



**CITY OF
MONTPELIER
MONTPELIER,
VERMONT**

Agenda for Special
Montpelier Board
of Health Meeting
Wednesday, May 19,
2010
06:30 P.M.

1. Call to Order by the Mayor
3. Workshop discussion with City Attorney regarding the conduct and procedure of the hearing.
4. Conduct Appeal Hearing. The Council issued a pre-hearing notice on May 12th outlining the scope of the hearing and expected testimony.
2. Consideration of convening as the Board of Health for the purposes of hearing the appeal of Steven & Barbara LaRosa of an administrative agreement between the Health Officer and Vermont Compost Company.
5. Consideration of entering into Deliberative Session under the provisions of 1 VSA 312 (e) and (f).
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William Fraser

To: Daniel P. Richardson; Karl Hammer
Cc: Gesualdo Schneider
Subject: Appeal of Health Agreement

Hello Dan & Karl

As you know, the La Rosa's filed an appeal of the Health Officer's determination that no serious health violation existed at Vermont Compost and the agreement that the Health Officer entered into with Vermont Compost. They stated their intent to appeal at the February 10th council meeting and followed up with a written summary of their concerns on March 17th. I believe that summary has been forwarded to you but I will send it again accompanying this e-mail.

I have not had any additional formal communication with the LaRosa's and, therefore, presume that it is their intent to proceed with the matter.

The purpose of this e-mail is to inform you that I am planning to schedule the hearing for this appeal on either May 12 or May 19. May 12 is a regular city council meeting date, May 19 would be a special meeting date. I am going to ask the council their preference at tomorrow night's meeting.

Bill Fraser

William Fraser

From: Daniel Richardson [drichardson@tmgvt.com]
Sent: Thursday, May 13, 2010 2:22 PM
To: William Fraser; SStitzel@firm SPF.com
Subject: Vermont Compost

Dear Bill,

My client requests that a site visit be incorporated into the hearing. As it is scheduled now for 6:30pm, we could schedule a site visit either prior to the procedural meeting or shortly thereafter and would still have enough sunlight. I have briefly reviewed the pre-hearing notice, and I believe, in light of the direction that the Council is taking this hearing, a site visit is even more important since the Council has framed the issue prospectively looking to whether VCC, if it acts in accord with the February voluntary compliance agreement, is causing or will cause a public health hazard. At the very least, they should know what the farm looks like today and what the compliance agreement looks like in action.

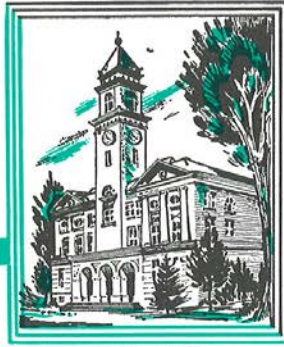
Please let me know when such a site visit can occur. My client will welcome the Board at any time.

Best,

Dan

Daniel P. Richardson
Tarrant, Gillies, Merriman, & Richardson
44 East State Street
P.O. Box 1440
Montpelier, Vt. 05601-1440
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CITY HALL

CITY of MONTPELIER *Vermont*

THE CAPITAL CITY OF THE STATE OF VERMONT

To: Montpelier City Council
From: William Fraser, City Manager
CC:
Date: 6/5/2019
Re: Documents provided for Hearing concerning VCC, Main Street Facility, Montpelier, VT

- Email from William Fraser to Karl Hammer, Steve LaRosa, Daniel Richardson, Steven Stitzel, Council and Gesualdo Schneider re: Pre-Hearing notice.5/13/2010
- Email from Daniel Richardson to William Fraser and Steven Stitzel re: Vermont Compost,5/13/2010
- Correspondence from Daniel Richardson to William Fraser, 4/14/2010
- Email to Daniel Richardson from William Fraser
- Email to William Fraser from the LaRosas,3/17/2010
- Agreement Concerning the Winter Receipt of Food Residuals at the Vermont Compost company's Montpelier Property, 2/5/2010
- Copy of The Vermont Statutes Online; 1 V.S.A § 312 Right to attend meetings of public agencies



