

Truro Board of Health Minutes
Tuesday October 22, 2019
Truro Public Safety Facility
Meeting Start Time: 5:30PM

Members Present: Chair Tracey Rose, Vice-Chair Jason Silva, Member Mark Peters, Clerk Peter Van Stratum, Member Tim Rose, Alternate Member Meredith Goff

Others Present: Health Agent Emily Beebe, Attorney Gregg Corbo, Town Counsel

I. PUBLIC MEETING

Truro Motor Inn; (296 Route 6): discussion on compliance with schedule of corrections; next steps

The Agent visited the property on October 22nd and provided an update to the Board: the brush has been removed, but everything else is still there; the building permit applications have not been addressed, the exterior lights were addressed; the floor plans were not submitted, and neither were the stamped, permissible Title 5 plans.

Attorney Corbo discussed the Order to Correct issued by the Board and the process of "Receivership" by the court. The Receiver is an independent third-party who acts in place of the owner of the property for purposes of correcting the violations. The Receiver is authorized to collect rents, enter into contracts and to make decisions regarding what type of repairs need to be made at the property. All the expenses of the Receiver then become a lien on the property, and if not paid, the Receiver can foreclose on the property, just as a mortgage holder would foreclose. A complaint would be filed with the Housing Court in Barnstable asking the judge to issue an order, requiring one last time that the property owner come into compliance. Mr. Peters asked about the time frame for the process. Attorney Corbo anticipated about two months. Mr. Peters then asked about the reduction of residents at the property due to the spatial limitations at the property. Attorney Corbo responded that if there ends up being a lesser number of units, the owner and the Receiver will have to take responsibility for insuring that anybody who is displaced as a result of them achieving compliance will find a suitable place for the tenants to go. Mr. Van Stratum asked if the tenants will be living at the property during the Receivership process. Attorney Corbo responded that they would and that the other option for the Board would be to proceed with condemnation of the property. Ms. Rose discussed the lack of affordable housing options should the tenants be displaced. Ms. Rose also noted that the Board is actively working with the Health, Fire and Building Departments to achieve compliance. Mr. Rose asked Attorney Corbo if the DelGizzi's can shut the property during the Receivership process; Attorney Corbo responded that the Receiver acts in place of the owner, and any decisions about the property would be made by the Receiver. The Receiver, at any time, could say that it's not feasible to make the repairs that need to be made in order to bring the property into compliance. If the Receiver were to do that, it would be their responsibility to go through proper process to remove the occupants; by putting this Receivership, the decision by the Board puts the matter into the hands of a neutral decision maker who can make rational decisions regarding the property. Mr. Silva asked who pays the Receiver; Attorney Corbo

responded that it would be the DelGizzi's. The Receiver may expend their own money, they then put that as a lien on the property and when the lien is not paid, they foreclose and become the owners. Ms. Rose stated that the rents from the tenants won't cover the cost of the septic system. Attorney Corbo responded that the trade-off the Receiver will have to make is does the property have sufficient value, so that at the end of the process the property can be sold for more than what was put into it. Mr. Peters noted that the Board is in charge of public health and safety, not with providing housing because of negligent landlords who have exploited their tenants. Attorney Corbo clarified that if the Board decides to pursue the path of Receivership that the Board is not requiring that any or all of the tenants stay at the property; the tenants are free to leave and find alternative housing, or to apply to the Housing Court on their own to seek relief from the conditions they're living in. The Board's course of action is not requiring anyone to stay in any particular location; the Board will not require that the property be vacated and secured, people will be allowed to stay there while the process runs its course. Mr. Van Stratum asked about the liability to the Town. Attorney Corbo responded that, in his opinion and in his experience, if the Town goes through the proper procedures, its liability is limited; there are immunities in the law, when the Town acts in good faith, with respect to issuance of permits or the taking of enforcement actions. If something were to happen at the property, that does not rest with the Board of Health, that rests with the DelGizzi's for creating this condition in the first place. Mr. Van Statum stated that the Town is accepting the tenants living there under those conditions; Attorney Corbo disagreed and stated that the Board is taking action that the law authorizes the Board to take. Mr. Silva inquired about the process beginning and that while the violations won't be remedied immediately, at the least steps will be taken to make the property safer. Mr. Silva discussed the possible steps of the Receiver; Attorney Corbo discussed the various types of individuals authorized by the court to act as a Receiver. Attorney Corbo then reviewed the timeline for filing with the court and the issuance of subsequent orders and deadlines for compliance.

