

Description		
Date	06/25/2009	Location
		Board Of Health
Time	Speaker	Note
6:44:17 AM		Board Members Present: Robin Cory, Berk Knighton, Laura Larsson, Brian Leland, Bill Murdock, Gretchen Rupp, Buck Taylor, Barbara Vaughn, Excused Members: Eric Bryson, Deputy County Attorney: Chris Gray Staff: Craig Caes, Toni Lucker, Tom Moore, Steph Nelson, Tim Roark, Public: Rick Gale, David Odt, Rick Cameron, Justin Houser, Marilyn Collins, Darren Legan, Scott Lowry, Mark Fasting, Ned Miller
7:01:32 AM		Call to Order
7:01:39 AM		Disclaimer for Audio Broadcast
7:02:08 AM		Public Comment on a Non-Agenda Item
7:02:24 AM	Rick Gale, Tobacco Prevention Specialist	Program Coordinator for Tobacco Free Gallatin, Rick presented information on the program activities. October 1st is the date for full implementation of the Indoor Air Act and the enforcement piece is through the Board of Health.
7:05:54 AM	Justin Houser, Morrison & Maherle	For future variances, Justin asked the Board to consider removing the word "naturally" from the regulation requiring a minimum 'drainfield vertical separation of four feet to naturally occurring groundwater.' Or would the Board consider accepting a variance that has a minimum of four feet separation at all times during disposal as this relates to on-site storage as opposed to discharging year-round (i.e., discharge for 9-months and hold for 3-months).
7:07:25 AM		Consent Agenda
7:07:54 AM		Gretchen requested that contracts and the minutes be pulled from the consent agenda.
7:09:08 AM	Motion	Brian made a motion to accept the consent excluding the minutes and the TB and the Cooperative Agreement contracts
7:09:23 AM	Second	Robin seconded the motion.
7:09:29 AM	Vote	Roll Call: Robin Cory - yes Berk Knighton - yes Laura Larsson - yes Brian Leland - yes Bill Murdock - yes Gretchen Rupp - yes Buck Taylor - yes Barbara Vaughn - yes The motion passed unanimously.
7:09:49 AM		Regular Agenda
7:09:53 AM		Corrections to the min
7:09:58 AM		Gretchen noted the pages that required corrections - page 2 of the minutes at time

		stamp 8:08:05am, the second sentence needs to be clarified.
7:12:39 AM		Chris advised that the record speaks for itself.
7:13:28 AM		Laura suggested removing the sentence entirely
7:13:39 AM		Gretchen asked for clarification of the effective date of the TB contract on page 26.
7:13:45 AM		Chris advised that the Board adopt the minutes as amended.
7:13:51 AM	Motion	Gretchen made a motion to adopt the minutes as amended.
7:13:59 AM	Second	Laura seconded the motion.
7:14:03 AM	Vote	<p>Roll Call: Berk - yes Brian - yes Buck - yes Robin - yes Laura - yes Bill - yes Barbara - yes Gretchen - yes</p> <p>The motion passed unanimously.</p>
7:14:25 AM	Contracts	Stephanie clarified the TB contract's effective date.
7:15:51 AM		Board asked for Chris' advice regarding contract not approved but contract half through
7:16:40 AM		Chris advised that the contract is fine.
7:17:01 AM		Gretchen asked for clarification on the period of performance dates for the Cooperative Agreement. Stephanie and Tim clarified the period of performance. The contract does not need to be signed and can be pulled. Next year's contract has not been forwarded from the State.
7:22:24 AM	Motion	Laura made a motion to adopt the Tuberculosis Task Order Contract.
7:22:27 AM	Second	Bill seconded the motion
7:22:33 AM	Vote	<p>Roll Call: Berk - yes Brian - yes Buck - yes Robin - yes Laura - yes Bill - yes Barbara - yes Gretchen - yes</p> <p>Motion passed unanimously.</p>
7:22:46 AM		Regular Agenda
7:22:52 AM		Cameron Variance Request #2009-006 and #2009-007
7:23:07 AM		Staff Report
7:23:21 AM		Tim presented the variance that seeks permission to replace an obsolete system with an Elevated Sand Mound due to seasonal high groundwater measured to be less than 4 feet below ground surface & the required horizontal setback from property boundaries is less than 10 feet.

