

## Meeting Minutes

September 9, 2002

### **Board of Health Members Present:**

Dr. Susan Horowitz, Chairman; Jodi Deuger, Matthew Waterman

### **Others Present:**

Robert K. Overton, R.S.; Debra Butcher

### **Meeting Called to Order:**

Chairman Horowitz called the meeting to order at 7:02 pm.

### **Minutes:**

Regular Session July 22, 2002 – Chairman Horowitz made a correction on “Gibbet Hill” to read “Gibbet Hill Orchard”. Member Jodi Deuger made a motion to approve the minutes with the amendment. The motion carried unanimously.

Special Session August 19, 2002 – Member Jodi Deuger made a motion to approve the minutes of Special Session August 19 2002 as written. The motion carried unanimously.

### **Permits Signed/Approved:**

- \*Whiley Road, Lot 3B; Robert Lacombe
- \*Whiley Road, Lot 4B; Robert Lacombe
- \*Whiley Road, Lot 5B; Robert Lacombe
- \*Whiley Road, Lot 1; Robert Lacombe
- \*North Street, Lot A; George Tully
- \*Hemlock Road, Lot 1; Raymond Paczkowski
- \*Ridgewood Road, William Carson
- \*Lost Lake Drive, Lot 1; B-Squared Corp.
- \*305 Townsend Road; West Groton Water Supply District
- \*202-204 Hayden Road; Diana Joyce
- \*73 Chestnut Hill Road; William Morton (redesign)

### **Bills Signed/Approved:**

- \*Covanta-\$8809.37
- \*Walnut Printing Specialties (FY04 stickers)-\$604.00
- \*Groton Electric Light Dept.-\$8.42
- \*Groton Electric Light Dept.-\$35.28
- \*Groton Electric Light Dept.-\$43.61
- \*Moison Ace Hardware-\$201.17
- \*Tank Recyclers-\$3.00
- \*Belmont Springs-\$27.00
- \*Groton Herald-\$78.75
- \*Superior Special Services, Inc.-\$1761.45
- \*ZEP-\$219.73
- \*CTC Communications (BOH)-\$48.42
- \*CTC Communications (SW)-\$30.47
- \*Buckley Energy-\$604.69

**Recycling Committee:** Present: Michael Brady, Tessa David & Bruce Dubey; Irene Congdon, Massachusetts Recycling Incentive Program

Mr. Brady presented contract information to the Board on Hazardous Waste Day in Groton and HHW Reciprocal Days in other communities. Mr. Brady explained how the reciprocal program works and what fees would be charged. He stated that the program will become effective next year and Groton would be one of three towns participating.

After a brief discussion, Member Matthew Waterman made a motion to approve the contract with Clean Harbors and give Chairman Horowitz authorization to sign the contract on behalf of the Board. The motion was seconded by Member Jodi Deuger and approved unanimously.

**27 Whitney Pond Road:** Present: Kevin Armstrong, Howe Surveying; Robert Moore, owner; abutters

Mr. Armstrong was present and requested the following variance. He provided copies of certified mailing receipts of abutters for the record.

Groton's Well Regulation 5.0 - Well location from well to property line – 50 feet is required; 43 feet is provided.

Mr. Armstrong stated that a proposed well is to be constructed to serve this house.

Chairman Horowitz asked Mr. Overton for his comments. Mr. Overton stated that a variance was given to an abutting property (#22) and caused this lot to have a variance needed. He had no objection to the approval of this variance.

Mr. Lewis, abutter, stated that he had concerns about the property line offsets since he was a direct abutter.

Member Jodi Deuger asked if there was any other relief here. Mr. Armstrong stated "dimensionally no". She asked if town water was available. Mr. Armstrong stated that town water was approximately ½ mile away.

After a brief discussion, the Board made no decision until further review with the Water Department and a site walk was completed.

**73 Chestnut Hill Road:** Present: Russ Wilson, R.Wilson & Associates; Mr. & Mrs. Morton

Mr. Wilson stated that an approved septic system construction permit was issued for an upgrade was issued to the Morton's on August 19, 2002. However, after careful review of the site conditions, the potential buyer of the property felt the septic design would destroy the top of the hill which consisted of approximately 40 fruit trees. The area consists of approximately 2.9 acres. Mr. Morton, property owner, presented the Board with pictures of the area proposed for the system and how the fruit trees would be impacted. He also stated that because of the contours of the land, it would cost an additional \$10,000 to retain a wall for the septic system.

