



Town of Ayer
Joint Meeting of the Ayer Board of Selectmen and Ayer Board of Health (BOH)
Ayer Town Hall – 1st Floor Meeting Room
Ayer, MA 01432

Thursday December 8, 2016
Meeting Minutes

BOS Present: Gary J. Luca, Chair; Christopher R. Hillman, Vice-Chair; Jannice L. Livingston, Clerk

Robert A. Pontbriand, Town Administrator
Carly M. Antonellis, Assistant to the Town Administrator
Gregg Corbo, Town Counsel, KP Law

BOH Present: Mary E. Spinner, Chair; Pamela Papineau; Patricia A. Peters, Clerk

BOS Call to Order: G. Luca called the meeting to order at 7:30 PM.

BOH Call to Order: M. Spinner called the meeting to order at 7:30 PM.

BOS Executive Session: A motion was made by J. Livingston to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21A, Exemption #3 (Litigation Strategy) *Town v. Velardi* and Exemption #3 (Litigation Strategy) 66 Westford Road and to reconvene in Open Session at the conclusion of the Executive Session. J. Livingston stated to discuss these items in Open Session would be detrimental to the Town's litigation strategy. **By Roll Call:** G. Luca, aye; C. Hillman, aye; J. Livingston, aye. **Motion passed by Roll Call 3-0.**

BOH Executive Session: A motion was made by P. Peters to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21A, Exemption #3 (Litigation Strategy) 66 Westford Road and to reconvene in Open Session at the conclusion of the Executive Session. P. Peters stated to discuss these items in Open Session would be detrimental to the Town's litigation strategy. **By Roll Call:** M. Spinner, aye; P. Papineau, aye; P. Peters, aye. **Motion passed by Roll Call 3-0.**

Joint Public Hearing with the Board of Health Relative to 66 Westford Road: Both Boards reconvened in Open Session at 8:08 PM.

G. Corbo from KP Law stated that both Boards were holding a Joint hearing to decide whether the conditions of the property at 66 Westford Road constitute a public nuisance. Mr. Ralph McNiff, owner of the property, was notified in advance, in writing, of the Joint Public Hearing. G. Corbo said that the Public Hearing would be broken up into 3 general phases: 1) the Health Agent and Building Inspector would give reports from their respective inspections on Monday November 28, 2016 and Monday December 5, 2016; 2) Mr. McNiff would be able to speak and offer rebuttal; 3) both Boards would deliberate and vote to issue orders regarding the conditions of the property.

Bridgette Braley, Town of Ayer Health Inspector, detailed her report from both inspections and made the following observations:

1. Most of the windows appear not to be weathertight (broken, cracked and rotting)
2. Front doors are not weather tight

3. Storm doors are in disrepair
4. Floors in the main living quarters are stripped down to the subfloors and are in poor condition
5. Heat is not adequate
6. Electrical outlets in disrepair
7. Possible electrical issues within the home (burnt out electrical outlet) see photo
8. Ceiling in disrepair throughout the house – evidence of leaks
9. Unoccupied section of the house is in complete disrepair. Large accumulation of trash blocking egress.
10. No heat in unoccupied section of the house
11. Room attached to the back of the house in disrepair (see photos).
12. The house itself is in complete disrepair (holes, rotting wood, missing siding) see photos

Violations in reference to the land surrounding the property

1. Trash accumulating in cars/trucks
2. Evidence of rats (burrows). Representative from Mass Department of Agriculture noted visually seeing rats in the main pig barn during one of her inspections.
3. There is a large amount of trash/debris/tires/ metal/ rotting wood/plastic barrels- unregistered vehicles of all sizes and uses that have been discarded on the property. The property has not been approved by the Board of Health as a disposal site (would require site assignment by local BOH and DEP) see photos

Violations in reference to the keeping of animals as reported by MDAR

1. Rat burrows around the swine barn located at the back of the property
2. Dead pigs in the lean to outside of the swine barn
3. Mud around the outside of the swine barn
4. Calves with improper/inadequate shelter
5. Calves with no access to water
6. Calves with watery diarrhea
7. Calves with excessive green discharge from their nostrils

B. Braley reported further that on December 1, 2016, she issued an Order to Correct with respect to the violations of the State Sanitary Code existing at the dwelling. Since the issuance of the Order to Correct, nothing has been done to abate any nuisances at the property and that in her opinion the overall conditions of the property are a nuisance, source or filth and cause of sickness in the Town and the conditions observed pose a serious threat to public health and safety, as well as to the occupants and any other persons who may come into contact with the property, including public safety officials, such that there can be no further delay in the issuance of an order to abate these conditions. B. Braley recommends that the owner be ordered to immediately vacate and secure the dwelling, to immediately remove all animals and animal feed from the property, to hire a professional exterminator to eradicate all rats from the property and to submit a plan for the removal of all animal waste and junk, refuse and debris from the property.

