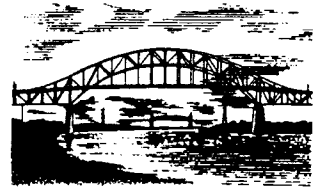




Terri Guarino
Health Agent

TOWN OF BOURNE BOARD OF HEALTH

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MINUTES September 28, 2016

Members in attendance: Kathy Peterson, Chairperson; Don Uitti, Secretary; Galon Barlow and Kelly Mastria

Support Staff in attendance: Terri Guarino, Health Agent and Jamie Butler, Health Inspector

MEETING WAS CALLED TO ORDER AT 7:00pm

- 1. 51 ACADEMY DR – Continued from September 14, 2016 - Attorney George J. MacKoul requests to have the fines issued against Mr. George Benway for violations of the State Sanitary Code 105 CMR 410.000 reduced and/or abated.** Attorney George J. MacKoul representing Mr. George A. Benway was present for this meeting. He stated that he is requesting an abatement of the fines issued against his client. Attorney MacKoul stated that Mr. Benway had a number of violations at his property including maintenance issue and also things that had been done by the tenants. Atty. MacKoul stated that those items have all been repaired. Atty. MacKoul read a list of those items that have been repaired starting with the sink in the bathroom that was repaired because it was not draining. Atty. MacKoul stated that they originally denied access by the tenants. Atty. MacKoul continued stating that there were Legos in the sink and that they were removed and that the same sink clogged again and it was due to half a scissor being in the sink. The door to the back was sealed. There was an issue with the toilet not flushing, and it was repaired incorrectly. A licensed plumber was sent to the dwelling and was denied access on two different occasions. There was a brief interruption where the chairman requested that the room be silent so that Atty. MacKoul could continue. Atty. MacKoul stated that Mr. Benway did not attend the prior Board of Health hearings on this matter due to a communication issue. At that point Atty. MacKoul was brought on to the case and immediately contacted Attorney Alva and discussed a way to remove the tenants to get access to do the repairs. Atty. MacKoul stated that he worked diligently to get the plumbers and the contractors to the dwelling. There was another brief interruption in the meeting while the chairman of the Board of Health

addressed a distraction in the meeting room. After the brief pause, Atty. MacKoul continued stating that a door that was broken and repaired was a result of the tenant, Mr. Webb kicking the door. There was a basement window frame that had to be repaired. Attorney MacKoul was then notified that there were rodents in the property. Attorney MacKoul was asked to provide a pest control contract by Friday. Attorney MacKoul stated that the pest control company visited the property on Friday and provided the contract on Monday. Atty. MacKoul stated that his client has been compliant and has fixed everything that needed to be fixed. He continued stating that the argument for fines is that fines are usually put in place to punish. Attorney MacKoul feels as if his client, Mr. Benway, has not been ignoring the Town and has not been shirking his abilities. He feels as if fines are not necessary as he is in compliance with the Board of Health. Atty. MacKoul stating that they are currently undergoing a process to remove the occupants. They are trying to provide re-location assistance. Mr. Benway would like to vacate the property so that he can renovate the dwelling. Ms. Peterson stated that in this case the office issued fines because they were not getting a response for anyone. Ms. Peterson stated that office starts with fines, because they get noticed. Ms. Peterson stated that Atty. MacKoul is a lawyer whom does return phone calls. Ms. Peterson stated that the amount of time that the Town put into this needs to be recognized. Ms. Peterson stated that the fine should be reduced drastically due to the compliance. Atty. MacKoul stated that a cause of the rodent problem could be due to all the bird feeders that were placed outside of the house that were not put there by Mr. Benway. Attorney MacKoul stated that there were circumstances that drew the nuisance to the property that Mr. Benway was not aware of. Attorney MacKoul explained that the time the Health Department spent on this case was not all due to Mr. Benway, but a substantial amount of this time was spent on trying to get the occupants to cooperate. Attorney MacKoul stated that Mr. Benway has been a landlord for this piece of property for 20 years and has never had a health code violation on this particular piece of property. Mr. Barlow read outloud that: *on July 14, 2016 Mr. Benway was issued an official order to correct violations of the State Sanitary Code, Chapter II, Minimum Standards of Fitness for Human Habitation 105 CMR 410.000 existing at his property, 51 Academy Drive. You were in attendance for the Board of Health hearing on July 28, 2016 were the Board of Health ordered you to correct outstanding violations at your property or fines would be issued against you for non-compliance. At this hearing the Board of Health continued the matter until the next Board of Health meeting on August 17, 2016 in which you did not attend this meeting. You are still out of compliance with the Board of Health order dated July 14, 2016.* Mr. Barlow stated that the reason why Mr. Benway is being fined is due to the non-compliance with the time frame specified in the orders. Ms. Guarino stated that a re-inspection was conducted which verified that all of the repairs had been made. Ms. Butler stated the re-inspection date was on September 2, 2016. Atty. MacKoul stated there were multiple times when

