

Board of Health Minutes
Monday, January 11, 2016 5:30 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 5:30 PM.

Members attending: Susan C. Hubbard and Margaret McDermott were in attendance. Dr. Spencer Amesbury was not in attendance

Others in attendance: Director of Public Health; Colleen Fermon, Public Health Administrative Assistant; Jennifer Brown, Marylou and Benjamin Fierro, Gerard McDonald, Michael Hetnar, Robert Grasso, Elizabeth Berkman and Philip Anderson, Carly Restuccia, Charlotte Howe and Lori Lafrance.

Citizens Queries: None.

Minutes: The December 14, 2015 minutes were not ready for approval.

Hearings:

5:31 - Marylou and Benjamin Fierro – 16 North Ridge Road – bedroom count

Marylou and Benjamin Fierro presented, and a hearing was held, upon their request, to appeal Colleen Fermon's decision regarding the number of existing bedrooms in the dwelling at 16 North Ridge Road.

Ms. Fermon explained that the Public Health Office does not have engineered plans for the septic system currently serving the dwelling. Based on this, the number of bedrooms is established by reviewing the current floor plan, pursuant to Board of Health Septic System Regulation, 2.14. After reviewing floor plans, Ms. Fermon determined that the dwelling contained two (2) bedrooms in accordance with the definition of bedroom provided in Title 5, 310 CMR 15.000. The dwelling was determined to contain two (2) bedrooms since the room Mr. and Mr. Fierro considered a third bedroom is only 65 square feet which is below the 70 square foot requirement in Title 5, 310 CMR 15.000.

At the meeting, the Board of Health reviewed floor plans done by Savoie Architecture dated December 14, 2015. Additionally, Assessor cards were reviewed. The property is currently assessed as having 3 bedrooms and 6 rooms. In 1979 the Assessor's card lists 2 bedrooms and 4 rooms and the 1964 Assessor's card lists 5 rooms but has no bedroom information. It was also noted that a building permit application filed by the previous owner listed 5 rooms and 3 bedrooms.

The Fierro's purchased the property on November 19, 2015 and said the real estate listing had it as a 3 bedroom dwelling. They signed an agreement with the Board of Health to upgrade the septic system by November 19, 2017. Soil testing was done and they will have a design completed but the number of bedrooms is in question. It is their intension to demolish the existing dwelling and build a 3 bedroom dwelling. They requested the Board designate the dwelling as having three (3) bedrooms.

Based on the information provided, Susan Hubbard made a motion to grant a variance to Board of Health Septic System Regulation, 2.14 and recognize the dwelling located at 16 North Ridge Road as a three (3) bedroom dwelling. Margaret McDermott seconded the motion. The motion passed unanimously. A 3 bedroom septic system must be installed by November 19, 2017.

5:36 - Hearing – Viehmann’s Plumview LLC – 19 Bunker Hill Road – represented by H. L. Graham Associates, Inc. – septic system variances

Gerard McDonald, P.E., presented and a hearing was conducted to consider variances from Title 5 for a sewage disposal system plan # 15-1521 designed Gerard McDonald, P.E., dated November 19, 2015 and last revised December 22, 2015 for the 2 bedroom dwelling located at 19 Bunker Hill Road, Ipswich, Massachusetts.

The existing 2 bedroom system failed a Title 5 inspection on July 22, 2015. Mr. Graham proposed a Pro Step pump vault and pressure distribution leaching area system with Infiltrator chambers for the upgrade and requested the following variances:

- To allow a 1 foot reduction in the separation between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW). A 3 foot separation is provided.
- To allow a reduction in the setback between the leaching area and the cellar wall. An 11 foot setback is provided.

