

**CITY OF NEWBURYPORT
DEPARTMENT OF PUBLIC HEALTH
MEETING**

4

Thomas

Name of Committee Meeting:

BOARD OF HEALTH

Date of Meeting: March 19, 2009

**LOCATION: 2nd Floor
Conference Room
City Hall 7:00pm**

NEW BUSINESS

7:00PM

1. Call to Order
2. Minutes of previous meeting, January 15, 2008
3. Board of Health Business
Election of Chairperson
4. Famous Pizza Update
5. Crow Lane (Please refer attachment)

**7:15PM: Request for Hearing: RESCHEDULED
Gerald F. Moynahan, 182 Storey Avenue**

7:30PM: Compost Facility Report

**CITY OF NEWBURYPORT
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Name of Committee Meeting:

BOARD OF HEALTH

Date of Meeting: March 19, 2009

**LOCATION: 2nd Floor Conference Room
7:00pm**

ATTENDANCE:

ROBIN BLAIR O.D.
SUSAN BELUK M.D.
JOHN W. MORRIS
GERALD F. MOYNAHAN
DAVE MADDEN
MOLLY ETTENBOROUGH
RON KLODENSKI
MR. CHATFIELD
TERRY JONES
BRIAN DERRIVAN

BOARD OF HEALTH, CHAIRPERSON
BOARD OF HEALTH
DIRECTOR PUBLIC HEALTH
RESIDENT-182 STOREY AVENUE
HEALTH AGENT
RECYCLING COORDINATOR
RESIDENT WARD 5
RESIDENT WARD 5
RESIDENT WARD 5
COUNCILOR WARD 5

MEETING WAS CALLED TO ORDER AT 7:07 PM

SUSAN BELUK M.D. MADE A MOTION TO APPROVE THE MINUTES OF JANUARY 15, 2009. SECONDED BY ROBIN BLAIR O.D., SO VOTED UNANIMOUSLY.

BOARD OF HEALTH BUSINESS

ELECTION OF CHAIRPERSON:

Postponed until next B.O.H. meeting (May 21, 2009) due to absence of Patricia Lawrence R.N.

FAMOUS PIZZA UPDATE:

Mr. Morris advised the Board of the current progress pertaining to the above Food Service Establishment. Recent reports were provided by their consultant and an inspection report dated 03/16/09 to the Health Department to determine if they had made progress under its probationary period imposed by the Board on December 19, 2008.

The Board of Health determined that condition number 1 and 3 of the December 19, 2008 Order has been complied with and condition number 2, (1 year probation) is still in effect until December 31, 2009. Pending no further serious violations of the Massachusetts State Sanitary Code 105CMR 590.000 or Rules and Regulations of the Newburyport Board of Health. The probation imposed will end December 31, 2009. During the next 9 months regularly scheduled routine inspections will be conducted by the Health Department.

Also, capital improvements pertaining to the ice cream station must be completed and a pre-operation inspection must be conducted prior to the start of operation.

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HEARING: MR. GERALD F. MOYNAHAN - 182 STOREY AVENUE:

Mr. Gerald F. Moynahan owner of 182 Storey Avenue was in attendance. Mr. Morris summarized for the Board the history between Mr. Moynahan and the Newburyport Health Department. Complaints regarding overgrowth of trees, shrubs, grass etc started as far back as May 4, 2007. Numerous attempts were made by the Health Department personnel to contact Mr. Moynahan. Finally on September 12, 2008 neighbors expressed great concern about the harborage of wild animals and the threat to abutting properties. Based on the unresponsiveness of Mr. Moynahan a search warrant was obtained from the Newburyport District Court on October 2, 2008 and executed on October 6, 2008 whereupon a full inspection took place to ascertain if Mr. Moynahan was inside the dwelling.

During the inspection conducted on October 6, 2008 it was determined that Mr. Moynahan was not present, but the dwelling was in deplorable condition and posed an imminent threat to the current owner and therefore was deemed uninhabitable and ordered vacated until such time as compliance with the Massachusetts State Sanitary Code 105CMR 410.000 was obtained.

Based upon the facts as listed above an "Order" was issued on October 7, 2008 (105CMR 410.750(g) and 105CMR 410.750(i). A pad-lock was utilized to secure the property after the search. In addition to the "Order" a "Right to a Hearing" was conveyed to Mr. Moynahan in the October 7, 2008 letter.

Numerous times thereafter Mr. Moynahan did communicate with the Health Department via letter or phone call. Mr. Moynahan agreed to a hearing before the Board of Health. For one reason or another hearing(s) were pushed back.

