

TOWN OF GROTON

Groton Board of Health
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MEETING MINUTES

October 4, 2004

Town Hall, Groton, Massachusetts

Board of Health Members Present:

Dr. Susan Horowitz, Chairman; Matthew Waterman; Robert Hanninen

Others Present:

Ben Cutone, R.S.; Debra Butcher

Meeting Called to Order:

Chairman Horowitz called the meeting to order at 7:30pm.

Minutes:

The regular session minutes of August 23, 2004 were approved as amended.

Bills Signed/Approved:

- *Belmont Springs-\$27.75
- *Groton Electric Light-\$31.40
- *Groton Electric Light-\$54.58
- *Groton Electric Light-\$7.08
- *McDevitt Trucks-\$926.87
- *Moison Ace Hardware-\$133.36
- *Massachusetts Association of Health Boards-\$90.00

Septic Signed/Approved:

- *Worthen Drive, Lot 5; Mickey Higgins
- *Shirley Road, Lot 2; Farmers Row LLC
- *133 Shirley Road, Lot 1; Farmers Row LLC
- *Shirley Road; Lot 5; Farmers Row LLC
- *Shirley Road; Lot 6; Farmers Row LLC
- *Shirley Road; Lot 3; Farmers Row LLC
- *Shirley Road; Lot 4; Farmers Row LLC

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241 Mill Street: Present: Stan Dillis; Ronald and Lillian Alcott

Mr. Dillis stated that the existing septic system was installed in 1964 under the construction criteria of the 1978 code but never received a Certificate of Compliance. He stated that in order for his clients' to split off a portion of the property, they must obtain approval from the local Board of Health for the current system. Mr. Dillis stated that in-season testing was conducted and soils were found to be sandy with no observation of groundwater noted. He said that mottling was at 12 inches. He asked if the Board would issue the Certificate of Compliance without having to upgrade the system.

Mr. Dillis stated that a passing Title 5 was conducted in April 2004. Health Agent Ben Cutone stated that he witnessed the testing and found no evidence of groundwater. He said that the house is served by town water and that there are plans to run sewer in the future.

Member Waterman asked that the applicant make sure there was enough land available for a system and that valid permits were obtained. Member Waterman made a motion to approve septic system compliant with the 1978 code so the existing property may be divided into two distinctive lots. The motion was seconded and approved unanimously.

Surrenden Farm: Present: Attorney Donald Cooper; William Conley; Attorney David Doneski

The hearing was recorded by a stenographer hired by the applicant for Surrenden Farm.

Chairman Horowitz stated that the hearing was continued from September 27, 2004 and said that attorneys for both sides met and re-interpreted language from paragraph #3 as follows:

"That the Board's determination of the testing, assessment, remediation and land use restriction requirements to be applied to the Surrenden Farm development shall be guided and informed by the Department of Environmental Protection (D.E.P.) responses to the questions formulated and submitted pursuant to items 1 and 2."

Chairman Horowitz asked for comments from the Board and audience. Member Matthew Waterman stated that he was comfortable with the amended language as long as the Board of Health was the overseer of the whole process and not the DEP. Member Robert Hanninen stated that it was his concern that the Board not give up local control but felt the amended language corrected his concern. He stated that once information was obtained from the D.E.P. it would

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be taken under advisement by the Board who should have final authority. Chairman Horowitz concurred with her fellow Board members and stated that she was much happier with the modification.

Donald Cooper, attorney for the applicant, stated that the new paragraph was not acceptable to them as written. He stated that he didn't feel that the previous version of paragraph 3 relinquished the Board's control and felt that if the Massachusetts Contingency Plan Method 3 was applied consistently, there would be no argument from his client if everyone agreed to use scientific and analytical data. He wanted the adoption clause as part of the agreement.

Attorney Cooper said that both sets of consultants claimed they were using the MCP guidelines and standards as the basis of their findings yet both sides were divided in their

determination. Mr. Cooper felt that the D.E.P. could respond to the issues that separate the consultants. He stated for the record that the Board of Health wanted to apply the standards as "they saw fit".

Chairman Horowitz felt the new language gave the Board the right to disagree with the D.E.P. and felt that Mr. Durand's comments at the last meeting indicated that this wasn't just science, but politics are involved and that concerned her. She said that she hoped that the D.E.P. will assist in solving the problems associated with this site. Dr. Horowitz stated that apple orchards have been developed for residential developments in the past but it is her concern that arsenic and contaminated soils constitutes a major health issue for public health.

