



Terri A. Guarino
Health Agent

TOWN OF BOURNE BOARD OF HEALTH

24 Perry Avenue
Buzzards Bay, MA 02532
www.townofbourne.com/health
Phone (508) 759-0600 ext. 1513
Fax (508) 759-0679



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2017 DEC 14 AM 10:23
TOWN CLERK BOURNE

MINUTES November 14, 2017

Members in attendance: Kathleen Peterson, Chairperson; Stanley Andrews, Vice Chairperson; Don Uitti; and Kelly Mastria

Support Staff in attendance: Terri Guarino, Health Agent; Zackary Seabury, Health Inspector; and Meghan McLean, Administrative Assistant

MEETING WAS CALLED TO ORDER AT 7:12 pm

Ms. Peterson asked if there were any audience members filming this meeting. Ethan Genter, a reporter for the Cape Cod Times, was recording on an audio recorder.

- Pocasset Mobile Home Park-- Charles W. Austin Trust, Owner-- Review status of Receivership and manufactured housing community license. Discussion and possible vote in regard to order dated November 8, 2017 and any/all compliance issues with applicable rules and regulations.** Ms. Peterson asked if there were any members of the audience present for this item. There were no attendees for this item. Ms. Peterson explained that on November 8, 2017, the Board of Health issued a letter to the Charles Austin Trust that reads: *"This property is in violation of the conditions established by the Board of Health, the Manufactured Housing Act, and the Attorney General's Regulations by operating without a license as of November 1, 2017. As we know, this property is currently under receivership which is anticipated to end in the near future. It is imperative that the property owner meet with the Board of Health to discuss the transition period between the cessation of the receivership and the grant of a new license to the property. Pursuant to 940 CMR 10.11 and M.G.L. c. 140, §32B, you are hereby ordered to appear before the Bourne Board of Health at the public hearing scheduled for 7:00 p.m. on Tuesday November 14th, 2017 at the Bourne Community Center to discuss this matter. At said hearing you will be given the opportunity to be heard and to present the requisite Board of Health Application for a License to Operate a Manufactured Housing Community. You have the right to be represented by an attorney and to obtain any public records on file relative to this matter. A copy of the posted Agenda will be visible at www.townofbourne.com/health. Please be aware that failure to comply with this order and the applicable laws, rules, and regulations relative to the operation of the Pocasset Mobile Home Park will result in the imposition of fines and the Board of Health pursuing any and all statutory remedies. Thank you in advance for your cooperation with this matter."* The Health Office has not received an application. Ms. Peterson suggested that no more than two days after receivership ends, which is anticipated to end this week, which a full application must be presented to Health Office with all pertinent reports attached. Also, there is a problem with rules and regulations for the park that needs to be rectified. The Attorney General and Director of Housing and Community Development issued a letter in 2014 stating that a portion of the proposed rules and regulations were disapproved. There is currently no known manager on duty at the park and the Board also asked for

complete accounting of owned and occupied units. Ms. Peterson stated we also do not have current status reports from the park. Ms. Guarino stated that also, as of November 10th, the October license fee for occupied units was due to the Collector of Taxes. This could possibly be in transit in the mail. Moving forward, all monthly fees will need to be paid and submitted on time, no later than the tenth day of the following month. **Ms. Peterson made a motion to make the previously stated conditions a Board order to immediately contact the receiver to obtain the required information such as the acting manager, status reports, owned and occupied units, and when the receivership will end. To owner of land, it is ordered that within no more than two days of the receivership ending, a full application for a Mobile Home Park license must be submitted to the Health Office, including addressing any issues with the rules and regulations, and outstanding license fees. If they fail to comply with these orders, Ms. Peterson moved to proceed with any and all fines and statutory remedies. Mr. Andrews seconded the motion, all were in favor, and it was a unanimous vote.** Ms. Peterson explained to the Health Agent that should the receivership be terminated by the Court on the 17th, the Health Office must be in receipt of the completed license application by Monday November 20th. If the application is not received by that time, Tuesday November 21st shall be the day the Board will start assessing fines for violations, where each day is a separate offense. If the receivership does not end on November 17th, this motion will take affect within two days of the receivership end. Town Counsel, Robert S. Troy, Esq. stated that he, on behalf of the Board, spoke to Attorney Sabatt to determine whether the receivership would end this week or continue. He expressed the concern that the Town and the Board of Health has regarding the park. In fairness to residents and in order for Board to carry out its lawful responsibility, it is important to have discussion about transition in a time frame that allows the subsequent operator of the park to understand Board's needs in order to ensure compliance with rules and regulations. Town Counsel currently does not have any definite information regarding the receivership and anticipates hearing from Attorney Sabatt later in the week. The important thing is that the Board will not be in a situation in which there is no one in charge at the park. If necessary, and it appears that there will not be voluntary cooperation by owner, the Board of Health is prepared to bring to court a civil action seeking an order requiring that. This situation is now completely in the hands of Attorney Sabatt and the Charles W. Austin Trust, whom to his understanding will be operators of the park when the receivership ends. Attorney Troy stated that he has also informed the Board of Selectman about this, and that they may have to authorize immediate legal action if deemed necessary. There were no questions from the audience and there was no further discussion.

