

Town of Lakeville
Board of Health
December 16, 2020 6pm

Present were: Chairman Maxim, Member Spratt, Member Poillucci, and Agent Ed Cullen. Chairman Maxim called the meeting to order at 6:00pm. This was a remote meeting and was recorded by LakeCam.

7 Morrison Way – Meet with Foresight Engineering to discuss Local Upgrade Requests. Darren Michaelis from Foresight Engineering was present for discussion. This property currently has a cesspool. The well will be relocated toward the front of the lot but a variance will still be needed to their own well. This will also leave the abutter at 9 Morrison Way outside the buffer zone so that he will be able to upgrade his septic. They will also be testing the well at 9 Morrison with this upgrade. Mr. Michaelis explained the variances he was looking for on this project. Neither Chairman Maxim or Member Poillucci had any questions regarding the plan. Member Spratt asked if there was any documentation on the well. Mr. Michaelis said there wasn't but it had been there as long as he could remember (he has done most of the repairs around it). It was a concrete well in the ground, so no one drove it in by hand. Mr. Michaelis also added that a deed restriction would be required.

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

Voted: to approve the septic system upgrade at 7 Morrison Way with the four local upgrades plus two additional variances, the distance to the pond from the tank and the distance to the pond from the field.

Unanimous approval

16 Fourth Ave - Continued discussion from the December 2, 2020 meeting with SFG Associates, to discuss requested variances for an existing well which was not permitted. Brad Fitzgerald was present for discussion. Michelle Forte-Cruz (property owner) was also present for discussion. There is an existing well on the property and they are requesting variances to allow the well to be used. They are asking for the following variances: to allow the existing well to be 89' from the SAS at 14 Fourth Ave, to allow the existing well to be 90' from the cesspool at 17 Fourth Ave, to allow the existing well to be 9' from the roadway rather than 20', to allow the well to be 5' from the southerly property line of 20 Fourth Ave rather than 10', to allow the existing well to be 89' from the SAS at 14 Fourth Ave, and 80' from the cesspool at 17 Fourth Ave. These are both Title 5 variances and Lakeville Board of Health variances. Mr. Fitzgerald had some answers to the Board's questions regarding the variances. This property is not a rental property since it doesn't have water service. It has been vacant since the current owner purchased it in 2007. They have paid to tie into the new water system but have not been tied in yet. They have not been using the well since they received a letter in 2008 stating the well was illegal. **The deed on this property does not state that it is seasonal use only.** A water test has not been done on the well since they have not been using the well. The current owners did not know the well was illegal until receiving a letter from the Board of Health telling them not to use the well since it was not put in legally. Mr. Fitzgerald said the owners are looking to use the existing well until they can tie into the new water line. Chairman Maxim asked if this was a deep well or a point. Mr. Fitzgerald said he went out and there is a 3' diameter concrete cover, he barely got the cover up and he heard something hit

water so he believes that it is a dug well and maybe 6-10' deep, whatever the water table is. Agent Cullen explained that a previous plan for this property had both a well and septic. The septic was approved, but the well denied. The cesspool at 17 Fourth Ave was shown on the plan at the front of the house, less than 70' from the well. This information was incorrect, Mr. Fitzgerald got the correct information, which is still less than 100' but is further away than the original denied proposal of 70'. Mr. Fitzgerald wanted to point out that this will still leave room beyond the 100' radius to put in a new system at 17 Fourth Ave. Chairman Maxim said he didn't think a dug well would be safe to drink from and wasn't comfortable giving approval even for temporary use. Member Poillucci agreed that because someone ignored the Board's decision and put a well in anyway, he didn't feel that should be rewarded. Member Spratt said that with the water table and septic failures in that area, he would be concerned with the health risks from the shallow water being contaminated by anything that has failed in the area. Mr. Fitzgerald said the property at 17 Fourth Ave was vacant so the cesspool wasn't receiving any flow. Agent Cullen said he didn't know it was a dug well, and it would have a better chance of being contaminated rather than a drilled well. Mr. Fitzgerald said he felt his client was suffering for what someone else did before them. They didn't have the knowledge that the well was illegal when they bought the property and it has hindered them in trying to use the property. Ms. Forte-Cruz said they were not the ones who put in the well. They were told not to use it and they never have. They have waited patiently for the year-round water line. It has been 13 years and they have paid \$3,000.00 to the association. She said the house next door to her is half the size of her lot and has a well and a septic. Member Spratt asked if she bought the house from the bank "as-is". She could not recall if the sale was "as-is". There was a lengthy discussion about the property. Chairman Maxim and Member Spratt were in agreement that if the well was a deep well and certified by a well driller, they would consider allowing the owner to use the well on a temporary basis.

