

HAMILTON BOARD OF HEALTH

MINUTES OF MEETING

February 28, 2018

Members Present: Giselle Perez, Walter Row, and David Smith (Chairman)

Others Present: Leslie Whelan (Health Agent) and Chris Lee (Public Health Nurse)

This meeting was called to order at 7:00 pm at the Hamilton Senior Center by David Smith.

Hearing for Wind River Environmental. Title 5 Inspector Licenses and Fines. Michael Graham and Robert Herrick.

Leslie Whelan said there were two outstanding Title 5 Inspection Reports done by Robert Herrick, for 64 Cunningham Drive and 236 Sagamore St. Both reports were submitted with errors. In the past, Ms. Whelan had listed errors for other reports and sent them to Rob Herrick but he never responded and the mistakes were never corrected. After Ms. Whelan received three reports in Rockport, Matt Dutra, a previous Wind River employee said he was going to help Rob Herrick fix the reports. Mr. Dutra reportedly understood the concerns and promised to work with Mr. Herrick before sending the Rockport reports. Ms. Whelan said she received the same errors on the Hamilton reports. Ms. Whelan said she was finished writing lists of errors, especially if Mr. Herrick wouldn't fix them. Mr. Dutra was told that information was missing, which began a 12 page e-mail chain with Mr. Herrick stating that Mr. Dutra didn't work there any longer. Ms. Whelan concluded that the concerns were not addressed.

Leslie Whelan wrote many e-mails with Wind River to get someone to fill the gap that Matt Dutra had filled by helping Rob Herrick. Ms. Whelan was frustrated when the only response was that Mr. Dutra didn't work there any longer. Ms. Whelan received the report for 64 Cunningham and then 236 Sagamore St. with the same errors. Wind River sent in Eric Muller who reviewed the file and met with Ms. Whelan. Mr. Muller found errors and Mr. Herrick found an error. One month later, Ms. Whelan had not received the corrected report and wrote to them regarding the missing report status. After another week, Ms. Whelan gave them one week for the report submission. Ms. Whelan received nothing for another two to three weeks. Wind River made no attempt to fix the report. After another three weeks, Ms. Whelan received a revised report with two errors fixed and four errors unfixed, including the only one Mr. Herrick had found. Mr. Herrick asked for a list of errors, but as he had been given a list in the past without fixing the errors, Ms. Whelan indicated that she felt she had spent too much time with the company and felt sorry for the homeowners who were strung along waiting for a Title 5 when the company would not fix the errors. Leslie Whelan said the other contractors in Hamilton and Wind River were like night and day. Other contractors complied with the Regulations and Ms. Whelan was satisfied with their work.

Denise Shane (13 Essex St.) said she had a Title 5 done a couple of years ago. Wind River located and fixed the septic then sent the report to the Town, which was wrong. Ms. Shane was

told by Wind River that they needed to dig from the house to the septic system, which would cost \$10,000. Another company came in and said they had worked on the system in the past and the system Wind River had been working on was the one that not working. The new company found the right system and Ms. Shane was charged \$2,000. Ms. Shane complained to Wind River with little response until she went to their headquarters in Westborough, when they agreed to reimburse her. Ms. Shane said she would not recommend Wind River to a friend.

Karen and Patrick Wallace (64 Cunningham Drive) were present. Ms. Wallace said she had a problem with the Town due to the lack of clarification. Ms. Wallace's pump chamber septic system was installed in 1998 and ran well. It was pumped every two years. The Title 5 was done for the home sale and Ms. Wallace wanted to see and understand where on the report, the errors occurred as it was not explained. Ms. Wallace said when it came to law, there was a matter of opinion and there could be variations and exceptions. Ms. Wallace was a Hamilton policewoman. The Town also realized that the system was pressurized and required the leaching field to have pipes cleaned out annually. The submittal of the Title 5 report was the first time Ms. Wallace was aware of the requirement or she said she would have had it done. Ms. Wallace said Ann Ricker sent an inspector out who indicated that the system would pass Title 5, but Leslie Whelan would not issue it. Ms. Wallace thought there was a personal vendetta against a specific inspector and did not want to get caught in the middle.

