

At the Farmington Town Board Meeting, held in the Town Hall or by Phone/Video Conferencing on the 23rd day of January, 2024, at 6:15 PM, there were:

PRESENT: Peter Ingalsbe – Supervisor
Mike Casale – Councilman
Steven Holtz – Councilman
Nate Bowerman – Councilman-via Zoom
Ron Herendeen – Councilman
Michelle Finley – Town Clerk

Also present in person: **Tim Ford** – Highway and Parks Superintendent, **Dan Delpriore** – Code Enforcement Officer, **August Gordner** – Code Enforcement Officer, **Ron Brand** – Director of Planning & Development, **Ed Hemminger** – Planning Board Chairman, **Bill Davis** – MRB Group, **Sheldon Boyce** – Legal Counsel, **David Capps** - resident

Also present by telephone/video conferencing were: **John Piper** – HR Consultant

PUBLIC HEARING:

Supervisor Ingalsbe opened the public hearing at 6:15 p.m. The Town Clerk read the legal notice. Supervisor Ingalsbe stated that this public hearing is in response to Mr. Capps request dated December 5, 2023, to the Town Supervisor, to pursue the Town Board hearing in his appeal for the interpretation and decision that has been made by the Town Code Enforcement Officer to not issue a permit for an on-site wastewater treatment system that has been installed on the property at 780 Hook Road for a pending single family dwelling. He stated that the legal notice for this public hearing was published in the town's official newspaper on Tuesday, January 16th, 2024, as noted by the Town Clerk. and that the public hearing is being conducted in accordance with provisions of Chapter 126, Article VII, Administrative Relief, of the Farmington Town Code.

Supervisor Ingalsbe stated that within 30 days of the close of this public hearing, the Town Board shall affirm, modify, or overrule the decision of the Town Code Enforcement Officer and that said decision shall be in writing and based upon the findings from the public hearing record. The decision will not extend to granting variances from the provisions of Chapter 126. He added that variances from the substantive requirements (e.g. septic tank sizes, setbacks distances, etc.) remain under the jurisdiction of the New York State Department of Health and the New York State Department of Environmental Conservation.

Supervisor Ingalsbe stated that he had asked Mr. Capps to make his opening testimony, he will allow 5 minutes which will then be followed by The Town Code Officer for five minutes of comments and then Mr. Capps can provide additional information or make a rebuttal.

He stated that the town board members should not ask questions until the first cycle of statements are made by both individuals.

Mr. Capps stated that back in 2009, he built one of the largest homes in Farmington for his wife and four sons, they are active in their local church, community events, and Scout Community volunteer projects. He stated that for several years they have wanted to downsize by building a home on their property next to their present home. He stated that their property, about 10 acres, is Agricultural with solar electric and a small farming operation.

Mr. Capps stated that on September 8, 2022, a stop work order was issued, was told that he needed a Site Plan and soon after that the Planning Board approved a Site plan that included Engineered drawings for the septic system. Mr. Capps stated that this summer site work was started, and the septic system was installed, inspected, and approved by the Engineer according to the plans approved by the Planning Board and that the system was back-filled according to instructions from the Engineer and according to Farmington Town Code. He stated that the Building Department apparently observes site work underway and stated that no site work or anything else was allowed because of the Stop work order from September 8, 2022, so all work had to be stopped. When he attempted to pay the \$100 to remove the Stop work order he was told that it could only be removed by getting a building permit, and that he was already pursuing. He stated that the Farmington Town Code states that all Stop Work orders are to be specific and that a Stop Work order from September 8th, 2022, should not prevent all work on the property especially after the conditions of its removal namely approved site plan by the Planning Board was completed. He added that shortly after that the engineer submitted the septic approval to the building department and he was told that he would not be allowed to get a building permit until the septic system was dug up, apparently, he was supposed to have filled out a septic system application and pay a fee, he now is being prevented from getting the septic system permit and paying the fee until he digs up the septic system. He added that two septic systems that were installed on the property a few years ago never had town inspections because the engineer who designs the system is the person who inspects and approves it according to Farmington Town Code.