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

Voted: to continue, subject to Agent Cullen being a witness to whatever happens there.

Unanimous approval.

4 Jennifer Lane - Meet with SFG Associates to discuss a variance request. Brad Fitzgerald from SFG was present for discussion. This is an existing 3-bedroom home with a failed septic system. The proposed plan includes examining the existing 1,000-gallon tank to see if it is sound and then picking up the pipe on the other side of the driveway and installing an additional 1,000-gallon tank and add a leaching field further south. The reason for this request is to save the driveway. Chairman Maxim said there is a local regulation that requires tanks over 20-years old are to be replaced at the time of a repair. The existing tank in this proposal is 28-years old. Agent Cullen said the Lakeville regulation allows for a 1,000-gallon tank to be re-used with the condition that it is less than 20-years old. Then a waiver can be requested for the two-compartments. Chairman Maxim asked if the current tank could be popped out and a new 1,500-gallon tank be put in the same spot. The same pipe can still be grabbed on the other side of the driveway to go to the new d-box without ripping up the driveway. Mr. Fitzgerald thought that may be an option. He withdrew his request for the variance.

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

Voted: to allow SFG to withdraw the request to leave the 28-year old tank.

Unanimous approval.

4 Old Powder House Rd – Continued discussion from November 18, 2020 meeting, with Zenith Consulting Engineers, LLC to discuss requested variances. Jamie Bissonnette from Zenith Consulting Engineers was present for discussion along with property owner Murray Wachtenheim, Mike O'Shaughnessy, attorney for the property owner and Ray Willis from Onsite Engineering. Mr. Bissonnette stated that at the previous meeting they had discussed trying to prove environmental equivalent protection of the resource. He had reached out to Ray Willis PE with Onsite Engineering to help determine if this could be put into writing, state it and have it certified. Mr. Willis and his team did hydrogeologic testing with mottling to demonstrate whether they meet one of the two criteria outlined by the Department of Environmental Protection (DEP) in Section 15 – 410. The report stated that the levels are better or equivalent to that of the minimum levels set forth in Title 5.

Ray Willis said he was brought in to analyze the nitrogen loading from a conventional septic system to the tributary to a water supply to support their variance request. They looked at a few different scenarios. First, how they came up with the 300-feet with the setback to the tributary. That is based on their interpretation of a reasonable conservative approach to what Title 5 would essentially demonstrate as a fully compliant conventional system. Meaning, if you had a situation where the Zone-A, the 200', was at the edge of the wetland, and then you add another 100' on to that to come up with the 300' which would represent the offset required for a bordering vegetated wetland (BVW) that is tributary to a surface water supply. The second aspect of what they did was look at the site and the region of where this is located. On the plan there are two radii's that represent the Zone-A buffer. There is one tributary to the north and one to the south. They analyzed the one to the south because after looking at the data, groundwater is going to flow to the east south/east not to the north. They performed two nitrogen loading analysis of a conventional system with the theoretical Title 5 setback to a tributary, being the 300'. Then, they took the same system and applied the same distances the proposed system would be from the same tributaries. The difference is the system as proposed is approximately 309' from the tributary associated with that radii that would intercept the groundwater coming from this site. Mr. Bissonnette said he wanted to share with the Board how some of the components of wastewater work. Mr. Willis will explain how horizontal separation is not the most important in all aspects when it comes to wastewater treatment. The clean dry vertical separation to groundwater is where the majority of the treatment occurs. The code itself (410) references that they are supposed to prove that they are meeting at least the equivalent of that provided by Title 5, without strict application of the means they are seeking the variance from. Mr. Bissonnette feels he has demonstrated the level of environmental protection. He believes the applicant has a grandfathered lot with an existing well and a permit to install, which has expired. Denying him the ability to use his lot because of a variance through Title 5, in which Title 5 says if they can meet the two criteria of manifestly unjust and environmental protection, then they should receive the variance as requested.

