

HAMILTON BOARD OF HEALTH

MINUTES OF MEETING

July 26, 2017

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

Continuation of Public Hearing. Essex Septic Service – Septic Hauler’s License and Pumping Reports.

Leslie Whelan updated the Board by stating that Mike Roy filed the previous two weeks of pumping records and that Mr. Roy had described his new computer program system for generating monthly reports to ensure accuracy to Ms. Whelan prior to the meeting. Mr. Roy said he upgraded his computer system and that he was doing the best he could to submit the required information. Mr. Roy said he currently had a system that allowed for finding pumping records that were dropped. Mr. Roy said his office space was being constructed to allow for more help and e-mail access.

David Smith said there were a couple of procedural options. The Board could close the hearing in anticipation that reports would be timely and complete or leave the hearing open and continue to allow for another month to determine how the reporting was done. Leslie Whelan suggested continuing the hearing and then if everything was fine, Mike Roy would not need to come to the next meeting to close the public hearing.

Mike Roy said the computer system was not in place for April and May while June and July were dedicated to his family’s health issues. Mr. Roy said the new program would help with billing and submitting information to the Board of Health. Giselle Perez said it was important to acknowledge that consequences would be rendered if the situation was not remedied.

Motion made by Walter Row to continue the public hearing, contingent upon a good report next month, when the hearing would be closed.

Seconded by Giselle Perez.

Vote: Unanimous to continue.

Hearing. Rooster Noise Complaint – Keeping of Animals Regulation 5.1. Claudia Woods 344 Cutler Road.

David Smith summarized the complaint noting three topics for consideration. There were procedural matters, an outline of facts, and an outline of possible decisions.

Procedural matters. David Smith announced that the Board was subject to the open meeting law and that there were rules that governed these proceedings. One was that the Board did not meet

any of the criteria for holding Executive Session and so the Board would not do that. Another was that the Chairman had the discretion to call a person out of order if the person did not behave in an appropriate manner. Mr. Smith recalled that during the previous meeting, Robert DeFelice requested to have Walter Row recuse himself. Mr. Smith explained that Town Counsel looked at the question and determined that the only person who could decide whether to recuse himself would be Mr. Row. The Selectmen who appointed him, could decide to terminate his position with due cause, however, the Selectmen declined to do so. Accordingly Mr. Smith asked Mr. Row if he wanted to stay active in this hearing, to which Mr. Row replied that yes, he did want to stay active.

Regarding the Keeping of Animals Regulation that the Board was operating under, Town Counsel determined that the Board did have the authority to make a determination within the Regulation. (John Hamilton clarified that it was a Regulation.) Town Counsel advised the Board that they could vote unanimously as a Board to make her opinion public otherwise the opinion would remain confidential. The opinion of Town Counsel included that the Board of Health had the authority to judge the nature of the complaint and reach a decision. Walter Row suggested leaving the opinion confidential and the Board agreed.

David Smith narrowed the issue that the Board was deciding upon. Robert DeFelice had quoted from the Keeping of Animals Regulation, making a complaint on specific language with “unreasonable” being the key word. The question was whether the noise in question had created an unreasonable interference for the enjoyment of his property. The decision would be if the noise was unreasonable. Mr. Smith defined the term unreasonable, “as being not fair, not sensible, or not appropriate,” according to Webster’s dictionary. The legal definition was “beyond what can be accepted as: clearly inappropriate, excessive, or harmful in degree or kind.”

Facts. David Smith summarized the meetings of May 28 and June 28, 2017 and information from the current meeting. Claudia Woods and Robert DeFelice had invited the Board to visit their properties. David Smith stated that he had parked his car at the site upon six different occasions between May 28, 2017 and July 25, 2017 at various days of the week within the hours of 8:00 am and 3:00 pm. Mr. Smith noted that during his frequent 15 minute visits, he had not heard anything until the day before the meeting when he heard the rooster crow nine to ten times between 3:01 to 3:02 pm. Mr. Smith also said since May 28, 2017 Mr. DeFelice had reported no complaints.

The Board had received a letter from Tom Larson, who worked on the property during the spring. Mr. Larson indicated that he did not hear a rooster for most of his visits. The letter was dated June 15, 2017 but not received until July 21, 2017.

Possible Decisions. David Smith suggested that the Board’s decision consisted of three options 1) uphold the complaint and issue an order for Claudia Woods to get rid of her rooster(s), 2)

dismiss the complaint deciding that the complaint did not meet the test of the Regulation, and 3) continue while the Board saw what developed.

