

Board of Health
Meeting Minutes
May 9, 2013

| | |
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| 6:30 p.m. | <p>Meeting called to order: - Present – Allen Hoffman, Donna Clark, Gary Menin, and David Favreau</p> <p>1. Approval of Minutes March 14, 2013 and April 11, 2013– Donna Clark motioned that the minutes be approved as amended, Gary Menin seconded, all approved April 11, 2013 –Gary Menin submitted a letter in the form of a motion request associated to 18 Sherwood Drive in which he wanted to have as an addendum to the minutes. The letter in the form of a motion was not seconded, however Allen Hoffman stated it would be attached to the minutes. Donna Clark motioned that the minutes be approved as amended, Gary Menin seconded, all approved</p> <p>Gary Menin also suggested that the water supply for the summer of Sterling be on the June 9th, 2013 agenda</p> <p>2. Current monthly activities update:</p> <p>Mr. Roland Marrinello of 184 Beaman Road made a complaint concerning Shooting Range at the Eight Point Sportsman Club on Beaman Road, David Favreau provided Mr. Marrinello with MGL c214 s7B to address this concern.</p> <p>An invoice for the professional service to review the wastewater treatment facility and Nitrogen Loading Grant of easement restriction for Chocksett Crossing Condominium Association was received by Fay Spofford and Thorndike, The invoice has been forwarded to the Association and will be paid in full by the trustees of the complex.</p> <p>34 Princeton Road, a recent sewage breakout occurred this has been brought to the attention of the residence and they have stated that construction to replace the system will be underway.</p> <p>Allen Hoffman and David Favreau have formally submitted their response to the complaint against them for the violation of Open Meeting Law and distributed copies of their response to Ms. Clark and Mr. Menin A copy of their response is attached to these meeting minutes.</p> |
| 6:50 p.m. | <p>Charla Kroll and Martha Hawley presented letters from Dr. LaCava concerning health issues of Martha Hawley. They stated that the State mandates that an air quality can be monitored at no expense to the town. Gary Menin will pursue this course and report back to the board at the June meeting.</p> |
| 7:00 p.m. | <p>Public Session:</p> <p>Discussion resulting from an email communication dated May 8, 2013 by Gary Menin concerning his opinions on the Mosquito Control Program Town Meeting article. It was noted that the Town Administrator had informed Mr. Menin that his email appeared to be in violation of the Town of</p> |

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|-----------|---|
| | <p>Sterling's Computer Usage Policy. Mr. Favreau indicated that Mr. Menin had misrepresented some of the facts. Mr. Menin noted that the only misrepresentation was the quoted program cost of ~\$70K – which was stated in the "Fall" presentation vs. the new quote of \$63K. The rest of Mr. Menin's letter dealt with his opinion's on the program and was promulgated because several residents approached him as to why the BOH was supporting "spraying" which was their understanding of Mr. Favreau's and Mr. Hoffman's earlier statements in the Sterling Meeting House News and as such the position of the BOH itself. Mr. Hoffman noted that his statements in the Meeting House News appeared in his candidate's statement and thus would reasonably be interpreted as his own personal views.</p> <p>The Board of Health had previously sponsored informative presentations by the Central Mass. Mosquito Control Project to address associated concerns. Mr. Tim Deschamps, director of Central Mass. Mosquito Control Project will attend the Town Meeting to answer detailed questions regarding this program.</p> |
| 7:15 p.m. | <p>Michael McDermott, 18 Sherwood Drive - Mr. McDermott stated that the rear system was disconnected, – Allen Hoffman said that a permit would be issued to abandoned existing systems, and the witness to proper abandonment compliance or, if Mr. McDermott prefers to have a soil evaluation to determine ground water within the area of the system in question, confirming or denying that the system is in the ground water. Soil testing must be performed in the presence of the Board of Health or representative to the Board of Health. Mr. Hoffman stated that either option is to be completed by June 7, 2013.</p> <p>Gary Menin noted that the Board is not being consistent with all actions/orders to correct. Mr. Menin noted that an actual threat to the public health is occurring at 34 Princeton Road (whereas the situation at Sherwood Drive is simply an issue of administrative compliance as no public health threat has ever manifested) and they were given as much time as they needed. Mr. Hoffman noted that while Mr. Menin is entitled to his own opinion, the facts remain that the septic system at 14 Sherwood Drive is in violation of several provisions of Title V. It was reminded that 34 Princeton Road was provided time to dry out for construction purposes from the spring time wetness, just as Mr. McDermott had also been granted time due to winter weather conditions during the winter months to remedy his matter. At this time, Allen Hoffman moved that 34 Princeton Road system must be completed by June 13, 2013. All agreed. Donna Clark made a motion to require Mr. McDermott to comply by June 7, 2013, otherwise on June 13, 2013 the Board would advise Mr. David Favreau to seek Town Counsel assistance and to file contempt order in housing court addressing the recent court injunction, Allen Hoffman seconded, Donna Clark aye, Allen Hoffman aye, Gary Menin nay – Motion Carried. An update to the matter will be presented during the June 13, 2013 meeting</p> |
| 7:30 p.m. | <p>Appointments: Board of Health Agent (David Favreau) Associate Agent (Kathy Nickerson) Animal Inspector (David Favreau) Alternate Animal Inspector(Louis Massa) and Burial Agent (Town Clerk) Alternate Burial Agent (David Favreau) Plumbing Agent Robert Jana- All for One Year</p> <p>Donna Clark made a motion to appoint all above, Allen Hoffman seconded , Gary Menin stated he could not approve these appointments , Gary requested on several times to be informed of daily activities and stated that he has only been informed once (and in that particular instance the appointment was cancelled) - Donna Clark aye, Allen Hoffman aye, Gary Menin nay – Motioned Carried</p> |
| Agenda | <p>June 13, 2013 – Meeting</p> <ol style="list-style-type: none"> 1. Water Supply 2. Sherwood Drive 3. 34 Princeton Road |
| 7:45 | Adjourned |