Charles Shultz, Town of Ayer Building Inspector, detailed his report from both inspections and made the following observations:

Main Barn

1. Multiple floor joists have deteriorated to the point where they can no longer support any loads.
2. The main support beam in the front portion of the barn is stressed to the point of deflection.
3. A section of the rock foundation is missing.
4. A section of the floor has collapsed into the basement.
5. Severe structural instability of the foundation and building components

Cement Block Structure

1. Windows are missing, the roofing has deteriorated to the point that the interior is exposed to the elements, there is an electrical cable that has not been installed to code and is dangerous.

Pole Barn

1. The sheet metal roof has numerous nail holes and is letting in the elements, the rafters are being stressed by the additional weight from the interior, support poles and beams have shifted.

Main Home

1. Exterior needs repair to keep the elements out; structural inspection is incomplete at this time.

Both B. Braley and C. Shultz presented both presented photographic evidence during their respective reports.

G. Corbo stated that the presentation of the Town evidence has concluded and that Town could now hear from Mr. McNiff.

Mr. McNiff was in attendance but declined to comment.

P. Papineau stated that this was the first time that the BOH has heard that the animals were in horrible conditions.

Both Boards agreed that the removal of the residents, animals and rats were the top priority.

Mr. James Jones, 5 Lilac Lane stated that his Town let him down and he doesn't know how it got to this point. C. Hillman stated that this has been an ongoing issue and that the Town has let down the residents.

Mr. Vipul Patel, 3 Lilac Lane stated that he has health related problems and wonders if the conditions at the property have contributed to his illness.

Ms. Erica Tamlyn, 15 Loon Hill Road stated that the odor from the farm is severe and she often cannot enjoy time outdoors.

Mr. Paul Magno, 5 Rose Lane said that the current condition of house is because the Town didn't act. J. Livingston stated that the Town can't just go onto someone's property and that until this point the Town's hands were tied.

BOS Motion: A motion was made by C. Hillman and seconded by J. Livingston that based on the facts adduced at this hearing, that the Board find that the property located at 66 Westford Road, Ayer, Massachusetts, is a nuisance, source of filth and cause of sickness within the Town and that the buildings located thereon are dilapidated and dangerous so as to constitute a nuisance, and, in accordance with the Board's authority as set forth in Massachusetts General Laws, Chapter 139, sections 1 and 3, that the Board issue the following orders to abate the nuisance and dangerous conditions:

1. Within twenty-four hours, the dwelling shall be vacated and secured to the specifications of the Health Agent and Building Commissioner and the dwelling shall not be re-occupied until such time as occupancy is approved by the Board of Selectmen and Board of Health;
2. Work shall immediately begin to remove and/or dispose of all animals, animal feed and animal waste from the property. Said work shall be done in cooperation with the Massachusetts Society for the Prevention of Cruelty to Animals and all animals, animal feed and animal waste shall be removed within seven days of issuance of this order;
3. No additional animals may be brought onto the property until such time as the Board of Selectmen and Board of Health have certified that all nuisance and dangerous conditions have been abated and the property owner

has developed a plan for keeping animals at the property in a safe and sanitary manner, said plan to be approved by the Board of Selectmen and Board of Health prior to any animals being brought to the property;

