

Board of Health Minutes
Monday, December 1, 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 6:00 PM.

Members attending: Susan Hubbard and Chuck Hill.

Others attending: Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Larry Graham, P.E., Gerard McDonald, P.E., Maria Wolters, Jim Cropper; Esquire, Daniel Johnson, R.S., Drew Marc-Aurele and Zong Song Zou.

Citizens Queries: None

Minutes:

Susan Hubbard made a motion to postpone approval of the November 3, 2008 minutes until the January 5, 2009 meeting. The minutes could not be approved given that Chuck Hill was not present at the November meeting. Chuck Hill seconded the motion. The motion passed unanimously.

6:00 – Hearing - The 14 Mill Road Trust – 19 Mill Road – represented by Drew Marc-Aurele – extension on Disposal System Construction Permit.

Drew Marc-Aurele requested a one (1) year extension on the Disposal System Construction Permit (DSCP) serving 19 Mill Road, Ipswich, Massachusetts. Mr. Marc-Aurele stated that the property was divided around 2003 or earlier and he is unsure what he would like to do with the property. There is no building or septic system on the property currently.

A sewage disposal system plan was approved by the Health Department and signed on December 13, 2005. The Disposal System Construction Permit (DSCP) is valid for three (3) years from the date on which it is signed and therefore is due to expire. Title 5 allows for a one (1) year extension on the Disposal System Construction Permit (DSCP) to be granted if the applicant requests it prior to the permit expiring.

The Board reviewed the request for a one-year extension on the Disposal System Construction Permit, number 05-59, for 19 Mill Road since, as required by Title 5, 310 CMR 15.000, the request was received prior to the expiration date of the existing permit.

Susan Hubbard asked Colleen for her thoughts regarding the extension. Colleen recommended granting the extension.

Susan Hubbard made a motion to grant a one-year extension. The Disposal System Construction Permit expiration date is now December 13, 2009; the construction of the system must be completed by said date. No additional extensions shall be issued. Chuck Hill seconded the motion. The motion passed unanimously.

6:10 – Hearing - Nancy Gray-Smith – 92 North Ridge Road – represented by Domestic Septic Design, Inc. – septic variances.

Daniel Johnson, R.S., presented, and a hearing was held to consider a request for variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Daniel Johnson, R.S., plan J-2205, dated October 30, 2008 and revised November 25, 2008, for the dwelling located at 92 North Ridge Road, Ipswich, Massachusetts.

Susan Hubbard asked if abutter notification was given. Mr. Johnson provided the certified mail receipts dated November 18, 2008 to Colleen.

This is a voluntary upgrade of an existing three (3) bedroom dwelling on a one hundred (100) foot by one hundred and twenty (120) foot lot. A conventional septic system was proposed by the designer for the upgraded system.

Soil testing resulted in a twenty four (24) minute per inch percolation rate and estimated seasonal high groundwater (ESHGW) was found forty one to forty six (41-46) inches below grade.

Susan Hubbard asked Colleen for her thoughts regarding the proposed conventional septic system design. Colleen noted that the retaining wall and concrete patio will need to be removed for the abandonment of the existing system and the installation of the septic tank.

The engineer agreed that the retaining wall and concrete patio must be removed for the abandonment of the existing septic system and the installation of the septic tank and said the owners are aware of this.

Chuck Hill made a motion to approve the plan and grant the following:

- A 1 foot reduction in the separation between the estimated seasonal high groundwater (ESHGW) and the bottom of leaching area; a 3 foot separation was provided.
- A reduction in setback from the leaching area to the foundation wall from 20 feet to 18 feet.
- A reduction in the setback from the drain pipe to the leaching area from 10 feet to 7 feet.
- A reduction of setback from the leaching area to property line from 10 feet to 7.5 feet.
- A reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Conditions for approval:

- The property line must be surveyed and staked along northern property line since the retaining wall is within 5 feet of the property line.

Susan Hubbard seconded the motion. The motion passed unanimously.

6:15 – Hearing - Theresa Shelzi – 56 North Ridge Road – represented by H. L. Graham Associates, Inc. – septic variance.

Larry Graham, P.E. presented, and hearing was conducted for a retroactive variance to allow a reduction in the setback between the tight tank and the ACEC from the 150 foot local requirement to 126 feet.

