

**Minutes of the Carlisle Board of Health  
March 22, 2011**

Present: Board Members Jeff Brem Chair, Bill Rizzo, Mark Caddell; Cathy Galligan; Absent - Elizabeth Nilson Ostrow; also present: Linda Fantasia, Agent, Adam Sayde (Carlisle Mosquito); John Luther (Building Commissioner), Rob West, Lou Baldoumas, Atty. Jim Flood, John Bakewell, Alan Carpenito, Atty Kathy Flood,

The meeting was called to order at 7:00 p.m.

**LOCAL NOISE REGULATION DISCUSSION** – a number of interested parties were present for the discussion.

The Board reviewed the final draft edited by Brem and Galligan as discussed at the March 15<sup>th</sup> meeting. The Board then reviewed additional comments submitted by absent Board Member Li Nilson, along with comments submitted by Michael Epstein and David Freedman. Since the Planning Board meeting schedule did not allow an official position, the Epstein and Freedman comments were submitted as individuals and not on behalf of the Planning Board. Freedman suggested that the \$1000 fine stipulate noise regulations. The Board had already made this change. The Board agreed with the edits from Epstein and Nilson through Section IV.D. The Board revised Section IV.E.1.a to identify interested parties and Open Meeting Law posting requirements. The Board accepted edits to E.2-4. The Board agreed that the town was not exempt under Section V. Wording was revised for VI. Penalties to read “issued by the Board of Health.” Brem then opened the meeting to questions from the audience.

Bill Costello, local developer, was concerned about the appeal process to the Selectmen. He thought it would need to be to Superior Court and suggested checking with town counsel. He also felt it was a mistake not to include measurable standards. Without standards, enforcing the regulation could be open to legal challenge which could be tied up in court for years. If a Court did not uphold the action taken by the Board, the town could be subject to significant damages. He felt the intent of the regulation was good, but it lacked authority to accomplish its goal. In his opinion, it would not survive a legal challenge. Bill Rizzo disagreed noting that case law states that a Board of Health has the authority to decide what constitutes a nuisance. Cathy Galligan said that the Planning Board may decide to base a bylaw on measurable standards. John Luther said that he did not think the appeal could be before the Selectmen. His decisions are appealed to the Zoning Board or Land Court.

Atty. Jim Flood said a subjective regulation cannot be used as a standard to enforce a violation. Once a project receives a permit, stopping the work could be viewed as a taking. Costello suggested requiring mitigation measures prior to starting work. Luther agreed that construction conditions such as requiring monitoring equipment would be better than enforcing a regulation. Flood said the developer needs to know the costs up front. Estoppels cost a lot of money.

Costello questioned the authority of the Board’s agents to issue a cease and desist. Brem said the process allows for immediate action in certain cases, but in most cases it would be the Board’s responsibility. He expects that the bylaw will be much stronger. This is why the Board’s regulation has a two year sunset clause.

Lou Baldoumas said he had checked with an attorney for the National Association of Home Builders. The proposed regulation could violate civil rights and be considered a taking. He claimed that the regulation was directed at his development. He did have to do hoe ramming at Chestnut Estates last summer which caused the complaints. Baldoumas said the Planning Board’s engineer, Steven Ventresca, did not find any problem with the work at the site. He provided a copy of a 1/7/11 Nitsch punch list which calculated the ledge removal of 34 CY at station 2+50 and 203 CY at station 10+75. Baldoumas said the Planning Board’s engineer was satisfied with the work.

Rob West, developer of Hanover Hill, wanted to know how the Board would measure unacceptable noise. He asked if the town would be held to the same standard and was told it would be. Galligan explained that the ability to carry on a conversation at the property line was one measure. West said a lot of construction equipment would exceed that measure. He was also concerned that the regulation would allow a disgruntled abutter to stop a project.

Baldoumas asked what would happen if the work was stopped by the Board's agent. Brem explained the process which allowed work to continue until the Board could legally meet. West said that ledge is an unknown. Luther agreed that ledge was a problem for many sites in Carlisle.

