

BOARD OF HEALTH

Bangs Community Center, Room 101

May 10, 2018

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

Staff members: Jennifer Brown, Public Health Nurse; Susan Malone and Edmund Smith, Health Inspectors; Geoff Kravitz, Economic Director. Health Director Julie Federman was excused.

Others: see attached list

The meeting opened at 5:02 PM.

Review and Receive

1. Minutes of March meetings

Minutes of the April 12 meeting were approved as drafted.

New Business

1. Well application, 62 Russellville Road

The Board considered an application for an agricultural well to serve a hoop barn at 62 Russellville Road. Ed Smith said he had inspected the site and gave his approval. Mr. George voted to approve the application; Ms. Gilbert seconded the motion, and it was **VOTED 5 – 0**.

2. Tobacco coalition grant

Consideration of this item was postponed until Ms. Federman's return.

3. Inspection of property behind the downtown Post Office/Ren's Mobil

A resident had raised concerns about the state of an unoccupied building, formerly housing the "Faces" retail store, located at 159 North Pleasant St. Mr. Boscardin alerted the Building Inspectors, and the building has now been condemned.

Old Business

1. 175 Summer Street, Unit 13

An Order to Correct had been issued for this apartment because of accumulated items that represented a hazard, as described in the minutes of the Board's April 10 meeting. Mr. Smith reported that the bags of craft items have now been removed, but the planned sale of boxes of clothing has been postponed until Ms. Federman returns.

2. 326 West Pomeroy Lane, Cease and Desist Order

Health Inspector Susan Malone reviewed the history of livestock issues at 326 West Pomeroy Lane. A Cease and Desist order had been issued on February 8, signed by Ms. Malone and Building Inspector Jon Thompson, requiring that all livestock be removed from this property in the Residential Outlying (R-O) zone owned by Michelle Chandler. The order was issued because of recurring complaints during the past 7 years from neighbors, validated by inspections of the property, about odors, animal

intrusions, and concerns about the animals' well-being. Ms. Chandler appealed the Cease and Desist order at the Board of Health's meeting on March 8. Through her attorney Marwan Zubi, Ms. Chandler argued on March 8 that similar animals were on the property before the passage of the relevant zoning bylaw in 2011. The bylaw does not apply, she argued, because keeping livestock was a pre-existing use. The Board of Health voted on March 8 to stay the Cease and Desist order for 60 days to allow zoning argument to be appealed to the Zoning Board of Appeals (ZBA). On April 12 the ZBA voted unanimously to deny the appeal, rejecting the claim of pre-existing use and ruling that current zoning does apply to the property. The Board of Health must now decide how to proceed with the Cease and Desist order.

Mr. George noted that, in e-mail correspondence prior to today's meeting, Ms. Chandler urged that the order remain stayed until Superior Court rules on an appeal she was planning. Mr. George said that if such an argument were to be made at today's hearing, the Board should first hear it and decide whether or not to accept it, before going through a hearing on the merits of the order. Atty. Zubi said that Ms. Chandler understands that the Board will act as it wishes, but depending on the outcome she may appeal the action in Superior Court.

At 5:20 PM, Mr. Boscardin opened a hearing on the Cease and Desist order. Mr. George said that the ZBA ruling makes clear which laws and regulations apply to keeping animals on properties in the R-O zone. Keeping livestock for the exclusive use of residents of an R-O property is an accessory use of a residential property that is allowed "by right," but Ms. Chandler's property is not a "farm" under state law. "By right" simply means that no action by the Planning Board is needed to allow the use. However, restrictions still apply, in this case bylaws such as those forbidding animal odors beyond the property boundary, and regulations such as requiring registration of the animals, which depends on approval by the inspectors. An order by the inspectors limiting the number of livestock animals to zero, based on past history, is severe but not inconsistent with livestock being allowed "by right" in the R-O zone.

