

Board of Health Minutes
Monday, December 7, 2009, 6:00 PM
Meeting Room B, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Dr. Spencer Amesbury called the meeting to order at 6:10 PM.

Members attending: Dr. Spencer Amesbury, and Chuck Hill.

Others attending: Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Larry Graham, P.E., Richard Kallman, Esq., Timothy Gould, and Ms. Kraufchuck.

Citizens Queries: None.

Minutes: Dr. Amesbury made a motion to approve the October 19, 2009 minutes. Chuck Hill seconded the motion. The motion passed unanimously.

6:12 – Hearing - Jennifer and Robert O'Connel—prospective buyers of 22 Greenspoint Road – installation of tight tank after December 15, 2009 and timeframe for installation of tight tank.

Robert O'Connel, prospective buyer, and his real estate agent Joyce Sullivan presented, and a hearing was held to discuss a variance to Ipswich Board of Health Septic System Regulation 3.10 which states that septic systems shall not be installed between December 15 and March 15.

The system failed a Title 5 inspection on February 8, 2003. A tight tank plan was approved on September 17, 2007. The corresponding permit was signed on July 3, 2008 and is good for three (3) years.

The prospective new owners would like to be able to install the new system after their closing so it would be after December 15th. Ipswich Board of Health Septic System Regulation prohibits septic installation between December 15 and March 15. D.F. Clark, Inc. is scheduled to begin the installation on December 21, 2009 with a completion date of December 23, 2009; with the Board's approval and weather permitting.

At the Board of Health meeting on September 8, 2008, the Board decided that the current owner could occupy the dwelling two (2) days per week in order to sell it. The Board also said the new owner would need to obtain a timeframe from the Board for the installation of the tight tank. Mr. O'Connel questioned if they could occupy the home provided they maintain the system as necessary to prevent any problems. The current system was last pumped on February 14, 2008.

Dr. Amesbury asked Colleen for her thoughts. Colleen supported the request. She reminded the buyer that a deed restriction for four (4) bedrooms and an operation and maintenance agreement are still needed per the Board of Health approval of the tight tank design granted on February 4, 2008.

Dr. Amesbury made a motion to grant a variance to Ipswich Board of Health Septic System Regulation 3.10 Said variance allows the installation of tight tank to occur after December 15, 2009 but prior to April 15, 2010 with the condition that the existing septic system is pumped, as necessary, to prevent ponding or breakout of effluent. The system must be installed with the Certificate of Compliance issued by April 15, 2010. Chuck Hill seconded the motion. The motion passed unanimously.

6:15 – Hearing - Agresource Inc. – Ipswich Compost Facility – Town Farm Road – Approval of Suitability, Type 1. Biosolids.

Timothy Gould presented, and a hearing was held to consider the renewal of the approval of Suitability for the Type 1 sludge product distributed by the Ipswich Compost Facility located on Town Farm Road, Ipswich. The approval needs to be renewed every two years.

Agresource has been operating in Ipswich since 1992 distributing compost. Most of the compost includes yard waste, brush, and biosolids from the Ipswich Waste Water Treatment Plant which comes from Ipswich, Amesbury, Rockport, Newburyport and Merrimack. The permit is based on where the biosolids are distributed from not where they are produced. The permit is issued in the Town's name but is managed by Agresource.

The Department of Environmental Protection (DEP) requires Agresource to monitor the compost and maintain records. Quarterly testing of compost results is done to look for metals, nutrients, PCP's, fecal and pathogens (coliform and salmonella). DEP requires either coliform or salmonella but Agresource tests for both.

The Board reviewed the Ipswich Compost Facility's application for Approval of Suitability for Type 1 Sludge distributed by the Ipswich Compost Facility.

Dr. Amesbury made a motion to approve the renewal application for Approval of Suitability for Type I Sludge. Chuck Hill seconded the motion. The motion passed unanimously.

6:25 – Hearing - Ed Fagen – 18 Heartbreak Road – represented by H.L. Graham Associates, Inc. – soils extension.

Larry Graham, P.E. presented, and a hearing was conducted to consider a request for a variance to Ipswich Board of Health Septic System Regulations 8.9; which states that soil testing conducted for new construction or upgrades shall be valid for two (2) years from the date of testing.

An extension on soil testing conducted on March 11, 12, 14, and 15, 2002 and April 3, 2002 was requested. Previously, the Board granted an extension until December 31, 2008.

Dr. Amesbury asked Colleen for her thoughts. Colleen recommended granting the variance since the property has been in litigation and no changes have been made to the property.

