

Board of Health Minutes
Monday, May 5, 2008, 6:00 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 6:04 PM.

Members attending: Susan Hubbard, Dr. Spencer Amesbury and Charles Hill.

Others attending: Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Gerry McDonald, P.E., Sean Malone, P.E., Cynthia Budzianowski, Jeff Clickstein, George Rathe and Peter Pommersheim, P.E.

Citizens Queries: none

Minutes:

Dr. Spencer Amesbury made a motion to postpone approval of the April 22, 2008 minutes until the June 2008 Board of Health meeting since the minutes were not ready for review prior to the meeting. Chuck Hill seconded the motion. The motion passed unanimously.

6:05 – Hearing- Theresa Shelzi – 56 North Ridge Road – represented by H.L. Graham Associates, Inc. –seasonal tight tank and variances.

At the April 22, 2008 meeting the hearing was postponed since the abutter was not notified. Susan Hubbard asked if the abutter was notified. The abutter was sent the septic plan via e-mail. In her email response copied to the Health Agent, she had no problems with the proposed plan. She was not notified by certified mail ten (10) days in advance of the hearing as required under Title 5 regulation. Susan Hubbard agreed to proceed with the hearing with the condition that the engineer notifies the abutter regarding the results of the hearing by certified mail. She would be given ten (10) days to respond to the outcome of said hearing. If she did not respond within the ten (10) days, the Board of Health will issue a letter indicating the variances granted and conditions of approval. If the certified mail card is not received by the Board of Health before the next meeting, all variances granted will be null and void since proper procedure was not followed in accordance with Title 5.

Gerry McDonald, P.E. presented, and a hearing was conducted for the approval of a seasonal tight tank designed by Gerard McDonald, P.E., dated January 30, 2008 and last revised April 22, 2008 for the dwelling located at 56 North Ridge Road, Ipswich, Massachusetts.

The system failed a Title 5 inspection on June 20, 2003. A septic plan was approved on February 27, 2007. At the August 6, 2007 Board of Health meeting the Board set an upgrade deadline of June 20, 2007. At the August 2007 Board of Health meeting the owners requested an extension so they could decide what they wanted to do with the dwelling and have the septic be installed when the building renovations would occur. In the interim, the owners said the property would be used seasonally. The Board of Health said they would allow a “seasonal” tight tank to be installed as an interim measure until plans for renovating the house were complete and a septic system for year round usage could be formalized.

A “seasonal” tight tank plan has been designed with a need for variances. The following variances were requested:

- Reduction in setback from the tight tank to the property line from 10 feet to 5 feet.
- Reduction in setback from the tight tank to the slab foundation from 10 feet to 4 feet.
- Allow a portion of the tight tank to be installed more than 3 feet below finished grade. A depth of 4 feet is proposed.
- Reduction of flow design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.
- Reduction in setback of the tight tank to the ACEC from the 150 foot local requirement to 128 feet.

Susan Hubbard asked Colleen for her thoughts. Colleen received the revised engineered plan on May 1, 2008 and was not able to review the plan prior to the meeting, but said she did not foresee a problem with the variances requested. The previous plan that she did review was rejected by the Conservation Commission.

Susan Hubbard made a motion to grant the variances as requested with the following conditions of approval:

- DEP approval.
- Prior to the issuance of the Disposal System Construction Permit, the owner shall record at the Southern Essex County Registry of Deeds a copy of the DEP's written approval of the use of a tight tank, or when the Department has presumptively approved the use of a tight tank, a copy of the local Approving Authority's written approval.
- A deed restriction limiting the facility to seasonal residential use specifying the facility will be used for six (6) months or less during the calendar year must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Health Office prior to issuance of Disposal System Construction Permit..
- A four (4) bedroom deed restriction must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Health Office prior to issuance of Disposal System Construction Permit.
- A Lifetime Maintenance restrictive covenant must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Health Office prior to issuance of Disposal System Construction Permit.
- A two (2) year operation and maintenance contract must be obtained with a copy submitted to the Board of Health prior to issuance of Disposal System Construction Permit.
- Conservation Commission approval.
- Interior plumbing changes to tie the laundry into the main building sewer must be completed prior to issuance of Disposal System Construction Permit.
- The system must be completed with a Certificate of Compliance issued by July 31, 2008.
- Health Agent approval of the revised plan.

