



**Jefferson County Board of Health
Minutes: November 14, 2018 10:00am**

Board Members Present: John Bresland (Chair), Ann Smith, Damien Hinck, Caleb Hudson (County Commission Liaison)

Board Members Absent: Carmela Cesare (Vice-Chair), Lorena Nathan

Also Present: Nathan Cochran (Assistant County Prosecuting Attorney), Marty Freeman (Health Administrator), Dr. David Didden (Health Officer), Bob Custard (Sanitarian Supervisor)

Call to Order:

The meeting was called to order at 10:03am by Chairman Bresland. The agenda for today's meeting was presented the personnel issue was removed.

Public Comment:

Jose Ayalah, Charles Town resident and retired Airforce Lieutenant Colonel, spoke regarding difficulties selling his land due to perc test results. He requested the Board develop a team of developers, real estate agents, and concerned citizens to find a win/win solution.

David Lutman spoke regarding recent difficulties with environmental services, including delays on approvals/denials past 21 days. He questioned Mr. Custard's authority to conduct inspections in West Virginia and to dispute licensed surveyors.

Larry Boyd spoke regarding difficulties with selling 15 acres subdivided off his farm. He has been trying to sell the property for 13 months and had to pay excavator to dig up lots for three separate 3 perc tests. Perry Campanaris reiterated the other speakers' points and added he believes Mr. Custard's membership on a planning board in Loudon County is a conflict of interest with his work for JCHD.

Dan Zappe spoke regarding difficulties with environmental services. He applied in July for major subdivision, and was told he'd need the whole area surveyed and to clear a wooded area with mature trees. He is afraid to move forward based on others' stories and does not want to pay thousands of dollars for repeated inspections.

John Bresland said that in April JCHD requested a state audit of Environmental Services. The results have just recently been received, discussion of which will most likely be in executive session, but he can say that the way work was done in the past was viewed unfavorably. Mr. Bresland invited members of the public to get on a meeting agenda to allow a dialogue between the Board and the public.

Old Business:

None.

New Business:

Activity Report:

- Administrator
 - Vaccinated over 70 people at the full scale exercise
 - Financial Report - No significant changes since last month. The Board accepted the October financial report as presented.
- Health Officer
 - Received email from Tom Trumble asking whether JCHD was taking action on the Rockwool Plant construction. He would like to bring a small group of citizens to next Board meeting to present a request that JCHD write a letter opposing the construction for health reasons.
 - Quick Response Team funds have still not been made available.
 - Attended Harm Reduction Coalition meeting in Flatwoods with two members of the Exchange Union.
- Environmental
 - New staff have completed classroom training and after passing November 13th exam and a week of on-site training will be cleared to work independently. Septic and well inspections will take more time and experience – staff are close to being able to complete routine finals on their own but will need further training on soil evaluations and alternative systems.
 - Making progress on inspections. Makes sure not issuing permits on systems doomed to fail – need to protect homeowners’ investment. Trying to correct mistakes one at a time. Almost always able to find an alternative but it can be expensive.
 - Many permit files have insufficient documentation. Expect we will have some appeals from dissatisfied clients. Head of state onsite sewage program and soil scientist will be invited to review Bob Custard’s work. What JCHD has done in the past was not up to state code.
 - High percentage of drinking water wells in the county show evidence of bacterial contamination. Cases of e. coli in the county are likely tied to groundwater contamination. JCHD needs to address this serious public health issue. Would like to apply for a grant from CDC to have intern for 10 weeks to gather data work on this issue.
 - Received results of state audit, 5 years since last one – “we’ve got a lot of work to do”.
 - Ms. Freeman pointed out the Mr. Custard is a part-time temporary employee licensed nationally and by the state. Dr. Didden said we now see that in the past we were not adequately protecting health in Jefferson County; the Board should invite public comment folks to get on the agenda.
 - Mr. Bresland asked about appeal process. WV does not have an appeals board but will send Rick Hertges (head of state onsite sewage program, former installer, and soil scientist) for a second opinion on a lot.
- Medical
 - Very successful flu clinics, especially at the full-scale exercise (processed 19 patients in 21 minutes)

Babies in the Workplace:

Dr. Didden sent a request to Board of Risk Insurance Management and received quick response listing 13 recommendations before implementing this policy.

