

TOWN OF HARWICH



BOARD OF HEALTH
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Town of Harwich Board of Health
Tuesday, June 13, 2017
6:30 PM
TOWN HALL – SMALL HEARING ROOM
MINUTES

BOARD OF HEALTH MEMBERS PRESENT: Chairman Dr. Robert Insley, Vice Chairman Pamela Howell R.N., & Frank Boyle

BOARD OF HEALTH MEMBERS ABSENT: Cynthia Bayerl

STAFF MEMBERS PRESENT: Health Director Paula Champagne, Senior Health Inspector Meggan Tierney & Administrative Assistant Jennifer Clarke

OTHERS PRESENT: Robert Bourne, Saamil Patel, Barry Dino Viprino, Meredith Viprino, Bill Galvin, Parest Patel, Dennis Lane, Maulik Patel, Bahecharbhal Patel, John Schnaible, Audrey Greenway, Ross & Bonnie Hall, Jim Knieriem, Justin Brackett, Griffin Brackett, Ray Tomlinson, Matt Kelly Michael MacAskill, Ben Medra, Pam Rodrigues, Richard Waystack, Bernadette Waystack, Cyndi Williams & Daniel Croteau

I. CALL TO ORDER

At 6:40 p.m., Chairman Insley called the meeting to order.

II. MINUTES OF THE PREVIOUS MEETING (Regular Meeting Minutes)- May 9, 2017

Motion made by Ms. Howell to accept the regular meeting minutes of the May 9, 2017 Board of Health meeting. Mr. Boyle seconded the motion. 3-0-0 Unanimous.

III. BOARD OF HEALTH WORK SESSION

A. Discussion- Amendments to tobacco sales regulation-continued discussion & review; 1. Raise age of sales from 18 to 21 years of age; 2. Limiting flavored tobacco/e-cigarette products; 3. Cigar minimum pricing/packaging; 4. Blunt wrap sales

Dr. Insley read the Board of Health synopsis on the tobacco sales regulation review. Health Director Champagne reported that the Board has been provided with a new working draft of the regulation which includes all suggestions from the tobacco control program. The Board now needs to settle on which working draft they would like to adopt. If the final draft is adopted, the next action will be to schedule a legal hearing for July 11, 2017. All permit holders will be sent the legal ad and working draft.

Mr. Boyle stated that he likes the working draft that was provided to the Board in February and while he appreciates and respects the wishes of the tobacco program, he thinks that their suggestions are over reaching. Ms. Howell agreed.

Health Director Champagne read an e-mail from Board member Cynthia Bayerl, stated that her opinion is to support the clear amendments that were added which address flavored tobacco, size and blunt packaging in addition to raising the age from 18 to 21.

Dennis Lane from Coalition for Responsible Retailing was present and stated that they are finding that raising the age to 21 and that strict enforcement of the regulation seems to take care of a lot of the issues. No other comments were heard from the public.

Motion made by Mr. Boyle to accept the amended draft based on the February submission to the Board of Health by Health Department staff, with a legal hearing to be scheduled on July 11, 2017. Ms. Howell seconded the motion. 3-0-0 Unanimous.

IV. NEW BUSINESS

A. Public Hearing-Resilient Family Farms/Barry Dino Viprino, 35 Chatham Road, to show cause why an outstanding order to cease & desist the following operations issued April 9, 2017 should be upheld, modified or withdrawn; 1. Operation of an unlicensed piggery; 2. Unlicensed wholesale of food; 3. Manure management not in compliance with agricultural best management practices

Dr. Insley opened the hearing. Barry Dino & Meredith Viprino were present. Dr. Insley noted that he has filed a notice of disclosure with the Town Clerk's office regarding his previous business relationship with the property owner. Health Director Champagne stated that this is a show cause hearing as a result of an order of noncompliance issued by staff in April 2017. She updated the Board as to what has been accomplished this far.

