

**Acton Board of Health**

**June 11, 2007**

**Members Present:** William McInnis, Chairman, William Taylor, Vice Chairman and Joanne Bissetta, Member.

**Staff Present:** Brent Reagor and Sheryl Ball.

**Others Present:** Therese Marsh, Steve Marsh, Alex Parra, Robert Hendrie, Mark Donohoe, Gwen Hotaling, Karen Rivero, Peg Mikkola, and Gary and Sharon Groose.

The meeting was called to order at 7:33 p.m.

**Permit Tolling – 93 Taylor Road**

The applicant, Steve Marsh, has before us a request to toll the permit at 93 Taylor Road and Mr. Hendrie is also present as an abutter along with his attorney, Alex Parra. This issue was continued from May 7, 2007 until this evening in order to give the DEP time to address the letter requesting interpretation of 310 CMR 15.020(2) and (3) in regards to the property located at 93 Taylor Road. Mr. Parra stated that the DEP has not been particularly helpful and believes that the permit should never have been issued in the first place and should not be tolled. Mr. Hendrie also spoke about DEP's letter and also about his e-mail correspondence back and forth to the DEP regarding the plan as designed for 93 Taylor Road as the plan incorporates sidewalk in the total area and due to a regulation change during the court process sidewalk is no longer counted in the total area. Mr. Hendrie feels that the permit should not be reactivated as it has a flaw and questioned whether it deserves equitable tolling. Mr. Marsh stated that this plan has been reviewed by DEP Worcester and Boston and they didn't have the opportunity to extend the permit during the court process. Mr. Marsh stated that the DEP has placed the burden on the Board and all he wants is fairness. Mr. McInnis asked if the audience had any questions. Mr.

McInnis stated that the Board issued the variance with careful consideration in 2003, the permit was sustained by both the court and DEP and the court process prevented the applicant from continuing. The Board stated that anyone that is in a court process should have the right to equitable tolling. The Board stated that it is fair and equitable to toll their expiration for the duration of the court appeal based on previous court cases. Dr. Taylor stated that he would like the purchaser notified of these issues. It was stated that notifications to purchasers have only been done in the past, as in the case of town sewer due to obligation of the purchaser to absorb the cost of the connection. It was also stated that the septic system is a Fast system and it will need to be recorded on the deed for future owners to see. Ms. Bissetta is pleased that it is a fast system and it will be recorded on the deed makes her feel a lot better. Mr. Reagor stated that a two year permit should be issued with an expiration of January 10, 2008 and further stated that a one year extension may be applied for. On a motion made by Ms. Bissetta, seconded by Dr. Taylor, the Board unanimously found that the septic permit issued in 1999 was equitably extended for two years from the date that final judgment was entered and shall have an expiration date of January 10, 2008.

#### **Variance – 122 Willow Street**

The Health Department is in receipt of an application from the owners of the property located at 122 Willow Street for a variance from 310 CMR 15.405(1)(a) for a reduction in the setback from a property line. The septic system is currently in failure. Mr. Donohoe, Engineer representing the property stated that the soils are sand and gravel and that pine tree roots are causing problems. The Board discussed what tree roots do to a septic system and stated that under local upgrade approvals, listed in order, the least risk would be to ask for a property line variance. Mr. McInnis spoke about other requests before us and tree removal can be economic hardship as part of the manifest injustice and he is comfortable with keeping the tree as long as the same degree of environmental protection can be met. Dr. Taylor asked how old the pine is and what the cost of tree removal is. It was stated that removal of one tree would be approximately \$1800. On a motion made by Dr. Taylor, seconded by Ms. Bissetta, the Board unanimously voted to grant a variance from 310 CMR 15.405(1)(a) to the property located at 122 Willow Street with the following conditions:

1. The septic tank shall be pumped a minimum of once every two years.

2. A Massachusetts Professional Land Surveyor (PLS) shall stake the affected property lines in the field prior to construction and shall certify the affected lines on the as-built plan.
3. The system shall be constructed in accordance with a plan stamped by Mark Donohoe, PE, to be submitted to the Health Department for approval.

