

# BOARD OF HEALTH

July 19, 2001

6:30 p.m.

**Members Present:** Mark Baker, Duane Gregory, and Ken Janson

**People Absent:** Laura Davis, Kay Halle. (Both are BOH members) and Jackie Silver, Health Inspector (all excused absences)

**Health Agent:** George Heufelder

The meeting was called to order at 6:30 p.m.

**Motion:** Duane Gregory made a motion to take the public hearing, regarding the adjustments to Title V flows for expansions of residential properties, out of order. (The hearing had been noted in the paper as taking place at 7:00 p.m.) Ken Janson seconded the motion and it passed unanimously.

## Public Statements

None

## New Business

### Mary T. Frangie - New Massage Therapist License

Mark Baker, the Chair, said that after reviewing her application, it seemed there were only two letters of recommendation and three letters are required. Ms. Frangie said she could easily provide the third letter.

**Motion:** Mark Baker made a motion to grant the license as soon as one more letter of reference was received. Ken Janson seconded the motion and it passed unanimously.

Another **motion** was made to take Lionel Pires (another applicant for a massage therapist license) out of order since he was not in attendance. It was passed unanimously.

### 15 Cottage Street - Discussion of bedroom count

Tom Thompson had a new proposal for Kensington Gardens (formerly Windsor Court) that addressed its bedroom count problem. Ken Janson disclosed that he owns Ampersand, a guesthouse on Cottage Street and would gladly step down if there were any objections to his sitting on the case. It was deemed irrelevant because it was merely a discussion.

Mr. Thompson presented the plan and stated that his client contends there are 16 bedrooms; the Health Agent contends that there are at most 14 bedrooms; therefore 2 bedrooms are of issue. To clarify the issue further, Mr. Thompson stated that the property was sold as having 16 bedrooms with one of those bedrooms considered a staff bedroom. The Health Agent noted that an inspection by William Rogers indicated 13 bedrooms, while a Disposal Works Permit dated 3-2-95 indicated 12 bedrooms. Another inspection by the Health Agent rendered an opinion of at most 14 bedrooms were legal given Housing Codes requirements for minimum bedroom size and habitable area. Furthermore, George Heufelder said anyone can SAY anything when they sell a property but it would be prudent to check all available records prior to purchase to ascertain all the facts. Duane Gregory asked Mr. Thompson what the license for the establishment reads – how many bedrooms?

Bottom line: Tom Thompson was advised to check all records on file with the town pertaining to the bedroom count and then make a finding.

### Gabriel's - Discussion to add flow to existing systems

Allen Cabral of FELCO presented the case on behalf of Gabriel. Gabriel is planning to acquire 102 Bradford Street that most likely has a failed septic system. Allen said ideally Gabriel would like to handle the waste on 102 and not tie into 102A or 104 Bradford Street (other properties owned by her). Mr. Cabral feels they're in a holding pattern until the sewer comes in.

George Heufelder feels that a fast system is the only interim solution. The interim system would have to be elevated

due to ground water levels and remedial use approval is the way to go. In addition, they would have to closely monitor the water usage. No vote was necessary because the meeting was seen as general guidance to the engineer.

### **Public Hearing:**

**7:05 announcing public hearing.** Mark Baker read the entire regulation into the minutes. There was one very important correction to the public hearing handout. On page 2, the paragraph just before Example 2 should read: "There shall be 150 square feet of living area for the first occupant, and **100** square feet for each occupant after that." (The change is from 150 to 100 and is noted above in bold type.)

For the benefit of the public, next George Heufelder further clarified the proposed regulation and gave some history as to how the Board of Health came to propose it.

### **Proponents:**

**Anne Howard**, chair of the Planning Board and the Local Comprehensive Planning Implementation Committee, said she appreciated the efforts of the Board of Health in proposing this regulation for Growth Management, but she and her committees would have liked to have been included in these deliberations before they were presented to the public.

### **Opponents:**

**Judith Oset**, head of Department of Regulatory Management, said she is not necessarily opposed to this but she thinks it needs more review. If this sends loads of people into a Growth Management queue, then it could tie up everyone up for a long time and create a backlash against the Growth Management Bylaw. She would like a lot more input from all the other committees. "You could ask my department to run a trial to study applications over a 6-month period to see the impact that the proposed regulation might have and how many people might be affected," said Judith. This would produce a body of evidence that could then be studied by any and all committees working on a regulation of this type.

