive Meeting Minutes.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes

Mr. Vona Yes

The Motion passed.

Review of Investments with NEPC: Mr. Driscoll began his presentation with a review of market performance for 2023 at large and specifically December's performance. Mr. Driscoll touched on how each asset class has performed in 2023. He reviewed how the market bounced back after a down year in 2022 and how the system performed in both of those years. Mr. Driscoll then addressed questions from Mr. Vona on Emerging Markets and Real Estate and his outlook for 2024. Performance will be updated upon receipt of PRIM's year end numbers.

Future Meeting Dates: February 26, 2024; March 25, 2024; April 29, 2024.

Mr. Driscoll exited the meeting at 10:08 AM.

Board Counsel Report: Mr. Quirk reported on recent anti-spiking decisions impacting pension calculations and Mr. Quirk will provide an update to the Board. Mr. Quirk also reported on DALA decisions impacting military service purchases which are under review by CRAB, and also by the Legislature. Mr. Gibson advised of a case affirming that payment of sick leave pending accidental disability retirement remains as regular compensation.

Report of the Executive Director: Mr. Horan informed the Board that he does not have an update on issues with the IRS as of this date. Leslie Davidson, the Town Treasurer, will inform the board about any updates. All Section 3(8)(c) bills to other boards were sent out in mid-January. All member annual statements have been mailed to active and inactive members. We have had a great number of responses to the annual statements already and it seems to have been very effective this year. 1099-Rs will be mailed by the end of the week, after some issues with PTG are resolved. PERAC has advised that the 2017 through 2020 Audit is scheduled for next month, likely mid to late February. Two of the three medical panel reports have been returned regarding the disability applications of Earle Frazier and Christopher Drinan, and it will be likely the applications will be ripe for decision next month. Medical panel appointments have also been scheduled for the Involuntary Disability Retirement application.

The Board reviewed the Budget through December 2023.

Update of cash books: Mr. Horan advised that the Cash Books for October and November have been submitted. Bank reconciliation has been done internally through December 2023. The Town has also completed all bank reconciliations through December.

Correspondence Received: None.

Public Records Requests: The board received a request from Patrick Higgins for all board meeting minutes from 2020 and released executive session minutes from 2020 to present. Copies of all these documents were sent to the requester within 10 days. We received extensive request for information on our investments from pitchbook, PEI. We satisfied the pitchbook request and informed PEI that we would have to charge them for the scope of the information they wanted, and they informed us they would no longer like to proceed with the request. We also receive a request for member information from Open the Books, and we sent all requested information back in a timely manner.

PERAC Memos: PERAC Memo #1 was in reference to Medical Panels and the Medical Panel testing procedures. PERAC Memo #2 was about the 2024 regular interest rate. PERAC Memo #3 was the Over

73 minimum Distribution letter and attachment. PERAC Memo #4 was the 2024 IRS Compensation Limits under Chapter 46 of the Acts of 2002. PERAC Memo #5 was 2024 Limits under Section 23 of Chapter 131 of the Acts of 2010. PERAC Memo #6 was the 2024 COLA Notice authorizing the granting of retiree COLA. Notice to the Legislative body is not required per PERAC, and the Board will take this up next month.

Approval of Expense and Payroll Warrants

Motion by Mr. Vona, seconded by Mr. Antonellis, To approve the January Expense Warrant and December Payroll Warrant.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Mr. Vona	Yes

The Motion passed.

Enrollment of New Members

<u>Name</u>	<u>Mem Date</u>	<u>Position</u>	<u>Department</u>	<u>Group</u>
Curtis Eames	12/14/2023	Building Substitute	School	1
Amanuel Negash	12/14/2023	Computer Spec with Cert	School	1
James Parsons	1/08/2024	Police Officer	Police	4

Motion by Ms. Vona seconded by Mr. Wellman, to approve new members and purchases of service.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Mr. Vona	Yes

The Motion passed.

