

Town of Lakeville  
Board of Health  
January 22, 2020 6pm

Members present: Chairman Maxim and Member Spratt, Member Poillucci was absent. The meeting was called to order at 6:08pm. LakeCam was present to record.

**5 Island View -**

Chairman Maxim stepped down to make a motion, seconded by Member Spratt, it was:

Voted: to continue to the next meeting.

Unanimous approval.

**6 Second Ave -** Will Connolly from Zenith Consulting Engineers was present to discuss the local upgrade requests. Abutter cards were presented. This is a proposal for an upgrade to a failed system. There was a discussion regarding the lot.

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

Voted: to approve the septic upgrade at 6 Second Ave, Lakeville, MA with the seven local upgrade approvals and the property must be tied into the new water system when available.

Unanimous approval.

**57 Long Point Rd** – Kevin Kline was present from Stantec for discussion on the redevelopment of 57 Long Point Rd. The original design for Island Terrace was 12,540 gallons per day with a 77-bed nursing facility plus houses with additional bedroom counts. This entire site is in the Zone-A with Pocksha Pond on one side and the cranberry bog (a tributary to a drinking water supply) on the other. The development plan is to remove the nursing home, remove the houses, and add 55+ condominiums. The Zoning Board of Appeals approved 77 units. After speaking with DEP, the public water supply is non-conforming, and because of the change in use, they were going to classify it as a new source approval. The conditions for the approval were: minimize pavement in zone 1, reduce flow (less than 10,000 gallons per day). By decreasing the number of units to 66, that would bring them down to less than 10,000 gallons per day. The water treatment system that is currently in the building will be moved to the new building. They have a new source approval from DEP. The biggest conditions were: stormwater from all the paved surfaces has to be treated and recharged, stormwater from all the roofs needs to be collected and recharged, the impervious area of the site has to be less than 20% (pavement and building – currently it is 23%). When they went to DEP for the septic for the nursing home, it was 12,540 gallons per day, under an administrative consent order.

There are two septic tanks and a series of concrete chambers for a moving bed bio-reactor. The first chamber is anoxic, then an aerobic for carbon removal, two chambers for nitrification, and then a clarifier. It recycles back from the clarifier to the first chamber and from the clarifier back to the first septic tank. By recycling, they get the denitrification, it goes through flow measuring and then the leach field. The current leaching field is a series of Cultec leaching chambers sized for the full 12,540 gallons. For the proposal they plan to remove eight rows of chambers so they can build the building, and replace four rows of chambers. This will make them further from the reservoir, but closer to the cranberry bog.

There are setback variances needed for the existing tanks since they will be closer than 400' to a drinking water supply, and for the existing and proposed leaching.

Chairman Maxim asked if there was anything in writing from DEP stating that the Town can take over a system that they approved. Mr. Kline said, no. Chairman Maxim said that it was reusing an old system that was a non-conforming system under the repair in 2013. He said technically, the nursing home had DEP approval, this project does not. So, there is no approval to use this septic system for this condo project, only the well. In 2013, the original approval was given, the consent order stated, no changes should be made to the system prior to approval from DEP. Chairman Maxim said he is looking for something from DEP saying you can do that since it was approved by them. He said you are using their system and asking us to approve it. The consent order said this system as of June 15, 2015 was out of compliance on several occasions. Chairman Maxim said the new system installed in 2015 was already not working properly. According to Mr. Kline, when the system initially went in they were already having problems which is why they did an administrative consent order (ACO) which allowed them to increase flow, add beds, and to make the modifications to it. For the last year it was in operation, it was compliant. Nick Lanney had written a response to the ZBA petition that had been filed. Chairman Maxim asked Mr. Kline if he and his client had seen the December 2018 DEP letter and the January 2019 HML Associates letter from Nick Lanney. Mr. Kline said both he and the developer had seen the letters. In the letter he explained the system is not "grandfathered", and any change in use or expansion of the activities at the Island Terrace property will require a project design that addresses conformance with current standards for water supply protection and wastewater management and disposal. There was a brief discussion regarding Groundwater Discharge Permits and Title V. Chairman Maxim said if its not a change in use, they should be able to issue a permit. Mr. Kline said they should, but they agreed to go under the 10,000 gallons per day due to the water supply. At that point, DEP said now go to the Board of Health for the variance to the setback for the existing and the leaching for the lower flow. Chairman Maxim said the letter also states that restrictions on the use of land designated on Zone A are contained in 310 CMR 22.20B and will significantly impact any planned redevelopment of the property in question. Mr. Kline said without the variance the property is not buildable. Chairman Maxim asked if the ZBA decision was appealed by the City of New Bedford and City of Taunton. Mr. Kline said he believed that issue was settled. Chairman Maxim said the Board has not received a copy of that appeal or documentation of where it stands. Chairman Maxim inquired if they planned any units with jacuzzi tubs (would affect flow). Mr. Kline said he did not know but would check with the architect. Chairman Maxim reminded Mr. Kline that since there were only two members present it would need to be a unanimous vote to pass. There was a discussion regarding new construction under Title V. Chairman Maxim read from Title V regulations in part: *New construction shall not include the replacement or repair of a building in existence since March 31<sup>st</sup> 1995, (Mr. Kline agreed that this building would fall under that definition), that has been totally or partially destroyed or demolished provided there is no increase in flow, no increase in the design flow above the existing approved capacity to any system, no increase in the number of dwellings or dwelling units and no increase in the number of bedrooms in any dwelling or dwelling unit.* Chairman Maxim said he didn't think there were two buildings there with 33 rooms in each dwelling. Mr. Kline said no, there is one with 77. The Title V report also showed one with 6. Chairman Maxim asked Mr. Kline if he agreed that if he could conform to that definition of the pre-existing, non-conforming, without adding the number of bedrooms in any said dwelling that this would fall under a repair. For public safety, any new construction in a Zone-A should not be approved. Mr. Kline said they were decreasing the total number of units or bedrooms. They were splitting one building into two. Mr. Kline asked if they added a walkway between

