

**Scituate Board of Health Meeting
Monday, November 13, 2017, 2017
Scituate Selectman Hearing Room
6:00 P.M.**

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

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

6:00 p.m. 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:

SCHEDULED ITEMS

Discuss/Vote: Septic System Design Hearing - 87 Glades Road - Morse Engineering representing home owner request for installation of a septic system requiring local upgrades/variances.

Mr. Gregory Morse, from Morse Engineering, and Ms. Doris Crary, the property owner of 87 Glades Road, attended the Board meeting. Ms. Keefe made note that the abutters of the property were notified of the meeting and the green cards were given to Ms. Keefe prior to the start of the meeting.

Mr. Morse noted that 87 Glades Road was before the Board at the August 7, 2017 meeting. At that time, the property owner requested a variance to reduce the setback between the tight tank (5,500 gallon) and the property line and the Board approved the variance. The owners hired an installer, was unable to bring the 5,500 gallon tight tank into the space due to the tight property lines. Thus, Mr. Morse redesigned the system to include two 1,500 gallon tight tanks that can be brought on the property to be used with the existing 1,500 gallon tank. Mr. Morse noted that the newly proposed two small tanks, in combination with the existing tank, will bring the property to a 4,500 gallon capacity. There is a required 4400 gallon capacity and the new design is proposed for a 4500 gallon capacity for the property. Mr. Morse noted that the proposed setback to the lot line is the same as the previous plan at five feet and was preciously permitted and approved by Board at the August 7, 2017 meeting. He also noted that the tanks now will be further away from the abutter to the north, which needs approval from the Board. The Board made note that the previous plan listed eight bedrooms and the new plan indicates the structure has ten bedrooms. Mr. Morse indicated that it was originally going to include the two bedroom home next door; however, he will update the plan to reflect the eight bedrooms. Ms. Keefe asked who owns the right of way. Ms. Crary noted that she owns the entire ten foot right of way. Ms. Keefe noted that she only has small administrative comments that she will give to Mr. Morse on the septic system plan that was submitted. The Board asked if there were any abutters in attendance and there were none present.

A motion was made and seconded with all in favor to approved the septic repair plan with the following variance requested: Reduction in the required setback between the tight tank and the property line from 10 feet to a minimum of 5.0 feet, as identified on the plan dated 10/25/2017 and pending the engineer's satisfactory revisions to the plan to address any Board of Health administrative review comments. The system needs to be installed and the certificate of compliance issued within 30 days of the meeting.

Ms. Keefe's noted that the Conservation Commission has already extended their order of conditions, so there is no wait to install the new septic system.

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

Mr. Thomas McDonough and Ms. Susan McDonough, the property owners of 41 Utility Road, attended the meeting. Ms. Keefe made note that the Title 5 inspection report dated March 27, 2014 for 41 Utility Road indicated that the septic system was in failure for multiple reasons. The Title 5 report stated "backup of sewage into facility or system component due to overloaded SAS or cesspool; Static liquid level in the distribution box above outlet invert due to an overloaded or clogged SAS or cesspool; liquid depth in cesspool is less than 6 inches below invert or available volume was less than ½ day flow; and any portion of the SAS, cesspool or privy is below high ground water elevation."

Ms. Keefe noted that the previous Scituate Health Agent sent the homeowners a letter dated April 7, 2014, which was signed for a couple of days later ordering the septic system to be upgraded within a year. Ms. Keefe noted that the upgrade did not occur and she sent subsequent letters dated June 21, 2016 and August 22, 2016 reminding the homeowners of the required septic system upgrade. Ms. Keefe served the homeowners by constable with a letter dated August 21, 2017 informing the homeowners that if the Board of Health did not receive a percolation test application within 14 days of receipt of the letter, then the matter will be discussed at the October 16, 2017 Board of Health Meeting. Ms. Keefe spoke to Mr. McDonough about potential pumping of the septic system as temporary measure. The owners did not attend the October 16, 2017 Board of Health meeting. Ms. Keefe sent a letter dated October 17, 2017 informing the homeowners that their attendance was expected at the November 13, 2017 meeting.

Mr. McDonough apologized to the Board for not attending the first meeting and indicated that it was not done intentionally. He indicated that they had a family situation and they thought they would have to move which was why they had a Title 5 inspection completed in 2014. Subsequently, there was a death in the family and they did not have to move. Mr. McDonough noted that it was put on the back burner. He stated that they currently have three children in college and have no money for a septic system, as he is involved in a federal lawsuit. Ms. McDonough reiterated that they have no financial means to install a septic system.

The Board asked if they have been pumping the system. Mr. McDonough stated that he has not been pumping the system. Mr. McDonough asked Ms. Keefe if there was sewage in the home. Ms. Keefe stated that she was quoting the 2014 Title 5 inspection report. Mr. McDonough found it hard to believe there was a backup identified since he noted that the inspector was at the property for 25 minutes and dug three holes in the front yard and there was no backup of sewage in the home.

