



# Town of Provincetown

## Meeting of the

### BOARD OF HEALTH

Thursday, August 27, 2015

Judge Welsh Hearing Room, Provincetown Town Hall,

260 Commercial Street, Provincetown, MA

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**Board Members Present:** Mark Phillips, Chair; Steve Katsurinis, Vice Chair; Elizabeth Williams, Dr. Janet Whelan and Elise Cozzi

**Board Members Absent:** Joseph Freitas (excused absence)

**Other:** Morgan Clark, Director, Department of Health and Environment; Gregg Corbo, Town Counsel; Laura Marin, Health Agent; David Gardner, Acting Town Manager; Geoffrey Larsen, Building Commissioner; Michael Trovato, Fire Chief; James Roderick, Deputy Fire Chief; Rich Waldo DPW Director; Cody Salisbury, Water Superintendent Austin Brandt, Conservation Agent, Anne Howard, Building Inspector

**Property Owner:** Bradford Rose and Will Harrington, tenant.

**Recording Secretary:** Susan Leonard

**Call to Order:** Mark Phillips called the meeting to order at 2:00 p.m.

#### **I. Public Hearing to Determine whether the Dwelling Units at 227R Commercial Street, Provincetown, Massachusetts, are Unfit for Human Habitation and whether an Order to Vacate and Secure Should be Issued:**

##### **Discussion:**

Mr. Phillips explained the format for the Public Hearing. First, Ms. Clark will present and summarize the various issues involved with the dwellings at 227R Commercial Street; Public Officials and Department personnel will then present their findings and lastly Mr. Rose will have the opportunity to respond. The public comments will be taken afterwards. The Board members will then close the Public Hearing and deliberate the matter.

Ms. Clark informed the Board that the property owner, Bradford Rose allowed an inspection of the dwelling unit at 227R Commercial Street by Ms. Clark and Austin Brandt on Monday August 24, 2015. It was found to have no electricity or running water. There were however, battery operated smoke and CO detectors. There is a stove and refrigerator, but due to the lack of electricity and running water it is not operable. Some windows are not weather-tight and do not have screens. Windows that were open however, did have screens. Portions of

the walls and ceiling that are not finished and insulation is exposed. There is no heat, but reportedly the building is not occupied in the winter. The owner reported that the property has a varianced tight tank with tail septic system and that once a week he runs a generator to pump the dosing chamber. The property owner has been paying a sewer betterment, but has not yet connected to the municipal sewer.

Ms. Clark defers to the Building Commissioner on issues of safety and egress, the Fire Department and Wiring Inspector on matters of electricity and the Water Superintendent about restoring electricity.

Ms. Clark read the Housing Inspection Report into the record.

Michael Trovato, Fire Chief and James Roderick, Deputy Fire Chief came forward to address any questions the Board might have. The Fire Departments focus was on the first floor of the structure due to the fire that recently occurred there. Chief Trovato summarized his concerns with the property. He reports that he was given access to the first floor after the fire on August 5, 2015 at the property and found the combustibles had been removed. He is concerned with the electrical system. Mr. Rose indicated that he would be getting David White, electrician, to address the issues before the power is turned on. Once the electricity is back on, Chief Trovato would like to see smoke and CO detectors installed that hare hard wired with a battery back up, however it is a single family dwelling, at this time, and battery operated detectors probably meet code. The electrical panels are a concern. Ever Source, the power company, has been notified not to turn the electricity on until the paper work has been signed by the Fire Chief and the Wiring Inspector. The Chief will be submitting a formal report on Fire Department stationary soon.

Ms. Cozzi asked if there was electricity and water service to the property before the fire. Chief Trovato replied that it had been turned off at some time in the past. Mr. Rose clarified that there had been a leak in the water service and it had been turned of by the Water Department. He claims that it was damaged during the installation of the sewer stub. The electricity was turned off in November 2013.

Dr. Whelan asked where the fire was. Chief Trovato explained that it was on the outside of the east side of the first floor probably from someone smoking. They opened up the building to make sure there was no extension of fire into the building.

Cody Salisbury, Water Superintendent and Rich Waldo, DPW Director appeared before the Board to provide information about the water service to the property. Mr. Salisbury stated that the water was turned off in October 2011. It was turned of because of an underground leak and cannot be turned on again until it is repaired.

There is also an outstanding balance on the account. If the bill remains current then there can be active water service. Mr. Salisbury also recommended a cross-connection survey because it is also a commercial property to make sure there is no cross contamination of the water supply. Mr. Phillips asked if a procedure could be put in place to inform the Health Department if water service is to be turned of indefinitely.

