



# UTAH COUNTY BOARD OF HEALTH

151 SOUTH UNIVERSITY AVENUE  
PROVO, UTAH 84601

## MINUTES November 26, 2018

Members Present:			
Mayor Jeff Acerson, Chair	X	Teresa Tavares, Vice Chair	X
Gaye L. Ray, RN	excused	Daril Magleby	X
Superintendent Rick Nielsen	X	Diane Lohner	X
Dianne C. Carr	excused	Commissioner Greg Graves	excused
Mark Donaldson, MD	X		

### Others present:

Ralph L. Clegg, EHS, MPA      UCHD Executive Director  
Julie Dey                              UCHD Secretary

Number of people in attendance – 10

1. Welcome by Jeff Acerson
2. Approval of the minutes from September 24, 2018

**MOTION:** Daril Magleby made the motion to approve the minutes as corrected on page 2 which was seconded by Rick Nielsen and passed by unanimous vote.

3. Public hearing on topic of proposed amendment to Health Regulation 16-01 Nonpublic Water Systems

**MOTION:** Diane Lohner made the motion to move the meeting to a public hearing for today's date, November 26, 2018 at this time and this location to consider the proposed amendments to Health Regulation 16-01 Nonpublic Water Systems. The motion was seconded by Daril Magleby and passed by unanimous vote.

Bryce Larson, Division Director, Environmental Health, said after several meetings and reviewing public comment, "I am in full support to the changes that have been recommended to 16-01."

Ben Van Noy, Utah County Attorney, opened the public hearing by explaining to the board the current proposed amendments to 16-01 Nonpublic Water Systems. Substantive changes were explained, and board members followed along on their strike through versions of the proposed amendments. Ben also stated that the regulation is in line with state regulations. They have reduced ambiguity and worked to clarify as much as possible. Clear statements are in the proposed amendment of what a 'public' water system is according to state rules and based off of the state rule what a 'nonpublic' water system is in the definition section. Anything not covered by the state is a 'nonpublic' water system in regard to the 1-7 service connections.

Primary changes highlights:

- Definition of 'service connection' has been added.
- 'Real property' statement of conveyance has been removed.
- Added language to clarify state language 'approved or corrective action rating,' we added the word 'rating' to clarify.
- Water right access in the county needed to be verified by the County Community Development and applicable planning agency.
- Additional options have been added for individuals if there are existing wells within 500 feet, they can use those wells for testing. In effect this makes it so that each lot doesn't have to have a well drilled, adding more ways to approve subdivision feasibility of water quality.
- Specific levels of offense were added due to the state regulation earlier this year mandating that all county regulations have an attached specific violation equaling a class B misdemeanor and becomes more severe with subsequent violations.

Below is a summary of some of the discussion and comments during the public hearing:

Mark Donaldson asked for clarification, "If you have seven lots, the well could be 500 feet away from all of those lots and still service several lots?"

Ben Van Noy answered, "Yes, for feasibility purposes of testing the water quality."

Mark Donaldson asked, "Is everything that has been added so far to the amendment relate to nonpublic subdivisions that are 1-7 lots; if so then what happens when someone has 30 lots?"

Ben Van Noy replied, "Then it is a public water system that is regulated by the state. The state has testing and their own set of rules."

Ben explained, "Utah County Health Department, division of Environmental Health has had opportunities to meet with Helina Carter-Thomas to listen to and work through some of her concerns. We have worked diligently to take the public comments we have received and try and make this the best regulation we can; to clarify in the best way we think possible."

Craig Bostock, Program Manager, Utah County, Environmental Health, indicated that section 12.9 is an addition. It takes what was in 9.0 and simplifies what an applicant would need to provide to the health department for eventual approval.

Helina Carter-Thomas stated, "We had several meetings. I sent an email to the attorneys and commissioners and actually I never heard back from anyone except Commissioner Ivie who said, 'Thank you.' This afternoon I received an email back from Ben Van Noy regarding my comments, but I have not met with anyone or gone over this at all."

Ralph Clegg stated, "The email Helina sent was forwarded to all the board of health members."

Helina Carter-Thomas said, "I was confused by some of the things Ben Van Noy just reviewed because it is still wrong and confusing, and I would also like to have some time to go through the changes. It is unfortunate that we haven't been able to get this all sorted out before now because I feel like we have had time to do that. One thing, we are still talking about this eight-lot issue. Utah County has confused 'subdivision lots' with 'service connections'."

Mark Donaldson asked for clarification, "The state doesn't have regulations for 1-7?"