Mr. Viprino read a memo from his counsel Attorney Ben Zehnder into the record which included the topics of wholesale food sales, manure management practices and procedures, unlicensed piggery, equitable treatment and concluding comments. He noted that an inspector from the state has been to the property and reviewed the wholesale permit process with him. They have applied for their wholesale permit and he feels that he is following through with the Health Departments request to be properly licensed.

Health Director Champagne reviewed the issue regarding the operation of a piggery and what would be required if they continue to pursue a commercial operation.

Dr. Insley inquired if anyone has been able to verify the impervious base under the manure pile. Mr. Viprino stated that there are areas around the pile that could be used to confirm the base.

Jim Knieriem, previous farm manager of 35 Chatham Road was present and stated that the manure pile does have an impervious base. He noted that Terry Walker Excavation was at the property today and stated that there is somewhere between 60 and 80 cubic yards of manure on the property. Some of it will be moved off the property in the next couple of weeks so the base can be investigated, a better berm will be build and a structure will be put over the pile. Mr. Viprino did acknowledge that the manure pile did not come from just the 2 pigs and horses. It will all be used on his property for farm use.

Health Director Champagne stated that the issue of the manure management plan is to be sure that it is in keeping with the existing Board of Health permit for the 2 horse stable. The Board is looking for a return to compliance plan and she stated that she likes the suggestion of the manure being removed and starting from square one.

Audrey Greenway, abutter to the property was present and read the manure management plan that was in place for the previous property owners. She noted that the manure was stored in a trailer and removed off site. The current property owners have never removed the manure and the pile has clearly been issues with runoff and odors. Mr. Viprino responded that the previous owner was hauling away manure because they were not composting it. He is reusing his manure for farm purposes.

Mr. Viprino and his counsel stated that if we are going to require him to obtain a piggery permit, they would like copies of the piggery licenses (with minutes from those hearings), USDA Farm Plans and composting plans for each other resident in town required to do so. Dr. Insley closed the hearing.

Motion made by Mr. Boyle to continue this hearing until the July 11, 2017 Board of Health meeting. Ms. Howell seconded the motion. 3-0-0 unanimous.

B. Public Hearing-Ember, 600 Route 28, Harwich Port, to show cause why an order to return to compliance for a 99 seat restaurant issued May 15, 2017 should be upheld, modified or withdrawn

Dr. Insley opened the hearing and noted that the Ember & Port hearings would be combined as one. Attorney Matt Kelly was present with Jud and Griffin Brackett in the audience. Health Director Champagne stated that this is a show cause hearing for a

return to compliance for seating plans at both establishments. She has met with Griffin Brackett at the staff level and they had amicable discussions about clarifying the seating issue.

This hearing is involving a question of any changes to the exterior seating plans, not an issue with the number of seats. The Board was provided with an update layout showing the location of all seats. Dr. Insley closed the hearing.

Health Director Champagne recommended that the Board accept the most current plan that was submitted to the Board as an amendment to their seasonal seating plan for 2017.

Motion made by Mr. Boyle to accept the Health Department staff recommendation to accept the most current plan that was submitted to the Board as an amendment to their seasonal seating plan for 2017. Ms. Howell seconded the motion. 3-0-0 Unanimous.

Mr. Boyle stated that the Health Department staff has received complaints regarding overcrowding, and inquired if patrons are turned away. Mr. Kelly stated that he does not believe the establishment has ever needed to turn anyone away.

Attorney Ray Tomlinson was present in the audience and stated that the difference between seating and capacity can be an issue.

C. Public Hearing-Port, 541 Route 28, Harwich Port, to show cause why an order to return to compliance for an 84 seat restaurant issued May 11, 2017 should be upheld, modified or withdrawn

Dr. Insley opened the hearing and noted that the Ember & Port hearings would be combined as one. Attorney Matt Kelly was present with Jud and Griffin Brackett in the audience. Health Director Champagne stated that this is a show cause hearing for a return to compliance for seating plans at both establishments. She has met with Griffin Brackett at the staff level and they had amicable discussions about clarifying the seating issue.

