

JESSICA COLLINS, Chair  
WALTER R. WOLF, DPM, Vice-Chair  
KAREN WALSH PIO, LICSW, LADC 1, Clerk  
LINDA DUGUAY, RN  
TONY JUDGE

SHARON D. HART, Public Health Director

## Board of Health Minutes

June 16, 2020

As Approved – July 8, 2020

Present: Jessica Collins, Chair; Walter R. Wolf, DPM, Vice-Chair; Karen Walsh-Pio, LICSW, LADC 1, Clerk; Tony Judge; Sharon Hart, Public Health Director; Jennifer Jernigan, Assistant Public Health Director

*Jennifer Jernigan alerted all present at the virtual meeting that it was being recorded and started the recording.*

*The Board of Health Meeting was called to order at 4:31p.m. by Jessica Collins.*

### **1: Acceptance of Minutes:**

Collins wanted to approve the minutes from the last meeting and stated that it looks like Board members reviewed them, gave feedback and then Jernigan sent out another version. Wolf then made a motion to approve the revised minutes from the June 10, 2020 meetings. All were in favor.

**Director Hart needed the link to the meeting and was working on getting signed in.**

### **2: Topic: (a) Expanded Position Statement Regarding the North Pole Estates Subdivision.**

Wolf commended Collins for her “placeholder” letter sent to the Planning Board. Walsh Pio asked if there was any feedback on the letter. Collins responded that she only received a “thank you.” Collins listened to the whole Planning Board meeting last night and they did receive the letter. Judge watched it also and said that there was an acknowledgement that the Board of Health had communicated.

The Board of Health then agreed that they do not need to look at the D Cubed peer review of the septic systems again for this current meeting. Walsh Pio stated that she feels it is important that the few critical items in that review be addressed, however.

Collins then asked that the letter Hart sent today to the applicant, that came from the Health Department and not the actual Board of Health, would not undermine anything that the

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Board of Health is asking for, correct? Collins was not aware that Hart would send out a letter without the actual Board of Health reading it first.

**Director Hart joined the meeting 3 minutes in.**

Collins gave a recap that they approved the minutes and that the Board agrees that they do not have to look at the D Cubed peer review again. Collins asked Hart, however, about the letter she sent out as required as Health Director to the applicant. She asked if what was mentioned in the letter would not undermine what the Board of Health is going to be talking about tonight and then put forth to the Planning Board. Director Hart explained that according to the Subdivision Regulation and according to our Town Counsel, our review of a subdivision plan is limited to Title 5. We have discussed that and it is her duty, that the Board of Health gave to her, to review subdivision plans for Title 5. And that is what she did. She reviewed it and sent it in. Above and beyond that, if the Board of Health wants to put in anything else, that would be up to the Board, according to Hart. Hart is not sure what that would look like. According to the Town Counsel letter, it states that we are limited to Title 5 review. But Collins got another letter from another attorney that the Board of Health can review and submit more than that. So right now, that second letter was sent forth to Town Counsel to see if our jurisdiction goes beyond Title 5 for a subdivision review. So, it would be up to the Board members to decide what they would like to submit, if they are going to submit something to the Planning Board that is above and beyond Title 5, per Hart. That would not be Hart's area but the Board members decision if it something that they want to do. As part of a subdivision review, you are required to give a copy to the applicant and the Planning Board. So, according to Hart, if the Board of Health decides to draft a letter, then they should give it both to the Planning Board via email (on letterhead) and to the applicant, if that is what the actual Board of Health wants to do. Hart will submit it for them.