2. **Septic System Upgrade at 51 Clay Pond Road—DWCP #116-17 John Graci Septic-- Discuss and possible vote on violations of Title 5 of the State Environmental Code.** Mr. Graci was not present for this meeting. Ms. Guarino explained to the Board that Mr. Graci placed a call to the Health Office late this afternoon stating that he would not be attending the meeting because he had two work appointments that night. Ms. Peterson clarified the topic of discussion explaining that according to law, the Board of Health has a 45 day period to review and approve any septic application that is submitted as long as the application is completed. The violations were incurred because Mr. Graci initially installed this septic system without have a septic permit or the plans approved. Then the Health Office found some issues with the installed system during an inspection, where components were not according to plan. On October 31st the system was replaced correctly, inspected, and we do have the certified as built on file. Ms. Peterson confirmed with Ms. Guarino that the system at 51 Clay Pond Rd. is now corrected to the Board of Health satisfaction. **Ms. Peterson moved to take no action at this time. She would like to have a letter written to Mr. Graci stating that it was unfortunate that he couldn't join us this evening, and explaining that projects must be submitted to the Health Office ahead of time for permitted. Mr. Andrews seconded the motion, all were in favor, and the vote was unanimous.**
3. **2 Worcester Avenue—Jack Landers-Cauley, P.E. on behalf of Ekatarina Kumbatiadis & Russell Gonsalves—Request setback variances from Title 5 for the raze and rebuild of a single-family**

dwelling and the installation of a three bedroom septic system. Discussion and possible vote on the following:

- a) 4.8 foot variance from the septic tank to foundation
- b) 9.7 foot variance from the septic tank to the property line
- c) 9.0 foot variance from the SAS to the property line
- d) 8.8 foot variance from the SAS to the crawl space

Jack Landers-Cauley, civil engineer, was present for this meeting. Ms. Peterson asked if there are abutters in the audience. Mr. Agrillo, resident of 5 Worcester Ave, was present. Mr. Landers-Cauley displayed an enlarged copy of the proposed septic plan for the property. He explained that this project is very similar to any other project on a small lot that needs variances due to a failed Title V system. The owner of the property would like to tear down the existing structure and build a new one, which will require four variances. The owners originally wanted 4 bedrooms, but according to the design flow of the current system and the Assessor's records they are only allowed 3 bedrooms. Mr. Landers-Cauley also explained that the property could not have self-imposed variances, meaning to change something on lot that would require additional variances. The plans propose a partial basement and there will be a concrete slab that will extend a minimum of 20 feet away from soil absorption system, and will be higher in elevation than the system. The point of the raised elevation is so that effluent will not travel up-hill, just laterally. The architectural submitted to the Board illustrate a partial basement, a first floor, and a second floor. The original structure has approximately 796 square feet on the first floor, and approximately 597 square feet on the second floor, giving an estimated total of 1,393 square feet. The proposed dwelling has approximately 754 square feet on each floor giving an estimated total of 1,508 square feet, not including porches or decks. Mr. Landers-Cauley's clients intend to change the footprint of the existing dwelling to create a new structure that is somewhat longer and narrower than the original. There will also be a bulk head door into the basement. Mr. Andrews reiterated that the property is not located next to a wetland and asked for the distance from the resource. Mr. Landers-Cauley stated that the distance is greater than the 150 foot setback required. Ms. Guarino stated that the setback variances requested are the distance from the foundation to the septic tank from 10 feet to 5.6 feet, the property line to the tank from 10 feet down to 0.3 feet, and the foundation to the soil absorption system from 20 feet to 11.5 feet. Also reducing the distance from 10 feet to 1 foot from the property line to the soil absorption system, and proposing the mitigation of a 40 mil polyliner. Mr. Andrews questioned the length of the polyliner, and stated that since the variance request is for the foundation he suggests the polyliner be wrapped around the system. Mr. Landers-Cauley also stated that the wood deck in the back of the dwelling is not part of the new proposal, it is existing. Ms. Guarino stated that since there is a variance proposed less than 5 feet from property line, the land surveyor must stamp the proposed plans if they were to be approved. Ms. Peterson asked for any questions from the audience. Joseph Agrillo, abutter at 5 Worcester Ave, asked to view the submitted plans for the system and asked for further explanation. He also asked about the percolation test and the results. Mr. Landers-Cauley showed the soil evaluation results, which were favorable. Ms. Guarino stated that the proposed system accommodates the same flows as existing dwelling, so there will not be an increase in flow with the new system. This is considered an improvement because it is Title V compliant. It will be larger in size, but it is the same flow are what is existing so there should not be negative impacts to Mr. Agrillo's property. **Mr. Andrews made a motion to approve the following variances for 2 Worcester Ave.: a 4.8 foot variance from the septic tank to foundation, a 9.7 foot variance from the septic tank to the property line, a 9.0 foot variance from the soil absorption system to the property line, and an 8.8 foot variance from the soil absorption system to the crawl space. Further, the plan must be modified to indicate the 40 mil polyliner barrier to completely encompass the system and tank, and obtain the land surveyor's stamp on the proposed plans. The reason for this approval is that the system is a major improvement to the existing septic system and will be better for the environment. Mr. Uitti seconded the motion and it was a unanimous vote to approve the variances.**