Mr. Wilson requested that the Board approve the following variance:

Groton Board of Health's Local Regulation:

Section I.A.5 – Minimum of five (5) feet of pervious material between the bottom of the leaching facility and the ground water elevation and/or any impervious layer. The offset above ground water may be increased depending upon climatic and/or site conditions encountered. **Five (5) feet required; four (4) feet provided.**

Member Jodi Deuger asked if this was the only requested variance. Mr. Wilson stated "yes". Chairman Horowitz asked if Mr. Overton had any concerns. Mr. Overton stated that there was currently an approved design plan on record. He stated that the plan on record, if constructed, would eliminate approximately 2/3 of the orchard.

The Board received letters of support from abutters on the new plan proposed.

Member Matt Waterman asked if town water was being proposed. Mr. Wilson stated "yes".

The Board had concerns that the previous plan was acted on in a special meeting of the Board. Member Jodi Deuger felt that her time was wasted with the first plan submitted.

Chairman Horowitz made a motion to approve the variance as requested. The motion was seconded by Member Waterman and approved unanimously.

**54 Wenuchas Trail:** Present: Stan Dillis, James Gmeiner, Steve May

The hearing was continued from August 12, 2002 so the Board could conduct a site walk of the property.

The following variances were requested:

Town of Groton's Local Regulations

1. Section I.A.1 – The Board of Health shall require that each individual lot shall meet all applicable requirements of Title 5 and the Groton Board of Health. Two (2) ground water observation holes and two (2) percolation tests must be performed on each lot to prove a suitable primary and expansion area for each lot. **Two observation holes and two percolation tests required, one test hole and one percolation test was done.**
2. Section I.A.2 – Deep observation holes for the determination of ground water elevations may be performed during the months of March and April. **Test holes not conducted "in season".**
3. Section I.C.5 – The area between trenches shall not be used for future expansion of a system. **No reserve area provided.**
4. Section I.E.1 – Leaching facilities (including the proposed expansion area) must be located at least one hundred (100) feet from the nearest wetland, water course, wetland vegetation, seasonal streams and drainage ditches. **100 feet**

**required; 60 feet provided.**

5. Section I.E.3 – Minimum of ten (10) feet must be available between the primary and expansion leaching facilities. **10 feet required; No reserve area provided.**
6. Section I.E.6 – Minimum of thirty-five (35) feet must be available between the edge of any street, passageway or road line and the entire exterior perimeter of any proposed leach areas. **Thirty-five feet required; 12 feet provided.**
7. Section I.E.9 – Minimum of 15 feet must be available between the edge of a soil absorption system and an adjacent side slope. **Fifteen feet required; 10 feet to poly barrier provided.**

#### Groton's Well Regulations

1. Well less than 50 feet from property line – **50' required; 3' provided.**
2. Well less than 100 feet from water – **100' required; 3' provided.**
3. Well less than 100' from leaching facility – **100' required; 60' provided.**

Mr. Dillis stated that it was his client's desire to rehab the building and the conditions of the site. He stated that the present site was an "eye sore". Member Matthew Waterman asked if the applicant had been before the Zoning Board of Appeals. Mr. Dillis stated that it had always been the practice to meet with the Board of Health first in order to ascertain whether a septic system was feasible. He stated "no" to the question.

Chairman Horowitz asked when was the last time the house was used. Mr. Dillis stated that it was last used during the Summer of 2001. He said it was his client's goal to make the property a year round use.

The Board discussed the issue of seasonal use vs. year round use. Mr. Dillis stated, and Rob Overton agreed, that it didn't matter relative to Title 5 whether the requirements for an upgrade were the same. Member Matt Waterman recommended that the applicant review the plan with the Conservation Commission and ZBA prior to any decision made by the Board of Health.

Chairman Horowitz asked about the possibility of a tight tank to serve the lot. Mr. Overton stated that if the plan were referred to the D.E.P., it would not be approved since the applicant had presented a viable alternative. Mr. Overton supported the variances as requested.

