

BOARD OF HEALTH MEETING MINUTES

June 13, 2016

*Rob Adams, Pembroke Town News, recorded the meeting for viewing on www.youtube.com.
Gail McSweeney audio recorded the meeting with her personal recorder.*

Board Members Donna Bagni, Chair, Gary Fine, Clerk, Gail McSweeney, Member, and Lisa Cullity, Health Agent, were present. The meeting opened at 6:31 p.m. The Board signed payroll. Chair Bagni read the following statement: *"Please note that this meeting is being made available to the public through an audio recording, which will be used to ensure an accurate record of proceeding produced in the minutes of the meeting. All comments made in open session will be recorded."*

Bagni reviewed correspondence as follows:

- Bagni stated that as Chair, she will be considering any item that comes to her via email or by mail that is pertinent to the Board of Health as a group and will read them as correspondence at each meeting. (1) Email system for the Board of Health through the Town. Cullity explained how to access the Town's email remotely and reset each of his / her own passwords. This will allow anyone to email Board members through the Town's address. Fine stated that he wishes to continue using his own personal email address. Bagni stated she chooses to use the Town's email. Cullity stated the members may choose to use the Town's email or not.
- Bagni received an email from the Town Administrator regarding a member copying Town Council on email communication responses. It stated that all requests to correspond with Town Council must be cleared with the Town Administrator in advance as each email received by Council incurs a cost to the Town. Each member was given the email threads for their own review.
- Bagni read an email correspondence from McSweeney dated **Monday, June 6, 9:19 p.m.** after the meeting that McSweeney said could not attend because she told Bagni she was working. Her question was **"Where are the meeting minutes?"** Bagni asked what minutes and **"do you have them?"** McSweeney said when she went to the meeting minutes, it was **"a bunch of laws"**. She said the minutes were not posted on the website. Bagni asked her which meeting? McSweeney wasn't sure which meeting it was. Bagni asked her to check. The other question Bagni noted from McSweeney's email was **"Why are there so many errors in dates and postings?"** Bagni requested McSweeney to give her a "heads up" so Bagni can know what is going on. Bagni continued with the steps of processing the minutes, stressing that minutes are not posted to the Town's website until they are approved at a meeting. Cullity stated that all minutes from the past 2 years are online, up-to-date and available. She also stated that all agendas are too.
- Bagni continued with the email she sent to the members regarding the Selectmen's summer meeting schedule. She felt that the email was a miscommunication somehow. She stated that in the past the Board followed their meeting schedule so as not to be in Town Hall by ourselves using electricity, air conditioning, etc. Bagni stated she had asked for the

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Selectmen's summer schedule so that the Board could discuss if they want to follow the schedule at the next meeting. McSweeney responded via email with ***"The Board of Selectmen have no authority over the Board of Health! All meetings going forward are to be and will be set by the Board of Health!"*** Bagni stated that was a correct statement; that the dates are set by the BOH. Bagni read from McSweeney's email ***"Again please provide me with the law you are abiding by that places the Selectmen in charge of the Board of Health!"*** Bagni felt that was a miscommunication, misunderstanding of what her intent of looking at the Selectmen's summer schedule was.

