

BOARD OF HEALTH MEETING MINUTES

June 27, 2016

Bonnie Pajic (with Art Egerton), Pembroke Town News, recorded the meeting for viewing on www.youtube.com.

Gail McSweeney audio recorded the meeting with her own personal device.

Board Members Donna Bagni, Chair, Gary Fine, Clerk, Gail McSweeney, Member, and Lisa Cullity, Health Agent, were present. The meeting opened at 6:33 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 proceedings produced in the minutes of the meeting. All comments made in open session will be recorded."* Fine moved to accept the minutes from the June 6, 2016 meeting; Bagni seconded. McSweeney abstained because she was absent from that meeting. Majority favor.

Per request of the Board, DPW Commissioner Benjamin Bastianelli will appear before the Board at its next meeting on Monday, July 25, at 7:15 p.m. to talk about his position with the Drainage Committee.

McSweeney questioned why there is a police presence at the meetings ever since she was elected to the Board. Bagni replied, *"Well, it is my understanding that it has been requested"*. McSweeney stated, *"From the Selectmen's office from what I received the action was taken by the Secretary, by the Health Agent and by the Administrator. So you have no knowledge on why...."* Bagni said, *"I have knowledge as I explained in the email that you sent to me. I felt it's something you should ask directly of the Health Agent, of the Secretary"*. McSweeney argued about the letter written by the Secretary that was read at the first meeting of May 16, 2016 that McSweeney attended regarding communication with the secretary via the Town's email only. Bagni stated *"I really didn't think this was the format or the platform for us to bring it up, but it has come to my attention, as well as several others, that due to historical situations that took place when neither I nor Mr. Fine had anything to do with the Board of Health; that there are still issues that are unresolved and if an employee does not feel comfortable, it is within their right to go to the Town Administrator and ask for police presence"*. McSweeney continued to argue *"I haven't been with the Board for over six years. I have not worked in this office..."* Bagni said *"I know you haven't"*. McSweeney continued *"So I don't understand what warrants that claim and I'm gonna ask the Board to give me in the future to provide me with more clarity on that"*. Bagni said *"Well, I'm going to instruct you, if you need clarity, I want you to please speak directly to Mr. Thorne."* McSweeney continued, *"Mr. Thorne has no control over the Board of Health. And if you will read this here this says, from Sabrina's office, that June 22, 2009, that the Board of Health made a vote and it specifically said that Mr. McInnes was the one that initiated that. Now if you go to the next page you will have an agenda and you will have the Board of Health meeting minutes for June 22 And nowhere on here was there a vote for the Board of Health to relinquish any responsibility to the Board of Selectmen"*. Fine stated, as he was reading the material for the first time, that *"as our Chair alluded, there were some events that took place prior to Donna and I being on the Board. So, if I were using maybe common sense as*

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opposed to some protocol, when I see this, when I see Town Administrator Ed Thorne oversee day-to-day operations of the Board, I would suggest you obviously have a concern. You raised an inquiry. I...." McSweeney interrupted "The Board of Health is autonomous". Fine said "Ok. Ed Thorne, I don't want toI didn't have to speak on this. This is to 2009". Bagni stopped McSweeney from interrupting Fine. Fine continued "Just as a courtesy, I would, if I had the same query that you did, I would probably make that inquiry, that query to Ed...and that would just be me and I'd make an informal inquiry if it's something that concerns" McSweeney, again interrupted Fine, "We are doing this backwards. The Board of Health is autonomous. I did not inquire from anyone outside of this office. This office is under Chapter 41, Section 21 of the Mass General Laws. The only way that we can relinquish any duties or any powers from the Board of Health office is at a Town Meeting through two-thirds vote. It cannot be done by the staff, by the Board members. We don't have that authority. The Mass General Law trumps that. To tell us that is a vote to be done by the people". Bagni said, "Well, I'm going to tell you, I'm gonna repeat myself, again. The situation that went down, how involved it was, or how...whatever situation took place because I was not privy to it. It rocked this department to its knees. So, if there are any ill feelings, any uncomfortable situations that still exist due to those three or four years, however long it was, has nothing to do with this existing sitting Board. If you want to explore, and I'm telling you, Gail, and I've said it and I've said it on camera, I'm not going back there. If an employee addresses Ed Thorne, that has nothing to do with us, she's a paid employee, if she does not feel safe, feels intimidated, or just feels crummy about it, she has the legal right as an employee under a union, that she is within her union rights to go to Mr. Thorne and request an officer. I'm not going to override her. I can take a vote right now....." McSweeney interrupted Bagni: "(unintelligible) that the Board of Selectmen and Mr. Thorne have no authority over the Board of Health. Maybe in the union district, but that should be with her shop steward. What I did notice on the meeting of June 6, is that Counsel seemed to...Counsel was here to....correct me if I'm wrong...was here to address the Board's violation. And there was quite a dialogue with the Health Agent". Bagni: "She was the complainant (sic)."

