

**Acton Board of Health**

**February 22, 2010**

Members Present: Joanne Bissetta, Chairman, Pam Harting-Barrat, Vice Chairman, Mark Conoby, Member and Michael Kreuze, Associate Member.

Staff Present: Doug Halley, Health Dept. Director and Isabel Roberts.

Others Present: Peggy Mikkola, League of Woman Voters.  
Scott and Maureen Blaufuss  
Ken Sundberg  
Mark White

The meeting was called to order at 7:30pm

**Minutes**

On a motion made by Mr. Conoby, seconded by Mr. Kreuze, the Board unanimously voted to approve the Board of Health minutes dated February 8, 2010, as amended.

**80 HARRIS STREET LOTS A & B – AQUIFER PERMIT APPROVAL**

Doug presented the Board with information regarding providing biological treatment of the sewage for both Lots A & B, 80 Harris Street, as previously requested by the Board.

Using a standard of 25 mg/1 for treatment, the Nitrate Loading Assessment has been recalculated with a result of post development nitrate concentration potential of 9.92 mg/1 at the nearest sensitive receptor. Based on these findings the Health Department recommends approval of the Aquifer Permit with the following conditions:

1. The plans as proposed shall be amended to include Bioclear or FAST System, approved by DEP for General Use and documented to provide total Nitrogen levels of 25 mg/1 or less.
2. Testing and monitoring of the system shall be consistent with the DEP General Use Permit for the chosen technology.

3. The applicant shall provide a proposed operation and maintenance plan for the system consistent with 310 CMR 15.290(2)(b).
4. The applicant shall provide a description of form of ownership consistent with 310 CMR 15.290(2)(c).
5. The applicant shall provide a description of a financial assurance mechanism consistent with 310 CMR 15.290(2)(d).

Mr. Kreuze presented a number of questions regarding the Nitrate Loading Assessment. Mr. Dimakarakos addressed his concerns. On a motion made by Mr. Conoby and seconded by Ms. Harting-Barrat, the Board unanimously voted to approve the Aquifer Special Permit with the aforementioned conditions and one additional condition:

6. The approval of the Aquifer Special Permit is subject to plan approval by the Health department.

### **315 CENTRAL STREET HEARING**

Doug presented to the Board a history of the agreement and progress between Sundberg Builders and Mr. and Mrs. Blaufuss. Sundberg Builders LLC has submitted a request for a final sign-off for an installed septic system at 315 Central St. The system has been inspected by the Health Department, the installer and Engineer has signed the Certificate of Compliance, plus the Health Department has received an as-built plan.

The abutter's to the property, Scott and Maureen Blaufuss of 313 Central St. have requested that the Health Department not sign the Certificate of Compliance until their agreement with Sundberg Builders has been fulfilled. In April of 2009 they signed an agreement with Sundberg Builders which would allow fill to be placed on their property, allowing slope compliance for Sunberg's system without relying on a proposed concrete retaining wall. This agreement was later amended in August of 2009.

The Health Department has worked closely with both abutters, in particular when the fill agreement was amended. Throughout the process it was anticipated that when the system was ready to be signed off, the owner's of 113 Central St. would be satisfied with the work performed on their property. While Sundberg Builders indicate a small amount of work needs to

be completed at 113 Central St. the Blaufuss' contend that the work as outlined in their agreement has not been met.

Without the fill agreement, compliance can not be obtained on the Blaufuss property. However, Sundberg Builders have submitted documents showing the system to be in compliance with Title 5 and no action has been taken to extinguish the fill agreement or to legally challenge the conditions of that agreement.

Mr. and Mrs. Blaufuss were then in turn given the opportunity to express their views/opinions about the situation. Both reiterated that the work completed by Sundberg Builders has not fulfilled the contractual obligation, plus additional work needs to be done but are very concerned about it being completed in a timely fashion.

Mr. Sundberg pointed out that the Septic System located on 315 Central Street is currently in compliance with Title 5. Mr. Sundberg acknowledged that there is grading work to be done and also the completion of the stonewall at 313 Central Street. This work has not been completed due to the weather conditions. Mr. Sundberg anticipates that work will commence in mid spring, but would need permission from Mr. and Mrs. Blaufuss to go on the property. Permission was granted, additionally, a Town of Acton, Health Agent would witness the assessment at 313 Central Street.

The Board stated that they are limited to dealing with Title 5 issues and does not have the authority to make decisions regarding private agreements. The Board discussed two main concerns (i) If the Health Department has sufficient basis to issue a Certificate of Compliance. (ii) If the parties change the conditions of the agreement, compliance with Title 5 still needs to be maintained.

The Board requested that Mr. Sunberg's Engineer for the project needs to provide the following:

1. Engineer should make determination if wall is sufficient, of suitable construction, safe and appropriate.
2. All grading relating to the septic system, subject to agreement is in compliance.

On a motion made by Mr. Conoby, seconded by Mr. Kreuze, the Board unanimously voted to continue the agenda item to next Board of Health meeting.

**TITLE V WAIVER – 13 SPENCER**

At the request of the Board, Town Council gave its decision regarding the granting of Title 5 waivers and Title 5 waiver extensions. Doug presented the board with the decision.

Under 310 CMR 15.305(1)(b), “If a system is failing to protect public health, safety, welfare or the environment as set forth in 310 CMR 15.303(1) or 15.304(1), the owner or operator shall upgrade the system within two years of discovery unless: ...the continued use of the system is permitted by the local Approving Authority in accordance with the provisions of an enforceable schedule for upgrade.” One basis for continued use includes a “proposal to connect to a sanitary sewer...system.” However, there must be a “fiscal commitment to the sewerage plan..., together with an approved facility plan where appropriate, proposing connection or replacement of the failing system within five years, and an enforceable commitment by the owner to perform interim measures (for example, regular pumping) ...”

Acton was on a continuous path to an approved facility plan for the Spencer/Tuttle/Flint neighbourhood; however, in June 2009, the Special Town Meeting could not muster the necessary 2/3 vote to appropriate \$1,707,010.00 for the purpose of financing the planning, design and construction of sewers and related infrastructure for the Tuttle-Flint Extension of the Middle Fort Pond Brook Sewer District ...” That action by Town Meeting interrupts the continuous path toward a “fiscal commitment to the sewerage plan..., together with an approved facility plan where appropriate...” Unless and until that situation changes, there is an insufficient basis for the Board of Health to authorize the continued use of a failing septic system under 310 CMR 15.305(1)(b) in the Spencer/Tuttle/Flint neighbourhood.

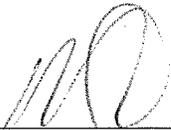
The Board questioned the number of existing Title 5 waivers. Doug noted that there are currently only 2 existing Title 5 waivers; one applicant had an approved septic system plan and one who has yet to start the process. With regard to the previously granted waivers, the Board requested the Health Department notify the applicants to schedule a meeting with the Board. For the applicants of 13 Spencer Road the Board recommended allowing them to withdraw their application then meet with the Board to strategize how to move forward.

On a motion made by Mr. Conoby, seconded by Mr. Kreuze, the Board unanimously voted to continue the agenda item.

**Adjournment**

On a motion made by Mr. McInnis, seconded by Mr. Taylor, the Board unanimously voted to adjourn at 8:40PM.

Respectfully Submitted,



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Isabel Roberts, Health Secretary  
Acton Board of Health



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Joanne Bissetta, Chairman  
Acton Board of Health