John Bakewell noted that many machines exceed DEP's standard, but are only used for very short periods such as wood chippers. He did not see the regulation as anti-building. He felt the hoe ramming at Chestnut Estates could have been avoided. There are better methods for removing ledge than day by day hoe ramming. There was also no dust mitigation done at the site. Costello agreed that there are alternatives to hoe ramming. Brem said the Board does not want to single out hoe ramming, but injurious health effects of excessive noise in general. West said leaf blowers are exceptionally noisy. Brem said that ambient noise levels may be different depending on location and activity. Costello said that if there was a complaint, the Board already had authority to take action. There was no need to adopt and enforce a local regulation. Baldoumas claimed that the proposed regulation was aimed at Chestnut Estates. Brem said that the Board had been working on the excessive noise issue for three months. It was an ongoing process not involving only one site. Risso said that he was not comfortable with regulating noise. It may not be necessary since the Board already has statutory authority to deal with nuisances. Brem said MGL C 111, Section 122 clearly defines this authority. Costello noted that he has been developing land in Carlisle for 35 years and never had a complaint about construction noise. Luther said the Board cannot be too restrictive without impacting development. Galligan agreed that having an identified standard would make the regulation easier to enforce. However, there could be a case where an excessive level did not bother the abutter. The Board would not want to enforce a regulation unnecessarily. People have different tolerance levels. Brem said that is why the Board is only proposing a guideline rather than a standard. Involvement would only occur upon the filing of a complaint. The issue might resolve itself before the Board could take action. Preconstruction meetings are recommended. Galligan asked if the Board needed a specific guidance for this purpose. Risso would prefer working with both parties following a complaint. Galligan said the Board could take into consideration the types of controls in place such as mufflers, sound mitigation, well maintained equipment, properly trained operators. These would help to alleviate some of the disturbance. Costello and Flood agreed that this approach made sense. The Board agreed that it was not prepared to take a vote.

It was moved (Risso) and seconded (Caddell) to table action on the proposed local noise regulation until a date to be determined. Motion passed 4-0-0.

Atty Flood asked to be notified when it is on the agenda again.

**BILLS – It was moved (Risso) and seconded (Galligan) to approve the bills as presented. Motion passed 4-0-0.**

## **ADMINISTRATIVE REPORTS**

Rabies Clinic – 30 cats and dogs were vaccinated. Tiffany Rule, DVM of Countryside Veterinarian Hospital did the vaccinations. A number of high school students received community service. Additional money collected will go to the general fund.

School Building Project – Risso is the Board's liaison for the project. Risso and Fantasia will attend a project meeting for the land use boards on 3/24/11. This will be an opportunity to discuss blasting, well permits, asbestos removal. The Board would like to review plans when submitted. Site preparation is starting.

State Arsenic and Uranium Study – Carlisle is one of the towns expected to have wells that exceed the standards. The state has provided an interactive website for homeowners along with recommendations on testing laboratories and treatment. Galligan has been doing additional research on the potential health risks but there is little conclusive research. Caddell thought the standards for arsenic had been changed because of better detection levels. Fantasia said the original standard of 50 mg/l was set during WWII. It was reduced to 10 mg/L in 1992. The state recommends well owners have their water tested if they are in a high predictability zone. The Board agreed that arsenic and uranium are not unexpected for Carlisle due to the town's geology. The Board agreed to put a link to the state information on the Board's website.

H1N1 AAR – the Board reviewed a proposal from Cleary Organized Business Solutions for \$1700. There is grant funding available. Risso is authorized to sign the contract. Fantasia is setting up a debriefing for volunteers, vaccinators, and MRC Executive Committee.

Hazardous Waste Collection – Galligan had notes from last year. Latex paint, mercury thermostats, car batteries and fluorescent bulbs do not need to go to the collection. All vehicles must have a transfer station sticker. If they do not, they must go to the Police Dept. to purchase one. Residents must call ahead for large quantities. Fantasia said the Board normally runs an article on what to bring closer to the collection which is scheduled for May 21, 9-12 at the DPW facility. Carlisle residents can bring unused medication to the Chelmsford Police Station on National Drug Take Day, April 30<sup>th</sup>. The Carlisle Police Dept does not have resources to run a separate collection. Clean Harbors had agreed to collect non-controlled drugs but the police would need to dispose of controlled substances. Fantasia will see if DEA will dispose of controlled substances following the hazardous waste collection.

Noise Discussion – the Board agreed to consider a guidance document rather than a regulation. Caddell was concerned about the regulation being too vague. The Board was uncertain how this would affect the Planning Board's bylaw efforts. Risso said a regulation may not be necessary in a rural community compared to an industrial one. Galligan said if there is a decibel standard, it would have to be applied equally to all noise sources. The Board discussed various situations that might initiate a complaint such as dirt bikes, dogs barking. The Board would prefer a neighbor to neighbor approach. The Board noted that the issue has not been brought up before which may be another indicator that a regulation is unnecessary. There are other ways of controlling construction noise. The Board could ask the Planning Board to do a pre-construction evaluation of how much ledge will need to be removed for a project. The Board agreed that in the worse case, it already has authority to take action. Board members were inclined to work on a policy which would include the planning board, building inspector, developer and neighbors proactively. Caddell suggested a policy of mediation or arbitration. Brem offered to work on a policy. There are also some legal questions that need to be answered.

There was no further business discussed. Meeting voted to adjourn at 9:55 pm.

Respectfully submitted,

Linda M. Fantasia  
Recorder