

**Norwell Board of Selectmen
Open Meeting Minutes
8/7/19**

TOWN OF NORWELL
2019 AUG 29 AM 9:29
RECEIVED

Present: Ellen Allen, Jason Brown, Alison Demong, Bruce Graham, Joe Rull, Peter Morin
Town Counsel Bob Galvin

The meeting was called to order at 6:45pm by Jason Brown.

Mr. Morin informed the board about the automobile accident involving the Fire Chief's Town owned vehicle. There will be a follow-up discussion at the next meeting. Questions were asked by the selectmen about the details of the accident and answered by Mr. Morin.

Approval of Minutes

Motion; made by Jason Brown, seconded by Alison Demong, to approve the minutes of the 6/5/19 Open Meeting (edited to reflect Mr. Brown's comment) and the 7/24/19 Open Meeting. The board voted 3-0-1 in favor of the 6/5/19 minutes, Mr. Graham abstained from voting as he was absent from the meeting.

The board voted 3-0-1 in favor of the 7/24/19 minutes, Mr. Rull abstained from voting as he was absent from the meeting.

(Ms. Allen was not present for the votes.)

Norwell Cares – Ms. Demong reported that this year's event on 9/20/19 is being run by Sarah Baker. Each high school class does a different community service project. She asked if the board would like to be involved again this year. The board will participate as well as make a donation from the BOS gift fund.

MassWorks grant application – Hanover Mall consultant April Anderson emailed Ms. Allen asking for a letter of support from each of the neighboring communities, to be received by Friday, 8/16. Proposed wording was provided. If the board is in favor of a support letter Ms. Allen will work with Mr. Morin to send a letter by the Friday deadline. The board discussed the pros and cons of a support letter with regard to the question of potential benefits for the Town. Highlighted in the grant application are the following proposed projects for Norwell:

1. Restructuring the intersection of South and Mill Streets
2. Widening and repairing the bridge over the culvert on Mill Street
3. Repaving Mill St.
4. Repairing the dam on Third Herring Brook

Discussion continued about the mechanics of the grant if awarded. The funds would go to the Town of Hanover (as the applicant) and they would disburse the funds per the award. Mr. Morin noted that the funds can only be spent as stipulated in the contract drawn up for the award amount. Mr. Rull stated that he doesn't support the mall project and therefore doesn't want state funding supporting this private project. Mr. Brown noted that the project is trying to fix some issues that will directly benefit the Town.

Per Mr. Morin and Attorney Galvin, the Town does have leverage and gains standing because of the ownership of a small portion of the mall property. Challenging the project would slow it down but not stop it. Mr. Graham said that his office is along Mill St., so he drives through these areas several times per day. He believes that Norwell residents in the area may be pleased by the improvements to the road. Some of the permitting needed in Norwell for this project has been discussed with Con Com. Mr. Brown asked to talk through the scenarios and opportunity costs of this project, to which Attorney Galvin gave a range of legal outcomes. A list of specific issues that impact the Town in ways unique to Norwell would be required to have a chance of halting the project. Realistically there will be a redevelopment of the property no matter what Norwell does. Because of the plans for the supermarket, a MEPA study will be done, but it

won't stop the project. (The board previously voted not to sign the MEPA letter of support. The Water Commissioners are addressing their own issues regarding the MEPA study.) The Town might want mitigation from both the state and the developer. Mr. Morin gave an update on the mitigation discussions and gave examples. However, Norwell has only a small role in this Hanover based project. The board discussed further the proposed grant projects for the Town. *Motion; made by Alison Demong, seconded by Bruce Graham, to endorse and send the letter of support for the MassWorks grant to Secretary of Housing and Economic Development Kennealy. The board voted 4 in favor, 1 opposed (Joe Rull); motion carried.*

Ms. Demong reported that the Town did not receive a Complete Streets grant this year. The Complete Streets Committee is meeting on Friday at noon to discuss this and next steps. A discussion of the Capital Plan will be on a future agenda.

