



TOWN OF GROTON  
Board of Health  
173 Main Street  
Groton, Massachusetts 01450

MEETING MINUTES  
November 7, 2011

Board of Health Members Present:

Robert Fleischer, Chairman  
Jason Weber, Member  
Dr. Susan Horowitz, Member

Others Present:

Nashoba Associated Board of Health Agent, Ira Grossman  
Land Use Assistant, Dawn Dunbar  
Town Counsel, Attorney Jeff Ugino

Meeting Called to Order:

Chairman Fleischer called the meeting to order at 7:05 pm in the Town Hall.

**Permits**

**Minutes**

**Member Horowitz made a motion to approve the minutes of October 3, 2011 as amended. Member Weber seconded the motion. All were in favor with a unanimous vote.**

**Member Horowitz made a motion to approve the minutes of August 1, 2011 as amended. Member Weber seconded the motion. All were in favor with a unanimous vote.**

**Member Horowitz made a motion to approve the minutes of August 15, 2011 as amended. Member Weber seconded the motion. All were in favor with a unanimous vote.**

**Well Regulations**

Member Weber started by stating that the proposed changes were read at the last meeting and that the last portion they discussed adding was a section on geothermal wells.

**Member Horowitz made a motion to add the text on geothermal wells suggested by Mr. Grossman to their well regulations. Member Weber seconded the motion.**

Mr. Grossman said that the other section they discussed modifying was the notification process for variances and what constituted an emergency.

Mr. Tupper of the Wash Well Company suggested to the Board that they consider adding a section pertaining to wash wells. He said that they are more complex than a driven point well or a dug well and

there are quite a few homes in Groton with them. Member Weber added that a wash well according to a search online could also be referred to as a jetted well. Mr. Grossman agreed with Member Weber and said that he would make the necessary changes to the well regulation for their next meeting later on in the month.

**Member Horowitz made a motion to continue the well regulation hearing until November 21, 2011. Member Weber seconded the motion and all were in favor with a unanimous vote.**

#### **14 Bayberry Road**

Present: Bob Tupper, The Wash Well Company; Mr. & Mrs. Comuzzi , homeowners

Mr. Grossman explained that the Comuzzi's were before the Board to ask for an emergency well approval as they had not water.

Member Weber asked if town water was nearby and if so where. Mr. Grossman said that it was across the street. Mr. Comuzzi said that the water department had been unable to give them a timeframe to connect to town water and reiterated that they had no water.

Mr. Tupper said that he was not replacing the well, just repairing it. He said that the pipes had calcified and clogged over time and that he would be pulling the existing pipes out and putting new pipes in. Mr. Grossman said that it was technically considered a new well because the old one was not working.

Member Horowitz asked how deep the well was. Mr. Comuzzi said that it was 20 feet deep. Member Horowitz asked Mr. Tupper if there was any other alternative. Mr. Tupper said that there was not.

**Member Horowitz made a motion o allow the well variance for an emergency situation at 14 Bayberry Road. Member Weber seconded the motion.**

Mr. Grossman added that connecting to municipal water would be preferable because this was considered a new well. He said that he had no objection to allowing the variance because the water quality tests would be done under the Board's regulations.

**All were in favor with a unanimous vote.**

#### **338 Lost Lake Drive**

Present: Stan Dillis, engineer

Mr. Dillis explained that he was before the Board a couple of months ago to request variances to upgrade the septic system. He said that he was now before the Board to request a variance from having to connect to town water. He said that town water was within 500 feet but that the water main would not be brought down the road. Mr. Grossman asked if Mr. Dillis had seen a recent email from Tom Orcutt with a more cost effective way to have town water available to 338 Lost Lake Drive. Mr. Dillis said that he had not.

**Member Horowitz made a motion to continue the discussion of 338 Lost Lake Drive until the next meeting on November 21, 2011 so that Mr. Dillis would have time to obtain new numbers provided to him by the Water Department.**

**Member Weber seconded the motion.**

Mr. Dillis said that if costs to connect to town water are similar to replacing the well, he would withdraw their request.

