

**Scituate Board of Health Meeting
Monday, January 29, 2018
Scituate Selectman Hearing Room
6:00 P.M.**

MEMBERS PRESENT: Mr. Doug Whyte, Chairman
Mr. Russell Clark, BOH Member
Mr. Steve Pansey, BOH Member

OTHERS PRESENT: Ms. Jennifer Keefe, Director of Public Health
Ms. Joan Schmid, Administrative Assistant

6:00 MEETING CALLED TO ORDER/ACCEPTANCE OF AGENDA

Mr. Whyte called the meeting to order at 6:02 p.m.

Acceptance of the Agenda- A motion was made and seconded with all in favor of accepting the agenda.

SCHEDULED ITEMS

Discuss/Vote: Morse Engineering representing the homeowner's request for installation of a septic system requiring multiple local upgrades, 109 Glades Road

Mr. Greg Morse, civil engineer from Morse Engineering, attended the meeting on behalf of the property owner of 109 Glades Road. Mr. Morse stated that he is presenting a septic system repair design for an existing dwelling to include a new 1,500 gallon tank, distribution box, and leaching field. The property owner is requesting four local upgrades. There are no property line setback variances being requested. Mr. Morse stated that they are requesting local upgrades for the reduction in the setback between the slab foundation wall and the septic system from the required 10 feet to 7 feet for a one bedroom cottage; the reduction of the required separation of 5 feet to 4 feet between the bottom of the septic system and the groundwater table; one test pit instead of two test pits; and the reduction from the setback between the septic tank and the water line from the required 10 feet to 0 feet where these cross. Mr. Morse stated that the Conservation Commission has approved the design pending the Board of Health approval.

The Board asked Ms. Keefe about the regulation for two test holes in leaching areas. Ms. Keefe noted that it is not unusual to request an upgrade for these types of small lots. The Board asked Ms. Keefe if she was okay with the plan and she stated that all of her administrative comments have been addressed.

A motion was made and seconded with all in favor of accepting the following four local upgrades to the septic repair plan for 109 Glades Road: The use of one test hole in the disposal area; the reduction in setback between the septic tank and water line from the required 10 feet to 0 feet with the water line to be sleeved; the reduction in the required separation of 5 feet to 4 feet between the bottom of the SAS and groundwater; and the reduction in the setback between the slab foundation wall and the SAS from the required 10 feet to 7 feet.

Discuss/Vote: Septic System Non-compliance with 310 CMR 15.000, The State Environmental Code, Title 5 and 105 CMR 410.000, the Massachusetts State Sanitary Code, Chapter II; 87 Glades Road; Badore and Crary

Mr. Greg Morse, Morse Engineering, attended the meeting with Ms. Crary, the property owner of 87 Glades Road. Mr. Morse stated that there is a long history of an existing eight bedroom multi-apartment property.

He stated that several months ago the Board approved the installation of a 5,500 gallon tight tank in the back of property. Mr. Morse stated that Ms. Crary hired a contractor, who decided not to take the job, and then hired a second contractor, who started the installation and realized it was not feasible to install a 5,500 gallon tight tank. Mr. Morse revised the septic system plan in November 2017 and switched to a series of three smaller tight tanks. After that approval from the Board, the second contractor did not take the job.

Mr. Morse stated that a third contractor was hired, Peter Armstrong Construction, who has indicated that three tanks are not possible for installation because of the size of the lot. Mr. Morse stated that there have been a number of issues including relationships with abutting owners, with one owner making it clear that the contractor cannot go over the lot line during the installation which has put installers in a difficult situation. Mr. Morse said that Peter Armstrong has indicated that the single tank layout works better for the property and a new notification was needed to the abutter, since it is now 5 feet to the lot line. Mr. Morse stated that the size of the tight tank is smaller than the 4,500 gallons that is required. A 3,000 gallon tight tank is being requested, which is 340 % of the design flow instead of the required 500% of the design flow. Mr. Morse stated that this requires a public notification for a Title 5 variance and he will present the septic system design plan at the next meeting.