### **Emergency Trapping Permit – 20 Main Street**

A request has been made for an emergency beaver trapping permit by John Anderson. Mr. Anderson stated that the property located at 20 Main Street has been flooded due to the beavers and is causing his parking lot to flood and also impacting the onsite septic system. Mr. Reagor stated that this is an immediate threat to public health and has verified that the culvert was completely clogged, water was entering basement, going across driveway, approaching the casing of the well and nearing the Town of Maynard's pump station. Mr. Reagor took pictures and given the immediate threat contacted Mr. McInnis and requested permission to begin the trapping prior to this Board of Health meeting. Mr. McInnis approved the request due to the immediate threat and is asking the Board to issue a trapping permit. On a motion made by Ms. Bissetta, seconded by Dr. Taylor, the Board unanimously voted to grant an emergency beaver trapping permit for 10 days to the property located at 20 Main Street.

### **Title 5 Waiver – 6 Spencer Road**

The owners of the property located at 6 Spencer Road have requested a Title 5 upgrade timeline extension, pursuant to 310 CMR 15.305(1)(b). This extension request is usually granted to allow the community time to provide alternative solutions as in this case, Town Sewer. Town counsel has reviewed this and has outlined the conditions in a three page letter. The existing septic system is in failure and the owners have a potential buyer who has also agreed to this request. Mr. Goose, buyer of the property, asked the Board if lenders will grant mortgages with this extension. The Board stated that it is entirely up to the lender. On a motion made by Dr Taylor, seconded by Ms. Bissetta, the Board unanimously voted, in accordance with the powers granted by 310 CMR 15.305(1)(b), hereby permits the continued use of the onsite wastewater system serving the dwelling at 6 Spencer Road for a period of not more than 5 years from today with the following conditions:

1. The septic tank shall be pumped, at a minimum, on an annual basis. This pumping shall be reported to the Board of Health within 30 days. During the pumping event, the

pumper shall perform a “function check” of the onsite wastewater system in accordance with approved Health Department procedures. This “function check” shall be documented by the completion of the Town of Acton Onsite Wastewater System Function Check form, available in the Health Department office.

2. The property at 6 Spencer Road shall connect to the sewer system no later than ninety (90) days after it is available.
3. Should the onsite wastewater system at the above listed property discharge sewage onto the surface of the ground or into the dwelling, or, in the opinion of the Board of Health or their designee, a nuisance, which is injurious to the public health or environment exists, the owners of the property shall take all necessary measures, as dictated by the Board of Health or their designee, up to and including the replacement of the onsite wastewater system with a compliant system or a tight tank replacement.
4. The Acton Board of Health reserves the right to modify these conditions and/or the extended timeline for upgrade in order to protect the public health and environment
5. If, in the judgment of the Acton Board of Health, a connection to a sewer system will not be available to the above listed property within five (5) years of the date of the letter on file in the Health Department office, this waiver shall be considered null and void, and the owners of the property shall be required to upgrade the onsite wastewater system within a timeline to be set by the Board of Health.
6. The owners of the above listed property shall submit written acceptance of these conditions and the required interim measures dictated by the Board of Health or their designee. This acceptance shall constitute an enforceable agreement with the Acton Board of Health. This agreement shall be plainly communicated and binding to all future owners of the property at the above listed property.
7. All future owners of the property shall submit, to the Board of Health, written acceptance of these conditions and required interim measures. Failure to submit written acceptance shall render this Upgrade timeline Extension null and void.

#### **Title 5 Waiver – 12 Tuttle Drive**

The owners of the property located at 12 Tuttle Drive have requested a Title 5 upgrade timeline extension, pursuant to 310 CMR 15.305(1)(b). This extension request is usually granted to allow the community time to provide alternative solutions as in this case, Town Sewer. Town counsel has reviewed this and has outlined the conditions in a three page letter. The existing septic system is in failure. On a motion made by Ms. Bissetta, seconded by Dr. Taylor, the Board unanimously voted, in accordance with the powers granted by 310 CMR 15.305(1)(b), hereby permits the continued use of the onsite wastewater system serving the dwelling at 12 Tuttle Drive for a period of not more than 5 years from today with the following conditions:

1. The septic tank shall be pumped, at a minimum, on an annual basis. This pumping shall be reported to the Board of Health within 30 days. During the pumping event, the pumper shall perform a “function check” of the onsite wastewater system in accordance

with approved Health Department procedures. This “function check” shall be documented by the completion of the Town of Acton Onsite Wastewater System Function Check form, available in the Health Department office.