CITY OF MONTPELIER, VERMONT

- THE SMALLEST CAPITAL CITY IN THE UNITED STATES -

Mayor Mary S. Hooper

City Council:

Tom Golonka
Andy Hooper
Sarah Jarvis
Jim Sheridan
Nancy Sherman
Alan Weiss

William Fraser,
City Manager
wfraser@montpelier-vt.org

Beverlee Pembroke Hill
Assistant City Manager
bhill@montpelier-vt.org,

Re: Inquiry Concerning VCC Main Street Facility, Montpelier, VT

Pre-Hearing Notice

This matter is before the City Council on the "appeal" of Barbara and Steven LaRosa, submitted by email on March 17, 2010, to address alleged issues concerning activities conducted by Vermont Compost Company ("VCC") at its Main Street facility in Montpelier, Vermont. Specifically, it is claimed that for a period of time, VCC has allowed food waste being processed at its Main Street facility to be transported off site by crows and other animals and deposited on the LaRosa property and the property of others. Ms. LaRosa asks "that the city create an agreement that has very specific timeline and consequential language that will assure the neighborhood is protected from the health risks posed by food waste transport off of VCC property."

The Council notes that authority to identify and address public health hazards and risks generally resides, in the first instance, with the Health Officer. In this case, acting under the authority of 18 V.S.A. Section 124 (Voluntary Compliance), the Health Officer has worked with VCC and entered into an "Agreement" in February of this year to address the issues mentioned in the LaRosa complaint ("February Agreement" herein). The Health Officer has not, as of this date, acted to seek issuance of a health order under 18 V.S.A. Section 126 or an emergency health order under Section 127.

Under these circumstances, the Council's role in this matter at this time is investigator in nature. The Council, acting as the local board of health, has authority to issue health orders. However, it can only do so upon issuance of notice to an alleged creator of a public health hazard or risk that there is reason to believe that condition(s) exist that warrant issuance of a health order. Accordingly, the Council will, on the basis of information it receives at the May 19th,

2010 hearing, determine whether to issue a notice of intent to seek a health order pursuant to 18 V.S.A. Section 126(c).

The Council is aware that events occurred over a period of time prior to execution of the February Agreement. These are, in large part, irrelevant to the matter now before the Council. The Council understands that the February Agreement provides for changed operating procedures at VCC. The issue before the Council is whether there is reason to believe, if operated in accordance with the February Agreement, the VCC Main Street facility is causing or will result in a public health hazard or risk. For this reason, in connection with its inquiry into this matter, the Council requests that it be provided the following information at the May 19th hearing:

1. For the Health Officer: Provide a general description of the conditions that the February Agreement with VCC is intended to address and what has occurred since execution of the Agreement.

2. For Vermont Compost Company: Comment on actions taken to implement the February Agreement and any further actions contemplated at this time.

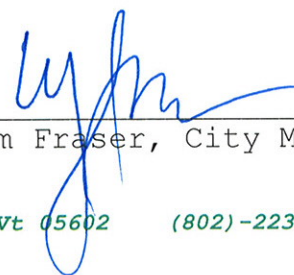
3. For Mr. and Mrs. LaRosa: Observations/comments on what has occurred since execution of the February Agreement. Comments concerning deficiencies, if any, in the February Agreement.

The Council intends to limit testimony to the matters identified above. However, if good cause is shown, it will consider allowing testimony on other, but related, matters.

Though the hearing will be investigatory in nature, the Council will conduct it in accordance with the requirements of 18 V.S.A. Section 128(a).

The Council has received a letter to William Fraser, dated April 14, 2010, submitted by Attorney Daniel Richardson on behalf of VCC. In substance, this letter objects to the Council's consideration of the "appeal" submitted by Mr. and Mrs. LaRosa on March 17, 2010. The Council believes that this notice disposes of the issues raised in this letter. However, the Council will allow VCC an opportunity at the up-coming hearing to address its April 14th letter if it so requests.

Issued on behalf of the Montpelier City Council this 12th day of May, 2010



William Fraser, City Manager

The Vermont Statutes Online

Title 1: General Provisions

Chapter 5: COMMON LAW; GENERAL RIGHTS

1 V.S.A. § 312. Right to attend meetings of public agencies

§ 312. Right to attend meetings of public agencies

(a) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under section 313(a)(2) of this title. A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met. A public body shall record by audio tape, all hearings held to provide a forum for public comment on a proposed rule, pursuant to section 840 of Title 3. The public shall have access to copies of such tapes as described in section 316 of this title.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and this information shall be available to any person upon request.

