

**SELECTMEN'S MEETING**  
**Monday, June 9, 2008**

On June 9, 2008, 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 Chairman Evirs at 7:00 PM. Selectmen present were: Selectman Evirs, Selectman Maksy and Selectman Yeatts. Also present were: Rita Garbitt, Town Administrator, Tracie Craig, Executive Assistant and Christine Weston, Recording Secretary.

**7:00 PM Discussion regarding Zoning Board of Appeals (ZBA) petition process**

*Jennifer Turcotte, Chairman of the Board of Health and William Garvey, Board of Health member, Donald Foster, Zoning Board of Appeals Chairman, and Robert Iafrate, Building Commissioner, were present for the discussion.*

Chairman Evirs explained that a letter was sent from Mr. Garvey to the Selectmen regarding the ZBA application process. His letter stated that he felt there needed to be some changes to the process in order to eliminate some problems that seem to crop up. Some applicants go directly to the ZBA without seeing the Building Commissioner first. Right now, the Town Clerk has to receive the petition, but if she does not have a checklist, she cannot direct the applicant as to what office they need to visit or if their petition is complete. The clock starts ticking, due to the date stamp, and it has to be acted upon.

Mr. Garvey suggested that a form be prepared like Mr. Iafrate has for his building permit applications. It is a sign off sheet with all the necessary Department sign off prior to anything being submitted back to him. This form would have the applicant receiving sign offs by the Planning Board, the Board of Health, and the Conservation Commission prior to going before the ZBA. Chairman Evirs noted that the ZBA has the ability to hear the decisions of some of the Boards. Mr. Iafrate noted that the petition asks for Board of Health approval on lots of 20,000 square feet or less, but that is only for a demolition of an existing structure.

Mr. Foster stated that the ZBA gets four (4) types of applications: Special Permits, Variances, Appeals of the Building Commissioner's Decision and Comprehensive Permits. These applications do not all need to go before all the Boards in town. The people that shepherd the Comprehensive Permit process through the Town seem to know what they are doing. Mr. Foster stated that the Special Permit and the Variance Waivers are the two (2) important ones. The applicant needs better directions on what is required in the application. In years past, the ZBA has articulated this problem with Town Counsel and she said to start denying the applications if they are incomplete, but the ZBA did not adopt that posture. People are innocent and naïve, and the ZBA wants to do the right thing by them. Chairman Evirs mentioned that the application could say that if the applicant does not follow the application instructions, then it will be denied or considered incomplete. Mr. Foster stated that they did have a case that someone did not do what they were told to do, and the ZBA denied the petition and it went to court etc. Mr. Garvey is correct about the need for a better process, but the Boards cannot place the burden on the Town Clerk. Chairman Evirs agreed. The Town Clerk has to accept the application, by law, even if it is incomplete. She has to receive it, and then it starts the clock with the hearing

process. One can almost hear Town Counsel saying to deny it, but it is an expensive way to learn the process. Mr. Foster stated that it has never been the ZBA's posture to do this, even though some are difficult. The applicant pays a lot of money to process the petition, and the ZBA wants to work with them.

Ms. Turcotte stated that there are applicants that do not hire expensive attorneys and engineers and they are not familiar with the process, so they try to do it themselves. Chairman Evirs agreed. They think they should go before the ZBA first. Mr. Foster noted that they have it backwards; they should do all the free things first. Chairman Evirs mentioned that they need to see if they can get a septic system. Ms. Turcotte stated that the Board of Health usually sends the ZBA a letter saying that they have no basis to recommend denial or approval of the petition since it is incomplete. They do not have the information they require to make a decision. Ms. Craig stated that we need to stop the incomplete applications from getting into the system. Once they are accepted, they are copied and distributed, even if incomplete and the Boards will not be able to make a recommendation. Chairman Evirs suggested that the applicant pick up the application in the Building Commissioner's Office instead of the Town Clerk's Office. Then Mr. Iafrate can have some discussion on what it is about and that will start the ball rolling in the proper spot. The petitioner should start there. Ms. Turcotte asked how the Town could stop accepting the incomplete applications. Chairman Evirs responded that the Town cannot, but if the applicant picked up the petition in Mr. Iafrate's office, then he can help educate the applicant on what they need to do.