Dr. Amesbury made a motion to grant another extension since the subdivision plan has been tied up in litigation and no changes have been made to the property. Said variance extends the validity of the soil testing conducted on March 11, 12, 14, and 15, 2002 and April 3, 2002 until December 31, 2010. Chuck Hill seconded the motion. The motion passed unanimously.

6:30 – Hearing - Ed Fagen – 18 Heartbreak Road – represented by H.L. Graham Associates, Inc. – definitive subdivision plan.

Larry Graham, Ed Fagan, and Richard Kallman, Esq., presented, and the Board reviewed and discussed the definitive subdivision plan for Heartbreak Farm; 18 Heartbreak Road, Ipswich. An abutter, Ms. Kraufchuck, was also present.

Litigation of the property ended with the court having the Planning Board start their review of the subdivision plan over. Attorney Kallman, representing Mr. Fagen, clarified that the Supreme Court remanded the case to the Superior Court who then remanded it back to the Planning Board for further action.

Colleen asked for the subdivision plans and received them on December 1, 2009. The plans have been revised a few times since the Board of Health granted its' approval on June 17, 2002 and it is unclear what changes have been made.

Larry Graham stated there have been four (4) revisions as a result of DEP and peer review. Colleen said since she has not seen the court's decision it is also unclear if the Board of Health should be reviewing this project again.

Colleen previously asked Larry Graham to provide her with the court's decision to determine if the Board should be reviewing the plan. Mr. Graham informed her that Attorney Kallman would attend the December 2009 meeting and provide the Board with a copy of the court's April 2009 decision at the meeting. Colleen received some of the legal documents from the Planning Director prior to the meeting.

Attorney Kallman gave the Board a copy of the court's April 2009 decision. The Board reviewed the paperwork.

The subdivision plan contains twenty five (25) acres. Only ten (10) to twelve (12) acres of the property is not a wetland. Ms. Kraufchuck, an abutter, raised concerns regarding water drainage and where the water will go. Her property is directly below the proposed subdivision.

Ms. Kraufchuck stated that her property continues to get increasingly wet. Since 2002 she has lost 40 feet of land due to the increase in water. Ms. Kraufchuck hired Atlantic Engineering in 2002 to do a study of the proposed subdivision. Atlantic Engineering provided a letter containing six (6) points of concern.

Larry Graham, P.E., said he responded to their concerns and has received no response to state they were dissatisfied.

In Superior Court Meridian Engineering testified that there would be problems with drainage for the subdivision. While the Supreme Court judge agreed that abutters raised valid concerns regarding drainage, he ordered that the Superior Court's decision stands and remanded the subdivision plan back to the Planning Board for further action.

Colleen questioned if the subdivision plan was remanded solely to the Planning Board. It was confirmed that the decision remanded further action solely to the Planning Board.

Attorney Kallman stated that the Planning Board has waived their regulation and allowed catch basins to be installed. Ms. Kraufchuck is concerned there will still be problems with water from the individual septic systems to be installed. According to Ms. Kraufchuck the Subdivision Plan fails to capture the water that begins ponding in March and lasts through July.

Ms. Kraufchuck presented a letter to the Board from a geologist who raised concern regarding septic breakout and drainage. It was noted by the Board that there is no criteria in Massachusetts for geologists.

Attorney Kallman agreed there are definite water problems which have deteriorated in recent years. That being said, it was his position that the water situation will be no worse post-development since catch basins will be utilized and the subdivision plan demonstrates this.

Colleen added that currently the Board of Health has no individual filings for septic plans in the subdivision. These septic plans will need to meet full compliance with current Title 5 regulations since they are new construction. The Board of health can't reject a subdivision plan based on Title 5 since septic plans have not been filed and they are not required to be filed as part of the subdivision approval process.

Dr. Amesbury asked if there was any reason to question whether the soils have changed since 2002. Colleen said that a confirmatory test could be done prior to the installation of each system, if the Board wanted to require it, but the soils do not change. Dr. Amesbury supported a confirmatory test-pit being conducted to address the abutter's concerns and to verify groundwater levels since the wetlands have increased.

Ms. Kraufchuck reported that she had the wetlands delineated on her property. She attested to the fact that the wetlands have moved up significantly on the property since 2002.

Colleen questioned if the wetland delineation for the subdivision had been revisited by the Conservation Commission. The Conservation Commission had the wetland delineation changed a few years back. Mr. Graham submitted his response letter to Mr. Osgood, which stated that Mr. Graham must re-test one (1) lot to have the testing outside the one hundred (100) foot setback to the wetland.

Dr. Amesbury suggested that Colleen review the plan to determine what areas, if any, are more impacted by wetlands.