7:25:57 AM	Chris Gray	Advised the Board on the legal change in the variance criteria. The undue hardship provision is gone. Variance criteria must exactly match the state regulations. Findings must meet the new variance criteria.
7:27:37 AM		Tim added that the variance was noticed in the June 14th & 24th edition of the Bozeman Chronicle.
7:28:04 AM		Comments by Petitioner and Questions by the Board
7:28:18 AM		Stephanie swore in the commenters.
7:28:36 AM	Dave Odt, SepTech	Dave presented additional information regarding the variance request and noted that the proposed system makes the best of the situation.
7:30:43 AM		The Board asked if the City of Bozeman was contacted about the possibility of annexation or connection to the sewer?
7:31:16 AM		Tim is not aware of sewer extension in the area.
7:31:30 AM		Board discussion with Dave about the missing mixing zone, although as a replacement system, the mixing zone is not required. Further Board discussion in the Board Deliberation period as needed.
7:41:02 AM		Written Comments - none
7:41:10 AM		Public Comment - none
7:41:28 AM		Staff Comments
7:41:49 AM		Tim discussed the non-degradation issues and ARMs. The applicant meets the state and local requirements.
7:44:03 AM	Motion	Bill made a motion to approve the variance subject to the conditions presented by staff.
7:44:25 AM	Second	Buck seconded the motion.
7:44:50 AM		Board discussion about adding the phrase "according to manufacturer's approved specifications" to staff recommendations #2.
7:49:20 AM	Findings	<p>Bill made a motion to approve the variance subject to the conditions presented by staff.</p> <p>The Board finds that, based on the analysis provided by the staff report, the applicant and their representative, the granting of the variance will not::</p> <ul style="list-style-type: none"> a) contaminate any actual or potential drinking water supply; and b) cause a public health hazard as a result of acces to insects, rodents, or other carriers of disease to humans; and c) cause a public health hazard by being accessible to persons or animals; and d) violate any law or regulation governing water pollution or wastewater treatment disposal, including the rules contained in this subchapter except for the rule that the variance is requested from; and e) pollute or contaminate state waters in violation of 75-5-605, MCA; and f) degrade state waters unless authorized pursuant to 75-5-303, MCA; and g) cause a nuisance due to odor unsightly appearance or other aesthetic consideration.
7:51:28 AM	Second	Buck scoded the motion.
7:51:35 AM	Discussion	Board discussion about adding the phrase "according to manufacturer's approved specifications" to staff recommendations #2.
7:56:57 AM	Vote	Roll Call: Berk - yes