Gregg Corbo, Town Counsel, had two questions. First, he said it appears the analysis that was done was the effect of the system on the tributary, but the variance at issue here is a request for a variance with respect to setbacks from a wetland. He did not hear any analysis to how, or a comparison of how this variance will affect the wetland. Second, there is a third variance relating to minimum square feet of upland required to have a septic system and a well on the same lot of 20,000sf. He did not hear any analysis as to how the proposal provides an equal degree of environmental protection with respect to that regulation. Mr. Bissonnette said in previous meetings the 20,000sf of uplands was addressed. The 20,000sf of upland requirement was more set for smaller lots that the Board thought shouldn't have wells and septic on them. He was unaware of any scientific proof that you needed 20,000sf of upland to substantiate a well and a septic. The wetland is what they are asking for relief from. Title 5 specifies a setback of 50' to a regular wetland and 100' to a wetland that borders a surface water supply tributary.

Mr. Bissonnette said that if you look at the intent they are trying to protect, it's not the actual wetland itself, it's the drinking water and tributary itself. So, when they talk about the difference from 60' plus or minus to 100' a reduction of 40' to the wetland, they are looking at it as trying to protect the pond and tributary. Mr. Corbo asked if the only intent is to protect the tributary and pond, why have a setback to a wetland at all, why not say you have to be 200' away from the tributary. Mr. Bissonnette said they aren't looking to discharge anything into the wetland, but into the ground like all the other houses, through vertical separation, the only thing that is requiring the horizontal distance is the nitrogen. They are trying to prove conventionally that they meet it, and they believe that the testing has done that. On top of that, they are offering an advanced treatment denitrification system if they receive approval. Mr. Corbo said his concern is it's a set back to a wetland which in and of itself is a protected resource area. Whether it has connection to a water supply or not and yet we haven't heard any evidence as to how this system, assuming it's even allowed for new construction, which he didn't think is, is going to affect the wetland. Mr. Bissonnette asked Mr. Willis if there would be a negative effect on the wetland by having the septic system 60' away. Mr. Willis said not in his opinion. He explained the BVW is like a mini treatment plant, he would have no reservation of any additional impacts to the actual wetland, provided they are meeting the vertical groundwater separation. Essentially, all the treatment that really occurs within these systems is within that 4' of unsaturated soil. Mr. Bissonnette said he had received an email from DEP in response to his question would they be able to use advanced treatment. He stated the response he received was that in the event they are granted the variances, they are allowed to use advanced treatment. They still will need to demonstrate the environmental level of protection without the use of the advanced treatment. Agent Cullen said they tried to address the setback to the wetland, but on the analysis they have it 300' and 309' and say the 309' is better. Everyone would agree that further away is better, and that's why they wanted at least 100' away because you get more treatment the further it is away. What isn't addressed is what happens if the effluent breaks out on to the wetland within 65'. Once the effluent breaks out and is above ground, it really isn't getting any treatment, some in the wetland. There was a discussion regarding breakout. Member Poillucci said if DEP doubled the distance to 100' from 50', they obviously think it causes more contamination. Mr. Bissonnette said with DEP allowing a variance, and the provisions to request a variance, they have tried to meet the items in which the variance requires them to meet. If DEP wanted the hold strong on all of their regulations, then there would not be a variance procedure. Mr. Bissonnette said he didn't think the 35 or 40' would make a difference here. Member Poillucci asked Mr. Willis why DEP would ask for that extra 50' in situations like this if they didn't believe it would make a difference. Mr. Willis said he wasn't sure why they selected that 100' setback. Mr. Corbo asked if their position was that it's simply not necessary to have a septic system located 100' from a wetland bordering a tributary? Or is their position that there is something unique about this site that makes that regulation not have to be enforced to provide adequate environmental protection. Mr. Bissonnette said yes, there is something unique about this site and that's why they had the hydrogeological testing done, to show that that is the case. Mr. Corbo asked what is unique about this site that is not present in any other similar situation? Mr. Bissonnette said he couldn't say it isn't present in any other similar situation, he could only speak about this situation, but the testing confirmed that they are meeting at the tributary, which is the protected source, that is what drives the setbacks, that and the pond. They are actually meeting better environmental levels of protection. Mr. Corbo responded that they actually didn't do the testing as to wetland itself. Mr. Bissonnette said no, because the wetland itself, while it has a greater setback, they are looking at it as they are trying to protect the water itself, the public water supply and the tributary in which it flows. Mr. Corbo said that the wetland is a protected resource in and of itself. Mr. Bissonnette said yes, all wetlands are protected resources unto themselves, that's

