

**Board of Health Minutes**  
**Monday, June 3, 2019 5:30 PM**  
Meeting Room C, Town Hall  
25 Green Street, Ipswich, MA

**Call to Order:** Susan C. Hubbard called the meeting to order at 5:32 PM.

**Members attending:** Susan C. Hubbard, Dr. Susan Boreri and Margaret McDermott were in attendance.

**Others in attendance:** Director of Public Health; Colleen Fermon, Health Administrative Assistant, Jennifer Brown, April Ferraro, P.E., Michael Castanga, Charles Johnson, P.E., Richard Harrington, P.E., Jeff Rhuda, George Haseltine, Hal Moody, Kenneth Lania, David Knowlton, Zong Song Zou and Gerard McDonald, P.E.

**Citizens Queries:** None.

**Minutes:** Susan Hubbard made a motion to approve the May 6, 2019 minutes. Dr. Boreri seconded the motion the motion passed unanimously.

**Public Hearing: Repeal of Environmental Tobacco Regulation and Proposed New Regulation, Prohibiting Smoking in Workplaces and Public Places**

Susan Hubbard opened the public hearing for the repeal of Environmental Tobacco Regulation and the adoption of a proposed new regulation, Prohibiting Smoking in Workplaces and Public Places advertised in the Ipswich Chronicle on May 16, 2019 which was at least 14 (fourteen) days prior to the hearing in compliance with Ipswich's General By-laws.

Susan Hubbard opened the floor for comment and asked if anyone wished to be heard regarding the proposed regulation.

Randy Gagnon, a resident of the Turner Hill Country Club, voiced concern regarding designated smoking rooms and employee smoking at the Country Club. Colleen Fermon clarified that Section 4 of the proposed regulation is the only section that exceeds the state's Smoke-free Workplace Law which has been in effect since July 2004. Since Turner Hill is not a not for profit membership club, they don't qualify for the exemption for private clubs in the state regulation. The Smoke-free Workplace Law mandates that all enclosed workplaces with one or more employees must be smoke-free so there is no smoking allowed at Turner Hill under the state regulation. Designated smoking areas or smoking rooms are also not permitted.

Mr. Gagnon thanked Ms. Fermon for explaining the Smoke-free Workplace Law and supported the adoption of the new proposed regulation Prohibiting Smoking in Workplaces and Public Places.

With no other comments being offered, the hearing was closed by Susan Hubbard.

Dr. Boreri made a motion to repeal the Ipswich Board of Health Environmental Tobacco Regulation and adopt the regulation Prohibiting Smoking in Workplaces and Public Places. The regulation shall take effect on June 3, 2019. The Environmental Tobacco Regulation was repealed effective June 3, 2019. Margaret McDermott seconded the motion. The motion passed unanimously.

## **Discussion: Joyce Redford, Director of North Shore/Cape Ann Tobacco Policy Program – Ipswich Tobacco Compliance Checks Results**

All retail stores that sell tobacco in Ipswich have been inspected by Joyce Redford and are currently in compliance. Ms. Redford indicated that beginning July 1, 2019 she may conduct 2 compliance checks per establishment due to the adoption of the new regulation. Ms. Fermon questioned if additional help was needed to complete the compliance checks and to address complaints. She added that Joe Perna, Ipswich School Resource Officer, has offered to help. Additionally, the Ipswich Police Chief is interested in having officers appointed as Board of Health designees to enforce the new regulation.

Susan Hubbard questioned how to ensure that Joyce and the police have the same protocols in place. Ms. Redford said the state has strict protocols to follow and she could work with Joe Perna to train him.

It was the decision of the Board to have both a representative of the Police Department and Ms. Redford attend the July 15, 2019 meeting to discuss how the Police Department can be best utilized for enforcement of the new regulation.

### **Hearings:**

#### **5:46 – John Quigley – 24 Allen Lane – Violation of Title 5 – Failure to Upgrade Failed Septic System**

Mr. Quigley was not in attendance at the meeting. Colleen Fermon presented.

