



TOWN OF OAK BLUFFS

Post Office Box 1327 • Oak Bluffs, MA 02557
Telephone 508-693-3554 • Fax 508-696-7736

Select Board

Brian C. Packish, *Chair*
Jason M. Balboni
Gail M. Barmakian
Emma Green-Beach
Ryan P. Ruley

Deborah Potter, C.G.A.
Town Administrator/Accountant

September 14, 2022

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108
Attn: Ms. Carrie Benedon

Re: OML 2022-141

Via e mail: mass.gov/ago/openmeeting

Dear Ms. Benedon:

Pursuant to the AGP ruling OML 2022-141, the Select Board, at their regular meeting on September 13, 2022, voted to amend its executive session minutes for the meetings of November 24, 2021, December 3, 2021, December 14, 2021, December 28, 2021 and January 11, 2022.

The minutes were amended, to the best of our ability, to include the following:

- a. Denoting additional attendees at the meeting
- b. Including additional summary/detail of the discussions that occurred
- c. Adding documents list

The addition of a start time for the minutes if available was added; however, if it was not available, we do not consider this to be a defect in consideration of the AGO ruling which notes:

A public body must "create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place" of the meeting. G.L. c. 30A, § 22(a). Here, where the Board met in an open meeting before moving into executive session, the minutes indicate when the open session began but do not further specify when the Board entered executive session. We have not construed the Open Meeting Law as requiring meeting minutes to separately list the start time of an executive session. Therefore, the Board did not violate the Open Meeting Law by omitting this information from the minutes.



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With such review and amendment being completed, the Board feels that an appropriate, satisfactory, and good-faith effort to resolve this issue has been effected and that no further action from the Board is required.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Ruley", written over a faint circular stamp or watermark.

Ryan P. Ruley, Vice Chair
Oak Bluffs Select Board

CC: Rich Saltzberg, (via email: rich@mvtimes.com)



**TOWN OF OAK BLUFFS
OAK BLUFFS SELECT BOARD
Executive Session
Remote Participation Only
November 24, 2021**

Original approved minutes in regular and *italic* text

Amendments approved 2022.09.14 for clarity and OML compliance are in bold

Present: Chair Brian Packish, Select Members Jason Balboni, Gail Barmakian, Emma Green-Beach, Ryan Ruley.

Also present: Town Administrator Deborah Potter, Executive Assistant Alice Ryan Butler, Labor Attorney Jack Collins; **Chief Erik Blake**

Meeting called to order at 5:01p.m.

Executive Session

Select Member Ruley motioned to enter into Executive Session to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Invited attendees: Town Administrator Deborah Potter, Labor Attorney Jack Collins, Executive Assistant Alice Ryan Butler. Not to return to open session. Vote was:

*Chair Packish Aye
Member Balboni Aye
Member Barmakian Aye
Member Green-Beach Aye
Member Ruley Aye*

Attorney Collins outlined the reasons for the Executive Session **noting that** Sergeant Marchand forwarded a written communication waiving his right to be present at this meeting.

Attorney Collins continued: A firearm is missing from the Police Department **that was assigned to Sergeant Marchand**. Sergeant Michael Marchand was put on Administrative Leave **pending the results of an investigation**. **The outside investigator (Paul L'Italien) began his inquiry on November 2 and included interviews of retired Lt. Timothy Williamson, Sergeant Marchand, Sergeant Daniel Cassidy, and Former officer James Morse**. On November 21, 2021, the Board was sent the OBPD statement of facts from Mr. L'Italien regarding his investigation.

A discussion was held regarding the facts of the incident including the fact that there is no specific punishment for an Officer losing a firearm.

