

Town of Lakeville
Board of Health
August 5, 2020 6pm

Present were: Chairman Maxim, Member Spratt, Member Poillucci, and Agent Cullen. Chairman Maxim called the meeting to order at 6:02pm. This was a remote meeting and was recorded by LakeCam.

4 Old Powder House Rd – Meet with Zenith Consulting Engineers to discuss requested variances. Jamie Bissonnette from Zenith Consulting Engineers was present for discussion continued from the last meeting. Also present was Michael O'Shaughnessy (attorney for property owner) and Murray Wachtenheim (property owner). There were three variances requested. The first variance was a reduction from 100' to 64' from a soil absorption system to a wetland bordering a surface water supply or tributary thereto. The second is a septic tank from 100' to 52' to a wetland bordering a surface water supply or tributary thereto. The third is a variance from the Lakeville Board of Health regulation requiring the lot have 20,000sf of upland acreage for both a water supply and septic system or sewage disposal system. This property has been in front of the Board several times in the past. This is a proposed three-bedroom home with garage and driveway. The proposed system is an advanced treatment system, MicroFast 0.5 with Cultec chambers and trench configuration. This property already has an installed well on a previous permit years ago. The test pits were done in 2019 to confirm soil types and water table. The soils found were good, within the 4" per minute range. Mr. Bissonnette reviewed the variances – Standard of Review from 15.410 (Title 5), specifically 15.410 (2), "with regard to variances for new construction, enforcement of the provision from which a variance is sought must be shown to deprive the applicant of substantially all beneficial use of the subject property in order to be manifestly unjust". There was a permit issued in 1986 for a system designed for a 4-bedroom house. At that time, it met the old version of the regulations. In 1995, the regulations changed. Mr. Bissonnette believes this meets the requirements for a variance because the allowed uses in a residential zone are residential uses. He said that by not allowing a residential house here, wipes out the ability to use the property. What he feels he has done to meet the requirement under the variance protocol for level of environmental protection is the advanced treatment system. Chairman Maxim said this was denied a few times previously by other Boards for different reasons. There was a lengthy discussion regarding legal findings on this property. Mr. Bissonnette feels they are meeting the level of environmental protection with the advanced treatment system and being 60'+ away with the leaching field. There was a discussion regarding water overflow and backup. Member Poillucci asked what the feedback was from Kopelman & Paige since they had represented the town in the previous lawsuit. Agent Cullen said there has been no additional feedback but they were aware of the previous legal issues. He said the previous justification was no variances for new construction. He felt the previous decision didn't really say it was justified, it was just the reason given. The blanket statement of no variance for new construction was the problem, not the fact that it was denied by the Board. Agent Cullen believed the previous Board needed a specific reason for denial, rather than a blanket statement. Member Poillucci asked what happened after the decision, did it come back to the Board for a vote, or did it just stop. Mr. Wachtenheim believed it just stopped. Agent Cullen said that he agreed with the decision, since this is a reservoir used as a drinking water supply, the blanket statement of 100' to a wetland doesn't begin to signify how sensitive this area is. He felt that would be the justification if the

Board wanted to deny it, the sensitivity of the area. Member Poillucci said he had been on the Board 11 years, and this is the first time this has come before him. Why didn't the applicant come back to the Board after the court decision? Mr. Wachtenheim said he didn't go back to the Board because he felt the Board was biased in their decision and would never render a just decision. Member Spratt said that the City of Taunton, who owns the water supply, was against it too. He said Mr. Wachtenheim may feel there was some bias, but when the water supply is against it, and they don't speak up much, but when they do the Board usually listens. Mr. Bissonnette said he agreed with the sensitivity of the wetland, but that is the purpose for the variance, the standard setback for a wetland is 50', and they are greater than that. The only reason they are asking for the variance is because it is a wetland that abuts a surface water supply or tributary. He said with a denial on this, there would have to be some type of justification why the Board doesn't believe they are meeting the environmental level of protection. He said the treatment level is there, and he would be happy to get a representative from the treatment company for the next meeting. He said the previous filings were proposing stone and pipe system with a septic tank. This is far from a stone and pipe septic system. Agent Cullen said when you grant a variance, it's to get an overall improvement. This isn't going to be an improvement, there is currently nothing there and now you're going to have something there polluting it. That really takes away the justification for a variance, you're not making an overall improvement, you're worsening it. Mr. Bissonnette argued that if one goes back to the variance section of Title 5, it says to deny this variance would be manifestly unjust in that they are meeting the levels of environmental protection at least under Title 5. With regards to variances for new construction, enforcement of the provision would be to deprive the applicant of substantially all beneficial use. Mr. Bissonnette said they are not saying that they are making anything better, but for the Board to deny this, it is taking away the person's right to use the property. There was a discussion regarding upland square footage. Mr. Bissonnette said he was ok with continuing the meeting if there was other information the Board needed in order to make a decision. Chairman Maxim said Mr. Bissonnette had gone with former Health Agent Kevin Bernardo to the Department of Environmental Protection (DEP) and asked what the clarification was. Mr. Bissonnette said according to his recollection of the DEP meeting if the variances were grantable, and there wasn't any negative feedback from the water supplies, then there would be no problem with this application. Chairman Maxim said he believed if the Board denied this application it would be manifestly unjust. He felt putting the treatment system in meets the requirements that you're meeting a least as good a protection for the wetlands with this system. In his opinion, they meet the requirement, and because it was pre-approved, he believes it would be manifestly unjust to deny. Member Poillucci said he had a lot of different opinions on this. He was not as concerned about the 20,000sf. He said the tributary did concern him. He would like to get, at a minimum, an opinion from Kopelman & Paige if being manifestly unjust is an issue here or it's not. He would like some guidance before a vote. Member Spratt said he looks at town counsel's opinion that all the prior approvals are null and void. The current regulations and Title 5 are what they need to look at now. Member Poillucci said when he got on the Board, he was told they could not issue variances on new lots. He said he would like to have a few things clarified from town counsel, he would like to hear from town counsel, not the applicant's counsel. Mr. Bissonnette said he was open to a continuance.