Dr. Insley asked Attorney Kelly why his clients did not respond to the Health Department's attempts of communication. Attorney Kelly responded that as soon as the letter was received, his clients responded the next day. Health Director Champagne stated that there have been possible glitches with the town hall e-mail server. The establishment owners have provided both personal phone and email address to the department.

Attorney Kelly stated that his clients have submitted a seating plan for Port reflecting 84 seats. He explained that there may have been confusion on how the seats are offset, and explained how the seats are used at different times during the day. There are never more than 84 seats being used at a time. Dr. Insley closed the hearing.

Health Director Champagne stated that when she was reviewing plans at staff level, it was found that they have a seating occupancy for 85 seats. She recommended approval of the seasonal seating chart and happy hour seating chart as a return to compliance plan.

Mr. Boyle moved to accept the Health Department staff recommendation to accept both the seasonal and happy hour seating charts for The Port as submitted to the Board of Health at the June 13, 2017 meeting and note that they are allowed an 85 seat capacity. Ms. Howell seconded the motion. 3-0-0 Unanimous.

Health Director Champagne informed the Board that she will be working with the building and fire departments on any difference of occupancy numbers.

D. Hearing-Roadhouse Culinary/Kelly's Kombucha/Kelly M. Clancy, 671 Route 28, Harwich Port, to consider a special permit requires to perform specialized processing methods-approval of HACCP plan required for the production of Kombucha-a fermentation process

1. Chapter 3-502.11 Specialized Processing Methods

Health Director Champagne stated that the applicant has requested a continuance until the July 11, 2017 meeting.

E. Hearing-525 Camelot LLC, 557, 559, 561 & 563 Route 28, Harwich Port, Environmental Impact Report to demonstrate compliance with Harwich Board of Health Regulation 1.211: installation of a sewage disposal system that will accommodate flows over 2,000 gallons per day for the proposed redevelopment of the property; prepared by Coastal Engineering Company Inc.

Dr. Insley opened the hearing. John Schnaible from Coastal Engineering Company was present and reviewed the site conditions and the application request. The proposed system meets all Title 5 and Board of Health Regulations.

Richard Waystack was present in the audience and spoke as an abutter to the property. He has a concern about the possibility of doubling the capacity of the septic system. He stated that he is against any increase in capacity of the system and asked that the Board put a caveat on the project that if any change of use occurs on the property that they be required to go before the Board again.

Health Director Champagne stated that once the Board approves the permit request, they are not required to come back before them for a change of use. Any change of use would be governed by the Zoning Board of Appeals & Planning Board. Mr. Schnaible provided the Board with existing and proposed nitrogen loading calculations for the property.

Mr. Waystack said that the proposed building is three times the size of the old building and will effect parking, especially if a 55 seat restaurant moves in there. He again requested that the Board not approve the project tonight. Mr. Schnaible responded that they are not looking at any specific group to use the property, but noted that they are looking at a potential use of over 2000 gallons per day. Dr. Insley closed the hearing.

Health Director Champagne has met with the Town Planner to be sure that the same sets of plans were being submitted to both departments. She recommended that the Board accept the Environmental Impact Report from Coastal Engineering Company dated May 31, 2017 for 525 Camelot LLC and determine that the project is in compliance with 1.211, to allow the project to move forward with the excess capacity without the addition of advanced wastewater treatment.

Motion made by Mr. Boyle to accept the recommendation of the Health Director. Ms. Howell seconded the motion. 3-0-0 Unanimous.