Mr. Moynahan stated in his letter of November 12, 2008 that he was seeking legal counsel but it was too costly. Mr. Morris advised via telephone and letter that the Health Department may be able to assist Mr. Moynahan organize his residence located at 182 Storey Avenue. Mr. Morris stated in a letter to Mr. Moynahan dated January 20, 2009 that he would like to conduct a site visit to review the "Order" and develop a compliance schedule.

During tonight's meeting, March 19, 2009, Mr. Moynahan was in attendance to answer various questions presented by the Board of Health.

Mr. Morris suggested that Mr. Moynahan start the cleaning process by approaching the outside of the house, brush, grass etc. Mr. Moynahan stated that after his parents passed away his brother would always mow the lawn. Mr. Moynahan stated that his brother has since stopped mowing the lawn. Robin Blair O.D. inquired as to the time frame from when his brother last mowed the lawn to present. Mr. Moynahan stated, "It's been years". Doctor Blair inquired as to why Mr. Moynahan didn't continue mowing the lawn after his brother stopped. Mr. Moynahan replied, " He doesn't believe in power lawn mowers. They're not good for the environment. The length of the grass is perfect the way it is now."

Mr. Morris passed around a few pictures of the house located at 182 Storey Avenue for the B.O.H. members to review. After reviewing said photo(s) Susan Beluk M.D. suggested that the photo(s) of his home be viewed by Mr. Moynahan so that he could provide comment as to each area. Mr.

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Moynahan, after careful examination of the photo(s) confirmed that the pictures were in fact pictures of his home. Mr. Moynahan stated, "he had no idea how his house got this way." He repeated the phrase again, "He had no idea how his house got that way".

The following points pertaining to the photo(s) were pointed out to Mr. Moynahan:

- A. Numerous coffee cups
- B. Sheet Music
- C. Empty Bags
- D. Empty Coffee Cans
- E. Documents
- F. Tubs of Mail
- G. Boxes of computer software

Mr. Morris advised Mr. Moynahan and the Board that you needed room to maneuver around your house. This is room Mr. Moynahan does not have with all the clutter. Mr. Moynahan stated that the above is used for storage only. Each piece plays an important part in his life.

Robin Blair O.D. asked Mr. Moynahan if he had considered moving. Mr. Moynahan stated this house is his old homestead. His parents lived there. He grew up there. No, he will not sell.

Susan Beluk M.D. advised Mr. Moynahan that unfortunately, he was violating State Sanitary Codes and a Clean -Up Action Plan must be put into place.

Mr. Morris advised Mr. Moynahan and the Board that he would make contact with Mr. Moynahan the following week for a compliance schedule.

Both Susan Beluk M.D. and Doctor Blair reassured Mr. Moynahan that the Health Department is on his side and we're here to help me. Doctor Blair pointed out to Mr. Moynahan that this is his family homestead that could go up in flames if care is not given. This meeting is for your protection, not your persecution.

Mr. Moynahan stated that originally he was afraid to attend the meeting for fear of his home being taken away. Now he feels pleased to meet with the Health Department and the Board of Health.

At this point in time Mr. Moynahan advised the Board and Mr. Morris of his telephone numbers where he could be reached:

617-268-1840 (landline Boston- answering machine)
978-465-0129 (182 Storey Avenue)

Mr. Morris stated that he will report back to the Board regarding this matter during the May B.O.H. Meeting scheduled for May 21, 2009.

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CROW LANE LANDFILL :

Mr. Morris advised all in attendance that the Crow Lane Landfill should be closed in 8 – 9 months. It will take 3 months to shape and final grade.

Mr. Klodenski stated he just found out that the Newburyport Board of Health and the City Council were not aware nor has a hand in the "Administrative Order" to be issued by Mr. Morris, the Director of Public Health. Mr. Morris advised Mr. Klodenski and the Board that the Board of Health has the right to rescind the "Administrative Order"

Mr. Chatfield stated that he believed the Board could not rescind the "Order".
Mr. Morris pointed out that anyone could seek an injunction.

Robin Blair O.D. expressed his concern and compassion to all the abutters of the Crow Lane Facility. Doctor Blair stated that he could not even begin to realize the problems and concerns of the abutters. Doctor Blair was empathic that the landfill must be closed immediately.

Robin Blair O.D. pointed out to Mr. Klodenski that the Board of Health was not turning over control to New Ventures, LLC, Mr. William Thibeault, President. The Health Department and the Board of Health will be constantly monitoring the Crow Lane Landfill.

