

**MINUTES OF THE SELECTMEN'S MEETING  
SPECIAL MEETING, MAY 31, 2016**

**PRESENT:** Lewis W. Stone (Chairman), Willard J. Boulter, Jr. (Vice-Chairman), Arthur P. Boyle, Jr. (Clerk), Daniel W. Trabucco (Selectman), Matthew J. Furlong (Selectman), Donna Bagni (Board of Health, Chairman), Gary Fine (Board of Health), Brian Krause, Julie Thompson, David Cedrone (WATD), Mark Burrige (Pembroke Mariner), Sabrina Chilcott (Executive Assistant), and others.

At 7:00 pm Mr. Stone opened the meeting and advised that this meeting is being made available to the public through an audio recording which will be used to ensure an accurate record of proceedings produced in the minutes of the meeting. All comments made in open session will be recorded.

**DISCUSSION WITH BOARD OF HEALTH MEMBER REGARDING OPEN MEETING LAW VIOLATIONS AND OTHER ISSUES**

Mr. Stone advised that the Board called a special meeting with executive session, but the other party is unavailable and the item will be rescheduled if needed. Mr. Stone summarized the complaints filed by two employees against a town official. The Board seeks to understand the situation and protect the employees of the town.

Mr. Boyle stated that holding public office is a sacred trust between the public and those who serve on elected boards. Mr. Boyle stated that, in light of the recent circumstances surrounding the action of the recent elected Board of Health member he would like to see the Board take decisive action to protect the taxpayers of Pembroke and keep a harmonious workplace for the employees. Additionally, the employees on staff in the Board of Health are employees of the Board of Selectmen under the Town Administrator and are not employees of the Board of Health and are not beholden to treat members of the Board of Health differently than other members of the public. Mr. Boyle stated that the two employees in the department have filed charges at the state level within the last two weeks. Mr. Boyle stated that to take up the performance of an individual requires proper notification to the individual in advance of said discussion of 48 hours; they have a right to be present in any such discussions, and have the right to have legal representation. Mr. Boyle stated further that emails are electronic communications that are generally public information. Mr. Boyle moved that the Board of Selectmen, in the interest of the town and in the interests of maintaining a harmonious workplace, formally request that Gail McSweeney resign as a member of the Board of Health. Mr. Boulter seconded the motion for the purposes of discussion, but stated that he would like more information on the issues. Mr. Trabucco stated that he doesn't have enough information; there is an Open Meeting Law violation which has a due process attached to it. Mr. Trabucco stated he wants to protect the employees of the town with a harmonious, productive work environment with no derisive boards versus employees. Mr. Trabucco cautioned that acting prior to due process being executed would be premature, and he is reluctant to interfere with the vote of the residents in an election held three weeks ago. Brian Krause was present to state that he agrees with Mr. Trabucco, and asked what the process is to backfill the position of an elected official. Mr. Boyle stated that an interim appointment is a joint appointment of the remaining members of the Board of Health and the Board of Selectmen. Mr. Boyle advised that the Board has an opportunity to send a firm message that they will not tolerate a hostile work environment; he stated that there is a history with this member as the member in question is a former employee of the town. Mr. Boyle clarified that an elected official cannot be forced to resign, but this is a resolution that asks the member to resign in the best interest of the town. Mr. Boyle stated that the member received the votes of 4% of the registered voters in town which is not an overwhelming mandate; Mr. Boyle further stated that, had the voters known what would happen, they would not have supported nor would they tolerate hostility in the workplace either. Mr. Trabucco agreed that he is cognizant of the history and he will take that into consideration at the proper time once due process has been completed in regards to the OML violations before the Board of Health. Mr. Thorne advised the Board that the public body in receipt of the OML complaint against the town is the Board of Health; under MGL c30A the town has fourteen (14) days to respond to the complaints dated May 26, 2016 and May 31, 2016 so the Board of Health must meet Monday, June 6<sup>th</sup> to discuss and take action on the complaints. Their response will be filed by town counsel with the Attorney General's office. Mr. Boyle questioned the legal expenses incurred to date, and surmised that the related legal expenses will grow significantly if the issues are not resolved immediately. Mr. Stone asked Ms. Bagni, Board of Health

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chairman, if she had any comments she would like to bring before the Board this evening. Ms. Bagni stated that the complaints name Ms. Bagni and Ms. McSweeney as the parties involved. Ms. Bagni stated that she is a chairman with a newly elected member; there is history, but Ms. Bagni was endeavoring to answer the new member's questions at the onset. After an earnest attempt to answer the member's questions and forwarding the Attorney General's Guide to the Open Meeting Law, citing to the new member specifically what communication is not allowed, Ms. Bagni stated that the communications continued and made her uncomfortable; she forwarded the communication to the Town Administrator. Discussion ensued on details from the Board of Health meeting on May 16, 2016. Mr. Thorne recommended that the discussion on the complaints be resumed by the Board of Health at their meeting of June 6<sup>th</sup>. Board of Health member Gary Fine stated he was present this evening as a resident, and he is disturbed by the allegations and hopes the Board can work together and leave their history behind. Mr. Stone stated that the Board of Selectmen's role is to ensure that processes and procedures are followed, that the town's officials have access to the materials that provide the foundation for general law, bylaw and statute compliance, and that all officials are prepared to follow these rules. Mr. Stone asked Ms. Bagni if the Board received the Attorney General's Guide to the Open Meeting Law at their May 16<sup>th</sup> meeting; Ms. Bagni confirmed that each member receives a MAHB Handbook for Boards of Health that includes Article 2, section B, subsection 1a Open Meeting Law. Mr. Boulter stated he would like the Board to table the matter until after the June 6<sup>th</sup> meeting of the Board of Health to allow the process to go forward as designed. Mr. Stone stated there is a motion and a second before the Board; the vote was 2/2/1 and the motion was lost, with Mr. Stone and Mr. Trabucco opposed and Mr. Boulter abstaining from the vote. Mr. Boulter stated that he would like to have the matter continued until after the Board of Health meeting. Mr. Trabucco stated that he joins the rest of the Board in fully supporting the employees in the Board of Health who do a fine job, and providing an atmosphere that is conducive to work and free from harassment, without fear or badgering from an elected board or its members. Mr. Trabucco stated that the Board will protect them, but it must be done in the right way. Mr. Stone stated that the Board of Health will defend themselves against the complaints of the two employees at their meeting of June 6<sup>th</sup> and will have legal representation to do so; at the conclusion of the meeting, the Board should have answers to their questions. Mr. Stone stated that the information, once available, will be reviewed thoroughly.

At 7:35 pm, Mr. Boulter moved to adjourn; Mr. Furlong seconded the motion. The vote was unanimously in favor.

#### **MATERIALS & EXHIBITS**

Correspondence to/from G. McSweeney (BOS/TA Office)

Table of Contents: "MAHB for Boards of Health (Comm. MA/BOS/TA Office)

Draft Minutes of BoH Meeting of May 16, 2016 (BoH)

Email from BOS Office May 18, 2016 Containing AG OML Guide (BOS/TA Office)

Open Meeting Law Complaint, Cullity, Received May 26, 2016 (BoH/BOS/TA Office)

Open Meeting Law Complaint, Mirotta, Received May 31, 2016 (BoH/BOS/TA Office)