4. **Failure to Repair/Upgrade Septic Systems—Discussion and possible vote on properties which are in violation of Title 5, 310 CMR 15.024(6) by failing to repair/ upgrade septic systems as ordered by the Board of Health:**

- a) **96 Clay Pond Road—Keith Raymond, Owner—Failed Inspection due to hydraulic failure of leach pit.** Keith Raymond is present for this meeting. Ms. Guarino stated that this property and these items on agenda have been brought to our attention as being overdue for upgrades. The Health Department would like to work out a solution to get these unique situations rectified. This particular property does not have failed report on file, but the Health Agent was present at the time of inspection on November 21, 2003. Mr. Andrews confirmed with Ms. Guarino that a letter of notification went out to the property in 2003. Mr. Raymond stated that back in 2003, he was attempting to sell the property and obtained an inspection. When they inspected the system, they saw a high water mark approximately 6 inches from the top. They deemed the system failed and he received the described letter. He stated that since then, he has never experienced a problem with the system and the septic tank is pumped every 2 to 3 years. He does not intend to sell the property in the near future and would like to have it retested. Ms. Guarino stated that his recollection of the inspection included a stain line and a liquid level much lower. The letter sent to him in 2003 doesn't state that, but it is included in local regulation that a stain line may deem a system failure. She explained that if the tank, leach pit, and distribution box could be dug up and made accessible, she would come out and inspect to determine what the liquid level is and if the system is a failure according to the State Regulations. If the liquid level is within 6 inches below the invert, that would pose an issue. That would equal less than half of a day's flow remaining in the pit, or about 95% full, which is a reason for failure. Zackary Seabury, Bourne Health Inspector, advised Mr. Raymond not to pump the system prior to inspection. The last pump-out was approximately 3 years ago according to Mr. Raymond. Mr. Andrews suggested this be completed within the next 3 weeks. Ms. Peterson stated that she appreciated Mr. Raymond attending the meeting and working with the Board of Health to solve this problem. **Mr. Andrews made a motion to take no action on 96 Clay Pond Road for noncompliance of a failed Title V system. Mr. Uitti seconded, and the vote was unanimous.**
- b) **11 Monument Avenue—Leonard & Arlene Nolan, Owners—Conditional Pass due to nonoperational pump.** No one was present for this item. Ms. Guarino stated she contacted them via mail. The owner uses the property as a seasonal residence and permanently resides in Winchester, MA. It was his understanding that the pump that originally failed was repaired in 2006. He stated that Ready Rooter does his routine maintenance, pump checks, and pump-outs. Ms. Guarino received confirmation from Ready Rooter today with an invoice from 2006 showing that the pump was replaced. It does appear that the pump issues has been resolved, however we do not have an approved permit from 2006. (Ms. Peterson recused herself for this item) Mr. Andrews explains that there should have also been an electrical permit pulled for the pump's electrical wiring. He suggested a letter be sent to the installer informing them that they completed work without applying for the appropriate two permits, and for future reference. **Mr. Uitti made a motion to send a letter to Ready Rooter explaining the discussion at tonight's meeting and informing them that if any future work shall be done, to apply for the proper permits. Further, a verbal warning be noted at this time. Ms. Mastria seconded the motion, and all were in favor.**
- c) **3 Sunny Lane—Lawrence & Jane Schraut, Owners—Failed Inspection due to cesspool intercepting water table. Previously heard by BOH Jan. 23, 2002.** (Ms. Peterson rejoined the meeting). Mark Schraut, owner of 3 Sunny Lane, was present for this item. He explained that his parents, Lawrence and Jane Schraut, are recently deceased. He and his sister, Karen Schraut, are the current property owners. Ms. Guarino stated that upon the failed Title V inspection quite some time ago, notices sent to owners and a Board of Health meeting was held to try to resolve matter. She explained that the failed system sits in the water table, so it is

