

Board of Health Minutes
Monday, January 13, 2020 5:30 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 5:32 PM.

Members attending: Susan C. Hubbard and Margaret McDermott were in attendance.

Others in attendance: Director of Public Health; Colleen Fermon, Health Administrative Assistant, Jennifer Brown, Charles Johnson, P.E., Mark Godin, Lori LaFrance, Margot Kelly, Carla Villa and Patrick Kriksceonatis.

Citizens Queries: None.

Minutes: The November 18, 2019 minutes were tabled until the February 3, 2020 meeting since Dr. Susan Boreri was not present to approve the minutes. Susan Hubbard made a motion to approve the December 9, 2019 minutes with one change in the 5th paragraph on page 2 under 158 Linebrook Road; add Susan Hubbard to the last sentence. Margaret McDermott seconded the motion. The motion passed unanimously.

Hearings:

5:31 – Mark Godin and Margaret Godin – 2 Jay Road – Represented by C.G. Johnson Engineering, Inc. – Septic System Design Variances

Charles Johnson, P.E., and Mark Godin presented, and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health Septic System Regulations for a sewage disposal system plan #1395 designed by Charles Johnson, P.E., dated December 12, 2019 the 3 bedroom dwelling located at 2 Jay Road, Ipswich, Massachusetts.

Susan Hubbard asked if the abutters were notified. Certified mail cards were provided to the Board as proof of notification.

Mr. Johnson provided an orientation of the property and explained that that the proposed system was designed 40 feet outside of the no build area.

Mr. Johnson proposed the use of a 2,000 gallon septic tank with a pump vault, Waterloo Biofilter and a Perc-Rite Drip Disposal leach system. Since a Waterloo Biofilter System is included in the design so a 50% reduction in leach field size was taken. He requested the following variances:

- A reduction in the setback between the septic tank and the property line. A 5 foot setback is provided.
- A reduction in the setback between the Waterloo Biofilter and the property line. A 5 foot setback is provided.
- A reduction in the setback between the leaching area and the property line. A 5 foot setback is provided.
- A reduction in the setback between the septic tank and the cellar wall. A 6 foot setback is provided.
- A reduction in the setback between the Waterloo Biofilter and the cellar wall. A 6 foot setback is provided.

- A reduction in the setback between the leaching area and the wetlands. A 40 foot setback is provided.
- A reduction in the setback between the Waterloo Biofilter and the water line. A 3 foot setback is provided.
- A reduction in the setback between the leaching area and the wetlands from the 100 foot local requirement. A 40 foot setback is provided.

The Board reviewed the sewage disposal system plan and considered the variance requests.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said this was a difficult site given the limitations of the lot and the proximity to the Coastal Bank. She recommended granting the variances as requested with the following conditions:

- A two year Operations & Maintenance contract for the Perc-Rite Drip Disposal and Waterloo Biofilter systems must be submitted to the Public Health Department prior to the issuance of the Disposal System Construction Permit.
- A Notice of Alternative Disposal for the Perc-Rite Drip Disposal and Waterloo Biofilter systems must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Department prior to the issuance of the Disposal System Construction Permit.
- Prior to issuance of the Disposal System Construction Permit, the System Installer must certify in writing to the Designer, the Public Health Department, 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 Perc-Rite training certification must be submitted to the Public Health Department.
- Conservation Commission approval must be obtained prior to the issuance of the Disposal System Construction Permit.
- A clean water test must be done with a Perc Rite representative and Director of Public Health to verify system design flush and dose rates; and to confirm the absence of leaks.
- Prior to issuance of Disposal System Construction Permit, an Ipswich licensed installer must come to the Public Health Department 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 system must be installed with the Certificate of Compliance issued by April 30, 2021.

Ms. Fermon explained that the owners signed an agreement with the Board of Health to upgrade the sewage disposal system by April 30, 2021 in lieu of having a Title 5 inspection conducted.

