

Board of Health Minutes
Monday, August 4, 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 6:00pm.

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

Others attending: Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Larry Graham, P.E., Gerry McDonald, P.E., Maria Wolters, Matthew Cummings, Paul Hackert, Richard Kallman, Esq., Greg Hotchmuth, P.E., Joseph Tragert, and Paul Allen-Webber.

Citizens Queries: Evan Parker, owner of 213 High Street, requested to be heard regarding a failure to comply with a sewage disposal plan submission deadline of May 31, 2008. The Board agreed to hear Mr. Parker.

Minutes: July 7, 2008

Susan Hubbard made a motion to approve the minutes of the July 7, 2008 meeting. Chuck Hill seconded the motion. The motion passed unanimously.

6:00– Hearing - Maria Wolters- Director – Cornerstones – 35 Mitchell Road – Minimum Standards of Fitness for Human Habitation, State Sanitary Code, Chapter II - variance.

Maria Wolters presented, and the continuance of her hearing from July 7, 2008 was conducted, regarding the order to correct issued on June 16, 2008. Variances to the 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation, provisions 410.250: Habitable Rooms Other than Kitchen-Natural Light and Electrical Outlets and 410.351: and Owner’s Installation and Maintenance Responsibilities were requested.

Per the request of Cornerstone’s Director, Maria Wolters, an inspection was conducted on June 11, 2008 in accordance with Chapter II of the State Sanitary Code, 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation. The inspection was requested by Ms. Wolters since the Department of Education requires a health inspection every two (2) years to run a residential facility. A Health Inspection Report developed by the Department of Education certifying the facility complied with Chapter II of the State Sanitary Code and other applicable codes was signed erroneously by Allen Gromko, Ipswich Food Inspector, in 2005. He does not do Chapter II inspections.

A re-inspection was conducted on July 9, 2008 and a second re-inspection was conducted on August 4, 2008. The following violations remain:

1. One screen was not replaced for a small bedroom window. It needs to be special ordered.
2. The ventilation wiring is incomplete and the ceiling needs to be repaired. The ventilation has been added to the second floor handicap bathroom and the second floor staff bathroom’s ventilation is operable now.
3. Track lighting in the kitchen is not operational.
4. The second floor bathroom has a leaking sink.
5. Three (3) bedroom windows are of insufficient size.
6. Three (3) light shields are missing in the activity room.

Colleen presented the Board an opinion from General Council for the Department of Public Health, Chapter II, provision 410.250, language which was the same in 1996, pictures of the windows with the size measurements, the Building Code in effect in 1996, and the Building Code currently in effect (the requirements have not changed) and building permit applications and occupancy permits for the building relating to the current use.

The Board of Health acknowledged the written response of General Counsel for the Department of Public Health. The opinion stated that the 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation, provision 410.250: Habitable Rooms Other than Kitchen-Natural Light and Electrical Outlets should have

been complied with in 1996 when the building was renovated for the occupancy of Cornerstones. Additionally, General Council for the Department of Public Health determined that there is no actual conflict between the State Sanitary Code and the Building Code. Compliance with the Sanitary Code would have also satisfied the Building Code and; therefore, the requirements in section 410.250 which were more restrictive than the building code should have been followed.

The Health Agent did not sign the original building permit application number (#) 96045 and the corresponding occupancy permit. The second building permit application for the expansion of Cornerstone's was signed by Domenic Badalato (Health Agent) but the corresponding occupancy permit was signed by the Building Inspector for the Health Department since there was no Health Agent at the time due to the illness or death of the Health Agent.

Although the kitchen was required to be licensed in 1996, no food permits were issued until 1998 and the first one issued was signed by the Building Inspector. It is unclear what involvement the Health Agent had in the conversion of the building to its current use as a school and residence for children.

Susan Hubbard reiterated the opinion of the Department of Public Health (DPH) general council clearly states that the building should have been altered to comply with CMR 410.250 and provided windows sized to equal eight percent (8%) of the entire floor area of the room prior to occupancy. Dr. Amesbury agreed.

The size of the existing windows range from two percent (2%) to four percent (4%) of the entire room it serves.

1. The first bedroom on the right has a window size equal to two percent (2%) of the entire floor area of the room.
2. The second bedroom on the right has a window size equal to three percent (3%) of the entire floor area of the room.
3. The third bedroom on the right has a window size equal to four percent (4%) of the entire floor area of the room.

Per 105 CMR 410.840, the applicant must prove manifest injustice in order to receive a variance. If the Board grants a variance, Colleen suggested they condition it to be in effect only for the current use of Health and Education Services (HES).

Susan Hubbard questioned if something concerning these rooms required a smaller window size. The smaller window size benefits many children since mental health issues compel them to block off light from the windows. Typically, the children are not in the rooms during the day since the rooms are only used for sleeping. Moreover, natural light from windows across the hall provide the bedrooms with a supplemental source of light.

If the window size were to be altered this would prove a hardship for the school since the rooms would be un-useable during the alterations. Subsequently, the school would have to close during the renovations and most residents have no other option for housing.

