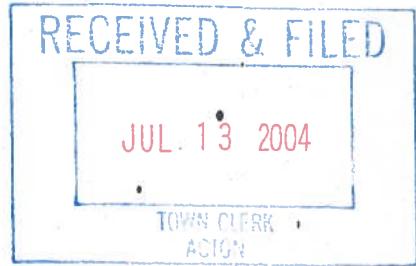


Acton Board of Health – Minutes

February 9, 2004

Room 126, Town Hall



Board Members Present: William McInnis, Chairman, Robert Oliveri and Roxanne Hunt, Cathy Block, Pam Harting-Barrat and Joanne Bissetta, Associates.

Staff Present: Doug Halley, Health Director, Brent Reagor, Health Agent & Sheryl Ball, Secretary.

Others: Representative James Eldridge. Mark Burell, Esq., Ginger Hobson, Craig Forester, Jonah Laufer, Bridget Nedzi, Doug Wilkins, Esq. and Mary Michelman.

The meeting was called to order at 7:35 p.m.

#### **Minutes**

On a motion made by Mr. Oliveri, seconded by Ms. Hunt, the Board unanimously voted to approve the minutes of December 22, 2003 with corrections.

On a motion made by Mr. Oliveri, seconded by Ms. Hunt, the Board unanimously voted to approve the minutes of January 12, 2004.

#### **Representative James Eldridge**

Representative James Eldridge was present before the Board to find out what issues the Board is concerned about. The Board stated that the issues that are of concern are beavers, enterprise/revolving funds and the proposed legislation that would require plaintiffs to pay for attorney charges if the lawsuit is dismissed or if the plaintiffs lose. Mr. McInnis stated that the Board has recently been served and that this legislation would be helpful to them. Mr. McInnis also stated that there is a timing problem with Chapter 139 – Beaver Trapping stating that if the Board of Health issues an emergency trapping permit due to problems caused by beavers, the permit is good for ten days only and the first day counts as of the night of the meeting. This causes problems with immediately coordinating the trapper and more flexibility is needed on this.

Rep. Eldridge stated that there is currently an appeal to repeal the current law and he would be attending a meeting on Thursday in support of that repeal and would take the Board's comments with him. Mr. Halley spoke about the Nursing Service revolving accounts which are under review by the Department of Revenue (DOR) since the Town over budgets the anticipated need each year for unexpected emergencies. Mr. Halley stated that the DOR has been putting pressure on the Town to budget the previous year's true budget. Mr. Halley asked Representative Eldridge to check into this for the Town. The Board thanked Representative Eldridge for coming before the Board.

#### **Hearing – Rex Lumber**

Mr. Craig Forester was before the Board to update the Board as to the status of the noise reduction equipment installation. Mr. Forester stated that the equipment was installed on Sunday, February 8, 2004 and he anticipates doing additional noise testing as soon as weather allows. Mr. Forester stated that the weather forecast looks good for this week and he has confirmed that his consultant is available this week. Mr. Forester stated that the decision to release the second noise testing report would be pending the outcome of the judge's decision on the current litigation. Mr. Wilkins, Town Counsel stated that he would see no harm in Rex releasing the report if the testing shows that they are in compliance.

Mr. Burrell, attorney representing the Hobson's stated that he would like to see the Board issue a deadline for conducting the sound monitoring to Rex Lumber. Mr. Burrell asked why the Board never required Rex Lumber to submit the initial sound monitoring test. Mr. Wilkins stated that the Board could require Rex Lumber to submit the initial sound monitoring report during a formal hearing, if the Board chose to do so. Mr. Burrell also stated that his clients would most likely want to have their own sound testing conducted. Mr. Burrell asked the Board if everything has been installed at this point. Mr. Forester stated that installation occurred on February 8, 2004. Mr. McInnis stated that two weeks from today would be a good timeline. Mr. Burrell said he thinks the Board seems to be tagging along by not requiring Rex to conduct the sound monitoring test to show that Rex is in compliance. Mr. Burrell asked the Town to conduct their own sound monitoring. Mr. Halley explained that the Town does not have the resources to conduct this testing. Ms. Hobson stated that she was awoken at 6:00 AM this morning to the sound of Rex Lumber. Ms. Nedzi also stated that her family was awoken at the same time. Mr. Burrell stated

that he is inclined to go back before the judge to tell him that the Board is not offering a reasonable timeline.

Mr. Halley stated that the Town is committed to make sure that Rex Lumber is operating within the sound guidelines. Ms. Harting-Barrat asked Mr. Forester if he would submit the additional sound monitoring report if it shows that they are in compliance. Mr. Forester stated that he would speak to his attorneys.

