

Board of Health Minutes
Monday, July 11, 2022 5:30 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 5:30 PM.

Members attending: Susan C. Hubbard and Dr. Susan Boreri were in attendance. Amanda Donovan was not in attendance.

Others in attendance: Colleen Fermon, Director of Public Health, John Morris, Health Inspector, Jennifer Brown, Public Health Administrative, Sharon Lombara, Judy Fields, Jonathan Granz, Jon Whyman, Peter Martineau, Katrina Martineau and Fred Fitzpatrick.

Citizens Queries: None.

Minutes: Dr. Boreri made a motion to approve the June 6, 2022 Board of Health minutes. Susan Hubbard seconded the motion. The motion passed unanimously.

Hearings:

5:01 - Sharon Lombara – 5 Barnside Drive – Order to Upgrade the Septic System and two Title 5 Inspection Reports

Sharon Lombara, Judy Fields, Jonathan Granz and Jon Whyman presented.

Colleen Fermon, Director of Public Health, provided some background information for the Board of Health. In accordance with the State Environmental Code, Title 5, 310 CMR 15.000, the Public Health Department received a Title 5 inspection report on May 6, 2022 from a Ipswich licensed septic system inspector, Jonathan Granz, for an inspection conducted on April 7, 2022 at 5 Barnside Drive. The inspector indicated the sewage disposal system(s) that serves said property is in failure. As outlined in a letter dated May 6, 2022, Ms. Fermon agreed with that determination and ordered the owner to bring this property into full compliance with Title 5 on or before April 7, 2024. The owner was also informed that if she was aggrieved by this order, she could request a hearing before the Board of Health. No request for a hearing with the Board of Health was submitted.

On June 9, 2022, Jon Whyman informed Ms. Fermon that he had made modifications to the septic system serving 5 Barnside Drive in early June 2022. He said he replaced the speed levelers. Pursuant to 310 CMR 15.020(1), no person shall construct, upgrade, modify, or expand a system without a Disposal System Construction Permit. His work on the distribution box is a violation of Title 5, 310 CMR 15.000 as outlined in 15.024 (5) since he did not receive prior approval or a Disposal System Construction Permit. Additionally, the system had already been deemed in failure and an order to upgrade the system had been issued to the owner, Sharon Lombara. Ms. Lombara did not contact the Public Health Department prior to the modifications being done to see if any changes could be made to show the system was not in failure.

On June 9, 2022, Ms. Lombara contacted the Public Health Department after learning the repairs to the septic system were done by Mr. Whyman without the requisite permitting or approval(s). She was concerned since she had a closing on July 19 and needed the situation resolved. Ms. Fermon informed her that once a system is deemed in failure the owner has 2 options, appeal the failure order with the Board of Health or to do a second Title 5 inspection to dispute the findings of the first Title 5 report. If Ms. Lombara chose to have a second Title inspection done, the Board of Health would decide which result they would accept.

On June 24, 2022, a second Title 5 inspection report was received from Jonathan Granz of Preventative Septic Services. The second Title 5 inspection was completed on June 14, 2022 and the inspector indicated the sewage disposal system(s) needs further evaluation from the local approving authority since modifications had been made to the septic system between the time of the first and second inspection. Ms. Fermon clarified that based on the second report, it appears the distribution box was leveled and the broken/obstructed pipe was repaired between the time of the first and second inspection.

The owner was scheduled for a hearing before the Board of Health on July 11, 2022, to discuss the results of both inspections and what modifications were made to the septic system between the time of the first and second inspection. Pursuant to 310 CMR 15.302(3), where an inspection is conducted for the purpose of refuting or corroborating the findings of a prior inspection, reasonable professional efforts shall require, at a minimum that the inspector employ methods to determine the location and condition of all system components and relevant physical features that are comparable to the methods employed by the prior inspector. Provided that these requirements are met, and the Approving Authority agrees with the findings in writing, the re-inspection shall supersede the prior inspection unless otherwise determined in writing by the Approving Authority.

