

Town of Lakeville
Board of Health
January 19, 2022 6pm

Members present: Chairman Maxim, Member Spratt, Member Poillucci, and Health Agent Ed Cullen. Chairman Maxim called the meeting to order at 6pm. This was a remote meeting recorded by LakeCam.

57 Long Point Rd - Discuss a recorded Notice of Decision. Michael Milinowski, John Conner, and Nicholas Kelly were present for discussion. Member Poillucci said he wasn't involved in this project and didn't vote on it, so he was going to recuse himself. Chairman Maxim informed the representatives that since there would only be two members voting, it would have to be a unanimous decision. Mr. Milinowski said when this project was permitted, there were a lot of conceptual items that were built into the project. As the project has moved forward; there has been some clarification to what has evolved. They would like to ask permission for some modification in the original decision language. First, they would like to modify the septic decision for monitoring volume of the septic flow into the facility. Second, under decision 18, the language calls for a surety or performance bond in a form acceptable to the town treasurer for \$99,000.00 that shall be provided prior to the issuance of a certificate of occupancy. They would like to address the fund, and what they have built into the purchase and sale agreements. Mr. Milinowski said in the original decision, it spoke about having individual septic meters to figure out how much effluent was flowing into the septic system. They found that it was impractical to hook up a septic meter on each unit. The net result is resolved by having water meters that determine how much flow goes into the system which then allows determination of how much flow goes into the septic component. Chairman Maxim said at the time of the decision, they were trying to make sure that each unit stayed at its design of 220 gallons, even though the total of the system is not to exceed 9,900 gallons. He understood that putting in 66 meters was impractical; there would have to be a separate water line running from the utility room to each basement. Chairman Maxim asked if they were planning to put a meter in each building, 33 units on one meter. He asked how the building was plumbed. Mr. Milinowsky said they would have two meters, one on each building. Chairman Maxim asked about the irrigation. Mr. Milinowsky responded that the irrigation was a separate well that's not tied to the potable water supply. Member Spratt said he did remember that the discussion was to make sure they are tracking. He didn't see the need for overkill if they are efficiently tracking the flow that's going through. Chairman Maxim and Member Spratt agreed with one meter per building. Mr. Milinowski then spoke about the surety or performance bond acceptable to the Treasurer. Because the system is located in an environmentally sensitive area and because it's a novel system requiring a high degree of oversight, a performance bond is to ensure that adequate funding is available to perform maintenance, sampling and repairs if the permit holder fails to do so and to restore any damage that may occur. While they are fully supportive of putting in the \$99,000, it's the mechanics that are problematic. In the purchase and sales agreements for each buyer they have added: "At the time of performance the buyer shall pay to Lake Point Village Condominium Association, amount equal to the common charge that would be due from the buyer for a three-month period. The said amount goes into a reserve fund and it's not credited to their common charges otherwise to be paid by the buyer. Also, at closing buyers shall pay \$1,500 (1/66th) of the amount required by the Board of Health) for a reserve fund for the septic system." They are setting up the fund by each buyer putting their \$1,500 into that reserve fund. Mr. Conner spoke with the Treasurer regarding the restricted