correct. Mr. Corbo continued, and you didn't do any analysis as to how this system affects the wetland. Mr. Bissonnette said no, because they looked beyond that. He said he thought they could all agree that the pond, the surface water is what they are all trying to protect. Mr. Corbo said he couldn't agree with that, but it's up to the Board to decide that. There are wetlands that are not connected to drinking water supplies that still have setbacks and are still entitled to protection. It's the setback to the wetland that they are seeking a variance from. Mr. Corbo said in his opinion, the burden here is to prove that having this system within that setback, has an equal degree of environmental impact on the wetland. And they haven't heard evidence or testimony with respect to how this system affects the wetland. Mr. Bissonnette said he would respectfully disagree; a regular wetland is allowed a 50' setback under the regulation. The fact that it gets bumped to 100' setback is because of the pond and the tributary. If it wasn't connected to the drinking water supply, it would be a 50' setback, which we have, we exceed. The pond itself being a drinking water supply with a tributary is what is the protected area which flags the additional level of protection and setbacks. It's pretty clear to see, it's the drinking water they are trying to protect. Mr. Bissonnette continued, if the Zone-A was closer, the tributary was closer, then they probably wouldn't have passed the environmental standard. But they are greater than 200' to it, and they can get the treatment for the nitrogen. Member Poillucci asked Mr. Willis if another lot had the same situation and same setback, what conditions if any would make that not suitable to give this. And if not, are you just saying that you don't believe that entire section is appropriate, that they don't need the 100 in any situation. Or what makes this one different that it does meet it? Mr. Willis responded, it's a MassDEP regulation, whether he thinks it's crazy or not, he has no say in that. Under normal circumstances, with a wetland you would only have to maintain a 50' offset. A wetland associated with a tributary to a water supply and a regular wetland minus a couple of little features, the protection level is not going to change drastically. It's really focused on is the fact that it's adjacent to a water supply, so that's why they are adding an additional setback. He looked at it as a positive, having so much wetland in front of a tributary, in this situation it's actually a great way to achieve more treatment. Agent Cullen said why has DEP put another 50' to the wetland if you're saying the wetland gives better treatment than underground. Mr. Willis said you would have to ask DEP that. Chairman Maxim asked Mr. Willis if in his expertise can you say in your opinion that this system at 65' gives the same level of protection if that system was at 100 to that bordering vegetated wetland, not going out to that 309'? Does this system give the same protection? That's the criteria we need to meet to approve and that the 40 extra feet isn't going to change anything. Mr. Bissonnette said they were trying to protect the public water supply and interpret how to protect the water supply is through the pond itself and the tributary. Chairman Maxim asked Mr. Corbo if this would satisfy the variance request that DEP was asking for. Mr. Corbo said it's when the applicant, to the satisfaction of the Board of Health, meets its burden of proving both of the two elements: that there would be manifest unjustness as a result of denial, and that the system as proposed can provide an equal environmental protection as a compliant Title 5 system could. There are three variances being sought, two are essentially the same, to reduce the setbacks to the wetland bordering a drinking water supply tributary. There was testimony from the two engineers that they believe that their analysis demonstrates that having this system located right where it is will not have an adverse effect on the drinking water supply itself. But in his opinion, no evidence to analyze the affect of the system on the wetland, which despite what has been said here, is in and of itself a protected resource. The second category of variance is from the Board's regulation that a lot having both a septic system and a drinking water well, have a minimum of 20,000sf of upland. This lot clearly does not have that. There has been no analysis or information concerning the effect of the septic system on the well or why the 20,000sf requirement should be waived. He continued by stating it is his opinion that the Board does not have a proper

