

**SELECETMEN'S MEETING MINUTES
SEPTEMBER 15, 2010-6:00 PM**

On September 15, 2010, the Board of Selectmen held a Special Meeting at 6:00 PM in the Board of Health's Office at the Town Office Building in Lakeville. The Meeting was called to order by Chairman Yeatts at 6:03 PM. Selectmen present: Selectman Maksy and Selectman Yeatts. Also present were: Rita Garbitt, Town Administrator and Tracie Craig, Executive Assistant. Selectman Olivier entered the Meeting at 6:06 PM.

Meet with Board of Health to discuss 2010 flooding with Seasonal Homeowners

William Garvey, Chairman, Terrence Flynn and Robert Poillucci of the Board of Health were present. Robert Iafrate, Building Commissioner, was also present. Chair Yeatts said that the Board of Selectmen had been contacted by several seasonal homeowners regarding the Board of Health (BOH) telling them they have to put in new septic systems due to the flooding. They are upset because year round homeowners can access FEMA monies to help them pay for new septic systems, but seasonal people cannot. There are people that have been seasonal residents for 50 years and live there only during the summer, but now they are being obligated to put in a Title 5 septic system. Chair Yeatts said if it wasn't for the flood (and the ownership of title is not changing hands), the BOH would have no right to go onto a property to inspect the septic system. Selectman Maksy said we were talking about the seasonal residents who cannot occupy their homes and cannot get assistance from FEMA. We received a letter from a couple from Spain who asked what we could do for them. We gave the seasonal residents an opportunity to meet with us. The Title 5 septic became the primary issue.

Robert and Susan Dunn of 143 Staples Shore Road said in addition to the Title 5 issue, we have a well issue. We were previously told that we needed to have our well tested for bacteria, which we did. Now the BOH wants a VOC test done on our well. Why the change and how come we were not notified of this change? William Garvey, Board of Health Chairman, said this issue was brought up at the meeting at the Library. Mr. Dunn said nothing was brought up about seasonal properties until he asked. All that was spoken about was the FEMA process. Chairman Garvey said they passed out a brochure, and it explained how the water must be tested. When we found out there were gas cans floating in the water, we knew there could be gasoline in the water and wells needed to be tested for VOC's, not just nitrates. Nitrates are bacteria, VOC's are volatile. We were also seeing arsenic in the well tests. Five (5) wells came back with arsenic, so arsenic testing was also added. Our intent is to protect water for the residents. We do the best we can. Mr. Dunn said the people who were targeted were the seasonal people whose homes were tagged by the Building Commissioner. There were three (3) homes up the street from our year-round home that were completely surrounded by water on Montgomery Street that were not required to have the same testing done. The seasonal people have no means for reimbursement. Chairman Garvey said the BOH treats everyone the same. Mr. Dunn said he

took exception to that. Chairman Garvey said there were 21 failed properties that we inspected, 11 of them were year round and 10 were seasonal. The year round residents needed to fix their systems also. Your system failed and was polluting the ground. Mr. Dunn said they have a tight tank and their system did not fail. We are talking about our water tests.

Selectman Maksy said when the meeting was held with DEP, they said not to use the flood as a tool to do anything from stopping these people from moving back into their homes. This flood does not give the Town an opportunity to go into homes and tell them they can't move back. If this flood had never happened, we would never have had an opportunity go into their homes. Chairman Garvey said the BOH developed parameters. We went down and inspected the property, and we asked for a well test. The only properties we went to were the people that called us. We did not go unless we were called to assess their system. We failed it if it was failing. Our job is to say if your system is working or not. We treated no one different and did not go anywhere without a phone call. Selectman Maksy said if the flood had not happened, you would not have gotten a call, and you would not have gone there. The State and Federal representatives told us not to do this. Your job is public health; it puts you in a tough predicament because FEMA, and the State said don't use the flood as a tool. Chairman Garvey said if a cesspool is polluting the groundwater are we supposed to ignore it. Chair Yeatts asked why were the residents calling you. They are calling you because they are forced to call you because they were tagged by the Building Commissioner.

