

Town of Rowe – FY2005

Board of Health

Minutes – December 1 2005

Call to order: The meeting was called to order at 10:40 AM

Present: Dick Alix, Angela Foshay, Danette Reynolds-Gallagher
Sharon White, Health Agent
Charles Kaniecki, District Health Officer, Massachusetts Dept. of Public Health (DPH)
Daniel Kurpaski, Environmental Engineer, Massachusetts Dept. of Environmental Protection (DEP)

Audience: Rebecca Bradley, Jodi Brown, Earl Carlow, Myra Carlow, Cindy Laffond, Gregory Lewis, Robin Reed, Florence Veber, George Veber, Valerie Williams

This was a special meeting of the Board of Health to discuss apparent violations of state food, housing and septic codes by the Maple House B&B, 51 Middletown Hill Rd., Rowe, MA. Charles Kaniecki, DPH and Daniel Kurpaski, DEP were asked to attend to provide unbiased opinions and recommendations on the situation.

Charles Kaniecki was asked by Chairman Dick Alix to preside over the meeting. Mr. Kaniecki agreed.

Charles Kaniecki asked Health Agent Sharon White for an overview of the apparent violations. Sharon listed the following:

1. **Operating beyond the scope of the food permit.** Maple House B&B has a permit for a B&B Establishment. On their website (and others) they are offering gourmet lunches and dinners in violation of 105 CMR 590.001 (B) (“a Bed and Breakfast establishment means a private owner-occupied house where four or more rooms are let and a breakfast is included in the rent”). Mr. Kaniecki was given copies of the website advertisements and a copy of the B&B’s permit to operate. (see attached).
2. **Number of bedrooms being rented.** In 1994 Maple House B&B was issued a special permit by the Planning Board to rent up to 4 bedrooms. The Maple House website and other websites list 5 bedrooms available to rent. Copies of the websites and the special permits from the Planning Board were given to Mr. Kanecki (see attached permits of May 12, 1993 and December 15, 1994). Building Inspector Bill Foster and Health Agent Sharon White were not aware of a fifth bedroom and, therefore, only inspected 4 bedrooms, all on the third floor; the fifth bedroom is on the second floor. Danette Reynolds noted that this is the second time Maple House B&B has operated out of the scope of their permit with regards to food and number of bedrooms being rented. The first time was in 1994 (see attached BOH minutes of January 25, 1994 and October 4, 1994).
3. **Undersized soil absorption system (SAS).** The existing SAS at 51 Middletown Hill Road was installed in 1967 and designed for a flow of 250 gal/day – equivalent to 2 bedrooms by the present Title 5 code. The property has 8 bedrooms. In 1993 the BOH informed the property owners, Michael and Rebecca Bradley, that their existing (1967) septic system was not adequate and would have to be replaced. A percolation test was done at the site on May 25, 1993 and plans were drawn up for a replacement system by engineer Kathy Bridges. The new plan required a 1500 gal septic tank, distribution box and leach field designed for a flow of 880 gal/day. In 1994 Rebecca Bradley asked the BOH if the 1500 gal septic tank could be installed then and the rest of the system at a later date. The BOH granted the request. Mr. Kaniecki and Mr. Kurpaski were provided with copies of the 1967 and 1993 Application for Disposal Works Construction Permits and BOH minutes of March 9, March 23 and May 26, 1993 concerning this matter (see attached).

Mr. Kaniecki opened the discussion to Rebecca Bradley concerning the above apparent violations:

1. **Operating beyond the scope of the food permit:** Mr. Kaniecki questioned Mrs. Bradley about serving gourmet meals. Mrs. Bradley stated “John Brickett [former Town Sanitarian] said verbatim ‘I can serve anything I want but alcohol’ so I’ve been operating that way.” Health Agent Sharon White asked Mr.

