

**Minutes of the Carlisle Board of Health
June 21, 2011**

Present: Board Members Mark Caddell (Chair), Bill Risso, Cathy Galligan; Donna Margolies; also present: Jonathan Stevens (PB liaison); Linda Fantasia (Agent), Adam Sayde (Mosquito), David Freedman (PB)

The meeting was called to order at 7:00 pm.

BILLS – It was moved (Risso) and seconded (Galligan) to approve the bills which include salaries and Hazardous Waste Collection (\$4800) to be paid from the Transfer Station revolving account and installation of the two radio antennas (\$1840) which is a reimbursable grant. Motion passed 5-0-0.

ADMINISTRATIVE REPORTS – Fantasia is preparing a year end financial summary of the Board's operating, revolving and grant accounts. No overruns are expected.

DISCUSSION ITEMS

School Fire Well Permit – The well will provide the water supply for the 40,000 gallon fire cistern which is part of the school building project. The Board reviewed the location plan and questioned the scale used. There are no septic systems located closer than 200' to the well and it is not within the Zone 1 of the school's public water supply. The Board agreed to issue a permit. The well will not be drilled until the blasting has been completed.

After Action Draft Report (H1N1 and Seasonal Flu Clinics) – prepared by Clearly Organized Solutions was reviewed with some edits by the Board. The Carlisle MRC also reviewed the draft report. Revisions will be incorporated into the final report. The Board was pleased with the completeness of the report. Recommendations will be included in the Board's Emergency Dispensing Site Plan. The Board would like the Selectmen to accept the report at a public meeting.

It was moved (Risso) and seconded (Galligan) to accept the AAR Final Draft with comments added and authorize payment (\$1700) to Clearly Organized Solution as agreed. 5-0-0

Solid Waste Permitting – Town Administrator Tim Goddard received a ruling from the state auditor that he forwarded to the Board. According to the ruling the "Amendments to the Law Governing Solid Waste Facilities" which transferred permitting of site assignments and small transfer station operations to the local Board of Health could be challenged as an unfunded mandate. Rather than individual court challenges, a better course would be a legislative remedy. The Board agreed that this information should be shared with Mass Health Offices Assoc and Mass Health Boards. Communities should register their concerns with their legislatures. The state associations could help by preparing a form letter. The Board will thank Goddard for sharing the information.

LOCAL NOISE REGULATION – Present for the discussion were David Freedman and Jonathan Stevens of the Planning Board.

Brem explained that the Board had requested two opinions from town counsel relative to adopting a local noise regulation. The first question asked if the proposed regulation might expose the town to significant financial damages if challenged. Counsel responded that as long as the regulation was reasonable a court would be unlikely to invalidate the regulation. This does not mean there could not be a challenge and the town would have to pay to defend itself even if the challenge was not successful. According to the opinion courts are likely to uphold a health regulation unless there is no rational relation between the regulation and the health purpose. The opinion also stated that Boards can be pre-emptive in their regulations in order to avoid a potential health problem. Brem said this is why it is important to distinguish between a nuisance and a health risk. The Board would need to have findings that identify a health risk if it wanted to enforce a regulation. The seconded question asked whether it was appropriate to have an appeal to the Selectmen. Counsel ruled that the authority to create a health regulation rests solely with the Board of Health by statute. Having an alternate appeal would conflict with the statutory authority. Any appeal of the Board's order would need to be heard in court.

The Board had tabled their work on the proposed regulation pending town counsel's responses. It took longer than expected. Freedman said the Planning Board is still interested in addressing the issue. The Board agreed that it might be better to regulate noise activity through the Board of Health if the purpose is to avoid a health risk. These would need to be defined. In most cases an excessively loud activity might only happen for one to two days. Once the work was completed, it would be unlikely that a complaint would be filed. The situation at Chestnut Estates was unique in that the activity occurred over a longer duration using equipment associated with loud impulsive noise. This would not be the typical situation.

Freedman said the Planning Board is thinking of regulating construction activity by requiring a management plan. The plan would be more than just a checklist and could include mitigation of any potential problem that might be appropriate in a particular development. For example, if a hoe ram were to be used a lot the plan would start with the presumption that the activity will exceed the levels acceptable to people. Identifying the potential problem could be followed by a meeting of all parties in order to work out a plan to mitigate impacts as much as possible. The Board agreed that this was their goal also.