The septic system serving 24 Allen Lane failed a Title 5 Inspection on February 1, 2017. In accordance with 310 CMR 15.000, Title 5, the previous owner was ordered to upgrade the septic system within 2 years from the date of inspection; by February 1, 2019. The order to upgrade was sent to Mr. Quigley as the representative of the owner and was received on March 17, 2017. Mr. Quigley purchased the property on April 11, 2019 so it was his responsibility to upgrade the failed septic system.

In a letter dated May 13, 2019, Mr. Quigley was notified that he was in violation of Title 5 and a Board of Health Order since no action had been taken. He was ordered to attend the June 3, 2019 Board of Health meeting to discuss a timeframe for bringing the property into compliance. This letter was received by Mr. Quigley on May 16, 2019.

Susan Hubbard made a motion to file a criminal complaint against the owner in court for failure to comply with a Board of Health order. Margaret McDermott seconded the motion. The motion passed unanimously.

#### **5:47 – MTGLQ Investors, LP – 39 Topsfield Road – Violations of 105 CMR 410.000 – Order for Correction**

No one was in attendance at the meeting. Colleen Fermon presented.

As a result of a complaint received on April 26, 2019, a plain view inspection was conducted in accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation and an Order for Correction was issued to the owner on April 27, 2019. The owner was ordered to start repairs within 5 days and bring the dwelling, land and accessory building into compliance with the State Sanitary Code 105 CMR 410.000 within 30 days.

In a letter dated May 13, 2019, the owner was requested to appear at the June 3, 2019 Board of Health

Dr. Boreri made a motion to refer the property to the Office of the Attorney General's Abandoned Housing Initiative and pursue receivership due to the owner's failure to make corrections. Susan Hubbard seconded the motion. The motion passed unanimously.

**5:49 – First Presbyterian Church – 175, 177 and 179 County Road – Represented by Meridian Associates, Inc. – Septic System Design Local Upgrade Approval Request**

April Ferraro, P.E., and Michael Castanga presented, and a hearing was conducted to consider a variance from Title 5 for a sewage disposal system plan # 6153 designed by April Ferraro, P.E., dated April 25, 2019 and last revised May 21, 2019 for the church, life center and proposed sanctuary at 175, 177 and 179 County Road, Ipswich, Massachusetts.

At the meeting, Ms. Ferraro, explained that the property has 3 individual buildings that are connected to two separate subsurface sewage disposal systems. One system serves the existing church at 179 County Road. The other serves 175 and 177 County Road. The system for 175 and 177 County Road was designed to accommodate a future expansion. Ms. Ferraro further explained that it is the intention of the owner to raze 175 County Road and construct a sanctuary addition that will connect 177 and 179 County Road.

The sewage disposal system plan proposes to abandon the system currently serving 179 County Road and then connect the building to the system serving 175 and 177 County Road. The addition of two septic tanks and one pump chamber will connect into the existing 4,000 gallon pump chamber and pressure distribution leach area.

At the meeting it was noted that the two existing septic tanks and one pump chamber were installed at depths greater than 3 feet but a Local Upgrade Approval was never obtained as a part of the original project. Ms. Ferraro requested to be able to utilize a maximum of 6 feet of cover over the existing three tanks and the proposed two septic tanks and one pump chamber.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said the leach field was properly sized to handle the flow.

Susan Hubbard made a motion to approve the plan and grant a variance to allow a maximum of 6 feet of cover over the existing two septic tanks and one pump chamber and the proposed two septic tanks and one pump chamber. Margaret McDermott seconded the motion. The motion passed unanimously.

**5:56 – Marshview Farms, LLC – 151 Labor-In-Vain Road – Main (4 Bedroom Dwelling) and Pool House – Represented by C.G. Johnson Engineering, Inc. – Septic System Installation Extensions and Design Flow.**

Charles Johnson, P.E. presented. The septic systems serving 151 Labor-In-Vain Road main house and pool house, failed Title 5 Inspections on August 11, 2016 and August 3, 2016, respectively. In accordance with 310 CMR 15.000, Title 5, the previous owner was ordered to upgrade the septic systems within 2 years from the dates of inspection. Marshview Farms, LLC purchased the property in September, 2016 so it is their responsibility to upgrade the failed septic system.

