

HAMILTON BOARD OF HEALTH

MINUTES OF MEETING

January 25, 2018

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 Town Hall by David Smith.

Public Hearing for the Vacant and Dilapidated Buildings By-law.

David Smith opened the public hearing and introduced the members of the Board as well as the Health Agent. Mr. Smith thanked members of the audience for their attendance.

David Smith presented an explanation of the By-law. Mr. Smith showed photos of homes that were in disrepair. Many of the homes had open windows with birds and animals entering the buildings. Mr. Smith said he had spoken with the Selectmen as well as the Director of Planning and Inspections regarding complaints against at least one of the properties with the response being that the Town was powerless to act in response to a complaint. A year ago, Mr. Smith had received the response with an added suggestion for Mr. Smith to develop a Nuisance By-law to create a legal tool to deal with the problem. Mr. Smith said the reason the By-law was needed was due to abutters being concerned with safety issues potentially caused by an explosion, fire, or vermin problems.

The State Sanitary Code (CMR 410) could not be used as it referred to minimal standards for human habitation. The housing code referred to a tenant's right to decent housing, according to David Smith.

David Smith investigated other towns that had Nuisance By-laws. The towns included: Warren, Framingham, Ayer, Amherst, Brookline, Littleton, Wellesley, Athol, Maynard, Milford, Acton, Reading, and Upton. Mr. Smith looked for models for Hamilton and developed a draft. Mr. Smith met with Michael Lombardo, Patrick Reffett, Donna Brewer, Leslie Whelan, the Police Chief, Council on Aging (COA), Asbury Grove leadership, realtors, and neighbors of problem properties. Mr. Smith attended two meetings with the Board of Selectmen and in the next two weeks would meet with the Planning Board to get comments and feedback. Mr. Smith indicated that he had received positive comments.

According to David Smith, this By-law would aid the common interest of the general public and not individuals that didn't maintain properties that adversely impacted property values. Every realtor that had met with Mr. Smith said the value of properties that abut problem properties was lowered as a result. The impact from the problem property declined as distance from the problem property increased.

The By-law could not be used by one neighbor to argue over another neighbor regarding the color of their front door, the condition of their windows, or how frequently they cut the grass. The By-law was for the common interest of the general public as they had a right to expect decent, safe, and sanitary structures that would not adversely affect their property values.

David Smith indicated that the By-law covered three types of problems of which the first was a vacant property. An abandoned property was one that had not paid taxes as its legal definition. The proper term would be “vacant” if the owners were current in their tax payments. The By-law did not consider the Board of Selectmen’s ability to sell a property to collect back taxes. A vacant building needed to be vacant for at least 180 consecutive days.

The second type of property problem was an unsafe property, which had a clear definition: “Structures or personal property that exposed persons to unreasonable risk of injury or harm or property to an unreasonable risk of damage or loss or destruction.” The word “unreasonable” had a legal definition, which would be employed to assess where the property would be in a graduation from no risk to a 100% risk.

The third type of building affected by the By-law would a dilapidated building with a definition of “a condition of decay or partial ruin due to neglect” with other details listed in the By-law.

Many of the properties of concern were vacant, according to David Smith who added that many were dilapidated and one was in all three categories.

Enforcement would be a complaint driven process. David Smith said the Building Inspector would not go around town looking for poor structures. The hierarchy of appeals would start with the Building Inspector, then go to the Town Manager, and finally the Board of Selectmen. In response to some concerns issued by the COA, the By-law was enhanced with a specific component to the administrative process requiring the Town obtain input from other agencies, particularly the COA. If the Building Inspector was unable to find a mutually agreeable solution, the Town Manager would solicit input from the assessor, COA, and Police Department and if another solution was not found, a notice of violation with a fine would be issued. Mr. Smith added that he hoped to have the By-law on the Annual Town Meeting Warrant for April 7, 2018.

The COA reportedly raised concerns about an aged and impaired (financially, physically or emotionally) person. The Town Manager would consult with the COA to see if the person could benefit from their help and to ensure the person was not evicted with nowhere to go.

Ed Howard (10 Meyer Lane) said the property in his neighborhood devalued his person property, as well as the greater interest of the town as a whole. Mr. Howard recalled speaking with neighbors to find there were no By-laws to enforce a solution. Neighbors wrote letters to the Selectmen with nothing happening. Mr. Howard thought the devaluation would be 10%.

Daniel Carlin (4 Horseshoe Lane) questioned the definition of dilapidated, which he thought might be subjective. Mr. Carlin's neighbor was running a company from his home, but was seldom there. In Ohio, towns would clean up the property and add the cost to the property's tax bill. In Mr. Carlin's neighborhood, the problem was more with the property than the home. David Smith thought the property might qualify under the unsafe section of the By-law.

Kathy Carlin (4 Horseshoe Lane) added that she had spoken with someone who suggested an Attractive Nuisance By-law, which would limit how children and young adults would be attracted to vacant places. According to Ms. Carlin, machinery, two shovels, two cars, a van, and ladders were in her neighbor's driveway. There were also open containers with a dark substance in them. Ms. Carlin suggested testing the soil as the neighborhood was in wetlands and to contact the COA to add mental illness to their purview rather than just elderly. Ms. Carlin also noted that the neighbor's garage was stacked from bottom to top with Tupperware containing an unknown substance. The water in the basement was also a concern as it might attract vermin.