		<p>Brian - No Buck - yes Robin - yes Laura - yes Bill - yes Barbara - yes Gretchen - yes</p> <p>The motion passed.</p>
7:57:39 AM		Legan Variance Request #2009- 008
7:57:47 AM		Staff Report and Questions by the Board
7:58:18 AM		Tim presented the variance that seeks to install an onsite replacement septic system where a municipal collection system is within 200-feet of the property line and 10-feet of the north property line.
8:00:35 AM		<p>The Board asked Tim for clarification about the first staff condition that refers to an Elevated Sand Mound as the replacement system. This was a mistake and will be replaced with "standard absorption system".</p> <p>Board discussion about condition #3 that stipulates the owner must agree to connect to a public system when available and it is available. Tim noted this condition was an error and would be removed.</p>
8:04:34 AM		Board discussion about the hardship issue that could no longer be considered due to the legal change in the variance criteria.
8:08:13 AM		Chris advised the Board members that laws or regulations may change but to apply the law as currently given.
8:13:03 AM		The Board asked Chris for clarification on the law - could the Board legally require hookup to the city sewer, as it states in the county regulations since it runs so close to the property? Chris advised the Board that at this time, the Board's criteria does not allow the members to make that decision. Board discussion about the county regulations that have been superceded by state laws. The Board must grant this variance and accept this onsite system as it meets the state requirements.
8:15:29 AM		The Board asked Chris for clarification - if the state threw out the county rules about hookup if within 200 feet of the sewer, what variance is the applicant applying for? Chris stated that the state has not thrown out the rule. The variance is from that requirement. The state has thrown out the rule where the Board determines whether or not there is a hardship when considering a variance.
8:16:03 AM		Comments by Petitioner
8:16:10 AM		Stephanie swore in the commenters
8:16:27 AM	Ned Miller, Thomas, Dean & Hoskins	Ned represents Ron & Carole Legan. He introduced their son, Darrin, who is also the legal property owner. Ned discussed the reason for the depth of the sewer, which affects the cost analysis. City impact fees will increase the cost analysis.
8:18:24 AM		The Board asked why the Legans do not hook into the sewer as this alternative would not require a variance? Ned stated that the Legans are a retired couple on a fixed income and cannot afford the cost to hook into the city sewer. An on-site system would be an improvement of the current system and would meet the state regulations.
8:21:44 AM		Board discussion about the mixing zone crossing the street and any effects to the neighboring property. Ned distributed the drawing that shows the 100-foot radius

		from the neighbors well.
8:23:09 AM		Board discussion with Darrin Legan about what research was done prior to purchase of the property?
8:24:10 AM	Darrin Legan	Details of the history of the property were not given to his parents.
8:25:45 AM		Written Comments - none
8:25:52 AM		Public Comment
8:26:02 AM	Marilyn Collins	Marilyn lives at 1509 Bridger Drive that is east of the Legan property. She testified that the previous owner wanted to subdivide and annex to the city.
8:27:18 AM		Petitioner's Rebuttal Comments and Questions by the Board Ned asked for clarification on condition #4 regarding the 5-year permit expiration.
8:29:03 AM		Tim addressed Ned's concern about the 5-year permit expiration but the new regulations deny this practice. The intent was to review and continue for another 5 years. If the situation changed dramatically enough, discussions could be had. City services is an issue that seems to continuously come up for the Board.
8:34:06 AM		Ned wants new verbage in condition #4 to the effect that if in 5 years the conditions stay the same, the Legans would not have to go through the variance process again.
8:34:41 AM		Board discussion with Ned about the mixing zone extending under the street and how it is not polluting whether it constitutes pollution of state waters.
8:37:16 AM		Discussion about changing condition #4 to "...if connection to a public system is feasible." Ned wants to see something that would prevent the Legans from having to go through the variance request again.
8:39:11 AM		Board Deliberation
8:39:17 AM		Brian stated he does not see how the first variance criteria has been met since the hardship criteria is out and asked Chris why the Board is hearing a variance when the criteria have not been fulfilled? Chris stated the criteria on the form are inapplicable and now there are seven items to consider today as a quasi-judicial body due to changes by DEQ. He advised the Board to evaluate those criteria and to utilize the facts and circumstances to make findings.
8:41:42 AM		Bill stated he would find that the Legans have met the criteria. He discussed the unreasonable city fees (for fees other than sewer) as not fair to those with failed systems and to retired people. Bill suggested adopting the economic infeasibility to the regulations and he stated he would vote in favor of the variance.
8:44:22 AM		Barbara stated that for the Board to require hookup to city sewer, it must be feasible to do so and she discussed the need for planning with the city. Tim suggested a possible modification to condition #4: "...if connection to a public system is feasible and has not significantly changed from the conditions heard by the Gallatin City-County Board of Health on June 25, 2009." In this way, if the conditions have not changed, the Legans would not have to come before the Board again.
8:47:26 AM		Board asked counsel how this change to condition #4 would impact future variances. Chris advised that this change would have no legal barring on other variances as each variance is heard on a case-by-case basis as the law and facts are presented to the Board at that time. The law will change.
8:48:55 AM		Tim recommended that condition #1 be changed to read: "All other conditions of

