

Truro Board of Health Minutes
PUBLIC HEARING - October 3, 2019
4:30 PM-Truro Town Hall

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

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

The Chair, Tracey Rose called the meeting to order at 4:30PM. Chair Rose requested that everyone speak clearly for the video recorder. She asked if anyone in the audience was recording. **Mary Ann Bragg of the Cape Cod Times stated she was recording the meeting; she left the meeting approximately half way through.**

Ms. Rose reviewed the rules for the proceedings and thanked the public for attending. Ms. Rose requested a motion to begin the public hearing. **Motion by Mr. Peters to open the public hearing; seconded by Mr. Rose; Vote: 5-0-0, motion carries.**

I. PUBLIC HEARING : Truro Motor Inn, 296 Route 6: Public hearing relative to the dwelling units located in the Truro Motor Inn, 296 Route 6, Truro Massachusetts.

The Chair called the public hearing to order and read the public notice that stated the purposes of the Public Hearing:

- 1) to determine whether any or all of the dwelling units located within the Truro Motor Inn were unfit for human habitation and whether an Order to Vacate and Secure should be issued based on numerous violations of the State Sanitary Code;
- 2) to determine whether the license to operate a motel should be suspended or revoked based on sanitary conditions;
- 3) whether an Order to Correct should be issued in accordance with Title 5 of the State Sanitary Environmental Code, 310CMR, 15-00, based on the defective condition of the on-site septic system serving the said property.

Chair Rose turned the meeting over to the Towns counsel from KP Law, Attorney Gregg Corbo,. Mr. Corbo addressed the public and the Board to clarify the role of the Board at the hearing, which was to receive evidence, to receive recommendations from its staff, and to deliberate and decide on this matter. He stated that the Board was considering whether there were violations of the state sanitary code at the Truro Motor Inn and whether those violations were sufficient to justify issuing an order that the units be vacated and secured. The Truro Motor Inn is a motel that also requires a license to operate that the Board will be considering whether to extend to the end of the year. Finally, the Truro Motor Inn has an on-site septic system that is required to comply with the State and Environmental Code, which is referred to as "Title 5".

Attorney Corbo explained the steps for the hearing:

- the first step will be for the Board to hear a report from its Agent, Emily Beebe, as to what she had observed at the Truro Motor Inn and how those observations relate to requirements under State and local law.

- Once the Agent's presentation is complete, the second step will be an opportunity for the owner of the Truro Motor Inn to make a presentation as to why the facility is in compliance and should not be ordered vacated and secured.
- The meeting will then be opened to any residents or members of the public for comment. Attorney Corbo provided parameters for public comments.
- The matter will then be turned over to the Board; the Board will deliberate and make a decision. The Board will have two votes to take: the first vote is to determine whether any violations were found; and if the Board finds a violation, what remedy the Board wishes to impose. If a violation is found, the Board will have two options – the Board can either issue an order that the premises be vacated and secured, which means that no one can be there and cannot be re-occupied until all the violations were corrected, and it's made safe. The other option for the Board is to allow residents to remain on the premises but require that the repairs be made within a certain period of time. At the end, Attorney Corbo will be asking the Board to take two votes: one on whether or not there is a violation, and one on what, if any, remedy they wish to impose.

Attorney Corbo asked Chair Rose for permission to take testimony from the Agent.