**All were in favor with a unanimous vote.**

Michelle Collette introduced Attorney Jeff Ugino, Town Counsel to the Board Members.

**128 Main Street**

Present: George Pergantis, Gloria Lammi, Eve Hars, Maria Hars,

Chairman Fleischer stated that in accordance with the open meeting law, he asked for the individual videotaping the meeting to identify herself and announce that she was videotaping. The woman videotaping introduced herself as Eve Hars and stated that she would in fact be videotaping the meeting.

Mr. Grossman said that he and Jim Garreffo, Director of Nashoba Associated Boards of Health, conducted an inspection earlier that day at 3:30pm. He said that Mr. Pergantis had definitely made progress but that he was not 100% completed yet. He said that there was still the issue of the lead paint violation, moldy sheetrock in the basement and minor patching of the foundation to name a few of the outstanding items. He said that the Fire Chief had provided a memo outlining what needed to happen in order to have the furnaces put in compliance. Building 2 had currently had electric heat and building 3 had a furnace providing heat.

Member Horowitz asked if the remaining items were capable of being completed by their next meeting. Mr. Grossman said that in his opinion, they could but he was not the one doing the work.

Chairman Fleischer asked what the process was for de-leading. Mr. Grossman said that the lead paint would have to be remediated in accordance with the lead paint law. Mr. Grossman added that they had not seen a contract to de-lead from a licensed professional. Ms. Lammi said that her son was doing the de-leading and added that he had been sick and needed an operation. She said that hadn't been able to find anyone else to do the work. Mr. Pergantis stated that he "took care of it." Member Horowitz stated that Mr. Pergantis could not do the work that it needed to be done by a licensed professional. She said that if Ms. Lammi's son was sick they would have to find someone else. Member Horowitz added that the Board had been promised that any and all outstanding items would be finished by this meeting and that they had known the lead paint needed to be remedied for at least the past month. Ms. Lammi said that they moved the family with the young child out of the lead apartment. Mr. Grossman said that it didn't matter; it still needed to be corrected because it had been cited as a code violation. Ms. Lammi said that they did not know this; they thought it was only because the child living there was three (3) years old. Mr. Grossman said that it had been discussed since the first meeting. Member Weber said that the record would show that it was discussed at the first meeting and added that it needed to be remediated.

Ms. Lammi said that they never knew that law. Member Weber said that the Town couldn't be responsible for your understanding and suggested that they seek legal representation.

Ms. Lammi stated that Mr. Pergantis had been working hard on completing all the items on the list. Member Horowitz said that they had been promised that the list would be completed by today. Ms. Lammi said that their only helper was injured and had been out for the past two (2) weeks. Member Horowitz said that their worker being injured was unfortunate but that it didn't excuse why the list had not been completed yet.

Mr. Pergantis said that the Mr. Grossman showed him the mold issue in building 3 that day. He said that in building 2 he patched a hole in the ceiling where a pipe was and that there was a stain on the ceiling that Mr. Grossman showed him today and it was taken care of after Mr. Grossman left.

Chairman Fleischer said that it was not a long list but that all items should have been taken care of months ago. He asked what reassurance the Board had that more time would get the remaining items corrected. Member Horowitz asked what consequence there was if all outstanding items were not fixed within the next two (2) weeks. Mr. Grossman said that he was prepared to suggest to the Board that they go to court and ask that money be held as a retainer in order to pay for outstanding items to be fixed.

Member Weber said that it was definitely an option. He said that so far he had heard that five (5) items needed to be attended to:

1. Lead paint in building 2
2. Moldy sheetrock in building 2 had been cleaned but that building 3 still had mold
3. Rotting wood in the basement of building 3
4. Minor patching in both buildings
5. Holes in the foundation in both buildings

Michelle Collette added that another concern was the heat situation. She questioned whether there was adequate heat in building 2. She said that the chimney had been torn down which left the apartments to be heated by electric heat. She said that no electric permits had been pulled to date for the conversion to electric heat and it wasn't clear if the electrical heating system was new or old. She asked if Mr. Grossman was able to confirm if the apartments were being supplied with adequate heat.