Mr. Dunn said he was told there were three (3) conditions that needed to be met for occupancy: well tests showing potable water, the toilet needed to be able to be flushed, and the structure was structurally sound. We fulfilled all that, but he still has a yellow tag because the Building Department referred him to the BOH. Robert Poillucci said Mr. Iafrate tagged it, but if the house wasn't structurally sound, you had to fix it, but having safe water doesn't concern you?. Mr. Dunn said they have safe water. My neighbors are year round and had their water tested, and theirs came back fine. He has no problem drinking the water. We have a tight tank and live there less than three (3) months a year. We met all the other requirements originally asked for. Mr. Dunn said he has been a resident for 36 years, and it seems that people that are ignoring what the Town wants, they are fine, but we aren't. He felt like he was being penalized. Chairman Garvey asked if he did a water test. Mr. Dunn said it is not required by the Building Department. Ms. Dunn said we did what we were informed by letter from the Building Department to do. Chairman Garvey said there is pollution in the water because of the flooding. We wanted to protect the people drinking the water. He couldn't say residents could drink the water. It might not be safe. Mr. Dunn said he is asking if the jurisdiction, according to the tag, was the Building Department. If the BOH doesn't want to sign off on his water sample, he didn't have a problem with it. His issue is with not using his property. Chairman Garvey said that Mr. Dunn could use his property. There is no law in Massachusetts that makes the BOH test residents' water. He can't force anyone to test it.

Selectman Maksy said the yellow tag is an ID tag for the Building Department. That is not that your property is condemned. Mr. Dunn said the tag said restricted use. Selectman Maksy said if the tag says that, it probably shouldn't. Chairman Garvey said the BOH isn't stopping people from using their property. Mr. Dunn said if the BOH is holding people from occupying their property (assumption), then we have a problem because there is a lot of need in terms of all the lakes. Chairman Garvey said people don't want to call us because they know their systems are polluting. We can't chase everyone. Ms. Dunn said we have already pumped our tight tank, but because of the water level, we leave our tank somewhat full. Telling us to pump it is stupid. Mr. Poillucci said that he was new to the BOH when the flood occurred and sent the letters out to homeowners, which told people to pump their systems. He did not think of tight tanks; he was thinking of regular septic systems. We probably should have put in there tight tanks were excluded. In your case, that was probably unnecessary. On a regular septic system, the intent was to pump the tanks to see if the groundwater was filling them back in.

Mr. Iafrate said we instituted a simple program. Houses were tagged in yellow. No homes were condemned (orange stickers). The stickers were issued to him by the State. At no time was anyone told that they couldn't go back into their residence. There is no one policing that. Green stickers were issued once they had potable drinking water and residents could use the bathroom. He felt it was safe at that point. After the June 2nd meeting with the Selectmen, residents have brought their well tests to him. He doesn't know how to read these. They need to go to the BOH with them, and once reviewed, he issues a green sticker. The process worked well. It doesn't work well for some seasonal residents that did not get money from FEMA. They had to pay for the well testing. We just want potable water. People with yellow stickers are still using their homes. He would like to get rid of the yellow stickers and continue on with this process.

Selectman Olivier said this process is flawed. The BOH mentioned that they do not have the authority to force residents to test the water. If someone comes to them, then they have the authority to go onto the property. Homeowners feel that yellow is bad, and they need to get to green. It is the homeowner's responsibility to get potable water. They shouldn't feel compelled to come through the BOH to get the water. Chairman Garvey said he did not say they have to meet Title 5 at any time. When we get a call, we inspect. If their system fails, it fails. If it passes, it passes. Selectman Olivier said when you get called. Chair Yeatts asked why you are getting the calls. Chairman Garvey said to get their sticker removed. Selectmen Olivier said so they are compelled to call to get their sticker removed. Mr. Poillucci said we have a responsibility to have safe water. For some reason, there is a problem with us saying test your water, but no problem saying your house is not safe. Selectman Olivier said if your water and septic were working fine before the flood, when the water recedes, it will work again. It's up to the homeowner to say it's not working properly after the flood. You would need to test every single house in the town of Lakeville because each house was impacted by the flood. There were

a lot of houses that had water in their basements and yards, but you didn't test them. Selectman Maksy asked if Mr. Iafrate required the residents to bring their homes up to code. Mr. Iafrate said we want to make it safe to rehab their house, but no, of course they did not have to bring their homes up to code. To be safely habitable, you have to make sure that your toilet works and your water will be safe or that your home is structurally safe. Taking away the Title 5 issue, we had a good process: flushable toilets, safe water and safe environment. Residents go through the BOH to have safe water and to flush their toilet. Once that was achieved, my Department received notification, and I would go out and a green sticker was issued.

