

HAMILTON BOARD OF HEALTH

MINUTES OF MEETING

June 28, 2017

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

Others Present: Leslie Whelan (Health Agent).

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

Continuation of Public Hearing. Essex Septic Service – Septic Hauler's License and Pumping Reports.

Leslie Whelan noted the Roys (owners of Essex Septic Service) were unable to attend the meeting, but updated the Board about the continued inconsistent submission of lists and reports. After the health issue, which caused the absence of the Roy family, was over, Ms. Whelan and Donna Roy would correspond regarding the process. According to Ms. Whelan, about once a week a stack of reports were received with a list having been received once a month. Discrepancies between the reports and the list of pumped locations were observed. Ms. Whelan noted that having both lists and reports was a way to cross reference the pumpings to determine accuracy. Fines for the missing reports and lists were not given as Essex Septic Service seemed honest and earnest regarding their attempts to provide the requested materials. David Smith recalled the last meeting when Essex Septic was planning on making an effort to comply. Giselle Perez said Ms. Whelan did a lot of hard work to communicate with them and after several months, they should try harder. Ms. Whelan would meet and express to Ms. Roy the importance of compliance.

Motion made by Gizelle Perez to continue the public hearing until the next meeting at 7:00 pm.

Seconded by Walter Row.

Vote: Unanimous to continue.

Hearing. Rooster Noise Complaint – Keeping of Animals Regulation 5.1. Claudia Woods 344 Cutler Road.

Bob DeFelice said he obtained records from the Hamilton Police regarding animal and bird noise disturbances at Claudia Woods' residence. Mr. DeFelice noted the annoying, irritating crowing and appearance of a rooster on September 1, 2013. According to Mr. DeFelice, on April 29, 2017, there were 7.5 hours of crowing causing a two page complaint. Mr. DeFelice noted the laws for peace and tranquility for neighbors and the enjoyment of life and property adding that the Board of Health had the authority to remove animals that created unhealthy living conditions. Mr. DeFelice requested the removal of the rooster within seven days after referring to 16 other police reports regarding the dogs and rooster owned by Ms. Woods.

Bob DeFelice said a neighbor who would have supported his complaint was frightened by having an attorney present at the meeting. John Hamilton said recitations of someone not present was not reliable evidence.

David Smith noted the June 5, 2017 letter from Claudia Woods expressing her views on the situation, which included her recommendations for a solution. Ms. Woods suggested the Board of Health members visit the property without notice to determine how loud the sounds were.

Wendy Wood announced that she lived at 278 Cutler Road and owned 290 Cutler Road, which she rented to a tenant who was present. Ms. Wood lived next door 11 years and owned 290 Cutler Road for 3.5 years. Ms. Wood noted that that she spent most of her day at 290 Cutler Road to tend to her horses. Ms. Wood recalled that the rooster was contained in his house and that she had never witnessed any incessant crowing. Ms. Wood thought any muffled sound the rooster produced was natural to the area.

Dr. Derek Cavatorta stated that he was a veterinarian who has rented the home at 290 Cutler Road for the past several years. He stated that he left for work around 8:00 am weekdays and typically heard no noise from the rooster either before he left or after he returned home in the evening. He also stated that he was home most weekends and Mondays, his usual day off, and would hear the rooster crow only once or twice on those days.

Lisa Burke said she helped take care of the horses in the morning and afternoon. Ms. Burke said in the morning she heard a muffled sound from the rooster and in the afternoon, while the rooster was outside of his coop, she heard him crow once or twice. There was only one rooster and if more were hatched, they were brought to other homes as Claudia Woods did not want to kill them.

Sonia Santos identified herself as the person who helped take care of Claudia's property for the past eight years. She worked onsite during the day, three or four days every week. She stated that she heard the rooster crow only very occasionally and never continuously.

Ed Howard said he had lived in Hamilton 56 years and had raised horses, pigs, chickens, roosters, geese, children, and cats. Mr. Howard referred to the previous Town Meeting when the article to ban roosters was practically abandoned as unsupportable and a voice vote indicated that there was no interest in the proposition of removing roosters from the town. Mr. Howard concluded by stating that he was a frequent visitor at Claudia Woods' property and while there, he rarely heard the rooster crowing.