Ms. Smith moved to go into executive session to receive legal advice. Motion was seconded and passed unanimously.

Board member status:

Mr. Hinck moved to recommend the Administrator prepare a letter for the Chairman's signature to be delivered to the County Commission to recommend replacement of Ms. Nathan due to continued absence. Motion seconded and carried unanimously.

Environmental Services:

Ms. Smith moved to direct Dr. Didden to set up a panel with a licensed sanitarian from the State of West Virginia Environmental Health Services, along with Bob Custard, another health department representative, and a board member to discuss the septic tank installation systems that we heard about today and attempt to resolve these issues. Motion seconded and carried unanimously.

October 2018 Financial Reports:

This item was discussed under Administrator Report.

Approval of October 12, 2018 regular meeting minutes:

The minutes of the October 12, 2018 regular meeting were approved by unanimous consent.

Adjournment:

Meeting adjourned at 12:51.

Respectfully submitted,

David Didden, Health Officer

At the Board of Health meeting on Friday, a number of false allegations were made against me personally. For the record, I would like to respond to those allegations in writing so that you have no doubts about my qualifications, professionalism, or ethical conduct.

Allegation: Mr. Custard was not certified to work in West Virginia until after the work on my lot was completed.

The Truth: Mr. Custard has been nationally registered as a Registered Environmental Health Specialist (REHS) through the National Environmental Health Association (NEHA) since October 1, 1993. Last spring he applied for licensure as a Registered Sanitarian (RS) in West Virginia by reciprocity. Mr. Custard was licensed as a Registered Sanitarian by the West Virginia Board of Sanitarians on May 4, 2018. Since then he has had the legal authority to perform any of the duties required of a sanitarian in West Virginia. (A copy of Mr. Custard's West Virginia license as a Registered Sanitarian is attached.)

Allegation: Mr. Custard is not qualified to do this work. He just went to onsite sewage training last week (Oct 22-26) and therefore was not qualified to evaluate lots for a permit prior to that time.

The Truth: Mr. Custard was fully qualified to evaluate lots for septic systems as of the date of his licensure as a Registered Sanitarian by the West Virginia Board of Sanitarians (May 4, 2018). He attended five weeks of basic sanitarian training in West Virginia with the four new Jefferson County sanitarians so that 1) he could assess their training performance, 2) he would know what the new sanitarians were being taught, and 3) he could fully understand the nuances of the West Virginia rules and regulations governing public health. In retrospect, nothing that he has learned in the course of this training would have changed the decisions regarding onsite sewage disposal he has made since coming to Jefferson County.

Mr. Custard has an undergraduate degree in geology and 58 graduate credit hours in sedimentary geology and karst hydrology from West Virginia University. He has over 31 years of experience as a sanitarian including a number of years working in onsite sewage programs in the Shenandoah Valley. His competence in the area of evaluating property for onsite sewage disposal systems and in designing these systems has been thoroughly demonstrated over the course of many years.

Mr. Custard was responsible for designing and coordinating the basic training and continuing education of all the sanitarians in Virginia for ten years (1992-2002) on behalf of Virginia's Office of Environmental Health Services. A large part of that training focused on describing soils and evaluating lots for onsite sewage disposal systems. The environmental health skills needed to describe soils and evaluate lots for septic systems are universal and would apply in any state although the specific standards often vary from state to state.

Mr. Custard is a nationally known environmental health professional who is frequently sought after as a speaker at professional conferences. He has been a speaker on environmental health topics in more than 25 states and several foreign countries. For example, Mr. Custard was a featured speaker at last summer's Interstate Environmental

Health Conference and at the National Environmental Health Association's Annual Education Conference. In January, Mr. Custard will be the keynote speaker at the Missouri Small Flows (Onsite Sewage) Conference.