Dr. Amesbury noted that the building should have been altered to comply with the State Sanitary Code in 1996 when the use was changed to its current use as a school and group residence. Compliance with the State Sanitary Code would have also provided compliance with the State Building Code so both codes could have been satisfied with the increase in the size of the three (3) bedroom windows.

Dr. Amesbury made a motion to grant a variance to 105 CMR 410.250: Habitable Rooms Other than Kitchen-Natural Light and Electrical Outlets for the three (3) bedroom windows that do not have transparent or translucent glass which is equal in area to no less than 8% of the entire floor area of that room with the condition that it is specifically for the current business occupying the facility, Cornerstones, and for the current use as a residential facility. If there is a change in tenancy, change in use, if the building is remodeled or renovated substantially or if the building is vacated, the windows will be required to be modified to meet the State Sanitary Code 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation. Susan Hubbard seconded the motion. The motion passed unanimously.

Dr. Spencer Amesbury made the motion to grant a variance to 105 CMR 410.351: and Owner's Installation and Maintenance Responsibilities. All the light bulbs that may be installed in the fluorescent light fixtures in the bedrooms do not need to be installed provided sufficient illumination is maintained. Susan Hubbard seconded the motion. The motion passed unanimously.

Susan Hubbard seconded the motion to modify the order and extend the timeframe for corrections until September 4, 2008 for the following violations:

- One screen was missing for a small bedroom window.
- The ventilation wiring is incomplete and the ceilings need to be repaired in the second floor handicap bathroom and the second floor staff bathroom.
- Track lighting in the kitchen is not operational.
- The second floor bathroom has a leaking faucet.
- Three (3) light shields are missing in the activity room.

Spencer Amesbury seconded the motion. The motion passed unanimously.

The individual subsurface sewage disposal system that serves 35 Mitchell Road was also discussed. The existing individual subsurface sewage disposal system does not comply with 310 CMR 15.000, The State Environmental Code, Title 5 since there is no pretreatment unit (grease trap). In accordance with 310 CMR 15.230, a grease trap shall be provided for kitchen flows at restaurants, nursing homes, schools, hospitals and other facilities from which grease can be expected to be discharged. Grease removal by other devices located within the building as part of the internal plumbing shall not be considered for compliance with 310 CMR 15.230.

Susan Hubbard made a motion and ordered the property to be brought into compliance with 310 CMR 15.000, The State Environmental Code, Title 5 by December 2, 2008. Dr. Amesbury seconded the motion the motion passed unanimously.

6:17 – Hearing – David Grasso – 40 Turnpike Road – swimming pool modification plan.

At the August 4, 2008 Board of Health meeting, the Board reviewed the plans designed by Matthew Cummings of Cummings Architects dated August 4, 2008; that proposed to bring the pool in to compliance with 105 CMR 435.000 Minimum Standards for Swimming Pools, State Sanitary Code, Chapter V.

The pool does not currently comply with 105 CMR 435.13: Walkways and Decks since the walkway around the pool is not a minimum of four (4) feet in width at one end of the pool. Mr. Cummings has designed a plan to modify the existing two (2) foot walkway at the end of the pool to bring it into compliance with Minimum Standards for Swimming Pools. The plan proposes to extend the deck with the use of an aluminum platform that is treated with an epoxy coating to make it a non-slip surface.

Colleen spoke with Peter Wheeler, at the Department of Public Health (DPH). It was his opinion it would be better to fill in the pool as a means of extending the deck. The Department of Public Health (DPH) felt the proposed extension could pose a trip hazard. Additionally, Mr. Wheeler voiced concern regarding water reaching the pool cover storage area and becoming stagnant.

Phil Haccort, the Certified Pool Operator, stated there would be a drain in the pool cover trough that would discharge to a drywell that serves the foundation drain. The pool cover will promote safety since, once closed, it prevents anyone from accessing the pool. The walkway will also be flush with the pool cover and; therefore, would not be a trip hazard. In addition; it will save energy, and provide a cost savings for the owner.

Mr. Cummings informed the Board that the drain would remove any water to the drywell outside. There would be no possibility for stagnant water.

This plan proposes to extend the aluminum platform, which currently covers the pool cover, by two (2) feet to provide an extension to the existing walkway to meet the code requirement of a minimum of four (4) feet. Since compliance is being proposed via an atypical material and method, Colleen felt this was a decision for the Board of Health to make.

Since Colleen was unaware of any other pool that has utilized this approach and based on DPH's comments, she recommended the pool cover trough be filled in.

Susan Hubbard questioned the strength of the aluminum cover, how much weight can it handle? Dr. Amesbury explained the concern was that the cover would not sustain the weight of rescue personnel and equipment. Mr. Cummings reported that the cover could sustain a great amount of weight and offered to supply the Board with a certified letter attesting to the structural capacity of the pool cover.