Bob DeFelice then turned towards and addressed Sonia Santos as "That Spanish woman" and asked her "Where are you from?" (as in what country) in an attempt to discredit her statements. That comment and question by Mr. DeFelice prompted an immediate outburst of dismay and

disgust from nearly everyone else in the room. After quiet was restored, Ms. Santos replied that she was an American citizen and she was born in Brazil.

Bob DeFelice said the agricultural commission had indicated that the site was only a farm if agriculture was the primary business, which the home of Claudia Woods was not and that the rooster was only a pet. Mr. DeFelice asserted that on April 29, 2017 the rooster crowed from 9:30 am to 4:30 pm when he called the police three times until someone showed up. Mr. DeFelice referred to the By-laws that indicated that if the rooster was impinging the comfort and relaxation of his property, it should be eliminated.

Wendy Wood said Bob DeFelice was the only person in town who had ever complained to the police about a rooster. Ms. Wood suggested that if Claudia Woods were to find another home for her rooster, Mr. DeFelice would find something else to complain about.

Peter Britton, Chair of the Agricultural Commission said agriculture was the process where one produced a useful product from a particular activity. According to Mr. Britton, Claudia Woods produced dozens of eggs from chickens which provided a public benefit. Mr. Britton said he had passed by the home of Ms. Woods several times and stopped in front to hear nothing. Mr. Britton stated that he walked through the area on the trails behind and around Ms. Woods' property twice a day and heard nothing intolerant.

Susan Lawrence (Agricultural Commission) spoke about going by the property six or more times on a daily basis and may have heard the rooster occasionally but never heard any excessive noise.

Susan Sandler (Agricultural Commission) said she understood that roosters liked to crow at 5 am when the sun came up and therefore, she drove to the site at sunrise and did not hear anything. Once or twice, Ms. Sandler said she heard a muffled crow while being on the road with the windows down and the car engine off, over multiple visits. Ms. Sandler continued that she had walked her dogs on the trail behind the Woods' home and never heard anything that sounded incessant or annoying.

Claudia Woods said she had chicks born in the spring and allowed them to live until she heard the crowing when she realized that it was time to find new homes for the ones that crowed. Ms. Woods said her rooster was nice and kept the chickens safe from hawks. Two years ago, she found a home for a noisy rooster.

Bob DeFelice said that all of these people whom Claudia had brought to the hearing and testified in support of her position could have been paid to do so, which prompted a loud cry of outrage from nearly everyone else present.

Bob DeFelice referred to the 19 police reports of going to the property to stop roosters and dogs. Mr. DeFelice said the property needed to be a commercial farming facility, according to the By-law to exempt the rooster. Peter Britton responded that it was not true. John Hamilton said the Right to Farm By-law did not require that agriculture had to be the primary use but that 61A stipulated that if \$500 of revenue per year were achieved, the property was agriculture. Peter Britton had noted that Claudia Woods' eggs would qualify for commercial activity. Mr. Britton referred to the Chapter 111 section 122, which suggested that noise from livestock may not be contingent upon the commercial component of agriculture. Mr. Britton affirmed that agriculture included growing chickens to make eggs, which was part of the submitted memorandum.

In response to David Smith's question regarding the quantity of eggs distributed, Claudia Woods responded that it depended on the season. The price of eggs was debated. Peter Britton noted that in the context of having 13 acres, there was a public benefit.

Bob DeFelice recalled that the most recent day long crowing experience was in April of 2017. In response to David Smith's question regarding experiences since that date, Mr. DeFelice recalled that he had been mowing his lawn from 10:00 until noon on the past Sunday, June 25, 2017, when he could hear the rooster. Rosemary Kennedy responded that she had been riding her horse when she stopped by Claudia Woods' property during the same time o that same day. Ms. Kennedy said she did not hear the rooster, but recalled that she did hear the lawn mower of Mr. DeFelice. John Hamilton said he met with Ms. Woods on her backyard patio also on that Sunday to discuss the matter during the same timeframe, arriving at 11:00 am, also hearing the lawn mower. Mr. Hamilton recalled that he heard the rooster crow four times at 11:30 when the lawn mower stopped. After that, Mr. Hamilton recalled that he never heard the rooster crow again before he left at 12:30. Gizelle Perez questioned the discrepancy in the timelines presented. Ms. Woods added that the lawnmower was much louder than the rooster.

