

Acton Board of Health – Minutes

January 12, 2004

Room 126, Town Hall

Board Members Present: William McInnis, Chairman, Mark Conoby and Roxanne Hunt, Pam Harting-Barrat, Associate and Rita Dolan, Associate.

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

Others: Mark Burrell, Andrew & Ginger Hobson, Denise Theodores, Rosalie Berry, Neil Cronin, Craig Forester, Jonah Laufer and Bridget Nedzi.

The meeting was called to order at 7:40 p.m.

Minutes

On a motion made by Ms. Hunt, seconded by Mr. Conoby, the Board unanimously voted to accept the amended minutes of December 8, 2003.

Hearing – Rex Lumber

The Board reviewed the letter submitted by Mr. Forester, Rex Lumber, outlining the anticipated time frame on the installation of the lagging. Mr. Forester stated that this timeline was based on information that has been provided to him and he is at the mercy of the consultants and contractors to stay within this timeline. Mr. Forester stated that Rex Lumber received the initial drawing on January 5, 2003 and sent them back to the contractor with needed changes. Based on the revised drawings a revised quote was received by Rex Lumber on January 12, 2004. Mr. Forester stated that once Rex Lumber approves the revised drawings, the manufacturer will take approximately 7 days to complete the design since Mr. Forester has asked for expedited delivery. The Board asked Mr. Forester what steps he would take after the lagging was completed, i.e. additional sound testing. Mr. Forester stated that due to the pending court action he was not inclined to comment. Mr. Forester clarified that statement and stated that as a practical matter he will continue to move forward. Mr. Forester stated that he will also continue to update Mr. Halley on a weekly basis. Ms. Harting-Barrat stated that this is her first meeting as a new

Associate Board member and asked what lagging was. Mr. Forester stated that it is a sound proof material. Ms. Hunt asked Mr. Forester if he had thought about cutting hours to give some relief to the residents as was discussed at the previous meeting. Mr. Forester stated that due to the pending court action he would not be inclined to cut hours. Mr. Conoby asked what hours Rex Lumber operates. Mr. Forester stated that they typically operate between 6:00 AM – 2:00 AM, Monday – Thursday with overtime hours as needed which include weekend hours. Mr. Forester stated that he asked for a quote from two companies to install the lagging and only one company submitted a bid and that the lagging would take approximately one day to install. Mr. Halley indicated that the Board issued an order letter in August. Ms. Harting-Barrat asked what measures have been taken by Rex Lumber since the order. Mr. Forester explained his timeline submitted on January 12, 2004 shows what Rex has done since the order and again reiterated that he is at the mercy of the consultants he has hired.

Ms. Hobson stated that Rex Lumber works more hours than what Mr. Forester stated. Ms. Hobson stated that she has heard them begin at 5:27 AM and has heard them all day on Sunday. Mr. Jonah Laufer stated that this came to his attention in October and feels that there has not been any level of cooperation by Rex Lumber and was upset by Mr. Forester's attorney telling them that an interim measure would be for the residents to shut their windows. Mr. Hobson stated that he invited Rex Lumber to his house in July in order for them to hear the noise. Mr. Hobson stated that Mr. Forester indicated that they would resolve the problems in the next few weeks. Mr. Hobson also asked what the next step would be if the lagging didn't work. Ms. Harting-Barrat stated that she was involved as a past Selectman in the noise complaint about the kennels. Ms. Harting-Barrat indicated that a dirt berm was placed to minimize the noise. Mr. Halley explained that the complaint for the kennels was received during the site plan process and that the timeline for appealing the neighbors is relatively the same in both cases. Mr. Forester stated that it is Rex Lumber's intention to be compliant with the law.

Mr. Conoby stated that he had hoped to be further along in the process at this point and that he would continue this to the next meeting. Mr. Conoby also asked the Health Department to draw up a draft Show cause letter for the Board's next meeting.

On a motion made by Mr. Conoby, seconded by Ms. Hunt, the Board unanimously voted to continue this hearing with Rex Lumber until January 26, 2004 conditioned that information be provided by Rex Lumber as per the timeline provided and that Rex Lumber continue to update the Health Department on a weekly basis.

Approval Modification – 108B Newtown Road

The owners of the property at 108B Newtown Road are seeking a reduction in the sampling interval for the Single Family Home FAST wastewater treatment system. The system has been in operation for a year and is showing excellent results. The Health Department recommends approval of this request. On a motion made by Mr. Conoby, seconded by Ms. Hunt, the Board unanimously voted to grant a reduction in the sampling interval to the property located at 108B Newtown Road with the following conditions:

1. The operations and maintenance visits shall continue to be on a quarterly basis.
2. If the BOD or TSS sampling results for a single sample exceed 30 mg/L and/or if the Total Nitrogen sampling results exceed 19mg/L, the sampling will return quarterly until such a time that results from two complaint samples are accepted by the Health Department.
3. The original terms and the conditions of the variance granted in March of 2001 are still in effect.

Article 11 - Vote

The minutes of September 8, 2003 did not reflect the vote approving the revised Town of Acton, Board of Health, Rules and Regulations, Article 11. The notes for the meeting contained the vote but the vote was inadvertently left out of the minutes. The minutes have been amended to reflect this vote. On a motion made by Mr. Conoby, seconded by Ms. Hunt, the Board unanimously voted to accept the amended minutes of September 8, 2003.

9 MacGregor Way – Variance

The Board tabled a post construction variance request from 310 CMR 15.405(1)(b) to allow a septic tank to be placed 4' from the foundation at their December 8, 2003 meeting. The Board had asked staff to conduct a confirmatory deep test hole to confirm the presence of ledge, thereby making it impossible to place the septic tank a minimum of 10' from the foundation. The Health Department evaluated the site and the tank was relocated to meet the 10' setback. The tank is now fully compliant and no longer needs the requested variance. On a motion made by Mr. Conoby, seconded by Ms. Hunt, the Board unanimously voted to deny the post construction

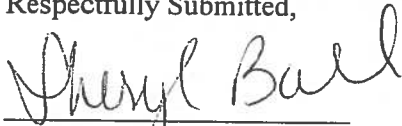
variance from 310 CMR 15.405(1)(b) to allow the septic tank to remain less than 10' from a foundation.

Other Business

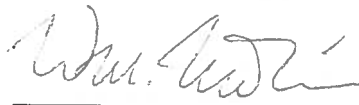
- The Board discussed the summons that was received by the Board members today. The Town also received the summons. The summons was issued from Ginger and Andrew Hobson regarding the violation of the noise regulation from Rex Lumber, 840 Main Street, and the lack of enforcement by local officials. Mr. McInnis stated that the summons read that they were being served as individuals as well as Board members. Mr. Halley stated that he would clarify this with Town Counsel in the morning. Mr. Burrell, counsel for the plaintiff stated that he is suing each member personally and suggested they speak with Town Counsel. Mr. Burrell also stated that this complaint has gone on way too long and that interim measures should be in place. Mr. Burrell stated that it is time to have a judge intervene. Mr. Burrell also indicated that he has information on some sound testing that was conducted which he will submit to the court. Mr. Burrell also stated that it is his intention on shutting Rex Lumber down. He is also focused on an expedited time line.

On a motion made by Mr. Conoby, seconded by Ms. Hunt, the Board unanimously voted to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,



Sheryl Ball, Secretary
Acton Board of Health



William McInnis, Chairman
Acton Board of Health