Mr. Custard has won numerous awards for his professionalism, leadership, and the excellence of his work in the field of environmental health. These awards include:

- ◆ Named 1999 Environmental Health Professional of the Year by Virginia Environmental Health Association
- ◆ Named Virginia Department of Health's 2000 Environmental Health Employee of the Year
- ◆ Recipient of the 2002 Jerrold Michael Award from National Capital Area Environmental Health Association (their highest award)
- ◆ Recipient of a 2004 President's Award from the New Jersey Environmental Health Association
- ◆ Recipient of a National Certificate of Merit from the National Environmental Health Association in 1999 and 2014
- ◆ Recipient of a Presidential Citation from the National Environmental Health Association in 2011, 2012, 2013, 2014, 2017, and 2018

Mr. Custard's professionalism has been repeatedly recognized over the last 20 years through election by his peers to positions of leadership in professional organizations representing the environmental health profession including:

- ◆ President - Virginia Environmental Health Association (1994-96)
- ◆ President - National Capital Environmental Health Association (2000-2002)
- ◆ Regional Vice-President, National Environmental Health Association (2003-2012)
- ◆ Second Vice-President, National Environmental Health Association (2012-2013)
- ◆ First Vice-President, National Environmental Health Association (2013-2014)
- ◆ President-Elect, National Environmental Health Association (2014-2015)
- ◆ President, National Environmental Health Association (2015-2016)
- ◆ Past President, National Environmental Health Association (2016-2017)
- ◆ President, NEHA Past Presidents Association (2017-2019)

Allegation: Mr. Custard is applying Virginia rules regarding septic systems in West Virginia.

The Truth: Mr. Custard has applied (and will continue to apply) the West Virginia rules regarding septic systems to the onsite sewage system applications he processes in Jefferson County. Each letter denying a septic system permit specifically cites the text of the relevant West Virginia rules regarding septic systems. Depth to rock and/or seasonal water table are typically the reasons for denial of a septic system permit. Virginia actually has less stringent standards than West Virginia in this regard.

Allegation: Mr. Custard is practicing surveying without a license because he has measured the distances between existing or proposed well locations and existing or proposed septic systems. He has also measured the dimensions of the areas proposed for Septic Reserve Areas (SRAs).

The Truth: Mr. Custard's job as a sanitarian requires him to verify the distances in the field between existing or proposed well locations and existing or proposed septic systems in order to protect public health. He is also required to verify that there is a useable SRA of a size that meets the rules and regulations. He has not conducted surveys, produced plats, or otherwise practiced the profession of surveying.

Allegation: It is a conflict of interest for Mr. Custard to serve on the Lovettsville (VA) Planning Commission. Mr. Custard is using his position at the Jefferson County Health Department to steer development away from Jefferson County and to Lovettsville.

The Truth: Mr. Custard does serve on the Town of Lovettsville's planning commission. However, his service on the planning commission has not influenced his ability to make unbiased decisions on behalf of the Jefferson County Health Department.

In fact, the Town of Lovettsville's planning commission and town council would like to limit future population growth in Lovettsville, keep development from exceeding the capacity of the current sewage treatment plant, diversify the tax base, and encourage more commercial and light industrial development. (Currently, 93% of Lovettsville's general fund revenue is from real estate taxes on residential properties.)

In Virginia, towns with a population of 3,500 or more must take over their streets from the Virginia Department of Transportation. (Lovettsville's population is currently about 2,400 persons.) Significant population growth would force Lovettsville to take over maintenance of its streets and would cause sizeable tax increases. It would also likely necessitate a costly expansion of the sewage treatment plant. For these reasons, Lovettsville is actively discouraging significant additional residential development and may actually be increasing residential development in Jefferson County.

Allegation: It is a conflict of interest for Mr. Custard to work for the Jefferson County Health Department because he has an environmental consulting company.

The Truth: Mr. Custard is a part-time temporary employee of the Jefferson County Health Department. Mr. Custard also is the CEO of a small environmental health consulting firm – Environmental Health Leadership Partners, LLC. Mr. Custard is extraordinarily careful to avoid conflicts of interest between his consulting work and his work for the Jefferson County Health Department.

