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4 **Town of Amherst, NH**  
5 **BOARD OF HEALTH MEETING MINUTES**  
6 **Barbara Landry Meeting Room**  
7 **2 Main Street**  
8 **Monday, March 10, 2014 at 7:00 PM**  
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11 **Call to Order 6:30 PM:** Chairman of the Board of Health, Katherine Lockwood called the meeting to  
12 order at 6:55 pm. Attendees: Chairman, Katherine Lockwood; Selectmen Dwight Brew, Brad  
13 Galinson, Mike Akillian, and Tom Grella. Also present: Town Administrator, Jim O'Mara and  
14 Executive Assistant, Torrey Demanche taking minutes.  
15

16 **Agenda:** Waiver request for the property located at 123 Amherst Rd.  
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18 Chairman Lockwood explained that the Town of Amherst has a building permit requirement that  
19 includes having a septic design on file before a permit is issued. The town generally approves the  
20 septic designs in a couple of days and then sends them to the State. The turnaround time is usually less  
21 than a few weeks. The applicant is asking for a waiver to obtain a building permit prior to submitting  
22 the septic design. The reason for the request is that the contractor hired to begin working on the  
23 property states that it will take four to six weeks to complete the septic design process.  
24

25 Chairman Lockwood stated that Deputy Health Officer Rick Keys outlined in his letter that granting a  
26 waiver should only be considered if there is significant hardship or there are unusual circumstances to  
27 prevent an applicant from meeting a requirements. It is the opinion of the Department of Health that  
28 this request does not meet the specifications for granting a waiver. Had the septic design process  
29 begun when the permit was applied for, the septic design work would have been close to completion  
30 by now. In addition, should the town begin allowing waivers by citizens with the reasoning that they  
31 just want to begin doing work now, opens the door for others wanting to begin projects without  
32 meeting requirements. Further, although not a Board of Health issue, it opens up the problem of not  
33 putting things in order. The town ran into issues in the past where the proper order of paperwork was  
34 not followed. An example is on Austin Road, where after the building was built it was found to be too  
35 close to the setback requirements; they then came in and asked for a waiver of the requirements. If you  
36 allow for waivers on requirements, it is very difficult after the building is built to come back and  
37 enforce requirements that could have been caught before construction was completed. The thought is  
38 that ACS New England needs to get the septic design into the town as soon as possible. If they had  
39 submitted it back on February 13<sup>th</sup>, even if it takes four weeks it, should be to the town this week and  
40 the town will do a quick couple-day turnaround and it shouldn't delay them more than about two  
41 weeks. Considering that it is continuing to snow and given the current weather, a two week delay is  
42 not enough to present a significant hardship.  
43

44 John Marino from ACS New England came forward. He is the property owner and the owner of the  
45 company presenting the request. He clarified the differences between this property and the one stated  
46 earlier. Austin Road was a new construction, where the property at 123 Amherst Street is a rebuild of

47 an existing structure that was destroyed by fire. They were unable to begin the septic design portion  
48 prior to owning the property. The Building Inspector would not allow them to begin the process, no  
49 matter how much they tried. They were forced to wait until now to start the process because the deed  
50 needed to be in their name. It is costing the company thousands of dollars a month while the property  
51 sits dormant waiting for the septic design to be completed. He has done septic designs for a number of  
52 years and it always takes four to eight weeks to get the designs completed by the State because they  
53 are busy. There are not asking for a waiver from the Town of Amherst for the requirement, they are  
54 asking to be allowed to begin the construction portion of rebuilding the structure while the septic  
55 designs are being completed. The Town of Amherst has an unusual requirement of submitting the  
56 septic design before the building permit can be issued. They are requesting that the town allow them to  
57 begin the building portion and hold up the Certificate of Occupancy, should the design portion not be  
58 completed by the end of construction. They are not asking for permission not to complete the septic  
59 design. They have hired a contractor to complete the design work and submitted a copy of the invoice  
60 proving they have hired someone to do the septic design. For them to wait another four weeks after  
61 they have already waited a few is costing them too much money. They are asking for a little leniency  
62 and do not believe that this waiver would be setting a precedence. They will not be able to get a final  
63 Certificate of Occupancy on the property; therefore, they cannot market the property for sale. They  
64 cannot sell without submitting a septic design. They want to get the construction part started while the  
65 septic design is in process. This will help them get the property started and it will get the property back  
66 on the tax roll for the Town of Amherst where they can reassess the property at a higher value.

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68 Chairman Lockwood asked about the hired septic design company.

