

This file contains the minutes of both Regular Session and Executive Session Minutes of January 12, 2024.

The regular session minutes were approved on February 05, 2024.

The executive session minutes were approved and released on February 26, 2024.



**TOWN OF BILLERICA
SELECT BOARD MINUTES
SPECIAL MEETING
JANUARY 12, 2024**

Members Present: Chair Michael Riley, Vice Chair Kimberly Conway, Secretary Andrew Deslaurier, Michael Rosa, and John Burrows

Members Absent: None

Staff Present: Town Manager John Curran, Assistant Town Manager Clancy Main, and Director of Administrative Services Robert Maynard

Chair Riley called the meeting to order and stated that the meeting is a hybrid meeting with a Zoom option.

Call to Order 7:00 PM

The Pledge of Allegiance was recited.

Chair Riley called for a moment of silence for the man that was killed today in a car accident.

Executive Session

1. **Executive Session Pursuant to G.L. c. 30A, Section 21 (A)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares - Dina Favreau vs. John Burrows & Others.**

MOTION - Secretary Deslaurier made a motion to go into Executive Session Pursuant to G.L. c. 30A, Section 21 (A)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares - Dina Favreau vs. John Burrows & Others at 7:03 PM. The motion was seconded by Vice Chair Conway and voted 3-2-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted No, Vice Chair Conway voted Aye, Member Burrows voted No and Chair Riley voted Aye.

Member Rosa stated point of order to the motion. According to the Charter, Section 7-10(b) and our Policy Section 2.6, we should have Open Microphone first. Chair Riley stated that he is not entertaining any discussion on the motion.

The Board returned from Executive Session at 8:41 PM.

New Business

2. **Consideration on Calling For and Scheduling of a Special Election for a Final Determination on the Vote Taken Under Article 14 of the 2023 Annual Town Meeting Warrant; Votes May Be Taken**

Secretary Deslaurier stated that we need to select a date for a Special Election and the Town Clerk has provided us a memo asking for as much time as possible when setting a special election date.

Chair Riley read a statement: On October 26, 2023, the Billerica Select Board considered action on a petition seeking to have the outcome of Town Meeting vote on Article 14 of the 2023 Annual Fall Town Meeting referred to the voters at large for a final determination pursuant to the Town Charter and in reviewing the language of the petition as submitted with signatures verified by the Town Clerk, the Select Board acting by a majority vote determined that the petition did not properly present the question as voted by Town Meeting so it was not in the form as required by the Town Charter. An action was subsequently brought to the Superior Court challenging the determination of the Select Board. After the submissions of briefs on the issue and arguments thereon, the Superior Court decided that they had determined that while the determination must be made whether the questions presented in the petition must be that as voted on by Town Meeting. The Court disagreed with the determination made by the Board in that regard and has ordered that a special election be held in accordance with the Town Charter. Therefore, the Board will call for a special election. The Select Board while disappointed with the reasoning of the court in reaching its decision, we have determined to forgo a further appeal in this matter and proceed with the calling for a scheduling for a special election placing the question



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before the voters at large. The Board shall determine the schedule of this election pursuant to the provisions of General Law, Section 42 C as such statute governs and scheduling of elections. As confirmed by the Secretary of the Commonwealth of the Elections Division. We now will schedule a date.

Member Rosa stated that statement is not for all of us.

Chair Riley stated that he spoke with the Town Clerk today regarding the Charter and MGL. The State statute says a minimum of 35 days and per Town Counsel we abide by that not what the Charter says. The Town Clerk is concerned with training on the new polling machines and would like February 17th.

Member Rosa stated that the Town Clerk's memo states as much time as possible and does not mention February 17th. There is a Presidential Primary on March 5th. We should look to have it then to save the Town money for another election only a few weeks away. This will give the Town Clerk enough time to prepare and get the question on the ballot. This is only 17 days past the 35 days required by State law and will be a cost savings.

Secretary Deslaurier stated that he would go with February 17th as the special election date.