The Board asked why they were before the Board. Ms. Keefe stated that the septic system was due to be constructed by December. The Board gave the December deadline and it is now one month past the deadline for installation. Ms. Keefe stated that she reviewed with Mr. Morse the current status and also spoke with Peter Armstrong. Ms. Keefe stated that the deadline had come and gone and she wanted an update for the Board since the Board notified the owner in December of the deadline for installation. Mr. Morse is hopeful the next installation will be constructed. He also stated that he is very knowledgeable about septic systems and has seen several hundred septic systems installed but has never encountered these types of issues. Mr. Morse also claimed that Mr. Armstrong is confident he can do the installation. Mr. Morse needs a Title 5 variance so a public notification is needed prior to the next meeting on February 12, 2018. Ms. Keefe took Mr. Morse's copies of the new septic system design plan and stated she will date stamp January 30, 2018 for her administrative review prior to the February 12, 2018 meeting.

There was a motion made and seconded with all in favor of continuing until the February 12, 2018 meeting.

*Discuss/Vote: Required Septic System Operation and Maintenance Contract Non-compliance;
6 Emerson Street; Rafferty and Farnham*

The Board noted that the property owners were not in attendance. Ms. Keefe stated that she received a letter from Clearwater Recovery in August 2017 indicating that the operation and maintenance contract was suspended and repairs were necessary to the jet system in order to make it fully compliant and functional. She stated that she sent the owners letters on August 16, 2017 and December 11, 2017 and both of the letters were signed for by the owners with one of the letters identifying this would be discussed at tonight's Board meeting. Ms. Keefe has not heard from the owners. The Board asked if it is owner occupied or rented. Ms. Keefe stated that she is unaware but the letters were sent to the owners with a Brookline Massachusetts address and they have owned the property since 2004.

A motion was made and seconded with all in favor to have the property owner of the septic system serving the property located at 6 Emerson Street served with an order to 1) re-instate the required operation and maintenance contract for the system within 21 days of this hearing and provide a signed copy of the contract to the Board of Health office upon execution and 2) conduct the necessary repairs to the system within 45 days of this hearing. This order will document that failure to do so will result in a subsequent hearing before the Board of Health and may lead to enforcement, including determining that the system is failure and possible condemnation of the property.

Discuss/Vote: Non-compliance for Failed Septic System; 41 Utility Road; McDonough

Susan and Thomas McDonough attended the meeting. The Board stated that they want an update. Mr. McDonough stated that they had the system pumped in December by Peter Spencer. He also spoke to Andrew Spath, who is going to look at the distribution box in depth. Mr. McDonough stated that he did not think the initial Title 5 inspection was accurate by the Title 5 inspector who dug two holes. The Board asked Mr. McDonough the name of the inspector and Mr. McDonough was not sure. Ms. Keefe stated that the Title 5 inspector was Eric Mueller from Southeast Septic Services. Ms. Keefe stated that Andrew Spath has been a licensed septic installer in the past but not currently licensed in 2018 but can come into the office to complete the paperwork. The Board asked if the McDonoughs had a date for Andrew Spath to come out to the home.

Ms. McDonough stated that they are going to move forward with the betterment program for the Town. She stated that they missed the deadline for the Board of Selectman to add the warrant to the spring Town Meeting for the betterment program, and they are working on getting it to the November special Town Meeting. The Board noted that again it is another year to wait for them to install a new system and it has already been 4 years. Ms. Keefe stated that it will be 4 years this spring, from March 2014. The Board stated it will be going into the fifth year.

Mr. Clark stated that he followed up and spoke with Mass DEP and he did not interpret the state regulatory correctly. The Board asked if the McDonoughs had received any quotes for installing a new system so they are aware of the cost associated with the system. Mr. McDonough stated that he wanted to have Phil Spath from Spath Engineering and Andrew Spath of SitePro, to re-evaluate the system but he has no date as of today. Ms. Keefe asked the McDonoughs if they are going to ask them to re-evaluate and potentially do another Title 5 inspection or what it would take to put in a new system and provide cost estimates. Mr. McDonough stated that they are asking for a little bit of both and to find out what is the least expensive way to be compliant because of their financial situation.

