

PLYMPTON BOARD OF HEALTH		OPEN MEETING NOTES		January 22, 2019	Next Meeting 2/12/2019 @ 5:00 PM
Present/Absent		Present/Absent			Place: BOH Office, Town House
Chair: Arthur Morin, Jr.	AM P				
Treasurer: Harry Weikel, Jr.	HW P	Health Agent: Robert Tinkham	P	Guests: Alexandria Artiano, Buz Artiano, Richard Serkey,	
Clerk: Brad Cronin	A	Administrative Assistant: Cathleen Ferguson	P	Kevin Grady	
TOPIC/AGENDA--NAME & ADDRESS					
ASSESSORS MAP - BLOCK - LOT		PROBLEM/DISCUSSION		FINDINGS/RECOMMENDATIONS	
Call to Order 5:00 p.m.		Minutes of January 8, 2018		Approved.	
OLD BUSINESS					
Approved Septic Plans					
0 Center Street (M11-B2-L14)		New Septic System		Plan approved; to be installed.	
0 Maple Street (M7-B2-L7)		New Septic System		Plan approved; to be installed.	
28 Oak Street (M2-B1-L2)		New Septic System		Plan approved; to be installed.	
0 Cedar Street (M15-B1-L9)		New Septic System		Plan approved; to be installed.	
0 Winneluxet Road (M21-B1-L14A)		New Septic System		Plan approved; to be installed.	
61 Ring Road (M8-B2-L3A)		New Septic System		Plan approved; to be installed.	
180 West Street (M15-B2-L4)		New Septic System		Plan approved; to be installed.	
65 West Street (M16-B1-L15)		Repair of Septic System		Out for Installation.	
Approved Plans/Out for Installation					

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Pending Septic Plans			
10 Mayflower Road (M17-B5-L13)	New Septic System	Waiting for plan.	
0 Center Street (M12-B2-L27)	New Septic System	Waiting for plan.	
0 Maple Street (M7-B2-L29)	Installation of Septic System	Waiting for plan.	
0 West Street (M15-B1-L14)	Installation of Septic System	Waiting for plan.	
0 Upland Road (M12-B5-L1B)	Installation of Septic System	Waiting for plan.	
Perc Tests			
13 Forest Street (M1-B2-L11)	Application for Perc Test	Test is scheduled for this Friday, January 25.	
Other			
165 Palmer Road (M6-B1-L3)	Discussion re: proposed septic plan	Alexandria Artiano, Buz Artiano, Kevin Grady & Richard Serkey appear to discuss 165 Palmer Road and 0 Palmer Road.	
0 Palmer Road (M6-B1-L3A)	Discussion re: proposed septic plan	Mr. Serkey introduces himself as an attorney appearing on behalf of the owner of the properties, West Light Development.	
		Mr. Serkey discloses that they are taping the meeting. Serkey states that he is aware that the BOH regulation 12.2.55 requires that mound systems for new construction must be on a lot of 5 acres or more. Serkey states that on October 29, 2018	
		Grady Engineering submitted plans for mound systems for 2 single family homes to be built on lots that were less than 5 acres	

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165 Palmer & 0 Palmer continued		on Palmer Road and requested a variance in each case from that regulation because West Light is proposing an alternative secondary treatment system which would provide an equivalent degree of environmental protection as the additional acreage would provide. Serkey states that on 11/27/18 these applications were on your agenda, on 12/1/18 they were on the agenda again and the minutes state that Health Agent reports that Mr. Grady contacted him and requested to be put on the January 22 agenda. The Board without notifying Mr. Grady that his request would be heard that night voted to deny the variance requests and deny the request to send the proposed septic plans out for review. BOH Chairman states that the BOH was unaware that an attorney was going to appear at this meeting, so the BOH will now postpone this meeting and contact Town Counsel and will reschedule meeting and will notify the parties in writing when the matter is again scheduled for discussion. Mr. Serkey states he would like to resolve this. BOH Chairman states that the BOH has been operating under this regulation which has been in place for almost 20 years, following the Board's own rules. Mr. Serkey requests to speak a little longer. BOH chairman states that the Board will not deal with an attorney without Town Counsel present. Chairman thanks Mr. Serkey for coming. Mr. Serkey continues to speak without permission from the Chairman. Chairman states again that the discussion has come to an end.