Ben stated, "The state does not. Most other counties in the state have their own county regulation for 1-7. Everything in the amendments to 16-01 is for nonpublic or 1-7."

Helina Carter-Thomas reading from state code: "In state code, this is talking about standards and regulations adopted by a local board, which is you, 'local standards not more stringent than federal or state standards, exception for written findings, administrative and judicial review of actions.' This says basically that the board may make standards and regulations not in conflict with the Department of Health and Environmental Quality necessary for the promotion of public health, environmental health quality, injury, control and the prevention of out breaks and spread of communicable diseases be the standards and regulations under subsection 1.a supersede existing local standards and regulations and ordinances pertaining to similar subject matter except as provided under subsection 1.c and except where specifically allowed by federal law or state statute may not be more stringent than those established by federal law, state statute or administrative rules adopted by Utah Department of Health in accordance with title 63G chapter 3 Utah Administrative Rule Making Act.

Subsection 1.c: The board may make standards and regulations more stringent than corresponding federal law, state statute and state administrative rules for the purposes described in subsection 1.a only if the board makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal laws, state statutes, or state administrative rules are not adequate to protect public health and the environment of the state. The findings shall address public health information and studies contained in the record which from the basis of the board's conclusion.'

Somehow Utah County has not provided studies. I feel like I am not getting any information from Utah County as to why things are different or more stringent or why we are leaving somethings out that are important in state code."

Teresa Tavares stated, "From the state code, did you say that as the amendment is presented right now, it doesn't protect the public health? Because as you know, our job is to make sure we follow state law and federal law and also to protect the public health. We have had more than a year discussion on wells and several studies and how the water gets contaminated; and we have had a lot of discussion on this. So, you feel we don't have enough knowledge to pass judgements to the code?"

I don't see your point of view of thinking that what we are doing right now doesn't protect the public health."

Helina Carter-Thomas said, "I think you are trying to protect the public health and I appreciate that and I think it is important. I think that Utah County is adopting things that sometimes are taken care of by other agencies in the state like the division of water rights. I am happy to see some of the changes they have made to 16-01 because that took care of a couple of my concerns. But it also can't be over reaching for no reason."

Ben Van Noy said, "There are no studies for 16-01. There may be other studies on wells, contamination sources and other sorts of things. We wouldn't have the studies the state has done."

Diane Lohner said, "It is my understanding that the state covers anything eight and above, so we are only talking seven and below, so how can we be more restrictive than the state when the state doesn't have any regulation for seven and below?"

Helina Carter-Thomas, "Because seven and below there is not regulation. Why is Utah County regulating it when the state doesn't?"

Diane Lohner said, "Because they don't regulate it and so there still needs to be safety for those people who are going to have seven hook ups. You can't be left out of that and then these people aren't kept safe from contaminates. There has got to be some kind of regulation to keep the public safe."

Mark Donaldson asked, "Can you give us a couple of examples of where you think this is over reaching? What would it mean in specific situations that you are concerned about?"

Helina Carter-Thomas said, "I did that in my email. I would like to review the changes which they have suggested and read it."

Rick Nielsen asked, "What is your interest in this particular topic? Concerned citizen? Developer? Relator? Water Rights Activist?"

Helina Carter-Thomas said, "I am a real-estate broker. I am also a developer. I also was on the planning commission for Utah County for years. I have been developing in Utah County for over 20 years, and I have dealt with the departments as things have changed and different commissions. I am also involved with a lot of attorneys and engineers; and for years and years, people have been extremely frustrated with Utah County and particularly some of the employees in Environmental Health. It has affected me hugely. I have heard it from so many people over and over again. I started looking into a few things in state code and in Utah County's rules and regulations and ordinances and there are problems all over the place.

I am not planning to sue Utah County, but I probably could because I was given wrong information and so were a lot of other people. I am trying to straighten this out; this is my interest in it for the public.

I am also a water right consultant and I deal with water rights every day. I feel that my experience is probably more broad in these areas than anyone else's in the valley. I feel that my understanding is better than the guys sitting behind me. I am frustrated that they haven't met with me or acknowledged these issues necessarily."

Rick Nielsen said, "From what you said earlier, you have had some kind of meetings but perhaps not a meeting since the most recent draft has been written."

Helina Carter-Thomas, "I have had one meeting, and then I was invited to attend another meeting with Mr. Magelby. I had one meeting initially where I expressed my concerns and I have not met with anyone since then. Because we are just talking about nonpublic water systems which I don't know, is there a reason why we are calling it nonpublic instead of private? The word nonpublic isn't in state code."