At the July 11, 2022 meeting, Mr. Whyman explained that Ms. Lombara contacted him since the Infiltrator system he installed in 2015 had an unlevel distribution box based on a report by a septic system inspector. He attested that he replaced the existing speed levels with Equalizer brand speed levelers and adjusted them to provide equal flow. Mr. Whyman was confident the system was now functioning properly and was not in failure.

Ms. Fermon asked Mr. Granz if he thought the system could be repaired and pass inspection?

Mr. Granz said that if he thought the system could be repaired and pass inspection he would have determined the system conditionally passed on April 7, 2022 rather than determining the system was in failure. One pipe was cracked, one was receiving all the flow and was overloaded and two were not receiving any flow. During the second inspection on June 24, 2022, the system appeared to be functioning properly but he was unsure if the modifications made in the interim without prior approval would resolve the failure.

Mr. Granz asked the Board of Health to consider if a repair of the problem trench would be sufficient. He recommended replacing the one trench as a solution.

Ms. Fermon explained that typically when a part of the leach field fails, the entire leach field fails. Susan Hubbard agreed.

Ms. Fermon voiced concern that the modifications made by Mr. Whyman may only temporarily resolve the hydraulic failure of one trench and may not be a long-term solution but it was up to the Board to decide.

Attorney Fields reiterated that Ms. Lombara contacted Mr. Whyman after the system failed the April 7, 2022 inspection since Mr. Whyman installed the system in 2015. She attested that Ms. Lombara was unaware Mr. Whyman did not follow proper protocols and should not be penalized for his failure to understand and follow said protocols. Ms. Lombara assumed Mr. Whyman was doing what was required. Attorney Fields said the 2-Title 5 inspections Ms. Lombara had done should be sufficient. Additionally, Mr. Whyman's actions are now jeopardizing a transfer of title for the property.

Dr. Boreri explained that there are 2-issues; 1) work was done without approval and 2) the system failed the Title 5 inspection. The system did not conditionally pass inspection, which would have allowed for a repair of the system component (distribution box). The system failed the Title 5 inspection and an order to upgrade the system was issued to Ms. Lombara.

The Board of Health understood that the property is under a purchase and sale agreement but said the system is in failure regardless of the unauthorized modifications made. Additionally, the Board was unsure if the modifications made would resolve the failure.

Dr. Boreri questioned if the flow to the system remained the same between the two inspections. Mr. Granz confirmed that the flow remained consistent. Dr. Boreri suggested another Title 5 inspection be conducted 6-months from the meeting date to determine if the system is functioning properly and passes a Title 5 inspection. The Board members considered this option.

Susan Hubbard made a motion that that a Title 5 inspection could be conducted in 6 months, after January 11, 2023, provided the system has been receiving normal flows during the six months, to determine if the system is functioning properly and passes a Title 5 inspection. If the system passes inspection, the failure order will be withdrawn. If the owner chooses not to do the inspection or the system does not pass the inspection, the order to upgrade the system by April 7, 2024 remains in place.

Dr. Boreri seconded the motion. The motion passed unanimously.

5:52 - Jon Whyman of J. Whyman, Inc. – Violation of Title 5 and Septic System Installers Permit

John Whyman presented and hearing was held to discuss a violation of Title 5 and if his Disposal System Installer Permit should be suspended.

Colleen Fermon provided some background information for the Board members. On June 9, 2022, Mr. Whyman informed Ms. Fermon that he had made modifications to the septic system serving 5 Barnside Drive in early June 2022. He said he replaced the speed levelers. Pursuant to 310 CMR 15.020(1), no person shall construct, upgrade, modify, or expand a system without a Disposal System Construction Permit. Mr. Whyman's work on the distribution box is a violation of Title 5, 310 CMR 15.000 as outlined in 15.024 (5) since he did not receive prior approval or a Disposal System Construction Permit so he was scheduled for a hearing before the Board of Health. Additionally, the system had already been deemed in failure and an order to upgrade the system had been issued to the owner, Sharon Lombara.