Town of Sterling

Town Clerk

1 Park Street, Sterling, MA 01564

Phone: 978-422-8111 x2308

Fax: 978-422-0289

Email: TownClerk@sterling-ma.gov

On Tuesday, April 23, 2013 the Town Clerk's Office received nine (9) pages of documents from the Board of Health Agent, David Favreau regarding Michael McDermott at 18 Sherwood Drive, Sterling, MA 01564. In response to an Open Meeting Law complaint filed with this office on April 2, 2013.


Jeanne Survell, Assistant Town Clerk


4/23/13
Date

RECEIVED

APR 23 2013

TOWN OF STERLING
TOWN CLERK

A True Copy
Attest:


Sterling Town Clerk



Town Of Sterling

Board of Health

Butlerick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2305 • FAX: (978) 422-0289

April 22, 2013

Mr. Michael McDermott
18 Sherwood Drive
Sterling, MA 01564

RECEIVED

APR 23 2013

TOWN OF STERLING
TOWN CLERK

Dear Mr. McDermott,

This letter addresses the Open Meeting Law complaint that you filed with the Sterling Town Clerk on April 2, 2013. Mr. Favreau received this complaint on the same day, while Mr. Hoffman received the complaint by email on April 3, 2013.

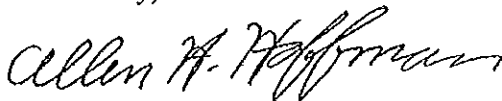
1. We find your complaint against Mr. Favreau to be without merit. The first condition that must be satisfied in order to file an Open Meeting Law complaint against an individual is that the individual must be a member of a public body. Mr. Favreau is the Health Agent for the Town of Sterling. As an employee, he reports to the Board of Health (a public body). The Board of Health consists of the three elected members and does not include the Health Agent. Since he is not a member of a public body, he cannot be charged with violating the Open Meeting Law. Mr. Hoffman is Chairman of the Board of Health. It is reasonable that, as a condition of his employment, Mr. Favreau would communicate with him. This communication is similar to the communication that takes place between the Town Administrator and the Chairman of the Board of Selectmen. Such communications do not fall under the provisions of the Open Meeting Law.
2. The Open Meeting Law governs communications between members of a public body. Your complaint does not charge Mr. Hoffman with communicating with other members of the Board of Health in a manner that would potentially violate the Open Meeting Law. Thus your complaint against Mr. Hoffman as an individual is without merit.
3. The Open Meeting Law concentrates on communications that constitute deliberations. The portion of the Board of Health meeting agendas that is posted as general business updates usually involves acceptance of minutes from previous meetings, correspondence, numerous reports from the Health Agent and often reports from members of the Board of Health. The status of enforcement actions is often reported within the general business updates. Such reports do not constitute deliberations. Appended to this report are four orders issued to you by the Board of Health and sent by certified mail for the period July 19, 2011 through February 9 2013. A preliminary injunction issued against you by the Trial Court of the Commonwealth of Massachusetts on January 9, 2013 to comply with the Board of Health order to bring your septic system into Title V compliance is also

attached. Updates from the Health Agent on this situation including court appearances have been routinely reported at several Board of Health meetings over the past 21 months. Such reports and updates do not constitute discussions as defined by the Open Meeting Law.