F. Hearing-Barry Bessette, 15 Carefree Way, Harwich, to consider a variance request to install a new Title 5 septic system prepared by Moran Engineering Associates, LLC

Variations from 310 CMR 15.211(1) Minimum Setbacks

1. Per 310 CMR 15.405(1)(a): To allow a proposed septic tank to be 5' from the North lot line where 10' is required. Variance request of 5'

2. Per 310 CMR 15.405(1)(a): To allow a proposed soil absorption system to be 5' from the North lot line where 10' is required. Variance request of 5'

3. Per 310 CMR 15.405(1)(a): To allow a proposed soil absorption system to be 5' from the West (road) lot line where 10' is required. Variance request of 5'

4. Per 310 CMR 15.405(1)(f): To allow a proposed soil absorption system to be 73' from the top of bank at edge of wetland where 100' is required. Variance request of 27'

The Health Department has received a letter from Moran Engineering Associates, LLC with a request to withdraw the application for 15 Carefree Way without prejudice.

G. Discussion-Town of Harwich/Saquatucket Harbor, 715 & 731 Route 28, Harwich Port, preliminary review of the Saquatucket Harbor Landside Improvement Project to demonstrate compliance with Harwich Board of Health Regulation 1.211; prepared by Moran Engineering Associates, LLC

Dan Croteau from Moran Engineering Associates LLC was present. He is before the Board to be sure that everything is in order for when they are presenting their final application. Mr. Croteau reviewed the project. They will not be asking for any variances from Title 5 or Harwich Board of Health Regulations. The proposed septic system will be a vast improvement from the existing 1967 system. He reviewed the proposed septic system.

Health Director Champagne stated that we are in agreement that conservative numbers are being presented and we are moving forward in a positive direction. She thanked Moran Engineering for listening to the concerns of the Health Department and directed them to continue to develop their proposal for the next meeting.

H. Hearing-Crabtree, 176 Great Western Road, Harwich, to reconsider Order of Conditions granted on March 18, 2003- no increase in square footage, habitable space or number of bedrooms beyond those presently existing in the dwelling; proposal to reintroduce the fifth bedroom, previously eliminated from the house, over the detached carriage house

Dr. Insley opened the hearing. Jim Haggerty from Reef Builders was present and provided the Board with a brief history of the property. The proposal is to reintroduce the 5th bedroom on the property by adding approximately 780 sq. ft. of living space will be added over the existing garage with no increase in footprint. The proposal will not increase the design flow to the existing 5 bedroom septic system installed in 2002. The system was recently inspected in 2015 with no issues. Dr. Insley closed the hearing.

Health Director Champagne recommended approval with the following conditions:

1. The dwelling shall be restricted to a total of 5 bedrooms as submitted on the February 28, 2017 plan prepared by Reef Builders.
2. The septic system design flow will be for 550 GPD. No increase in flow, number of bedrooms or square footage.
3. All other variances/order of conditions granted on March 18, 2003 will remain in full force and effect.
4. Record deed restriction as "margin referenced" and return a copy to the Health Department.

Motion made by Ms. Howell to accept the recommendation of the Health Director to approve the request as per plan dated February 28, 2017. Mr. Boyle seconded the motion. 3-0-0 Unanimous.

I. Davenport Realty Trust, 56 Bog Lane & South Westgate Road- Rescind action of December 13, 2016 regarding Environmental Impact Review & decision

Health Director Champagne informed the Board that this project has been redesigned to be under 2000 gallons per day, and that they need to vote to rescind the Environmental Impact Report and Order of Conditions dated December 13, 2016 for 45 Bog Lane and 225 & 235 South Westgate Road.

Motion made by Mr. Boyle to rescind the Environmental Impact Report and Order of Conditions dated December 13, 2016 for 45 Bog Lane and 225 & 235 South Westgate Road. Ms. Howell seconded the motion. 3-0-0 Unanimous.

