

# HAMILTON BOARD OF HEALTH

## MINUTES OF MEETING

March 28, 2018

Members Present: Giselle Perez, Walter Row, 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 by David Smith.

### **Public Hearing: Wind River Environmental with Robert Herrick and Michael Graham, Title 5 Inspector Licenses and Fines.**

Leslie Whelan said she hoped that the Board would revoke Robert Herrick's and Michael Graham's licenses and fine Wind River for the time spent dealing with the two Title 5 inspections at Sagamore St. and Cunningham Drive. Ms. Whelan had received three versions for each property from Rob Herrick with a few mistakes remaining. Ms. Whelan said that after 18 years of working with the company, she believed that the inspectors were not capable of doing quality work. Since December, the company was not able to help the inspector to find mistakes or research the files. Helping the company took a lot of time, which was not fair for their customers or the Health Department employees. Ms. Whelan stated Matt Dutra told her he would not have Michael Graham do any more Title 5's in Rockport due to poor communication skills. Ms. Whelan thought the same problems would occur in Hamilton over and over.

Eric Mueller said, based on the previous month's discussions, that protocol was put in place for Title 5's that were submitted and reviewed within six business days and follow up with revisions. Mr. Mueller said the Title 5 for Sagamore St. had been submitted with no feedback from Leslie Whelan, which did not follow protocol. Leslie Whelan thought protocol was not recalled correctly. Mr. Mueller recalled that if there were issues with the Title 5, Wind River would receive it and within six days, they would return it back to Ms. Whelan with whatever she had found was an issue with it. Ms. Whelan said she did not recall that she was to itemize the problems and that it was a one-time event for Karen Wallace's (Cunningham Drive) Title 5 report.

Elizabeth Durkee asked if Wind River were given back the report without noting the issues, how would they know what was wrong. Giselle Perez said an itemization could not be offered for every single report as it was not common protocol to itemize errors. Ms. Durkee asked how she was to know what was wrong with the report for Sagamore St. and that Leslie Whelan charged \$75 to look at the report. Ms. Perez said that it was Leslie Whelan's responsibility to make sure everything was correct. Ms. Perez said that based on a previous discussion, Ms. Whelan would itemize the errors for Cunningham Drive but could not do it for every single report. Ms. Whelan stated it was normal protocol for her to itemize errors, but starting with these two reports, she was putting responsibility on Wind River Environmental.

Leslie Whelan noted that she did not accept the report as there were two tanks at 64 Cunningham Drive and the depths were only provided for one of the tanks on page 10. The building sewer only had one depth, but two sewers. Eric Mueller was helping Rob Herrick find his mistakes and thanked Ms. Whelan for finding them and helping Mr. Herrick. Ms. Whelan recalled that she had given Mr. Herrick detailed lists for prior reports and he never fixed them so she was giving Wind River the responsibility moving forward. Ms. Whelan reminded Mr. Mueller that she had sent him multiple e-mails detailing Rob Herrick's errors from past reports. Mr. Mueller thought the issue was from last November and that everyone was moving forward, not dealing with "stuff" from the past. Elizabeth Durkee noted that the quality of Mike Graham's inspections in Rockport should not be reflected in Hamilton. Ms. Durkee said the issue was with Wind River rather than the individual inspectors.

Walter Row recalled that Leslie Whelan's position had been that she had been working with Wind River for an extended period of time with a record of erroneously filed reports with Ms. Whelan going through many attempts to work with the inspectors to help them to be correct. Mr. Row said that Ms. Whelan had lost her patience in the process of going the extra step to help and that it would now be on Wind River's shoulders to have the reports done correctly including research. According to Mr. Row, the reports had been untimely and inaccurate and that other vendors were able to perform the services. It was in the interest of the Town and Ms. Whelan to continue to work with Wind River.

Elizabeth Durkee requested that Leslie Whelan provide 18 years' worth of complaints via e-mail. While Walter Row asked if that was an appropriate request, Giselle Perez explained that she did not have a history with the company but noted the amount of defensiveness and need to attack someone who had been working to help the company. Ms. Perez stated that the Board wanted to try to work out a fair approach to solve the issue.