Terri Jennings (965 Bay Road) said she had lived near a problem property for 35 years and that nothing had been done after many complaints had been filed. Ms. Jennings noted that a deck was added to the problem property in 1968 and subsequent owners had built a room around it. After a complaint was filed, it was deemed to be an illegal structure with a cease and desist order sent. The building, which was dilapidated in the opinion of Ms. Jennings, was never taken down. Ms. Jennings said the property now had three vinyl quasit hut structures in the back, which were loaded with small engines and various pieces of machines, which were all over the yard. Neighbors had discussed a serious mold problem inside the home and questioned the safety of the building. A former owner had towed cars, which were stored on the property and Ms. Jennings questioned the contamination of the soil as one neighbor was contemplating drilling a well. Ms. Jennings thought the By-law was promising.

Phil Bouteleary (26 Old Cart Road) noted that the process should begin after more than one complaint had been filed and that a person on social security did not become overwhelmed with fines. David Smith responded that all properties brought to his attention were not owned or occupied by someone who was impaired or would fit the concern of the COA. Mr. Bouteleary offered an example of a home that had contractor issues and wondered if that would qualify. There were two houses on Old Cart Road that would likely qualify under the By-law.

Steve Decatur (6 Horseshoe Lane) noted that the problem property owner had specific personality traits but were paying their taxes. They knew how to play the system, according to Mr. Decatur. Mr. Decatur complimented David Smith for his work and hoped the By-law would pass. Mr. Decatur offered his concern that the legal definitions be highlighted to avoid any fights over the topic. Mr. Decatur asked what would happen if the fines were not paid and what Plan B would be. According to Mr. Decatur, something should be in the By-law that assured that once a complaint was filed, the timelines would be sped up.

David Smith said he shared the concern about the absence of a definitive timeline for action within the By-law and noted the wide range of scopes with the By-laws he had researched. Mr. Smith was concerned that if the scope was too broad, someone at Town Meeting would take issue with a specific aspect of it and it would be defeated. By keeping the scope narrow, the Town would minimize the likelihood of individual reactions at Town Meeting. Once the By-law was passed, it could be amended and broadened.

Some concern was issued regarding the limitation of the part time Building Inspector's time. The Selectmen were considering increasing the hours to accommodate the additional workload, according to David Smith. Explicit timelines in the By-law might raise concerns. In Upton, twelve structures were subject to complaints, some of which were owned by elderly people who were unable to solve the problem. The Town of Upton formed a working group to understand each situation and researched grants and loans to solve the problem. Mr. Smith said that in Upton about half of the complaints were dealt with by the owner selling the property to someone who bought it with the idea to fix it up or demolition and rebuild the structure. This By-law might give Town government the ability to induce an owner to sell the property rather than deal with the legal process or fines.

An abutter said his contractor knocked on his problem neighbor's door and the neighbor would not talk to him. These are extraordinary circumstances in a nice community. Another abutter wondered where a senior citizen might go.

Heather Keene (81 Old Cart Road) mentioned an issue with a gas station in Lynnfield. Ms. Keene asked about involving Habitat for Humanity or a vocational school for help. By being proactive, the solution would feature a positive spin to the problem. While Janet Herrick (66 Old Cart Rd.) was concerned that town wide help might be abused, David Perinchief (18 Old Cart Road) responded that according to MA Chapter 115, assets would be reviewed before benefits would be applied. The State had a formula in place and loans could be utilized. Mr. Perinchief thought it was important to keep someone in their home and the money could be paid back when the home was eventually sold. David Smith added that it was a parallel concept to the COA, which would mollify the critics at Town Meeting.

Ed Howard thought it was advisable to look at an Attractive Nuisance By-law and wondered when a vacant property became attractive to "hobos." Mr. Howard said the town would turn out in force to help the person and the senior center would provide for the senior as well.

Janet Herrick was concerned that only the outside of the properties were being considered and pointed to issues with hoarding or mold. David Smith said no one would be able to enter a home or a property without a search warrant. If a tenant were to file a complaint that the rental property was in violation of the State Sanitary code, the Health Inspector could do an inspection.

If an owner was approached to do an inspection and denied access, a neighbor could go to a judge and request a warrant to allow access.

David Smith said the COA had arrangements with the Police or Fire Departments to conduct wellness checks on some of the residents in town. Mr. Smith said the issue was not with the elderly but with neighbors who had common traits that were difficult.

Jay Butler (78 Old Cart Road) said he liked everything about the By-law including the penalties of \$100 the first day, \$200 the second day, and \$300, every day thereafter. Mr. Butler did not think the fines would be paid and that lawyers and hearings would drag the process out for a long time. Mr. Butler asked if the fines reached the assessed value of the property, would the Town take the property. David Smith responded that perhaps a lien on the property could be placed. Mr. Smith said currently the Town did not have any legal means to do anything, but the Town could use the By-law as an enforcing function to force owners to sell the property to someone who would fix it up. Mr. Butler suggested adding a sentence regarding an attractive nuisance.

David Smith closed the public hearing and asked attendees to come to Town Meeting and vote for the By-law.

List of documents and exhibits reviewed.

Public Hearing on Proposed By-law on Vacant, Unsafe, and Dilapidated Buildings.

Draft By-law 1/16/2018.

Power Point Presentation.

Adjournment

Motion made by David Smith to adjourn at 8:19 pm.

Seconded by Giselle Perez.

Vote: Unanimous in favor.