

**TOWN OF LAKEVILLE  
SELECTMEN'S MEETING MINUTES  
Monday, April 26, 2010  
7:00 PM**

On April 26, 2010, the Board of Selectmen held a meeting at 7:00 PM at the Town Office Building in Lakeville. The meeting was called to order by Chair Yeatts at 7:03 PM. Selectmen present were: Selectman Yeatts, Selectman Olivier and Selectman Maksy. Also present were: Rita Garbitt, Town Administrator, Tracie Craig, Executive Assistant and Christine Weston, Recording Secretary.

**7:00 PM Orrall Earth Removal Permit Hearing-continued**

Upon a motion made by Selectman Maksy, seconded by Selectman Olivier, it was:

VOTED: To open the Earth Removal Permit Hearing for Emery Orrall for the property located at 150 Rhode Island Road, that was continued from April 12, 2010.  
Unanimous in favor.

Selectman Olivier noted that one of the things that was mentioned before was that the Tax Collector did not sign off on the application, and that has still not been done. There is not a paved road shown and the dirt road looks about six (6) inches lower. Chair Yeatts stated that they plan on paving the road and bringing the elevation up. Selectman Olivier asked if the Superintendent of Streets will look at the tracking pad. Chair Yeatts stated that is an old front page on the plans. Mr. Orrall will be providing a 50' paved driveway and will sweep any debris that collects on the driveway. When the permit is actually issued, this is one of the conditions that can be put in place. Selectman Olivier asked about the designation of Crooked Lane being a scenic road. Ms. Garbitt stated that she would ask the Historical Commission for a recommendation since it is a scenic road.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To continue the Orrall Earth Removal Permit until May 10, 2010 at 7:15 PM.  
Unanimous in favor.

**7:30 PM Revisit request for hours extension – Back Nine Club**

*Joe Klein, Manager of The Back Nine Club, was present for the discussion.* Chair Yeatts said The Back Nine Club was not legally required to notify abutters regarding their change of hours request. However, the Board had requested that the applicant notify abutters. Since there are abutters present this evening, it appears the notifications were sent out. The Board asked if any complaints had been received. Ms. Craig stated she has not received any written complaints from neighbors. Adele and Ken Nanfelt did send in a letter regarding noise from the Sailor's Tower but that is not a problem with the Back Nine Club. Chair Yeatts read the letter into the record from the Nanfelts. Mr. Klein presented some emails that he had received. He sent out about 50-60 letters to the abutters and received a few calls back. He has had nothing but positive

feedback, with the exception of one (1) response. He is asking to increase the hours to add incremental sales to further the business. He has received a lot of good comments about how the business is being operated. Selectman Maksy asked if this is just for Thursday, Friday and Saturday nights. Mr. Klein responded yes. William Glass of 1 Tewalema Place asked if they will do anything to try and restrict the amount of noise out on the deck since in the summer they drink and talk loudly on the deck and wonders if they will curtail that after 9:00 or 10:00 PM. Mr. Klein responded that he can see that being an issue. The deck could be closed at 10:00 PM. We do not have music that plays outside. The only people outside are really people having cigarettes. Selectman Maksy asked if the smoking bothered the neighbor. The neighbor responded that it did not.

Karen Lynch of 6 Assawompsett Court stated that she is a good customer of Back Nine, but is anxious about the plans and has heard rumors about music being played and dj's. She would like to know specifically why the Club is requesting the hours so that the neighbors know and what the hours are now. Chair Yeatts stated that the hours now are Monday through Saturday 8:00 AM to 10:00 PM and 11:00 AM to 11:00 PM on Sundays. Mr. Klein explained that there is no intention of having live bands or music during the extended hours. Chair Yeatts stated that he would need a license for that from the Board. Mr. Klein stated that he has had requests from clients to stay open. We are not trying to infringe on the business that we already have. We don't want customers to have to leave our place and then drive somewhere else to have a bite to eat or a drink because we are closing. We will keep the kitchen open for people to receive food until 11:00 PM. It is only open until 9:00 PM now. This makes sense for business. Ms. Lynch said she enjoys Back Nine. She goes there all the time, but with those hours, she cannot see people like herself being there at that time. She has a concern that it will be younger people coming to get a drink. She thinks 11:00 PM for a golf club is late enough. You are encouraging young adults to visit your establishment. We are concerned about their driving, as well as, the integrity of our own neighborhood.

