

Harvard Board of Health Meeting Minutes
Town Hall, Volunteer Meeting Room
Tuesday, March 10, 2020
7 p.m.
Approved: April 7, 2020

Board of Health Members present: Sharon McCarthy; Libby Levison (via Skype); Tom Philippou, Chair.

Attending: Alison Flynn, Board of Health (“BOH”) Clerk; Ira Grossman, Health Agent, Nashoba Associated Boards of Health; Dan Gaffney, SafeWell; Jack Maloney, Ducharme & Dillis; Jane Thomsen, homeowner, 23 Lovers Lane; Nick Deane, property owner, 325 Ayer Road; David Formato, PE, Onsite Engineering.

Mr. Philippou called the meeting to order at 7:06 p.m.

PUBLIC COMMENT- None.

NEW BUSINESS

a. 16 Babbit Lane: Consideration of local upgrade approvals (7:05)- Mr. Maloney presented the homeowners’ request for a local upgrade approval to allow a three-foot offset to groundwater for installation of a new Presby system. He explained that the existing system, which was installed in the late ‘60s or early ‘70s, recently failed on Title 5 Inspection. To meet full-compliance, the homeowners would have to move the existing plumbing up 1.5 feet. After reviewing the proposed plan, Ms. McCarthy made the motion to approve the local upgrade approval to allow a reduction from the required 5 feet to 3 feet; Ms. Levison seconded. Mr. Grossman indicated he does not have any issue with the requested approval. No further discussion was needed. A roll call vote was taken: Ms. McCarthy, aye; Ms. Levison, aye; Mr. Philippou, aye. As the septic permit was not available for signature at the meeting, the members agreed that the installation could go forward with Mr. Grossman’s issuance, and the permit would be signed by the members at the next BOH meeting. Ms. Levison made the motion to empower Mr. Grossman to issue the permit so the install can begin; Mr. Philippou seconded. A roll call vote was taken: all were in favor.

b. Clerk and Health Agent Update-

- Ms. Flynn offered the members the newest RCAP Newsletter. Mr. Grossman indicated he would like review it.
- Ms. Flynn requested approval of the 4th Quarter Invoice for NABH. Ms. McCarthy made the motion to approve the invoice; Ms. Levison seconded. A roll call vote was taken: all were in favor.
- Ms. Flynn advised that she received a package from the Central MA Mosquito Control Program advising of the program offerings. The members asked that she keep the package on file.
- Ms. Flynn requested permission to order replacements for the expired D batteries in the EDS trailer, replacement rechargeable batteries for the two-way radios, and combination

locks for the EDS trailer. Ms. McCarthy made the motion to approve such a purchase; Ms. Levison seconded. A roll call vote was taken: all were in favor.

- Ms. Levison advised that the Library has indicated that the BOH Night at the Movies, scheduled for April, will need to be rescheduled for June due to the unavailability of AV-equipment. Ms. Flynn will remove the save-the-date announcement from the BOH homepage; Ms. Levison will request Ms. Doucet update the Town homepage accordingly.

OLD BUSINESS

a. 23 Lovers Lane: Continued hearing of 9/24/19- The BOH members reviewed the status report received from Ms. Thomsen on March 9th. Ms. Thomsen advised that she is making progress as quickly as possible, and noted a visible difference. She asked that BOH members if they would consider her joining the next discussion remotely if COVID-19 continues to be a risk to her health. Ms. Levison made the motion to continue the hearing until 4/28/20 with the allowance that Ms. Thomsen joins the discussion via Skype, if necessary; Ms. McCarthy seconded. A roll call vote was taken: Ms. McCarthy, aye; Ms. Levison, aye; Mr. Philippou, aye. Ms. Thomsen also asked the BOH to consider that many residents have concerns regarding COVID-19, and she feels the more information the BOH can provide to residents, the better. The BOH members indicated the BOH and Town home pages direct residents to the Department of Public Health (DPH) and the Centers for Disease Control (CDC) for the most updated and expert information. Mr. Philippou added that the BOH is actively working with multiple Departments in Harvard regarding COVID-19 emergency preparedness.

b. 325 Ayer Road: Continued discussion regarding proposed revision- Mr. Deane and Mr. Formato requested relief from requirements listed in Mr. Grossman's Review Form of February 10, 2020. Mr. Grossman indicated the Review Form reflects what is required by Title 5 as the minimum requirements for permit for a Septic Disposal System (SDS), including modifications to a SDS. Mr. Formato acknowledged that the modification is not in compliance with Title 5, but argued that permitting this project would bridge the divide between the interests of the property owner and the BOH. Mr. Deane stated that he understood from the last discussion with the BOH that by undertaking the modification he would be able to void the written agreement with the BOH for preapprovals of tenancy, and allow for full occupancy of the property. Mr. Grossman indicated that it was his understanding that it was the BOH's intent for Mr. Deane to apply for the modification as a safety measure to allow SnoWerks tenancy, and not to allow for full occupancy. Mr. Philippou clarified that it was the BOH's intent for Mr. Deane to apply for a permit for the modification with the goal of full tenancy by SnoWerks with its existing business model, suggested employees, and use of the remaining space as storage, and not for full occupancy by other tenants. Mr. Grossman advised that for permit approval, at minimum soil evaluation would be needed, and the plan would need to note the intent of the modification for whatever they are requesting and not for full occupancy. If the goal is full building occupancy, the owner will need to meet full compliance with Title 5. Mr. Philippou confirmed that Mr. Deane will not be able to get away from the BoH preapproval of tenants without restrictions on the use. Mr. Deane stated he thought that the modification would allow approval of all usages except for medical; Mr. Philippou stated that was not the BOH's intent in any way. Ms. Levison added that while she was not at the meeting where the suggested modification was discussed, her review of the Minutes is consistent with Mr. Philippou's statements. Mr. Grossman advised that the only path to full occupancy without restriction would be for the Septic Disposal System to meet full Code compliance. He advised Mr. Formato and Mr. Deane that the next steps in the review process would be to dig soil holes and conduct perc testing, and then apply the Title 5 flow chart. Mr. Grossman indicated that obtaining soil evaluation minimums of 2 feet is the only

