

1 **TOWN OF ANTRIM**

2 **Zoning Board of Adjustment**

3 Tuesday, October 10, 2023

4 **MINUTES**

5 **Board/Staff Present:** Diane Kendall (Chair); Janet McEwen (Vice Chair); David Clater  
6 (Member); Shelley Nelkens (Member); Connor Fitzpatrick (Alternate Member); Patty Montereyc  
7 (Land Use Administrative Assistant); and Carol Ogilvie, Board Consultant.

8 **ZOOM:** Michael Ott (Member); Donna Hanson (Selectman); and Ingo Schaefer, Busse Green  
9 Technologies.

10 **Members/Staff Absent:**

11 **Others present:** Cory Staats, Applicant; Joseph Hoppock, Attorney; Daniel Latini, Fieldstone  
12 Land Consultants; Diane Chauncey, Town Clerk; Marschall Gale, Fire Chief/Health Officer;  
13 Rebecca Hull, Abutter; Orestes Montereyc, Resident; and C. Scott Blair, Abutter (arrived at  
14 @7:30 P.M.)

15 **CTO:** Chair Kendall called the meeting to order at 7:00 P.M.

16 Ms. Kendall welcomed everyone and introduced the Board and staff. The first order of business  
17 was to appoint Mr. Fitzpatrick to sit for Mr. Ott, who was present on Zoom, but would possibly  
18 not be present for the entire meeting. There were no objections to Mr. Ott participating in the  
19 discussion.

20 Ms. Kendall stated that her intent was to allow about 15 minutes for new information to be  
21 presented; she will allow public input, but asked that people not rehash what was presented at the  
22 prior meeting. Ms. Nelkens stated that there were abutters who had not been notified, to which  
23 Ms. Kendall replied that she would get to that issue.

24 Ms. Kendall stated that this meeting was to continue the public hearing that was held on October  
25 3 2023 and continued that night to this date. (At this point Ms. Hull stated that she was  
26 recording the meeting.) Ms. Kendall went on to describe the procedure for noticing ZBA  
27 meetings, confirming with Ms. Ogilvie that the statutory time frame for a zoning board is five  
28 days. Ms. Ogilvie noted that it has been customary with this Board to follow the same noticing  
29 time frame as the planning board – which is 10 days, but with timing challenges for this hearing,  
30 it was necessary to use the five-day requirement. Ms. Hull stated that she never received her  
31 notice. Ms. Kendall responded that the statute only requires the board to send the notice; it  
32 cannot be responsible for whether the recipient actually receives it. In her opinion, the issue of  
33 notification is settled, and she is ready to re-open the public hearing.

34 Attorney Hoppock stated that his client objected to the hearing continuing without the same  
35 board composition as heard the case on October 3, 2023. He pointed out that Mr. Ott – who is  
36 not sitting tonight, had heard all of the evidence and that Ms. Kendall – who is sitting, had heard  
37 none of the evidence. There followed discussion about options, with the end result being that  
38 Mr. Ott would be online for approximately one hour, and if it seemed likely the Board could at  
39 least get through the testimony, they could hear that tonight and continue for deliberation, if need  
40 be. Ms. Kendall then re-appointed Mr. Ott to sit as full member, recused herself, appointed Mr.  
41 Fitzpatrick to sit in her stead, and appointed Ms. McEwan to serve as Chair.

42 Ms. McEwan stated that the public hearing is re-opened. Ms. Hull interjected that she had  
43 material to distribute. Attorney Hoppock objected to that, stating that Ms. Hull had presented her  
44 objections at the last meeting, to which Ms. Hull responded that the applicant had new  
45 information, to which Ms. McEwan replied that the applicant had only brought what the Board  
46 had asked for. Ms. Hull objected to that, but Ms. McEwan reiterated that the applicant was  
47 responding to the Board's request, and then asked the applicant to proceed.

48 Attorney Hoppock stated that they were prepared to respond this evening to the concerns  
49 expressed by the Board at the last meeting, and there were people present this evening to  
50 respond. First of all, he introduced Daniel Latini from Fieldstone Land Consultants to speak to  
51 the question of a mounding analysis. Mr. Latini introduced himself and stated that DES does not  
52 require or ask for a mounding analysis unless a proposed system is for 2500 gallons per day or  
53 more, at which point it is an engineering issue for DES. When asked about the capacity of this  
54 proposed system, he responded that it is 900 gallons per day.

55 Attorney Hoppock then asked Mr. Schaefer, on Zoom, to first speak to his academic  
56 qualifications, which he did, and then to describe the process for inspections and maintenance of  
57 this system. Mr. Schaefer explained that the system is inspected annually, except for the first  
58 year it is inspected twice, to ensure all is working properly. He then went on to detail the steps  
59 that are taken for these inspections, which include opening the tanks and testing the floats.  
60 Regarding alarms for system malfunction, Mr. Schaefer stated that when the floats are not  
61 working properly, the alarm sounds.

62 Mr. Schaefer answered a number of follow-up questions having to do with lifetime of the  
63 system, ability to bypass the system, the service contract, redundancy for the alarm, impact of  
64 power outages, and possibilities for the system to fail. In sum, Mr. Schaefer replied that: the  
65 system will last as long as it is maintained; if the company goes bankrupt, the property owner  
66 must find a new service provider; in the event of a power outage, the pump doesn't work and  
67 therefore there is no effluent going through the system, and furthermore the tank has capacity  
68 for several days of light usage; if the property changes hands, the contract is still in place,  
69 although the company would send a service technician to explain the system to the new owners;  
70 and in the event of system failure, it simply stops.