Dr. Spencer Amesbury seconded the motion. The motion passed unanimously.

6:10 – Hearing- Barry Low – 55 Argilla Road – represented by Oak Engineers – septic variances.

Susan Hubbard asked if the abutter was notified. Colleen spoke with the Town Manager. He met with the engineer on Friday, May 2, 2008. He was agreeable to the proposed plan, but was not notified by certified mail ten (10) days in advance of the hearing as required under Title 5 regulation so he left the decision to go forth with the hearing to the discretion of the Board. Susan Hubbard agreed to proceed with the hearing with the condition that the engineer notifies the abutter regarding the results of the hearing by certified mail. The abutter would be given ten (10) days to respond to the outcome of said hearing. If the abutter did not respond within the ten (10) days, the Board of Health will issue a letter indicating the variances granted and conditions of approval. If the certified mail card is not received by the Board of Health before the next meeting, all variances granted will be null and void since proper procedure was not followed in accordance with Title 5.

Sean Malone, P.E., presented and a hearing was held to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Steven Sawyer, P.E., plan 064125, dated December 31, 2007 and last revised April 2, 2008, for the dwelling located at 55 Argilla Road, Ipswich, Massachusetts.

The system failed a Title 5 inspection on April 16, 2005. The Board of Health approved a septic upgrade plan on November 14, 2005 for a two (2) bedroom dwelling. The current owner purchased the property and then requested a walkthrough by Colleen Fermon for a bedroom count determination. It was determined that the dwelling had three (3) bedrooms.

The dwelling has been unoccupied and the homeowner intends to demolish the existing dwelling and rebuild with a new septic system. A three (3) bedroom septic upgrade plan has been submitted to the Health Department.

Susan Hubbard asked Colleen for her thoughts. Colleen felt that since the system had been in failure since April 16, 2005

some timeframe should be given for the upgrade of the system. However, given that the dwelling has been unoccupied, she did not feel it was essential.

Susan Hubbard made a motion to grant the following variances:

- To allow the use of a sieve analysis in lieu of a percolation test.
- Reduction in setback from the leaching area to the property line from 10 feet to 8.5 feet.
- Reduction in setback from the leaching area to the foundation wall from 20 feet to 10 feet 4 inches.
- Reduction in setback from the leaching area to the catch basin from 50 feet to 14.6 feet
- Reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.
- To allow the use of soil testing conducted more than two years ago. Soil testing was conducted on May 31, 2005.

With the following conditions of approval:

- A 2 year Operations & Maintenance contract for the system to be submitted to the Health Department prior to issuance of Disposal System Construction Permit.
- A Lifetime Maintenance restrictive covenant filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Health Office prior to issuance of Disposal System Construction Permit.
- Conservation Commission approval.
- The property lines abutting Argilla Road and Heartbreak Road must be surveyed and staked prior to construction.
- The system must be installed with the Certificate of Compliance issued by June 15, 2009.

Dr. Spencer Amesbury seconded the motion. The motion passed unanimously.

6:15 – Hearing- Cynthia Budzianowski – 159 County Road –septic variances.

Susan Hubbard recused herself as she knows the homeowner.

Jeff Clickstein and Cynthia Budzianowski presented, and the Board heard a request for a variance, under Local Upgrade Approval, from Title 5, 310 CMR 15.211 Minimum Setback Distances. A reduction in the minimum ten (10) foot setback requirement from a slab foundation to a leaching system was requested. Jeff Clickstein said they recently renovated the home and added a second floor and would like to move the garage back for additional off-street parking space in the driveway. Since County Road is a busy street, they don't feel they have ample parking. In addition, they felt leaving the garage as is has an adverse effect on the architecture of the home.

Colleen Fermon reminded the Board that at the April 22, 2008 Board of Health meeting a septic upgrade plan was approved with variances granted. Now the owner is requesting approval of an additional variance under local upgrade approval to allow a proposed garage, on a slab foundation, to be placed two and a half (2.5) feet from the leaching area. A ten (10) foot setback is required under Title 5.