path forward for consideration of the Snowerks tenancy. He further stated that if the soil test is consistent with those performed in the '80s, and the goal is to add a safety buffer for Snowerks to occupy the empty space, then perc testing won't be required. The BOH confirmed that if Snowerks were to vacate or fail to occupy as planned, then the flow of the replacement tenant would need to equal retail or less. Mr. Grossman confirmed that the potential occupancy of Coil Bros. does not factor into the decision as their occupancy has already been approved. Mr. Grossman agreed to work with Mr. Formato on his draft re-submittal, and confirmed that the soil testing needs to be performed prior to approval of the building permit.

c. SafeWell: Review of lab selection and results- Mr. Gaffney indicated he is looking for more clarification of the BOH's concerns regarding ETR. Mr. Grossman stated he will not accept results from any lab which states they are not testing according to DEP requirements, as ETR does, particularly without specifying in what ways they are noncompliant or which analytes. Mr. Philippou indicated that he spoke with MA DEP's Damon Gutterman, who agreed that ETR's MA certification has been revoked, and with Lisa Touet (who does inspections at ETR) who stated that they regularly use less than the required sample volume for coliform testing. Mr. Philippou stated that where there was a positive coliform result at 73 East Bare Hill in an untreated sample, he is reluctant to accept ETR's report. Mr. Gaffney noted ETR's certification was revoked in 2018, but the pending date keeps extending because of their ongoing appeals. Mr. Gaffney expressed frustration that he left the last BOH discussion believing SafeWell was approved to use ETR, and only received the letter indicating that the BOH would not accept ETR reports with the blanket disclaimer after 73 East Bare Hill was already sampled. Ms. Flynn noted that the effective date for SafeWell's approval to sample private wells in connection with home sales was February 18th, and 73 East Bare Hill Road was sampled prior to the effective date. Ms. McCarthy made the motion that the BOH does not accept ETR results with a blanket disclaimer that the tests were not performed in accordance with DEP requirements and will consider any results which specify the deviations; Ms. Levison seconded. A roll call vote was taken: all were in favor. Mr. Gaffney requested clarification on certain BOH requirements for sampling. Mr. Grossman indicated that raw samples must be taken and results must include gross alpha. He further explained that post treated samples must be taken with tests run to confirm that the treatment systems are functioning as designed for any exceedances and not for the entire testing requirements. The BOH members confirmed that the regulation does not specify whether it is the obligation of the seller or buyer to sample and report testing to the BOH. The BOH further confirmed that notification, remediation, and subsequent retesting is required for radon detected at 10,000 pCi/L. Lastly, Mr. Grossman confirmed that there is no requirement for testing for VOCs or quantity at the time of sale and transfer of private property.

d. Update COVID-19 response & messaging- Ms. McCarthy advised she is preparing a FAQ reflective of the afternoon's BOH meeting which solely addressed COVID-19. Ms. Flynn will assist by forwarding Ms. McCarthy the questions she noted.

e. Additional updates re PFAS testing in Harvard- Ms. Flynn advised that the letters encouraging non-responsive private well owners accept the Army's offer to sample will be mailed out tomorrow.

f. Update from Land Use Boards meeting- Ms. McCarthy and Mr. Grossman reported that LUB has not met since the last BOH meeting.

g. Update from the Transfer Station Committee- Mr. Philippou reported that the Transfer Station Committee has not met since the last BOH meeting.

h. Review Action Items- Action items from the last meeting were reviewed.

PERMITS

- Trash haulers- Ms. Flynn advised that the permit application packages of EL Harvey and Waste Management are now complete. Ms. Levison made a motion to issue permits to EL Harvey and Waste Management; Ms. McCarthy seconded. A roll call vote was taken: all were in favor.
- 15 Harris Lane- The BOH members considered the septic application package to install a new, separate tank to accommodate an in-law apartment, and issued the permit.
- Lot 2 Pinnacle Road- The BOH members considered the application for a transfer permit, and issued the permit.

MINUTES

The BOH members reviewed and amended the draft minutes of February 25, 2020. Ms. Levison made the motion to approve the minutes as amended; Mr. Philippou seconded. A roll call vote was taken: all were in favor.

ITEMS FOR NEXT AGENDA- Items for the next agenda were discussed.

ADJOURNMENT- Ms. Levison made a motion to adjourn at 8:54 p.m.; Mr. Philippou seconded. All were in favor.

Respectfully submitted,

Alison Flynn
Clerk

Referenced Documents:

- Agenda
- Draft minutes of 2/25/20
- Variance request letter, proposed plan and Local Upgrade Conditions Form for 16 Babbit Lane
- 4th Quarter invoice dated 3/2/20 from NABH
- 325 Ayer Road: Request for reconsideration of perc testing requirement
- 23 Lovers Lane Update of 3/9/20
- 73 East Bare Hill Road: Water quality results of 2/13/20
- BOH letter to SafeWell of 2/18/20
- Waste Management permit application package
- EL Harvey permit application package
- Septic permit application package for 15 Harris Lane

- Septic permit application package for Lot 2 Pinnacle Road