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**Town of Dartmouth  
Board of Health  
Minutes of the Meeting of  
09 April 2014**

DARTMOUTH TOWN CLERK

The meeting notice was duly posted. Town Counsel noted for the record that the agenda that was previously posted had been revised. The revision reflected the restructuring of the agenda. There were no additions or deletion to the agenda.

This meeting was called to order at 7:00 p.m.

Thomas W. Hardman, Leslie E.J. McKinley, and Lynne Brodeur, were present. Wendy Henderson, Director of Public Health was also present.

At this time, Thomas W Hardman nominated Leslie E.J. McKinley as chair. Therefore, with Thomas W. Hardman motioning and Lynne Brodeur seconding the Board voted unanimously to reorganize and reappoint as follows:

Leslie E.J. McKinley	Chair, Board Member, Health Agent, (term expires April 2015)
Lynne Brodeur	Vice Chair, Board Member, Health Agent, (term expires April 2016)
Thomas W. Hardman	Board Member, Health Agent, Representative to Soil Board (term expires April 2017)
Wendy W. Henderson, R.S.	Director of Public Health/Health Agent, Animal Inspector
Christopher Michaud, R.S.	Health & Sanitary Inspector/Health Agent, Animal Inspector
Janice Young	Health & Sanitary Inspector/Health Agent
Donna Farias	Administrative Clerk
Stephaney Santiago	Administrative Clerk
Kerri Mason	Senior Clerk
Dr. Gail Davidson	Board Physician
Sandra J. Gosselin	Animal Inspector/Rabies Control Agent
Stacy Rebelo	Assistant Animal Inspector/Rabies Control Agent
Catherine Perry	Assistant Animal Inspector/Rabies Control Agent
Nicholas Charest	Tobacco Control Agent

The Minutes of the meeting of March 12 and March 26, 2014 were tabled.

**Appointment 7:10 PM RE: Anthony Savastano, Town Counsel - Nuisance/Noisome Trade - MGL, Chapter 111, Section 122 proposal, section 143 - Comm97 soils - 12/11/2013 & 2/12/2014-** Following correspondence was received.

- a. Department of Environmental Protections letter dated March 31, 2014 responding to Dr. Wendy Heiger-Bernays response dated March 3, 2014
- b. Colleen Noseworthy
- c. Kerri Parsons
- d. Dr. Wendy Heiger-Bernays letter dated April 8, 2014

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Leslie E.J. McKinley. Chair stated that the Board had asked Town Counsel, Anthony Savastano to draft regulations addressing COMM-97 soils both as a Nuisance Trade pursuant to MGL, Chapter 111, Section 143 and for a complete ban as a nuisance pursuant to MGL, Chapter 111, Section 122. Ms. McKinley informed the audience that this is a discussion among the Board and counsel and is not a public hearing.

Attorney Savastano provided the Board members with a draft regulation and stated that he attempted to follow the Board's instructions in drafting this regulation. He stated that he wanted to make it clear the Board is not bound in any way to adopt the regulation as written, and that the Board may adopt it in whole, reject it in whole, or amend the draft in any way it saw fit, including by striking, adding, or amending any portion or portions of the draft. He reiterating that it was drafted in attempt to follow what he believed was the instructions of the Board. Also, Attorney Savastano stated that he wanted to once again make it clear, as repeatedly stated by Board members, that the drafting of this regulation and the regulation itself wasn't targeting any one particular project or property. The manner in which Comm-97 materials came to the attention of the Board is not pertinent. Once it did, the Board decided investigate the use of Comm-97 soils in the Town. The Board hired an expert to provide information about, and an opinion regarding, the transportation, use and disposal of Comm-97 soils. These comments about the intent of the Board were reiterated by Board Members who again stated that this regulation would address the Town as a whole and that there may be several possible sites which could use Comm-97 soils. Each Board member, and Ms. Henderson agreed that Dr. Heiger-Bernays's expert opinions and analysis was extremely helpful.