Elizabeth Durkee complained that it was frustrating to work with Leslie Whelan and that she was frustrated and defensive because of accusations made. Ms. Durkee said the private and public entities needed to work together to best serve the residents. Ms. Durkee said she did not think the Board had heard the entire story. Wind River employees worked hard, took pride in their work, and didn't know what to fix. Ms. Durkee said other Boards of Health would ask for specific information such as math for the water records, which would be provided for them.

Eric Mueller said he did not know the entire history, but wanted to develop a good relationship by trying to fix the issue. Mr. Mueller recalled that three people had revised the Title 5 report, which was submitted with the review fee. Wind River expected the report to be returned noting the issues documented. Leslie Whelan said she understood that was what Mr. Mueller thought and that was what Mr. Mueller would like. Mr. Mueller referred to the minutes of the meeting, but Ms. Whelan responded that the case was only for Cunningham Drive. David Smith agreed that the list of revisions was for the one instance. Ms. Whelan added that in the past, she had given long lists of problems to Rob Herrick and Mr. Mueller was now present in order to help

Mr. Herrick. Ms. Whelan asserted that Mr. Mueller was failing to do the very thing that she asked to have someone in place to do. Ms. Whelan added that Mr. Muller was brought in to help Rob Herrick improve his reports and Mr. Mueller had failed. Mr. Mueller responded that the last filed report was almost identical to another Title 5 report completed by another company.

Leslie Whelan referred to the Title 5 at 264 Sagamore, noting that it appeared that the files had not been researched, the need for which it had been spelled out to Wind River five times in recent e-mails. A meeting had been scheduled for Eric Mueller to pull the file, but the meeting did not occur. Mr. Mueller agreed that he had misunderstood the protocol. Elizabeth Durkee had written down that Wind River would fix the mistakes within six days for all other Title 5's, but had nothing that indicated that itemized mistakes would not be provided. Ms. Durkee asked how she would know what was wrong without the itemization. Ms. Whelan said this was the first time that she had not listed the errors because Wind River had added an employee (Matt Dutra) who would work with Rob Herrick to fix the issues. When Ms. Whelan received the bad report in Hamilton, she wrote to Mr. Dutra to find out he was no longer employed by Wind River. Ms. Whelan said she always told people what was wrong with their reports and this was the first time that she stopped because she wanted Wind River to take on the onus and recognize they had an inspector that was not performing.

Leslie Whelan said she had to list everything (14 items) with no response from Rob Herrick in Rockport and didn't want to do the same thing in Hamilton. Elizabeth Durkee indicated that a Health Agent should not need to do that, adding that the inspector should respond especially with 14 items. Ms. Durkee added that the mistakes were getting less because she and Eric Mueller were correcting the reports before they went to the Agent in every town. Ms. Durkee assured Ms. Whelan that she would not receive another report with 14 mistakes, but there might be two or three. Ms. Durkee said they would not know what the two or three mistakes would be unless Ms. Whelan told them, such as the water line. Ms. Whelan responded that it was on the report. Ms. Durkee said some agents wanted information, such as the math on the report while others did not. Ms. Durkee said she would make the employees write the water meter reading math on the report now and that if there were something specific for Ms. Whelan, she would ensure it was on the report. Ms. Whelan suggested that Ms. Durkee refer to the e-mails that had been sent to Rob Herrick and forwarded to Eric Mueller.

While Elizabeth Durkee stated that the process would be changed moving forward, Eric Mueller suggested a probation period. It was noted that Michael Graham no longer did Title 5 inspections.

Motion made by Walter Row to revoke the license of Robert Herrick, Title 5 Inspector in the Town of Hamilton.

Giselle Perez said she did not agree because she wanted to be fair. Ms. Perez sensed Leslie Whelan's frustration and thought she had a right to be frustrated due to the length of time where there was a lack of clarity. Ms. Perez was new to the Board but understood there was a lot of

history. Ms. Perez said she would like to see moving forward that Ms. Whelan did not carry the burden, but offer a one-time feedback and that the reports be fixed in a timely fashion. If the situation occurred again, there would be no tolerance. Ms. Perez, who said she had tremendous respect for Ms. Whelan, was trying to be mindful of both parties having their own experiences, frustrations, and general struggles. Ms. Perez said she would not feel comfortable revoking the license.