Mr. Phillips also inquired about the varianced septic system at the site. Mr. Rose asserted that he knows everything about the system; he helped with the installation. Dr. Whelan wanted to know how the toilets are flushed if there is no water? Mr. Rose replied that they use buckets of water from a neighbor. Dr. Whelan then asked what happens next as far as

the septic system functioning. Mr. Rose explained that it has a 14,000 gallon tank with a grease trap, a tank for solids and a tank for the liquids. There are two pumps, but the system doesn't actually need to be pumped because gravity makes it work. At the time, it was state of the art.

Mr. Katsurinis asked, for the purpose of this hearing, if the property was being considered as commercial or residential? Ms. Clark replied that she is concerned with the residential portion of the property only. Mr. Katsurinis stressed that discussion should be limited to the residence.

Dr. Whelan asked how many people live at the property. Mr. Rose replied there were two in July and five currently.

Mr. Waldo informed the Board that the property is a "blue dot delay" meaning that once the sewer system was available, it was required to connect to the sewer system. A notice to connect was sent in February 2004 and so far there has been no response. The property is considered delinquent in connecting to the sewer. The necessary infrastructure is in place to serve the property.

Ms. Clark explained that she had contacted George Heufelder from the County to ask if manual pumping of the property's septic system is adequate. Mr. Heufelder responded that it may suffice for the moment, but electricity is necessary for dosing the system properly. He also stated that the County has a loan program to assist with upgrading septic system if cost is an issue. It has also been known that since 1996, when the municipal sewer became available the septic system at the property would have to be abandoned and a sewer connection be made.

Mr. Corbo, Town Counsel, asked if the DPW ever found the source of the leak? Mr. Salisbury replied that the Town's responsibility stops at the street shut off valve. The DPW will assist an owner in locating a leak. He does not know if the field staff at the time located the leak. Mr. Corbo then asked if proof was needed that the leak was fixed before the water was turned back on? Mr. Salisbury replied yes and once the meter is relocated to the meter pit at the street it would show water use if there is still a leak. In order to turn on the water, a cross connection survey must be done, the water meter has to be moved to the water supply vault (at the owner's expense), as soon as there is a payment plan is made and the current usage is paid then the water service would be on. He could have service back on in a week's time frame, if everything is addressed.

Mr. Phillips asked how much time and what would be involved in connecting to the town sewer. Mr. Waldo responded that the time frame is in the owner's hands. The infrastructure already is in place. The sewer betterment is already being paid and assuming there is a tax title agreement with the Town and there is no delinquency in the sewer bill the owner could have a licensed installer connect tomorrow.

At the Board's request, Mr. Larsen, Building Commissioner, came forward to discuss the enforcement actions to "make safe" the property. He also mentioned that the property most likely comes under Ch. 91 jurisdiction, which may complicate Code enforcement.

Mr. Phillips asked if the current violations, namely lack of handrails to the upper deck, temporary wiring in the structure, and egresses, would render the property unsafe. Mr. Phillips pointed out that even if the building was determined "safe", it is not the same thing

as being habitable. Mr. Larsen said that public records show it is a mixed use building having a restaurant and a 4 bedroom apartment. However, because an R3 dwelling unit by definition requires a permanent cooking facility, Mr. Larsen is not prepared to define the unit, as it is today, as a dwelling even though it is being inhabited. Since it is not defined as a dwelling unit, he cannot speak to the question of egress. In his opinion, any remediation of the building would require a design professional because it exceeds 35,000 cubic feet. Mr. Larsen stated that the temporary wiring is an issue requiring a licensed electrician working under an electrical permit to make the corrections and then a Town inspection prior to energizing.

Dr. Whelan asked if the roof leak is compromising the electrical system? Mr. Larsen replied that the licensed electrician should take it into consideration while performing the work. Mr. Rose interjected that there are two complete and separate electrical systems in the building. The septic system works off the household panel. Dr. Whelan asked what is the source of lighting in the building. The tenant, Mr. Harrington replied that they use solar powered or car batteries to operate LED lights on AC/DC.

Mr. Larsen hopes that the owner proceeds with obtaining the necessary permits to make the building safe from the enforcement action in place since the fire on August 3, 2015. He feels it will require an architect. The need for a second egress does exist. The notion of "grandfathering" does not apply. You cannot "grandfather" an unsafe situation. If the owner's intent is to proceed with having a restaurant and a R3 residence as it was originally intended then a sprinkler system will be necessary.