Dr. Raymond Widican introduced himself as a friend of and occasional visitor to Mr. DeFelice's home. He said he visited Robert DeFelice twice a month. Mr. Widican said he had heard a rooster a couple of times. One April 28, 2017, late in the morning, the rooster was making a lot of noise in the morning and was noted as still crowing that afternoon. Since that time, Mr. Widican had not recalled hearing noise during his bi-monthly visits. Mr. Widican had heard nothing in May or June and had not visited in July. Mr. Widican recalled hearing roosters before April 29, 2017 during the winter.

Robert DeFelice submitted his resume in response to insinuations about him having a job or if he was sane or not. Mr. DeFelice said the rooster noise had decreased since June 28, but over the last five years, the rooster had been removed or muffled in response to police. John Hamilton responded that Claudia Woods had removed the noisy rooster. Mr. DeFelice asserted that Ms. Woods was not engaged in commercial farming according to Hamilton's Regulations and that the Right to Farm By-law only applied to land devoted primarily to agriculture. According to Mr. DeFelice, 344 Cutler Road was a residential property. Mr. DeFelice said roosters had nothing to do with producing eggs.

Robert DeFelice said the neighborhood was quiet and any reasonable sounds could be heard, including a muffled noise, an apparent rooster indoors, which was not as disturbing as a rooster outside. Mr. DeFelice referred to five or more years of roosters crowing in his quiet house, which had been emotionally unsettling causing him to make repeated calls to Hamilton police. Calling the police made Mr. DeFelice uncomfortable and the situation had interfered with the comfortable enjoyment of his life and property. Mr. DeFelice asserted that the repeated annoyance over five years had created psychological conditioning which did not require prolonged repetition of the annoyance to create emotional anxieties and discomfort.

Robert DeFelice said roosters were not allowed in Ipswich, Beverly or Concord and that Salem Municipal Court had enforced a rooster removal in Danvers. John Hamilton responded that the removal was under a By-law rather than a Regulation. Mr. Hamilton explained that municipalities had By-laws, but Hamilton did not. Mr. DeFelice responded that the Board of Health had the authority to remove a rooster and requested removal of the rooster and not allowing for the replacement in accordance with the Keeping of Animals Regulation.

Robert DeFelice played a tape of a conversation with a policeman in response to Claudia Woods having gone to the police because Mr. DeFelice contacted her. Mr. DeFelice said the recording was from a few years ago.

Tom Larson spoke about how quiet and peaceful the rooster was and that he didn't hear him very often when he worked on the property. Mr. Larson referred to his crowing as muted. Mr.

Larson's work was in early March at various times of the day and week. Mr. Larson worked on different areas of the 12 acre parcel.

Giselle Perez described Robert DeFelice's conditioned response to the rooster, which might extend to seeing an image of the rooster or even Claudia Woods. Ms. Perez referred to Mr. DeFelice's tolerance, which had become quite low and then noted that Ms. Woods was also distressed. Mr. DeFelice said Ms. Woods liked the sound of a rooster, but if he lived next to someone who listened to loud music would he need to put up with that. Walter Row repeated Ms. Woods' statement that roosters played a protective role protecting chickens from hawks. There would be a reason to have a rooster even though some people in town found it crazy to have a rooster.

John Hamilton responded that the Right to Farm By-law did not require that the primary purpose be commercial agriculture and noted that 61A required \$500 in gross revenue from combined agriculture on a single property as an agricultural requirement. Mr. Hamilton stated that roosters did not lay eggs but protected hens from hawks and allowed them to be free range hens. Mr. Hamilton said Claudia Woods was not 200' from Robert DeFelice's home but according to google maps was 321'. Mr. Hamilton also stated that a pileated woodpecker made a sound like a rooster. Mr. Hamilton said the police recording was taken right after Ms. Woods' husband had passed away and that Mr. DeFelice was coming onto the property to leave notes. The message from the police was to have Mr. DeFelice contact them to avoid the situation that Ms. Woods was uncomfortable with. John Hamilton objected to a continuance of this hearing as citizens were entitled to a speedy decision.

While Robert DeFelice said it made no difference about agriculture, the rooster was an aggravation to Mr. DeFelice in that he could not lead a comfortable life. John Hamilton responded that it was not about whether the rooster bothered Mr. DeFelice, it was about if the noise was unreasonable. Mr. DeFelice said it was about his personal enjoyment of the property as a person, not a group.