Mr. Klodenski wanted to know if the Board was aware that the materials coming into Crow Lane will be transported from Everett. There is a high probability that the materials will contain gypsum.

Mr. Morris advised the Board that yes, the materials will most likely be coming from Everett. However, gypsum is not allowed in C & D materials. Mr. David Madden, Health Agent will be overseeing the trucks coming into the Landfill. We should have roughly 1,170 trucks with C & D material coming in.

Mr. Klodenski questioned the height of the landfill. Mr. Morris stated that New Ventures, LLC never exceeded the vertical height, but did exceed the lateral height.

Doctor Blair inquired about the following:

1. Is the Noisome Trade still in effect? Yes, per Mr. Morris
2. Is the flare in place, working correctly and be monitored? Yes, per Mr. Morris

Mr. Chatfield expressed his concern over the flares operation. He stated no one has been monitoring the flare.

Susan Beluk M.D. stated the following:

- A. We are here to help you not hinder you
- B. Mr. Madden will be monitoring the landfill daily
- C. Within the past year the odor has not been as bad as in the past. Minimal at best
- D. Until the arrival of Mr. Morris the landfill was in chaos. No organization. No monitoring. No reports. No meetings. No communication between the City and the abutters.
- E. We have the Noisome Trade
- F. We ALL need to have closure and breathe fresh air

Both Mr. Klodenski and Mr. Chatfield agreed with the above points addressed by Doctor Beluk. It has been better since the arrival of Mr. Morris.

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Mr. Klodenski pointed out to the Board that the City Council will not approve of the "Administrative Order".

Mr. Chatfield reminded everyone of the HCA (Host Community Agreement). Doctor Beluk pointed out that the HCA was first drafted when the previous Health Director, Mark Tolman was here. Doctor Beluk stated that we all know the HCA is similar to swiss cheese, it has holes in it. This is past history which we cannot revisit. Mr. Morris agreed with Doctor Beluk that Mr. Tolman was here for during the start up of Crow Lane and the development of the HCA. But, just as Doctor Beluk stated that's past history and we can't revisit.

Mr. Jones suggested a public hearing before the "Administrative Order" was signed.

Mr. Morris advised all in attendance that the Mayor is working on the 21E issue. Mayor Moak is in the process of signing an agreement with New Ventures, LLC that states the company will not sue the City under 21E contamination regulations in exchange for capping the landfill. By signing this agreement paves the way to file an "Administrative Order" which will then instruct New Ventures to cap the landfill according to the terms set by the DEP.

COMPOST FACILITY :

Mr. Klodenski handed out numerous information pertaining to the Compost Facility located on Crow Lane. Mr. Morris advised all to locate "Option #2" which is what we are going with. Keep the Compost Facility at the existing location with the following alterations:

- Move leaf and grass drop-off to the west of the facility on the other side away from residents
- Impose accurate volume limits that will be monitored by the City and Agresource
- Remove leaves and grass within a two-week period once those limits are reached.
- Assess adequate permit fees to cover costs
- Develop operating plan with DPW on leaves from street sweeping
- Continue education on benefits of home composting

Doctor Beluk agreed that we should stay with "Option #2".

Mr. Klodenski thanked Molly for all her hard work at the compost facility. However, by using "Option #2" that does not address the wet lands issue. The Compost Facility does not comply with the State guidelines in the location. Mr. Morris agreed that we are not in compliance. It could in fact cost upward to \$10K to have an engineer compile a study and we still may not be in compliance.

Mr. Chatfield wanted to know if any composting was happening at the facility. Mr. Morris referred to "Option #2" of the hand-out. Mr. Chatfield suggested that you refer to "Option #3" – Relocate Facility in Newburyport. Develop a committee to plan and review all options for relocating the existing compost facility to another location in the City. Included in that review would be DPS on Perry Way as suggested by Mr. Chatfield. Mr. Chatfield wanted to know if the Health Department had investigated "Option #3". Mr. Morris and Molly Ettenborough stated that they had not had a chance to look that far into it. Doctor Blair stated that he would take "Option #3" under advisement. Doctor Blair also stated that we implement "Option #2" and work on "Option #3". Mr. Chatfield also stated that if we moved from "Option #2" to "Option #3" the City would make more money. Brian Derrivan, Councilor for Ward 5, recommended that the B.O.H. pursue "Option #2" and look into "Option #3".

