

BOARD OF HEALTH MEETING MINUTES

July 25, 2016

*Rob, Pembroke Town News, recorded the meeting for viewing on www.youtube.com.
Janice and Dan Antoine from PACTV recorded the meeting for viewing on www.pactv.org.
Gail McSweeney audio recorded the meeting with her own personal device.
Charles Mathewson, reporter, 95.9 WATD*

****** Please note that at approximately two minutes into the meeting, Chair Bagni noticed that she had forgotten to start the Board of Health tape recorder from which the meeting minutes are taken. Bagni: *"I'm sorry I wanna just go back and say that it was 6:31. I neglected to start the tape, so I'm going to add that I have read the Chairman's statement. We have Rob from Pembroke News and we have Jan from PACTV here. And Gail is recording on her own device. Gary is looking over the salary payroll, which is all set. The other thing that I would like to do is on the June thirteenth minutes of the meeting, that is the one that is eight pages long, if I could please get someone to approve".* Fine: *"I'll make a motion to approve the minutes dated June 13, 2016 as written".* Bagni: *"Do we have a second?"* McSweeney: *"Yah, I'll second it".* Bagni: *"All in favor?"* Bagni and Fine: *"Aye."*

You can view the first two minutes (6:31:00:00 – 6:32:58:11) and the rest of the meeting on www.youtube.com, "Pembroke Town News, July 25, 2016".

Continuing from the Board of Health tape recorder:

Fine asked for clarification regarding approval of minutes. Bagni explained that when each member receives a copy of the minutes, they are to review and if there are any changes to be made, they are to request those changes via email to all Board members. It allows all members to assure the changes or edits will be correct.

Bagni requested the Board to respond to the email regarding the June 27, 2016 minutes.

Bagni stated that Town Atty. Carolyn Murray sent letters to the Board stating that the Attorney General's office found there were no violations to the Open Meeting Law complaints sent by the Health Agent and Secretary. Copies were given to each member and original letters will be kept on file.

Bagni noted that each member had copies of Board of Selectmen Executive Sessions of June 15, 2009 and June 22, 2009, a July 11, 2016 email from Carolyn Murray, and BOH Meeting Minutes dated February 1, 2010. Bagni stated that this is just reading material, but if anyone had concerns about rehashing any historical information to please notify her by email.

Selectman Daniel Trabucco re: Board of Health issues. Bagni said that McSweeney *"has handed us... it's not a public document"....* McSweeney interrupted: *"It's from Town Council from the Selectmen back in 2007 and it was during (unintelligible)"* Bagni: *"That would be nine years ago? Nine years ago".* McSweeney: *"You gotta read that. It's from a judge. And it was requested by the*

