

TOWN OF HARWICH



BOARD OF HEALTH

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**TOWN OF HARWICH BOARD OF HEALTH
TUESDAY, SEPTEMBER 10, 2019-6:30 P.M.
HARWICH TOWN HALL – SMALL HEARING ROOM
MINUTES**

BOARD OF HEALTH MEMBERS PRESENT: Chairwoman Pamela Howell, R.N., Member Matthew Cushing, M.D., Member Ronald Dowgiallo, D.M.D., and Member Sharon Pfleger

STAFF MEMBERS PRESENT: Health Director Meggan Eldredge & Executive Assistant Jennifer Clarke

OTHERS PRESENT: Larry Ballantine, Mark Foss, Irene Bourne, Rob Bourne, Representatives from Main Street Market, Parim Patel, Paresh Patel, Saumil Patel, Kahil Patel, Cheryl Sbarra, Taylor & Sarah Powell, Dan Croteau & others

Recording & Taping Notification: As required by law, the Town may audio or video record this meeting. Any person intending to either audio or video record this open session is required to inform the Chair.

I CALL TO ORDER

Chairwoman Howell called the meeting to order at 6:31 p.m.

II MINUTES OF PREVIOUS MEETING- August 13, 2019 & August 19, 2019

Ms. Pfleger moved to approve the minutes of the August 13, 2019 Board of Health meeting as amended, 2nd by Mr. Dowgiallo and approved 4-0-0.

Dr. Cushing moved to approve the minutes of the August 19, 2019 Board of Health meeting as printed, 2nd by Ms. Pfleger and approved 4-0-0.

**III 6:30-7:00 PM- BOARD OF HEALTH WORK SESSION
A. Discussion/Review-2020 Board of Health Meeting Schedule**

Health Director Eldredge stated that 2019 has been a challenging year due to large hearings that have been scheduled and a small hearing room with limited space. For the 2020 Board of Health meeting schedule, staff is proposing to meet on the 3rd Tuesday of the month, rather than the current 2nd Tuesday schedule. The 2020 Board of Health meetings would be held in the Donn B. Griffin Room, with some meetings held in the Small Hearing Room, and a couple of meetings held on Mondays due to holidays and election schedules. The Board agreed that the 3rd Tuesday of the month would not pose any scheduling conflicts and also agreed to start the meetings at 6:00 p.m.

The Board of Health agreed to hold off on discussing agenda item III-B until after discussion and vote of agenda item V-A.

B. Discuss enacting a temporary moratorium on tobacco sales permits until such time as the Proposed Tobacco Sales Regulations have been made effective

No action was taken on this item as the Board of Health adopted the revised "Harwich Board of Health Restrictions for the Sale of Tobacco Products" regulations.

IV OLD/UNFINISHED BUSINESS (NO EARLIER THAN 7:00 P.M.)

A. Show Cause Hearing-262 Oak Street/Shanley- Discuss violations in accordance with 105 CMR 410.000 "Minimum Standards of Fitness for Human Habitation" cited on April 23, 2019 (Continued from August 13, 2019 Board of Health Meeting)

Health Director Eldredge reported that there have been no updates since the August Board of Health meeting. The dwelling remains unoccupied and the violations have not been corrected.

Dr. Cushing moved to continue the show cause hearing for 262 Oak Street/Shanley until the October 8, 2019 Board of Health meeting, 2nd by Mr. Dowgiallo and approved 4-0-0.

B. Continued Hearing-Environmental Impact Report, 79 Headwaters Drive- to demonstrate compliance with Harwich Board of Health Regulation 1.211-Installation of a sewage disposal system that will accommodate over 2,000 gallons per day, prepared by J.M. O'Reilly (Continued from August 13, 2019 Board of Health Meeting)

A request has been received from the applicant to continue the hearing until the October 8, 2019 Board of Health meeting.

Dr. Cushing moved to continue the hearing for 79 Headwaters Drive until the October 8, 2019 Board of Health meeting, 2nd by Ms. Pfleger and approved 4-0-0.

