

HAMILTON BOARD OF HEALTH

MINUTES OF MEETING

March 22, 2017

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

Others Present: Leslie Whelan, Health Agent

This meeting was called to order at 7:00 pm at the Hamilton Senior Center

**265 Cutler Road – Hearing Continued Keeping of Animals Permit – Minimum Standard for Keeping of Animals Regulation 12**

Leslie Whelan reviewed the reason for the public hearing to include that animals were being kept on site without a license. An application had been filed, but information had been missing. The application had not been approved. Regulations included 2.1, 2.2, 3.1 (occupied stable), 4.1 (stable being a minimum of 100' from a well) so a variance would be needed. According to Ms. Whelan, if a water sample had been collected by a company to indicate that no bacteria was involved, it would help make the case that the well could be used, but a water sample collected by a professional company had not been conducted. Lane Chase said he had e-mailed that information and that another test had been conducted the day before the meeting. One test was done a month and a half ago and the company was to e-mail the results directly to Ms. Whelan. Mr. Chase said he had the bill for the work and that the test results were submitted. Two tests were conducted by Biomarine of Gloucester, one from last April and another that week.

Leslie Whelan said due to the fact that she had received the application later than she had specified in the order letter, she did not have time to review the application and whether or not the letter that Lane Chase had written and the list of abutters would work. Ms. Whelan outlined what Mr. Chase would need to do for the variance. There would be a longer list of abutters and copies of the certified mail receipts would need to be accepted. Ms. Whelan explained that according to the Keeping of Animals Regulation, the definition of abutters included direct abutters, across the street abutters, and 300' of the abutters to abutters. Ms. Whelan would give the applicants the list.

Lexi Chase asked if the well existed with horses being present in the past, why would it become an issue currently. Giselle Perez responded that current regulations may not have been in place in the past. David Smith explained that when owners changed, it triggered a new permit requirement, which required current regulations.

Leslie Whelan asked if the Board of Health wanted to issue fines because the application was received late. Lane Chase said he recorded the last two meetings when a water sample was requested and perhaps someone was agitated because the results weren't received promptly. Mr. Chase said his attorney advised him that it was against his constitutional rights that he wasn't allowed to speak on his own behalf. Mr. Chase said he was one of the owners. His daughter's

check was cashed three years ago for the permit. Mr. Chase said he had done everything and that the Town had accused his wife of getting Poland Springs as a water sample. Mr. Chase said he had improved the property and paid taxes on it. According to Mr. Chase, there was nothing that stated a company needed to conduct the water sample. Lisa Chase said she had a private meeting to her attorney and Leslie Whelan, who asked her to contact Biomarine to collect the water sample. She was never told how to collect the water sample.

Lane Chase said his loss of use in the last three years was up to \$300,000 for not having a boarding facility. His attorney wanted to come that evening to discuss why Mr. Chase was not able to speak about the property that was owned by a trust of which his daughter was trustee, but Mr. Chase indicated that he did not want to pay for it. Mr. Chase noted the property was a commercial horse farm and if the Town wanted to issue a \$200 per day fine and put it against his \$4,000 per day loss of use, he would be willing to do that.

Giselle Perez said it seemed that the applicants wanted to comply and asked why there was such a gap in their response. Lane Chase said it was his seventh meeting and that the Board wanted him to get a wetlands engineer to measure the wetland, which he did himself. Mr. Chase said the Board doubled the amount of wetland from 9,000 sf, which he measured, to 18,000 sf and said the facility was good for seven horses while there were ten horses there presently. Even if the Board took 80% of the land and threw it away, there would still be ten horses allowed, according to Mr. Chase. The manure was a big issue and it was moved the same day.