McSweeney continued "The Board, the attorneys' Counsel was sent here to address the Board. It doesn't make any difference. She was here to represent the Board". Fine: "Counsel was here, are you referring to the meeting that you weren't here?" McSweeney: "Correct". Fine: "So Counsel was here to offer a legal opinion as to respond to the two complaints that were made"....McSweeney: "Which you and Bagni addressed. That had nothing to do with the Health Agent as far as...." Fine: "It seems like we're talking about two different issues". McSweeney: "I don't know about you, but when you represent Counsel, did they represent both parties? Did they represent both parties, Gary?" Fine: "They can". Bagni: "They represent the Town of Pembroke. You and I as elected bodies fall under the Town of Pembroke. We are elected officials. The other two positions in this office, are hourly rate paid. One is a paid employee, one under a union. Ok? The office duties, the office and the staff, report to Ed Thorne. If you have a question as to why it's been requested, then you need to go to their boss". McSweeney: "That would be the same as me attending the Board of Selectmen meeting to ask me for my resignation. The Board of Selectmen have no authority and no power over me. Therefore, there was no reason for the Executive Session". Bagni: "Again"....., Cullity asked to clarify something: "You understand the Board of Selectmen is offering up, acting in two functions right now...they are also Wage and Personnel". McSweeney: "I do understand that and I'm gonna tell you right now I've been in touch with ethics and unless you want to put this straight and reclaim the Board of Health, it is an ethical situation for the Selectmen and Mr. Thorne to be involved in the Board of Health". Bagni: "Ok, so...."

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McSweeney: "We're not running the way that we should be. We're running, we should be (unintelligible) for the people and we're letting other offices...." Bagni: "And we haven't gotten to anything that has to do with the people of Pembroke yet in the last three meetings that we've had".

McSweeney: "That has nothing to do with me. I did not call police personnel. I did not decide to read a letter of limitations for the Board, for a brand new Board member at the first meeting. Donna, this Board needs to run under the law. We are not running under the law right now. We're not running for the people. If we were running for the people, we would have control over our department". Bagni: "And what control don't we have? I guess the word that you used a lot on the campaign trail....Ok? Forgive me, it's been a long day...was that you wanted to see 'change'. What is that change? Why do you not feel that the Board of Health is operating...number one, you just said ethically and I take great, great offense to you making that statement, because you don't know what you're talking about, OK?"

McSweeney: "That's your opinion". Bagni: "It is my opinion. Ethically, this Board has functioned, it has worked for the people, and only the people of Pembroke. Your issue has nothing to do with this three-seated Board. And these five variances that we have to get to, so I'm not going to discuss...that police officer is here due to the request of a (sic) employee of the Town of Pembroke, ok? Her letter was read whether Mr. Fine became Chairperson or you became Mr. Chairperson. It was a correspondence that was requested to be read due to past history between you and the Secretary. I agreed to abide by it. And nowhere does it say in that letter, and I'll read it again if you want, but I don't think you want me to, nowhere in that letter does it state that Carol Mirotta states that you cannot speak to her, ask her any question, you can ask any question of her. If there's an error on an agenda meeting, you can turn around and send her an email ..'geesh, could you just double check this date? See if there's an issue?' It does not say that. It says we are not to give out her personal"

