

TOWN OF HARWICH



BOARD OF HEALTH

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**TOWN OF HARWICH BOARD OF HEALTH  
TUESDAY, FEBRUARY 18, 2020-6:30 P.M.  
HARWICH TOWN HALL – SMALL HEARING ROOM  
MINUTES**

BOARD OF HEALTH MEMBERS PRESENT: Chairwoman Pamela Howell, R.N., Vice Chairwoman Sharon Pflieger, Members Matthew Cushing, M.D., Ronald Dowgiallo, D.M.D & Matthew Antoine

STAFF MEMBERS PRESENT: Senior Health Agent Kathleen Tenaglia & Executive Assistant Jennifer Clarke

OTHERS PRESENT: Parin Patel, David Stott, John Schnaible, Leo Cakounes, Rob Donovan, Maulik Patel, Laura Kelly, Mark Farber & 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 6:30 p.m.

**II MINUTES OF PREVIOUS MEETING- January 21, 2020**

**Dr. Cushing moved to approve the minutes of the January 21, 2020 Board of Health meeting, 2<sup>nd</sup> by Mr. Dowgiallo and approved 4-0-1 (Pflieger).**

**III 6:30-7:00 PM- BOARD OF HEALTH WORK SESSION**

**A. Continued Review of Draft Town of Harwich Nutrient and Pesticide Control Bylaw/Education-Discussion with Shawn Fernandes from the Golf Department**

Golf Superintendent Shawn Fernandez was present to discuss the history of fertilizer use at Cranberry Valley and how they have reduced their rates, thoughts on organic fertilizer and how they work, pesticide use and thoughts as it pertains to the town and the environment and the hope of Cranberry Valley to become an Audubon International cooperative sanctuary. Mr. Fernandez informed the Board that his main goal since starting his job in 1999 was to reduce fertilizer use. He uses approximately 11 ounces per 80 acres of land. The goal of Cranberry Valley is to give the best product that they can, but understand that we are dealing with financial and economic situations. In April and November, the golf course uses a synthetic fertilizer and in the middle of the summer, they are able to use organic products. Mr. Fernandez reviewed the soil testing and water testing that is done at the golf course, noting that they try to always do preventative maintenance.

In addition to Cranberry Valley, Mr. Fernandez also takes care of the front field at Monomoy and advises the Highway Department for the fields that they maintain, which is approximately 80-90% of town owned land.

At Cranberry Valley and other town owned properties, they try to move away from the use of glyphosate, but Mr. Fernandez stated that he does not want to lose the option to ask for permission to use it, if absolutely necessary.

Mr. Dowgiallo asked if there is any alternative that they can use on the golf course, other than "Round Up". Mr. Fernandez asked the Board to remember that "Round Up" is a chemical that is still legal to use in the state of Massachusetts. However, where we are a municipality, they do listen to Boards and others to try and look at different treatment methods.

Ms. Pflieger would still like to see education provided and feels that it would answer a lot of questions. Mr. Fernandez agreed and also offered any assistance to the Board. Ms. Pflieger stated that she does not think that there is any data that links glyphosate to cancer and Mr. Fernandez agreed and added that that the chemistry needs to be understood.

Mr. Dowgiallo wants to be sure that the town does not get involved in any kind of law suit as has been seen on the news.

**Ms. Pflieger moved to continue this discussion until an upcoming Board of Health Work Session, 2<sup>nd</sup> by Mr. Dowgiallo and approved 5-0-0.**

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

**A. (Continued from November 12, 2019 Board of Health Meeting) Request for Extension of Board of Health Condition-** Request from 21 Plus Smoke Shop, 1421 Orleans Road, to extend the deadline of their approved tobacco application until April 30, 2020

Chairwoman Howell opened the hearing. Parin Patel was present. Mr. Patel informed the Board that he is requesting an extension of their Board of Health condition because they are still in the process of trying to finalize their lease. The company that they are dealing with is a large company so it is taking longer to receive correspondence from them. They have a contractor lined up and are simply waiting on approval from the landlord.

No public comment was heard. Chairwoman Howell closed the hearing.

The Board stated no objection to Mr. Patel's request. Ms. Howell did suggest that it might be better to approve the request on a month by month basis. If they need another extension after one month, Mr. Patel can request, in writing, to be on another Board of Health agenda.

Health Agent Tenaglia stated that the Health Director recommended that they be in operation by March 17, 2020 and if he needs a further extension, he will have to submit a written request to the Board.