Leslie Whelan noted the number of horses applied for was up to 20 horses. The application recently submitted was more complete. Ms. Whelan looked online to determine where the wetlands were located on the property and determined that wetlands consisted of 60,000 sf, which would need to be deducted from the total lot area. Based on the quick assumption of Ms. Whelan, the ultimate number of horses allowed would be 16. Lexy Chase asked if there was any grandfathering regarding the property as there was an 18 stall barn and that the previous owner maintained at least 20 horses. Wenham had a change of regulations for mini-horses. David Smith said the Hamilton regulations currently did not specify the difference between mini-horses and full size horses, but that was something to consider in the future.

David Smith said he thought it would be best to take it under advisement. Giselle Perez had no additional questions. Lane Chase said the original permit with a check was dated May 2015. Mr. Chase said half of the wetland was on Mandy Carter's property. Leslie Whelan responded that she had only calculated the portion on Mr. Chase's property and suggested Mr. Chase go onto the Town's website to confirm the calculations. The recent application was sufficient enough for Ms. Whelan to review. Previous applications lacked the type of soil and location of the wetlands.

David Smith asked who was responsible for the list of abutters, to which Leslie Whelan said the applicant, but after checking the list, found it was insufficient so Ms. Whelan supplied the

applicant with the appropriate list. The list included abutters 300' from the property line. The letter would include the notice of the hearing date, place, and time. Certified mail needed to be provided with a 10 day notice. The hearing would be Wednesday, April 26, 2017 at 7:00 pm at 299 Bay Road. Receipts would be given to the Board of Health office.

Lane Chase appreciated that Leslie Whelan worked to make sure the farm could accommodate 16 horses. David Smith noted the permit was renewable annually and that perhaps by next year's renewal, there might be a change of regulations to include mini-horse requirements.

### **Essex Septic Service – Hauling. Public Hearing.**

Michael Roy was present. Leslie Whelan updated the Board of Health as to the status of the service. There were three letters which were issued to Mr. Roy going back to last December and a letter of response from Mr. Roy assuring the Board of Health that compliance would not be a problem going forward. Mr. Roy had submitted the reports on the proper form. The final letter was sent because he had submitted missing pump reports from the last three years. However, the homeowner at 131 Essex St. had requested evidence of pumping for three years in a row to ensure that the Title 5 Inspection Report was still valid. The list of pump reports provided did not include 131 Essex St.

Michael Roy said he submitted the pump reports before receiving the letter and that he realized the pump reports had different gallon amounts so he purposefully put them aside as he realized there was an issue with the reports. According to Mr. Roy, there was a problem with his gauge. Once he received an e-mail that the reports were missing, he turned them in. A couple of other reports were questionable, so he turned them in as well.

David Smith asked Michael Roy who was responsible for submitting reports, to which Mr. Roy responded that it was him. A full report to be filled out on the Hamilton form was to be submitted within 14 days, but Mr. Roy said paperwork had been filled out but not filed. Mr. Smith said there were nine licensed haulers in Hamilton, eight of which complied with license requirements. It was unacceptable to have residents call in for reports that did not exist on file. Mr. Smith said that Mr. Roy had a series of problems that prevented compliance and asked how the Board of Health could feel comfortable that Mr. Roy would remain in compliance. Mr. Roy said his process had been streamlined and that he fully intended on being in compliance. Mr. Smith said that Mr. Roy was leaving the Board with no choice to either fine him or revoke his license.

David Smith reiterated that Michael Roy would submit a report within 14 days after each pump out and the lists submitted would include date, name, and gallons pumped. Mr. Smith said if Mr. Roy could not comply, he could not pump in Hamilton. Leslie Whelan asked if Mr. Roy had submitted all the properties from 2014 to 2016 that he had pumped, to which Mr. Roy said he thought he had to the best of his ability. Going forward he could guarantee that he would.

One month and a week from the date of the meeting, he would submit a list to the Board of Health. Leslie Whelan said the point of the list was to keep track of who was pumped and the list should be compared with the report to determine if it was complete. Giselle Perez wanted to know if Michael Roy could determine a way to submit the list. Mr. Roy said he needed to find a program that would allow for a list to be generated. Ms. Whelan asked if the reports submitted were complete and up to date, to which Mr. Roy said yes. Ms. Whelan asked if Mr. Roy had pumped out 29 Moynihan Road for a Title 5 inspection recently. Mr. Roy said he didn't know. Ms. Whelan said it wasn't in the stack recently submitted and that Mr. Roy might have a problem with the generation of the list.

