

**TOWN OF CHARLESTOWN ZONING BOARD OF REVIEW  
4540 SOUTH COUNTY TRAIL, CHARLESTOWN, RHODE ISLAND  
Held an  
OPEN MEETING & PUBLIC HEARING AGENDA  
FEBRUARY 20, 2018 at 7:00PM**

**Call to Order: The meeting was called to order at 7:05PM**

**Pledge of Allegiance**

**Roll Call: Present: Mr. Chambers, Mr. Lovoy, Mr. Quadrato, Ms. Quinn,  
Ms. Stolle, Mr. Vanover,**

**Ms. Wibeto, Mr. Dreczko**

**Also Present: Ms. Murray, Zoning Officer, Mr. Brochu, Solicitor, Ms.  
Dion, Stenographer,**

**Ms. Goff, Clerk and Ms. Tracy, Clerk**

**Pre-Roll: March 20, 2018: All those present this evening will be in  
attendance at the March 20, 2018 meeting**

**Approval of Minutes: January 16, 2018: A motion was made by Mr.  
Quadrato, seconded by Ms. Stolle to approve the January 16, 2018  
meeting minutes as submitted. Vote was unanimous.**

**PUBLIC HEARINGS:**

## **#1436 Michael & Theresa Breaux**

**Requesting a Dimensional Variance in accordance with Article VII, Section 218-41 Dimensional Table to replace the existing structure with a new single family dwelling closer to the front yard setback than allowed; 30' permitted; 15' proposed, and closer to the rear yard setback than allowed; 38' permitted; 35' proposed. Premises is located at 40 East Burdick Street and is further designated as Lot 236 on Assessor's Map 9.**

**Mr. Donald Packer, Esquire, representing applicants Mr. Michael Breaux & Ms. Theresa Breaux this evening. He was unable to attend December 12, 2017 meeting. He understands it was continued so revised plans could be submitted. Revised plans have been submitted. Relief requested was 15 feet from front, that has been modified, in revised plans, house has been moved back, front allowed is 30 feet, house was at 15 feet, presently sits at 26 feet. Variance is decreased as requested initially in the application, a revised second sheet of application was submitted as well, which has the modified setbacks. Changes that were made in order to increase the setbacks were an entry way and a deck and a porch off the rear which was removed, a set of stairs on the front which was removed, both moved to the side of the house. Both entrances from the front and the rear are built into the deck going up to the side of the house so that reduced generally the width of the house, which basically were access ways. The house was pushed back. The house is further back,**

actually the original proposal the house was consistent, the setback of 15' was really consistent or actually less than the two abutting houses. And it was also less than the existing home which is on the lot right now which is proposed to be torn down. With revised plan the house now sits 26 feet off of the road which is significantly further back than the two abutting properties and the rest of that neighborhood. And significantly further back than the existing home. So I hope you have had the opportunity to review the revised plans that you have requested to be submitted and if I or Michael can answer any questions relative to the revised proposal and I hope it address your concerns from the December meeting.

Mr. Dreczko asks if there are any questions from the Zoning Board to the Applicant.

Mr. Quadrato asks why Applicant could not release the depth further and still expand out on the left, still at 39 feet.

Mr. Michael Breaux is re-sworn in. A couple of things that we had looked at, like a raised ranch or a colonial, In the 27-28 foot depth we'd have to go up 5 and half feet above grade. So everything we saw the entrances between the stairs and the landings, regardless of that was still going to put us over the front and rear set-backs slightly. So what I looked at doing, the house we have has a porch in the front so we could access it from the end and walk along the front, so we moved stairs over, moved the house back into the area, the house

itself, the first floor, the kitchen and bathroom are actually behind the garage. So it's harder to make it much narrower and have usable space in there. Everything that we looked at, by the time we put a landing and a set of stairs to go up the 5 and a half feet and center of the house, was still going to encroach unless we went extremely narrow with the house and that doesn't really work.

Mr. Quadrato: if you went with a 32 foot width house and 5 feet for your stairs, it would put you at 37 still instead of 39.

Mr. Breaux; would still have to have entrance in the front and the back. I'm only looking for 4 feet in the front and 3 feet in the back total. Like I said the existing house is only about 7 feet from the front property line, maybe 8. I realize that looking for 15 feet last time was substantial, so I just tried to bring us back as far as humanly possible with the existing house. And we also know that all the neighboring homes are much closer to the road than we're going to be. So we are just trying to work within the limits.