**Dr. Cushing moved to approve the request to extend the deadline of the approved tobacco application from 21 Plus Smoke Shop, 1421 Orleans Road, until March 17, 2020 and that if the owner needs an additional extension, that they submit a written request to the Board of Health, 2<sup>nd</sup> by Ms. Pflieger and approved 5-0-0.**

**V NEW BUSINESS**

**A. Hearing-7 Eleven 34434/Syed Naqui-**Appeal of an order and fine issued by the Health Department for violation of the Regulations of the Harwich Board of Health Restricting the Sale of Tobacco Products, Section D and 105 CMR 665.010: Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems

Chairwoman Howell opened the hearing. Syed Naqui was present. Mr. Naqui stated that he no longer has access to the video because he has turned the store back over to corporate. He went on to request that the Board of Health reduce the \$1000.00 fine, claiming a financial hardship.

Dr. Cushing asked Mr. Naqui if he was in charge and responsible for his employees on the day of the violation. Mr. Naqui responded that he was.

Mr. Naqui stated that since the new tobacco regulations went into place, it has harmed his business. He added that he has been paying the salaries out of his pocket and he doesn't have any money left, which is why he returned the store back to the corporate office. Dr. Cushing asked if Mr. Naqui has any evidence that he cannot

afford to pay the fine. Mr. Naqui responded that if the Board gives him time, he can provide documentation. Dr. Cushing said that he would be willing to consider the appeal request with further evidence from Mr. Naqui.

Health Agent Tenaglia stated that Health Director Eldredge requested a copy of the surveillance tape or a written statement from Mr. Naqui or the clerk. As of today, neither of those have been received.

**Dr. Cushing moved to continue the hearing for 7-Eleven 34434/Syed Naqui, until the March 17, 2020 Board of Health meeting and require that Mr. Naqui submit documentation showing his financial hardship and inability to pay the fine, plus that a letter from 7-Eleven Corporation be sent to the Health Department showing that they have retained control of the business, 2<sup>nd</sup> by Mr. Dowgiallo and approved 5-0-0.**

**B. Hearing-Lucey, 32 Dunes Road**, to consider a variance request to relocate and replace an existing pump chamber & request for relief from providing a monopour or plastic construction pump chamber  
Harwich Board of Health Regulation 1.210

1. Per Harwich Board of Health Regulation 1.210: To allow a proposed pump chamber to be 35' from the wetland as recognized by the Harwich Conservation Commission where 50' is required. Variance request of 15'.

2. Per Harwich Board of Health Regulation 1.210: To allow for relief from providing a monopour or plastic construction pump chamber within 100' of a wetland as recognized by the Conservation Commission

Chairwoman Howell opened the hearing. John Schnaible from Coastal Engineering Company was present. Health Agent Tenaglia read the variances being requested. The homeowners would like to install a new hardscape including stairs and stone walls that will be located over the existing pump chamber. To best access the pumps, the chamber is being moved. The chamber will be farther away from the resource area than it is now. Industry does not make a 2000 tank is that is H2O and the tank will be located under the driveway, so H2O is required. The engineer has proposed to wrap the tank and make it watertight in lieu of a monopour tank.

No public comment was heard. Chairwoman Howell closed the hearing.

Dr. Cushing asked for further explanation on the makeup of the pump chamber. Mr. Schnaible reviewed how the pump chamber system works and that in order to get the required 24 hour storage, you need a 2000 gallon pump chamber.

Ms. Pflieger confirmed that the pump chamber will be located under the driveway. She asked how the system would be accessed. Mr. Schnaible responded that there will be covers to grade that will allow for access.

Health Agent Tenaglia stated that Health Director Eldredge recommends approval of the variances with the following conditions:

1. The property shall be restricted to a maximum of 7 bedrooms.
2. No increase in square footage or habitable space without further review by the Board of Health.
3. The 2000 gallon pump chamber shall be water tested prior to use.
4. Variances and conditions to be recorded at the Barnstable County Land Court.

**Ms. Pflieger moved to approve the recommendation of the Health Director, 2<sup>nd</sup> by Dr. Cushing and approved 5-0-0.**

**C. Hearing-Murray, 23 Harbor View Road**, to reconsider Order of Conditions granted September 14, 1994-No increase in square footage to the dwelling. Projects consists of adding a 2<sup>nd</sup> floor to the existing dwelling. The 2<sup>nd</sup> floor will consist off a bedroom, bathroom and office/study

Chairwoman Howell opened the hearing. Attorney Bill Reilly was present. The approved floor plan in 1994 did not include any finished space in the basement. The proposed floor plan shows an increase in habitable space by adding a second floor. The first floor is being modified to remove a bedroom and install a larger bathroom/master suite. The second floor is proposed to have a bedroom and an office/study accessed by a 4' cased opening. This area is not located in a watershed and is in phase 8 of the CWMP.