Attorney Savastano stated that there are two possible ways the Board could regulate Comm-97 soils. One would be to do so as a Nuisance Trade under MGL Chapter 111, Section 143. The other would be as a Nuisance under Chapter 111 Section 122. Attorney Savastano first addressed Section 143 and referred the Board to Section 5 of the draft regulations. He explained, if adopted, this section would regulate for-profit businesses which utilize Comm-97 material. This section would not completely ban the use of Comm-97 material. An individual land owner, who is addressing its landfill, without a third party and without profit could use Comm-97 soils. Also, if the Department of Environmental Protection changes its policies and/or regulations to allow other uses of Comm-97 material than that currently allowed, and if any such newly allowed use is undertaken by one other than a for-profit business, Comm-97 materials could be used. If Comm-97 soils are imported into or used within the Town for profit, this section determines that such activity constitutes a Nuisance trade and, therefore, would not be allowed. Second, Attorney Savastano addressed MGL chapter 111, Section 122 and referred the Board to Section 4 of the regulation. Adoption of this section would create a complete ban of the importation into, transport through, and use in the Town of Comm-97 soils. These are two separate distinct regulations, within the proposed regulation. Attorney Savastano then explained the severability clause.

Ms. McKinley asked for Ms. Henderson's opinion on these draft regulations. Ms. Henderson cited Dr Wendy Heiger-Bernays expert input onto the public health concerns related to contaminated (Comm -97 soils) and Dr. Heiger-Bernays's response to the Mr. Weinberg's letter, stating that both were persuasive and reinforced the need to regulate this material. She also stressed the importance of addressing this issue for the entire community, stating that over 1/3 the Town's land area is in the Aquifer Protection District which the town has vigilantly protected since 1981. This regulation is important to the entire community's water supply, whether town water or private

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wells, our schools, our public buildings and our community for generations to come. With municipal wells under development just north of Route 6 our aquifer areas may be expanding.

All Board members echoed Ms. Henderson's comments that the written and oral presentations of Dr. Heiger-Bernays were excellent, informative and persuasive. Mr. Hardman referenced a March 31, 2014 letter from Philip Weinberg, MassDEP Southeastern office Regional Office to Ms. Henderson and Dr. Heiger-Bernays's letter in response dated April 8, 2014. He thought that Mr. Weinberg's letter was unclear and confusing at points and that Dr. Heiger-Bernays's letter was very helpful in both interpreting Mr. Weinberg's letter and in providing expert opinions on the issues raised. Mr. Hardman requested that both letters be included in the record. The other Board members agreed and said letters were incorporated into the record. Mr. Hardman asked whether both letters be put on the Town website. The other Board members agreed and Ms. Henderson said that she could and would do so. Mr. Hardman stated Dr. Heiger-Bernays's initial opinions raised issues that were not responded to by DEP.

Board members discussed that they had concerns about issues raised by Dr. Heiger-Bernays including that Comm-97 Soils may contain levels of arsenic, cadmium, chromium and lead that are far greater than is safe for persons or the environment to be exposed to and that Comm-97 Soils do not need to be tested for various contaminants that are typically found in urban fill, and which can be hazardous and toxic to humans and the environment, including vanadium, polycyclic aromatic hydrocarbons, asbestos, selenium, dioxins, pesticides and herbicides. They also discussed and expressed concerns raised by Dr. Heiger-Bernays about the dangerousness of dust generated. They also stressed their significant concerns about Comm-97 contaminants leaching into public and private drinking and groundwater supplies, including when they are not isolated and contained from the elements by a completed capping system.

Ms. Henderson and Ms. McKinley discussed that they, along with and Attorney Savastano, had visited Crapo Hill Landfill with Scott Alfonse, Executive Director and Shawn Peckham, Operations Manager for the Greater New Bedford Regional Refuse District. Ms. Henderson and Ms. McKinley stated that there were strong winds at the site and this reinforced their concerns about windblown and airborne dust. Both stated they saw trucks leaving the site after driving on the Comm-97 material and tracking it onto public roads. Both Ms. Henderson and Ms. McKinley stated Crapo Hill Landfill is very well run. Ms. Henderson mentioned Scott Alfonse had provided some figures relating to costs for, and income from, soils cover materials. The District currently gets paid for taking in Comm-97 soils to be used as daily cover. A ban of the use of Comm-97 soils would result in a cost to the District and, therefore, the Town. Ms. McKinley stated that it is the charge of this Board to regulate and protect public health. She stated that notwithstanding the negative financial impact on the Town, she favors adopting these regulations.

Ms. McKinley inquired if the Board wanted to discuss regulating other materials that were briefly mentioned in Dr. Heiger-Bernays's report and which may have health impacts, including fly ash, C&D fines, and catch basin cleanings this evening. Mr. Hardman stated that the Board didn't have sufficient information to address those and could do so in the future. The regulations can be modified at any time. Ms. Henderson stated these regulations are something the Board can build on.