Susan Hubbard made a motion to grant the variances as requested with the conditions as enumerated by Colleen Fermon. Margaret McDermott seconded the motion. The motion passed unanimously.

5:31 – Patrick Kriksceonatis – 4 Lakeman’s Lane – Noncompliance with Order for Operation and Maintenance Contract

Colleen Fermon provided some background information for the Board. On September 6, 2019, the Public Health Office was informed by Clearwater Industries that they were no longer maintaining the Pressure

Distribution system located at 4 Lakeman's Lane. The last maintenance visit was on April 24, 2018. The State Environmental Code, Title 5, requires Pressure Distribution systems to be inspected, at a minimum, once a year with the results of the inspection submitted to the local Board of Health. Additionally, Ipswich Board of Health Regulation requires that owners of Pressure Distribution systems have a valid two-year operation and maintenance contract on file at the Ipswich Public Health Office. This contract must be renewed 60 days prior to expiration.

In a September 9, 2019 letter, the owner was ordered to submit a valid two-year operations and maintenance contract for the Pressure Distribution system to the Public Health Office within 30 days of receipt of the September 9, 2019 notice. The certified mail card was signed and was returned to the Public Health Office on September 23, 2019 but a contract was not received.

In a letter dated December 5, 2019, the owner was informed that if a valid two-year operations and maintenance contract for the pressure distribution system was not received by January 3, 2020, they would be asked to attend the January 13, 2020 Board of Health meeting to discuss the failure to comply with Title 5 and Ipswich Board of Health Regulations. No contract was received.

At the January 13, 2020 Board of Health meeting, Mr. Kriksceonatis explained that he had a billing dispute with Clearwater Industries so they are no longer maintaining the Pressure Distribution system. Mr. Kriksceonatis attested that he has been unable to obtain a maintenance contract from someone who is on the list of operation and maintenance providers given to him by the Public Health Department.

It was noted by Susan Hubbard that it had been 4 months since Mr. Kriksceonatis knew the operations and maintenance contract has ended. Additionally, the Board of Health does not license the operation and maintenance providers. The provider list is given out as a courtesy. The owner is responsible for finding the maintenance provider.

Susan Hubbard made a motion to grant Mr. Kriksceonatis a 30 day extension; until February 12, 2020 to submit a valid two-year operations and maintenance contract for the pressure distribution system. Failure to provide a contract by the February 12, 2020 deadline will result in the Board of Health filing a criminal complaint against Mr. Kriksceonatis in court for failure to comply with a Board of Health order. Margaret McDermott seconded the motion. The motion passed unanimously.

5:31 – John and Amber Quigley – 24 Allen Lane – Noncompliance with Board of Health Order issued on November 18, 2019

Susan Hubbard outlined the violation. The septic system serving 24 Allen Lane failed a Title 5 Inspection on February 1, 2017. In accordance with 310 CMR 15.000, Title 5, the previous owner was ordered to upgrade the septic system within 2 years from the date of inspection; by February 1, 2019. The order to upgrade was sent to Mr. Quigley as the representative of the owner and was received on March 17, 2017. Mr. Quigley purchased the property on April 11, 2019 so it was his responsibility to upgrade the failed septic system.

In a letter dated May 13, 2019, Mr. Quigley was notified that he was in violation of Title 5 and a Board of Health Order since no action had been taken. Mr. Quigley was ordered to attend the June 3, 2019 Board of Health meeting to discuss a timeframe for bringing the property into compliance. This letter was received on May 16, 2019. No one attended the meeting.

At the June 3, 2019 Board of Health meeting, it was the decision of the Board to file a criminal complaint against Mr. Quigley in court for failure to comply with a Board of Health order.

Subsequently, on November 18, 2019 the Board of Health approved sewage disposal system plan # 19-1924 designed by Hugh L. Graham, P.E., dated September 23, 2019 and revised November 4, 2019 for 24

Allen Lane. Approval was granted with the condition that Mr. Quigley provided the name of the Installer and the estimated date for the installation of the system to the Public Health Office by December 10, 2019. No information was provided to the Public Health Office.