Mr. Dresczko asks if there are any more questions for the applicant.

For the record; anyone in favor of the application – there were none

Anyone present opposed to the application – there were none

Any correspondence received – there was none

Discussion: Ms. Stolle; I'd like to commend the applicant for reducing

**the relief requested, I think they made a very good effort to move the house back, and they may be limited in the back, but 4 feet in the front and 3 feet in back I think is least relief. Mr. Dreczko; I agree the 33 feet opposed to 32, I think you have to keep in mind that the garage is the bump to the right side of the home, so they'll end up with an 'L' shaped configuration, based on the reduction from requesting 15 feet down to 4 feet is quite a difference.**

**Mr. Dreczko; if there is no further discussion, do I hear a motion?**

**A motion was made by Ms. Stolle to approve application #1436 with the changes that have been made, Seconded by Mr. Dreczko.**

**Ms. Stolle; I think I stated my views on the matter. I think they've gone the extra mile to try to answer our concerns from the previous hearing; and they've put the deck over on the side and redesigned the front entry; I think they've made every effort to comply with our requests; so for those reasons I vote to approve.**

**Mr. Dreczko; I also vote to approve file #1436 as amended for the reasons stated by Ms. Stolle.**

**Mr. Chambers; I vote to approve #1436 for the reasons Ms. Stolle gave.**

**Mr. Quadrato; I also vote to approve file #1436 for the reasons stated.**

**Mr. Vanover; I also approve file #1436; I think Ms. Stolle has presented what I believe too, so thank you.**

**Mr. Dreczko; with a vote of 5 to zero in favor the application it's unanimously passed, thank you.**

**Member Vote**

**Ms. Stolle Approve**

**Mr. Dreczko Approve**

**Mr. Chambers Approve**

**Ms. Quadrato Approve**

**Mr. Vanover Approve**

**Based on a vote of 5 – 0 in favor application #1436 was unanimously approved.**

**Petition #1398 Art Frattini for Pear/Nike, LLC**

**Requesting a Special Use Permit in accordance with Article XIII,**

**Section 218-78 A (4) installation of an**

**Onsite Wastewater Treatment System (OWTS) in a Flood Zone.**

**Premises is located on Third Street**

**further designated as Lot 294 on Assessor's Map 9. This petition**

was remanded from the Washington County Superior Court for written findings of fact and conclusions of law.

Mr. Dreczko; with respect to this application, with no one present to discuss the matter with, discussion amongst Board members with respect to coming up with a decision based on the parameters that the court has set forth. Are there any questions with regards to that? Any further discussion needed on the matter?

Mr. Quadrato; well, I'd like to review some of the reasons that I find that the motion should be rejected.

Mr. Dreczko; it's been remanded so the motion hasn't been entertained at this time.

Mr. Quadrato; first off there's quite a number of discrepancies with the and the verbal testimony of the application which to me raises some credibility issues. The written testimony stated that a well would be constructed with a steel liner and likely down 300'. And then it came to light that it was going to be a 20 foot well with a 2 inch PVC pipe. The second thing we were told that he had tested for potability, which came out that he tested 3 parameters out of 16 required. We were also told that he had permission to cross the street, and we learned that that was from no longer a member of the board, a letter from 2010. And a current association member did testify that he had

no approval to cross the road. And in the applicants own words, DEM would not approve a system for this property on Third Avenue on more than one occasion. There are not one, not two, but three wells that are within the 100 foot radius required and contrary to what the applicant's engineer stated I don't see these required setbacks as an arbitrary number. The OWTS is also less than 100 feet from the pond where 200 is required and the lot has a 24 inch water table. And I feel for these reasons it would pose a threat to the drinking water, especially the three wells that are within the 100 foot radius and sewage in water disposal and surface water drainage would not be handled onsite, for those reasons. So then the applicant went ahead and went to 54 Shore Drive, which he even had listed incorrectly as being in South Kingstown. This property is a quarter of a mile away, and irregardless of what's done there it still doesn't change the facts on Third Avenue, the facts of the three wells, the distance to the pond and the fact that DEM would not approve this application based on what was given at that location alone and this application is for Third Avenue it's not for both properties. So I really think as a Zoning Board we need to reject this application and protect the public convenience, welfare and safety of the people that live on Third Avenue.

Mr Chambers; let me just throw in my thought. We had an expert on wastewater from the Town testify and gave us certain conditions under which this application would work. If those conditions were to be met and I believe the applicant agreed to every one of those



conditions, then I don't see a reason to reject the request.