The Board acknowledged the passing of members of the system:

Member Deaths

<u>Name</u>	<u>Death Date</u>	<u>Option</u>	<u>Years of Service</u>	<u>Retirement Date</u>	<u>Gross Monthly Benefit</u>
Evelyn Roche	01/01/2024	Survivor	N/A	N/A	\$1652.27
Muriel McGinty	01/01/2024	A	18.333	06/12/1987	\$1,484.11
Wayne O'Neill	01/04/2024	B	19.	2/26/2000	\$3544.31

Chair's Report: Mr. Gibson discussed the Office of the Inspector General Advisory on Banking Controls and Cybersecurity, which referenced a fraudulent transfer in 2022 of \$3.5 million from a retirement system. Mr. Gibson advised that PERAC update in the interview process for the Executive Director's position as John Parsons is retiring. Mr. Gibson reminded all board members of the need to file a Statement of Financial Interest with PERAC by May 1, 2024. Mr. Gibson also updated the board on the upcoming PTG Litigation that has been brought against the new competitor that has recently entered the space.

Motion by Mr. Vona, seconded by Mr. Wellman, to adjourn the Meeting.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Mr. Vona	Yes

The Motion passed.

The meeting adjourns at 10:56 AM.

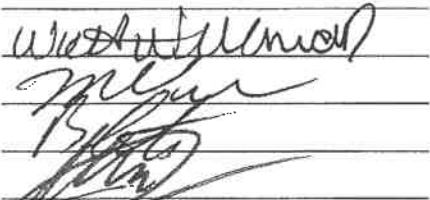
Documents Distributed:

January 22, 2024, Agenda
NEPC January 2024 Presentation
PERAC Memos #1-6
OIG Advisory
PERAC Advisory on retired annuitants

Respectfully Submitted,

Ryan Horan
Executive Director

Approved by the Retirement Board:

The image shows three handwritten signatures in black ink, written over a set of horizontal lines. The signatures are cursive and appear to be of different individuals. The first signature is the largest and most prominent, followed by two smaller ones below it.

February 26, 2024

EXHIBIT E

REVISED 2
Belmont Contributory Retirement Board
Special Meeting to be Held on **Tuesday, February 20, 2024**, at 1:00 p.m.
90 Concord Avenue 3rd Floor, Suite 3
Belmont, MA 02478

**RECEIVED
TOWN CLERK
BELMONT, MA**

DATE: February 15, 2024
TIME: 1:08 PM

Pursuant to Section 40 of Chapter 2 of the Acts of 2023, members of the public are invited to attend in person or to access the meeting remotely through Zoom or by telephone, as set forth below:

Join Zoom Meeting

<https://us02web.zoom.us/j/88955506419?pwd=anlFby9JZG83SWYzYjdJb1EveHU3QT09>

Meeting ID: 889 5550 6419

Passcode: 676185

One tap mobile

+13126266799,,88955506419#,,,,*676185# US

1. Call to Order – Introduction of Board Members and Guests
2. Public Comment, Discussion and Vote for Fifth Member Position
3. Adjournment

EXHIBIT F

Belmont Contributory Retirement Board

Minutes of Special Meeting of February 20, 2024

Meeting Conducted Pursuant to Section 40 of Chapter 2 of the Acts of 2023

Board Members Present: Thomas Gibson, Chair; Walter Wellman; Brian Antonellis, Donna Tuccinardi, Ross Vona. (Remote)

Staff Present: Ryan Horan; Joseph Martin.

Guests Present: None.

Identified Public Attendees: (In person Attendees) Liz Allison, David Hodgdon, Joseph Baptista, Dave Frizzell, Robert McLaughlin, Daniel P Scannell, Patrice Garvin, Chris Doyle, Susan Gonzalez, Gerry Benoit, Nick Kacoyanis, Mary Byrne, Kathleen Kiely-Becchetti. (Remote Attendees) Angus Davison, John Pizzi, Janice Maxine Ellard, E. Crisafi, Chad Onufrechuk, Ted Pendergast, Wendy Murphy, Matt Taylor, Maria Kiorpes, Bethany Aste, Tom Caputo, Erin Lubien, Geoffrey Lubien and Chuck Laverty

Mr. Gibson called the meeting to order at 1:03 PM and introduced the Board Members and guests.