- Bagni said that on **June 9** McSweeney requested via email ***"The job duties of the Board of Health employees be placed on the agenda and be provided to all BOH members on June 13, 2016. I am NOT asking for a discussion, I am seeking an understanding of the employees duties!"*** Bagni stated that because they are employees under Wage and Personnel and has to follow a chain of command, the email was sent to the Administrative Assistant of the Board of Selectmen who sent McSweeney exactly what she asked for. McSweeney said *"My question at this point though is with the information that I received in my first packet on Board of Health duties one of them is the Hazardous Waste Day and that is actually under the Selectmen. So, I really want to make sure that we've got clarity of who's supposed to be responsible for what. That was under the Mass. Board of Health Directive. I don't know if I've got that with me"*. Bagni said she would add that as an agenda item. Cullity offered an explanation: *"The Board of Health permits the activities at the recycling and transfer station, and the transfer station - when I say transfer station it is a single dumpster. It is an authority given by DEP to license any small-scale transfer station under and don't quote me on this, 30,000 yards or something like that annually, which we fall well underneath. So we like to permit and oversee the operation. But since the Town has chosen to hire Michael Valenti to run the transfer station, he had taken over the day-to-day duties and operations. Yes, if this Board wished not to have Hazardous Waste Day, cancel...."* McSweeney interrupted her and asked *"Isn't Michael Valenti under the Board of Health?"* Cullity replied *"He's under the Board of Selectmen but he works with us. He works out of both"*...McSweeney interrupted Cullity, again, and said the *"Board of Health we put out applications for employment; he was hired by the Board, so why would he be the Board of Selectmen?"* Cullity stated he works with both and have never had any issue. McSweeney interrupted Cullity, again, and addressed Bagni saying *"This is the part, Donna, where we're crossing lines and it's getting very confusing"*. Bagni stated to McSweeney that it would be a great question for Town Administrator Ed Thorne. McSweeney said she *"Was very involved with this so I do know regulations, the government regulations on this"*. She continued to say *"I've worked with government regulations for 20 years"*. Bagni suggested that Sabrina Chilcott, Administrative Assistant to the Selectmen, would be the best person to address that question to for more clarity. Bagni stated to McSweeney that she did not add it to the agenda because that *"As a Chairperson, I am responsible for creating the agenda. The reason I did not put this agenda request for their contracts or their job duties on the agenda is because it's not open for discussion, their job descriptions. If I put it on the agenda, then it has to be a discussion. We were not going to discuss..."* McSweeney interrupted Bagni: *"And at the very first out of the gate, that's why I contacted you and said okay, I want to review different records because it's not something that should be ever discussed in open meeting"*.

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Bagni stated *"So, if I put it on the agenda, then I'd have to discuss it .."* McSweeney interrupted Bagni and said *"Exactly. And now we're in violation."* Bagni then stated that McSweeney got what she needed.

- Bagni continued with the next correspondence item regarding future topics that members wish to see on the agenda. Forms were supplied to the members for their lists. Bagni stated *"I feel, as a Board, we need to start talking about the tobacco products, topics - any future topics to be discussed. There is one thing I want to note that no BOH paperwork other than what's in your folder, and what any of us is given, is to leave the office at any time. I'd like to give my fellow Board members an update on PTAD as a future topic. I am the Board of Health's representative for the Pembroke Titans Against Drugs. I sit on the Executive Board along with the Fire, Public Nurse, Police, School Committee members and we are actively involved in the non-profit organization that has been created"*. McSweeney mentioned a North Shore town that had a place where people could go for help. Bagni stated that there wasn't one in place yet, but if McSweeney could get the information and appear before PTAD to present it, it would be something PTAD could work towards. Bagni also said *"There's a lot of talk about legalizing marijuana.....coming up possibly on the November ballot. So, I think that's important"*. McSweeney asked about a marijuana dispensary in Pembroke. Bagni stated that she did not have that answer. Cullity stated that a party has expressed interest and *"asked for informal sit-downs with the Board of Selectmen to ask if the Board of Selectmen and/or the Town would be opposed to a dispensary in Pembroke. No formal application has been put forward. It was an informal request by one individual"*. Bagni asked if the interest of legality was recreational or medical. Cullity answered it was medical.
- Bagni included the rules and regulations and the process of absentee remote telephone calls to BOH meetings. McSweeney stated there was an unscheduled meeting of the Board of Health that she could not attend because she had *"prior commitments at that time"*. Bagni explained that there were legal complaints filed against McSweeney and Bagni that had to be answered within 14 days; therefore there would not have been enough time for the Board to get legal counsel to attend the June 13th meeting so the meeting had to occur June 6. How the Selectmen went about their job had nothing to do with Ms. Bagni. Bagni felt she should attend as she was listed on the complaint. Fine pointed out that Bagni, as Chair, had given McSweeney just short of a week of the June 6 meeting, so it wasn't an unscheduled meeting. McSweeney interrupted Fine and argued that it *"was an unscheduled meeting from our Board meeting"*. Fine replied, *"Semantics. The meeting wasn't scheduled at our last meeting but the Chair is entitled to schedule a meeting and you did call that meeting..."*. Bagni said *"Legally, I had to call it..... I could have called it for Wednesday night at 6:00. Let both of you know. If you could come and you couldn't come, that's responsibility, but this one, this had legal ramifications"*. Fine said, *"I just wouldn't call it unscheduled. It was unscheduled from our meeting on the 16th, but as Chair, Donna is entitled to schedule a meeting as long as we have ..."* McSweeney again interrupted Fine. *"Well now you're going (unintelligible), Gary, because a scheduled meeting is determined by the Board at their meeting for the next meeting, ok? Now in light of the fact that the Health Agent wasn't going to be here on the 6th, I had an opportunity to go to Edgartown for the week. But what I'm saying is, it was not something that I was aware of that I had the time that was going to be set aside for that we agreed in unison that would be together, ok? So when we set a meeting as a Board and*