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Selectmen and the Town Administrator.” Bagni: “Okay, so I just have a question. Why are you bringing this up? Why are you handing this out?”. McSweeney: “Because the judge emphatically states the powers of the Board of Health. Second page....it’s highlighted on the second page. If you read it, you’ll understand it”. Dan Trabucco thanked the Board for having him and hoped that he could answer the questions that McSweeney “in particular” had for the Selectmen and Town Administrator. Trabucco stated: “More importantly, what I’d like to do is help the Board of Health get any past issues resolved so you folks can roll your sleeves up and get to work on the issues at hand. So, if there’s anything I can do to help that along, that’s what I’m here for”. Trabucco stated that some of the information the Board has is public and some are of executive meetings that may not have been voted on yet and are not for public distribution. Trabucco and Bagni invited anyone to ask a question. McSweeney: “Why is the Selectmen under the authority...they have the hiring and firing authority (unintelligible)?” Trabucco: “For the office staff?” McSweeney: “Yes”. Trabucco: “The Board of Selectmen is the executive branch. We appoint the Town Administrator, who is just that. He administers the daily events of the Town. Part of those duties are to administer the staff of all Town Hall employees”. McSweeney: “Like he does not sign off payroll. He doesn’t contract with our Health Agent. He doesn’t do the hiring for our department”. Trabucco: “So, but he does administer the day to day operations”. Trabucco continued: “He’s here every day, forty hours a week plus, dealing with all the folks in Town Hall, all the personnel, all the personnel matters. Board of Selectmen? I’m part-time, I’m here Monday nights, even less in the summertime with our schedules. And you folks are here on Monday nights. How can you be, as elected boards, manage the day to day operations? So, it makes sense that there’s an administrator that handles the day to day operations and therefore, is the personnel manager for those folks”. McSweeney: “But the Board of Health is autonomous. You don’t do that with the DPW and they’re under the same jurisdiction”. Trabucco: “So, well let me ask you this....what’s the issue? I don’t understand....what the issue is...” McSweeney interrupted: “The issue is that...” Trabucco: “Do you want to hire, do you want to hire everyone in this office, whether it’s the....Lisa, or anyone else....I’m not sure where you going with this. Help me out”. McSweeney: “Okay. Where I’m goin’ with this is we should be running under the Mass General Law. We’re not running under the Mass General Law. The Board of Health is autonomous. We’re not supposed to be lending people out....we’re supposed to be ruling what the Mass Department of Health tells us we should be under solely under an autonomous department”. Trabucco: “So,.... I’m missing something ‘cause I don’t understand what the rub is”. McSweeney: “I think if you read that Judge Dwyer’s....” Trabucco: “What are we trying to accomplish, Gail? That’s what I’m getting at.” McSweeney: “I’m trying to accomplish the fact the Board of Health is a sole identity. That the Board of Health is autonomous. The Board of Health is to run just the Board of Health. We’re not supposed to have other people outside dominate or managing...we shouldn’t be lending out our employees...” Trabucco: “You may think that but you...that’s not correct”. McSweeney: “It is correct. And Judge Dwyer....” Trabucco: “Gail, I’m sorry, but.....” McSweeney interrupted again: “I wish you’d read that”. Trabucco: “Please, Please. Help us out. What are we trying to accomplish? I wanna help you. You have questions..” McSweeney interrupted: “I would like to go forward. I did not ask for a police detail (unintelligible)” Bagni said: “It was not your request. As I told you, that was a request....as a matter of fact, they’re not here. The reason they’re not here, is ‘cause Carol is not here. And she doesn’t want...she doesn’t want to (unintelligible). She wants a police officer present, it is her right. I have...so put that...” McSweeney interrupted Bagni: “Under what, Donna. You still have never told me what I did that warranted that action”. Bagni: “Well, 2012...let’s go back to ‘Free America’. You go read that.