**David Nicolau**, a local real estate broker, agreed with the previous speaker. When the Growth Management bylaw was created it was based on Title V flow as determined by bedroom count and has no mention of occupancy. He's not in favor and recommends more research by the DRM and then eventually should be brought before Town Meeting.

**Anne Lord** commiserated with the BoH regarding the problems they face but feels that their proposal needs more research and time to investigate the effect that this regulation might have. Her opposition stems from the fear that it would cause even more families to leave town because they would be caught in the web that is being created and might not be able to expand their home for their growing family needs.

**Anne Howard** had a question addressed to George. "Why don't we go with the building code of 200 sq ft per occupant?" George replied, "When BoH writes a regulation it's better to keep it in simple calculations and the state sanitary code is easier to enforce and easier to explain. The BoH has no authority to oversee the building code." She also warned that perhaps only 4 building permits a year could be issued under this regulation and the Growth Management Bylaw.

**Gregg Russo**, another real estate broker, wondered if the BoH had received any complaints about overcrowding? George said no but in just the past two weeks there have been two overflows and that constitutes anecdotal evidence. Mr. Russo continued that, if anything, there should be an adjustment made to the Growth Management Bylaw and concluded by saying that he agreed this question should go back to Town Meeting for consideration.

**Barney Hadler** asked, "When you go to a property and there's a sewage overflow and you witness overcrowding – what do you do?" George said you have to deal with the immediate overflow. Barney said we run risk of having regulations that are too restrictive and keep people from wanting to upgrade to a Title V system. He also said there is confusion between the Growth Management Bylaw and this proposed BoH regulation and that could impact people in a negative way.

**William Rogers, II** said he has been doing this (designing Title V systems) for 30 years and as a homeowner finds this proposal very disturbing. A lot of people have upgraded to Title V and a lot of hurt is going to be done to property owners in this town if this regulation were to pass as is. He sees it as a stranglehold on property owners and occupants who want small additions. It will place limitations on homeowners. "You're not going to hurt the big people, but it's the little people who will be hurt. Nobody sees the big picture as I do. It would be a big negative."

**Carl Spector** said the proposal was very discouraging to all of us. Most of the people in town have small parcels of land and the BoH is attempting to place too many restrictions on people and it's very arbitrary. He would prefer a mandate of water-saving devices placed on all households.

**Rachel White** does not want to be locked into these restrictions. "We're trying to close the barn door and the horse has already run away." While she admits that the town is in a difficult situation, she also feels it would be advisable to put any restrictions of this caliber before the voters. "Let us decide."

**Tom Thompson** requested that a letter from his clients, Douglas Pew and Donald Croxton of Amston CT, be read into the record. Chair Mark Baker did so. It was lengthy and basically requested a delay until clarification of the regulation could be made.

**Richard McDever** asked how the regulation would affect those in the sewer district? George responded, "Your betterment will be based on your Title V flow as determined by this proposed regulation's formula." Mr. McDever wanted further clarification and couldn't understand the proposed regulation. "You have a right to tell me how I can expand my house?" He also noted that should the sewer come into being before this regulation does, the regulation does not address the homeowner already connected to the sewer who wants to do an addition. The BoH agreed that this would need to be considered.

**Judith Oset** noted that the above case would still trigger growth management.

**Jonathan Sinaiko** asked, "If I'm considering closing in a porch, what then?" He also wondered if you could skirt this by just adding to your living room? George H. answered in the affirmative and Mr. Sinaiko said, "So I don't think this is going to do what you want it to do."

**Conrad Malicoat** asked, "What if someone is pumping their own water?" Mark replied that the BoH would certainly take that under advisement as well, as the regulation as currently proposed does not address that situation. Mr. Malicoat then went on to reiterate Anne Lord's sentiments regarding the possible effect of restricting families.

**Penny Silva** suggested a solution that Falmouth has – you can only have 4 people in a unit with different last names. There is legally nothing you can do about overcrowding.

**Rachel White** also agreed with the previous speaker in that the use of living room space is going to be very difficult to enforce.

**Barney Hadler** asked if there was something that the BoH sees happening in the future that we are trying to prevent? Mark responded by saying we've just seen many seasonal properties growing like into larger year-round usage. Barney noted that with the sewer coming along, perhaps it would be better to wait to implement a regulation of this type.

**Sasha Richter** read that water usage has gone down in the last two years. He wondered if that were true? Answer from George H.: Actual per capita consumption is down, but that is probably due to the repair of leaks in the main water delivery system.

