

MEETING MINUTES BOARD OF HEALTH SEPTEMBER 18, 2013

MEMBERS

Present: Mr. Frank DeFelice, Chairman
Amy Wiegandt, M.D., Member

Mr. Robert M. Ethier, Health Agent
Mr. Richard Johnson, Health Inspector

Excused: Mr. Glenn M. Monterio, Member
Catherine Phinney, R.N., Associate Member

PUBLIC HEARINGS

Chairman DeFelice opened the meeting at 4:00 p.m.

4:00 p.m. - Signing of minutes.

The minutes were approved and accepted.

On a motion of Dr. Wiegandt and second by Chairman DeFelice, a motion was made to accept the minutes of the meeting held on September 4, 2013.

4:05 p.m. 27 Over Jordan Drive, McKinnon & Keese- Variance to State Regs.

Sandy Keese, Environmental Planner of McKinnon & Keese Engineering, approached the Board on behalf of Mrs. Margaret Saunders to request the following variances to upgrade an existing cesspool.

Proposed SAS to:

1. Existing Full Foundation: 8', (with use of a Ruffco 240, 40 mil. Impervious barrier
2. West Property Line: 5.1'

Proposed Septic Tank System to:

3. South Property Line: 5.1'
4. Foundation wall: 8'

Proposed Distribution Box To:

5. South Property Line: 8'

Abutter certified receipt collected.

On a motion of Dr. Wiegandt and second by Chairman DeFelice, the Board voted to grant the variances.

4:10 p.m. 260 County Road, Victor Brier- order to Appear

Mr. Victor Brier was ordered to appear before the Board due to a continued nuisance of an offensive odor on property located at 260 County Road, County Road Recycling. Abutters have been filing complaints during the summer months since 2001. Complaints were also lodged on the DEP/SW hotline to Mr. Robert Johnson. Unfortunately, in each case, Mr. Johnson did not receive the complaints until the morning of the following workdays when he would visit the site and find no odors were present. On occasion, Mr. Johnson would drive by the site on a random basis in the mornings, evenings, and weekends. To date, Mr. Johnson has not yet been able to detect any odors. Mr. Johnson's advice to the Board members was "if the town is able to document offensive odors and determine that a public nuisance condition persists, they are fully empowered to take whatever enforcement measures that they are entrusted with to resolve the problem." Health Agent, Robert Ethier and Member, Dr. Wiegandt visited the property. Dr. Wiegandt reported a gas like smell at the shell pile. Chairman, Frank DeFelice and Member, Glenn Monterio visited the site and could detect no odors. Dr. Wiegandt summarized the history of Mr. Briers case and stated "in the past, recommendations had been made to move the shell pile, lower the size of the shell pile, putting up a wall and using fine monies to investigate the situation." Dr. Wiegandt then pointed out the case has not gone any further in solving the situation. Mr. Brier was to submit water tests to the office of the Board of Health, to date, no results have been submitted. Mr. Kenneth Ferreira, Associate Member referred to The Legal Handbook for Massachusetts Boards of Health and read the DEP regulation, found at 310 CMR 7.09 (c) Dust, Odor, Construction and Demolition- "No person having control of any dust or odor generating operations shall permit emissions there from which cause or contribute to a condition of air pollution. Dust and odor impacts can be very difficult to quantify with any kind of precision. For that reason, citizen complaints and first-hand observations can be a sufficient basis for a finding that a nuisance condition exists. See, Town of Shrewsbury v. Comm'r of the Department of Environmental Quality Engineering, 38 mass. App. Ct. 946, 948, (1994). In that case, which stemmed from complaints of odors from a municipal composting facility, the DEP hearing officer rejected the scientific techniques used to quantify odors as having virtually no probative value, and relied instead on the incidence and nature of the complaints from nearby property owners. The Appeals Court upheld that decision." Mr. Ferreira pointed out that first hand observations could be a sufficient basis for finding a nuisance exists. In this case, we have a complaint from a neighbor, first hand observation from a

Board Member and a Health Agent. Apparently that is enough to consider a nuisance exists. Mr. Ferreira recommends the property owner deposits money into a 53G account and hire an environmental engineer of the Board's choice to investigate the problem and submit a report. Report should state what's happening, is there a nuisance, is there a violation in terms of pollution. Dr. Wiegant reviewed photos of the property and agreed with Mr. Ferreira's recommendation. Chairman, DeFelice agrees with the recommendation and also recommends the neighbors have their well water tested also.