Member Burrows stated that he agrees with Member Rosa about having it on March 5th and saving the town some money.

Vice Chair Conway stated that she is uncomfortable with having it the same day as the Presidential Primary. Attorney Mark Reich stated that he would have to confirm with the Secretary of State's office if we could add to the ballot of a Presidential Primary. He does think that the February 17th date is appropriate. Vice Chair Conway stated that February 17th is the best date for the election.

Chair Riley stated that he spoke with the Town Clerk dated today and she said February 17th was doable. Having a Special Election on its own day is less confusing and Saturday is typically our election day.

Member Burrows stated that the memo from the Town Clerk says the latest as possible for the date. There has been a lot of talk about how much this election costs so we should try to save money.

Member Rosa stated that the letter from the Town Clerk was received at noon today. We scheduled this 48 hours ago and no work was done ahead of time to try to coordinate this. The plans are already in place for March 5th and the Presidential Primary should be well attended so why wouldn't we want it?

MOTION - Secretary Deslaurier made a motion to hold a Special Election for a final determination on the vote taken under Article 14 of the 2023 Annual Town Meeting Warrant on February 17, 2024. The motion was seconded by Vice Chair Conway and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Vice Chair Conway voted Aye, Member Burrows voted Aye and Chair Riley voted Aye.

Member Rosa stated that this vote should have happened on October 26th. He doesn't like the date but he wants this election to happen so he voted yes.

Vice Chair Conway stated that she has remained quiet because she wanted to see the process play out. A group of residents say that she doesn't value democracy. On October 3rd duly elected Town Meeting members voted to support this project. 67% of the Town Meeting members voted in favor. 126 For and 61 Against. That is democracy. She is voting in favor of setting the election even though she does not agree.

MOTION - Secretary Deslaurier made a motion to call for early voting prior to the February 17, 2024 Special Election. The hours of early voting shall be during regular Town Hall hours; 8:30 AM to 4:00 PM on Monday, February 12, 2024 and Tuesday, February 13, 2024 and 8:30 AM to 7:00 PM on Wednesday February 14, 2024. The motion was seconded by Member Rosa and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Vice Chair Conway voted Aye, Member Burrows voted Aye and Chair Riley voted Aye.



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MOTION - Secretary Deslaurier made a motion that the ballot question shall state: “Shall the Town of Billerica be allowed to appropriate the sum of \$15,000,000 to pay for the design, engineering, and construction cost for the New Town Center Plan, including the payment of all costs incidental and related thereto; and that to meet this appropriation the Treasurer, with approval of the Select Board, be authorized to borrow the sum of \$15,000,000 under and pursuant to the provisions of G.L. Chapter 44, Section 7, and or any other enabling authority; and to authorize the Select Board to acquire by gift, purchase, or eminent domain upon such terms and condition as the Select Board determine, interests in land including any necessary temporary and permanent easements and to grant necessary utility easements associated with the project; and that the Select Board be authorized to execute such documents and enter into such agreements as it deems in the best interest of the Town in the furtherance of the objectives of this article; and further, that the Town be allowed to discontinue a portion of the Concord Road right of way for public way purposes and to transfer that portion from the board or officer currently having care, custody and control of that portion for its current purpose to the Select Board for General Municipal Purposes, including but not limited to Council on Aging purposes, said portion as shown on a map entitled “Map Showing Portion of Concord Road, More or Less, to be Discontinued Pursuant to Article 14 of the 2023 Annual Fall Town Meeting” on file in the office of the Town Clerk. YES or NO”. The motion was seconded by Member Rosa and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Vice Chair Conway voted Aye, Member Burrows voted Aye and Chair Riley voted Aye.

MOTION - Secretary Deslaurier made a motion that the hours of the Special Election on February 17, 2024 will be 8:00 AM to 8:00 PM at the normal polling locations. The motion was seconded by Member Rosa and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Vice Chair Conway voted Aye, Member Burrows voted Aye and Chair Riley voted Aye.