application in front of them. Under Title 5, in order to prove an alternative system, the system must be designed in accordance with the DEP approval letter for that system. In this case, the DEP approval letter for the FAST system, is abundantly clear that it cannot be used in a circumstance where a variance is required. His recommendation is that the application be denied because it is not in proper form to be considered by the Board. He would further recommend that the Board considers the variance criteria and find that it has not been met. There has been no adequate explanation for why an approval was given prior to these requirements being put into effect and yet for five years after that, nothing was done to install a system when it could have been installed. To say that they sat back and did nothing for five years, waited for the rules to change, and now we're saying there's manifest injustice, to him is not supportable in the law. In his opinion, there has not been sufficient evidence for the applicant to carry their burden of proving this system will have an equal degree of environmental protection as a fully compliant system. Mr. Bissonnette said they can update the plan if that's the Board's pleasure to show us a conventional stone and pipe system with a septic tank and take off the advanced treatment. If that's the application flaw Mr. Corbo's referencing, we can do that without a problem. All of Mr. Willis' models were based on a very simple conventional system, not the advanced treatment. Mr. O'Shaughnessy (the applicant's legal counsel) brought up the first comment about the 20,000sf. At the first or second hearing on this matter, the Board said they were comfortable with it and that is why they did not focus on it. The variances that they are seeking, if they don't receive them, the land is usable for nothing. Which means it brings it from \$180,000 lot to next to nothing. Mr. Bissonnette said to him, that is manifestly unjust. There was a brief discussion regarding "manifestly unjust". Mr. O'Shaughnessy said there are three letters on record from professionals stating that the system is not going to have any impact. If you look at the letters from the City of New Bedford and the City of Taunton, the City of Taunton was ok with it, because they are more than 400' away. The City of New Bedford was concerned about nitrogen and phosphorous. With a conventional system, the amount of nitrogen that is going to reach the surface drinking water supply is negligible. Mr. O'Shaughnessy asked Mr. Bissonnette and Mr. Willis, with respect to the wetlands, can you say in your professional opinion there will or will not be an impact? Mr. Willis said he would go back to under normal circumstances the setback of the bordering vegetated wetland would be 50' and they exceed that. That fact that it's 100' is directly tied to the surface water supply. Under normal circumstances, if you were 50 or 60' away, the amount of change that you're going to have at that distance is negligible. Mr. O'Shaughnessy said if there is a true concern about the impact and effect on a wetland, they still have to go through Conservation. This Board should truly be focused on if there's any impact on the drinking water supply. Member Poillucci asked if Mr. Willis was willing to write a letter and put his stamp on it stating that this change will not be any more detrimental, moving it 65' rather than 100'. Mr. Willis said he is basing his opinion on that fact that the bordering vegetated wetland under normal circumstances would be 50'. The change in setback is due to the surface water supply, that is what they analyzed and that is what they based their opinion on. Member Spratt said he would like to hear more about the ground water and where it would commingle. That is much closer than the buffer zone, the 300'. He believed the ground water would commingle much closer than 300'. Mr. Willis said, just because the edge of the wetland is at elevation 60 doesn't necessarily mean that ground water is at elevation 60. With wetlands, usually the ground water is usually 6-12" below the surface. It doesn't mean it's actually breaking out on the surface. You can have a wetland with no standing water in it. The fact that it gets into the ground water doesn't necessarily mean it breaks out at the wetland surface, just at the elevation. If this was a pond or an open water body then I'd agree with that statement, but with a wetland, it doesn't necessarily mean that the water is at the surface at elevation 60. Agent Cullen added, but at periods of time, if you go out there right now, probably the water is not