McSweeney interrupted..."(unintelligible) would that be? First of all, Donna, the way that this was conducted, it wasn't on the meeting minutes that you were reading a retirement letter from the Secretary. But then you read a statement that you received ten minutes before the meeting. I'm not apprised of what's going on as a new Board member, neither was the Clerk. Then the next thing I know, after this letter, we're doing open meeting violation. Open violation meetings were caused by that letter because I was told that it would be best for me to contact you and that you would direct the rest of the staff". Bagni: "I would direct anything that you didn't feel getting in contact with Carol directly. But you have every right to contact her at cmirotta at...."

McSweeney, interrupted Bagni, "Also in that letter, it was stated that I was not be contacted unless it was an emergency to Ms. Mirotta". Bagni: "Ok." Bagni announced a bathroom break at this time.

Bagni: "We're back on. I've pulled out the letter. It is dated May 16, 2016. The first sentence states In light of the past history in this office with Gail McSweeney, I wish to announce that I will only communicate with her via the Town's email and only when absolutely necessary. What that means or what I will imply it to mean is the fact that anything having to do with the Board of Health we deal with as a Board. Election was on May 14th, this letter was drafted May 16th. It was held right after the elections. It was a Monday evening. Timing-wise, do you think it wasn't on the agenda because it was two days after the election? And it was sent through as correspondence to the Board of Health? So, it was addressed to the Board of Health...."

McSweeney: "But it was not a full correspondence. It didn't say statement from Secretary, retirement, or statement from Secretary. It's got....you just can't make an open statement, anybody could put anything in here. In the agenda, it needs to make a complete of what the letter is going to be about." Bagni: "It wasn't an agenda, it wasn't a topic for conversation. It was a correspondence to the Board..."

McSweeney: "That should have been under correspondence read by....." Bagni:

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"The agenda is a blanket statement that says 'and review any correspondence'" McSweeney: "No." Bagni: *"Gail...we're gonna agree to disagree. And I'll leave it at this because when you mentioned about the ethics, and I think you were getting ready to say something else, maybe you weren't, but if you feel that you need to exercise any right that you feel, please feel free to do that. I personally and professionally, would like to get on with the business we have in hand because we have five homeowners that are looking to have their sep...."* McSweeney, again interrupts, *"I understand that, but unless this Board is running properly, we're not doing our job the right way"*. Bagni: *"And I, for the record again, will you state why you don't feel the Board is running the way it should be"*. McSweeney: *"Because we have a letter from the Selectmen's office stating that Monday, May...June 22nd, 2009, Mr. McInnes appointed Mr. Thorne in charge of the Board of Health office. This never took place. You also have the agenda for June 22nd, 2009, it's not on there. It is also not in the meeting minutes. It is reflected nowhere. It is signed. So, therefore, if it's not in the meeting minutes, how can you type or tell me that this transpired?"* Fine: *"You know, Gail, I'm not gonna make a determination here whether thiswhether you're...what you're stating is correct or incorrect, but it goes...you're bringing up an issue on a vote that was taken in 2009. It's not on the agenda. I'm not quite.....(interruption by McSweeney)...."* Fine: *"Can I finish?"* McSweeney: *"Let me. Let me interject...just, no Gary, for one second..."* Fine: *"Cause you were the one, Gail, who started and asked about the police presence. And now you're morphing into...if you have a question, and if it's a legitimate question about the police presence, that's fine, but now you're morphing into history that goes back seven years. You need to go see....I'm almost done...."* McSweeney: *"I haven't spoken"*. Fine continued: *"You need to go see Ed Thorne. Ed Thorne was appointed to run the day-to-day operations of the Board of Health. And if you have a problem with that, that's your right, then go see Ed Thorne. Don't..."* McSweeney interrupted Fine: *"That's the Board's problem"*. Fine: *"Don't take up thirty minutes of a topic that we weren't prepared to address tonight. I'm not saying your concerns aren't valid. If you have concerns, you should get a (unintelligible) as does Donna and I. But you're bringing up at the start of a meeting something that happened seven years ago. If you are concerned about the police presence here, then that's your right. Then take it..... to me, the logical person to ask that question. I would go see Ed Thorne. I don't know why you're saying that the Board has...."* McSweeney: *"Well, we'll just let the decision come back and see where we go from there and hopefully we can straighten out the Board of Health so that the Board of Health is running (unintelligible)...for the people"*. Fine: *"I feel for the record we're running pretty well right now. We can always be running better, I will agree to that"*. Bagni: *"Well, once again, I think that we are moving on but I'm going to end it with the fact that there is a...out there says the 'Board of Health', on that door, it says the 'Board of Health'. We are an elected Board to vote and deal with issues that affect the people of Pembroke under the guise of information that the Health Agent goes out and collects and gathers. So, my understanding of the Board of Health....I look at that door and there are two entities here.....there's two entities that make up the Board of Health. With that being said, I publicly made my statement. You do what you need to. And I'd like to move on to our first variance"*.