3. Open Microphone

Chair Riley stated that Open Microphone will last for 30 minutes and each speaker will be allowed 3 minutes to speak.

George Simolaris of 38 Andover Road – Mr. Simolaris stated that he is glad we are having an election but the leadership is going down the wrong road. Select Board members have said that Town Meeting approved the article so we should just let it go but having a petition is our 1st amendment right. The three members of this Board trying to control everything is fascism. You don’t honor your position and you violated the voter’s trust. Someone was killed today on Gray Street and this intersection needs a light. We need sidewalks and we would be wasting \$20 million on the Town Center which is not a priority. We need to bring in more revenue, that should be the priority.

Daniel Darris-O’Connor of 14 Forest Park Ave – Mr. O’Connor stated that he respects the decision of the Board to set an election. The Town Center will bring change for the good and it is a good project. The people fighting this are anti-progress people.

Joanne Barry of 22 Friendship Street – Ms. Barry stated that we need to move forward but she is concerned with the date that was selected. School vacation starts on February 17th and more people will go to the Presidential Primary than a local election. We should be looking to save the taxpayers money whenever possible. We need to come together. It’s ok to agree to disagree and she would like the Board to reconsider the date.

Dina Favreau of 41 Boston Road #353 – Ms. Favreau asked if the Board is going to file a waiver of right to appeal with the court. Ms. Favreau stated that she spoke up in public for the first time 7 years ago because of the special election and she vowed to continue to speak up when there are things that are not right. You violated your oaths of office; the Charter and you are on the wrong side of history. She is Dina Favreau and is running for Select Board.



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Mary Leach of 7 William Road – Ms. Leach stated that she is relieved that you set an election and it is really sad that we had to be here. We have to live in a place where we have to sue our leaders to do the right thing. This is sad. The judge knew what the Charter said and initiating a petition is everyone's right. The leaders should make this into something positive. The February 17th date is making it harder for people to go out and vote. She is disappointed that the date was not March 5th.

Janet Morris of 74 Tercentennial Drive – Ms. Morris stated that she hopes the community can come together and not be further divided. We need to take this opportunity to heal and this Board provides another disappointment. The Charter requires 20% of the voters have to come out so that is why you didn't pick March 5th.

Steve Rosa of 1 Putney Circle – Mr. Rosa stated that the majority of the Board is a disgrace and you are gas lighting people and treating them like criminals. You purposely picked a date to try to suppress the voters. You took an opportunity to try to bring the town together and created more of a divide.

Andrew Jennings of 29 Talbot Ave – Mr. Jennings stated that he spent this last week in Washington DC at the National Transportation Research Board seminar. He has viewed what is the best practice in traffic design. Our current design is not great, but this new design will have the probability to increase the chance of pedestrian deaths and he urged the Select Board not to proceed until an independent traffic study is done. We can make the center safer without spending \$20 million and a complete redesign.

Marlies Henderson of 31 Sprague Street – Ms. Henderson stated that the Board did the right thing by setting the election. Everyone makes mistakes so we need to move on.

Kelley Sardina of 95 Gray Street – Ms. Sardina stated that Open Microphone should have been first on your agenda so you could have listened to the residents before going into Executive Session. The Gatekeepers are the residents. If you get the required number of signatures, the election should happen. You select February 17th which is a holiday weekend. You did that purposefully hoping to not get the 20% turnout. You try to shut down residents and you always say, "We can do better." But this Board needs to do better.

Marilyn Slattery of 17 Kenmar Drive – Ms. Slattery stated that the center as it is now works and she feels very disrespected by this Board.

Terri Witts of 44 Nolte Road – Ms. Witts stated that she is glad that you set a date but the date is bad. We need to get the message out for early voting and absentee voting.

Diana Saunders via Zoom – Ms. Saunders stated that she is concerned that you are taking land away from Mr. O'Connor who has done so much for this town. He is against the project and you don't care. Mr. Curran replied that was false information. Chair Riley stated that the resident can have her 3 minutes. Ms. Saunders asked when the ballots will be ready and the Board should let everyone have a chance to vote.

