

Fairhaven Board of Health
Monday, August 10, 2020 – 4:00 pm

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TOWN CLERK

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Present: Chairperson, Peter DeTerra; and Board Members Mike Ristuccia and Geoff Haworth all attended in the Town Hall Banquet Room. Interim Health Agent, Sarah Dupont, and Town Counsel, Tom Crotty, were in attendance. Members of the public were also in attendance via the Zoom platform.

FAIRHAVEN,
MASS.

1. Call to Order:

Mr. DeTerra called the meeting to order at 4:00 pm.

2. Welcome and Media Notification:

Mr. DeTerra read off the notice regarding Gov. Baker's statements in regard to remote meetings still serving as public hearings and fulfilling Massachusetts Open Meeting Laws. Mr. DeTerra said that the meeting was open to the public, but there would be no public comment.

3. Minutes of Previous Meetings:

Mr. Haworth stated that the Interim Health Agent just got access to the computer this afternoon, so she was just able to send the minutes out to us, so I haven't had a chance to review yet. He asked to postpone the minutes until next meeting. Mr. DeTerra asked Mr. Ristuccia if he had seen the minutes and he said that he had just seen them for the first time. Mr. Haworth made a motion to postpone the minutes to the next meeting. Mr. Ristuccia seconded the motion. The motion passed unanimously.

4. Health Agent Report:

Ms. Dupont stated that since the last Board meeting on Thursday, she has gained access to all of the computer files on her own personal computer and that she doesn't have access to the other computers in the office yet. Ms. Dupont also stated that she cannot use the iPad yet because she is lacking the passcode. She also has received keys to the filing cabinet today. Mr. DeTerra asked Ms. Dupont if she has access to the computer in the middle of the office; she stated that she does not, but she has access to all of the shared drives. Mr. DeTerra stated that there are 2 computers you do not have access to, and Ms. Dupont said correct. Mr. Haworth asked Ms. Dupont if she still does not have access to the iPad to do inspections with. Ms. Dupont confirmed this. Mr. Haworth asked if this is the one that the department is spending \$2400+ a year for the software for, and Ms. Dupont confirmed this. Mr. Haworth stated that the Board needs to address this. Mr. DeTerra agreed. Mr. Haworth stated that she needs to be able to perform inspections with this device. Mr. DeTerra said that the Board would need to send a letter or give a call to get the passcode. Mr. Haworth elaborated that it is a leased iPad to the town with software for the Town to do inspections. Mr. Haworth stated that, with the permission of the Board, he would like to handle this with Ms. Dupont over the next day or two. Mr. DeTerra and Mr. Ristuccia agreed with this.

5. COVID-19 Update:

Ms. Dupont stated that the new numbers had not been released as they are released by the state on Wednesdays by 4:00 pm. She reiterated the numbers she had at the meeting on Thursday August 6, 2020. Ms. Dupont stated that the total number of positive tests (within the past 14 days) is 2, that the total case count for the year is 247, and that we are seeing a decrease in cases. Ms. Dupont also stated that the free COVID-19 testing, located in New Bedford and Fall River, has been extended until September 12th and that information on this can be found at mass.gov and that she is working on getting that information on our website. Ms. Dupont also stated that on Friday Gov. Baker announced that outdoor gatherings are to be capped at 50 people and indoor gatherings are still to be capped at 25 people. Mr. DeTerra asked if the Board had any questions on that. Mr. Haworth stated that he knows the office is receiving a lot of complaints about people not wearing masks and gatherings and that he knows that Ms. Dupont is following up on them as fast as she can. Mr. Haworth said that he has done a few checks for her. Mr. Haworth stated just so the public is aware that the Board and the Agent herself are trying to follow up on the complaints as quickly as they can. Ms. Dupont said that people can expect to hear from her later this week. Mr. DeTerra said that he and Mr. Haworth have done some inspections and that they are all working together.

6. Pay Rate Discussion Interim Health Agent:

Mr. DeTerra asks the Board if they had voted on this before. Mr. Ristuccia said that yes, they had voted on it but there seems to be some holdup on it. Mr. DeTerra asked what the holdup is; Mr. Ristuccia stated that the town administrator does not want to allow the pay rate and Mr. DeTerra replied that the town administrator hadn't really given a reason why. Mr. Haworth stated that the Board hired Ms. Dupont and agreed upon a pay rate and that it is bad bargaining on the town's part not to uphold what she has been told since day one. Mr. Haworth stated that Ms. Dupont told him that her paycheck was not correct last week and that even though she started on the 20th of July she has only been paid for since the 28th on. Ms. Dupont confirmed that she was not paid for her first week of work and that she had been paid for her second week of work but her pay stub did not reflect the pay rate the Board had voted on. Mr. Haworth stated that it is his opinion that the Board take a vote so that it is recorded properly that Ms. Dupont has been working since the 20th so she is paid for all of the time she has worked and at the rate the Board negotiated with her. Mr. Ristuccia asked Ms. Dupont the date she started, and she confirmed that it was the 20th of July. Mr. Ristuccia and Ms. Dupont then confirmed she was officially appointed on the 28th of July. Mr. DeTerra reiterated that the Board had voted on pay rate 17-3 at the meeting on July 28th. Mr. Ristuccia stated that he has investigated this on his own and that there is an amendment that clearly states the Board of Health has the ability to set wages, hire, fire without any interference from anybody as they're autonomous. Mr. Ristuccia added that this amendment also went on to say that any municipal bylaw that states otherwise is invalid according to the state constitution, so he is unsure why this is a discussion. Mr. Ristuccia went on to state that he spoke with someone who works for the state twice (Friday and today) to confirm this. Mr. Ristuccia said that a vote is great but that should