Mr. Iafrate stated that even if they pick it up in his office, it will eventually go to the Town Clerk's office. He added that when he writes denial letters, it spells out whether they need a Special Permit or a Variance and that has been a good starting point. The Board of Health can let the Building Commissioner know what circumstances they will need to have a sign off or want to sign off, like if the applicant needs a Title V inspection, etc. Miss Turcotte stated that the Board of Health would like to see the smaller lots with additions or with bedrooms, which may increase the nitrogen load. Mr. Iafrate asked where the 17 copies go that are turned in by the applicant. Mr. Foster responded that the ZBA gets eight (8) copies and the rest go to the Building Commissioner, Conservation Commission, Board of Health, the Police Department, the Fire Department and the Board of Selectmen. Ms. Turcotte asked why isn't the copying the responsibility of the applicant? Chairman Evirs responded that it is supposed to be. Ms. Craig noted that the copying is done by the applicant.

Mr. Foster suggested on a trial basis, have the application process start with Mr. Iafrate, then, have a sign off sheet and see if that will meet the needs for all. The applicant will do a little ground work. Chairman Evirs stated that he is most concerned about the Board of Health aspect. Ms. Turcotte stated that the applicant has to go before the various Boards for what they have jurisdiction over and it cannot be done in one shot. Chairman Evirs stated that it should be done as part of the petitioning process. The Board of Selectmen should not see the application prior to it being submitted. The turning point is the Board of Health. Selectman Yeatts noted that there are a lot of non-conforming lots in the shorefront communities, so it is definitely a Conservation Commission issue. Mr. Foster stated that he did not think the ZBA has ever refused an application based on Conservation Commission issues. The ZBA will send the applicant back to the Conservation Commission to work out any problems. Chairman Evirs stated that if the

applicant cannot put in a proper septic system, then they should not be putting a system in at all. Mr. Foster stated that the applicant should go to the Board of Health and ask if it makes sense and if it could be done. Chairman Evirs stated that by starting at the Building Commissioner's Office, he could send the applicant to the Board of Health or where they need to go since he has reviewed the application with them. Then they would go back and see the Building Commissioner, before they file the application with the Town Clerk. Selectman Maksy stated that Mr. Iafrate should do the checklist, since he is looking at all the paths the applicant has to go through/to. Mr. Foster suggested that the ZBA come up with a checklist and then put its thumb print on it.

Selectman Yeatts asked if there a safeguard so that the applicant is not showing different sets of plans to different Boards. Everyone needs to make sure that they are all looking at the same set of plans. Mr. Foster mentioned that there is another wrinkle. The ZBA has made a positive posture to work proactively with petitioners, particularly with petitions that have grossly infringed on the bylaws. We help make sure the improvements are more conforming or much less non-conforming. Chairman Evirs stated that the ZBA is still there to make the best decision, whether it is a Special Permit or a Variance. There are five (5) people on the ZBA and that is what they are charged to do. The Board does vary it from the original intent quite a bit. The Board of Selectmen has also attended some of the various meetings to offer opinions, when it has been appropriate. Mr. Foster stated that the bylaws stipulate that the ZBA needs Board of Health approval or denial and sometimes the Board of Health waffles. Ms. Turcotte stated sometimes there are no health related reasons or enough valid information to make the decision. Mr. Iafrate stated that everyone can condition all of their approvals so that it needs to have Board of Health approval initially. The applicant cannot go forward with a building or a project until they get the Board of Health's approval. This way the checks and balances are in place. Maybe the people have to be made aware that they will be doing a lot of work for nothing and will have to spend a lot of money otherwise, so maybe have on the application a checklist so that they know what they need to have in place. Chairman Evirs noted that it is a lot easier when the applicant is more educated. Mr. Iafrate asked if all additions need a Title V inspection, for instance like a garage or a deck. Mr. Garvey responded that a septic system could be under a deck, so it still requires some research. The Town does not want a deck over a tank. Selectman Maksy asked if it is all additions or strictly if the applicant is adding a bedroom. Mr. Garvey stated that he would rather see if the system is failing than to have the applicant put on an addition and have it trigger a Title V to make sure the system is working. The Town does not want people digging in their yards if they do not know where everything is. Mr. Iafrate stated that he tries to send applicants to the Board of Health. When they come back from the Board of Health, he needs some guidance from the Board whether they will need a Title V. Mr. Garvey responded that it all depends where the septic system is. As long as the Board of Health has the information in the office, it can be researched. Mr. Iafrate stated that there is a checklist in place for building permits and now will do one similar to that for Special Permits and Variances.

