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Town of Barnstable

Board of Health

200 Main Street, Hyannis MA 02601



Wayne Miller, M.D.
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BOARD OF HEALTH MEETING MINUTES **Tuesday, November 18, 2008 at 3:00 PM** **Town Hall, Hearing Room** **367 Main Street, Hyannis, MA**

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on November 18, 2008. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also attending were Board Members Paul Canniff, D.M.D. and Junichi Sawayanagi. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were also present.

I. Hearing – Proposed Revision to the Saltwater Estuary Protection Ordinance, Section 360-45.

Liza Cox, Nutter, McClellan & Fish, spoke of community impact is great, yet the economic and minimal amount of benefit.

Phil Boudreau, Centerville resident, he is opposed to it. Small benefit. He wonders whether it would even be a measurable impact. Most are already developed. It would impact the number of chairs in a restaurant, whether a dentist can add a dentist to the practice. Commercial, many have high loads, but it is not necessarily high contaminated loads, it often is just water (as in a dentist office). He feels it is not a true comparison and recommends leaving the word residential.

Matthew Eddy, Baxter, Nye Engineering, who did a comparison to residential and commercial loading at the request of Councilor Crocker. STE effect that could happen. They did make some broad assumptions. The GP and WP already restrict the area. The Town's GIS department gave him the necessary data. They calculated that 252 acres of commercial zone compared to 15,758 acres of residential zone (98.8%). They further broke it down to see the parcels within just the AP zoning district. They compared commercial sampling of 16 different parcels and provided the Board with detailed analysis.

Tony Shepley, Shepley Wood Products, stated the amount of commercial property located in the Saltwater Estuary amounted to only 1.6% of the total property in the estuary and the calculations do not show a measurable difference. He stated the total amount of commercial property in the entire town is only 9% which experts outside the town agree is very low. He feels we have a big balance problem in the town between commercial and residential and it sends a terrible message to anyone starting or running a business in our town. Mr. Shepley knows from experience how hard it is to work with serious

restrictions as he had a cap placed on the number of employees he could hire in the mid-80's because he was not hooked up to the sewer at that time. He said there is no measurable benefit; however, there is a lot of detriment. Every town needs a careful balance between commercial and residential to be healthy.

Olive Chase, Casual Gourmet, said she is one of the 1.6% who own commercial. She said it took her literally years to find a building in the community that she could buy for her business. At the time she purchased the building, it was permitted as a 14 seat restaurant. Mrs. Chase operates a 24 seat catering business and she couldn't find the words of what it would mean to her if the Board decreased the value of her business by not allowing her to grow and expand, unable to add bathrooms or add employees, especially knowing it wouldn't make a difference in the quality of our water as the study shows its negligible. Mrs. Chase said she lives in the community, she employed a lot of people, pays employees as well as she can, and gives the employees benefits. She feels the Board does not place a value on her business if they put the proposed restriction on her business which she bought in good faith and all for a regulation which has negligible difference in water quality. Olive said the town needs jobs right now more than anything else.

Ron Mycock, Cotuit, stated he is involved in many commercial properties in Cotuit and many properties contain dentists, etc, who would be very affected if they needed to move.

Marcel Poyant, Osterville, feels including the commercial is very detrimental to the community. He owns many commercial property and he has been working with the Growth Management Department who agreed to reconsider changes and he hopes the Board of Health will reconsider the wording and at minimum, change the wording from "shall" to "should" leaving an option.

David Chase, Casual Gourmet, said he understands the BOH task is to take care of the public health. He asks that the Board of Health also look at the global results as well. It will have a tremendous effort on commercial. When he had worked on Boards, their procedure had been to meet with small groups and see how everyone was affected. He would like the Board to see how they might minimize the effects on the business.

Deborah Cumberson, CEO of the Hyannis Chamber of Commerce, stated there are 670 businesses in Hyannis, many will be impacted by this proposal. She agrees we must protect our estuaries but because the 1.6% commercial is a negligible amount of an impact, she requests to wait on the proposal until there is something in place to mitigate the losses. The community needs to take care of economic engine that drives our economy. She urges the Board to hold off at this time until we can extend the town sewer to these businesses.