No public comment was heard. Chairwoman Howell closed the hearing.

Health Agent Tenaglia stated that Health Director Eldredge recommends approval of the request with the following conditions:

1. The office/study shall have a half wall open to the stairwell in order to remove privacy and the use of the room as a bedroom.
2. The property shall be restricted to a maximum of 2 bedrooms.
3. No increase in square footage or habitable space without further review by the Board of Health.
4. Variances and conditions to be recorded at the Barnstable County Registry of Deeds.

**Dr. Cushing moved to approve the recommendation of the Health Director, 2<sup>nd</sup> by Ms. Pflieger and approved 5-0-0.**

**D. Value Mart, 435 Route 28,-Food Service Permit suspension hearing for repeat violations of 105 CMR 590.000: The State Sanitary Code and the 2013 FDA Food Code**

Chairwoman Howell opened the hearing. Attorney Matthew Porter was present with Bahecharbhai Patel. Attorney Porter stated that the violations are extremely unfortunate and unacceptable. The employee who was on staff when the violations occurred has been let go. According to Attorney Porter, the violations have been corrected. Mr. Patel stated that the property, including the outside, has been cleaned up. Health Agent Tenaglia read the history of violations at the property, dating back to October 2018. This suspension hearing is due to a culmination of many violations cited over the last two months. Expired food items are routinely brought to the attention of management, removed from the shelves and days later, more expired items are back on the shelves. It is believed that the owner is not getting the food from an approved source. In addition to the litter that has still not been completely cleaned up, the store now has evidence of a mice infestation. All affected food items and containers have been discarded and shelving disinfected, however the storage room remains an issue. Holes in the ceiling are most likely the access method for the rodents.

Ms. Pflieger asked how the holes in the ceiling would be addressed. Health Agent Tenaglia responded that the pest control company would more than likely be filling the holes as part of their contract. Ms. Pflieger would like to see a condition that the holes be filled.

Mr. Dowgiallo asked who has been running the store for the last month. Mr. Patel responded that 2 employees were as he was out of the country. Ms. Pflieger added that the owner should have been following up with employees while he was away.

Dr. Cushing would like to be sure that all of the trash outside is removed. He would also like to see the egress and ingress patterns of the rodents sealed so that the issue cannot re-occur. Dr. Cushing suggested allowing a one month time period for removal of the trash, including anything located in the marsh. Ms. Pflieger disagreed and feels that 2 weeks is more appropriate for compliance.

Attorney Porter stated that the establishment receives their food products from J. Polep Distributer.

Mr. Antoine asked what would happen if follow up inspections continue to show violations. Health Agent Tenaglia responded that the Health Director's recommendation would be that their food service permit be suspended for 30 days.

Health Agent Tenaglia informed the Board that staff will be conducting weekly inspections to insure 100% compliance. Health Director Eldredge has recommended the following:

1. Owner must provide a signed contract with a pest control company by Friday, February 21, 2020 at 4:00 p.m.
2. Owner must provide invoices for food products to show where they are coming from.
3. Written plan of action required for monitoring use-by dates.

- Weekly inspections with 100% compliance

The Board requested the following conditions be added:

- All outside trash, including in the marsh area, will be cleaned up within 2 weeks of the meeting date.
- Evidence that egress and ingress for all rodents has been eliminated within 2 weeks of the meeting date.
- If owner is unable to attain the above, recommend suspension of food service permits for 30 days.

**Dr. Cushing moved to accept the recommended conditions, 2<sup>nd</sup> by Ms. Pflieger and approved 5-0-0.**

**VI REPORT OF THE HEALTH DIRECTOR (January 2020)**

Health Agent Tenaglia read the report of the Health Director for January 2020.

**VII CORRESPONDENCE**

No correspondence was discussed.