At the April 2, 2018 Board of Health meeting, Charles Johnson, P.E., requested extensions for the upgrade of the systems until December 15, 2018 since some other failed septic systems on the property must obtain Conservation Commission approval prior to the issuance of a Disposal System Construction Permit and then the owners intend to have all 5 systems upgraded in the same timeframe. It was the decision of the Board of Health to grant an extension. Marshview Farms, LLC was ordered to have the systems installed with the Certificates of Compliance on or before December 15, 2018.

Subsequently, at a meeting of the Board of Health on November 19, 2018, Charles Johnson, P.E., requested another extension for the installation of the septic systems until June 30, 2019. Mr. Johnson explained that the installation of the system at 151 Labor-In-Vain Road (garage) was underway but design plans for the main house and the pool house had not been submitted for approval yet. It was the decision of the Board of Health to grant another extension. Marshview Farms, LLC was ordered to have both systems installed with the Certificates of Compliance issued on or before June 30, 2019. On April 1, 2019 two septic design plans for the main house and the pool house were approved.

At the June 3, 2019 meeting, Charles Johnson, P.E., explained that the owner would now like to have both buildings on the same system to avoid the aesthetics of having a 3 ½ foot mound. Mr. Johnson requested the design flow to remain at 600 gallons per day with no additional flow added to include the pool house. Additionally, Mr. Johnson requested another extension on the owner's behalf, for the installation of the septic system until September 30, 2019.

Ms. Fermon asked if the Board was comfortable with the pool house being on the same system as the main dwelling with a design flow of 600 gallons per day (150 gallons per day/bedroom for 4 bedrooms) or should some additional flow be considered for the pool house. The approved plan for the pool house did have a flow assigned to it. It was noted that the main dwelling was granted a 4-bedroom deed restriction.

Dr. Boreri was uncomfortable with the fact that anyone on the property could utilize the pool when there is a failed system in an environmentally sensitive area. She added that avoiding the aesthetics of having a 3 ½ foot mound was not a hardship. For these reasons Dr. Boreri did not support the variance request.

Susan Hubbard was okay with the 600 gallons per day as opposed to 440 gallons per day.

Susan Hubbard made a motion to allow the design flow for the septic system proposed to serve both the main house and pool house to remain at 600 gallons per day. The Board of Health granted another extension, the system must be installed with the Certificate of Compliance issued by September 15, 2019. Margaret McDermott seconded the motion. Dr. Boreri was not in favor of the motion. The motion passed.

### **6:11 – Village at Linebrook Road, LLC – 173 Linebrook Road – Represented by Richard Harrington of William and Sparages – Definitive Subdivision Plan**

Richard Harrington, P.E., of William and Sparages and Jeff Rhuda of Symes Development and Permitting LLC presented, and the Board considered approval of the Definitive Subdivision Plan for 173 Linebrook Road, designed by John J. O'Rourke, P.E., dated June 8, 2018 and revised on May 3, 2019.

Under the Subdivision Control Law, once a definitive plan is submitted the Board of Health must act within 45 days to approve, deny or modify the plan and provide a written report to the Planning Board. The standard applied in deciding whether to approve or deny a plan is whether or not the lots shown can be used for building sites without injury to the public health. The Board can consider drainage, potential contamination of wells, fields or anything else the Board determines to be a potential health problem.

Mr. Harrington explained that that the owner intends to develop the property in 3 areas. For 173 Linebrook Road, the land abutting Mile Lane (Phase 2) is proposed to have an 8 lot subdivision with individual subsurface sewage systems serving each dwelling. For 178 Linebrook Road (Phase 1) 16 lots will be served by individual systems and is proposed to have 52 single family homes (90 bedrooms). For 173 Linebrook Road, (Phase 3) is proposed to have 27 attached townhomes and will be served by a common septic system. The remaining land at 173 Linebrook Road will be undeveloped open space.

The Board reviewed the Definitive Subdivision Plan for the 8 lot subdivision.

Susan Hubbard did not have any public health concerns regarding the Definitive Subdivision Plan.

Margaret McDermott made a motion, to approve the Definitive Subdivision Plan. Susan Hubbard seconded the motion. The motion passed unanimously.