Mr. Capps stated that under Farmington Town Code, Requirements for a new on-site wastewater treatment system, Section 126-17 – Inspections Certifications- requires the design professional responsible for the design of the on-site wastewater treatment system to certify and inspect the system prior to backfill. Mr. Capps stated that was done. Mr. Capps stated that the Supervisor email him parts of the Town Code relating to wastewater treatment systems, the first one was §126-17. A. which states... "Installation of the on-site wastewater treatment system shall be under the direct supervision of the authority having jurisdiction." He added that it states supervisor not inspection, the other two septic systems on the property were never inspected by the Building Department because that is the responsibility of the engineer designing the system and who also must certify the system with the Building Department, which he said was done.

The second one sent to him by the Supervisor was §126-17 B. which states... "The applicant shall be prohibited from covering any component of the on-site wastewater treatment system without proper authorization." Mr. Capps stated that the engineer is the proper authority authorizes the system to be backfilled.

The third one sent to him was §126-16 A. which states... "The authority having jurisdiction shall not issue an on-site wastewater treatment system permit unless: all pertinent site data has been submitted, verified and certified as required by this chapter, all permit fees have been paid" and §126-16 B. (3) "Can be denied if the applicant has failed to pay all necessary fees." He stated that he filled out the application, he provided pertinent site data, and tried to pay the fee but was told that he had to dig up the

septic system first. Mr. Capps stated that on September 3rd, 2021, he originally sent new home plans to the Building Department, the illegal actions just described are just a few of the many that have caused my family great harm and he requests that the septic system be approved, the stop work order be removed, legal action against myself and my wife be stopped, and a non-bias process be setup to streamline permit approvals for long term residents.

Dan Delpriore, Code Enforcement Officer, stated that at the end of August 2023, he received a letter from Brent Rosiek of Rosiek Engineering that he certifies that a replacement Onsite Wastewater Treatment System was installed on Dave and Angela Capps property on Hook Road. In this letter Mr. Rosiek states that the new building was not constructed at the time that the septic system was installed, and he strongly recommended that all components of the system be fenced off until construction of the new house is completed. Mr. Rosiek also advised that the swing ties measurements to the building would need to be confirmed upon completion of the home and added to the record drawings. With this letter was a drawing, which was not correct as what should have been submitted was as-built drawings of what was installed. He added that with that information, the building department sent Mr. Capps a letter stating that he was in violation for installing a septic system without a building permit and with a work stop order on the property.

Mr. Delpriore stated that per Town Code 74-4 Building permits shall be required for any work which must conform to the State Uniform Code and/or the State Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation, or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney, or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Town. Also, per state code section R10S.1 which requires persons and entities who construct, renovate, use, and occupy buildings and structures to apply for and obtain building permits.

He stated that the definition of a structure per State code is something which is built or constructed, which a septic system is constructed for use. The Building Department has been working with Mr. Capps in meeting the requirements for a permit for installation of a septic system since the end of August 2023 and he has questioned all information that has been requested and requested the code sections that apply to the request before providing the needed information.

Mr. Delpriore stated that at this point there is one item that has not been addressed which does not allow the Town to issue a building permit for the septic system. The Town has requested information on how the Town will be able to inspect the system that has been installed and is now covered. The state code is clear per section R105.3 that any person or entity performing work for which a building permit is required shall keep work accessible and exposed until the work has been inspected and accepted by the authority having jurisdiction. Also, the Town code states per section 126-17 Inspection certifications of on-site wastewater treatment system that the applicant shall be prohibited from covering any component of the on-site wastewater treatment system without proper authorization. Mr. Delpriore added that the authority having jurisdiction per the State is the Code Officer that is appointed by the Town, and that authority can not be given to an engineer or architect unless the Code Officer allows for that per the State requirements.

He stated that without knowing how the inspection is to be completed the Town cannot issue a building permit. This is his interpretation of the Town and State Code.