Mr. Grossman said that he was not sure if the electric heat was supplying adequate heat.

Michelle Collette said that the furnace had been removed from one of the buildings. Member Horowitz asked if there was heat. Mr. Pergantis said that years ago the buildings had oil and electrical heat in case of an emergency.

Member Horowitz asked how many tenants were living in the apartments. Mr. Pergantis said that all three (3) apartments in Building 2 were occupied and in building three (3) apartments #1 & #4 are the only ones occupied and they have heat. He said that the empty apartments did not have the heat on.

Chairman Fleischer asked how recently there might have been a complaint about heat in the apartments. Michelle Collette said that they would have to look through the file to see.

Member Weber asked Attorney Ugino for his guidance. Attorney Ugino stated that it was well within the BOH's scope to make sure that the tenants were receiving adequate heat. He said that because there had not been any recent complaints that the first step would be to ask the property owner to check the heat in each of the units. He said that it would be worth seeking a court order if no one allows entry.

Chairman Fleischer wondered whether or not he had reason to believe that an additional two (2) weeks would bring satisfactory completion of the outstanding items. Member Horowitz said that the week prior they received a note that nothing had been completed and now within the last week another ½ of the items had been completed. She said that she was inclined to make sure it gets done in another two (2) weeks or go to court.

Member Weber said that the goal was to see remediation done and it was the motivation of the Board to keep the train on the tracks and moving forward. He said that while they were seeing forward motion and they were doing their best to help the property owner but it was a 2-way street. He said that the Board had never given a deadline; that they always worked with the property owner to set a fair deadline. He was content with providing Mr. Pergantis with another 2 weeks. Chairman Weber agreed.

Mr. Pergantis said that he needed to know what was left. Chairman Fleischer said that Mr. Grossman could provide him with that list. Member Weber said that it was the property owner's obligation to understand the violations and not Mr. Grossman job to walk him through the process. He encouraged Mr. Pergantis to seek legal counsel.

Member Horowitz said that the Board had also been informed that apartments had been rented out when they were not suppose to have been. She said that two (2) individuals had visited Town Hall for other business and stated that they were renting from Mr. Pergantis. Ms. Lammi said that they were not aware the individuals were coming to Town Hall.

Michelle Collette said that she wanted to enter the following into the Board of Health record. She said that she became aware of two (2) different individuals who claimed to be tenants of Mr. Pergantis when they came to the Land Use Counter. One individual wanted a home occupation permit and the second one was discovered by the Town Clerk's office when they came to Town Hall looking to have a lease agreement notarized. Member Weber asked if any of the leases had signatures on them. Michelle Collette said that one did not have the signature page and the other was an inquiry about a home occupation permit. Ms Lammi said they were all told that the apartments needed to be inspected prior to moving in.

Member Weber asked Mr. Pergantis how many apartments were located in Building 2. Mr. Pergantis said "5." Member Weber asked if the apartments were numbered. Mr. Pergantis said "yes." Member Weber then asked if the following apartments in Building 2 were occupied or unoccupied:

- Apartment 1 = occupied
- Apartment 2 = occupied – single man
- Apartment 3 = occupied – single man
- Apartment 4 = unoccupied
- Apartment 5 = occupied – Mr. Pergantis' unit

Member Weber asked Mr. Pergantis how many apartments were in Building 3. Mr. Pergantis said "3." Member Weber asked if the apartments were numbered. Mr. Pergantis said "yes." Member Weber then asked if the following apartments in Building 3 were occupied or unoccupied:

- Apartment 1 =occupied – single man
- Apartment 2 = occupied – family – 2 adults and 1 child (age 3)
- Apartment 3 = family – mother and 2 adolescents (ages 16 & 19)

Member Weber asked Mr. Grossman if the property owner was cited for the lead paint issue. Mr. Grossman replied "yes, in building 2." Member Weber asked if building was cited because of the young child living there. Mr. Grossman said "yes" and added that the property owner is obligated to meet the lead law which says it's against the law to rent to someone with a young child due to the presence of lead. Mr. Pergantis stated that every home n Groton has lead paint. Member Weber replied that he lived in Groton and that his home did not have lead paint. He said that many of the older homes may have lead paint but that it wasn't relevant to the discussion.

