

TOWN OF HARWICH



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BOARD OF HEALTH

732 Main Street Harwich, MA 02645

508-430-7509 – Fax 508-430-7531

E-mail: health@town.harwich.ma.us

**TOWN OF HARWICH BOARD OF HEALTH
THURSDAY, OCTOBER 20, 2022- 6:30 P.M.
HARWICH TOWN HALL – DONN B. GRIFFIN ROOM
MEETING MINUTES**

BOARD OF HEALTH MEMBERS PRESENT: Chairwoman Sharon Pflieger, M.S., Vice Chairwoman Pamela Howell, R.N., Clerk Ronald Dowgiallo, D.M.D., Member Matthew Antoine & Member Kevin DuPont, R.N.

STAFF MEMBERS PRESENT: Health Director Kathleen O'Neill & Executive Administrative Assistant Jennifer Clarke

OTHERS PRESENT: Animal Control Officer Jennifer Harrington, Renee Cole, Mark Coleman, Leon Narbonne, Jen Cahoon, Katie Rhodes, Mark Moleski, Marli Bratcher, Craig Whitcomb, Liz Dubuque, Irene Bourne, Rachel Tremblay, Jennifer Lewis

Michael Lewis, Sol Ellis & others

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

Ms. Pflieger called the meeting to order at 6:30 p.m.

II PUBLIC COMMENT

No public comment was heard.

III MINUTES OF PREVIOUS MEETING (Regular Meeting Minutes) September 20, 2022

Mr. DuPont moved to approve the minutes of the September 20, 2022 Board of Health meeting as printed, 2nd by Mr. Antoine and approved 5-0-0.

IV BOARD OF HEALTH WORK SESSION

A. COVID-19 Update

Health Director O'Neill read her COVID-19 update as provided in the packet.

B. Board of Health discussion and possible vote to support a potential Town By-Law banning the use of fertilizer on residential lots

Health Director O'Neill stated that the Conservation Commission had recently discussed referring the suggestion of a bylaw creation regarding the use of fertilizer to the Board of Selectmen. At this point, Harwich cannot create a bylaw or regulation of this nature because of actions that were taken in 2013 regarding the district of critical planning concern. At this point, the Board of Health could petition the Board of Selectmen to petition the state to change the decision from 2013.

Mr. DuPont stated that it sounds like we can't make any changes now and that he would be hesitant to only implement bans for residential lots and not include commercial properties. He feels that green grass is a vanity feature of a property.

Mr. Dowgiallo would like to see the Board to start thinking about this and that the Board should communicate with the Selectmen on next steps.

Ms. Pflieger feels that we might not have a problem now, but that we should start thinking about it. There are places on Cape that people come to for vacation, referring to resorts like Wequasset Resort. These resorts want their grounds to look nice. If the resorts are following the regulations that are set by the state, then Ms. Pflieger wants to see that brought into consideration when looking at what properties would be included in the potential bylaw or regulation. Ms. Pflieger asked if it would be possible to schedule a public hearing to solicit public comment from the residents about what their thoughts are. While a total ban may sound good, Ms. Pflieger does not feel that it is realistic. Health Director O'Neill suggested holding a public hearing after the Selectmen petition the state for changes. Ms. Pflieger responded that the Board of Health may want to have more information before anything it sent to the Selectmen.

Mr. DuPont commented that if residential properties are going to be included in the ban, then we should also be looking at commercial properties as well. Mr. DuPont stated that he lives on West Reservoir and has personally seen the environmental decline.

Jon Idman was present remotely and stated that he is in support of restoring Harwich and other Cape Cod communities ability to regulate plant nutrients, in particular fertilizers. Mr. Idman added that he would support some direction from the Board of Health and other land use boards such as the Planning Board to direct the Board of Selectmen to seek a legislative delegation to either put in general and/or special legislation for the ability to regulate plant nutrients. Mr. Idman feels that it is better to control fertilizers with responsible regulations and not by an outright ban. The community needs an opportunity to discuss these issues and Mr. Idman would like to see the authority over these matters be returned to the individual towns.

Leon Narbonne was present and commented that there are natural alternatives for fertilizer that can work for everyone. Ms. Pflieger asked Mr. Narbonne to send over a list of his suggestions for Health Department staff review.

Ms. Pflieger would like to have the community involved at next month's meeting to have more information on what should be presented to the Selectmen.

Ms. Howell asked how long it would take to petition the state. Health Director O'Neill responded that she is unsure as to how long it would take to get an answer. Ms. Howell feels that if the process is going

to take a while, that we should start it now even before getting any public comment. Health Director O'Neill commented that the Board could start the process now, but it would be held up pending information.