On May 5, 2008, the Board of Health granted a reduction in the setback between the tight tank and the ACEC from the 150 foot local requirement to 128 feet and approved a tight tank plan designed by Gerard McDonald, P.E. The tight tank system was proposed as an interim measure until a conventional system was designed and installed.

At a meeting of the Board of Health on October 6, 2008, a hearing was conducted to consider variances from Title 5 for a conventional sewage disposal system plan designed by Gerald McDonald, P.E. The plan called for reusing the tight tank as a septic tank /pump chamber. It was the decision of the Board to grant a reduction in the setback between the septic tank /pump chamber to the ACEC from the 150 foot local requirement to 126 feet.

On the plan for a conventional system Colleen did not notice that the variance request was changed to having the tank one hundred and twenty six (126) feet from the soil absorption system (SAS). Colleen had erroneously informed the Board that the setback was the same and she did not believe that the engineer verbally specified the change to the Board at the hearing.

Although the tight tank was approved to be one hundred and twenty eight (128) feet from the (ACEC), the installer put it one hundred and twenty six (126) feet from the ACEC, as it was shown on the conventional plan.

Subsequently, a retroactive variance is being requested to allow the tight tank to be one hundred and twenty six (126) feet from the ACEC.

Susan Hubbard asked Colleen for her thoughts. Colleen did not see a problem with granting a retroactive variance.

Susan Hubbard made a motion to grant a retroactive variance to allow a reduction in the setback between the tight tank and the ACEC from the 150 foot local requirement to 126 feet. Chuck Hill seconded the motion. The motion passed unanimously.

6:20 – Hearing - John and Priscilla Davis – 21 Meadowview Lane – represented by H. L. Graham Associates, Inc. – septic variances.

Chuck Hill recused himself from the hearing since he was a personal friend of the Davis family. With the absence of Dr. Amesbury there was no quorum so a discussion was held in lieu of the hearing and the hearing was continued until the January 2009 meeting.

Gerard McDonald, P.E., presented, and a discussion was conducted to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Gerard McDonald, P.E.

This is a voluntary upgrade of an existing four (4) bedroom dwelling.

The design incorporates a Presby Enviro-septic pipe which allows for a 40 % reduction in the leaching area size.

Susan Hubbard asked Colleen for her thoughts. Colleen reviewed the plan and informed the designer via a review letter that she felt the first two (2) variance requests were not warranted; however, the designer has asked to pursue it with the Board. Colleen felt since the facility is almost one (1) acre in size, the system could be fully sized. Additionally, the system could be raised one (1) foot without substantially changing the grade. A variance requested in order to avoid a pump chamber is not meeting maximum feasible compliance. The facility is large enough to size the system on 150 gallons per day per bedroom and then take the forty percent (40%) size reduction with the Presby system. Additionally, the reduction in the separation to groundwater was requested to avoid a pump chamber, not because raising the system would create a mound that would negatively impact the dwelling or the property. Colleen did not feel maximum feasible compliance had been met with this design. She felt a one (1) foot reduction in the separation to groundwater would be sufficient. If another variance is deemed warranted by the Board then Colleen recommended designing the system on 110 gallons per bedroom per day instead of 150 gallons per day per bedroom.

The designer stated that the Remedial Use Approval issued by the Department of Environmental Protection (DEP) for the Presby system shows that the reduction of two (2) feet to groundwater will provide a level of protection at least equivalent to one designed in accordance with 310 CMR 15.100 through 15.293. Colleen disagreed with this statement. The Remedial Use Approval for Presby, which allows a forty percent (40%) reduction, does provide equivalent protection. Equivalent protection would be provided only if the size reduction was taken, when an additional two (2) foot reduction in the separation to groundwater is asked for, this is no longer equivalent protection, therefore; approval from the Board of Health and the Department of Environmental Protection (DEP) is necessary.

If the existing tank is to be reused, the designer or a Title 5 inspector should certify that the tank is water tight and structurally sound. There is no Title 5 inspection report on file in the Health Department and therefore the condition of the existing septic tank is not known.

Susan Hubbard felt that a one (1) foot reduction in the separation to groundwater would be sufficient.

Gerry McDonald stated that Presby prefers gravity systems. Larry Graham offered to redesign the system with a pump chamber and a four (4) foot separation to groundwater. Susan Hubbard said this discussion must be revisited in January when they can either come with a new design or come back with the same design for further discussion.

