

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINTUES
OCTOBER 7, 2014
7:30 PM**

At Kensington Elementary School Library
DRAFT-Subject to Board Approval

In Attendance: Michael Schwotzer, Janet Bunnell, Richard Powers, Elliot Fixler

Public Attendance: Attorney Derek Durbin, Scott David, Attorney Justin Pasay, Lynne Bonitatibus, Mark Sikorski, Building Inspector

Michael Schwotzer, Acting Chairman called the public hearing to order at 7:37pm.
He then read the following to all present.

PUBLIC HEARING

Pursuant to RSA 677:2, The Kensington Zoning Board of Adjustment will hold a Public Hearing, OCTOBER 7, 2014, at 7:30pm in the Kensington Elementary School Library to hear the application for a Motion for Rehearing on the Administrative Appeal for Scott David of 21 Amesbury Road; Map 14 Lot 26, in accordance with Chapter II, Article 8.3 and Chapter V, Article 3.8. The Town of Kensington Selectmen are questioning the decision of the Zoning Board of Adjustment to grant Scott David's Administrative Appeal at the August 5, 2014 public hearing.

Michael explained that the board had held a public meeting on the 17th of September to see whether or not the board would hear the motion for rehearing, and they decided them to rehear the case on October 7th, 2014.

Michael asked the town to present the facts of why they think the Zoning Board should reverse their original decision to grant the appeal which was done on August 5, 2014.

Justin Pasay, Town Attorney for Donahue, Tucker and Ciandella, explained that the Selectmen are looking to ensure the fair and uniform presentation of the zoning ordinance in the Town of Kensington. It was explained that they are here to talk about Chapter V Article 3.8 Septic Regulations, and not Chapter II Article 8.3. They are focused on whether or not there are violations of Chapter V Article 3.8. The original Cease and Desist order stated that there was a violation of Article 3.8 C (4) which states:

4. *Applicants for expansion or alterations of existing systems or for assessments of existing systems shall submit single copies at a reasonable scale. No expansion or alteration shall commence until plans have been approved. The only exception to the above shall be systems which are repaired or replaced "in kind" which shall be allowed to commence without submission of plans or approval. In kind repairs or replacements shall be limited to the strict definitions contained in Part Ws 1002.01 (d) (1)-(9) of the State of N.H. Subdivision and Individual Sewage System Design Rules, chapter Ws 1000.*

The Corrective Actions that were required were that Mr. David was to obtain proper approvals for any changes that had been made to the existing septic system.

There are two issues that they are dealing with tonight, they are whether or not Mr. David expanded or altered the septic system and secondly whether or not he obtained any approval from the town. The selectmen feel that he did expand and or altered the septic system, without approval from the town. In Kensington anyone who wants to put in a new septic system, expand the use of an existing septic system, or alter the septic system has to get approval. The one exception would be for a replacement of the septic that is "in kind". This is definitely not an "in kind" replacement.

Attorney Pasay would like the board to focus on 3.8 C (4) as stated above. According to the Kensington Zoning Ordinance there is only one change that does not require an approval which is an "in kind" replacement. He stated the following issues:

- Prior to the construction in the 2013 time frame there was a single structure
- Approved 3 Bedroom 450 gallon/day septic system
- 150 gallons per day regulation and one bedroom will equal 150 gallons (3x150=450) according to Mr. David
- Now there is a separate structure containing kitchen, sink, bathroom, washer, with pump of some sort that pumps uphill to the existing septic system
- The town believes that there is an expansion to the septic system in general

Attorney Pasay stated that the first questions would be is there an expansion in the original system. Attn. Durbin has cited 3.8 B (5):

- 5. Expansion of use** - is defined as an increased flow of wastewater into a septic system created by:
 an increased number of bedrooms in a dwelling unit an increase in the number of employees in a commercial use
 an increase in floor area or increased number of seats in public assembly buildings **any other physical changes in any building resulting in increased wastewater flows.**