**Anne Lord** asked one more question about the proposed regulation. If eating and living rooms are excluded, then innovations will be born. She hopes the BoH realizes that. George responded, "The Board asked me to write a regulation and then the BoH attempted to soften it. We brought it before a hearing and asked for review of this regulation. We are bringing it before you for your input. Comments will be taken under advisement."

**Mr. Fenton** asked if the BoH had looked into any water saving devices. Answer: Yes.

**Jonathan Sinaiko** wondered if incentives had been offered to reduce usage – e.g., "You want another bedroom? Then install water saving devices."

**THIS CONCLUDED THE PUBLIC HEARING PORTION OF THE MEETING. ALL WHO ATTENDED WERE THANKED FOR THEIR VALUABLE INPUT AND IT WAS PROMISED THAT ALL THE**

**COMMENTS WOULD SINCERELY BE TAKEN UNDER ADVISEMENT AND CONSIDERATION AT A FUTURE BoH MEETING.**

**Lionel Pires – massage therapist license**

Mr. Pires' packet was also missing one letter of recommendation. He said the three letters had been submitted and the absence of one letter must be an oversight.

**Motion: Mark Baker made a motion to grant the license on the condition that the third letter of reference is presented. Ken Janson seconded the motion and all passed it.**

**17 Bayberry Avenue - Continued from 7/5/01 meeting**

Tom Thompson appeared for Pamela Kraft and Evelyn French and submitted a new proposal that opened up the "library" area as much as possible. George Heufelder said Mr. Thompson had opened up the plan as much as he could BUT it is an area that can still afford some privacy and thus possibly be used as a bedroom. Duane Gregory said since these people have a 5-bedroom design flow, the 4<sup>th</sup> bedroom/library they propose should be allowed. George said the present system was installed under the old code and the 5-bedroom system proposed is not in the ground now; just the plan is available. Ken Janson said that even though Tom had opened up the design, it's still a bedroom in his opinion, or could be with the simple addition of two doors.

**Motion: Duane Gregory made a motion to approve the proposal. It received no second and therefore was not voted on.**

**Motion: Ken Janson made a motion to continue the case until the August 2<sup>nd</sup> meeting so that more discussion could happen with the owners and more BoH members could consider it. Mark Baker seconded it and it was approved unanimously.**

**85 Bradford Street - overflow**

Mr. Teebagy is the owner and when the overflow occurred George said that he responded to the problem rather quickly. The owner is now coming up with a proposal to deal the problem. Either the owner will be entering into an escrow agreement for a sewer hook-up or he is considering the installation of a Title V with 1 month for a plan and 3 months to install. GH and Allan Cabral spoke to the owner today regarding these options. In the meantime, it was also determined that a contract be put in place for periodic inspections by a septage hauler to oversee the function of the system and an alarm be installed within 1 week to sound at 80% of capacity in the second cesspool.

**Motion: Ken Janson made a motion regarding the overflow with the following conditions:**

- 1. The owner must enter into an escrow agreement for the sewer or submit a Title V plan within one month to be installed within three months.**
- 2. Must ensure that an alarm will be installed by July 26, 2001 in the overflow/2<sup>nd</sup> cesspool and set to sound at 80% capacity.**
- 3. Septic must be inspected at two week intervals for openers and then perhaps, based on reports filed by the pumper with DRM, the inspections could ease to no less than once a month.**
- 4. A report from the septic person must be received by the Board of Health as to the viability of the system.**

**Duane Gregory seconded the motion and it was approved unanimously.**

A **motion** was made to take "Any other business" out of order due to the length of the meeting and people still needing to be addressed. It was passed unanimously.

**Other Business**

**Joe Pezzulo – 135 Bradford St**

Mr. Pezzulo is the new owner of Tropical Joe's and Jungle. He would like an outdoor seating area and the restaurant is licensed for 120 seats but the septic was built – for some unknown reason- to only handle 100 seats. George Heufelder said he is comfortable with the 100 seat plan but not with the 120 seat plan, but that the precedent is when there is historical documentation to allow the present licensing to stand. The present licensing has been in place and documented for several years. Ken Janson wondered if there had been any problem with the septic. George stated that there has been none since the system was installed in 1991. Mark Baker wondered if the property had entered into an escrow agreement and George H. said he wasn't quite sure whether the property was in the proposed sewer system.

