

WALTER R. WOLF, DPM, Chair
DIANE DIETZEN, MD, Vice-Chair
JESSICA COLLINS, Clerk

SHARON HART, Director of Public Health

BOARD OF HEALTH MINUTES

January 14, 2019

As Approved – February 6, 2019

Present: Walter Wolf, DPM, Chair; Jessica Collins, Clerk; Sharon Hart, Public Health Director; Jennifer Jernigan, Assistant Public Health Director; Martha Terry, South Hadley; Robert Pleasure, South Hadley; Vern Blodgett, South Hadley; Kathleen Davis, South Hadley; Bill DeLuca, South Hadley; Walter Hamilton, South Hadley; Linda Young, South Hadley;

The Board of Health Meeting was called to order at 5:35 p.m. by Dr. Wolf.

1. Topic:

(a) Gravel Business Expansion – Chicopee Concrete Services:

Dr. Wolf stated that they elected to meet today prior to the Planning Board Meeting tonight in case there are any deliberations so that they don't violate open meeting law. Only two Board members could be there tonight. Dr. Dietzen sent her regards.

Dr. Wolf stated that the topic tonight is the position statement regarding the Chicopee Concrete Special Permit Application that the Board made at their January 2, 2019 meeting.

Director Hart read the letter received from the Town Attorney Brian O'Toole dated January 9, 2019 into the minutes. This letter discussed the Town Attorney's opinion "that the vote taken by the Board of Health on January 2, 2019 to "forbid" the Planning Board from taking action on the petitioner's application has no legal basis or affect." Dr. Wolf stated that they can voice their opinion but not block the special permit then. Dr. Wolf wanted to know if the special permit is granted, could they then block it with a cease and desist. Director Hart responded not that she is aware of. Director Hart stated that the Department of Environmental Protection oversees the drinking water supply. Dr. Wolf then declared that he wants another legal opinion. Director Hart stated that we can talk to the Town Administrator and Selectboard. Dr. Wolf asked about a possible Board of Health association or group that could help. Director Hart named some boards but she is not sure who will take this on. Doctor Wolf then asked about the State Attorney General's office. Director Hart and Jessica Collins voiced that they are not sure about the process on getting a second opinion. Jessica Collins asked about what they could put in place to mitigate their concerns. She stated that because there is no regulation

in front of them, it seems their hands are tied. What could they put in place to mitigate their concerns? Dr. Wolf wants the information on the last time the Department of Environmental Protection (DEP) inspected the gravel pit. Director Hart stated that the Planning Board should have this information and that the Building Commissioner is the Zoning officer who has oversight as to what the Planning Board puts in place. Dr. Wolf wanted to know if the Board of Health can ask the DEP to do an inspection to look for contaminated soils. Director Hart was unsure about what this would like for DEP and Water District #2. If the Water District #2 has concerns about their water quality or the area they have oversight on, it would probably be based on the water quality testing results. She is not sure what their oversight to that whole area is unless there is a change in the water quality when tested. She is not sure what they would look for. Dr. Wolf stated contaminated soil that could potentially leach into the ground water. “Ask what chemicals the gravel pit is using?” Director Hart questioned. Jessica Collins stated that the excavation around the containment wall concerns her. She feels that more research and scientific study needs to be done on this like the Conservation Commission letter stated. She feels that many people are still very unsettled on this topic and what will they do with the big hole in the ground in the future? Director Hart responded that they may have to make sure the slope is stabilized. For the future, Director Hart added, maybe a regulation that bans pesticides in that area or think about plans for that space in the future, but that is not under the Board of Health’s jurisdiction, it is under the Planning Board’s.

Linda Young asked if the Board of Health could write a letter expressing concerns regarding all the items they listed at the last meeting, now that they know they cannot “forbid.” The petition, etc. could be included. She wondered if that could not be done for tonight’s Planning Board meeting. Jessica Collins stated that they could, or they could write a letter suggesting a hydrogeologist be hired to look at the excavation concerns.

Joanna Brown voiced other concerns. She stated that she has concerns around children, animals and people getting hurt with an excavation hole 70 feet deeper than the current one. She is also concerned about the accumulation of surface water and drowning. The depth was revealed in a planning board meeting, she stated, but this safety concern just came to Joanna.

Jessica Collins asked about what they could do tonight. She wanted to know when the 90-day review period starts. Director Hart stated that it is supposed to be a 90-day period to review but she is not clear on when that actual time frame starts. It depends on what happens tonight at the Planning Board meeting. Jessica Collins then stated that she doesn’t see any harm in sending another letter. Dr. Wolf and Jessica Collins reviewed the original draft letter written by Director Hart that wasn’t initially used to see if they could alter it to fit their needs now.