Maris Hars stated that she had gone over to Nashoba Associated Boards of Health the week before and looked at their files. She said that in an email dated July 2011 a tenant had complained about mold in the basement. She said that nothing in the file stated that the mold was remediated. Mr. Grossman replied that he had tried to call the tenant and that no one returned his call.

Eve Hars asked why the BOH can't set a deadline. Member Weber replied that in this particular case they listened and took into consideration the needs of the homeowner. Eve Hars asked if there was a consequence. Member Weber said that is what they were working on. Eve Hars asked if they would have to go to court. Member Horowitz said that that could be the next step. Attorney Ugino said that if someone was told to do something and they didn't comply, the Board could go to court for resolution.

Member Weber stated that the Board could assess fines. Mark Presti asked under what regulations they could assess fines. Michelle Collette said that the town had adopted non-criminal disposition. Mark Presti asked if the fines would be retroactive or from a particular start date. Attorney Ugino said that the Board could go back to the date of the order unless they modified it as a Board. Mr. Presti said that as a property owner he would want to know all this ahead of time so as to avoid any surprises. Member Weber said that the Board had never surprised anyone with a fine.

Mr. Presti stated that he thought the Board needed to be more proactive in their communication. Chairman Fleischer said that they requested that Mr. Pergantis not re-occupy the vacant units and that had been something they had stated to Mr. Pergantis from the beginning. He said the goal was to provide a safe place for people to live and if they get to the point that compliance is not going to be met, levying fine may be necessary to achieve their public health goal.

Mr. Presti said that as a property owner he would want / appreciate something a little more specific and absolute and suggested that the Board adjust their practice on a case by case basis.

Member Horowitz asked what the fine range was. Attorney Ugino said that it was from \$75 to \$300 per day.

**Member Horowitz made a motion to require Mr. Grossman's finalized list be supplied to Mr. Pergantis and that all outstanding items be finished by the next meeting. The consequence for not meeting compliance by the next meeting would be assessed in the form of a \$100/day fine.**

Member Weber said that he took Mr. Presti's point to communicate more effectively and added that a deadline for November 21, 2011 is set for full compliance.

**Member Weber modified Member Horowitz's motion. Member Weber made a motion to provide and deliver an itemized list of all violations to Mr. Pergantis by 5PM on Thursday November 10, 2011. Mr. Pergantis will have until November 16, 2011 to read and reply to the Board as to whether he can complete the list or not. It is Mr. Pergantis's duty to come back to the Board at Town Hall in person or by telephone by 4pm on 11/16/11 to let the Board know if he can complete the list. If Mr. Pergantis says that he can complete the list, he has until November 21<sup>st</sup> to do so. If he can not complete the list by November 21<sup>st</sup>, a fine will incur. If Mr. Pergantis said that he cannot complete the list he is to provide the Board with a specific date in which it will be completed. If Mr. Pergantis says that he cannot complete the list and does not provide a specific date the deadline will be November 21<sup>st</sup>. If Mr. Pergantis elects not to reply by November 16<sup>th</sup>, the deadline will be November 21<sup>st</sup>.**

**Member Horowitz seconded the motion.**

Maria Hars asked if it would be best for a company to give Mr. Pergantis a quote with timeframes. Member Weber said that it would be a reasonable first step.

There was a brief discussion between the members as to a reasonable per day fine to assign. It was suggested by Member Weber that \$100/day was acceptable to him. Chairman Fleischer agreed.

Mr. Presti said that his thoughts had turned more towards public safety than the owners' rights. His concern lied less and less with the owner and more and more with the inhabitants. He requested that the Board request for inspections of all units. He was concerned that the property owners may try to remediate the lead himself.