He cited the submitted information from Attn. Durbin where they had T.D. Brouillette Land Surveying and a Rockingham County Conservation District employee named Vicky comment on whether or not there was an expansion of use. They both indicated that there were only two bedrooms on the property and because there is only two bedrooms the septic system is fine as is. Attn. Pasay pointed out exhibit 10 (Mark Sikorski's inspection letter), he stated that for septic purposes the separate building constitutes 1.5 bedrooms in the context of the septic system, so (2 main house+1.5 separate structure=3.5x150=525) that would require a 525 gallon a day system, which is bigger than what is currently used. He believes that there is an alteration to the septic because of the two new sinks, toilet, shower, and washer. As he stated there needs to be approval from the board of selectmen for any alteration. The board wants to insure that Mr. David goes through the same process that anyone else would have to. Attn. Pasay stated these facts:

- Permit for a garage and nothing else
- Inspection of an unfinished garage
- No final plumbing inspection
- No certificate of occupancy
- Clear alteration to the system and expansion of use
- They want Mr. David to submit plans and go through the process that everyone else has to

Mr. Sikorski recently was contacted on the 22nd or 23rd of September by Mr. Edwards of Edwards Survey and Design in Seabrook, NH. Mr. Edwards was recently contacted by Mr. David questioning the sizing of the septic system. Mr. Edwards wanted to consult with the Building Inspector and asked his opinion based on the zoning ordinance. He had not viewed the site, and asked about the additions to the septic. Mr. Sikorski stated the additions that he had noticed in his inspection. Mr. Edwards indicated that when they install pump systems like the one indicated on Mr. David's property, they would require that the septic be assessed and designed to accept that. Mr. Edwards would contact Mr. David to discuss. Mr. Sikorski had not heard anything further from Mr. Edwards.

Mike asked if the town had anything else to present. They did not at this time. The board had no questions either.

Attorney Derek Durbin agreed with the overview of Attorney Pasay, but did not think that some of the facts were in dispute. They also differ on their interpretations on what is an expansion or alteration of the septic system. He referred to the submission that was passed out to the board at the beginning of the meeting which focused on the expansion of use. He continued to explain the town originally had been focused on expansion of use not alteration. He indicated that Mr. Sikorski is not a licensed installer of septic systems and Mr. David got an opinion on the expansion from Thomas Brouillette, (exhibit B) Mr. Brouillette indicated that it was not an expansion of use according to the state design standards, because it is based on the number of bedrooms. Kitchen sinks and bathrooms are not discussed in the design standards. The focus of the selectmen before tonight was on the addition of the bathroom because it increases the waste water flow. He reiterated for new members, that the reason they are here was based on Mr. Sikorski's letter to the board on the inspection of the structure submitted at the September 17th Meeting. This inspection was volunteered to and was after Mr. David successfully appealed the Cease and Desist Order as to Articles 8.3 and 3.8 of the current zoning ordinances. Part of the zoning board's decision was based on the fact that the town issued the Cease and Desist without ever inspecting the property. The reason the Board of Selectmen issued the Cease and Desist was based on an anonymous complaint that the structure was being used as a dwelling unit. Attn. Durbin explained that alteration is not defined in the zoning ordinance. Alteration to him is that someone is making a physical alteration of the design. According to the zoning ordinance the basis for determining septic size is on bedrooms and there is no mention on bathrooms. Attn. Durbin read the following section from Article 3.8 E:

- 3. **Expansion of use-feasibility**
Assessment of the feasibility for expansion of an existing septic system's use, or the requirement for improvements shall be based on the information generated by section 2 above and the following data:
 - a. *Proposed increase in wastewater flows*
 - 1) *residential - increase in number of bedrooms*
 - 2) *commercial/industrial - increases in flows.*
 - b. *Leaching area required by current State regulations.*
 - c. *Elevation requirements necessitated by current regulations cited in section E 1-G of these regulations.*