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Relisten to it. Tell me if you still feel the same. So, I'm not going there again. I'm telling you, we have people here, we have a meeting to conduct..." McSweeney cut in: "'Free America'? 'Lawless America'." Bagni: "Thank you. Whatever it's called. Same thing. Dan is here to help the Board move forward. You have questions. You have concerns. We are in two thousand and sixteen. You've just handed me an...I want to make point of reference..." McSweeney interrupted again: "These are the laws". Bagni: "I understand, but you have also passed out to a sitting Board, a confidentialit says in bold letters, underlined, 'not a public document'. Are you allowed..." McSweeney continued interrupting Bagni: "I am and I'm going to tell you I've retained counsel and counsel tells me yes, I can pass this on from one Board member to another". Bagni: "Okay. So, are you putting this Board on notice that you have counsel in order for you to perform your duties as a Board of Health member?" McSweeney: "At this point, Donna, what option do I have?" Bagni: "Your options are let's start talking about things that have to deal with the people of Pembroke. We have tics. We have zika. We have mosquitos....whatever they carry. We have our Public Health Nurses. We could go into a (sic) electric down of our whole system and have people in sweltering heat. That has to deal with the Pembroke Board. We have ponds that we have to deal with. We have variances and septic and people who wanna add on to their property to increase their value. This to me, I don't care about right now. I care about serving the people of Pembroke....ok..." McSweeney interrupted Bagni: "...You gotta serve them by the law". Bagni: "What in God's name are we not doing that is against the law?" McSweeney: "I've been told that our employees (unintelligible) and they are under the guise of the Administrator". Bagni: "Gail, we live in the town of Pembroke that is strapped for money that we have to cut certain things out of our budget....." McSweeney overspoke Bagni: "(unintelligible)". Bagni: "I know, but we do not have the help in this Board, in this building, not to share resources. If I sat as a secretary of this department and I happen to be really really good with the internet and with designing websites, I would be more than happy to throw my hat in and say 'You know what? Let me help work on it. Let me help do this.' It's shared. We are a community. Communities..." McSweeney: "The Board of Health is autonomous. It's not shared". Bagni: "Okay. Why don't you have your counsel get in contact with whoever you would like them to...." McSweeney interrupted Bagni: "And then we'll (unintelligible)". Bagni: "Wonderful". Bagni continued: "Dan, unless you have anything else to add, I would like to basically state that I really don't know if this Board can move forward until a clarification is in fact made with what Mrs. McSweeney's concerns are". McSweeney: "I don't see any reason why the Board can't move forward because to me right now this is a done issue. This is....we don't even need to discuss it until ethics comes back that it's not a concern. It should be brought up in another meeting. This week, Ms. Cullity, Alan Dias was in here and he asked at the beginning of the week to sign me up for the MHOA. It has not been done as of yet. Can you give me an ETA of when that will be done?" Cullity: "I talked to him yesterday..I'm sorry, Friday. So, no and it's not scheduled yet. The MHOA new Board members' conference in November..." McSweeney: "No, I wanna be signed up for the website, I want the information". Cullity: "And no, I saw him late last week. I did not see him at the beginning of the week and I can confirm that if you'd like, with him". Trabucco: "So, Donna, if I could. So, Gail, I hope you don't mind me addressing.....I wanna help you with some of the answers but some of what you're saying keeps falling back to this rabbit hole. I just want to say to you on a personal note, you worked really hard to get elected, you ran for several years in a row. You're here now. I'm not sure why you want to take the opportunity that the voters gave you to go down this rabbit hole that you're going down when you could be here and embrace the position that you fought so hard for. That's what I really hope that you will do". McSweeney:

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"When I first came, my first meeting, within the first ten minutes, I was (unintelligible) restrictions on who I could talk to and how I could contact people. I was never welcomed by the Board and this has continued since. I've had police personnel standing here for me, which is totally ridiculous, that is just if (unintelligible) the secretary is not comfortable with me being on the Board, then she certainly has the right not to be in the office...we tape our recording. For the police personnel, I found it a complete abuse of power and an intimidation factor and I am not going to be intimidated".

Trabucco: "Well, I think it was the opposite....that's what you need to realize. She was intimidated by you...."

McSweeney interrupted: "No, Dan. You have to give me a reason why she was intimidated..."

Trabucco: "Because she was scared to death of you".

McSweeney: "For what reason?"

Trabucco: "That's her own personal business, but, I do understand that".

McSweeney: "But you have to divulge that. I'm an elected official now so if you're gonna tell me an employee is calling in police detail because she's afraid of me...." (unintelligible overtalking).

Bagni asked Cullity if she had the police records. Cullity said she could get them. McSweeney stated she read them and she rebutted them. Bagni: "Well you, so, then again, it's feelings, it's how people...."

McSweeney interrupted Bagni: "No, it's not feelings".

Bagni: "Feelings and it is feelings. It is".

McSweeney: "So it must have been feelings when I went to my shop steward and I asked her why the municipal fee was being ran on a non-union job. That was feelings when she sent Det. Cain to me the next day and then I get a police report and the police report said I went to her house two years prior".

Bagni: "Welcome to two thousand and eight".

McSweeney: "Welcome to two thousand and ten. Two years prior I never went, police never came. You just can arbitrarily write things. The other police report, I was fired. I was not fired. My position was eliminated. There's a big difference between being fired and being eliminated. There were three other false reports in there".

Cullity: "So that's a problem with the police station".

McSweeney: "Lisa, this is of not your concern, this is the Board's issue right now. I would ask you please remain quiet".

Cullity: "I'll leave until you're done That's fine with me. Membership is \$60.00 a member. I have the applications on here, we can print them out if the Board wants to vote. It's \$60.00 a member". (At that point, Cullity left the meeting).

Trabucco: "So, let's get back to my hope is to....I was hoping to answer a lot of the questions that you have here. It doesn't seem like I'm going to be able to do that tonight although I would still like to if I could...."