At the July 11, 2022 Board of Health meeting, Mr. Whyman explained that Ms. Lombara contacted him since the Infiltrator system he installed in 2015 had unequal flow from the distribution box since it was not level based on a report by a septic system inspector. Mr. Whyman attested that there was a settling issue so he uncovered the distribution box and replaced the existing speed levels with Equalizer brand speed levelers and adjusted them to provide equal flow. Mr. Whyman felt this was standard maintenance so a Disposal System Construction Permit was not required. He provided the Board members with Equalizer information and provided a model distribution box and speed levelers to demonstrate the modifications made. Mr. Whyman explained that the frost probably shifted the distribution box.

The Board of Health informed Mr. Whyman that pursuant to Title 5, 310 CMR 15.020 any modification to a system requires a permit. The Board members also noted that he failed to contact the Public Health Department until after he made the modifications to the system.

Ms. Fermon said on June 23, 2022, Mr. Whyman emailed Claire Golden of MA Department of Environmental Protection about permitting requirements. Ms. Golden responded to Mr. Whyman's email on June 24, 2022 and said that any modification of a septic system, including adjustment of or installation of speed levelers, at a minimum requires prior consultation with the Board of Health. This is required by 310 CMR 15.020(1) and may, in fact, require a permit and that work must be done by an Installer licensed in that community.

Dr. Boreri questioned why Mr. Whyman did not contact Colleen Fermon prior to modifying the system. Even if a permit was not required, the Board of Health should have at least been consulted.

Mr. Whyman said there was nothing to talk about before he uncovered the distribution box. He explained that he offered to do a permit retroactively.

Dr. Boreri re-iterated that the requirement(s) for a Disposal System Construction Permit is in Title 5 and informed him that he did not go through the proper channels.

Colleen Fermon added that even emergency work on a system requires a Disposal System Construction Permit.

Dr. Boreri questioned if Mr. Whyman leveled the distribution box or replaced any pipe in the soil absorption system.

Mr. Whyman attested that he did not level the distribution box or replace any pipe in the soil absorption system. He said the first visit three trenches looked good, on the second visit all looked fine.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said the Board of Health had the option to issue a warning to Mr. Whyman, suspend his Installers Permit, or revoke his Installers Permit.

Susan Hubbard asked Mr. Whyman how long he has worked as an Installer. Mr. Whyman has been an Installer for more than 30 years. Are you currently working in Ipswich on any other septic systems? Mr. Whyman said he is not working on any systems currently but may be doing one installation in the near future.

Susan Hubbard asked if any prior enforcement action had been taken against Mr. Whyman. Colleen Fermon noted there have been no prior enforcement actions taken against Mr. Whyman in Ipswich. Ms. Fermon noted that Mr. Whyman has not been licensed in Ipswich since 2016. He applied for a 2022 license and it was issued on May 31, 2022.

The Board of Health agreed that Mr. Whyman failed to demonstrate knowledge of Title 5, 310 CMR 15.000. Susan Hubbard recommended that Mr. Whyman review Title 5 to familiarize himself with the regulation.

Susan Hubbard made a motion that Mr. Whyman violated Title 5 by working on the system without a permit or prior approval and issued a formal warning. If Mr. Whyman performs any work on a septic system in Ipswich without the proper prior approval(s) and/or permitting, his Disposal System Installer Permit will be revoked. Dr. Boreri seconded the motion. The motion passed unanimously.

6:05 – Peter Martineau – 5 Blair Drive – Order for Correction and Timeframe for Compliance for Violations of 105 CMR 410.00

Peter and Katrina Martineau presented.