Mrs. Deborah Muse and Mr. T.K. Roy both spoke on behalf of the neighborhood and stated: "At times, windows can not be opened due to the horrendous odor". Neighbors feel the smell is coming from the shell pile and dirty shells are being dumped. Mr. Briar argued the shells are clean, chlorinated and steamed. Mr. Brier stated he has a permit, records are kept and he purchases clean shells from a highly regulated, reputable company, Sea Watch in New Bedford is his only supplier. Mr. Brier feels there is no problem with his shells. In the past he has conducted wind analysis and conducted water testing. Dr. Wiegandt requested Mr. Brier submit water reports to the BOH office.

On a motion of Dr. Wiegandt and second by Chairman, Frank DeFelice the Board voted to set up a 53G account where the property owner will deposit money into the fund, the Board will bid out to three environmental engineers and the Board will hire the environmental engineer of their choice to perform an assessment on Mr. Briers property to seek out the source of the odors.

Mr. Brier will report back to the Board on October 16, 2013.

4:20 p.m. Allied Waste- Order to Appear

The office of the Board of Health received a complaint regarding an Allied Waste Service truck releasing leakage in the Rose Point area of West Wareham. This is a violation to the Massachusetts General Laws, Chapter 111, Section 122: Regulation Relative to Nuisances; Examinations: The Board of Health shall examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may, in its opinion, be injurious to the public health, shall destroy, remove or prevent the same as the case may require, and shall make regulations for the public health and safety relative thereto and to articles capable of containing or conveying infection or contagion or of creating sickness brought into or conveyed from the town or into or from any vessel. Whoever violates any such regulation shall forfeit not more than one thousand dollars. Complainant also reported Allied Waste is not following the Local BOH mandated recycling regulations.

On behalf of Allied Waste, Mr. Daniel Higgins, General Manager approached the Board and apologized for the service performed by the company's drivers. The drivers were unaware of a hole in the harbor, which has been repaired. Mr. Higgins announced the company is changing over to new management and will change the name to Republic Services, Inc.

Mr. Higgins distributed an updated "point of contact" list. The company is in the process of building a new C & G facility and will be using C & G fuel instead of diesel. Three new company vehicles have been purchased and two will be in Wareham. The drivers do recycle and Mr. Higgins will oversee the process by contacting the operation supervisors to make sure all rules and regulations are properly followed. Mr. Higgins will submit an updated report of the prices and services offered to the residents of Wareham. Health Agent, Robert Ethier strongly advised Mr. Higgins to contact him with any further questions as future violations could carry fines of up to \$100.00 per day.

4:25 p.m. Health Agent's Salary

The Board discussed the Health Agent's salary.

Old Business- No old business.

New Business- 1. Flu clinics will be held on Thursday, September 26th from 1:00 to 3:00 and Thursday, October 3rd from 4:00 to 6:00 p.m.

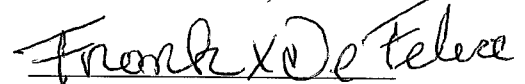
Member, Dr Wiegandt moved to close the meeting. Seconded by Chairman DeFelice.

Meeting adjourned at 6:23 p.m.

Respectfully submitted: Suzanne Burke, September 26, 2013.

Signed and dated: 10/02/13

Frank X. DeFelice, Chairman



Glenn M. Monterio, Member

Amy Wiegandt, Member