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Ms. Henderson stated that she had concerns about potential projects in Dartmouth and the exportation of Comm-97 soils. Attorney Savastano stated such soils cannot be exported except for disposal as solid waste. If its intended use is for daily cover, intermediate cover or grading and shaping material at any landfill, then its transportation would be banned. Ms. Henderson reiterated her concern about the effects of this regulation on potential projects in Dartmouth.

The Board and Attorney Savastano discussed some of the definitions in the draft regulation. Attorney Savastano and the Board agreed to table this matter for a short time so Attorney Savastano could review the definitions. After reconvening, Attorney Savastano spoke about the definitions. The Board and Attorney Savastano agreed to continue this matter to the April 16, 2014 meeting for Attorney Savastano to make a final review of the draft regulation.

**Appointment 7:20 PM** RE: Mary Mehri/Plat 1, Lot 5 1176 Horseneck Road - Loose Chickens - A letter received from Mary Mehri was perused. Ms. Mehri stated that she wouldn't be available until May 7, 2014. Wendy W Henderson, Director of Public Health had spoken with Ms. Mehri, and explained that she should have something put together for the Board because of her repetitive ongoing violations regarding her chickens. Lynne Brodeur feels this is habitual and would suggest the Board revoke her permit. Ms. Henderson did reiterate to Ms. Mehri that her permit is in danger. Lynne Brodeur motioned to revoke Ms. Mehri's permit and to order the animals be removed from the property within 30 days. Mr. Hardman mentioned the staff having to do more paperwork and would suggest 60 days. Ms. McKinley, chair wasn't comfortable with revoking the permit for Ms. Merhi.

With Lynne Brodeur motioning to revoke Mary Mehri's animal permit and removing the animals within 60 days and Mr. Hardman seconding the motion, Ms. McKinley voting nay. It was brought to the Boards attention at the end of the evening that this topic will need to be brought to the Board's next meeting of April 16, 2014, for a revote because there wasn't a majority as Mr. Hardman must be sworn in.

**Appointment 7:30 PM** RE: Adelino Cordeiro/Plat 138, Lot 182, Gorham Street Extension to remove animals- Adelino Cordeiro approached the Board members with a purchase and sale agreement and commented how he has put 10 percent down on the property he is buying. Mr. Cordeiro would like an extension to be allowed to keep his unpermitted animals in the wetlands without a permit, so he can have time to build shelters and move the animals out of town. Mr. Hardman and Lynne Brodeur perused the purchase and sale agreement. Mr. Hardman suggested giving Mr. Cordeiro until May 15, 2014, to remove the animals.

Lynne Brodeur motioned to give Adelino Cordeiro an extension to remove the animals until May 15, 2014, with Ms. McKinley seconding the motion. Mr. Hardman vote was not counted as Mr. Hardman has not been sworn in.

RE: Cecil Smith Landfill Capping and Closure - Plat 72, Lot 6 Old Fall River Road -02/06/2013- a) Administrative Consent Order with Penalty and Notice of Noncompliance/b) Administrative Consent Order- Leslie E.J. McKinley, Chair informed everyone that the ACO had been received and there isn't a lot the Board of Health can discuss on this matter because the Board isn't party to it. Wendy W Henderson, Director of Public Health commented that if the project proceeds, the Board would be involved in the monitoring. The Board then discussed the funds and time available for this involvement

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Ms. McKinley asked if the Select Board is making any decision that the Board of Health needs to be aware of. Ms. Henderson stated not to her knowledge. The Board discussed a timeframe to submit comments.

Ms. Henderson discussed Mary Robinson's penalty and the requirement for her to put money aside for a SEP (Supplementary Environmental Project)

Gloria Bancroft from Collins Corner Road commented on the penalty payment and its use as well as a time frame for providing comments.

Ms. Henderson mentioned she is preparing well testing draft guidance to bring to the Board at their next meeting that she has been working on.

Todd Kochan of Stonefield Lane would like to see a construction fence installed because he is getting debris blowing into his yard from Robinson property. Ms. Henderson suggested Mr. Kochan contact the office and file a complaint.

Robert Michaud asked about Crapo Hill Landfill. Mr. Hardman said there would be no discussion on that.

No further discussion at this time.

RE: State Road Cement Block (SRCB)/Plat 164, Lot 46, 656 State Road – Dust Complaint – 7/21/2010 – A Complaint had been received from John Wheaton. Christopher Michaud, Health and Sanitary Inspector provided the Board with a written overview of the situation. The Board discussed this matter and felt that a friendly letter reminding State Road Cement Block should be sent reminding them to be mindful of their neighbors.