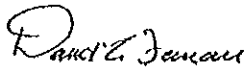
4. It was discovered that the agenda for the meeting on March 14, 2013 was not properly posted in a timely manner. The agenda was not received in the Town Clerk's office until March 14, 2013. It is not known why or how this delayed submission of the agenda occurred. The Health Agent has now been instructed to submit the meeting agenda to the Town Clerk 72 hours before our scheduled meetings rather than the required 48 hours.

In summary, the complaint against Mr. Favreau is invalid since he is not a member of a public body. The complaint against Mr. Hoffman is invalid because it focuses on communication between Mr. Hoffman and Mr. Favreau. This type of communication is not subject to the Open Meeting Law. It should be noted that the original order to correct the septic system on your property was issued on July 19, 2011 long before Mr. Hoffman became a member of the Board of Health. Since you have failed to comply with that order and subsequent orders issued by the Board of Health, it would be expected that the Health Agent would be reporting on the status of this situation at numerous subsequent Board of Health meetings. As noted, such reports do not of themselves constitute discussions as defined by the Open Meeting Law.

Yours truly,



Allen H. Hoffman
Chairman



David Favreau
Health Agent

Enclosures:

Board of Health letters dated July 19, 2011, June 5, 2012, July 23, 2012 and February 9, 2013.

Preliminary Injunction issued by the Trial Court of Massachusetts, January 9, 2013.

cc: Board of Selectmen



Town Of Sterling

Board of Health

Butterick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-3025 • FAX: (978) 422-0289

July 19, 2011

Mr. Michael Mcdermott
18 Sherwood Drive
Sterling, MA 01564

RE: Order to Correct:

Dear Mr. Mcdermott:

The Sterling Board of Health (B.O.H.) is aware of construction activities to the subsurface disposal system located at the referenced property. As a result of an inspection, July 12, 2011, the Board of Health has observed construction activities to the primary component, septic tank and the distribution box at this site. Both components have been structurally compromised by previous site work performed, as a result, these components are required to be replaced and brought into compliance (310 CMR 15.223 and 15.232).

Furthermore, no individual shall engage in the construction of any on-site system without first obtaining a disposal system installers permit from the local approving authority (310 CMR 15.019). No person shall construct, upgrade, or modify a system without a Disposal System Construction Permit which has been issued by the local approving authority (310 CMR 15.020). You are required to permit all work. All work shall be performed by a licensed install.

The Sterling Board of Health Hereby Orders you to correct (replace existing septic tank and distribution box) the Violation's of Title V, 310 CMR 15.00, The State Sanitary Code that exists at your 18 Sherwood Road property.

Any person who fails to comply with this order shall upon conviction be fined. Each day's failure to comply with an order shall constitute a separate violation. You have the right to request (in writing) a hearing with the Board of Health by filing a written petition. Such petition must be filed in writing to the Sterling Board of Health, 1 Park Street Sterling, MA 01564 within (7) days after the day the order was received.

If you have any questions about this information please feel free to contact our office at 978-422-8111 ext. 2036

Respectfully,

David C. Favreau
David Favreau
Health Agent

A True Copy

Attest:

Sterling Town Clerk

cc: BOH file
N:\complaintcorrespondence\tile5-onsite



Town Of Sterling

Board of Health

Butterick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2305 • FAX: (978) 422-0289

June 5, 2012

Mr. Michael McDermott
18 Sherwood Drive
Sterling, MA 01564

RE: 18 Sherwood Drive

Dear Mr. McDermott:

On July 19, 2011 the Board of Health (B.O.H.) presented you with an "Order to Correct" letter. As a result of this Official Order, a construction permit #11-26 dated October 13, 2011 was generated granting approval to correct the outlined violations within the Order. However, the B.O.H. observed additional construction activity on May 17, 2012 which was not outlined in the construction permit #11-26 dated October 13, 2011.