Open Meeting, cont'd., Osborn Room

The meeting was called to order at 7:35 by Chair Ellen Allen, who reminded all that the meeting is televised and recorded. All rose to recite the pledge of allegiance.

Approval of Agenda

Motion; made by Jason Brown, seconded by Bruce Graham, to approve the amended agenda postponing discussion of item g. Batelle and PILOTs. Unanimously voted

Citizen Comments - None

BOS reports and Announcements - None

Town Administrator's report - None

7:35 Application and Appointment to Board of Registrars – Natalie DiCecca

Ms. DiCecca was present to give a short summary of her background and reasons for applying. *Motion; made by Jason Brown, seconded by Alison Demong, to appoint Natalie DiCecca to the Board of Registrars for a 3 year term expiring 6/30/22. Unanimously voted*

Electronic Voting Committee (EVC) – recap – Marybeth Shea, Chair

Ms. Shea was present to summarize the status of this committee and a recap of the electronic voting pilot at the May 2019 Town Meeting. The EVC considered the pilot a success, in that it was a clear showing of how the software operated. However, the Town voted not to use this particular technology which was not a good fit for a town meeting, as there was a steep learning curve. Electronic voting at Town Meeting could still be considered in the future, but simplicity and speed would be the key factors. Ms. Shea noted that the Warrant Articles used in the pilot were not close votes and there were no lengthy discussions. The tablets were easier to use than the smart phone technology. Mr. Brown added that usage had more to do with the voting than the technology. There was too much technical prep needed before and after the vote tallies. Discussion ensued about the pros and cons of using this technology vs. the old fashioned form of town meeting voting.

Ms. Demong asked for the committee's recommendation. Ms. Shea stated that this committee doesn't wish to continue. The board agreed to disband the committee for the time being and perhaps revisit this issue again in 2 or 3 years.

Motion; made by Jason Brown, seconded by Alison Demong, to disband the EVC with the thanks of the board. Unanimously voted

7:45 – Park View Inn – Public Hearing, Cont'd.

The hearing was continued at 7:48pm by Chair Ellen Allen. Park View Inn's legal counsel John Fink, and property manager Brent May were present. Ms. Allen updated all on the status of the Park View hearing.

Ms. Allen invited Attorney Fink to speak on behalf of his client. Attorney Fink noted that the property has a long history of annual lodging licenses except for the last two years. His understanding is that the Town has a problem with lodging units 9 and 10. He stated that he contacted the prior owner, who confirmed that these two units were present when he purchased the property in 1996. He asked if the board had any other issues regarding issuing a lodging license to his client.

Ms. Allen informed Attorney Fink that there are several issues that affect this lodging license and then turned the discussion over to Town Counsel Bob Galvin. Attorney Galvin's previously circulated memo (attached hereto) includes a history of the property's operation as a motel and a lodging house, as well as miscellaneous building permits issued over the years.

A motel differs from a lodging house in the transient nature of the rental. A daily guest register is a legal requirement when operating a motel. Instead, the Park View keeps a copy of the residents' driver's licenses and a list of rent payments made. The different definitions of motel, inn and lodging house were discussed.

Attorney Galvin went on to say that historically, the Town did not issue motel permits because a lodging house license was the only instrument recognized by the Town, yet the Park View's use as a motel was clear by inference. The ZBA never authorized a change of use from motel to lodging. The board cannot grant a lodging license in this area of the Town, because it is not zoned for lodging houses. Attorney Galvin noted that this is the first exhaustive review of this property issue. The bottom line is the fact that this is a motel converted into a lodging house. A review of this property use should have been done when the property was sold to the current owner. The board cannot legally issue another lodging license even though it has done so in error in the past.

Town Counsel's recommendation is to correct this mistake by granting a motel license for the originally approved 14 units, with the condition that all cooktop facilities be removed, after-the-fact building permits be obtained for construction work already completed, and a compliance date be set for the completion of this work.

The board expressed concerns about the non-transient residents possibly being displaced.