McSweeney: "Dan, I have no problem going forward. I, myself, am very tired of it. I have waited to get on to the Board of Health and address the Board of Health issues. I really want to know what's going on with our inspections. I wanna know, you know, with our stores. I have several issues. I wanna get on the MHOA so I can get into the conferences. I signed up for my compliance. I am very hard trying to get into that, but I can't get into this when it's, the obvious attention is on me from the very first meeting".

Trabucco: "If you ask me my opinion on that? I'll give you my opinion, frankly".

McSweeney: "You can".

Trabucco: "I think that you came in with a grudge of sour grapes from when you worked here. (McSweeney tried to interrupt) You asked me my opinion and you can rebut that or we can talk about it. So you can call it sour grapes or a grudge, and you wanted, retribution is not the right word, but you wanted to right those perceived wrongs. But, that's not your position as a Board of Health member. You're so much more powerful now than you were then. You should take the authority that you now have, that you fought for three years in a row I believe it was, to get here. You made it...."

McSweeney argued: "Dan, can I tell you why I ran? Because they're not running under the Mass General Laws and they need to".

Trabucco: "You know, you need to think your logic through on that because there's.."

Bagni interjected: "That's a pretty big accusation. A very big accusation".

McSweeney: "There's a lot of substance behind that, Donna".

Bagni: "Okay, that's great".

Trabucco (to McSweeney):

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"Listen, I'm available for....you know I was coming here and I was hoping that this would be straightforward and linear conversation and end up with you folks going back to work like you should. I still hope that that'll happen. So I'm going to chalk this up to, you got me here, you wanted to get a few things off your chest, and confirmed the Board in open meeting, which is great. If you do want to contact me, if you don't have my phone number, I'll give it to you now. My email address, too. We're not Board members together so the open meeting law, but don't give me any information that would...." McSweeney: "I know the restrictions". Bagni thanked Trabucco for coming and it was greatly appreciated. She stated it was a good idea for all if they could "lean into" Mr. Trabucco and if he wouldn't mind reporting back to the Selectmen. Fine echoed Bagni's sentiments. Fine asked Trabucco if he attended the meeting on his own or as a representative of the Board of Selectmen. Trabucco: "I set the meeting up as an individual Selectman, but I spoke to the Chairman of the Board of Selectman and the Town Administrator to let them know that I was here. And they asked that I would represent the entire Board. So, I'm not just here as an individual, I'm here as one member of the Board because there's at least one member, maybe a couple – I can't think of any more than the one, there are some that made some public statements that I didn't think....we were trying to go down the list who would be a better liason. So, that member was out. There's a newer member that doesn't have the history, and there's a couple of other members that they could have done a capable job. (To McSweeney) But, you and I have spoken before, you came to my house when you were running. We spoke about some of your issues. (To the Board) So, I had a better background. Maybe a better disposition for this. So, that's why I came". McSweeney: "I appreciate it, Dan". Trabucco: "I'll give you all the information...." McSweeney: "I'm not here to (unintelligible) the Town. What I'm here to do is to do my job. I know. I worked in this office for three years. I am very very affiliated (sic) with state and government laws. I came from Medicare and had twenty years' experience there. And I know what I know to be a fact, I would like things to run properly. This to me, this past week I decided to reach out to counsel because I just feel that police presence and all the media and everything and the news articles, and then Selectman Boyle on WATD for a full day, has been a little overkill". Trabucco: "I understand but I will say this. I have found that being a public figure, which you are now, you really do need thick skin. I have been beat up for so many things as a Selectman in things that I think are right. So you have to have thick skin. As far as Board members not accepting you, not liking you, I know that as well. But one good thing we have downstairs before Selectmen, we can go toe to toe against each other on one issue, and then the next issue we agree upon. It's the best for the Town". McSweeney: "Yah, and I agree with that. I totally agree with that". Trabucco: "So, I need to get over things, I found. So, hopefully all of you folks find that, too. (to McSweeney) And I'm gonna appeal to you, again, you worked so hard. You made it. You're here. Make the best of it instead of reaching back. If it was something egregious or..." McSweeney interrupts: "It's not so much reaching back, Dan, it's where we are now and being able to move forward. And if we're not moving forward under the guise of the law, then we're not doing our jobs as elected officials". Trabucco: "But, see, I don't understand that 'guise of the law' crap that you're talking about. There's a disconnect from what you're saying and what I'm hearing. Because if it's, one thing that was mentioned before, the trash being run by the Selectmen. That is not going to change. This Board's never gonna have that again.....I'll tell you why. The Board of Selectmen and the Town Administrator and our staff have been doing a damn good job. Five dollars a week to take your trash, your recycling from your curb to the dump. Five dollars a week, which also includes, capping the landfill, which this Board could not do for seventeen years. Board of Selectmen did it in eighteen