he was not allowed access to the dwelling. Ms. Peterson stated that the fines to date are \$14,100.00. **Mr. Uitti made a motion to reduce the fines issued against Mr. Benway of 51 Academy Drive from \$14,100.00 to \$500.00. Mr. Barlow seconded the motions. The vote was unanimous.** Ms. Peterson stated that the reason the fine is being issued is due to the time the office had to put into this case. Mr. MacKoul stated that he accepts that. Ms. Peterson stated that the fine has to be paid within 72 hours. Mr. Benway stated that he would come to the office to pay the fine tomorrow. Attorney Alva representing Mr. Nicholas Webb was present for this meeting. Attorney Alva stated that his clients allowed access for repairs at all times. Attorney Alva continued stating that the one time his clients denied access was because the plumber was not a licensed plumber and that it was his clients understanding that at the Board of Health meeting they were told that only licensed individuals were to go to the premises. Attorney Alva stated that when this denial of access occurred it was already two months from the initial date of the complaint. Attorney Alva stated that his clients are trying to move and if they could've moved that they would of. Attorney Alva stated that he sent a letter to Board of Health office late in the afternoon. Attorney Alva stated that his clients deny that they caused any of the problems at the dwelling, and that a walk through by any of the Board of Health members would have revealed that it is a very old dwelling that needs a lot of repairs.

2. **40 SQUETEAGUE HARBOR ROAD – David R. MacLean & Associates for Roy & Clare Heffernan- request waiver to use existing septic system for proposed addition and renovation. The proposed addition will increase the bedroom square footage by 14% and increase the non-bedroom space by 31% by adding a second floor to an existing one story, three bedroom dwelling.** David R. MacLean representing Roy & Clare Heffernan was present for this meeting. Mr. MacLean stated that the Heffernan's purchased this property 4-5 years ago and that prior to their occupancy it was a seasonal guest home to the home next door owned by Howard Crow. Mr. MacLean stated that the three bedrooms are very small, and that it is more of a cottage than a year round residence. Since both of the owners do volunteer work, they each need their own study space. The proposal is to open up the two bedrooms on the downstairs and to move two bedrooms to the upstairs. There is no increase in the number of bedrooms. Mr. MacLean stated that the bedroom space is being increased by 14% and the non-bedroom space by 31% which is well below the maximum criteria set forth. Mr. MacLean is requesting a waiver to continue to use the existing system. Mr. Barlow asked if the boat house has any facilities inside of it. Mr. MacLean responded that the boat house has no facilities inside of it. Ms. Peterson asked Ms. Guarino if she has any thoughts on this project. Ms. Guarino then stated that this project triggered Board of Health review because of variances that were issued to this property in 2004 and were extended to 2005. This variance granted was a 3' variance from the 150' setback to a water resource area. Ms. Guarino

stated that at the time that the variance was granted, a 3 bedroom deed restriction was put into place. Ms. Guarino stated that the additional bedroom space would be a concern for future owners, however, there already is a deed restriction in place. Mr. MacLean stated that system was inspected today and that it passed inspection. Ms. Guarino confirmed this. Ms. Guarino also stated that the reserve area in front should not be disturbed during construction. **Mr. Barlow made a motion to approve the waiver request to use the existing septic system for proposed addition and renovation. The proposed addition will increase the bedroom square footage by 14% and increase the non-bedroom space by 31% by adding a second floor to an existing one story, three bedroom dwelling. A three bedroom deed restriction is already in place. Mr. Uitti seconded the motion. The vote was unanimous.**

