

**CITY OF GLOUCESTER
Board of Health
Minutes of the Meeting
August 3rd, 2016
9 AM
City Hall Annex
3 Pond Road
Gloucester, MA 01930**

Board members present: Chairperson: Dr. Richard Sagall; Vice Chair Robert Harris and Frederick Cowan.
Present from the Health Department: Assistant Director: Max Schenk; Sanitarian: Thorsen Akerley.
Absent: Joe Rosa and Claudia Schweitzer.

This meeting is being recorded by audio in accordance with State Open Meeting Law.

PUBLIC ORAL COMMUNICATION

There was no "Public Oral Communication".

APPROVAL OF MINUTES

There were no minutes presented for approval.

OLD BUSINESS

6 Seaview Road (Map 75 / Lot 52) Erik Anderson, Owner – Dan Johnson, P.E., Design Engineer

Discussion by the Board of Health regarding its July 7, 2016 approval for an onsite wastewater treatment system upgrade for the above referenced property.

(Due to meeting room scheduling conflict, meeting was moved to CATA Training Room, first floor, 3 Pond Road)

Mr. Cowan **MOTION** to re-consider the Board of Health decision to approve the proposed system upgrade for 6 Seaview Road (Map 75 / Lot 52) as presented on July 7, 2016 by Erik Anderson Owner - Dan Johnson, P.E., Design Engineer, with the following variance requests:

Request for variance to Title 5 section 15.211 (1) (Minimum setback distances) in order to place septic system components within 37' of a wetland boundary (50' required per Title 5, 100' required by local regulations)

Second, Mr. Harris

All in favor – Motion carries

Mr. Akerley provided background as to the issues surrounding the co-ownership of the area that is proposed for use of the system upgrade.

Mr. Cowan discussed his conversations with the City's legal counsel, who stated that the Board would need to have some certification from the other co-owners of the property, indicated on the Registry of Deeds map as lot 109 (a.k.a 9r Seaview Road), where the system is to be located.

Mr. Johnson commented on the possibility of siting other systems on the co-owned lot, if need-be, extrapolating the information gathered for the system design of 6 Seaview and applying it to the

remainder of the lot to create envelopes for three leaching areas utilizing Presby systems, including 6, 7 and 10 Seaview.

Mr. Cowan stated that this should assure the other property owners, but a signed statement is needed from the remaining property owners.

Mr. Johnson stated that he cannot guarantee that systems can be placed in the area designated.

Mr. Sagall stated that is not the expectation, but that the requirements outlined by the City Legal Department only ask that the property owners acknowledge that they understand the possible consequences and know they have the right to speak to an attorney should there be concerns.

Mr. Anderson stated that he was not aware that they were under an obligation to have signed letters from the co-owners of the lot.

Mr. Sagall stated that the Board had approved the plan on July 7th using the notification requirements for interested abutters, and not that of co-owners of the property and therefore, based on the advice of Counsel, are asking that all owner sign a statement that shows their understanding of the potential impact to their ability to upgrade, should their systems fail.

Mr. Johnson stated that they were successful in getting one property owner to sign the original abutter notification, but not the other co-owner. He stated his concerns that the Board may be trying to enforce a stipulation that is not enforceable.

Mr. Sagall stated that they are following the advice of the City's legal counsel in this matter.

All Board members agreed that co-ownership of this type in regards to septic system upgrade is a unique circumstance.

Mr. Johnson again stated that he feels that the other owners chose to ignore the original notification and therefore, in his opinion, there are no further obligations to receive any co-owner approvals.

Mr. Sagall asked whether the deed information compiled by City staff related to the right of the co-owners to utilize the 9r Seaview lot was stated on the deeds of all the interested parties?

Mr. Schenk stated that it was referred to in one form or fashion.

Mr. Sagall stated that he would like the opinion of City Counsel as to whether that is acceptable in ensuring that the co-owners' notification rights have been maintained and stated that the matter can be continued to the Board of Health meeting of August 4th.

Mr. Johnson asked whether the language requested by the Board to be signed by co-owners could be modified so that it may have a better chance of being signed by the other owners?

Mr. Sagall stated that is up to City Counsel and *Mr. Schenk* stated that he would ask and have a response before the meeting of the 4th.

