

TOWN OF HARWICH



BOARD OF HEALTH

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**TOWN OF HARWICH BOARD OF HEALTH
TUESDAY, NOVEMBER 16, 2021- 6:30 P.M.
HARWICH TOWN HALL – DONN B. GRIFFIN ROOM
MEETING MINUTES**

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

BOARD OF HEALTH MEMBERS ABSENT: Member Kevin DuPont, R.N.

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

OTHERS PRESENT: Attorney Matt Fitzsimmons, Bhadrash Patel, John Weld, Mary Albis & Amy Kwesell, Esq.

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 (Regular Meeting Minutes) October 19, 2021 & November 8, 2021

Mr. Dowgiallo moved to approve the minutes of the October 19, 2021 Board of Health meeting as printed. 2nd by Mr. Antoine and approved 4-0-0.

Ms. Pflieger moved to approve the minutes of the November 8, 2021 Board of Health meeting as printed, 2nd by Mr. Antoine and approved 4-0-0.

III 6:30 PM - BOARD OF HEALTH WORK SESSION

A. COVID-19 Update

Health Director O'Neill reported that we are currently tracking 38 positive cases of COVID-19. The average age of all cases is 35 years old and the case ages range from 2-86 years old. 18 of the positive cases are fully vaccinated and 20 are not vaccinated.

To date, 8,106 of our eligible 11,481 full time residents are fully vaccinated. 9,396 have received at least one dose. The Pfizer COVID-19 vaccine was authorized by the CDC for use in children ages 5-11 on November 2, 2021.

There will be a COVID-19 vaccine clinic held at Harwich Elementary School on December 1, 2021 from 3:00-4:30 p.m.

Free COVID-19 testing is being offered to Town of Harwich staff and Board/Committee members. Please call the Health Department at 508-430-7509 to schedule an appointment.

B. Board of Health Discussion regarding face covering requirement during Board, Committee and Town Meetings

Health Director O'Neill recommended that the existing face covering requirement remain in effect. The Board agreed with the recommendation.

C. Discussion regarding revisions to Animal Regulations

Ms. Pflieger stated that she has been working on a draft piggery regulation and reviewing what other towns have in place. She has been running into issues with different setback requirements. Ms. Pflieger has been in communication with Health Director O'Neill and will work to have information for the Board to review at their December meeting.

The Board had a brief discussion regarding residential versus commercial requirements. Health Director O'Neill noted that while the Board of Health would still permit commercial operations, the USDA oversees animals for consumption, including vaccination and transportation.

Health Director O'Neill stated that once the Board has a draft, we can ask other Board and/or staff for their input.

D. Board of Health Discussion on sewer extension criteria

Ms. Pflieger had spoken with Wastewater Superintendent Dan Pelletier regarding extension criteria. She noted that she would follow up with him in January. Health Director O'Neill suggested inviting Mr. Pelletier to the Board's January meeting to be involved in extension criteria discussions.

E. Review 2022 Board of Health Meeting Schedule

Mr. Antoine moved to accept the 2022 Board of Health Meeting schedule as provided in the packet, 2nd by Ms. Pflieger and approved 4-0-0.

IV OLD/UNFINISHED BUSINESS

No old/unfinished business was discussed.

V NEW BUSINESS

- A. **Public Hearing-Board of Health** vote to rescind Nutrient and Fertilizer Control Regulation adopted January 22, 2021

Chairwoman Howell opened the hearing. Town Counsel Amy Kwesell, Esq. from KP Law was present. It was brought to the attention of KP Law that the Board of Health enacted fertilizer regulations. Unfortunately, there is a state act which preempts cities or towns from adopting such a regulation. The regulations, if challenged, would found to be null and void. It is the recommendation of KP Law that the regulations be rescinded and to allow for MDAR to control fertilizer use as they have been tasked to do by the legislature.

Ms. Pflieger stated her concerns about if the Board were to rescind their regulation, then the town is left without a regulation and that is not a benefit to help control fertilizer use. She asked if we could reference the state regulation and provide information and/or guidelines to homeowners on fertilizer use. Attorney Kwesell stated that there would not be an issue with putting guideline information on the Town of Harwich website and referring residents to the state regulations. Just because the Board of Health rescinds their regulation, does not mean that the Board of Health couldn't provide fact sheets to their residents.