Health Director O'Neill stated that she would draft a memo after next month's Board of Health meeting, which would include any public comments. She wants to make sure that the public is aware that this is not something that would be able to be ready for May Annual Town Meeting.

C. Board of Health Discussion on Revisions to Regulations of Harwich Board of Health Restricting the Sale of Tobacco Products

Bob Collett from Barnstable County was present remotely.

In the packet, the Board was provided with a copy of the state drafted sample 2022 tobacco sales regulations. Health Director O'Neill stated that it might make sense for the Board of Health to adopt what the state has provided and make any local amendments as the Board sees fit.

Mr. DuPont commented that in the current local regulation, there is a section that says if a tobacco license is not renewed or a business closes, that the tobacco license is dissolved and that the total number of tobacco permits in town is reduced. Health Director O'Neill recommended keeping that section in the regulations. Mr. DuPont responded that he would hesitate to deprive someone the opportunity to run a business if there is a demand for the product.

Ms. Howell said that the point of that section was to reduce the total number of tobacco permits as there were a lot in town. If we ever got to a place where there was only 1 tobacco permit in town, the Board could always re-address that portion of the regulation.

Mr. Antoine feels that tobacco and smoking is still a public health crisis.

Mr. Dowgiallo stated that he is against cigarette smoking and that the least amount of establishments that sell tobacco products, the better.

Ms. Pflieger agreed that she is against smoking but that when it comes down to it, people do have rights and responsibilities. She would not want to get down to zero permits, but would like to have a discussion on a number in between.

Mr. Collett asked if Harwich has a current permit cap. Health Director O'Neill responded yes and explained that if a permit is retired, that the permit is then dissolved. Mr. Collett asked if the Board has a desired number of permits that they would like to see in Town and recommended that the Board establish a static cap. This static cap would be designed to prevent every gas station or convenience store on every corner from all selling tobacco. It also creates a bigger level of awareness and responsibility based on the restricted number of permits in town.

Ms. Pflieger would like to bring this back for further discussion.

The Board had a brief discussion on the potential number of tobacco permits that should be in town.

Health Director O'Neill stated that the Board would have to hold a public hearing before any changes can be adopted.

Rachael Tremblay was present and asked if the number of adult only tobacco would be capped as well and that her concern is for the small businesses. Health Director O'Neill responded that she would have to review the regulation. Ms. Tremblay went on to ask about the fee increases shown in the regulation. Health Director O'Neill responded that the fees are set by the state. The Board of Health can control the number of days that an establishment would lose their license.

Ms. Pflieger stated that the Board would bring this back for their November work session.

Mr. Collett commented that the cleanest way to move forward would be for the Board to rescind their current regulation, and adopt the state regulation with any language changes.

D. Review of 2023 Board of Health Meeting Schedule & Filing Deadlines

Mr. DuPont moved to approve the 2023 Board of Health Meeting Schedule & Filing Deadlines as presented in the packet, 2nd by Mr. Antoine and approved 5-0-0.

E. Board of Health review and discussion of existing and proposed Board of Health fees

Health Director O'Neill stated that this is the first step in the yearly fee review. If any changes are to be made, then the Board would need to hold a public hearing.

Mr. DuPont moved to direct Health Department staff to schedule a public hearing to discuss the proposed Board of Health fee schedule, 2nd by Mr. Antoine and approved 5-0-0.

V OLD/UNFINISHED BUSINESS

A. Continued-Public Hearing to solicit comment on the proposed revisions to Town of Harwich Board of Health Animal Regulations (continued from September 20, 2022 meeting)

Mr. DuPont commented that the Board has discussed these regulations at length and that changes from the last meeting have been included. He added that to date, there has not been a lot of public comment received.

Renee Cole was present and stated that she sent an email earlier in the week to the Health Department. The email was regarding the possible re-wording of the definition of a pet pig. She suggested wording changes to livestock and domestic. Ms. Cole has 3 pet pigs that live in the house and are very similar to dogs. According to the definition, she would be considered a piggery and asked if she would need to get a variance. Health Director O'Neill responded that the Health Department and Board would make the process of applying for variances easy. The Board is not looking to take anyone's animals away. There would still be an inspection and permit process.

Emma Bankman was present remotely and stated that she also has 2 pet pigs. Ms. Bankman feels that the Board is misinterpreting what the term piggery is. Ms. Bankman also sent an email to the Health Department and added that she does not like the term piggery. Ms. Bankman complained about the process and what she considers to be the lack of transparency.

