

DUXBURY BOARD OF HEALTH MEETING MINUTES

March 16, 2023

Remote Zoom Meeting 7pm

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TOWN CLERK
2023 AUG 18 AM 11:34
DUXBURY, MASS.

The meeting was called to order at 7:00 p.m. via Zoom with Dr David Brumley, Bruce Bygate, Melissa Rosenblatt and Nick Leing were all present. Tracy Mayo, Health Agent was also present

I. BUSINESS BEFORE THE BOARD

1. COVID-19 AND COMMUNICABLE DISEASE UPDATES AND DISCUSSIONS

Tracy Mayo gave an update on the town COVID numbers on behalf of Kathy Carney, stating that since February 16, 2023 through today, Duxbury has 25 positive cases, where less than 5 years old, there is 1 case, between 5 and 18 there were 2 cases and over 18 years of age there were 22 cases. Influenza there was 1 case and Lyme disease there was 1 case.

2. CONTINUED DISCUSSION WITH THE DUXBURY SAFE WATER COMMITTEE REGARDING CONCERNS TO THE TOWN'S PUBLIC WATER SUPPLY

Dr. Brumley asks if there is anyone on the meeting to speak for the Committee

Bruce Bygate states I did attend their meeting last week and the committee asked if I knew of any funding to support the PFAS issues and I feel that there should be a project manager to oversee the whole thing.

Melissa Rosenblatt states that the Town Consultants Weston and Sampson should be handling this; they are working closely with MASS DEP. Melissa also mentions that the EPA will be implementing a new lower rate for PFAS so we will likely have more than one well contaminated

Amy MacNab, Selectboard Member, states that she agrees with Bruce, there is a bit of disconnection but this is our main focus as things move along. We are working to get the Water and Sewer Committee back up and running.

Dr. Brumley states this is a standing agenda item, so thank you for that

3. 160 MARHALL STREET – UPDATE AND DISCUSSION REGARDING THE ENFORCEMENT OF TITLE 5 AND DUXBURY BOARD OF HEALTH REGULATIONS

Dr. Brumley states that at the last meeting on February 16, 2023, the Board subsequently implemented some enforcement in a letter sent on February 17, 2023 to the owners of the property first stating that a stamped engineered plan with a Disposal System Construction Permit will be required to be filed with the Board of Health within 30 days and second was the approved septic system to be installed by June 1, 2023 and the third item was the bungalows on the property should be capped and fourth the Board voted that the property not be used commercially at this time and that all existing septic systems on the property be abandoned once the approved septic system has been installed.

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Tracy Mayo states that she did receive photos of the capped pipes on the trailers, the letter did go out and we have not received anything as of today. I do see the new property owner, Jennifer Bylo, on the meeting and I am sure she can respond to some of this.

Jennifer Bylo shares her screen and presents to the Board. Ms. Bylo states that she is a 50% owner of the LLC and I felt it important to let you know who I am and why I used an LLC to buy the property. I am a business owner and have lived in Duxbury for over 20 years. I am a construction manager and also am a registered nurse. I am not a real estate investor, I used the LLC to purchase the property because my neighbors of this property are highly litigious. My Attorney recommended to use an LLC to purchase the property, as some of the neighbors have stated they will sue me, for what I don't know, but nonetheless, this is solely to protect my family. We met the Husk family when we stayed at the property for a month when we were in between homes. Our intentions are to improve this property together, starting with the upgrades to the title 5 system. We knew the inspection would fail and have been preparing for that, but I was shocked when I received this letter. I was never given notice of the title 5 inspection or the results, which is improper. We were finally notified and understood that we would need to upgrade the system within two years or 2025. I was also never informed about the meeting you had on February 16th. My attorney's first question is what constitutes an imminent health hazard. I researched and read the law and it is supposed to include that the local approving authority based on the existence of an imminent health hazard as omitted in that letter. I asked Tracy where the evidence was, are there water samples and stated I just had to send the letter and I can put you on the next meeting. I am proving to you tonight that the existing cesspool is not causing an imminent health hazard. The Eagle's Nest Cove is monitored by Marine Fisheries with the State and I asked them and they explained the data from the sampling they do every two months is completely normal and there is no unusual sampling results. The only time there was a little blip in the sample was July 2021 and they explained that boats and swimmers could cause that. Eagles Nest River has been closed since 1989, so that closure has nothing to do with 160 Marshall Street. There is no evidence and I would ask the Board to please consider that this bay is safe. Furthermore, I did some investigating on the drinking water and Duxbury uses aquifers and it is scientifically impossible for anything at 160 Marshall Street to infiltrate the aquifers per Water Superintendent Peter Mackin. In reference to Mr. Uitti's presentation to this Board on February 16th, he mentions a bridal shower that the Husk's hosted for me, here is the truth. My daughters bridal shower was a private family event. Mr. Uitti made false statements about this event. This was a private family event, with my family, the Husks did not host this and there were less than 20 people. The title 5 enforcement has nothing to do with this bridal shower. The outstanding in the field event that the town approved, I attended two years in a row and here are the photos of the porta potties used for this event. The reason that things got delayed with the new septic design was because the bnb application was going through the ZBA. When CJ Husk's brother Ben no longer wanted to be involved with the property and so I bought his share in the property and this transaction just went through. Having not been able to attend or be a part of the title 5 inspection, there are things that are wrong, there are actually 3 cesspits on the property, this is just wrong. We know the septic needs to be upgraded and there are conceptual plans but I am new and I am learning about septic designs and we would like to research and enhance a system that has nitrogen reduction. We don't want to spend all of this money on a plan that will be outdated in the next few years when regulations change regarding title

