

Town of Lakeville
Board of Health
September 2, 2020 6pm

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

7 Langlois Pines – Meet with Zenith Consulting Engineers LLC to discuss requested local upgrade approvals. Jamie Bissonnette from Zenith Consulting Engineers was present for discussion. This is a septic repair that was before the Board 1-year ago which proposed a leaching field on the other side of the dwelling. After the approval, it came to their attention that what was located as a well, was actually a leaching field on an adjacent parcel. That required a shift in the leaching field to the other side of the site. Another perc test was done and a new plan designed with updated variances. Chairman Maxim asked about the previous plan that showed two wells with a notation that said 'disconnect from pump house to house #7'. Mr. Bissonnette explained that it was a pump house that went to a shared well, the owners are now looking to install their own well and will disconnect from the shared well. Chairman Maxim also asked about the concrete slab shown on the plan where the proposed septic system is located. Mr. Bissonnette said the slab would need to be removed. Chairman Maxim asked about the retaining wall and a brief discussion followed. Member Poillucci said he would like to see a detail on the wall since it is a requirement.

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

Voted: to approve the three local upgrade requests at 7 Langlois Pines with the condition that before work begins, the health agent gets a copy of the retaining wall detail showing the design and what it will be made out of and the height.

Unanimous approval.

4 Old Powder House Rd – continued discussion from August 5, 2020 meeting with Zenith Consulting Engineers to discuss requested variances. Jamie Bissonnette from Zenith Consulting Engineers was present for discussion along with Mike O'Shaughnessy, Lauren from J&R Sales, and property owner Murray Wachtenheim. Mr. Bissonnette said that the wrong certification for approval was sent to the Board of Health office. The certification for general use in secondary treatment was sent to the Board in error. The FAST (Nitrogen Reducing) less than 2,000GPD approval is different from the secondary treatment approval. The difference is when specifying for secondary treatment, there is an advantage to a reduction. This can be done for new construction under general use, provided new construction standards are met. Mr. Bissonnette read from the certification for general use "*Subject to the conditions of this Approval and any other local requirements, the purpose of this Approval is to allow the use of the System in Massachusetts on a General Use basis. With the necessary permits and approvals required by 310 CMR 15.000, this Certification authorizes the installation and use of the System in Massachusetts. The System may be installed for residential facilities with design flow less than 2,000 GPD where a system in compliance with 310 CMR 15.000 exists on-site or could be built and for which a site evaluation in compliance with 310 CMR 15.000 has been approved by the local approving authority.*" Mr. Bissonnette said they aren't trying to take advantage of a reduction credit by using an advanced treatment unit. He said they are trying to add an advanced treatment unit to improve effluent quality

before it gets into the ground. Mike O'Shaughnessy (attorney for the property owner), said they would like to submit this document to the Board to have as part of the record. He stated that Agent Cullen had suggested that the DEP approval document did not authorize the Board to grant the variance since it didn't comply with the new construction standards. He thought that the Board really needed to focus on the first paragraph that says this can be done with the necessary permits and approvals required by 310 CMR 15. One of the approvals is the request for variances, so if the Board granted the request for variances, they would be in compliance with 310 CMR 15. He believes they are proposing a system that is far superior than a conventional system. There was a presentation by the sales representative for the FAST system. Town Counsel Gregg Corbo said that the document Mr. Bissonnette had up on his screen (which he has not had a chance to review), the second paragraph states the system can only be approved for use where a compliant Title V system can be installed. He continued that if that is the case, under Title V, you cannot approve an alternative system unless it meets all the requirements and criteria of the DEP certification. He stated that unless there is something from DEP that states that this system can be used when variances are required, it can be the best system in the world, but it cannot be approved by the Board of Health. Member Poillucci said he didn't think that they needed to go over the engineering of the FAST system. He asked if they made variances to Title V, then you could put a Title V system in and could use this. He thought this was putting the cart before the horse. He said every lot in town could come to them and say if they were given a bunch of variances, then they could put a Title V system in. He said since he's been on the Board, he was told they couldn't give variances for new construction. He wanted an opinion from Town Counsel, would they be setting precedent. Mr. Corbo said before they can discuss all that, they need to have a proper application in front of them. The document that was presented says on page 2, paragraph 2, *"the system may be installed for residential facilities with design flow less than 2,000GPD where a system in compliance with 310 CMR 15, exists on site or could be built and for which a site evaluation in compliance with 310 CMR 15 has been approve by the local approving authority."* Here, there is no Title V system on site, nor can a compliant Title V system be built on this site. For that reason, Mr. Corbo said, it is his recommendation that they either deny this application or that this is continued to give the applicant the opportunity to demonstrate with correspondence from DEP, why this system can be put in. And once they receive that, then they can move on to the other questions as to whether the criteria for issuance of a variance has been met. Mr. O'Shaughnessy wanted to respond with two points. First, when they found out about this, they got in touch with Brett Rowe at DEP. They are working on that and would expect this hearing to be continued. Second, you have to look at the regs in totality. If Title V provides for the opportunity to request variances, why wouldn't they pursue that. The variances they are looking for are supported by the standards that are articulated in the regulations. The first standard being, are they at the same level of protection. Second, is the manifest injustice provision. Why would DEP have that regulation in Title V if it was never intended to be used. What the approval says is that with the necessary approvals required by 310 CMR 15, this certification authorizes the installation and use of the system in Massachusetts. There was some discussion regarding the project with Mr. Corbo stating that he had not offered an opinion that it would be manifestly unjust to deny this application. He had given an opinion as to what the Board could reasonably do under a certain set of facts. The court remanded the matter back in 2006, they did so because there was insufficient information in the record only and did not reach a decision on that issue. Mr. Corbo wanted to make it clear that he had not given an opinion on manifest injustice, that is a decision that only the Board can make after a hearing. He added that where they stand now, based on the approval given by DEP, this system cannot be approved with variances from Title V. If they receive an alternative decision from DEP, they can move on to the other criteria, but until then, it is his position that this application cannot be approved as it sits today. Chairman Maxim said they were at a stand-still until they decide whether this system can be used. Mr. Bissonnette said he would like to request a continuance. Member Poillucci voiced a concern about other lots in town that

