

Executive Session

Board of Health Meeting Minutes

February 20, 2014

Present: Rich Maccagnano, Eric Dickinson and Ann McCobb. Eric called the meeting to order at 7:03 p.m. following a roll call vote.

Attorney Adam Simms present at the meeting.

Adam gave an overview of the Waldman vs Board of Health case. On December 2, 2013 the Waldman's filed a formal complaint in Superior Court against the Board of Health. Town Council Bill Mayer answered. Adam has been given the case through the Town's insurance company.

Adam will file the Administrative Record the first week in March. The Waldman's will have 30 days to file their Memorandum of Law explaining their case. Then the Board will have 30 days to file their Memorandum of Law rebutting. After which the judge will have a hearing with the attorneys present. The judge will have 3 to 6 months to render a decision.

There will be no testimony. The judge could inquire back to the Board if there was a procedural flaw or he needed more information, but this is rare. After the decision it could go to Appeals Court.

The Waldman's are seeking an injunction for the Fowlers not to keep a horse or manure on their property. The Fowler's attorney Peter Barberi has contacted Adam. The Fowler's could submit their own Memorandum of Law.

Animal Inspector, Don Kramer entered the meeting. Don has been on the Fowler's site many times and said the mini-horses were well cared for. The Fowler's put the manure in a covered water-tight dumpster that is emptied regularly. Rich confirmed that the drain hole on the dumpster was sealed. Ann said that Adam has a letter from the hauler of the manure dumpster stating that he is emptying it.

Adam asked if there is a town regulation on manure "proper disposal." Ann stated that it is in the zoning by-law for Zone II of the public water supply. The horse pen is not in the Zone II of the public water supply; there is no Board of Health regulation regarding manure. Adam requested a town wide zoning map so he can show the judge that there is not a zoning violation.

Karen McManamon joined the meeting at 7:10 p.m.

Adam said the property files and meeting minutes are still public record, but executive session minutes should not be released until after the case is resolved.

Adam believed that this would be a straight forward case. The Waldman's have the burden to show the Board's decision was either 1) arbitrary or capricious, or 2) wrong in the law (State law misapplied). They would have to show a misuse of power, which is not in this case.

The animals are well tended. The Board's role is to protect the health of all the residents, not a single resident.

If there was a bad stench in the summer, the Waldman's would have requested a restraining order. The judge will see that they did not request a restraining order so it must not be that bad.

Rich Maccagnano motioned to exit out of Executive Session and return to Regular Session at 7:25 p.m. Karen McManamon seconded the motion.

Rich Maccagnano, Aye; Karen McManamon, Aye; Eric Dickinson, Aye

Respectfully submitted:

Ann Adams, Health Department Clerk

Approval Date: 3-19-15