Attn. Durbin stated that this clearly states the difference between residential and commercial expansion of use. He referred the board back to section 3.8 E(2):

- 2. **Assessment of existing septic systems.**
Use capacity of existing septic system shall be based on:
 - a. *Current wastewater flows*
 - 1) *residential - number of bedrooms at a rate of 150 gallons per day per bedroom.*
 - 2) *commercial/industrial - gallons/day wastewater flow volumes as defined by Ws 1007.02 of the State's Sewage System Design Rules.*

The zoning is not well drafted but in 3.8 B (5):

- **5. Expansion of use** - is defined as an increased flow of wastewater into a septic system created by:
 an increased number of bedrooms in a dwelling unit
 an increase in the number of employees in a commercial use

an increase in floor area or increased number of seats in public assembly buildings any other physical changes in any building resulting in increased wastewater flows.

The town is relying on the section that states “*any other physical changes in any building resulting in increased waste water flows*”. Attn. Durbin believes that this is put into the context of a commercial or public use facility which is completely different from what is applied to residential buildings. It is also stated at the DES (Department of Environmental Services) if you increase the number of bedrooms in a house not bathrooms you are required to seek approval from the state. His interpretation of the zoning ordinance is that this is not an increased use or alteration of the septic system. Attn. Durbin expressed that there was verbal permission from the then building inspector Bill Grant and there was a letter confirming the agreement of the bathroom being installed in the garage. He expressed that the town’s records on this property appeared to be insufficient for the board to be able to see exactly what was exchanged between the two. The exchanges between Mr. Grant and Mr. David were that Mr. Grant didn’t believe that it was an expansion of use, due to the reduction of bedrooms in the main dwelling. The property tax card shows that the main dwelling is a two bedroom dwelling unit. Two issues are the reading of the zoning ordinance, and that the selectmen don’t have anything to stand on in saying that there was an expansion of use. Mr. Grant according to Mr. David, granted the permission and they believe that they have to enact the Municipal Estoppel at this point because there was verbal permission from a town municipal official. Municipal Estoppel is:

A legal doctrine employed by courts to assure that citizens are treated fairly in their dealings with municipalities. If a person proves that a matter was taken up with the municipality:

- 1. through an elected official or a municipal employee with actual authority to represent the municipality on the matter;***
- 2. who either withholds important facts or makes a statement to a person which proves to be false, with the intention that the person rely upon the information provided; and***
- 3. the person is ignorant of the truth, reasonably relies upon the information, and suffers damage as a result of the reliance, the courts will not allow the municipality to act in a manner contrary to that representation. That is, the municipality will be “estopped” or “prevented” from taking action to reach some other result with the person. Thomas v. Hooksett, 153 N.H. 717 (2006).***

Elliot asked for each attorney to define alteration as it related to the state or local zoning for this subject.

Attn. Durbin expressed that it is not defined in Kensington’s ordinance and it is not defined through the state specifically and said that it would be up for each person’s interpretation of the word. Mr. David commented that anyone remodeling a bathroom, if the zoning was taken literally would have to go through the whole process, because it is an alteration of sorts.

Michael asked Mr. David what he had to do to get the affluent to the septic system. Mr. David responded:

- that there was a trench dug from the main structure to the garage
- pump installed into the foundation of the garage
- pipe was run from the garage to the house
- it was inspected by Mr. Grant and filled in

Rich asked if there was proof of the inspection and Mr. David explained that there is nothing on paper that has to be done for inspection of that, the town does not require that. He also asked Mr. David how many feet of pipe was installed. Mr. David explained that there was 100 feet of pipe installed. Mr. David had asked Mr. Grant the question and was told that there is no issue with the connection. Rich recalled that Mr. David had stated earlier that he is a builder. Rich questioned if he feels that adding that amount of pipe is an alteration? Mr. David expressed that he didn’t say that.

Attn. Durbin reiterated that when we are talking about an alteration in this context, it is for use capacity. He thinks that is clear in the zoning.