Ms. Pflieger asked who is responsible for enforcing the state regulations. Attorney Kwesell responded that MDAR is responsible for enforcement. Health Director O'Neill added that MDAR's contact information is available on the Town of Harwich Health Department webpage.

Ms. Pflieger would like to provide the general public with guidelines about fertilizer application. Attorney Kwesell agreed and also agreed to review what information the Board puts together.

Harwich Resident Mary Albis was present. She stated her disappointment that the well thought out and well researched regulation needs to be rescinded. She feels that the state laws are pretty lax. Ms. Albis stated that Senator Julian Cyr has a bill before our legislature that would give towns the ability to enforce stricter regulations on topics like fertilizer. Ms. Albis feels that educating the public is very important. While it may be a large task, Ms. Albis encouraged the Board to consider thinking about regulations of pesticide and herbicide use in town as well.

Chairwoman Howell closed the hearing.

The Board directed Health Department staff to supplement fertilizer information on the Town of Harwich Health Department and Board of Health webpages. They also instructed staff to update the fertilizer policy for review and possible vote at their January 2022 meeting.

Mr. Antoine moved that the Harwich Board of Health rescind the Fertilizer Regulations adopted on January 22, 2021, 2nd by Mr. Dowgiallo and approved 4-0-0.

- B. **Show Cause Heraing-100 Route 28, Fitzpatrick-Show Cause** hearing to discuss non-compliance with an order issued to upgrade a failed septic system

Chairwoman Howell opened the hearing. No one was present to represent the property. On August 29, 2016, the Health Department received a Title 5 inspection report for 100 Route 28, West Harwich. It was determined that the septic system was in a state of hydraulic failure and required upgrade. The owners were notified via mail of the upgrade requirements. On September 8, 2016, the Health Department

received an email from Stephen & Denise Fitzpatrick acknowledging the failed system and stating that they had other projects to attend to before upgrading. They expected the upgrade to be completed within 90 days. A search of Health Department records shows that as of today, the failed septic system has not been upgraded. The Health Department has had no further communication from the property owner beyond the September 8, 2016 email.

Health Director O'Neill recommended the following conditions be imposed:

1. The existing septic tank must be pumped within one week of this meeting and the Health Department must receive a copy of the pumping record. If it has already been pumped (within the past 2 months), then please provide a copy of the pump record to the Health Department.
2. Owner shall provide a copy of the service agreement to the Health Department as proof of engineering engagement within 7 days of this meeting.
3. The owner shall hire a septic installer and provide a copy of the service agreement to the Health Department who will submit the application to install the upgraded septic system within 30 days of this meeting.
4. The system upgrade shall be completed within 45 days of application approval.
5. Failure to comply with these conditions will result in fines by non-criminal method in the District Court pursuant to the provisions of MGL Chapter 40 § 21D. For the purposes of this Regulation the following fine schedule will be imposed: First Offense: Written Warning Second Offense: \$50.00 Third Offense: \$100.00 Fourth and subsequent Offenses: \$300.00
6. If the system hasn't been installed by February 1, 2022, the water shall be shut off to the property.

Mr. Dowgiallo suggested changing the timeline of condition 3 to 15 days and the timeline of condition 4 to 30 days. The other Board members agreed.

Mr. Dowgiallo moved to accept the recommendation of the Health Director, with his proposed amendments, 2nd by Mr. Antoine and approved 4-0-0.

- C. **Hearing-Bhadresh Patel-** Request for a variance from Harwich Board of Health Tobacco Regulations Restricting the Sale of Tobacco Products-Section E/10C (Tobacco Product Permit Sales/Maximum Number of Tobacco Product Sales Permits)

Chairwoman Howell opened the hearing. Bhadresh "Bob" Patel was present along with Attorney Matthew Fitzsimmons and John Weld of Kinlin Grover. Attorney Fitzsimmons stated that he has worked with Mr. Patel for over a decade and has had an opportunity to see how he manages his product and inventory, while working with supplies and remaining compliant with regulations. In the current regulations, tobacco licenses are non-transferrable. In seeking this variance, Mr. Patel is looking to maintain and improve the property while keeping it active.