**6:28 – 30 Town Farm Road, LLC – 30 Town Farm Road – Violation of Title 5 – Failure to Inspect Septic System upon Transfer of Title**

Colleen Fermon provided the Board with some background information. On May 2, 2016, 30 Town Farm Road, LLC purchased 30 Town Farm Road without a Title 5 inspection being conducted. Except as provided in 310 CMR 15.301(2), 15.301(3), and 15.301(4), a system shall be inspected at or within two years prior to the time of transfer of title to the facility served by the system. An inspection conducted up to three (3) years before the time of transfer may be used if the inspection report is accompanied by system pumping records demonstrating that the system has been pumped at least once a year during that time. Also, an inspection of a system is not required at the time of transfer of title of the facility served by the system if a certificate of compliance for a new system has been issued by the Approving Authority within three years prior to the time of transfer and system pumping records demonstrate that the system was pumped at least once during the third year.

A June 13, 2016 letter regarding the order to sign an agreement to upgrade the system, connect to town sewer or have a Title 5 inspection was sent to the owner's attention and the certified mail card was signed on June 21, 2016 but no action was taken. A second letter, dated January 11, 2017, was sent to the owner's attention and the certified mail card was signed on January 26, 2017 but no action was taken.

In a letter dated May 13, 2019, the Board of Health requested the owner or a representative to appear at the June 3, 2019 Board of Health meeting to discuss bringing the property into compliance with 310 CMR 15.000, Title 5.

At the meeting, the owner's representative, Attorney Richard Kallman, explained that the owner has been pursuing a 40B for the property and that they are still going through the Zoning Board of Appeals (ZBA) process. Once the Zoning Board of Appeals (ZBA) process is complete it is the owner's intention to demolish the dwelling, abandon the septic system and connect to town sewer. The Board understood that a 40B is being pursued but noted that compliance with Title 5 is still required.

Dr. Boreri questioned if the dwelling was vacant. Mr. Kallman confirmed the dwelling was not occupied. He attested that the owner intends to hook up to town sewer and that the existing dwelling will be razed and rebuilt.

The Board reviewed water records for the property.

Susan Hubbard made a motion to grant an extension. The owner was ordered to have a Title V inspection conducted or the septic system abandoned on or before August 2, 2019. Dr. Boreri seconded the motion. The motion passed unanimously.

**6:37 – Harold and Stephanie Moody – 7 Bulls Eye Road – Represented by George Haseltine of Greenscape Property and Building, LLC, Inc. – Approval of Revised Building Plans**

George Haseltine and Harold Moody presented, and the Board heard a request to keep the three spaces that were finished in the basement at 7 Bulls Eye Road.

The property is currently served by a three-bedroom septic system. The three-bedroom dwelling was demolished and a new three-bedroom dwelling, approved to have two (2) finished levels and an unfinished basement, was constructed. The contractor, George Haseltine, finished the basement which resulted in three finished rooms. Based on the definition of bedroom in Title 5, the total number of rooms resulted in needing a four-bedroom septic system.

A bedroom is defined in Title 5 as a room providing privacy, intended primarily for sleeping and consisting of all the following:

- (a) floor space of no less than 70 square feet;
- (b) for new construction, a ceiling height of no less than seven feet three inches;
- (c) for existing houses and for mobile homes, a ceiling height of no less than seven feet zero inches;
- (d) an electrical service and ventilation; and
- (e) at least one window.

Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms. Single family dwellings shall be presumed to have at least three bedrooms. Where the total number of rooms for single family dwellings exceeds eight, not including bathrooms, hallways, unfinished cellars and unheated storage areas, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two then rounding down to the next lowest whole number. The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the Approving Authority a deed restriction limiting the number of bedrooms to the smaller number.

At the meeting, Mr. Haseltine requested to be able to keep the finished basement as constructed without it impacting the bedroom count. Mr. Haseltine said his client wanted unheated storage space which is the intent of the basement space. The gym has an unfinished floor and the wine room has no heat. Additionally, he felt the basement could be considered one space since the only wall is a 36 inch knee wall. Ms. Fermon clarified that the floors, walls and ceilings were finished. She explained that with the addition of the 3 rooms in the basement there are now 9 rooms. A 9 room dwelling requires a subsurface sewage disposal system that is designed for 4 bedrooms in accordance with Title 5 310 CMR 1500. Ms. Fermon also noted that she questioned the use of the basement space during the building permit application process since dwelling is only served by a three-bedroom septic system. Subsequently, the basement was finished without approval so Ms. Fermon could not sign off on the building occupancy permit.