V REPORT OF THE HEALTH DIRECTOR (May 2017)

- Projects-
 - Emergency Management- we participated in a statewide communication readiness drill with MDPH on May 23rd. Staff are also participating in the redraft/update to the towns All Hazard Mitigation plan as required by FEMA.
 - Summer Interns- we will again participate in the intern program with Barnstable County Dept of Health & Environment. David Sherman will be here Tuesdays' to assist with food inspections. David will be a senior at Johnson & Wales majoring in nutrition. It is his 2nd year as an intern with the county program. Alexandra Fitch will be our beach and pond sampler 1 ½-2 days per week. She has just received her MPH from Tulane University in New Orleans. Sampling of beaches will begin week of June 5th
 - Resilient Family Farm- inspectors from MDPH – Food Division conducted an inspection May 2nd. This was directly related to the BOH order concerning wholesale of farm product in at area grocers. An agricultural practice is allowed to wholesale product to a retailer provided the product is delivered directly to the retailer from the slaughter/processing facility. This was not the case. Resilient Farms must go through the wholesale permitting process with MDPH to allow this practice.
 - Pet Cemetery- Cemetery Administrator inquired as to BOH role in Harwich Pet Cemetery. Health Director filed a request to Town Counsel for an opinion if MGL BOH hearings and site assignment requirements would apply to this situation. Ruling- no BOH jurisdiction.
 - Community Development Project Review- team met with potential buyers of the *Stonehorse Motel* who wish to use the property for seasonal employee housing and year round guest quarters for a local company's training program. Team also met with Saquatucket Harbor development group on amended plans for the landside construction project. The project has been significantly altered in size and is now ready to begin committee review process to prepare for bidding. Moran eng will be preparing the septic component (with an included advanced wastewater system) and will schedule an informal discussion with the BOH prior to completion of the Environmental Impact Report.
 - Inspections, Inspections, Inspections!- pools, beaches, seasonal food establishment openings dominate most of May
 - Accela- we have passed the 2 year point of live use and installation and 10 months of 'go live' to the public. We continue to learn of many new users to the system esp for research and download of information but the electronic filing of permits is still light. Our largest potential category of use (as well as the simplest) would be the filing of Real Estate Inspection Reports. Try as we might to persuade the inspection community to use this program, to date we have only one company in use. We would like to institute a mandatory filing of this program and suggest a date

of September 1, 2017 for implementation. We would agree to host multiple training sessions again to assist with education.

Motion made by Mr. Boyle to support the mandatory filing of Real Estate Inspection Reports in Accela with a implementation date of September 1, 2017. Ms. Howell seconded the motion. 3-0-0 Unanimous.

- Regulatory review: it has been a minimum of 6 and as much as 11 years since all of our fee schedules were reviewed. In addition, staff has been reviewing areas requiring unusual amounts of staff time that are perhaps in need of a use fee. For example, during violations/ work without permits/ return to compliance there is no fee associated with the multiple documents and amended permits/reports issued. We are also exploring the idea of an annual license for our septic system inspectors. Request input/discussion with the BOH
- Tobacco Control- suggestions from Tobacco Control program added to draft for June BOH discussion; Tobacco Sales Violation- met with manager and regional manager from Cumberland farm to review training and protocols; \$100 ticket issued

Food Service Programs

- The Toast of Harwich ran May 5th - Meggan, Paula & Mark split the ‘hubs’ for coverage since it was a very limited timeslot. Excellent reports on the event food safety wise.
- Domino’s Pizza- discovery of room temperature sauces as SOP in the facility prompted a consultation with the manager concerning food safety practices. Extensive documentation was provided from corporate indicating this met the FDA guidelines for a temperature control exemption and the matter was resolved. Health Dept requested future notification of such products in advance.
- **RET’s/ Sewage permit review – outstanding issues**
 - 47 Old Wharf Rd-RET- additional meetings and onsite walkthrough with owner
 - 232 Bank St-RET- 3 units where 2 are approved; # BR- RTC plan required- *resolved*
 - 54 Sugar Hill Rd-RET- finished basement w/out permits- *resolved with permits and deed restriction*
 - 25 Partridge Lane-RET basement issue- *reconstruction; resolved*
 - 68 Smith St-RET- after many consultations and site visits- *reconstruction; deed restriction; resolved*
 - 27 Rose Lane-RET- basement w/out permits, zone II- *permits; reconstruction; deed restriction; resolved*
 - 265 Lothrop Ave-RET- full basement and apt over garage w/out permits; septic lines w/out permits; unauthorized use of ejector pump in basement. Most complicated case for RET violations in recent history case involved Health, fire, plumbing, electrical and building. *After numerous consultations, call, site visits and team inspector meetings resolved by deconstruction, alterations, permits, deed restrictions.*
 - 26 Sunrise Lane-RET- finished basement w/out permits- return to compliance needed
 - 153 Long Rd-RET- # BR’s 6+ vs 4 permitted, Zone II- return to compliance needed
 - 23 Prince Charles-RET- # BR- walkthrough clarified issue- *resolved*
 - 672 Queen Anne Rd-RET- # BR’s not as permitted in Zone II. Walk thru clarified floor plan. *Deed restriction - resolved*