David Smith seconded

Vote: Majority in favor. David Smith and Walter Row voting aye. Giselle Perez voting nay. Leslie Whelan noted that the vote would be effective immediately.

While Mike Graham had not worked with the Town of Hamilton for a while, Leslie Whelan said he had a license. David Smith said he felt uncomfortable revoking his license in Hamilton based on experiences in Rockport. Walter Row and Giselle Perez agreed.

Leslie Whelan suggested the Board fine Wind River for the amount of time she had spent reviewing the two Title 5 reports and sending Wind River e-mails to try to have them find someone in their company to work with Rob Herrick and the hearing, which Ms. Whelan thought would be ten hours at a minimum. Ms. Whelan thought it would be reasonable to fine Wind River \$500.00 for the time taken out of Town resources.

Walter Row made motion to fine Wind River Environmental \$500.00 for the failures to conform with the procedures that Leslie Whelan had documented on the record.

David Smith seconded.

Vote: Unanimous in favor.

**Local Upgrade Approval Request for 285 Asbury St. Request variance to reduce the offset from the proposed leaching area to the property line from 10' to 8' (Washington Avenue only). Dan Johnson. R.S.**

Dan Johnson was present to discuss the system designed for the failed system. Mr. Johnson said the soil tests had shallow ground water and were not as permeable as the other one. Mr. Johnson designed a Presby Environmental system to reduce the ground water difference by two feet. The system fit except for the property line. Mr. Johnson decided to encroach on the least obtrusive property line, which was Washington Ave. The variance required a public hearing to reduce the setback from 10' to 8' at the closest point. Leslie Whelan thought it was the best solution. David Smith said the difference was not significant. The DPW did not give feedback for concerns.

Motion made by Walter Row to approve the 8' offset as opposed to 10' for this particular property as the design of the septic system.

David Smith seconded.

Vote: Unanimous in favor.

**Public Hearing: Essex Septic Services, Inc. Septic Hauler License and Late Pumping Records**

A letter regarding \$10,000 in fines, dated February 21, 2018, was picked up by Mike Roy. Fines were due March 22, 2018, which were not paid. Mr. Roy was under the impression that Leslie Whelan would call him but she did not. Mr. Roy said he tried to call Ms. Whelan but she would not speak with him. Mr. Roy said he did not have the money. Mr. Roy said he honestly thought he had submitted the November reports. He had submitted the December reports. He was notified January 10, 2018 that the reports were missing. Mr. Roy said he returned the reports within a week's time. Mr. Roy said a letter came out a month after the reports were turned in. Mr. Roy would have turned January reports in on time, but he left a day early for vacation. When he realized he neglected to submit the reports, he submitted them upon his return. Leslie Whelan indicated that January, February, and March reports were fine but the issue was November and December. Mr. Roy reiterated that he thought he had turned them in.

Mike Roy indicated that 25% of his work was in Hamilton. Leslie Whelan said Mr. Roy was compliant with his reports for the last three months. David Smith said there were 19 pump reports due in November. While Giselle Perez noted that Mr. Roy had submitted reports, excepting November, since the Board of Health discussion. Ms. Whelan responded that he would have needed to submit two sets of reports, one for each 14 days in November. Mr. Roy said he was in the office so many times, he assumed he had dropped them off. John Guerrin was present to discuss the topic and said Mr. Roy had personal matters in December that precluded him from having work completed, but that Mr. Guerrin would be available to ensure the situation did not happen again.

Giselle Perez said it sounded as if Mike Roy had made an effort to submit reports in a timely fashion, except for the one month. Ms. Perez thought \$10,000 was unreasonable as he submitted the report as soon as he was aware of the problem. David Smith suggested a fine of \$300 - \$500. Walter Row wanted Mr. Roy to make an investment to comply in the future. Mr. Smith said the compliance status was encouraging but he was uncomfortable letting it go.

Walter Row suggested working the fine down \$1000 per month to be compliant. A fine would be assessed at the current time and the balance would be worked down over the remaining months by being compliant. If Mike Roy was not compliant, he would be held to the remaining fine.

Motion made by David Smith that the Board of Health fine Mr. Roy today an amount of \$625.00 due to the Town within a week and that the Board of Health forestall payment for the remaining \$10,000 at a rate of \$1,000 per month for each month that Mr. Roy was compliant with the reporting requirements. In ten months, the balance would be zero on that fine. Walter Row added that if Mr. Roy was not compliant for a single month, would he owe \$1,000. Mike Roy said it was clear.

