

Truro Board of Health Minutes  
September 3, 2019  
4:30 PM-Truro Town Hall

**Members Present:** Chair Tracey Rose, Vice-Chair Jason Silva, Member Mark Peters, Clerk Peter Van Stratum, Alternate Meredith Goff  
**Others Present:** Health Agent Emily Beebe

Chair Tracey Rose called the meeting to order at 4:30PM. Ms. Rose requested that everyone speak clearly for the video recorder. She asked if anyone in the audience was recording. No one replied in the affirmative.

**I. PUBLIC COMMENTS**

There were no public comments.

**II. PUBLIC HEARING**

**29 Knowles Heights Road, DAJA Investments, LLC (35/2); Waiver to Truro Board of Health regulations, section 6, article 4.1.a.**

The applicant did not appear.

**Motion by Mr. Peters to continue to September 17, 2019; seconded by Mr. Silva; Vote: 4-0-0, motion carries.**

**17 Bay View Drive, David Goldman & Jacques Abatto (39/42); - Variance request to Truro Board of Health regulations, section 6, article 9.1**

Jason Ellis of J.C. Ellis Design came to the able representing the applicant. The applicant has an existing old code Title 5 septic system. The system was designed for three bedrooms. The home has three bedrooms and a finished basement. The finished basement area is not used as a bedroom but could be considered a bedroom. The applicant would like to receive formal approval for the basement area to be designated as a bedroom and to install a new Title 5 system with IA technology. Mr. Ellis confirmed the property is serviced by a well. Mr. Peters stated that the proposal is simply for expansion, not to provide additional housing through an ADU. Mr. Ellis clarified that the applicants are considering selling the property, but they have not yet listed the property for sale. Mr. Silva agreed that the use of IA technology would be an improvement over the current system, but also discussed the applicant's request to use IA technology for an expansion of bedrooms instead of the creation of an ADU. Discussion occurred regarding the use of IA technology and the required operating and maintenance agreement. Mr. Ellis discussed the requirements and obligations of the contract, which would be passed along to a new owner. Mr. Van Stratum felt that the IA technology would be a benefit to the property. Ms. Rose felt that approval of the request would set a bad precedent and would undermine the intention of the ADU. Mr. Peters agreed with Ms. Rose regarding the precedent.

**Motion by Mr. Peters to deny the request for the variance; seconded by Mr. Silva; Vote: 3-1-0, motion carries.**

### III. AGENDA ITEMS

#### 296 Route 6, Truro Motor Inn: Update; discussion with Town Counsel

Jason Ellis of J.C. Ellis Design came to the table representing the applicant. Also present was Attorney Gregg Corbo, Town Counsel, of KP Law.

The Agent informed the Board that the soil percolation test was completed and that she met Mr. Ellis on site and discussed the progress of the proposed plan, which is not complete; to date, the property owner had not responded to requests for a re-inspection nor a perimeter inspection with the Fire Chief. The Agent was notified last week that Mrs. DelGizzi would not be able to attend the meeting.

Outer Cape Health's Navigator program coordinator contacted the Agent regarding the fact that occupants of the Truro Motor Inn reported that they had been notified of eviction by the property owner because the Town was closing the property down. The Agent informed the Outer Cape Health coordinator that the Town has not initiated an order to vacate the property, but that the license expires on October 1<sup>st</sup>, that there were compliance inspections that needed to be passed in order to renew the license, and that the inspections were not scheduled, and compliance could not, at this point be made by October 1. The Agent spoke with a representative from the Homeless Prevention Council (HPC); there is a concern that the Town needs to provide information to the occupants of the TMI in the event of a condemnation of the property.

Mr. Ellis provided the Board with an update as he has been working on the septic design; he said there are 2 cesspool systems on the Castle Road side of the property. Mr. Ellis opened two leach pits located in the center yard of the property which showed no indication of overflow. Mr. Ellis then discussed the location of the proposed system, the IA technology and the inclusion of a grease-trap, or "trash-tank" prior to the treatment system. Ms. Rose asked Mr. Ellis about his proposed timeline; Mr. Ellis estimated the complete installation of the system could be done before the end of the year. Ms. Rose reiterated the Board's deadline of October 1<sup>st</sup>, and asked Mr. Ellis when he was hired by the applicant; Mr. Ellis stated he was hired in mid-July. He was asked if he has been paid for his services and he confirmed he has received payment. Mr. Van Stratum asked Mr. Ellis about the areas of disturbance; Mr. Ellis discussed the trenching and excavation areas. Ms. Rose asked Mr. Ellis if he could provide a plan by October 1<sup>st</sup>; Mr. Ellis confirmed he could do that, and suggested a final installation deadline of January 1<sup>st</sup> with a regular pumping schedule in the interim. Mr. Peters then raised the option of the Board entering an Executive Session. Attorney Corbo addressed Mr. Peters' suggestion of an Executive Session stating that the Board can go into Executive Session to discuss whether or not to initiate litigation, however, it must provide notice of that possibility beforehand. The Board was not in a position to do so at the time of the meeting.