**VIII PERMITS**

ESTABLISHMENT	ADDRESS	TYPE	TYPE
<b>FOOD SERVICE</b>			
Cakes for All Occassions *	15 Partridge Lane	Limited Food Svc.	
Corner of Yum *	31 Sea Street	Caterer	
Jake Rooneys *	119 Brooks Road	>150 seats	
Kim Jerauld *	1281 Orleans Road	Limited Food Svc.	
Mooncussers Tavern *	86 Sisson Road	61-150 seats	
Nobska Farms *		Event Permit	
Pilgrim Congregational Church *	533 Route 28	Institution	
Pleasant Lake Farm *	2 Birch Drive	Retail <600 SF	
Reds Pizza *	703 Main Street	Retail <50 SF	31-60 seats
Ridiculous Fun *	24 Mabel Canto Way	Event Permit	Limited Food Svc.
The Family Pantry of Cape Cod *	133 Queen Anne Road	Mobile Food	
Wellfleet Chick Koop & Farm *		Event Permit	
Wequassett Resort-Outer Bar & Grill *	2173 Route 28	61-150 seats	
Wequassett Resort-Main Kitchen *	2173 Route 28	>150 seats	
Wequassett Resort-Pavilion *	2173 Route 28	61-150 seats	
Wequassett Resort-Tennis Grille *	2173 Route 28	1-30 seats	
<b>SEPTIC HAULER</b>			
United Site Services *			
<b>STABLE</b>			
Ronald Daigle & Kristen Goulis *	9 Sadie's Way	Res. Stable	
Solomon & Laurie Jean Ellis *	15 North Westgate Road	Res. Stable	
Susan Shaw *	326 Main Street	Res. Stable	
<b>SEPTIC INSTALLER</b>			
A & S Construction *			
Aaron T. Gingras *			
Cape Coastal Builders *			
J.C. Ellis Design Co. Inc. *			
MCE Dirtworks *			
Peter W. McIntire & Sons, LLC *			
<b>TITLE 5 INSPECTORS</b>			
Jason C. Ellis *			

Joseph M. Martins *			
Michael O'Loughlin *			
<b>LICENSED UTILITY INSTALLER</b>			
<b>Bortolotti Construction (2020 New)</b>			
<b>John Martin, Inc. (2020 New)</b>			
<b>Northeast Construction (2020 New)</b>			
<b>Robert B. Our Co. Inc. (2020 New)</b>			
<b>T.W. Nickerson, Inc. (2020 New)</b>			

\* 2020 Renewal

**Dr. Cushing moved to approve the permits as per list dated February 18, 2020, 2<sup>nd</sup> by Ms. Pflieger and approved 5-0-0.**

**IX      OTHER**

No other items were discussed.

**X      ADJOURN** -The meeting adjourned at 8:04 p.m.

**Ms. Pflieger moved to adjourn the meeting at 8:04 p.m., 2<sup>nd</sup> by Dr. Cushing and approved 5-0-0.**

**Respectfully Submitted,**

**Jennifer Clarke**

**Next meeting is Tuesday, March 17, 2020 at 6:30 p.m. in the Small Hearing Room.**

Documents included in February 18, 2020 Board of Health Meeting Packet:

- February 18, 2020 Board of Health Agenda
- Draft Board of Health Minutes dated January 21, 2020
- Letter from Shawn Fernandez to Health Director dated February 12, 2020
- Copy from CWMP
- UMASS Extension Step by Step Fertilizer Guide for Home Grounds and Gardening
- Understanding a Turf Fertilizer Label dated May 2011
- Request from 21 Plus Smoke Shop/1421 Orleans Road dated February 3, 2020
- Letter to 21 Plus Smoke Shop dated November 18, 2019
- Board of Health Site Summary for 21 Plus Smoke Shop dated November 12, 2019
- Request from 21 Plus Smoke Shop/1421 Orleans Road dated September 30, 2019
- Request from 7-Eleven dated January 28, 2020
- Letter to 7-Eleven dated January 22, 2020
- Tobacco Compliance Check Form for 7-Eleven dated April 14, 2015
- Site Summary for 32 Dunes Road dated February 18, 2020
- Board of Health Variance Application and Associated Documents for 32 Dunes Road dated February 5, 2020
- Site Summary for 23 Harbor View Road dated February 18, 2020
- Board of Health Variance Application and Associated Documents for 23 Harbor View Road dated February 4, 2020
- Site Summary for Value Mart/435 Route 28 dated February 18, 2020
- Letter sent to Value Mart dated February 6, 2020
- Town Harwich Non-Criminal Violation Notice dated February 6, 2020
- Narrative for Value Mart dated February 5, 2020
- Various Photos for Value Mart dated February 5, 2020
- Letter sent to Value Mart dated January 17, 2020

- Various Photos for Value Mart dated January 14, 2020
- Health Director Monthly Report dated February 5, 2020
- Town of Harwich Report of the Health Director 2019
- Letter to Value Mart dated January 17, 2020
- Letter of Main Street Market dated January 22, 2020
- Letter to Portside Liquors dated January 22, 2020
- Letter to 7-Eleven dated January 22, 2020
- Any other documents submitted for/at the February 18, 2020 Board of Health Meeting