

The Fayette County Board of Health met on Tuesday, January 26, 2010 in Conference Room One of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Board of Health Members Present:

John DeCotis, PhD
Don Haddix
Lynette Peterson
Michael Strain, MD

Staff Members Present:

Glenda Bryant, RN, MN, FNP
Merle Crowe, BA
Jeff Kilgore

CALL TO ORDER: Dr. Strain called the meeting to order at 7:30 AM.

APPROVAL OF MINUTES FROM January 12, 2010: Ms. Peterson made a motion to approve the minutes as written. Mr. Haddix seconded the motion. The minutes were unanimously approved with no further discussion.

OLD/UNFINISHED BUSINESS / PUBLIC COMMENT:

Legal Easements:

Mr. Kilgore updated the board on the current standing of legal easement approval or disapproval for sewage systems in some of the larger metro counties in Georgia. Fulton, Dekalb, Gwinnett and Cobb counties were contacted. Mr. Kilgore also contacted Coweta, Spalding, and Henry counties to get their input. Fulton, Dekalb and Gwinnett counties do not allow legal easements for septic systems at all. Cobb County does allow them, as long as they are properly recorded and all sewage system requirements are met. There was no information on how long these regulations had been in place. Historically, legal easements have been allowed in Fayette County. Such easements must meet county building codes, after review and approval by Environmental Health. Mr. Kilgore checked with state authorities and found that although legal easements could be allowed under state guidelines, approval was discouraged; but there would be no objection on the part of the state if the county chose to grant them. The board thought that care must be taken when considering such nebulous statements from the state: there could later be a change in the way regulations are written which would make the county in violation of state law. For example, change of one word in a regulation could make it a requirement that Peachtree City's sewage system expand to the entire county, and even to potentially allow surrounding counties to hook into that system. Peachtree City does not want that to happen. Nebulous language and interpretation of state law can easily change *discretionary* to *mandatory*.

The board felt that there would need to be a good reason to grant a legal easement: for example, a home with no replacement area and which was going to be condemned due to a failing sewage system. There are some hi-tech sewage systems that might be an alternative, but such systems are expensive. The board would not be able to consider expense of replacement systems, any more than they consider the initial cost of the home.

The two cases discussed last meeting are already in the pipeline, and the board agreed that those cases have gone too far to be denied. There are other cases where staff foresees that legal easements will be requested, and it looks like a trend is being established. In the past, requests for legal easements were quite rare, because there was

plenty of buildable land. However, as the county has built up, contractors are attempting to build on marginal land. Builders make the assumption that legal easements will be granted, based upon how it has always been done. Requests for legal easements on adjoining property for marginal land are questionable, because the property next door is probably marginal as well. Since it has been the practice to approve site plans based on planned legal easements, all that can be done now is to tag the deed.

The language in a legal easement between two properties usually allows that a septic system can be installed on adjoining property, but usually does not state what condition the property will be left in once the system is in the ground. If a property owner grants a legal easement, s/he might not realize that enactment of that easement means that heavy equipment will come onto their property and dig it up. The owner might also not understand that the property is unavailable in perpetuity for his or her use, unless both parties agree to void the agreement, or the property affected by the legal easement is sold to the holder of the legal agreement. S/he might also not realize that the legal easement prohibits use of that area for replacement of his or her own sewage system, for installation of a pool, and so on.

The BOH can set policy and recommend ordinances to the Board of Commissioners (BOC), but does not have the authority to pass ordinances; that authority resides with the BOC. The BOH considered that it might be a good idea to create an ordinance to grandfather in any existing legal agreements and those in process, but that any further legal agreements should be denied, with no variances. The board felt that allowing variances would establish a precedent which could be dangerous, because if a precedent was set any legal challenge would probably win. Mr. Kilgore said that there is no real urgency with the current requests for legal easements, since one request has been in the pipeline for over a year.

The BOH directed staff to put these considerations into a letter to be given to the county attorney, once the chair approves and signs the letter. The letter should state that the board is considering granting requests for legal easements in process and denying any future legal easements, based on information presented at this meeting. The letter to the county attorney should ask for direction for the next steps the BOH should take to put such an ordinance in place, so that the BOH can make a final determination at the next meeting.

There was no Public Comment.

NEW BUSINESS:

There was no new business.

Staff Reports:

There were no staff reports.

ADJOURNMENT: Motion to adjourn was made by Mr. Haddix, seconded by Dr. DeCotis. The meeting was adjourned at 8:04 AM