David Smith reiterated that the Board had three options: uphold the complaint and order the rooster to be banished, dismiss the complaint, or continue the hearing and asked the Board if they had sufficient facts on which to make a judgement. Mr. Smith noted that the Board of Health Regulation stated that they were ruling on the fact that animal owners shall maintain all buildings, premises, etc. in such a manner as to not create unsanitary condition where the word unsanitary was defined in the Regulation as that state of being of a facility, which in the opinion of the Board of Health, is conducive to or results in ...noise in such concentrations and such duration as to cause unreasonable interference with the comfortable enjoyment of life and property. Mr. Smith noted that the key word was unreasonable. Walter Row added that the notion of reasonable or unreasonable would be a ruling on the average experience taking into account the preponderance of evidence as the sum of which was an average experience. Within an average there would be a range of experience with Mr. DeFelice being on one end.

Reasonable versus unreasonable would be making a judgement based upon the average experience that people had brought to the Board.

Robert DeFelice responded that this was a subjective issue in that what was painful to one was enjoyable to another. Mr. DeFelice said he happened to find the rooster crowing annoying and after the duration of five years, the sound should not go on. Mr. DeFelice added that apparently, after April 29, 2017, Claudia Woods removed the noisy rooster(s) and subsequently there had not been anything of comparable noise. David Smith surmised that the concentration and duration in the last couple of months had not been sufficient to cause unreasonable interference with enjoyment of life and property. Mr. DeFelice agreed and wished that Claudia Woods was present because he wanted to ask her why there had not been any rooster noise. Mr. DeFelice said that in the last month, there was hardly any noise. The evidence would suggest Ms. Woods had a quiet rooster. David Smith added in the span of several hours over months, he had only heard the rooster for one time for one minute with the noise being drowned out by vehicles passing by. Mr. DeFelice repeated that he had hardly heard anything in one month.

David Smith cautioned the Board that their decision would set a precedent. The Board needed to consider Hamilton Regulations, namely, in the opinion of the Board of Health, was this rooster noise in such concentrations and of such duration as to unreasonably interfere with the comfortable enjoyment of life and property. Mr. Smith refined his comment to include that the Regulation did not say life and property of any single resident, the neighbors, neighborhood, or public, and noted that it was non-specific.

Giselle Perez asked Robert DeFelice if there had been a change in noise since April, to which he agreed. Ms. Perez asked Mr. DeFelice if the decline in noise continued in this state, would he be as interested in having the rooster removed to which he responded no. Ms. Perez asked if Claudia Woods retained the rooster in a quiet state, would there be a need to remove the rooster to which Mr. DeFelice answered no. Mr. DeFelice agreed that at this point in time there had not been that much distressing noise. Mr. DeFelice said previously, the police showed up and the noise stopped for a month but then the rooster noise came back. David Smith understood the irregular pattern of objectionable noise in history and that Mr. DeFelice would be waiting for the next concentrated outburst of noise.

Giselle Perez said she was trying to meet the needs of both parties and asked if there was anything on Ms. Woods' part to ensure that the rooster would not be there. John Hamilton didn't know why she had two roosters but the quiet rooster was a semi-juvenile and she was willing to get rid of the noisy one. She was not willing to coop her chickens as she wanted free range chickens. She did not intend to get another rooster unless she lost the current rooster.

David Smith proposed to continue the hearing until the next scheduled meeting in August to frame a conclusion with conditions. Mr. Smith's intention was to frame a decision that would give Robert DeFelice and Claudia Woods satisfaction with closure on both parties. Mr. DeFelice

suggested that Ms. Woods should be present. The Board would provide questions for her to answer in writing for the next meeting.

Walter Row stated that he would not be at the next meeting. John Hamilton wanted all three members present for a vote. The following meeting would be September which would cause the continuance to become burdensome. John Hamilton said he believed adequate evidence had been provided for a decision at the current meeting. Mr. Hamilton suggested having Claudia Woods respond to Board questions within one week of their presentation, however, Robert DeFelice wanted an opportunity to respond to Ms. Woods' responses.

David Smith said he thought the Board was at a point to make a decision. The Board debated having an additional meeting and what would occur if two members voted in opposition to each other. John Hamilton said Claudia Woods did not intend on getting another rooster unless the current one died of natural causes but would continue to have hens. Walter Row said Ms. Woods was sensitive to this issue because she removed noisy roosters in the past. Mr. Hamilton told Robert DeFelice not to shoot the rooster. Raymond Widican suggested having the rooster for a neighborhood dinner. Giselle Perez noted that the rooster appeared to be friendly and quiet and that Ms. Woods rid herself of noisy roosters in the past. It was discussed what would happen when the current rooster passed and a noisy rooster replaced it. John Hamilton said his guess was that Ms. Woods would get rid of it.

Motion made by Walter Row to make a decision whether or not to give Mr. DeFelice relief on the issue of the rooster.

Seconded by Giselle Perez.