significant that an upgrade should happen in a timely manner. Mr. Schraut stated that he currently has the property on market. Peter Valeri came to do a visual inspection and confirmed that the system needs to be upgraded. He was never aware of the failing system prior to his parents being deceased. The realtor gave him the option to fix system prior to selling the property, or disclosing this to potential buyers and they will upgrade it. There is currently an offer on the property that is in negotiation, and a second offer will be coming in soon. Mr. Andrews asked what the time frame is to fix a system upon title transfer. Ms. Guarino stated that the deadline was 2 years after the inspection in 1999, so despite the ownership of the property, a percolation test should be completed within a reasonable amount of time so that an engineer may design a proposed plan. This septic upgrade will likely require some relief from the Board and most likely require a hearing for the approval of the plans. Mr. Schraut stated that his parents' estate has been in probate until December of 2016, so he could not take any action until that was settled. Mr. Andrews confirmed with Ms. Guarino that the process for a timely upgrade would include a perc test, system design, septic permit, and installation in that order. Ms. Peterson stated that she would like a letter sent to Mr. Schraut's real estate agent by certified mail so they are aware of what must take place so that they may properly disclose the information to any potential buyers. Mr. Andrews asked if Ms. Guarino was comfortable with 2 month, 4 month, 6 month, and a year for the process timeframes, to which she agreed. **Mr. Andrews made a motion to require the owner (or any subsequent owners) to have percolation test done in within two months, an engineered design for a septic system upgrade completed within four months, a completed septic permit application submitted to the Health Department within six months, and the completed system installation within a year. Mr. Uitti seconded the motion, all were in favor, and it was a unanimous vote.**

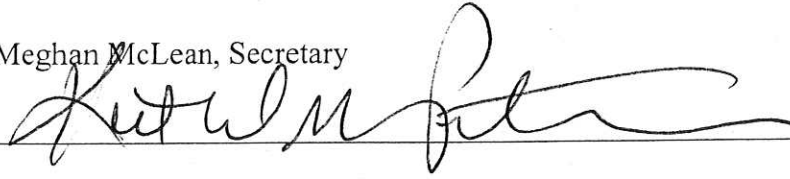
5. **71 & 72 Nightingale Pond Road—Mary M. Zagwyn, potential buyer, requests an audience with the Board of Health to discuss transferring a current variance approval for the property's horse allowance prior to the sale of the property.** Marie Zagwyn, potential buyer; Kathy and Steve Toth, property owners; and Janet Maxim, realtor are all present for this item. Ms. Peterson asked if Ms. Zagwyn submitted proof of certified mailing to the Health Department for the property's abutters. Ms. Guarino stated that we have not received anything regarding this property other than a letter of request to be heard. The abutters were not properly informed about this meeting, therefore this will be an informal discussion and the Board will not be answering specific questions at this time. Mrs. Toth stated that she has green cards from a previous meeting and all of the abutters are the same except for one. Ms. Peterson understood, however all of these abutters may not feel the same way today that they did back then. She explained that the Board cannot give advice or deliberate without notifying the abutters first. She suggested to submit a formal request including certified green cards from abutter mailings. Ms. Zagwyn chose not to discuss her request until she notifies the abutters properly. **Mr. Andrews made a motion to take no action on this item, Mr. Uitti seconded the motion, and the vote was unanimous.**
6. **Approve the Minutes from the October 11, 2017 meeting—CONTINUED from Oct. 25th.** Ms. Mastria made a motion to approve the minutes from October 11, 2017. Mr. Andrews seconded the motion, and all were in favor.
7. **Discuss October 25, 2017 Agenda and Approve the Minutes from the meeting.** Ms. Peterson stated that although the October 25th agenda was posted in a timely fashion with the Town Clerk, it was brought to our attention afterwards that it was not posted on the Town website. She explained that amongst other things, this was discussed at a recent meeting with Counselor Troy. The October 25th meeting was a discussion only and there was no new action taken. **Ms. Mastria made a motion to approve the minutes from October 25, 2017. Mr. Andrews seconded the motion, and all were in favor.**

8. Set tentative date for next meeting and adjourn. The next Board of Health meeting will tentatively be on December 13, 2017.

Mr. Andrews made a motion to adjourn the meeting. Mr. Uitti seconded. All were in favor, and the meeting adjourned at 8:28 pm.

Taped & Typed by Meghan McLean, Secretary

Kathleen Peterson



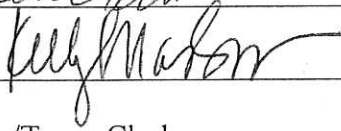
Stanley Andrews

Galon Barlow Jr.

Don Uitti



Kelly Mastria



cc Board of Selectmen/Town Clerk