223 Church Street – John Field, Engineer and Richard DeFusco, Ayoub Engineering. Variances "after the fact": The original septic plan was drawn to accommodate a half slab / half basement. It was discovered that there is a full basement so variances "after the fact" were requested as follows: (1) reduction from the required 20' from SAS to cellar wall to 14', and (2) reduction from the

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required 10' from septic tank to cellar wall to 6'. Bagni moved to allow variances; McSweeney 2nd. All in favor.

41 Lorna Avenue – septic variances as follows: (1) to allow substitution of a sieve analysis in lieu of a percolation test due to saturated soils at time of testing, and (2) to allow a reduction of the design flow per bedroom to be reduced from the required 150 gpd to 110 gpd. House was abandoned and has poor soil. Deed restriction to 2 bedrooms. Fine moved to allow the variances as presented; Bagni seconded. All in favor.

103 Pleasant Street – septic variance as follows: To reduce the distance of seasonal high ground water from the bottom of the SAS from the required 4' to 3.5'. Fine moved to allow the variance; McSweeney 2nd. All in favor.

95 Washington Street – Alumni Café – Field saturated / pump system failed. Septic variances as follows: (1) reduction of separation of ground water to SAS from 4' to 3', and (2) use of grain size distribution analysis. They will also remove and replace 5' of soil under the parking lot. Bagni moves to allow the variances; Fine 2nd. All in favor.

Gary Fine update re: Attorney General complaints. He spoke to Town Atty. Carolyn Murray on July 2. Both complaints have been submitted. Atty. Murray has not heard back from the Attorney General's office. Fine asked what was a typical wait time, what her expectation of a response may be. Murray said approximately 30 days. She would notify Fine. All Board members and others involved will be given copies of results.

Health Agent contract: At a previous meeting, McSweeney had challenged the time-frame for the Board to vote on renewing the Health Agent's contract as per McSweeney's search of **MGL c41 s 21**. Bagni said she would go to Ed Thorne's office because the Board of Selectmen is also Wage and Personnel who write and have final approval of the contract. Bagni stated the general law that's quoted by the Town Administrator and the Selectmen's office: **MGL c41, s108N and s108O and MGL c111, s30**. There is a discrepancy regarding what MGL c41 s21 vs MGL c41, s108N and s108O. Bagni stated directly from **MGL c41 s108N**: Under MGL c41, there are provision for contracts between the towns and the following positions: Town Manager, Town Administrator, Executive Secretary, Administrative Assistant to the BOS, Town Accountant, City Auditor, City Manager, Police Chief, Fire Chief. Under this language, Section 108N states that the town 'may establish a contract for a period of time..' The section does not address under what time frame the contract may be renewed, nor does it state under what time frame the contract may not be renewed. Bagni said she agrees with the Town Administrator because he should know the law. Since the Board had been asked to look at Cullity's contract ahead of March 17, 2017, Bagni stated she looked back at audio and video recorded minutes, she found it was stated that typically the Board looks at the contract at the first of the year. Bagni also stated that since there is no law that states the Board has to wait a certain amount of time and the Board should stay at this point in time. Bagni moves to address and vote the contract at the December 19, 2016 BOH meeting. McSweeney requested a copy of the contract to review. Bagni stated she already has a copy of the contract. McSweeney said they need to make pay and other updates. Bagni stated she didn't believe the contract had any reference to pay. Cullity stated that pay is not included in the contract, that it is