Mr. L'Italien's report noted the following (not all inclusive):

- **Regarding the complaint that Sergeant Michael Marchand violated Oak Bluffs Police Department General Order #2002-0153 ("officers shall take a reasonable**



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precaution to insure that weapons issued to them are protected from loss, misuse, or theft)...is **SUSTAINED**

- **Regarding the complaint that Sergeant Michael Marchand violated Oak Bluffs Police Department General Order #2005-1101 (officer's daily cruiser inventory... to ensure that a weapon is in the rack...)is **SUSTAINED****
- **General Order #2002-0513 requires the inspection of all weapons by the department armorer on an annual basis (and) the only two weapons that didn't meet the standard of this policy were the patrol rifles assigned to Sgt. Marchand and Chief Blake**

The Board noted several, but not all, of their concerns included:

- **Why was the missing firearm not discovered earlier?**
- **Why were the Police general orders not being adhered to?**
- **Why was the Police Chief and Sgt. Marchand's weapons the only two not physically checked each year?**
- **Who certified that all weapons were accounted for during the annual certification?**
- **What kind of credibility issues does this create?**
- **What kind of leadership example does this set?**

Attorney Collins noted again that there is no specific punishment for an officer losing a firearm and noted some other examples from other police departments across the state; however, the Board discussed a variety of possible punishments to include but not limited to:

- **No additional discipline: Sgt Marchand has been on admin leave for over three weeks so that was sufficient punishment**
- **Additional suspension: An additional suspension without pay. Possible periods of time were two weeks or one month**
- **Demotion: The loss of a weapon was serious but the failure of a senior staff member to follow procedure and set a good example was not acceptable.**
- **Termination: The loss of the weapon, the failure for it to be discovered for three years, the failure to follow and enforce established procedures, the failure to set a high standard of work performance, and the loss of positional credibility were significant enough to consider termination.**

The Board also collectively noted how disappointed they were in the responses and attitude presented by Sgt Marchand in his interview (as recorded in the transcripts) which the Board found unprofessional and inappropriate for a senior member of the police department.



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The Board ultimately agreed via consensus that additional discipline was warranted but termination was not an option that the Board wished to pursue. The Board authorized Attorney Collins to work with Attorney Becker (Sgt Marchand's counsel) to negotiate a resolution that included an additional unpaid suspension and demotion from Sgt as the list of charges was prepared against Sgt. Marchand.

Member Balboni motioned to adjourn at 6:21p.m., seconded by Member Ruley. Vote was:

***Chair Packish Aye
Member Balboni Aye
Member Barmakian Aye
Member Green-Beach Aye
Member Ruley Aye***

Respectfully submitted,

Alice Ryan Butler
Executive Assistant

Approved Select Board Meeting 02/08/2022

Respectfully submitted,

Alice Ryan Butler
Executive
Assistant

Documents on file:

**2021.11.22 Email from Becker re Marchand waiver of attendance
2021.11.24 L'Italian Investigation report with exhibits**



**TOWN OF OAK BLUFFS
OAK BLUFFS SELECT BOARD
Executive Session
Remote Participation Only
December 3, 2021**

Original approved minutes in regular and *italic* text

Amendments approved 2022.09.14 for clarity and OML compliance are in bold

Present: Chair Brian Packish, Select Members Jason Balboni, Gail Barmakian, Emma Green-Beach, Ryan Ruley.

Also present: Labor Attorney Jack Collins, Town Administrator Deborah Potter, Assistant Town Administrator Wendy Brough, and Executive Assistant Alice Ryan Butler

Meeting called to order at 5:02p.m.

Executive Session

Select Person Ruley motioned to enter into Executive Session to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Invited attendees: Town Administrator Deborah Potter, Labor Attorney Jack Collins, Executive Assistant Alice Ryan Butler and Assistant Town Administrator Wendy Brough. Not to return to open session. Vote was:

*Chair Packish Aye
Member Balboni Aye
Member Barmakian Aye
Member Green-Beach Aye
Member Ruley Aye*

Attorney Collins reported that neither Sergeant Marchand nor his Attorney wished to be present at this meeting.

The Select Board discussed possible punishments relative to the offense.