The Agent provided her report: the violations that were being discussed were cited in an **Order to Correct** from an inspection done in December of 2018 for the 2018 licensing year. This team inspection was conducted on December 6, 2018 by the Agent, the assistant Health Agent, the Fire Chief, the Building Commissioner, the Plumbing & Gas Inspector and the Wiring Inspector. The inspectors met Mrs. DelGizzi on site and went through all 36 units. The license application for 2018 was submitted in June of 2018. Pursuant to that inspection the **Order to Correct Violations** was developed. The **Order to Correct** included violations to the State Sanitary Code, relative to the exterior of the building as the facility must be weather tight; a stairway identified at the rear of the west building on Castle Road was cited as unsafe by the Building Commissioner and falls under the property owner's responsibility to maintain structural elements. The storage of materials behind, outside, around and between each of the buildings was cited as being hazardous because of its flammable nature. Also, the location of propane grills, refuse, brush and construction materials were cited as being improperly stored. There were also issues with smoke detectors and carbon monoxide alarms. Interior issues were cited for various units. Also cited was the area of the units; the citation included that each of the 36 units at the property have kitchen facilities and not enough area for the kitchens and not enough habitable area to meet the State Sanitary requirements for accommodation, meaning that there was not enough room in the units for the use that was observed during the inspection, the owner was cited for minimum square footage violation under the State Sanitary Code.

The Agent reported that after the inspection they repeatedly attempted to serve the **Order to Correct** to the property owner. The Agent reported the following synopsis of communication efforts by the Town to the Owners:

- The **Order to Correct** was served by email, first-class mail and certified mail; the green card for the certified mail was not returned, the envelope was returned as undeliverable; the Agent and staff repeatedly called and emailed the property owner; on February 14th a response was received, and at that time the owner stated that they

had not received the **Order to Correct**. The **Order to Correct** was again sent to the property owner by email.

- A re-inspection was required within 30 days issuance of the **Order to Correct**. On May 20th in the absence of follow-up by the owner's representative, the Town emailed the re-inspection date of March 27th. On March 21st the owner's representative declined and requested April 4th. On April 1st the owner's representative cancelled that and requested April 11th. On April 9th the owner's representative cancelled that and requested April 25th. On April 23rd the owner's representative cancelled that and did not request another date. On May 6th the Town emailed and required a response within 24 hours to schedule a re-inspection; the owner's representative requested three dates; the Town picked a date; on the 15th of May the Town emailed that the schedule for May 21st needed to be confirmed, and if it wasn't confirmed they would need to appear before the Board of Health.
- On May 16th the Town observed evidence of septic work being done on the site and spoke with the owner about the requirement for a permit for any septic work.
- On May 16th the owner's representative at that time requested an inspection for May 28th. On May 17th the Town emailed a request to appear at the May 21st Board of Health meeting. The day before, on May 20th, the owner's representative stated that because they were scheduled to appear before the Board of Health on the 21st they thought no re-inspection would be held, so the inspection date was moved again. On May 20th the re-inspection date was scheduled for May 28th and reiterated that the Board of Health meeting was on May 21st. On May 20th the owner's representative requested to appear at the June 4th Board of Health meeting instead and declined the 28th inspection date, requesting two additional dates, which couldn't be accommodated by the Town due to the schedule of other inspectors. On May 21st the owner's representative suggested June 4th or June 11th for re-inspection; the date of June 5th was confirmed by both parties.

At the May 21st Board of Health meeting, the Board voted to order the owner to have the septic system on the property inspected prior to July 1st, to notify the owner to appear at the June 18th meeting and to issue non-criminal violation citations for the lack of licensure since 2018.

- On May 29th the Town emailed the owner's representative to confirm the June 5th re-inspection and the June 18th Board of Health meeting, along with a reminder on licensing paperwork for the 2019 licensing season and the documents for the same. On June 5th the email from the owner's representative cancelled the June 5th inspection; the Town responded with rescheduling it to June 11th and reminded them of the June 18th meeting. On June 11th an email from the owner's representative cancelled the June 11th inspection; on June 16th the Town emailed to reschedule to June 20th, reminding again of the June 18th Board of Health meeting. On June 18th the Town emailed to reiterate the requirements for the septic inspection ordered on May 21st.

At the June 18th meeting of the Board of Health, they met with Carolyn DelGizzi, the owner's representative. The Board requested she return to the next meeting with proper documentation from the legal owner Daniel Delgizzi that authorized Mrs. DelGizzi to represent the property owner. The Board inquired further about:

- the septic inspection status;
- the re-inspection schedule;
- the permit to operate for 2019;
- the payment of back taxes.

