

APPROVED

CLERK

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20 AUG 25 AM 11:22

RECEIVED-POSTED

BOARD OF HEALTH
PUBLIC HEARING MINUTES
JULY 1, 2020

CALL TO ORDER: Chairman Rhoads called the meeting to order at 4:11 PM. He stated that according to Governor Baker's March 12 and March 15, 2020 order suspending Open Meeting Laws and proposing strict limitations of attendees that are allowed to gather in one place, the Board of Health meeting would be conducted via remote participation with no public allowed but they are able to access the meeting.

MEMBERS PRESENT: Chairman David Rhoads, Vice-Chairman Peter Hoyt and Member Laura Grandchamp

OTHERS PRESENT: Attorney Edmund St. John, III and Cathy Foster

NOTICE OF RECORDING: Chairman Rhoads announced that the meeting was being recorded.

APPROVAL OF MINUTES: May 20 & June 3, 2020

Chairman Rhoads stated that the minutes of May 20 and June 3, 2020 were not provided at this time. Chairman Rhoads asked Attorney St. John for his input. He stated that they should be submitted as soon as possible.

PUBLIC COMMENT: There were none.

Join Zoom meeting by video

URL: <https://zoom.us/j/95852985757?pwd=ZzVwSXpjTHg5YUZ3WDBLZi9pVG10Zz09>

Meeting ID: 958 5298 5757

Password: 794373

Join Zoom meeting by phone, dial by your location

1-929-436-2866 (New York)

Meeting ID: 958 5298 5757

Password: 794373

PUBLIC HEARING: No public hearing at this time.

A motion made by Vice-Chairman Hoyt, seconded by Member Grandchamp to move the agenda item to hear Ms. Foster at the present time. A roll call vote was taken 3-0-0.

Attorney Ed St. John addressed the board members stating to them that the Board of Health received an Open Meeting Law complaint from Ms. Foster. He told them that they were each sent individual copies of the complaint, as well as copies of the attachment to the complaint. Mr. St. John stated that a response had been provided to them also. He told them that according to the Attorney General's regulation, it was required that the Board of Health hold a meeting regarding this complaint. He stated that he would inform the board members of Ms. Foster's complaints as well as his responses to those complaints. Attorney St. John stated that he would file this response while giving Ms. Foster the original and submitting a copy to the Attorney General's Office also. Attorney St. John stated to

the members that the Open Meeting Law required that the Board of Health hold this meeting within 14 business days of the complaint being filed. He continued to point out that there was not sufficient time for them to place this complaint on their June 3rd meeting however, therefore it could not be acted on within this timeline. Attorney St. John explained that the law required that he request that the Attorney's General Office be requested an extension which was granted for their current meeting on July 1, 2020. He stated that a response to the complaint be submitted to their office and Ms. Foster no later than July 2, 2020 which Mr. St. John stated that he would be adhering to.

Mr. St. John began his review of the complaints to the Board of Health Office.

He began by reading the two separate complaints submitted by Ms. Foster:

"Intentional violations of the Open Meeting Law's were committed in a serial manner as evidence by the attached emails. The Board of Health Chairman Peter Hoyt was absent on the date of my March 4, 2020 hearing and in anticipation of the Zoom hearing of May 6, 2020, Town Administrator Jay Green (JD) facilitated unlawful deliberations when he told Building Commissioner Gerald Garner and Health Code Enforcement Officer Mark Blaisdell; *to bring Pete, Board of Health Chair absent from hearing, up to speed on the Foster matter.* The context of the violation's hostile remedy enter refusal to comply and procedural posture of the appeal."

"On May 4, 2020, Code Enforcement Officer, Mark Blaisdell sent an email to the Board of Health members and laid out his arguments outside of a public hearing. When my appeal was eventually rescheduled to be heard in its entirety on May 20, 2020, Chairman Hoyt and the rest of the board had already been tainted by private conversations from the above mentioned parties."

Attorney St. John's response to the complaint was provided to the board members.

He stated that "nothing in the Open Meeting Laws prevents board members from receiving emails in preparation for a hearing although Mr. Blaisdell's email to the full board could have invited deliberations by way of email, none took place. As the Attorney General's Open Meeting Law Guide indicates distribution of the meeting agenda, scheduling or procedural information or reports of documents that needed to be discussed at the meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation provided that when these materials are distributed no member of the public body expresses an opinion on matters within the bodies jurisdiction."

Attorney St. John stated to the members that "no members of the board provided an opinion other than at the meeting itself," which he continued to state that "no violation of the Open Meeting Law had occurred by reason of this."

He continued with stating Ms. Foster's second complaint.

"I was subject of a hearing that was scheduled through remote access on May 6, 2020. My audio was muted for most of the hearing until the Board of Health wanted to hear my defense. I was unable to object to testimony because of this but the other party was not similarly muted. This was a violation that all persons present be clearly audible to each other."