Mr. Dreczko; I would add you're certainly entitled to a personal opinion but the standard that we go with of 100' from well to septic, I don't know that I would use the word arbitrary. I can respect that comment but 80' is the State standard and has been applied on numerous applications. While I don't know nor am I going to state to believe that I can get in the minds of DEM, I think that it's, I would caution against stating that they would not grant an OWTS on this property on its' own I think what they're choosing to do and I would like to believe this is the case and the rationale behind it, they're trying to force, probably an old pain that they are trying to take care of which would definitely reduce the nitrates of whatever outdated system is on that property, a quarter of a mile away, to help benefit the pond and the surrounding area as well. If DEM was concerned that a system absolutely, positively could not be put on this property there would be nothing else on the table they would never grant it regardless. So I don't think it's that they're doing one for the other, I think that they have the opportunity they have the applicant held hostage, if you will, to get what they probably wanted for a period of time and this is their way of forcing his hand but those are just my two points on what you've stated I still stand by the original decision that I read on to the record.

Mr. Dreczko; while Mr. Vanover is thinking I have a question of council. Mr. Brochu with regards to the potential need for some time

to think I thought there was going to be representation this evening, where if any of the members felt that they needed more time, they could pose that question, and get approval if you will. Most importantly I would like to of been able to pose a question of tabling it to next month's meeting as opposed to having a special meeting to meet the 60 day requirement. That said and while I can certainly simplify what we're tasked to do here this evening, if there was some concern, is there any reason why we couldn't continue this matter?

Mr. Brochu; What I would recommend, Mr. Chairman, is that you continue the matter and I could, A. contact Attorney Kenyon, he was going to have someone from his office here tonight, I don't know why the applicant's Attorney is not here. I know Mr. Kenyon personally was at a matter in Narragansett tonight, but he was going to have another associate of his firm here tonight. And secondly, we could request the court for additional time for the Board to address the remand order and that request could be made to Justice Lanphier.

Mr. Dreczko; with that knowledge, are all of the members satisfied that they could render a decision this evening? Or would they like to have time to consider the matter further?

Mr. Vanover; I want more time to consider the matter. I just need a week if you wanted to meet before the deadline with time to finish the document. I would be willing to do that. I just have to take what I heard before and I have to read again what I have to say back then and come up with my own findings of facts which will be rolled into

**one common findings of fact from the Board. Would there be enough time? Mr. Brochu?**

**Mr. Brouchu; We could attempt to contact the court this week, and see if, informally, Attorney Kenyon or I could get an answer on that. And again, the reason I would present to the court is that the Board wants more time to consider the remand to issue its' decision. And again, I think as long as that request is reasonable, we can present that to the court.**

**Mr. Vanover; Is there enough time to do it as I suggested, not ask the court? So today is the 20th , we have until, is that March 12th? So we have 3 weeks. We could have a short special meeting. Do we have enough time to announce it?**

**Ms. Quinn; I propose continuing the meeting to allow for discussion.**

**Mr. Dreczko; Well, yes, the meeting is not closed at this time. We are still in discussion in regards to the matter. I can't answer for Mr. Vanover, but if I heard everthing correctly the Board in general is asking to take the time this evening to afford the time to read the decision and make any amendments or potentially write up a decision in lieu of Mr. Quadrato, that the Board could agree upon as opposed to another evening.**

**Mr. Brochu; We could continue this matter to a date certain, for**

**example, whether that was next week or the following week.**

**Ms. Stolle; An issue Mr. Dreczko raised that there's no representation here tonight by either the Attorney or the applicant. I don't know if that's something we should take into consideration when scheduling an additional meeting.**

**Mr. Brochu; I did speak to Attorney Kenyon yesterday, there was not planning to be any testimony, argument, of the inquiry given, it was solely on the remand order to address the court's comments on the prior decision. But obviously I can't comment as his availability, as his scheduling or anything like that.**

**Mr. Dreczko; And I would just like to reiterate a couple of facts on the matter. Counsel had stated that this has him baffled as to why this is back before us; and with respect to the judge's decision to hear one voice that has been unanimously agreed upon, I personally am not sure if you are satisfied with your facts and statements last time. Why we couldn't take a consensus, pull out the pertinent information and vote on it again. I don't know what we're going back to revisit. I am definitely open to it, but I just don't understand it.**