the two buildings, it would be one building with 66 units. Would that be ok? Chairman Maxim said it was definitely a wording of Title V. There was a brief discussion regarding Title V and new construction. Mr. Kline agreed that if they could connect the two buildings they could get away from new construction. Chairman Maxim explained the 'grandfathered clause' regarding DEP. *A provision in which an old rule continues to apply to some existing situations, while a new rule will apply to all future cases.* So, if they could fall under the pre-existing, non-conforming prior to 1995, this could be grandfathered. Chairman Maxim read a letter from Nick Lanney regarding his review of the plans and listed some areas of concern including the Title V report performed in November of 2019 and the non-hazardous wastewater holding tanks (2-tanks) in a Zone A.

Chairman Maxim read from 314 CMR 18:05 which stated "*install or maintain such holding tanks within the Zone 1 or the Zone A of a public water supply in violation of the requirements of 310 CMR 22.21(3)(b)*". He asked Mr. Kline what other options they could do. Mr. Kline said they could look at a possible above ground tank in the garage (Chairman Maxim said this also would not be allowed), or use the stormwater treatment system with an oil/water separator to the subsurface leaching.

Chairman Maxim asked if there were any options to reduce the buildout of this site to make it more conforming. Mr. Kline said he didn't think his client would want to reduce it anymore, but would ask.

There was more discussion about making the project one building rather than two. Chairman Maxim also asked about the Town of Lakeville taking over the responsibilities of overseeing something of this size that DEP approved. Mr. Kline said it's an I/A treatment system that will require a licensed operator and the reporting has been sent to DEP and the Board in the past and they could continue to do that. There was a discussion about adding to the system to make it over 10,000 gallons per day and put it back under DEP approval. Member Spratt asked if there was a reserve area. Mr. Kline said there was. There was a review of the plan. Chairman Maxim said that it may be a good idea to put something on the deed that references the property is in a Zone-A, and nitrogen sensitive area. People that are used to city sewer aren't aware of septic system maintenance.

There was a discussion regarding DEP approvals in a Zone-A. Chairman Maxim said that DEP won't approve a change in use in a Zone-A or even grant variances. Their argument is this isn't a change in use. Chairman Maxim said if it isn't a change in use, it shouldn't be coming to the Board. According to DEP the system would need to be kept under 10,000 gallons per day, but Mr. Kline said he could certainly ask if they would keep the system under their jurisdiction. He also suggested that maybe they set up a meeting with DEP. Selectman John Powderly said that Town Counsel has been at several of the meetings and that this development of 66 units would bring about \$225,000 in tax revenue. Town Counsel has always regarded the property as a pre-existing, non-conforming business. This is a non-conforming, less conforming, less hardship on the environment. Nancy Yeatts said that she would like to see a copy of the Taunton and New Bedford settlement agreements. Chairman Maxim said that is one thing he has asked for and felt he could not make a decision without reviewing the agreement. Mr. Kline said he spoke with the attorney and an agreement was reached but he was unsure if it was in writing yet. Abutter Nick Decas said he didn't oppose the project, he just wanted to be treated fairly. He would like to see this as a successful project and not impose on their property. He said they do have some interest in the project since they do have some land that they may be able to build and put a system in like this as well. Chairman Maxim asked Mr. Decas if he owned the right-of-way to the property. He thought so. Chairman Maxim asked Mr. Kline if he had deeded access. He said yes. The City of New Bedford has also restricted the use of salt on the property. Mr. Kline said they will be using sand and not salt. Snow also cannot be stored in Zone-A. All snow will need to be removed for the site. There was a brief discussion

regarding the requests from the City of New Bedford. Chairman Maxim also said this will be a deed restricted 55-and-over.

Nate Darling said he thought there should be a written notice of continuance for a period not to exceed 45 days or 60 days or whatever the Board feels appropriate. Mr. Kline felt a continuance of 45 days would be appropriate and if it needs to be extended, it could be extended.

Chairman Maxim stepped down to make a motion, seconded by Member Sprat, it was:

Voted: to continue 57 Long Point Rd. until the next meeting and give 45-days to get answers on the project. (this item will be kept on each meeting agenda in case Mr. Kline needs to come back with more information)

Unanimous approval.

**Discuss recent BOH Agent pending items** - Chairman Maxim said the new Agent will start on February 10<sup>th</sup>.

**Review and approve Board of Health meeting minutes from December 18, 2019 as typed** –

Chairman Maxim stepped down to make a motion, seconded by Member Sprat, it was:

Voted: to approve the Board of Health meeting minutes from December 18, 2019 as typed.

Unanimous approval.

**Review and approve Board of Health meeting minutes from January 8<sup>th</sup> 2020 as typed** -

Chairman Maxim stepped down to make a motion, seconded by Member Sprat, it was:

Voted to approve the Board of Health meeting minutes from January 8, 2020 as typed.

Unanimous approval.

**Adjournment** – (8:10pm)

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

Voted: to adjourn.

Unanimous approval.