Michael Roy manually compared invoices to incoming checks as a way to manage his bookkeeping. Leslie Whelan suggested keeping a hand written list. Giselle Perez said the Board was trying to find a way to work with Mr. Roy to ensure the missing information would be submitted. David Smith reiterated that there were eight companies complying with the rules and that Mr. Roy needed to comply. Mr. Smith noted the Board was on alert.

Leslie Whelan asked if the Board wanted to consider fines if Michael Roy did not comply. David Smith said the Board was allowed to fine \$10 per failure per day. Mr. Smith agreed with Ms. Whelan that the fine was \$10 per incident up to \$25 per day for failure to comply and the Board had the right to seek fines up to \$500 per day per incident. Mr. Smith stated the Board owed it to the residents of the Town to keep the haulers in compliance. Giselle Perez noted after the month, there would be a fine if Mr. Roy was not in compliance. Mr. Smith said it should be in writing so everyone would have a common understanding of the situation and penalties.

Giselle Perez made motion that the Board of Health draft a letter to be sent to Michael Roy specifying expectations as to what would happen if there was not compliance.

David Smith seconded.

Vote: Unanimous in favor

**Community Package Store, 45 Bay Road– Tobacco Sales Permit. Non-Compliance. Public Hearing.**

Jane O'Leary, owner of the store, was present. On January 25, 2017, a compliance check turned into a violation with a tobacco sale to minors. A notice was left with the Merchant upon the sale with the rules indicating that the violation (third) would cost \$300 and a thirty day suspension of their license to sell tobacco and nicotine products. Ms. O'Leary noted she was aware of the violation and consequences. This was the third violation within three years. David Smith said the Board did not have a choice with the fine or the suspension, but what was of concern was the reoccurrence. Ms. O'Leary said the new employee had been fired and that the owners, not being in the store, relied on an amount of trust. Mr. Smith asked about what type of training the employees had and Ms. O'Leary explained that it was similar to liquor sales.

Giselle Perez said it was a judgement call in that someone who only looked of age may not be an indicator of their age and where this had occurred upon several occasions, she felt strongly that there should be alternate trainings as it had not worked in the past. David Smith said simply replacing the employee with another under the same training, did not assure the Board regarding compliance. Jane O'Leary said the new protocol would be to ask for a license for anyone who looks under 30 years old. Mr. Smith asked if there were violations in the sister store in Ipswich. According to Ms. O'Leary, the response was no and the difference was in the employees.

Each violation had been with a different employee. The person making the sale thought the buyer was much older than they were. David Smith said if it was a different employee each time, it would lead one to believe that the training was inadequate or that the standard set for what the salesperson needed to do before selling tobacco products was not strict enough. Mr. Smith did not think looking 30 was a certain enough approach to avoid fines and loss of business. Jane O'Leary said her solution was to enforce it more with the employees and if they were unable, they would be fired as was this employee. Mr. Smith thought it was arbitrarily set at 30 years and perhaps the store should card everyone before selling them a nicotine or tobacco product. The bar needed to be raised as it was obviously not good enough and perhaps the owner could conduct a test of sending someone in who looked older than they were. Mr. Smith noted his disappointment.