Mr. Gibson explained the purpose of the special meeting in reference to the Fifth Member Election and the issues surrounding this current election stalemate. Mr. Gibson then explained the background on how the process works for retirement systems acknowledging PERAC's advice to not abdicate the Board's authority to elect the fifth member to the board of selectman, and that the board should make every effort to perform its fiduciary duty. Mr. Gibson then opened the meeting to public comment from the attendees.

Kathleen Kiely-Becchetti, President of the Massachusetts Association of Contributory Retirement Systems spoke to Mr. Gibson's qualifications and experience as the fifth member of the Board, noting among others that he is the most qualified person in the commonwealth in terms of knowledge and experience in Chapter 32.

Robert McLaughlin made statements about issues with the open meeting law and when and how the agenda had been posted. He then commended Brian Antonellis and Donna Tuccinardi for their bravery in their votes. He compared the meeting today to the January 6th Capitol riots intended to overturn the results of an election, and insinuated that the meeting was called as an intimidation tactic.

David Frizzell made statements about his experience with the board as an employee, Chief of the Fire Department, and then retiree from the system and his experiences with Thomas Gibson. He commended Mr. Gibson for his performance as a board member voiced support for his reelection.

Chris Doyle made comments indicating she feels that a change in the retirement board composition will possibly be a positive change for active members, retirees, and residents of the town. She feels that the way that the board manages investments and handles expenses could be done more diligently and result in significant savings. These savings could then be passed along to the employees and residents of the town.

Susan Gonzalez made comments about her experience with the warrant committee and her background as an attorney in the financial sector. She indicated that she felt that a change in the composition of the board could be beneficial to all parties involved within the town of Belmont.

Liz Allison is a town meeting member and a former warrant committee member who wanted to read an excerpt from the last town warrant committee report on their findings and issues with the retirement system.

Board Members then made comment:

Ross Vona made comments on why he feels Thomas Gibson is very experienced in Chapter 32 Law and feels that the complexity and nuance and change to those laws make them very difficult to understand and pick up for people who do not have the wealth of knowledge that Tom has.

Walter Wellman made comments about Thomas Gibson and the length at which he has served the retirement board and for how long he has been a tax paying resident of the town. He then went through all the reasons he thinks Mr. Gibson is more experienced and qualified than Mr. Onufrechuk due to his service as a member of our board, an attorney for other retirement systems and an educator through his presentations for MACRS. Mr. Wellman then indicated his worries about a change in the composition of the board and how he feels this could threaten the approval of future COLAs, extension of the funding schedule and hurt the long-term stability of the system.

Donna Tuccinardi made comments about her opinions on the election. She indicated that her vote was not against Mr. Gibson but in hopes for a change in the future for the board. She said she feels that the only thing that could be changed for the better now would be with the board's investments. She indicated she feels Mr. Onufrechuk could bring some expertise in the investment space and help the board improve their investment returns. Ms. Tuccinardi made it clear that she is not intimidated by the groups in the room and her decision has not changed since the January meeting.

Mr. Antonellis made statements about his experience of this election and how he feels that this had been a very political situation, and he resents the way that he has been painted in this election. He feels that in his time with the board he has approached everything from a professional point of view and has only been paying attention to the numbers that he can analyze and understand. He feels that change can be beneficial for multiple reasons from improving our returns, improving our culture, and innovating for the future. He indicated he respects Mr. Gibson as a person and has appreciated his assistance as a board member in his short time with the board and is only making this decision based upon what he feels is best for the retirement system.

Final Comments were made.

Motion by Mr. Vona, seconded by Mr. Wellman, to appoint Mr. Gibson as the fifth member of the retirement system.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Did not Participate.
Mr. Antonellis	No
Ms. Tuccinardi	No
Mr. Vona	Yes

Motion by Ms. Tuccinardi, seconded by Ms. Antonellis, to appoint Mr. Onufrechuk as the fifth member of the retirement system.

Roll Call:

Mr. Wellman	No
Mr. Gibson	Did not Participate.
Mr. Antonellis	Yes
Ms. Tuccinardi	Yes
Mr. Vona	No

No final decision could be made on the fifth member election at this special meeting.

Motion by Mr. Vona, seconded by Ms. Wellman, to adjourn the Meeting.