Mr. Graham attested that the majority of changes to the plan have been made along the road to handle the run-off.

Ms. Kraufchuck asked if the changes resulted in more water flow going to retention pond B. Larry Graham said yes but that the pond has a greater capacity than the other basins. He said they have reacted to all concerns raised by Meridian Engineering previously.

Larry Graham told the Board that 2 different engineering firms have reviewed the drainage plans for the Planning Board.

Dr. Amesbury made a motion that since the subdivision plan dated May 3, 2002 was revised four (4) times after the Board of Health approved the plan on June 17, 2002, the Health Agent should review all the revisions and the final definitive subdivision plan and report back to the Board of Health regarding the revisions to the plan.

The Board of Health will discuss the subdivision plan dated May 3, 2002 and last revised March 4, 2005 at their January 4, 2010 meeting. Upon review of the revisions, the Board of Health will decide if any of the changes are significant enough to warrant the Board to review their approval granted in 2002. Chuck Hill seconded the motion. The motion passed unanimously.

7:00 – Hearing - David Ketchum – 140 Jeffrey’s Neck Road – building permit application.

Mr. Ketchum presented, and a hearing was conducted to consider a building permit application for the addition of a second kitchen in the lower level of the existing dwelling.

The homeowner received approval to add an accessory apartment from the Zoning Board of Appeals (ZBA).

Previously, Mr. Ketchum had submitted a building permit application for a proposed accessory apartment in the lower level of the existing dwelling and the application was denied by the Health Agent since his property is served by a septic system that was designed for three (3) bedrooms and according to the floor plans submitted the dwelling already contains three (3) bedrooms.

Currently, Mr. Ketchum would like to forgo having an accessory apartment but still add an additional stove, sink, and refrigerator to the lower level of the dwelling. He attested that in doing this there would be no change in the use of the home although he also stated that he may rent the space to a relative.

Dr. Amesbury pointed out that if Mr. Ketchum adds the apartment space he is increasing the bedroom count for the home. Additionally, if this became a single family home with two (2) kitchens it is the same thing as having an accessory apartment since there will be an increase of flows to the septic system. The floor plan for the second kitchen is the same as the floor plan for the accessory apartment previously sought.

Mr. Ketchum felt the proposed changes would create no added stress to the septic system. The Board disagreed. They felt the addition of a second kitchen would result in an increase in flow to the septic system.

Mr. Ketchum said he could just add some partitions and relocate the sink that is currently in the laundry room.

Chuck Hill said it can't be done without septic changes.

Mr. Ketchum proposed that he provide documentation to the Board to ensure that when he sells the home the apartment will be eliminated. Colleen felt that even if a three (3) bedroom deed restriction was filed at the registry there would be no way to control the elimination of the apartment. Additionally, at a minimum, a two (2) compartment tank or two tanks in a series is required if Mr. Ketchum maintains the three (3) bedrooms with the accessory apartment by eliminating one (1) bedroom. If the bedroom count increases to four (4) with the addition of the apartment then a new system meeting new construction standards will be required. The Board did not want to accept a deed restriction to allow a second kitchen or an accessory apartment.

Dr. Amesbury made a motion that since the dwelling already contains three (3) bedrooms, based on the definition of bedroom in 310 CMR 15.000 Title 5, the building permit application for the accessory apartment or the addition of a kitchen can not be approved unless a new septic system design, meeting new construction standards, is approved or one (1) bedroom is eliminated to result in a total of three (3) bedrooms being maintained. If Mr. Ketchum chooses to eliminate one bedroom in the upper level in order to maintain three (3) bedrooms, a building permit application and plans for this modification must be submitted along with the plans for the kitchen addition. Additionally, the building permit application for the kitchen addition cannot be approved until a septic system design plan for the modification of the existing septic system is approved. In accordance with 310 CMR 15.223 (b), systems to serve more than one dwelling unit must have a two compartment septic tank or two septic tanks in series. Chuck Hill seconded the motion. The motion passed unanimously.

7:15 – Hearing - Lillian and Richard Edmonds – 7 Sunset Drive – represented by David Clark of D.F., Clark Inc. – installation of the septic system after December 15, 2009.

The hearing was not heard since Dr. Amesbury had to leave.

7:15 - Report of the Health Agent:

The Report of the Health Agent was not heard.

Next Board Meeting: The next meetings of the Board of Health were scheduled for January 4, 2010 and February 1, 2010 at 6pm.

Adjourn: Dr. Amesbury made the motion to adjourn at 7:15 PM. Chuck Hill seconded the motion. The motion to adjourn passed unanimously.

Dr. Spencer Amesbury, Board Member

Charles Hill, Board Member