Attorney Galvin stated that it is the property owner's responsibility to rehouse the residents. Mr. Morin noted that he spoke to the Commissioner of the Dept. of Transitional Assistance who referred him to the Department of Housing and Community Development. This agency's priority is to find alternative housing for such individuals, with those employed in the Town being housed here. A 3 to 6 month time period for rehoming is reasonable and they would work with the Park View/Town on this issue. Mr. Morin recapped the issues with the property that prompted this situation: no application for the renewal of their lodging license and the many items identified by Building Inspector Barry.

Park View Inn counsel John Fink opined that the board can't know when it was a lodging house back in history and that an increase from 14 to 18 units is not a substantial change. For 50 years the property has been a lodging house, and the current owner purchased it with that expectation, not anticipating substantial renovations requiring a building permit. Mr. Morin reminded him that the license renewal application was not filed this year or last year. Attorney Fink opined that it was an oversight. Of note, as recently as 2009 the Building Inspector inspected the property noting that it had 15 units.

Discussion ensued about the legal issues of this incorrect license. The board reminded Attorney Fink that the zoning is a separate issue from the number of units on the property and that the BOS is only the licensing board. The owner could apply to the Zoning Board of Appeals for a variance permitting the additional units. Mr. Galvin reiterated that granting a license doesn't change the permitted zoning use. There is a bylaw that allows certain non-use zoning changes by special permit, but nothing has ever been filed.

Most board members agreed that the only legal choice is a motel license. Mr. Morin stated that this property was constructed as a motel. One of its owners made changes without permits to make more money. Mr. May informed the board that the Park View has no leases for its units. All discussed the shortcomings of this property. The Town is taking this situation very seriously and has tried to bring the property into compliance instead of shutting it down. Ms. Allen

units is outside of this board's purview. The owner could apply to the ZBA for an expansion of the number of motel units from 14 to 18. Attorney Galvin added that this is the right way to solve the issue and is more than fair. The manner in which the residents pay is a large factor in determining the property's function; monthly payment is a lodging house; daily payment is a motel. The 14 units can have a microwave, refrigerator and coffee maker. The manager in residence is permitted to reside in the house unit.

Ms. Allen summarized the criteria to issue this motel license: compliance with motel criteria by a date certain (90 days), a building inspection and filing and payment of the building permits in arrears. Mr. Morin noted that they are less than 6 months away from the time to renew their annual license. At the end of the 90-day timeframe the board will review the progress and then make a decision about the Parkview's ability and intent to come into compliance.

Motion; made by Jason Brown, seconded by Alison Demong, that the Board of Selectmen issue a motel license for 14 motel units plus the original dwelling unit (1) for the manager, and order the Parkview to come into compliance for 2019 within 90 days from the date of this hearing with a daily guest register, a daily rate charge and a building inspection for compliance with the state law requirement applicable to motels and occupancy reflecting motel units. The previous lodging license issued in error is revoked. 4 voting in favor, 1 opposed (Joe Rull). The motion carried.

Mr. Brown encouraged Attorney Galvin and counsel for the Parkview Inn to confer. Attorney Galvin gave Attorney Fink a copy of the memo attached to these minutes.

Motion; made by Jason Brown, seconded by Alison Demong, to close the Public Hearing at 8:48pm. Unanimously voted

Hawker and Peddler License Request

Realtor Andrea Mongeau was present to summarize her reasons for applying to go door to door in the Town to distribute real estate information and small tokens of appreciation to residents.

Ms. Allen explained that the BOS has a history of not approving Hawkers and Peddlers licenses as residents have consistently expressed their dislike of door to door solicitation. She recommended other activities to enhance Ms. Mongeau's sales programs. Mr. Brown added that he is sure that her intentions are good, but residents' feedback says no thank you. This policy is also a safety measure; as there are NO licenses issued, residents know that anyone trying to solicit is illegal.

