

## **BOARD OF HEALTH MEETING MINUTES JULY 12, 2007**

**PRESENT:** Board members, David Merry, Erik Lowe, and Tim Barnett. Agent John Powers  
And asst. Hadden Blair. Guests, Robert and Cathy Harris, Victoria Nelson, and  
Attorney John Amabile.

**WELLS APPROVED:** Melissa Manter 21-6, Richard Dubin 29-35, Susan McCoy 3-34, Fred  
Fisher 3<sup>rd</sup> 11-46.1.

### **7:04 PM REVIEW OF A NOISE COMPLAINT BY ROBERT AND CATHY HARRIS**

The Agent, John Powers, gave the Board an overview of a noise complaint he received Monday July 9<sup>th</sup> from Mr. & Mrs. Robert Harris of 7 Millstone Lane concerning noise from domestic poultry emanating from their neighbor's property, 31 Millstone Lane, owned by Kurt Freund. The complaint pursues two tracks. First, as a violation of the West Tisbury zoning by-law, and second, as a violation of the State DEP noise regulations. The Agent told the board that he was awaiting a response from DEP (5 DEP people were unable to answer the Agent's question when called) if animals were included in 310 CMR 7.00. He also informed the Board that he requested and was invited to the Planning Board meeting this Monday the 16<sup>th</sup> to hear them discuss the complaint and hear their advice. The Agent reminded the Board that there was a complaint by the Harrises last year that the planning board answered at their 7/17/06 meeting saying, "Board members agreed that loud roosters were not a zoning issue, and that roosters are part of living in a rural town." Erik Lowe asked Mr. Harris if he has spoken with Mr. Freund. Mr. Harris indicated that he has, and that Mr. Freund believes he is within his rights and has been unwilling to change anything. The discussion continued for some time. The Harrises maintain this noise is a nuisance that prevents them from fully enjoying their property. They have approximately 25 hours of recordings they made. They also feel the professional sound study included in the complaint supports their view that the State DEP noise regulations are being violated. John Amabile, the Harris' attorney, of 380 Pleasant St. Brockton, MA 02301, spoke to the violation of State law and local zoning, that the noise interferes with the Harris' enjoyment and use of the property, that trying to work with the neighbor got nowhere, that the Harrises have spent a lot to support this complaint, and that the burden should now shift to Mr. Freund to refute the claim that State law is being violated. Mr. Amabile said, "It's illegal....not a close call...the Health department should be put on notice....there is no exemption in the regs....so, there is no credible legal challenge (to the complaint)....it is a noise level exceeding the law." The Agent offered that he would like to consult with Town council. The Board unanimously approved consulting Town council. The complainants indicated they were pleased with the Board's prompt response to the complaint. The Agent said he would be in touch as soon as he had answers to the outstanding questions.

**DWAs APPROVED:** Lynn Whipple 32-6, David Gibby 11-26.

**BARN REVIEW FORM:** Neil Flynn's 8-12 application was taken under advisement.

**LANFILL/REFUSE DISTRICT:** The Board approved a map showing the drop off area  
For the recycling shed to one side of the building as well as traffic/parking areas  
to be given to the shed volunteers so that drop offs do not happen in front of the  
shed blocking traffic.

## **EMERGENCY MANAGEMENT:**

**OLD/NEW BUSINESS:** 7-104 Karelekas The engineer reported on the illegal buried waste saying it was in two trenches 40 & 75 feet long and 12' deep composed of approximately 20% sheetrock and 5% bricks and block and wood with no household waste and no petroleum with the balance (75%) being native soil. The engineer proposed leaving the waste in place. The Board unanimously voted to water test all wells within 500', and if they were found clean, the waste could stay in place. Vineyard Gardens drainage update found that only ½ of the work is completed. The owner will complete ASAP. Cronigs Mkt 16-84 received another dumpster/odor complaint, and the Agent's inspection found liquid seepage and very strong odor. The owner reported they would purchase a watertight leak proof dumpster, and has informed his employees that he would fire them for disposing of liquid waste there. There was a case of EEE just off the Cape. The Hillside farm stand 22-47 was given permission by the ZBA to make coffee with bottled water. Finally, the Board had a general discussion of rooster noise. The Board felt that there is no need for someone to have more than one rooster, that they should be caged in a location off the property line if possible, with a fence/noise barrier. The Board wondered if nighttime hooding of roosters is practical. The Board felt that they did not want a new zoning by-law because we are a rural community of which roosters are a part. The Board might consider a chicken coop setback regulation.

**WATER TESTING:** All testing results for beaches, ponds, and streams were satisfactory except for the first test at Seth's Pond

## **CORRESPONDENCE:**

**IN:** Waste News, MEMA, MDPH, SArien Co. (back flow devices), On Tap, Coastlines, Consumer Confidence report, ZBA 31-33.2, Planning Board Ferry 16-71.1 & 80, Dole 32-78, Jarrell 32-109.

**OUT:** DEP