

## Ware Board of Health Meeting Minutes

October 19, 2022 / Conference Room

Present: John Desmond, Katrina Velle, Jennifer McMartin

In Attendance: Andrea Crete, Betty Barlow, Stuart Beckley

John called the meeting to order at 6:00 PM and announced the meeting is being audio recorded

### **APPOINTMENT – None**

### **DISCUSSION/ACTION**

Madison Wellman of RCAP Solutions is present to talk about the Coalition of Safe Drinking Water. Madison passed out the **attached** flyer and explained RCAP Solutions as a community development non-profit organization based out of Worcester operating in MA since 1969. They are advocating for Massachusetts to adopt legislation that would empower the department of environmental protection to create standards for well water quality and testing. They are not advocating for what the standards should be, just that there should be standards. They are trying to get as many town Boards of Health behind them as they can. Jennifer questioned what happens when they do find contaminants in the private well. Madison stated they do have funds available to assist homeowners with low interest loans. He also stated their legislation includes setting funds for this purpose. Madison states the coalition is not legally binding in any way and they are only hoping to add the town name and seal to their website and some of the articles, possibly a banner, where they list their supporters. Not asking for any money or to change the towns laws or adopt new regulations. Andrea talked about Belchertown and Pelham updating their well regulations and suggests Ware should adopt well regulations, could just use DEP model regulations if preferred but joining this coalition does not require the town to have it's own regulations. John asked Madison if he had a written statement of what the coalition is asking for which Madison does not at this time but will forward one to them

ReSource Waste official withdrawal of their application to go from 750 tons per day to 1400 tons. John spoke with town counsel Jeffrey Blake and the tone of the email from ReSource attorney which Blake agreed. John informed the board that Blake responded to the ReSource Waste attorney and provided them with a copy of the email which **is attached**.

John also wants to talk about the Host Agreement. Jennifer stated she thought in past Host Agreements other departments weighed in on it not leaving it totally to the select board and questions why this agreement was not handled the same. John stated that since this Host Agreement has been drawn and ReSource has withdrawn he questioned board how they would feel about sending a letter to the selectmen requesting that they set a Host Agreement for the existing 750 tons per day. Jennifer questions if the selectmen reach out to the business requesting an agreement or if the business typically reaches out to the selectboard but John feels the selectboard has every right to approach the business for an agreement. John feels the selectboard should ask ReSource to set a Host Agreement for their now permitted 750 tons per day and when, or if, the modification is approved, extend the agreement to include the 1400 tons per day. Jennifer stated she doesn't even like the Board of Health discussing the Host Agreement as it is not the roll of the Health Department. Jennifer stated she is not comfortable with discussing the host agreement. Katrina questioned the mention of bulky waste on the

agreement and also on ReSources website yet they are not permitted for bulky waste so who oversees that? Andrea will research this more and share whatever information she can find.

John motioned to approved meeting minutes of September 21, 2022 and October 7, 2022, Katrina seconded, all in favor.

John discussed the Quabbin Health District 2023 budget. He states that Ware's assessment was 168,322.42 yet Stuart estimated Ware's assessment for 2022 at approximately 172,000.00 which was approved in towns budget so for the district 2023 budget it could go up to 172,000.00. Andrea states she was hoping to save the towns a little money with the district budget and she made a correction to her proposed budget in regards to the retirement and consultation and she added a line item for public health nursing supplies that are not covered with the grant. By making these changes the Ware proposed assessment is now at 170,249.99. John feels this is better as it is closer to the previous year budget, closer to being level funded. Andrea emailed the revised district budget to all board members this morning.

Andrea informed the board of a new construction septic design being approved in error in September 2021 for a 3 bedroom house at 46 Horseshoe Circle. This is a 0.3788 acre property. Perc test was completed in 2015. The issue Andrea recently came across is that it was designed for 3 bedrooms, house now already built but septic not yet installed is that in Title 5 being less than an acre requires nitrogen loading limitations. With nitrogen loading it limits the design flow and for a piece of property this size, it doesn't allow for a 2 bedroom house. The engineer should have known the requirements of the Code. Now there is another lot on a nearby road for sale about the same size and the realtor knows about 46 Horseshoe being a 3 bedroom home. The realtors client wants to also install a 3 bedroom home on their lot. Andrea feels moving forward when a septic plan comes in for a 3 bedroom home on property less than an acre it will need to meet full compliance with the State Sanitary Code Title 5 or she will have to deny the permit. Andrea just wanted to give board warning that if this comes up in future and her denied permit is questioned, she may have to tell them they could partition the board for a variance so then it would be up to the board to allow it or not. Allowing a variance to new construction could set a precedent with the Board which is discouraged. In regards to 46 Horseshoe they may need to rescind the permit, have it redesigned for 2 bedrooms which means they may have to remove a wall otherwise they could just let 46 Horseshoe go as approved a year ago but going forward be careful to not let this happen again. John suggests Andrea contact state to see if they have any recommendations of how this should be handled.