Bill Guerrin questioned the equity of a \$500 fine and loss of license in a public health issue versus a case of bookkeeping. David Smith responded that it was two different issues and that there was no provision in the By-law for a fine in the previous case. The greater penalty in the Wind River case would be the loss of license.

Mr. Roy submitted a check for \$625.00.

Seconded by Walter Row.

Vote: Unanimous in favor.

### **By-law for the Improvement of Blighted or Unsafe Structures or Property and the Maintenance of Vacant Buildings**

David Smith noted the support of the Board of Selectmen, Planning Board, FinCom, Town Manager, Director of Planning, and the two to one vote of the Board of Health. The item was on the Warrant as Article 4.1. Mr. Smith would meet with Mary Beth Lawton and Sherry Leonard for follow up discussions for debate day at the Council on Aging. Mary Beth Lawton said an amendment would be introduced to remove “blighted structures” from being a violation. Mr. Smith added that he believed the By-law as amended should get passed.

### **Health Agent Update**

Leslie Whelan recalled that she had spoken to Donna Brewer regarding revoking Mike Graham’s license. Ms. Brewer had opined that the license could be revoke, but Wind River would hire other inspectors that were not good. Ms. Whelan would write language that a company would need to obtain a license to provide Title 5 Reports. An employee and employer would both need a license. The topic would be discussed and voted upon at the April meeting.

The Housing Order under the Sanitary Code for 15 Roosevelt was discussed. The Order was sent to the owner who returned it indicating that they no longer owned the property. The Order was forwarded to the bank. There would be a reinspection on April 11, 2018. The date was changed once the new owner had been notified. The owner of 22 Elliot St. wrote a letter indicating that it was unsafe to work with ladders at the current time and requested more time.

The Title 5 inspection at 957 Bay Road was underway. Soil testing was complete with ground water appearing to be very deep. The system functioned currently and was inspected by Jon Granz.

David Smith noticed that all winter long, his neighbors had let their cars idle in an effort to warm them up. Mr. Smith asked about the fliers that Leslie Whelan had handed out. Ms. Whelan said idling cars were bad for global warming and public health. Mr. Smith added that it was bad for cars as well.

The Police Chief and Town Manager wanted the Board of Health to take on a dog pooper scooper By-law. It was determined that the animal control office, who was under the Police Department would pursue the By-law.

David Smith said he had called Michael Harvey and sent an email. Mr. Smith said Dr. Harvey had replied and thanked him for his communication regarding ALICE. Giselle Perez said there was a School Committee meeting the same evening for discussion but some members of the community were stuck on asking kids to fight.

Leslie Whelan discussed Roberts Rules of Order, noting it was possible to second a motion, even if one were not planning on voting for the motion. David Smith said a motion needed to be seconded before debate ensued.

The Board discussed the equity between the Wind River and Essex Septic situations. Giselle Perez thought Mike Roy deserved a fine. Walter Row thought it was a completely different situation.

**Nomination of Hayes Demeule (Animal Inspector) and Anne Jackman (Asst. Animal Inspector). Appointment will run from May 1, 2018 – April 30, 2019.**

Motion made by Giselle Perez to nominate Hayes Demeule as animal inspector and Ann Jackman as assistant animal inspector.

Seconded by Walter Row.

Vote: Unanimous in favor.

**List of documents and exhibits reviewed.**

Letter, dated 2-28-18 to Robert Herrick, Michael Graham and John O'Connell (Wind River Environmental) from Leslie Whelan.

Letter, dated 2-21-18 to Michael Roy (Essex Septic Service, Inc.) from Leslie Whelan.

Essex Septic Disposal Report, dated 11-30-17

Health Agent Update, dated March 28, 2018

Meeting minutes of February 28, 2018

**Review Minutes dated, February 28, 2018.**

Motion made by Giselle Perez to approve the minutes of February 28, 2018.

Seconded by David Smith.

Vote: Unanimous in favor.

**Adjournment**

Motion made by David Smith to adjourn at 8:27 pm.

Seconded by Giselle Perez.

Vote: Unanimous in favor.