



Meeting Minutes
Gloucester Board of Health
Septic Subcommittee
February 25, 2019
9 DALE AVE
CITY COUNCIL COMMITTEE ROOM

IN ATTENDANCE

Frederick Cowan, Chair; Rich Sagall, Board of Health Chair; Joseph Rosa, Board of Health member; Karin Carroll, Health Director; Chip Payson and Krisna Basu, City Legal Department; Max Schenk & Craig Lopiccolo, Health Department staff

OPENING OF MEETING – 9:00 AM

SUBJECT

Discussion regarding enforcement options for noncompliance with Board of Health and Health Department orders.

Discussion:

Mr. Schenk provided background on the issue of having property owners who have not responded to several requests to upgrade their failed septic systems. He provided information from Title 5 of the State Environmental Code, Massachusetts General Law and State Sanitary Code CMR 105 410.00 that highlight the Board of Health’s jurisdiction and enforcement options in such circumstances. The question is whether the City can upgrade a failed system

Mr. Cowan stated that in the past, that if the property owner were noncompliant, the Board of Health would send a letter stating that the water to the property would be turned off at the street in order to abate the potential for further pollution. He added that prioritization of enforcement was based on environmental impact and proximity to habitable buildings.

Attorney Payson asked what the State Departments of Health or Environmental Protection have stated in regards to the power of local Public Health in these matters?

Mr. Schenk stated that, in Title 5, enforcement responsibility is largely ceded to the “approving authority” and in its definition, the approving authority is the local Board of Health.

Mr. Payson stated it is their opinion that, although the regulations and statutes provided outline certain capacities, that Title 5 has the overarching authority in these instances and given the appeal process it provides, the advice of his office is to seek a written determination from the Department of Environmental Protection as to whether the Board of Health and/or the City have the right to enforce an order to the extent that the City performs the necessary upgrade to



prevent further violations. His concerns are for the overall liability to the City as a whole if we act outside of regulatory authority.

Mr. Schenk stated that he will contact the Department of Environmental Protection for their opinion and follow-up with the Board and City Counsel.

Attorney Payson stated that his office would be happy to play a part in discussions with Mass DEP regarding proper procedures and channels of communication.

MOTION: Mr. Cowan to Adjourn

SECOND: Mr. Rosa

All in favor – motion carries

CLOSE OF MEETING – 9:30 AM

Respectfully Submitted,

Max Schenk

Date

Accepted by:

**Frederick Cowan
Subcommittee Chair**

Date