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REGIONALIZATION:

.... Morris advised the Board that he has attended several meetings with Amesbury and Salisbury representatives discussing regionalization. Doctor Blair asked Mr. Morris if he was working in Amesbury and Newburyport right now. Mr. Morris replied, "No". Doctor Blair stated that there's a lot of misinformation out there. Mr. Morris advised the Board that Amesbury and Salisbury will be paying a certain % of our (Director / Admin Asst/PHN) salary in addition to a % of our Health Benefits. We (Newburyport) will be the administration unit. Mr. Morris also stated that the Admin Asst will be moving into a separate office which will be extremely helpful during the regionalization as it will allow privacy and the ability to focus clearly on the additional two communities. Mr. Morris also stated that the regionalization will go into effect 07/01/09.

Meeting adjourned: 8:55pm



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4A
Fax Cover Sheet

Date 16 MARCH 2009

Number of pages 4 (including cover page)

To: JOHN MORRIS
Name HEALTH DEPT.

Company CITY OF NEWBURYPORT

Telephone _____

Fax 978 465 9958

From:

Name G.F. MOYNAHAN

Company SELF

Telephone 978 465 0129

OR 617 268 1840

Comments _____



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RECEIVED

MAR 16 2009

CITY OF NEWBURYPORT
HEALTH DEPARTMENT

Gerald F. Moynahan
Apartment No. 13
376 West Fourth St.
South Boston, MA 02127

DELIVERED ON MONDAY MORNING, 16 MARCH VIA FAX TO 978-465-9958

Friday, 13 March 2009

Mr. John Morris
Director of Public Health
Health Department
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

Dear Mr. Morris:

In preparation for the hearing scheduled on Thursday, 19 March before the Board of Health concerning the Order to Vacate my property at 182 Storey Avenue served upon me by your letter of 07 October 2008:

I hereby request that I be provided with a legible and unredacted copy of each and every document, record, letter, report, memorandum, communication, or other document or record in the possession of the Board or available to it from any other City of Newburyport municipal entity that is in any way related, whether directly or indirectly, to this matter.

This request includes without limitation or exception:

1. any and all complaints and other communications received, whether written or oral, regarding the property at 182 Storey Avenue or regarding the property owner or regarding me personally, noting from whom, when, where, how, and by whom received and any responses or memoranda made in response, and when and by whom made;
2. any and all responses made to these communications and any memoranda or any other document created in response to them;

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3. any and all records of visits to the property and inspections thereof, in any form whatsoever, whether written, photographic, aural, or other;
4. all letters allegedly sent to me and returned undelivered; and
5. any other record of any sort, without exception or limitation, in any way related to the property at 182 Storey Ave, to the property owner, or to me personally, including without exception or limitation (a.) any and all records of attempts to contact me by any means whatsoever, and (b.) of any and all records of attempts made to ascertain my whereabouts or state of well-being, including without exception or limitation any communication made to the Newburyport Police Department or to any other police or investigative agency or any other entity, whether governmental or private.

I intend to maintain and argue that any record with which I am not provided does not exist, since the preceding is, and is to be interpreted as, a blanket request for a copy of each and every document and record, of whatever sort and in whatever form and wherever located, that in any way is related to this present matter, whether the document is related to the property itself, or to the property owner, or to me personally, all without any limitation or exclusion or exception.

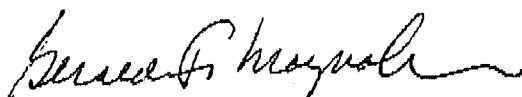
I hereby request that these documents be made available in a sealed package containing additionally an inventory of the documents provided therein, for my collection at the Board of Health during regular business hours as soon as possible, but in no event later than 3 pm on Tuesday, 17 March 2009, in order that I may have time to review them and consult with any involved parties prior to the hearing scheduled on Thursday, 19 March 2009.

At this time I expect that I shall, unfortunately, be representing myself ("pro se") at this hearing, since to date I have been unable to obtain counsel that I can afford. I had, of course, anticipated that my counsel would obtain these documents.

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I look forward to being able to collect the aforementioned sealed package with inventory of its contents no later than 3 pm on Tuesday 17 March 2009; although, given the exigencies of public transportation from Boston, it may possibly be later than that when I actually arrive to do so.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gerald F. Moynahan", written in dark ink.

Gerald F. Moynahan

P.S. I would appreciate receiving notification when the aforementioned package of documents is ready for collection by telephone at 978.465.0129 and/or 617.268.1840. Please note that I must leave my residence by 12 noon in order to arrive at the Board's offices before 4 pm.