Mr. Capps stated that the Code Enforcement Officer is taking a lot of the code from under the section Building Permits in the Town Code, and there is no building on the property where the site plan is approved. He stated that he received site plan approval from the Planning Board and that is why he started on the site work, and that the stop work order Mr. Delpriore is using to stop everything on the site and it was issued saying that he didn't have a site plan, and he went and got a site plan then turned around said that he didn't pay the fee, it applied to everything on the property. Mr. Capps stated that the Farmington Town Code clearly states that Stop Work Orders are for specific items and he fulfilled that item and Mr. Delpriore won't let him pay the fee to remove the stop the work order. Mr. Capps added that everything with the septic system is identical to the two other systems on the site, and those were never inspected by the town only the engineer. He added that the engineer designed it, inspected it, and certified it and there was never any building inspector that inspected the septic systems. He stated that is states in the Town Code that the authority having jurisdiction supervisors, receives the paperwork, never goes out and inspects it.

Supervisor Ingalsbe asked Mr. Capps if the engineer took pictures for the record. Mr. Capps replied that he was not sure if he did or not. Mr. Capps added that it was designed by an engineer and it went to the Planning Board and it was approved, everybody at the meeting agreed that was the plan that they were going with, Springtime came, he had an approved site plan, started doing some site work, installed the septic system exactly as planned, engineer came out and inspected it, everything looked great and then he backfilled it. Supervisor Ingalsbe asked if it was any of the engineering firms the town uses, Mr. Capps replied it was Brent Rosiek.

Supervisor Ingalsbe referred to Mr. Delpriore that Mr. Capps brought up two other septic systems that were on the site that he says his engineer had done and inspected and claims that they were never inspected by the town. Mr. Delpriore replied that he was the residential inspector at that time, Jim Morse was the Department Head at that time, and that Mr. Capps had applied for a permit and that their records show that the town did do inspections and they issued the certificate of compliance when they received the As-Built Drawings from Mr. Capps engineer. Mr. Delpriore stated that there is proof in the records that the town did do inspections. Supervisor Ingalsbe asked what year that was, Mr. Delpriore responded 2018 but did not have that information in from of him.

Supervisor Ingalsbe stated to Mr. Capps that he did have a permit from the town and town staff did inspect it. Mr. Capps stated that he would like to see evidence of that. He added that the town only wanted the certification from the engineer. Supervisor Ingalsbe will have staff provide him with that information.

Mr. Delpriore addressed the Stop Work Order by stating that there were a couple of items on the order that had to be addressed before it could be released, and one of the items was to submit a site plan and have approval by the Planning Board, Mr. Capps did complete that one, the next item was to apply for building permits and pay for them before starting any work, Mr. Capps has not complied with that, and the third item was to pay the fee to release the stop work order, which is obviously the last one they do because they wont release that until all the other requirement are completed. Mr. Capps stated that he tried to pay the fee and it was not accepted and that the stop work order does not say anything about building permits, it states site plan, and a site plan was accomplished. Mr. Delpriore stated that he will provide a copy of the stop work order to the board. Supervisor Ingalsbe asked Mr. Delpriore to the best of his knowledge he never received building permit paperwork? Mr. Delpriore responded for the septic they had not received anything until we notified him that after finding out he already installed the septic system, and that they do have an application for the house that Mr. Capps would like to build but that is still under review pending additional information. Supervisor Ingalsbe asked how long that application has been there, Mr. Delpriore responded 6 or 7 months now, they are trying to get all the required information. Mr. Capps stated that process was not true, that he was told he could not get a

building permit until he dug up the septic system. Mr. Delpriore stated that Mr. Capps is correct and that they stopped the review once they found out about the septic system issue. Supervisor Ingalsbe asked Mr. Delpriore if prior to him knowing of the septic issue, was he still asking for more information for the building permit, Mr. Delpriore replied correct, for the home permit. Mr. Delpriore added that there have been multiple emails back and forth asking for additional information. Mr. Gordner stated that as of May 8, 2023, they have been discussing the house permit and they found out about the septic issue at the end of August 2023.