at elevation 60. But in the highest ground waters which are not all the time, it can get that high, in fact it can actually get higher than that. Member Spratt said, it's a pond, it's more than just a tributary. Mr. Bissonnette said it gets standing water there at times during the year, there's no question. You get 100-year floods, you get 1-year floods. But we don't design septic systems based off of 100-year storm water realizations either. We base them off of redox remodeling which is yearly seasonal high ground water. Chairman Maxim wanted to make a few points. On the 20,000sf, he agreed with Mr. Bissonnette on that, he clearly said it wasn't a big issue for him for denial on this one, seeing it was a local upgrade. He also looked at the meeting minutes from 2002 when they were going back and forth on the upland, and the regs did not say upland, it just said 20,000sf at that time. It may have been their intention when they made the regulation, but that is not what it says. He originally thought the regulation was changed in 1997, but it was changed in 2007. All previous regulations before 2007 were removed, and in 2007, they added the word upland into that 20,000sf. So, they were previously trying to deny it before 2007, when it did not say upland. But it does say it now, from 2007 on, it does say 20,000sf of upland, which this does not have. The manifest unjust, in his opinion, he felt it met the criteria. Solely because it was approved in 1986, with a permit from the town that was never picked up, but was stamped approved. Chairman Maxim continued, his sticking point was what DEP had sent in, that email that you have to show it complies. Does it meet the same level of environmental protection at 100' as it does at 65'? He wanted to clarify with Town Counsel where DEP's email said if this is granted, for this conventional system, we are allowed to put a treatment system in if they so choose as an additional requirement of this approval. Mr. Corbo said that is the way he would interpret the DEP's position, that if the Board finds that the criteria for variance is met, then it could, in its discretion, allow this alternative system in addition to whatever protections are being put in to satisfy the variance criteria. Chairman Maxim said DEP said the Board has the authority to approve if they feel it meets the two criteria: the environmental protection required, and manifest unjust. For him to vote to go forward, he needs to 100% agree this meets the environmental protection at 65' to that bordering vegetated wetland, as it would meet at 100. And he still doesn't think they have heard that. He asked if they put a treatment system in, they have a treatment system that gets rid of all the nitrates, am I correct on that? Mr. Bissonnette said, knocks it down drastically, but it's not going to effectively reduce all of it. He thought there were treatment systems that would get it down to 20-25 milligrams per liter. Chairman Maxim also thought there may be ways to get this system further away by going to a different treatment system and taking that 50% reduction, which they can grant as a variance on a treatment system. He thought you could almost get the system over 80' theoretically away from the wetland. He agreed with Mr. Corbo, that the plan should show a conventional system because according to DEP that's what you need to have. He thought Agent Cullen had said he didn't believe it met it and that Mr. Corbo was in the same category, that it doesn't meet the environmental protection. Agent Cullen said it would have to meet or exceed the environmental protection and he agreed with the on-site analysis in the sense that if it's further away, you get better treatment. That's what they tried to say, 309' is better than 300', and he agreed with that completely. But what surprised him was they didn't do it from 65'. And although they said wetlands give treatment, and he doesn't deny that, but at the same time this is what's out there now (video image shown), it's a flowing wetland. It's not just standing in weeds, it's flowing, this is the wetland. It's part of the tributary, but it's not like it's a big canal. Once it gets into the standing water, it's moving, and it's moving at a decent pace. So, to say you have the same amount of treatment from 100' to 65', he disagrees with that. Mr. Corbo asked Agent Cullen if he could show the picture again, and clarify what that is a picture of. Is it a picture of the tributary or the wetland? Agent Cullen said both. He displayed the GIS map of the area. He said this is all flowing, to say its stagnant water, it's all flowing. Some in the middle is flowing faster than the edges. As it