4. The property owner shall immediately retain the services of a duly licensed and insured exterminator to eradicate all rats and vermin from the property;
5. All junk, refuse and debris shall be removed from the property within fourteen days of issuance of this order, and all materials removed shall be disposed of at a duly permitted disposal site in accordance with applicable laws;
6. Within thirty days of issuance of this order, the property owner shall submit a plan, developed by a duly qualified contractor, to remediate all nuisance and dangerous conditions, said plan to include, but not be limited to: demolition or making the out-buildings safe and for making the dwelling habitable, said plan to be submitted for approval by the Board of Selectmen and Board of Health;
7. Within ninety days of issuance of this order, all nuisance and dangerous conditions shall be abated in accordance with the approved plan;
8. Within twenty-four hours of issuance of this order, and at reasonable intervals thereafter, the owner shall permit the Town's Health Agent, Building Inspector, Animal Inspector and Fire Chief to enter the property, including the dwelling, to inspect and document existing conditions and the owner shall comply with any such additional orders issued by said officials; and
9. This order to remain in effect until the Board of Selectmen and Board of Health certify in writing, after further hearing, that all nuisance and dangerous conditions have been abated. **Motion passed 3-0.**

BOH Motion: A motion was made by P. Peters and seconded by P. Papineau that based on the facts adduced at this hearing, that the Board find that the property located at 66 Westford Road, Ayer, Massachusetts, is a nuisance, source of filth and cause of sickness within the Town and that the buildings located thereon are dilapidated and dangerous so as to constitute a nuisance, and, in accordance with the Board's authority as set forth in Massachusetts General Laws, Chapter 111, sections 122 to 125A, that the Board issue the following orders to abate the nuisance and dangerous conditions:

1. In accordance with Massachusetts General Laws, Chapter 111, sections 127A and 127B, the Board hereby finds that the dwelling units located on the property are unfit for human habitations, that said dwellings units shall be vacated and secured to the specifications of the Health Agent and Building Commissioner within twenty-four hours of issuance of this order, and the dwelling units shall not be re-occupied until such time as occupancy is approved by the Board of Health and Board of Selectmen;
2. Work shall immediately begin to remove and/or dispose of all animals, animal feed and animal waste from the property. Said work shall be done in cooperation with the Massachusetts Society for the Prevention of Cruelty to Animals and all animals, animal feed and animal waste shall be removed within seven days of issuance of this order;
3. No additional animals may be brought onto the property until such time as the Board of Selectmen and Board of Health have certified that all nuisance and dangerous conditions have been abated and the property owner has developed a plan for keeping animals at the property in a safe and sanitary manner, said plan to be approved by the Board of Selectmen and Board of Health prior to any animals being brought to the property;
4. The property owner shall immediately retain the services of a duly licensed and insured exterminator to eradicate all rats and vermin from the property;
5. All junk, refuse and debris shall be removed from the property within fourteen days of issuance of this order, and all materials removed shall be disposed of at a duly permitted disposal site in accordance with applicable laws;

6. Within thirty days of issuance of this order, the property owner shall submit a plan, developed by a duly qualified contractor, to remediate all nuisance and dangerous conditions, said plan to include, but not be limited to: demolition or making the out-buildings safe and for making the dwelling habitable, said plan to be submitted for approval by the Board of Selectmen and Board of Health;
7. Within ninety days of issuance of this order, all nuisance and dangerous conditions shall be abated in accordance with the approved plan;
8. Within twenty-four hours of issuance of this order, and at reasonable intervals thereafter, the owner shall permit the Town's Health Agent, Building Inspector, Animal Inspector and Fire Chief to enter the property, including the dwelling, to inspect and document existing conditions and the owner shall comply with any such additional orders issued by said officials; and
9. This order to remain in effect until the Board of Selectmen and Board of Health certify in writing, after further hearing, that all nuisance and dangerous conditions have been abated. **Motion passed 3-0.**

C. Hillman stated the he doesn't believe the property owner will perform the necessary work and that the Town will be left coming up with a reasonable solution.

BOS Motion: A motion was made by J. Livingston and seconded by C. Hillman to adjourn at 9:10 PM.
Motion passed 3-0.

BOH Motion: A motion was made by P. Peters to adjourn at 9:12 PM.

Mr. McNiff then spoke stating that he hopes to be out of the house next year and done with farming. He also said that it was his son's fault the animals were in the condition they were in.

There was back and forth between both Boards and Mr. McNiff about the conditions of the farm.

BOH Motion Passed 3-0 at 9:21 PM.

Minutes Recorded and Submitted by Carly M. Antonellis

Date Minutes Approved by BOS: 3 JAN 17

Signature Indicating Approval: 