Motion; made by Jason Brown, seconded by Alison Demong, to regretfully not approve the application for a Hawker and Peddler license. Unanimously voted

Jacobs Farm Licenses

Ms. Allen gave a recap of the Community Supported Agriculture program (CSA) at Jacobs Farm Property. At the May 2009 STM the Town approved \$50K of CPA funds to start a CSA on the portion of the fields on the east side of Jacobs Lane, specifically for the sale of farm shares. Norwell Farms (NF) then came together as a volunteer committee to accomplish this. After many years working with 3 different farmers, NF learned that this property isn't big enough for a farmer to support him/herself. In fact, NF supported some of them with subsidies for rent, etc. In 2018 NF was unable to locate a farmer for the 2018 growing season and asked the Conservation Commission to allow Cross Street Flower Farm (CSFF) to plant the front field while they sought a farmer for 2019. (The owners of CSFF were on the NF board until two years ago, so knew what had and had not worked over the years.). The Town approved a sub license from NF to CSFF to run through 2019. In 2019 NF got approval to have CSFF expand its operations and plant all of the fields on the east side. NF retained use of some raised beds, a small learning garden and a chicken coop. The Town agreed to the temporary sub license arrangement, but said it wanted to have two separate licenses after 2019—one to NF and a second with the farmer so the Conservation Commission could work directly with them, not via the volunteer NF board, which had proven cumbersome.

Ms. Allen explained further that the Jacobs Farm property is under a preservation restriction agreement with Historic New England (HNE). Activities there must be approved by HNE and also involve 3 Town committees (Conservation Commission for the fields, Historical Commission for the buildings and Recreation Commission for the playing fields across the street) with the BOS having overall responsibility for the property. (The BOS appoints all three of those committees.). The purpose of the meeting tonight is to determine who will receive licenses for 2020 and how the two entities will coordinate and cooperate to share the resources at the Farm. Questions from the Board about this background were asked and answered. All will discuss how to structure the property use going forward. All reviewed the map of the property. There are 3 fields totaling ~7 acres.

Proposals were received in July from both groups and meetings were held that included the co-chairs of NF, co-owners of CSFF, Ellen Allen, Jason Brown, Nancy Hemingway, Mr. Morin and consultant Kim Roy.

Both parties made short presentations of these plans to the Selectmen.

Dee Dee Tobias of NF reviewed the history of the organization. Starting in 2020 it wants exclusive use of the entire 1.5 acre front field (including its greenhouse) as well as the exclusive use of portions of the barns and carriage house. Their plan is to have staff and volunteers manage vegetable, perennial and learning gardens plus a pumpkin patch and the chicken coop. They plan to provide educational and volunteer opportunities. They would directly manage their activities and did not articulate plans working with the Con Comm.

Nikki Bartley spoke for CSFF which wants to continue using all ~7 acres so that it's business (500 flower shares this year) remains viable. It needs use of the greenhouse and parts of the barns to operate. CSFF has reinvested all its profits in the property and gotten ~\$130k in equipment. It recently received USDA grants for two additional hoop houses and irrigation systems. CSFF wants to work with NF on all of their activities, which would reduce the amount of fund raising NF needs to do. They support all of its activities. They believe it would be difficult for NF to increase its activities from its current small scale to the full front field, but would support them with incrementally expanding the land they use for their activities, perhaps an additional 1/8 acre in 2020.

Mr. Brown made the following comments: the Town/BOS wants to simplify the licensing process. Both groups have good plans. The Warrant Article that originated the CSA was intended for farming (not education) which is exactly what Cross Street Flowers is doing. Norwell Farms' education programs are also important to the Town. The question is how to share the property to best advantage for both groups and the Town.

Mr. Morin noted that he and Ms. Roy met with both groups and were very impressed with their passion. He thought it was unfair to Norwell Farms to have to manage a farm and its complexities; running the educational programs is daunting enough. In an effort to have each group do what it does best, the Town, through Con Com, should contract directly with the farmer. The license has to be signed by three boards which the current arrangement permits. As long as there are preservation, conservation and educational activities, the public benefits. Historic NE is aware of the farm's activities and is fine with a for-profit entity doing the farming despite certain language in the preservation restriction. This has always been the case at the farm (including the fields on the west side of the street that are farmed by Hornstra Farms). Cross Street Flowers has the more viable business plan, but Norwell Farms should be allowed to continue using some part of the fields for education that is complementary to Cross Street Flowers. He encouraged both groups to work together to share the fields.

