

Ashland Board of Health Meeting Minutes
Ashland Town Hall, 101 Main Street, Ashland, MA
Meeting Room B/C, 7:00 P.M.
May 24, 2016

Mary Mortensen, Chairman
Charles Legassey, Vice-Chairman
Judith Margulies, Clerk

Jon A. Fetherston, Member
Koduvayur Narayana, Member
Mark Oram, M.P.H., Agent/Director

Members Present

Mary Mortensen, Charles Legassey, Judith Margulies, Koduvayur Narayana and Jon Fetherston

Others Present (participants)

Mark Oram, Health Agent / Director
Laura Clifford, Administrative Secretary
Michael Herbert, Town Manager
Mark Dassoni, resident
Steve Morgan, resident
Paul Saulnier, Civilized Solutions
Jim Kelly, resident
Cassandra Kelly, resident
Emad Antony, Exxcel
William Goldberg, Main Street Wine & Spirits
Michael Merusi, Main Street Wine & Spirits
Bill Shaner, Metrowest Daily News

Call to Order

Mrs. Mortensen called the meeting to order at 7:00 p.m. and announced that the only information to be discussed was what is on the agenda; discussion requests for new information may be put at the discretion of the chair on the next agenda, that there should be no interruptions, speakers must go through the Chair, and that the Health Agent's Report is provided by the Health Agent, questions to the Agent must go through the Chair.

Mrs. Mortensen announced that the meeting was being audio recorded and that Ms. Margulies would also be audio recording the meeting.

Ms. Margulies made a motion to amend the agenda, Mr. Narayana seconded the motion for discussion. Mrs. Mortensen said the agenda has been set, no changes will be made to the agenda. Ms. Margulies made a motion to reconsider the Chair's decision. Mr. Narayana seconded the motion. Mrs. Mortensen said that the motion is not being recognized and asked to move on to citizen's participation.

Citizen's Participation

Mark Dassoni inquired of the Board as to how each of the Board Members feel about the State moving up the tobacco sales age to 21. Mrs. Mortensen responded that it is absolutely a good thing. Ms. Margulies responded that there are pros and cons, that evidence doesn't show that end as being the most effective, believes in the education piece, and doesn't believe in taking away the choice from a 19 year old. Mr. Narayana feels it should be based on health studies. Elliot Brown feels that 21 is a good age to go to, young people's minds and brains are still developing, and those teens that smoke cigarettes may be more likely to be exposed to marijuana. Mr. Oram stated that 21 is the age recommended by the experts from Mass. Association of Health Boards and the Mass. Municipal Association after many studies and much research. Mr. Oram praised the Ashland Board of Health for being proactive on this topic.

Mr. Narayana stated he has wanted items such as Zika virus and mosquitoes on the agenda, but that they have not been put on. Mrs. Mortensen asked Mr. Narayana to submit the specific item he wants to be put on the agenda. Mr. Oram asked if Members are all receiving the weekly Zika virus update from the State Department of Public Health; Mr. Narayana said he is not, other Members said they are.

Ms. Margulies said that many important items have not been on the agenda, such as noise, Nyanza and Rail Transit District; Mr. Oram reminded the Board that we did have a tour of Nyanza and a presentation from Dan Keefe of DEP at a recent meeting in April.

(Mr. Fetherston entered the meeting at approximately 7:10 p.m.)

Mr. Herbert thought it would be important to come to the Board of Health meeting tonight to discuss a few items. Mr. Herbert told the Board that a memo was issued to the Town of Ashland from the Investigator General's office stemming from an alleged complaint against the Health Agent/Director working for another town while on another town's hours. Mr. Herbert said there are three issues the IG wants the Town to look at. Mr. Herbert asked Mr. Oram if he has his permission to speak about it, Mr. Oram agreed, noting that appropriate language be used, referencing that this is "alleged", that this stems from a complaint from a person in Sherborn who did not want to follow regulations. Ms. Margulies called point of order, stating that this is discussing someone's character and calls for executive session.

Mr. Herbert went over the three issues in the IG's memo, and noted that he has commissioned someone to conduct an investigation and issue a report to him. Mr. Herbert said that in the 8 months since they have been speaking with the IG's office, never has there been an issue with the Town's timekeeping being unsatisfactory, and feels the Town's timekeeping methods are relatively strong. Mr. Herbert spoke about the recommendations the IG's office made in their memo regarding employees who work in other municipalities, and the use of flex time. Ms. Margulies stated that the letter requests that the Board of Health work with other Boards, and asked if there is a plan for the Board of Health to meet with the Board of Selectmen. Mr. Herbert said there is no plan, that the Board of Selectmen has been briefed and that he will continue to provide updates. Ms. Margulies stated that the IG requests that the Board proactively do something. Mr. Fetherston feels that the Board is doing something, that we are having a public discussion with a member of the media present, and an investigation is ongoing. Ms. Margulies said she would like to make a motion that the Board do more than that. Mr. Herbert said it is simple, we need to conduct an investigation and look at the charges and deal with the results accordingly, and will tighten up internal controls if necessary. Mr. Herbert added that moving forward the innuendo and allegations also need to be taken out.