Ann Getchell stated that animals and agriculture were an important part of Hamilton. Ms. Getchell added that she had visited the property at all times of day and didn't think she had ever heard a thing.

Bob DeFelice, said he didn't need multiple neighbors to show that he was bothered by the roosters and that he was amazed that the people present had never heard anything. Walter Row wanted a witness who was motivated enough to be there with the burden on Bob DeFelice to produce a neighbor's testimony. There were 19 reports to the Police Department with only one not generated by Mr. DeFelice.

Gizelle Perez said she needed to hear from another person. Walter Row recalled that Bob DeFelice had a month to get a witness there and that he had missed an opportunity to get a witness to support his position.

David Smith stated that the Board had just been presented with a great deal of new information and handouts that could not be digested so the Board was not in a position to make a decision. Mr. Smith thought it might be helpful to have the Board hear the rooster on site. Mr. Smith asked Bob DeFelice to contact him when the rooster was noisy and John Hamilton recalled the Claudia Woods had offered to have the Board visit the site to listen. Mr. Smith added that it was important to be at the DeFelice location to hear what Mr. DeFelice had heard.

Claudia Woods concluded that Hamilton was a rural area and recalled that when the Hamilton Police Department responded to having her chickens crossing the road, the police laughed and said that this was what chickens did. Ms. Woods asked the Board to determine when chickens became a problem to one's health and quality of life, but needed to consider that it was only a part of farm noises.

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Motion made by Walter Row to suspend discussion until the next meeting on July 26, 2017 at 7:00 pm.

Seconded by Gizelle Perez.

Vote: Unanimous to approve.

By-law potential to ban or restrict commercial marijuana establishments.

The State law that legalized the use, growing and eventual sale of marijuana, was part of the law allowing each Town and City to have the ability to ban sales and commercial ventures related to recreational marijuana in their community. Michael Lombardo reportedly had concerns and believed that the Town would be better off if the Town banned recreational sales and commercial ventures. The Police Chief felt the same. Concern included not normalizing the sale of marijuana as well as minimizing the availability for children.

Leslie Whelan recommended that the Board take a position as a ban would come before Town Meeting even though a vote of the citizenry would determine whether to ban or not. The House of Representatives proposed a law that would give a Town government official the power to ban or not while the Senate bill had provided for a referendum vote of the population. The debate was not reconciled yet.

Gizelle Perez wanted to ban establishments. Walter Row agreed but discussed keeping businesses in town rather than in Beverly, which was worth considering, but not a strong enough reason to change his mind. David Smith asked if Michael Lombardo or the Selectmen wanted to hear from the Board of Health on the subject.

Gizelle Perez made motion that the Board of Health assume a position to ban commercial marijuana establishments for recreational use.

Walter Row seconded.

Vote: Unanimous to approve.

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Decision to sign anti-fracking letter to Governor Baker

Walter Row compared supporting the letter to supporting not driving cars because the tailpipes and exhaust produced pollutants in the air, causing poor health. Mr. Row's view of infrastructure for gas and fracking infrastructure was that natural gas was better than coal. The combustion engine had propelled significant worldwide economic growth spurring innovation, such as creating electronic cars that would be able to be powered from the sun, making the combustion engine eventually obsolete. According to Mr. Row, natural gas was making coal go on the wayside, which was a positive benefit and to say that it caused pollution must be balanced with the progress that was made.

Gizelle Perez agreed with Mr. Row but added that just because there was a problem with emissions, we should not just take a step back and not do anything about it because it already existed. Ms. Perez wanted to determine what could be done to improve the chance of health conditions. Ms. Perez was more in line with signing the letter.

David Smith referred to his gas bill, which featured a high cost for transmission from the source. Mr. Smith noted the opportunity to add to the transmission capacity because the limitation on the capacity was limited. The new gas transmission line would help reduce the costs due to competition or capacity. The letter assumed that the gas was derived from a fracking process but Mr. Smith did not think it was necessarily the case. Mr. Smith would take a position on fracking for good reasons, but the idea of additional gas transmission line capacity would be a good idea from an economic standpoint. While solar and wind were the cleanest forms of energy, Mr. Smith did not think it was feasible to live from them. Mr. Smith suggested asking Governor Baker to limit fracking for gas but to blend the two things together was unfair.