Karen Wallace said now she needed to hire a lawyer to resolve the issue and that health agents might vary on their opinion from town to town. David Smith responded that the opinion might depend on the competence and diligence of the agent and that each Town's Regulations also differed. All towns needed to follow the State's Title 5 Regulations. Mr. Smith added that an agent in Hamilton and another town might see the reports differently. Ms. Wallace suggested taking a report from Ann Ricker's company and comparing it to the Wind River report to see what significant differences existed.

In response to Giselle Perez's question about communication regarding errors being directed to the homeowner or the inspector, Leslie Whelan said she communicated with the inspector. Ms. Perez asked if the inspector would know more about the details than the homeowner to which Ms. Whelan responded yes, they would. Ms. Perez added that an inspector who had worked on the system would know where the gaps were. Karen Wallace responded that the inspector said there are no gaps, but Ms. Whelan disagreed.

David Smith suggested that Leslie Whelan give Karen Wallace of copy of the Title 5 report that was marked up with a clear statement of deficiencies, missing items, or errors. Ms. Wallace referred to the laws that pertained to specific sections and noted that when reading the law nothing was mandated via the terms "shall" or "will" regarding pressurized systems. Ms. Wallace added that the pressurized system was cleaned out the previous week. Wind River conducted the Title 5 on November 9, 2017 but did not mentioned that there was a pressurized system. Leslie Whelan responded that the previous health agent did not catch the system when it

was approved and did not inform the homeowner that they needed to conduct annual maintenance. Ms. Whelan said when she found pressurized systems, she required the annual maintenance in all fairness to the buyers.

Walter Row summarized that Leslie Whelan had worked with other providers with a quick turn around and if there were errors, she was able to speak with the service provider and get a near immediate resolution so the client would not be in the dark, but in this instance, Ms. Whelan was trying to get the service provider up to par with the other providers, and unfortunately this left Karen Wallace without the information she needed. Mr. Row said even though Ms. Whelan usually worked with the service provider, she would work with Ms. Wallace to provide a marked up report, which would relieve the frustrations on both parties. .

Elizabeth Durkee (Wind River) referred to the 16 page e-mail chain from December 8, 2017 until February 9, 2018, where she continuously asked Leslie Whelan what was wrong with the report. Ms. Durkee indicated that Ms. Whelan's response was to keep find the errors. Ms. Durkee recalled that Ms. Whelan had listed the errors in the past. Ms. Durkee said Wind River needed to find someone to correct them and added that it was part of Ms. Whelan's job to find the errors. Wind River had completed 857 Title 5 reports in MA in 2017 and hadn't had any problems. Giselle Perez responded that if there one or two complaints it would be difficult to argue, but there were many complaints. Eric Muller had resubmitted the report with only two errors corrected after an entire month had passed from the original meeting, according to Ms. Whelan. Eric responded that it was a communication problem in the company.

Elizabeth Durkee questioned the taking of minutes in the meeting with Leslie Whelan and Eric Muller. David Smith said there were no minutes taken in private meetings, but in the 40 years in regulatory agencies with clients, Mr. Smith had taken detailed notes and left the meetings with a written record of what the regulatory agency expected, wanted, or required for briefing the client. Wind River admitted it was their problem and that inspectors and health agents in every town were different. Wind River apologized and that if Rob Herrick dropped the ball, they would correct it. Mr. Smith said Leslie Whelan would close the loop by providing a clear written record of deficiencies in the report and Wind River would bring the report up to requirements.

In response to Walter Row's question as to the work involved, Eric Muller said information was written down on site during the inspection and typed into the report when the inspector returned to the office with the full scope of work including getting the paperwork done quickly. Mr. Row said he was hearing from Wind River that it was difficult and the health agent was accountable to Wind River. Mr. Row added that Wind River was accountable to the Health Agent.

Denise Shane said her issue was not with paperwork but with the total incompetence and the making of an outrageous bid to fix her system when they were not even working on the right septic system. Ms. Shane repeated the barrier for information as a problem as well.

Leslie Whelan could not determine what happened to 236 Sagamore St. and become involved with the manager. Rob Herrick had given Eric Muller the files. If the report was not received, Mr. Muller would handle it.