Motion by Mr. Rose to proceed with legal proceedings to petition the court to appoint a Receiver; seconded by Mr. Peters; Discussion occurred on the motion:

Ms. Goff asked Attorney Corbo if a Receiver decided that it the repairs were too costly, would they have to help the current tenants find housing; Attorney Corbo responded that it would be a private process between the landlord and the tenants. Ms. Goff then asked if the Receiver could increase the rent to such a degree that the tenants couldn't afford to live there; Attorney Corbo felt that the court would monitor that type of situation, but it could be a possibility that the rent would be increased. Ms. Goff then asked if the Receiver could intentionally raise the rents with the goal that the building be vacated; Attorney Corbo responded that the goal of the Receivership is to achieve compliance, while they are a profit-making endeavor, they are an agent of the court and they understand what their responsibilities are. Ms. Rose added that the Board can't control certain things beyond a certain point; the Board doesn't bear the responsibility of the actions made by the Receiver. Ms. Rose also stated that the DelGizzi's could have avoided this situation. The Agent asked Attorney Corbo about prior discussions wherein the Board would request that the court require the DelGizzi's to pay for the relocation of the occupants; Attorney Corbo responded that the discussion was in the context of condemnation, not Receivership. Attorney Corbo said that the Town can ask the court for anything that is reasonably within the Board of Health to order. The Town can ask that if the Receiver is required to remove occupants that they exercise reasonable efforts to find alternative, suitable housing. Mr. Van Stratum posited that the property is unsafe to live in, and

if the Board proceeded with condemnation, the tenants would have legal recourse against the DelGizzi's. Attorney Corbo provided two paths for the Board: path one is seek enforcement of the current order, or path two is to re-open the condemnation proceeding and decide whether to issue an order that the property be vacated and secured. In the opinion of Attorney Corbo, either way, the Town will end up in the housing court. The determination of whether the tenants can remain at the property is up to the Board. Mr. Peters asked if the Receivership process is not moving at a pace that satisfies the Board, can the Board instead proceed with condemnation. Attorney Corbo responded that the Town would have to go through the court; the Receiver will have milestones that the Receiver has to meet and there will be status conferences with the court; if things aren't moving to the satisfaction of the Board, the Town would have the opportunity to ask the court to move things along, or if necessary, to relocate people. Mr. Peters is hoping that a Receiver will address the safety issues and will abide by minimal standards or habitation. Ms. Rose responded that the Board's concerns would accompany the case. Attorney Corbo confirmed that once the property is in the hands of the Receiver, the responsibility of the Receiver is to make the facility habitable. Mr. Silva asked if the Board can have direct contact with the Receiver; Attorney Corbo assumed that the Receiver would cooperate with the Board and provide progress reports. If the Receiver is not achieving the results the Board expects, a remedy would be to ask the court to issue a supplemental order. Ms. Rose asked Attorney Corbo if the safety concerns are a priority to the Receivers; Attorney Corbo responded that yes, that is the job of the Housing Court.

Vote: 4-1-0, motion carries.

Motion by Mr. Rose to adjourn the meeting; seconded by Mr. Silva; Vote: 5-0-0, motion carries.

Respectfully Submitted,

Michelle Fogarty

Tracey Rose

Chair-Tracey Rose

Meredith Goff

Meredith Goff, Alternate Member

Mark Peters

Mark Peters, Member

Tim Rose

Tim Rose, Member

Peter Van Stratum, Clerk

Jason Silva

Vice-Chair, Jason Silva