Robert Pleasure stood up and stated that he and Vern Blodgett were going to the Planning Board meeting tonight. Robert stated that in the case of water protection, it is mandatory before any action that the Planning Board serve by mail the notice that there’s a hearing on this

issue in the water protection zone. The Planning Board notified the departments and not the actual Boards. No consultation took place which created this crisis. This crisis affects both his and Vern's family as well as other citizens and so they have a direct interest in this. This, he feels, is an emergency now. An important field was left blank on their application. Boards of Health have the emergency power to act. Robert Pleasure stated that misreading of zoning bylaws occurred. The zoning stated agricultural. It's operating a gravel mine in a water protection zone, not just moving earth in an agricultural setting. Robert has experience with gravel mines. He believes that the Board of Health has emergency powers, despite what they have been told. The Conservation Commission received a letter stating that it is too late to voice concerns over the project. They were told they only had 35 days to respond, Robert stated. Jessica Collins stated that the Board of Health didn't even get a response to their letter. Robert stated that according to them, it's too late to do anything, unless they didn't notify the Boards by mail. Robert handed out to the Board copies of the following:

Statement to South Hadley Planning Board at Continuation Hearing on January 14, 2019

Town of South Hadley, MA, Chapter 255 Zoning, Article XI. Administration, Section 255-139
Public Hearings

Pioneer Valley Planning Commission's pamphlet on Understanding Water Supply Protection
Overlay Districts

Town of South Hadley, MA Zoning Code – Use Regulation Schedule (continued) 255
Attachment 1:10

Robert stated that the Pioneer Valley Planning Commission explains thoroughly about water protection overlays. Their classification of "Other: Earth Removal" is in question. These handouts addressed the comments that he and his group will be covering at tonight's Planning Board meeting and were then discussed with the Board.

Dr. Wolf made a motion that until they get legal advice from the Attorney General confirming that the Board of Health doesn't have the right to forbid, their letter to forbid stands. He feels that they need further legal advice. This has been their first chance to discuss in an open meeting the Town Attorney's letter. He wants to determine if this letter has merit. Jessica Collins agreed that this situation is frustrating and of the essence and it is very hard to have a conversation about it. She is feeling conflicted because the letter went out to the public and now there is confusion about what is the Board of Health's jurisdiction. She asked about why they are rushing. She was concerned that Dr. Dietzen couldn't be there tonight because of a previously scheduled commitment. She wondered if this could be slowed down and is concerned that no one knows. She feels that they need to have more time. Jessica Collins stated that they want more scientific study and information and now they find out they were

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supposed to be mailed something. Dr. Wolf responded that it seems that they wanted to move the project forward without due process. There was a lack of communication which is a violation of the bylaws. Jessica wondered that if time is of the essence, is it more helpful to send a new letter to the Planning Board or could they do both and consult with the Attorney General? Director Hart responded that the Town Administrator and Selectboard would have to be consulted. Dr. Wolf stated that he wants another legal opinion before they retract their letter forbidding the special permit. Robert Pleasure stated that their group was not aware of how little consultation had taken place on this project.

Dr. Wolf stated that he wants a new letter to the Planning Board to state that they weren't given proper notification to review the application. Due process was not followed and the Board of Health did not receive anything in the mail. As a result, they want an independent hydrogeologist to review the permit application. Vern Blodgett then directed the Board to see the handout they were given on notification requirements. Jessica Collins motioned and Dr. Wolf seconded the motion and all were in favor of this new letter.

Dr. Wolf then motioned to let stand his letter sent out on January 4, 2019 forbidding the Planning Board to approve the special permit for the expansion of the gravel pit until he gets a second review by another attorney. Jessica Collins seconded. All were in favor.

Walter Hamilton spoke up and stated that the Planning Board agenda states decision tonight – just in case they do decide. Kathleen Davis mentioned that Chicopee Concrete has cancelled four times in the past with the Planning Commission, when concerned about urgency. Bill DeLuca, Chair of the Conservation Commission, stated that there has been no official response to their letter yet, when asked about it by Dr. Wolf. Bill DeLuca did state that it seems like because the letter was received outside the 35-day comment period, they are not required to respond. Dr. Wolf then commented that maybe Bill DeLuca could ask at the Planning Board meeting tonight for an official response.

Dr. Wolf then asked Director Hart if there have been any comments on the Water Testing Regulations yet from the Town Counsel. Director Hart stated that there hasn't been any yet. Dr. Wolf then asked Director Hart to follow up on this.

2: Adjournment

At 6:27 p.m. Dr. Wolf motioned to adjourn. All were in agreement.

Respectfully submitted,

Jennifer J. Jernigan
Assistant Public Health Director

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ATTACHMENT A

DOCUMENT

RECORD LOCATION

Town Reminder Article – 1/11/19
Health Board Blocks Gravel Pit
Expansion Plan

BOH File

Town of South Hadley MA
Chapter 255. Zoning Bylaws
Article XI – Administration
Section 255-139 Public Hearings

BOH File

Town of South Hadley MA
Chapter 255. Zoning Bylaws
Section 255-84

BOH File

Zoning Use Regulations Schedule
(continued)

BOH File

Pioneer Valley Planning Commission –
Understanding Water Supply Protection
Overlay Districts

BOH File

Statement to South Hadley Planning Board
At Continuation Hearing on January 14, 2019
Robert Pleasure and Vern Blodgett, Jr.

BOH File