Vote: Unanimous to approve.

Giselle Perez explained her opinion. Ms. Perez wanted to be mindful of the complainant's feelings. There had been frequent crowing in the past which was distressing. Ms. Perez believed that one crow could be distressing to Robert DeFelice, especially if it happened to be particularly loud. It appeared to Ms. Perez that Claudia Woods had made an effort to take care of the noisy rooster in this period of time. During the past several months, the noise had been tolerable, even by Mr. DeFelice's standards. Ms. Perez hoped that Ms. Woods would create an amicable relationship where she would be mindful of her neighbors and cautious of the rooster noise. When the rooster passed by natural causes, Ms. Perez was hopeful that Ms. Woods would assess the replacement rooster for its noise and frequency of crowing because it might not be a lot for her and other neighbors, but there was one that had a history. Ms. Perez empathized with Mr. DeFelice but did not think there was enough evidence to support the removal of the rooster.

David Smith moved that the Board of Health dismiss Mr. DeFelice's complaint.

Giselle Perez seconded.

Walter Row announced that he would abstain out of respect for Mr. DeFelice and apologized for any misunderstanding during the previous meeting. Mr. DeFelice accepted his apology.

David Smith said he was optimistic in Giselle Perez's reasoning and that if Robert DeFelice was aggrieved in the future, he could file another complaint and start the process over again, which would also be a significant deterrent to another occurrence. Robert DeFelice said he thought the answers were reasonable because the crowing had dramatically been reduced.

Vote to dismiss Mr. DeFelice's complaint: Unanimous of the two voting members with Walter Row abstaining.

Keeping of Animals Regulation – mini horses

David Smith recalled that at the last hearing, he gave a list of contacts within Essex County to whom he sent a letter. While there was a 50% response rate, it was unanimous that no one had information to help. Mr. Smith contacted his veterinarian who wondered about how the original By-law had been written. The veterinarian thought it was more important how animals were cared for rather than numbers on the property. Nancy Stevens was contacted to determine the history of the Regulation. The Chairman from the 1990's was contacted as well. Research as to the minutes would be conducted. Several entities would be contacted to determine if there was useful information available.

Leslie Whelan recalled that the subject came about because someone wanted to know if there was an opportunity to have more mini horses than horses allowed on the property. One option might be to ask for a variance and obtain a permit with conditions allowing for the possibility to have more animals if a resident was doing a good job of caring for the horses. The variance would be based on the level of cleanliness. David Smith thought it was a clean and simple solution to the problem. Mr. Smith wanted to pursue some research but thought it sounded like an efficient way to solve the problem.

Nuisance by-law update

David Smith recalled that he sat with Michael Lombardo, who promised to progress the By-law as well as Patrick Reffett, however, nothing happened. One possible reason the By-law had not progressed was that it would create more work for Town employees to enforce. Mr. Smith explained that he was an abutter to a property owner who might be the subject of a complaint under the proposed Nuisance By-law that, as an abutter, MGL would allow for a Board of Health member to participate in discussions and deliberation but would not allow for Mr. Smith to vote on it. Mr. Smith had proposed the By-law and received comments from Leslie Whelan, Donna Brewer, Patrick Reffett, and the Police Chief.

Ecologically safe grocery bags – encouraging use across the region.

Walter Row compared the plastic bag use at Stop and Shop versus the model at Crosby's and wondered if the model could be used by other towns. Mr. Row wondered about the costs incurred by the vendors. Leslie Whelan responded that it was a Town By-law that was pushed forward by a Board of Health member who reached out to the recycling committee. The group went to the establishments in town to determine that their costs were small, but regardless, they

were in favor. It was a grass roots effort to get the owners on board before they went to Town Meeting.

Walter Row thought he might contact the Board of Health in Beverly, while Giselle Perez suggested increasing incentives such as offering a discount for bringing one's own bag. Mr. Row would determine if there was State level interest.

Discussion – Health Agent Update

Leslie Whelan updated the Board that everything had been completed regarding the Septic Regulations. In reviewing the pumping reports, the department had sent out letters to homeowners that their light duty covers might need safety grates and they should contact their pumper to have them installed. About half of those contacted had been installed and the other recipients had called regarding the letter. David Smith was happy that there were no new complaints on Brick Ends Farm. .

Unanticipated items/announcements

Minutes – June 28, 2017.

Motion to approve the minutes of June 28, 2017 made by Giselle Perez.

Seconded Walter Row.

Vote: Unanimous in favor.

Adjournment

Motion made by David Smith to adjourn at 9:10 pm.

Seconded by Giselle Perez.

Vote: Unanimous in favor.