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something comes up, no, she's gonna schedule it, but in the terms of whether or not was it a scheduled meeting between the Board at the last meeting, no it was not". Fine, "No, I agree, but she (unintelligible), when you said unscheduled meeting, I take it as Donna can schedule a meeting. That's all". McSweeney continued to dispute the issue. Bagni then said unless there was anything to say on that, she would like to go to the next agenda item.

65 Plain Street – Extending deck closer to the septic. Owner Dennis Griffin could not attend. The variance request: To allow a setback of 8' from the required 10' to the septic tank due to the cost of removing current concrete slab with heavy equipment and not do damage to the area. Cullity stated the owner will dig by hand and will take full responsibility for any damage and expenses incurred to the septic system. McSweeney moved to allow the variance; Fine seconded. All in favor.

42 Blueberry Lane – Information regarding rebuilding of house using existing 5-year old septic system with a varied flow of 110 gpd instead of the required 150 gpd for a new build. Owner Stephen Patt was not in attendance. The old house was unrepairable. Patt would demolish the old house and rebuild a new deed-restricted 2-bedroom house, hoping to use the existing 5-year old septic system. Bagni felt a precedent would be set if allowed to use the old system instead of coming into compliance with 150 gpd flow. Fine felt the system is young and doesn't need to be upgraded to 150 gpd. Bagni said she was concerned that the home is on the waterfront of Stetson Pond. McSweeney thinks more information is needed. Cullity asked her what information she would like because no further information will be forthcoming. McSweeney did not answer. Fine moved to allow the 110 gpd system; McSweeney seconded; Bagni opposed. Favor.

91 Phillips Road – Septic variances. John Hoar, Engineer and owner appeared. Cullity stated the 3-bedroom house property is sandwiched between two bodies of water. The variances request is as follows: (1) to allow a setback reduction from the homeowner's private water supply well and the S.A.S. from the required 100' to 82', (2) to allow a setback reduction from Furnace Pond (a surface water supply tributary) and the septic tank and S.A.S. from the required 200' to 156' and 140' respectively, (3) to allow setback reduction from Great Sandy Pond (water supply for Abington and Rockland) and the septic tank and S.A.S from the required 400' to 100' and 103' respectively, and (4) to allow a setback reduction from wetlands bordering Great Sandy Pond (a surface water supply) and the septic tank and S.A.S from the required 100' to 80' and 84' respectively. Fine moved to allow the variances as written, Bagni seconded, McSweeney abstained. Favor.

Health Agent Updates:

- Trash / recycling – auto-trash on target for toter delivery by 7/10/16. Reminder to put the pick-up bars facing the street
- Health Agent contract – 3-year appointment extension. Wages / duties are non-negotiable with BOH, just Wage and Personnel only. Bagni state the Health Agent also shared a few other "hats" in this Town. Cullity stated the many other "hats" she wears along with her Health Agent duties. Fine asked if the contract was put on the agenda by Donna. Cullity answered that a copy of the contract was requested. Bagni stated she put it on the agenda and asked Cullity when the contract expired. Cullity stated the contract was up March 27, 2017. Fine asked if it was on the agenda for the Board to vote. Bagni stated that the Board

