

July 11, 2019
Sterling Board of Health Meeting
Butterick Building, Lower Level Conference Room
1 Park Street, Sterling, MA 01564

Meeting Minutes

5:35 PM The meeting was called to order by Chairman Donna Clark.

Roll Call: Donna Clark, Chair – present
Gary Menin, Vice-Chair – present
Allen Hoffman, Member – present
David Favreau, Health Agent – present
Elaine Heller, Admin. Asst. – present

Attendees: Patty Page, Theresa Page, Matt Scannell, Dave Farabaugh,
Susan Staudaher, Steve Staudaher, Cathie Ryan, Joan Drown,
Selectman Arden Sonnenberg, Kerry Flynn, and Laura Ricci

Sterling-Lancaster Community Television and Gary Menin recorded the proceedings of the meeting.

General Business Updates:

Approve Any Available Minutes:

Allen Hoffman made a motion to approve revised minutes of the May 2, 2019 meeting and Donna Clark seconded the motion. All were in favor and the motion carried.

Allen Hoffman made a motion to defer approval of the June 13, 2019 minutes to the next meeting.
Donna Clark seconded the motion. Unanimous vote.

Correspondence: None

Health Agent Report:

David Favreau noted the Board of Selectmen suggested the BOH consider drafting regulations regarding collection bins in town. This subject had generated an article on the town meeting warrant with residents giving their approval for a bylaw; no vote was taken on the article.
After discussion, Gary Menin offered to work on draft regulations, to be discussed at the next meeting. Allen Hoffman suggested the regulations be for a one-time license which could be revoked. The Health Agent will notify the Town Administrator regarding the outcome of their discussion.

Mr. Favreau advised members the Board of Health has received a completed application for soil testing at 3 Fox Run Road, which has been scheduled for July 30, 2019, at 10:00 AM.

The Health Agent spoke on a formal public records request for documentation on the residence at 2 Loring Way dated July 3, 2019, made by BOH member Menin.

Mr. Favreau commented that the public records, in which Mr. Menin requested, was provided to Mr. Menin and all Board members in the form of an email on June 26, 2019 substantiated by an affirmative e-mail reply on June 28, 2019 from Mr. Menin. Mr. Menin noted he was satisfied with the response of this public records request.

Signatures Required: Completed

Other Items: None

Public Session:

Arden Sonnenberg, the newly-elected selectman, announced she is the Liaison to the Board of Health, and offered her help whenever it is needed.

With time available before the 6:00 PM agenda items, Mr. Hoffman advised he will not be available for a BOH meeting on August 8, and asked if the Board could possibly meet on August 15. Mr. Menin was not sure of that date and will advise Mr. Favreau after checking his schedule. Date to be determined.

Appointments and Agenda Items:

Discuss the Action of a Failed T5 Inspection Report for Property at 2 Loring Way:

Gary Menin began speaking on this topic, calling out a Point of Order and presented a multi-page document, "Board of Health members- Explanation of the conflict of interest law" conflict of interest rules as they pertain to Board of Health members. Mr. Menin stressed that Health Agent Favreau should recuse himself from this discussion as he is related to L.R. Favreau, LLC, the company that performed the first inspection. Allen Hoffman pointed out that Mr. Favreau is not a Board of Health member, but appointed to the position of Health Agent. Therefore, the document does not apply to Mr. Favreau.

Mr. Favreau presented to the Board his conflict of interest disclosure statement, which was established in 2006, and revised in 2014 at Mr. Menin's recommendation. He read this pertinent information from the disclosure statement:

"The current BOH members, Donna Clark Chairperson, Allen Hoffman, and Gary Menin recognize that it is not necessary for Mr. David Favreau to recuse himself from any public documents gathering, research of files, and/or information requested from the public, including family members. Furthermore Mr. Favreau in his position as Health Agent is allowed to review and comment on all septic system plans submitted to the BOH and stamped by other individuals who are certified under the requirements of Title V irrespective of whether or not members associated with the family business were present at the time soil testing was performed".