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

Voted: to continue for two weeks, and ask Agent Cullen to get some guidance from Kopelman & Paige on the three issues he brought up.

Unanimous approval.

141 Main St – Meet with Zenith Consulting Engineers to discuss requested local upgrade approvals. Jamie Bissonnette was present for discussion. This is an existing 2-bedroom home with a system that is not functioning. They are looking to upgrade with an Infiltrator system with a Roth two-compartment tank, and a Roth style pump chamber. They are looking for relief from the 200' to a tributary to a surface water supply. The only other place this could go, staying out of the 200' to a tributary, is under the paved driveway which would block access to the house and garage. It does need a pump to maintain groundwater separation and accommodate the existing plumbing. Chairman Maxim said he reviewed the plan and drove by and the access to the backyard will be difficult. He thought the reasoning for the plastic tanks was because a tank truck couldn't get back there. Mr. Bissonnette said that did go into the decision making. Member Spratt said he didn't realize that was a tributary. There is a small water body and this is a conservative approach. The existing system will be removed in accordance with Title 5. Agent Cullen thought this was the only place the system could go and it is a little closer than the existing, but higher up so there will be more protection. He felt this was an improvement since the existing was in groundwater.

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

Voted: to approve the two requested variances on 141 Main St.

Unanimous approval.

29 Pilgrim Rd. - Meet with McKinnon and Keese to discuss requested local upgrades. Sandy Keese from McKinnon and Keese was present for discussion. This is an existing home on Pilgrim Road that they are looking to upgrade and add a new well. The lot is small, and has been delineated by a land surveyor. They are asking for several variances from Title 5, as well as one from the Lakeville Board of Health. They are proposing a new well to replace the existing that is 25' from a cesspool that sits in the water table. They were unable to do a perc test on this lot, so a soil sample was sent out for analysis. Ms. Keese said they are proposing a 1,500/500 tank that is one unit with the pump chamber built in, for 2,000 gallons in all (1,500 for the septic tank and 500 for the pump chamber). There was a review of the variances requested. Chairman Maxim asked if the tank was monolithic, which is usually required when the water table elevation is above the seam on a two-compartment tank. Ms. Keese said that they do not make a monolithic tank in this size and weight. This tank is made by Wiggins Precast and they guarantee their tanks for life. They are sealed with a rubber gasket sealant on the seams and waterproof it all the way around. She said in doing business with this company for 34 years, she has never had a tank leak. Member Poillucci asked if the number of bedrooms was 2 or 3. Ms. Keese said it was 2 and will be deed restricted. Member Spratt asked where the neighboring new septic was. Ms. Keese said it was to the east and it was on the other side of the lot, over 100' from the well. Member Spratt also asked if any other Board members or if Agent Cullen had ever seen a tank like this. Ms. Keese said she could send the specs on it and that she uses them all the time. Chairman Maxim said he has seen them and has installed them on properties in Lakeville, so the variance has been granted before. Member Poillucci asked Chairman Maxim if the ones he had installed were monolithic. He responded that he believed it was a monolithic but thought it was made by Shea. Member Poillucci said they usually require monolithic if it is in the water table, that's why he was asking. Member Spratt asked Chairman Maxim about the functionality of the tanks like this that he had installed. There was a brief discussion concerning the tanks. Martin Levin (northerly abutter), asked how high this would be and would the finish grade be right against the wall? Ms. Keese said there is a three-foot existing stone wall (63) and the top of the system is 61.42 so it won't be going over to his property. Mr. Levin asked if they would be digging right up to the stone wall. Ms. Keese said they would be digging right up to one-