## **DIRECTORS REPORT**

Andrea updated board on covid 19 and monkey pox. See [attached](#) report.

John motioned to adjourned at 7:44 PM, Katrina seconded all in favor. Next meeting to be November 16, 2022 at 6:00PM

Respectfully Submitted,  
Betty Barlow

Meeting minutes approved 11/16/2022





**YOU CAN MAKE  
A DIFFERENCE  
IN ENSURING ALL  
MASSACHUSETTS  
RESIDENTS HAVE SAFE  
WATER TO DRINK!**

## ABOUT THE COALITION

The Coalition for Safe Drinking Water is a group of diverse individuals and organizations advocating for equitable access to safe drinking water for private well homeowners across Massachusetts.

Led by RCAP Solutions and The Health Foundation of Central Massachusetts, the goal of this grassroots effort is to effect change by moving the state legislature to enable the Massachusetts Department of Environmental Protection (MassDEP) to enact sensible, health-based regulations for private wells and to offer financial resources for homeowners who discover contaminants in their well water.



Unlike with public water systems, there are currently no statewide regulations to ensure private well water is safe from contaminants like PFAS, arsenic, radon, and more. This problem can be solved, but it will take leadership from community advocates, non-profit organizations, legislators, and others.

## HOW TO JOIN

You can join the Coalition as an individual or as an organization by scanning the QR code or visiting the link below and completing the interest form.



<https://bit.ly/CoalitionInterest>

## WANT MORE INFORMATION?

Visit [WhatsInYourWellWater.org](https://WhatsInYourWellWater.org) or contact:

Madison Wellman, *Coalition Manager*  
[mwellman@rcapsolutions.org](mailto:mwellman@rcapsolutions.org) • (774) 239-9783





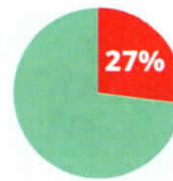
# WHY ARE STATEWIDE PRIVATE WELL REGULATIONS NEEDED?

## CURRENT LACK OF REGULATIONS IN PRIVATE WELLS

Article 97 of the Massachusetts Constitution established “the right to clean air and water”, yet over half a million households who rely on private wells may not know if their drinking water is safe from contaminants.



Unlike with public water systems, there are currently no statewide regulations to ensure private well water is safe. Individual Boards of Health have the authority to develop local regulations, but many are outdated or nonexistent.



## PRIVATE WELL PROGRAM UNCOVERS CONTAMINANTS

In 2021, we conducted 240 well water tests across several Massachusetts towns. We found that **~27% of wells had levels of contaminants exceeding state health standards and/or suggesting potential health risks.**

In addition, MassDEP's ongoing PFAS Private Well Testing Program has found that **~5% of households had PFAS levels exceeding state health standards.**



## BOTTLED WATER IS NOT AN APPROPRIATE SOLUTION

Many people who discover contaminants in their wells resort to drinking bottled water, which is expensive. Plastic also harms the environment; 80% of plastic water bottles used in the United States end up in landfills.

## INEQUITY IN COMMUNITIES

Residents who live in municipalities with public water systems or with local private well regulations are more likely to have access to safe drinking water than residents who don't.



## HEALTH IMPACTS OF CONTAMINATED WATER

**PFAS IS IN PRIVATE WELLS TOO!**

Contaminant	Examples of Potential Health Risks
PFAS (forever chemicals)	Developmental effects in fetuses & infants. Effects on the thyroid, liver, kidneys, certain hormones, & the immune system.
E. coli	Gastrointestinal illness
Nitrate	Can cause death in babies younger than 6 months
Radon	Cancer
Total Coliform Bacteria	Gastrointestinal illness
Uranium	Cancer, kidney toxicity
Manganese	Neurological effects
Arsenic	Cancer, skin damage, circulatory system problems

## OTHER STATES WITH PRIVATE WELL REGULATIONS

Several other states (including Oregon, Rhode Island, and New Jersey) have sensible, health-based regulations for private wells. These states require private well water be tested for contaminants upon sale or transfer of a home. In addition, property owners must disclose the results of the well water test prior to the sale or transfer. **Let's add Massachusetts, with its 500,000 private wells, to the list!**



OREGON

Regulations Enacted: 1989  
Private Wells in OR: 350,000



RHODE ISLAND

Regulations Enacted: 2002  
Private Wells in RI: 48,000



NEW JERSEY

Regulations Enacted: 2002  
Private Wells in NJ: 400,000  
In addition, New Jersey requires different counties test for different contaminants in areas which have varying contamination concerns.