Ben Van Noy answered, "That is because the state doesn't regulate 'nonpublic' – they do 'public' systems. Other counties call it 'nonpublic' water systems, some other counties call it individual water systems. It is the nomenclature we have chosen to use."

Teresa Taveres said, "We are talking about, if people are living in the subdivision, they are going to use the well for human consumption, it needs to be tested."

Helina Carter-Thomas said, "I am not saying that it shouldn't be tested before they build a home or use it for that. I am talking about subdivision feasibility. What I recommend is that an engineer/geotechnical study as an option that Utah County offers for determinations."

Ben Van Noy said, "That is available in groundwater monitoring which goes to feasibility in subdivisions. So, we are trying to give developers more options."

Ben Van Noy went on to say, "There is no state law or regulation. That is why the county has the regulation and for that reason, it is not more stringent because it can't be more stringent."

Ben Van Noy said, "After the last board of health meeting, we met with Ms. Carter-Thomas for about 3 ½ hours to go over her lengthy email to Mr. Acerson. We have communicated over email numerous times since that meeting, and we have discussed lots of things."

Ben Van Noy continued, "Feasibility regarding nonpublic water systems and feasibility is a part of that with subdivisions less than seven service connections as an omnibus regulation, we feel it is necessary to include the feasibility section in there because it deals directly with nonpublic water systems whether the ownership is on the developer or the home builder, we feel it's appropriate on the developer's end as the entity that is putting in the service connections because they have more control over what happens for the entire subdivision. You could get in a situation where a home owner buys a lot and tries to build, and they can't – buyer beware, sure – but this can be handled on the front end to allow people to develop and to build in rural Utah County."

Helina Carter-Thomas gave an explanation of drilling for wells.

Ben Van Noy said, "One of the main purposes of this is to test for contaminants and bacteria which can't happen just by an expert looking at the water, they have to test it."

Helina Carter Thomas said, "The testing from this lot to this lot could be different. I'm just saying it serves no purpose. Filtering is allowed. If there are contaminants and someone has invested \$20K-\$50K in the well, plus investment in the lot, if there is a contaminate, they are going to put in a filtration system and use it."

Rick Nielsen asked, "Wouldn't it be better for the developer to have done that and then the person who bought the lot is aware of what the report is and can make a determination going into the purchase whether or not they want the lot knowing that if they buy the lot, they will have to put a filter on it?"

Helina Carter-Thomas, "So you are saying that you think a well should be drilled on each lot? Because that is not required right now."

Ralph Clegg asked Jason Garrett, Bureau Director Environmental Health, "If a well has a high level of nitrates or dissolved solids, without this regulation, they are not allowed to build, is that correct?"

Jason Garrett answered, "That is how it was when we first created this regulation. If you didn't meet the standards, you were stuck out-of-luck which is one of the reasons why we created this regulation is to give a path forward. In fact, that is what we have been trying to do all along with the changes is to give more options, more paths forward to be able to do what you would like to with your land while still protecting public health. That is the balance we have tried to strike here. When we first developed it, that is what the situation was."

Ralph Clegg asked, "Has that changed?"

Jason Garrett indicated that what has changed is where it was located at. It used to be in the land use portion. They (*Community Development*) asked us to create this regulation with these options and then they have struck that from their ordinance. That is part of what went on from my recollection.

Ben Van Noy said, "Now if there are contaminants, this regulation allows for filtration systems."

Jason Garrett said, "Yes, that was never there before. So, what we try to do is to give options if you have high arsenic, which would be one of the most common ones, to put a treatment system and guidance for that."

Helina Carter-Thomas said, "But state code also allows for filtration."

Jason Garrett said, "I don't want to mix the state code up. The state code does allow for 'public' water systems but does not address 'nonpublic' water systems."

Ralph Clegg asked Jason Garrett the following about what his feeling was on what Helina said about having a geoscientist determine its feasibility rather than using information from testing a well.

Jason Garrett answered, "I think you could do that for many of the items, but to actually know if you have arsenic or nitrates or microbial issues, the only way to do that is to send it to an accredited lab."

Helina Carter-Thomas asked, "But do you agree there could be a well here and a well 250 feet away that are different?"

Jason Garrett said, "I do agree with that. I feel like it is kind of a minimum that we are requiring. I don't disagree in the fact that we have seen that, and that is what makes it so hard, is that you will go a mile down the road and find arsenic in a well and then none there. The reality is that it is a very baseline amount of information for feasibility that has been in place for as long as I have been here. I do agree why we added the provision of 500 feet without. If you can find a geotechnical person to come in and say it is pulling from the same aquifer, then yes, that is some leeway we can certainly give. But we are trying to satisfy in a very basic way some of the other ordinances in the county by doing this feasibility."