Ms. Keefe read the specific criteria of the Title 5 inspection report quoting "backup of sewage into facility or system component due to overloaded SAS or cesspool; back up of sewage into the facility or system component due to an overloaded or clogged to cesspool." Mr. McDonough noted that the rear system is for the laundry and another was located in the front of the home and was working with no problem. Mr. Clark noted that usually the inspector will open the cover of the tank or distribution box and asked if the inspector pointed it out. Mr. McDonough said he was with the inspector and the inspector did not point it out to him. Mr. Clark noted that the tank allows solids to settle with a scum layer on top, and a liquid layer underneath. The effluent then goes out to the distribution box and the Title 5 states that the liquid is above the distribution box, which means that the water is not dropping down enough and the liquid in the cesspool is above the pipe in the cesspool. The report therefore indicates that the system fails by criteria but the owners may not see the failure. Mr. Clark said it may not be coming out of the ground and if it was it becomes a health issue. Mr. McDonough noted that the system comes out the front from the home and runs out to the driveway to a 1,000 tank. He did not know why the Title 5 inspector did not look at the tank. Mr. Clark noted that they usually will dig an observation pit to determine depth to groundwater and that is another reason for failure.

He also noted that a cesspool should be 3-4 feet above the groundwater so the effluent flows through earth before it gets out to the drinking water supply and this property is close to a Town well. Ms. Keefe noted it fails for four reasons.

Mr. McDonough indicated that he is not contesting the failure and understands Title 5. He also noted that if any of his neighbors were going to move they would have to put in a new septic system. One of his neighbors on Fairview behind him had to put in a new septic system. The inspector told him it would be an ideal spot for a new system but he indicated it is a financial issue with no means to do it.

Ms. Keefe noted that the system is sitting in groundwater and, therefore, effluent is going directly into the groundwater with no treatment. Mr. McDonough noted that it was once a cesspool but the previous owners put a tank off the cesspool to increase capacity when they added more bedrooms. The Board asked Ms. Keefe if it needs a fully compliant system. Ms. Keefe confirmed that is the case. She also noted that a cesspool cannot be upgraded as such, meaning a new system was needed. She further confirmed that there is no Town sewer in that area. The Board suggested possibly doing another Title 5 inspection. Ms. Keefe noted that it would not help the owners by spending the money to do another Title 5 when it will still show failure. The Board suggested that the owners pump it once or twice a year and see where they are in one year. Ms. Keefe noted that there are other septic systems in failure in the Town and currently there are sixteen known septic systems in failure. She also noted that all owners are required to upgrade systems and are typically given one year to put in a compliant septic system. This property had a Title 5 three years ago and no new septic system has been installed. Ms. Keefe also noted that, although there are unexpected home issues, there are fifteen other homes that could be saying they too are in financial hardship that could lead to long term septic systems in failure. The Board understood and noted that this property has failed on paper. This puts the Board in a difficult position. The Board asked the owners when they had it pumped last. Mr. McDonough noted that they have not pumped it since the inspection in 2014. The Board asked how many people are living in the home. Mr. McDonough said that there are two in college and one of their children is at home, so there are only three of them living in the home. He also noted that sometimes the other two are home. Mr. McDonough noted that the laundry and kitchen sink goes into another tank in the back of the property which was not inspected. The Board noted that it is good maintenance to have it pumped.

The Board would like to have it immediately pumped and again in six months and have the owners before the Board again in one year. The Board repeated that this has been going on for three years, an issue, and there is no plan in place to fix it. The Board also noted that the owners have not tried to get it pumped or made an effort to get an estimate to fix it in three years. The Board understands the financial issues but if the owners had taken care of it three years ago it would have been less expensive than it would be today to have it fixed. Mr. McDonough agreed but it was just the circumstances in his life that prevented them from coming up with thirty thousand dollars. He also indicated that he is not opposed to a "drop dead date" and hopefully they will have the means to do it before that date.

The Board noted that if there is breakout then it is a catastrophic failure and that it would have to be fixed immediately. The Board reminded the owners that they can condemn the home and it is something they do not want to do.

Ms. Keefe reminded the Board, with all due respect to the owner's situation, it is part of her job to advocate that the State regulations be enforced but that the Board makes the decision. She noted that Title 5 is very clear. The homeowners have two years to upgrade the septic system and currently it is at the three year mark. If the Board agrees to let it go on indefinitely, then the Board will not be meeting the state regulations and enforcing the State regulation.

Mr. McDonough noted that he does not agree that it will be indefinitely. Ms. Keefe has not heard any date of installation and it is her concern that it is three years after the date of the inspection with effort initiated to fixing the septic system. She understands the unexpected expense and it is her job to remind the Board of the

regulations. Mr. McDonough noted that it is out of his control. Ms. McDonough asked the Board what date they are looking to have the septic system installed. The Board noted that the Title 5 regulations dictate and the state has a maximum of two years and they took an oath to uphold the State laws. The Board does not have the power to go against State regulations.