The Draft Order was discussed. Leslie Whelan spoke about Title 5 inspectors needing to conduct their own research of the Board of Health files. Good inspectors reviewed files and neighboring files for groundwater information. One problem with Wind River was that they didn't do their own research, but rather sent homeowners in to gather information, which required the administrative assistant to search the files. Ms. Whelan continued that it was not the job of the assistant to find the information for the homeowner or the inspector. The inspector needed to know what was going on in the neighboring properties. Ms. Whelan said reports needed to be complete and accurate. Revised reports or information requested should be submitted within six calendar days. The clock would start from the day Ms. Whelan sends an e-mail or calls the contractor to notify them of deficiencies. David Smith said an understanding of what was required and the means by which the correct information would be submitted, either a revised report or an email with an answer would become the common understanding between Ms. Whelan and an inspector.

Leslie Whelan indicated that she did not mind solving the situation at 64 Cunningham Road by writing out the mistakes, but she had done so repeatedly in the past for other problematic Wind River Title 5 reports with no corrections being made. Ms. Whelan added that Wind River should be figuring out the reoccurring mistakes at this point.

David Smith asked Elizabeth Durkee if she would agree that Title 5 inspectors should conduct their own research in connection to Title 5 preparing an inspection report. She agreed. Mr. Smith asked if it was a reasonable expectation that inspection reports should be complete and accurate. Once the health agent and inspector had a common understanding of the status of the report, perfect or with deficiencies, omissions, or errors, there needed to be a common understanding of the means for deficiencies or errors to be corrected. The corrected information must be returned to the Board of Health within six calendar days. Ms. Durkee wanted to be copied on the requests in case the inspector was on vacation or in an emergency that he didn't receive the e-mail. Wind River was committed to comply with the requirements. A PDF copy of the report would be accepted but individual pages would not.

On Friday, Leslie Whelan would e-mail Karen Wallace a list of the mistakes in the report indicating what needed to be changed. David Smith indicated that the request was a major exception and would not be done again.

Chris Lee (Public Health Nurse) Presentation on “ALICE” – An Active Shooter Civilian Response Training.

According to Chris Lee, the Hamilton Police Department looked to adopt ALICE and had been in discussion with the Superintendent of Schools for three years. A year ago, Chief Stevens

made a presentation to the School Committee. The protocol included alert, lock down, inform, counter, and evacuate when faced with an active shooter. ALICE was recommended by the FBI, Department of Education, Homeland Security, and the Chief of Police Association of MA. Statistics have shown that citizens must respond because police respond in five to six minutes. There had been 18 shootings since January 2018. Teachers would review a power point presentation at home in two to three hours for a small fee and take an exam. Police can train staff in about six months.

Chris Lee said evacuation was similar to a fire, something that would cause mortality in a building causing a need to evacuate. Four times a year, fire drills were conducted in Hamilton, but not a single drill for an active shooter. Ms. Lee sent a letter to the Schools with the Superintendent responding that staff had been trained. The Schools practiced lock down for any circumstance, according to the Police Chief. The protocol went against police policy. The towns around Hamilton (Beverly, Danvers, Gloucester, Georgetown, Ipswich, Manchester, Essex, Salem, Masco, Pingree School and Marblehead) have adopted ALICE. Peabody had some sort of program, not drilled in schools. Hamilton did not.

The graph of the Virginia Tech shooting was discussed. Those classrooms that were evacuated or barricaded had a higher survival rate. According to Chris Lee, someone said they didn't want their children scared or throwing things at an intruder. The policy would be that the teacher made the decision when they alert another teacher that a shooter was present, and empty their classroom. If close to the shooter, the teacher would know to barricade their door as there would be no time to get to an exit. Ms. Lee said in Hamilton children just cower. Ms. Lee thought the children should have a path to an exit and should practice barricading.

David Smith recalled the police chief asking why would children bunker down at the Winthrop School when there was a door out from every classroom. Chris Lee said Winthrop School also had a door in every classroom that accessed the outside. While there was a concern that a child would be lost, evidence showed a child had never been lost. Giselle Perez said everyone knew the children in the neighborhood. Mr. Smith said the Board could adopt a resolution to request, suggest, or demand that the Hamilton Wenham School District adopt the ALICE program. Chris Lee said the Schools could use one piece or all of the program. If the target was moving, an accurate shot would be more difficult. The empowering program would go along with all aspects of the children's lives. Mr. Lee added that they cower under the desk principle was adopted for air raids and was an outdated program.