Since this is an upgrade situation, the applicant must meet the standard of maximum feasible compliance (MFC). Maximum feasible compliance (MFC) was met with the approval plan so the Board needed to decide if any additional provisions in Title 5 should be waived.

Dr. Amesbury felt there were two (2) different issues to consider. First; would putting the garage that close to the septic components impair the function of the system? Second; would the Board of Health be setting a bad precedent by granting a variance not based not on a need to enable a septic system to go on a property that has site constraints, but rather for the desire of a homeowner to make changes to a dwelling/property?

If the Board chooses to allow for a reduction, Colleen recommended not allowing a reduction in the setback of more than five (5) feet since going beyond that would interfere with the five (5) foot overdig that needs to be done as part of constructing the leaching system.

Dr. Spencer Amesbury was not in favor of granting a variance for a new structure to be placed within the ten (10) foot setback requirement since the existing garage could be placed in an alternate location on the lot and was not necessary to achieve a viable septic upgrade.

Dr. Amesbury felt the Board could not, in good faith, allow a structure to be put near a septic system when there are alternate possibilities for the site of the garage.

Chuck Hill questioned what the standard length of a garage was. Jeff Clickstein said twenty three (23) feet is the standard length. Colleen asked if the driveway could be widened to accommodate off-street parking. Jeff Clickstein said they would have to look into it.

Dr. Amesbury made a motion to deny the variance request since the required minimum ten (10) foot setback could be provided if the proposed garage was placed in an alternate location on the lot. In addition, a number of variances had already been granted to allow for a septic system meeting maximum feasible compliance to be installed and this variance was not necessary for the septic upgrade. Chuck Hill seconded the motion. The motion passed unanimously.

6:25 –Hearing- George Rathe – 26 Town Farm Road – timeframe for the septic upgrade or town sewer connection.

Homeowner George Rathe presented, and a hearing was conducted to discuss the order to either bring his property into compliance with 310 CMR 15.000 by upgrading the septic system or connecting to town sewer.

The system failed a Title 5 inspection on March 5, 2005. A septic upgrade plan was approved on May 17, 2005. Since then, the Board has granted two (2) extensions on the upgrade to give the owner time to see if the proposed 40B project in the area would be approved. The 40B applicant said he would allow the owner to tie into the sewer system if the 40B was approved.

The project has been before the Zoning Board of Appeals (ZBA) since December 2006 and has yet to be approved. Since the applicant has submitted a revised application, as of April 23, 2008, that is substantially different from the initial plan the approval process must start again. The prospect of sewer being available will not be known this year and there is no way to know how long the approval process may take.

Susan Hubbard questioned how many people occupy the dwelling. The homeowner said he lives there with his wife.

Colleen informed the Board that the permit for the approved plan expires on May 17, 2008 but a one (1) year extension can be granted. After that one (1) year extension, if granted, the owner would need to submit new plans and fees and start the process again. Since the system has been in failure since March 4, 2005 and sewer is not imminent Colleen felt an upgrade deadline of December 15, 2008 was a reasonable one with an extension given for the Disposal System Construction Permit until that time. If sewer is available by the end of November 2008 then Mr. Rathe could pursue sewer; if not, he should have the septic installed.

Dr. Spencer Amesbury made a motion to grant that Mr. Rathe must either upgrade the septic system or connect to town sewer by May 17, 2009. In addition, a one year extension was granted on Disposal System Construction Permit 05-26. The Disposal System Construction Permit now expires on May 17, 2009. No additional extension on the permit will be allowed. Susan Hubbard seconded the motion. The motion passed unanimously.

6:35 – Hearing- Ann Fisher – 77 North Ridge Road – represented by Donald Fouser, contractor – Title 5-inspection variance.

Contractor Donald Fouser presented, and a hearing was held to consider a request for a variance from Ipswich Board of Health Septic Regulations, section 10.2. Section 10.2 requires that a septic system shall be inspected by an Ipswich licensed Title 5 Inspector whenever an addition or renovation to an existing building, excluding decks, is proposed that increases the footprint of the building and requires a building permit or occupancy permit from the Building Inspector.