Michael expressed that 450 gallons is for 3 bedrooms, is that correct? Attn. Durbin expressed that they have a 3 bedroom approval for 450 gallon septic. Mr. David expressed that he remodeled the entire home and took all of the original pipes out of the dwelling and that was not considered an alteration to the main house. Michael considers that a plumbing issue, not septic.

Elliot asked what the town attorney thought of the word alteration.

Attn. Pasay thanked the board for the time to speak. He continued with:

- asking the board to look at the intentionality of the zoning ordinance, and that when it was drafted it was broken it out into three categories:
 - new septic design
 - expansion of use of an existing system
 - alteration

He does not agree with Attn. Durbin that an alteration is tied to the increase in waste water. The only place that would occur would be in the definition for expansion of use. Alteration is not defined in the zoning ordinance and plain language meaning of the word should be applied. What Mr. David did in 2012 was a replace “in kind” and would not require permits. Attn. Pasay expressed that there is a public health issue, because you can’t just have anyone installing pipes, grinders, a forced main, or pumping affluent uphill without some kind of oversight from the town, from a health perspective. His interpretation of alteration is a change to this extent (adding 100ft of pipe; adding 2 sinks; toilet; shower; washer) would be described under the zoning ordinance which requires approval from the town. The town is not arguing that it would not pass the inspection; they just want him to follow the same procedure as anyone else in the town, such as submitting a septic plan, and having it reviewed and approved. He believes that Mr. David does not meet the sole exception which is a replacement “in kind”.

Attn. Pasay responded to the mention of Municipal Estoppel, he included that it involves a detriment to the individual. Mr. David is arguing that he is not required to submit anything to the town, the only thing that the town has is an unsigned letter from Mr. David in May of 2013. This was 2 months after the building permit for an unfinished garage was submitted. There is no record from Mr. Grant that this was ever approved; there is no amended building permit, additional fees, amended electrical permit, or occupancy permit. With regards to the focus of the town they originally sited the portion of the zoning that they are now dealing with. As stated in Chapter V Article 3.8 C (1), anyone expanding the use shall submit a plan to the Board of Health. In regards to why it was issued, it was based on the meeting that Mr. David attended with the Board of Selectmen where he told them it was not an unfinished space it had been finished, and could be or was being used for residential purposes and it had a kitchen. Based on those things the Board of Selectmen issued the Cease and Desist. He pointed out Attn. Durbin's focus on the number of bedrooms and the 150 gallon a day per bedroom theory, and informed the board that it is used to help the board in assessing the septic once the approval has been sought. Mr. David is saying that he does not even have to submit a request for approval. The only definition of the word alteration is a change. It is the town's perspective that he needs to go through the process and submit for approval just like anyone else. Elliot asked for rebuttal.

Attn. Durbin expressed that an Alteration is an open ended never ending definition. He believes that the state never intended for the municipalities to have that kind of power. The state was very definite in stating the number of bedrooms. They may have a void for vagueness issue under the zoning ordinance and is that constitutional and he is asserting that, based on what has been presented tonight. If they do accept the town's definition of alteration they would argue that:

- there were conversations with the then building inspector Grant
- Mr. David reduced the number of bedrooms in the main structure

No one is sure of what the case was then, Mr. Grant must have felt that reducing the bedrooms was sufficient. It is clear when you look through the records that Mr. David was not sure of any town process. In regards to the Municipal Estoppel it has been to Mr. David's detriment due to the time and effort he has had to spend, in some degree on principal, fighting this. It has cost him significantly and the Cease and Desist does exist and the violations are there, the penalties are real. Mr. David acted on the representations of then building inspector Grant, moved forward with the project, based on it not being an expansion of use. He is now here and saying that it was not to Mr. David's detriment, that would be tough to prove.

Elliot is the town saying that there is no proof, and that there was a verbal approval.