Roll Call:

Mr. Wellman	Yes
Mr. Gibson	Yes
Mr. Antonellis	Yes
Ms. Tuccinardi	Yes
Mr. Vona	Yes

The Motion passed.

The meeting adjourns at 2:03 PM.

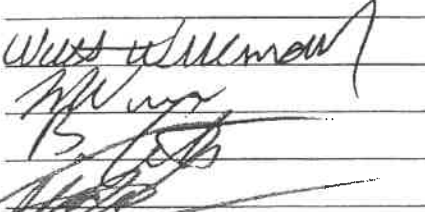
Documents Distributed:

Correspondence Received about the Fifth Member Election

Respectfully Submitted,

Ryan Horan
Executive Director

Approved by the Retirement Board:



February 26, 2024

EXHIBIT G

Belmont Contributory Retirement Board
Meeting to be Held on Monday February 26, 2024, at 9:15 a.m.
90 Concord Avenue, Third Floor, Suite 3
Belmont, MA 02478

RECEIVED
TOWN CLERK
BELMONT, MA

DATE: February 21, 2024
TIME: 4:38 PM

Pursuant to Section 40 of Chapter 2 of the Acts of 2023, members of the public are invited to access the meeting remotely through Zoom or by telephone, as set forth below:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84622956181?pwd=aFRRaHJVSTFFeGtJa3NBTE9TSTNPQT09>

Webinar ID: 846 2295 6181

Passcode: 456771

Or One tap mobile :

+19292056099,,84622956181#,,,,*456771# US

1. Call to Order
2. Acceptance of Board Meeting Minutes
3. November 2023 Investment Update – Scott Driscoll, NEPC
4. Future Meeting Dates
5. Board Counsel Report – James H. Quirk, Jr., Esq.
6. Report of the Executive Director
7. Review of 2024 Projected Expense Budget
8. PERAC Memo #6/2024 – Election to Grant 2024 Retiree COLA
9. Update of Cash Books and Bank Reconciliation
10. Approval of Expense and Payroll Warrants
11. Review of Correspondence Received
12. Public Records Requests
13. PERAC Memoranda and Advisories
14. Applications for Retirement
15. Approval of New Members, Group Classifications, Service Purchases
16. Chair's Report – 2024 Valuation, PTG Contract Proposal, Training Credits Status – Upcoming
MACRS, NCPERS Educational Conferences, Technology Update, Board Composition Issues
17. Discussion of Topics Not Reasonably Anticipated 48 Hours in Advance of Meeting
18. Executive Session – Disability Application – *Executive Session under Purpose 7 of the Open*

Meeting Law.

Executive Session under Purpose 7 of the Open Meeting Law: To comply with Exemption (c) of the Public Records Law (G.L. c. 4, s. 7(26)(c)) exempting personnel and medical files or information and other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

EXHIBIT H

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chair*

JOHN W. PARSONS, ESQ., *Executive Director*

Auditor DIANA DIZOGLIO | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES J. GUIDO | RICHARD MACKINNON, JR. | JENNIFER F. SULLIVAN, ESQ.

February 27, 2024

BY ELECTRONIC MAIL ONLY:

Thomas F. Gibson, Esq.
Chairman
Belmont Retirement Board
thomas.gibson@thomasgibsonlaw.com

Dear Mr. Gibson:

It has come to the attention of PERAC that the Belmont Retirement Board (“the Board”) voted yesterday, Monday, February 26, 2024, to reappoint you as the fifth member of the Board. This letter shall serve as notice that PERAC hereby invalidates that appointment pursuant to PERAC Memorandum No. 14 of 2009 (“PERAC Memo #14/2009”).

Of note, before yesterday, the Board had four prior votes on this matter at two other meetings in which all four members were present and deadlocked at 2-2. At these two prior meetings, the agenda made clear that the Board would be voting on the appointment of the fifth member. Then this matter came up at yesterday’s meeting without being specifically mentioned on the agenda when the members of the Board were aware that one of the four members could not attend the meeting.

There are issues involving yesterday’s vote which fall under the purview of the Attorney General’s Office. Those issues include, but are not limited to, as noted above, the adequacy of the posting of the vote on the agenda. PERAC will leave such issues to the Attorney General’s Office and the Division of Open Government.