Neither Austin Brandt, Conservation Agent nor David Gardner, Acting Town Manager had anything to add at this time when asked by Mr. Phillips for comments.

At this point, Mr. Rose addressed the Board. After straightening out communications with Ms. Clark, he agreed to an inspection of the premises in exchange for changing the date of the hearing because of a scheduling conflict he had. He stated, in the past, the Town had a tax lien and a tax taking of the property. During that time, the exterior lighting, that seems to be one of the issues, was installed by the Town. The Town left the electrical panels with the covers off when it had control of the property.

In response to the issue of unfinished open walls, Mr. Rose said there are many existing summer cottages that are the same. The Fire Chief was given open access to the building several times. He will do whatever the Fire Chief asks if he is financially able to comply. Cooking facilities exist; they just can't be used because there is no electricity or water.

Mr. Rose stated that the Town says the leaks in the water service are supposedly in the part of the property that he controls. He questions if the leaks may be in the first 100 feet where Robert B. Our installed the sewer stub. When he went looking for leaks he found his water line stretched tight over a granite boundary marker 7 feet down in the middle of the driveway. He claims Robert B. Our moved his water line around their stub.

He is trying to comply with the Town's process, he lives elsewhere and official paperwork form the Town is in transit while he is commuting 200 miles to get here.

If the Town deems the property uninhabitable he will ask the Town to allow him to site a trailer on his property. He would like a couple weeks to get a trailer in there. His priority is public safety first and secondly to provide housing for his “young men”. He questions why he has a sewer bill when he is not connected. It makes no sense to him. He intends to reopen the restaurant and provide a youth hostel in the future. This is the peak of the season for contractors and no one wants to do the job because of the Town’s oversight.

Mr. Philips thanked Mr. Rose for his perspective and history of the property and reminded him that the sole purpose of the hearing is to determine if the structure is fit or unfit for human habitation. Mr. Phillips asked if any of the tenants would like to make a statement. They declined. Mr. Phillips also asked if any members of the public or abutters would like to make a statement. There were none.

Mr. Rose made it known he would be leaving the meeting and the rest was up to the Board. Mr. Phillips and Ms. Clark encouraged him to stay as they might have questions for him or ask him to agree to certain things during the Board’s discussion and deliberation. Mr. Rose informed the board that he would leave and come back after getting coffee.

*The Public Comment portion of the hearing was declared closed by Mr. Phillips.*

Mr. Phillips proceeded by outlining the options available to the Board. It could agree to condemn the property and require the people living in it to vacate the premises and determine if Mr. Rose has to relocate them at his expense. The second option is to issue an order to correct within a certain timeline and the residents could continue to live in the building.

Ms. Williams asked if there had not been a fire would any of these questions have come up? Ms. Clark responded that the Fire Chief, the Acting Town Manager and the Police have all had discussions in the past. She had personally inspected the property several times during the bad weather last winter trying to determine people if the building was inhabited. She did not find any evidence of it. Chief Trovato has also tried to contact Mr. Rose in the past.

Mr. Katsurinis stated that it seems clear the property is not inhabitable. He is reluctant to do anything short of condemnation because he fears that the issues will not be addressed. The history indicates there have been challenges in bringing the property up to minimum standards of habitation. He also stated that among the conditions that would have to be met to allow reoccupation of the property is connection to the municipal sewer. He is troubled by the fact there is a septic system leaching untreated sewage into the harbor.

Dr. Whelan agrees with condemning the property. It is an old problem that has been overlooked and not dealt with for a long time.

Mr. Corbo, Town Counsel, added that an order to correct could be issued or the Board could find it unsafe and condemn. If it is condemned, Massachusetts Law requires the Town to offer assistance in relocating the tenants. It doesn’t mean paying for housing it means offering assistance. If there are no resources or alternative housing available, the situation of the tenants may be worse than what already exists. Dr. Whelan asked if the owner of the property bears any responsibility to find housing? It isn’t necessarily all on the Town? Mr. Corbo replied that in his opinion the owner should be required to provide and

pay for alternative housing. The assistance the Town provides could be information about social services agencies or housing assistance that are available to assist the tenants.

Ms. Cozzi asks if the responsibility is for legal residents of Provincetown? Mr. Corbo informed her that it applies to any resident of the property.