Lynne Brodeur motioned to send a friendly reminder letter to State Road Cement Block to be mindful and considerate of their neighbors with Ms. McKinley seconding the motion. Mr. Hardman could not vote on this matter because he needs to be sworn in.

Public Health Nursing/Brandon Woods – Bullard Center – proposal- Wendy W. Henderson, Director of Public Health updated the Board she has met with Brandon Woods again, and they will be looking into hiring an experienced Public Health nurse. Ms. Henderson stated Brandon Woods wanted to cut the hours to 10 hours of public health nursing, but Ms. Henderson felt this was unacceptable. Lynne Brodeur asked if there was a timeframe. Ms. Henderson said they would like to start for June 1, 2014, so they can participate in Dartmouth's 350 anniversary with an open house at the Bullard Center.

RE: Cedars Pump Station update 3/26/14- Wendy W Henderson, Director of Public Health updated the Board that she has spoken to Attorney Matthew Thomas who is representing Peabody Properties Cedar's owners. Ms. Henderson feels Attorney Thomas is on the right track with a little pressing from David Cressman, Town Administrator who is trying to get the affected homeowner's compensation. Ms. Henderson spoke with David Hickox, Director of Public Works who is adamant the Department of Public Works does not want to take the pump station over.

Lynne Brodeur made a motion that the lists of homes in this area don't have to connect to this private sewer system with Ms. McKinley seconding the motion. Mr. Hardman's vote could not count as Mr. Hardman has not been sworn in.

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RE: Letter of support for Braiden Norton tumor treatment-Wendy W Henderson, Director of Public Health had left a message for Braiden's father but has not heard back from him. Bonnie Sousa who was present on other matters and knows of the family informed the Board that Braiden is in Florida receiving treatments. The treatments aren't the same but until such time as the FDA approves the antineoplastons treatment the family has found a way to get Braiden same treatment.

RE: Assistant Animal Control Officer Discussion/Budget proposal - 12/11/2013-Wendy W Henderson, Director of Public Health update the Board that Sandra Gosselin will be out two more weeks. Ms. Gosselin has been receiving physical therapy for her injury she sustained in an automobile accident a month ago while on the job.

Ms. Henderson also informed the Board the budget proposal will be supported by the Finance Director and David Cressman, Town Administrator. It now has to go through Finance Committee and Town meeting for the final approval.

RE: Update on Director's insurance & Director of Public Health position- Wendy W Henderson, Director of Public Health stated there is no real update. She will be meeting with the Select Board on May 19, 2014, so for now this can come off the agenda. Ms. Henderson read to the Board a memo that had been sent to the Melissa Medeiros from Human Resource asking her to do a salary study for the Director position. Ms. Henderson will send another letter again asking the Ms. Medeiros from Human Resource to forward the Board Director salary information to the Board of Health by April 30, 2014. The Board had a brief discussion on posting of the position, and possible replacement for the position.

RE: Septic Plans - The following septic plans were reviewed by Health and Sanitary Inspector, Christopher Michaud and approved by the Board.

John Delgado/Plat 104, Lot 1-2, 762 Smith Neck Road - waiver & deed restriction- The Board discussed the aforementioned septic plans and pursuant to the provisions of 310 CMR 15.000, Title 5, with Lynne Brodeur motioning to approve with proposed 3' between the bottom of the soil absorption system and the estimated seasonal high groundwater elevation as designed 4 feet required Leslie E.J. McKinley seconding, the Board of Health voted unanimously to approve the aforementioned with a deed restriction limiting the home to three bedrooms. Mr. Hardman's vote could not count as Mr. Hardman must be sworn in.

RE: Septic Plans -

Margaret Sweet/Plat 13, Lot 8, 529 Horseneck Road

RE: Complaint Log -March 20 through April 4, 2014 - The Board perused a copy of the complaint log for the aforementioned dates. No action required.

RE: Health County outcomes - Overall - The Board perused the report and Dartmouth falls under Bristol County which ranks number 12 on the list.

RE: Discussion of any item not known 48 hours in advance -

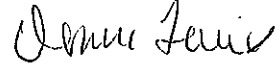
RE: Board Signatures - Leslie E.J. McKinley signed an Employee Absentee Report for Wendy W Henderson, Director of Public Health.

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At 8:50 p.m. Leslie E.J. McKinley, Chair entertained a motion to close the regular Board of Health Meeting. Roll call vote -Thomas W. Hardman - yes, Lynne Brodeur - yes, Leslie E.J. McKinley.

With no further business to discuss, the Chair adjourned the meeting at 8:51 p.m.

Respectfully submitted,



Donna Farias  
Administrative Clerk