reserve account. The only people that can take money out of it is the Town of Lakeville or the HOA. Mr. Milinowski said that the decision does say performance bond or other suitable surety. They have run the language by their bondholders and it doesn't have any definitive date. A performance bond needs an opening and a closure date so they can amortize how they're going to charge. They just want to make sure there's cash in there as the properties are sold and it accrues interest over the time frame. Member Spratt thought their main goal was, with that dollar amount, to cover specifically the series of tanks and the treatment facility itself before the field. They didn't know how long it was going to take for construction, how long it would take for every unit to sell. They wanted some surety that it could be replaced. If it failed, it wasn't just going to sit and leak in an area of concern, and it could be replaced immediately. That was the whole reason for having that lump sum up front. This was early on in the project, before an association was discussed. If something catastrophic happens, it could be replaced before the other building is even built. The money won't be there if something happened before all the units are sold. Mr. Milinowski said when this was permitted, it was a little unclear how the construction schedule would operate. They are constructing one building at a time, but they built all the infrastructure necessary for both buildings up front. The system is designed for 66 units, it's installed and functional. Member Spratt asked how many units were under agreement. Mr. Conner said that approximately 1/3 are under agreement. Mr. Milinowski said initially there was no discussion of a condo association. The condo association is going to be the entity that will be running the facility in the future, once the building is fully sold out. It's the membership that's there that will be obligated to do those continuous maintenance, inspections, and upgrades. They have third party operators assigned to manage the water and the septic. Chairman Maxim said he remembered the previous owner wanted \$1,000 per unit, but the Board wanted \$1,500 per unit. He thought they had talked about it being at every closing, but it wasn't worded that way in the meeting minutes. This is a new owner, it isn't the same owner it was approved for. He had intentions of building both of the buildings at the same time in 3-months. Member Spratt said he thought the original owner was going to keep it and not sell it off. Mr. Milinowski said they were hoping to have the facility up and running in September and getting the labor and supplies has been problematic. That's why they decided to get the first building up and running and then move on to the second. Chairman Maxim said he was okay with it being at every closing, but he understood Member Spratt's point. Who's going to pay if the pumps fail right off the bat. Mr. Milinowski said all the pumps have been upgraded and replaced. Member Spratt asked Agent Cullen how all the inspections had gone. Agent Cullen said all the inspections were okay and they did run the pumps, the generator, and the blower. Everything was run and they did a pressure test. Everything looked good. He didn't know when the pumps were replaced, but they were working properly. Mr. Conner said the water pumps were replaced, but was unsure how much they rebuilt of the pumps, but he could find out. Mr. Milinowski said if a pump goes, based upon having the third party operating it, they are obligated to replace that immediately. It's a safety issue that it has to get replaced and at that point it's up to the ownership as well as the condo association until it's fully turned over to the condo association. They have everybody pre-pay a three month hold over. So, they have cash flow to deal with any type of incidental should something happen. Agent Cullen said they do have two alternating pumps on all commercial systems, so if one fails, the other one works while the failed pump is replaced. All pumps fail, they will fail in the future but, he thought this money was more set aside for a broken tank or something more catastrophic. He didn't know if they should be focusing so much just on pumps. Chairman Maxim asked when it would be turned over to the association, the developer is still going to be in control of this and liable for everything that goes on until it's turned over to the association. Mr. Conner said they would be heavily involved through the first phase of the building and into the second. He wasn't sure if it was 75 or 80% that they will be looking to form the association and

take it over. Mr. Milinowsky said the ownership act says the HOA management will roll to the association when they hit that 75-80% threshold. Chairman Maxim said that would probably be close to 50 units closed on at \$1,500 each that it would be rolled to the association. Agent Cullen said the amount doesn't necessarily need to be 99,000, but if something does go and there is only 1,500, that's a problem. They probably need something more like 50,000. As long as there's a certain number of units sold or in agreement, he thought it was okay. He didn't think they needed the full 99,000 up front, but they need a certain amount. Chairman Maxim proposed since they are only doing one building, could they get half up front and then do the other building at each closing. Mr. Milinowsky said the ownership is still in charge and responsible for all the bills. So hypothetically, if a tank has a breach in three weeks, the ownership is still there, and responsible. He is asking that the certificates of occupancies move forward. But before the ownership releases its responsibility, that the HOA has the funding set aside, that they would make sure the account was funded. Would that be acceptable? Chairman Maxim said he would defer back to Agent Cullen and Member Spratt. He said this was a way that the town would even be able to go and fix anything in case the developer didn't. They would have the funds available to fix the problem immediately if the developer wasn't. Agent Cullen agreed. As long as we got some of the money up front. If the town had something to start with, he thought that would be okay. Member Spratt proposed half now, and half when the other unit is ready and starting to sell. It's not a giant lump sum up front, but at least it's something. Mr. Milinowsky asked Agent Cullen what number he thought the town would need if anything were to happen. Agent Cullen agreed with Member Spratt that half would be reasonable. Mr. Milinowsky asked when they would want it paid by. Agent Cullen said the original agreement was before occupancy, he wouldn't want to change that. Chairman Maxim asked if they were aware of this agreement prior to buying this property. Mr. Milinowsky said they were and they were fine with the \$50,000. Chairman Maxim asked how they wanted to do the second building, would they want to do the 1,500 at every closing on the other building, or before occupancy of the other building? Mr. Milinowsky responded that they would like to do it at all closings for the second building, and put up \$50,000 cash up front today or tomorrow. After some discussion, it was agreed to cut a check for \$49,500 to the Town of Lakeville, to set up a reserve fund account (prior to certificates of occupancy) with \$1,500 at each closing on the second building for a total of \$99,000. This will be put in a reserve fund naming the town as a co-signer. Chairman Maxim asked about the owner name change. Do they need to do anything seeing it's a new LLC? Mr. Conner asked to change the name in the decision from 1 Fitzgerald Drive LLC, to Lakeville Island LLC. Chairman Maxim said there is a \$4,000 fee for inspections by an outside entity to oversee for the first year and then \$2,000 for each additional year until the Board of Health determines there is no longer a need. Has this been set up? Mr. Conner said no, they can set that up as well. He said they do have an outside vendor that will be monitoring these systems. He believed that was included in their contract with the outside consultant that will be managing it. They do have a professional water operator in place. Chairman Maxim said he believed it was the Board of Health that was going to hire a third party to monitor the reports submitted. Agent Cullen said they definitely need a third party, not the operator, because the operator also sends reports to us. He wasn't sure if it was determined if the Board of Health chooses the third party or if the owners do, but a third party is definitely needed for the first year, possibly more. He thought if the owners choose, the Board will need to approve it. They can send him the contract and he could investigate the company and go from there.