Judge stated that he is looking at Collin's letter date June 10, 2020. It is addressed to Brad Hutchison. It certainly does go beyond issues that Hart may have communicated. Judge stated that the Chair and Director should both be aware of communications so that they are consistent and highlight the same issues. Walsh Pio stated that she thinks that both letters are consistent. Hart put her letter out to the Board at the same time that Walsh Pio was making comments back on the same points. Walsh Pio thought that Hart's responses to Jay Ouellette were very clear about what had to happen and she was glad to see that. Walsh Pio doesn't even know if those perc tests that were done are valid. Hart responded that they did over 70 perc tests and they are all valid perc tests. They now need to do a survey and get an elevation of each one of those because once they start removing soil, that perc is no longer valid. So, we need to have that identified. There are only four lots going in right now. That is all that is part of the subdivision. That is all it is looking like right now. They are not applying for any

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of the other lots that we did right now. So, the request to them, to be clear, is that we would like elevations. The Planning Board needs to know that there are buildable lots. So, by doing the perc tests, it identifies that there are building lots. Hart stated that when they come in to see her, to actually do a system, it may not be Jay Ouellette. It may be that he has sold that piece of property (lot) off. So, the homeowner comes in with their house design. They have to design their system based on those perc tests and give Hart a plan that is detailed. Right now, they are not required by law to give a detailed plan to Hart during the subdivision review. That happens later on.

Collins then stated that right now, tonight, we charged ourselves with drafting up more specific asks and recommendations to the Planning Board.

**The first question was determined by the Board to be: Has any earth been moved since the perc tests were done.**

**The second question: Is there a monitoring well in place so that once earth is removed, we can see the water table and separation?** Hart responded that this question is best asked of Richard Harris, Planning Director. It should be in the hydrogeological study and she thinks that one of the requirements of DEP is that they were going to have monitoring wells. Walsh Pio stated that there was a letter that Collins gave the Board of Health at the last meeting from Ternbach, Pleasure and Davis stating that the monitoring wells have not been done. Collins stated that so, again, there is the question of will there be a monitoring well to address DEP requirements. Hart responded that she knows that there are some monitoring wells out there when she did the perc tests. She doesn't know, however, if they have been abandoned or are still in good condition. They were back toward the Connecticut River, on the ridge.

Collins stated that this now leads to the separation of the water table. That is the monitoring of the water quality. The Board of Health had put out their intense concern about contaminants and controlling contaminants. That was discussed just over and over again last night at the Planning Board meeting. Her and Judge had watched the meeting. Basically, the applicant's attorney kept coming back and saying that these are all hypotheticals and we can't respond to hypotheticals. They said that they needed real regulations that are being pointing to and real examples. This makes Collins nervous because if you cannot imagine hypotheticals then there is no mitigation strategy that the company would be held to, to protect from contaminants. We are charged to mitigating any risk to the water quality, so this concerns Collins.

Judge stated that the applicant's team did no good last night. He feels that serious doubts were reinforced after the Planning Board meeting and non-doubters now have some.

Hart stated that DEP and Water District #2 have oversight to public drinking water supplies. It is Hart's understanding that according to DEP, they must remain 5 feet above ground water and the Planning Board is requiring 10 feet. Collins added that without the monitoring wells, there is no way to monitor it. Hart thought that they were going to have monitoring wells and test twice a year, instead of the once a year. Collins stated that this is the confirmation that they want. Hart said that they could ask what the DEP requirements are in Zone 2 and are they following them. They can check with the Planning Board on what they are requiring and what that looks like.

Collins then asked for any other recommendations to the Planning Board. Hart stated that Collins had previously been concerned about nitrogen. Collins agreed. Hart then said that maybe they could recommend no fertilizer or limit it to twice a year or limit pesticide use. Hart asked the Board if they wanted signage like "You are in a Zone 2 Drinking Water Area"? Maybe give more detailed strategies and make suggestions to the Planning Board. Collins asked the Board for feedback on these ideas. Walsh Pio thought these ideas made sense. Wolf liked the idea about the signage and feels they should be up before any prospective buyer looks at a lot. Hart stated that the Board of Health cannot make these ideas a requirement but can recommend them. The Board of Health can bring up the concern with the nitrogen and how fertilizer is linked to that. The Board has to come up with how they feel on that.

Walsh Pio asked about restrictions and if these restrictions can carry over to a second buyer of the same property. Hart stated that she thinks that this is what a deed restriction does. It is attached to the property. You could maybe have all these items be put as a deed restriction, by asking the Planning Board to do so.