Leon Narbonne was present and stated that he has a small hotel in Dennisport that is pet friendly and over the past few years he has had guests bring their pet pigs with them. Mr. Narbonne thinks that the

term piggery might seem a little slang. He went on to ask about the variance process. Health Director O'Neill responded that the structures themselves would have to have variances applied for.

Belinda Rowllins was present remotely and stated that Ms. Bankman's pet pigs are lovely. Her concern as she reads the regulations are mostly around the grandfathering aspect. She wants to see if be made clear that people can apply for variances. As she reads the regulation, she finds that the variance process is not precise. She is asking that the Board clarify the variance process with stronger language and perhaps make it clear that pet pigs living in households would be exempt. Health Director O'Neill responded that she can re-send the draft regulations to Town Counsel for clarification and bring them back for the November Board of Health meeting.

Elizabeth DuBuque was present and asked about the 8' ceiling horse when it comes to mini animals. Health Director O'Neill responded that she did reach out to abutting towns and that the 8' is a normal height requirement.

Craig Whitcomb was present and asked about the management of manure and rodents. If manure is buried on a property for a continual amount of time, and there are a lot of animals in a small area, how the manure is managed and monitored and to what extent is allowed before it attracts rodents. He asked how many rats it would take before it becomes an issue. Health Director O'Neill responded that someone would need approval for composting on site and that manure management plans are required. Rodents are a problem that the Health Department is aware of, and this problem is Cape wide, not specific to Harwich. If someone sees a problem, they should contact the Health Department for investigation. Mr. Whitcomb stated that he has been on his property for all of his life and has not seen a live rat until this year.

Mr. DuPont moved to continue the public hearing to solicit comment on the proposed revisions to Town of Harwich Board of Health Animal Regulations until the November 15, 2022 Board of Health meeting, no earlier than 6:30 p.m., 2nd by Mr. Antoine and approved 5-0-0.

VI NEW BUSINESS

A. Show Cause Hearing-10 Old County Road/Toni-Ann Nominee Trust- Failure to comply with Notice of Violation issued by the Health Department on July 27, 2022-15.301: System Inspections

Ms. Pflieger opened the hearing. Leon Narbonne was present and talked about the property and the tenants. He informed the Board that a tenant was flushing diapers into the septic, which caused the backup. Mr. Narbonne stated that the 3 systems on the property are pumped every year and that one system was replaced in 2015 and another in 2017. A Title 5 inspection was performed on one of the three systems and the system has failed. Mr. Narbonne has hired EAS Survey to design the new system. Mr. Narbonne asked the Board not to require him to have the other two systems inspected, as he has been informed that they are working fine and because he does not want to have to pay additional money for the inspection.

Health Director O'Neill did confirm that one failed inspection report was received today and that Mr. Narbonne was ordered to have all of the systems onsite inspected. The Health Department is concerned that the other 2 systems may be failing as well. The water readings for the failed system are more than double for what the system was designed for. Mr. Narbonne responded that there was a running toilet, which is the reason for the high water readings.

Mr. DuPont feels that there may be conflicting information on the other 2 systems. He would like to see the other 2 systems inspected to confirm that there are not any issues.

Mr. Antoine asked how water was flooding into the system if the pipes were clogged with diapers.

Mr. Narbonne again said that there have not been any issues with the other 2 systems on site and that he feels he should not have to spend the extra money on the inspections.

Health Director O'Neill stated that shared septic systems are supposed to be inspected every three years and these have not been inspected.

Ms. Pflieger agreed that the systems the other two systems need to be inspected.

Mr. Narbonne agreed to keep in contact with the Health Department regarding any delay in inspections.

Mr. DuPont moved to require that completed Title 5 inspections of the septic systems at 10 Old County Road be submitted to the Health Department no later than January 1, 2023 and if inspections are not submitted by that date, begin fining the owner utilizing the Non-Criminal Disposition fee schedule, 2nd by Mr. Antoine and approved 5-0-0.

B. Show Cause Hearing-119 Julien Road/Moleski & Maynard- Failure to comply with Harwich Board of Health Regulations regarding the testing and reporting requirements for Innovative/Alternative Systems

Ms. Pflieger opened the hearing. Mark Moleski was present and provided the Chair with a copy of an operation and maintenance contract. Mr. Moleski went on to review the history of the property.

Health Director O'Neill stated that she would need to review the contract to make sure that it meets all of the testing requirements. She wants to remind the Board that there was an increase of habitable space when the septic was being installed which triggered the Board's condition of an innovative alternative septic. This condition was accepted by the engineer that was present at the meeting on behalf of the owner.