(2) The time, place and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be

given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher or news director of any newspaper, radio station or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 281 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7.)

TARRANT, GILLIES, MERRIMAN & RICHARDSON

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PAUL S. GILLIES
CHARLES L. MERRIMAN
DANIEL P. RICHARDSON

(802) 223-1112
FAX: (802) 223-6225

SARAH R. JARVIS

April 14, 2010

Hand Delivered

William Fraiser,
City Manager
City Hall, 39 Main Street
Montpelier, VT 05602

March 17, 2010 E-Mail from Barbara LaRosa

Dear Bill:

Thank you for your e-mail in regard to an "appeal" given to City Officials by Barbara LaRosa. The e-mail chain that you forwarded to me indicates that Ms. LaRosa filed this statement with the City on March 17, 2010, and that she wishes "to appeal" the agreement that the City of Montpelier entered into with the Vermont Compost Company on February 5, 2010, which was the subject of Chief Schneider's Report to the City Council presented on February 10, 2010.

With all due respect to Ms. LaRosa, Vermont law does not allow such an appeal, that even if it did such an appeal is untimely, and that there is no basis for the Council to sit as a Public Health Board in this matter as it currently stands. Accordingly, the Council has no authority to hear such an "appeal."

The Issue Has Been Resolved and There Is No Factual Basis for an Appeal

Ms. LaRosa's e-mail recites much of the information that the Council has already heard and that Chief Schneider stated was either untrue or greatly exaggerated. In her letter, Ms. LaRosa does not cite to any new or continuing violations or to any on-going or likely public health threats. Vermont Compost understands that its new practices—which it has followed in accord with and in reliance on the February 5, 2010 agreement—have resolved the problem. Ms. LaRosa has requested an advisory opinion from the Local Public Health Board on an issue that has—regardless of its nature—been effectively controlled. Notwithstanding Ms. LaRosa's opinion, Vermont Compost has been cooperative, and it has voluntarily altered its practices to address the problems identified by the City's Health Officer.

Vermont Compost took these actions without regard to whether the problem should be classified or not as a “public health threat.” The current feeding enclosure solution cost approximately \$12,000, which Vermont Compost agreed to spend in reliance upon its discussions with Chief Schneider. In addition, he has arranged for the purchase of a new farm tractor small enough to enter and leave the feeding enclosure for an additional \$36,000, based on the agreement with Chief Schneider. Vermont Compost has taken its business and this agreement very seriously.

Vermont Statutes Do Not Permit Neighbors to Bring an Appeal on Effective Voluntary Compliance Agreements

The only “decision” that Chief Schneider made, and the one which Ms. LaRosa appears to be appealing, is the agreement signed by Chief Schneider in his capacity as the City’s Health Officer, which was subsequently reviewed and left substantively unmodified by the City’s Attorney. This agreement was pursued and made in accord with 18 V.S.A. § 124, which obligates the local health officer to “make all practicable efforts to secure voluntary compliance.” Nothing in Chapter 3 or Chapter 11 of Title 18 gives neighbors a right to appeal a voluntary compliance agreement to the local health board, and the fact that the City’s duly authorized health officer negotiated and signed such an agreement raises reliance and estoppel issues should the City forcibly modify the agreement through additional procedures several months after it was signed and implemented with initial actual and planned expenditures of over \$40,000.¹ Ms. LaRosa cites to no authority or rules in her letter that permits her to make such an appeal. While I understand that Ms. LaRosa has decided to represent herself in this matter, it does not relieve her of the obligation to cite some authority and legal basis for what she wants the City to do. It also does not allow her to create a new avenue for her benefit. *Earth Const., Inc. v. State Agency of Transp.*, 2005 VT 82, ¶ 14 (“[T]he fact that plaintiff appears pro se does not entitle its complaint to be judged by a lesser standard . . .”).