Member Burrows stated that it's obvious there is a disconnect between the majority and the Board and the residents.

MOTION - Member Burrows made a motion that the Select Board file a waiver of appeal with the Court and notify them that we are going to have an election. The motion was seconded by Member Rosa and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Vice Chair Conway voted Aye, Member Burrows voted Aye and Chair Riley voted Aye.

Mr. Curran would advise against this because Town Counsel advised against this in Executive Session.

Vice Chair Conway stated that we could put it on the agenda for January 22nd to discuss it and get an opinion. Member Burrows replied no, he would like his motion to stand because there is no reason to appeal it.



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Member Rosa stated that by taking this vote, it's a clear message that we have no intention of appealing the decision. Mr. Curran stated that you already voted in Executive Session. Member Rosa stated that now it will be in open session.

MOTION - Member Rosa made a motion to reconsider the date of February 17, 2024 as the date of the Special Election. The motion was seconded by Member Burrows and voted 2-3-0. On a roll call vote: Secretary Deslaurier voted No, Member Rosa voted Aye, Vice Chair Conway voted No, Member Burrows voted Aye and Chair Riley voted No. The motion failed.

MOTION - Secretary Deslaurier made a motion to adjourn the Select Board meeting of January 12, 2024 @ 9:43 PM. The motion was seconded by Member Rosa and unanimously voted 5-0-0.

*Respectfully Submitted by Dawn McDowell,
Recording Secretary*



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Exhibits for the Select Board Meeting – January 12, 2023

Call to order 7:00 PM

Executive Session

1. **Executive Session Pursuant to G.L. c. 30A, Section 21 (A)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares - Dina Favreau vs. John Burrows & Others. - Superior Court – Civil Action #2381CV03248**

New Business

2. **Consideration on Calling for and Scheduling of a Special Election for a Final Determination on the Vote Taken Under Article 14 of the 2023 Annual Fall Town Meeting Warrant; Votes May Be Taken – Superior Court – Civil Action #2381CV03248, Certified Petition, Memo from D. McCoy dated 10/17/23, Memo from D. McCoy dated 01/12/24**
3. **Open Microphone - No Exhibits**

Approved On: February 05, 2024



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Members Present: Chair Michael Riley, Vice Chair Kimberly Conway, Secretary Andrew Deslaurier, Member Michael Rosa, and Member John Burrows

Members Absent: None

Staff Present: Town Manager John Curran, Assistant Town Manager Clancy Main, Town Counsel Mark Reich

The Executive Session was called to order at 7:05 PM.

1. Executive Session Pursuant to G.L. c. 30A, Section 21 (A)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares - Dina Favreau vs. John Burrows & Others.

Attorney Reich gave a history of the case. On October 26, 2023 the Select Board voted not to set a Special Election on a petition that was filed. Dina Favreau brought a suit against the town and filed an injunction. The judge sided with the arguments submitted by Ms. Favreau. The main issues the judge focused on were: the gatekeeping role of the Select Board and the timely submission of the petition which had the required number of voters and the language of the Warrant Article was sufficient. The Select Board has two options: Go forward with a Special Election or Appeal the Decision of the Court.

Chair Riley asked what a reason for appeal would be. Attorney Reich stated that we could challenge the gatekeeping role and the lack of clarity in the Charter. Our position was that the Select Board has discretion and questioned if the people signing the petition understand the petition which had confusing language. We can question if the judge acted reasonably to determine if the language on the petition was appropriate. Did the judge understand the role of the Select Board as a gatekeeper in the Charter? Attorney Reich stated that it is difficult to overturn a judge's decision unless there is a clear error in the law. There is case law that technical errors should not invalidate a petition.

Member Rosa stated that we should not consider an appeal. The Select Board did not have the authority to reject the petition in his opinion, which the judge agreed with. There is nowhere in the Charter that says the Select Board has approval of the wording of the petition. The Town Clerk certified the petition and the Charter says we had 10 days to set the election, not to debate the language. The Charter is clear if the petition is submitted in the required timeframe and with the required number of signatures then we need to set the election. The Charter does not say we are gatekeepers.