foot of the stone wall. Mr. Levin asked what would be in the 5' strip out. Ms. Keese said it would be Title 5 certified sand, it would be used underneath and around the system since they were stripping out subsoil that they can't use. He also asked if there was a vent. Ms. Keese said there would be a vent with a cap, it's a charcoal vent that has a cover that can be replaced. He asked if there would be any smell. She explained there shouldn't be but if there is, he should ask the owner to replace the charcoal filter. Member Poillucci said he thought that was a retaining wall, not just a stone wall. Ms. Keese said it would be a Ruffco barrier. Member Poillucci said a liner will not hold up the weight of the dirt. Ms. Keese said it was a rigid liner that can stand up on its own. Chairman Maxim said he didn't know this specific brand but didn't think it should be used as a retaining wall. Agent Cullen said a barrier cannot be used as a retaining wall, it would need to be filled on both sides. If it isn't filled on both sides, the sun will eat it away so it will need to be covered. There was a discussion regarding the wall and grading. Agent Cullen said they are located in a Zone-A (within 400' of the pond), so there needs to be setbacks from both the leaching field and tank. Member Poillucci said it would be these six variances, plus two additional. Agent Cullen said there would be a reduction from the leaching field and a reduction from the tank. Neither a leaching field or tank are allowed within the 400' without a variance.

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

Voted: to approve 9 variances, the six on the letter dated 7/21/2020, the seventh will be to give a waiver for the two different tanks to use the one 2000-gallon tank with a 1500 and 500 for the pump chamber. Eight will be reduction to less than 400' to the leaching field. Nine will be reduction from 400' for the tank. In addition, the condition of a two-foot wall around the back and right side of the field (northern and eastern).

Unanimous approval.

7 Carrie St - Amended betterment agreement in the amount of \$39,340.00. Chairman Maxim said this had been previously before the Board and approved for an amount of \$19,775.00. The installer hit ledge. Agent Cullen said it was less expensive to raise the system and put in a pump chamber.

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

Voted: to approve the betterment increase to \$39,340.00 for 7 Carrie St.

Unanimous approval.

43D Committee - Recommend Chris Spratt to be appointed by the Selectmen. There was a brief discussion regarding appointments.

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

Voted: to appoint Chris Spratt to the 43D Committee.

Two in favor (Poillucci, Maxim), 1 abstain (Spratt).

Discussion: Agent Cullen said he had gotten some clarification, for Assistant Board of Health Agents, the Board appoints them. Since Agent Cullen works under the building department, he needed to be appointed by the Selectmen to be the Milk Inspector. For Member Spratt, being appointed to the 43D Committee or Assistant Health Inspector, the Board would do that.

EEE – Agent Cullen said there was a case of EEE in Middleboro and in Carver, they are now at high risk. Lakeville got upgraded to moderate risk. It is early in the season to get a human case. Residents are urged to limit hours outside after dark, use mosquito spray, and remove standing water.

Coronavirus - Agent Cullen said Lakeville is doing very well, but Massachusetts as a whole, there is an uptick in cases. This is mainly from backyard barbecues, graduation parties, and house gatherings. The public is urged to avoid these if they can.

Parks – Member Poillucci said in the past when the EEE threat has gotten to high, the Board has always voted to shut down the parks and fields from dusk until dawn. He said if the Board agrees, they shouldn't have a special meeting to vote on it, they can just have Agent Cullen put it on the next meeting. Chairman Maxim asked if high risk meant there was actually a case in Lakeville. Agent Cullen said that was correct, but even if there were cases in the surrounding communities, they would still put Lakeville in that category. He was unsure of what the exact definition of high risk was. Member Spratt said that a human case would raise the level to critical. Chairman Maxim said they could make a motion to give Agent Cullen the authority if the level jumps to critical, to close the parks from dusk to dawn. Member Poillucci said he thought, and Agent Cullen could check, they actually closed the parks when the level went to high risk.

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

Voted: to give Agent Cullen the authority, that if Lakeville gets to high risk, he can close the fields and town properties from dusk until dawn.

Discussion: Member Poillucci said to clarify it was outdoor activities, not all activities.

Unanimous approval.

Meeting minutes - review and approve meeting minutes from May 20, 2020 as typed.

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

Voted: to approve the Board of Health meeting minutes dated May 20, 2020 as typed.

Unanimous approval.

Adjournment – (8:15pm)

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

Voted: to adjourn

Unanimous approval.