Ms. Garbitt noted her concern on moving the ZBA petitions. The Town Clerk or the Assistant is always in that office, but Mr. Iafrate is out a lot on inspections. Selectman Maksy suggested to have the applicant call to see if Mr. Iafrate is there. Mr. Iafrate stated that it will not be as prompt as it is now, but the applicant is not getting any information the present way. Ms. Garbitt stated that the Town Clerk will have the check off list for Special Permits and Variances

so they are aware of it. The ZBA can deny the petition, but the Town Clerk has to accept it. She can say that she does not see a letter from Mr. Iafrate or a Board of Health approval and that the ZBA has the right to deny it, so that the people are on notice. Mr. Foster suggested checking with Town Counsel to make sure that the Town can have the applications forms elsewhere in the Town Hall besides the Town Clerk's Office. Selectman Maksy stated that they can call Mr. Iafrate, and he can put his number on the top of the form. People are getting confused right now, and they have no direction. They will not get direction in the Town Clerk's Office, but they will get it with the Building Commissioner. Mr. Foster added that Mr. Iafrate can also provide them with the mentoring and guidance to help them out so that they may not need a Special Permit or Variance. Ms. Craig asked if the petitions will be on the agendas. Chairman Evirs responded that it is a bylaw to still have them circulate among all the Boards. Ms. Craig noted that with the time frame, the Town sometimes does not get all the information back in time for when Boards meet, and if it is received on a Friday, then it is very little time for her to get it to the Board of Selectmen. Chairman Evirs explained that that is Chapter 40A and not much can be done about that. The Town cannot make it too hard for the petitioner and prevent them from applying.

#### **7:30 PM Meet with Marcus Baptiste regarding revisions to earth removal permit-Main Street**

Ms. Garbitt stated that Mr. Baptiste cancelled his request to be on the agenda.

#### **Request for pledge of liquor license-LeBaron Operating Company LLC**

Chairman Evirs stated that the liquor license is an asset to the property, but LeBaron's lender has asked them to pledge their license to the lender. This is so if something happened with the building and the property, they can continue to operate it with a liquor license. It will still have to go through ABCC approval. This is not an uncommon practice.

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

VOTED: To approve the pledge of alcoholic beverages license held by LeBaron Operating Company, LLC to South Shore Savings Bank, 1530 Main Street, South Weymouth, MA.  
Unanimous in favor.

#### **Request from Richard Fickert to be appointed to the Ted Williams Commissary Renovation Project**

Chairman Evirs stated that the Board of Selectmen will send Mr. Fickert a thank you for his interest and will notify him when the Committee is being appointed. He asked the press again to publicize the Committee so that more people might volunteer.

### **Review memo to Department Heads regarding three (3) year budgets**

Minor discussion and correction took place on the budget memo. Basically the Board is looking for three different budgets from each Department: maintenance, restoration and additional needs. The heating fuel per gallon for 2012 needed to be changed to \$7.50 from \$7.20 in the two (2) expense sections. Ms. Garbitt noted that wage increases are mostly Police and Fire based on the two big proposed developments, the 204-residential units at the T-station and the LeBaron 55 and over housing. The Departments can write a narrative and explain what they are basing their growth on. Selectman Maksy would like one standard for the growth rate. Ms. Garbitt noted that there are only three or four Departments having trouble, but the projects have all been approved. The Building Department, Police, Fire and maybe the Board of Health. Discussion occurred regarding projected development. It was agreed that Departments that will be affected should see Ms. Garbitt for expected growth projections.