Attorney Corbo stated that he would limit his comments to preserve any future litigating position the Board may have.

He then reviewed the two current orders: (1) the completion of the upgrade of the septic system by October 1<sup>st</sup> and (2) correction of other violations of the State Sanitary Code with

respect to the units themselves, for which the DelGizzi's had been given a 30-day time frame to at least demonstrate a good faith effort to resolve those issues.

- The Board needs to consider if the upgrade of the septic system in and of itself will make the premises habitable or if all the violations must be cured to make the premises habitable.
- It is clear that the October 1<sup>st</sup> deadline will not be met.

Attorney Corbo provided the Board with two options for proceeding:

(1) to extend the deadline to allow the property owner to come into compliance;

the engineer has asserted that it is feasible to have the system designed and installed by the end of the year. If that deadline were not to be met, then it may be likely the system may not be installed until the spring due to weather or

(2) to move into enforcement;

Enforcement options include: to not extend the license beyond October 1<sup>st</sup> and/or to initiate proceedings to condemn the units under the State Sanitary Code; either course would involve issuing notice to the owner and the occupants, holding a public hearing and issuing an \*order that the units be vacated and secured by a date certain.

If that further \*order is not complied with, then the option is to go to Barnstable Superior Court to seek an order of enforcement by the court, which would essentially be to have the court issue an order requiring compliance with the Town's order. When that type of compliance is sought, counsel typically asks the court to issue an order that the property owner be required to put the tenants up in suitable, alternative housing until the property is made habitable at the owner's expense. The tenants are entitled to habitable housing; this is the very reason the Sanitary Code exists. The order of the Board and order sought from the court would be that the premises be vacated and secured, that the landlord pay to put the tenants in suitable, alternative housing and that the repairs be made within a certain reasonable period of time.

In terms of whether or not to allow additional time, if the Town proceeds to court, the court will be looking to whether or not the property owner was given a reasonable opportunity to achieve compliance. In the opinion of Attorney Corbo, there is a substantial record of opportunities that have been given to the property owner. The other aspect to consider is the time, effort and cost of litigation to the Town. Attorney Corbo asked the Board to consider if they have seen sufficient progress to believe that if the Board were to give another extension, the work would actually get done in that time. If the Board does not feel there is sufficient evidence, the recommendation is to proceed with enforcement.

Mr. Ellis requested to leave the meeting due to another engagement.

Prior to his departure, the Board discussed the floor plan requirements for the rooms. The Agent suggested meeting with Mr. Ellis to review the rough plans to help determine how to  
→ proceed. Attorney Corbo asked Mr. Ellis, if the Board were to set an aggressive schedule, realizing that contingencies are likely going to come up, if there is anything that would prevent Mr. Ellis from achieving compliance. Mr. Ellis responded no, that he is about 80% done with the work. *[Mr. Ellis departed the meeting.]*

Ms. Goff asked about the letter issued by the Board on August 6, 2019 that gave the property owner a deadline of 30 days to show that there was a good faith effort to address the violations; Ms. Goff asked the Agent to confirm that the issues had not been addressed; the

Agent confirmed she has received no updates or request for inspection. The Agent reviewed the layers of non-compliance, from leaking sinks to the spatial requirements which creates over-crowding and a lack of habitability. Ms. Goff further noted the importance of a variety of problems that need to be addressed and the lack of attempt to comply with what's been ordered, regardless of how small the issues may be. Mr. Peters felt the two priorities are the septic and the spatial requirements for habitation. Ms. Rose summarized that the Board has been apprised that the engineer's services have been retained and he has been paid, the septic plan is being designed; there is some progress.