Ms. Malone recounted efforts by town staff to deal with odor problems and animal welfare at 326 West Pomeroy, including an agreement with Ms. Chandler to move her rabbits to a larger property across the street at 357 West Pomeroy as agreed to by that property's owner. However, the rabbits were moved back to 326 West Pomeroy during the winter without notifying the inspectors. The Board of Health's stay of the Cease and Desist order included a requirement to move the rabbits back across the street by April 1; Ms. Chandler agreed to this during the March 8 hearing. Ms. Malone said that some rabbits still remained at 326 West Pomeroy as of the date of this meeting, in violation of the Board's motion. Ms. Chandler said that bad weather around April 1, as well as the state of her health, prevented her from moving the rabbits. Ms. Malone also noted that Ms. Chandler had been given application forms for registering the livestock on several occasions during the past few years but had never submitted them, except for submitting one shortly before this hearing. Atty. Zubi criticized the Health Department's demand for a registration application now when the Cease and Desist order stated that no such registration by Ms. Chandler would ever be accepted. He asked whether any other residents have submitted livestock registration applications; Ms. Malone said this has happened. Atty. Zubi said Ms. Chandler's position is that the Board has no right to take action to limit her livestock, and that neighbors' complaints are unjustified.

Attorney John McLaughlin, representing abutters John and Susan Fortin, argued that it was time to reinstate unconditionally the original Cease and Desist order, since Ms. Chandler has violated, and is currently violating, state as well as town laws. He said the Health Department and the Board of Health have shown much concern for Ms. Chandler, and now concern should be shown for the suffering of her neighbors. Susan Fortin, who lives at 316 West Pomeroy next door to the Chandler property, said that each time the animal situation is brought under control, it later reverts to an unsatisfactory state because Ms. Chandler seems unable to limit the number of animals.

The Board then discussed what action to take. A revised order to remove livestock should include a feasible timetable; June 29, approximately 6 weeks from the date of the meeting, was agreed on for goats and chickens. Livestock rabbits would be moved across the street by May 20. Mr. George made a motion to that effect, seconded by Dr. Amsterdam. Mr. Tobiason suggested that a number of livestock somewhat greater than zero should be manageable by Ms. Chandler without violating the bylaws. Ms. Malone said this could be considered if it included a specific, detailed management plan. The motion was amended several times, leading to this final version:

All livestock rabbits must be removed from the property at 326 West Pomeroy Lane in Amherst by May 20, 2018. All other livestock and poultry must be removed from 326 West Pomeroy Lane by June 29, 2018. After June 29, the agents of the Board of Health will consider an application for a new poultry and/or livestock registration, which must include a comprehensive management plan approved by agents of the Board of Health.

The motion was **VOTED 5 – 0**. The hearing was closed at 6:40 PM. After the hearing ended, several members of the public who had not asked to be recognized to speak during the hearing called out to say that the Board should have permanently banned all livestock from 326 West Pomeroy Lane.

3. Adult use marijuana

Geoff Kravitz, town Economic Director, met with the Board to discuss issues arising from the state legalization of adult use (recreational) marijuana. Points made during the discussion included these: The Board's role may be more like its role in alcohol use, in which the state has the lead role, rather than like tobacco, in which there is more local involvement. The Board could be involved in regulating edibles that contain spoilable contents; in specifics of labeling every individual dose of edibles, as Northampton has done; and in requiring retail outlets to provide educational materials on drugged driving and diversion to minors. If the Town develops the materials, the costs can be covered through the 3% of sales that is collected to cover local costs related to cannabis. Regarding inspections, if state inspection proves inadequate, towns could get together to fund a regional inspector. Board members thanked Mr. Kravitz for coming to the meeting.

Topics not anticipated by the Chair 48 hours prior to the meeting

Mr. Boscardin said that the Kern Center at Hampshire College informed him that they had returned to using town water on May 9 because of high heterotrophic plate counts in the building water. Board members recalled that the Center changed from building water to town water for the same reason during the past year, but did not remember hearing that they had gone back to building water.

Some members will be away during each Thursday in June; the date that appeared to fit the largest number of members' schedules was June 21, so this date will be checked with Ms. Federman.

The meeting was adjourned at 7:20 PM.

Respectfully submitted,

Steve George