All discussed licensing options. Town Counsel Bob Galvin said that he was OK with a license to CSFF coupled with a sub license to NF or two separate licenses.

Mr. Morin and the BOS will work with both groups to allocate the property. Discussion continued at length about how to accommodate both entities, the equitable division of the front field and future growth plans for both parties. The board concluded that Cross Street Flowers should have the license for all 7 acres, as they have the farmer who is running a successful farming business. They also want a sub license from CSFF to NF to ensure coordination. However, they want to include specific requirements in the CSFF license so it is clear that NF's activities

will be accommodated. Ms. Demong emphasized the need to ensure that the licensing arrangement allows for NF's activities. She asked Ms. Tobias if this arrangement was acceptable to them. Ms. Tobias replied that the NF board had discussed this possibility and voted unanimously that they want to maintain their independence for fund raising purposes, that they don't want any direct affiliation with a for-profit entity and that nothing less than the full front field would be sufficient for their 5 year plan. Mr. Brown pointed out that NF's plan would leave no viable option for the farming of fields 2 & 3. Ms. Allen asked that NF work with Mr. Morin and Ms. Roy to find a workable sharing of the property with CSFF.

Motion; made by Jason Brown, seconded by Joe Rull, that the Board of Selectmen instruct the Town Administrator to work out an agreement and develop a license between the Town of Norwell and Cross Street Flower Farm, with the understanding that there should be an accommodation to ensure the future functions of Norwell Farms within a sublicense structure with Cross Street Flower Farm. We would ask that this be developed and brought back to the Board of Selectmen more formally at a later date for review and approval. Unanimously voted

Michael McDonough of 53 Main Street (abutted to Jacobs Farm) asked about the infrastructure plans for the fields. Ms. Allen will give him the diagram approved by HNE and Con Com for the two new hoop houses and irrigation. No additional structures will be added.

Athletic Fields Committee mission statement – Review and Approval

Motion; made by Jason Brown, seconded by Joe Rull, to approve the additions and edits to the mission statement for the Athletic Fields Committee (attached). Unanimously voted

Batelle – Payment in Lieu of Taxes (PILOT) – postponed to a future meeting

The next BOS meeting will be in two weeks on 8/21/19.

Adjournment

Motion; made by Jason Brown, seconded by Joe Rull, to adjourn at 9:55pm. Unanimously voted


Ellen H. Allen, Chair

TOWN OF NORWELL
2019 AUG 29 AM 9:30
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MEMORANDUM

TO: Norwell Board of Selectmen & Town Administrator
FR: Robert W. Galvin, Esq.
DA: July 9, 2019
RE: Park View Inn

Dear Members of the Board:

I have been asked to review the state of affairs and the legal status of the Park View Inn. In rendering this advice, I am relying on my interview with Tom Barry, Building Inspector, a review of the Town of Norwell Assessor's record for the property, documents from the Registry of Deeds including deeds and plans, some lodging home licensing issued by the Board of Selectmen since 1974, and some past and present Norwell Zoning Bylaws and the Norwell Zoning Map.

FACTUAL SUMMARY:

I believe the following facts are true:

Some in approximately 1900, the property at 350 Washington Street, Norwell, Massachusetts was improved with a single-family home. There may have been a garage/barn style building added at or about the same time.

In the early 1942, the Town of Norwell adopted an early zoning bylaw.

In 1947, in the Land Court decision in Herbert A. Lincoln v. Inhabitants of the Town of Norwell, Docket No. 9746 (MISC) dated January 16, 1947 (Courtney, J.) the then existing Norwell Zoning Bylaw was invalidated.

In 1952, the Town of Norwell enacted a new zoning bylaw said bylaw became effective after approval of the Attorney General in 1952.