Mr. Graham said he requested a 1 foot reduction between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW) to prevent the need for grading and a retaining wall.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon felt the variance requests were reasonable ones and recommended granting the variances as requested with the following conditions:

- A 2 bedroom deed restriction must be filed at the Southern Essex County Registry of Deeds with a copy provided to the Public Health Office prior to the issuance of the Disposal System Construction Permit.
- A 2 year Operations & Maintenance for the Pressure Distribution septic system must be submitted to the Public Health Office prior to issuance of Disposal System Construction Permit.
- A Lifetime Maintenance restrictive covenant for the Pressure Distribution septic system must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Office prior to the issuance of the Disposal System Construction Permit.
- The system must be installed with the Certificate of Compliance issued by July 22, 2017.
- An Ipswich licensed installer must come to the Public Health Office prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee. The installer will receive the disposal system construction permit, the trench permit and a signed copy of the approved plan.

Susan Hubbard made a motion to approve the plan and grant the variances as requested with the aforementioned conditions. Margaret McDermott seconded the motion. The motion passed unanimously.

5:40 - Hearing – Michael Hetnar – 0 Locust Road – extension on the timeframe for the Chapter II order for correction

Colleen Fermon reviewed the history of the property for the Board. As a result of a complaint received by the Public Health Office, a housing inspection was conducted on March 14, 2015, at 0 Locust Road, Ipswich in accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation. Violations were found and an order to correct was issued on March 16, 2015. Mr. Hetnar was ordered to secure the property within 5 days of receipt of the order and to bring the dwelling into compliance with the State Sanitary Code 105CMR410.000 within 30 days or provide the Health Department with a plan to demolish the structure.

On March 27, 2015 Mr. Hetnar requested a hearing before the Board of Health to discuss the order to correct issued on March 16, 2015. The Board reviewed the violations which were 105 CMR 410.750 Conditions Deemed To Endanger or Impair Health and Safety of Occupants or the General Public,(A)-(O) Inclusive. Violations of this section constituted complete non-compliance with 105 CMR 410.000. At the April 6, 2015 meeting it was noted that the dwelling was vacant and in very poor condition. Mr. Hetnar attested that he had obtained a building permit to correct the exterior violations but he needed additional time to do the interior repairs which were extensive. Mr. Hetnar said the roof had been repaired and the windows had been ordered. He expected to have the exterior violations corrected by the end of May. Mr. Hetnar stated that he intended to renovate the dwelling and use it as a rental property.

Based in this information it was the decision of the Board to modify the order and extend the timeframe for corrections. Mr. Hetnar was ordered to obtain compliance with 105 CMR 410.000 by December 31, 2015.

On December 16, 2015 Mr. Hetnar requested a second hearing before the Board of Health to discuss the order for correction.

At the January meeting, the Board discussed the request for an extension. Mr. Hetnar attested that all exterior violations have been corrected but he needs additional time to do the interior repairs. He is seeking an architect to develop construction plans and then will be pursuing a building permit application to complete the interior repairs. Mr. Hetnar confirmed that the property remains unoccupied.

Susan Hubbard made a motion to grant another extension, until December 31, 2016 with the condition that the dwelling remains unoccupied until all violations have been corrected and a re-inspection is conducted by a representative of the Public Health office to confirm compliance. Margaret McDermott seconded the motion. The motion passed unanimously.

5:41 - Hearing - Peter and Jennifer Rockett –13 Allen Lane – represented by Engineering Land Services, LLC –Alternative Technology Waiver

Robert Grasso, R.S., presented, and a hearing was conducted to consider an Alternative Technology waiver for the sewage disposal system plan designed by Brian Framer, R.S., dated November 20, 2015 and last revised December 29, 2015 for the 3 bedroom dwelling located 13 Allen Lane, Ipswich, Massachusetts.

This is a voluntary upgrade to serve an existing 3 bedroom dwelling. Mr. Grasso proposed the use of a Presby Enviro Septic system for the upgrade and requested the following Alternative Technology waiver:

- To allow a 2 foot reduction between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW) with the use of a Presby Enviro-Septic System. A 2 foot separation is provided.