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could vote with the new Board in place; they could wait... McSweeney interrupted and said *"the way to do it would be within the 30 to 60 days prior to the contract.....or I think it's 60 to 90 days prior to the contract. I know it's one of them.....to re-sign a contract. We're signing it now a year ahead of time."* Fine stated he would like to make a motion to *"table this for a potential vote at our next Board of Health meeting, hearing.."* McSweeney interrupted Fine stating she would look up the regulations for the overlap. Bagni asked Fine to continue. Fine continued saying *"I have no problem stating for the record I wholeheartedly endorse, in my years, with 2 years on the Board, what our health agent has done and going "above and beyond" is a phrase I would concur that our current health agent does. But I think it behooves us to at least...."* McSweeney interrupted, saying *"to stay within the law"*. Fine: *"to stay within the law if we're able to....to vote on this next week, I think everybody should have the opportunity to do so, if we are within the law."* Bagni said she would ask the Selectmen's Administrative Assistant for that specific law, where it is, and have it provided. Bagni stated this would be tabled until the next meeting, with paper backup. Fine asked if the Board is able vote now, he wanted to make a motion to table this issue for a vote for next week. McSweeney said he could not make a motion because *"we don't have the proper paperwork to do so. This says March 24, 2014. We don't even have the proper paperwork to..."* Bagni said *"Well this is the existing contract. The contract isn't going to change."* McSweeney: *"Correct, but the numbers are going to change."* She continued *"I do know that there is from my days at Medicare I do know that there is a statue (sic) in between a contract being signed- you can't sign a contract a year and a half 'cause it...for a year and a half away."* Cullity corrected McSweeney by stating *"it's not a year and a half away. It's nine months away."* Bagni stated she will send the information to the Board members when she receives it from the Board of Selectmen's office. Bagni will decide if it is to be put on the agenda, but it is tabled for right now. Bagni seconded Fine's earlier motion to table. All in favor.

- Pond testing – to date, all ponds testing just fine. Porta-johns have been delivered to the public beaches. Bagni asked if any treatment was being done at Oldham Pond; Cullity replied that the alum treatment was all done. Fine asked about Little Sandy; Cullity answered that Little Sandy and Stetson are *"crystal clear"*. Turbidity (cloudiness) is high, but poses no danger.
- Urgent items that need to be acted upon by vote of the Board (i.e. variances, etc.): Bagni stated to continue handling them as always: When they came to the agent's attention, Cullity sent the Board members via email very detailed information of the particular item. McSweeney stated she had no knowledge of the situation. Cullity stated that circumstances such as needing to vote on variances can arise a lot between meetings and the failure to get the septic systems signed off and into the ground could be detrimental to homeowners losing a sale of their property by not meeting the target date for closing. McSweeney stated that she has two homes and is *"well aware of legal ramifications that can happen. And all of the different scenarios that can fall into that. My only thing is for me to take a vote on any kind of a variance on a septic I really feel that I should have some knowledge.....far too young into the Board to know what's been discussed or to have anything that you guys have reviewed in the past for me to be up to speed with it. Until I get comfortable with what we're reviewing and the special requirements that are coming along, I will probably*

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stay with a no vote on week one on those kind of variances until I'm assured that I know full scale that we're in compliance with everything." Bagni continued to state that condemnations will be issued at times when the Board of Health is called upon to do so. She invited McSweeney to ask any questions that may come up. Bagni stated that when Fine started with the Board, he actually went out to witness Title 5 inspections and installations. McSweeney said, *"The both of you have the knowledge of prior septic systems that have come up, prior things that have been rejected the new ones certainly I'll follow, I'll start off with the new ones with you and then we'll move from there"*. Fine said, *"In terms of emergency decisions that our Health Agent is making, and I'm aware there are some towns in the South Shore where the Boards of Health had actually given the Health Agent the latitude to make an emergency decision. So I think Pembroke, we as a Board have been smart, we've been cautiously intelligent in that we have directed our Health Agent to when an emergency situation is put forth to her that she makes that phone call and reaches out to the members. So, I don't think, you know, we're giving carte blanche to the Health Agent. We're asking for that phone call she's presenting us with the information. So, I concur that we continue what we've been doing where you have reached out to us, Lisa, and we have been able to vote on matters.....I think we haven't abdicated our responsibility to the Health Agent but we've given her the ability to reach out to us and have that emergency vote"*. Bagni said to McSweeney that *"being on the other side now of being a Board member versus clerical, there is definitely a learning curve of learning all these different things and components and different engineers and how things are presented..."* McSweeney interrupted Bagni and said, *"My challenge is where I need to get more fluent is into the septic. As far as.....I have a book. My husband bought me one for dummies."*

- Perc testing for potential fire station at 369 Washington Street was successful. This is the parcel that was voted at Town Meeting to buy that the Town may or may not be developed for emergency management / fire station.