John Pendergast, Jr, Cape Cod Package Store, said he was hoping to make some expansions there for his family of the third generation. The property has changed over the years from retail to retail, to restaurant, to retail to office to retail. If the regulation is imposed, it would further restrict the use of the property and he wonders what would happen if 10 years down the road, the family wants

to change the operations again. He wonders whether there has been a concern by the Water District on this. Mr. Pendergast feels we have too many regulations on businesses as it is. He feels very, very strongly that the Board should curtail this proposal on commercial.

Arlene Wilson, she recommends adopting it as is. She stated that if there was a 40,000 sq. ft. lot, it would have 4,400 gallons in flow which would allow for a number of cars (30) which would contribute to the problem. She did acknowledge, though, that does not think there is any more of these size properties left in the town.

James Crocker of Osterville and Precinct 5 Councilor expressed a vested interest in commercial property and pointed out that it is the only way to create new income for the town and new growth in the economy. The town has bought 30% of the land in the community and it leaves very little for commercial. New commercial is the only time the town has a chance to go over the 2 1/2 % proposition and create revenue stream. This revenue brought in \$3 million (\$1.7 million went to the schools and \$1.3 million to the town operations) This is how the town managed to avoid a number of override requests of Prop.2 1/2. Other towns around us have had to pursue overrides. He feels the regulation has a large impact on the potential uses of commercial property in the town as our communities are made up of mixed use – commercial. He would not like to see commercial included in the regulation and mentioned the Board also has the Review Planning Committee to view each business at a time and restrict as needed.

Dr. Miller recommended closing the public portion of the hearing and allowing the Board members an opportunity to review the large amount of information especially the documents supplied by Matthew Eddy at Baxter Nye Engineering. The Board will take everything under advisement and will conclude the vote on December 9, 2008 Board of Health meeting. Dr. Miller stated he appreciated the turn out.

Mr. McKean expressed that there had been many good comments that had come up and he agrees with the statement that the Health Division always has the opportunity to restrict the business at the Plan Review Committee one business at a time rather than to have the regulation.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to close the public comment and **CONTINUE** to December 9, 2009 Board of Health meeting. (Unanimously voted in favor.)

II. Appointment – Board of Health Agent

Robert D. Collett and Patricia Lindauer, Agent for the Board of Health for the purposes of tobacco control and issuance of non-criminal ticket citations.

The proposed would be that Bob Collett and Patricia Lindauer would be able to issue tickets right on the spot. It would allow them to issue tickets

for the Town. They will issue tickets which will be citations stating a violation has been made and request the business to come before the Board. (At this time, Mr. Collett and Ms. Lindauer do not have the number of violations per store which the health division has in their database.)

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to appoint Robert Collett and Patricia Lindauer agents of the Board of Health with respect to issuing tickets for tobacco violations. (Unanimously voted in favor.)

III. Hearing – Housing:

Allen White, President, Health Care Management Associates and Merrill Blum, Executive Director, Veteran's Outreach Center, requested a hearing regarding a complaint from an occupant at 379 South Street, Hyannis.

Mr. White was not present, nor was occupant. **Voted to CONTINUE to Dec 9, 2009.** Timothy O'Connell, Health Inspector, stated that the original plans showed that the square feet for rooms 3 and 5 were suppose to be 83 square feet or greater, which Timothy O'Connell stated is not accurate.

IV. Food Establishment:

Paul Dean, Osterville Fish Market – requests reconsideration of grade received during an inspection on 10/21/08.

The grade will be averaged in with other inspections.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the request to reconsider the grade. **(NO, Unanimously Denied.)** (no reconsideration.)

V. Septic Variances (Cont):

POSTPONED UNTIL BOH DEC 9, 2009 Michael Ford representing Michael and Gisa Belanger, owner –100 Cross Street, Cotuit, Map/Parcel 033-032, 0.9 acre lot, four variances for repair (cont. from Oct 14, 2008)

VI. Septic Variance (New):

A. Mike Aucoin, A & M Land Services, representing Roger & Richard Bergenheim, owners – 112 Nyes Neck Road East, Centerville, Map/ Parcel 232-011-002, 1 acre lot, one variance requested regarding setback of existing well to proposed septic tank (57 feet).