Secretary Deslaurier asked if a future petition doesn't have the exact wording of the Town Meeting article do we have to accept it? Attorney Reich stated that the judge says there are three requirements in the Charter: Is it submitted within the 7 days following the dissolution of Town Meeting? Does it have the name and addresses of not less than 5% of voters and is the language the same as the article at Town Meeting? He believes that the Select Board has discretion if the question falls into the categories listed in Section 2-13(a) of the Charter, which allows discretion. Hopefully other petitions will get the language right. Secretary Deslaurier asked for a clarification on the 35 days vs. 21 days to set the election. Attorney Reich stated that Charter refers to 14-21 days but Chapter 54, Section 42(c) makes it clear that no election can occur before 35 days with notice to the Town Clerk. He confirmed this with the Chief Counsel for Elections. Secretary Deslaurier asked what the timeframe for appeal would be. Attorney Reich replied he could not say for sure but he would request an expedited hearing so maybe a month. Secretary Deslaurier asked if we could still appeal for clarification but set an election date. Attorney Reich replied that he thought about it but the question is does the Select Board have the discretion to deny a petition. Attorney Reich stated that he would suggest that perhaps an amendment to the Charter be done to add a provision criterion or more easily we could provide a format for a petition in the future so there is no misunderstanding.



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Member Burrows stated that he read the Charter and why would the Town Clerk spend hours upon hours to certify a petition that was not valid. If the Town Clerk certified it, we should have scheduled an election back in October. He would agree to provide a format for any future petition. If we don't set the election, it will be a disservice to all the residents.

Chair Riley stated that the Town Clerk's role is solely to certify the signatures. Attorney Reich stated that was correct. There is a statutory provision regarding the role of the Town Clerk. All she did was validate the signatures on the petition and not the validity of the language on the petition. She has a ministerial role.

Vice Chair Conway stated that if the petition had the language that Clancy would be fired but cut and paste the language from a Town Meeting article, then is that valid. Attorney Reich stated that brings the issue of discretion in the review process. Attorney Reich stated that the judge indicated that there were 3 actions that Town Meeting member can do; Yes, No or Abstain. There is a fourth condition when funding on a town wide vote, i.e. Debt exclusion. The language on the petition suggested that the Town Meeting voted to send it to the voters, which was incorrect. Vice Chair Conway asked if we could address the Charter clarification sooner than the normal Charter review. Attorney Reich stated that we can look at updating the Charter at any point to submit it to Town Meeting. Vice Chair Conway stated that she doesn't know why we wouldn't give recommendations on wording for a petition. Attorney Reich stated that the Select Board can put language online with a form to submit to the Town Clerk. This would be a policy not law. Vice Chair Conway stated that she doesn't believe the language on the petition was put there intentionally to confuse people, they just didn't know better. Vice Chair Conway asked if there is a State law that says you can't put a funding article on a petition. Attorney Reich stated that the Charter acts on the same level as MGL except in a few circumstances like timing of elections. The Charter is a Special Act of Legislation and occupies the same space as MGL. Vice Chair Conway asked if the plaintiffs Go Fund Me is a political campaign and can we see it. Attorney Reich replied no, that is not covered under a political campaign finance. Vice Chair Conway stated that the vote is to go forward with the election, what can the Town Manager and his employees be allowed to do to get the facts out to residents. Attorney Reich can provide campaign finance bulletins 91.0-1 and 91.0-2. The Town can provide fact base information but cannot advocate. Vice Chair Conway asked if the Town could put out a fact based presentation and invite the residents. Attorney Reich stated that you make certain levels of presentations but you cannot use public resources to advocate like putting flyers out. The Town cannot advocate but as elected officials, you can. The Town can put a link on the website but again, cannot advocate for it. Vice Chair Conway asked if the Town could post questions and answers because there is so much misinformation. Attorney Reich stated that you can answer questions with fact base answers. We can provide guidance to the Town Manager and it should be shared with the Board.