Bill Hogan of 21 Heritage Hill Drive said he was opposed. Lakeville Country Club and Poquoy Brook both have 1:00 AM licenses. However, they very seldom serve drinks after 9:30 PM. A 1:00 AM license does not encourage late dining, it encourages late drinking. Lakeville Country Club is ¼ mile from a residential street to the club house. Poquoy Brook is ¼ mile from a residential street. The Back Nine Clubhouse is only 94' from a residential area so the noise factor will be a detriment to the neighborhood. He requested that the Board not allow the neighborhood to become a place for late night drinking. Jim Whalen of 32 Heritage Hill said the business is a good thing, but he did not think the extension of hours enhances what has been created. You are not going to get golfers there looking for meals or drinks at that time. The crowd changes at the later hour. The patrons will not be leaving at that time; it will be 1:30 or 2:00 AM that they will leave and we are already hearing the cars. An extension of the hours will only increase the potential for that type of behavior with cars in a residential neighborhood. He knows Mr. Klein would do everything that he can to control and monitor behavior, but how would you monitor their behavior when you get to a point of them drinking and then getting into a car. This will be a public endangerment. Selectman Maksy asked if there had been any complaints from other golf clubs. Ms. Craig responded that the Town has not received any other complaints. Selectman Maksy explained that the Board allowed those hours for the golf clubs since it was part of the norm, and what they asked for originally.

Mr. Klein stated that he did not know if 12:00 AM would make more sense. The extension of the license is also contingent on keeping the kitchen open a little bit later. We have been putting out food up to 9:45 PM since people have been coming in later. Chair Yeatts stated that she thinks that people do go out later now, and it is not like a regular restaurant since it is relaxing, and one is able to sit and talk. However, perhaps 1:00 AM might be too late. Sherry Barron of 6 Sassamon Circle said she did not receive the abutters' letter. Chair Yeatts stated that Mr. Klein sent out notices to abutters 300' from the clubhouse. Ms. Barron said she thought that there were quite a few people who did not get a letter. Bruce Malenfont of 17 Old Powder House Road said they did not receive a letter, however, he is a supporter of the club. Mr. Klein stated that he sent out letters to the exact same amount of people that the Assessors gave him on the list. Terri Malenfant of 17 Old Powder House Road said she was concerned about the kitchen hours and also about karaoke going on up there on Thursday nights. Jim Laham of 4 Sassamon Circle said he would also like to say that Mr. Klein has done a great job with the Club but he had some concerns. We have seen more traffic and we are on a cul-de-sac and that gets into safety concerns at the late night hours as people get lost. We also were not notified by letter, but we did receive an email. We endorsed the club last year when they were taking it over, but he thought that this becomes a safety problem for the neighborhood at that late hour. Chair Yeatts stated that Mr. Klein was not under any legal mandate to notify anyone. The Selectmen asked that he do this. There may have been a misunderstanding between the clubhouse and the property lines for footage, but he did reach out. He is trying to reach a balance of a successful business, and he is trying to keep business getting better. He would like to see a compromise.