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5. We do not want to jump into something without proper research. In summary, I hope that based on the scientific evidence that I shared this evening would reverse the Boards decision from February 16th. I have given you facts that would dispel any imminent health hazard.

Dr. David Brumley thanks Ms. Bylo and states one of the items we considered in the last meeting is in terms of the evidence of large gatherings on the site, the existing septic system is inadequate to handle that large number of people.

Melissa Rosenbladt states that the concern was regarding the abundant shellfish in Eagle's Nest. Shellfish take in and filter any contaminants in the water, so when there wouldn't be accumulations. There could be impact to the shellfish beds

Jennifer Bylo asks wouldn't the e.coli testing I showed prove that wasn't the case

Melissa Rosenbladt states no, because shellfish are known to take in the e.coli in the water, so you would find it in the shellfish and may not find it in the waters

Jennifer Bylo states that is exactly my point, the Marine Fisheries specialists stated that. Do you by any chance have a scientific background

Melissa Rosenbladt states yes, I am a drinking water engineer and a virologist as well.

Jennifer Bylo states if shellfish eat e.coli they would have to get that from the water and the water sample should show that

Dr. Brumley states well it all depends on the sampling cycle

Jennifer Bylo state well, I did speak to one of the agencies, oh Mass DEP, who stated that he had never heard of such an aggressive timeline. He said that in Rockport they have had parties on the coast where they have raw sewage flowing from backed up systems. There is none of that happening on this property and remember you are basing this on an inaccurate report.

Melissa Rosebladt states can you speak to what section you feel are inaccurate

Jennifer Bylo states the count on the number of test pits, it states one pit and there are three. One for the cottage and two for the main house. It also states there are people using it at time of inspection and there isn't.

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Tracy Mayo states when there is a cesspool, they re only required to fill out the front page of the report and state automatic failure. When we have no records, it is very difficult for the inspectors to find what is there.

Jennifer Bylo states well, this report created more anxiety. There has never been any overflow, nothing I was on my way to the inspection and my lawyer called me and said Freeman Boynton cancelled, he can't get in the property. I could have helped him locate things. My Lawyer stated that it was fine, it would be a fail and to budget for an upgrade in the next two years. I have also been told about what is happening on the cape with nitrogen reduction and that we should wait to design something appropriate for the coastal property.

Attorney David Uitti, Attorney for the neighbors, states that when the title 5 inspection occurred they used medal detectors. They are also using these properties as rentals and basically the cottage is just going into the ground somewhere and the cesspools are below the highwater table as well. That is the Boards evidence. Also, the Board made a decision and you have the opportunity to appeal that decision to a court. That is in the letter the Board sent out. Also, the plan is due by March 20th. I also want to point out that the owners of this property applied for a pig farm on this property and so that is another use here. Lastly, I spoke to the Conservation Agent today and they said they were required the owners photos of the capped pipes and also supply a letter certifying those capped pipes are in fact from the trailers and lastly, the Conservation Commission want to do a site visit as well. As of today, none of that has been done yet.

Jennifer Bylo states there are no renters on the property, I am living in the cottage, no one is renting that.

David Uitti shared his screen showing a listing for long term rental on the property

Jennifer Bylo states that is an old listing.