Mr. Grasso explained that Department of Environmental Protection's (DEP) approval allows for a 2 foot reduction in the separation between the bottom of the leaching area and estimated seasonal high groundwater (ESHGW) but the Board of Health must approve the variance request. Mr. Grasso asked for the variance to achieve a gravity system.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon felt the system would work without the need for a 2 foot reduction but felt it was a reasonable request for the Board to approve.

Susan Hubbard made a motion to approve the plan and grant the variance as requested with the following conditions:

- Prior to issuance of the Disposal System Construction Permit and after recording the Deed Notice required by 310 CMR 15.287(10), the System Owner shall provide to the Public Health Office a copy of a certified Registry copy of the Deed Notice bearing the book and page/or document number. The Notice is the DEP document titled Notice of Alternative Disposal. A sample of the Notice of Alternative Disposal can be found on the Massachusetts Department of Environmental Protection's website <http://www.mass.gov/dep>.
- Prior to the issuance of the Disposal System Construction Permit, the System Installer must certify in writing to the Designer, the Public Health Office, and the System Owner that (s) he is a locally approved System Installer and is certified by or has received appropriate training by the Company. The Presby certification must be submitted to the Public Health Office.
- Prior to the issuance of a Certificate of Compliance by the Public Health Office, the System Installer and Designer must provide, in addition to the certifications required by Title 5, certifications in writing to the Public Health Office that the System has been constructed in compliance with the terms of the Approval.
- Prior to the issuance of a Certificate of Compliance, the Installer must provide a bill of lading certifying the sand meets ASTM C-33.

- Prior to the issuance of a Certificate of Compliance, the Installer must provide a completed "System Installation Form" to the Public Health Office before the Certificate of Compliance can be issued.
- An Ipswich licensed installer must come to the Public Health Office prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee. The installer will receive the disposal system construction permit, the trench permit and a signed copy of the approved plan.

Margaret McDermott seconded the motion. The motion passed unanimously.

5:47 - Hearing - Elizabeth Berkman and Philip Anderson – 6 James Road – failed septic system and Noncompliance with Title 5 and Chapter II

Colleen Fermon reviewed the history of the property.

In response to complaints received about sewage breakout from the property, an inspection was conducted by a representative of the Board of Health on December 15, 2006. Evidence of discharge of effluent from the system to the surface of the ground was found which is a violation of the State Environmental Code, Title 5, 310 CMR 15.000. A noticed of violation dated December 19, 2006 was sent to the owners.

In a letter dated January 12, 2009, the Board of Health notified the owners that the septic upgrade plan designed by Daniel Johnson, R.S., plan # J-2177, dated January 14, 2008, revision date November 17, 2008, for the three bedroom dwelling located at 6 James Road, Ipswich, Massachusetts was approved. The owners were order to have the septic system installed and the Certificate of Compliance issued by July 31, 2009.

At the meeting of the Board of Health on August 10, 2009, a hearing was held to discuss an extension for the installation of the upgraded septic system serving 6 James Road. At the meeting the owners explained they were not financially able to keep the home and have put it on the market to be sold. It was the decision of the Board to have them attend the February 2010 meeting to give an update of where they were in the process of selling the home and to provide a timeframe for bringing the property into compliance.

At the meeting of the Board of Health on February 2, 2010, based on the assertion that the home was still on the market to be sold and the financing of the upgrade is contingent upon the sale of the property, it was the decision of the Board to have the owners attend the July 2010 meeting.

At the August 2, 2010 Board of Health meeting, the owners attested that the home was still on the market and they were working with a mortgage company to re-finance the home and install the septic system. It was the decision of the Board to have the owners attend the February, 2011 meeting to give an update of where they were in the process of selling the home and to provide a timeframe for bringing the property into compliance.