Attorney Collins advised the board that a voluntary discipline agreement had been worked out with Attorney Becker (Sgt Marchand's counsel). Sgt Marchand had prematurely executed a prior version and dropped it off at Town Hall before the Board had an opportunity to review and/or agree to it and a few changes were needed to the document prior to its full execution.

Some of the details Attorney Collins noted that were in the agreement include:

- **Reduction in rank from Sergeant to Police Officer**
- **Non-disparagement clause**
- **Suspension: A additional 10 scheduled work day suspension**



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- **Restitution: The surrender of fifty (50) hours of comp time to offset the cost of the weapon. Any future Comp Time, sick time, or other leave would be paid at Police Officer rates**
- **Mutual releases**
- **Other assorted legally required agreement provisions**

The Board opted, through consensus to accept a “demotion with modified probation”.

Each Board member would review the document and advise Attorney Collins of any modifications, issues, or comments so that a fully executed document could be affected.

Attorney Collins also noted that Sgt. Marchand may float the idea of retiring instead and that if offered the Board may consider its acceptance.

The Zoom meeting was inadvertently terminated at 6:08 pm prior to the ability formalize a roll call vote.

Respectfully submitted,

Alice Ryan Butler
Executive Assistant

Approved Select Board Meeting 02/08/2022

**Documents on file:
2021.12.03 Draft Voluntary Disciplinary Agreement**



**TOWN OF OAK BLUFFS
OAK BLUFFS SELECT BOARD
Executive Session
Remote Participation Only
December 14, 2021**

Original approved minutes in regular and *italic* text

Amendments approved 2022.09.14 for clarity and OML compliance are in bold

Present: Chair Brian Packish, Select Members Jason Balboni, Gail Barmakian, Emma Green-Beach, Ryan Ruley.

Also present: Town Administrator Deborah Potter, Assistant Town Administrator Wendy Brough, Labor Attorney Jack Collins, Attorney John Becker, Chief Erik Blake, Sergeant Michael Marchand, and Executive Assistant Alice Ryan Butler

Select Person Balboni motioned to enter into Executive Session in accordance with MGL c.30A, section 21 (a)(1). To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual and not to reconvene in open session, seconded by Select Person Ruley.

Chair Packish Aye

Select Person Balboni Aye

Select Person Barmakian Aye

Select Person Green-Beach Aye

Select Person Ruley Aye

Meeting called to order at **apx 7:35 PM** from open meeting session

Attorney Collins reported that two previous meetings went well. The negotiations with Attorney Becker were productive.

There will be a **mutual separation and release agreement, instead of voluntary discipline**, with no litigation. **Sgt Marchand** will use his earned leave by February 2, 2022, and provide a letter of resignation **along** with a non- disparagement clause. Since he (**Sgt Marchand**) is beyond the age of 40, he has seven days to change his mind.

Attorney Collins reviewed the specifics of the Mutual Separation and Release Agreement with the Board which included:

- **Last day of work: Sgt Marchand will remain on paid administrative leave until December 15, 2021, then on accrued leave until February 2, 2022 which is the separation date**
- **Mutual Non-Disparagement clause**
- **Wage and Benefit entitlements**
- **Permanent Separation from Employment: an irrevocable letter of resignation effective February 2, 2022 will be delivered to the Town Clerk. Employee will not be precluded from applying for retirement in interim.**
- **Several other legally required clauses for agreements.**



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Attorney Becker addressed the difficulty of the process for Sergeant Marchand. He also thanked the Select Board for being forthright and open.

