

## **BOARD OF HEALTH**

**Bangs Community Center, Room 101**

**March 8, 2018**

Board of Health members in attendance: Diane Amsterdam, Marco Boscardin (Chair), Steve George, Nancy Gilbert, and John Tobiason.

Staff members: Julie Federman, Health Director; Susan Malone, Health Inspector; Jon Thompson, Code Enforcement Inspector

Others: see attached list

The meeting opened at 5:02 PM.

### **Review and Receive**

#### **1. Minutes of February 8 meeting**

Minutes of the February meeting were approved as drafted.

### **New Business**

#### **1. Hearing: 326 West Pomeroy Lane livestock**

A hearing was opened at 5:05 PM to review a Cease and Desist order issued by the Town Inspection Services Department on February 9. The order required Michele Chandler, owner of the 1.14-acre property in an R-O zone at 326 West Pomeroy Lane, to remove all livestock from the property. The order stated that Ms. Chandler was in violation of the Livestock or Poultry section of the Town's zoning bylaw. The order also informed her of her right to appeal to the Zoning Board of Appeals (ZBA) and to have a hearing before the Board of Health. This hearing was held at Ms. Chandler's request.

Ms. Federman reviewed problems with livestock on this property beginning in 2011, based on multiple complaints from a neighbor about noxious odors and animal intrusions, and observations by Ms. Federman, Health Inspector Susan Malone, and Animal Control Officer Carol Hepburn during inspections of the property over several years. The inspections confirmed odors beyond the property boundary and in some cases raised concerns about the welfare of the animals, which include rabbits, goats, and chickens. Ms. Federman said she advised the owner in May 2017 of the need to obtain a livestock permit but none has been applied for. She said the owner had promised to move the rabbits to a larger property across the street at 357 West Pomeroy with the agreement of that property's owner. The rabbits were initially moved, but the neighbor complained that they were now back on Ms. Chandler's property and the odor had returned. Ms. Malone reported that she inspected the property on February 8, 2018, confirming the strong odor and the fact that the rabbits had been moved back to 326 West Pomeroy, contrary to her understanding of Ms. Chandler's commitment to house them off the property.

Susan Fortin, whose property at 316 West Pomeroy is adjacent to Ms. Chandler's, said that since 2011 animal waste odors from 326 West Pomeroy have often been strong enough to prevent her and her family from going outside. During some periods, such as the months when the rabbits were across the street, the odors have abated, but then the odors have returned, as is the case now.

Attorney Marwan Zubi, representing Ms. Chandler, said she is exempt from the bylaws cited in the Cease and Desist order for two reasons: first, because the bylaws were adopted after livestock had been established on the property, and bylaws do not apply to pre-existing uses; and second, because he claimed the livestock activities on this property are not an accessory use of residential property subject to regulation by local ordinances such as requiring registration with the Health Department. Rather, he argued, this is a farm covered by state law (MGL Ch. 40A, Section 3) even though the lot area is below the stated minimum area for the law to apply. He said Ms. Chandler would appeal the zoning issues to the ZBA. He denied that the odor complaints were valid, saying that people who buy a home in a non-urban community like Amherst need to accept farming and the odors associated with farming.

Six members of the public spoke against the Cease and Desist order and in favor of allowing Ms. Chandler to continue raising livestock as she has been doing. Points made by these speakers included that they have detected no odor when visiting or stopping by to purchase eggs; that bringing children, including Scout groups, to the farm was an important learning experience and animal smells were part of that experience; that Ms. Chandler is a resource for others who farm in Amherst; and that small farms, unlike large-scale agribusiness farms, help maintain biodiversity.