Mr. Dunn said the only places that were tagged were homes that were evacuated. Mr. Iafrate said we concentrated on those, but he could have probably tagged 40% of the homes in Lakeville. Basically waterfront properties were tagged. Mr. Dunn said there were two (2) homes on Staples Shore Road that were not tagged. He had to comply with one (1) set of rules while across the street didn't. Chairman Garvey said the only houses that we went to were the homes we were called to. It was not whether it was seasonal or year round. Their systems failed. These systems are still polluting the groundwater and the ponds. Do we turn our head? Joe Beneski said under the General Laws, the BOH does have the right and responsibility if they suspect a pollutant is happening around a water source or property. They have the right to inspect. There are bylaws in place. If the BOH gets indication of a problem somehow, it is their responsibility to get it fixed. If you turn your head, you are at fault. This flood happened and brought a lot to the BOH's attention. Selectman Maksy asked Mr. Beneski if he received a Title 5 request. Mr. Beneski said his neighbor had arsenic in his water, but he didn't. He did not have a problem with his septic. Shore Avenue was flooded. Those systems the BOH knows there are problems. Those properties should all be tight tanks, and they are not. No one is forcing people to fix their bad systems. Nature did this. The BOH was made aware of problems; it is their responsibility to make sure everyone is safe. They added rules to the well test. Mr. Beneski said he has to test for VOCs and arsenic. The State makes the rules on lots of these things.

Selectman Olivier said if the BOH is made aware that there is a problem, like a neighbor calling saying that the septic system is overflowing or if someone calls and says I have a problem, yes they are responsible. He did not agree when there is nothing apparent, just because the flood happened, that it gives the BOH the authority to go out there. Chairman Garvey said the BOH has not gone on anyone's property without a phone call. We did our job. We have not gone to the other houses on this list, unless we were called. Selectman Maksy said he apologized as a Selectman for allowing the Building Commissioner to come here for your assistance. He should have just gone and flushed the toilet and looked at the well test. Last time we discussed this, we voted and told him to get the people into their homes. We didn't understand this was happening until we started getting the calls.

Mr. Poillucci said there was a meeting with Mr. Iafrate, Health Agent Larry Perry, Fire Chief Dan Hopkins, the DEP and FEMA to figure out what we were going to say at the Library

meeting. We have never deviated from this. If someone is having a problem, we should have met again instead of just saying you can't do this. We got advice from the people whose job it is to handle it. We did exactly what we had decided at that meeting. Ms. Garbitt said it was her understanding that the State Inspector met with the Local Building Commissioners, and this process was recommended by them. They did not want anyone's home to be condemned. Yellow tags meant enter at your own risk. Mr. Iafrate said this is what happened. Mr. Beneski said the Board of Selectmen has their responsibilities and the BOH have theirs. If the Selectmen see that there is something happening that could affect public health, they should notify the BOH, not say we aren't going to bring them into it. Building handles building issues, BOH handles health. These two (2) departments have worked well together these past years.

Ms. Dunn said in regard to how the BOH has not been out on people's properties unless they were called. Residents wanted a green sticker. That is why they were calling you. Were they calling you to get a green sticker or for health issues? If the various boards had met and come to the conclusion that it was the Building Commissioner's process, why weren't residents referred to the Building Department? We were sent to the BOH when we went to the Building Department. Chairman Garvey said when someone comes in for a building permit, they go to Mr. Iafrate. Ms. Dunn said people were calling you due to them getting a green sticker. Chairman Garvey said the day we met, we set up guidelines, which were the well needed to be tested, septic had to be inspected, and building needed to be inspected. When we went to the Library, this is what we said. We had a pamphlet regarding the water testing. We told people to check their water again in six (6) months. We did not say flush your toilet. We presented everything that day. If your system is in water, you are polluting, and we failed it. We went out because we were called because of a sticker. We still have to do a job. We can't look away and say that your toilet flushes, so the system is ok. You have to fix your system.

Mr. Poillucci said just like Mr. Iafrate isn't making the structure go to code, the septic system has to work the way it originally was supposed to work. We weren't telling people they had to go up to Title 5. If it's failed now after the water went down, it's failed. When we met with DEP and FEMA, they were advising us on requirements to get these stickers off. We were doing the best we could. Chair Yeatts said she was at that meeting and she didn't remember anyone saying anything about a Title 5. All three (3) Selectmen remember the same thing that a Board of Health member said that at one of the meetings that they were not going to use the flood as an excuse to fail the systems. Unless your property changes hands, you do not have the right to go onto someone's property unless someone reports sewage. You have used the flood as an excuse. You have to respect people's rights.