WhatsInYourWellWater.org



#WhatsInYourWellWater

## Barlow, Betty

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**From:** Krieger, Kirsten  
**Sent:** Thursday, October 20, 2022 12:46 PM  
**To:** Barlow, Betty  
**Subject:** Ware COVID information from 10/19/22

Ware:

% positivity rate 9/25/22 – 10/8/22 = 6.03%  
Hampshire County positivity rate 9/25/22 = 10/8/22 3.59%  
Massachusetts statewide positivity rate 9/25/22 – 10/8/22 = 7.87%

10/4 – 10/10 age <18 = 2 cases (1 vaccinated with 2 doses, 1 not vaccinated)  
10/11 – 10/17 age <18 = 3 cases (1 vaccinated with 2 doses, 1 not vaccinated)

10/4 – 10/10 age >18 = 17 (5 not vaccinated, 5 vaccinated 2 original doses, 7 w/ 2 original doses and at least 1 booster)  
10/11 – 10/17 age >18 = 23 (9 not vaccinated, 2 vaccinated 2 original doses, 1 vaccinated with one dose)

No Monkeypox cases in Ware during the current outbreak  
No other communicable disease outbreaks in Ware MA that have been investigated in last 2 weeks

*Kirsten L Krieger, RN, BSN*

Public Health Nurse  
Quabbin Health District  
Office: 413-967-9648 xt 112  
126 Main Street D, Ware, MA 01082  
[kkrieger@townofware.com](mailto:kkrieger@townofware.com)

*Serving the Towns of Belchertown, Pelham, and Ware*



John Desmond <jodes1314@gmail.com>

**Fw: Withdrawal of Site Assignment Modification Application - ReSource Ware**

2 messages

**Metcalf, Judy** <JMetcalf@townofware.com>

Fri, Oct 14, 2022 at 9:42 AM

To: John Desmond <jodes1314@gmail.com>, "Jennifer McMartin (jennifer.peterson@ymail.com)" <jennifer.peterson@ymail.com>, Katrina Velle <kvelle@umass.edu>

Good Morning,

Scroll down.

PS- I really don't understand the rhetoric and tone of Resource's attorney to the town attorney. It reminds me of the old adage

"If the facts are on your side, pound the facts.

If the law is on your side, pound the law.

If you have neither, pound the table."

Judy

**From:** Jeffrey T. Blake <JBlake@k-plaw.com>

**Sent:** Friday, October 14, 2022 4:40 AM

**To:** Metcalf, Judy <JMetcalf@townofware.com>

**Cc:** Beckley, Stuart <sbeckley@townofware.com>

**Subject:** Fwd: Withdrawal of Site Assignment Modification Application - ReSource Ware

**CAUTION:** This email originated from outside of the Town of Ware organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Judy

See below and attached. I can discuss today if you wish.

Jeff

Sent from my iPhone

Begin forwarded message:

**From:** Valerie Moore <VMoore@nutter.com>

**Date:** October 13, 2022 at 1:40:37 PM EDT

**To:** "Jeffrey T. Blake" <JBlake@k-plaw.com>

**Cc:** Michael Scott <MScott@nutter.com>, Arthur Kreiger <AKreiger@andersonkreiger.com>

**Subject:** FW: Withdrawal of Site Assignment Modification Application - ReSource Ware

Good afternoon Jeffrey,

In light of the Board's decision that it will not agree to extend the opening of the public hearing and the corresponding deadline to issue a decision to allow the applicant sufficient time to

address the Board's peer reviewer's comments, the Applicant has withdrawn its application at DEP and will re-file at a later date. Our withdrawal notice to DEP is below for the Board's records.