Attn. Pasay answered that the only thing that the town has is the letter from Mr. David, there is nothing in Mr. Grants records of the issue or conversations had. Mr. David is memorializing conversation that he and Mr. Grant had. Mr. David explained that Mr. Grant came out and instructed him to put something in writing and that is what he had done, he printed off two copies and kept the unsigned one and gave the signed one to Mr. Grant. Elliot asked if that is standard practice between the inspector and the homeowner, asking them to write back to him. Was that the standard procedure at that point in time, or is every inspection or discussion put into the record somewhere. Lynne explained that she worked with Bill, and he would not have had the authority to approve it. It would have had to go back to the Selectmen for them to change it from an unfinished garage to a finished garage. Mr. Grant never said anything to her about this change. She explained that Mr. David would have had a yellow card that they are supposed to post. This would have had dates and each inspection would have been signed off on, and she would have had a copy, but there is nothing in the files. Elliot stated that this is not on the dwelling. Is there anything mentioned on the septic. The board reviewed the letter. Janet asked if Mr. Grant is available, and was told that he is deceased. Elliot asked if the added pipe was for the bathroom in the garage to pump up into the septic system. He asked if in town he would have to get a permit to add a bathroom. Mr. Sikorski answered yes. Elliot then asked if in that building permit if the applicant would have to talk about where the bathroom would be hooking up to and where the waste is going. Mr. Sikorski explained that if it was in the primary structure, there would probably not be a change to the septic system, but in this instance the building is a long way away from the primary structure. An introduction of a pump from that distance would change the formula of how the flow would go into that system. If it was his structure he would want to know the impact on the system and that it could handle it. Elliot is there something in the town ordinance, as far as permitting, that says that if I am adding to the dwelling, if you have an out building that says now I have to get a permit and show a plan of how that is going to get into the system, because I am hooking up into the main pipe. Mr. Sikorski said you have to go a step further and see where that structure is on the site and how that bathroom is added to it, and how the outflow of that bathroom will reach the septic. When he spoke with other people on this they stated that once you introduce a pump system into the septic system, the current operation of the current system is looked at more closely. It would be evaluated as to whether it can handle the introduction of the force of the pump system into it. That would require at that point a review of the existing septic system. Elliot asked if that is a requirement in the zoning ordinance. Attn Pasay interjected that is what they are talking about. If you look into 3.8 C (4) it is not perfectly worded, but that is what the town is talking about: 4. *Applicants for expansion or alterations of existing systems or for assessments of existing systems shall submit single copies at a reasonable scale. No expansion or alteration shall commence until plans have been approved.*

The only exception to the above shall be systems which are repaired or replaced "in kind" which shall be allowed to commence without submission of plans or approval. In kind repairs or replacements shall be limited to the strict definitions contained in Part Ws 1002.01 (d) (1)-(9) of the State of N.H. Subdivision and Individual Sewage System Design Rules, chapter Ws 1000.

That is how it relates to the requirement to submit something to the town, to construct a new septic system or expand an existing one or to alter it. Elliot expressed that an application for expansion or alteration doesn't necessarily talk to the increase in capacity. Attn.