Mr. Moleski asked what levels would dictate that he is out of compliance.

Health Director O'Neill stated that if staff finds that the contract is not correct, this will be brought back before the Board.

Mr. DuPont moved that the Board of Health take no action at this time regarding 119 Julien Road, 2nd by Mr. Antoine and approved 5-0-0.

C. Hearing-126 Route 28/Chase Escape Cape Cod LLC-for the applicant to provide the Board of Health with sufficient evidence that a contract has been executed for a septic upgrade and to have further discussion on a possible extension of time for the septic upgrade of up to 45 days or longer

No one was present on behalf of the property.

Health Director O'Neill reported that staff was informed of a management change for Chase Escape Cape Cod LLC.

Mr. DuPont moved to continue the hearing for Chase Escape Cape Cod, LLC, 126 Route 28, until the November 15, 2022 Board of Health meeting no earlier than 6:30 p.m. for the reason that no one was present at tonight's meeting to represent the property, 2nd by Mr. Antoine and approved 5-0-0.

VII REPORT OF THE HEALTH DIRECTOR- Health Director report for the month of October 2022

Health Director O'Neill read her monthly report for the month of October 2022.

VIII CORRESPONDENCE

No correspondence was discussed.

IX PERMITS

ESTABLISHMENT
SEPTIC INSTALLER
Earth & Stone *
Miranda's Excavating *
UTILITY INSTALLER
JTC Contractors (2022 NEW)
Quirk Excavating & Trucking (2022 NEW)
*2022 Renewal

Mr. DuPont moved to approve the permits as presented, 2nd by Mr. Antoine and approved 5-0-0.

X OTHER

No other items were discussed.

XI ADJOURN- The meeting adjourned at 8:15 p.m.

Mr. DuPont moved to adjourn the meeting of the Board of Health at 8:15 p.m., 2nd by Mr. Antoine and approved 5-0-0.

Respectfully Submitted,

Jennifer Clarke

Next meeting is Tuesday, November 15, 2022 at 6:30 p.m.

Documents included in the October 20, 2022 Board of Health Meeting Packet:

- October 20, 2022 Board of Health Agenda
- Draft Board of Health Minutes dated September 20, 2022
- COVID-19 update dated October 12, 2022
- Memo from Harwich Conservation Commission to Harwich Board of Selectmen dated October 5, 2022
- DCPC Information dated October 8, 2014

- **Barnstable County Assembly of Delegates Fertilizer Management DCPC dated September 18, 2013**
- **310 CMR 31:00 Department of Agricultural Resources**
- **Session Law-Acts of 2012 Chapter 262**
- **Email from Patrick Otton to various town departments dated September 9, 2022**
- **2022 Sales Regulation-Sample Regulation Restriction the sale of tobacco and vape products**
- **Regulations of the Harwich Board of Health Restricting the Sale of Tobacco Products**
- **Draft 2023 Board of Health meeting schedule**
- **Draft 2023 Health Department Fee Schedule**
- **Existing Health Department Fee Schedule**
- **Town of Dennis FY2022 Fee Schedule**
- **Town of Chatham Board of Health Department Fee Schedule**
- **Town of Brewster Health Department Fee Schedule**
- **Town of Orleans Health Department Fee Schedule**
- **Draft Town of Harwich Board of Health Animal Regulations**
- **Email from Mark Coleman dated September 21, 2022**
- **Email from ACO Jennifer Harrington dated September 23, 2022**
- **Site Summary for 10 Old County Road dated October 20, 2022**
- **Notice to Appear before the Board of Health for 10 Old County Road dated September 13, 2022**
- **Notice of Violation for 10 Old County Road dated July 27, 2022**
- **Email correspondence for 10 Old County Road dated July 27, 2022**
- **Complaint regarding 10 Old County Road dated July 26, 2022**
- **Site Summary for 119 Julien Road dated October 20, 2022**
- **Notice to Appear before the Board of Health for 119 Julien Road dated September 21, 2022**
- **Non-Compliant I/A Septic System Referral Summary for 119 Julien Road**
- **Letter to property owner of 119 Julien Road dated August 11, 2022**
- **Site Summary for 126 Route 28 dated October 20, 2022**
- **Letter from Thomas Paulini to Town of Harwich dated October 7, 2022**
- **DEP Letter dated June 1, 2022**
- **DEP Fact Sheet dated June 1, 2022**
- **Health Director Monthly Report for October 2022**
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