Collins went over the four recommendations at this point:

- 1: limit fertilizer
- 2: place signage before a prospective buyer entertains purchasing
- 3: no pesticides
- 4: deed restriction per lot

The Board was in agreement with this.

Collins stated that she would now like to talk about wastewater treatment systems as a nitrogen-reduction strategy as well. She reviewed the research that she had done on Granby

Heights Condominiums. There are 90 units there and they are also in the overlay district. The original septic system failed. They had to put in an advanced water waste treatment system. It was very expensive. It gets tested several times a year and the results go to the Board of Health. The other end of the spectrum is a normal septic system. Collins asked if the Board of Health can require or recommend a type of system. Hart responded that it is up to the applicant. If they are in Zone 2, they are limited to 4 bedrooms per 40,000 square foot lot. If they had wanted to put in one system for all the houses, then there is a way to do a treatment to limit their nitrogen loading but they did not choose that system. It is up to the applicant. The Board of Health cannot require it. Judge asked about what if the Board of Health came to the conclusion that there is only one acceptable option and if the applicant wanted to proceed, then the Board of Health says this has to be done. Hart responded that it is her understanding that you have to have health data to support your requirement. DEP has done studies and their oversight is public drinking water. Their requirement is that you stay five feet above groundwater, for a four bedroom it is a 40,000 square foot lot and that should be acceptable for a Zone 2 of a drinking water supply. Hart does not have data that says that this does not meet the requirement.

Judge stated that if you listen to the peer reviewers from last night, they continue to see deficits in this plan. He doesn't see a resolution in this. The peer reviewers are not satisfied. Judge thinks that this is very problematic and that we all must agree on that. This is an easy one.

Collins stated that she thinks the Board of Health is struggling with the lack of data they can produce to back up concerns. She wanted to know if that they do not have the health data, can they cite the peer review and the deficit of the responses and therefore we are not confident and very concerned and want to see a more advanced nitrogen-reduction system put in place? Can they use the peer review deficits if we do not have the data? Walsh Pio stated that this some kind of data, isn't it? The peer review?

Hart stated that it is up to the Board. She asked the Board about what they are fearing will be in the water. Walsh Pio stated that there are so many "not adequate responses" in the peer review and that is troubling. Collins thinks that this was the shocking part of it. Every category had "inadequate, inadequate." A lot of their responses were "Well, that's the property owner's responsibility." Contamination, storm water run-off, water quality was all deferred to the homebuyer. Judge thinks they have a non-serious attitude and effort about this project and it leaves one to wonder about what their real serious intention with the project is.

Collins asked about using the peer review and deficits as a foundation for their recommendation.

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We could recommend:

- 1: No more earth removal.
- 2: Most advanced nitrogen reduction system like Granby Heights Condominiums.
- 3: Also include the list we just brainstormed.

Hart asked if the first four houses are **a phase** of the subdivision or if they do more it is then another subdivision? Collins does not know why they would have to excavate 40 million cubic yards for four houses. This seems totally unnecessary. Judge stated they maintain that they have to put in a road anyway, even to do four houses. They want a massive amount moved out for four lots. Hart responded that two of the houses are on the road. Two are just off the road. So how much gravel do they have to move? Walsh Pio said that they are requesting to move that massive amount. Collins stated that this is what the Board of Health is trying to mitigate and are concerned about. For four houses. It is a scary amount of sand and gravel that is going to be trucked down Route 47 for four houses. Hart stated that at that elevation, no more soil can be removed due to the perc tests at those four lots.

Per Wolf, they should make a recommendation in the letter that there should be no further excavation. This has been a major concern right from the start and the fact that they have been doing this excavation for years without permitting and without being authorized to do it and never being held accountable is really sad. He is concerned about the road excavation for these four lots and in the areas that were perked. There should be minimal grading for the lots as they currently are and minimal excavation for putting in the road. Wolf then went on to state that we have limitations but we need to be clear with the Planning Board by making strong recommendations. Wolf stated that he liked Collins' June 10, 2020 letter. He does not know how more specific we need to be. We urge them to say "No," but we do not have the authority.