Dr. Amesbury made a motion to grant approval for the Cummings Architects plan, dated August 4, 2008, with the following conditions:

1. The plan must be stamped and signed by Matthew Cummings before the pool can be modified.
2. A certification of the structural capacity of the proposed aluminum platform must be submitted to the Health Office before the pool can be modified.
3. The new deck surface (aluminum platform) must be flush with the existing deck and finished with a slip resistant non-abrasive surface.
4. The aluminum platform that serves as a cover to the pool cover must be maintained in a closed position during the operation of the pool
5. No accumulation of water is allowed in the pool cover trough.
6. The pool deck must comply with all applicable codes.

The Health Agent will ask for clarification from the Department of Environmental Protection on whether or not chlorinated water can be discharged to a drywell. Susan Hubbard seconded the motion. The motion passed unanimously.

6:30 – Hearing - Nicholas DiBenedetto – Sunrise Realty Trust – 39 Turnpike Road, 41 Old Right Road, 45-47 Old Right Road (assessor map 38C, lots 4, 4A, 4B and 10)– represented by Neve – Morin Group, Inc. – extension on soil testing results.

Greg Hochmuth presented, and a hearing was conducted to consider a variance from Ipswich Board of Health Septic System Regulations to extend the validity of soil testing conducted on March 15 and 16, 2005 for the property located at 39 Turnpike Road, Map 38C, Lot 004, 41 Old Right Road, 45-47 Old Right Road (assessor map 38C, lots 4, 4A, 4B and 10) Ipswich, Massachusetts. Previous extensions have been granted.

The soils found during testing were loamy sand; sandy loam with percolations rates that ranged from less than two (<2) minutes per inch to nine (9) minutes per inch.

Mr. Hotchmuth reported there were no changes made to the site since he appeared before the Board on July 23, 2007, and that the property is now on the market. There is currently an interested buyer so the owner does not want to proceed with engineered plans until he knows if the property will transfer ownership.

Colleen recommended granting the variance.

Dr. Spencer Amesbury made a motion to grant a variance to Ipswich Board of Health Septic System Regulations for the properties located at 39 Turnpike Road, 41 Old Right Road and 45- 47 Old Right Road, Ipswich, Massachusetts. Said variance extends the validity of the soil testing conducted on March 15 and 16, 2005 until December 31, 2009. The variance was granted since the property is currently for sale and septic plans will be designed after the property transfers and the development plans have been finalized. Susan Hubbard seconded the motion. The motion passed unanimously.

6:25 – Hearing - Robert and Megan Greenleaf – 229 High Street – represented by Neve – Morin Group, Inc. – septic variances.

Greg Hotchmuth, P.E. presented, and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by John Morin, R.S., plan S-2704, dated April 21, 2008 and last revised July 1, 2008, for the dwelling located at 229 High Street, Ipswich, Massachusetts. Robert and Megan Greenleaf were in attendance.

The system failed a Title 5 Inspection on July 15, 2003. The Board granted extensions beyond two (2) years for the upgrade while a town sewer extension was being considered.

At the March 10, 2008 Board of Health meeting the Board set a timeframe for installation of November 30, 2008 since Tim Henry, Ipswich Utilities Director, informed the Board that the High Street sewer extension project would not be undertaken.

The following variances were requested:

- A one foot reduction in the separation between the bottom of the leaching area and Estimated Seasonal High Ground Water (ESHGW); a 4 foot separation is provided.
- The use of a H10 loading, one compartment, 1000 gallon tank with 4 inch walls.

Colleen spoke with E. F. Shea New England and confirmed that a tank with four (4) inch walls could be vacuum tested.

Dr. Spencer Amesbury made a motion to grant the variances as requested. The system must be installed by November 30, 2008 with the Certificate of Compliance issued by said date. Susan Hubbard seconded the motion. The motion passed unanimously.

6:40 – Hearing - Joseph and Bernadine Tragert – 42 Skytop Road – Title 5 inspection variance.

Joseph Tragert was present and a hearing was conducted to consider a variance from Title 5 for a tank relocation plan designed by John Judd, R.S., plan 2932, dated June 10, 2008 and last revised July 31, 2008, for the dwelling located at 42 Skytop Road, Ipswich, Massachusetts.

Mr. Tragert proposed to expand the dwelling at 42 Skytop Road along with the addition of a three (3) car garage which made it necessary to relocate the septic tank /pump chamber combination tank so the tank will meet the required ten (10) foot setback to the proposed garage slab foundation.

At the July 7, 2008 Board of Health meeting the Board granted two (2) variances regarding the existing combination septic tank/ pump chamber. The existing tank does not comply with Ipswich Board of Health Septic Regulations, provision 2.8, since it is not monolithic and the tank can not be vacuum tested in accordance with Ipswich Board of

Health Septic Regulations, provision 3.3 since it has been used; and therefore, the manufacturer won't perform the vacuum test. The Board allowed the existing tank to be relocated although it wasn't monolithic and could not be vacuum tested.

The plan has been revised to provide two (2) new tanks, both monolithic and can be vacuum tested. A variance was requested since the septic tank inverts can not be placed one (1) foot above estimated seasonal high groundwater (ESHGW) without making significant plumbing changes. No plumbing changes are proposed. The variance would allow the septic tank inverts to be below estimated seasonal high ground water (ESHGW).