The Board decided not to take a position. If the two issues were separated, the Board would support the one opposing fracking, but not the transmission lines. Gizelle Perez wanted to sign the letter based on the data presented. While Governor Baker could be asked about the gas transmission lines, it was determined that the Federal Regulatory Commission regulated gas pipelines.

Discussion – Health Agent Update

Leslie Whelan presented her report and an addendum. Septic regulations were completed. All professionals had the new regulations and applications for new licenses were distributed. Ms. Whelan described the situation with Windriver Environmental. Ms. Whelan recalled that she had reviewed a Title V inspection and did not have the pumper report. Ms. Whelan looked in other files and found inconsistent reports. Ms. Whelan would continue to investigate filing requirements.

According to Leslie Whelan, the public health nurse was also in favor of banning the retail sales of marijuana with the rationale being the marketing to children. The public health nurse had

spoken with Michael Lombardo discussing adjusting the budget to get four extra hours mid-year. The request would be voted upon at Fall Town Meeting.

There had been an accidental blood spill at Dunkin Donuts, which triggered the need for a food inspector to ensure the spill was cleaned up properly.

Recreational marijuana. Leslie Whelan, the Police Chief, and Town Counsel would go to the Selectmen's meeting to encourage them to support the ban. After the Selectmen's meeting, the group would go to the Planning Board. The Selectmen's meeting would serve as the public form that Michael Lombardo had requested. While 51% of voters in Hamilton wanted marijuana legislation to pass, Leslie Whelan thought more than 50% would vote in favor of not allowing the sale within the town.

There was a housing complaint in Asbury Grove regarding clutter in a resident's house. A Clinical Hoarding Specialist and Social Worker would get involved to work with the person to get the place cleaned up.

Keeping of animals. Leslie Whelan noted that after a literal reading of the regulations, it appeared that a coop would be the same as a stable as it was a place where animals were housed. Chickens were animals and a coop was place to keep animals. The definition is not separated, which Ms. Whelan originally thought was wrong. There were standards for a stable that were not meant for a coop and six months ago, Ms. Whelan though there should be lesser standards for coops than stables.

Ms. Whelan referred to a 36 small animals complaint, and noted that if one were to read the regulations as written, the homeowner could not have that many chickens because it was only a 12,000 sf lot with distances from a dwelling or property line not being maintained by the owner of the 36 small animals as the lot was not large enough for the setbacks. Other small animal owners included only one that was on a fairly small in-town lot, so if Ms. Whelan interpreted the rule in the stricter fashion, it wouldn't be having an impact on very many animal owners while this animal owner was having an impact on her neighbor.

According to the rules, a coop shall mean where poultry were kept, while a stable was where animals were kept. However the definition of animals included small animals such as poultry. Ms. Whelan wanted to make it more understandable because no matter which way the Board wanted to go with the intent of the rule, it was not worded to clarify their intent. If manure and coop need to be a certain distance from a dwelling or property line, it should be spelled out.

Leslie Whelan presented a list of horse and chicken properties. If there were nine or fewer small animals, such as bunnies or chickens, a resident would not need a Keeping of Animals permit, but the animal inspector would need to do an annual inspection.

New/Old Business.

David Smith said he had drafted a letter to several surrounding towns to determine if they had By-laws for mini horses versus horses. Mr. Smith would distribute a copy of the draft letter as well as a list of the recipients requesting comments from Board members.

David Smith discussed the process of Crosbie's Market's contribution to charitable organizations based on five cents per chip contributed to each charity. Each month, Crosbie's found that 4,000 shoppers brought in their own bags. The previous year, 25% of customers brought in their own bags, which had increased up to one third this year. The goal was to increase the "bring your own bag" usage to one half of all shoppers.

Minutes – May 24, 2017.

Motion to approve the minutes of May 24, 2017 made by Gizelle Perez.

Seconded Walter Row.

Vote: Unanimous in favor.

Adjournment

Motion made by David Smith to adjourn at 8:48 pm.

Seconded by Gizelle Perez.

Vote: Unanimous in favor.