The City Council’s power when sitting as a local board of public health is limited by statute. See 18 V.S.A. § 613(a). It does not have specific or general jurisdictional power to retrospectively review the actions of a local health officer. Under 18 V.S.A. § 126, a local health board may issue a health order, but this power is premised on the local health officer compiling evidence “setting forth the health officer’s reasons to believe a

¹ The four essential elements of estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. *Burlington Fire Fighters’ Ass’n v. City of Burlington*, 149 Vt. 293, 299 (1988). Here the City as an entity or through its agent, the City Health Officer, knew, or should have known, all of the allegations made by the LaRosas and the expenditures required by Vermont Compost to comply with the agreement; the City intended that Vermont Compost should comply with the terms of the agreement; Vermont Compost was unaware that the City would view this “agreement” as subject to revisions, amendment, or outright cancellation prior to making the purchases; and Vermont Compost relied on what it believed was a final agreement with the City in making the purchases and taking the action required to comply with the agreement.

health order should be issued.” 18 V.S.A. § 126(c)(1). Chief Schneider formally and publicly stated on February 10, 2010 that he does not believe the food residuals that were identified constituted a significant public health hazard. Under this statute there is no appellate authority for a local board of health to bypass the public health officer and conduct another hearing where no supporting evidence has been compiled. The evidence in this case, including Ms. LaRosa’s appeal letter, shows that any alleged situation has been alleviated by the February 5th agreement and Vermont Compost’s on-going compliance with that agreement. In other words, there is no evidence to support even the premise for an appeal.

To the extent that Ms. LaRosa speaks of her future concerns, the agreement explicitly allows the City to exercise its full power to enforce public health laws or issue public health orders in the future. This power, however, is injunctive, not punitive, by nature and looks to alter or modify behavior that rises to the level of a public health threat through voluntary cooperation or, failing that, a more formal health order.

The fact of the matter is that Vermont Compost has voluntarily complied with the duly authorized City Health Officer, and any question of whether there was or was not a public health threat created by wild birds moving food residuals has become moot. Thus, any hearing at this point would be strictly advisory and jurisdictionally outside the City Council’s limited authority in this area.

Ms. LaRosa’s Appeal Was Filed Out of Time and Seeks to Disturb a Well-Functioning
Voluntary Compliance Agreement

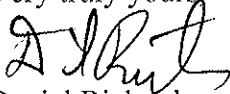
Finally, Ms. LaRosa’s notice of appeal has come forty (40) days after Vermont Compost entered its agreement with the City and thirty-five (35) days after the City Council and Ms. LaRosa heard Chief Schneider’s Report. To the extent that the City Council may, as the local health board, review Chief Schneider’s “decision,” the process explicitly incorporates the Vermont Rules of Civil Procedure. See 18 V.S.A. § 126(c)(2). Under V.R.C.P. Rule 75(c), Ms. LaRosa had only thirty (30) days to file notice of her appeal. The Vermont Supreme Court has ruled that such deadlines are jurisdictional, and the interests of finality and rest require strict enforcement of such deadlines. *In re Town of Killington*, 2003 VT 87. In this case, Vermont Compost has invested significant funds and shifted its practices in reliance upon a voluntary agreement with the City that it understood was final. The results have, thus far, been effective, and it is both unfair and harassing to re-open this settled agreement.

Vermont Compost is an internationally recognized business in Montpelier employing local residents and contributing to the economic and social fabric of the City. It is one of the last operating farms within the City. Nearly every complaint that Vermont Compost has received stems from its farm operation and not its composting work. While Vermont Compost has asserted its statutory right to farm and determine its agricultural practices (see e.g. 12 V.S.A. §5751), it has also been cooperative and respectful in trying to deal with the complaints of Ms. LaRosa. Each time, Vermont Compost has sought to

City of Montpelier
April 14, 2010
Page 4

modify its processes when it became aware of Ms. LaRosa's concerns. In this instance, Vermont Compost worked with the City's Health Officer. It twice made significant changes to its practices and invested substantial funds solely in an attempt to satisfy the concerns of its neighbors. Vermont Compost asks only that the City act appropriately and under due process of law in responding to Ms. LaRosa's March 17th e-mail by rejecting the appeal as not supported by Vermont law and untimely.