Colleen noted that this would be a significant change in the building sewer and she did not think it was warranted. She recommended that the variance be granted since only the tanks are changing, not the entire system.

Dr. Amesbury made a motion to allow the septic tank inverts to be below Estimated Seasonal High Ground Water (ESHGW) since the building sewer would need to be raised one (1) foot and no plumbing changes are proposed with the addition; the plan is only for the tank relocation not an upgrade of the system and the septic tank will have neoprene boots to make the connections watertight. Susan Hubbard seconded the motion. The motion passed unanimously.

6:50 – Hearing - Owen Lynch – 2 Colby Road – represented by Domestic Septic Design, Inc. – septic variance.

Domestic Septic Design, Inc. did not attend the meeting. The hearing was postponed until the September 2008 Board of Health meeting.

6:55 – Hearing – David Morin and Kevin Power – 15-17 School Street – represented by H.L. Graham Associates, Inc. – septic variances.

Larry Graham, P.E., and Gerry McDonald, 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 Gerard McDonald, P.E., plan 08-805, dated May 22, 2008 and last revised June 20, 2008 for the dwelling located at 15-17 School Street, Ipswich, Massachusetts.

The existing failed septic system serves a duplex (two residences). The system is operational, but the leaching pit is in groundwater. A new system, on a different area of the existing property, was proposed.

The following variances were requested:

- A one foot reduction in the separation between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW), a 4 foot separation is provided.
- A reduction in the setback from the leaching area to the wetland from 100 feet to 80 feet.
- A reduction in the design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Mr. McDonald reported that the reduction in the setback from the leaching area to the wetland from 100 feet to 80 feet was previously approved by the Conservation Commission at their July 2, 2008 meeting.

Susan Hubbard asked Colleen for her thoughts. Colleen recommended granting the variances as requested provided the Form 9A is signed by the second owner, Kevin Powers.

Susan Hubbard made a motion to grant the variances as requested. The signature of the second owner, Kevin Power, must be provided on the Form 9A prior to the Disposal System Construction Permit being issued. Dr. Spencer Amesbury seconded the motion. The motion passed unanimously.

7:05 – Hearing - Martin Noone – 239 High Street – represented by H.L. Graham Associates, Inc. – septic variances.

Larry Graham, P.E., and Gerry McDonald, P.E. presented, and a hearing was heard to consider variances from Title 5 for a sewage disposal system plan designed by Gerry McDonald, P.E., plan 06-616, dated May 7, 2008 and last revised June 30, 2008, for the dwelling located at 239 High Street, Ipswich, Massachusetts.

The property failed a Title 5 inspection on April 10, 2006. At a meeting of the Board of Health on August 7, 2006, it was the decision of the Board to grant a variance under Local Upgrade Approval to allow a one (1) foot reduction in groundwater separation, with a certificate of compliance issued, by April 10, 2008. The design was for the previous owner.

Martin Noone purchased the property on February 6, 2007. On April 2, 2008, the Health Department received an application for soil testing. The new owner wanted the system located in the front of the property. The previously approved plan had the system located in the back of the property so a new design was created. A variance was requested to locate the system in the front of the property using a septic tank and Waterloo Biofilter with a pressure dosed leaching field to avoid mounding.

Susan Hubbard asked Colleen for her thoughts. Colleen raised two (2) concerns.

1. The waterline is to be relocated as part of the project so the applicant wishes to relocate the gas service to the west side of the dwelling. He has requested that the water service be located in the same general area so that all utilities (gas, water, and electric) enter the dwelling in the same general location. Colleen felt the waterline could be relocated ten (10) feet off the septic components or the tanks could be rotated or relocated to meet the setback; therefore the request for a variance was not warranted.
2. There is no percolation test within the proposed disposal area. Although the engineer said he located the percolation to avoid roots from a large oak tree it appears he didn't factor in the required twenty (20) foot setback to the leaching area from the cellar wall since he did the percolation fifteen (15) feet away from the foundation. Colleen recommended doing a confirmatory percolation test at the time of installation.

The following variances were requested for the new design:

- A two foot reduction in separation between the bottom of the leaching area and Estimated Seasonal High Ground Water (ESHGW) with the use of a Waterloo Biofilter.
- A reduction in the setback between the cellar wall and leaching area from 20 feet to 19 feet.
- A three (3) foot reduction in setback between the septic tank and the relocated water service.

The Board denied the variance request for a three (3) foot reduction in setback between the septic tank and the relocated water service. The sewage disposal system plan must be revised to have the waterline ten (10) feet from the tanks. Susan Hubbard suggested rotating the tanks to meet the required ten (10) foot setback.

Dr. Spencer Amesbury made a motion to grant the variances to allow a two foot reduction in separation between the bottom of the leaching area and Estimated Seasonal High Ground Water (ESHGW) with the use of a Waterloo Biofilter and a reduction in the setback between the cellar wall and leaching area from 20 feet to 19 feet.

Susan Hubbard seconded the motion. The motion passed unanimously.