Dr. Boreri requested the basement be altered. Susan Hubbard questioned if there was a way to open up the enclosed space. Otherwise, the septic system must be modified to accommodate 4 bedrooms. Colleen Fermon felt a 4 bedroom system was not feasible because it is unlikely that new construction standards could be met on this lot.

The Board reviewed the building plans and considered the request. Ms. Fermon asked if the Board would consider the gym as not private since it is the only access to the mechanical room. The Board of Health said they would allow the gym to remain without it being added toward the bedroom count since it is the only access to the mechanical room so it is not a room providing privacy.

Sr. Boreri made a motion that the wine room must be altered by having the partition(s) and the door removed so that it is no longer a room providing privacy. Once the changes have been made and an inspection is conducted to confirm compliance with the approved revised plan, occupancy approval can be granted by the Public Health Director. Susan Hubbard seconded the motion. The motion passed unanimously.

#### **6:55 – Kenneth M. Lania of Cornerstone Land Associates – Soil Logs for 56 Fellows Road**

Kenneth Lania and David Knowlton presented. On May 16, 2018 Kenneth Lania conducted soil testing at 56 Fellows Road for the purposes of designing a subsurface sewage disposal system. The subsurface sewage disposal system plan for the 4 bedroom dwelling located at 56 Fellows Road, Ipswich, Massachusetts was submitted to the Public Health Department on March 27, 2019. Upon Ms. Fermon's review of the plan it was discovered that the witness noted Kenneth Lania as the Soil Evaluator but the subsurface sewage disposal system plan had John Visniewski as the Soil Evaluator. Additionally, the Form 11 had both names listed but only one certification for 10/99. The plan had a different date of certification.

At the meeting, Mr. Lania explained that at the time of the May 16, 2018 soil testing he was unaware that his Soil Evaluator certification had lapsed. He attested that he was granted a Soil Evaluator certification in 2000 and his certification remained valid through June of 2016. In 2016 he applied for his certification renewal but when he recently looked into the matter with NEIWPC he was told they never received his paperwork so his certification expired in 2016.

Mr. Lania requested that his employer, John Visniewski, who is currently is a licensed Soil Evaluator, be allowed to use his testing results from May 16, 2018 as his own for the basis of the subsurface sewage disposal system for 56 Fellows Road. John Visniewski submitted a letter confirming that he is confident in Mr. Lania's evaluation and would like to utilize the testing results.

Susan Hubbard made a motion to grant the request and allow John Visniewski, P.E. to use the soil testing results conducted on May 16, 2018 as his own for the purposes of designing a subsurface sewage disposal system for 56 Fellows Road. Dr. Boreri seconded the motion. The motion passed unanimously.

### **6:36 – Mayflower Restaurant – 11 Depot Square – Represented by Zong Song Zou – Variance from 105 CMR 590, FC 3.502.11(C) - Specialized Processing Methods**

Zong Song Zou presented, and a hearing was conducted to consider a variance from 3-502.11 for acidified rice.

Colleen Fermon provided some background information for the Board. On May 13, 2019, the Public Health office received a copy of a Hazardous Analysis Critical Control Point (HACCP) plan for the use of acidified rice at Mayflower Restaurant. Before using food additives or adding components such as vinegar to render sushi rice so that it is not a time/temperature control for safety food a variance must be granted by the Board of Health, in accordance with 3-502.11.

Previously, the restaurant had approval for acidified rice but had difficulty with record keeping and the approval was suspended by the Board due to noncompliance with the code on January 4, 2010 after an emergency suspension was issued on December 12, 2008. On February 1, 2010 the sushi operation was allowed to reopen provided refrigerated rice was used not the acidified rice.

Colleen Fermon asked the Board if they were comfortable with Mayflower Restaurant now using acidified rice. Susan Hubbard asked if the staff had been sufficiently trained. Mr. Zou attested that he had a professional consultant do training on site for staff.