6:20 – Hearing - Albert Howes, Sr. – 39 Bay View Road – represented by H. L. Graham Associates, Inc. – septic variances.

Gerard McDonald, 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 Gerard McDonald, P.E., dated October 28, 2008 and revised November 20, 2008, for the dwelling located at 39 Bay View Road, Ipswich, Massachusetts.

The system failed a Title 5 inspection on June 28, 2007.

At the October 6, 2008 Board of Health meeting, the Board determined that there was a four (4) bedroom home on the property.

The septic plan submitted to the Health Department incorporates a Waterloo Biofilter which allows for a two (2) foot reduction in the separation to groundwater which was used in the design.

In addition to the 2 foot reduction in the separation between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW) with the use of a Waterloo Biofilter, the following variances were requested:

- A 47.5% reduction in field size with the use of a Waterloo Biofilter leaching system.
- Reduction in setback from leaching area to the cellar wall from 20 feet to 10 feet.
- The retaining wall footing to be 2.75 feet from the SAS
- Reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Susan Hubbard asked Colleen for her thoughts regarding the proposed upgraded system. Colleen reviewed the plan and informed the designer that she did not feel the forty seven and one half percent (47.5%) reduction was warranted. The width of the field could be increased or the design could be changed to chambers and then only a twenty seven percent (27 %) size reduction would be needed.

Again, the engineer claimed the design provides equivalent protection. Colleen disagreed since more than one (1) waiver has been requested. If only the two (2) foot separation was requested and not the forty seven and one half percent (47.5%) size reduction, Colleen would agree. Since both waivers are being sought she did not feel that equivalent protection had been provided. In addition, Colleen felt maximum feasible compliance had not been achieved. Colleen recommended an increase in the size the field so only a twenty five to twenty seven percent (25-27%) size reduction is needed.

Also, the third variance for the retaining wall footing did make sense to Colleen. She had commented previously that the retaining wall footing was within the overdig and that the wall footing should be moved back. The designer responded by adding the variance request. Title 5 recommends ten (10) feet between a wall and the soil absorption system (SAS) but it is not required so a variance isn't needed. As policy, Colleen has required a five (5) foot setback be maintained unless it is not feasible. The setback is measured from the footing, if one is used. The wall could be moved closer to the property line. Via an email, the designer said he was concerned with getting too close to the abutters wall on the down gradient side of the property. Colleen recommended allowing the wall to remain five (5) feet from the down gradient property line as designed. She felt that the size of the soil absorption system (SAS) should be looked at and recommended a redesign. A forty (40) foot by twenty one (21) foot field would provide seventy five percent (75%) of the size and if they did this Colleen would recommend allowing the footing within five (5) feet of the soil absorption system (SAS).

Susan Hubbard asked Colleen and Gerry for a recap of their positions.

Colleen:

- 1) The Waterloo system allows for the two (2) foot reduction or a fifty percent (50%) reduction in the size of the system.
- 2) The length or width of the system could be increased to achieve maximum feasible compliance.

Gerry:

- 1) Gerry designed ten (10) feet between the leaching area and the property line due to limited area. If it was made wider or larger the system would have to be raised.
- 2) The use of chambers would allow for a thirty percent (30%) reduction; however, the Department of Environmental Protection (DEP) considers this to be double-dipping.
- 3) The topography of the lot consists of two (2) steep slopes. The septic tank was placed at the base of the steeper slope.

Susan Hubbard felt maximum feasible compliance had been met by the designer and asked Chuck for his opinion. Chuck agreed that maximum feasible compliance had been obtained.

Susan Hubbard made a motion to approve the plan and grant the following variances:

- A 47.5% reduction in field size with the use of a Waterloo Biofilter leaching system.
- Reduction in setback from leaching area to the cellar wall from 20 feet to 10 feet.
- Reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

with the following conditions of approval:

- DEP approval
- A 2 year Operations & Maintenance contract for the Waterloo Biofilter and Pressure Distribution systems to be submitted to the Health Department prior to issuance of Disposal System Construction Permit.
- A Lifetime Maintenance restrictive covenant for the Waterloo Biofilter system 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.
- The property line must be surveyed and staked prior to construction where the retaining wall is proposed to be within 5 feet of the property line

Chuck Hill seconded the motion. The motion passed unanimously.

6:20 – Hearing - Linda Riley – 40 Bunker Hill Road – septic installation extension.