No person shall construct, upgrade, or modify a system without a Disposal System Construction permit which has been issued by the local approving authority (310 CMR 15.020). You are required to permit all work and all work shall be performed by a licensed installer. Furthermore, no work has been performed in accordance with the construction permit #11-26 dated October 13, 2011.

Failure to take the necessary corrective actions as ordered or otherwise directed by the local Approving Authority in accordance with (310 CMR 15.024) is a violation of the State Sanitary Code.

A public hearing has been scheduled for Thursday, June 14, 2012 at 7:15pm in the Butterick Building, room 205 on this matter. The B.O.H. requests your appearance at this public hearing. Please provide any supporting documentation to this matter.

Respectfully,

David E. Favreau

David Favreau
Health Agent

cc: BOH file...N: complaint correspondence\title5-onsite

A True Copy
Attest:

Rose E. Shilling

Sterling Town Clerk



Town Of Sterling

Board of Health

Butterick Building
1 Park Street • Sterling, Mass.

Bus: (978) 422-8111 x2305 • FAX

*True and correct
for record*

July 23, 2012

Mr. Michael McDermott
18 Sherwood Drive
Sterling, MA 01564

Dear Mr. McDermott,

At a meeting on June 26, 2012, the Board of Health reviewed the file and records regarding the property at 18 Sherwood Drive. Among other items these records include; a Title 5 Inspection report dated January 15, 2011, notes made the Health Agent regarding onsite visits and other communications dating from July 12, 2011 through July 14, 2012 and notices to correct existing violations related to the septic system dated July 19, 2011 and June 14, 2012. The Health Agent notes also reveal that he has observed work being done on the property without proper permits and/or by unlicensed persons. Based upon this review, the Board of Health issues the following orders pursuant to 310 CMR 15.026:

1. The existing septic tank and distribution box must be replaced in compliance with the Board of Health order previous issued to you on July 19, 2011.
2. The drywell that apparently serves the kitchen sink and/or possibly other wastewater components must be abandoned in compliance with Title V regulations (310 CMR 15.354). Abandonment must be witnessed by the Health Agent.
3. The septic tank and leach pit boarding Sherwood Drive must be abandoned in compliance with Title V regulations (310 CMR 15.354). Abandonment must be witnessed by the Health Agent.
4. A certified Title V inspector or installer meeting the requirements of 310 CMR 15.340 must inspect all the plumbing in the house in the presence of the Health Agent and subsequently then certify in writing that all wastewater from the dwelling flows directly one the 2 septic tanks on the property (the tank mentioned in Item 1 above or the tank on the Elizabeth Lane side of the dwelling).

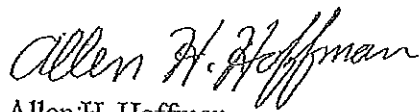
M. McDermott
July 23, 2012

Page 2 of 2

5. You are further ordered not to allow any unlicensed persons to perform work on the septic system or in the area of the septic system as defined in 310 CMR 15.019.

You must fully comply with the conditions of this order no later October 19, 2012. Failure to meet these conditions by that date will result in the Board of Health seeking redress in the Housing Court.

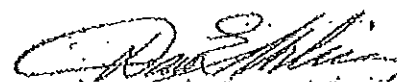
Yours truly,



Allen H. Hoffman
Chairman

cc: BOH file...N: complaint correspondence\title5-onsite\Sherwood Drive 18
Certified mail # 7000 1670 0000 1873 2121

A True Copy
Attest:



Sterling Town Clerk



Town Of Sterling

Board of Health

Butterick Building
1 Park Street • Sterling, Massachusetts

Bus: (978) 422-8111 x2305 • FAX: (978) 422-8111

| U.S. Postal Service | |
|---|---------|
| CERTIFIED MAIL RECEIPT | |
| (Domestic Mail Only; No Insurance Coverage Provided) | |
| For delivery information visit our website at www.usps.com | |
| OFFICIAL USE | |
| Postage | \$ 1.46 |
| Certified Fee | 3.10 |
| Return Receipt Fee (Endorsement Required) | 2.55 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 6.11 |
| Sent To Mr. Michael McDermott Street, Apt. No. or PO Box No. 18 Sherwood Drive City, State, Zip+4 Sterling, MA 01564 | |
| PS Form 3800, August 2000 See Reverse for Instructions | |