goes under here (Bedford St.), it goes to a pinch point and gets to a faster point, but it's all flowing. Right now, this pond is lower than Long Pond, so there's not enough water to go through here, so it goes under this culvert here and then passes through, right by the site. As you just saw, that's hundreds of gallons per minute, all 24-hours a day for the last weeks, so that's a considerable amount of flow. As the water commingles, once it gets into the water, once it gets into the standing water, it's not the same as traveling 309' underground. When it's traveling underground, it's traveling quite a bit slower than the surface water. When you're traveling slow, you get better treatment. Once it's traveling on the water, as shown in the picture, you don't get the same amount of treatment. Some wetlands that are stagnant will provide better treatment, but the example of treating storm water, that's more of a stationary wetland. That's not a flowing wetland. This is a flowing wetland. Although it is a tributary, but it's not defined, there's a big canal in the middle and that's it. It's wide, it's over hundreds of feet wide here (view of GIS map). It's all flowing, all at different rates, it's all a flowing tributary. Agent Cullen did not think there would be the same amount of treatment there, that you would have if it's underground. Agent Cullen said the analysis of traveling 300' underground showed that the farther you go, the more treatment you get, and you're going a shorter distance, you're only going 65' and after that point it could very possibly seep into the actual surface water of the wetland. So, it's not 309', it's only 65'. That's a huge difference. Mr. Willis said that just goes back to their analysis associated with the bordering vegetative wetland, being that under normal circumstances, the protection setback distance to a bordering vegetative wetland is 50'. The fact that it's 100, one can surmise that it's associated with protecting the tributary itself. That was the basis of their analysis. Mr. Corbo said it appears that that wetland according to those photos is actually underwater. And if the wetland that we're talking about is underwater, does that change your position? Mr. Willis said he would have to know where that water is actually standing with relation to the extents of the wetland. Chairman Maxim said he could verify that it was about 50' from the wetland flags as of this morning. It's connected, it looks like a pond. There is no ditch, there is no channel, it is a huge pond. Literally, 50' from the flags right across to Bedford Street. Member Spratt said, nine months of the year it's probably like that. Agent Cullen said it's not just from storm water, it's from Long Pond. It goes under Highland Road, travels through there and goes to Assawompset Pond. It's not just from storm water, it's not just from rain. There's a difference between the two ponds and it's a flowing tributary. Mr. Wachtenheim asked if Mr. Willis would answer the Chairman's question, is the distance between the 65' we are at, negligible to the 100'. Mr. Willis said he hasn't performed that analysis but for the most part, yes it would be negligible difference. Chairman Maxim said to clarify that point, we need to prove it's a 100', you have to meet the 100'. You may be able to scoot the system to get 85' but you still have to prove per DEP's requirement that you meet it at 100'. Member Poillucci said he really didn't care about the 20,000' and he agreed with the points Chairman Maxim made. But, he was just coming back to: if they have to prove that the 65' is equal to 100'. And he asked the expert if he would stamp and certify a letter saying that it's the same and it's no worse and he's not willing to do that. If Mr. Willis was willing to do that, give the Board a letter and stamp it and say 65' is the same protection as 100, then he was okay. But no one is saying that, and it sounds like from what Chairman Maxim said, DEP is saying we need to be able to show that. Mr. Bissonnette said the way he reads Title 5, it isn't saying the we have to prove that the wetland line, that the same environmental level of protection is met. It's saying that we are supposed to meet the same level of environmental protection with the strict application to Title 5 on the varianced items. What they're saying is they are looking at the item in which needs to be protected being the pond and the tributary. And they are showing that because of their distances to the drinking water supply pond and tributary that our analysis shows that is the case, they can prove based on the mottling that they have at least equal treatment. They do not feel that the wetland edge