Rick Nielsen said, "We talk about the state rules and regulations that are in place for 8 plus service connections for a 'public' system; and we talk about the state rules and regulations applying to those principles. Is what is presented to the board, more restrictive than those? Less restrictive with those regs? Or are the regs in alignment with the regulation?"

Jason Garrett answered, "Much less restrictive. Our goal, when we created this, was that nobody was drinking contaminated water unaware. As far as infrastructure goes, it is much less restrictive."

Rick Nielsen asked for clarification, "So if an 8-plus service connection is over here and a 7-less service connection is over there...state code is silent on the 1-7 service connections; so anything we do is going to be more restrictive than nothing. But what is being proposed is less restrictive than what is in place for an 8-plus service connection, am I understanding that correctly? Our unique challenge, always in these roles and responsibilities, is to try to strike that happy medium where if we believe that doing nothing is irresponsible, and we have got to have something and striking the balance on the 'something' that is reasonable and rational and not overburdensome."

Jason Garrett said, "Through many hours of trying to look into it and what other counties have done for areas, without having unlimited funds to do these studies as Helina is suggesting, we would love to have that information, it just isn't feasible. We are trying to strike that same balance of what will protect the public health and not being over-the-top burdensome, that is what we have honestly tried to do."

Helina Carter-Thomas asked, "So why do you think that the state doesn't have any requirements as far as a private water system or a nonpublic water system?"

Rick Nielsen said, "I know why I think they don't. I think they believe it is a local issue. I think it is quite common in state code that they write overarching code and then when things become a smaller more local type of an issue, they intentionally stay silent on the code so that the local entity can then step in and write local policy on it."

Jason Garrett said, "I can attest to that as well as I have been on a couple of state rule writing committees. They are specific on certain issues and then they remain silent so that local places can do their own things if they do anything about it."

Mark Donaldson said, "Maybe their thinking is that this is an individual's freedom or liberty to build a house and drink contaminated water. No one is going to drink arsenic or contaminated water knowingly, but on the other hand when you are not dealing with something bigger maybe they are saying 'hey' - let people have the freedoms to do things they can afford to do and live with the consequences themselves. They aren't contaminating the aquifer'."

Jason Garrett said, "What discussion took place as we are doing this, as it happens so often, is that they test and they do that; but it is the second and third and fourth homeowner that know nothing about it, and that is what we have to guard against."

Helina Carter-Thomas said, "County living is different than living in the city, and people choose to live that way because they are afforded more ability to not be controlled by every little thing."

Mark Donaldson to Helina Carter Thomas, "I read your email and I think you have some very important points there. It sounds like Daril met with you and had a lot of input from other people."

Daril Mableby said, "This is my last board meeting. This wasn't even a topic on our agenda, but I have a half a dozen developers or homeowners that have had extreme frustration with this department and just like Helina and my family member that came to the meeting with Ralph. I do appreciate those who were present there. That is just one or two people making comments, but there is a major frustration within the county with this department. My advice and my direction would be to 'clean it up.' We are serving the citizens of Utah County. It is important that you have that mindset that you serve the individuals in this county the best you can. Don't hide behind regulation. Why is this document so regulated before we made changes? Why did it ever get to that point? I appreciate the effort that has been put forth and it would have never changed unless Helina or other people have come forward and shown frustration. I think you are there to serve and do the best you can there. I would advise the board here and Ralph going forward that they make changes internally."

Eric Edwards, Deputy Director of Utah County Health Department stated, "As I look through this proposed change to this regulation, I appreciate the public comment we received. That is the value of this of this process, having the public comment period. I also understand and value the input of our legal opinion of Ben Van Noy and also our employees I've seen put in countless hours. If I could emphasize three points and if you will look through these changes, you will see the intent is to provide clarity, and to also provide more avenues which I feel is in here as well, and then the bottom line is to do exactly what Mr. Magleby is mentioning. We have a tough job and that is to protect the public's health and I believe the changes in the regulation are meant to do those three things: 1) provide clarity, 2) protect public health, and 3) provide other avenues.

**MOTION:** Daril Magleby made the motion to close the public hearing which was seconded by Diane Lohner and passed by unanimous vote.



4. Consider for adoption the proposed amendment to the Health Regulation 16-01 Nonpublic Water System

**MOTION:** Diane Lohner made the motion to accept the amendment to Health Regulation 16-01 with the intent that things will be continued to be looked at and revised more as the health department discusses more with the public. The motion was seconded by Daril Magelby and passed by unanimous vote.