February 9, 2013

Mr. Michael McDermott
18 Sherwood Drive
Sterling, MA 01564

Dear Mr. McDermott,

Referenced from a Preliminary Injunction dated January 9, 2013, a review of the facts issued by The Honorable, Timothy F. Sullivan, Commonwealth of Massachusetts Trial Court, Housing Court Department has determined that you, the defendant, are ordered "to comply with Title 5 (the State Environmental Code 310 CMR 15.000) within 60 days". As outlined in previous "orders" dated July 19, 2011 and July 23, 2012, pursuant to the State Environmental Code 310 CMR 15.000, listed below are the items that must be brought into compliance with Title 5:

1. The existing septic tank and distribution box must be replaced in compliance with the previous Board of Health "order to correct" issued to you on July 19, 2011.
2. The drywell that apparently serves the kitchen sink and/or possibly other wastewater components must be abandoned in compliance with Title 5 regulations 310 CMR 15.354. Abandonment must be witnessed by the Health Agent.
3. The septic tank and leach pit boarding Sherwood Drive must be abandoned in compliance with Title 5 regulations 310 CMR 15.354 unless a soil evaluation shows the bottom of the leach pit to be in compliance with Title 5 regulations 310 CMR 15.212. Soil evaluations and/or abandonment must be witnessed by the Health Agent.
4. A certified Title 5 inspector or installer meeting the requirements of 310 CMR 15.340 must inspect all the plumbing in the house in the presence of the Health Agent and subsequently then certify in writing that all wastewater from the dwelling flows directly to one of the 2 septic tanks on the property (the tank mentioned in Item 1 above or the tank on the Elizabeth Lane side of the dwelling).

Elizabeth McDermott
also In hand while C. B.O.H. office
David E. Brown

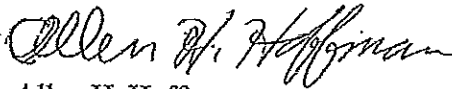
M. McDermott
February 9, 2013

Page 2 of 2

5. Soil evaluation performed by a licensed soil evaluator, witnessed by the Health Agent to determine ground water within a 40' radius of the referenced systems.
6. You are further ordered not to allow any unlicensed persons to perform work on the septic system or in the area of the septic system as defined in 310 CMR 15.019.

You are required to fully comply with the Title 5 regulations within 60 days as directed from the Preliminary Injunction dated January 9, 2013.

Yours truly,



Allen H. Hoffman
Chairman

cc: BOH file...N: complaint correspondence\title5-onsite\Sherwood Drive 18: 02-09-13
Certified mail #

Commonwealth of Massachusetts
The Trial Court

Worcester, ss.

Housing Court Department
Worcester County Division
Docket number 12CV 1016

RECEIVED

JAN 10 2013

Board of Health
Town of Sterling

Town of Sterling Board of Health (Plaintiff)
v.

Michael McDermott
(Defendant)

Preliminary Injunction

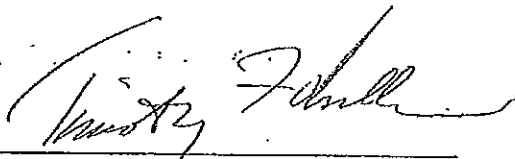
After review of the facts on 01/09/13, it has been determined that the Defendant(s) and the Defendant(s) agents, each and every one of them are ordered to perform the following work

Defendant to comply with title five within 60 days.

For good cause shown, I order that no security be given by the Plaintiff for the issuance of this Order.

AVISO PARA LAS PERSONAS QUE HABLAN ESPANOL: SI USTED NO PUEDE LEER INGLES, ESTE DOCUMENT LEGAL DEBE SER TRADUCIDO CUANTO ANTES.

Date: 01/09 /13


Timothy F. Sullivan, Associate Justice

SHERIFF / CONSTABLE'S RETURN OF SERVICE

I, the undersigned, served this Order and accompanying documents upon the Defendant on ____/____/____
In the following manner: _____

Signature: _____

PROOF OF CONSTABLE SERVICE OF THIS ORDER MUST BE PROVIDED TO THE COURT

A True Copy

Attest:


Sterling Town Clerk