**Mr. Vanover; well if you want to work on it now because we're here that's fine, but I would like some help in rewriting this. Because there are, I've put my beliefs, some of this is my opinion.**

**Mr. Dreczko; Well, if I may, with respect to what Mr. Quadrato put out, are there any comments in here that you would retract from the decision? Starting with Mr. Quadrato's. So from that if we go to the decision, are there any statements made by Ms. Stolle that you would like to add to Mr. Quadrato's comments? If you want to take a moment to read that.**

**Mr. Quadrato; I think Ms. Stolle, I think I've covered most of what you said don't you think? Do you have anything you would like to add?**

**Ms. Stolle; I don't want to add anything. As I had written and stated it would've been nice to hear from DEM if this would've been approved without the conditions on 54 Shore Drive. I was never convinced that this particular lot would've been approved for a system had not the other been added to it as a condition and that was why I said I was uncomfortable about the whole application.**

**Ms. Quinn; I believe they did say they would not have approved it without, because it's not approved unless it's concurrent with the one on the other road.**

**Ms. Stolle: 54 Shore Drive, that's exactly it. So if you took that out of the mix.**

**Ms. Quinn; It isn't out of the mix, it's part of the mix.**

**Mr. Quadrato; I have that in there and once again it was in the words of the applicant himself, that he admitted that he went to DEM on more than one occasion and never got approval. And also, in line with that, I don't understand, how, why, DEM had this particular property in mind, a quarter of a mile away. Unless it's just a general policy, but I don't know, it's one I'm not favorable about. I mean, I think things need to stand on their own myself. And from what I've seen and heard it's not standing on its own. And I also have huge credibility issues with this applicant. And one other issue as long as we're talking about it, talking about credibility issues, all of his documentation and all of his talking and computations were all with Hydrokinetic model 600 FEU at both locations. Everything revolved around that but yet in the last meeting Mr. Dreczko asked a system that Mr. Frattini would be placing and the type of system is proposed. And Mr. Frattini replied, 'they haven't done the engineering on that yet' and 'are hoping to use the existing drain field if it passes a float test.' I'm confused. I thought this was a horrible system and he had it all engineered to make these comparisons and all. And then his engineer went on to say that he would probably go with the Advantecx textile filter. And I'm not sure, is that the same system as the Hydrokinetic? Or is that something different? I mean we just hear different things at different times. I can't depend on anything he tells me. Do you know that? Can someone tell me that? Is it an Advantex textile, is that a Hydrokinetic model 600?**

**Mr. Dreczko; I personally cannot tell you.**

**Mr. Quadrato; You can't tell me? And he did all of these comparisons and now he's saying here that he hasn't done the engineering yet on that property. And this system is so terrible but he may be using the existing drain fields. I'm confused.**

**Mr. Dreczko; The only thing I can state with regards to that, like a lot of things with construction, excavation etc, you may go in with one set of ideas, plans, and they end up changing. The two things with that, I'm not going to claim this is anything one way or the other, I'm just going to tell you what my opinion is. When you refer to using the existing drain fields, the systems regardless of it being a conventional system or an advanced system, has some form of a leaching component, and if the leaching component was still usable with the actual tank, I think he was deferring to that. DEM could very easily say, no you've got to have the bottomless sand filter. And with that, regardless of all that and regardless of what my opinions are, it's one of those things that DEM, in my mind, has a game plan with those two properties and they're going to require a certain system to satisfy what they are looking for. And to your point, if they don't get what they want on Shore Drive then they are not going to approve Third Ave.**

**Ms. Stolle; I think the more we discuss it the more confusing most of us become, when you talk about existing drain fields, this has been considered an unbuildable lot for decades. So what existing drain**

**fields are we referring too? Oh the one on Shore Drive, I'm sorry.**

**Mr. Quadrato; But also he was talking about, I don't know I would have to go through the documentation, it was not a traditional drain field he was using. And I don't understand how he made all these computations showing how these two properties are going to produce less into the soil; and now he's saying that he hasn't even done the engineering on that second property. So how does he know how abrad that property actually is?**