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months. So, the Board of Selectmen, not just in this town, the Board of Selectmen in the majority of towns, run the trash, not the Board of Health". Trabucco went on to give kudos to Mike Valenti, manager of the Pembroke recycling center. He continued that he understands there are old wounds to heal but not to let them get in the way of the business at hand. McSweeney: "I don't want to call them wounds. They're not wounds. The law is not a wound. The law is established and I'm a staunch believer of what the law reads". Trabucco: "Okay. What law, for what reason, what purpose. What are we looking into? Be specific". McSweeney: "Okay. I gave you a piece of paper over there, Judge Dwyer. And if you read the two paragraphs that I gave you, they specifically state (unintelligible). Now, I have been told that our employees are under Ed". Trabucco: "Why can't Ed run the people during the day? I don't understand. What are you gonna do? You're here on Monday nights. How are you gonna run the people? What's your purpose? What's the purpose of it? I don't get it". McSweeney: "The purpose of it is that the Board is not intended to be ran (sic) that way". Trabucco said he doesn't get it. McSweeney: "They did it for, Mr. Leary did it for eighteen years". Trabucco: "Was he full-time?" McSweeney: "Yes he was". Trabucco: "Was he the Health Agent or....." Bagni: "The Health Agent is paid to be here, forty hours a week. We're not paid to do this. Mr. Leary was a Health Agent. Was here. Took care of the Board of Health, correct? Then Mr. Leary went away. Okay? So now, the documentation, the Board of Health, transferred that responsibility to the Town Administrator, who's here, forty plus hours a week". McSweeney: "(unintelligible) the existing Board of Health agent was doing prior, why would our Board of Health agent, not, our new Board of Health agent not take over those same responsibilities?" Bagni: "I'm sorry, ask that question again?" McSweeney: "For some reason I think I'm confused". Bagni: "You have totally confused me. Fred Leary, you said Fred Leary, correct?, runs, ran the Board of Health". McSweeney: "He was the Health Agent for eighteen years". Bagni: "And ran the Board of Health". McSweeney: "No, he did the job of the Health Agent for eighteen years and it's significantly changed". Bagni: "In eighteen years, we've all significantly changed". McSweeney: "Donna, that's the period of time that he worked here. He got laid off. He was fired in 2011". Trabucco: "Whoa. Time out. Time out. Time out. You, you of all people know that that did not happen. That's not the way it happened". McSweeney: "That Mr. Leary was terminated?" Trabucco: "You know, you were here long enough to know that that's how it happened and ended is incorrect. Don't look at me like you're shocked!" McSweeney: "No. I need you to tell me what you're talking about". Trabucco: "You need to get more information because you're going on some false information". McSweeney: "What's the false information?" Trabucco: "We could talk off-air. But if that's what you believe happened, you are really against, raging against the machine for nothing because that is not what happened". McSweeney: "Mr. Leary was not terminated". Trabucco: "I will talk to you out there". Bagni thanked Mr. Trabucco and moved the meeting to the next item on the agenda.

595 Washington Street – Brian Sealund. Request for after-the-fact variance of deck to field at a new condominium project. Sealund said they could not find any regulation regarding the setback from sono tubes. Sono tubes for supporting decks should be 10' from infiltration system. Those on the plan are only about 2'. Cullity feels that because it is a condo and no changes can be made by any unit, there is no problem with the 2'. Original plan had smaller decks; actual decks are larger and closer to the field. Variance: to allow the sono tubes to remain at 2' from infiltration system instead of 10'. Bagni moves to allow a variance for the 2' separation to the field; McSweeney seconded. No one opposed. All in favor.