Pasay explained that the definition of expansion of use is what defines the increase in water, which would be B(5). Elliot asked if he was to put a riser on the septic that would be an alteration, because it is physically nailed into the septic system. Mr. Sikorski stated that was outside of the topic because you are not altering the inflow or the change of the way the sewage that comes into that system is handled. All that does is make it easier to access the cap; it is not a change to the system. Elliot stressed that an alteration could be anything. Attn. Pasay stated that in this case it is for an unfinished garage. In due course there is an application for a building permit, the building or code enforcement officer looks and says okay does this comply with the zoning ordinance. In this case there is a garage that was permitted to be built, but two years later it is a finished space. He sees the board's frustration, because procedurally how does this work, usually it is a conversation with the building inspector on what is approved. At that point it is just a conversation. Elliot is having trouble with the word alteration, and everyone is referring to 3.8 B (5), which is poorly written and a run on sentence. His interpretation on that section would be that they are referring to a public building, because of the run on sentence. His concern is reading more into something than what is actually there; he would like to determine what is overreach and what is not. Mr. Sikorski gave a parallel. At 61 Amesbury Road and the homeowner decided that the room wasn't big enough, so he had her pull another permit even though the first permit was not completed yet for the paper trail. The same issue would have happened here. The town computes the fees on finished and unfinished space, and certainly Mr. Grant given that decision would have gone back to the selectmen and modified the fee structure. Michael asked if his question was answered on that point and Elliot accepted that his questions were answered on that point. Mr. David corrected by saying it is not finished space and unfinished space for the permit fee, the Town of Kensington figures it on living space and non-living space, and the board has already determined that it is not living space. So therefore he was not required to get another permit for finished space. Attn. Durbin expressed that this was a point that was hashed out before, but since two members were not present the last time he would explain. Board member Andreasse had said that this was the custom for dealing with Mr. Grant. This process was not abnormal. Janet asked for an example of a septic, because his example was confusing where it was not a septic. She asked where Mr. Sikorski has seen this issue with a separate structure in Kensington. She wanted to make clear that this was for a separate structure that had an alteration so that there could be water flow into a septic. Mr. Sikorski has not had any exposure to a property like that or to any building that has added more use to a septic system on a separate structure. She then asked if anyone in Kensington wanted to alter their garage or barn would they have the ability to do that, if they lessened the bedrooms in one structure and added to the other structure, could they use the same septic system. Mr. Sikorski said that would be a case by case basis, and would be a matter of reviewing their plan and seeing how they would introduce the out flow into that system. In most cases you would find that it would be prudent to review the system. Janet asked as far as permitting would they have to go to the town and ask to run a pipe to another structure on their land so that they could use the main septic system, in the barn or garage. Mr. Sikorski stated that pipe would be put in to introduce to the septic and that would be permitting. You would be installing something new and is not there now. If you added a sink or toilet would that be something that you would be permitting in Kensington. Elliot clarified if you would have to permit that pipe going to the septic system to take waste or water from the barn and add it to the existing septic system. Mr. Sikorski explained that would be part of the plan, and it would need to be permitted. Elliot as it relates to septic regulations not building permits. Michael interjected that would be the board's decision; they are here to interpret, because they were asked for a rehearing on this. What it came down to was whether or not the procedures were followed when the piping was added to the structure. There has been a lot of information given and the board has to find out if they say what happened was an expansion of use or an alteration, or does none of this apply. Therefore it was done correctly by Mr. Grant. Michael would like to close the conversation from the applicant and bring it back to the board and have them discuss the issues. Michael asked the board what their wishes were. Elliot asked if anyone had any other information. Attn. Pasay expressed his appreciation of the time. Attn. Durbin added one point that they did submit a licensed installer designer's evidence of what they felt was in compliance. They have not seen anything independent come from the town. Rich asked if Mr. David had a plumber do the work or did he do it himself. Mr. David responded that he had a licensed plumber do the work, but he didn't have to be licensed in NH, according to Mr. David. They did have a serious discussion on if the system could handle it as well. Michael asked if the board had any comments or thoughts. Janet expressed that there was information that they have now that they didn't have. But she is still not clear on the definition even after asking about it. She believes that it is up to their interpretation and she would like to hear what the other board members have to say. Rich had a conclusion after working with Bill as a prior Selectman. Each building permit he had filled out he got money from, so he would tend to think that he would have insisted on a permit for something that size. Most of his experience would have indicated that, but he was a very practical man. He is struggling because he can envision him saying that if the owner had taken out the two bedrooms that should be good enough. But he can also see him saying that he should have the permit to cover himself. That is all guess work and he believes for the town's sake we should have everyone follow town procedures. If you do a sizable alteration or change the size of the building you would need to follow procedures. Elliot, there is a lot of ambiguity here. He got two things from Rich's statement. That Mr. Grant was a practical guy so he could have just said that was not an issue. He can see that he might have said just send me something in writing. He does not see where Mr. David has been cited for dishonesty or bad feelings with the town. He is assuming that the letter was written in earnest to the town. He is looking towards septic systems as capacity and ability to leach out. As far as septic systems as far as capacity, if something is designed to leach out "x" amount of gallons and you exceed that you are going to strain the system. Whether it is a bathroom in a building or an out dwelling, that doesn't mean you would add