Colleen presented, and a hearing was conducted, upon the homeowner's request, to consider a request for a variance to the Title 5 requirement of upgrading the septic system within two years of a failed Title 5 inspection.

At the meeting of the Board of Health on May 7, 2007, it was the decision of the Board that the system must be installed with the Certificate of Compliance (COC) issued by October 14, 2008.

The homeowner resides in Pennsylvania. She had rented the dwelling to a tenant with the option to buy the property. The tenant was supposed to handle the septic upgrade as part of the purchase. The tenant can not afford to buy the property so the septic upgrade is now back in the hands of the owner. She has hired a licensed Ipswich installer, Lewis Vlahos, to put in the upgraded system in the spring of 2009.

Susan Hubbard made a motion to grant an extension until June 1, 2009 for the installation of the system. The system must be installed with the Certificate of Compliance issued by said date. The extension was granted with the condition that the system is pumped once (1) by December 30, 2008. Chuck Hill seconded the motion. The motion passed unanimously.

6:20 – Hearing - Cornerstones – 35 Mitchell Road – represented by Health and Education Services – grease trap.

Maria Wolters, Director of Cornerstones and Attorney Jim Cropper; counsel for Health and Education Services presented, and the individual subsurface sewage disposal system that serves 35 Mitchell Road was discussed. The presence of the property owner, Doug Tress, was also requested in a letter dated November 10, 2008. Neither he nor a representative was in attendance.

The hearing was continued from last month so that Health and Education Services and the property owner, Doug Trees, could be invited and discuss bringing the property into compliance within Title 5 by adding a grease trap to the septic system. At the August 4, 2008 meeting, the Board ordered the property to be brought into compliance by December 2, 2008.

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.

Colleen explained that an interior grease trap is designed to protect the plumbing system. An exterior grease trap is designed to allow the grease to settle before the waste water is sent to the septic tank. Grease is difficult to break down in the septic tank so its introduction in the system should be minimized. Without an exterior grease trap, the grease has no time to cool so it can float to the top of the grease trap liquid. This cooling/settling time is important so that is why the tanks are sized to allow a twenty four (24) hour retention time. If the grease trap is not used, the grease will likely get to the leaching area and it can significantly shorten the life of the septic system. Grease is discharged daily so quarterly pumping of the septic tank won't help. Title 5 specifically states an interior grease trap should not be considered for compliance with 310 CMR 15.230.

Cornerstones Director, Maria Wolters, requested a variance last month mainly due to financial concerns. She said that this was her request and that she did not speak to Health and Education Services about this. Health and Education Services owns Cornerstones so the Board felt someone from Health and Education Services should attend the next meeting. Susan Hubbard re-iterated that at the November 3, 2008 meeting Maria felt the installation of the exterior grease trap was not the responsibility of Health and Education Services (HES) and questioned why it was not the responsibility of the property owner. Attorney Cropper stated that there is nothing in Health and Education Services' lease which indicates HES is responsible for maintaining code compliance. Their responsibility, as outlined in the terms of the lease, pertains to maintaining the property not modifying the property. Additionally, nothing in the lease states that HES is responsible for Title 5 compliance; therefore, the installation of the external grease trap to bring the property into compliance with 310 CMR 15.230 is not the responsibility of Health and Education Services (HES).

Colleen added that the building permit application and the occupancy permit from 1996 when the building was being altered to add the kitchen were not signed by the Board of Health or the Health Agent.

Susan Hubbard made a motion that Mr. Trees must bring the property into compliance with 310 CMR 15.230. Compliance consists of modifying the individual subsurface sewage disposal system that serves the building by adding an exterior grease trap. Modifying the individual system will require the following: (1) hiring a professional engineer or registered sanitarian to design a plan that complies with Title 5 of the State Environmental Code; (2) submitting an application for a disposal system construction permit to the Board of Health along with the fee and engineered plans; and (3) hiring a contractor that is licensed to install septic systems in the Town of Ipswich.

Mr. Trees was ordered to submit an engineered plan by February 1, 2009 for the addition of a grease trap and ordered to have the installation of the grease trap completed by April 1, 2009. A certified letter will be sent to Mr. Trees by the Health Department. Chuck Hill seconded the motion. The motion passed unanimously.

6:25 – Hearing - May Flower Restaurant – 11 Depot Square – represented by Zong Song Zou – variance for specialized process.