Bruce Bygate states I feel we should be focused on title 5 here. David are you familiar with title 5; all of it? Title 5 does not focus on whether someone is in a bedroom or in a house, it focuses on how many bedrooms are in a house and what type of system you need to handle the flow of those bedrooms. Also, 15.303 in title 5 it gos beyond public health and I want to ask Tracy, this list of compliance in terms of public health safety and environment, it's not an and list, it's an or list. Tracy is that true

Tracy mayo states yes

Bruce Bygate continues I think you will have a hard time in court with these arguments.

Jennifer Bylo states are you referring to me

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Bruce Bygate states second, in 2021 somebody started some kind of effort to put a system together to put in some type of system to handle the compound and then perc tests were done and then somebody stopped it. This isn't a case where we are only giving you 30 days, we understand that you Jennifer is ne and 50% owner and the other owner is in New Hampshire. The failure didn't just happen, it happened years ago and that is why we want to see this addressed quicker. I don't care about whether you're renting or not, ot having weddings or whatnot, what I care about is whether you are meeting Title 5.

Jennifer Bylos responds that the trigger point for the rule is when the title transferred. I am stepping into what my lawyer let me know about, the two years to put in a new system. I need more time, I knowingly and want to upgrade our septic, I have ben talking to many engineers and excavators and I want to make the right decision here and need more time

Bruce Bygate states how much more time

Jennifer Bylo states two years, give the fact that I am not hurting anybody

Bruce Bygate states we don't know if the environment is hurt

Jennifer Bylo states I tried my best with monitoring happening out here

Bruce Bygate states we see new construction here regularly go in within weeks

Jennifer Bylo states I am doing research and these new regulations for coastal communities are coming and the I/A systems are going to be implemented here and I am doing work with the cape and trying to learn.

Tracy Mayo states those regulations are still under comment period and people are speaking out and suing regarding these changes. There are different methods to go about this. The town can implement watershed permitting, which would be ideal. But this is still in the comment period and is getting pushed back. I wouldn't rely on title 5 changing quickly.

Dr.Brumley states I have not been convinced that there is not an imminent threat, so I don't feel we have the evidence to reverse the decision.

Jennifer Bylo state we are fully prepared on fighting this unfortunately.

Dr. Brumley states I don't think we will resolve this tonight

Nick Leing states to my memory is that our reasoning was the danger to the shellfish beds. In my opinion all of this innovative and alternative system talk is a little over the top and unnecessary. Denitrification is usually taken care of, it's a fancy tank with an electronic unit inside to handle the nitrogen. All of that happens in the tank not the leaching field. I wouldn't use plastic chambers in the field, they do tend to

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fail a little sooner, but some people still sue them. Did you say there were plans submitted to us in December? If you have a plan, if you would send that to me, I would like to see what they have prepared for you.

Jennifer Bylo agreed; Tracy CJ said he did send those to you.

Nick Leing states that since you already have a plan, 30 days doesn't seem outlandish. You being a new owner I do understand the shock, but the other owner has continued to rent and use the property inappropriately with the septic system or cesspools on site. Consistent disregard to regulations over the years.

Jennifer Bylo states my daughter is graduating in May and we want to have her party there, I would appreciate that the yard isn't dug up. My plan is to expand the cottage and bring my mom in to retire with me. That's my dilemma. I want to get through planning first before I commit to a new system design. Can I have my family visit to the property and have a graduation party there.

Dr. Brumley states we just stated no commercial use and a graduation party wouldn't be charging people a fee.

Nick Leing states you have the right to use your property, a graduation party for your daughter is not a commercial use. I understand your position here and I do apologize that you walked into this situation as a new owner.

Jennifer Bylo thanks the Board and states that I do respect all of you.

Melissa Rosenbladt states I completely agree with Nick, it is not personal and it is unfortunate

Jennifer Bylo thanks the Board and states I know it's not personal David.

David Uitti agrees, not personal at all. Thank you for that

Dr. Brumley states ok, that is all we have this evening, is there anything else

Bruce Bygate states nice job Nick

Tracy Mayo states I do want to point one thing out, our next meeting I will not be here, it's April vacation week

Dr. Brumley states it will depend on if we have any variances, we can cancel. Let's stay in touch

Bruce Bygate states Tracy, did you go to a law firm about this situation

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Dr. Brumley states we did get opinion from Town Counsel

Bruce Bygate states does the Town know

Tracy mayo states yes, the Town Departments know about this and Town Counsel is aware as well

Bruce Bygate states well, we know now that we have no plan. So

Tracy Mayo states the 30 days goes by the return receipt from the certified letter

Bruce Bygate states what happens if they don't submit a plan

Dr. Brumley states Tracy maybe we should clarify that with Town Counsel on how to handle that and what the scenarios will be