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		Mr. Serkey continues to speak without permission from the
		Chairman. Chairman states that Mr. Serkey can seek whatever
		legal remedies he would like. Chairman states that BOH will
		discuss with town counsel and then move forward. Mr. Serkey
		attempts to speak to another member of the BOH without
		permission from the Chairman. Chairman states again that
		the BOH has made its decision and will discuss with Town
		Counsel. Mr. Grady asks when Town Counsel will be at
		BOH meeting. Chairman states he does not know Town
		Counsel's schedule. Discussion ends.
3. NEW BUSINESS		
0 Cedar Street (M15-B1-L9)	Proposed Septic Plan	There is an approved plan for this address. Property may be
		bought & subdivided. Proposed new owner wants to submit
		new proposed septic plan. Proposed owner has been informed
		that plan can be submitted for review after subdivision is complete.
		Waiting for subdivision document.
Building Department		
84 Ring Road (M8-B1-L10)	Building Permit to renovate basement.	Building permit signed.
4. OTHER		
Administrative Updates		
Mail & Bills/Warrants for payment		Reviewed and signed.
Adjournment		Motion made & voted 2-0 to adjourn. Adjourned at 5:50pm

PLYMPTON BOARD OF HEALTH MEETING
JANUARY 22, 2019

ATTENDANCE SHEET

Alexander Antonio	74 Oak St #1, Plymouth MA 02360
BVE Ariane	6 Commerce Way, Carver MA 02330
Richard Buckley	81 Somerset Street, Plymouth MA 02360
Yerlin Grady	71 Evergreen St Kingston MA 02264

 **SERKEY & KELMAN, PC**
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PRESENTATION TO PLYMPTON BOARD OF HEALTH ON JANUARY 22, 2019

1. Disclose per Open Meeting Law the fact that proceedings are being tape recorded

2. Chronology:

a. BOH Regulation 15.255 provides that "mounded systems for new construction must be on a lot that has 5 acres or more".

b. 10/29/18: West Light's project engineer, Kevin Grady, submitted completed applications for mounded sewage disposal systems for two single family homes to be built on lots less than 5 acres in area on Palmer Road, requesting a variance in each case from Regulation 15.255, for the following reasons: [West Light] is proposing an alternative secondary treatment system that will treat the effluent prior to discharge. The additional treatment provides an equivalent degree of environmental protection as the additional required acreage would provide:

i. Treated effluent on a 1.5 acre lot is equal to if not better than untreated effluent on a 5 acre lot.

ii. A monitored system on a 1.5 acre lots is equal to if not better than an unmonitored system on a 5 acre lot.

c. 11/27/18: These applications were on the BOH Agenda for the meeting held that night, but it is unclear what, if anything was discussed about them that night.

d. 12/11/18:

i. These applications were on the BOH Agenda for the meeting held that night.

The minutes from the 12/11/18 meeting state as follows: "Health Agent

reports that Engineer (Mr. Grady) contacted him and requested to be put on the

January 22 Agenda"

ii. Instead, BOH (without notifying Grady that his requests would be heard that

night) voted to not only deny West Light's variance requests but also to deny

West Light's requests to send the proposed septic system plans out to the

Town's third party reviewer.

e. 12/13/18: BOH sent a letter to Grady informing him for the first time what the BOH had

done two days earlier. The letter went on to say that this matter would again be on the

agenda for the meeting to be held tonight, 1/22/19.

f. 1/8/19: These applications were on the BOH Agenda for the meeting held that night, but

it is unclear what, if anything was discussed about them that night.

g. 1/22/19: These applications are on the BOH Agenda for tonight's meeting.

3. Purpose of BOH regulations per Section 2: "These regulations are intended to protect the public

and environmental health, provide adequate water supply and waste water treatment, and

ensure the residents a safe, clean and healthy environment to live in."

4. Our position is that the 5 acre requirement for mounded systems does not, in and of itself,

further these purposes. Mr. Grady has submitted a letter dated January 18, 2019 which explain

why this is the case. [Grady presentation based on letter].

5. A BOH regulation can be enacted merely by vote of the BOH and public notice thereof. By

contrast, a Zoning Bylaw amendment be enacted only after a publicly noticed public hearing by

the Planning Board, a two-thirds vote of Town Meeting, and approval by the Attorney General.

Our position is that BOH Regulation 15.255 ("mounded systems for new construction must be

on a lot that has 5 acres or more") is of questionable legality because it is, in essence, a Zoning

Bylaw amendment.

6. West Light therefore requests that:

a. The BOH vote to rescind its votes of 12/11/18 to not only deny West Light's variance requests but also to deny West Light's requests to send the proposed septic system plans out to the Town's third party reviewer.

b. The BOH vote to

i. Approve West Light's variance requests, or, at the very least,

ii. Send the proposed septic system plans out to the Town's third party reviewer

7. If the BOH doesn't do so, West Light will have to appeal the BOH's 12/11/18 votes to the Superior Court, thereby calling into question the validity of BOH Regulation 15.255 on its face.