The Board continued the matter to July 2nd to complete the discussions noted.

- On June 20th there was an email to the owner's representative confirming a June 27th inspection and reminders on the permitting process. On June 27th the Town completed a re-inspection of the Truro Motor Inn pursuant to the January 2019 **Order to Correct** violations. At this inspection the owner's representative informed the Agent that they opted not to inspect the septic system, but to upgrade the septic system.

At their meeting of July 2, 2019, the Board of Health approved the change of manager and the permit to operate the Truro Motor Inn until October 1st, subject to the conditions that the septic system be upgraded, that all outstanding taxes be paid, and that progress be made on the correction of violations previously cited.

- On July 12th the Town emailed the owner's representative and the septic designer, providing benchmark schedules for the submittal of information for the Board of Health review. On August 2nd the Town emailed reminders for the Board of Health filing dates, requesting information. On August 6th the Town issued the **Order to Correct** for the septic system. On August 20th the Town sent an email requesting an update on the septic plan work.

On August 20th the Board of Health met and voted to request the property owner to attend their next meeting, which was September 3rd, to provide an update on their progress. The Board also discussed beginning the process of suspending, modifying or revoking the license for the Truro Motor Inn as the timeframe for the installation of the septic system was approaching; no perc test had been done and the property owner and engineer had been silent about the anticipated Board of Health filing date on the upgrade design plans.

On August 21st the Town issued a written summary of all the Board of Health actions from previous meetings. The Town emailed the owners confirming an on-site on August 28th and requesting attendance at the September 3rd meeting. On August 26th the owners declined attendance at the September 3rd meeting, but indicated they would send a representative. On August 29th the perc test was completed.

On September 3rd the Board of Health met with Town Counsel present, to discuss the likelihood of compliance with the October 1st deadline. The Board voted to hold a Public Hearing on October 3rd to discuss the license and condemnation proceedings; they also required the owners file engineered plans suitable for permitting by September 26th.

- On September 4th the Town received un-dimensioned floor plans; the following day the Town requested dimensioned plans as required.

The Town issued the notice of public hearing to the property owner by email and by Constable. On September 6th the owner's representative requested a re-inspection for the Truro Motor Inn on September 19th or 20th; the Town accepted the 20th. On September 19th the owner's

representative cancelled the inspection for September 20th and suggested dates to re-schedule; the re-inspection was conducted on September 25th.

- On September 25th the Town received revised floor plans (these were incomplete and were not dimensioned); the Town received preliminary septic plans on September 30th; at their meeting on October 1st the Town received revised preliminary draft septic plans.

The September 25th inspection showed correction of some violations within individual units as cited under the January and June orders. Violations cited relative to: the exterior sidewall; the rear stairway (rec); spatial requirements; Title 5; and storage of flammable materials around, behind, outside and between the buildings were all still outstanding.

This concluded the Agents testimony.

Attorney Corbo then summarized for the Board and the public:

- As part of the licensing process, an inspection was done; numerous violations were found.
- For approximately 11 months, the Health Department, Fire Department and Building Inspector have all attempted to work with the property owner to achieve compliance.
- Numerous violations of the laws still exist, most significantly a septic system that does not comply with state requirements and individual units that are insufficient in size to accommodate cooking facilities and the number of people living there.

Mrs. Carolyn DelGizzi came to the table on behalf of the Truro Motor Inn. Mrs. DelGizzi stated that there had been no evidence of a septic failure and stated that the covers had been opened and the found to be functioning fine. She further stated that they (The DelGizzi's) intended to upgrade the system, then hired Mr. Ellis to prepare the plans; she asserted that the lack of compliance with the deadline was due to Mr. Ellis not providing plans. Mrs. DelGizzi stated that most of the violations had been addressed and has hired a structural engineer to correct the stairway as required by the Building Commissioner; further, she stated that the flammables had not been moved as she was waiting for direction from the Fire Chief. Mrs. DelGizzi felt the violations of the law did not warrant condemnation.