**Mr. Dreczko; Again the advanced system still has filtration component a leaching component with it. And if I remember correctly while not conventional, as in it's not a 500, 1500, gallon concrete tank, I think it was something like a metal tank that is on Shore Drive, again going from memory, on that stand point it certainly isn't conventional or acceptable and probably more is reflective of a cesspool than anything. Which may prove to be one of the driving forces for DEM wanting that cleaned up. As far as, I don't even know if it would be less than, would also go in my mind as to what DEM is considering. If you pump 100% of effluent from Shore Drive into any area that is sensitive and you put in any of the advanced systems, again we are told, even by Mr. Dowling, at least 50 % reduction. So if both the proposed home and the existing homes are both 2 bedroom and you take 100% and drop it to 50 and put in a new system at 50 you're back at the 100%. It's not worse, it's equal to or less. Is my assumption.**



**Ms. Quinn; Actually that is what the expert said, it isn't your assumption.**

**Mr. Vanover; Mr. Brochu one of my major objections is what Mr. Quadrato said about the credibility of the applicant. I don't know what to believe anymore, I don't know what to believe from the applicant because he and I'm asking you to help me, how do we craft a statement about his credibility and make it fit one of the seven items?**

**Mr. Dreczko; May I? First, before I address that, I just want to get to your paragraph and find out what you would like to add if there wasn't anything and Ms. Stolle's. To go to your point though, how do you go about addressing that? I believe it's been addressed before and certainly would hold true, and if I'm mistaken, Mr. Brochu could correct me on this, I would take what Mr. Quadrato just stated, because those were facts that he pulled out of the record, contradictory terms and based on those contradictory terms, you don't know what to believe, that is a reason to deny the application. If the testimony you are handed is unreliable and/or contradictory or you can't feel comfortable with it. And that's something that should be spelled out that is concise, it's specific, it's what they are looking for.**

**Mr. Vanover; Well, let's do it.**

**Mr. Dreczko: Well, I would add whatever you would like to have word**

for word to, right now I'm just using the outline that Joe handed us, I would add that, ask Joe for his specific information if you don't have that, incorporate that into what you have for your paragraph, go through that, read it, pull out anything that wasn't covered here, include it. Then at that point, once you have inclusions from the three paragraphs, make sure that the three of you are in agreement on it.

Mr. Vanover; Okay, it's so complicated. Just the OWTS, the Advantex, the first systems DEM approved, what ten, fifteen years ago now. Since that time and I said that, it's part of my reasons to deny. They're finding that they don't work right. For those houses that are summer houses with Advantex systems, it takes them a while to get up to speed, six weeks. So in that time they're polluting. Now this is something that DEM didn't know when they approved them, but they know it now. So why can't we assume that we may see the same kinds of problems with this new system. It's not proven, and we have the facts to show that DEM can get it wrong.

Mr. Dreczko: I can't argue that point and you're absolutely right and I would include that, that's again another precise comment and observation that should be contained in your decision. When you're going back to the way it's presented, I'm going to respectfully disagree with the opinion that you go through and read standards A1-7 and apply it to the permit. Every piece of documentation that you will find regarding the Zoning Board with Variance and Special Use Permits tell you, do not read out of your booklets verbatim, because

they want meat and the meat is the things that you are talking about right now. You can apply that standard or your decision rather your specific examples to that criteria but you don't sit here and go alright the convenience and welfare won't be substantially served, it will not result in adverse impacts, etc etc etc. It won't serve the welfare substantially because, we found out that Advantex systems are lousy systems and who knows in the next five to ten years they may yank these things. Whatever you want to use as a conclusion that you want to use in conjunction with these standards.

Mr. Vanover; Can I go in the other room and start writing?

Mr. Dreczko; Would a five to ten minute recess work?

Mr. Vanover: Yes, but that's just for one issue.

Ms. Stolle; I personally would be willing to eliminate my entire paragraph, favoring what Joe Quadrato submitted tonight and adding Cliff Vanovers' comments about the lack of dependability of the system, the OWTS system, or whatever else he wants to include. I would be willing to have a more succinct statement, I think Joe Quadrato did a great job and he included much of my concerns. So if that helps at all, just throwing that out there. I'm still opposed to it being a quid pro quo, one for the other, but who knows what would've happened if just 54 Shore Drive was applied for with no connection to the one on Third Avenue, I guess it is, but that's not for us to decide