are pre-Title V that would need variances and it's technically unbuildable, how does that not apply to every other lot in town before Title V came along. If financially the lot is worth money and you're not going to let them build on it, doesn't that factor into every single other pre-Title V lot in town? Mr. Bissonnette responded that because in the 1980's there was an approved plan by the Board of Health, a well was installed, and an approval by the Conservation Commission. The permit expired and when the applicant filed for a subsequent permit, Title V came into effect and made the lot non-conforming. The applicant has been denied since then. Member Spratt asked Mr. Corbo for clarification about setting precedence. Mr. Corbo explained that in order for an applicant to claim a prior decision is precedence setting the two properties have to be substantially the same in all relevant respects. The fact that a prior Board gave a variance does not necessarily mean that the current Board is required to give a variance if there can be shown differences in the two properties and the two circumstances in which the applications are presented. It's not enough to say you gave them a variance for new construction, therefore you have to give me a variance for new construction. He also said that if there was a prior Board that made a decision in error, that error does not have to be carried over by future Boards. Member Spratt also said that the Board hasn't done any variances for anything under 20,000sf in town. He also stated that New Bedford and Taunton hadn't responded initially because they were so busy, and it wasn't clear to them that it was new construction. With that lack of clarity and the fact that they're so busy, they may not realize that the wetland on this lot is hydraulically connected on the surface to Assawompset pond. He continued by saying that even though there is prior history with this lot, it has expired. The applicant had time and had a grace period to make adjustments under the past approval and he didn't act on it. Member Spratt asked the applicant if at any time did he concede that this was a non-buildable lot. Mr. Wachtenheim said no, not really. The Board had turned him down so many times, he conceded that it was unbuildable in his own mind. Member Poillucci wanted clarification from Mr. Corbo since the applicant said again that if the Board didn't let him use the lot, then it's manifest unjust if it's not buildable. He continued by saying that every lot before Title 5 that we don't let them build on, then they're all manifest unjust. Member Poillucci said for him, it needs to be another reason other than that.

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

Voted: to continue to the next meeting or until the applicant's attorney or engineer lets the Board know they are ready to proceed.
Unanimous approval.

Discuss Youth Football and Cheer guidelines - The proposed plan is to include Lakeville, Freetown, and Berkley only, with only seven from each team on the field. Masks would be required. They would like to eventually expand to include some type of competition. Agent Cullen said the proposal was within the State guidelines.

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

Voted: to allow the flag football season to proceed with the conditions outlined in the letter presented to the Board on the Lakeville fields.
Unanimous approval.

Discussion: Member Poillucci asked if this would be the same conditions as Little League with one adult and one child. Agent Cullen said that was a State guideline that the program would have to follow. The condition of one parent to one child will be added to the guidelines for the program.

Tobacco Control Compliance Checks - Agent Cullen said the compliance check would need to be approved. Member Spratt asked if this would include vape. Agent Cullen said it would.

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

Voted: to approve the compliance checks under Ed Cullen's guidance.

Unanimous approval.

EEE - Agent Cullen said the aerial spraying that took place was very successful. The testing after spraying showed an 80% reduction in mosquitos. There is still a risk and residents need to take precautions. There have been two human cases nearby in Middleboro and Halifax.

COVID-19- Agent Cullen said that Lakeville had no new cases for a month, but in the past two weeks there have been eight new cases. Residents are urged to still wear masks and social distance.

Adjournment – 7:26pm

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

Voted: to adjourn.