During the past year Mr. Custard has done consulting work for the following entities:

- ◆ NSF International – represented NSF International as an exhibitor and speaker at a number of professional conferences for environmental health professionals
- ◆ Major League Baseball (subcontract through Dave Ellis Sports Nutrition, LLC) – consulted concerning food safety and kitchen facility design in clubhouse facilities for visiting teams at major league baseball stadiums
- ◆ Association of Food and Drug Officials (AFDO) – reviewed and scored FDA food safety grant proposals submitted by state, local, and tribal health departments
- ◆ National Environmental Health Association (NEHA) – facilitated an environmental health leadership training workshop; helped develop a strategic plan for NEHA

regarding its food safety initiatives; moderated educational sessions at their annual educational conference.

None of these represent a conflict of interest with Mr. Custard's work at the Jefferson County Health Department. In the coming year, Mr. Custard plans to continue working with these clients and may take on additional work from similar clients. Mr. Custard also will likely be working in the U.S. Virgin Islands on a NEHA-administered CDC project to build environmental health capacity, resilience, and leadership in the aftermath of Hurricane Maria.

It should also be noted that Mr. Custard and his wife, a public health laboratory scientist, from time to time do volunteer work to improve drinking water quality and train public health professionals in rural areas of sub-Saharan Africa and gypsy villages in Eastern Europe. In the future, that work may expand to developing countries in other parts of the world.

Allegation: Mr. Custard and the Jefferson County Health Department are not acting with integrity. (There were no specifics cited to support this allegation.)

The Truth: Mr. Custard holds himself and his staff to the highest standards of ethical conduct. Any unethical or unprofessional conduct by Mr. Custard or his staff would likely end their employment in Jefferson County. Further, any unethical or unprofessional conduct by Mr. Custard could jeopardize his licensure as a Registered Sanitarian (RS) in West Virginia as well as his national credentialing as a Registered Environmental Health Specialist (REHS).

The work Mr. Custard and his staff do in the onsite sewage program has three primary goals:

- ◆ To protect public health – Assuring that sewage is properly treated and disposed of is a cornerstone of public health. Sewage contamination of drinking water wells is a well-known cause of human illness. In recent months, a high percentage of drinking water wells sampled for coliform bacteria (an indicator of fecal contamination) in Jefferson County have come back positive.
- ◆ To protect groundwater quality - Because of its karst topography, groundwater in much of Jefferson County is very susceptible to contamination from nearby malfunctioning or improperly designed septic systems. A number of recent cases of E. coli infections in county residents may have occurred as a result of groundwater contamination. These included one death and two children who went into kidney failure.
- ◆ To protect the investment of homeowners – For most middle income Americans, the purchase of a home is the biggest investment that they will ever make. If the septic system for their home fails or contaminates their well, the costs of repairs to the septic system can be large, sometimes beyond their means. Further, sewage ponding in a yard or running onto a neighbor's property can have a significant impact on real estate values. Properly designing septic systems, installing them in appropriate soils, and inspecting the construction of them helps protect the investment of homeowners far into the future (long after developers, builders, realtors, and septic system installers are out of the picture).

State of West Virginia

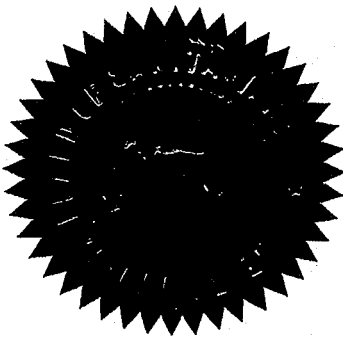


State Board of Sanitarians Certifies that *Robert W. Custard*

has this day fulfilled the requirements of the laws of West Virginia governing the registration of Sanitarians and, has been duly licensed as a Registered Sanitarian in accordance therewith.

In Testimony whereof, we hereto subscribe our names and affix the seal of the State Board of Sanitarians on this 4th day of May, 2018.