Mr. McDonough stated that he does not think that the inspection that he witnessed four years ago can be an accurate Title 5 test of the septic system. The Board stated that the system could be in worse condition now than it was four years ago. Ms. McDonough noted the system is not bubbling over, and the ground is not broken, and was pumped out to the bottom. The Board stated that the bubbling over is serious; however, this still needs to be done and they have had four years. Ms. McDonough noted that the previous agenda item discussed tonight had a much longer time, eighteen years. The Board noted that it is on a case by case situation and the current health agent is looking back into old records, and following up. The Board also noted that the McDonoughs coming into to look at their septic system file which alerted the health agent to the issue that started with the former health agent. Ms. McDonough noted that there are others but she was just looking at the minutes and this person had eighteen years and they are only looking for six months. Ms. McDonough does not think the Board of Selectman will say no to the betterment program. The Board noted that the betterment program is not six months away and it will be at least ten months away if it passes at the Town Meeting in November. The Board also asked the McDonoughs how sure are they that the State can get the program going right away and get the money to the Town. Ms. Keefe stated that it will also take several months after the Town Meeting for collaboration with approximately four Town departments for this voluntary program to be implemented and coordinate with the State. Mr. McDonough stated that they are willing to pump the system twice a year, which is not bubbling over and broken. Ms. McDonough noted that the State betterment program is all online. The Board noted that the betterment program could be another year to a year in a half away and asked what the parameters are for the betterment program. Ms. McDonough stated that the owner pays 2% to 5% interest back to the Town. Mr. McDonough stated that the Town makes money on the betterment. Ms. Keefe stated this does not account for the increased work load for many departments. Ms. McDonough knows that but thinks it is a necessary thing for the betterment of the Town. She stated that in her neighborhood there are elderly with reverse mortgages, who need this betterment program. Mr. Clark stated that the Board members are volunteers

and they do not make any money for being on the Board and do not see a penny from the Town. Ms. McDonough stated she knows but she is willing to help out in any way she can for the betterment program.

Ms. Keefe stated that they have been struggling with this case for more than two years and she has asked on a number of occasions if the McDonoughs have contacted any bank or financial institution for loans.

Ms. McDonough stated that in October they told the Board they tried and that they make too much money for the State grant program. The Board noted that they cannot even go to a bank, since they have not done any due diligence to determine how much money they even need for a septic system and don't even know what it will cost. The Board stated that their frustration is that there have been meetings; no shows from the McDonoughs, and then when the McDonoughs did attend the meeting the only thing they discussed with the Board is the betterment State program and getting it pumped once a year. The Board also stated that they never gave the Board any information on finding out about a new septic system and if they called any engineers or installers. Ms. McDonough asked the Board how much it costs for a septic system because she has no idea. The Board stated that is the whole point; that they need to find out the cost. The Board stated that is an arrangement with an owner and a private company and the McDonoughs just need to show good faith and make calls to find out the cost so they have a concrete dollar amount and then they can go and ask for money for the septic system. Mr. McDonough stated he called Morse Engineering at the time of the Title 5 failure and they were setting up plans and then things changed because of a family situation.

Mr. McDonough noted that in the Board meeting minutes from January 9, 2017 it stated that Title 5 inspections that fail are not to be pursued but is documented in the file if not a health issue. Ms. Keefe stated she cannot tell what the minutes are referring to off the top of her head, but noted that Title 5 is very clear and she has had several conversations with the State and Mr. Clark has also had conversations with the State and the State provides two years from the time the failed system is identified. Mr. McDonough asked why then does a failed system go on for eighteen years. Ms. Keefe stated it is because she was not aware, and when she does become aware of a failed system she becomes actively engaged. Ms. Keefe also stated that they come before the Board like the McDonoughs. Ms. McDonough left the meeting.