Selectman Olivier stated that he liked the fact that Mr. Klein would close off the deck for noise. He thought they should be allowed to increase the business since we have had issues with the club being vacant in the past. We know you are making a great go of it. 1:00 AM may be pushing it, but 12:00 AM may be a better time with keeping the kitchen open a little bit later. He did not think it is a safety issue any more than what it is right now. One (1) or two (2) hours will not increase the safety issue. He would be in favor of increasing the hours a little. Perhaps some additional signage to direct people to The Back Nine Club. Mr. Laham said he is not suggesting more signage for the neighborhood. It is the issue of driving through the neighborhood. The Sunday hours are 11:00 AM to 11:00 PM and the other days it is 8:00 AM to 10:00 PM. What is the rationale for 11:00 AM to 11:00 PM on Sunday? Mr. Klein stated that is what they were approved for when he first came into the job himself. Mr. Laham said why don't you put a cap on it for 11:00 PM. He did not see a need to go beyond that. Mr. Klein stated that the kitchen will close at 11:00 PM. Ms. Lynch said in regard to the kitchen, will it be a limited menu that will be offered at that time, a full dinner or just chicken wings. She did not see extending the kitchen an hour as a benefit. You really need to put yourself in our place. As adults you will not be going out for your dinner at that hour. This club is in the middle of a neighborhood. Ask yourself, if this were my neighborhood would I want that in my neighborhood. As far as the signs, she did not want little signs all through my neighborhood pointing to The Back Nine Club. There is a big sign on Highland Road right now. It is my neighborhood first and The Back Nine Club second. Mr. Klein responded he is planning pizza and sandwiches. The main entrees would be taken off at 10:00 PM and a limited menu till 11:00 PM. Ms. Garbitt stated that the license for Heritage Hill Golf Club had hours of 8:00 AM to 1:00 AM, last call was 12:45 AM.

Janet Whalen of 32 Heritage Hill Drive asked when did the golf club become not a golf club. It is not a bar. We moved in there for a golf club, but not the extension of hours and people speeding down the road. Who knows what can happen after they have had six (6) or seven (7) drinks. 11:00 AM to 11:00 PM is enough time to serve alcohol. Chair Yeatts stated that any decision that we make here tonight is appealable to the ABCC. They would take into account previous licenses and existing licenses. Ms. Craig stated that all the Common Victualler licenses that the Town has issued currently close at 1:00 AM. The ABCC could consider that this license is being unduly penalized. Pat Laham of 4 Sassamon Circle said they may have a license to 1:00 AM, but very few actually stay open those hours. Mr. Klein said he is more than willing to compromise. He is not trying to create a rift. He has not received negative calls or emails, and he did not think they had any legal issues with people speeding. My employees are all TIP certified, and we try to run a tight ship. Maybe 1:00 AM is too late, but we are a public place, not private. We are a restaurant and a golf club. He thinks they can do both and with a little bit of an extension of hours, we can make it a little better.

Ms. Craig stated that in order for Mr. Klein to not serve alcohol on the deck, he would have to apply for an Alteration of Premises. Selectman Olivier suggested that the deck be closed for alcoholic beverages at 10:00 PM. A resident spoke about the few people that do go outside to smoke and the noise travels at that time of the night. Selectman Maksy stated that right now the Board is saying that the only people that will be on the deck after 10:00 PM will be the smokers. They cannot be served there or bring their drinks onto the deck. Chair Yeatts stated that the Board is trying to come to some sort of a compromise. She was concerned that a 10:00 PM closing is something that could very easily be overturned by the ABCC. Phil Lynch of 6 Assawompset Court asked why can't the Board extend the hours until 11:00 PM and see how that goes. If there are no problems, then perhaps revisit it and go to midnight perhaps in three (3) months. Selectman Olivier stated that the Board can try midnight by the same token and see how that works out. The other clubs have closing times at 1:00 AM. Mr. Klein is here in good faith and willing to compromise and willing to address the concerns the neighbors already have. Selectman Maksy stated that he has tried to go to the club some nights after a meeting and it is already closed. Selectman Olivier stated that he is a person that works late on Saturday sometimes and likes to eat late, and there are not too many places that are open for dinner at that time. Selectman Maksy suggested a 12:00 AM closing. Chair Yeatts said how about 11:45 PM for last call and then all out at 12:00 AM. Mr. Laham added and serving on the deck is to stop at 10:00 PM. Selectman Olivier stated that there is no alcohol or food after 10:00 PM on the deck, only smoking is allowed.

Upon a motion made by Selectman Olivier; seconded by Selectman Maksy it was:

VOTED: To extend the hours at The Back Nine Club until 11:45 PM for last call with all customers out by 12:00 AM on Thursday, Friday and Saturday nights. The deck and downstairs patio will be closed at 10:00 PM for the serving of drinks on a nightly basis.  
Unanimous in favor.