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Ben Bastianelli, DPW Commissioner – Drainage Commission. Bastianelli explained the purpose of the Drainage Commission: street runoff, river runoff, any water source of runoff, construction, temporary construction runoff, street drains, street sweeping – all fall into the category of drainage. The State has rules and regulations regarding drainage. The Commission keeps the DPW up-to-date on those rules.

187 Schoosett Street – Variance request as follows: A reduction in the required setback cellar wall to SAS from the required 20' to 15'. Cullity explained what the variance means and that there also be a membrane in place. Fine moved to accept the variance as written; McSweeney seconded. All in favor.

593 Washington Street – Units 7-12 - deck to setback. Variance as follows: A reduction from the required 10' between a permanent structure and the leaching system to 1'. Cullity stated this is the same request as 595 Washington Street; the 2 parcels are connected.

187 Fairwood Drive – Sieve analysis variance as follows: to allow the use of sieve analysis in place of percolation test due to high water. Cullity explained the topography of the property. McSweeney moved to accept the variance; Bagni seconded. All in favor.

Bagni explained to the Board the timeline and procedure for the hiring of the new Board of Health Secretary in September 2016. She explained that a screening committee consisting of the Town Administrator, Board of Health Chairman and the Health Agent would narrow down the applicants. Fine commented and questioned the applicant screening process. McSweeney stated she was hired as Clerk in a little different manner. Bagni stated that that was the way it used to be done; this is the way they're doing it now. Bagni suggested she could speak with the Town Administrator, Ed Thorne, or the Administrative Assistant, Sabrina Chilcott, for further information. Bagni stated that she has requested that the 3-member Board interview the applicants that have gone through the screening process. Fine asked about how many candidates will the Board be interviewing; Bagni said probably between 3 and 5.

Discussions:

- Medical marijuana dispensary –Green Harbors Dispensary requested letters of non-opposition from the Board of Selectmen. As per an email sent by the Board of Selectmen's office: The request was denied by the BOS; the company was not licensed by the State of Massachusetts.
- Dog bite – Fine attended the Board of Selectmen meeting where the issue of the dog bite was discussed. Fine said that a non-Pembroke resident brought his dog to a relative in Pembroke on a regular basis. That dog bit another dog and Fine thought a human was also bitten. Cullity explained that the dog was licensed in Carver; therefore there was very little, if any, jurisdiction from the Board of Health. Cullity said the only reason she was involved was ensure the dog was vaccinated; he was. Town Administrator Ed Thorne, Admin. Asst. Sabrina Chilcott, Dog Officer, Bill Hart and Cullity met with the parties involved. The owners

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agreed the dog would not be returning to Pembroke. McSweeney asked where the incident occurred and was told Gurney Street.

- Mosquitos – Cullity stated that Pembroke remains in the low status regarding an EEE finding in Massachusetts.
- Ticks – Bagni handed an article from the Patriot Ledger concerning Lyme disease and Phaswana virus.

Bagni said the next meeting will be on August 8, 2016. McSweeney stated it was her husband's birthday and they would be away and requested another date for the meeting. Fine asked if she could *"potentially phone in"*. McSweeney: *"Potentially phone in?"* and laughed. Fine then stated that usually they don't change the dates of the meetings to try to stay consistent. Bagni stated they cancelled the last time because that was a vote the Board made. There was a brief discussion of an agenda item for the August 8 meeting regarding Wind River and their service to a resident. McSweeney then said, *"I can phone in. I'm gonna be up in Lake Winnepesaukee. But I need to get to an area that my phone works"* (laughs). Fine said, *"I think we should stay with the eighth. I think with my time on the Board we haven't moved too many meetings. I think we should be consistent"*. Bagni said to McSweeney that if she can phone in, they will start right at 6:30 p.m. Bagni invited the Board members to contact her with any agenda items they may wish to discuss. She then requested a motion to adjourn.

McSweeney motioned to adjourn at 8:02 p.m., Fine seconded. All in favor.

Donna Bagni
Chair