At the meeting of the Board of Health on February 14, 2011, the owners attested that they re-financed the home and have obtained three bids for the installation of the septic system. It was the decision of the Board to grant another extension for the upgrade of the system since they had been unable to sell the home and the financing of the upgrade is contingent upon the sale of the property. They were ordered to install the system by December 15, 2012.

At the September 12, 2011 meeting, they owners explained that they would like to be considered for the town's septic loan program that is currently being developed. It was the decision of the Board to grant you an extension until April 6, 2013 so they may pursue a septic loan with the town.

At the meeting of the Board of Health on December 3, 2012, the owners attested that they received pricing for the new system which was too expensive for them to consider and that they received some negative feedback on the alternative technology used in the design. They stated that a Title 5 Inspection was never done since the system was determined to be in failure due to the breakout of effluent in 2006. They requested the opportunity to have a Title 5 Inspection done to determine if there is a problem with the distribution box or what was causing the breakout. It was the decision of the Board to grant them 60 days; by February 3, 2013, to have a Title 5 Inspection conducted along with a groundwater determination at the location of the existing leaching area with the results provided to the Health Office. If the system was determined to be in failure, the upgraded system was to be installed with the Certificate of Compliance issued by December 31, 2013. The Septic System Inspector, Paul Ricker, confirmed on February 1, 2013 that the septic system was in failure.

At the meeting of the Board of Health on February 10, 2014, the owners stated that their intention to obtain an equity loan and to pursue a septic betterment loan with the town. Unfortunately, they did not qualify for an equity loan. Additionally, their mortgage holder will recall the mortgage if they obtain a septic betterment loan with the town since the town would then become the priority lien holder on the property. It was the decision of the Board to grant another extension until December 31, 2014 to upgrade the septic system with the Certificate of Compliance issued by said date.

At the meeting of the Board of Health on December 8, 2014, another hearing was held to discuss a timeframe for the installation of the septic system. The owners attested that the property was back on the market to be sold, but they will need to do a short sale of the property in the next few months.

At the July 13, 2015 Board of Health meeting another hearing was held to discuss a timeframe for the installation of the septic system. The owners attested that they were in the process of doing a short sale of the property. Based on this information it was the decision of the Board of Health the septic system must be installed in 2015 or they would consider issuing a finding that the dwelling is unfit for human habitation which may result in an order of condemnation requiring you to secure the dwelling and the occupants to vacate the dwelling. The owners were ordered to install the septic system by December 31, 2015.

At the January 11, 2016 Board of Health meeting a hearing was held to discuss a timeframe for the installation of the septic system. At the meeting the owners confirmed that that they are unable to finance the upgrade of the septic system and that the short sale has not moved forward. They attested they were in the process of moving in with family but need 2 months for the new dwelling to be ready.

Susan Hubbard made a motion to grant an extension until April 10, 2016 to complete the installation of the septic system. If the system is not installed on or before April 10, 2016, the dwelling will be deemed unfit for human habitation and an order of condemnation will be issued since the dwelling is being served by a failed septic system that has not been upgraded within the prescribed timeframe. The condemnation order will require all occupants to vacate and secure the dwelling on or before April 11, 2016. If condemned, the dwelling unit shall not be occupied without the prior written permission of the Board of Health. Margaret McDermott seconded the motion. The motion passed unanimously.

6:20 - Discussion:

Sustainability Scholars Class of Ipswich High School – represented by Carly Restuccia, Charlotte Howe, and Lori LaFrance – reducing use of polystyrene (Styrofoam):

Previously, at the December 14, 2015 meeting, the Board discussed the Ipswich High School's Sustainability Scholars proposal to ban the use of plastic bags and polystyrene (Styrofoam) by all retail establishments in Ipswich. Originally in December, one group proposed a plastic bag ban that the Police would enforce and the other group wanted a polystyrene ban that the Health Department would enforce. At the January meeting, the Board was informed the two initiatives were combined and the students wanted the Health Department to enforce both.