The Board then discussed what action if any to take on the Cease and Desist order. Members said they did not have the expertise to assess the legal claims made by Ms. Chandler's attorney; input would be needed from the Building Commissioner and, if necessary, Town counsel. Ms. Gilbert asked whether animal waste was entering the small stream on the property; Ms. Federman said the Conservation Commission could be consulted. Members wondered why the rabbits had been moved back to the Chandler property. Ms. Chandler said it would be dangerous for her children to cross West Pomeroy Lane in winter to carry water and food to the rabbits. She said the rabbits would be moved back to 357 Pomeroy by April 1, and that moving the rabbits was a "summer remedy." Ms. Federman disagreed, saying the verbal agreement was to move them permanently and that issues regarding the road were discussed fully with Ms. Chandler. Ms. Federman stated it is Ms. Chandler's responsibility to oversee the care of her animals. Members felt that the Board should wait to act until the ZBA rules on the zoning appeal. Ms. Federman said that with the ZBA's current full schedule it could take as much as two months for them to hear an appeal.

Mr. Boscardin suggested that the Board could place a stay on the Cease and Desist order for 60 days. Ms. Gilbert so moved, and Mr. George seconded the motion. Mr. Tobiason moved an amendment, seconded by Dr. Amsterdam, to include the understanding that the rabbits would be moved off the property by April 1. The full motion voted on the Board was as follows: "The Board of Health moves to stay the Cease and Desist order for 60 days from the date of this meeting, with the condition that the rabbits be moved to 357 West Pomeroy Lane by April 1, 2018." The motion was **VOTED** 5 -0.

Attorney Zubi noted for the record that Ms. Chandler wants the Cease and Desist order to be lifted unconditionally. The hearing was closed at 6:10 PM.

## **2. 62 Russellville Road, 1 permit for 2 agricultural wells**

Matthew Biskup applied for a permit to drill dual agricultural wells at 62 Russellville Road. Health Inspector Edmund Smith wrote that the site meets all requirements. Mr. Tobiason moved that the permit be approved; Dr. Amsterdam seconded the motion. The motion was **VOTED** 5 – 0.

## **3. 908 South East Street, permit for agricultural well**

James Hoerle applied for an agricultural well permit at 909 South East Street. Ed Smith wrote that all requirements were met. After reviewing maps of the site, Board members wished to make sure

there was no impact on the town aquifer source of drinking water. Mr. Boscardin moved, and Ms. Gilbert seconded, that the permit be approved subject to Conservation Commission approval of the site relative to aquifer protection zones for drinking water wells. The motion was **VOTED** 5 – 0.

## **Old Business**

### **1. Adult use marijuana**

Ms. Federman said that the Cannabis Control Commission has developed regulations on aspects of adult use/recreational marijuana except for “social consumption,” i.e. on-premise marijuana café’s, so these will not be authorized until later this year at the earliest. The Massachusetts Association of Health Boards has organized a conference on health effects of marijuana use from 9 to noon on March 27; this will be streamed on the internet. Diane Amsterdam has registered to view the conference at her home and invited Board members to join her if they are available.

### **2. Fluoridation**

Residents who attended the February Board meeting to raise concerns about fluoridation of the public water supply have not submitted references or other documentation to back up the claims. Regarding whether fluoride levels are reported in the water purity notices sent by DPW to residents, Ms. Federman said that the information is included in the annual report, but not in other reports.

### **3. Kern Center and Hitchcock Center building reports**

The Board received these reports several weeks ago. Mr. Tobiason reported that the gray water system in the Kern Center is functioning; both buildings still depend on the town for potable water.

### **4. Lift condemnation, 33 Kellogg Ave. unit #31**

The previous occupant of this unit has relocated, and the condemnation has been lifted.

## **Topics not anticipated / Director’s report**

- Members warmly welcomed Nancy Gilbert’s return to the Board of Health.
- The High Horse and the Moan and Dove, both under the same ownership, were in peril of losing their permits to serve food because of missing Workmen’s Compensation paperwork, but the required documents have now been filed.
- Mr. Boscardin’s current term on the Board, which is his second term, ends later this year, and he said he expects to rotate off the Board at that time.

The next meeting of the Board will be on April 12.

The meeting adjourned at 7:05 PM.

Respectfully submitted,

Steve George