



TOWN OF WESTMINSTER
11 South Street
WESTMINSTER, MASSACHUSETTS 01473
(978) 874-7409 • Fax (978) 874-7462
BOARD OF HEALTH

Minutes for January 19, 2022
Board of Health Meeting, Room 205, 4:30 p.m.

Present: Board of Health members Dr. Michael Popik, Ed Simoncini, Ann Loree, Health Agent, Abigail Conlin, Assistant Health Agent, Elizabeth Penney, Administrative Assistant.

Also Present: John Despres, Marina Muchlke, Michael Ferris, Heather Billings, Attorney Alex Weisheit, K P Law, Linda Sardelis, Ted Sardelis, Ben McDonald, Traditional Concepts, Brian Carlson, Traditional Concepts, Attorney Jeffrey Aveni, Dombrowski, Aveni & Bunnell, P.C., Gerry Powers, Wesley Flis, Whitman & Bingham, Robert Bujold, Robert Gendron

Dr. Popik called the meeting to order at 4:30 pm and announced the meeting was being recorded. Attorney Jeffrey Aveni requested a copy of the recording. Marina Mulchke announced that she was recording the entire meeting. Robert Gendron announced that he had arrived late and was recording the meeting.

New Business:

88 State Road West Housing Issue –

Ms. Loree provided an overview of the housing issue for 88 State Road West Unit 2. The Board of Health office issued two letters to Landlord, Mr. John Despres citing many violations under 105 CMR 410 Housing code.

In May of 2021, the landlord began work on the hallways in the apartment. The occupants requested from the Landlord that additional work be done on the apartment. The occupants went away for a three week vacation in July. While on vacation the roof started leaking. The Landlord started to repair the roof and work on the walls and floors and basically gutted the apartment. The Landlord does not have a lease contract with the occupant. The Landlord pays for the occupants to stay at a hotel and collects rent from the occupants.

In November 2021, the occupants contacted the Board of Health office and in December, the occupant's attorney provided the Board of Health office with a timeline of events. The Landlord was given a cease and desist order by the Building w Inspector because he did not pull the building permits to do the work. On January 14, 2022, the landlord provided Ms. Loree with a timeline on the sequence of events from his perspective.

Ms. Loree noted the hearing is to determine if the apartment is not fit for human habitation and whether to sustain the original order with new deadline dates, since the dates have lapsed, modify the deadline dates or withdraw the order letter. Ms. Loree noted that given the current supply chain issues, Ms. Loree and Town Counsel made a recommendation for the Landlord to finish the repairs within a 60 to 90 day period. However, the items to be repaired within twenty four hours will stand.

Town Counsel Alex Weisheit confirmed that the Board can proceed with action as all parties involved are present at the meeting. Town Counsel explained to the Landlord and occupants that issues not pertaining specifically to the order letter should not be discussed at the Board of Health meeting and should be handled between their legal counsels respectively.

Dr. Popik made a motion to determine that 88 State Road West, Unit 2 is not fit for human habitation. Mr. Simoncini seconded the motion. Motion passed. Dr. Popik made a motion to extend the completion date of the order for 90 days. Mr. Simoncini seconded the motion. Motion passed.

Lot 13A White Pine Drive –

Attorney Jeffrey Aveni, representing Traditional Concepts and Board members noted that the issues not under the purview of the Board of Health should not be discussed or addressed at the hearing. Mr. Simoncini commented that the discussion should pertain only to the septic system and the well.

Attorney Aveni stated that they are not waiving any procedural or substantive defects and they are not waiving any notes. Attorney Weisheit noted the Board may proceed.

Dr. Popik made a motion to reconsider the previous vote taken at the January 5, 2022 meeting to revoke the permits issued for Lot B 13A White Pine Drive. Seconded by Mr. Simoncini. Motion passed.

Mr. Simoncini summarized the issue and vote taken at the January 5th Board of Health meeting. The former Health Agent issued permits to Mr. Brian Carlson, owner of Lot B 13A White Pine Drive to install a well and septic system. Each permit required variances against Board of Health regulations. The variances were never brought to a Board of Health hearing. The vote at the January 5th Board of Health meeting was to see that the variance issues be resolved in order for construction to begin. Mr. Simoncini noted the discussion is to provide adequate time for the owner and interested parties to present to the Board.

Mr. Simoncini cited the Town of Westminster Regulations 245.14 Setback requirements, the septic system be located 100 feet from the wetlands. Mr. Wesley Flis, Whitman & Bingham addressed the Board and noted the leeching field is 100 feet away from the wetlands. Mr. Simoncini noted that the tank and pump chamber do not meet this requirement. Mr. Flis commented the plan was reviewed and approved by the previous Health Agent. It was noted that the septic plan approved by the previous Health Agent did include a request for variance for the well only. The plan did not cite septic variances. Health Agent Ann Loree showed Mr. Simoncini the plan with the variance.

Mr. Simoncini reviewed the Town of Westminster Well Regulations prior to 2019. Mr. Simoncini commented that in order to move forward, it is required that variances be approved by the Board and the variances did not come before the Board.