The Board discussed who would be responsible for enforcement. Colleen Fermon noted that the Public Health Office has limited time, resources, and no staff to take on the initiative and handle enforcement. If Public Health was going to be involved, funding and staffing would be needed. Additionally, she noted that the town budget process controls the funding and where funds are allocated to.

In Ipswich, solid waste, recycling, household hazardous waste is all handled through the Department of Public Works. Based on this, Ms. Fermon felt that the proposed regulation should be housed in Public Works and could be enforced by the Recycling Coordinator or others. Ms. Fermon added that Public Works is the responsible agency in Nantucket and Cambridge. The regulation for Cambridge included Public Works, Health and Police for enforcement.

Susan Hubbard suggested the girls look into obtaining grant funding. She suggested speaking with the Recycling Advisory Committee to see if they have any available grants or helpful advice on how to obtain a grant for their initiative. Additionally, she suggested the girls speak with the Town Manager to get some guidance.

The Board was supportive of the proposed bans but neither initiative can be supported without funding/staff that is not currently available. The Board felt the initiative's oversight and enforcement would be better suited in Public Works than Health since Public Works oversees the solid waste contract, household hazardous waste and recycling and there is a part time recycling coordinator. Since the Board can't dedicate town funds or dictate which department oversees the initiatives, the students were directed to speak to the Town Manager to get some guidance. The warrant article language had not been drafted at the time of the meeting. If the warrant article needs to include any language about enforcement, the Board recommended the language include Public Works, Health and Police (like Cambridge did) to give flexibility.

6:45 - Director of Public Health Report:

December Activities Report. The report was reviewed the Board members. The following points were discussed:

Ipswich YMCA Pool: At the December 14, 2015 Board of Health meeting, a hearing was conducted to consider variance requests from 105 CMR 435.000. This variance letter was filed with the Department of Public Health (DPH) in late December. DPH may approve, disapprove, or modify the variances within 30 days from receipt thereof. If the Department fails to comment within 30 days, its approval will be presumed. No work shall be done under any variance until the Department approves it or 30 days elapse without its comment.

Housing:

40 South Point Lane - Upon Colleen Fermon's request, the Office of the Attorney General continues to pursue corrections at 40 South Point Lane as part of their Abandoned Housing Initiative. A joint inspection was conducted on April 13, 2015 with the owner, the Attorney General office, and the Ipswich Health Department in order to identify current violations of the State Sanitary Code. At the time of inspection the owner did not have keys to the property so only an exterior inspection was conducted. Numerous code violations were present which require corrective action. Given the long-standing violations at the property, the Assistant Attorney General gave the owner 30 days to correct the exterior violations but she had to immediately contact the Office of the Attorney General to schedule a date and time for an interior inspection. A second joint inspection was completed on May 15, 2015 and the inspector found that the exterior violations had been corrected but there were violations pertaining to the interior of the dwelling. The owner was ordered to correct the interior violations by June 5, 2015. A joint inspection was conducted on June 15, 2015 and an additional violations pertaining to the electrical panel and mold were found. Because these new violations were found once the drywall was removed the owner was given additional time to correct the violations.

A re-inspection was not conducted mid-July, as previously planned, since the owner had to have two new electric panels installed, an electrician connect all the wiring to the new electric panels and apply for a building permit. A re-inspection was conducted on July 31, 2015 and the inspector noted the mold has been remediated, new electric panels were installed and water and electricity were restored. The building permit was issued in July and the Inspector of Buildings did his inspection on August 27, 2015 and allowed for the drywall to be installed. The owner made repairs through September. A re-inspection was conducted on October 16, 2015 but wiring and other violations have not been corrected fully. A re-inspection was supposed to occur in November but the electrical work has not been completed. The Attorney General's Office sent a letter to the owner giving a deadline of January 6, 2016 for completion of the remaining violations.