Mr. Herbert said that he has pledged to work with a member from each Board and Committee to develop joint goals and objectives and would like this to be discussed and put on a Board of Health agenda in June.

Mr. Herbert emphasized all the good work the Board has done in the past, including being a leader in raising the tobacco age, implementing the sharps program, adding a food and tobacco inspector and now have public health nurse funds in the budget. Mr. Herbert said to see the productivity in the work decline over the past 8 months has been discouraging, adding that a protocol must be used to get back on track; public health must be the Board's number one goal. Mr. Herbert encouraged the Board to work together moving forward. Mr. Fetherston agreed that public health is the people business, and that the people must be first.

Mr. Narayana questioned portions of the IG's letter pertaining to whether the Board needs to investigate, and if the IG's office thinks the Board has ignored them, since the Board never received documents referenced in the IG's letter. Mr. Herbert said that he will note the fact that the Board of Health never received the documents in his response.

Mr. Fetherston stated that he is proud of the work the Board had done when he was a Member and that, after stepping away for a year, the only reason he came back was after what he sensed was unacceptable behavior for the Town of Ashland, to be acting this way. Mr. Fetherston disagreed with a statement regarding Mr. Oram, stating that for the record, Mr. Oram is a part of the Board, maybe not elected, but vital; that we are all in this together to do the public health, as professionals. Mr. Fetherston said we can agree to disagree, and not like each other, but we need to be professional at all times.

Ms. Margulies asked Mr. Herbert how he anticipates responding to the IG's letter, that the Board of Health is directly referred to and wants to make sure that the Board is kept continually in the loop; Mr. Herbert responded that he would.

(Mr. Legassey arrived at the meeting at approximately 7:37 p.m.)

Steve Morgan said that in regards to Agenda items #7 and #10 and the IG's letter, he has sent the Selectmen an email and has spoken with the AG's office. Mr. Morgan asked when they were going to meet on this, and, as a member of another committee, is concerned.

Variance Request for Septic System – 22 Dean Road

Paul Saulnier, Engineer for Civilized Solutions, explained to the Board the need for a waiver from Ashland's Regulations Chapter 303-7(a) and 303-11, due to the steep, constrained lot and number of trees. The cesspool has recently collapsed and they will be doing a repair. They were only able to test two pits, rather than the required three. Mr. Saulnier said one tree will need to be removed. There will be no increase in flow, and no garbage grinder will be installed. Mr. Oram recommended both waivers conditional to a deed recording stating that no garbage grinder will be used and the use of an effluent filter is required.

Discussion continued regarding the construction of the system.

Ms. Margulies asked that the homeowner's name be listed on future agendas.

Ms. Margulies stated that she would like to know if Mr. Kelly has any conflict of interest with any Board Member or staff, Mr. Kelly said he has no professional relationship with anyone in the room. Mr. Oram noted that if he had any conflict of interest, he would have disclosed this as well.

Mr. Legassey made a motion to grant a variance to Ashland Regulations Chapter 303-7(a) to allow the soil absorption system to be designed utilizing two deep observation holes and two percolation tests versus the required three deep observation holes. Mr. Fetherston seconded the motion. The motion was approved 5-0.

Mr. Legassey made a Motion to grant a variance from Ashland Board of Health regulations 303-11 to allow the subsurface disposal system to be designed without a garbage grinder with the condition that no garbage grinder be installed within the house; a deed recording be placed on the property stating no garbage grinder shall be installed in the house while the subsurface sewage disposal system is in use; and a septic tank effluent filter shall be installed. Mr. Narayana seconded the motion. The motion was approved 5-0.

Kyromina Oil Corp. / Exxcel, review sale of cigarettes to a minor

Elliot Brown, Tobacco Compliance Officer, reviewed with the Board the details of the tobacco sale to the undercover minor at Exxcel gas station. Mr. Brown was surprised by this store selling to a minor, adding that the minor was never asked for identification. Mr. Oram noted the fine has been paid.

Emad Antony, owner, apologized to the Board, adding that, as a parent, he takes this very seriously. Mr. Antony said the clerk who sold the cigarettes has been a good employee for many years. Mr. Antony stated that he has gone over the rules with all employees and has also added more signs. Mr. Antony also invested in a machine that will check the age when the ID is swiped. Mr. Fetherston questioned what happens if they don't swipe the ID, adding that this Town has zero tolerance, and does not want to see him lose his business.