Thank you.

Very truly yours,

Daniel Richardson

DPR/dp

cc: Vermont Compost Company
Barbara LaRosa

William Fraser

From: Daniel Richardson [drichardson@tmgvt.com]
Sent: Thursday, May 13, 2010 2:22 PM
To: William Fraser; SStitzel@firm SPF.com
Subject: Vermont Compost

Dear Bill,

My client requests that a site visit be incorporated into the hearing. As it is scheduled now for 6:30pm, we could schedule a site visit either prior to the procedural meeting or shortly thereafter and would still have enough sunlight. I have briefly reviewed the pre-hearing notice, and I believe, in light of the direction that the Council is taking this hearing, a site visit is even more important since the Council has framed the issue prospectively looking to whether VCC, if it acts in accord with the February voluntary compliance agreement, is causing or will cause a public health hazard. At the very least, they should know what the farm looks like today and what the compliance agreement looks like in action.

Please let me know when such a site visit can occur. My client will welcome the Board at any time.

Best,

Dan

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William Fraser

From: The LaRosas [stevenbarbnathan@comcast.net]
Sent: Wednesday, March 17, 2010 9:41 AM
To: William Fraser; Mayor
Cc: Tom Golonka; Sarah Jarvis; Nancy Sherman; Jim Sheridan; Gesualdo Schneider
Subject: letter of appeal

City Council Members and whom it may concern:

My name is Barbara LaRosa; I live at 2012 Main Street in Montpelier, Vermont. I am writing this letter to formally appeal the decision of Health Officer Schneider that Vermont Compost Company (VCC) actions have not historically resulted in health hazards as presented in the testimony to the City Council on February 10, 2010 and represented in the agreement between the City Health Officer and Vermont Compost Company dated February 5, 2010.

I have spent endless hours over the past four years cleaning up food waste deposited on my property by crows and other vectors that have had free and easy access to food wastes at Vermont Compost Company's Main Street facility. This food waste has been transported from VCC property to ours by crows and other vectors. When the animals are done with the food waste they drop it and there it stays on our lawn and field. My son cannot go out to play without me first perusing the grounds every day so that I know he is not exposed to rotten meats, bones and other food waste materials. My husband and I have spent thousands of dollars in vet bills that can be traced back to injuries sustained by our dog ingesting food waste that was dropped on our lawn. My dogs cannot be free to run on our own lawn because of the amount of food waste and the dangers if they ingest such material. I have collected, bagged and frozen more than 20 one gallon containers of food waste transported onto our property from the VCC facility. During a 1 week period in the fall/early winter of 2009 I collected gallons of food waste droppings every day from my property. Our land represents only a fraction of the area surrounding VCC. The actual volume of food waste being transported off VCC property in all directions of the compass is much greater than just what is dropped on our property. This is clearly exhibited by the documented deposition of food wastes on properties up to ¼ mile away on Center Road. This volume of putrescent food waste transport and deposition off the VCC property clearly represents a health hazard.

The city health officer has asked numerous times that VCC voluntarily comply to solve this issue because the City really doesn't want to settle this health issue in the court system. VCC has failed to comply with the City requests for voluntary compliance for more than a couple months at a time. VCC has not "voluntarily" controlled the access of wild birds to food waste unless the City demands such controls are in place. In fact, even when the City demanded that fresh food wastes not be accepted at the Montpelier VCC facility in the Spring of 2009, VCC only complied for a limited time. VCC began accepting fresh food wastes again in the Summer of 2009 without notifying the City. This led to more waste deposition onto our property, calls to the City, inspections and ultimately the City forcing VCC to cease accepting fresh food waste again.