Sometime in 1954, the premises was improved to the rear with a 24' x 96' motel style building located to the rear of the original single family residence with several units which was ostensibly continued to be used as the residence of the owner of the motel.

The three buildings were identified on a plan prepared for the then owner, Gertrude Gaddis, by Loring Jacobs, a registered land surveyor, on April 23, 1959. The rear building described as a motel, the smaller building described as a shed, and the single family building described as a dwelling. (see Attached Plan).

In 1968, the motel building was added onto by an 18' x 68' adding the total number of units in the rear building to app. 14.

In 1974, during the ownership of the premises by Robert P. and Winifred M. McQuarrie, the Board of Selectmen began issuing annual Lodging House Licenses in connection with the property pursuant to Gen. L. c. 140 sec. 22. These licenses have issued annually by the Board from 1974 to the present. There is no record of how many units were approved as lodging units.

In 1976, the single-family residential building had an addition added to it 14' x 30'. I am uncertain as to what the addition was used for.

During the tenure of Skip Joseph as Building Inspector, Mr. Joseph inspected the property as a 14 unit motel on an annual or every other year basis as a motel.

In app. 1988 and at other times in the 1980s, there were some remodeling permits issued in connection with motel units by the Building Department.

In 2009, during the tenure of Tim Fitzgerald as Building Inspector, Mr. Fitzgerald inspected the property as a 15 unit motel. I think the 15 units may have been in error.

In the last three years, Tom Barry as Building Inspector tried annually to get in to inspect the premises and was reportedly unable to contact them until this year when he was permitted to inspect the same. He reports that the former shed was converted without the benefit of permits to a cottage dwelling unit, that a number of the 14 motel units were converted units with kitchen facilities without the benefit of permits from his office, and that a living area within the former dwelling was divided into two studio units and one larger unit again without the benefit of permits. Mr. Barry additionally reports that there are 18 total units at the premises and that there were no zoning approvals obtained to expand or change the use. I am attaching all of documents obtained from Mr. Barry.

The property has since changed hands several times and is now owned by Bosco Properties, LLC whose purpose is "TO ACQUIRE, MANAGE, USE, DEVELOP, FINANCE, MARKET AND SELL REAL ESTATE AND IMPROVEMENTS THERETO, AS WELL AS TO OWN AND OPERATE MOTELS, HOTELS AND LODGING FACILITIES, AND TO CARRY ON ANY OTHER LAWFUL BUSINESS, TRADE, PURPOSE OR ACTIVITY". Bosco is managed by Brent May whose address is listed as 350 Washington Street, Norwell, MA.

The license up for renewal and the Board of Selectmen have inquired as to the status of matters and what legal options they have at this time.

The front portion of the property is zoned under the current Zoning Bylaw as Business-2 and the rear portion of the property is zoned under the current Zoning Bylaw as Residential B. Neither of the districts allow the use by right or special permit and our bylaw precludes the issuance of use variances.

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ANALYSIS:

Based on the foregoing, it is my opinion that the motel use was grandfathered and commenced lawfully in 1954 and that the use continued until sometime likely in the early 1970s when the owners, McQuarrie, obtained a license from the Board of Selectmen to operate the units on the property then likely to be 14 motel units as a "lodging home."

A lodging home is defined in Mass. Gen. L. c. 140 §22 as:

"a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth."

By law, lodging homes are permitted to furnish individual cooking facilities for the preparation, serving, eating and storage of food; provided that no such facility shall be furnished in a room having an area of less than one hundred fifty square feet and such facilities shall, in a single room, consist of a gas or electric plate, a refrigerator and hot and cold running water and in a unit consisting of two adjoining rooms shall consist of a gas or electric range, a sink with hot and cold running water, a refrigerator and storage area for food. Mass. Gen. L. c. 140 §22A. Lodging houses may also have microwaves. Mass. Gen. L. c. 140 §22B. All such facilities furnished under this section shall comply with the building code applicable thereto.