The Board asked if town water was available. Mr. Dillis stated that the closest area was on Pine Trail or Lost Lake Drive. Attorney Gmeiner stated that town water runs past Redskin Trail and up Lost Lake Drive to Bob Lacombe's subdivision. He said it was approximately ½ mile away.

Mr. Overton stated that this property was not a "pretty site" and stated that regardless of use (year round vs. seasonal), there was no better solution for a septic system. Member Jodi Deuger stated that she tended to agree since she visited the site.

Chairman Horowitz applauded the applicant for designing a system on a difficult site, however, felt that the best solution would be to have the building removed and the property to be vacant. She said that she had many concerns about the well location. She would like to have wells as far away from the lake as possible. She stated that this property was an example of what's wrong with properties at the lake. She questioned when would a tight tank be considered then. Mr. Overton stated that "with this plan, a tight tank was not considered."

Dr. Horowitz agreed that the plan should first be reviewed by the Conservation Commission and ZBA.

Mr. Dillis understood the concerns of the Board but stated that it should not be torn down and made to go away. He stressed that the Boards should be willing to work with the applicant to try to fix the situation.

Attorney Gmeiner disagreed with Chairman Horowitz's recommendation. He argued that it made no difference to the Board of Health as long as a viable septic system was designed and could be constructed.

After a brief discussion, the Board recommended that the applicant meet with the Zoning Board of Appeals and Conservation Commission and inform them that preliminary discussions with the Board of Health have occurred. She instructed the applicant to come back to the Board of Health if ZBA liked the plan. The Board made no decisions.

**Brooks Orchard Concept Plan:** Present: Robert Pine, Pine & Swallow; Planning Board member Joshua Degen; Members of the Board of Assessor's; Ralph Baker, former Board of Health member; many abutters and interested parties.

Robert Pine, on behalf of the Groton Land Foundation, requested a preliminary meeting with the Board of Health to begin dialogue on plans that would limit the development of a 188-acre property to a maximum of developing 18 dwelling units, including the existing house on the property. He said that at least one of the units would qualify as affordable and a minimum of 160 acres will be permanently restricted. Mr. Pine stated that he would like feedback from the Board in order that they understood the Board's expectations with respect to development and public health with arsenic and lead identified on the property.

Mr. Pine stated that the concept plan would need to be voted on and approved at the Special Town Meeting. He said that if the Town approves the plan, it would then need to go the Planning Board for site plan review.

Mr. Pine proceeded to give the Board and audience a review of the site conditions. He indicated that remnants of pesticides known on the property would be remediated. He said that the total number of residences to be built was still under review. Mr. Pine assured the Board that all areas of remediation would be done to D.E.P. standards.

During testing, Mr. Pine stated that remnants of pesticides was identified in areas in the upper soil levels (6" to 1' or deeper). He said that the property needed to be addressed for a risk assessment and the applicant was prepared to conduct one. Mr. Pine stated that the plan was to include extensive trails throughout the site and would also include an assessment on how to manage any lead or arsenic issues.

Rob Overton stated that he had contacted the State and was advised that the applicant needed to follow the D.E.P.'s guidelines on how to handle contaminants.

Member Matthew Waterman stated that he supported the best use of the property. He stressed the need for any remediation needed to find out where the pesticides were located. Mr. Waterman said he would like to see more analysis done on the wooded areas as well.

Mr. Pine indicated that a risk assessment was necessary, however, he said that the risk assessment would also show if the cost of remediating the contamination was worth it or not. Mr. Pine said that the residential use standard would be met even if the residential areas were considered exempt from D.E.P. controls. He also added that portions of the site that will be used for agricultural, horticultural or conservation uses would not require remediation.

Board of Assessor Edward Kopec voiced his concern that the Board of Health was "hasty" in its declaring that the land was unbuildable under a previous subdivision review. He said that the owners received a large tax abatement of \$12,000 as a result of the Board's decision that the land was not buildable from the Assessor's office. He asked if the Board of Health could be "less liberal in passing on lands as being buildable."