For the past several years we have had and continue to have many basic City ordinances violated by VCC and Karl Hammer. None of these complaints were or have been taken care of by VCC without active enforcement of the laws by the City. This pattern of behavior clearly indicates that VCC will not follow the requests/requirements of the City without the threat/action of enforcement. Mr. Schneider says he is "hopeful" that the food waste transport and dumping problem has been mitigated by a "hoop house" recently installed by VCC. Well hope is not enough any more. If food waste transport does happen in the future than I need there to be concrete language that will penalize and hold VCC accountable for yet again violating the law. If there is no language regarding immediate enforcement and repercussions, there is not enough incentive for VCC to follow the agreement. They have proven their inability to comply with City requests over and over. This is the main reason I feel this agreement, which Mr. Hammer's lawyer drew up, is not going to protect us. And please keep in mind that we are taxpaying, law abiding citizens of this city that only want to enjoy our property which we own without being impacted and violated by VCC's irresponsibility regarding the food waste they are paid to dispose of properly. We as neighbors of VCC have no reason to believe that this will **not** continue to happen over and over again as it has in the past. We simply want protection for our family and our pets health. I ask that the city create an agreement that has very specific timeline and consequential language that will assure the neighborhood is protected from the health risks posed by food waste transport off of VCC property.

The city has attempted in the past to mitigate and Karl Hammer and VCC have proven to do just enough to get the city to back off and then they continue to do whatever it is that they want. There are no repercussions for months we complain long and loud enough about this very same issue-again. Sometimes it takes years and sometimes it takes months for the

city to make any efforts to enforce this health issue even after we have given plenty of new evidence. We have little to no faith that the current agreement will be fully solve the problem without the city making a greater effort to control the health issues that this business puts on its neighbors year after year.

Mr. Richardson, Hammer's lawyer stated that "Mr. Hammer is proactive." This is not true. In all circumstances he is reactive. He only reacts to when he is forced to deal with something. Without laws being enforced we would still have his animals on our property, **everyday**. Although they are not off 100% we at least have enforcement in place to further protect us when Hammer violates these laws. Mr. Hammer has not and does not resolve problems voluntarily, he pacifies them temporally. Only under duress does Hammer make changes **and** as soon as the pressure from the city lightens, he goes back to the old ways that continue to impact us **and** the rest of the neighborhood.

I appreciate the time that has been spent on this issue but just like my own time has been wasted so has the cities. Let's make this problem stop immediately, and if it doesn't, let's have iron clad consequences.

Sincerely,
Barbara LaRosa

William Fraser

From: William Fraser
Sent: Thursday, May 13, 2010 2:05 PM
To: 'Karl Hammer'; Steve LaRosa; 'The LaRosas'; Daniel Richardson
Cc: Steven Stitzel; L-Council; Gesualdo Schneider
Subject: Vermont Compost Hearing - Wednesday, May 19th
Attachments: pre hearing notice.pdf

Hello All

I am writing with information about the City of Montpelier Board of Health Hearing to be held next Wednesday, May 19, 2010.

At last night's meeting, the City Council formally approved the attached pre-hearing notice providing guidance for next week's hearing.

Based on advice from Attorney Steven Stitzel, the hearing will be conducted in a somewhat informal manner. A record will be kept of which documents are provided to the Council but strict rules of evidence will not be used. Obviously all parties will have an opportunity to offer comment and information, to ask questions and raise concerns or objections. For convenience purposes, the Council will be provided, in advance, with a copy of the Agreement between the Health Officer and Vermont Compost, the March 17th notice of appeal filed by Mr. & Mrs. LaRosa and the April 14th letter submitted by Mr. Richardson on behalf of Mr. Hammer.

The hearing is scheduled to begin at 7 PM. The Council will convene at 6:30 PM with Attorney Stitzel to review the conduct of the hearing. This will be done in open session and, as such, will be an opportunity for all parties to get a good understanding of the process.

Additionally, Attorney Stitzel has indicated that he will be happy to talk directly with Mr. and Mrs. LaRosa, Mr. Hammer or Mr. Richardson about any questions or concerns they have about the hearing and his recommendations to the council. Mr. Stitzel's e-mail address is included on this message and his office phone number is 802-660-2555. I will also be happy to speak with any of you about this.

Bill Fraser
City Manager
802-223-9502

Agreement Concerning the Winter Receipt of Food Residuals at the Vermont Compost Company's Montpelier Property

NOW COME the parties to this agreement, the VERMONT COMPOST COMPANY and the CITY OF MONTPELIER, in its capacity as a public health enforcement entity to establish procedures and protocols to stop wild birds removing fresh and recognizable food residuals from the Vermont Compost Company's Montpelier property and depositing them on neighboring lands.