In contrast, a motel is defined in Mass. Gen. L. c. 64G §1 as:

"Motel", any building or portion thereof, other than a hotel or lodging house, in which persons are lodged for hire with or without meals and which is licensed or required to be licensed under the provisions of section thirty-two B of chapter one hundred and forty, or is a private club.

It is further defined in Mass. Gen. L. c. 140 §32A as follows:

The term "motel", as used in section twenty-seven, in this section, and in sections thirty-two B to thirty-two E, inclusive, shall be construed to mean any building or group of buildings which provide sleeping accommodations for transient motorists and which is not licensed as an inn.

Motels, which are for transients, are not typically equipped with individual cooking facilities for the preparation, serving, eating and storage of food; however, are typically equipped with small appliance including a coffee maker or refrigerator.

Both lodging homes and motels must be licensed by the Board of Selectmen on an annual basis in order to lawfully operate and there are penalties for operating either type of business without such licenses.

Independently of licensing by the Selectmen, the Town of Norwell regulates the use of all property via its Zoning Bylaw. Based on what I can see and what I am informed of, while the use became licensed by the Selectmen in 1974 as a lodging house, there was never any zoning approvals obtained to convert what was grandfathered as a "motel" into a "lodging house."

I can only presume that there was a misunderstanding as to the proper licensing which was perpetuated by carrying forward the license for renewal each year.

From the existing information I have which is somewhat limited, there were also no approvals to convert the shed into an additional lodging unit and to add two studio lodging units in the former residence. Our Zoning Bylaw and Mass. Gen. L. c. 40A §6 would have minimally required that there be some type of special permit to alter or change the prior nonconforming use of a motel into another non-conforming use. There does not appear to be any such approvals on record at the Registry and Mr. Barry was unaware of any such approvals from his records. As such the lodging house use should never have been permitted in any of the buildings; however, 45 years ago this is precisely what was authorized by the Selectmen.

The property owner may argue that given the passage of time the Town is barred from bringing about zoning compliance by a legal doctrine known as "estoppel". Estoppel also known as "equitable estoppel" is a defense asserted when a party alleges that they have rightfully relied on the position of another person and takes action or avoids certain action in reliance on the position of another and there would be a prejudicial change of position if compliance is directed/ordered. I might expect that argument from the Park View Inn owner.

Regrettably for this owner, in the matter of Ferrante v. Board of Appeals of Northhampton, 345 Mass. 158 (1962), the SJC rejected that the theory of equitable estoppel as a defense to municipal zoning enforcement where there was revocation of a building permit originally issued in error and then the subsequent denial of a variance. Although the result in Ferrante was viewed as harsh, the basis for the result emanated from the court's view as follows:

The governmental zoning power may not be forfeited by the actions of local officers in disregard of statute and the ordinance. The public has an interest in zoning that cannot thus be set at naught. The plaintiff landowner is presumed to have known of the invalidity . . . and to have acted at his peril.

Ferrante, at 163. (other citations omitted).

RECOMMENDATION:

It is my recommendation to the Selectmen that notwithstanding the prior licensure that the Selectmen take the following measures which I think is consistent with law and will bring about zoning compliance and proper licensure:

- (1) Decline to issue any further lodging house licenses for the property absent any evidence that a zoning approval was granted to change a motel use to a lodging house use;

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- (2) Grant a renewal license, subject to conditions, to the Park View Inn as a 14 unit motel confined to the rear building originally permitted as a motel also allowing also the main residence to be used as a live in office/storage for the owner or operator or manager of the motel (for a total of 15 units).
 - (3) Direct that all individual cooking facilities for the preparation, serving, eating and storage of food in the 14 units be removed forthwith as a condition of allowing the motel use to continue and all such work be done with permits and approvals obtained from the building department; however, permit the units to be equipped with small appliances including a coffee maker, microwave and/or refrigerator.
 - (4) Direct that occupancy of the motel units displaced during the period of time that the units are converted back to motel units be relocated temporarily at the expense of the owner/operator and allow units to be re-occupied after inspection by the building inspector. Individual units may be occupied or re-occupied as the work is completed as long as this is approved by the building inspector.
 - (5) Establish a compliance date for the work to be completed.
 - (6) Order compliance with state laws and regulation as to the occupancy of motel units.