Colleen Fermon provided some background information for the Board members. An Order for Correction was issued to the previous owner, Rolland Kelley, Jr, on March 20, 2022. Mr. Kelley was ordered to take corrective action within 5 days of receipt of the order for the violations of 105 CMR 410.750. Additionally, he was ordered to bring the dwelling into compliance with the State Sanitary Code 105 CMR 410.000 within 30 days of receipt of the order; by April 19, 2022. A re-inspection was conducted on April 5, 2022 and all of the violations remained so Mr. Kelley was ordered to attend the Ipswich Board of Health meeting on Monday, May 9, 2022 to discuss a timeframe for bringing the property into compliance with 105 CMR 410.000.

At the May 9, 2022 Board of Health meeting, Mr. Kelley explained that the property was under agreement to be sold and a closing was scheduled for May 31, 2022. As the proposed buyer, Mr. Martineau's said that it was his intention to clean up the property and correct the violations cited so that he could use the property (garage) for storage only. Based on this information, it was the decision of the Board of Health to modify the order and grant a 60 day extension; until July 11, 2022 to obtain compliance with 105 CMR 410.000. The extension was granted with the condition that the property could not be occupied. A re-inspection would be conducted after July 11, 2022 to confirm compliance.

On July 5, 2022, the Public Health Office received a request for a hearing before the Board of Health to discuss another extension since Mr. Martineau purchased the property on June 15, 2022. In response to the request for a hearing before the Board of Health, a hearing was scheduled for Monday, July 11, 2022.

At the July 11, 2022 meeting, the Board reviewed the violations of 105 CMR 410.00 and the photographs of the property provided by the owners. Mr. Martineau explained that he removed 3-tons of trash and debris and that all the corrections had been made but that he needed more time to remove the camper and the boat since they needed to be broken down.

The Board commended the owners for the work done to the property. Mr. Martineau explained he will use the building for his business and hobbies. It will not be used as a dwelling.

Dr. Boreri made a motion to determine that the boat and camper are not a violation. A re-inspection by John Morris, Health Inspector, would be conducted to confirm compliance. The owner was told to contact Mr. Morris to schedule an appointment. The \$75.00 re-inspection fee was waived. Susan Hubbard seconded the motion. The motion passed unanimously.

6:14 – Christine Fitzpatrick and Louis Lampson – 22 North Main Street – Order for Correction and Timeframe for Compliance for Violations of 105 CMR 410.00

Fred Fitzpatrick presented. He said his wife and her brother are trustees of the property.

John Morris, Health Inspector, provided the Board members with some background information. As a result of a complaint received, a housing inspection was conducted on May 31, 2022, in accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation. Also, an Order for Correction was issued to the owners on May 31, 2022. The owners were ordered to bring the dwelling into compliance with the State Sanitary Code 105 CMR 410.000 within 30 days of the receipt of the order; by July 3, 2022.

The violations were not corrected so the owners were ordered to attend the Ipswich Board of Health meeting on Monday, July 11, 2022 to discuss a timeframe for bringing the dwelling into compliance with 105 CMR 410.000.

At the July 11, 2022 meeting, the Board reviewed the violations of 105 CMR 410.00 and photographs of the property from the inspection. Mr. Morris noted that trim and fascia boards were rotted and not in good repair, the siding has flaking and peeling paint and a hawk (birds) in the eaves is causing unsanitary conditions.

Fred Fitzpatrick explained the hawk was there in the springtime. He wanted to hire someone to correct the issues but found out he needed a commercial builder based on the dwelling having 12 units. He also noted that he contacted the Audubon Society and was told not to try to remove the hawk. Mr. Fitzpatrick had difficulty finding a commercial builder to make the necessary repairs so the owners needed additional time to complete the repairs. He said the hawk is no longer there. He provided a contract to the Board of Health and said the contractor was scheduled to begin the repairs this week. Mr. Fitzpatrick said it is his intention to have chicken wire installed on the ledge of the front of the building to prevent the hawk (birds) from nesting in the eaves next spring (from April to mid-May).