Ms. Garbitt said the Local School budget is only including contractual increases or if someone is going to retire. There is a lot of confusion with the maintenance budget term. The Police and Fire budgets will be a little different with EMT incentives, etc. The salaries should be what is on the budget for Town Meeting. If a Department is budgeting for the incentive, then they have to put it in somewhere. Also, the Departments are not to include any new personnel. The next budget is trying to restore any cuts made to that Department. For instance the Treasurer/Collector's Office has not replaced the person that they were cut, so is the Town looking to put that person back. The Departments will need to do six (6) worksheets, three (3) for each. A 2007 column will be added on the worksheets as well. The more history a Department provides the better. Everyone has been cutting basic aspects of their budgets since FY07. Maybe the Town should have Departments go back to that year and that will be the basis year for them to do a restoration budget. Chairman Evirs stated that the Board wants to put back the money taken from the Selectmen's Clerk budget and that would be in the maintenance budget. Also, we need to put back in what was taken out of the Library budget and the Park as well. The Town is having problems right now with the fuel costs since it is much more than it was last year. Chairman Evirs stated that the budget needs to restore in the main section what the services were to maintain the Town. Selectman Maksy was concerned that would give a false sense of hope to Departments that the funding will be there, and the Board may need to cut it all out again next year. Ms. Garbitt suggested maybe in the memo portion to add something that the Town is looking at this, and the Town may need an override. Chairman Evirs stated that that is the purpose and the Town does not want to run up against the clock again like what just happened. Ms. Garbitt stated that the Town needs to maintain what it has a need to; everyone should put in true costs. No one can put in the budget figures from FY09, since the Town is not going to make it. Selectman Maksy explained that that is the point and that is why the Town needs to consider an override.

Ms. Garbitt stated that that is why the Town needs to understand the upcoming needs of each Department. For each Department to keep, not to add any new personnel. Restoring cuts is one thing, adding new personnel is another. A Department may not want to restore that person; they may want to do something else. They need to anticipate what they will need in the future, so there are really three (3) budgets to do: a maintenance budget, a restoration budget and a future needs budget. Some Departments will be able to prepare it than others. FY10 has a large debt

service amount. It is based on the years remaining and based on the cuts that were deferred, since the Town has to make them up. The Town needs to get back on track somehow, it may take one (1) year or it may take more. The three (3) large projects that were slated to be here have been delayed. The Town has a few years that we will be short, and we need to know how short to know what to do. What will it take to maintain a balance budget, pay off the debt and preserve what have?

#### **Vote to sign DEP Recycling Grant Agreement**

Chairman Evirs explained that these are containers that you place recyclable plastic bottles in.

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

VOTED: To accept the ten (10) Public Space Canables from the Department of Environmental Protection.  
Unanimous in favor.

#### **Request for one day liquor license-Park Commission**

Chairman Evirs read the request from the Park Commission for a one day all-alcohol liquor license.

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

VOTED: To approve a one day all alcohol license for July 12, 2008 Sweeney Family Military going away party at Ted Williams Camp from 6 PM to 11 PM.  
Unanimous in favor.

#### **Request for appointment of Volunteer Observer-M/L Herring Fishery Commission**

Chairman Evirs read the request from the Middleborough/Lakeville Herring Fishery Commission for appointment of a volunteer observer.

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

VOTED: To appoint William Orphan as a Volunteer Observer with the Middleborough-Lakeville Herring Fishery Commission with a term ending September 30, 2008.  
Unanimous in favor.

#### **Request to use Town Office Building for car wash June 14, 2008**

Chairman Evirs read the request from some Apponequet High School students and their families to use the Town Office Building for a car wash fundraiser for American Cancer Relay.

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

VOTED: To approve the use of the Town Office Building for a fundraiser carwash for the American Cancer Relay on June 14<sup>th</sup> and 15<sup>th</sup> from 10:00 AM to 2:30 PM.  
Unanimous in favor.