Conditions of approval:

- A 2 year Operations & Maintenance contract for the Waterloo Biofilter and pressure distribution system must be submitted to the Health Department prior to issuance of Disposal System Construction Permit.
- A Lifetime Maintenance restrictive covenant for the Waterloo Biofilter 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 percolation test must be conducted within the proposed disposal area at the time of installation.
- The system must be installed by December 31, 2008 with the Certificate of Compliance issued by said date.

8:10 – Hearing - Joseph and Ethel Rogers – 11 Masconomet Road – represented by H.L. Graham Associates, Inc., – septic variances.

Larry Graham, P.E., and Gerry McDonald, P.E. presented, and a hearing was heard to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Gerard McDonald, P.E., plan 08-811, dated June 30, 2008 and last revised July 28, 2008 for the dwelling located at 11 Masconomet Road, Ipswich, Massachusetts.

Susan Hubbard asked if abutters were notified. Abutter notification documentation was provided to the Board.

The following variances were requested:

- A reduction in the setback from the leaching area to the property line from 10 feet to 6 feet.
- A reduction in setback from the leaching area to the cellar wall from 20 feet to 10 feet.

- A reduction in setback from the septic tank to the cellar wall/ bulkhead from 10 feet to 4 feet.
- A reduction of setback from the septic tank to property line from 10 feet to 6 feet.
- A reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Colleen provided the Board with background regarding a variance request to a property line. Under Title 5, 15.220; if a variance to a property line is requested, the plan must reference a plan which bears the stamp and signature of a licensed land surveyor (LS). Prior to the Board meeting, Mr. Graham did not a plan to reference since many changes have occurred with the development. Mr. Graham met with Colleen and asked if this could be waived. Colleen felt it was a variance that would require Board of Health and the Department of Environmental Protection (DEP) approval. In addition, she felt it would be more feasible to have the property surveyed to determine where the property lines are. It would be difficult to request a reduction based on incomplete information.

Larry Graham said after his meeting with Colleen, he located a plan dated May 11, 1954, which shows the location of all four (4) property lines along Masconomet Road. Mr. Graham presented the plan for the Board's review.

Colleen stated the plans need to be signed and stamped by the designer but, recommended granting the variances subject to the plan being revised to reference a plan done by a MA licensed land surveyor (LS).

Susan Hubbard made a motion to grant the variances as requested. The sewage disposal system plan must be revised to include a reference to a plan which bears the stamp and signature of a Massachusetts Professional Land Surveyor in accordance with 310 CMR 15.220(3). Dr. Amesbury seconded the motion. The motion passed unanimously.

6:55 – Hearing - Theresa Shelzi – 56 North Ridge Road – extension on tight tank installation.

Larry Graham, P.E., and Gerry McDonald, P.E. presented, and a hearing was heard regarding non-compliance with a Board of Health order to upgrade the septic system by installing a tight tank by July 31, 2008. The owners now requested to be allowed to postpone recording a deed restriction limiting the property to seasonal residential use until a conventional septic upgrade plan is approved by the Health Agent.

On August 6, 2007, it was the decision of the Board to allow a tight tank to be used as an interim measure until a conventional system was installed, with the condition that a deed restriction was filed at the registry of deeds limiting the property to seasonal residential use, 6 months or less during the calendar year, and to the approved design flow.

At the November 19, 2007 Board of Health meeting, the Board of Health granted an extension until May 31, 2008 for the tight tank installation. The system was to be installed by May 31, 2008 with the Certificate of Compliance issued by said date. On May 5, 2008 the owners were granted another extension and given until July 31, 2008 to install the tight tank.

Mr. Graham reported that the Conservation Commission and the Board of Health had both previously approved the tight tank plan.

Susan Hubbard asked Colleen for her thoughts. Colleen felt the variance was not founded. The property failed a Title 5 inspection on June 20, 2003. A seasonal tight tank was approved by the Board of Health in May 2008. The Department of Environmental Protection (DEP) will presumptively approve the tight tank installation on August 6, 2008 but approval is still pending. The tight tank plan and corresponding deed restriction should not be affected by the conventional design's timeline. The existing system has been in failure for five (5) years and the property is still being occupied.

Mr. Graham reported that the three (3) owners of the dwelling are concerned with recording a deed restriction without having the conventional plan approved; they want to know that they will be able to occupy the property year-round once the conventional system is installed. Colleen suggested a letter could be sent to the owners stating the deed restriction limiting the property to a seasonal residential use will be rescinded when the new system is installed. Colleen recommended the tight tank be installed by August 31, 2008 since there is already an installer hired to put in the system.

Colleen said the conventional system plan was rejected on July 29, 2008 since it was designed with the wrong sizing criteria (LTAR). The plan must be redesigned and reviewed. Given this, the plan may not be approved until October or November 2008 since the Department of Environmental Protection's (DEP) approval must also be obtained.