C. Continued Hearing-MNT Realty Trust, 1, 2, 6, 10, 14 Saltwater Lane & Saltwater Lane (aka 123 Riverside Drive)- Definitive Subdivision Plan prepared by Coastal Engineering Co. (Continued from August 13, 2019 Board of Health Meeting)

John McElwee from Coastal Engineering Company was present. The applicant is proposing a two lot definitive subdivision plan. The lots will use less than 2,000 gallons per day and will be served by town water. The lots are not located within a Zone II water recharge area and therefore not subject to a bedroom restriction. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the definitive subdivision plan designed by Coastal Engineering Company with the following conditions:

1. The lots shall be served by town water.
2. Fully compliant septic systems are required to serve the dwellings.
3. In preparation for the municipal sewer, all building sewers shall exit the front of the dwelling foundations.

Dr. Cushing moved to accept the recommendation of the Health Director for MNT Realty Trust, 1, 2, 6, 10, 14 Saltwater Lane & Saltwater Lane (aka 123 Riverside Drive) as presented, 2nd by Mr. Dowgiallo and approved 4-0-0.

The Board of Health agreed to hear agenda item VIII at this time for discussion and vote of permits.

V NEW BUSINESS

A. PUBLIC HEARING to solicit comment on proposed amendments to the regulation "Harwich Board of Health Restrictions for the Sale of Tobacco Products" including a restriction on flavored tobacco products and maximum number of retail permits

Chairwoman Howell opened the public hearing. Health Director Eldredge reviewed the changes that have been incorporated into the regulations since the August Board of Health Work Session. She added that after discussing the regulations with Town Counsel, that the Board could have 2 separate effective dates for the regulations. An effective date for the flavor restriction could be separate from the effective date of the rest of the regulations.

Chairwoman Howell opened the meeting up to public comment.

Irene Bourne from Harwich Mobil was present. She stated that they understand and share the Board of Health's concern regarding youth vaping, however she strongly disagrees with the approach that the Board is taking and feels that customers will feel discriminated against when trying to purchase flavored tobacco products. Ms. Bourne feels that the proposed restriction goes well beyond the problem that everyone is trying to solve and she would prefer that the Board work with the current license holders on reasonable solutions.

Mark Foss from Fletcher Tilton was present. He provided the Board of Health members with a release that was issued from Massachusetts General Hospital "Daily e-cigarette use may help smokers quit regular cigarettes" dated July 23, 2019. Mr. Foss stated that some communities have regulations that include an exemption for mint, wintergreen and menthol in the characterizing definition and he suggested that the Harwich Board of Health follow that model. Ms. Pflieger responded that while she understands Mr. Foss's point of view, she is looking at this regulation to protect our youth. Ms. Pflieger added that as additional information regarding vaping is released, that more towns will seek to restrict certain products.

Ms. Howell stated that she would be in favor of any way to stop youth from obtaining tobacco products.

Dr. Cushing added that the mandate of the Board of Health is to protect the health of the people of Harwich in any way possible. We all agree that smoking is a proven health hazard and that vaping may in the long run also turn out to be a health hazard. Dr. Cushing feels that adding any kind of flavor to the cigarette product may make it more attractive and pleasant to smoke. The Board of Health should do anything possible to reduce the desirability of these products.

Cheryl Sbarra from the Massachusetts Association of Health Boards was present. She stated that she has heard that youth use menthol tobacco products more frequently than adults. Ms. Sbarra added that if the Board restricted all tobacco products to adult only retail stores, that would be a great goal, but she isn't sure if Harwich is at that point yet.

Chairwoman Howell closed the public hearing.

Dr. Cushing moved to approve the "Regulations of the Harwich Board of Health Restricting the Sale of Tobacco Products" as presented, effective September 11, 2019, with the exception of section G, which will be effective on January 1, 2020, 2nd by Mr. Dowgiallo and approved 4-0-0.

B. Hearing-Route 137 Development, LLC- Preliminary Subdivision Plan dated June 28, 2019, prepared by Clark Engineering, LLC.

Chairwoman Howell opened the hearing. David Clark from Clark Engineering, LLC was present. The applicant is proposing a 10 lot preliminary subdivision plan off of Route 137. This application is for the approval of the subdivision only and not an Environmental Impact under Regulation 1.211. The subdivision is proposed to be served by town water and to be sewer in phase 2. A definitive subdivision plan is forthcoming which will include design plans to connect to the municipal sewer.

Health Director Eldredge recommended approval of the preliminary subdivision plan designed by Clark Engineering, LLC with the following conditions:

1. The lots shall be served by town water.
2. If the dwellings are to be occupied prior to the connection to the municipal sewer system, the septic system sewer lines shall exit the foundations on the street side of the buildings.