Mike Aucoin stated in June 2008 the Board of Health granted a few variances for the property above. One of the unknowns on this site was the situation of the well. It was planned to be 150 feet away. Desmond Drilling attempted to install the well and he did not receive good water at that distance. He moved it to a different location and he, again, did not receive good water (he had to go through a lot of peat and it had an odor.) He eventually tried a fourth location and it was 57 feet away from the tank and 154 feet from SAS.

He looked into moving the SAS; however, their invert would be too low for the lake. Also, they are dealing with a sloping piece of property.

Mike said he has a FAST system and they don't make a monolithic tank for it. Mike must correct the plan revised 11/6/08 as the distance listed of the SAS to the well is incorrect (reversed the information with the tank)

It is proposed that the engineer put in a monolithic tank and pump up to the Fast System which is by the garage. The engineer can authorize both tanks will be tested for water proof and water tight.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to **CONTINUE TO DEC 9, 2008, BOH** with the revised plan. (Unanimously voted in favor.)

B. (moved to end of meeting.)

VII. License: Disposal Works (Septic Installer)

Michael Takach, Dennisport.

Health Division recommends it.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve Michael Takach as a Disposal Works Installer. (Unanimously voted in favor.)

VIII. Correspondence / Old Business / New Business:

A. Cumberland Farms, 389 West Main, Hyannis – status of underground storage tank.

Letter Read.

B. Review Regulation: 1) number of food safety handling certificates required at (a) Residential Kitchens, and (b) businesses operated by one person.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to approve one food safety handling certificate required at a Residential Kitchen operated by one person and a business operated by one person. (Unanimously voted in favor.)

C. Review Regulation: Touchless faucet regulation with regards to Residential Kitchens, churches, schools, and municipals.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to (a) exempt the Residential Kitchen from the touchless faucet regulation, and (b) churches, schools and municipals will be deferred until further notice once Mr. Sawayanagi and Mr. McKean have an opportunity to

categorize different situations which may be proposed to handle low use kitchens. (Unanimously voted in favor.)

D. Strategic Planning.

The Board will read for review.

E. Barnstable Agricultural Commission – “Right to Farm” Ordinance.

Word change was recommended to say “Agriculture Commission shall review and expeditiously as possible report its recommendations to the Board.” More review is needed.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to approve the re-wording (above) AND (view video for any additional item(s) from Dr.M.) (Unanimously voted in favor.)

F. Regulations Recommended for Deletion:

1.) Criteria for determining System Repair or Replacement (Sections 360-19 through 360-24)

The Board considered voting to delete all other sections above except for Section 360-20C which covers Separation of Ground Water. There are discrepancies in the wording of the above sections in comparison to Title V. Deleting the sections will clean up the town ordinances.

Arlene Wilson recommends saving Section 360-21 pertaining to Variances. She also recommends putting it in as its own procedure.

The Board will vote on them once the re-written items are created (above).

2.) Herbicide Regulations (Chapter 332, Sect.322-1 through 322-5)

The inspectors stated that the pesticide applicants are licensed by the State and have already received permission from the State.

The Board stated that the homeowner is currently allowed by the State to apply to property up to two feet before a well.

The Board recommended that it could be updated to say that with respect to commercial use, the state regulations will be used. Mr. McKean will bring the revised wording back to the Board to voted on once it is composed.

3.) Marginal Lot Regulation (Sections 360-17 and 18)

The Board determined to KEEP the regulation. We are more strict from the state in that we require four feet of soil be required and the state allows it to be IN the ground water level.

4.) Screening of Dumpsters Regulation (Section 353-5)

The inspectors are proposing again to drop the Dumpster Regulation as it is focused on appearances instead of actual health issues.

The Board recommends drafting a letter to Growth Management s

V. (cont) Septic Variance (New):

POSTPONED B. Michael Ford representing Sandra Tubman, Trustee of
UNTIL DEC 9, 2009, Ruth Rusher Trust, owner - 111 Ocean Street,
BOH Hyannis, Map/Parcel 326-045, 0.45 acre lot, variances
requested to 105 410.400 (C) for a proposed construction or
reconstruction of dwelling into a youth hostel.