Councilman Holtz stated that they were not doing anything regarding the stop work order, Supervisor Ingalsbe replied correct, but it is part of the whole trail. Mr. Delpriore stated that the board is just reviewing at his decision on the septic system, Mr. Capps states that he denied it and he has not, he has deemed it not complete, and he is waiting on information on how they can inspect the system since it has been covered up. Mr. Capps stated that Mr. Delpriore told him that he would have to dig up the system and to dig up a septic system you would basically destroy it. Mr. Delpriore replied that he had not said that and his request back and forth since August was how does the town inspect something that has been covered up and that is what he needs answered in order to issue a permit. Supervisor Ingalsbe asked if the Town Code and/or Department of Health state that it should be left open until it can be inspected, Mr. Delpriore responded both the Town Code and the State Code state that. Mr. Capps replied then it was inspected, it was inspected by the engineer who designed it. Mr. Delpriore replied that his engineer does not have authority in the town to do so. Mr. Capps stated that it was allowed on the other two systems. Mr. Delpriore replied because the town granted him that. Mr. Capps stated that the town choose this time to not grant it to the engineer. Mr. Delpriore responded because after they do an inspection, they grant the ability for the engineer to come out. Mr. Capps stated that the other septic systems were not inspected by the town, they were inspected by the engineer.

Supervisor Ingalsbe went back to the septic system that Mr. Delpriore inspected, which is septic system No. 2. He asked Mr. Delpriore is Mr. Capps had a paid permit, Mr. Delpriore replied yes. He asked what he found when he went out and inspected it. Mr. Delpriore responded that it was installed correctly and then we request record drawings from the engineering, who comes out and does all the measurements, and then submits them to the Building Department and they can close the system out. Supervisor Ingalsbe asked if the trenches were opened when he went and inspected it, Mr. Delpriore replied that he believed so as that is their normal procedure, so he doesn't see it going any other way.

Supervisor Ingalsbe to Mr. Capps, that what he is hearing is that the engineer has authority to continue and do the final records drawings, in that case Septic System No. 2, staff had been out and inspected it, which is different that this system. Mr. Capps stated that they have three systems there not, No. 2 was supposed to be the house and they rejected that, so he put in a third septic which is the one he is having issues with now. He added that the engineer came out inspected it, verified it was out in exactly like the other one, and that he could backfill it, so he did. Councilman Holtz asked if there was never a permit to start that third one, just the other two. Mr. Capps replied correct. Mr. Capps stated that this went to the Planning Board and received approval. Councilman Herendeen stated that he did not have the permits in order to start work, and he didn't do that. Mr. Capps stated that it was approved by the Planning Board, Councilman Herendeen responded that the Planning Board approved the site plan, not the work, you have to go through the Building Department and go through the steps, just like everybody else does. Supervisor Ingalsbe asked Councilman Herendeen how long he was on Planning Board and Zoning Board of Appeals, Councilman Herendeen replied that he was on the Planning Board for 15 years and 2 years on Zoning Board of Appeals.

Supervisor Ingalsbe asked if anyone online would like to speak. No one spoke.

Final Comments

Mr. Capps stated that he specified Code in here, Requirements for on-site wastewater treatment systems, Chapter 126-17 (D), states .."requires the design professional responsible for the design of the on-site wastewater treatment system to certify and inspect the system prior to backfill". He added that it is pretty clear that it is the design engineer to design it and inspects it that it is done according to the design. Mr. Delpriore added that Mr. Capps left out an important part of that code which reads "The Code Enforcement Officer shall have the right to require the design professional responsible for the design of the on-site wastewater treatment system to certify and inspect the system prior to backfill". Mr. Delpriore stated that the code is pretty clear that he has the right to ask for that, it does not say in the code that the design professional can go out and do the inspection so there was no permission that his office would give to allow that without those in place given that they did not know about it until after the fact. Mr. Capps stated that everyone at the Planning Board meeting, even Dan knew about the design, anyone coming out wouldn't know if the system was right or not except for the engineer who designed it.