Mr. Morris questioned how long it would take to complete the repairs. Mr. Fitzpatrick said the contractor thought a week would provide sufficient time to make the repairs.

Susan Hubbard made a motion to modify the order and grant an extension until August 15, 2022. The owners are ordered to obtain compliance with 105 CMR 410.000 by August 15, 2022. Compliance includes obtaining all required permits, inspections and approvals from the Building Department. Failure to correct all violations by August 15, 2022 will result in a criminal complaint being filed against the owners in court for failure to comply with a Board of Health order.

A re-inspection by John Morris, Health Inspector, will be conducted after August 15, 2022 to confirm compliance. A \$75.00 re-inspection fee is applied to each re-inspection.

6:25 - Director of Public Health Report:

COVID-19 Update – COVID-19 Cases, Positivity Rates and Vaccinations:

- Colleen Fermon said that Ipswich currently has 7 active COVID19 cases, people under isolation.
- Ipswich had a COVID-19 positivity rate of 4.9% last week.

COVID-19 Test Kits: The Public Health Department received 2,520 COVID-19 test kits. Ms. Fermon is working on a press release for this week. Test kits will be distributed by Ipswich Public Library, Council on Aging and Recreation. The kits will be given to the Open Door, Ipswich Dinner Bell, local churches and local businesses.

Food Establishments:

- Mayflower Restaurant – The restaurant is currently closed due to a fire on June 11, 2022. Mr. Morris inspected the establishment and re-opening will not be allowed until violations found at the time of the inspection are corrected. An inspection will be conducted prior to re-opening to confirm compliance. The Building Department also found an egress violation.

Housing:

- 59 Topsfield Road – At the June 6, 2022 Board of Health Meeting, the Board of Health requested a plain view inspection of the property be done. Mr. Morris conducted a plain view inspection on June 13, 2022 and had a discussion with the owners regarding the refuse and debris on the property. A second visit was conducted on July 8, 2022 and significant improvement was made to the property.

The Board reviewed photographs from July 8, 2022. It was the decision of the Board of Health that no further action was necessary.

Next Board Meetings: The next meetings of the Board of Health are scheduled for August 1, 2022, September 12, 2022, October 3, 2022, November 7, 2022 and December 5, 2022. All meetings will start at 5:30 PM and are held in Town Hall, Meeting Room C.

Adjourn: Susan Hubbard made the motion to adjourn at 7:42 PM. Amanda Donovan seconded the motion. The motion to adjourn passed unanimously.

Documents used at the July 11, 2022 Board of Health meeting:

- Title 5
- Ipswich Board of Health Septic System Regulations.
- Title 5 Inspection reports dated June 14, 2022 and April 7, 2022 for 5 Barnside Drive.
- Email dated June 24, 2022 from Claire Golden regarding Jon Whyman.
- Emails dated June 9, 2022 and June 23, 2022 from Jon Whyman to Colleen Fermon regarding 5 Barnside Drive.
- Email dated June 23, 2022 from Jon Whyman to Claire Golden, Department of Environmental Protection, regarding 5 Barnside Drive.
- Letter dated June 15, 2022 from Colleen Fermon to Jon Whyman regarding 5 Barnside Drive.
- Email dated July 5, 2022 from Peter Martineau regarding 5 Blair Drive.
- Letter dated May 11, 2022 from Colleen Fermon regarding 5 Blair Drive.
- Quitclaim Deed dated June 15, 2022 for 5 Blair Drive.
- 105 CMR 410.000, Chapter II State Sanitary Code.
- Violation Order and Inspection Report for 22 North Main Street dated May 31, 2022.
- Emails dated June 21, 2022 and July 5, 2022 from John Morris regarding 22 North Main Street.
- Request for Contact dated April 4, 2022 from John Morris for 22 North Main Street.

Susan C. Hubbard, Chairperson

Dr. Susan Boreri, Board Member