Mr. Narayana inquired as to where the tax money goes, and if the undercover person is given a receipt. Mr. Brown responded that the undercover person does not ask for a receipt.

Ms. Margulies said there is no mention of the owner's name on the material given to the Board.

Mr. Fetherston read the Violations section of the Regulations to the owner, and told the owner that he is now on the clock for the next 36 months.

Ms. Margulies said that she is concerned with applying these regulations after checking with an attorney because of comments at the October 13th meeting, the opinion of the attorneys was that they are not enforceable.

Main Street Wine and Spirits, review sale of cigarettes to a minor

Bill Goldberg, owner of Main Street Wine and Spirits, together with Mike Marusi, addressed the Board regarding how the sale of tobacco to a minor occurred. Mr. Brown agreed with the facts and was shocked by this store selling to minors. Mr. Goldberg said that there is no excuse; adding that he has always been vocally supportive of the tobacco laws and was distraught to learn that this had happened. Mr. Goldberg stated that Mr. Marusi is a good, honest employee of over 15 years, this was his first transgression. Mr. Goldberg said that since 2000, he has been using the BARS program, testing cashiers four times a month, twice for alcohol,

twice for tobacco. Mr. Goldberg will also be upgrading his age verification software, and has emphasized to his employees the importance of following the age verification process completely.

Mr. Narayana asked Mr. Goldberg how the tax money is paid. Mr. Goldberg responded that the cost portion of the sales tax is reported to the state and pays the total tax due on all total sales, adding that rarely customers will want a receipt in a business of this nature.

Mr. Fetherston appreciated Mr. Goldberg's work that went into his presentation to the Board and knows he is sincere.

Mr. Fetherston asked Mr. Marusi what he will do different with the stricter tobacco regulations in place, Mr. Marusi responded that there are people he would now card, that he wouldn't have before.

Old / New Business

Mr. Narayana stated there was an agenda item, "Clarification with Town Counsel on Board of Health legal process and liability", and this was never discussed at the May 11th meeting. Mr. Legassey responded that Attorney Mead said that she would be addressing this at the Open Meeting Law Training. Discussion ensued regarding the Open Meeting Law Training.

Mr. Narayana said that he has serious questions and concerns regarding the Policies and Procedures. The Board discussed the Policies and Procedures. Ms. Margulies said discussion of the Policies and Procedures should be put on the next agenda for further clarification. Discussion continued regarding revisions to the Policies and Procedures and attendance of the meeting. Mrs. Mortensen requested that we go through each item one by one at the next meeting.

Ms. Margulies said that minutes should contain information that someone could understand who did not attend the meeting. Mr. Narayana mentioned he feels there have been inaccuracies in the minutes and need to be corrected.

Health Agent / Director's Report

Landfill, review of gas migration investigation and public relations format

Mr. Oram explained to the Board that the Landfill is still under study by DEP and the Town's consultant, ECS, and both have been out and have taken samples as well as testing gas probes, the homes across the street, and homes with drinking / irrigation wells. Testing of the homes with these wells is a requirement of DEP when there are spiked levels from groundwater testing at the landfill.

Ms. Margulies inquired about the solar panel plans; Mr. Oram said that is up to the Town Manager, Michael Herbert. Mr. Legassey said there has been no activity with regards to construction. Mr. Narayana inquired about Mr. Oram's statement regarding rainfall increasing the gas levels; Mr. Oram said the consultants have stated that rainfall can make the area over the Landfill less permeable.

Nurse position, history and status for employment

Mr. Oram told the Board that the Board of Selectmen appointed Nancy Cleary as the public health nurse at their last meeting, and that they did waive the 14-day waiting period. She will be coming in to fill out paperwork on Thursday.

Mr. Oram noted that management is looking at utilizing the unused nursing funds for the costs associated with the extra testing and work required at the Landfill.

Mr. Narayana hopes that there will be money for vaccines; Mr. Oram said he hopes all the same funding will be back on the budget for FY17.

Ms. Margulies asked if there is a proposed schedule for the public health nurse; Mr. Oram said he would be discussing this with her when she comes in. Ms. Margulies stated that she has heard great things about Ms. Cleary.

Acceptance of Minutes, May 11, 2016

Mr. Narayana stated that when Members are absent, that can be stated at the top of the minutes, that it doesn't need to be throughout the minutes, and the votes should read '3-0-0' rather than '3-0-2'. Mr. Oram said we would look into that. Mr. Narayana said there was valuable information from Lisa Mead that wasn't in the minutes.

Mr. Fetherston made a motion to accept the meeting minutes as presented. Mr. Legassey seconded the motion. The motion was approved 3-1-1 (Ms. Margulies was opposed, Mr. Narayana abstained).