Select Person Balboni motioned to accept the Mutual Separation Agreement and requested that Chair Packish sign it on behalf of the Select Board, seconded by Select Person Green-Beach. Vote was:

***Chair Packish Aye
Select Person Balboni Aye
Select Person Barmakian Aye
Select Person Green-Beach Aye
Select Person Ruley Aye***

Select Person Ruley motioned to adjourn at 8:25 p.m. seconded by Select Person Balboni. Vote was:

***Chair Packish Aye
Select Person Balboni Aye
Select Person Barmakian Aye
Select Person Green-Beach Aye
Select Person Ruley Aye***

Respectfully submitted,

Alice Ryan Butler
Executive Assistant

Approved Select Board Meeting 02/08/2022

Documents on file:

2021.12.14 Draft Press Release

2021.12.14 Signature Version Mutual Separation and Release Agreement



**TOWN OF OAK BLUFFS
OAK BLUFFS SELECT BOARD
Executive Session
Remote Participation Only
December 28, 2021**

Original approved minutes in regular and *italic* text

Amendments approved 2022.09.14 for clarity and OML compliance are in bold

Present: Chair Brian Packish, Select Members Jason Balboni, Gail Barmakian, Emma Green-Beach, Ryan Ruley.

Also present: Labor Attorney Jack Collins, Town Administrator Deborah Potter, Police Chief Erik Blake, Attorney Timothy Burke (personal representative for Sergeant Michael Marchand) Attorney John Becker, Union Attorney.

Select Board member Balboni motioned to enter into Executive Session to discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Not to return to open session, seconded by Select Board Member Ryan Ruley. Vote was:

*Chair Packish Aye
Select Board Member Balboni Aye
Select Board Member Barmakian Aye
Select Board Member Green-Beach Aye
Select Board Member Ruley Aye*

Meeting called to order at apx 8:00 PM from the open meeting session

The Board noted that the missing rifle had been “located” on Dec 16, 2021 in the training room of the Police Department. Sgt Marchand submitted a letter of revocation regarding the mutual separation and release agreement previously executed.

Attorney Burke said that Sergeant Marchand is a “whistleblower” who is now being punished and should be back to work by now. He is owed “emotional distress” pay.

Attorney Becker reported that the Investigator has been re-engaged. It is likely that the weapon in question was given to a new officer to use at the Academy.

The Select Board discussed the suggestion that the Sergeant was a “whistleblower” and other questions surrounding the missing weapon.

The Board noted that Sgt Marchand did not meet the criteria of a “whistleblower” as:



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- The situation was not an “emergency” as Sgt Marchand waited THREE years to disclose any issues or problems relating to the procedures used to account for police issued weapons
- Sgt Marchand never made ANY complaint to either the Police Chief or Town Administrator regarding these supposed “issues”
- Sgt Marchand was one of the individuals that created and was responsible for the issue to begin with.
- There were no reasonable fears regarding physical harm as the result of the disclosure
- The disclosure was not for the purpose of providing evidence of a perceived “crime”
- The good faith of the disclosure was questionable

Furthermore, the Board noted that as the weapon was now “found”, numerous statements from Sgt Marchand in prior statements were inconsistent and/or untrue. In addition, the integrity of the ENTIRE police department was now in question as either an ineffective search was made in prior searches or someone returned it without disclosing that it had been in their possession the entire time.

The Board was in agreement that these additional developments did not change the position of the Board regarding Sgt. Marchand’s position within the department and it was decided that it is necessary to hold a Hearing.

By consensus, the Select Board agreed to hold a Hearing including all of the original findings plus the addition of the charge of lying.

Chair Packish Aye

Select Board Member Balboni Aye

Select Board Member Barmakian Aye

Select Board Member Green-Beach Aye

Select Board Member Ruley Aye

The previous Agreement will be honored **by the Board**
The Hearing Date will be a date certain in mid-January.

Select Board Member Balboni motioned to adjourn at 8:34 p.m., seconded by Select Board Member Ruley. Vote was:

Chair Packish Aye

Select Board Member Balboni Aye



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*Select Board Member Barmakian Aye
Select Board Member Green Beach Aye
Select Board Member Ruley Aye*

Respectfully submitted,

Alice Ryan Butler
Executive Assistant

Approved Select Board Meeting 02/08/2022

**Documents on file:
2021.12.17 Marchand letter of revocation**



**TOWN OF OAK BLUFFS
OAK BLUFFS SELECT BOARD
Executive Session
January 11, 2022**

Original approved minutes in regular and *italic* text

Amendments approved 2022.09.14 for clarity and OML compliance are in bold

Present: Chair Brian Packish, Select Members Jason Balboni, Gail Barmakian, Emma Green-Beach, Ryan Ruley.