The Board wants to revisit in one month, have the owners get the system pumped now, and Ms. Keefe will do some research Title 5 to see if there is anything that can be done under extenuating circumstances. Ms. Keefe noted that the meeting in one month would be on December 11, 2017, at 6:00pm at the WPA Building in North Scituate. Ms. Keefe informed the property owners that she has a list of pump and haulers and the list is also on the Board of Health website. Ms. Keefe gave the McDonoughs the information needed for the MassDEP Southeast Region, Mr. Brett Rowe. Ms. Keefe noted that she speaks with Martha Sullivan in that office. Ms. Keefe gave the owners the MassDEP telephone numbers and she also noted that sometimes there maybe funding available. Ms. Keefe informed the owners that she can give the owners the Title 5 website address.

A motion was made and seconded with all in favor to continue in one month at the December 11, 2017 meeting, the property owners will have the system pumped and the owners are to bring the pumping records with them to the meeting on December 11, 2017.

*Discuss/Vote: Required Septic System Operation and Maintenance Contract Non Compliance;
Champa; 142 Tilden Road*

Ms. Keefe identified that the owners have not attended and this was the first time they were to be before the Board. Ms. Keefe provided the background. The Board of Health was notified in August that the owners chose not to renew their operation and maintenance septic system contract as of April 2017. Ms. Keefe sent the owners a letter on August 17, 2017 that an operation and maintenance contract is required. The property owners did not sign for that registered letter. Ms. Keefe had a constable serve the property owners on October 17, 2017 with a letter that indicated the owners must have a new operation and maintenance contract by November 6, 2017 or the Board will discuss the matter at the meeting on November 13, 2017. Ms. Keefe noted that there has been no documentation received that they are in compliance.

The Board asked Ms. Keefe for her recommendation. Ms. Keefe recommended having the property owner served with a letter informing them that they need to reinstate the operation and maintenance contract in 21 days.

A motion was made and seconded with all in favor to have the owner served with an order to reinstate 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 that failure to do so will result in a subsequent hearing before the Board of Health and may lead to enforcement, including possible condemnation of the property.

NEW BUSINESS

Ms. Keefe gave the Director's report to the Board.

Flu clinics are scheduled on November 16th 9:00am-11:30am and November 18th 12:00pm-2:00pm at Town Hall.

The 2018 permitting process is ongoing. Today is the deadline to submit 2018 food establishment permit application packages. There are ninety-four food establishments and of those, sixteen have not submitted their applications. There are thirteen incomplete packages received. The tobacco permit application deadline is on

Wednesday, November, 15th. There are three outstanding tobacco permit application packages not received. The pump and haul and rubbish permit need to be issued by the end of the year. The office is currently making telephone calls and sending email reminders to get applications submitted.

There are nine open housing cases with no new cases. There are four nuisance cases with one that was closed and one that is new. There is one owner that is not responding to Ms. Keefe's letters and for the first time she may have to start instituting fines.

She is keeping track of the required documentation for five environmental releases. There are two septic systems with operation & maintenance repair requirements. There is one that was to go before the Board at the last meeting and the owners indicated that they were going to take care of it. The office has not received any documentation that the repairs have occurred. Ms. Keefe will continue to monitor and if necessary bring it back before the Board. Ms. Keefe is working with the service provider on the other property.

There are three operation and maintenance contracts that have been renewed. As of last week, there were six more letters being sent regarding contracts that have not been renewed.

There are eighteen septic systems in failure with one that conditionally passed, with four septic plans submitted. There is one septic system that has been installed and the owner has applied for the certificate of compliance.

There is a winter farmer's market that will be held at St Luke's twice a month from the last weekend in January until April. This will add permitting & inspection work to the office. Ms. Keefe noted that between October 24th and October 31st, the food inspector conducted twenty-three food inspections, with just two re-inspections. The critical violations include, dirty meat slicer; food not labeled, covered, dated or separated; dishwashers not sanitizing; and food in the temperature danger zone.

OLD BUSINESS

None

OTHER BUSINESS

The Board reviewed and signed the administrative invoices for approval.

ADJOURNMENT

A motion was made and seconded with all in favor at 6:49pm.

LIST OF DOCUMENTS PRESENTED:

- 1) Title 5 Inspection Report March 27, 2014 for 41 Utility Road.
- 2) Copy of letter to Susan and Thomas McDonough, 41 Utility Road dated April 7, 2014.
- 3) Copy of letter to Susan and Thomas McDonough, 41 Utility Road dated June 21, 2016
- 4) Copy of letter to Susan and Thomas McDonough, 41 Utility Road dated August 22, 2016
- 5) Copy of letter to Susan and Thomas McDonough, 41 Utility Road dated August 21, 2017
- 6) Copy of letter to Susan and Thomas McDonough, 41 Utility Road dated October 17, 2017
- 7) Copy of October 18, 2017 signed attestation of hand served letter dated October 17, 2017 for Susan and Thomas McDonough, 41 Utility Road
- 8) Copy of letter to Ms. Stephanie Champa, 142 Tilden Road dated August 16, 2017
- 9) Copy of letter to Ms. Stephanie Champa, 142 Tilden Road dated October 17, 2017

10) Copy of October 18, 2017 signed attestation of hand served letter dated October 17, 2017 for Ms. Stephanie Champa, 142 Tilden Road