



Town of Barnstable

Board of Health

200 Main Street, Hyannis MA 02601



Office: 508-862-4644
FAX: 508-790-6304

Wayne Miller, M.D.
Paul Canniff, D.M.D.
Junichi Sawayanagi

BOARD OF HEALTH MEETING MINUTES

Tuesday, March 11, 2014 at 3:00 PM
Town Hall, Hearing Room, 2ND Floor
367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, March 11, 2014. The meeting was called to order at 3:00 pm by Chairman Wayne Miller, M.D. Also in attendance was Board Member Paul J. Canniff, D.M.D. Board Member Junichi Sawayanagi was unable to attend due to illness. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were also present.

I. Consideration of Condemnation

Loren Fellows, tenant – 70 Winter Street, Unit# E, Hyannis, Map/Parcel 309-242-00A, unit has no heat and no hot water, tenant is responsible for utilities. (Owner is Kenneth Willett.)

Loren and April Fellows were present and explained they have the gas scheduled to be back on Tuesday – space heaters have been used in the meantime. April will confirm with Mr. McKean once the gas is back on. The Board agreed to follow up with this next month, April 8, 2014.

II. Hearing – Stable

Kathy Woodbury, Stable, and Mrs. Richard Koppen, property owner – 365 Sampsons Mill Road, Cotuit, stable violations and no current permit.

No one present.

Mr. McKean explained that the manure has not been properly disposed of for the past few months. Kathy told the inspector that her trailer broke and the manure has been (improperly) dumped on the ground. The straw has mixed in with it and the horses are eating it. The operator also has not paid for a permit for a number of years. There are 6 horses on the property and a horse produces 50 pounds of manure per day.

Cindy and Robert Sullivan spoke of their concern. Cindy is Kathy's sister. The property is owned by her mother. The family has not been able to get Kathy to clean up the property and keep it that way. Cindy explained that Kathy had chosen to sell the trailer, even though it is needed to handle the manure – the trailer did not actually break as Kathy had stated.

The Board spoke of a cease and desist order. There was discussion of the lengthy time period involved in a court case and the problem as far as who assumes responsibility of the costs of the horses, if not voluntarily removed. The MSPCA normally gets involved if horses are not properly fed. However, these horses are well-fed. Charlie Lewis, Animal Control Officer, is trying to recruit MSPCA in the involvement of the process. The Board will put in a request to MSPCA, as well.

The property is located in a groundwater protection zone. This is a concern as one horse is said to produce the equivalent level of nitrogen into the groundwater as a seven bedroom house.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to order the following stipulations: 1) all past and current permits must be paid for, and 2) all violations need to be corrected including removing fresh manure on a daily basis to avoid additional accumulation of frozen manure. The health agent will do weekly inspections. If issues exist, the Board authorizes the issuance of weekly fines. If violations are not corrected, the Board will consider issuing a "Cease and Desist Order" for immediate removal of horses to Kathy Woodbury with copies sent to the property owner, Mrs. Richard Koppen. (Unanimously, voted in favor.)

III. Septic Variance (Cont):

- A. Matthew Eddy and John Lavelle, Baxter Nye Engineering, representing Peter Bilodeau, owner – 29 Hathaway Road, Osterville, Map/Parcel 114-036, approximately 0.70 acre parcel, proposed Nitrogen Aggregation Credit Land (from 83 Bunker Hill Road, Osterville, Map/Parcel 095-019), existing 3 bedroom home, requesting to construct a 4 bedroom home, one variance requested (continued from December-February 2014).

Matthew Eddy summarized the changes which occurred in the last meeting. He withdrew the plan for an I/A system as the Legal Department was not satisfied with whether "manifest unjust" was met. They then proposed an aggregation plan crediting land from 83 Bunker Hill Road and restricting the 3 acre parcel to 8 bedrooms in the future (a five bedroom septic currently exists there). The Parcel of 29 Hathaway would then be credited as four bedroom parcel. Deed restrictions would be placed on both properties.

McKean said the staff and he have no issues with the proposed plan. They are waiting to hear from the Town Attorney to see if she is satisfied with the wording of the deed restrictions.