Member Robert Hanninen made a motion to adopt the following submission and have the Department of Environmental Protection respond to the Board's questions:

1. To submit to the DEP the following request: that the DEP respond to a list of questions, formulated in item no. 2 and designed to elucidate the testing, assessment, remediation and land use restriction requirements that would apply to the presence of arsenic and chlorinated pesticides in the soil at the property with the applicant's proposed development, Surrenden Farm, under the Massachusetts Contingency Plan (MCP) (310 CMR 40.0000 et. seq.), absent the statutory exemption from the MCP for the contaminants in issue.
2. To authorize the Board of Health's consultants and the applicant's consultants to prepare for the DEP a list of questions concerning MCP standards and risk characterization provisions, and specifically how the provisions of the MCP Method 3 Risk Characterization (310 CMR 40.0990 et. seq.) for harm to human health would apply to the property within the Surrenden Farm development, notwithstanding

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- the fact that the contaminants in issue are subject to an exemption from the MCP.
3. That the Board's determination of the testing, assessment, remediation and land use restriction requirements to be applied to the Surrenden Farm development shall be guided and informed by the DEP responses to the questions formulated and submitted pursuant to items 1 and 2.

The motion was seconded by Member Waterman and approved unanimously.

Attorney Cooper requested that the Board of Health approve and release the septic permits for the ANR lots on Shirley Road. The Board agreed with the understanding that no construction could proceed until the Board renders their decision on the soil remediation plan.

Moose Trail: Present: Attorney Howard Hall

The hearing was continued from September 27, 2004. Chairman Horowitz stated that a site walk was conducted on October 1, 2004. She stated that the applicant was seeking variance approval under Section I.E.9 of the Town's Septic Regulations concerning side slope requirements. She said that the approval for was for new construction.

Chairman Horowitz stated that as a result of the site walk, she was inclined to deny the approval request, especially since it was for new construction. She said she was very concerned about wash out of the site and it's impact on public health. Attorney Howard Hall

stated that the site would require grading to prevent breakout and disagreed with Chairman Horowitz about wash out. He felt that the site could meet public health and safety requirements.

Member Hanninen agreed with Chairman Horowitz about the site and said that this was an "extreme" site with a lot of fill needed. He suggested that the applicant come back with a different engineering plan. Member Waterman stated that as an engineer, he designs systems requiring retaining walls all the time. Mr. Waterman said that he understands that Title 5 allows the barriers and he wasn't against the approval of them. He said he was comfortable with retaining walls as long as they were designed and constructed properly.

Chairman Horowitz asked if permits and approvals have been obtained from other Boards. Attorney Hall stated that approvals were granted from the Conservation Commission and Earth Removal Committee.

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Attorney Hall suggested that the plan be revised so the site would be stabilized with materials that would hold up for 20 years. Member Waterman made a motion to grant the variance subject to stabilizing materials used to stabilize the area surrounding the septic area. The motion was seconded by Member Hanninen.

VOTE: Hanninen-No; Waterman-Aye; Horowitz-No. The motion was denied by a vote of 2-1 against.

Attorney Hall suggested that a new engineering plan be submitted using geo-technical fabric to stabilize the site. Health Agent Ben Cutone stated that under Title 5 requirements, the use of retaining walls and polybarriers were allowed but there were no guidelines from D.E.P. on the use of geo-technical fabric. Attorney Hall requested that the Board allow his client to design a plan using fabric to stabilize the site and to rescind their previous vote.

Member Hanninen made a motion to rescind the Board's previous vote and have the site engineer design a plan that would prevent the slopes from sliding using fabric to stabilize the site and to continue the hearing. The motion was seconded by Member Waterman.

VOTE: Hanninen-Aye; Waterman-Aye; Horowitz-No.

The vote was approved 2-1 and the hearing was continued.

Shaw's Supermarkets: Present: Planning Board members; Shaw's Supermarket representatives and engineers

Based on new information obtained about the proposed soil being transported from Deven's in Ayer, the Board voted unanimously to rescind their vote taken on September 27, 2004 providing guidelines in allowing the soils to be moved. The Board stated that it has come to their attention that there was a potential of soils being contaminated and transported to the Shaw's site as fill.

Discussion involving the methods of testing the soils was discussed with the applicant's engineers and the Planning Board members and it was determined that the risk involving the use of these soils was not appropriate. Member Waterman made a motion to deny the proposal to accept fill from Deven's. The motion was seconded and voted unanimously.

The Planning Board members stated that representatives from Shaw's will be meeting with them on October 14, 2004 and that members of the Board of Health should be present.

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Worthen Drive, Lot 5: Present: Mickey Higgins; Philip Barry

The Board of Health asked that the applicants for this site provide a history of the previous land use prior to them approving the septic system permit.

Mr. Barry stated that the 50-acre parcel of land belonged to his family and was used primarily as a dairy farm. He stated that it was his family's intent to construct 26 houses on the land but it never happened as his parents passed away prior to development. He said that the new plan was to develop 8 lots in which 7 lots have already been sold. Lot 5 was being sold to Mr. Higgins.

Chairman Horowitz stated that it was the policy of the Board to obtain the previous land use of land believed to be apple orchards. The Board determined that no arsenical pesticide use on the land was conducted and signed the permit.

The meeting adjourned at 9:55pm.

GROTON BOARD OF HEALTH

_____ Dr. Susan Horowitz Chairman	_____ Matthew Waterman	_____ Robert Hanninen
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Respectfully Submitted,
Debra A. Butcher