Also present: Labor Attorney Jack Collins, Police Chief Erik Blake, Town Administrator Deborah Potter, Assistant Town Administrator Wendy Brough, and Executive Assistant Alice Ryan Butler.

Select Board member Balboni motioned to enter into Executive Session to discuss strategy re pending or threatened litigation under MGL c. 30A, s 21 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. Not to return to open session, seconded by Select Person Green-Beach. And so voted by roll call vote:

*Select Person Balboni – Aye,
Select Person Green-Beach – Aye,
Select Person Ruley – Aye,
Chair Packish-Aye
Select Person Barmakian-Aye*

Meeting called to order at **apx 7:00 PM from open session**

With the resurfacing of the missing weapon in December, Sgt. Marchand rescinded his retirement and solicited additional counsel.

The original issues surrounding the missing weapon still existed.

The Board reviewed the process to date:

Sgt. Marchand failed to follow multiple prescribed General Orders for which he was aware of and responsible for adhering to. Whistleblower status was not applicable as the issues were never reported and Sgt. Marchand, who had the ability to effect change of such conditions, failed to do so and was an active participant in such violations and failures of the general orders and written procedures.

- The Board had **previously** discussed multiple options of discipline **which included, but are not limited to: no additional punishment, an additional suspension with or without pay, demotion, demotion with probation, and termination. The Board remained in agreement via consensus that if after a formal hearing was conducted and the facts continued to justify punishment that a demotion and a suspension was most appropriate.**
- **Sgt Marchand was NEVER forced to resign. Termination was determined to not be a response the Board would pursue early on in the process. A voluntary discipline agreement was first sought as the resolution to the issue.**
- Sgt. Marchand and his counsel initiated the request for retirement, **in lieu of the voluntary**



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Executive Session
January 11, 2022**

The subsequent L'Italien report noted that the patrol rifle was issued to Sgt. Marchand on December 3, 2016. He is the officer who is/was responsible to "take reasonable precaution to ensure that weapons issued to him are protected from loss, misuse, or theft...following the second part of this investigations my (L'Italien) conclusion and recommendations remain the same. It is Michael Marchand who is/was responsible for the rifle.

With the withdrawal of the Retirement offer and **the completion** of the subsequent additional investigation, the board discussed **whether the original grounds for discipline still remained** and decided, **via consensus**, upon the following course of action.

- The original violations of various general orders and procedures was still a significant issue. Inconsistencies in Sgt. Marchand's positions, reports, conduct and attitude during the investigation, and public comments as well as issues with accreditation submissions led the Board to have **serious** concerns with Sgt. Marchand's credibility.
- The original offer of demotion and suspension with a February 2 retirement date stands and is valid for 24 hrs. Otherwise a hearing will be set to address the multiple violations.
- Sgt. Marchand will retract any claim to Whistleblower status.

If Sgt. Marchand and his attorneys agree, then Board counsel (Collins) is authorized to craft the separation documents for execution. Attorney Collins will keep the Board apprised of the status of any agreement.

At 7:27 pm Jason Balboni moved to adjourn the meeting, seconded by Emma Green-Beach, and so voted by roll call vote:

Select Person Balboni – Aye,
Select Person Green-Beach – Aye,
Select Person Ruley – Aye,
Select Person Barmakian- Aye,
Chair Brian Packish – Aye.

Respectfully submitted,

Debra Alley – Office Administrator
Executive Assistant

Approved Select Board Meeting 02/08/2022

**Documents on file:
2022.01.11 L'Italien 2nd report with exhibits.**