



Town of Barnstable

Board of Health

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BOARD OF HEALTH MEETING AGENDA

Tuesday, October 11, 2011 at 3:00 PM
Town Hall, Hearing Room, 2ND Floor
367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, October 11, 2011. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending was Board Member Junichi Sawayanagi. Board Member Paul J. Canniff, D.M.D, was unable to attend. Thomas McKean, Director of Public Health, and Lindsay Parvin, Division Assistant, were also present.

Public Announcement: There will be a Flu Clinic tomorrow – Wednesday, October 12, 2012, at the Greek Orthodox Church on Hyannis from 9:30 am – 11:30 am.

I. Hearing – Septic in Failure:

- A. FDIC – Receiver IndyMac Bank, Attn: Mark Bruce, owner – 23 Sycamore Street, Hyannis, past deadline repair date.

Bank owned – no one was present.

Mr. McKean gave the history: New septic was installed in 2004. An inspection report was done in 2008 which showed it was in hydraulic failure. A letter was mailed out 4/15/09 requesting the repair be done within 90 Days. As it is owned by banks, it is difficult to track down the person managing the property. No response was received from the bank.

The Board requested (1) a letter be sent requiring them, or a representative, to appear at the next Board of Health meeting on November 8, 2011, (2) a sticker “Unfit for Habitation” be placed on the dwelling, and (3) if possible, find out if the building is occupied.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue to the November 8, 2011, Board meeting. (Unanimously, voted in favor.)

- B. Wolfram Vedder, Trustee, WVDV Island Ave Realty Trust, owner – 129 Island Avenue, Hyannis, past deadline repair date.

Attorney Theodore Schilling represented Mr. Vedder who was out of town. The first Mr. Vedder had heard of any septic issues was this past weekend.

The prior owner was a bank which had begun addressing the issue of the single cesspool which had apparently resulted in the automatic failure. Stephen Wilson had presented the Board with a plan in April 2009 and the Board approved the variances with the condition of a two bedroom deed restriction. The bank did not notify the new owner of these events.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve a nine-month extension for the septic repair. (Unanimously, voted in favor.)

- C. Alan Curtis and Gail Eagan, owners – 204 Washington Avenue, Osterville, past deadline repair date.

No one was present.

The owner had emailed that they were unaware of any failed report until they received our letter to appear before the Board. They asked for an extension to research the issue. They had bought the house in 2005 and were only aware of one septic inspection, which had passed, and it was their understanding that both houses were connected to the same septic system.

Mr. McKean explained that there was an earlier inspection done in 2004 which was for the front house and which showed it in failure. There are some questions to be answered. It's unclear whether the front house is hooked up to the rear, since the water was turned off to the property at the time of inspection in 2005 (the rear house passed). The water was turned back on in April 2011 according to Water Dept.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to continue this to the November 8, 2011 meeting. The owner will be notified as soon as possible. (Unanimously, voted in favor.)

- D. Harold Kearsley, owner – 255 Old Craigville Road, Centerville, past deadline repair date.

The property is currently owned by the Estate of Harold Kearsley. The septic system had failed in 2005. No one had lived there for a while. The water was recently turned back on in July 2011.

Seth Brownell from Vermont was present and explained it was his grandfather's house. It has been on the market for 7 years. No one is living in it. He will be down to work on exterior over the fall and the interior over the winter. The family has set

funds aside for the septic repair as they plan to install it before selling the house. He expects the septic will be installed during the summer of 2012.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a 12-month extension on the replacement of the septic system until 10/11/2012. (Unanimously, voted in favor.)

- E. Benjamin Canavan, owner -1567 Race Lane, Marstons Mills, past deadline repair date.

Benjamin Canavan was present and had bought the house in 2008. In August 2008, the leach pit had stain lines above the inlet showing it was in failure. Mr. Canavan had moved into the house two years ago and the system has been working fine. He wonders whether the system is actually in failure.

Mr. McKean said the staff does agree that when the failure is based solely on the stain lines, it is hard to be sure whether the system has failed.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to extend the deadline of repair and allow the owner to do a second septic inspection within the next 60 days and a third inspection twelve months from the second inspection. At that time, the Board will look at the results and consider whether the system should be determined as a pass or fail. (Unanimously, voted in favor.)

II. Variations – Septic (New):

- A. Arlene Wilson, A.M. Wilson Associates representing Jay Bergeron and JoAnne Crowley, owners –59 Short Beach Road, Centerville, Map/Parcel 206-034, 6,534 square feet lot, two setback variations.

Arlene Wilson presented her plan for a tight tank to replace the current single cesspool. The property abuts the Centerville River at one point. It is a four bedroom built in 1940. The high ground water over a one month period is approx. 2.25 feet and the ground surface elevation is five feet. This means it is not possible to meet the Town's requirement of four feet of dry, permeable material above ground water.