Dr. Canniff had missed the prior meeting and was wondering why the I/A system did not suffice for allowing a four bedroom here. Dr. Miller explained the criteria of 'manifest unjust' was not satisfied even though the nitrogen removal would be better.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the variance on revised septic plan dated February 21, 2014, with the following conditions:

- 1) Both the facility (29 Hathaway Road, Osterville) and credit land (83 Bunker Hill Road, Osterville) must be restricted in perpetuity through a nitrogen loading restriction and easement,
- 2) A properly worded deed restriction, approved by the Town Attorney, shall be recorded at the Barnstable Registry of Deeds restricting a portion of the 133,373 square feet (3.06 acre) off-site non-facility property located at 83 Bunker Hill Road. The portion, 8,300 square feet, shall be used as aggregate for the subject property, thereby limiting this off-site property to a maximum of eight bedrooms, which is the maximum allowable number of bedrooms on 125,073 square feet within this Well Protection (WP) zone. A copy of the recorded deed restriction shall be submitted to the Health Agent prior to obtaining a disposal works construction permit,
- 3) The applicant shall record a properly worded deed restriction, signed by the owner of the property, at the Barnstable County Registry of Deeds restricting the subject property at 29 Hathaway Road Osterville to four (4) bedrooms maximum. A copy of the recorded deed restriction shall be submitted to the Health Agent prior to obtaining a disposal works construction permit.

(Unanimously, voted in favor. Dr. Canniff commented that he liked the other plan better.)

IV. Septic Variances:

- A. Matthew Eddy, Baxter Nye Engineering, representing Cummaquid Golf Club, owner – 35 Marston Lane, Barnstable, Map/Parcel 350-001, 110.3 acres, Presby SAS I/A System, two variances requested, reduction in size of project previously approved.

Matthew Eddy and Steven Cook were present. The project was previously approved in year 2012 for a larger design flow.

There was discussion about whether garbage grinders were allowed. Matthew said Presby had informed him that the DEP approval does allow for the use of garbage grinders.

The Board decided to restrict the use of garbage disposals installed until the staff has been able to check with DEP to ensure the general use of Presby would allow them.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the variances on the revised February 24, 2014 septic plans with the following conditions: 1) additional test holes shall be excavated, 2) the system owner, the company, the installer and the designer shall strictly adhere to all conditions contained within the Presby Enviro-Septic Wastewater Treatment System approval letter from the Department of Environmental Protection (DEP) entitled 'General Use Certification' dated March 19, 2013. The designing engineer shall supervise the construction of the onsite sewage disposal system with innovative alternative components and shall certify in writing to the Board that the system was installed in substantial compliance with the revised plan dated February 24, 2014.

- B. Stephen Wilson representing Wolfram Vedder, and Wolfram Vedder, Trs, WVDV Island Avenue Realty Trust, owners – 119 and 129 Island Avenue, Hyannis, Map/Parcels 265-018-001 and -265-018-002, 0.99 acres (total both parcels), house renovation and addition, changes made to previously approved plan in August 2013.

Stephen Wilson was present and reviewed the revised plan which includes a pump chamber.

Mr. McKean said the staff has no objections to the revised plan.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the revised plan dated 2/24/14 with the following conditions: 1) Lots 119 and 129 Island Avenue, shall be placed under the same ownership prior to the issuance of a disposal works construction permit, 2) a three-bedroom deed restriction must be recorded at the Barnstable County Registry of Deeds, 3) the owner shall execute and record at the Barnstable County Registry of Deeds, a deed restriction on both lots, approved by the Town Attorney, requiring that in the event one these two parcels are conveyed into separate ownership, an easement shall be placed onto the 119 Island Avenue lot for the new septic system location on this lot. 4) official copies of the deed restrictions must be submitted to the Health Division. (Unanimously, voted in favor.)

- C. Darren Meyer, Meyer & Sons, representing Laura Hodgson, owner – 25 Bayberry Lane, Barnstable, Map/Parcel 335-044. 44,342 square feet parcel, failed septic system, two variances requested.

Darren Meyer presented plan for the failed septic and noted that there is no increase in flow. The property is under agreement and the new owners understand the restrictions being placed on the property. Mr. Meyer pointed out that the room labeled "den" has always been a den.

The new owner, Robin Loureio, asked for allowance to turn the water back on with the stipulation of pumping, as necessary. They are getting quotes for the new system and are expecting to install it within a week. If system is not in by April 8, meeting, the owners will return to BOH to review whether water can remain on (as it was a very severe hydraulic failure.)

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the variances with the following conditions: 1) must correct the type error on the plan so that it shows the intended variance for D-box and one for the SAS, (2) under "General Notes" must correct #14's reference to wetlands, 3) must record a 3 bedroom deed restriction at the Barnstable County Registry of Deeds, 4) provide an official copy of the deed restriction to the Health Division, 5) the new owner may turn the water back on and will return to the Board April 8, 2014 if the system is not in. (Unanimously, voted in favor.)