		GCCRWTS Sections 17.02 (Standard Absorption Systems)..."
8:49:41 AM		Board discussion continued about denying the variance based on the mixing zone under the street creating pollution.
8:52:01 AM		The Board asked counsel if the variance could be legally denied if all criteria is met? Chris advised that the Board could not legally deny this variance unless there are findings to base a denial, i.e. pollution. Board discussion about the mixing zone that is not required in this case because this is a replacement system. Tim added that by state regulation, this is determined to be non-significant degradation of state waters and meets the Clean Water Act.
8:57:09 AM		Board discussion about reliance on staff conclusions, opinions and recommendations based on evidence presented to staff.
8:59:41 AM	Motion	Bill made a motion to approve the variance subject to the conditions as amended.
9:00:10 AM	Findings	<p>Bill stated that Board discussion and questions and answers on the record with staff have clearly demonstrated that the applicant has met the variance criteria.</p> <p>The granting of the variance will not::</p> <ul style="list-style-type: none"> a) contaminate any actual or potential drinking water supply; and b) cause a public health hazard as a result of acces to insects, rodents, or other carriers of disease to humans; and c) cause a public health hazard by being accessible to persons or animals; and d) violate any law or regulation governing water pollution or wastewater treatment disposal, including the rules contained in this subchapter except for the rule that the variance is requested from; and e) pollute or contaminate state waters in violation of 75-5-605, MCA; and f) degrade state waters unless authorized pursuant to 75-5-303, MCA; and g) cause a nuisance due to odor unsightly appearance or other aesthetic consideration.
9:00:28 AM	Second	Berk seconded the motion.
9:01:19 AM		Board discussion on the motion. Brian discussed condition #2 and requested adding the phrase "...according to manufacturer's specifications."
9:02:53 AM		Laura expressed her concern with the sewer so close and cannot make them hook up.
9:03:40 AM		Board discussion on this issue that continues to come up for the Board. The wastewater committee could continue this discussion with the city.
9:05:23 AM	Amended Motion	The amended conditions include #1, #4 and the elimination of #3.
9:06:08 AM	Vote	<p>Roll Call:</p> <ul style="list-style-type: none"> Berk - yes Brian - no Buck - yes Robin - yes Laura - no Bill - yes Barbara - yes Gretchen - yes <p>The motion passed. (Bill & Chris left)</p>
9:06:32 AM		Committee Updates
9:06:41 AM		Prevention Alliance

		Robin reported on the accreditation workshop she attended.
9:10:36 AM		Stephanie reported that the Prevention Alliance updated their work plan. One of the recommendations from the discussion was the possibility of changing the website to include an option for "Messages for the Board", which would allow places for editorials not published or other Board statements to the public.
9:11:47 AM		<p>Water/ Wastewater</p> <p>Gretchen reported on the last meeting that included discussions on updating Chapter 3. She referred the Board to the meeting notes and requested Board input on the bold/italicized sections. Next meeting in July. Gretchen volunteered the committee to take the lead on the difficult issue of what happens when incorporated cities bump up next to properties with on-site systems, what policies should be entertained and how to do this in the most fruitful and equitable way.</p> <p>Tim added that significant outreach has been done with the industry, staff has compiled the issues and will present to the subcommittee and Board. The first reading of Chapter 3 will not be ready for the July Board meeting.</p>
9:21:29 AM		For the July Board of Health agenda, Brian asked that a formal request to the Board of Environmental Review be an agenda item. He wants to have the Board of Environmental Review meet and help craft the variance criteria.
9:23:44 AM		<p>Air Quality</p> <p>Berk reported on the last meeting that addressed using the data produced by the continuous particulate monitor at the high school, requesting assistance from Bob Jeffries to make some modifications to their web site and initiated discussion on the creation of a non-regulatory air quality district.</p>
9:29:02 AM		Meeting adjourned.

Secretary

Date

Chair

Date