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TRI-TOWN HEALTH DEPARTMENT Lee - Lenox – Stockbridge

Town of Lee BOH Meeting 7.28.22

In Attendance:

TTHD: Jim Wilusz, Zachary Roberts

Lee BOH: Bob Wespiser, Carissa Vincent, JoAnn Sullivan

Town of Lee: Jerimia Pollard, Town Counsel

Members of the public: Janice Braim, Tim Gray Steve Handel, Bob Jones, William Mathews, David Carrington, Caroline Young, Josh Bloom, Deidre Consolati, Sean Regnier, Monica Ryan, Anne Langlois, Gordon Bailey, James Castegnaro, Tom Bosworth, Claire Lahey, Ed Lahey, Gail Ceresia

Documents: Agenda, HRI/EPA/Town Correspondence Packet, Southern Berkshire Covid-19 Dashboard

1. Meeting called to order at 6 p.m.
 - A. Bob Wespiser introduced Carisa Vincent, JoAnn Sullivan, Jim Wilusz, Zachary Roberts, Jerimia Pollard and himself to attendees.
 - B. Bob Wespiser provided ground rules and laid out the structure of the meeting before moving on to the next step.
2. Discuss EPA and HRI Correspondence
 - A. Jim Wilusz highlighted each document submitted to the Board as part of the HRI/EPA/Town Correspondence Packet and provided a summary for the Chair.
 - a. June 3, 2022 certified demand letter from HRI petitioning the Board to hold adjudicatory hearings.
 - b. June 22, 2022 response letter from Lee BOH Chair, Bob Wespiser to Timothy Gray, HRI Executive Director requesting further, specific information.
 - c. June 22, 2022 response letter from John Kilborn, EPA Senior Enforcement Counsel to Jerimia Pollard, Lee Town Counsel.
 - d. June 29, 2002 letter from Attorney Cristobal Bonifaz to Lee BOH Chair, Bob Wespiser.
 - e. July, 26 2002 email regarding EPA statement on liners from Dean Tagliaferro to James Wilusz.
 - B. Bob Wespiser, BOH Chair addressed Tim Gray and asked him to summarize the HRI Demand Letter.
 - a. Timothy Gray discussed the position of HRI and cited two examples – Deerfield Pipeline and an in-town cogeneration plant – from the June 3, 2022 demand letter that HRI believes are precedent for the Board to take action.
 1. Timothy Gray offered to call attorney Cristobal Bonifaz, whom HRI has consulted with and presents as an expert in this type of law. Bonifaz

would like to make a statement and will answer any questions from the Board.

C. The Board followed up with Tim Gray.

- a. The Board asked if either of these precedents had been tried in court or faced any sort of legal assessment.
 1. Tim Gray agreed with Bob Wespiser that neither of these cases had been adjudicated but stated that the boards had been unopposed when they acted.
- b. Bob Wespiser stated that the board had two primary questions after reading the demand letter.
 1. Can the Board legally and functionally affect a change to the current plans for the PCB dump?
 2. Do we have evidence that this particular dump is a significant threat to the health and safety of Lee residents?
- c. Josh Bloom requested speak.
 1. Bloom made a comparison with this situation to a situation in nearby Pittsfield regarding a cell tower and the actions that city's BOH took to oppose it.
 2. Bob Wespiser noted Bloom's comment and asked him to hold onto it until Citizen Speak time.
- d. Bob Wespiser reiterated the Board's position
 1. Wespiser said that personally he does not want to see the dump installed and holds grave concerns about its safety, but the two things that remain key to this situation are a sound legal approach backed up by evidence of a substantial health and safety threat.
 2. Citing prior open meeting concerns, Wespiser noted that the Board has not spoken of this matter, with each other, outside of this current forum.
- e. Timothy Gray presented Cristobal Bonifaz over speakerphone to make a statement and answer questions from the Board.
 1. Cristobal Bonifaz stated that according to Massachusetts state law, the Board of Health has the authority to prevent reasonable risk of harm to the town. He also stated that according to an 1869 law, the Massachusetts Supreme Court determined that local boards of health are the ultimate authority over the health and safety of their towns and that even the federal government cannot supersede them. Further, he stated that applying this precedent would create a situation in which many laws that rely on said established case would be put into such jeopardy that the Board's decision would be unappealable and ultimately remain standing. Bonifaz said that he would be willing to represent the town pro bono.
 2. Cristobal Bonifaz cited cases in Cambridge, Amherst and the local cogeneration plant that he believed were

similar in nature and in which Boards took action to prohibit.

1. Bob Wespiser recalled that he was sitting on the Board at the time of the cogeneration plant issue but does not remember it the same way as Bonifaz. Wespiser asked Jim Wilusz and Zach Roberts to locate the file for review.
 3. Jeremia Pollard asked Cristobal Bonifaz if any of these cases involved federal permits.
 1. The cogeneration plant involved a Massachusetts state permit, said Bonifaz.
 2. Bonifaz believed the Cambridge case involved a federal permit.
 3. Pollard asked if Bonifaz is arguing that there are no instances where the federal law preempts local law.
 - a. Bonifaz confirmed.
 - D. Jim Wilusz stated that he has reached out and spoken to Cheryl Sbarra at MAHB to look at the present case and render their opinion. Wilusz stated that the department and boards intent is to make sure that all decisions will be based on solid evidence and the legal authority of the Board.
 - a. Cristobal Bonifaz added that it was his opinion that the board did not need to hold an adjudicatory hearing, but that this type of hearing would be beneficial for both sides to make the case that PCBs do or do not present an unreasonable risk to health.
3. Citizen Speak Time
- A. Ann Langlois
 - a. Langlois asked about the MAHB contact, the nature of the questions asked and if the MAHB response will be public information that can be requested.
 1. Jim Wilusz elaborated on his conversation with MAHB and affirmed that their written response will be made public when received.
 - B. Josh Bloom
 - a. Bloom urged the Board to speak with the City of Pittsfield regarding their cell tower issue and summarized the situation.
 - b. Bloom stated that he would love to see Lee and the TTBOH get involved in independent public health studies regarding PCBs.
 1. Jim Wilusz responded in agreement and supported working together with as much information as possible.
 - C. Gordon Bailey
 - a. Encouraged the board to go forward with an adjudicatory hearing.
 - b. Raised concerns are about transportation and other activities related to the dump that will cause issues in Lee and in neighboring communities.
 - c. Referenced an Ohio case in which the court sided with a municipality over the EPA.
 - d. Stressed the importance of gathering data.
 - D. Tim Gray