Chair Riley stated the judge's rejection of the petition language baffled him because the language in the petition asked that the Select Board send something back to the voters, which is not the action of Town Meeting. The Town Meeting members are the ones representing democracy for the Town. There were 3 different petitions going around and only one had enough signatures. He would agree with creating a policy for the future petitions to avoid confusion. He believes the judge was wrong but our legal representative was not good. She did a disservice to the Town. The judge asked If a perfect petition came before the Board is that subject to mandamus and she stuttered. He was very disappointed in her. Attorney Reich stated that the decision was made that the legal representation would be separate from him, who advised you October 26th. He regrets the decision but everything ends with him. She is a seasoned litigator but is not a Town Meeting expert. Her points were good but he would have done things differently but the judge made his decision. Chair Riley stated that the Town Manager can put together materials as long as they are fact based. Vice Chair Conway asked if we could use the Town's website and social media. Attorney Reich replied yes.

Member Burrows asked if we could set up a commission, so if a petition is going to be submitted, it comes before the commission for review so if there is a problem with language it can be corrected before going to the next step. Attorney Reich stated that is outside of the scope of this Executive Session but could be discussed in open session at another time.



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Member Rosa stated that he agrees that the Charter should be amended to make it specific to the proper language. As far as the timing, we had the same discussion in 2017 relative to 14 or 21 days. The judges order says that we follow the Charter and set the election. Our Charter Section 6-3, states "Except as expressly provided in the charter and as authorized by law, all town elections shall be governed by the laws of the commonwealth relating to elections, including, but not limited to, the right to vote, the registration of voters, the nomination of candidates, the conduct of regular and special elections, the submissions of charters, charter amendments and other propositions to the voters, the counting and recounting of votes and the declaration of results." Chair Riley stated that he spoke with the Town Clerk today and 14 or 21 would be problem but she could do an election in 35 days. February 17th is the Saturday following 35 days. Member Rosa stated that 35 days is well within the judge's ruling because that is a minimum. Attorney Reich replied that he agreed. Member Rosa stated that we don't need to make a policy; we could change the Charter with an article for the Spring Town Meeting, like we've done in the past and then it goes to the legislator. Chair Riley stated that he agrees, and this should be on a future agenda to discuss it.

Attorney Reich stated that the Board needs to decide if they are accepting the judgement or appealing it.

MOTION - Member Rosa made a motion to abide by the judges' decision and Dina Favreau vs. John Burrows and other and go back into open meeting and set a date for the Special Election on Article 14 of the 2023 Annual Fall Town Meeting. The motion was seconded by Vice Chair Conway and voted 4-1-0. On a roll call vote: Secretary Deslaurier voted No, Member Rosa voted Aye, Member Burrows voted Aye, Vice Chair Conway voted Aye and Chair Riley voted Aye.

Attorney Reich stated that he had provided a draft statement to be read for either scenario (appeal or setting an election). He also drafted the article to be submitted on the warrant.

Chair Riley stated that early voting will be done along with mail in voting. Mr. Curran stated that if early voting is allowed, then it should be 3 days prior to the election as we have done for other elections. This should all be discussed and voted on in open session.

MOTION - Secretary Deslaurier made a motion to come out of Executive Session at 8:38 PM and return to Regular Session. The motion was seconded by Member Rosa and unanimously voted 5-0-0. On a roll call vote: Secretary Deslaurier voted Aye, Member Rosa voted Aye, Member Burrows voted Aye, Vice Chair Conway voted Aye and Chair Riley voted Aye.

*Respectfully Submitted by Dawn McDowell,
Recording Secretary*

Exhibits for the Select Board Executive Session Meeting – January 12, 2024

1. Executive Session Pursuant to G.L. c. 30A, Section 21 (A)(3) to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares - Dina Favreau vs. John Burrows & Others. - Superior Court – Civil Action #2381CV03248

Approved On: February 26, 2024

Released On: February 26, 2024