Board of Assessor Hugh McLaughlin agreed with his fellow Board member. He asked if the Board of Health could be clearer on its ruling and "assess accordingly" and be consistent with its methodology so that years down the road, there would be no loopholes. Chairman Horowitz stated she didn't disagree. She acknowledged that there were communications problems amongst boards.

Former Board of Health member Ralph Baker defended the Board's negative decision. He stated that the Board of Health responded to its duties on a subdivision application and plan in the area of the open orchard section of the site. He stated that as a result of extensive testing, the levels of arsenic and lead were well in excess of residential standards so the Board of Health unanimously voted to reject the plan. The current Board of Health agreed.

Member Matthew Waterman asked if town water was to be used. Mr. Pine stated "yes". Mr. Overton stated that the Board could possibly require that a common septic system be required in order to protect the wetlands near Martins Pond Road.

Planning Board member Joshua Degen expressed his concern about any building in the area and even the possibility of having a roadway cross the contaminated areas. He stated that under 81U of the Code of Massachusetts, the Board of Health is required to report to the Planning Board any issues concerning the development of the land.

Alan Hoch expressed his concerns about all the potential for conservation issues involved in the plan. He asked that the Board consider that potential as well.

The Board asked if the Groton Land Foundation had actually purchased the land yet. Mr. Pine stated "no". He stated that the plan before the Board was only preliminary at this point for land purchase determination.

Planning Board member Joshua Degen asked if the Board of Health would be giving their position at Town Meeting. Member Matthew Waterman stated that at present, there was nothing definitive to comment on.

Chairman Horowitz stated that she was very uncomfortable with any access through the contamination areas. She stated that any further discussion would need to be tabled until a site walk was completed. She also stated that the Board would pursue hiring its own expert on arsenic and lead remediation.

### **Tobacco Compliance Hearing:**

Mr. Mike's Mobil – Present: Nancy Jaillet, Manager

Debra Butcher stated that a tobacco compliance check was conducted on August 16, 2002 at 3:12 pm at this establishment and a sale of tobacco to a minor occurred. She stated that this violation was Mr. Mike's Mobil's second violation within 12 months resulting in a fine of \$200 and a possible three (3) day suspension.

Chairman Horowitz requested comments from the merchant manager. Ms. Jaillet acknowledged that the sale did occur and the employee was terminated upon her learning of the offense. She apologized for the incident. Chairman Horowitz expressed her concern over the sale and stated that future sales would force the Board to revoke her license to sell. Ms. Jaillet understood and assured the Board that she work closely with her staff to prevent future sales.

Member Jodi Deuger made a motion to fine Mr. Mike's Mobil \$200 and suspend their license to sell tobacco products for three (3) consecutive days beginning on September 11, 2002 at 6:00 am and ending on September 13, 2002 at 10:00 pm. The motion was seconded by Member Waterman and voted unanimously.

Sherwin Brothers – Present: Win Sherwin, store owner

Debra Butcher stated a tobacco compliance check was conducted on August 16, 2002 at 2:48 pm and sale of tobacco to a minor occurred. She stated that this violation was Sherwin Brothers first violation since July 2000 in which the fine and suspension was waived by the Board of Health.

Chairman Horowitz repeated her concerns previously spoken to Mr. Sherwin. Mr. Sherwin apologized for the incident and stated that the store was "very busy" at the time of sale. He stated that he is aware of the hazards of smoking and does not support teenage smoking. He asked for leniency from the Board.

Member Jodi Deuger made a motion to fine Sherwin Brother \$100 and suspend their license to sell for one day for September 16, 2002 from 7:30 am to 6:00 pm. The motion was seconded by Member Waterman and voted unanimously.

Baddacook Pond Road, Lot K49B – Present: Dan Wolfe, Ross Associates; Atty. Ray Lyons

Abutters' notices were submitted to the record. Mr. Wolfe informed the Board that abutters for New England Forestry Foundation extend miles into the Dunstable line and Raddin Road. He stated that they notified every abutter who may directly concerned and asked the Board if this was acceptable for the record since the regulations state that all abutters and their abutters need to be notified. The Board of Health had no concerns with the submittal. Member Matthew Waterman made a motion to accept the abutter's list as submitted. The motion was seconded and carried unanimously.