On December 11, 2019, the court ordered the information to be provided to the Public Health Office by December 17, 2019 and issued a default warrant for Mr. Quigley's arrest since he did not appear in court as directed. Again, no information was provided to the Public Health Office by the aforementioned deadline.

At the January 13, 2020 Board of Health meeting, Mr. Quigley explained that he is currently pursuing bids from three Septic Installers and has received two so far. He expected the last one would be received soon and thought he would have a contract in place in 10 days. He intends to have the upgraded system installed in April, 2020.

Susan Hubbard made a motion that Mr. Quigley must provide the name of the Installer and a signed contract to the Public Health Office by January 23, 2020 and clear up the housing court default warrant by noon on January 14, 2020 or the Board will pursue a contempt of court motion. As previously ordered, the system must be installed with the Certificate of Compliance issued by May 31, 2020.

5:31 – Carla Villa – Cape Ann Botanicals – 8 Central Street – Deadline Extension for Sale of Food Containing Cannabidiol (CBD)

Carla Villa presented, and a hearing was held to consider a request to extend the deadline for offering food containing CBD. Previously, at the July 15, 2019 Board of Health meeting, it was the decision of the Board of Health that all food containing CBD may no longer be offered as of January 15, 2020.

On June 13, 2019, the Department of Public Health, Bureau of Environmental Health's Food Protection Program issued an interpretation of the Massachusetts wholesale and retail regulations regarding the addition of cannabidiol (CBD) and certain hemp derivatives to food and consumer products. The Department of Public Health incorporates Food and Drug Administration's (FDA) codes for both wholesale (food manufacturing) and retail food regulations. Both the wholesale food and retail food regulations require that all food must comply with federal, state, and local law. The FDA has issued a statement that CBD may not be added to foods because CBD is an active ingredient in an FDA approved medication; medications may not be added to food. Therefore, under current Massachusetts law and under current FDA guidance, CBD may not be added to manufactured foods or to foods sold at retail.

At the January 13, 2020 meeting, it was noted that the Massachusetts Department of Public Health has confirmed that there have been no changes in federal or state laws.

Ms. Villa explained that enforcement of the directive is different from town to town and CBD infused food products are still available in surrounding towns. She requested an extension on the timeframe for the sale of foods containing CBD since she is waiting for the new legislation to pass. The sale of gummies, loose leaf teas, honey and chocolates infused with CBD comprises 10% of her business.

Susan Hubbard asked Colleen Fermon for her thoughts. Colleen Fermon said the state prohibits the sale of CBD infused foods and the only thing left to the Board's discretion was the way the enforcement of the prohibition would be handled. The Board granted a six-month extension.

Susan Hubbard made a motion to uphold the Board's July 15, 2019 decision since the sale of foods containing CBD is still prohibited. All food containing CBD must be removed from Cape Ann Botanicals offerings by January 15, 2020.

Discussion:

Lori Lafrance and Margot Kelly – Proposed Bylaw regarding Plastic Straws and Stirrers

Margot Kelly, a student of Ipswich High School, presented to the board a draft Town Bylaw, Single Use Straw, Stirrer and Hotstopper Ban. As proposed, no food establishment, retail establishment or beverage provider shall use, provide or distribute plastic straws, stirrers and hotstoppers. Straws, stirrers and hotstoppers specifically packed for retail sale are exempted.

Ms. Kelly explained the proposed bylaw and its importance in the mitigation of pollution and provided alternatives to plastic products at no significant cost difference. She requested the input of the Board on the proposed bylaw.

The Board reviewed the draft bylaw and discussed who would be responsible for enforcement. It is assumed it will be placed with the Department of Public Works as the previous ban on plastic bags and polystyrene was.

It was the decision of the Board to support the proposed bylaw.