is the resource that they need to prove the nitrogen is being reduced at. Chairman Maxim said he is still stuck with Member Poillucci on the analysis too. But the water might dry up, it probably goes down to a ditch in the summer, but as of right now, it's a huge...it's flooded. It's completely flooded. That water is not 300' away, it's at 100'. He thought that was Agent Cullen's argument now, and he agreed with that. This isn't just a little marshy wetland that's not totally underwater, this is all flooded, and this is right now in December. We're not even into April when it's the rainiest season of the year. It needs to be taken into consideration that it's not getting the treatment through this that you presented to the Board at 300 to 309. Mr. Bissonnette asked if when Chairman Maxim walked the site was the water he could see 50' off the wetland, was it moving or stagnant. Chairman Maxim responded that it was stagnant at where it started 50', it definitely was not flowing. Chairman Maxim described the site and there was a discussion about the site. Chairman Maxim asked the same question as Member Poillucci, would the specialist be able to give the Board something in writing that shows that at 65 or wherever your new system you're going to propose for the standard system, whatever that distance is, protects the same amount environmental protection at 100 that the DEP is looking for. That is what Chairman Maxim is looking for, something that says this extra 20' is not going to change the environmental protection. Mr. Bissonnette asked Mr. Willis if he could explain what happens when nitrogen gets into the ground. Mr. Willis said once it gets into the ground water, it travels with it and over distances it starts becoming more dilute. You don't actually lose the nitrogen, it just becomes more dilute as it travels along in the ground water. The wetland actually helps because it is a noxic environment which will then convert the nitrates over to nitrogen gas and then release it to the atmosphere instead of keeping it in the ground. Chairman Maxim said that from Mr. Willis' analysis just then, you're saying this 20' shouldn't make a difference then because it doesn't break down whether it's 100 or 150. Mr. Willis said the load is still there. Agent Cullen said although they did get a four-minute perc, which allows a 4' separation, you're removing that soil and replacing it with sand, which is pretty much a 5', less than two-minute per inch which would require the 5' separation. There was a discussion regarding the 5' separation and test pits. Member Poillucci said he is willing to not worry about the 20,000 feet, but what Chairman Maxim read, says you have to show that you can meet it and no one is willing to say that, that the change is equal protection. If Mr. Willis says he'd write a letter saying the 65' is the same protection as 100, he would vote for it. Chairman Maxim said he would agree with Member Poillucci 100% on that. He felt DEP was very specific on what they were looking for. Chairman Maxim said the email from DEP said this is a very hard requirement to meet. With both Agent Cullen and Town Council saying this does not meet the requirement, he agreed with them. He didn't see how it was addressing the variance to the bordering vegetated wetland. Again Mr. Bissonnette said what they were trying to state is that they don't believe that it's the bordering vegetated wetland that DEP has the concern for. Mr. Bissonnette said he saw what direction the meeting was going in and asked for a continuance to regroup with his team and client and if they can come up with another solution to this. He would like to ask for a 1-month continuance, the end of January or beginning of February.

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

Voted: to continue until February 3rd. `

Unanimous approval.

New Food Establishment License –

4Life Nutrition Corp – 12 Harding Street Ste 203A

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

Voted: to approve the new food establishment license for 4Life Nutrition Corp at 12 Harding St. pending servesafe certificates and a passing pre-op inspection.

Unanimous approval.

MAJIT Properties, Inc dba Fat Cousins Pizza – 166 County St.

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

Voted: to issue a new food establishment license and Milk & Cream license to MAJIT Properties, Inc dba Fat Cousins Pizza at 166 County St. subject to a pre-op inspection passing.

Unanimous approval.

43D Committee Update – Member Spratt said the 43D Committee has now gone on to Public Hearings. There was a brief discussion on the existing system. Chairman Maxim said he had questions with the pitch going into the tank. Agent Cullen had also mentioned this. Chairman Maxim said he also had questions with the tunnel tank, which he doesn't like. He thought maybe they should send this over to the review engineer ahead of time to address any concerns the Board or Agent Cullen may have prior to the peer review being sent over. He also wanted clarification on what is out there for existing septic, if there are any cesspools on that property that they are not aware of, if there are any existing septic tanks since it doesn't show anything. Also, what the piping is made out of, whether it's asbestos concrete sewer line that runs into that pump station out front by Main Street. If it is, it would need an abatement to remove it and a permit from DEP. Agent Cullen asked if the Board members could send him their questions individually and he would compile them and send them over to the peer reviewer.

BOH Agent pending items – Agent Cullen said Gail Joseph is with the Board of Health in New Bedford and will be helping us out with some of the food inspections. She did have some issues at East Coast Fitness, they didn't have their ServSafe certificates. They had issues with the tanning facilities. When Gail went out the person in charge wasn't familiar with any of the food preparation procedures and they weren't respecting the COVID mask guidelines. There was a brief discussion about fines. A warning letter will be sent and if there is no compliance, a fine will be issued.

Review and approve meeting minutes as typed – October 7, 2020

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

Voted: to approve the meeting minutes from October 7, 2020 as typed.

Unanimous approval.

COVID-19 Update - Agent Cullen said there was a big surge in cases after Thanksgiving. The number of deaths has increased as well. Agent Cullen urged residents to keep gatherings small for the holidays. There was a discussion regarding the vaccine roll-out.

Adjournment – 9:20pm

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

Voted: to adjourn.

Unanimous approval.