D. Dan Ojala, Down Cape Engineering, representing Deborah Wheeler, Maywood, LLC, owner – 11 Maywood Avenue, Hyannis, Map/Parcel 287-130, 1.50 acre parcel, failed septic system, multiple variances.

Dan Ojala was present and reviewed his plan with the Board.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant the variances with the following conditions: 1) the plan will be revised to show the correct dimensions of the amount of stone to be placed at the ends of the leaching, 2) a 9-bedroom deed restriction shall be recorded at the Barnstable County Registry of Deeds, and 3) an official copy of the recorded deed restriction will be submitted to the Health Division. (Unanimously, voted in favor.)

V. Food Variance – New:

Ming Gu requesting a variance from the required two servsafe certified people on location at Hot Diggity Dogs, 569 Main Street, Hyannis.

Ming Gu (mother) and Feng Tao (son) were present. Feng Tao has a current servsafe certificate. His mother, Ming Gu, has taken the test several times and due to a language barrier has missed the passing grade. Her last exam was a 74. Health Inspector Marybeth McKenzie feels Ming Gu is knowledgeable and she has gone over the necessary material with Ming. The State Sanitary Code allows for such a variance if someone has taken the servsafe course two times or more. The staff feels comfortable with the variance being issued.

Upon a motion duly made by Dr. Canniff, seconded by Dr. Miller, the Board voted to grant a variance to Ming Gu so that she is able to perform the duties of a servsafe certified individual in the Town of Barnstable. (Unanimously, voted in favor.)

VI. Requesting Extension to Connect to Sewer and Water:

Brad Pfeifer representing Hyannis Athletic Association at McKeon Field, 120 High School Road Extension, Hyannis, requesting extension on plumbing installation as funds are not available until July 2014.

Brad Pfeifer said the estimates DPW received for the work of connecting water and sewer to the concession stand came in higher than expected (\$55K) and a letter from Dan Santos, DPW, states that they have put in for a capital expense approval. The approval would not be given until July 2014 and therefore, the work would not be done until after the 2014 summer season. They are asking for one more year extension.

John Cotellessa said the only item prepared on site is the grilling of the rolls. All the other food (chili, chowder, sausages, and hot dogs) are prepared at the restaurant and brought to the concession stand. The concession stand is open for 22 nights plus any playoff games for a period of 3-4 hours a night. The field is owned by the Town and there is a three way user agreement between the town, the school and the athletic association.

Discussion was brought up of the portable toilets used and that they will continue to be used after the capital expenditure project. The capital expenditure includes supplying water, installing a grease trap and pumping back to the sewer connection. John mentioned that he purchased a heated handwash station last year for the concession stand and any time someone goes out of the concession stand, he has them automatically wash their hands before serving food.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant one more year extension with the same terms as the last extension with the exception that item# 5 will state that if water and sewer are not in place by the 2015 season then the facility will be restricted solely to prepackaged retail foods only. (Unanimously, voted in favor.)

VII. I/A Monitoring: No Maintenance Contracts.

- A. Maria Eftimiades, owner – 562 South Main Street, Centerville, Map/Parcel 186-047, no contract has been submitted.

No one was present (see below*).

- B. Jeremiah and Kristen Valiga, owners – 646 Osterville-West Barnstable Road, Marstons Mills, Map/Parcel 123-015, contract expired April 1, 2013.

No one was present (see below*).

* Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to issue a strong letter to both parties above (under item A and B) stating that their continued operation of their septic systems are not in compliance with the approval granted and the owners must obtain and maintain a service contract. Failure to do this may result in further action by the Board up to and possibly including a finding that the septic system is no longer compliant. (Unanimously, voted in favor.)

VIII. Old / New Business:

- A. Approval of the Minutes – February 11, 2014.

The approval of the minutes will be continued to the April 8, 2014 meeting.

- B. Preliminary Discussion – Revision to Outdoor Dining.

Elizabeth Wurbain, Hyannis Main Street Improvement District, put in the request for the Board to consider “open air dining” be available to the food establishments to create more ambiance. She mentioned this type of dining is available in Edgartown, Falmouth and Newport, among others. The indoor seating would be fully open to the outdoors and understands the kitchen / food preparation areas must be protected presumably with additional air curtains, etc.

The Board discussed how this was granted at Pain D’Avignon with specific conditions for their establishment to meet the safety standards required. The Board is willing to look at this on a case by case basis.