

BOARD OF HEALTH
TOWN HALL
334 MAIN STREET
MEETING AGENDA
THURSDAY MAY 2, 2013
7:30 P.M.

1. **APPROVAL OF MINUTES:**

A. Minutes of April 4, 2013

MOTION: Ms. Ryan to approve.

SECOND: Dr. Majdalany (stepped down as chairman)

VOTE: 2-0

2. **VARIANCE REQUEST:**

A. 1097 Main Street, John Hobart for a Request for Variance to Well Rregulation setback.

Attorney Alex Glover and Brent White from White Engineering were present to explain the request. A site plan was submitted with the Variance. Attorney Glover advised the property is 59' 10" which is 2" short of 60 feet on each side. She said the Variance Request is to narrow the side setback by 8". Attorney Glover said she understands you measure the setbacks for wells from the center of the well but in this case the setback has been measured from the well casing so we are being ample. She stated "the amount of distance we are looking for is minute." She noted that there is no other well in the area. Everyone is on Housatonic Water and there is no septic in the area including John's house which is serviced by sewer. Attorney Glover stated that she was not sure the Board had the opportunity to review the entire package that was submitted, but one of the attachments is an affidavit from John Hobart himself. She said John is a different kind of guy and has a different view of the world. He is very independent and that is one of the reasons he would like to be off the grid if he could and why he wants his own private well. She noted in paragraph 12 of his affidavit that he acknowledges and regrets that this has been such a concern to Mark and to the Board for a long period of time. His intent is not to be a pain in the behind. His intent is to get his well in and disappear from the radar screen – at least the Great Barrington Board of Health.

Brent White, from White Engineering said this is the same site plan that was presented back in December 2011 and heard on January 5, 2012. He noted it is the same plan and no dimensional changes have been made. He stated as with any Variance application for a septic system involved in zoning, we always look at the property and wonder if there is a way we can feasibly come into compliance with the rules as stated. In reviewing the property that is not conforming as well as the abutting properties, both neighbors to the east and west have structures within 2 to 3 feet of the side property line so any kind of effort to either establish a boundary line agreement or change the sideline or the 30' setback so it could be met is not feasible because we would create a greater nonconformity than what exists. None of the abutting properties are serviced by septic. The water line broke. Mr. Hobart feels that if he installs a well, he owns the water line and would have an agreement with the contractor installing the well. Brent White noted that the addendum states that the well will not have a negative impact on the neighborhood or any burden to the Housatonic Water Company source for their water.

Attorney Glover noted that Mr. Hobart has no other source of water on his property and he does not want to enter into an adhesion contract. If he had 8' more space – and there were no health issues he could put a well in as a right and if the Town had Town Water he would not have any objection to it at all. He doesn't want to do business for this for profit private water company. Attorney Glover said in her research, in every case that was found in court records it had to do with a well setback variance to a septic tank, leach field, or something that really presents a significant health question. She noted she is not aware of any reason health or environmental reason to deny this variance in this situation. Attorney Glover said she is requesting the board consider the context of other variances this board has granted in harder situations. Brent from White Engineering said in no way would granting this variance have an impact on the abutting property. If someone wanted to add to their property, they have sewer, they are not expanding a leach field which would infringe on a 100 or 150' setback to this well. The only property that is impacted by this variance is Mr. Hobart's.

Mark said he personally had a difficult time finding similar cases but did speak with Town Counsel for advice. He said another issue is precedent. Mark advised that that 69 Blue Hill Road is on the other side of the mountain with no access to a public water supply and is not a comparable situation as Attorney Glover had implied. Numbers 5, 6, 7, 8, and 9 Grant Lane were all granted variances to the setbacks as noted in Attorney Glover's packet but the difference in those situations was that it was a shared water line from the main on a private road. The length of the service line is in excess of about 640 feet. There was no legal ownership of that pipeline and it was complicated, expensive and a very different situation with no easy access to the water main. Mark said it is true there was an argument between the Housatonic Water Co. and Mr. Balestro on Grant Lane but that was never taken into consideration in granting the variance. Mark said he disagreed with the private for profit issue. Not that it is a private for profit entity but in the States and town's view, it is a public water supply whether privately owned or not. The Town Attorney agreed. Mark said that Counsel and he discussed the issue of manifest injustice and his comments were that denying the variance would not necessarily create that situation because there is a water supply available. It is not leaving him without potable water. Mark said he has no personal opinion on this and he is not going to guide the Board on which direction to go but would suggest if a variance was granted that it would be under strict conditions. Mark requested that if the variance were granted, that it be conditioned carefully. 30 days for the waiting period as required by the regulation, 30 days permit to install and test the well and get the water supply certificate for a total of 60 days to complete the work. The second condition that the board should consider is that Mr. Hobart be asked to sign an agreement in writing that he will not reside in the home. Mark noted he has significant evidence indicating Mr. Hobart has ignored the Board of Health order and is living in the house.