PERAC invalidates the Board’s vote to reappoint you as the fifth member because all four of the other members did not vote and participate. It is our understanding that the vote was 2 to 1, with one member absent from the meeting.

In PERAC Memo #14/2009, issued on February 23, 2009, we addressed this topic. In that Memorandum, we declared:

Thus, this memorandum is applicable to all retirement systems except those of the counties and those of certain cities and towns where the local option described in G.L. c. 32, § 20(4)(c) has been exercised.



Thomas F. Gibson, Esq.
Chairman
Belmont Retirement Board
February 27, 2024
Page Two

Belmont has not exercised the local option described in G.L. c. 32 Section 20(4)(c) and, as such, is bound by Memo #14/2009.

We further stated, in regard to G.L. c. 32, Section 20:

The above-referenced statute unambiguously provides that the fifth member “shall be chosen by the other four members.” This means that in regard to the selection of the fifth member, **all other members of the retirement board must be present when this individual is selected. An attempt to appoint a fifth member without the other four members all participating and all voting will be invalid.** The vote need not be unanimous. A person may be appointed by a simple majority. But the four other members are obliged to select the fifth member, so **those four voting members of the retirement board need to be present, and all four need to vote.** It goes without saying that if the incumbent is vying for re-appointment, or even if he is not, he should not participate in the voting.

Pursuant to our authority under G.L. c. 32, § 21(4) to review all determinations of retirement boards, the Commission should be notified in writing when a fifth member is selected. **The notification should include a record of the vote of the four board members, including a statement that all four members were present and all four voted.** (Emphases added.)

We are aware of timeliness concerns and potential subsequent actions involving this matter, so we did not want to delay in informing the Board of our decision.

If you are aggrieved by PERAC’s determination herein, you may file a written appeal within 15 days of receipt of this letter to:

Natalie Monroe, Esq.
Chief Magistrate
Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148

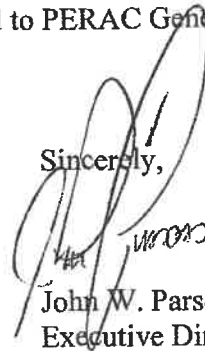
Your notice of appeal must state your email address, your street address, and your telephone number. You must include a copy of this letter, along with your notice of appeal.

Thomas F. Gibson, Esq.
Chairman
Belmont Retirement Board
February 27, 2024
Page Three

The notice of appeal may be filed through an online portal, by email, by mail, or by other methods. For guidance, please visit <https://www.mass.gov/how-to/file-an-appeal-with-the-division-of-administrative-law-appeals-dala>. Submissions by email should be addressed to dalapleadings@mass.gov.

Any questions about this letter should be directed to PERAC General Counsel Judith Corrigan, at (617) 591-8904, or judith.a.corrigan@mass.gov.

Sincerely,



John W. Parsons, Esq.
Executive Director

cc: All Other Members of the Belmont Retirement Board, by electronic mail only:

Walter Wellman	walterwellman@yahoo.com
Ross Vona	rossvona@gmail.com
Donna Tuccinardi	dtuccinardi@belmont-ma.gov
Brian Antonellis	brian.antonellis@gmail.com

And to:

Ryan Horan, Executive Director
rhoran@belmontretirement.org

Attachment: PERAC Memorandum No. 14 of 2009

JWP/ddm
24019

MEMORANDUM #14, 2009

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
Five Middlesex Avenue, Suite 304, Somerville, MA 02145
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac
Domenic J. F. Russo, *Chairman* | A. Joseph DeNucci, *Vice Chairman*
Mary Ann Bradley | Paul V. Doane | James M. Machado | Donald R. Marquis | Robert B. McCarthy
Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards
FROM: Joseph E. Connarton, Executive Director
RE: Selection of the Fifth Member
DATE: February 23, 2009

In recent months, some controversy has arisen in regard to several retirement boards and their selection of a fifth member to serve on their retirement board. General Laws, Chapter 32, Section 20 discusses the selection of the fifth member to various retirement boards. Section 20, Subsection 4(b) provides in pertinent part that as to the composition of the retirement board for a city or town, there shall be:

... [A] fifth member who shall not be an employee, a retiree, or official of the governmental unit and shall be chosen by the other four for a term of three years (Emphasis supplied.)