Board discussions / actions:

- Board voted to reappoint Benjamin Bastianelli to the Drainage Commission for 3-year term to expire June 30, 2019. McSweeney asked if the vote could be put off until June 27. Bagni asked Cullity about the vote. Cullity answered: *"Required every 3 years"*. Bagni asked *"why?"* and Cullity answered it was a State law. *"It's always a joint vote with the Selectmen and the Board of Health."* Cullity assumed it's because they are looking at the Board to protect water. They want someone who will take care of storm water runoff. Fine asked if the candidate was chosen by the Drainage Commission. Cullity said it is almost always a DPW Commissioner. McSweeney stated: *"It's just that not having the attachment, not having the State law that goes along with why we're making this decision, I'm inclined not to vote for this"*. Bagni asked if there was enough time to table to vote to the 27th meeting. Cullity answered *"no"*. Bagni, *"I didn't think we would"*. Fine moved to reappoint Benjamin Bastianelli to the Drainage Commission for a 3-year term; Bagni seconded; McSweeney abstained. Favor. Bagni to notify Board of Selectmen of results.
- Authoritative roles of Board members individually as well as a Board. Bagni cited the procedures in the Handbook- item #1 – setting agendas, etc.

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- Ethics Course-training for new Board members: Cullity to forward Mass. Association of Health Boards (MAHB) link to website to the Board for online training. Cullity hopes there will be another in-depth training session in Taunton in November. McSweeney said, *"The ethics course we should all be doing this once a year. We should be doing this online once a year"*. Bagni said the Town Clerk will be sending each department a notice of such. Cullity said the Open Meeting Law - it's required to be done by every appointed / elected official. The form must be signed and returned to the Town Clerk. McSweeney must abide.
- Voting procedure and requirement available to a Board of three: All the Board of Health needs is 2 votes to pass or not.
- Summer Schedule: List of Board of Selectmen summer meeting schedule. Bagni advised Board earlier as to why the Board follows that schedule. McSweeney asked if there would be a July 27 meeting. Bagni affirmed that and she said she would like a Board of Health meeting every 2 weeks...*"which is something we've always done with the exception..."* McSweeney interrupted Bagni with, *"If we're gonna do that then, why don't we get some clarity on Benjamin Bassinelli (sic) because where they're asking June 30 then we can squeeze him in on the 27th"*. Bagni said *"I think we already voted on that. The 27th is not enough time for the information to get for June 30th to the Selectmen's office. Even though we're meeting Monday, they won't get it until the 28th, 2 days before. They are looking for a vote tonight. And we have voted"*. Fine said, *"when the Drainage Commission votes to appoint someone to be drainage commissioner, that they come before the Board"*. Bagni said she believes that was asked for the last time by Fine. Bagni would like Bastianelli to come to one of the Board meetings, introduce himself and explain what he does. Getting back to the summer schedule, Bagni asked, *"With everybody taking a look at it, I know that we have vacations in there. To the best of your knowledge, do you think that we can all make these meetings?"* McSweeney: *"The only one I might have difficulty with is August 8"*. Cullity: *"I can tell the Board with certainty I will miss 2 of them; I will be away the week of July 11 and I'm away the week of August 22. I can prepare written statements if you like and certainly if there's plans to be reviewed that might have variances or such that are associated with them I can tell the engineers that they are 'on their own' to come in to present their own projects to you; obviously as a courtesy I've presented many engineers' projects for them to save them the time and therefore save the client money. But I can definitely put them on notice to come in and present their own"*. Bagni stated that perhaps the Board can do some "backfill" that doesn't require Cullity's presence. McSweeney moved to vote for the Selectmen's summer schedule; Fine seconded. All in favor.

Fine stated, *"Before we make a motion to adjourn, I just want to update my two colleagues on the Board—at our meeting last week I was asked to have a discussion on the ruling of the two complaints. So, the attorney has forwarded me her response to the Attorney General on the two complaints that were made. One of them has already gone in to the Attorney General so I had a lengthy discussion on her report – there were some edits that I had suggested she had made. I will be emailing her or calling her tomorrow because tomorrow the second complaint must be sent to the Attorney General. So, just to let you guys know. I believe, to my two Board members, you both will have access to the responses that the*

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attorney has prepared to the Attorney General. And that was one of my questions 'Are you guys gonna have an opportunity to see it?' So, you will after they've been sent". Bagni: "After they've been sent. So I'm assuming that they are going to come through to you or to Ed Thorne's office?" Fine: "I'm not 100 per cent sure". Bagni requested the Board members send her their wishes for future agenda items.

McSweeney moved to adjourn at 8:14 p.m.; Bagni seconded. All in favor.

Donna Bagni
Chair