**tonight. DEM did allow the quid pro quo. So Cliff take your pen and go to it.**

**Mr. Dreczko; Before you put pen to paper can I, I'm on the fence about throwing this out there, but I feel the need. It has been brought to our attention before that there is a difference between downsizing and being able to utilize a piece of property, as opposed to making it unusable all together. I would be cautious to make sure that the findings of fact are substantial and would satisfy anyone looking at it and while you're sitting there considering quid pro quo, there are worse things to consider, which could be if this goes back and gets remanded, excuse me not remanded, overturned and it goes through now you have what exists, potentially, on Shore Drive, as well as an advanced system on Third Ave. I'm just throwing it out there for food for thought, I have no idea, and as it's been mentioned, I won't even go to different oversights, it could be on the way somebody woke up and on what side of the bed and get a different decision from the same individual. But it is something to consider as you're going through your decisions.**

**Mr. Quadrato; I'm confused as to what you're suggesting.**

**Mr. Dreczko; Bottom line, the air of what we are looking at, if all of us vote the way we most likely will vote it's a sound decision assuming all of the facts are in there and stated, but you also have to consider, there's little doubt in my mind that, if this is a denial that it will be**

**reviewed again and you don't know what that review is going to hold.**

**Ms. Quinn; The worst that can be is that it's overturned and approved and they get to build there, and the worst is that there's no change in the pond supposedly because of the two systems that will be installed.**

**Mr. Brochu; If I could comment Mr. Chairman, one distinction is that the current representation of the applicant is in agreement to that two page conditions document that they would need to meet which would run with the property as long as the Special Use Permit is in place. We don't have any control over the court if it sought to overturn a denial of the application would require those conditions from the Waste Water Management office.**

**Mr. Dreczko; Again, I'm throwing it out as food for thought, any time we render a decision unanimously or otherwise, our decisions are reviewable, go to the next level, and you end up with what you end up with. It doesn't force you to make a decision one way or the other because quite frankly I would like to think quite similar to the other matter that we were looking at it's very possible that if all the I's and T's are taken care of, it's up held and the Board did their job. And I shouldn't word it that way because I like the way that counsel worded it earlier, the Board can only push forward and give the best decision that it can based on the testimony that's given, but when it comes down to it, it comes to what you put on the record for a decision and**

**what it is that you base that decision on.**

**Mr. Dreczko; With that, Mr. Vanover you mentioned five or ten minutes might address one concern. How many concerns might you have, so that we know how to proceed.**

**Mr. Vanover; Well, I think my concern is this, what I said during the hearing. I see things that I could change it could take me a few minutes. Give me five minutes.**

**Mr. Dreczko; At this time we will take a five minute recess.**

**Mr. Dreczko; Back in session. Further discussion.**

**Mr. Vanover; I guess I'm going to be the one to read this entire statement.**

**Mr. Dreczko; Before we do that, we want to do the 'in favor' first, you'll second the motion and yes you want to read in your findings of fact. And whether you do it as a summation or during the decision, apply it to the standard as you go along would be most beneficial.**

**Mr. Vanover; I'm probably not the one to do that, I think Joe should do it, he started this. I don't see why I can't read my one paragraph. Is that possible Mr. Chairman?**

**Mr. Dreczko; Well as long as, I would suggest, as long as you have yours and Joanne's thoughts together as 'your decision' and then if you don't have any issue with anything cliff has in that paragraph regardless of who reads it I think you can just read from, say your decision, into the paragraph that Mr. Vanover gave. So if two of three members want to speak their piece, you suggest one speaks and then the other speaks and they're separate but together? Is there any further discussion before we make a motion?**

**A motion to approve application #1398 was made by Mr. Dreczko, seconded by Mr. Chambers, based on the following:**

**Mr. Dreczko; I make a motion to approve application #1398 that all the conditions that were discussed again this evening and outlined in Mr. Dowling's memorandum dated November 15, 2016 deed restrictions which were agreed upon by the applicant (a copy attached); that the system upgrade at 54 Shore Drive must be conformed prior to issuance of a building permit; that the well is not only potable but the easement is granted to cross the road to get water to the subject site; that the application has met all the criteria in Section 218-78; that the Special Use Permit portion of the application has been met; that the public convenience and welfare will be substantially served; that the OWTS system is projected to be a better performing system than any of the systems in the neighborhood; that by upgrading the second**

