

**Acton Board of Health**

**May 7, 2007**

**Members Present:** William McInnis, Chairman, Dr. Bill Taylor, Vice Chairman, Pam Harting-Barrat and Joanne Bissetta, Members, Phil Alvarez, Associate (voting for open Board member position)

**Staff Present:** Doug Halley, Health Director and Sheryl Ball.

**Others Present:** Peggy Mikkola, League observer, Karen Rivero, ACES, Robert Hendrie, Alex Parra and Stephen Marsh,

The meeting was called to order at 7:35 p.m.

**Minutes**

On a motion made by Ms. Bissetta, seconded by Dr. Taylor, the Board unanimously voted to approve the minutes of April 23, 2007.

**Public Hearing – Changes to Tobacco Regulation**

Mr. McInnis opened the Public Hearing at 7:41 PM. Mr. Alvarez stated that he would like the Board to form a subcommittee with himself and Mr. McInnis to work on the draft regulations prior to Board approval. Dr. Harting-Barrat stated that she thought the Board had left this up to our Tobacco Control Coordinator, Tina Grosowsky, to decide which draft that she recommended. Ms. Grosowsky reviewed the draft regulations that Mr. McInnis had amended and submitted her comments to the Board for review tonight. Mr. Alvarez voiced concern with staying consistent with the State's regulations. The Board stated that Acton has their own local bylaw so we could enforce these regulations with non-criminal disposition tickets. Dr. Harting-Barrat stated that rather than each of us reworking this draft bylaw we should stay with the draft regulations that Ms. Grosowsky has recommended stated that Ms. Grosowsky has far more

knowledge about this matter. Mr. Alvarez thought the concept was to harmonize with the state and we are losing the concept. It was also stated that Ms. Grosowsky wants these regulations accepted as soon as possible. The Board discussed Tina's concerns with the increase fines and the buffer setbacks. Mr. McInnis expressed concern with a high fine to the employee as most employees are making minimum wage. Mr. Halley stated that in most cases the employee will be fired from their job and the fine may never be recovered. The Board's came to the consensus of establishing the fine at \$75.00 to the employees. On a motion made by Dr. Harting-Barrat, seconded by Dr. Taylor, the Board voted to close the public hearing and adopt the regulations with the amendment of the 75.00 fine. 4-0-1(Mr. Alvarez abstained). Motion passes.

#### **Permit Extension – 93 Taylor Road**

Mr. McInnis stated that we have before us a decision to extend the septic permit for the property located at 93 Taylor Road and the Board can choose to deny or approve the extension. Mr. Halley stated that the applicant has requested an extension of the septic permit as he could not act on the installation as a result of the legal challenge to the Board's variance approvals. Mr. McInnis asked if there was an injunction to rescind the septic permit during the court proceedings. Mr. Halley stated there was no injunction but that the Town would not allow the system to be built during the court process. The septic permit for the property located at 93 Taylor Road expired in 2003 and the court case was not resolved until 2006. The question before the Board tonight is whether or not the permit's life can be extended due to the hold status while in the court system.

Mr. McInnis asked Mr. Marsh if he is the property owner. Mr. Marsh stated that he owns this property jointly with his sister in law, Therese Marsh.

Mr. Halley stated that at the last Board of Health meeting this agenda item was continued until tonight. Mr. Halley stated that the lot is located at 93 Taylor Road and the septic permit was applied for and approved with a Board of Health variance and as a result of the issuance of the permit court action was taken by the abutter, Mr. Hendrie against Mr. Marsh and was resolved in Mr. Marsh's favor in 1/2006. Therefore, the applicant believes that the two years of the permits life should run from 1/2006 to 1/2008.

Alex Parra, Attorney for the abutter, Mr. Hendrie, recently sent a letter to the DEP asking them to review the facts of the permit and asked their opinion of the validity of the permit. As of

tonight, the DEP has not sent their comments. Mr. Halley stated that he had a conversation with the DEP who verbally indicated that they had no role in this issue but would say that the permit was considered to be in suspension during the court action. Mr. Halley has sought Town Counsel's opinion who has outlined the following three options the Board can take:

1. Agree with applicant that the permit was in suspension during the court process.
2. Deny the request saying there is nothing in our rules and regulations speaking to the validity of granting an extension, however, it should be noted that town counsel pointed out case law which shows that permits are considered to be in suspension during court process.
3. Tell the applicant to go back to court to have the judge make the ruling about the validity of the permit.