Rick Nielsen said, "It is critical that the conversation continue on, but I also don't want to hold people up for the next two months. The interest in protecting public health is going to necessitate something and who knows what the something is. Given our inclination to say we've got to do something, I applaud the motion. But to articulate it for the record, it is was important to get something in place that is in middle ground, and if there needs to be some movement a little bit to the right or movement a little bit to the left to make sure that we have been as responsive as our attempt to be responsive, because it is always very difficult to have a document in the moment and see if we hit it right on point, if we struck right on the tip, so I don't know that any of us are totally confident that we've struck the absolute sweet spot. But we are close enough that we need to be, that it is important to make the motion and get it in place and let people start moving forward with what they want to be doing and continue to make efforts to get to that sweet spot."

5. Findings of Fact and Conclusions of Law on Tobacco Regulation 2018-01

Linnea Fletcher, Program Manager at Utah County Health Department and Ben Van Noy presented the Findings of Fact and Conclusions of Law. This shows that we are using good science and data from what we have collected up to this point in protecting our youth specifically. The report shows the regulation has been adopted, that we held a public hearing, we didn't receive any public comments based on this. The facts site things from the United States Surgeon General. Conclusions of law and why specifically we put this together proposing it and what specifically was not covered in either state or federal law and why the regulation on a county level was approved.

**MOTION:** Rick Nielsen made the motion to adopt the Findings of Fact and Conclusions of Law on Tobacco Regulation 2018-01 which was seconded by Diane Lohner and passed by unanimous vote.

6. UALBH Steering Committee Report

Diane Lohner reported on UALBH September's symposium. There were very favorable reviews and more people attended than had in the past. The new medical cannabis act was discussed.

7. Appoint board member to replace Diane Lohner on the UALBH Steering Committee representing the Utah County Board of Health

**MOTION:** Diane Lohner made the motion to appoint Teresa Tavares to the UALBH Steering Committee which was seconded by Rick Nielsen and passed by unanimous vote.

8. Recommendations for appointments of potential Board of Health Members to the Utah County Commission (tabled until after the closed meeting)
9. Approve and set a date, time and location for closed meeting to discuss the character, professional competence, or physical or mental health of an individual or individuals (suggested for today's date, at this location, following the completion of the regular agenda)

**MOTION:** Rick Nielsen made the motion to move to a closed session to discuss items 8 and 9 to approve and set a date, time and location for a closed meeting to discuss the character, professional competence, or physical or mental health of an individual for today, November 26, 2018 at this location and this time which was seconded by Daril Magleby and passed by unanimous vote.

**MOTION:** Daril Magelby made the motion to open the meeting which was seconded by Diane Lohner and passed unanimously.

**MOTION:** Diane Lohner made the recommendation to accept four individual candidates for recommendation to fill the board of health positions to the Utah County Commission which was seconded by Daril Magleby and passed by unanimous vote.

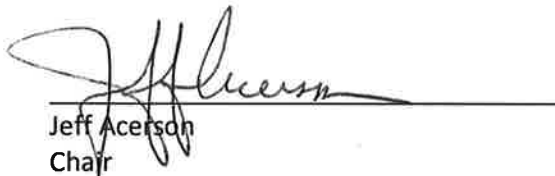
#### 10. Other business

- a. Follow up on Provo Property Reported on by James O'Neal at September 2018 Board of Health Meeting. *Ralph reported that the health department followed up with Provo City zoning. A guardian has been appointed to handle the property both exterior and interior.*
- b. Follow up report on response to Helina Carter-Thomas' concerns at September 2018 Board of Health Meeting. *Ralph reported that Environmental Health staff and Ben Van Noy met with Helina for 3 ½ hours. There are still disagreements with interpretation of law. We are willing to work towards solutions.*
- c. Medical Marijuana Dispensing. *Current proposal is that medical marijuana would be dispensed from public health departments. We have communicated that if the funding is there, local health departments are willing to step up to help communities avoid recreational marijuana. We are proposing that the funding for local health departments come from a mill levy from the state legislature. A special session of the legislature will meet on December 3, 2018.*
- d. Employee changes are routine.
- e. Appreciation plaques were presented to Diane Lohner and Daril Magleby for their service on the Board of Health.

**MOTION:** Daril Magleby made the motion to adjourn which was seconded by Diane Lohner and passed with unanimous vote.



Ralph Clegg, EHS MPA  
Director  
Utah County Health Department



Jeff Acerson  
Chair  
Utah County Board of Health