Michelle Collette said that it would be a good question for town counsel. She asked if the tenants had constitutional rights to consent or not consent and whether or not the town or its agent had rights to inspect. Attorney Ugino said that if the tenants refused an inspection, the Board could go to court for an inspection warrant. Mr. Presti asked about the common areas. Mr. Grossman said that an inspection of the common areas was done and that was what they were talking about. He said that the tenants were aware of the proceeding and that he didn't have the right to access without the tenant's permission.

#### **All were in favor of Member Weber's motion.**

Member Weber asked what the Board's take was on Mr. Presti's request to inspect the units. Chairman Fleischer said that they could ask Mr. Pergantis for permission to enter the vacant apartments. Member Horowitz said that they could send a letter to each of the tenants requesting permission to inspect but that they couldn't inspect without permission. Mr. Grossman said that he recommended not doing that. He said that the tenants had their own legal rights. He added if they called with a complaint that would be one thing.

Mr. Presti said that they could ask the property owner for cooperation in this matter. Mr. Pergantis said that he did not want anyone coming into his apartment. Chairman Fleischer asked if he would allow an inspection of the vacant apartments. Mr. Pergantis said that Mr. Grossman was in one of the vacant apartments earlier that day.

#### **Carriage House – 128 Main Street**

Chairman Fleischer said that he was not sure what the current state was but did not think that an application had been received yet. Member Horowitz asked if there was any feedback from Bridgette Braley at Nashoba. Mr. Grossman said that her inspection stated that nothing was cleaned and operational. He said that Mr. Pergantis still needed to start with the Planning Board for site plan review.

Michelle Collette said that they met with Mr. Pergantis earlier that morning to review all requirements for permitting the restaurant. All information was provided to him and they reviewed the process and how best to proceed. It was considered a change of use under zoning. She added that the Selectmen notified Mr. Pergantis that he didn't have a liquor license or common victualer license.

Member Horowitz asked how long the process would take. Michelle Collette said that it will take some time. Member Horowitz stated that they don't have much to discuss until applications are filed.

Mr. Pergantis said that he was not ready to go to the other Boards yet. Chairman Fleischer said that he was no inclined to delay tie into town sewer and added that Title 5 compliance needed to be met before restaurant can open.

Eve Hars asked what Carriage House was permitted for. Member Horowitz said it was permitted as a function hall. Mr. Grossman added that it hadn't had a food service permit since approximately 1984.

Eve Hars questioned whether the function hall had been operating as a night club without permits since 1993. Member Weber replied "no." Eve Hars asked if Member Weber was disputing the allegation. Member Weber stated that he simply answered the question. Eve Hars stated that it appeared the Board was not going to take any responsibility. Member Horowitz replied "why should we take responsibility." She said that no one from the current Board had researched it before November 7, 2011.

Member Weber said that as the two plus hours of Ms. Hars video tape would show in a perfect world every property in town would be in compliance. He said that the reality was that local boards like this one deal with what comes before them. He said that it was most important for them to look at the forward view. He suggested that she ask previous board members for past details.

Eve Hars asked if the Carriage House as it was not was permitted for anything. Member Horowitz said that the whole thing was a moot point and that the permits were gone and the Carriage House would need to be re-permitted.

Mr. Grossman announced that he had to leave.

**Member Horowitz made a motion that the Carriage House be connected to town sewer before the Carriage House opens as a restaurant.**

**Member Weber seconded the motion.**

Maria Hars asked if he could re-open the Carriage House as it was. Member Horowitz said that he could not; there are no permits.

**All were in favor with a unanimous vote.**

**Member Horowitz made a motion to continue the remainder of the hearing for 2 weeks.**

**Member Weber seconded the motion and all were in favor with a unanimous vote.**

**Member Horowitz made a motion to adjourn the meeting at 9:50pm. Member Weber seconded the motion and all were in favor with a unanimous vote.**

Respectfully submitted,

Dawn Dunbar  
Land Use Assistant