### **Revisit Proposed Bylaw changes – M/L Herring Fisheries Commission**

*Ronald Burgess, Secretary of the Middleborough/Lakeville Herring Fisheries Commission, was present for the discussion.* Chair Yeatts stated that she was concerned since the Board was asked to approve by-laws that had changes in them without being advised of what the changes were. Ms. Craig went back and did a very good job of showing where the changes were. The one that was of most concern to her was under C-b#4. Why was this change made? Mr. Burgess responded that it is ambiguous. Lakeville and Middleborough residents can be volunteers, and it gives the numbers from each Town, two (2) from Lakeville and five (5) from Middleborough. We were really trying to make the by-laws clearer. Selectman Maksy asked if the wardens are to be selected from an available list of volunteers. Mr. Burgess stated that there is a list of people available that have been serving as volunteers. Selectman Maksy asked who picks the wardens. Chair Yeatts responded that it is the Board of Selectmen. Selectman Maksy stated that it does not say that. It says you are appointing them. Mr. Burgess stated that the Fisheries Commission selects them and then the Boards appoint them. Tom Barron of 6 Sassamon Circle said that after volunteering, if there is a vacancy for a warden, then you request to be appointed as a warden. If the committee chooses you then it goes to the Board of Selectmen to appoint. Mr. Burgess stated that the Board of Selectmen in both Towns have the ability to do this, and they have the right to put that they either approve or disapprove the person as warden. That has been on going since we were initially formed. Multiple candidates for wardens have never been a problem. There are only about 13-14 people that are doing all the work that needs to be done.

Chair Yeatts asked about #4 on the first page about administering funds. Mr. Burgess stated that Middleborough has custody over the account. That is why it says Middleborough Board of Selectmen. We have no funding anymore. Originally it was from permits that were sold for the fishing of the herring. The herring fishing moratorium is in effect until 2012. If we are able to start selling permits again, then we would make money. If someone donates money, it would have to go into a separate account, not the revolving account, since that is for the permits. The earlier Board of Selectmen in Lakeville had voted that Lakeville did not want to be involved in the money part. There was a joint account at one time. Whereas all of the structures that have to do with the herring are in Middleborough, so that is where the money is expended. All discussions about funds have been with the Middleborough Board of Selectmen. That is why we are looking to change it to Middleborough. Chair Yeatts stated that there are always grants available and by keeping both Towns together, you have more chances of funding with grants. Chair Yeatts said regarding establishing rules and regulations, subject to approval by the Middleborough Board of Selectmen, which should still include Lakeville. Selectman Maksy suggested to also keep Middleborough and Lakeville still on as the administrator of funds. So that it can go to either one. Selectman Olivier stated that he has a comment about the last page about the E-Conduct of the Commission #1. Selectman Maksy suggested to change that to alleged. The Board will forward their revisions to the Commission for them to consider.

### **Revisit Invitation to participate in 100<sup>th</sup> Anniversary of Pilgrim Monument**

This item will be discussed at the next meeting since the Historical Commission has not yet met to discuss this.

### **Revisit ZBA petition – Kenn-6 Lakeside Avenue**

Chair Yeatts stated that the Building Commissioner has stated that this petition needs a Special Permit since he is interpreting 6.1.3 from the last sentence, “shall be exempt from the above special permit except when a violation of the bylaw is believed to have existed”. Selectman Maksy stated that he called the Building Commissioner to ask him what he was missing on this. Residential lots of 20,000 square feet or more may be exempt, except when there is a violation? This is not a violation; this is a pre-existing, non conforming lot. He feels that they are grandfathered in. Selectman Maksy stated that his concern is that the Building Commissioner is interpreting this wrong. This by-law does need to be rewritten. Chair Yeatts stated that this needs to be put on the list of the things we need to do. Selectman Maksy stated that the Board needs to discuss this with the Building Commissioner since we may be setting ourselves up for a lawsuit if we charge them \$450 to get a variance. Chair Yeatts stated that she would like to know how the Zoning Board acts on these. Chair Yeatts stated that the Board had no comment at this time regarding this petition.