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70 Mr. Marino confirmed that they hired a company called Drain Pro out of Milford and offered a copy  
71 of the invoice for the Board's consideration. At one point ACS New England had considered making  
72 the property a four bedroom versus the original design of a three bedroom. They understood on  
73 February 13, 2014, that they would have to submit a septic design. It was their belief that the septic  
74 design was necessary because of the property change and when they changed the building design back  
75 to a three bedroom they thought the septic design was no longer necessary. It wasn't until when they  
76 were applying for the building permit that it came to their attention that the septic design would be  
77 required. In most towns the septic design is not required until you apply for the occupancy, which is  
78 what they expected when they applied for the permits. They are doing the exact same requirement for  
79 another town and they do not require it until the end. The sequence of submitting the septic design is  
80 not normal and was not something they were expecting this early in the building permit process. They  
81 have never come across another community that says you can't even start the process without the  
82 septic design on file.

83  
84 Chairman Lockwood stated that the rule of having the septic design at the time of applying for the  
85 building permit is the same rule as about fifty communities in the State of New Hampshire. It may not  
86 be the ones you have dealt with in the past, but it is not unusual. This is one of the reasons that  
87 Amherst is sitting on the cleanest and largest aquifers in the southern tier of the State of New  
88 Hampshire. We do have more stringent requirements and many people in Amherst derive their  
89 drinking water from the aquifer it is very important to protect the aquifer. The town's rules are not in  
90 place to make it more difficult for citizens; our rules are in place to protect our environment.

91  
92 Mr. Marino stated they agree with it and do understand it. As soon as they were made aware of it they  
93 began the process. They are not trying to get around it. They are trying to preserve their profit by  
94 turning the house around and working on it now instead of allowing it to stay dormant for the next  
95 couple of weeks.

96

97 Chairman Lockwood stated that they do understand their concerns. The town does not normally issue  
98 waivers for these requirements and the reason is because it opens up other issues. It is true that they do  
99 not need to issue a Certificate of Occupancy until the town confirms everything is complete; however,  
100 if something is not completed properly after the fact, then it makes it easier for the applicant to come  
101 back to the town to say but now I do really have a hardship.

102  
103 Mr. Marino added that they are not changing the footprint of the house, the layout is not changing, and  
104 they are not changing the bedrooms. The house has already existed for a number of years and the only  
105 reason why they are here is because the septic design was never put on file for the original structure.  
106 The septic is and has been in place for a number of years. The house has been in existence since 1950.

107  
108 Chairman Lockwood stated that the town has issued building permits to a number of contractors that  
109 did comply with the septic design process in the past. It is not fair to those citizens who did comply  
110 with that requirement in order to receive their building permits. Chairman Lockwood stated she does  
111 not believe that even just a few week delay is too much to ask, in order to comply with the  
112 requirement of the septic design as requested.

113  
114 Mr. Marino stated they could have started the process earlier. They had met with the Historic  
115 Commission and had the septic design been brought to their attention earlier, they would have been  
116 before the Board of Health earlier or started the design earlier.

117  
118 Chairman Lockwood cannot speak to the process described, but does know that the Building Inspector  
119 is recommending against the waiver and the Board of Health is also going to recommend against  
120 granting a waiver. This will set precedence by the Board of Health to be granting waivers and the town  
121 wants to keep the processes consistent for all who apply for building permits. Then for those who did  
122 comply with the requirement, they can now come forward and with complaints of why were they  
123 required to wait for the septic design before they started construction. Those citizens/contractors  
124 would then be looking for compensation for the money they lost by waiting. If there were unusual  
125 circumstances with the request, the town may have been able to consider those, but there are no  
126 unusual circumstances behind this request. The waiver should not be granted outside the requirements  
127 that everyone else can and does comply with.

128  
129 Discussion:

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131 Selectman Galinson stated that he is sympathetic to the request. He understands the need to get the  
132 project completed quickly, and appreciates the ability to get the property back on the tax rolls;  
133 however, a request for a waiver has to have extreme circumstances in order for the Board to go against  
134 town laws. It is not the job of the Board of Health or the Board of Selectmen to interpret the laws and  
135 a request must be truly exceptional in order to rise to the level for him to consider granting a waiver  
136 request. This request does not rise to that level. In addition, the Building Inspector had significant  
137 concerns and the combination of the two is what is leading him to not support the request.

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139 Selectman Grella confirmed with Mr. Marino that the property gets its water from a well. It is his  
140 opinion that the septic design be completed before the building permit is issued for the safety of the  
141 water in the well. The septic design should be done completely because if it is found that the current  
142 septic is not in an appropriate location it will cost even more money to have that issue corrected. When  
143 the house was built in the 1950's there were no requirements with regard to septic systems designs and  
144 we do not know if that septic system meets the requirements in place today.

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146 Selectman Galinson motioned that the Board of Health deny the septic design waiver request for the  
147 property of 123 Amherst Street. Seconded by Selectman Brew. Vote 5-0  
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149 Selectman Galinson motioned to adjourn the Board of Health meeting at 7:15. Seconded by Selectman  
150 Brew. Vote 5-0