71 At this point Ms. McEwan asked if the Board was satisfied and whether there were any more  
72 questions from them, to which the response was there were no more questions from the Board.

73 Ms. Hull raised questions about testing for nitrates, E. coli, and ammonia. Mr. Schaefer said that  
74 this system does not filter any of these without a separate add-on component. Mr. Latini stated  
75 that DES does not require testing for any septic system. Responding to a question from Ms.  
76 Nelkens regarding the treatment of phosphate, Mr. Schaefer replied that the system does not treat  
77 phosphates, but that this is less of an issue today because of reduced use of this chemical. Ms.  
78 Nelkens responded that this is an issue because of the wetlands, to which Ms. McEwan pointed  
79 out that the use of this system is the point, since the system is designed to treat effluents.

80 Mr. Ott asked if all questions from the Board had been asked and answered and all information  
81 provided, to which the answer was yes.

82 C. Scott Bailey, introduced himself as an abutter and apologized for arriving late. He asked if  
83 copies of the septic design and plan were available. He was informed where he could find them,  
84 but was also invited to take a copy of the plan with him, which he did.

85 Ms. McEwan closed the public hearing at 7:45. The Board then discussed whether they would  
86 need to continue deliberation to a future meeting, depending on whether Mr. Ott would be able to  
87 stay in the meeting. After reviewing several possible dates for a future meeting, it was ultimately  
88 decided to go ahead with deliberations as long as Mr. Ott was available.

89 Ms. McEwan then described the process that they would follow in going through the five  
90 variance criteria. She will go through each one (although combining 1 & 2 because they are so  
91 similar), and ask each member to respond.)

92 • Criteria #1 & #2 (Public Interest and Spirit of the Ordinance):

93 Mr. Ott asked if the Board could not just consider all five at one time and take that vote, but Ms.  
94 McEwan explained that this was not their customary practice and they should not change it  
95 tonight.

96 Mr. Clater: He believes the proposed system is related to public health and that the system is  
97 appropriate for the site.

98 Mr. Fitzpatrick: He does not see any impact on the abutters from this proposal.

99 Ms. McEwan: She sees no impact and does believe that this is in the public interest.

100 Mr. Ott: He believes that this application is directly in the public interest and embodies the spirit  
101 of the ordinance.

102 Ms. Nelkens: She has a problem with the proximity to the wetlands.

103 • Criteria #3 (Substantial Justice):

104 All five members stated that they saw no harm done from this proposal.

105 • Criteria #4 (Property Values):

106 All five members saw no diminution in the value of surrounding values from this proposal.

107 • Criteria #5 (Hardship):

108 All five members felt the application met the criteria for proving hardship.

109 The Board then discussed whether any conditions would be attached, should they vote to  
110 approve. The Board agreed that the proposed condition included in Mr. Beblowski's letter to the  
111 Board from the Conservation Commission was reasonable; with a few edits, the condition was  
112 agreed to.

113 There was further discussion about the life of the system and inspections. Ms. McEwan noted  
114 that DES requires the inspections and the maintenance agreements, and Mr. Clater stated that  
115 since the inspections are mandated, the Board should not be too specific regarding inspections.  
116 Mr. Ott questioned whether they should require an alternative power source in the event of  
117 failure. Ms. McEwan stated that these are not required for other systems, and Mr. Clater pointed  
118 out that it would be beyond the scope of this application request to do that. Mr. Schaefer stated  
119 that, again, in the event of a power failure, the system just sits there; without power, there is no  
120 pressure, and the water doesn't move.

121 *On a motion by David Clater/seconded by Connor Fitzpatrick, the ZBA voted 4 in favor, 1*  
122 *abstention, to approve the application of Cory and Cynthia Staats for a variance from Article XI,*  
123 *E. 1 of the Zoning Ordinance to facilitate the construction of an NH DES-approved leach field*

124 *that includes an approved waiver for Env-Wq-1008 Section: 04 Minimum Distances, subject to*  
125 *the following condition:*

126 *“The current and any subsequent lot owner(s) shall maintain an inspection and maintenance*  
127 *agreement for the Busse Model MF-B-400 Wastewater Treatment System with a qualified entity*  
128 *for the life of the system. The system shall be sampled during each inspection, twice in the first*  
129 *year and once annually thereafter. Evidence of the inspection and maintenance agreement,*  
130 *inspection report(s), and sampling results shall be submitted to the Town’s Health Officer*  
131 *annually within one month of inspection. Any deficiencies that were identified and corrective*  
132 *actions (taken in the past year) should be summarized in the inspection reports.”*

133 Ms. McEwan then turned the meeting back to Chair Kendall. Attorney Hoppock asked that the  
134 Notice of Decision be emailed to him.

135 Ms. Kendall stated they could continue with the business portion of their meeting. Ms. McEwan  
136 suggested that they table the minutes from last meeting, since there will be another set of minutes  
137 from this meeting, and meet at their regular date which would be October 24<sup>th</sup>. There were no  
138 objections to this. Ms. Kendall stated that they could take up other business items at this  
139 meeting; if anyone had issues they wished to have on the agenda, to email them to her.

140 Ms. Nelkens said that she wanted to object to the way Ms. Hull was treated by Ms. McEwan; she  
141 thought it was rude. Ms. McEwan defended her response, stating that it had been made clear that  
142 the Board was in deliberation and no further public comment is allowed; despite that, Ms. Hull  
143 insisted on continuing to talk. Mr. Clater added that Ms. Hull had had multiple opportunities to  
144 state her case and raise objections.

145 There being no further business, the meeting adjourned at 8:23 P.M.

146 Respectfully Submitted,

147 Carol Ogilvie

148

149 **Approved February 13, 2024**