Director of Public Health Report:

105 CMR 665 and Tobacco Product Inspections: The Massachusetts Department of Public Health (DPH) has promulgated an emergency regulation, 105 CMR 665, to implement certain sections of a new state law: An Act Modernizing Tobacco Control. This regulation took effect on December 11, 2019. As a result, there are important new requirements for retail establishments that sell tobacco products, including e-cigarettes. These requirements differ depending on the type of retail establishment. The new law restricts the following:

1. Retail stores licensed to sell tobacco (convenience stores, gas stations) etc., are restricted to the sale of non-flavored nicotine products with a nicotine content of 35 milligrams per milliliter or less.
2. The sale of non-flavored nicotine vaping products (with a nicotine content over 35 milligrams per milliliter) is restricted to licensed, adult-only retail tobacco stores and smoking bars.
3. The sale and consumption of all flavored nicotine vaping products may only occur within licensed smoking bars.

Beginning June 1, 2020, the sale of flavored combustible cigarettes and other tobacco products, including menthol cigarettes and flavored chewing tobacco, will be restricted to licensed smoking bars where they may be sold only for on-site consumption.

This law also focuses on new mandated fining and enforcement. The new mandated fining is as follows: \$1,000 for a first offense, \$2,000 for a second offense and \$5,000 for a third or subsequent offense within a 36 month period. These new fines apply to violations regarding sales to persons under the minimum legal sales age and sales of flavored tobacco product sales only.

A mailing was sent to all tobacco retailers outlining the new law, required signage, and the mandatory fining structure. Included with the mailing was a chart outline of Where and What Tobacco Products Can Be Sold in Massachusetts published by the Massachusetts Department of Health December 11, 2019 to help simplify the new requirements.

Tobacco compliance inspections were conducted by John Morris on January 7, 2020. Re-inspections will be conducted on January 14, 2020. All retailers will be provided with proper signage and education as deemed necessary.

Water Forum Presentation and Water Demand and Supply Study provided by Vicki Halmen: Ms. Fermon reviewed the Water Forum Presentation and Water Demand and Supply Study provided by Vicki Halmen since the Board has recently questioned the quantity of water for proposed developments.

Septic Betterment Loan: An additional \$300,000 loan from the Massachusetts Clean Water Trust has been approved to help homeowners comply with Title 5, 310 CMR 15.000 of the State Environmental Code by providing financial assistance to homeowners to upgrade or repair their septic system. Colleen Fermon appeared before the Select Board on January 6, 2020 to explain the program. The Select Board approved the additional \$300,000 loan.

Margaret McDermott: Margaret McDermott will be stepping down after the March, 2020 Board of Health meeting. A new Board member is needed for the April, 2020 meeting.

Next Board Meetings: The next meetings of the Board of Health were scheduled for February 3, 2020, March 9, 2020, April 6, 2020, May 11, 2020 and June 1, 2020 at 5:30 PM.

Adjourn: Susan Hubbard made the motion to adjourn at 6:58 PM. Margaret McDermott seconded the motion. The motion to adjourn passed unanimously.

Documents used at the January 13, 2020 Board of Health meeting:

- November 18, 2019 and December 9, 2019 Minutes.
- 310 CMR 15.000, Title 5.
- Ipswich Board of Health Septic System Regulations.
- November 20, 2019 Notice of Variance for 24 Allen Lane.
- December 11, 2019 Northeast Housing Court order to Mr. Quigley.
- December 31, 2019 email from John Morris to John Quigley regarding 24 Allen Lane.
- March 6, 2019, May 13, 2019 and June 5, 2019 letters from Colleen Fermon regarding 24 Allen Lane.
- CBD in Food Document from the Massachusetts Department of Public Health.
- June 13, 2019 and December 27, 2019 emails from Diane Bernazzani regarding CBD in food.
- July 18, 2019 letter from Colleen Fermon regarding the Massachusetts Department of Public Health Prohibition of CBD in Food.
- Septic Design Plan for 2 Jay Road.
- September 9, 2019 and December 5, 2019 letters regarding 4 Lakeman's Lane.

Susan C. Hubbard, Chairperson

Margaret McDermott, Board Member