Kaniecki if Mrs. Bradley would be able to do a catering situation for her lunches and dinners from a licensed commercial kitchen. Mrs. Bradley stated that she thought she had a licensed approved kitchen and "I have allowed catering to happen out of my place." Sharon White said that catering was not permitted since Maple House has a residential not a commercial kitchen

2. **Number of bedrooms being rented.** Mrs. Bradley stated that she does not rent all 5 rooms at once; she offers of choice of 5 bedrooms. She stated that Building Inspector Bill Foster looked at the bedroom on the second floor when she told him she was considering renting it and he approved the room. Mrs. Bradley asked where does the BOH have authority to inspect rooms. Mr. Kaniecki said Chapter 2 of the State Housing Code.
3. **Undersized soil absorption system.** Mrs. Bradley stated that in 1993 the BOH "made me do the plan so I could prove a leach field would fit on the property." Mr. Kurpaska (DEP) asked if she took out an application in 1993 just to do the tank. Mrs. Bradley said yes, and she would have done the whole thing if they [the BOH] told her she had to. She showed the Application for Disposal Works Construction Permit from September 2, 1993 and said that according to a statement added to the permit she did not have to replace the leach field - "If present leach field fails, new leach field must be constructed as per the attached plans at that point." Danette Reynolds said she spoke with an individual who had been on the BOH at the time and was told the BOH agreed to allow the Bradleys to replace the system piecemeal as they were starting a business and funds were probably tight. Danette Reynolds also cited the BOH minutes of May 26, 1993 (see attached) where Mrs. Bradley approached the BOH with the request of replacing the components at different times and the BOH granted her request. In discussing the situation with Mark Schlewais of the DEP, Danette said the consensus was that the BOH at that time was allowing the Bradleys to replace the leach field at a later date but within the time frame of the Application. However, if the leach field failed, it would have to be replaced immediately. Mr. Kurpaska (DEP) noted that the 1500 gallon septic tank installed in 1994 was too small and the information from the 1993 percolation test could not be used because there was no soil evaluation. Mr. Kurpaska asked Mrs. Bradley if the BOH at that time was aware that she was going to use the facility as a Bed & Breakfast to which she replied "yes". He also asked Mrs. Bradley if there was a requirement at that time for a grease trap and Mrs. Bradley responded "no". Twice Mrs. Bradley asked about her system being "grandfathered". Mr. Kaniecki responded that there is no "grandfathering" in Public Health.

Mr. Kaniecki received permission from Mrs. Bradley to conduct an inspection of the Maple House B&B with Mr. Kurpaska and Sharon White at 12:00 PM, following the meeting.

After hearing questions from the audience regarding the authority of the BOH Mr. Kaniecki stated, "The Board of Health has the right to investigate any concern they may have. Under Title 5 they can order a septic system inspected if they believe there's a health concern. Believe - doesn't mean they have to prove it. The Board of Health has the authority to get a search warrant and go in if they're not allowed access."

Earl Carlow asked that if the 1500 gallon septic tank is not large enough, would it have to be replaced? Mr. Kaniecki replied that all components would have to be brought up to current standards. Also, the ultimate decision rests with the BOH in how far to proceed with things. The Commonwealth becomes involved if the Board is viewed as becoming negligent.

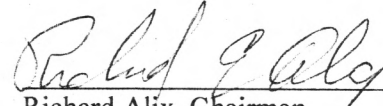
Mr. Kaniecki requested the BOH go into executive session relative to litigation. Pursuant to MGL c.39,§23B, Item (3) "To discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the governmental body." The BOH will not reconvene after the executive session.

A roll call vote was taken for going into executive session. Richard Alix, yes, Angela Foshay, yes and Danette Reynolds-Gallagher, yes.

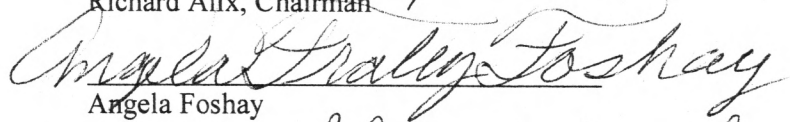
The BOH went into Executive Session at 11:40 AM.

Respectfully submitted,
Danette Reynolds-Gallagher

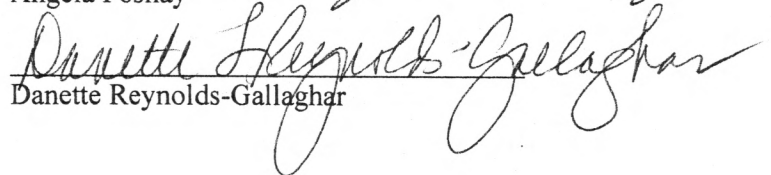
Approved:



Richard Alix, Chairman



Angela Foshay



Danette Reynolds-Gallagher