Mr. Halley further stated that he would recommend that the Board continue this hearing as new information may be received by the DEP. The Board stated that they do not want to see this matter go on indefinitely and considered waiting 30 days for DEP's response. The Board further directed Mr. Halley to write to the DEP.

Mr. McInnis stated that the Board's rules and regulations specifically state a time frame of a permit's validity, however there are variance provisions also in our regulations and the Board typically grants these variances when there is Manifest Injustice or when the same degree of environmental protection can be met.

Mr. Marsh stated that he needs the Septic Permit in hand before the Conservation Commission will allow him to begin installation as they had previously granted an order of conditions and he is on a strict timeline and needs to have planting done by October 17, 2007. Mr. Marsh further stated that if he cannot resolve this issue within the timeframe the Conservation Commission has outlined, he will have to file a new notice of intent. Mr. Halley stated that the Conservation Commission has stated that it is not a buildable lot until there is a valid septic permit. Mr. Marsh indicated that he also had a conversation with the DEP and would not install the septic system until the letter comes from the DEP. Mr. Marsh further stated that the DEP has no jurisdiction over this matter and the court has ruled in his favor twice.

Alex Parra, attorney for Mr. Hendrie asked to speak to clarify a few things. Atty. Parra stated that it was the judge who remanded the deadline of the plantings by October 17<sup>th</sup> not the Conservation Commission. Atty. Parra stated the letter he sent to the DEP asked them about

Title 5 and their regulations in regards to length of time a septic permit can last. Atty. Parra also asked about the provisions of the wetlands protection act irrespective of court proceedings. Atty. Parra further indicated that the DEP indicated they would make a decision and he does not know what the DEP will say.

Mr. Hendrie stated that Title 5 has changed since the original septic permit was designed and stated that the septic system as designed is now invalid. The Board stated that regulations are constantly being updated which make existing septic systems substandard. Dr. Taylor asked how much the regulations changed. Mr. Halley stated that title 5 changed in beginning of 2006 and the impact on the original approval showed that the design had previously allowable sidewall which is no longer allowed and in the process of the wetland hearing a different wetland line has been established. Mr. Halley stated that this issue should be legality issue not an inadequate issue as these regulations were utilized by anyone and freely given to anyone during the time the permit was designed and approved.

Mr. Marsh stated that Town Counsel has stated that the Board has the power to extend the permit and also stated that he does not want to go back to court for this.

The Board agreed to continue this request for a period of 30 days so that the DEP has time to write a response to Mr. Halley's request.

On a motion made by Mr. Alvarez, seconded by Ms. Bissetta, the Board agreed to continue this request until June 11 at 7:30 PM and directed Mr. Halley to write to the DEP for clarification.

Mr. Alvarez left at 8:50 PM.

#### **Variance – 211 Pope Road**

The Health Department is in receipt of an Article 15.405(1) (j) –Local Upgrade Approval for a waiver of the required separation between the septic tank and pump chamber inverts for the property located at 211 Pope Road. The Health Department reviewed this request and found that the site is restricted by the depth to groundwater and the inability to alter the internal plumbing. Mr. McInnis stated that this is the first time he has ever seen this type of variance. It was stated that groundwater is so high that it infringes on the plumbing and that there is no way to correct the problem without losing the functioning of the house. On a motion made by Ms. Bissetta,

seconded by Dr. Harting-Barrat, the Board unanimously voted to grant a variance from Article 15.405(l) (j) to the property located at 211 Pope Road with the following conditions:

1. All boots or pipe joints are sealed with hydraulic cement or installed with watertight sleeves and the tank is proven watertight.
2. The septic tank shall be pumped a minimum of once every two years.
3. The system shall be constructed in accordance with the above conditions and a plan stamped by Joseph March, PE, dated 4/25/2007.

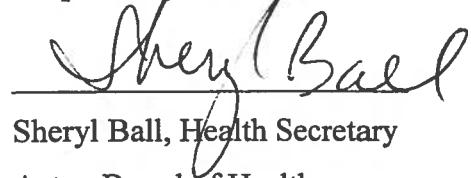
#### Other

- Mr. Halley showed the Board pictures of Hazardous Waste Day, Wellness University and the Storm water Labeling Project.

#### Adjournment

On a motion made by Dr. Harting-Barrat, seconded by Ms. Bissetta, the Board unanimously voted to adjourn at 8:45PM.

Respectfully Submitted,

  
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Sheryl Ball, Health Secretary  
Acton Board of Health

  
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William McInnis, Chairman  
Acton Board of Health