The Board stated that the McDonoughs need to talk to engineers and keep moving forward. They have never heard of a Title 5 re-inspection nor have they heard of a Title 5 inspection being overturned. Mr. McDonough stated he is not looking to have the Title 5 overturned. Mr. McDonough stated that in speaking with the inspector it may just be something wrong with the distribution box or it may need an upgrade and he was not sure until the inspector got physically in the ground and looked at the system. The Board stated that is a positive sign moving forward and maybe it can be repaired but the Board does not know. Mr. McDonough stated that they know they are going to repair or replace the system. He also stated it is a cesspool and has a 1,000 gallon tank. Ms. Keefe stated that the cesspool is acting as the leaching field and cesspools cannot be repaired and they have to be upgraded. Mr. McDonough stated that he is not an engineer but tried to describe his septic system. He stated the system comes out from the front of the home towards the driveway and then to a distribution box. The Board asked if it is all in front of his home and Mr. McDonough stated that it is in front of the home. He stated there is a 500 gallon tank in one spot and a 1,000 gallon in another spot in the front. Mr. McDonough stated that the Title 5 inspector put a shovel in the ground and then wrote his report. Ms. Keefe pulled out the sketches of the septic system. Mr. McDonough said it was the original system from when the house was built and the previous owner did something to upgrade it before they bought the house. Mr. McDonough noted that before he bought the home, the previous owners put in a new tank off of the original tank. Ms. Keefe looked at the sketch in the file and stated that there is a tank, a trench and a leaching pit.

The Board asked Mr. McDonough what he is asking from the Board. Mr. McDonough stated that he is asking for time to move forward and he understands the Board's frustration. The Board stated it is not the level of frustration; it is about doing the right thing and that Ms. Keefe and the Board are not held liable with the State regulations even though the McDonoughs state they have financial hardships. Mr. McDonough stated that he understands. The Board stated that it is part of owning a home and an expensive aspect of owning a property. Mr. McDonough stated that it is also the loss of a loved one when this all started and they are trying to move

forward. Mr. McDonough stated that other owners have had eighteen years to repair their system. The Board asked Mr. McDonough not to bring up other cases. Mr. McDonough asked why not and the Board stated because it should have not gone eighteen years and the new health agent is following up on them.

The Board stated that they have been working on this case with the McDonoughs and they have had no shows to meetings. The Board wants to know they are working on it in good faith. Mr. McDonough stated that he did not come to the meeting as an attempt to just blow it off. He stated that it was not done on purpose and it was not his intent to not show up. He also stated that they have other things going on and some letters that were mailed he did not get. Mr. McDonough stated that he did get the constable hand delivered letter. He also stated that his wife is a paralegal and has done a lot of research; and she has offered to volunteer her time to move the betterment program forward for Town Meeting. He also stated that if the betterment program does not work out in the end, then the Board can condemn the home or do what they have to do but he does not think it is necessary; since the system is working and the contractor said it cleaned up nicely. Mr. McDonough wants to wait for the betterment program to get put in place and they will pump the system twice a year until they can put in the new septic system. The problem now is financing and he wants to try for the betterment program to get it done.

The Board stated that there are other people that need to be in compliance and what the Board does for one they do for all and this sets an awful precedence. Mr. McDonough noted that it is in the minutes if someone was going to sell their house and chose not to sell. The Board stated that case could have been something totally different and not festering for 4 years and the McDonoughs are asking the State to consider five years when the State compliance requirement is two years. Mr. McDonough stated he does not think it is festering if they are moving forward in a positive direction and he stated it is festering if he is not doing anything. He noted that they are being proactive and positive to get it done.