Chairman Garvey said we never asked anyone to do a Title 5. We went out and did the inspections. No one spent \$500 to do a Title 5 inspection. Chair Yeatts asked if residents had to spend money to have their systems pumped. Chairman Garvey said yes, if you have a cesspool to see if it was working. We did tell everyone in the beginning what we were going to do. We

aren't trying to pick on anyone. Chair Yeatts said people were tricked; they were forced to call. Chairman Garvey said we didn't trick anyone. Chair Yeatts said they were tricked on the process. Chairman Garvey said we can't say that the system is working fine, whether they were tricked or not. If they don't call, we don't go. Mr. Iafrate said because he doesn't know how to read water test reports; he sent them to the BOH to be reviewed. He told Mr. Dunn in order to get rid of your yellow sticker so you can put this whole nightmare behind you, you need a flushable toilet, potable water and structurally sound structure.

Selectman Maksy said the big thing here is the year round folk had the opportunity to get funding so it was easier for them to do this. A lot of people don't have the money. Selectman Maksy asked what do people do on a failed system. Chairman Garvey said they have two (2) years to fix it. Selectman Maksy said they still have to meet Title 5. Chairman Garvey said yes. We aren't here to make people spend more money. When we found out about the various chemicals in the water, we told people they had to test for this. We are trying to protect people. Mr. Dunn said the water analysis is recommended by the BOH. His test says bacteria and chemicals meet the maximum standards for potable water. Chairman Garvey said we can't force you to test your water; drink it if you want. You could be drinking gasoline. We are telling you there could be gasoline or arsenic if you didn't test for it. That doesn't mean your water is safe, based on what you had tested. Larry Perry, Health Agent, said on the water analysis, in parentheses it says "for the parameters tested". It does not say what else could be in your water. The lab is only saying it's safe for what you had tested. This is misleading. Chairman Garvey said we tried to make people aware that this could be in your water. It is drinkable for what they tested it for.

Mr. Dunn said he still has a yellow sticker. In terms of the septic, he had no problem with what you are saying. We didn't need to put in a tight tank, but we did. He has to conform to certain specifications from the BOH because he is on one side of Staple Shores Road. They were flooded just like me. Chairman Garvey said his recommendation was to test all flooded wells in Lakeville and that we would pay for them, but we had no money. Selectman Maksy said you have a list of failed systems, but there are two (2) betterment programs to fix your septic system. Mr. Iafrate said yellow tags were put on houses most adversely affected by the flood, totally surrounded by the water. Some streets like Shore Avenue were completely tagged. There were approximately 115 houses that could not be accessed. He avoided doing more tagging. Chairman Garvey said he thought Mr. Iafrate did a great job.

At 7:00 PM, the Board of Selectmen left the Board of Health meeting and continued their Meeting in their office.

Selectman Olivier said that he wanted the Board to vote on instructing Mr. Iafrate to take the yellow tags off of the houses if the residents are satisfied with their water and septic system. Selectman Maksy said if the lab says the water is potable, then that's it. They shouldn't be any

more stringent than with a new house. Selectman Olivier said the BOH should have been testing every house in Lakeville. Selectman Maksy said we need to follow DEP and FEMA guidelines.

Upon a motion made by Selectman Olivier, seconded by Selectman Maksy, the Board:

VOTED: To notify the Building Commissioner to remove yellow tags and not tag if the homeowner has had the water tested and not go through the Board of Health, as long as the home is structurally safe, the toilet can be flushed and a laboratory has certified potable water.
Unanimous vote.

Mr. Iafrate said the Board needs to help him advocate to these people to come forward. You have scared a lot of people away. We may have to go knock on doors since we are only halfway through. The Board instructed Mr. Iafrate to send a letter to the homeowners that are still tagged, saying that as long as the building has been found structurally sound, that they have had water testing done and its potable and the toilet flushes, that the tag can be removed. Selectman Maksy cautioned Mr. Iafrate on properties that the Board of Health has already inspected, saying that he cannot reverse any BOH decisions already made.

Adjournment

Upon a motion made by Selectman Olivier, seconded by Selectman Maksy, the Board:

VOTED: To adjourn the Selectmen's Meeting at 7:07 PM.
Unanimous vote.