Dr. Whelan suggested that if there is an order to correct then the problem still exists. The property is still uninhabitable. Under either circumstance people still need a place to live. Mr. Katsurinis replied that they could continue to live in the building until a specified date certain for the repairs to be made. In the meantime, people are living in unsafe conditions. Ms. Cozzi said that if a safe home cannot be provided it should be condemned.

Mr. Corbo stated that the owner indicated he had a plan. It would behoove the Board to hear what it is. Ms. Clark said Mr. Rose indicated that he wanted to install some type of trailer on the property. Code does allow temporary housing. Either way there is a time lag and people will be living on the beach.

Ms. Williams said she is torn. She feels badly for the people living there. Will they be leaving after Labor Day? Mr. Rose said there is just a wood stove for heat, but the chimney was taken down to fix the roof. You can't live in it unheated. Mr. Harrington asserted that the people who were in the house spotted the fire. If there is no one living there then people hanging out on the beach will not have anyone to tell them not smoke and throw cigarettes near the property. The police do nothing to monitor the property and the people partying and living on the beach.

Mr. Rose would like the opportunity to provide for the tenants. He will apply to site a modular unit on the property of the same capacity and hook it up to services. He can't afford to hook up the water service right now. He will provide water himself. Mr. Phillips asked Mr. Rose if he has done any research into getting a trailer. Mr. Rose replied that he has not had enough time to look into it yet.

Mr. Katsurinis asked Town Counsel with respect to a condemned property what is the owner's responsibility to secure and protect the property. Mr. Corbo replied that once it the building is determined to be unsafe for habitation then an order to secure and vacate the premises is issued. It has to be made so it cannot be entered. For purposes of repair only there can be access.

Mr. Corbo asked if the Building Commissioner could provide information on what is involved in placing a temporary structure on a property. Mr. Larsen replied it should be clear what contingency is being referenced. For zoning purposes it has to be approved and it has to be permitted, as well. It will require a building permit and an electrical permit. Everything discussed will require permits for remediation and renovation or temporary housing.

Mr. Katsurinis informed Mr. Phillips that he is prepared to make a motion.

**Motion: I move to find that, based on the facts adduced at this hearing and set forth in Housing Inspection Report dated August 24, 2015 and the Hearing Notice dated August 20, 2015, that the building located at 227R Commercial Street is being used as a dwelling and that said dwelling does not comply with the Minimum Standards for Human Habitation, as set forth in the State Sanitary Code;**

**And I further move, based on the findings of the Board, that the premises located at 227R Commercial Street are unfit for human habitation, based on the existence of numerous conditions, which, pursuant to 105 CMR 410.750, are deemed to endanger or impair the health, safety and welfare of the persons occupying said premises;**

**And I further move based on the findings of the Board, that the owner and occupants of the premises located at 227R Commercial Street, be ordered to vacate said premises within 72 hours from 5:00 pm Thursday August 27, 2015 and the owner be required to secure of said premises within said 72 hours; the owner shall relocate the occupants, at his sole cost and expense to suitable alternative housing, that the occupants be advised of this, and that no person be permitted to re-occupy the premises until further order of the Board and that the staff of the Department of Health be directed to assist in any way it can.**

**Motion: Steve Katsurinis**

**Seconded: Betty Williams**

**Vote: 5 – 0**

Mr. Phillips asked for further discussion of the motion.

Mr. Katsurinis stated that the evidence given today suggests that this property is not fit for human habitation. The time frame of 72 hours gives time for alternate accommodations to be procured and the building to be secured. Obviously, we expect staff to support that as required by statute. I added that the occupants be personally informed by the owner that alternate accommodations will be provided by the owner.

Mr. Corbo suggested a friendly amendment to clarify that staff be directed to work with the occupants to provide relocation assistance. It is good to have it in the order so everyone's responsibilities are clear. Mr. Katsurinis and Mr. Phillips agreed to insert it.

## **II. Any Other Business That Shall Properly Come Before the Board**

Mr. Katsurinis stated, as a follow up, that we need to put this property on the agenda for connection to the sewer as a condition for re-occupancy. It something we might want to understand more fully. Mr. Phillips agreed to put it on the agenda for the next meeting

## **III. Board Members' Statements**

Mr. Phillips recognized the new Board member present, Elise Cozzi. He thanked her for volunteering and welcomed her to the Board.

**Adjournment:**

There being no further business, Mark Phillips moved to adjourn the meeting at 3:48 pm.

Respectfully submitted,

Susan Leonard

**Approved by \_\_\_\_\_ on \_\_\_\_\_, 2015**