Dr. Amesbury made a motion to grant an extension until September 30, 2008 for the installation of the tight tank with the Certificate of Compliance issued by said date. No further extensions will be granted. It was also the decision of the Board that the seasonal tight tank deed restriction and the conventional septic upgrade plan are unrelated issues; therefore, a deed restriction limiting the use of the property to a seasonal residential use, six (6) months or less during the calendar year, must be filed at the Southern Essex County Registry of Deeds prior to the issuance of a Disposal System Construction Permit for the tight tank. Once a conventional sewage disposal system plan is approved and the corresponding system is installed, the deed restriction limiting the property to a seasonal residential may be rescinded. Susan Hubbard seconded the motion. The motion passed unanimously.

All of the following conditions must be met before the Disposal System Construction Permit for the tight tank can be released to the installer:

- 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.
- 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.
- 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.
- A two (2) year operation and maintenance contract must be obtained with a copy submitted to the Board of Health.
- Conservation Commission approval.
- Interior plumbing changes to tie the laundry into the main building sewer.

8:35 – Hearing -Paul D. Allen-Webber –Ipswich Party Shop – proposed location at 15 Market Street, Unit 2 – Minimum Sanitation Standards for Food Establishments, State Sanitary Code, Article X- variance.

Paul Allen-Webber presented, and a hearing was held, upon his request; for variances from the 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments State Sanitary Code, Article X / 1999 Federal Food Code.

Mr. Allen-Webber requested variances from three (3) provisions of the 1999 Federal Food Code; 4-301.12, 5-204.11(A) and 5-205.11. Provision 4-301.12 states a sink with at least three (3) compartments shall be provided for manually washing, rinsing and sanitizing equipment and utensils. Provision 5-204.11(A) states a handwashing facility shall be located to allow for the convenient use by employees in food preparation, food dispensing and warewashing areas. Provision 5-205.11 states a handwashing facility shall be maintained so that it is accessible at all times for employee use.

The variances were requested since he is relocating the Ipswich Party Shop into a new space that will be connected to his existing store, River's Edge Fine Gifts and Home Accents. He is expanding the space by five hundred (500) square feet to incorporate both businesses into one space; keeping both business names. The unwrapped candy currently sold at Ipswich Party Shop would actually be sold at River's Edge Fine Gifts and Home Accents which does not have a dedicated handsink or three (3) compartment sink. Mr. Allen-Webber currently has a retail food service permit to sell candy by the pound at the Ipswich Party Shop at the High Street location.

The owner proposed to utilize the dishwasher and three (3) compartment sink at a nearby licensed food establishment; Stone Soup. No formal agreement was provided to the Board. He explained that the existing handsink in the restroom within the store could be utilized as the handwashing facility needed for employees involved in food dispensing. Since typically there is only one employee working in the store at a time except for a few hours mid-day when there are two (2)

employees, he felt the handsink in the restroom would always be accessible. Colleen noted that this is not typically allowed since if someone is using the bathroom the sink is not accessible; therefore, this does not comply with CMR 5-205.11. Mr. Allen-Webber explained that the variance request was based on monetary concerns. The connection of a handsink, alone, would cost Mr. Allen-Webber over three thousand dollars (\$3,000). The owner stated the installation of a three (3) bay sink and/or handsink would be a financial and structural hardship.

Susan Hubbard asked Colleen for her thoughts. Colleen expressed concern regarding the potential for disease transmission from unwashed hands and recommended a handsink be installed other than the bathroom sink. She noted that there were two (2) code issues to be considered; an accessible handwashing sink and a three (3) bay sink or an equivalent way to clean the scoops and containers. She was concerned that there was no formal agreement provided by the owner of the food establishment with the dishwasher and 3 bay sink that Mr. Allen-Webber says he will access. She felt the business should comply with the state regulations.

Dr. Amesbury questioned if the candy was self-serve. It was confirmed that the candy is self-serve. Dr. Amesbury voiced apprehension regarding monitoring, refilling of the candy bins, and handwashing. Charles Hill shared the concern of having the candy bins monitored by employees.

Mr. Allen-Webber reported that the candy would be placed in direct view; within ten (10) to fifteen (15) feet, of the cashier for easy monitoring.

When the Ipswich Party Shop was previously selling candy (under a different ownership) the previous owner obtained a variance to utilize the dishwasher and three (3) compartment sink at Birth to Three.

Colleen said all new establishments have been required to comply except for this one (1) variance granted by the Board of Health in 2003 to the previous owner of the Ipswich Party Shop when it was located on Market Street. The Board granted the owner a variance at that time although Colleen was concerned with setting a precedent for non-compliance with the State Sanitary Code, Minimum Sanitation Standards for Food Establishments Article X. The owner did comply with the sink requirements when she relocated her business to High Street.

Colleen and Allen Gromko, Ipswich Food Inspector, have spent five (5) years bringing Ipswich establishments into compliance with state requirements for sinks. There was a long list of non-compliant establishments Colleen inherited when she became the Health Agent for the Town of Ipswich. Colleen did not recommend allowing a business to relocate to a new location that does not comply with the State Sanitary Code, Minimum Sanitation Standards for Food Establishments Article X. The existing Party Shop complies with the sink requirements under the current ownership and did under the previous ownership at the existing location. Mr. Allen-Webber knew enough to call and ask about the three (3) bay sink requirement so he should have taken this into consideration. He could still sell pre-wrapped candy if the plumbing changes are too expensive.