Upon a motion made by Member Spratt, Chairman Maxim stepped down to second, it was:

Voted: to approve the changes to the Order of Decision. A water meter will not be required on each individual unit, but one per 33-unit building, measuring the overall flow into the system. The bond surety for the system is amended from \$99,000 to \$49,500 upfront for the first unit. When the second units are sold, they can bring in \$1,500 per unit. Also, the name change is fine with the Board. This is all conditioned to town counsel review. These are the amendments to the March 18th 2020 Notice of Decision Variance and Change in Use for 57 Long Point Road.

Two in favor (Maxim, Spratt), one abstention (Poillucci)

8 Old Powder House Rd - Meet with Collins Civil Engineering Group, Inc. to discuss Local Upgrade Approval and Variance Request. George Collins from Collins Engineering was present for discussion. This property has bordering vegetated wetlands to the east, those wetlands border a surface water supply. This is triggering a request for a local upgrade approval for the reduction of the setback between the wetland and the leaching field, the pump chamber, and septic tank. They have filed with Conservation and that meeting is next Tuesday. They are also requesting a local upgrade approval for the use of a sieve analysis. They are 101-feet off the on-site well, 106-feet from the well to the southwest, 121-feet from the well to the northeast. Chairman Maxim said they are only 10-feet off the property line, and the variance is just 50-feet from 100-feet. He recommended that it be staked at the time of construction because there's no room for error. They have already staked it for conservation. He will be in communication with the contractor so if they need to, they can re-stake it in the field. Chairman Maxim said he just wants to make sure that the contractor knows, and Agent Cullen is aware at time of open hole that there's no wiggle room without coming back for after the fact variances. Agent Cullen said they could give him a waiver to the property line, he has exactly 10-feet from the property line. They could give him 9 rather than the 10, just move it a little. He would rather push it closer to the street because it's so tight. Chairman Maxim said that he agreed. They wouldn't have to notify an abutter since they were just moving it closer to Old Powder House Road. A fifth variance to the property line could be given from 10' to 5'. Agent Cullen said there is a well at 106' so it can't be moved too much, but they can move it a couple of feet. Member Poillucci said he agreed, a couple of feet. Either way this is so tight it's going to have to get staked in the hole anyway, so they may as well just give them the extra foot if for some reason they lay it wrong. Mr. Collins said if they had two extra feet, from 10 to 8, then they could stake it in the field an additional time after they start bringing in the sand, and they could make sure it's right where it needs to be and they'll still have 1' of wiggle room.

Upon a motion made by Member Poillucci, seconded by Member Spratt, it was:

Voted: to approve the septic repair at 8 Old Powder House Rd. with five local upgrade approvals. Four listed: allowing a sieve instead of a perc; a variance from 100' to 50' to the wetlands bordering a surface water supply; a variance from the septic tank from 100' to 63' to the wetlands bordering a surface water supply; a variance from the pump tank from 100' to 75' to the wetlands bordering a surface water supply. The fifth variance is to allow an 8' setback to the property line at Old Powder House Rd.

Unanimous approval.

3 Old Powder House Rd - Meet with Douglas Murphy to discuss a request for a waiver from the Lakeville Board of Health Regulations. Mr. Murphy said that Murphy Brothers did an inspection and they reported that the tank and pump tank are in excellent condition and probably don't need to be changed.