### **Meet with Marcus Baptiste regarding Town drainage easement-102 Precinct St.**

*Marcus Baptiste and Chris Peck, Superintendent of Streets, were present for the discussion.* Mr. Peck said that the Town needs an easement on Mr. Baptiste’s property for drainage. The alternatives are taking the easement by Eminent Domain or having Mr. Baptiste go before the Zoning Board of Appeals (ZBA) for a variance. Chair Yeatts asked if Mr. Baptiste was looking for a recommendation for a variance. Mr. Baptiste responded that he is asking that the Board recommend going before the ZBA and that would keep the lot conforming. Mr. Peck stated that he needs the easement so that the Town will be able to get on that property legally to address drainage issues. Mr. Baptiste stated that this area is a naturally draining vegetation area. There was no standing water there after all the rain we had. However, with the repaving of Precinct Street, there will be more water flowing off Precinct Street. Ms. Garbitt said that Town Counsel said a variance would be needed. Selectman Maksy stated that a variance allows that you are giving back. He thinks this would be a Special Permit since it will be made a non conforming lot. Anytime the owner wants to put an addition, they will have to amend the Special Permit. It would be better taking it by Eminent Domain. Ms. Garbitt stated that she did not think that there would be time to hold public hearings and have this done in time to be voted on at Town Meeting for an Eminent Domain taking. Mr. Baptiste stated that he would like to get this resolved so that when he shows the property, he can make prospective buyers aware. Mr. Peck stated that he is mostly concerned of a repeat of what we have at 113 Precinct Street, which is under six (6) feet of water. Ms. Garbitt stated that Eminent Domain does take a while. Ms. Garbitt will call Town Counsel and have this on the next agenda.

Mr. Peck then gave an update on the water mains. The contractor is now working on Water Street. They have the hydrants in on Precinct Street and they still need to do the services. So we will have to close the street again. They cannot do the section on Bedford Street until the water level of the pond goes down.

### **Discuss Postponing the Special Town Meeting and the Annual Town Meeting**

Chair Yeatts stated that the Board has some things coming up that need to be addressed at Town Meeting, so that is why the delay is needed. Ms. Garbitt stated that the new date has been confirmed with Town Counsel and the Town Moderator and the auditorium is available. Chair Yeatts stated that the problem might be with warrant review. The week before is Memorial Day, so we might have to meet on a Tuesday. It was decided to hold warrant review on Tuesday, June 1<sup>st</sup> at 6:30 PM.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To postpone the Special Town Meeting until June 7, 2010 at 6:30 PM at the Apponequet High School Auditorium.  
Unanimous in favor.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To postpone the Annual Town Meeting until June 7, 2010 at 7:00 PM at the Apponequet High School Auditorium.  
Unanimous in favor.

### **Review and Vote to Renew Lease Agreement for the Lakeville Martial Arts Club at the Ted Williams Camp**

Ms. Garbitt stated that John Mirando always maintained the restrooms in the commissary for any function. He also does maintenance on his own outside, like the plantings. The Town has a current Certificate of Insurance.

Upon a motion made by Selectman Olivier; seconded by Selectman Maksy it was:

VOTED: To renew the Lease Agreement for the Lakeville Martial Arts Club at the Ted Williams Camp for two (2) years.  
Unanimous in favor.

### **Discuss the May 8, 2010 Meeting with Residents regarding the Flooding**

Chair Yeatts stated that the meeting is on a Saturday. She has already attended meetings at Clark Shores and Huckleberry Shores. There are a lot of questions from people, so we are going to having one (1) public meeting on a Saturday with the Building Commissioner, Conservation members, FEMA, Board of Health, Plumbing Inspector, Superintendent of Streets, Fire Chief, Police Chief, and Bill Gray from the Environmental Police. People are allowed to put boats in on the pond right now, but they need to keep the wakes down. The boat ramp is not open. That way everyone will be answering questions in front of each other. We would like to get cable there also. People need to know that if their house is tagged, what they need to do. She has invited Representative Canessa, Representative Quinn and Senator Menard to attend as well.

Ms. Garbitt said we did have good news that Plymouth County was approved by FEMA as a Disaster Area. We received more information today about the declaration of the disaster. The Town Accountant will have a meeting now that it has been officially approved so that all the Departments know how to fill out the worksheets for reimbursement. She will distribute this information to all the Department Heads. Selectman Olivier asked if net lost revenue can be requested as well. Ms. Garbitt stated that that is not known right now. Chair Yeatts stated that Analytical Balance called and stated that they cannot honor the price for residents for the well testing. That price was if the Town was paying for the testing. The price for residents is \$255 and an additional \$50 if Analytical Balance goes out and takes the sample themselves.