41 Country Club Way - The Office of the Attorney General is also pursuing corrections at 41 Country Club Way as part of their Abandoned Housing Initiative. The property is unoccupied and has been abandoned by the owner. The Attorney General's office completed their title research and sent a demand letter to the owner to order the correction of the violations Colleen Fermon cited in her orders. The owner is going through bankruptcy proceedings in Maine. His attorney directed the Assistant Attorney General to contact counsel for Wells Fargo, the first mortgage holder. A Wells Fargo representative said they will be securing and remedying the violations at the property and the work should begin in May. The Assistant Attorney General asked for an opportunity for a joint inspection with representatives of the Attorney General's office and the Ipswich Health Department so all violations can be identified. A joint inspection was conducted on June 15, 2015 and violations were found.

A re-inspection was scheduled for mid-July, 2015 but needed to be rescheduled to mid- August since the contractor for Wells Fargo was unable to get approval on the scope of work until July 28, 2015. On August 10, 2015, a re-inspection was done and all violations had been corrected except there was no electricity and the smoke detectors and carbon monoxide detectors couldn't be inspected without electricity. Once the electricity is restored, the Fire Department can check the detectors and then all violations will have been corrected. The Attorney General is still trying to get Wells Fargo to bring this to completion.

Substance Abuse: Beverly and Gloucester/Cape Ann communities received a Substance Abuse grant. Gloucester is the lead community for the grant. Ipswich has been invited to join the grant but there will be no money for Ipswich, just capacity building. The goal of the grant is the prevention of first use of alcohol and other drugs by youth and young adults. Chief Nikas and Colleen Fermon met with representatives of the grant partnership in December to obtain more information. Memorandums of Understanding for Police, Health, Schools, and Town Manager were discussed but Ms. Fermon has not received any documents to date.

Next Board Meeting: The next meetings of the Board of Health were scheduled for January 11, 2016, February 8, 2016, March 7, 2016, and April 4, 2016 at 5:30 PM.

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

Documents used at the January 11, 2016 Board of Health meeting:

- Septic system design plan for 13 Allen Lane designed by Brian Framer, R.S.
- Septic system design plan for 19 Bunker Hill Road designed by Gerard McDonald, P.E.
- Assessor's record cards for 16 North Ridge Road from 1964, 1979 and 2016.
- Email from Ken Savoie dated December 21, 2015 regarding 16 North Ridge Road.
- Savoie Architecture drawing, number A1, dated December 14, 2015, of the existing floor plan for 16 North Ridge Road.
- Disposal System Construction Permit # 08-10 and approved septic system design plan for 6 James Road designed by Daniel Johnson, R.S.
- Letters from Colleen Fermon dated December 12, 2015, November 9, 2015, July 15, 2015, January 28, 2014, February 13, 2014, November 12, 2014, December 14, 2014, February 6, 2013, May 14, 2012, October 16, 2012, December 6, 2012, January 20, 2011, February 16, 2011, August 16, 2011, September 15, 2011, January 7, 2010, February 2, 2010, July 16, 2010, August 4, 2010, January 12, 2009, September 9, 2009, August 19, 2009, July 14, 2009, June 17, 2009, January 8, 2009, January 12, 2009, August 27, 2008, December 19, 2006 regarding 6 James Road.
- Letter from G.H. Ricker, Inc. dated February 14, 2013 regarding 6 James Road.
- Water records for 6 James Road from October 2, 2011 through December 2, 2015.
- Letter dated June 19, 2015 from Attorney Alicia Champagne regarding 6 James Road.
- Email dated January 5, 2016 from George Hall regarding 6 James Road.
- Letters from Colleen Fermon dated October 29, 2015 and December 21, 2015 for 0 Locust Street.
- Emails from John Morris dated December 13, 2015 and December 28, 2015 regarding 0 Locust Street.
- Plastic Bags and Polystyrene proposed ban (Styrofoam) in Ipswich.
- Chapter II of the State Sanitary Code

Susan C. Hubbard, Chairperson

Margaret McDermott, Board Member