capacity. He doesn't see anything stating that Mr. David needs a permit for that pipe that touches the system. From the licensed installer's letter, he gets that it is all about the bedrooms not the bathrooms, as far as capacity and liability for that system to function properly whatever its lifespan. He did not find anything in the zoning book that defines it better than the licensed installers' explanation. He might have had a violation, but he does not see it in this case if he is looking at the septic system. He stated that it all comes down to the one pipe, and did Mr. David need a permit for it. Michael explained that he has been through the meetings that the board has had on this topic and what he sees is that the records don't exist. There are no inspection cards, and the other issue is Mr. Grant has since passed away, he can't tell the board what he did in the past. The town has made a point that under V 3.8 C(4) that there was an expansion or alteration. And that is what the board is trying to decide tonight. In the boards opinion from everything that they have heard

- Was there an expansion of use
- Or alteration, and how much constitutes an alteration.

Michael used his own home as an example for the board. He has a holding tank, and then there is a leach field outback. He has a system for 3 bedrooms and he has 3 bedrooms. He has added a bathroom, but that doesn't change the flow because there is still the same number of people living in the building. But if he was to put up a garage to put in a bathroom in the garage, he would have to go around the home and tie into the system. That is the crux of what he is calling an alteration to the system, it is when you start from the outside and bring something into the system. They are talking about one word in a poorly defined zoning ordinance. If they are talking about an alteration then they would need to overturn their original decision. If they can't agree that there was an alteration then the original decision stands. He asked if anyone wanted to make a motion.

Rich asked if there are any penalties that would be assessed to Mr. David. Michael expressed that would be up to the town in regards to how they would want to proceed, but they have shown in the past that they have put in a Cease and Desist to say he was in violation of the ordinance. They as the board had previously decided that there were not any violations of the ordinance and overruled the Board of Selectmen's decision. The Selectmen have appealed on one section of the Cease and Desist which is the Septic so therefore, the zoning board will have to rule whether there was a violation, in their opinion of that specific section regarding the septic system. Elliot looks to an alteration as something that would allow him to exceed the capacity of what the septic system is engineered for. Adding a bedroom or expanding the space in a public place where the alteration would cause and excess of the septic system. He feels that is the common sense way of looking at alteration, otherwise adding a riser to a septic system would be an alteration, even though it does not change how it is used in capacity. He cautioned the board on how they would look at the word. Rich explained that the cover of the system would not have a relation to the capacity of the system, however a pump could. He would like to see a licensed installer say it will increase it by 3lbs or not increase it at all, someone to say it is good or not. Janet is ready to make a motion.

Janet made a Motion that there is not a violation of Chapter V Article 3.8 of the septic regulation. Elliot seconded. Michael asked for discussion. Vote: For Janet, Elliot, Rich and Against Michael.

Michael explained that with that vote the rehearing was null and void.

Mr. David asked if there was a copy of the new ordinance and Kathy will let him know when the new book comes out.

Approval of
SEPTEMBER 2 AND 17, 2014
MEETING MINUTES; postponed until next meeting.

Next Meeting: to be determined

Motion to adjourn made by Janet at 8:55pm, seconded by Elliot, all in favor.

Respectfully Submitted,

Kathleen T Felch, Zoning Board Clerk

Disclaimer – these minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 91A:2, II. They will not be finalized until approved by majority vote of the Zoning Board of Adjustment.