Arlene explained there is an added problem as the property is located in the DCPC area which requires that all structures built on grade must comply with a 20 feet front yard setback and a 15 feet side yard setback. A structure under this ruling would include any retaining walls so a mounted system is not an alternative. No variations are permitted.

A tight tank is proposed because it is underground and does not have to conform to the front and side yard setbacks. The tight tank would be 78 feet from mean high water which exists on a small sea wall.

Mr. McKean said he and the staff reviewed old plans on file to see if a Title V system could be installed. It appears the ground water level has risen since the previous plans and is now only about 2 feet above grade so a comparison with the old plans is not possible.

The staff also had a question on the bedroom count. A previous plan approved in 2002 was for 3 bedrooms, not 4, and the floor plans submitted appear that the second room identified as a bedroom on the first floor is too small.

Dr. Miller stated that this property is restricted to a 3 bedroom as it is in the Estuary and the DCPC area and can not approve an increase in flow.

In the past, Brian Dudley, DEP, had turned down a tight tank on Short Beach; however, that was prior to the DCPC and now a mounted system is not allowed in the DCPC area.

The Board supports the tight tank plan and acknowledged that it must go to DEP for approval.

Mr. Pinho, the father of James Pinho at 65 Short Beach spoke to the committee. They are in support of the system as it will be an improvement over the cesspool which is probably sitting in ground water. The issue he brought up was that he does not believe the plan is accurate in depicting the cesspool as being on the 59 Short Beach lot. He believes it is six feet over onto his son's lot at 65 Short Beach and they request that when the cesspool is removed that it is completely removed and filled in with clean fill and the lawn repaired similar to the plush lawn which exists now. He also asks that no heavy equipment will be parked or use his son's paved driveway to the left of his house so as not to damage it. Otherwise, they are in support of the plans.

Arlene Wilson said she did not survey the property. Mr. McKean stated that the three plans in the file from three different engineers all show the cesspool on 59 Short Beach.

Ms. Wilson said she'll be happy to investigate and if, indeed, it is on the Pinho's property, the cesspool will be removed to the proper satisfaction.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to have the plan for a tight tank approved by the DEP with the following conditions: 1) a three-bedroom deed restriction is recorded at the Barnstable Registry of Deeds, 2) a proper copy of the deed restriction is submitted to the Public Health Division and 3) the engineer must share the DEP restrictions placed on the system with the homeowner as the restrictions are mailed to the engineers and not the owners. Prior to obtaining a permit, a signed Operating and Maintenance Contract must be submitted to the Public Health Division. (Unanimously, voted in favor.)

An additional note: Arlene Wilson said the owners have been trying to obtain a pier permit for five years. The window to obtain a pier permit is very small and normally, the Health Division can not sign off unless the septic is fine. Arlene asked the Board if it would be possible to have the inspectors sign off on the pier permit now that the Board has reviewed the plans. She said the standard time frame for the State DEP approve for the tight tank would be a minimum of 60 days which would be too long. The Board declined the request. The septic permit must be pulled before the sign-off.

III. Informal Discussion:

Stephen Wilson representing Christopher Kuhn, owner – 337 South Main Street, Centerville, requesting to utilize open space land as credit to construct a restaurant on a small parcel of land in the salt water estuary. (Continued from discussion in June 2011.)

Stephen Wilson and Christopher Kuhn were present. Stephen said he had checked with Brian Dudley, DEP, for clarification on what constitutes fast food. Brian said that with paper plates and plastic cutlery, it would meet fast food category which would mean a 20 gallon/day flow design.

The new structure would basically be where the existing barn is. The advantage is that they can do the necessary water proofing on the foundation efficiently.

The house on location is a 3 bedroom and the minimum requirement for design flow of a restaurant is 1,000 gallons/day. Mr. Wilson suggests they put in a new system and tie both the house and the restaurant into the same system for a total design from of 1,330 gallons/day.

The anticipated variances will include setback to property and the foundation of the new building. The existing house has a dug-out cellar and the rest of it is crawl space. The new leaching system will be about 20 feet from the crawl space. A grease trap variance will be requested as there is no dishwasher and using paper/plastic in the food establishment.

They would be in need of setback variances from wetlands for (1) the SAS and (2) the septic tank and pump chambers. The components would be about 75 feet from wetlands. Also, as discussed in June, they are still willing to do a set of Deed Restrictions for this property and 49 Weaver Rd (which has a lot of acreage to it) in such a fashion which would limit the total flow of both properties to an amount less than what would be allowed if each property was viewed separately. This would be a trade-off they are willing to do.)

They would keep the house out front and put a bar around back. Zoning would allow this because this is not a residential zone. This is a new zone established within the past year. Mr. McKean said he understands that Growth Management's requirement for this zone is that it must be a sit-down restaurant. Mr. Kuhn said it would be a "sit-down" restaurant and Brian Dudley had said that the DEP is

expanding what is categorized as fast food and this would be categorized as one because of the disposable serving ware.