VII CORRESPONDENCE

- 2017 Refuse Haulers
- 2017 Septage Haulers
- Change to 314 CMR 18.00: Industrial Wastewater Holding Tank & Container Construction, Operation & Record Keeping Requirement
- Meetings & Minutes Guide for Boards, Commissions & Committees
- Mass DEP-Lothrop Avenue Drinking Water Storage Tank & Pump Station
- Stone Horse Motel/Work Force Housing

VIII PERMITS

ESTABLISHMENT	ADDRESS	PERMIT TYPE	PERMIT TYPE
FOOD SERVICE			
A & W Restaurant	297 Route 28	Food Service: 61-150 seats	Frozen Dessert
Belmont Beach Club	1 Belmont Road	Food Service: 61-150 seats	
Cranberry Liquors	555 Route 28	Retail: <50 sq. ft (non PHF only)	tobacco
Fionas Scottish Scones		Event Permit	
Good Times Ice Cream		Mobile Food Service (3 trucks)	
Irish Pub	126 Route 28	Limited Food Service	
Kim Jerauld (new 2017)	1281 Orleans Road	Limited Food Service	

Perks	545 Route 28	Food Service: 31-60 seats	
Seawind Meadows LLC		Event Permit	
Soul Jam		Event Permit	
Winterbottom Ice Cream d/b/a Perrys Cape Cod Ice Cream Trucks		Mobile Food Service (3 trucks)	
SEPTIC HAULER			
Daniels Recycling	71 Finlay Road, Orleans		
MOTEL			
Coachman Motor Inn	774 Route 28		
Seadar Inn by the Sea	1 Braddock Street		
POOLS			
A Beach Breeze Inn	169 Route 28		
Harwich Port Resort Club	558 Route 28		
Seascapes Condominium	231 Route 28		
Winstead Inn & Beach Resort	114 Parallel Street		
Wychmere Village Condominium	767 Route 28		
Wyndemere Condominiums	405 Lower County Road		
SEPTIC INSTALLER			
DG Digging	Brewster		
BATHING BEACH			
Great Sand Lakes Association	Clearwater	Buck's Pond	
Great Sand Lakes Association	Lakeside Terrance	John Joseph Pond	
Great Sand Lakes Association	Vacation Lane Beach	John Joseph Pond	
Great Sand Lakes Association	Pleasant Park Circle Beach	Buck's Pond	
Sandy Shore Association Beach	Sandy Shore Way	Aunt Edie's Pond	
Winstead Inn & Beach Resort	4 Braddock Street	Nantucket Sound	

Motion made by Ms. Howell to approve the permits as per the list dated June 12, 2017. Mr. Boyle seconded the motion. 3-0-0 Unanimous.

IX OTHER

Ms. Howell requested that at an upcoming meeting, the Board discuss seating vs. occupancy.

X ADJOURN-The meeting adjourned at 9:05 p.m.

Ms. Howell moved to adjourn. Mr. Boyle seconded the motion. 3-0-0 Unanimous.

Submittals of the meeting are part of the permanent record.

Respectfully Submitted,

Jennifer Clarke

Next meeting is Tuesday, July 11, 2017 at 6:30 p.m. in the small hearing room.