The Chair reminded Mrs. DelGizzi that the property owner chose to upgrade the system in lieu of the required inspection ordered by the Board.

Attorney Corbo asked the Agent to describe in better detail the issues with the septic system. The Agent stated that the Board of Health may order the inspection of a septic system and did so following unpermitted work that was observed at the property in May; This precipitated the conversation with the Board of Health about the presence of a non-conforming system at the site. There are cesspools in the driveway on the Castle Road side of the property and modified Title 5 systems close to the swimming pool. The non-conformity of the system deems it failed. Mr. Peters asked the Agent if an inspection had taken place, and the lids on the cesspools had been opened, and the in-flow was over the pipe, would that have indicated failure, the Agent affirmed this.

Attorney Corbo asked the Agent to explain the spatial issues. The Agent stated that the minimum area required under the State Sanitary Code is 150 sf of habitable area for the first person and 100 sf for each additional occupant. Under the local Board of Health regulations, a motel that provides cooking facilities requires 400sf of gross floor area. The Agent observed

that the units did not have adequate area. Attorney Corbo asked the Agent how the spatial requirements relate to the septic system. The Agent explained that the spatial requirements are tied to the occupancy, and the septic system design is based on the usage of the property. Attorney Corbo asked the Agent about the number of bedrooms stated on the applications submitted. The Agent said that the property had been licensed for 36 units. A State "Sanitary Survey" was done in 2003 for the public water supply well and it cites 36 units and 36 bedrooms. The Agent has been provided with a preliminary septic plan showing 44 bedrooms. Attorney Corbo asked the Agent if the current configuration can accommodate 44 bedrooms. The Agent stated that the public water supply approval allows for 36 bedrooms and is a grandfathered water supply; the usage can't be increased. Attorney Corbo asked the Agent if the building can physically accommodate 44 bedrooms based on the code and size requirements; the Agent stated that it could not as currently configured. Mr. Peters spoke about the complication of the cooking facilities, which further restricts the square footage requirements. Without dimensioned floor plans for the facility, the number of allowable bedrooms can't be determined.

Mrs. DelGizzi informed the Board that Mr. Ellis has agreed to start immediately on the floor plans and should have floor plans prepared within two weeks.

II. PUBLIC COMMENTS

The meeting was opened to public comment.

Carol Nickerson of Town Hall Road approached the table and asked Ms. Rose to read a note into record: "I retired from the Town in 2003, and even then, we had constant problems with the DelGizzi properties, and we were in 2019 and still having issues with them. My heart goes out to the tenants living there in dangerous and unsanitary conditions. I'm hoping that with the many agencies on the Cape, that they can find housing for these families, but it should not be at the Truro Motor Inn. Shame on the DelGizzi family for subjecting these families to awful living conditions. The DelGizzi's always tested the Town with promises of taking care of violations, however, once inspections were completed and conditions brought to code, it wasn't long before violations again existed. The tenants deserve a safe place to live in and not live in fear of a fire or health violations. Enough is enough. It is time to come down hard on the DelGizzis. Carol Nickerson, Dated October 3, 2019."

Carol Pesiri of Seascent Pines approached the table to address the Board. Ms. Pesiri expressed concerns about the septic system at the Truro Motor Inn. Ms. Pesiri stated that she's never had any problems, but the septic is a big concern.

Paul Wundrock, resident of Truro Motor Inn, approached the podium and read a letter, dated October 3, 2019: "The property is not unfit for human habitation and should not be condemned. Many citations in Ms. Beebe's report were questionable and she patently exaggerates minor issues. Ms. Beebe callously stormed The Inn with police, threatening us with eviction and handing out flyers for homelessness. What a disgraceful way to treat the working families and people who call The Inn home. We were a vital part of this community and local economy, and we deserve more respect than that. Ms. Beebe's biased, over-zealous approach toward us clearly illustrates in her report with minor things like leaking faucets, loose light bulbs