be the end of this discussion. Mr. DeTerra stated that if you want good employees you need to pay them and that he feels pay 17-3 is appropriate for someone with a Master's in Public Health. Mr. Ristuccia stated that the town has not had an agent who holds a Master's in Public Health before. Town Counsel stated that there appears to be two issues (1) the pay scale and (2) the date of hire. Mr. Crotty recommended that the Board vote to make the appointment of Ms. Dupont retroactive to July 20th. Mr. Crotty stated that the town has a personnel bylaw that states the personnel board, now the town administrator, establishes the pay scales and can establish policies for hiring out of scale for various factors. Mr. Crotty stated that if there is another provision of law that states otherwise that they can look into it. Mr. Ristuccia stated that Mr. Rees offered a compromise on the pay and offered 17-2. Mr. DeTerra stated that he has a problem with Mr. Rees going other Board members and not the chairman and that he is not following protocol here. Mr. Haworth stated that he feels that Ms. Dupont was hired at a certain pay rate, that she agreed to work at that pay rate, and that was negotiated with her. Mr. Haworth elaborated and stated that he does not think that it is fair for anybody to change that rate after she's already worked. Mr. Ristuccia agreed. Mr. Haworth motioned to retroactively move Ms. Dupont's hire date to July 20, 2020 as the Interim Health Agent and I still feel it should stay at 17-3. Mr. Ristuccia seconded the motion. The motion passed unanimously. Mr. Ristuccia told Mr. Crotty that he would email information to him and again stated that it had been confirmed by the state. Mr. Haworth stated that he just wants to see this resolved as quick as possible. Mr. DeTerra stated that if you work you should get paid.

7. Personnel Discussion: Mary Freire-Kellogg:

Mr. Ristuccia asked if the Board would be discussing this in open session. Mr. Crotty stated that he believes one of the issues with Mary is what the status was in regard to leave. Mr. Haworth stated that he was told today via email that she has been on FMLA since July 17th. Mr. Crotty stated that there is a meeting tomorrow between himself, Attorney Beauregard, John Markey, Mark Rees, and probably Dan Freitas. Mr. Crotty stated that he hopes to resolve some of the issues that have been lurking around. Mr. Crotty stated that running the Health Department should be concern number one and that the personnel issues are undermining that work. Mr. Crotty stated that item #1 that he will talk about with the Attorney for Mr. Shea will be getting the passcode and the information for Ms. Dupont to get into the iPad. Mr. Crotty asked for a chance to work on the personnel issues, whether it is employees coming back to work or new employees coming in. Mr. Crotty suggested having a Board member authorized to work on these things individually and have that person report back to the board because waiting for meetings can become cumbersome. Mr. Crotty asked Ms. Dupont to call him tomorrow so he can find out what things she needs, and Ms. Dupont confirmed that she could do this. Mr. Ristuccia agreed with Mr. Crotty but also stated that he has been screaming for these things since the 3 or 4 days into his time on the Board. Mr. Ristuccia also discussed absenteeism of staff and the length of time to get the Interim Health Agent items like keys to the filing cabinet. Mr. Ristuccia stated how Ms. Dupont has not had an administrative assistant in the office and has been responsible for the

responsibilities of both jobs. Mr. Ristuccia stated that he feels his screams have not been heard, that for the welfare of the people in the town of Fairhaven let's get it so the Health Department runs as it should, and that he is frustrated beyond frustration. Mr. Haworth stated that he is trying to catch up and see what is really going on, to determine the successes and failures of the department. Mr. Haworth also stated that he has not seen any of the medical documentation, and that maybe this could be discussed in executive session. Mr. Haworth stated that we need to move forward, that we have more important things going on COVID, EEE, and continuous complaints, and that the Board can't continue to be bogged down with personnel issues. Mr. Haworth also stated that if this is not resolved quickly the department will continue to spin its wheels and go nowhere. Mr. Ristuccia agreed and stated that the people in town are the ones who lose. Mr. Ristuccia stated that he feels he has offered reasonable accommodations to people in the department many times. Mr. Haworth suggested moving on from this discussion and taking it up in executive session because Ms. Freire-Kellogg is not here nor is her lawyer. Mr. Haworth read the letter the Board received from Attorney Beauregard. Mr. Crotty suggested that Mr. Haworth obtain documents from the Board. Mr. Crotty did not recommend going into executive session as it could expose the Board to liability and potential litigation. Mr. Ristuccia said that until 20 minutes ago he was not aware that Ms. Freire-Kellogg was on FMLA and that last meeting Attorney Beauregard got angry and said she was not on sick leave. Mr. Crotty said he would address this tomorrow. Mr. Haworth asked who would represent the Board tomorrow and stated he would be willing to go if the others were not going. The Board determined that Mr. Haworth will represent the Board tomorrow at 3:00 pm via Zoom. Mr. Crotty said that IT staff would put the link together. Mr. Ristuccia said we need a resolution within the next few days.

8. Invoices/Other Business:

The Board members signed an invoice.

9. Next Meeting:

Mr. DeTerra stated that he will work on scheduling another meeting.

10. Executive Session, Personnel Discussion: Mary Freire-Kellogg:

The executive session did not occur.

11. Adjourn:

Mr. Ristuccia motioned to adjourn, and Mr. Haworth seconded the motion. The motion passed unanimously. Mr. DeTerra adjourned the meeting at 4:39 pm.