Attorney St. John stated that his response to Ms. Foster's complaint which he submitted by a letter was to inform her that at the onset of the meeting, the meeting was presented using the Zoom app, adding that this was permissible as an exception to the physical presence requirement of MGL Chapter 30A Section 20 pursuant to Governor Baker's executive order of March 12, 2020. Attorney St. John stated that "as you were the subject of the hearing you were allowed to participate remote and no violation of 940 CMR 29.10 (4)(a) occurred because all parties were clearly audible to each other. Although you may have been muted in order to hear from another witness, you were afforded numerous opportunities to present your

side of your case. Indeed you did make objections and you did present a statement of your defense which was considered by the board during their deliberations, therefore no violation occurred in this instance.”

Attorney St. John stated that this concluded the letter to be submitted to Ms. Foster. He asked board members if they had any further questions for him. There were none. He stated to the members that he would be sending a hard copy letter in the mail, as well as an email that evening or the next day. Attorney St. John stated that he would also include a letter to be sent to the Attorney General’s Office.

Chairman Rhoads addressed Attorney St. John to ask him if the board was required to vote on this. He responded by requesting that the board members should have a motion directing him to respond to the complaints in the fashion he described to them which would be appreciated.

A motion made by Vice-Chairman Hoyt, seconded by Member Grandchamp approving Attorney St. John to proceed with his response to Ms. Foster’s complaints as stated by him.

Chairman Rhoads had further discussion. He wanted to point out that Mr. Blaisdell was planning to offer some hearing guidelines for the board members on conducting an appeals hearing for future use but they had not received this at the current time.

Attorney St. John stated that there were no real guidelines set for conducting an appeals hearing. He told them that if they viewed case law and statutes in the MA General Laws under the Administrative Procedure Acts, this would provide standards of review and values of evidence collected. He offered to obtain this information for the board members.

Chairman Rhoads stated to him that he had a copy of these laws in his possession that he could use for the boards future reference.

Chairman Rhoads asked if there was further discussion. Ms. Foster asked if she could join the meeting. Chairman Rhoads explained to her that they needed to continue with their voting at that time.

A roll call vote was taken with 3-0-0.

Chairman Rhoads asked Attorney St. John if the board should offer Ms. Foster time to speak with them. He stated that this would be acceptable.

Chairman Rhoads asked Ms. Foster if she would like to speak at this time. She said she did not need to speak to them.

CODE ENFORCEMENT OFFICE REPORT:

- Status of reopening (restaurants, public spaces, etc.)

Chairman Rhoads stated that there was no comments presented to them by Mr. Blaisdell. Vice-Chairman Hoyt recommended that he send an email to Mr. Blaisdell to submit the information to them or report back to them at their next scheduled meeting. Chairman Rhoads stated that he would communicate with Mr. Blaisdell in the days ahead.

OLD BUSINESS:

- Hauler regulations:
- Capping tobacco permits: Vote on final draft tobacco regulations

Chairman Rhoads stated that they had a draft regulation before the board.

A motion made by Vice-Chairman Hoyt, seconded by Member Granchamp to accept the final revised draft regulations made by Vice-Chairman Hoyt to be presented at the Board of Health

Public Hearing scheduled for August 5, 2020.

A roll call vote was taken 3-0-0.

- COVID-19 update

Chairman Rhoads stated that he was encouraged with the report that the state made informing them that there were no additional deaths which he added was a good sign.

He also commented that he was appreciative of the work that Code Enforcement Blaisdell performed in the re-opening of various businesses.

- Other old business/new business

Attorney St. John clarified to the members that Open Meeting Law required that only real emergency items were allowed to be discussed at their meeting if they were not placed on the agenda to be discussed, noting that all other business items have to be posted prior to a meeting. He stated that if the board members needed to amend the agenda, they would be allowed to do so right up to the time of the meeting date as long as the amended agenda was posted at the Town Clerk's Office.

NEW BUSINESS:

- Appropriation of funds for Berkshire VNA 2020-2021 contract for public health nursing.

Chairman Rhoads reads an email from Administrative Assistant, Pam Gerry as to the status of the payment for the new contract which would be moving forward for renewal.

A motion made by Chairman Rhoads, seconded by Vice-Chairman Hoyt to authorize Ms. Gerry to make this payment of \$2250.00 for the Berkshire VNA 2020-2021 public health nursing contract, passed unanimously.

A roll vote was taken 3-0-0.

LOCAL / COUNTY UPDATES:

- 6/11: Berkshire Public Health Alliance (Rhoads)

FOR THE GOOD OF THE ORDER:

UPCOMING EVENTS:

REVIEW MAIL:


- Specialty Minerals 3rd Party Inspection Report (April 2020)

SCHEDULE NEXT MEETING: Next monthly hearing was scheduled for August 5, 2020 at 4:00 P.M.

ADJOURNMENT: A motion made by Vice-Chairman, seconded by Member Grandchamp to adjourn the meeting, passed unanimously. A roll call vote was taken 3-0-0.

Respectfully Submitted,

Date


Recording Secretary

8-25-20