Mr. Forester reminded everyone that the sound consultant needs time to analyze the results since the equipment does not print out the information on the spot. Mr. Laufer asked if the Board can order Rex to be in compliance. Mr. Halley stated that an order letter was sent to Rex Lumber in August, 2003. Mr. Wilkins stated that the Board could fine Rex Lumber in a formal proceeding for failure to be in compliance with the original order letter. Mr. Burrell stated that the fines should be accrued so the Town would be able to pay for a sound consultant. Mr. Wilkins explained that Town revenue goes into a general fund and could not be used to pay for that service. Ms. Harting-Barrat stated that she would like to see a deadline imposed on Rex Lumber in the next two weeks. Ms. Harting-Barrat stated that she would also like to see some indication that the testing showed compliance and if not show what other methods are needed to rectify the noise. Ms. Hunt asked Mr. Forester if they are found not to be in compliance has the sound consultant stated what the next step would be. Ms. Hobson stated that the Board had asked Rex for voluntary hourly cutbacks which Rex never implemented. Mr. Wilkins stated that if the Board held a show cause hearing they could implement an hourly cutback. Mr. McInnis proposed that by the Board's next meeting, Rex should provide evidence as to how they are in compliance or the Board will take action at that point. Mr. Oliveri stated that if Rex Lumber is in compliance he hoped that the neighbors would be happy since it is human nature to adjust to the environment. Ms. Hunt stated that she would like to see the show cause hearing for the next meeting.

On a motion made by Ms. Hunt, seconded by Mr. Oliveri, the Board voted to issue a show cause hearing against Rex Lumber on February 23, 2004 at 8:00 PM to show the Board that Rex Lumber is in compliance.

**484 Great Street – Variance**

The owners of the property located at 484 Great Road are seeking a variance from Article 11-9.6 for a reduction in the required depth of the stone and 310 CMR 15.284 for remedial use of I/A technology. On a motion made by Mr. Oliveri, seconded by Ms. Hunt, the Board unanimously voted to grant a variance from 310 CMR 15.284 and Article 11-9.6 to 484 Great Road with the following conditions:

1. The System is approved for the treatment and disposal of sanitary sewage only. Any wastes that are non-sanitary sewage generated or used at the facility served by the System shall not be introduced into the System and shall be lawfully disposed of.
2. Maintenance agreement:
  - i. Throughout its life, the System shall be under a maintenance agreement. No maintenance agreement shall be for less than one year.
  - ii. No System shall be used until an operation and maintenance agreement and contingency plan are approved by the Board of Health which:
    - provides for the contracting of a person or firm competent in providing services consistent with the System's specifications and the operation and maintenance requirements specified by the design engineer, MADEP and the Acton Health Department;
    - contains procedures for notification to the local board of health and the Department within 24 hours of a System failure, malfunction or alarm event and for corrective measures to be taken immediately.
    - provides the name of the operator, which must be a Massachusetts certified operator or operators if one is required by 257 CMR 2.00, that will operate and monitor the System. The operator must maintain the System at least every three months and anytime there is an alarm event. The provisions of 314 CMR 12.00 are incorporated herein and apply to the maintenance and operation of the System; provided, however, that DEP approval is not required for the operation agreement.
3. Prior to use of the System, the owner of the System shall submit to MADEP and the Health Department the name and address of the operator or operators that will operate the System. Every time the operator or operators are changed, the owner shall notify MADEP and the Health Department and the local approving authority in writing within seven days of such change.
4. Effluent from the System shall be monitored quarterly. At a minimum, the following parameters shall be monitored: pH, BOD<sub>5</sub>, and TSS. Every time the System is monitored, the water meter reading also shall be recorded. All monitoring data shall be submitted to MADEP and the Health Department within forty-five (45) days of analysis and by January 31 of each year for the previous calendar year. After one year of monitoring and reporting and at the request of the owner/operator, MADEP and the Board of Health may reduce or eliminate these monitoring and reporting requirements.
5. When a sanitary sewer connection becomes feasible, within 60 days of such feasibility, the owner/operator of the System shall obtain necessary permits and connect the facility served by the System to the sewer, shall abandon the System in compliance with 310 CMR 15.354, unless a later time is allowed, in writing, by MADEP and the Board of Health, and shall in writing notify the Department of the abandonment.