He also spoke with Bay State who said the tanks were in excellent condition. The pump that's in the dosing tank is new with new wiring in 2018. When he got the report from Zenith he was surprised that the condition of the tank wasn't passed on. They wanted an entire Presby system put in: tank, pump chamber, everything. He did try to go get a bunch of estimates but no one has gotten back to him. But, they all said the same thing, that it would be crazy and expensive to change the septic tank out and the pump chamber. He reiterated that the tanks work and are in excellent condition. He did concede that the leaching field if anything would be a problem. More than likely it's probably loaded with tree roots, although he has not put a camera down there to verify. Chairman Maxim said there is one other regulation that wouldn't be in compliance is the two compartments, that is in our local regulations. He said he had the as-built and these must be almost the original tanks, from June 21, 1980. These tanks are coming up on 42-years old. The new system could last another 30-40 years so you're talking tanks that are going to be 70-80 years old. Chairman Maxim said from his experience, there is no way you can tell the structural integrity of a tank that's buried in the ground, that's been in the ground 42-years. He disagreed with Mr. Murphy's reasoning and felt the tanks need to be replaced. Member Poillucci said since he's been on the Board they have been following that regulation. It's not like it's 18 or 21 years old, it's 42 years old. If you tack on the next field lasts 20 or 30 years, you get a 70-year old tank. He doesn't know how people are saying the tank's good without digging around it and doing soil tests around it or under it to find out if it's leaking. If the cost is the issue, there is money available to lend out to do these types of repairs. There is also a six-thousand dollar total tax credit for septic systems when they are replaced and bring the entire system up to code. Member Poillucci said this one isn't even close, 42-years and you tack on 20-30 years and you have a 60-70 year old tank; and he didn't know of any concrete tank that's ever lasted 60 or 70 years. Member Spratt asked if the house was being sold. Mr. Murphy replied that it was. Member Spratt said that's another reason too. They need to be concerned about the homeowner that's going to take on this problem down the road. Agent Cullen said the regulations are there for a reason. Especially with the tanks. When a field fails, you get back up in the d-box and then it's a gradual failure. When a tank fails, it's pretty immediate and catastrophic and they collapse. When they collapse, it's usually the top. It's the hydrogen sulfide within the tank itself, it eats away at the underside. Chairman Maxim asked Agent Cullen if the plans were submitted and approved. Agent Cullen said they were approved, there were no waivers so he approved it back in December. Chairman Maxim said he knew it was a pump system and asked what the mottles were. Where was the mottles to the invert of the tank, and did they request H2O monolithic tanks because of the water table, and tar coated. That's another factor for replacing these tanks in the water table. Agent Cullen said they were requesting both monolithic H2O. Part of it is the buoyancy calcs as well, that's one of the reasons they went with the H2O. They didn't do any test pits near the location of the tanks. The mottling was right near the initial grade because where they did the test hole, a lot of that was fill. So, the mottle was just below the fill. There's definitely a lot of water coming down the hill. He wasn't sure what was around the tanks, if there's anything there to divert the water. He would expect water when they're excavating the tanks. The plan also has a dewatering basin for when they install the tanks. Chairman Maxim said he read the Title 5 report and it says there is a sump pump in the basement, so obviously there must be some water close to some point in the basement. The engineers that submitted the plans are asking for H2O tanks. We don't know back in 1980, what the tanks are. In his opinion, that's another reason why these tanks need to be changed. To give waivers for something like this, we might as well take the regulation off the books. Everyone will want a waiver. He understood the cost, and people don't want to spend the money to put in a tank when they have a tank. But to grant a waiver for these two tanks, he just couldn't agree with. Member Poillucci said he agreed, this is just too old. Mr. Murphy said he didn't see the plan until a few weeks ago. He wanted to know

who changed the house from a three-bedroom to a four. Chairman Maxim said he didn't know why it was designed for a four, especially with a sieve. Agent Cullen said the old plan has 495 gallons. The assessors have it as a four-bedroom, so that's why they did it for a four. Chairman Maxim said it should have been kicked out by the Board because it would have been new construction if it went to four. He asked Mr. Murphy if he wanted to have the plan redrawn and submitted as a three-bedroom. Mr. Murphy said no.

Upon a motion made by Member Poillucci, seconded by Member Spratt, it was:

Voted: to deny the request for 3 Old Powder House Road to leave the existing tanks in place.
Unanimous approval.

Review and approve meeting minutes, as typed -

- October 20, 2021

Upon a motion made by Member Poillucci, seconded by Member Spratt, it was:

Voted: to approve the meeting minutes from October 20, 2021.
Unanimous approval.

Discuss recent BOH Agent pending items -

Agent Cullen said the tight tank annual inspection reminder letters should be sent out soon. The Board agreed.

Covid 19 update - Agent Cullen said the case numbers are starting to come down. The numbers are high right now so it will take a couple of weeks to be back to what we were before Thanksgiving. We're going in the right direction, people are taking precautions now. Overall, the hospitalizations haven't really changed much, but they are starting to get a lot of their staff back. The Lakeville Fire Department is offering testing. Information can be found on the website. The Federal Government is also offering four free tests via mail. A link to the website can be found on the Board of Health's website.

Adjournment - (7:33pm)

Upon a motion made by Member Poillucci, seconded by Member Spratt, it was:

Voted: to adjourn.
Unanimous approval.