Although this subsection admittedly refers only to the retirement boards of cities and towns, references to the other retirement boards specifically enumerated in Section 20 contain virtually identical language relating to the selection of the fifth member. In regard to the State Retirement System, General Laws, Chapter 10, Section 18 provides that the State Board of Retirement shall include "a fifth member who shall not be an employee, a retiree, or official of the commonwealth and shall be chosen by the other four for a term of three years." The Teachers' Retirement Board, which has seven members, provides that the seventh member "shall be chosen by the other six for a term of four years." General Laws, Chapter 15, Section 16. Thus, this memorandum is applicable to all retirement systems except those of the counties and those of certain cities and towns where the local option described in G.L. c. 32, § 20(4)(c) has been exercised. In regard to the Teachers' Retirement System, all references to the "fifth" member should be read to refer to the "seventh" member. All references to the "other four members" should be read as the "other six members."

The above-referenced statute unambiguously provides that the fifth member "shall be chosen by the other four members." This means that in regard to the selection of the fifth member, all other members of the retirement board must be present when this individual is selected. An attempt to appoint a fifth member without the other four members all participating and all voting will be invalid. The vote need not be unanimous. A person may be appointed by a simple majority. But the four other members are obliged to select the fifth member, so those four voting members of the retirement board need to be present, and all four need to vote. It goes without saying that if the incumbent is vying for re-appointment, or even if he is not, he should not participate in the voting.

Pursuant to our authority under G.L. c. 32, § 21(4) to review all determinations of retirement boards, the Commission should be notified in writing when a fifth member is selected. The notification should include a record of the vote of the four board members, including a statement that all four members were present and all four voted.

We trust the foregoing will be of some assistance to you.

Memo

[Return to PERAC Home Page](#)

EXHIBIT I

From: Thomas Gibson <thomas.gibson@thomasgibsonlaw.com>
Sent: Wednesday, February 28, 2024 10:42 AM
To: DALApleadings (ALA) <DALApleadings@mass.gov>; Corrigan, Judith A. (PER) <judith.a.corrigan@mass.gov>
Cc: Horan, Ryan <rhoran@belmontretirement.org>; 'walterwellman@yahoo.com (walterwellman@yahoo.com)'
<walterwellman@yahoo.com>; Ross Vona <rossvona@gmail.com>; Tuccinardi, Donna <dtuccinardi@belmont-ma.gov>;
Brian.Antonellis@gmail.com; jhq@jhqlaw.comcastbiz.net; Gerald McDonough <gmcdonough@thomasgibsonlaw.com>
Subject: [EXTERNAL]Notice of Appeal - Belmont Retirement Board and Thomas Gibson v. PERAC, CR-24-XXXX

Dear Chief Magistrate Monroe – Please accept this Notice of Appeal under G.L. c. 32, s. 16(4) of the attached February 27, 2024 letter of PERAC invalidating the vote of the Belmont Retirement Board to appoint the Board’s fifth member “because all four of the other members did not vote and participate.” This appeal is being filed due to the jurisdictional time requirements of Section 16(4).

Where there are no factual issues in dispute, and where it is respectfully asserted that issue on appeal is the proper application of the Legislature’s intent in enacting the provisions of G.L. c. 32, s. 20(4)(b), the matter is hereby submitted for decision on written submissions pursuant to 840 CMR 1.01(10)(b).

Further, in view of PERAC’s acknowledgment of the “timeliness concerns” of the issue, specifically the appointment’s defaulting to the municipality’s chief executive officer after March 7, 2024, it is respectfully moved that the Division expedite the resolution of this appeal, and/or stay PERAC’s action pending final decision of the Division.

Thank you for your attention to this important matter.

Thomas F. Gibson
Law Offices of Thomas F. Gibson
2400 Massachusetts Avenue
Cambridge, MA 02140-1854
TEL: (617) 576-2400
FAX: (617) 576-2876
Email: thomas.gibson@thomasgibsonlaw.com

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