WHEREAS, the Vermont Compost Company has operated a farm at its 1996 Main Street property in Montpelier, Vermont for over twelve years; and

WHEREAS, Vermont Compost Company's operations have over this time included a poultry operation which has relied on source separated community food residuals from residents, businesses, schools and institutions in and around Montpelier to feed its flock of laying hens; and

WHEREAS, the City of Montpelier has received complaints from neighbors about wild birds depositing recognizable food residuals on their property taken from the Vermont Compost Company's piles; and

WHEREAS, the City of Montpelier claims a public health interest in preventing the depositing of fresh and recognizable food residuals on residential properties; and

WHEREAS, the City's Health Officer has observed and received evidence of fresh and recognizable food residuals being deposited on properties around the Vermont Compost Company's Montpelier property; and

WHEREAS, the City's Health Officer has noticed that the impact of wild birds on neighboring properties is limited to the early winter-early spring seasons; and

WHEREAS, the Vermont Compost Company seeks to continue its chicken farm operations but cannot control the area's wild bird population; and

WHEREAS, the City of Montpelier recognizes that the Vermont Compost Company has worked with the City and its Health Officer to address this problem and has complied with the Health Officer's requests and orders; and

WHEREAS, the Vermont Compost Company and the City seek a reasonable series of protocols and procedures toward a common end of stopping the transport of fresh and recognizable food residuals by wild birds onto neighboring properties; and

NOW THEREFORE, the Vermont Compost Company and the City agree to the following:

1. **Purpose:** The parties agree that the purpose of this agreement is to stop wild birds from transporting fresh and recognizable food residuals off the Vermont Compost Company's Montpelier property and depositing them onto neighboring properties.
2. **Scope:** This agreement shall govern how the Vermont Compost Company receives fresh food residuals from November 1st of each calendar year to May 1st of the following calendar year.
3. **Food Residuals for Chicken Feeding:** At its own expense, the Vermont Compost Company has built an enclosed structure on its Montpelier property for the purpose of feeding rations, including source separated community food residuals, to its chickens. During the scope of this agreement, Vermont Compost Company only intends to bring source separated community food residuals onto the Montpelier property to feed its poultry. Any source separated community food residuals received must either be put inside the enclosed structure or stored in piles sufficiently covered and buried with other, non-food residual materials immediately upon receipt so that wild bird access is prevented.
4. **All Other Food Residuals:** The Vermont Compost Company agrees that during the scope of this agreement, it shall not receive fresh food residuals at the Montpelier property in any manner or for any purpose other than those stated in Section 3 above.
5. **Communication:** The Vermont Compost Company shall keep the Montpelier Health Officer and the LaRosa family informed of any changes in the proposed use and receipt of source separated community food residuals during the scope of this agreement.

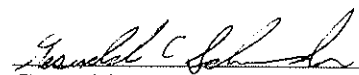
6. **New Offsite Food Residual Deposits:** If the City of Montpelier's Health Officer receives complaints concerning the depositing of fresh and recognizable food residuals on properties neighboring the Vermont Compost Company's Montpelier location such that he determines a need to assert his public health authority, he shall notify the Vermont Compost Company of the complaints. The Vermont Compost Company shall cease receiving all food residuals immediately and shall work with the City's Health Officer to alter or establish new practices in accord with this agreement. If the Vermont Compost Company has a reasonable basis to understand that one of its food residual receipt practices (described in Section 3 above) is unrelated to the new food residual depositions then it may, with prior approval from the City's Health Officer, resume that food residual practice.
7. **Clean Up:** The Vermont Compost Company, with permission of the landowner, shall provide personnel to clean up any food residual depositions reported on a neighboring property in a timely manner.
8. **Legal Rights:** This agreement is entered into voluntarily by the Vermont Compost Company and is not intended to limit or affect the City's legal rights to bring or enforce public health orders. It is also not intended to limit or affect any right the Vermont Compost Company might have under law if such an action is brought.

February 4, 2010
Dated

VERMONT COMPOST COMPANY
By: 
Karl Hammer

CITY OF MONTPELIER

February 5, 2010
Dated

By: 
Gesualdo Schneider