**Discuss MMA Legislative Action Alert regarding increase in COLA base**

Chairman Evirs explained that the MMA Legislative Action Alert has to do with the cost of living adjustment (COLA). Section 15 of the Senate passed State Budget contains a provision that would increase the base for municipal pension cost of living adjustments. They want to add in the \$4,000 and pass it along to the Towns. This information is also in the Beacon, which does a very good job of talking about it. It will increase from \$12,000 to \$16,000, it is \$120 for each retiree, for each year and it adds up exponentially. The way it is funded, it is for future and current taxpayers. So, the Town needs to contact its Legislators before they blanket approve this and have them do an actuarial, since there is no way to fund it.

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

VOTED: That the Board of Selectmen opposes the increase in the COLA base and requests that an actuarial be done prior to any increase being made.  
Unanimous in favor.

**Review and vote to approve Selectmen's meeting minutes: October 29, 2007; April 16, 2008; May 8, 2008; May 12, 2008 (two sets) and May 29, 2008**

Upon a motion made by Selectman Yeatts with Chairman Evirs stepping down to second and stepping back up to vote, it was:

VOTED: To waive the reading of and approve the Selectmen's minutes of May 8<sup>th</sup>.  
In favor 2, Abstain 1 (Selectman Maksy)

Selectman Yeatts stated that on the May 29<sup>th</sup> minutes, page 3, she would like it to say who opposes and who abstains. During the meeting that recently took place about the Open Meeting Law, they said that the Board does not have to include this, but a Board member can ask that it be done.

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

VOTED: To waive the reading of and approve the Selectmen's meeting minutes of October 29, 2007, April 16, 2008, May 12, 2008 (two sets), May 29, 2008 as presented, with the exception of May 29, 2008, as amended.  
Unanimous in favor.

**Review and accept Executive Session Minutes: March 10, 2008; March 24, 2008, April 16, 2008 and May 5, 2008**

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

VOTED: To waive the reading of and approve the Executive Session Minutes of March 10, 2008, March 24, 2008 and April 16, 2008 as presented.  
Unanimous in favor.

Upon a motion made by Selectman Yeatts with Chairman Evirs stepping down to second and stepping back up to vote, it was:

VOTED: To waive the reading of and approve the May 5, 2008 Executive Session minutes.  
Unanimous in favor.

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

Chairman Evirs stated that the Town has been notified by Representative Canessa that the Governor is coming to the Lakeville Library tomorrow at 4:00 PM. The Governor is expected to discuss an Economic Development Announcement for the Town Lakeville.

Ms. Garbitt stated that she has received the 75% design for Route 79, and it has been delivered it to MassHighway. This project is on target time wise, and the Board members can come by and review it.

Ms. Garbitt stated that she received from FEMA the flood zone information. It is a digital Flood Insurance Rate Map. Selectman Maksy stated that he would like to nominate Selectman Yeatts to review the map since Selectman Yeatts is on board with water related issues. The Conservation Commission also needs to look at it. The current flood maps are 25 years old. Selectman Yeatts stated that she will review it.

Ms. Garbitt asked if the Board of Selectmen would like to appoint a screening committee for the applications that have come in for the Conservation Commission position. Chairman Evirs asked if the Board of Selectmen are the designated appointing authority. Ms. Garbitt responded that the Conservation Agent is hired as an at will employee by the Conservation Commission. They give the Agent direction on what to do day to day, but for sick time and vacation time, they report to the Town Administrator. Chairman Evirs stated that the Board should change the practice that the Selectmen are the appointing authority and the Conservation Commission is the screening and recommending authority. Ms. Craig stated that with a preliminary screening committee, one cannot have a Board quorum present. There are five (5) Conservation Commission members, plus two (2) associates. Associates do not vote so three (3) members is a quorum. It was decided to have Selectman Yeatts, Ms. Garbitt and two (2) members from Conservation Committee. It was also discussed having a Board of Health member on the committee. Ms. Craig stated the Board of Health does not meet again until June 25<sup>th</sup>. It was suggested that Mr. Garvey be nominated by the Selectmen.