**system the nitrates are being reduced by approximately 50% +/- than what exists with the current existing system; that it will not result in adverse impacts or create conditions that will be inimical to the public health, safety, morals and general welfare of the community; if the proposal will reduce the nitrates by 50% +/- on two properties vs. the existing one it can't have an adverse impact; it will not alter the surrounding area or impair the intent or purpose of the Ordinance; as it is a single family lot and a single family home is being proposed which is not contrary to the neighborhood; that granting of the special use permit will not pose a threat to the drinking water supplies; it was testified to that the separation requirements will be 80' as opposed to 100' feet but still meet the standards and therefore would not be a threat to the neighbors or the resident of this project; that the use will not disrupt the neighborhood or the privacy of the abutting landowners by excessive noise, light, glare or air pollutants, as again it is a residential home being proposed in a residential neighborhood and based on the number of bedrooms would not have excessive traffic; that the sewage and waste disposal into the ground and the surface water drainage from the proposed use will be adequately handled on site; that also speaks to the advanced system that was proposed; that the traffic generated by the proposed use will not cause undue congestion or introduce a traffic hazard to the circulation pattern of the area; again, a single family home in a single family neighborhood, there wouldn't be excessive traffic; that the proposed OWTS system has been accepted by DEM with the conditions that have been placed on the performance of the system.**



**The public will be served based on the fact that it would be a single family residence which is allowed on a residential piece of property which would also produce revenue and the upgrade of the system would reduce the nitrates in the area and again that's based on the comment of both properties; for these reasons I vote to approve file #1398.**

**Mr. Chambers voted to approve file #1398 based on the assessment by Matt Dowling the expert from the Town and the acceptance by Mr. Frattini of the conditions that were laid out and also based on the analysis that Mr. Dreczko has just stated.**

**Mr. Quadrato voted to reject application #1398 for the following reasons. First off there are a number of discrepancies among the written and verbal testimony which to me raised credibility issues with this application; the written testimony stated that the well would be constructed with a steel liner and likely be down 300'; later on in presentation it changed to an existing well down 20' in 2" PVC pipe, that's quite a difference from the likely 300' feet in the steel pipe; then we were told the well had passed potability water when in reality only 3 parameters were tested out of the 16 which the State of Rhode Island requires for a CO; and plus this testing was done back in 2011; and this is contrary to what Mr. Deczko stated that the property has potable water because it does not, it has not passed the Rhode Island requirement for potable water; next we were told they had approval from the Association President to run the water line under the road,**

when we received a copy of this letter it was dated November 13, 2010 and was signed by the President who is no longer on the Board of Sea Lea Colony Association; a current Association member also testified that the applicant does not have current approval; once again contrary to what Mr. Dreczko stated that he had permission to cross the street; I don't see the permission; in the Applicant's own words on more than one occasion he was told by DEM that not one of the several systems that he offered would be allow them to approve an OWTS on this property; and that was in the words of the Applicant himself; there are not only one, not two, but three wells, that could be affected because they're within the required 100' radius of the proposed OWTS; and contrary to the applicant's engineer I don't see these required setbacks as just an arbitrary number; the OWTS is also less than 100' from Green Hill Salt Pond, where 200' is required and this property also has a 24" water table; for these reasons this application would pose a threat to the drinking water especially for the three wells within the 100' radius; and sewage and water disposal and surface water drainage would not be adequately handled onsite, and I am sure this is the reason why DEM would not approve a system on this property in the past; so next the application went back to DEM and was told he would replace an OWTS at a second location at 54 Shore Drive, which once again the applicant put in the incorrect address and put it in as South Kingstown; while this second property is a quarter inch away from Third Avenue, a new system there changes nothing for the people on Third Avenue, there still are three wells with a 300' radius set back and the OWTS would be less than

100' from Green Hill Pond and there still is a 24' water table; I am in favor of replacing old problematic existing systems but not if it creates a negative impact for people living in another area; and once again this application, if you read it ( about a quarter mile in), this application is for the property on Third Avenue alone, not for both properties, it's just for Third Avenue alone; and once again DEM would not approve an OWTS on this property alone; one other I think important credibility issue with the testimony is that the proposal was always to design and install a Hydro-kinetic Model 600 FEU at both locations, this is quoted from his, and calculations with the pollutant loading can be found in the following Sections; all his calculations, everything, all his conversations, his agreement with the Town was always to put this specific system in, but yet in our last meeting Mr. Dreczko asked the system that Mr. Frattini would be replacing and what type of system proposed; Mr. Frattini replied they haven't done any engineering on that yet and are hoping to use the existing drain fields if it passes a float test; I mean this is totally contrary to everything else we've been hearing and I wonder just how bad this system is now, he's telling us that possibly the drain fields are going to be suitable; then he went on to say, his engineer went on to say, they would probably go with an Advantex Textile System, filter system; once again, this is contrary, he states everything was all revolved around the kinetic, Hydro—Kinetic, now we're hearing about engineering that hasn't even been done yet, once again some serious credibility issues with this application; so I feel as members of the Zoning Board we need to reject this application and protect the public