3. If the dwellings are to be occupied prior to the connection to the municipal sewer system, fully compliant septic systems are required to serve the dwellings.
4. Should the lots not be developed under a 40B Comprehensive Permit, an Environmental Impact Review under Regulation 1.211 and full compliance with State and Local Regulations is required prior to development.

Dr. Cushing moved to accept the recommendation of the Health Director for Route 137 Development, LLC as presented, 2nd by Mr. Dowgiallo and approved 4-0-0.

C. Hearing-Martin Rich, 0 Deacons Folly Road, Definitive Subdivision Plan prepared by East Cape Engineering, Inc.

Dr. Cushing recused himself.

Chairwoman Howell opened the hearing. Tim Brady from East Cape Engineering was present with Marty Rich present in the audience. The applicant is proposing a 7 lot definitive subdivision plan off Deacons Folly Road. This application is for the approval of the subdivision only and not an Environmental under Regulation 1.211. The subdivision is located in the Herring River Watershed and proposed to be sewerred in Phase 5 of the CWMP. The subdivision is proposed to be served by town water and each lot is roughly one acre. Should the lots be developed with three bedroom dwellings, the septic systems would account for over 2,000 gallons per day, triggering an Environmental Impact Review. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the definitive subdivision plan designed by East Cape Engineering with the following conditions:

1. An Environmental Impact Review be submitted and approved by the Board of Health as required by Regulation 1.211.
2. The lots shall be served by town water.
3. No development of the lots will be approved until the Environmental Impact Review has been approved by the Board of Health.
4. No variances from Title 5 will be allowed.
5. In preparation for the municipal sewer, all building sewers shall exit the front of the dwelling foundations.

Ms. Pfleger moved to accept the recommendation of the Health Director for 0 Deacon's Folly Road as presented, 2nd by Mr. Dowgiallo and approved 3-0-1 (Cushing).

D. Perks/Taylor & Sarah Powell, 545 Route 28, request to have water shut-off condition be removed from Board of Health permit

Taylor & Sarah Powell were present. They wish to modify the order of conditions that was placed on the food service permit in 2012. One of the conditions required a water shut off to the building on a seasonal basis. The history of the property shows that a septic system was designed and installed with a capacity for 1000 gallons per day-sufficient for a 2 bedroom apartment and a 39 seat restaurant. When the septic system was approved by the Board in 2008, no conditions were placed on the property. When the owner applied for a change in the food service and seating plan, conditions were placed on the food service license. This year, the Board of Health allowed the expansion of use to the full 1000 gallons per day capacity. Health Director Eldredge stated that with the allowance of utilizing the 1000 gallons per day, there is no reason to restrict the property to seasonal use.

Dr. Cushing asked if the restaurant and the apartment have separate water meters. Mr. Powell responded that there is one meter that controls the entire building. He added that they maintain their septic system and have it pumped yearly. Their business will remain seasonal.

Dr. Cushing moved to approve the request for Taylor & Sarah Powell, 545 Route 28, Perks to allow for the water shut off condition to be removed from the property and to allow for year round water use for the property, 2nd by Ms. Pfleger and approved 4-0-0.

E. Hearing-Nancy S. Hellstrom Family Trust/Nancy S. Hellstrom, 49 Snow Inn Road to consider a variance request to install a new Title 5 septic system prepared by Moran Engineering Associates, LLC
Variance from 310 CMR 15.211 (Minimum Setbacks)

1. Variance requested to locate the new septic system for 49 Snow Inn Road beyond the property line of the facility. The septic system is proposed to be on the property of 17 Bay View Road. Both properties are under common ownership.

Chairwoman Howell opened the hearing. Dan Croteau from Moran Engineering Associates, LLC was present. This property is located directly on Wychmere Harbor with common ownership to the property across Snow Inn Road, at 17 Bay View Road. The septic system was installed in 1979 with variances approved by the Department of Environmental Quality Engineering to allow the soil absorption system to be located across the street from the dwelling it served. The Town of Harwich granted an easement for the sewer line to be under the road at the 1978 Annual Town Meeting. The line under Snow Inn Road is still intact and structurally sound. The leaching was inspected and failed due to lack of 4 foot separation to groundwater. These two properties are for sale and will remain in common ownership. This project has received approval from the Conservation Commission to complete work as needed within the 100' buffer zone. Chairwoman Howell closed the hearing.