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

VOTED: To approve Selectman Yeatts, Ms. Garbitt, and William Garvey to the Conservation Agent Screening Committee, along with two (2) Conservation Commission Members of their choosing to make recommendations to the Selectmen regarding the hiring of a Conservation Agent.  
Unanimous in favor.

Ms. Garbitt mentioned that there is a request for a one day Auctioneers Permit. The Town only has six (6) days to vote on this from when it is received. The Auctioneer has a State Auctioneer's License. The auction would take place at Thompson Box on 310 Kenneth Welch Drive on July 17, 2008 from 8:00 AM to 4:00 PM. The Town Clerk issues the permit, and the Board of Selectmen approve it.

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

VOTED: To approve the one day Auction License to Randall Koster of Koster Industries, Inc. at Thompson Products, Inc., 310 Kenneth Welch Drive on July 17, 2008 from 8:00 AM to 4:00 PM.  
Unanimous in favor.

### **Other Items**

1. Notice of reorganization-Cemetery Commission  
Chairman Evirs noted that an update was received from the Cemetery Commission that they have reorganized and appointed Kenneth W. Upham as the Cemetery Commission Chairperson at their May 14, 2008 meeting.
2. Letter of thanks from Lakeville Litter Lifters  
Selectman Yeatts noted it's wonderful what the Litter Lifters do for the Town on an every other week basis. It is incredible how much trash is collected in a short span of space. 96 bags of trash is quite a bit.
3. Notice from Lakeville Historical Commission of A Lakeville Perspective
4. Notice of reorganization-Lakeville School Committee
5. Notice of reorganization-F/L Regional School Committee  
Chairman Evirs noted that there was a reorganization of the F/L Regional School Committee. Selectman Yeatts asked if it is legal for the Chairperson to be the Treasurer. Ms. Garbitt responded that they did split it since the Business Manager used to be the Treasurer. The person signing the checks cannot be the same person that is issuing the checks. Ms. Garbitt will inquire about this.
6. Memo from Town Counsel regarding Attorney-Client Privilege to Government Officials
7. Letter from Verizon regarding PEG programming  
Chairman Evirs noted a letter from Verizon which announces that Lakeville public education and government channels are now part of the FIOS for those customers. Channels 32, 30, 31 are the Lakeville public channels.
8. Letters from Comcast regarding changes to cable packages
9. Letter from Comcast regarding HD programming

10. Letter from Department of Conservation & Recreation Flood Hazard Management Program

Selectman Maksy mentioned that the Conservation & Recreation Flood Hazard Management Program may help Selectman Yeatts with the Flood Map.

11. MassWildlife Newsletter

12. MEMA Reports

13. City and Town publication

Chairman Evirs stated that this is in regards to E&D (Excess & Deficiency) funds. This may be interesting to copy for others. Ms. Garbitt stated that hopefully there will be legislature filed on how they may vote to spend the E&D money. She did call and speak about this with Representative Canessa, but there is no pending legislation at this time. Freetown and Lakeville would want it by vote of the member Towns, not the Committee. This should also be brought to the attention of the Finance Committee.

14. MBTA Advisory Board meeting notice

15. Department of Conservation & Recreation Access News

16. Information from School Department regarding electricity savings

Selectman Maksy explained that the information from the School Department is about the demand, when the schools can help out the other areas of Town. They go off on peak hours. If they do that, then they pay you money. It is an energy savings program for the School Campus. They have enrolled in the N.E. ISO demand program and Bob Souza helped get the paperwork in order for this to take place. The savings will offset load monitoring and installation costs. It may show a \$34,000 savings. So, the schools need to make sure that it is reflected in their budget. It will cost \$2,000 for the equipment.

At 9:25 PM, upon a motion made by Selectman Yeatts; seconded by Selectman Maksy the Board unanimously:

VOTED: To enter into Executive Session and not to return to Open Session to for the purpose of discussing pending litigation and contract negotiations with non union personnel. Polled vote of Selectman Yeatts – aye, Selectman Maksy, aye, and Selectman Evirs, aye.  
Unanimous in favor.