Ms. Pflieger stated that she doesn't think anyone is questioning the quality of Mr. Patel's stores and that the Board is looking at the sale of tobacco products. The Board worked very hard at updating the tobacco regulations while looking at public health. She feels that if the Board starts granting variance requests for tobacco regulations, that others will come forward and then the Board would be adding more tobacco licenses in town. Ms. Howell agreed and added that as soon as a permit has been returned to the Board of Health, it is permanently retired.

Health Director O'Neill recommended denial of the variance request, stating that the tobacco regulations were put in place to minimize the number of locations that sell tobacco in order to protect public health. We are pro-business, but not pro-tobacco.

John Weld from Kinlin Grover was present and stated that he has been involved in a lot of Mr. Patel's real estate transactions. He feels that if there is no ability to have a tobacco license at this location, then no one will rent the property as a convenience store. Ms. Pflieger asked Mr. Patel that if he is not able to sell tobacco, that he wouldn't be able to make a go of the business. Mr. Patel nodded yes. Ms. Pflieger responded that she has a problem with that and that the regulations are in place to protect public health. Ms. Howell agreed.

Attorney Fitzsimmons asked if the Board would consider allowing for a narrower tobacco product sales option. Ms. Pflieger again stated that if the Board grants a variance for one, then they would need to be granted for all.

Mr. Weld stated that what is happening in a lot of towns is that if 7-11 has a store, and they sublease it from an owner, that they are not notified about any changes in regulations. For point of clarification, Health Director O'Neill stated that all tobacco license permit holders were notified of the tobacco regulation public hearing.

Chairwoman Howell closed the public hearing.

Ms. Pflieger moved to deny the variance request from Bhadresh Patel for 5 Route 28, West Harwich, 2nd by Mr. Dowgiallo and approved 4-0-0.

VI REPORT OF THE HEALTH DIRECTOR

Health Director O'Neill reviewed her monthly report as provided in the Board of Health packet.

VII CORRESPONDENCE

A. Copies of violation notices for 47 North Road

Health Director O'Neill informed the Board that as of today, none of the non-criminal violations have been paid and noted that we will be filing a criminal complaint with Orleans District Court in the future. We have also had no communication from the property owner. The water to the property has been shut off.

VIII PERMITS

No permits required review.

IX OTHER

No other items were discussed.

X ADJOURN- The meeting adjourned at 7:30 p.m.

Ms. Pflieger moved to adjourn the meeting at 7:30 p.m. 2nd by Mr. Antoine and approved 4-0-0.

Respectfully Submitted,

Jennifer Clarke

Next meeting is Tuesday, December 21, 2021 at 6:30 p.m.

Documents included in November 16, 2021 Board of Health Meeting Packet:

- November 16, 2021 Board of Health Agenda
- Draft minutes of the October 19, 2021 Board of Health Meeting
- Draft minutes of the November 8, 2021 Board of Health Meeting
- Weekly COVID-19 update dated November 12, 2021
- Town of Chatham Animal Regulations
- Town of Brewster Animal Regulations
- Town of Dennis Animal Regulations
- Town of Yarmouth Stable Regulations
- Draft 2022 Board of Health Meeting Schedule
- Legal Ad Notice for Public Hearing of rescindment of Town of Harwich Fertilizer and Nutrient Control Regulation dated October 18, 2021
- Email from KP Law to Health Director dated October 12, 2021
- Memo from KP Law to Health Director dated October 12, 2021
- Site Summary for 100 Route 28 dated November 16, 2021
- Notice to appear before Board of Health for 100 Route 28 dated October 19, 2021
- Email from Steve Fitzpatrick of 100 Route 28 dated September 8, 2016
- Notice of Violation for 100 Route 28 dated August 31, 2016
- Title 5 Official Inspection Form August 22, 2016
- Site Summary for 5 Route 28 dated November 16, 2021
- Request for variance for 5 Route 28 dated November 1, 2021
- Health Director Monthly Report for November 2021
- First Offense Non-Criminal Disposition-Writing Warning for 47 North Road dated October 14, 2021
- Second Offense Non-Criminal Disposition-Writing Warning for 47 North Road dated October 19, 2021
- Third Offense Non-Criminal Disposition-Writing Warning for 47 North Road dated October 26, 2021
- Fourth Offense Non-Criminal Disposition-Writing Warning for 47 North Road dated November 8, 2021
- Any other documents submitted for/at the November 16, 2021 Board of Health meeting