Based on the comments of the Board, Attorney Corbo suggested the Board schedule a public hearing on revocation of the license and condemnation, to occur as close to the October 1<sup>st</sup> deadline as possible. In the meantime, the property owner is to be instructed to have, prior to that date, an actual engineered plan as to how compliance is going to be achieved. The extension, and showing of good faith, is essentially giving the property owner until October 1<sup>st</sup> to have workable, engineered plans that can then move on to the permitting stage. If sufficient plans are received prior to the suggested meeting date, then the Board can either decide to continue to allow the property owner to move to the next step, or in the absence of insufficient progress, the Board can decide to proceed with the October 1<sup>st</sup> hearing and, ultimately, issue an order to vacate and secure the units. The Board would be giving the property owner a month to demonstrate a readiness to move on to the next step. The Board will have a public hearing on Thursday, October 3<sup>rd</sup> to consider the license and condemnation proceedings. Attorney Corbo recommended taking a vote to schedule the hearing and to issue an order that final engineered plans, sufficient for permitting, be submitted to the Health Agent by September 26, 2019.

**Motion by Mr. Peters to schedule the public hearing for October 3, 2019 to discuss the license and condemnation and to issue an order that final engineered plans, sufficient for permitting, be submitted to the Health Agent by September 26, 2019; Discussion occurred on the motion:** The Board discussed the proposed timeline and the requirements for re-housing the tenants of the Truro Motor Inn. Attorney Corbo suggested inviting the tenants to the meeting so they may participate in the conversation. Ms. Rose acknowledged that Mackenzie Perry of the Homeless Prevention Council (HPC) was in the audience and available to assist with any questions. She provided the phone number and encouraged the occupants to contact the HPC at (508)255-9667 to speak with a case manager. Ms. Rose encouraged the tenants to contact HPC or the Navigator Program through Outer Cape Health at either the Wellfleet location: (508)349-3535 or the Provincetown location: (508)487-9395. Attorney Corbo then requested a modification to the motion as follows: any units that are vacated voluntarily by the tenants not be re-occupied until after compliance is achieved. Mr. Peters accepted the amendment to the motion as set forth by Attorney Corbo.

**Amended motion by Mr. Peters: to schedule the public hearing for October 3, 2019 to discuss the license and condemnation; to issue an order that final engineered plans, sufficient for permitting, be submitted to the Health Agent by September 26, 2019; and any units that are vacated voluntarily by the tenants not be re-occupied until after compliance is achieved; seconded by Mr. Van Stratum; Vote: 5-0-0, motion carries.**

*[Mr. Silva and Attorney Corbo departed the meeting at 6:05pm]*

**Water Resource Protection Regulations:** proposed amendments (*Continued from August 20 meeting*)

**Motion by Mr. Peters to continue the matter to September 17, 2019; seconded by Mr. Van Stratum; Vote: 4-0-0, motion carries**

**Discussion on Standish Pond, North Truro**

The Agent is looking for grant opportunities for an assessment of this water body.

**IV. REPORTS**

**Health Agent's Report**

- The Agent informed the Board that no further positive mosquito sample results for West Nile virus have been received, however, a mosquito sample tested positive for EEE, from a location in North Truro; the Agent directed the public to the Town's website for additional information. The Animal Control Officer has reached out to property owners with horses and barn animals to urge them to have their animals vaccinated.
- The Walsh property will be discussed at a work session with the Select Board. The Agent directed the Board and the public to check the Town's website for the work session schedule.
- A forum regarding Storm Preparedness will be held on Tuesday, September 10<sup>th</sup> at the Community Center.
- The Agent provided the Board with information about the property at 82 South Pamet Road, which was used in connection with a trucking business, storage of equipment and construction materials. In 2004 a release of oil occurred on the site and the DEP issued a notice of non-compliance and issued an order in 2006 that went unanswered until 2018. Bennett Environmental was hired to complete an assessment to determine the extent of any contamination that was there. Contaminated material was found in some areas of the property and was removed. An Order of Conditions was issued by the Conservation Commission and after completion of the work a Certificate of Compliance was issued.
- A temporary food service permit was issued for the Truro Elementary School for Truro Treasures.

**V. MINUTES**

**August 6, 2019**

**Motion by Mr. Peters to approve; seconded by Mr. Van Stratum; Vote: 3-0-1, motion carries.**

Motion to adjourn the meeting by Mr. Van Stratum; seconded by Mr. Peters; Vote: 4-0-0, motion carries.

Respectfully Submitted,

Michelle Fogarty



Chair-Tracey Rose



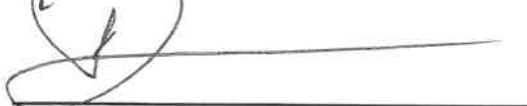
Meredith Goff, Alternate Member



Mark Peters, Member



Vice-Chair, Jason Silva



Peter Van Stratum, Clerk