The Board stated that the only thing they have heard from the McDonoughs for a septic system fix is the betterment program. Mr. McDonough noted not necessarily and that it could just need a repair. The Board stated that the McDonoughs need to move forward and look at pricing, since they do not know if the betterment program will be approved at Town Meeting in November. Mr. McDonough stated that other towns have this program in place. The Board cannot predict what happens at Town Meeting. The Board stated that this should not have come to a hearing and noted that Greg Morse, engineer from Morse Engineering was sitting in the room at tonight's meeting and the McDonoughs could have had a conversation with him and asked him to come out and look at their system. Mr. McDonough asked that when he had the Title 5 inspection and they were going to sell the home, he reached out to Morse Engineering and that was the direction they were going in for the septic system. Mr. McDonough stated that someone passed away and they did not put their home on the market. He understands the Board's letters and it was not his intent to not appear at the meeting. Mr. Clark stated it was probably his words in the minutes and it is his own personal opinion. Mr. Clark stated that if the State law states something, then the Board needs to abide by it. Mr. Clark stated that was why he made the telephone call to the Department of Environmental Protection (Mass DEP). Mr. Clark stated that whether or not it is his personal opinion, it does not matter. When a Title 5 inspection does not pass, the State gives a certain amount of time to fix it. Mr. Clark reiterated what was his personal opinion. Mr. Clark also stated that it is too late and that the Title 5 inspection did not pass and it is the letter of the law that the Board has to do what they need to do.

The Board stated that the McDonoughs had the Title 5 inspection and they knew that it failed but they chose to put it on the back burner. The Board asked what Mr. McDonough was looking for when he came into the office to look at the septic system file. Mr. McDonough stated he came in looking for his septic records several months after the death in his family because he received a certified letter and he was looking for information. The Board stated that Ms. Keefe did not send a certified letter until after Mr. McDonough came in to look at his file. Ms. Keefe stated that at the time Mr. McDonough came in to ask for the file, she was unaware of a failed Title 5 inspection. At that time, Ms. Keefe told Mr. McDonough he had a failed Title 5 inspection. Mr. McDonough stated to Ms. Keefe at that time that he did and that that it wasn't going to go well at home that this

was discovered in the file. Ms. Keefe stated that she sent a letter to the McDonoughs. Mr. McDonough stated that he received a letter from Ms. Sullivan before he came into the office. Ms. Keefe stated that the McDonoughs did receive a letter from Ms. Sullivan in 2014 after she received the Title 5 inspection report. Ms. Keefe stated that she picked up the case to follow through with the failed Title 5 inspection after Mr. McDonough came into the office to look at his file.

The Board stated that they need to make a decision. The Board asked Mr. McDonough if Mr. Spath could come out in the next three weeks since the McDonoughs do not even know what is going on or what the cost will be or if there are any payment plans with a private company or ask for a payment plan. The McDonoughs should explain their situation with these companies.

Mr. McDonough asked the Board what if they list their house for sale. The Board stated that when the Title 5 inspection does not pass, the septic system needs to be repaired for the new seller. Ms. Keefe noted that some banks allow for some money to be put aside in escrow to give time for new owners to get the new system installed.

Mr. McDonough wanted it noted to the Board that within the past two years, his family has been involved in a Federal lawsuit that is completed and it took a lot out of him and his family. He also stated that he wanted the Board to add everything up that his family has been through. The Board noted that they empathize with the family. Mr. McDonough stated that he is not looking for empathy but is looking for time to move in the right direction. He stated that, in time, 41 Utility Road eventually will have a new septic system and it will not be five, ten or eighteen years.

The Board asked Mr. McDonough if he has a date for Andrew Spath to come to the home and look at the system. Mr. McDonough said he does not but will call Andrew Spath tomorrow to come out. Ms. Keefe reiterated that Andrew Spath has been a licensed installer in the past but not an engineer. She believes that the McDonoughs would need an engineer, like Phil Spath as they mentioned or some other engineer. Ms. Keefe stated that Phil Spath is Andrew Spath's father and he was in the office on Friday making copies of the file and doing some research, and she assumes in anticipation of the Board meeting. Ms. Keefe stated that Andrew Spath is not a licensed inspector but he was a licensed septic installer in the past and can give all the necessary paperwork to complete for his 2018 installer permit. Ms. Keefe also stated that the system needs to be installed by a Scituate licensed installer.