In this instance, Colleen felt that although potential hazardous foods are not being sold; a bad precedent would be set by granting a variance.

Dr. Amesbury made a motion to grant a variance from the 1999 Federal Food Code sections 5-204.11(A) and 5-205.11 to allow the current restroom handwashing sink to be utilized by employees involved in food dispensing. Based on the limited number of employees, the Board felt the handwashing sink would be accessible to employees whenever needed. A variance from the provision 4-301.12 was also granted allowing Mr. Allen-Webber to clean and sanitize candy bins at Stone Soup or another licensed food establishment facility provided a formal written agreement authorizing him the use of the facility is submitted to the Health Department. He shall be limited to offering unwrapped candy for sale; no other unpackaged food items shall be sold. Susan Hubbard seconded the motion. The motion passed unanimously.

7:30 – Hearing – Evan Parker – 213 High Street – septic upgrade deadline.

Evan Parker presented, and a hearing was conducted to discuss his failure to comply with the sewage disposal plan submission deadline of May 31, 2008.

On March 10, 2008, the Board ordered Mr. Parker to have a sewage disposal system plan submitted to the Health Office by May 31, 2008 and to have the sewage disposal system installed with the Certificate of Compliance issued by November 30, 2008.

It was the decision of the Board to grant an extension until August 31, 2008 for the submission of a sewage disposal system plan to the Health Office since the plans are complete but have not been submitted since the fee for the plan submission must be obtained from the escrow account and there has been difficulty in receiving the money.

The Board upheld the order to have the disposal system installed, with the Certificate of Compliance issued, by November 30, 2008.

8:35 – Hearing - Amy Rudel – 22 Greenspoint Road – non-compliance with tight tank installation deadline.

Amy Rudel was not present. A hearing was held to discuss non-compliance with a Board of Health order to upgrade the system serving 22 Greenspoint Road by June 30, 2008. The homeowner was unavailable to attend since she was working.

On March 15, 2003, it was determined that the sewage disposal system serving the property was in failure. In accordance with the State Environmental Code, Title 5, 310 CMR 15.00, the Board of Health ordered the owner to bring the property into full compliance within two (2) years from the date of inspection. On September 17, 2007, the Board of Health approved a tight tank design.

At the meeting of the Board of Health on June 4, 2007, a hearing was conducted to discuss an extension for the installation of the tight tank. The Board of Health granted an extension for the tight tank installation, until December 15, 2007.

At the meeting of the Board of Health on February 4, 2008, a hearing was conducted to discuss an extension for the installation of the tight tank. The Board of Health granted another extension for the tight tank installation, until June 30, 2008.

In a phone conversation with Colleen on August 4, 2008, the homeowner said she would be moving out as of September 1, 2008 but was unsure if her ex-husband would be moving in. She requested the Board re-visit this at their September 2008 meeting so she or her ex-husband could attend the meeting to update the Board on whether the house will remain occupied. The homeowner has reduced the selling price of the home so that the buyer would be responsible for funding the installation of the tight tank.

Since the June 30, 2008 deadline had passed, Dr. Amesbury felt occupancy should not occur given that the system has been in failure for five and a half (5 ½) years. He suggested rendering the dwelling uninhabitable after September 1, 2008.

Chuck Hill felt this would penalize the homeowner by adding difficulty in selling the home. Dr. Amesbury reasoned that the Board did not wish to negotiate with another owner for the installation of the tight tank.

Since the existing system has been in failure for more than five (5) years, the deadline for installation (after extensions) had passed, and no effort has been made to provide the Health Department with the required documents pertaining to the system installation, Dr. Amesbury made a motion that the dwelling must be unoccupied after September 1, 2008 and until the tight tank is installed. Failure to comply may result in the condemnation of the dwelling.

The Disposal System Construction Permit (DSCP) can not be released to a septic installer until the following documents have been provided to the Health Department

1. 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.
2. A two (2) year service contract with a septage hauler licensed to operate in Ipswich, designating disposal location of contents prior to issuance of the Disposal System Construction Permit.

3. A Lifetime Maintenance restrictive covenant (deed restriction) must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Health Office prior to the issuance of the Disposal System Construction Permit.
4. A four (4) bedroom deed restriction must be filed at the Southern Essex County Registry of Deeds prior to issuance of Disposal System Construction Permit.

Susan Hubbard seconded the motion. The motion passed unanimously.

Report of the Health Agent:

Household Hazardous Waste: Household Hazardous Waste day will take place on Saturday, September 27, 2008 between 9:00AM-12:00PM. The Board of Health has been over-budget for the event for the last several years. At this point the department is two thousand (\$2,000) dollars over budget at six thousand two hundred (\$6,200) dollars, since the Health Department is not properly funded by the town. The Board of Selectmen suggested charging a minimal fee for residents who participate in the event to help offset the cost and in lieu of increasing the budget for the event. If the supplemental fee does not fully fund the event, Colleen did not feel it should be the responsibility of the Health Department to fund the remainder of the event. Additionally, in order to begin charging a fee, the Board would need to formally adopt the fee by advertising in the Ipswich Chronicle and then having a public hearing to adopt the fee change. Furthermore, it would be time consuming for the Health Department to pre-register residents. It was the decision of the Board that the Health Department not charge a fee or pre-register residents for the event.