License No. 396



Lloyd H. White, R.S.
Chairman
Richard H. Cook, R.S.
Vice-Chairman
Richard H. Elbert, R.S.
Member

Robert W. Custard, R.S.
Member
Richard H. Cook
Member
[Signature]
Member

Board of Health Talking Points:

1. Why Mr. Custard Fails to accept a signed plat from Surveyor, requires an exhausting amount of survey marks, that require several trips from surveyor at an additional cost to land owner
2. Why Mr. Custard Disputes the mark of a licensed surveyor
3. Why Mr. Custard is allowed to process permits slower than WV code states.
 - a. 21 days for well and septic
4. What Authority Mr. Custard has to dispute the prescriptive guidelines of WV Sewage and Septic Codes?
 - a. Rock Strata or water table in a 10,000 sq. ft area but requires more than state code 20,000
 - b. Creates and Arbitrary Limiting layer denying conventional permits
 - c. Mandates Arbitrary class 2 systems and pre-treatments that require homeowner maintenance contracts that if neglected by home owners possess a greater environmental risk in future.
 - d. Mr. Custards Risk assessment only considers the present not what would happen if all pre-treated systems where not properly maintain because of there expense
5. Why Mr. Custard intentionally recommends replacement systems that cost 10 to 15k more than a standard system when a standard system has worked for many years.
6. Why Mr. Custard is not available for inspection or prohibits other staff members for conducting inspections for weeks since he works part time.
 - a. Tell your Steamboat Story- nearly 3 months a no system in place.
7. Why Mr. Custard Requires new observation holes to be dug when renewing permits with perk results on file. Which are used to prescribe systems.
8. Why Mr. Custard Refutes renewal applications for same systems and denies any septic systems at time when there have been ones in past.
9. Why does the board of health continue to sub contract Mr. Custard who is not an expert of WV soils when other staff has been trained, educated and tested in their fields as WV experts.

(No subject)

JA

Jose Ayala

Today, 9:36 AM

Adela Ayala (adelavayala@msn.com) ✕

↩ Reply | ▾

Sent Items

Good Morning, My Name is (Retired lieutenant Colonel) Jose Ayala. AT YOUR SERVICE.

I LIVE AT 148 MACBETH DRIVE IN AVON BEND Community.

I was talking to my wife this morning and I told her this is my "Mr. Smith goes to Washington" moment. Well, I promise not to filibuster this meeting today. ALLOW ME TO SHARE TWO ISSUES.....

I came today to share I have been impacted by your decisions.

I use to have a boss (colonel) WHO SAID "Don't come into my office and complain about anything unless you bring some SOLUTIONS".

When two groups of people have an impasse or difference how to resolve an issue, defenses go up, escalation happens and nothing is accomplished.

We need a "WIN WIN" SOLUTION FOR THE BUILDERS, REALTORS BUT MOST OF ALL, OUR COMMUNITY PEOPLE.

NOW I have a piece of land that I cannot build on or sell.

But I still am expected to pay taxes on it. This is not a win win for me.

This Monday is Veterans Day. I appreciated when people thank me for my service. This Monday I would appreciate someone call me and say they will work with me to resolve is issue for the community.

Thank you

SUBJECT

DATE

Intco - JA.
 * 148 Macbeth
 * 28 Years
 * 2008 Purchased 155 Acres
 Parc 4 BR - 2 1/2 Bath
 I purchased based on
 that, To build my
 Retirement Home.

Stop!
 Thought:

Needless
 expense

- The only reason it had
 to be a Parc was because
 I let my one (1) year
 permit lapse.

(1) You mean because I did
 pay my yearly permits,
 I am forced to have a new
 parc test done?

(2) This is not consid-
 ering change me
 a back fee for setting
 it lapse but don't
 force a new parc.

(New assessor
 Diff opinion)

(3) I should be given
 opportunity to get current
 and then I can work with
 existing parc.

(4) Don't change the rules.

- ~~Was~~ the change approved through the Health Board?

- Did we have an ^{open} hearing on this change? ¹

- if not, why wasn't it grandfathered for those in the system, then going forward let everyone know the new rules.

★ solution:

Develop a "Tiger Team"

→ Report

process/plan

changes

or recommendations

- Builders

- Real estate personal

- Private citizens

That have vast interest.

- if one is developed, I would like to be a part of developing a solution.

- I think it is obvious ~~to~~ our community is highly impacted by the way this is being handled. Right now.

- Roll up your sleeves and fix it!