Attorney Lyons stated that the property consisted of an existing cottage surrounded by Baddacook Pond on a large ridge of land. He said that there was an outhouse that currently exists. He stated that the placement of the system was on the best possible location which is less than the required 100 feet from the wetlands.

The following variance was requested:

Groton Board of Health's Local Regulation

Section I.E.1 – Minimum offset from the sewage disposal system to the edge of the wetlands is 100 feet. **100 feet required; 51 feet provided.**

Chairman Horowitz asked if the premises was occupied. Mr. Wolfe stated that it was used largely as rental property but there were no occupants currently.

Abutter George Collins stated that he owns the camp next door. He stated that he had no concerns about the upgrade.

Attorney Lyons stated that the New England Forestry contemplated what to do with the property. He stated that their hope was to fix up the property to save it from non-use.

Mr. Wolfe stated that the well would be abandoned and town water was being proposed.

Chairman Horowitz asked Mr. Overton for his comments. He stated that the proposed area was the best possible area for a system. He stated that if the Board of Health chose to approve this and town water was not available, the applicant could choose to come back before the Board at a later date with a proposal for a well.

Member Matthew Waterman asked if there was a Zoning Board of Appeals filing. Attorney Lyons stated that there wasn't a need to file with them.

After a lengthy discussion regarding the septic upgrade and location, the Board agreed to conduct a site walk prior to any decision. The site walk was scheduled for September 21, 2002 at 9am. The Board made no decision regarding the variance.

15 Dorothy Place – Present: Stephen Smith, owner; Joan Lundgren, abutter; Mr. & Mrs. Poulter, abutters

Chairman Horowitz opened the discussion by questioning the owner why a resolution had not occurred with this. Mr. Smith explained that he arranged with BFI to have the dumpster emptied weekly from bi-monthly. He submitted disposal records for the file.

Abutter Joan Lundgren had a question about the actual location of the dumpster. She claimed that the dumpster was on town-owned land. Mr. Smith stated that he would be moving it off the road and onto his property.

Chairman Horowitz stated that the Board of Health has received complaints about the dumpster being emptied prior to 7:00 am. She stated that this violates the policy of the Town. Mr. Smith stated he would resolve that issue directly with BFI.

Mr. Overton stated that the nuisance conditions needed to be resolved which is the only concern for the Board of Health at this hearing.

Member Jodi Deuger concurred and stated that the dumpster needed to be emptied and kept clean of all trash debris. She stated that it was the owner's responsibility to do this.

Abutter Joan Lundgren presented pictures for the Board's review. She stated that this has been an ongoing issue for over five years. Mr. Smith stated that he is willing to cooperate with the Town and keep the area clean.

Mr. Overton stated that if the dumpster remained on town land, the Board could issue orders to require screening.

Chairman Horowitz asked Mr. Overton to periodically inspect the premises and report back to the Board.

**General Business**

Deerhaven Subdivision - Mr. Overton informed the Board of an oil spill he has been investigating. He stated that he instructed the property owner to clean up the area and submit disposal receipts where the remnants were disposed of.

Sewer Commission Article 17 - The Board discussed the Sewer Commissioner's article for Special Town Meeting on September 23, 2002 concerning the study for sewer system needs for West Groton, Lost Lake and areas abutting the sewer district in determining the extent and location of infiltration and inflow and whether to support it or not.

Member Jodi Deuger stated that she supported this study and requested that the Board take a formal vote of support.

After a brief discussion, Member Matthew Waterman made a motion to support Article 17 for Special Town Meeting and send a letter of support to the Sewer Commissioners and Finance Committee. The motion was seconded and carried unanimously.

Debra Butcher will send the letter to the Sewer Commissioners.

Bruce Dubey – Mr. Dubey informed the Board that he would need additional medical leave and would be out at least another month. He has contacted the Highway Surveyor to assist with his responsibilities at the Transfer Station.

**Adjournment:**

Member Jodi Deuger made a motion to adjourn at 10:20 pm. The motion was seconded and carried unanimously.

**GROTON BOARD OF HEALTH APPROVAL**

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Dr. Susan Horowitz, Chairman

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Jodi Deuger, Member

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Matthew Waterman, Member

Respectfully Submitted,  
Debra Butcher