Who will be doing the record keeping for the acidified rice? Mr. Zou, the day manager, and the sous chef will be in charge of the record keeping.

Susan Hubbard made a motion to grant the variance as requested. Margaret McDermott seconded the motion. The motion passed unanimously. The Board noted that the HACCP plan could be put into operation now and must be followed. Additionally, the HACCP plan must be maintained on-site for review by the Board of Health or its agents.

### **7:08 – Discussion: Gerard McDonald of H.L. Graham Associates, Inc. – Tight Tank Design without Soil Testing:**

Gerard McDonald, P.E., asked for some general guidance on whether the Board would accept a tight tank design without any soil testing being conducted. Since abutter's were no notified as required in Title 5, he was not able to seek a variance for Title 5 regarding soil testing and so he can't speak about a specific property so he was seeking general guidance.

Mr. McDonald felt that due to the proximity of the coastal bank, Area of Critical Environmental Concern (ACEC) and flood plain, a tight tank should be installed on a property.

Colleen Fermon said the Conservation Agent and the Conservation Commission had not prohibited soil testing so she directed Mr. McDonald to do soil testing. She also informed him that if soil testing resulted in the ability to design a septic system but he wanted to pursue a tight tank instead, he could provide his rationale and provide an outline based on his educated assumptions regarding what the impacts to the property would be to install a system given the sensitive resources impacting the facility. She directed him to provide the associated costs if he wanted to claim it was not financially feasible to do the system and then seek a tight tank approval.

Even if there is a strong possibility that a system can't be installed but a tight tank can, do you still want soil testing to be conducted to prove it? Ms. Fermon added that Title 5 requires soil testing to determine site conditions, soil type, groundwater elevation etc. so a Title 5 variance is needed. At a minimum, does one deep hole need to be done for a tight tank design to determine soil characteristics and high groundwater elevation for buoyancy calculations?

Susan Hubbard said it would be beneficial to do the testing to prove to the Board of Health that no other option exists but a tight tank and the conditions at the proposed tight tank location.

Margaret McDermott made a motion that the soil evaluator would need to conduct soil testing on the property in accordance with Title 5 if soil testing is allowed by the Conservation Commission. If testing is prohibited by the Conservation Commission, a deep hole would need to be done at the time of construction if a tight tank is presumed to be the only option.

Once Mr. McDonald has soil testing results he can discuss the options for the property with the Public Health Department and the Conservation Commission. Susan Hubbard seconded the motion. The motion passed unanimously.

#### **Director of Public Health Report:**

There was no Director of Public Health Report.

**Next Board Meetings:** The next meetings of the Board of Health were scheduled for July 15, 2019, August 5, 2019, September 9, 2019, October 7, 2019 and November 18, 2019 at 5:30 PM.

**Adjourn:** Susan Hubbard made the motion to adjourn at 7:25 PM. Susan Boreri seconded the motion. The motion to adjourn passed unanimously.

Documents used at the June 3, 2019 Board of Health meeting:

- May 6, 2019 Board of Health Minutes.
- 310 CMR 15.000, Title 5 and Ipswich Board of Health Septic System Regulations.
- Town of Ipswich Board of Health Environmental Tobacco Regulation.
- State Sanitary Code 105 CMR 410.000.
- Letters from Colleen Fermon dated March 6, 2017 and May 13, 2019 regarding 24 Allen Lane.
- Letters from Colleen Fermon dated June 13, 2016, January 11, 2017, and May 13, 2019 and water usage records from February 21, 2014 through May 1, 2019 regarding 30 Town Farm Road.
- Septic System Design Plan for 175, 177 and 179 County Road.
- Septic System Design Plan for 33 Upper River Road.
- May 28, 2019 submittal from Charles Johnson, P.E. for 151 Labor-In-Vain Road.
- Open Space Research Plan (13 pages) from William and Sparages for 173 Linebrook Road.

- May 13, 2019 HACCP Plan for Acidified Rice for Mayflower Restaurant.
- Building Plans for 7 Bulls Eye Road.
- Soils Application and Soils Log for 56 Fellows Road.

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Susan C. Hubbard, Chairperson

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Dr. Susan Boreri, Board Member

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Margaret McDermott, Board Member