Supervisor Ingalsbe asked Mr. Hemminger, Planning Board Chairman, that when they did site plan approval, what was in his mind was for that site plan approval. Mr. Hemminger stated that in general the next step for everything is obtaining a building permit from the code office, there is nothing that can be done based on a site plan without a building permit and although he might not have said it for this project, but no project ever starts without a building permit. Supervisor Ingalsbe stated that would it be a general comment that planning board approves the location (such as storage shed, septic system). Mr. Hemminger stated yes, the location, and the engineers look at the specifications to make sure everything is correct, but they certainly don't think that having site plan approval that gives the applicant permission to move forward with any building until they get all the appropriate building permits and to get with town staff, it has always been like that. Mr. Capps stated that a building permit is for a building or structure. He read Chapter 74 Building Permits 74.4 (A). Mr. Capps added that there is no building or structure there, it is an open field. He was working on the building permit for the house, and as Augie stated that they have been going back and forth on the details to be put on the building permit and then it came to an abrupt halt. Mr. Delpriore read the definition of a structure per State Code: it is something that is being built or constructed. He added that he reached out to his counterparts from the State to see if a septic system would be part of that definition and they agreed that it would be since it is constructed in the ground.

Supervisor Ingalsbe stated that he will provide guidance within 30 days. He closed the public hearing at 6:47 p.m.

Following the public hearing Mr. Capps emailed the Supervisor asking for the following email from Mr. Delpriore and final comments from his to be added to the minutes of this meeting:

Dave,

We have been informed that you have installed your Septic system for the house you have in for review right now. You have no permit for this system to be installed. You have a work stop order on the property which means no work could be done. I am unsure as why you would think that this would be allowed to be installed with no permits and no inspections. You will need to have a permit and you will need to dig up the system so it can be inspected. You will need to dig up the full system before any permits can be issued for any projects on your property.

Please let me know if you have any questions.

Comments emailed from Mr. Capps dated January 23, 2023

Dan stated that the Stop Work order from 9 8 22 specified the need for a building permit. The attached image of that order clearly does not show that. The order specifies the Farmington Town code section for Site Plans and specifies Planning board approval needed. A Site Plan was approved by the Planning board. Why would an approved Site plan not allow site work?

Someone's opinion that a septic system needs a building permit contradicts the code that specifies that a building permit is for a building or structure. A septic system is not a building or structure.

I do not recall any Building department inspections of the previous septic systems and look forward to Dan's documentation of such inspections. The approved Site Plan shows a Septic system with the comments "see design by Rosiek Engineering". Dan was part of this process and reviewed the septic design that was approved and fulfilled the requirements of the APPLICATION FOR A CONSTRUCTION PERMIT FOR AN ONSITE WASTEWATER TREATMENT SYSTEM FOR RESIDENTIAL OR COMMERCIAL. Is it really reasonable to dig up an Engineer approved septic system?

Dan stated that he did not say I had to dig up the septic system. I forward you the email that states "You will need to dig up the full system before any permits can be issued for any projects on your property." Is this reasonable?

TOWN OF
FARMINGTON



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Stop Work Order

[FTC § 165-100. Site development plan.](#)

TAKE NOTICE that there exists a violation of Article VIII, Section 165-100, of the Town of Farmington Codes / NYS Building Codes at the following locations: 768 Hook Road Tax Map Number 17.00-1-63.210 and the vacant lot with (no address number) Tax Map Number 17.00-1-63.220 in that: development was started by installing a driveway and working on water lines to an unapproved building lot. Town Code states before any development of a vacant lot can occur there needs to be an approval by the Town of Farmington Planning Board and appropriate permits are to be issued and paid for before any work can commence.

You are hereby

Directed and Ordered to Stop Work,

comply with the law, and to remedy the conditions above mentioned

on or before October 8, 2022 and pay the release fees that are approved by Town Code.

Failure to remedy the condition aforesaid and to comply with the applicable provisions of law may constitute an offense punishable by fine, imprisonment, or both.

September 8, 2022

Date

A blue ink signature of the Code Enforcement Officer, written in a cursive style, is placed over a horizontal line. Below the line, the text "Code Enforcement Office" is printed.

Code Enforcement Office

Michelle A. Finley, MMC, RMC -Town Clerk