At this point, Mr. Menin read into the public record, also from the disclosure statement, what he felt was pertinent to this situation:

"In the course of carrying out the Health Agent responsibilities as outlined in the Health Agent job description, Mr. David Favreau will recuse himself from inspections of any Title V subsurface disposal systems, hauling operations, licensing and permitting to Title V regulatory related business conducted by any family member for which they are certified and/or licensed by the Town of Sterling. Mr. David Favreau, his father or any other family member who is involved with matters related to Title V, such as a Title V upgrade or new system must disclose their involvement with any project. Such projects shall be presented to the BOH for regulatory permitting and inspections. Any matters or project inspections

associated to any family member involving Title V regulation will be handled/processed by the BOH Assistant Agent and/or the BOH or a person designated by the BOH”.

Health Agent Favreau stressed one particular phrase in the above: “Mr. David Favreau will recuse himself from inspections”, as outlined in the disclosure statement. Mr. David Favreau has no involvement in this matter; he is merely bringing the facts and details to the Board as an agenda item for their discussion. Additionally, Mr. Favreau also advised that on July 3, the facts were presented to the Town Administrator and Town Counsel, who noted no conflict of interest.

Mr. Menin said the system repair was voted on at the last meeting, and approved for a D-box and tank replacement, and he prepared a statement as suggested by David Boyer of DEP, explaining the rationale behind the vote. Mr. Hoffman noted the statement must be approved by the Board as the previous vote was incomplete without the explanation as to why approved.

In Mr. Menin’s opinion, the homeowners have waited 2-1/2 months for approval, which is unacceptable. Mr. Favreau then read the timeline of events regarding 2 Loring Way, which outlined dates and results of inspections and tests; delays were caused by the homeowners who challenged results.

Mr. Menin then read the statement he sent to Kathie Nickerson, the Assistant Health Agent, which was his response to DEP. Mr. Menin also read into the record the homeowners’ affidavit regarding their observations and experience during this protracted inspection process.
(ATTACHED)

Health Agent Favreau explained that all information on the inspections done at 2 Loring Way were sent to David Boyer at DEP on June 18, 2019 for his advice, and he read Mr. Boyer’s comments (also provided to all Board members June 26, 2019 via e-mail), which noted the motion made at the previous Board meeting was incomplete due to lack of documentation and requires further action. Mr. Favreau said the purpose of the discussion at this meeting is to vote on a “Failed” title 5 inspection report or the septic repairs at 2 Loring Way and the Board of Health to then make a determination in writing. Mr. Menin stated that, in his opinion, the first soil evaluation was incomplete and should be thrown out and there was ample evidence that the system as found was not in the SHGW and furthermore a formal soil evaluation is not required during property transfers and indeed should only be accomplished as a last resort and then only with the homeowner’s cognizant permission. Mr. Favreau stressed DEP reviewed all documentation, and did not discard the documentation on the first soil report or any other information.

Mr. Hoffman stated that 2 of the 3 licensed soil evaluators documented that the system is in the groundwater, with 2 soil evaluations determining estimated seasonal high ground water being 3 inches apart in separate observation holes, which confirms system failure.

Donna Clark said that, after the June meeting, she reviewed the complete file and believes she made an error in judgment during the June meeting. Mr. Hoffman commented that he had voted nay at the June meeting, and is voting nay on this vote. Mr. Menin presented a motion (statement) for the rationale for disregarding the soil evaluation tests and thus only requiring replacement of the septic tank and distribution box. The discussion continued, with questions from attendees. The vote to accept Mr. Menin’s motion was: Menin – aye; Clark and Hoffman – nay. Therefore, the applicant’s request to only replace the septic tank and D-box was denied. Mr. Menin, upset with this reversal of the vote from the previous month’s meeting, left the meeting at 7:07 PM.

Mr. Favreau stated the homeowners would need to upgrade their system, as there is no agreement on the rationale to allow the continued use of the existing system. The existing system has been confirmed to be in the ground water.

Further Discuss DEP Proposed Floor Drain Regulations:

Members had reviewed the regulations and Mr. Hoffman noted the Board would need to schedule a public hearing in order to adopt the regulations. Notifications will have to be published in advance of a hearing, so Mr. Hoffman suggested the public hearing be held at an upcoming meeting.

Other Business:

Chairman Clark suggested members attend a Cannabis 101 seminar to be held at the Sterling Senior Center on July 27 (note: update to reflect correct date of July 31) at 6:30 PM, presented by Ross Riley of The Botanist.

Adjourn:

A motion to adjourn the meeting was made by Donna Clark and seconded by Allen Hoffman. Unanimous vote and the meeting adjourned at 7:20 PM.