Ipswich Housing Authority: Colleen had a lengthy conversation with the Construction Advisor for the Department of Housing and Community Development (DHCD), Bill Miller. He alleged Colleen was citing violations that do not fall under the purview of a health concern. Furthermore, he alleged that she did not have the authority as the Health Agent to enforce the State Sanitary Code and cite violations for the Ipswich Housing Authority. Colleen explained the authority of the Board of Health and the extent of her responsibility to enforce the State Sanitary Code. Mr. Miller conceded, but did not agree that all the violations cited were warranted. He did recommend a splash guard, relocating the sump pump drain and repairing the crushed drain pipe at 16 Southern Heights.

Julie Martineau, Director, Ipswich Housing Authority; submitted an outline to the Health Department of violations corrected. The roof replacements at Southern Heights have commenced.

1-12 Leblanc Drive: As a result of a complaint received by this office, a site inspection was conducted on May 15, 2008. In accordance with Chapter II of the State Sanitary Code, 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation. A violation of 410.600: Storage of Garbage and Rubbish (C) was found since no garbage/rubbish receptacles are on site for use by the occupants of the twelve dwelling units.

At the meeting of the Board of Health on June 2, 2008, the Board heard a request for a hearing regarding the order to correct dated May 19, 2008. At the hearing, the Board of Health upheld the order stating that the regulation's use of the word convenient is intended to mean that the receptacles must be on the property being served. The Board of Health ordered Mr. LeBlanc to provide, on the property, as many receptacles for the storage of garbage and rubbish as are sufficient to contain the accumulation before final collection by July 2, 2008.

A re-inspection of the property was conducted on July 9, 2008. No receptacles for the storage of garbage and rubbish before final collection were on the property at the time of re-inspection. In a letter dated July 30, 2008, Mr. LeBlanc was notified that he was in violation of the Board of Health order.

In a phone conversation on July 30, 2008, Colleen spoke with Mr. LeBlanc regarding the situation. He is in the process of filing an appeal in a court of competent jurisdiction.

6 James Road: Colleen sent a letter to the property owner and the owner's attorney using language from Kopelman & Paige informing the owner that instead of requiring her to obtain a ruling from the Land Court certifying exclusive

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ownership in Birch Lane, the proposed location of the leach field, it was the decision of the Board to require a certification from her attorney, to the Board of Health, that she holds the fee ownership interest in the way free of rights of others to use the way for access and utilities. If Ms. Berkman owns the fee in the way and no other person has any rights in the way, her attorney is prepared to certify these two points, and Kopelman and Paige, P.C. agrees the certification meets the following criteria, the Board of Health will accept a septic system application proposing to locate the leaching system in Birch Lane.

Karmco – 73-79 Turnpike Road: The deadline for installation is October 1, 2008 and the Department of Environmental Protection (DEP) will not consider design flows presented to them by Daniel Johnson, R.S., since there is no means to accurately measure the flows. Additionally, as a Registered Sanitarian, Mr. Johnson does not have the authority to stamp a plan that proposes to utilize over two thousand (2,000) gallons per day. Mr. Johnson is designing plans with the intention of a Professional Engineer stamping the plans for him. As of the meeting date he had not found an engineer willing to stamp his design plans.

Majestic Dragon:

The sewage disposal system for Majestic Dragon is located within the Zone 1 of its public water supply and therefore the sewage disposal system was determined to be in failure, in accordance with 310 CMR 15.304: (1) & (2), on October 21, 2003. The failed system had a design flow greater than ten thousand (10,000) gallons per day so it is under the jurisdiction of The Department of Environmental Protection (DEP).

Given this, the Majestic Dragon Restaurant was put under an Administrative Consent Order (ACO) with the Department of Environmental Protection (DEP). Under the Administrative Consent Order (ACO), they were allowed to continue to use the well for a potable water supply until such time as the Town of Ipswich completed the construction of an accessible water main, provided that the restaurant complied with several water-sampling requirements. The site conditions prevent the upgrade of the system outside the Zone 1 of the well, and the proposal to extend the water distribution system to this area would eliminate this problem. If town water were not available by March 2009, the Department of Environmental Protection (DEP) would revisit the Administrative Consent Order (ACO).

The Department of Environmental Protection (DEP) sent a letter to the owner of the Majestic Dragon Restaurant and the Ipswich Water Department requesting a written update as to the status of connecting Majestic Dragon to the municipal water supply system.

Next Board Meeting: The next meetings of the Board of Health were scheduled for September 8, 2008 and October 6, 2008 at 6pm.

Adjourn: Susan Hubbard made the motion to adjourn at 7:50 PM. Dr. Spencer Amesbury seconded the motion. The motion to adjourn passed unanimously.

Susan Hubbard, Chairman

Spencer Amesbury, Board Member

Charles Hill, Board Member