As this issue may resurface when we refile, I wanted to bring to your attention some background information on how the regulations concerning the deadline to open the hearing and to issue a decision have been applied in other cases. In our experience, extensions of both of these deadlines are routinely granted, including in the Southbridge matter which your firm participated in. In that matter, multiple extensions were granted, some contested, and others agreed to by all parties. In determining that the deadlines could be extended in that matter, the parties and the hearing officer relied on the case law interpreting the term "shall" as directory and not as a condition of the validity of the act. For example, in *Amherst-Pelham Regional School Cmtee. V. Dept. of Education*, 376 Mass. 480, 496-497 (1978), the Supreme Judicial Court holds that the term "shall" is directory, rather than mandatory where (a) it relates only to the time of performance of a duty, (b) the duty is done by a public officer, and (c) the duty does not go to the essence of the thing to be done. See also *Cheney v. Coughlin*, 210 Mass. 204, 211-212 (1909), *City of Boston v. Barry*, 315 Mass. 572, 577-578 (1944), and *Kiss v. Bd. of Appeals of Longmeadow*, 371 Mass. 147, 157 (1976). In the Southbridge matter, the Hearing Officer allowed some extensions of time even where they were contested because the term as used in the statute relates only to the time of the performance for opening the public hearing and issuing a written decision, the Board of Health is a public officer, and the essence of the thing to be done is to assign the site, not to open a public hearing or issue the written decision. Accordingly, the Board's refusal to extend the deadline, particularly where doing so was for the purpose of responding to the Board's peer reviewers to provide information the Board requested, is not consistent with precedent on this issue.

Our client is committed to growing its business in Ware and will be re-filing once it has updated its materials to respond to Tech Environmental. To that end, our consulting team would like to work directly with Tech Environmental in the coming weeks to ensure that our revised modeling addresses all of their comments. Please let us know if you are in agreement that the consultants may work together in the interim.

Thank you,

Valerie

**Nutter**  
uncommon law

Valerie Moore

Nutter McClennen & Fish LLP

Direct / 617-439-2233

From: Stephen Wright <swright@sanbornhead.com>

Sent: Thursday, October 13, 2022 12:40 PM

To: Hall, Daniel (DEP) <daniel.hall@state.ma.us>

Cc: Eva.Tor@mass.gov; Bob GollEDGE <bob@golledgestrategies.com>; John Farese <jfarese@resource-waste.com>

Subject: Withdrawal of Site Assignment Modification Application - ReSource Ware

Dear Mr. Hall,

On behalf of ReSource Waste Services of Ware (ReSource Ware), Sanborn Head is submitting this email to inform MassDEP that ReSource Ware has elected to withdraw the application for the *Site Suitability*

*Report for a Major Modification of Existing Site Assignment*, submitted to your office on June 30, 2022 (MassDEP Record No. 22-SW38-0001-APP) to allow the applicant sufficient time to respond to comments raised by the Board of Health. ReSource Ware is taking this action without prejudice and intends to file for the site assignment modification at a later date. In the meantime, we would like to express our appreciation to MassDEP for its efforts in reviewing the permit application and we look forward to working with you again in the future.

Very truly yours,

**Stephen E. Wright, PE**

Vice President

Licensed: PE in MA, NH

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**SANBORN | HEAD & ASSOCIATES, INC.**

D 978.577.1029 | M 617.548.6425 | 1 Technology Park Drive, Westford, MA 01886

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Jeffrey T. Blake <[JBlake@k-plaw.com](mailto:JBlake@k-plaw.com)>

To: John Desmond <[jodes1314@gmail.com](mailto:jodes1314@gmail.com)>, "Metcalf, Judy" <[JMetcalfe@townofware.com](mailto:JMetcalfe@townofware.com)>

Wed, Oct 19, 2022 at 4:59 PM

FYI

Jeffrey T. Blake, Esq.

**KP | LAW**

101 Arch Street, 12th Floor  
Boston, MA 02110  
O: (617) 556 0007  
F: (617) 654 1735  
C: (617) 990 6341  
[jblake@k-plaw.com](mailto:jblake@k-plaw.com)  
[www.k-plaw.com](http://www.k-plaw.com)

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**From:** Jeffrey T. Blake  
**Sent:** Friday, October 14, 2022 6:38 AM  
**To:** Valerie Moore <VMoore@nutter.com>  
**Cc:** Michael Scott <MScott@nutter.com>; Arthur Kreiger <AKreiger@AndersonKreiger.com>  
**Subject:** RE: Withdrawal of Site Assignment Modification Application - ReSource Ware

Valerie,

I understand your position regarding the import of "shall"; however, as I indicated to you in a call, I was involved in the Oyster Creek case that ultimately went to the SJC. The central issue there was whether the word shall was mandatory or directory. I argued, as you have that it was directory- we lost. Without any case law on this issue, I am not comfortable telling my client that you have the right to continue the matter despite the clear language of the regulation.

Be that as it may, I appreciate your position and will reach out to the BoH to make sure they are ok with the expert working together to get questions answered prior to the hearing.

Jeff

Jeffrey T. Blake, Esq.

**KP | LAW**

101 Arch Street, 12th Floor  
Boston, MA 02110  
O: (617) 556 0007  
F: (617) 654 1735  
C: (617) 990 6341  
[jblake@k-plaw.com](mailto:jblake@k-plaw.com)  
[www.k-plaw.com](http://www.k-plaw.com)

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