Giselle Perez said she understood parental concerns as explaining it to children would be difficult, but given the fact that it was a reality and trying to pretend it did not exist was difficult. Ms. Perez was for the program and suggested strongly emphasizing the need by raising parental awareness. Chris Lee compared the drill to a fire drill. When children train for a fire drill, they would not be thinking of horrific things in the building, they would be listening to what the teacher told them to do. Students have been trained since preschool to listen to their teacher. In

Columbine, the librarian said the shooter was in the hall and a child was heard saying why can't we go out the exit and she said get under your desk. He asked again why can't we go. The teacher repeated to get under his desk. They listened to their teacher and died.

Chris Lee said Mike Harvey would discuss a possible adoption of ALICE at the March 14, 2018 School Committee meeting and Ms. Lee would appreciate anything to expedite the process.

Motion made by David Smith that the Hamilton Board of Health strongly recommended that the Hamilton Wenham Regional School Superintendent work with the Chief of Police to adopt the ALICE program in the Hamilton Wenham school system. .

Seconded by Giselle Perez

One issue was that the teachers could not be mandated to stay after school to learn the system as they were unionized.

Vote: Unanimous in favor.

Unanticipated Items/Announcements.

Ben Carlson (1R Horseshoe Lane) was present. Leslie Whelan explained that Mr. Carlson's house needed an addition and had a four bedroom septic system. When Mr. Carlson added the proposed rooms, the total number of rooms would be ten. Once you have nine or more rooms, bedrooms were counted by the total number of rooms divided by two and rounded down. A ten room house had to be considered a five bedroom house according to Title 5. If the Board could agree that it was a four bedroom house and there were more rooms, a notice could be put into his deed that would alert future people that buy the house that it was only a four bedroom house. If Mr. Carlson needed a variance, it would need to be put on the agenda. A deed restriction would make it clear to a prospective buyer what had happened, according to David Smith. Ms. Whelan said the point of the notice would be for when a buyer saw ten rooms, and they wanted to upgrade their system, they would not be able to do it automatically unless they met new construction standards.

Ben Carlson said he wanted to put in an office and reconfigure his kitchen with an eating area. According to Mr. Carlson, it was a four bedroom septic and a four bedroom house. In years to come, if someone wanted a five bedroom house, they would perc the lot and put a bigger septic in. Leslie Whelan said she was not aware of a site restriction but would not want to say without further investigating. The one acre lot had a room proposed above the garage that had to be one large room or a room with a guest bedroom. If the Board agreed with a deed restriction saying it was a four bedroom house and septic, Leslie Whelan could sign off on his plan for a four bedroom, 10 room house.

Motion that the Board of Health allow the house plans to be signed off on by the Health Agent that 1R Horseshoe Lane had ten rooms total and four bedrooms total with a four bedroom deed restriction.

Giselle Perez seconded.

Walter Row asked why the Board would go against the Rules and Regulations. Giselle Perez responded that it was due to the lack of health concerns and didn't want potential buyers to assume it was a five bedroom house. David Smith said he thought it was clear as it was attached to the deed. Ben Carlson said the restriction indicated the primary intent of his construction plans.

Vote: Unanimous in favor.

Vote on Final Draft of the By-law for the Improvement of Blighted or Unsafe Structures or Property and the Maintenance of Vacant Buildings.

David Smith said Town officials understood and endorsed the proposal with one minor exception and each would defend the By-law at Town Meeting. The Building Commissioner would decide what work would be done and how long the improvements would take with each case being individually considered. Donna Brewer would interpret for when work started. Something for appearances as it related to property values and sound structures and buildings was included. Landscaping was included for vacant properties only. The Board debated if the status of the property was an issue or the structure was an issue.

David Smith said Ayer and Upton were used as templates for the By-law. Patrick Reffett, Leslie Whelan, Donna Brewer, Michael Lombardo, and Scott Maddern each customized it to suit Hamilton. The Council on Aging wanted to be consulted regarding senior residents who were emotionally, physically or mentally impaired. Giselle Perez worried about protection for those who lost their job or had a financial burden. Ms. Perez was also concerned about properties that were ugly, rather than dangerous. Mr. Smith responded that in his experience, the Town government was very sensitive to the unique situations of Town residents and would bend over backwards to accommodate anyone with financial, physical, or mention/emotional issues that impaired their ability to maintain their property. Mr. Smith recalled the public hearing when residents were disappointed with the unresponsiveness of the Town and that Mr. Reffett had complained about a lack of resources to enforce the By-law.