4 B

Fax Cover Sheet

Date 18 MARCH 2009

Number of pages 5 (including cover page)

To:

Name BOARD OF HEALTH

Company City of Newburyport

Telephone _____

Fax 978.465.9958

From:

Name G.F. MOYNAHAN

Company SELF

Telephone 978.465.0129

OR 617.268.1840

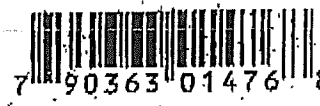
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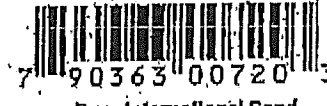
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Gerald F. Moynahan
Apartment No. 13
376 West Fourth St.
South Boston, MA 02127

DELIVERED 18 MARCH 2009 VIA FAX TO 978-465-9958

Wednesday, 18 March 2009

Board of Health
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

Dear Board Members:

I am very sorry to inform you that I cannot appear at the Board's meeting Thursday evening.

I had fervently hoped for an amicable discussion of all of the relevant facts, and that this entire -- to me very frightening -- matter would be resolved by the end of the meeting. Indeed, I have a long-postponed plane ticket to Ireland on 31 March. But I cannot appear for such a hearing without the knowledge of the facts which the documents I requested on Monday would have at least have begun to give me.

Unfortunately my request for these factual documents has been met with nothing more than the provision of a series of letters, delivered and signed for by me beginning with the letter of 07 October 2008, all of which I therefore obviously already have, and undelivered and returned to sender prior to 07 October 2008, which I obviously never received, all stating substantially the same assertions and claims, but without one single piece of corroborating factual documentation whatsoever.

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Instead of the documentation requested, I have now been provided with two additional copies of the letter of 07 October, despite the fact that my receipt of two copies of that letter had already been acknowledged six months ago.

Plus a large number of certified mail returns marked as "unclaimed," and copies of those letters the Department was aware I never received (although one of them begins "As you are aware, the Newburyport Health Department has notified you etc.)).

But absolutely nothing that I have been provided with is factual documentation which I requested; it in no way adds anything to my totally insufficient knowledge of the facts. (Beyond my now learning that ever more serious and threatening letters for some reason continued to be addressed to me at 182 Storey Avenue even after the sender had been notified by the Post Office that it had been so long since any mail was delivered to that address that the forwarding period had long ago expired.)

During this entire period my other published addresses and my five published telephone numbers -- one of which appeared in every Newburyport telephone directory printed since at least 1964 through mid-April 2008 -- were publicly and clearly available on the web by an elementary-level Google search for "Gerald F Moynahan" in the country "United States." And the local telephone company's information service had three telephone numbers for me, along with my South Boston address. Moreover, the City of Newburyport had officially been notified of one of my two new addresses months before, in early February 2008, when the City Census form was forwarded to me with the Postal Service notation: "Sender Notified of New Address." And the City Water Department sent mail to that "new address" as early as April 2008.

Yet the series of ever more ominous and threatening certified letters continued to go out from the Health Department to 182 Storey Avenue; and I was declared to be "unresponsive" to these letters even though the Department knew I had never received them, since they were returned to it as "unclaimed."

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That, unfortunately, is all I have learned factually from the materials provided in response to my request.

And this, unfortunately, is a totally insufficient factual knowledge with which to approach a very serious and complicated hearing.

I still know nothing about the factual and legal basis for the repeated assertions and claims, as well as for the forced entry and search of my house: I have only the assertions and claims themselves, repeated again and again in unreceived letter after unreceived letter, but never documented.

Therefore I respectfully request that the Board grant the two requests that I hereby explicitly and officially make of it:

First, that this hearing be postponed at least until its May meeting; and

Second, that the Board direct its employees to supply me as soon as is legally required with the factual materials and documentation I have requested and which I need to prepare for that hearing.

Very truly yours,


Gerald F. Moynahan

P.S. I respectfully request that the Board please see my letter of 13 March, delivered by fax on 16 March, and my two letters of 16 March, delivered by hand on 17 March.

I had assumed that all materials relevant to the hearing would certainly, by two days before, have been gathered in one folder or place, and that it would have been simply a matter of photocopying those materials and providing those photocopies for my collection.

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Then I could be prepared for the hearing by knowing what factual documentation was to be adduced in support of the various claims and assertions that had hitherto been undocumented and unsubstantiated to me.