David Smith said the Board would send a bill for \$300 and the starting date for the 30 day suspension would be Friday, March 24, 2017 through Sunday, April 23, 2017. The license would be reinstated on Monday, April 24, 2017. Jane O'Leary presented the Board with a check for the \$300. Giselle Perez asked what would be the consequences for a repeat offense. Ms. O'Leary said tobacco would be removed for the 30 days. Mr. Smith stated that failure to remove all tobacco products would be another violation. Leslie Whelan said she would investigate what would happen for a repeat offense. A third or subsequent violation within three years of a second violation would incur a fine of \$300. Mr. Smith encouraged Ms. O'Leary to be stricter with her employees and have a better carding policy. Ms. O'Leary had not had liquor violations. Ms. Perez asked what the hesitation would be for carding everyone. Ms. O'Leary said it was difficult and irritating to the customer. Mr. Smith said if everyone knew the policy was that everyone was carded, it would be better than making judgement calls.

### **Health Agent Report**

**FDA Grant.** Leslie Whelan said the Health Department received an FDA grant to do a self-assessment of the food protection program as compared to nine voluntary standards. Ms. Whelan completed the assessment and shared it with Bobby Cody, Hamilton Food Inspector, who would offer her input. Once submitted to the FDA, grant money would be given. Ms. Whelan hoped to use some of it to augment Ms. Whelan's increased hours between the current time and the end of the fiscal year, when, after Town Meeting approval, the Health Inspector hours would be increased from twelve to sixteen. Ms. Cody and the Public Health Nurse would

both consider what uses could be funded. Ms. Whelan said the Town would receive the fund and the Board of Health would need to request the money for the specific uses.

Update on Septic Regulations. Leslie Whelan was working on the Septic Regulations. Ms. Whelan was considering amending the weight of the covers. The authority to suspend a license for not complying with the requirement that all pumpers supply a monthly list, could possibly be added to the regulations. Keeping of Animals Regulations were discussed to determine if coops were stables because a strict reading would indicate they were stables, which would need to fulfill the requirements. Ms. Whelan thought some of the requirements would be useful while others would not. Adding mini-horses in ratio to larger horses should be considered. David Smith thought a ratio of two to one might be appropriate but then asked about at what point a mini become a horse.

David Smith recalled that Nancy Stevens, Leslie Whelan and he had visited Brick Ends Farm, which he considered to be an illuminating experience as to the size and materials of the composting facility, especially considering the intensity and frequency of complaints. Mr. Smith was working on initiatives of what was causing the problems and what precautions needed to be taken to avoid reoccurrences. Mr. Smith noted that Brick Ends Farm was really trying. The farm's new permit would be issued in the next few months and a copy of the permit should be requested by the Health Department.

**Nomination of Animal Inspector – Jennifer Gilson and Assistant Animal Inspector – Anne Jackman**

Motion made by Giselle Perez to nominate Jennifer Gilson as Animal Inspector and Anne Jackman as Assistant Animal Inspector.

Seconded by David Smith.

Vote: Unanimous in favor.

**Minutes – January 25, 2017**

Motion made by Giselle Perez to accept the minutes.

Seconded by David Smith.

Vote: Unanimous in favor.

David Smith and Giselle Perez discussed the Keeping of Animals Regulations. Mr. Smith noted he felt uncomfortable being confrontational with applicants as it would be counterproductive. It appeared that the current applicants would be willing to work with the Board. Mr. Smith thought being compliant was more helpful than fining the current applicants. Mr. Smith suggested writing a letter of understanding to be sent to the Cutler Road applicants indicating what would be on the agenda for compliance. The number of horses permissible would be based on the revisions to the calculations. Ms. Perez agreed that not fining would be appropriate because of the cordial attitude of the applicant, but the letter should indicate that fines may be appropriate in

the future if there was not compliance to legitimate requests. Mr. Smith suggested sending information via certified mail to various addresses on file.

It was noted that Michael Roy was trying to comply.

Giselle Perez stated that she felt strongly regarding the compliance of the tobacco sales and found it hard to believe that there would be any difference with the sale of liquor.

**Adjournment**

Motion made by Giselle Perez to adjourn at 8:35 pm

Seconded by David Smith.

Vote: Unanimous in favor.

Prepared by:

\_\_\_\_\_  
Marcie Ricker

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Attest

\_\_\_\_\_  
Date