Mr. Narayana asked if it is possible to go back to correct inaccurate statements. Mrs. Mortensen asked Mr. Narayana to email the Board of Health office with the inaccuracies so they may compare with the audiotape.

Reorganization

Mrs. Mortensen made a recommendation to nominate Jon Fetherston as Chairman of the Board. Mr. Narayana stated that the vote taken to revise Article VII of the Policies and Procedures regarding the Board reorganizing after Town Meeting is not valid because Article III states that the Board shall not vote on a policy at the same meeting at which it is first introduced. Mr. Legassey responded that Town Counsel was present at the meeting and advised the Board that this could be done. Mr. Narayana feels Town Counsel was wrong, that Members failed to follow the Policies and Procedures as soon as it was adopted.

Mr. Legassey said that he does not see the Policies and Procedures as a Law, he sees it as a document, and when he noticed the sentence regarding the Board reorganizing in June he asked Attorney Mead about revising this. Attorney Mead told the Board they may make an amendment. Mr. Legassey said there will likely be many other amendments; this was written, amended and approved. Ms. Margulies suggested that it be stated in a preamble that the Policies and Procedures may be amended. Ms. Margulies made a motion to suspend the Policies and Procedures until such time that they may be reviewed by the entire Board and voted on. Mr. Narayana seconded the motion. Mr. Narayana said there needs to be an auxiliary motion, that there needs to be a vote to take a vote, and made a motion to consider Ms. Margulies' motion. Ms. Margulies seconded the motion. Motion failed 2-3. Mr. Narayana said the Board cannot reorganize. Mr. Legassey said that if Mr. Narayana does not agree, he can object or abstain. Mrs. Mortensen restated her motion to appoint

Mr. Fetherston as Chairman. Mr. Legassey seconded the motion. Ms. Margulies feels that members are voting in a block. Discussion continued regarding the role of the Chairperson. Discussion ensued regarding a Board retreat.

Mrs. Mortensen called for a vote. The motion to appoint Jon Fetherston as Chairman passed 3-1-1 (Ms. Margulies voted against, Mr. Narayana abstained). Ms. Margulies made a motion to appoint Mr. Narayana as Vice Chairman. Mr. Narayana seconded the motion. The motion failed 2-2-1 (Mr. Fetherston and Mr. Legassey opposed, Mrs. Mortensen abstained). Mrs. Mortensen made a motion to nominate Mr. Legassey as Vice Chairman. Mr. Fetherston seconded the motion. The motion was approved 3-1-1 (Ms. Margulies was opposed, Mr. Narayana abstained). Mr. Fetherston nominated Mr. Narayana for Clerk, Mr. Narayana refused. Mrs. Mortensen seconded the motion. The motion was approved 3-0-2 (Ms. Margulies and Mr. Narayana abstained). Mr. Fetherston made a motion to withdraw Mr. Narayana's nomination for Clerk. The motion was approved 5-0. Mr. Narayana made a motion to nominate Ms. Margulies for Clerk. Ms. Margulies seconded the motion. The motion was approved 5-0.

Mrs. Mortensen stated that with her new work schedule, she would be available to meet the alternate weeks of the ZBA so that the meetings may be televised if the other Board Members so wish. Discussion ensued regarding meeting dates and whether or not meetings should be televised. Ms. Margulies made a motion to televise most of the Board of Health meetings. Mr. Narayana seconded the motion. The discussion continued regarding which meetings should be televised. Mr. Fetherston said the Board needs to sit down together outside of a Board of Health meeting. The Board voted 4-0-1 (Mr. Legassey abstained). Mr. Fetherston asked the Board to agree to the next agenda having topics on public health issues and the Policies and Procedures.

Mr. Fetherston asked for a motion to adjourn. Mrs. Mortensen so moved the motion, Mr. Legassey seconded the motion. Motion was approved 5-0.

The meeting adjourned at 10:48 p.m.

ASHLAND BOARD OF HEALTH
DOCUMENTS REVIEWED AT THE 5/24/2016 MEETING
(All items stored in the Board of Health files unless otherwise noted)

1. Exxcel Oil / Main Street Wine & Spirits, review sale of cigarettes to a minor
 - a. Tobacco Compliance Check form
 - b. Copies of Letters sent to Tobacco Vendors
 - c. The BARS Program information received from William Goldberg
2. 22 Dean Road Waiver Request
 - a. Letter/waiver request from Civilized Solutions
 - b. Construction Permit application
 - c. Septic Plan
3. Documents distributed by Judith Margulies:
 - a. A typed statement regarding a motion
 - b. Town Organizational Chart
 - c. Health Agent/Director job description
 - d. Investigator General's letter to the Town
5. Email from John Niedzielski of ECS regarding landfill monitoring/testing
6. Year to date budget report
7. Acceptance of Minutes
 - a. May 11, 2016 draft minutes
8. Audio Recording of Meeting available