Mr. Anderson read the following statement to the Board for the record:

"My wife Kristen and I purchased our home at 6 Seaview in May, 2013. Our family, including our two boys Sam and Evan, have enjoyed the home and the lovely neighborhood. However, in the Fall of 2015, Kristen and I decided that it made financial sense for us to sell the home and use the proceeds beyond

the payoff of the mortgage to close the books on various other financial obligations, thereby considerably lessening our monthly obligations beyond basic living expenses.

Just before Thanksgiving, through ReMax and our agent and friend Lori Bouchie, we put the home on the market. We received an asking price offer within two days and entered into our first Purchase & Sale agreement. However, the buyer's inspection revealed a significant foundation structural issue that needed to be dealt with before we could even consider moving forward. From December 2015 through January 2016, Kristen and I invested \$20,000 out of pocket, since it was determined to have been a pre-existing issue, to make the repair and restore the integrity of the foundation. On that note, Kristen and I are presently represented by Orlando and Associates in a suit claiming damages against the original inspection company that performed our inspection of the property in April, 2013.

However, that winter, for this, other lesser issues related to the inspection, and other intangibles that enter into the buying and selling of any home, both the original agreement and a second agreement, with a second potential buyer for \$12,000 less than the original offer, fell through.

Also, as a footnote, before the first buyers inspection revealed the foundation issue, unfortunately, albeit enthusiastically, although I will say in hindsight irresponsibly, Kristen and I jumped the gun on finding suitable housing and were excited to find a rental home in the same neighborhood, on Harriet Road, that we knew would be unavailable if we waited, and entered into a lease agreement. Although we never occupied the home, that ended up costing us an additional \$8,000.

At that point, Kristen and I were now in the same monthly financial boat as we had been, plus we had essentially exhausted our cash reserves. Still intent upon selling, we decided to take a break and try again in the spring.

That spring we were able to obtain a fairly quick offer, again for the asking price, although \$10,000 less than the previous fall, and with their inspection report acknowledging the foundation repair, and otherwise being acceptable to them, entered into a P & S with our friends Derek and Janelle Jackson. However, as we all know, and the reason for which we are all here, on May 13th, the leaching system portion of our septic system did not pass Title V. Thankfully, Derek and Janelle are patient, yet determined buyers.

Since June 1st, Kristen and I have invested an additional \$8,870 in septic design services, various tests, city fees, permits, abutter notices, etc. in preparation to fulfill our responsibilities as property owners under Title V law. However, that doesn't even begin to address the actual cost of installing the new system. Kristen and I do not have the \$34,000 that will require and do not qualify for the City of Gloucester Septic Loan program. At least, we didn't a month ago. Consequently, we have reduced the agreed upon sales price of our home by \$34,000, with the Jacksons, having obtained a loan for that same amount, installing the new system upon completion of the sale of the home.

Of further concern to both the Jacksons and ourselves is our current living arrangements. We no longer live at 6 Seaview; they do. We live at 1097A Washington Street, in Gloucester. Upon approval of the septic plan by the Board of Health last month, we signed a lease agreement to rent the aforementioned property and the Jacksons entered into a Use of Occupancy agreement for 6 Seaview with us.

Also, to make matters even worse, at present I am unemployed for the first time in my life. Needless to say, we are "all in" on both our obligation for repair of the public health issue created by our faulty leaching system and the sale of our home. To make a long story short, and to be perfectly clear and straightforward, if this previously approved plan is disapproved and the sale of our home does not go through, Kristen and I will have no recourse but to declare bankruptcy and bring suit against the City of Gloucester to recover our losses pertaining to the septic system and, as advised by counsel, other expenses related to the lost sale of our home."

Mr. Sagall instructed Mr. Schenk to communicate with Counsel and Mr. Anderson in regards to language required to indicate co-owner notification and acceptance of the proposed system upgrade and whether the existing deed language is enough to suffice for that purpose.

Motion by Mr. Cowan to continue discussion to the Board of Health meeting of August 4th, 2016.
Seconded by Mr. Harris

All in favor

MOTION by Mr. Cowan to adjourn.
Seconded by Mr. Harris. **CARRIED.**
MEETING ADJOURNED – 10:00 AM

Respectfully submitted,

Max Schenk

Accepted by:

Richard Sagall, Chairperson

Documents Referenced:
July 7, 2016 Board of Health Minutes
Letter from Mr. Erik Anderson