#### **Request for Reappointment as Constable – Danielle Elliot**

This is tabled, pending receipt of the bond.

#### **Request for One Day All Alcohol Liquor License – Mitchell Memorial Club**

Chair Yeatts said the Board had received an application from the Mitchell Memorial Club for a One-Day All Alcohol Liquor License at the Ted Williams Camp.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve a One-Day All Alcohol Liquor License for the Mitchell Memorial Club from 12:00 PM to 5:00 PM for their Annual Chicken Barbeque on July 18, 2010.

Unanimous in favor.

#### **Request to use Town House – Sampson Cemetery – May 5, 2010**

Selectman Olivier asked about the word “intentional” in the application. Ms. Garbitt will ask Town Counsel about that.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve the use of the Town House on May 5, 2010 from 7:00 PM to 8:30 PM by the Sampson Cemetery Association.

Unanimous in favor.

#### **Request to use Town Office Building Parking Lot – Lakeville Cub Scouts Pack 14 – May 8, 2010**

Chair Yeatts read the request from Lakeville Cub Scouts Pack 14 to use the Town Office Building Parking Lot for a car wash.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:



VOTED: To approve the use of the Town Office Building Parking Lot for a car wash by Lakeville Cub Scouts Pack 14 on May 8, 2010 from 9:00 AM to 12:00 PM.  
Unanimous in favor.

### **Request for Sign – Tuesday Club of Assonet**

Chair Yeatts read the letter from the Tuesday Club of Assonet requesting signs advertising their event. In the past, the Board has approved a sign at the Precinct Street and Pickens Street intersection.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To approve the sign for the Tuesday Club of Assonet at the intersection of Precinct and Pickens Streets with the same conditions for their Annual Strawberry Festival on June 20, 2010.  
Unanimous in favor.

### **Any other business that may properly come before the meeting**

Chair Yeatts stated that Brad Bates did not run for re-election for the Cemetery Commission this year. Ken Upham, Chairman of the Cemetery Commission, requested that we send him a thank you note for his years of service.

Upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To send Brad Bates a thank you note for his years of service on the Cemetery Commission.  
Unanimous in favor.

### **Other Items**

1. Notice from the Board of Health regarding Appointments of Assistant Board of Health Agents
2. Memo from Board of Health regarding Board Reorganization
3. Letter from Department of Revenue regarding Deficit Spending in regards to Flood Expenses  
Chair Yeatts stated that the Town was approved for deficit spending.
4. Notice from PERAC regarding limits on Massachusetts public employment for Massachusetts public retirees and a post-retirement earnings worksheet
5. Meeting Notice – SRPEDD Commission – April 28, 2010
6. Reminder notice of Regional Sustainability Conference – April 27, 2010  
Ms. Garbitt will try to attend.
7. Notice from DEP regarding Sustainable Materials Recovery Program
8. Notice of Public Hearing – NSTAR
9. Notice of Public Hearing—Bay State Gas Company
10. Letter from Comcast regarding Ascertainment Hearing Transcript for March 8, 2010

11. Memo from Library Director regarding Reorganization of Library Trustees

**Adjournment**

At 9:20 PM, upon a motion made by Selectman Maksy; seconded by Selectman Olivier it was:

VOTED: To enter into Executive Session to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the government's bargaining or litigating position and not return to Open Session. Also, to conduct strategy sessions in preparation for negotiations with non-union personnel; and to actually conduct collective bargaining and contract negotiations with non-union personnel; and to consider the purchase, exchange, taking, lease, or value of real property if such discussion may have a detrimental effect on the negotiation position of the governmental body. Specifically, the Board will discuss the Fire and Police Collective Bargaining Agreements, negotiations with non-union personnel and the TIF Proposals submitted by Sysco.  
Polled vote of Selectman Maksy – aye, Selectman Olivier - aye and Selectman Yeatts – aye.