- a. It is the intention of HRI to have two PCB experts attend an adjudicatory hearing should the board choose to hold one. He stated that David Carpenter and Wendy Heiger-Bernays have already agreed to speak and present data.

- E. Jim Wilusz responded.
 - a. Wilusz stated that all options will be explored but there also needs thought put into what will happen if all options are exhausted. Should the PCB be installed there will be a role for monitoring it's impact.

- F. Tim Gray
 - a. Tim Gray expressed concern for dioxane that he states is leaking from an adjacent landfill to the PCB site.

- G. Monica Ryan
 - a. Also has concerns about dioxane from adjacent dump. Who has oversight?
 - b. Encouraged the Board to attend the HRI forum on 8/18/22.

- H. Claire Lahey
 - a. Provided a history of the Schwietzer-Mill
 1. Stated that records show the well was drilled too deep.
 2. Also expressed concern for dioxane, PCB and any other contaminant that could leak from an improperly cited well.
 3. Stated that a sense of urgency is required. If the permits have been issued is there a chance that they could begin construction tomorrow? How soon could this happen?

- I. Jeremia Pollard
 - a. Asked HRI if they have requested information about what will be used for the dump liner.
 1. Tim Gray answered yes. However no specifics have been given, only citations of the regulations and statements that they will comply.
 - b. Asked if experts could indicate whether the warranty states that it is a PCB/HAZMAT compatible liner.

- J. Ann Langlois
 - a. Encouraged the board to go to CTSB to view past HRI meetings.

- K. Gail Ceresia
 - a. Stated that the project is not completely planned. That no traffic studies have been completed and raised questions about how the resulting sediment will be dewatered. She stated that basic procedure is not being followed and any environmental questions are going unanswered.

- L. Josh Bloom
 - a. Asked for clarification of the structure and role of TTHD BOH vs. Lee BOH.
 1. Jim Wilusz explained the structure of department and collaborative relationships between the health boards, town managers, and town counsel.
 - b. Bloom asked the Board to speak to other town counsels in addition.

- M. Bob Jones
 - a. Urged to pursue adjudicatory hearing.
 - b. Urged collaboration between the Board and private citizens.

- N. Jim Castegnaro
 - a. Provided pictures for the board and explained impacts he is already facing as a resident and adjacent homeowner.

- O. Tom Bosworth

- a. Bosworth, an attorney spoke of his appreciation and concern for the town of Lee and his willingness to assist in any way he can.

P. Ed Lahey

- a. Expressed his support for and trust in the Board.
- b. Pointed to history for an answer.

Q. Gail Ceresia

- a. Asked for a meeting schedule.

R. Janice Braim

- a. Expressed support for the Board.

S. William Mathews

- a. Stated that the PCB dump will be sited above an aquifer that the town will be unable to use if the dump goes forward.

T. Dave Harrington

- a. Stated that water percolating through the earth saturates with PCBs and that they can also travel on wind.

U. Tim Gray

- a. Stated that PCBs can be measured in trees at least 3 miles from any contaminated area.

V. Monica Ryan

- a. What are the Board's next steps?
 - 1. Bob Wespiser responded that there is nothing to prevent a hearing thus far. However timing will be based on gathering information and getting all parties involved together.

W. Nick Peck

- a. Asked why Lee does not send PCBs by rail to Texas.

X. Gordan Bailey

- a. Suggested that the decision to hold a hearing should be made in the next 4-6 weeks.

Y. Claire Lahey

- a. Expressed concern that once the dump is constructed that Lee will be subjected to dumping of PCBs from other communities.

Z. Jeremia Pollard

- a. Indicated that he would like to obtain the opinion his select board before moving forward to an adjudicatory hearing as well as determine all involved parties.
- b. Suggests that if the Board chooses to make a motion there should be a provision that the adjudicatory hearing will be concerning items that the Board has jurisdiction over.

AA. Bob Wespiser motioned to formally present to the Select Board an interest in potentially scheduling an adjudicatory hearing to look at this question and seek the appropriate resources to address the jurisdiction and health effects with specifics in mind. A letter will be written and delivered to the Select Board.

- a. Roll call vote.
- b. The Board voted unanimously.
- c. Motion passed.

BB. Bob Wespiser proposed a motion to schedule a meeting for Tuesday, August 9 at 5:30 p.m..

- a. Roll call vote.

- b. The Board voted unanimously.
 - c. Motion passed.
4. Tri-Town Health Department/SBPCH Updates
- A. Jim and the Board discussed the most recent covid-19 dashboard and rates.
5. Bob Wespiser motioned to adjourn at 8:05
- A. Roll call vote.
 - B. The board voted unanimously.
 - C. Meeting Adjourned.

DRAFT