Melissa Rosenbladt states Tracy is the Planning Board working on this

Tracy Mayo states no

Nick Leing states they do have a timeline with Conservation as well

Bruce Bygate states they're going on a site visit, Tracy are you going on that

Tracy Mayo states no, they haven't been able to schedule that either

Nick Leing states I think their issues are sperate from ours though

Tracy Mayo states there is someone in the audience wishing to speak

Bruce Bygate states one more thing, Jennifer Bylo mentioned going to the Planning Board, is there anything in there regarding subdivision or anything

Tracy mayo states not that I am aware of

Jennifer Rice, 157 Marshall Street, states I just have a procedural question. When 160 Marshall Street added these trailers and a site inspection occurred and it was shown they were intended to rent them out. At what point would the board of health been involved to show that there was an increase in flow and why did that happen or not and what should have been the process.

Tracy Mayo states they need to turn in a building permit first off to do any of that and I don't believe that was ever done properly, if at all. When a building permit comes through, I would pull the file and

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see what the system is designed for and determine that it's a cesspool and that they would need to upgrade in order to increase flow. Now, if you are stating you are just adding a shed or a deck, those are two things that don't require you to upgrade your title 5 system. I don't believe there was ever a building permit submitted to show the intent for what they are using these bungalows for. If they had submitted a building permit application back in 202 when they built these, it would have triggered a stop and they would have had to upgrade the system.

Bruce Bygate states well who put the plumbing in for those and did it require a permit

Tracy Mayo states they should but I don't know if they did, that is the Building Department. It's a moot point though now

Bruce Bygate states would plumbing permits notify the Board of health

Tracy Mayo states if someone is adding a structure, I would but not if someone was changing out a fixture.

Nick Leing states they would need a special permit from the ZBA for the trailers and they didn't get it or withdrew and put the structures there anyways or beforehand and so we never had the opportunity to speak to this. Until someone pulls a permit we wouldn't know

Bruce Bygate states so the only way to increase flow would require a permit

Tracy mayo states our rules state anything over adding of 50 square feet require a title 5 inspection. So most things that require a permit, I sign off on those. If you are doing something without a permit, then I wouldn't know. Since the property is in the WPOD, they require a special permit and that would come to me for comment and then I would submit comment to the ZBA and go from there

Jennifer Rice states so in 2020 they received a violation for the trailers. Perhaps the town should look at these violations and maybe they can send those to the board of health- maybe use this as a learning situation

Nick Leing agrees

Dr. Brumley states we are strictly health, so if they say they capped those we can't do anything about that

Jennifer Rice states there are bedrooms in these trailers so in essence increasing flow

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Tracy Mayo states yes, so if they pulled appropriate permits, then yes, the board of health would be involved

Bruce Bygate states 157 Marshall how do you know all of this

Jennifer Rice states I am a neighbor and have been dealing with all of this since 2020

Tracy Mayo states well, it went to zoning, it's not our purview until it gets to septic. Also, in 2020 the office was scheduled differently, not everyone was in the office together. So unless it was brought to my attention and if they don't pull a permit, I wouldn't know. To your point, violations are a good way to address this and be brought in

Dr. Brumley states well, I don't want to get too far out of our purview here. I believe there are formal structures in place

Melissa Rosenblatt states is there a special permit required for pigs

Tracy Mayo states anyone in town can have animals; we don't have animal regulations. We have a keeping of animals permit and we are also a right to farm community. This property did pull a permit in September of 2022. There is nothing in place for manure storage, it could potentially go right up to the property line.

Amy MacNab states knowing the Board of Health has extraordinary power, I would imagine the town wouldn't tolerate any negative impact to the neighbors in terms of smells or noise. I would hope that you do have oversight in farming of animals and protecting neighbors.

Dr. Brumley states we would have to deal with this case by case since we don't have any regulations in place.

Amy MacNab states but the public would be able to come to you to seek relief in a nuisance instance

Tracy Mayo states yes, as a nuisance case

Amy MacNab states thank you

Dr. Brumley states any other comments or questions;

Melissa Rosenblatt makes a motion to adjourn

Bruce Bygate seconds

All in favor Melissa Rosenblatt, Bruce Bygate, Nick Leing, David Brumley

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Lauren Hache
Assistant Health Agent

Karen Tepper, Chairman

Dr David Brumley, Vice Chairman

Bruce Bygate

Melissa Rosenblatt

Michael Count

Nick Leing (Alternate)