Freedman said the key question is whether the Board of Health should be involved in the pre-construction planning or only if a problem arises. Brem said that whether the Board is involved in the pre-planning or reacting to a complaint, the Board of Health is authorized by statute. The Board would prefer to work with the involved parties on how to deal with the problem. At Chestnut Estates it was not possible to satisfy all parties. Freedman said that if citizens know that town boards are attempting to do something it makes for a better outcome. The process of regulating a management plan under the special permit review is also an easier process than adopting a bylaw which requires town meeting approval. Galligan agreed that a reasonable effort to address potential noise issues is the goal. This was not done at Chestnut Estate and both Boards need to be prepared if the pre-planning is not successful. The Board of Health might need to take some readings so that there is no dispute about the consequences of the activity. The Board might want to consider a work-study student to do this. Freedman agreed that the first step would be to work with the parties involved. If this is not successful, the Board of Health may need to act. Brem restated that the Board of Health already has this authority under MGL Ch 111 sec 122. Freedman agreed that a construction management plan would not prevent Board of Health involvement if it is not acceptable or working. The plan would be a first measure not the final determinant on noise activity. Freedman suggested that the Planning Board prepare a draft and have it reviewed by the Board of Health and Building Department. There will also be an opportunity for public comments. The Board agreed with this format and is willing to work with the Planning Board. There was no further discussion on the matter.

DISCUSSION ITEMS (continued) [Brem had to leave the meeting and Caddell took over the chair]

Contracts – TCG submitted a new three year agreement which included 3% per year escalation clause. The last contract included a 3.5% escalation clause. Stevens asked if the Board considered putting the contract out to bid. The Board said it had not. Fantasia said the engineering contract had been bid out several times in the past, but once TCG was selected the Board was satisfied with the arrangement. The Board agreed that Rob Frado's (TCG) knowledge of the town and environment was extremely helpful and he has always had a good relationship with the Board. The Board has been very pleased with his work. The Board agreed that with today's economy and the problems with the municipal budget, the automatic escalation clause would be a problem. Work that still needs to be done has already been paid for with lower fees. The Permit Extension Act also extended the window for doing the work to the point where remaining fees may not cover expenses. Brem said he is concerned that the 53E revolving account may run out of money for the prepaid obligations. The Board agreed to ask Frado to accept a new one year contract at the same rate as last year. They would be happy to discuss it further.

Sanitarian Contracts – both Phelps Food Service and Public Protection Specialists have agreed to a one year renewal contract at the same rate as this year.

It was moved (Risso) and seconded (Galligan) to sign a one year contract for sanitarian services with Phelps Food Service Co and Public Protection Specialists for food establishment inspections and camp inspections, respectively, and at the same rates as this year's contracts. Motion passed 4-0-0.

Hurricane Exercise – Fantasia, Galligan and Margolies attended the training exercise in Weston. Region 4A had approved bringing the exercise to Carlisle. Since Concord was not able to attend, Fantasia recommended inviting them. Participants should include police fire, emergency response, EMS, COA and DPW along with elected town officials. A tentative date was set for 7/20/11. The Board agreed to keep the group with Carlisle and Concord since both towns have a long history of working together and maintain a regional high school. If there are not enough attendees, it could be opened to other towns.

Flu Clinic Planning – A survey will be published using survey monkey to see how many residents might be interested. The survey will also be available at Old Home Day. Li Nilson signed off as medical director. The expected insurance reimbursement will be used to purchase vaccine. Fantasia would also like to move the vaccine storage refrigerator from the gym to the town hall to make temperature readings easier.

HAM Antennas – Dave Willard submitted a report on the successful installation of two antennas, one at the police station and one at the school (shelter).

Year End Bills – the Board agreed that Risso as Treasurer was authorized to sign FY 11 final bills which are due 7/11/11. Risso noted that there will be a pay adjustment in Fantasia's salary due to a calculation error in the Grade 8 Compensation schedule that had been missed for a few years. The Selectmen will do a reserve fund transfer to cover the shortages for this year but the Board needs to consider impacts to next year's budget.

There was no further business discussed. Meeting voted to adjourn at 8:50 pm.

Respectfully submitted,

Linda M. Fantasia
Recorder