Dr. Miller questioned whether the 440 regulation allows for a trade-off to be used. Mr. Wilson provided a copy of the regulation and it did have included that it allows trade-offs.

Mr. McKean stated a concern was that the trade-off from 49 Weaver appears to be from wetlands. Mr. Kuhn acknowledged that roughly 6 acres of the 9.6 acres is wetlands. He also said the wetlands is actually an old cranberry bog with is very overgrown and was abandoned 25-30 years ago.

Dan Ojala, Down Cape Engineering, offered the information that the DEP will not look at open water as part of trade-offs but they will however, look at wetlands for trade-offs. He added the Cape Cod Commissions do not look at wetlands, but DEP does.

Mr. Wilson acknowledged this is still in the discussion phase. They have other regulatory groups to check with.

The Board's comment was that the amount needed for the trade-off is 1,000 gallons/day and with the 3 ½ acres of upland, using the 440 regulation rule, they would have the necessary flow available for the trade-off.

The Board also asked them to keep the Board posted on their progress because the Board would like to do a site visit to the properties once the progress is further along. The owner said he is looking to serve fried food and run a restaurant similar to Cooke's Restaurant. He will keep the Board posted on the progress.

IV. Discussion – Town Sewer:

Mark Ells, Director of Department of Public Works, will give update on DPW sewer availability.

Roger Parsons, new Town Engineer, introduced himself and is filling in for Mark Ells.

Mr. Parsons summarized the H1 sewer area which serves the east and west of Stewart's Creek. The east and west sides are currently on a similar schedule where all the pipes have been installed and tested. There are still some technical features which have to be completed. The target for paving the east side is this fall provided the technical issues are completed. The pump station is on the west side of Stewart's Creek. They are ordering the 30 grinder pumps at one bulk rate. There are some outstanding issues with some individual grinder pumps and they are developing a program for the ongoing maintenance of the grinder pumps. The goal is to be hooked up by the end of the year.

Roger will keep the Health Division informed of the time frame of when to send out the letters requesting hooking up. Mr. McKean mentioned that once the letters are sent requesting hooking up, regular reporting to the Health Division will be necessary to keep the Health Division informed with who has and has not connected – possibly, once every 6 or 12 months. Dr. Canniff said Mark Milne has estimated the betterment at \$8,300 which is a very good price. Mr. McKean has spoken with Kendall Ayer to keep him informed that people will be applying for loans to hook up to sewer. The Board also said they will be willing to facilitate the process by adding monthly meetings for the sewer connection hearings, if necessary.

V. Variance – Food (Cont.):

Mario Mariani representing Pain D’Avignon Café – 15 Hinckley Road, Hyannis, outdoor dining, follow-up on air curtain variance granted March 2011.

No one was present.

Mr. McKean stated that there have not been any complaints or issues with flying insects or rodents. The health inspectors did inspect the location and said the air curtains were installed. Mr. McKean said air curtains have been proven to be at least 80% effective. They are apparently working fine.

Dr. Miller asked that we call Mr. Mariani and ask him to supply a written statement that he has not had any complaints so that we have something in the files to document this.

VI. Variance – Food (New):

Down Cape Engineering representing CTS Fiduciary, LLC, owner – 655 Route 132, Hyannis, Map/Parcel 311-008, grease trap variance.

Dan Ojala, Down Cape Engineering, presented the plan which would be located at the end unit at the Christmas Tree Plaza. The owner is looking at putting in a coffee shop there. The property is on town sewer and a grease trap variance is requested.

Mr. McKean said that the submitted menu is large; however, it states that the food is not prepared on the premise so it will not create a lot of grease. Mr. Ojala clarified that they will be preparing some sandwiches at the location but there will not be any baking on the premises. Also, they will have a Big Dipper Device which skims the grease off and is very effective.

Mr. Sawayanagi asked about the toilet facilities and the outdoor dining. There are two bathrooms proposed. The outdoor dining would be a separate issue. Mr. Ojala is not involved in that. Mr. Ojala said he will mention to the owners that if they have outside dining, the Board would need them to install air curtains.

Roger Parsons, Town Engineer, said in reading the past history regarding the sewer and grease traps, DPW's concerns have not gone away. However, Roger feels this particular use is very clear and is not posing concern to grease going into the sewer system so he is comfortable using a grease recovery device here.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve a grease trap variance with the submitted menu and it only applied to this operator and the menu submitted 10/11/11. (Unanimously, voted in favor.)

ADDITIONAL:

Dr. Miller brought up to Roger Parsons that the Board would like DPW to work on taking over the approval of grease trap variances for properties on town sewer. Roger said that is very understandable and they can work towards that. Dr. Canniff mentioned that the former Town Engineer was about to take this step before he retired. Roger said he will discuss this with the Director.

VII. Old / New Business:

Postponed To A Later Date A. Discuss Policy of Bacteria testing at Beaches.

Voted to Adjourn 4:27pm