2. The property at 12 Tuttle Drive shall connect to the sewer system no later than ninety (90) days after it is available.
3. Should the onsite wastewater system at the above listed property discharge sewage onto the surface of the ground or into the dwelling, or, in the opinion of the Board of Health or their designee, a nuisance, which is injurious to the public health or environment exists, the owners of the property shall take all necessary measures, as dictated by the Board of Health or their designee, up to and including the replacement of the onsite wastewater system with a compliant system or a tight tank replacement.
4. The Acton Board of Health reserves the right to modify these conditions and/or the extended timeline for upgrade in order to protect the public health and environment
5. If, in the judgment of the Acton Board of Health, a connection to a sewer system will not be available to the above listed property within five (5) years of the date of the letter on file in the Health Department office, this waiver shall be considered null and void, and the owners of the property shall be required to upgrade the onsite wastewater system within a timeline to be set by the Board of Health.
6. The owners of the above listed property shall submit written acceptance of these conditions and the required interim measures dictated by the Board of Health or their designee. This acceptance shall constitute an enforceable agreement with the Acton Board of Health. This agreement shall be plainly communicated and binding to all future owners of the property at the above listed property.
7. All future owners of the property shall submit, to the Board of Health, written acceptance of these conditions and required interim measures. Failure to submit written acceptance shall render this Upgrade timeline Extension null and void.

#### **Variance – 38 Washington Street**

The Health Department is in receipt of an application for a variance to Article 11-6.1.1 for a reduction in the setback to the wetlands for the property located at 38 Washington Drive. The site is restricted due to the wetlands as they cover approximately 80% of the property. The proposed system will be a Cultec system. On a motion made by Ms. Bissetta, seconded by Dr. Taylor, the Board unanimously voted to grant a variance to Article 11-6.1.1 for the property located at 38 Washington Drive with the following conditions:

1. The septic tank shall be pumped a minimum of once every two years.
2. The system shall be constructed in accordance with a plan stamped by Steven Calichman, RS, to be submitted to the Health Department for review.

#### **Variance – 124 High Street**

The Health Department is in receipt of an application for a variance from Article 11-6.1.1 for a reduction in the setback to the wetlands, Article 18.1 for a reduction in the leaching area, 310

CMR 15.405(1)(b) for a reduction in the setback to the foundation wall, 310 CMR 15.405(1)(a) for a reduction in the setback to the property line, 310 CMR 15.284 Remedial Use Approval to the property located at 124 High Street. The proposed system is a Presby system utilizing 2 foot reduction to groundwater which also allows for a reduction in the square footage of the leaching area. Mr. McInnis asked if we are going to change our regulations for the use of Presby system as these systems allow for about a 30% reduction in the leaching area. Mr. Reagor stated that he will put a rough draft in the next board packet. The site is restricted by wetlands, ledge and slopes. On a motion made by Dr. Taylor, seconded by Ms. Bissetta, the Board unanimously voted to grant a variance from Article 11-6.1.1, Article 18.1, 310 CMR 15.405(1)(b), 310 CMR 15.405(1)(a) and 310 CMR 15.284 Remedial Use Approval to the property located at 124 High Street with the following conditions:

1. The septic tank shall be pumped a minimum of once every two years.
2. A Massachusetts Professional Land Surveyor (PLS) shall stake the affected property lines in the field prior to construction and shall certify the affected lines on the as-built plan.
3. The system shall, at all times, be maintained in compliance with the most recent Remedial Use Approval issued by MADEP for the Presby Enviro-Septic System.
4. The system shall be constructed in accordance with a plan stamped by Steven Calichman, RS, to be submitted to the Health Department for approval.

### Other

- The Board commended Heather Hasz for the success of Wellness University.

### Adjournment

On a motion made by Dr. Taylor, seconded by Ms. Bissetta, the Board unanimously voted to adjourn at 9:00 PM.

Respectfully Submitted,



Sheryl Ball, Health Secretary  
Acton Board of Health



William McInnis, Chairman  
Acton Board of Health