Health Director Eldredge recommended approval of the variance with the following conditions:

1. The property is restricted to 2 bedrooms.
2. No increase in square footage or habitable space without further review by the Board of Health.
3. Variance approval and conditions to be recorded at Barnstable County Land Court with a copy returned to the Health Department.

Dr. Cushing moved to accept the recommendation of the Health Director, 2nd by Ms. Pflieger and approved 4-0-0.

VI REPORT OF THE HEALTH DIRECTOR (August 2019)

Health Director Eldredge read her monthly report for August 2019.

VII CORRESPONDENCE

Health Director Eldredge reviewed correspondence provided in the Board's packet.

VIII PERMITS

ESTABLISHMENT	ADDRESS
TOBACCO	
21 Plus Smoke Shop (2019 New)-Continued from 8/13/19	1421 Orleans Road Unit # 9
Harwich Smoke Shop (2019 New)-Continued from 8/13/19	16 Route 28
Royal Smoke Shop (2019 New)	721 Main Street
SEPTIC INSTALLER	
Holmes Land Service *	
2019 Renewal *	

Health Director Eldredge stated that all 3 of the tobacco applications are proposed to be adult only stores. The permits have been applied and paid for and all paperwork has been submitted. All of the permits are pending Board of Health approval before they move into their locations. Health Director Eldredge recommended that with the new regulations in effect, that the Board put a condition on the permit applications. All 3 of the proposed tobacco retailers need to be operational before December 31, 2019. If not operational by 12/31/19 then the

applications will be considered to be New and must comply with the tobacco sales regulations in place at that time.

Dr. Cushing moved to approve the permits as per list dated September 10, 2019 with the condition that the listed tobacco permits have a permit application expiration date of December 31, 2019 and that the tobacco businesses need to be operational on or before December 31, 2019, 2nd by Mr. Dowgiallo and approved 3-1-0 (Pfleger).

IX OTHER

No other items were discussed.

X ADJOURN -The meeting adjourned at 8:30 p.m.

Mr. Dowgiallo moved to adjourn the meeting at 8:30 p.m., 2nd by Dr. Cushing and approved 4-0-0.

Respectfully Submitted,

Jennifer Clarke

Next meeting is Tuesday, October 9, 2019 at 6:30 p.m. in the Small Hearing Room.

Documents included in September 10, 2019 Board of Health Meeting Packet:

- September 10, 2019 Board of Health Agenda
- Draft Minutes dated August 13, 2019
- Draft Minutes dated August 19, 2019
- Draft 2020 Board of Health Meeting Schedule
- Draft Regulations of the Harwich Board of Health Restriction the Sale of Tobacco Products dated August 19, 2019
- Site Summary for 123 Riverside Drive dated August 13, 2019
- Board of Health Definitive Subdivision Plan Filing Package for 123 Riverside Drive dated July 23, 2019
- Site Summary for Route 137 Development dated September 10, 2019
- Board of Health Definitive Subdivision Plan Filing Package for 137 Development dated August 14, 2019
- Preliminary Division Plan for 137 Development dated June 28, 2019
- Site Summary for Deacons Folly Road dated September 10, 2019
- Board of Health Definitive Subdivision Plan Filing Package for Deacons Folly Road dated August 28, 2019
- Plan of Land for Deacons Folly Road dated August 28, 2019
- Site Summary for 545 Route 28 dated August 13, 2019
- Letter from Taylor & Sarah Powell/545 Route 28 dated August 26, 2019
- Site Summary for 49 Snow Inn Road dated September 10, 2019
- Board of Health Variance Filing Package dated August 27, 2019
- Special Town Meeting Warrant Article dated April 6, 1978
- Septic System Design Plan for 49 Snow Inn Road dated August 26, 2019
- Health Director Monthly Report August 2019 dated September 3, 2019
- Town of Harwich Plastic Container Bylaw
- News Release from DPH dated August 10, 2019
- News Release from DPH dated August 29, 2019
- MA State Public Health Laboratory Report dated August 13, 2019
- Immediate Response Action Plan for Sisson Road dated August 13, 2019
- Weights & Measures Program Quarterly Report dated August 12, 2019
- Resignation Letter from Frank Boyle dated August 15, 2019
- Letter to Building Commissioner regarding 198 Main Street dated August 14, 2019
- Emergency Waiver Provisions for Harwich Elementary School dated September 5, 2019

- Any other documents submitted for/at the September 10, 2019 Board of Health meeting