**convenience and welfare and safety of the people that live on Third Avenue; and I also agree I have seen Mr. Vanover's testimony that he wants to add in regards to the system itself and I am in full agreement with his portion of the objection to this application as well.**

**Ms. Stolle; I'm in agreement with everything that Mr. Quadrato just read in to the record and I vote to reject the application #1398.**

**Mr. Vanover; I also agree with Mr. Quadrato. I vote to deny application #1398. Additionally I'd like to state and as Mr. Quadrato has said he has seen my statement and agrees with it. And I state the applicant has not to a satisfactory degree, that the proposed OWTS, will not negatively impact Green Hill Pond. It does not satisfy the second and sixth conditions for granting a Special Use Permit, which are, it will not result in adverse impacts or create conditions that will be inimical to the public health, safety, morals, and general welfare of the community. That the sewage and waste disposal into the ground and surface water drainage, from the proposed use will be adequately handled onsite. Granting a Special Use Permit may cause conditions inimical to the public health because it is my understanding that it has been determined that advanced AWOTS systems do not always work as advertised. These systems were approved sometime between 2000 and 2005. It is not recognized that the OWTS system that are used only part time. I'm sorry, could I change that? It really isn't a solid statement. Okay so, these systems were approved sometime between 2000 and 2005. OWTS systems that are used only part time**

take six weeks before they are able to remove nitrogen to the degree promised by the designers. Until that point they discharge raw sewage into the ground, though probably at a decreasing rate as the system gets up to speed. In this application if the house was used only during the Summer how is RIDEM going to assure the public that the pond is not going to be further polluted by the system? In light of the new information regarding these systems, common sense indicates that RIDEM can't guarantee that they will work properly. Obviously there are problems with these systems that weren't known when they were first approved, and I'm referring to the advanced systems. But now that this problem is recognized we should not proceed using these systems for houses occupied only part of the year, until RIDEM has found a solution. At the last hearing the applicant's OWTS engineer explained to the Board that the applicant had permission to use a new kind of OWTS design that was recently approved by RIDEM that would discharge less nitrogen into the ground than other advanced systems. Based on what we know about problems with existing advanced OWTS systems how can we be assured that problems with this new system will not crop up in a few years with results similar to what was described above, that raw sewage was being discharged into the ground. Obviously RIDEM didn't know the whole story about these advanced designs when they first approved them. RIDEM is fallible it appears. We all make mistakes but when a bureaucracy like RIDEM makes a mistake and doesn't correct it, it is the duty and the obligation of the Zoning Board to act as a final check. Finally the issue here for me is the state of

**Green Hill Pond which continues to decline, as Art Ganz, President of the Salt Ponds Coalition recently said, he stated they have a report dated 2012 that describes the ongoing decline of the aquatic health of the pond especially in the area close to Sea Lea Colony. The question should be asked, could the continuing water quality decline in the pond be in part due to the new advanced OWTS systems installed in the area over the last 10 years that may not be working properly because they are only used a portion of the year? Shouldn't this be determined before proceeding with more approvals similar to this application.**

**Mr. Dreczko; with a vote of 2 in favor and 3 in opposition of the application has been denied.**

**Member Vote**

**Mr. Dreczko Approve**

**Mr. Chambers Approve**

**Mr. Quadrato Deny**

**Ms. Stolle Deny      Mr. Vanover Deny**

**Based on a vote of 2 approve - 3 deny, application #1398 Special Use Permit is denied.**

## **Members Comments and Questions**

**Mr. Dreczko: I would like to take this time to thank Mary for her years of service and let her know she will be surely missed. You'll certainly enjoy your retirement. And I'd like to also welcome aboard Krista Tracy, she's got some shoes to fill.**

**Mr. Chamber; I would like to thank Grace for the work she did on that sign we brought up the last month, and it was taken care of very quickly and very amicably and I appreciate the effort.**

**Mr. Dreczko; Any other comments or questions? If not, do I hear a motion to adjourn?**

**Adjournment: A motion was made by Ms. Stolle, seconded by Mr. Quadrato to adjourn the meeting. The vote was unanimous. The meeting adjourned at 8:55PM.**

**Respectfully submitted,  
Krista M. Tracy, Clerk**

**Approved 3/20/2018**