Collins asked Wolf about requiring what type of system should be installed. Wolf stated that they have no legal precedence to require that. As Sharon has explained perfectly, we need legal precedence to require that for a single-family home. He doesn't believe that the Planning Board can require that either.

Wolf stated that he thinks they should just say that this is something that they do not approve of as a Board of Health. We do not have the authority to say no. "It is really up to you folks. Please do the right thing." Collins asked about the list with the signs, eliminating fertilizer, etc. Wolf said that this is the thing. If we keep listing out all these things that we recommend, will we still be happy? If they meet all the requirements and then we approve it? There is just so much potential for abuse. Who would enforce these more stringent regulations? This is set

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up to fail down the road, even if we put in the most stringent regulations and the Planning Board is on board with this and this is our drinking water supply. We should be protecting it as best as we can.

Judge suspects that if the Planning Board were to approve this, very quickly there would be litigation and this could go on for some period of time. He wonders how much they are willing to invest in this project. Wolf stated that there could be a lawsuit if the Planning Board says no. Either way, litigation could happen but we as a Board should just speak strongly with what we recommend. Just keep it plain and simple. We don't like the idea even if they do all these things to pacify our fears. Walsh Pio agrees.

Collins stated that what she is hearing is a short, simple letter. Something like, "We understand it is your authority and we urge you not to approve. We say no to the development and excavation of this land. We just see problems down the road. We have a strong objection." Wolf stated that Collins' letter raised all their concerns already. The Board of Health found out about this gravel pit and development from Walter Hamilton. This has been going on for a long time. Wolf feels that this is what the Board should do. He is embarrassed that they didn't know about it before. Collins asked if everyone agreed. Walsh Pio, Judge and Collins all agreed. Judge stated that "We can't fool around here." If they do approve it, then Judge said, we can exercise our strength then as to what we can do.

Collins will draw up the letter, then run it by Walsh Pio for grammar. Then it will go to Hart. Hart will get it to the rest of the Board members. Collins wants the letter on letterhead and all Board of Health members to sign it. She asked that it be sent as well to Mike Sullivan, Conservation Commission, Water Departments, etc. She will put a cc on the bottom of the letter for Hart as to where it goes.

Wolf motioned that the Board of Health put together a brief, strongly worded letter condemning any further excavation on the site and any future development of the site. Walsh-Pio seconded. All were in favor.

Collins is drafting up the letter. Then it will go to Walsh Pio and then to Hart. Then the rest of the Board will get a version to sign. The Board of Health will notify the Planning Board of their request. Hart told the Board whomever you want the letter to go to, put it on there. Collins will try and turn it around this week.

Judge then had a general COVID-19 question about the process of getting tested for the virus. Do town residents know how to approach this? Where do you get tested? Does your physician send you? Hart then reviewed the process with the Board and the instructions given on the Town website. Judge asked if the Board of Health is under the obligation to tell the town how to get tested. Collins would like to see these instructions broadcasted, maybe by an article in the Town Reminder.

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Walsh Pio brought up that protesters can get tested if they have been in a crowd or march. Hart, Jernigan will check our advertising budget. Judge will try to get it advertised for free with the Town Reminder.

Updates were given on the high school graduation and the South Hadley Swim Club permit.

Collins wants an agenda item addressing racism as a public health issue for the next meeting. Walsh Pio and Wolf agreed.

**The next Board of Health meeting was set for July 8, 2020 at 4:30 p.m.**

Respectfully submitted,

Jennifer J. Jernigan  
Assistant Director of Public Health

**ATTACHMENT A**

Placeholder Letter sent to Planning Board  
From Jessica Collins, Chair of the Board  
Of Health, Dated June 10, 2020

BOH File

Letter from Director Sharon Hart  
To Applicant Regarding North  
Pole Estates Septic Plan Peer Review,  
Dated June 16, 2020

BOH File