The Board wants to move as fast as possible. The Board asked Mr. McDonough to call Mr. Spath to come out this week or next week. The Board stated that the McDonoughs need to have a path to move forward and want an update in one month. Mr. McDonough asked what a Title 5 inspection entails. Mr. Clark stated that the inspector would open the tanks, measure the liquids in them, look at the current septic plans and sometimes dig an observation hole and see the depth of groundwater. Mr. McDonough stated that never happened on his property. He stated that the Title 5 inspector put a shovel in the ground three times. Mr. Clark stated that he never heard of an inspection being disputed and he does not know. Mr. Pansey stated it is up to the McDonoughs if they think it was not done correctly, and the McDonoughs should have brought that up in the past, then they can choose to pay for another Title 5 inspection and assume that extra cost. However, he stated that it could be a gamble and the McDonoughs are advised that if the inspector finds a significant problem then they are back in the same boat. Mr. Clark stated that an engineer could also look at a design that will work and if it will need a percolation test and the McDonoughs have to pay that fee. Mr. McDonough said he would rather pay the extra \$400-\$500 to have it re-inspected then to just say it failed. The Board said if they do a re-inspection they can also conduct percolation tests and look at a design on site at the time of the inspection. The Board stated if it does pass, then they will not need a percolation test. Mr. McDonough asked the Board what the fees are for percolation tests. Ms. Keefe stated that the fee is \$320.00 that includes a \$40 nonrefundable fee and \$70.00 per hour for a percolation witness for four hours. Ms. Keefe stated that Mr. Phil Spath is a licensed Title 5 inspector and also an engineer and can do the percolation test holes and come up with a septic design if

that is their choice. Ms. Keefe reiterated that Andrew Spath has been a licensed installer in the past and will need to complete the paperwork to be licensed as a 2018 installer to install a septic system.

The Board noted that the property owners need to come forth and show good faith to the Board with their plan, pricing and what it entails for repair and/or installation of the septic system.

There was a motion made and seconded with all in favor to continue 41 Utility Road until the February 26, 2018 meeting so the owners can conduct a re-inspection of the Title 5 and if the Title 5 inspection fails again then percolation tests are performed for repair of the system and include some septic system plans.

NEW BUSINESS

Director's Report

Ms. Keefe stated the first Winter Farmer's Market had eleven inspections for temporary food permit holders with the potential to be twelve permit holders.

There is one new housing case for a total of ten cases.

There is an unchanged number of nuisance cases, which is two.

The office is currently reviewing septic system design plans received from January 9 through January 17, 2018.

There is one outstanding septic system operation and maintenance repair, besides the one that was before the Board at tonight's meeting.

There are four outstanding operation and maintenance contracts, with one new and one that has been addressed, since the last report.

There are currently fifteen known septic systems in failure or conditionally passing. Currently, three of them have been installed and the office is waiting for as-built plans, etc. to issue the certificates of compliance. Then the number will then be down to twelve. An installer came in today to get a copy of an approved plan for an additional failed system.

Ms. Keefe informed the Board that there are no longer any flu shots available.

OLD BUSINESS

None

OTHER BUSINESS

There were no administrative invoices for Board approval.

A motion was made and seconded with all in favor of accepting the meeting minutes for November 13, 2017, November 27, 2017, December 11, 2017, December 18, 2017, and January 3, 2018

ADJOURNMENT

A motion was made and seconded with all in favor at 7:10pm.

LIST OF DOCUMENTS PRESENTED:

- 1) A copy of the Clearwater Recovery letter to Ms. Michele Rafferty, 6 Emerson Street, dated August 1, 2017
- 2) A copy of the letter from Jennifer Keefe to Ms. Michele Rafferty and Ms. Jessica Farnham dated August 16, 2017
- 3) A copy of the letter from Jennifer Keefe to Ms. Michele Rafferty and Ms. Jessica Farnham dated December 11, 2017