6. The owner/operator of the System shall at all times properly operate and maintain the System.
7. The owner/operator shall furnish the Board of Health and/or MADEP, within a reasonable time, any information that the either may request regarding the operation and performance of the System.
8. The owner of a facility served by the System shall provide a copy of this Approval, prior to the signing of a purchase and sale agreement for the facility served by the System or any portion thereof, to any new owner.
9. The system shall be built in accordance with the above conditions and a plan stamped by Steven Calichman, RS, dated 1/15/2004.

### **253 Arlington Street – Variance**

The owners of the property located at 253 Arlington Street are seeking a variance from 310 CMR 15.284 for remedial use of I/A technology with a 2' reduction in groundwater and Article 11-9.6 for a reduction in stone. The property's use will be changing from a single family home to a residential hair salon. A tight tank has been proposed for the hair salon. On a motion made by Ms. Hunt, seconded by Mr. Oliveri, the Board unanimously voted to grant a variance from 310 CMR 15.284 and Article 11-9.6 to 253 Arlington Street with the following conditions:

1. The System is approved for the treatment and disposal of sanitary sewage only. Any wastes that are non-sanitary sewage generated or used at the facility served by the System shall not be introduced into the System and shall be lawfully disposed of.
2. Maintenance agreement:
  - a. Throughout its life, the System shall be under a maintenance agreement. No maintenance agreement shall be for less than one year.
  - b. No System shall be used until an operation and maintenance agreement and contingency plan are approved by the Board of Health which:
    - i. provides for the contracting of a person or firm competent in providing services consistent with the System's specifications and the operation and maintenance requirements specified by the design engineer, MADEP and the Acton Health Department;
    - ii. contains procedures for notification to the local board of health and the Department within 24 hours of a System failure, malfunction or alarm event and for corrective measures to be taken immediately.
    - iii. provides the name of the operator, which must be a Massachusetts certified operator or operators if one is required by 257 CMR 2.00, that will operate and monitor the System. The operator must maintain the System at least every three months and anytime there is an alarm event. The provisions of 314 CMR 12.00 are incorporated herein and apply to the maintenance and operation of the System; provided, however, that DEP approval is not required for the operation agreement.
3. Prior to use of the System, the owner of the System shall submit to MADEP and the Health Department the name and address of the operator or operators that will operate the System. Every time the operator or operators are changed, the owner shall notify

MADEP and the Health Department and the local approving authority in writing within seven days of such change.

4. Effluent from the System shall be monitored quarterly. At a minimum, the following parameters shall be monitored: pH, BOD<sub>5</sub>, and TSS. Every time the System is monitored, the water meter reading also shall be recorded. All monitoring data shall be submitted to MADEP and the Health Department within forty-five (45) days of analysis and by January 31 of each year for the previous calendar year. After one year of monitoring and reporting and at the request of the owner/operator, MADEP and the Board of Health may reduce or eliminate these monitoring and reporting requirements.
5. When a sanitary sewer connection becomes feasible, within 60 days of such feasibility, the owner/operator of the System shall obtain necessary permits and connect the facility served by the System to the sewer, shall abandon the System in compliance with 310 CMR 15.354, unless a later time is allowed, in writing, by MADEP and the Board of Health, and shall in writing notify the Department of the abandonment.
6. The owner/operator of the System shall at all times properly operate and maintain the System.
7. The owner/operator shall furnish the Board of Health and/or MADEP, within a reasonable time, any information that the either may request regarding the operation and performance of the System.
8. The owner of a facility served by the System shall provide a copy of this Approval, prior to the signing of a purchase and sale agreement for the facility served by the System or any portion thereof, to any new owner.
9. The system shall be built in accordance with the above conditions and a plan stamped by Steven Calichman, RS, dated 1/15/2004.

**WR Grace**

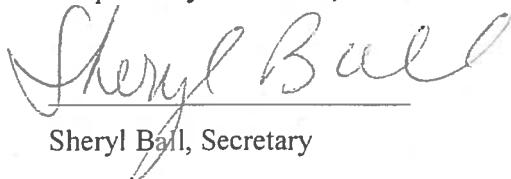
On a motion made by Ms. Hunt, seconded by Mr. Oliveri, the Board unanimously voted to extend the administrative hold regarding the Irrigation Well Moratorium within the 500' WR Grace Plume until April 1. 2005.

**Other Business**

- The Board discussed the draft regulations for licensing Title 5 inspectors that Mr. Reagor submitted.

On a motion made by Ms. Hunt, seconded by Mr. Oliveri, the Board unanimously voted to adjourn at 9:32 PM

Respectfully Submitted,



Sheryl Ball

Sheryl Ball, Secretary



William McInnis

William McInnis, Chairman