and the presence of ants being fabricated into health hazards. The square footage of our rentals was also cited, but units of the same size can be found in local real estate listings with asking prices in the hundreds of thousands of dollars. Further, a local restaurant chain is known to cram employees into a nearby motel in far less desirable conditions without any issues from the Town. And while I can't speak for every conflict that property owners have had with the town, I have found The Inn to be safe, sanitary and reasonably maintained. Although some tenants do believe the property needs updating, I haven't heard any of them say they feel unsafe there, and I don't. Our affordable housing includes heat, electricity, cable, wifi, parking, snow removal and trash removal and it's definitely preferable to many area apartments I have seen and lived in. Given the draconian threat to condemn the property, other residents and I can't help but wonder if race and class discrimination might be at work here. Could it be that some folk just don't like the sight of an old motel near their million-dollar homes overlooking the bay? Maybe they just don't want to see The Inn kids playing out front or hear dreadlocked Jamaicans chatting in patois while fixing an old car in the driveway. They might just want that repulsive slum shut down and busted up and it's undesirable tenants disbursed and hidden from view. Maybe an invisible servant class is all you want here. But those kinds of racist and classist attitudes aren't usually expressed publicly. Instead, lots of fancy footwork like this goes on behind the scenes to facilitate the desired outcomes and Truro has some crafty ways of keeping people out. It is for example essentially a form of redlining to have zoned three-season properties that were only available to cash buyers and those financing them as second homes; I know because I tried to buy one. That is why I'm calling BS on Emily Beebe and the Town of Truro. Perhaps if you cared more about affordable housing, then about habitable square footage, we wouldn't be in this mess. Public safety involves far more than Ms. Beebe's knit-picking games; you should be grateful The Inn provides us housing while you sit back and benefit from our hard work. But instead, you shamelessly focus on actions that only worsen the housing crisis."

At this point the Chair, interjected and told Mr. Wundrock to sit down

Mr. Wundrock continued to speak over Ms. Rose, and a police officer was summoned.

Officer Starbard moved into the hearing room from the back of the room to preserve order and told Mr. Wundrock remain seated or be removed; he remained seated.

Attorney Corbo reminded the public of the rules of decorum, and that the issue at hand was about the condition of the property; he asked that the public refrain from making personal attacks on anyone, including Town staff. The Board wished to hear relevant information about the property, but it was inappropriate to provide specific attacks and name calling of any person.

Steve Stalimar, resident of the Truro Motor Inn addressed the Board. Mr. Stalimar has been a resident of the Truro Motor Inn since 2015 and spoke in support of Mr. DelGizzi and expressed his appreciation for residing at the Truro Motor Inn.

Amy Paine, resident of the Truro Motor Inn addressed the Board showing a poster board with photographs of some of the living spaces at the Truro Motor Inn; she stated she had resided at the Inn since 2015 and discussed her inability to find year-round housing. She urged the Board to not take away the housing of the residents.

[There were no further public comments.]

III. DELIBERATION OF BOARD MEMBERS

Attorney Corbo recommended that the Board proceed in two steps and make two motions:

- The first step was to determine whether there were any violations, specifically the State Sanitary Code relative to the minimum standards for human habitation. The role of the Board of Health is to enforce the regulations. The evidence heard by the Board supports a finding that several violations of the code exist: structural and exterior elements were not weather tight and in good repair; the property is not maintained free of garbage and rubbish; there was inadequate area for cooking; the units do not meet the minimum square footage both under the state code and the Town of Truro regulations; and the septic system does not comply with the state code and local Truro regulations.

-Mr. Rose stated, in his opinion, that the Board was not trying to evict anyone; for several years the Board has been asking that the property be kept up and repaired for safety reasons. Mr. Rose would like to see the residents remain in their homes and have all repairs completed in an adequate amount of time, and to have the licenses obtained in a timely manner.

-Mr. Van Stratum stated that the citations were accurate and also expressed concerns about the liability of the Town, the volume of attempts at communication with the property owner and the lack of compliance.