Attorney Aveni noted the previous Health Agent approved the plan and signed the permit. Attorney Aveni noted that in the letter from Dombrowski, Aveni & Bunnell, P.C. dated December 22, 2021 that the Board of Health acknowledged receipt, with no additional response was received. Attorney Aveni noted that property owner of Lot B13A was not notified of the January 5th Board of Health meeting discussion which is a violation of the Open Meeting Law.

Ms. Loree reviewed the dates the septic and well permit applications were submitted by Traditional Concepts. The well application was submitted in January 2019. The septic application was submitted in August 2018.

Mr. Michael Ferris, 32 White Pine Drive, abutter to Lot B 13A addressed the Board regarding issues with application submissions. Mr. Ferris also noted that Lot B 13 A was subdivided.

Attorney Weisheit commented that it has been determined that it is feasible to locate the septic system outside the buffer zone. Mr. Simoncini concurred. Attorney Weisheit noted if the applicant can prove it is not feasible to develop the well outside the buffer zone; the Board may consider a hardship. Attorney Aveni noted the review should be under the Well Regulations in effect prior to June 1, 2019.

Mr. Flis provided a summary of the history of the subdivision well approvals. Mr. Flis commented that the design cannot be done without the need for a variance.

Attorney Weisheit summarized the Town of Westminster Regulations are clear that variances are required for the septic system and well and provided summary of how Board can proceed.



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Attorney Aveni read an email from former Health Agent Elizabeth Swedberg dated September 21, 2017 that stated as follows:

"I told the board last night that next meeting we would be having 3 lots that need a well variance. Ed told Dr. Popik that we had approved the subdivision plan many years ago and the Board felt comfortable issuing variance for well setbacks on this subdivision, but any new subdivisions they would not agree to variances. Wibby"

Questions regarding the lot numbers and subdivision of some properties were clarified by Mr. Flis.

Mr. Simoncini made a motion to rescind the well and septic permits until such time the owner applies for and obtains the required setback of variances or modifies the plan to not require variances. Dr. Popik seconded the motion. Motion passed.

Attorney Aveni stated that he is not waiving any objections, and procedural defects.

With the vote, the Board of Health is looking for due process for plan review and variance approval with the submission of an amended plan.

Attorney Aveni inquired if the plan review would be based on the Town of Westminster Well Regulations prior to June, 2019. Attorney Aveni noted he will consult with the Town Clerk regarding this request.

Dr. Popik made a motion that Town Counsel will respond to the Open Meeting Law complaint. Seconded by Mr. Simoncini. Motion passed.

32 White Pine Drive – Mr. Michael Ferris

Well Setback – Mr. Ferris requested a variance for the well setback from ten feet to eight feet. Currently the well is situated eight feet from the property line. Mr. Simoncini noted that the well was installed under the previous Board of Health Well Regulations dated prior to June 2019. Mr. Simoncini made a motion to grant a variance to allow the well to be eight feet from the property line. Seconded by Dr. Popik. Motion passed.

Bedroom Count Deed Restriction – Mr. Ferris came before the Board of Health in June 2021 to discuss finishing his basement. At the time, the proposed room count and bedroom count would have overloaded his septic system capacity. Mr. Ferris reviewed the number of rooms and bedrooms and noted that the Board of Assessors corrected the number of bedrooms from four to three. Board members reviewed proposed design of the basement. It was determined that based on the room count and bedroom count the property will qualify for a Deed Restriction. Mr. Simoncini made a motion to accept a three bedroom Deed Restriction. Seconded by Dr. Popik. Motion passed.

Health Agents Update:

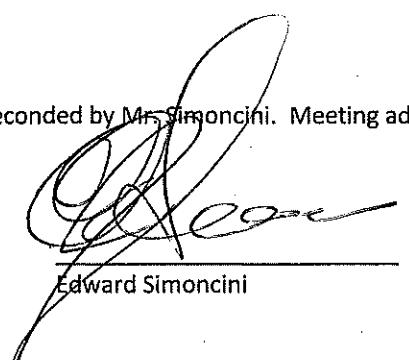
Covid Update - Town of Westminster has a 14 day average of 237 cases. The Board of Health is working with the Town Administrator to procure Covid Test kits for residents.

The 2021 Annual Report draft will be reviewed at the February 2 Board of Health meeting.

Septic System Pumping Observation - Mr. Loree reviewed the discussion from the January 5th meeting regarding the system pumping during a Title 5 inspection. Ms. Loree noted that she and Assistant Health Agent will witness the Title 5 Inspector inspecting the septic tank and pumping the system.

Other Business: Mr. Rob Bujold inquired about the organization that oversees and regulates Recovery Center of America. Ms. Loree said the Massachusetts Department of Public Health is the regulatory authority.

Dr. Popik made a motion to adjourn. Seconded by Mr. Simoncini. Meeting adjourned at 6:04 p.m.


Dr. Michael Popik
Edward Simoncini

Attachments:

88 State Road West letters

Lot B 13 A White Pine Drive file documents

Open Meeting Law Complaint of Attorney Jeffrey Aveni, Dombrowski, Aveni & Bunnell, P.C.

Letters from Attorney Jeffrey Aveni, Dombrowski, Aveni & Bunnell, P.C. re: Lot B 13 A White Pine Drive permits

32 White Pine Drive well permit and revised floor plan