Town of Norwell
Division of Inspection
345 Main Street – Room 108
Norwell, MA 02061
(781) 659-8018

TOWN OF NORWELL
TOWN CLERK
2018 AUG 29 AM 9:30
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To: Norwell Town Administrator/Board of Selectmen
From: Tom Barry, Inspector of Buildings
Date: April 8, 2019
Re: Lodging House License – Park View Inn, 350 Washington Street

Town Administrator and Members of the Board of Selectmen:

Previously

Park View Inn is on record with the town as a 15 "sleeping unit" Inn for "transient" occupancy.

Note: The site in the past, consisted of 3 structures – a 2 ½ story primary structure; including a rental office, that in the past was known to house a resident owner and family, a maintenance structure; for example - for storing tools, lawn mower, cleaning supplies, etc., and the motel structure, consisting of 15 units.

(See Attached Definitions – 4 pages & Attached "Certificate of Inspection")

Presently

Park view presently is the same 3 structures, now consisting of 18 units combined; 1 for a resident manager and 17 for rent, for "nontransient/permanent" occupancy.

(See attached diagram)

Note: The site now consists of 3 structures – a 2 ½ story primary structure; a rental office no longer in use; that houses a resident property manager and 2 "nontransient/permanent" "Dwelling Units", a former maintenance structure (referred to by the site manager as the "cottage"); now used as a "nontransient/permanent" "Dwelling Unit", and the motel structure that consists of 14 units; that have been converted to "Dwelling Units" - no unit meets the definition of a "Sleeping Unit".

(See Attached Use & Occupancy Classification – 2 pages & Definitions – 4 pages)

(Presently - Cont.)

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There are no permits on file for any of the work that was performed to transform the units, add cooking and or food storage facilities, or the creation of the 3 additional "Dwelling Units". (*Violation of 780 CMR 114.1 – "Unlawful Acts" of the Building Code and MGL c40A s6 "Change of Use"*)

In its present configuration, the buildings have changed "Use Group" Classification from R1 (Residential 1) to R2 (Residential 2) and increased the number of units, unit type and "Occupancy Load". (*See Attached Use & Occupancy Classification – 2 pages*)

All of this appears to have happened over the last 9 ½ years; the last Building Dept. records are dated 5/18/09. (*See Attached "Certificate of Inspection"*)

Other Safety Issues:

The lack of Building, Electric and Plumbing Permits and Inspections

The fire alarm is inadequate/insufficient – *Does not serve the new and some of the other existing units.*

The facility does not have a sprinkler system – *Would be required if allowed to function/remain an R2 Use Group.*

The site does not conform to current "Accessibility" requirements - *Would be required if allowed to function/remain an R2 Use Group.*

Respectfully,



Tom Barry, Inspector of Buildings
(781) 659-8018

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**Athletic Fields Committee:
Proposed Revised Organization & Mission
August 2019**

Membership – 7, plus one Alternate

1 member from Tree and Grounds Department, or its designee

1 member from School Department/Committee, or its designee

Appointed by the Board of Selectmen to three-year terms (staggered)

5 At-Large members

1 Alternate member

Mission Statement:

The Athletic Fields Committee will study the needs of the community and recommend action for usage, improvements, and development of all Town-owned athletic fields.

The Committee may review, support and/or sponsor proposals put forth by Town organizations that would impact Town-owned athletic fields. From time to time, the Committee may bring proposals before the Community Preservation Committee for funding, and/or may seek additional funding sources. The Committee may develop its own projects, or endorse projects proposed by others.

Each project proposed or endorsed by the Athletic Fields Committee shall identify ~~project management & oversight roles and determine future maintenance responsibilities~~ once the project is completed.

Members will work cooperatively to prioritize needs and propose projects that are of the greatest benefit to the Town. As a result, At-large members are expected to work on projects that may or may not be relevant to their sport of interest.

JACOBS FARM FIELDS