-Mr. Silva thanked the public for attending the meeting and pointed out that the last time a Board of Health meeting was so well attended, it too involved a property owned by the DelGizzi's with outstanding violations and issues with the surrounding neighborhood. Mr. Silva discussed the lack of trust with the DelGizzi's and the role of the Board in enforcing state and local regulations. Mr. Silva asked for good faith from the owner going forward and more effort toward compliance.

Attorney Corbo stated that the purpose of the Code is to protect the occupants; and the obligation of the property owner to not only give an individual a place to live in exchange for money, but it's the owner's obligation to use that money to give the individuals a safe place to live. The role of the Board of Health is to ensure that is happening. It is an option to close the property, but it's not the only option.

Attorney Corbo discussed the Board's ability to issue an **Order to Correct**, in which certain deadlines can be imposed. If those deadlines were not met, the Board can file a petition in the Housing Court for enforcement of the order. The Housing Court can appoint an independent third party called a "Receiver"; the Receiver steps up in place of the owner and can divert the rents from the owner to a special account that is used for the sole purpose of bringing the premises into compliance. The Receiver is an important tool for the residents, because it enables them to ensure that their money is being used for giving the tenants a safe place to live.

-Mr. Silva asked the tenants to consider that they were paying rent to landlords who owe serious tax debt in several towns; at any time, the property owners could choose to close the property.

-Mr. Van Stratum asked Attorney Corbo if it is the responsibility of the landlord to find housing for the tenants in the event of the property closing. Attorney Corbo stated that if the Board issues an Order to Vacate, they would be required to provide relocation assistance, helping to identify an alternative place to go, but it does not mean that the Town must provide that place.

Attorney Corbo provided Ms. Rose with a suggested motion.

-Ms. Rose stated for the record that the Board cares about the tenants; she thanked the Agent and stated that the job of enforcement keeps people safe.

Motion by Mr. Peters to find the owners of the Truro Motor Inn in violation of the State Sanitary Code, Title 5 and the regulations of the Truro Board of Health as follows: 1.) 105CMR 410.500, structural and exterior elements not weather tight and in good repair; 2.) 105CMR 410.602, property not maintained free of garbage and rubbish; 3.) 105CMR 410.100, inadequate cooking facilities; 4.) 105CMR 410.400, minimum square space footage, Truro By-Law Section 3, Article 5, kitchen units; 5.) 105CMR 410.300, septic system not compliant with Title 5 and the Truro Board of Health regulations- Article 4, Section 6, cesspools; seconded by Mr. Rose; Vote: 5-0-0, motion carries.

Attorney Corbo directed the Board to a proposed schedule for corrections prepared for their consideration. The Agent read the schedule into the record.

Motion by Mr. Silva: based upon the violations found, that the Board issue an Order to Correct, requiring the violations be corrected in accordance with the schedule suggested by the Health Agent, and that the motel license be renewed to the end of the calendar year subject to compliance with the Order provided that any unit that is now vacant or that becomes vacant shall not be re-occupied until the Board certifies that compliance has been achieved; seconded by Mr. Rose;

Discussion occurred on the motion: Mr. Peters expressed his deep reservations about voting for the motion but could not in good conscious put the tenants on the street. Mr. Van Stratum suggested an alternative plan, putting a septic system in place, and having the rooms redesigned and re-built, and at such time the Board of Health can look at the property. Mr. Peters again expressed his concern about voting for the motion.

Vote: 4-1-0, motion carries.

The Agent noted for the record an email received from Evelyn Paine on behalf of her sister who is an occupant.

Motion by Mr. Peters to close the public hearing; seconded by Mr. Rose;
Vote: 5-0-0, motion carries.

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

Tracey Rose

Chair-Tracey Rose

Jason Silva

Jason Silva, Vice-Chair

Mark Peters

Mark Peters, Member

Peter Van Stratum

Peter Van Stratum, Clerk

Tim Rose, Member