3. **71 WAMSUTTA AVENUE—Michael Borselli, P.E. of Falmouth Engineering for Tom Lyons – request waiver to use existing conventional septic system to raze and rebuild one-bedroom dwelling that is within the 150 foot setback to a water resource.** Michael Borselli, P.E. of Falmouth Engineering representing Tom Lyons was present for this meeting. Mr. Barlow stated that he filed a form with the ethics to be able to hear this project. Mr. Borselli stated that Mr. Lyons owns a one bedroom cottage on Wamsutta Avenue that is adjacent to a family compound. The cottage is in desperate need of repair/renovation. Mr. Lyons was advised by builders that it wasn't cost effective to renovate it. The floor plan is very small. There is one bedroom, a kitchen, and a very small living area and bathroom. Mr. Borselli stated that the concept is to tear down the building and to re-build the same exact footprint but to add a second story so that there is more living space and still have only one bedroom. In 2012, Mr. Lyons received variances from the Board of Health to allow him to install a title five septic system. What was installed was a 2 compartment septic tank, the first compartment being a 1500 gal tank and the second compartment being a pump chamber. There are significant elevation changes between where the leaching field is under the driveway and where the plumbing and septic tank are. There is difference of about 5 or 6 feet, so a pump was necessary for the design. The system has capacity for 2 bedrooms even though there is only 1 bedroom. A deed restriction for 1 bedroom was placed on the property. The conservation commission has reviewed and approved this project. Also the Zoning Board of Appeals had to issue a finding on this because it was too close to a property line. Mr. Borselli is requesting a waiver from the Board of Health to continue to use the existing septic system at this property. Mr. Barlow asked Ms. Guarino how she feels about this project. Ms. Guarino stated that the system that is existing was installed October 4, 2012. It is a fairly new system, and it is a seasonal property. In 2012 a local upgrade approval was granted to repair/replace a failed cesspool which was on the edge of the property closest to the water resource. In 2012 the plumbing was relocated to the other end of the property. Groundwater separation is not an issue with this

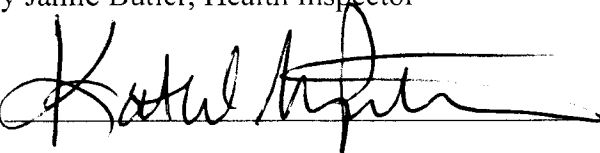
property. Ms. Guarino stated that a reserve area is needed to meet the requirements of new construction. Mr. Borselli stated that he can add a reserve area under the driveway adjacent to the existing leaching. Ms. Guarino asked if this was just a gravel driveway, and Mr. Borselli responded that it is. This driveway will remain a gravel driveway. Mr. Borselli drew in the reserve area on the office copy of plan and initialed it. **Mr. Barlow made a motion to approve the waiver request to continue to use the existing conventional septic system to raze and rebuild a one-bedroom dwelling that is within the 150 foot setback to a water resource. Mr. Uitti seconded this motion. The vote was unanimous.**

- 4. APPROVE THE MINUTES – From the meeting dated July 27, 2016 – CONTINUED from August 17, 2016 and September 14, 2016. Mr. Barlow made a motion to continue this to the next Board of Health meeting. Mr. Uitti seconded the motion. The vote was unanimous.**
- 5. APPROVE THE MINUTES – From the meeting dated August 17, 2016 – Continued from September 16, 2016. Mr. Barlow made a motion to continue this to the next Board of Health meeting. Mr. Uitti seconded the motion. The vote was unanimous.**
- 6. APPROVE THE MINUTES – From the meeting dated September 14, 2016. Mr. Barlow made a motion to continue this to the next Board of Health meeting. Mr. Uitti seconded the motion. The vote was unanimous.**

Ms. Mastria made a motion to adjourn the meeting. Mr. Uitti seconded the motion. It was a unanimous vote and the meeting adjourned at 7:36 PM.

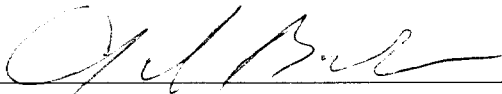
Taped and typed by Jamie Butler, Health Inspector

Kathleen Peterson



Stanley Andrews

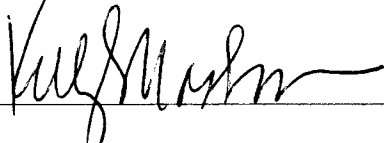
Galon Barlow



Don Uitti



Kelly Mastria –



cc Board of Selectmen/Town Clerk