Dr. Majdalany said he did not see a hardship in this situation. He advised when the Board grants a variance there has to be a specific reason to grant it. It was noted that the only reason Mr. Hobart is applying for a variance is that he wants one. Dr. Majdalany said Mr. Hobart has water out his front door and there is no reason to grant the variance. It is likely cheaper for him to hook up to the water line than drill a well which does not justify a financial hardship either. Attorney Glover said it is a hardship because he chooses not to contract with that company. Dr. Majdalany noted that we want people to hook up to a public water supply rather than drill wells. Ms. Ryan said she is not happy that he may be living in the house when the board told him he

couldn't live there. Attorney Glover said he does not have a lot of means and he is homeless without the house. Attorney Glover said to her knowledge, he had no interaction with the house now or after the time of the housing court matter. Attorney Glover said she has no disagreement that the Housatonic Water Company is a public water supply legally, but that term just means it serves a certain number of people.

MOTION: Ms. Ryan to deny the variance.

SECOND: Dr. Majdalany (stepped down as chairman)

VOTE: 2-0

3. **HEALTH AGENT REPORT:**

Mark advised that 22 food inspections were done for the month. There were also three Title V Inspections and three Perc Tests. Fiori had their ansul system go off over their wood fired rotisserie. There was creosol built up in the chimney and the foam blew all over. They cleaned it up and had the system recharged and re-inspected.

4. **OLD BUSINESS:**

A. 1097 Main Street – Discussion/Vote – Mark said we need to decide how to move forward with the condemnation issue. He noted he thought the condemnation order would be resolved if the variance was issued. It probably will have to be taken back to housing court to enforce the condemnation issue. Mark noted he would forward an e-mail to Town Counsel to begin the process.

B. Tobacco Signage – The signs have been installed at all the Parks and Cemeteries in town.

C. Food Truck Bylaw – Mark noted this will be back before the Board of Selectmen in June. The Selectmen asked him to hold off on it until after Town Meeting and elections. He was asked to return with a chart of the downtown restaurants and the 50' zones. Mark advised he will be working with the Planner to work something up. The bylaw may be changed for next town meeting or the Selectmen may require a special permit for a food truck. At this point, food trucks would have to be in the downtown area to avoid conflicting with zoning. It was written this way because zoning says outside of town use would require a special permit.

D. Well Regulations Review – The underground propane tank issue was discussed. Mark advised he was only able to find 3 other communities that have propane tanks separate from petroleum tanks. One was outside of Berkshire County and their set back is 25'. Williamstown and Richmond also have a 25' set back. DEP's guidelines recommend 20 to 50 feet. Mark said 25' was going to be his recommendation. Currently it is listed under underground fuel tanks. Mark said he wants to differentiate between the two so propane tanks don't have to be 200' away. He advised that he would like to hold the public hearing at the next meeting and amend that and add the definition of public water supply so that is not a concern going forward. Mark advised under the variance section it states that the Board of Health may vary the application of any provision of these regulations. He noted he would like to change it to the Board of Health may at its discretion vary an application so it makes it a little more clear.

5. **NEW BUSINESS:**

A. Board of Health Training – Registration – Mark advised that there is a Board of Health Orientation Class being held on June 10, 2013 at the BCC South County campus. The registration is at 5:00 p.m. and the class is from 5:30 p.m. to 8:30 p.m. Mark advised that it is required to obtain grant funding for the BPHA.

B. Beach sampling – 2013 Season – Mark advised he stopped using Berkshire Envirolabs 3 years ago. Mark advised he did the water sampling the last two seasons and drove to Pittsfield and did the paperwork because of no other option. A quote was received from a new lab in Lee for \$1,785 for the summer which includes \$75.00 for road time and \$22.00 for each test. \$1,542 has been budgeted. Mark advised that he would like to move \$243.00 into the testing account from supplies to cover the cost.

C. 597 Main Street – septic/sewer – Discussion/Vote – McTeigue and McClelland – they have a cesspool in the back that was not known. It backed up into the basement and Mount Everett called and said they wanted to connect to the sewer. Mark said he pulled out a file and found a letter from February 2005 from Sandra Martin stating that she was aware there was a cesspool and there was an agreement that he was going to connect to Town sewer at that time. It never happened and it got filed away. They asked if they could come before the board to install a tight tank. Mark said he advised them that it is not a good idea and it would need DEP approval. Mark advised there is an elevation issue, they will have to pump up and will have to bore under the road to where the sewer line is and they don't know what else is there. They have contacted dig safe. They are going to connect to the Town sewer at this point.


D. Holiday Inn Pool – Pool Inspections – Mark noted the Holiday Inn Pool is open. All indoor pools have been inspected and are permitted.

E. BPHA coverage in May – Mark advised that Scott Krzanik from Berkshire Public Health Alliance will be covering for him May 13, 15, 20, and 22nd. He will be doing title 5's, percs, and housing issues. Locke will be dealing with pools, garbage and food issues.

F. FDA Grant – last year the Towns of Egremont, Lanesboro and Mount Washington enrolled in this FDA food standards program. It is an 8 part standards program though the FDA to improve food safety. This year they are asking Sandisfield, Great Barrington, Washington and New Marlboro to get involved. We really don't have to do anything other than provide information. They are going to do an audit of our food inspection program and point out ways we can improve on it. It is grant funded. They would like to utilize Great Barrington's reports. Nancy Simons-Rudderman will be the auditor. They would like us to bring our reports up to the FDA standards.

Mark said he would write a letter to Dr. Conforti from the board thanking him for his service on the Board of Health. It was noted he has been on the Board since 1995.

Respectfully submitted,


Carolyn Wichmann, Secretary