**Motion: Ken Janson moved to accept the historical record of 120 seats for the property. Duane Gregory seconded the motion and it passed unanimously.**

## **122 Bradford Street Extension (overflow of sewage)**

Ken Janson disclosed that he owns a guesthouse; Duane Gregory disclosed that her husband is working for Ted Malone. Neither disclosure was considered relevant by anyone present.

Ted Malone, Michael Bunn, and David Nicolau were at the meeting to see to the problem of their about-to-be-acquired property. The old motel (The Meadows) is occupied seasonally by restaurant workers until October 15<sup>th</sup> with no plans for occupancy beyond that date. The reasons for the overflow, Mr. Malone said, was due to malfunctioning toilets and other minor problems; these have been rectified by Flying Plumbers and an accounting of such was supplied to the BoH.

**Motion: Mark Baker made a motion to allow the motel to continue operating with the following conditions:**

- 1. Installation of an alarm in the system that will trigger at 80% of system capacity.**
- 2. Regular inspection of the system for volume – every two weeks until pattern of usage evolves as reported by the pumper to the DRM, and then no less than once a month thereafter.**
- 3. The BoH must receive an inspection plan indicating the viability of the system.**
- 4. A new plan for a septic system must be submitted by January 19, 2002.**

**Duane Gregory seconded it and it was unanimously approved.**

Mr. Malone asked for relief from the regular inspections after October 15, 2001 since the buildings will not be occupied. It was granted as long as the DRM confirms that there is no occupancy beyond that date.

## **Approval of Minutes**

It was agreed to table the approval of minutes until August 2<sup>nd</sup>.

## **Health Agent's Report**

George Heufelder said things are going well. He announced that Jackie Silver is leaving and her last day will be July 20<sup>th</sup>. He noted that the DRM had requested coverage of the Health Inspector's position by Barnstable County until it is filled but noted their limited ability to do so given their own staffing issues. George then apprised the BoH of the happenings at Sanjo's development on Cap'n Berties Way. A stop work order happened when the building inspector found a room in the basement of one of the buildings that was completely finished and habitable for sleeping. It was not in the original plan. George would now like guidance from the BoH since there is now a habitable room in the basement which was not in the plan and which would have triggered a BoH review of the septic system prior to its installation due to the need for a variance. The building inspector had advised the Sanjo people that perhaps a building permit (issued after the fact) would fix the oversight, but the Health Agent was not willing to sign-off on such. The BoH suggested the policy that a deed restriction be placed on all the buildings in the project stating that the basement area was never to be used as a sleeping area. Hopefully, this will limit further problems with this project.

## **Health Inspector's Report**

**Mark Baker** said that the town is now without a health inspector but he spoke with Jackie this afternoon who told him we are now dealing with two new HepA cases. Mark wants a HepA clinic. In other years it has been either Diane Corbo or the PASG who have conducted it. He will follow-up and try to determine who will host the clinic.

## **Board Members Statements**

**Ken Janson** wondered if George agreed that what the BoH regulation proposed would send most expansion requests into Growth Management? Is there a way that we can avoid sending it into Growth Management? George feels that the entire issue will have to be defined a bit more and thought that a revision in the Growth Management Bylaw to include "flow categories" for renovations (as one example) could then create a different queue into which projects would then fall and be reviewed. Mark Baker said he would like to see this "flow category" policy added to the Growth Management Bylaw.

**Mark Baker** said due to the lateness of the hour he would merely hand over a list from Michele Couture to George for follow-up. *George thanked him profusely for the list!* Mark continued that he has been attending the Harbor Committee meetings and taking part in the review of the draft Beach Management Plan. The Harbor Committee wants to know what constitutes a "health hazard" in regards to the accumulation of seaweed and eelgrass. Sean is looking into the town of Dennis' policy on this. In conjunction with the discussions about the Beach Management Plan, Mark requested the following.

**Motion: A motion was made to direct Mark Baker to write a letter to the BoS requesting that they reinstate the**

**pooper-scooper policy and fund it. It was so voted by all.**

**Duane Gregory** spoke regarding the public hearing. She isn't in favor of the regulation due to Growth Management Bylaw concerns and noted that she wasn't on the Board when it was formulated. She believes that the abuses that the regulation is trying to address are the exception to the rule. She feels it will hurt some of the townspeople.

**The meeting adjourned at 9:45 p.m.**

**The next meeting will take place on August 2<sup>nd</sup> at 6:30 p.m.**

Respectfully submitted,

*Evelyn Rogers Gaudiano*

Approved by

\_\_\_\_\_ on \_\_\_\_\_  
Mark Baker, Chair date