Zong Song Zou, presented, and the Board heard a request for a variance, in accordance with 3-502.11 of the 1999 Federal Food Code, to be allowed acidify rice, with the use of vinegar, in order to render it a non- potentially hazardous food. The request for the variance was accompanied by a Hazardous Analysis Critical Control Point (HACCP) plan as required by FC 8-201.13.

Colleen informed the Board that May Flower Restaurant would like to acidify their rice, thereby dropping the pH of their rice, rendering it a non- potentially hazardous food so it does not have to be refrigerated.

Chuck Hill questioned if acidifying rice was a normal procedure for restaurants to practice. Colleen reported that it has become a more common procedure in restaurants during the last several years since sushi is growing in popularity.

Zong Song Zou stated that the certified food personnel at May Flower Restaurant have been practicing the technique of acidifying rice for many years at other restaurant locations under the same ownership.

The Board members reviewed the Hazardous Analysis Critical Control Point (HACCP) plan submitted by May Flower Restaurant as required by FC 8-201.13.

Susan Hubbard made a motion that the HACCP plan complied with the requirements of FC 8-201.14 and therefore, the variance was granted with the following conditions:

- The operator must comply with the HACCP plan submitted.
- A written recipe or formulation for acidifying the rice and a laboratory report must be submitted annually as part of the Verification Process. Any change in the recipe would require lab validation of the new recipe before it may be used. (For example, switching to a new brand of vinegar is a significant change and necessitates the revalidation of the recipe.)
- A calibrated pH meter or pH test strips must be used, according to manufacturer's instructions, to monitor the pH of every batch of acidified rice. Manufacturer specifications and calibration instructions for pH meter or pH paper used must be available for review by the inspector. The pH meter must be calibrated daily if used in place of test strips. The pH strips must be able to detect **.3 or less** unit differences in pH.
- The results of the pH measurement of **each batch** of rice must be properly recorded, and the records must be retained for 30 days.
- Corrective actions should also include that if the pH of the rice is noted above 4.6 and the rice was not made within the hour, the rice must be discarded.
- No bare hand contact is allowed.
- An employee training plan is required which addresses; Employee Health and Hygiene, Cleaning and Sanitizing Procedures, Cross-contamination Prevention Procedures, Monitoring Procedures for Acidified Rice, Use of pH meter or pH papers, Corrective Actions and Recordkeeping Requirements. The HACCP plan must be reviewed and modified, if needed, **at least annually** and signed by the certified food manager.
- Since many finfish naturally contain parasites, most finfish need to be frozen prior to being served raw to kill the parasite. Freezing must be conducted in accordance with FC 3-402.11 Parasite Destruction:
(A) Except as specified in ¶ (B), before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

- (1) -20°C (-4°F) or below for 168 hours (7 days) in a freezer; or
- (2) -35°C (-31°F) or below for 15 hours in a blast freezer.

(B) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under ¶ (A).

- Time and temperature records for freezing of fish must be maintained in accordance with FC 3-402.12 Records, Creation and Retention. The establishment may freeze the fish on the premises but must document the proper freezing temperatures and times were achieved. The time and temperature record for freezing must be kept on site for 90 calendar days beyond the time of service or sale of the fish. Alternatively, if the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under § 3-402.11 may be substituted.
- To avoid cross contamination between raw and cooked ingredients that are being prepared, there should be separate setups (bamboo mat, knife and cutting board) for raw and cooked products if possible. If separate setups are not possible, then the utensils should be cleaned and sanitized between preparations of sushi containing raw fish ingredients and sushi containing other ingredients. Bamboo mats are hard to clean so they must be wrapped in plastic and be rewrapped in new plastic at least every four hours or after use on raw fish.
- Invoices for the fish must be kept on site. All food must come from approved sources.

The documents from the fish suppliers were provided to the Board of Health. Chuck Hill seconded the motion. The motion passed unanimously.

7:20 - Report of the Health Agent: There was no report of the Health Agent.

Next Board Meeting: The next meetings of the Board of Health were scheduled for January 5, 2008 and February 2, 2009 at 6pm.

Adjourn: Susan Hubbard made the motion to adjourn at 7:00PM. Chuck Hill seconded the motion. The motion to adjourn passed unanimously.

Susan Hubbard, Chairperson

Charles Hill, Board Member