Walter Row said he went down Old Cart Road and couldn't find a blighted home. Leslie Whelan had the same experience until she found a car with flat tires. Reportedly, neighbors knew it was vacant and the neighbors didn't like it slowly degrading. The Building Commissioner would work the severity of the problem out. Giselle Perez thought it might be harassing. David Smith said vacant buildings were singled out because abutters were fearful the structure could be the source of an explosion, fire, collapse, and vagrants. Typically, the owner was not the original owner of the property but paid taxes so the Town could not take possession. Mr. Smith did not find a case where the owner did not have the resources. Ms. Perez said there might be discrepancies applying to blighted properties especially if someone was living in the home and it needed repair.

Giselle Perez was concerned about the fence situation of Walter Row, which he said detracted from the value of his home with the neighbor's fence falling down. David Smith said there were

hundreds of cases of falling down fences all over town. Ms. Perez thought the language regarding fences was open for interpretation. Causing harm would be an issue but devaluing an abutter's home might set the stage for harassment. Ms. Perez said the By-law should be mindful of people who wanted to do what they wanted to do within their home. Lowering of abutter value did not constitute a reason for the By-law, according to Donna Brewer. Ms. Perez wanted to have a rationale and thought value should not be an issue. Sanitation, unfit for human habitation, or a deteriorated roof or roof collapse could be issues. Ms. Perez suggested deleting "3.B." Walter Row disagreed. Leslie Whelan said there was no way to write the By-law without it being subject to interpretation and some would be harassed by their neighbors. Mr. Perez said she was comfortable with the By-law if a structure was dangerous but not if it included devaluing the home. Mr. Row responded that if a house was falling down, it would affect the abutter's property value. Mr. Perez said value was not a Board of Health issue.

David Smith made motion that the Board of Health endorse the By-law as amended, namely, to delete item (B) in Section 3. Blighted Structure or Property for a yes vote at Town Meeting. Giselle Perez seconded.

Vote: Majority in favor (2:1), Walter Row voted nay. Mr. Row wanted to vote for the By-law as originally proposed to include B.

Health Agent Update

Leslie Whelan distributed the Health Agent Update noting the \$10,000 in fines for Essex Septic and that the Board could revoke his license the following month unless the Board gave him another chance. As reported last month, Essex Septic did not submit November or December reports. Later Essex Septic submitted December but not November reports. Ms. Whelan said she wrote to him. He sent November after a month. Ms. Whelan tallied the delays, which totaled \$10,000 worth of fines because November was so late. Essex Septic had submitted nine out of twelve months, but Ms. Whelan asked if it was reasonable that she had to chase him. Walter Row said contractors needed to be reasonable to work in the town of Hamilton. There would be a hearing in April. Ms. Whelan said she also had to chase down an Operation and Maintenance provider who did not submit reports without request.

Approve Minutes dated, January 10, 2018 and January 25, 2018.

David Smith made motion to accept the minutes as revised.

Giselle Perez seconded

Vote: Unanimous in favor.

David Smith made motion to accept the minutes as revised.

Giselle Perez seconded

Vote: Unanimous in favor.

List of documents and exhibits reviewed.

Letter to Michael Roy, Essex Septic Service, Inc. dated February 21, 2018.

Draft Town By-law “By-law for the Improvement of Blighted or Unsafe Structures or Property and the Maintenance of Vacant Buildings – Final Draft.

Better Business Bureau Complaints and Reviews of Wind River Environmental, dated 2/8/18
E-mail chain between December 8, 2017 and February 23, 2018 regarding 64 Cunningham Drive.

Draft Order for Non-Compliance with Title 5 Septic System Inspection Requirements, dated February 28, 2018.

Revised Order for Non-Compliance with Title 5 Septic System Inspection Requirements, dated February 28, 2018.

Health Agent Update, dated February 28, 2018.

The Lesson from Virginia Tech.

Minutes of January 10 and January 25, 2018.

Adjournment

Motion made by David Smith to adjourn at 9:30 pm.

Seconded by Walter Row.

Vote: Unanimous in favor.