The inspection requirement shall be waived if a Certificate of Compliance was issued, a Title 5 Inspection was completed within the previous 3 years, or if the system is under an operation and maintenance contract.

The homeowner proposed to construct a screen porch addition which triggers the need for a Title 5 inspection under Board of Health regulations. The proposed twelve (12) foot by fourteen (14) foot, screen porch addition will extend off

the existing sunroom located on the back of the house. The septic tank is located on the west side of the dwelling; therefore, the proposed screen porch will not encroach on the septic tank or its components. No windows, only screens, were proposed.

Susan asked Colleen for her thoughts. Colleen had no objections since the Health Department has a Title 5 report showing where the septic components are located and the septic tank was pumped on May 11, 2001 and October 30, 2007 and no problems with the septic system were found. Colleen recommended granting the variance as requested.

Dr. Spencer Amesbury made a motion to grant the variance and not require the Title 5 inspection for the proposed addition since a Title 5 inspection was conducted on April 14, 2000 and it passed the inspection. In addition, the septic tank was pumped on May 11, 2001 and October 30, 2007 and no problems with the septic system were found at those times. Susan Hubbard seconded the motion. The motion passed unanimously.

6:40 – Hearing- Michael & Theresa Gambardella – 3 Valley Drive – represented by Meridian Associates, Inc. – variance for percolation testing outside of the new construction season.

Peter Pommersheim, P.E., presented and a hearing was conducted to consider soil testing for new construction beyond the new construction season.

Soil testing for new construction was done on April 23, 2008 but the soil was too wet to perc. Per Board of Health regulation 8.1, soil testing for new construction or on undeveloped lots must occur between March first (1st) and May thirty first (31st). In addition, since the testing is being done for new construction a sieve analysis was not possible to conduct in lieu of a perc test. A de watered perc was possible, but is very involved; therefore a request to conduct soil testing outside the new construction was requested.

Colleen felt that testing is done at this time of year in particular because it is typically the wettest, and therefore; the most accurate high groundwater elevation can be obtained.

Since high groundwater has been determined Colleen did not have a problem with doing the perc beyond the new construction season. The only other option is for a dewatered perc, which could be done but, as previously stated, can get very involved, during the new construction season.

If the variance is granted, Colleen recommended the perc being done by the end of August 2008.

Dr. Spencer Amesbury made a motion to grant a variance to Ipswich Board of Health Septic System Regulation 8.1 which requires soil testing for new construction to be completed between March 1 and May 31. Said variance allows percolation testing to be conducted after May 31, 2008 but prior to September 1, 2008. Chuck Hill seconded the motion. The motion passed unanimously.

6:50 – Hearing- Michael and Kimberly Marini –227 Linebrook Road – variance for the reduction in the setback between the reserve leaching area and a crawl space.

The hearing was postponed until the June 2, 2008 Board of Health meeting since the abutters were not notified according to the Marini's attorney; Richard Kallman.

Discussions:

Temporary Food Establishment Guidance Documents: Temporary Food Establishment Guidance Documents were completed as part of the Health Department FY08 goals. The role of the Board of Health is to protect public health by carefully reviewing temporary food applications, both the menu and the facilities provided. Colleen presented five (5) food establishment guidance documents to the Board for their review. The documents were prepared in an effort to explain state food protection regulations and temporary food permit requirements for the general public. In doing so, Colleen expanded on state documents.

The goal is to educate the public on the process of evaluating what requirements must be met based on the menu proposed. The cover letter is the biggest part of the package since it gives an overview of the permitting process and the

state regulations. The approved documents will be added to the town website. A mailing will go out to all current vendors who have pulled temporary food permits in Ipswich. The Board members unanimously approved the food establishment guidance documents.

Fee Schedule Changes: It was the decision of the Board to increase the tobacco fee from five (\$5.00) dollars to fifty (\$50.00) dollars. A legal notice will be placed in the paper giving advance notice of the public hearing.

Body Work Regulation: It was the decision of the Board to dissolve the current bodywork regulation. A legal notice will be placed in the paper giving advance notice of the public hearing.