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voted at Town Meeting according to the SA schedule and is not controlled by the BOH. Cullity continued that the contract merely stated terms of employment. Bagni stated it's the same contract that's currently in force, that no changes to it will be made. McSweeney stated that in the past, *"the Health Agent's pay rate, pay rate was in there, workers' compensation, everything was tied together"*. Bagni asked if that was done when she was clerical. McSweeney said *"when I was clerical. Mr. McInnes actually the Board of Health Chair at the time submitted the contract to be signed by Mr."* Bagni said, *"I believe when Mr. McInnes gave over control...correct me if I'm wrong..."* Lisa interjected and said *"I was the one that established the contract for Mr. Leary. It was always terms of employment. Mr. Leary's compensation was always under the SA27 classification of the Wage and Personnel by-law"*. McSweeney: *"Lisa, I'm gonna have to correct you on that 'cause Mr. Leary didn't have a contract for four years solid."* Cullity: *"Correct and I was the one who created it. I went to Town Meeting, I'm the one that argued for his rates"*. McSweeney: *"Mr. McInnes..."* Cullity: *"Ok, I guess you're gonna have to find it. I didn't see it, I created a contract for him, I was the one who advocated for his raise on Town Meeting floor"*. McSweeney said she *"most definitely can"* show the document. Fine stated that there was a motion on the table, Cullity said she had a question about if the contract was inaccurate. McSweeney said she needs to *"see what's in it"*. Bagni reiterated that it was given out at the last meeting. McSweeney: *"Funny, it doesn't resemble any form of contract that we've ever done for the Town"*. Cullity: *"So you'd like to create a new contract"*. McSweeney: *"I would like to review it at this point"*. Cullity: *"Sure. What information would you like?"* McSweeney: *"If I need to ask for information, I'll contact you. I'll request it then"*. Fine reiterated that *"there is a motion on the table by Madam Chair....you set a date late in December, so doing the math, which I'm pretty good at, and I'm looking for clarification to your motion. You're kind of talking about maybe looking at the contract or table it to roughly ninety days ...so the end of December, ninety days if the contract is March 27"*. Fine wanted to make an amendment to Bagni's motion, to change the date from December 19 which would leave a 90-day window to a November date to make it a 120 window. Bagni stated the motion is now instead of making it mid-December, to make it to 120 days, which would move it to November. McSweeney seconded. All in favor. Bagni admonished McSweeney if she had any questions, she is to ask Cullity. Fine asked for a November date and was given November 14, 2016.

Mandatory Ethics Training: Bagni asked if McSweeney had taken the Ethics Training yet. McSweeney answered *"No, I have not"*. Cullity reminded the Board that the Open Meeting Law was to be completed within 2 weeks of election, and she thought the Ethics Training was due within 45 days of notification. McSweeney stated she had taken care of the Open Meeting Law with the Town Clerk. All Board members and Health Agent signed the Ethics Training receipt form to be turned in to the Town Clerk.

Next meeting: July 11 meeting cancelled. McSweeney moved that next meeting be July 25; Fine seconded. All in favor.

Bagni moved to adjourn at 7:49 p.m.; McSweeney 2nd. All in favor.

Donna Bagni
Chair