Report of the Health Agent:

Russell Orchards: In August 2004 a site visit was made by the Department of Environmental Protection (DEP) based on an inquiry from the Board of Health concerning the status of the public water supply for the facility.

The Drinking Water Regulations of Massachusetts, 310CMR 22.00 define a “Public Water System” as a system for the provision to the public of water for human consumption, through pipes or other conveyances, if such a system has at least fifteen (15) service connections, or if it regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days a year. Under 310CMR 22.00, the term, “water used for human consumption,” is defined as water that is used by humans in residential, commercial, industrial, institutional or other setting for drinking, bathing, showering, cooking, dishwashing or maintaining oral hygiene.”

It was the determination of the Department of Environmental Protection (DEP) that the well supplying the facility met the definition of a public water supply well.

The Department of Environmental Protection (DEP) informed the Health Agent in a phone conversation that the property was being tied to town water. Unknown to the Health Agent, a temporary line to the public water supply to supply the farm stand and house during the operating season was constructed. After the close of the season the spring would be re-activated to supply the house until the start of the next farm season. It was determined by the Department of Environmental Protection (DEP) that this arrangement would be acceptable and would mean that Russell Orchard was not a public water supply system but nothing was documented in writing from DEP acknowledging this approach.

The Health Agent conducted a site visit when a septic system design of eleven (11) bedrooms was proposed for the farm house and barn. The original septic system was completed in 1980 and was designed for five (5) bedrooms. At the time of the site visit it was discovered that only a seasonal line was installed and the well was being used off season. A second inspection was conducted by DEP on April 24, 2008 at the request of the Health Department.

The inspection revealed that when the proper valves are opened/closed and the Town has activated the temporary water supply line, the farm stand and house are being supplied by the Ipswich Water Department. The Department of Environmental Protection (DEP) again determined that this was not a public water supply system but made several recommendations that, “should” happen to ensure proper use of the water supply.

Colleen’s concern was monitoring the recommendations made by the Department of Environmental Protection (DEP). For example, the town water was not turned on at the farm last year until July 31, 2007.

The Board felt since the facility supplies food and beverage to the public, there must be a fail-safe put into place. Water testing should occur prior to opening each season and the Board of Health must be notified when the town water is turned on and off.

Susan Hubbard made a motion to require water testing samples be collected by a Department of Environmental Protection (DEP) certified laboratory for total coliform bacterial analysis and a written record be submitted to the Health Department showing when town water was activated and deactivated, along with the name of the individual who performed the work, prior to the opening of the operating farm season. Watee usage records must be submitted to the Health Office after each season. Dr. Spencer Amesbury seconded the motion. The motion passed unanimously.

16 Southern Heights: On April 20, 2008 the Health Agent responded to a call from the tenant of 16 Southern Heights claiming the basement was flooded. Colleen did a site inspection and found the basement was not flooded but was visibly wet. The sump pump put in place by the Ipswich Housing Authority to remedy the existing problem in the basement was not operational at the time of inspection. Colleen asked what the Housing Authority protocol was in this situation. She received no response. Colleen has discussed the wet basement condition with the Housing Authority for one (1) year and the Housing Authority has still not conducted an evaluation of the problem. The Board asked to have the Ipswich Housing Authority attend the next meeting to get an update on roof repairs and replacement of windows.

7 Agawam Village Unit C: The unit was condemned by the Board of Health at a previous meeting. The Housing Authority believes they completed the necessary repairs and are ready to re-occupy the unit. According to Julie Martineau, Director of the Ipswich Housing Authority, the windows have not been replaced since money for the repairs is tied up in procurement. They requested a hearing to lift the condemnation. The Board felt it was against regulation to lift the violation and/or condemnation until the windows are repaired. They felt that even if the money for the repairs is tied up in procurement something to improve the situation could still be done as a temporary measure.

Next Board Meeting: The next meetings of the Board of Health were scheduled for June 2nd and July 7, 2008 at 6pm.

Adjourn: Susan Hubbard made the motion to adjourn at 7:30 PM. Dr. Spencer Amesbury seconded the motion. The motion to adjourn passed unanimously.

Susan Hubbard, Chairman

Spencer Amesbury, Board Member

Charles Hill, Board Member

