



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, October 16, 2014

Judge Welsh Hearing Room, Provincetown Town Hall,
260 Commercial Street, Provincetown, MA

Board Members Present: Mark Phillips, Chair; Ken Janson, Dr. Janet Whelan, Elizabeth Williams and Steve Katsurinis, Alt.

Board Members Absent: Laurie Delmolino, Vice Chair

Other attendees: Brian Carlson, Health and Environmental Affairs Manager; Morgan Clark, Public Health and Safety Officer; Sherry Prada, Operations Director, Water & Sewer Dept.; Rich Waldo, DPW Director, Eric Larsen, Deputy DPW Director, Dave Quinn, DEP

Recording Secretary: Susan Leonard

Call to Order: Mark Phillips called the meeting to order at 4:00 p.m.

I. Public Comments:

There were no public comments.

II. Old Business

There was no old business raised.

III. New Business:

a. Public Hearing on the Board of Health Regulations Regarding Trash and Recycling, Including The Off-season Hours Of The Provincetown Transfer Station

Discussion:

Mr. Phillips explained that this subject came up at the Annual Town Meeting and the Town Manager asked the Board of Health to look at questions raised at Town Meeting. The DPW Staff will have an opportunity to share their thoughts on what is working or not working as well and comment on any changes to be made in the future.

Mr. Phillips read into the record an email letter from Leslie Star, Trustee at the Meadow Road Condo Association, 42 Meadow Road, Provincetown. She expressed two issues that she hoped the Board would address:

1. That the Transfer Station accept bulky items such as furniture, a fee would be acceptable
2. That the Transfer Station not be closed on Sunday or Monday

There were no other public comments. The public portion of the hearing was closed at this time.

Additional Public Comment

Although the public comment portion of the hearing had been closed, Mr. Phillips agreed to hear a comment from a gentleman in the audience who had not made his intention to speak on curbside pick-up known until 48 minutes into the meeting.

Mr. Robert Jason, 29 Conwell Street, addressed the Board. He spoke on behalf of his partner who lives at 10 Seashore Park Drive. At issue is the Town has a policy of not picking up trash from a condo association comprised of more than 8 units.

He read a letter from Richard L. Campbell of 102 Bayberry Ave, Unit 13 regarding the Town not offering curbside pick-up for condo associations despite the fact that it amended the policy to accommodate Town owned complexes such as Province Landing. Multi-units complexes generate a lot of tax revenue and require just one stop for trash pick up as opposed to single family properties that require multiple stops with less overall tax revenue.

The complex that includes 10 Seashore Park Drive spends \$7,360 a year for private trash pick up, in spite of paying for this service in their tax bill, while other smaller condo associations in the same general area have town pick up. Liability issues have been raised by the Town as a reason for no trash pick up on private property. He asked if the tax rate is figured the same for condos that have pick up versus those that do not?

Mr. Phillips summarized Mr. Jason's comments as a request to change the regulations to accommodate curbside trash pick up for condo associations.

The DPW staff, Rich Waldo, DPW Director; Eric Larsen, Deputy DPW Director; and Sherry Prada, Operations Director appeared before the Board.

Mr. Waldo expressed that this was a great opportunity for the DPW Department. They envision changes as well in the operations and would like to tighten up operations

where they can. The department has applied for a grant from the DEP for 80 hours of in kind services from DEP staff member Dave Quinn to review and compare operations to other towns. Bulky items are something they are looking at. There is a confined space for such things, however they want to expand recycling as much as they can within the resources available. An outline has been created of needed changes. Single Stream Recycling does not have much of a market and actually is an expense. They need to plan ahead and cover the costs for the materials they work with. The hours of operations are tricky in the winter. A lot of other towns don't have curbside collection, which Provincetown does have. Provincetown times its hours of operations to accommodate these collections. How to offer weekend service may be difficult to figure out.

Mr. Phillips asked if the grant is received when would the study be done.

Mr. Quinn responded that he has already been working with other Cape towns on waste reduction and recycling. The grant would formalize the working relationship with Provincetown. He has started the outline of tasks to be worked on; things could be added to it. Mr. Waldo added that he is currently working, as well, with Ms. Clark on the regulations and they will be pinpointing areas of concern. They will submit their suggestions of regulation changes sometime in the future.

Mr. Phillips said an administrative calendar would be helpful for the Board to understand the timing of regulation changes as it refers to union requirements, hours of operations and staffing. How much time does the Board need to implement changes administratively.

Ms. Prada replied that if there is no change in the staffing with a change of schedule then she has to do a two week written notice for the personnel it involves. If there is a change in the number of staff it involves a fiscal year budget change for additional personnel. Changing the days of operations would not require any other action with the union.

Dr. Whelan asked if there is an advantage to having two consecutive days of closure? Ms. Prada replied that the staff likes to have a two day weekend. A change in this may lead to staff taking sick days or personal days off and then lead to an overtime situation for others to fill in.

In response to a question by Mr. Phillips, Mr. Quinn foresees the completion of his recommendations sometime in the Spring. Mr. Waldo added that everything revolves around the new contract for solid waste in January 2015. Ms. Clark said she can work with this schedule for regulation changes to be brought before the Board.

Mr. Katsurinis asked what the capacity is to hold trash collections if the Transfer Station was closed Wednesday and Thursday. Mr. Larsen said it runs into retraining staff. He foresees issues with being closed on Thursday because it is a very heavy day; Wednesday is a heavy day, also. There is not as big of an impact on Monday. Mr. Waldo added that everything is weighed as it is brought in. If the transfer Station is not staffed then the collectors will have to do the calculations and weighing which will take time from collections. Ms. Prada said there could also be an issue with the trailer filling up. Only a handful of people are licensed to operate trailer and bring another one in. There would be an overtime element with it.

Mr. Waldo stated that the fee structure for commercial haulers should be addressed sooner than later to cover recycling that they bring in. They would not be charged for cardboard if they separate it out curbside, since it is just about the only thing that generates revenue at this time. We need to offset the solid waste costs.

There being no further comments from Board, Mr. Phillips closed the Public Hearing.

Motion: That the Board take no further action until there are specific recommendations from Ms. Clark and DPW in the Spring.

Motion: Mark Phillips

Seconded: Steve Katsurinis

Vote: 5 – 0 - 0

b. Public Hearing - Board of Health Regulations: Part IX, Article 1 – Tobacco Use Regulations and Part IX, Article 2 – Tobacco Sales Regulations

Discussion:

Mr. Phillips explained for the public that this is the culmination of a year and a half work by Ms. Clark in reviewing the tobacco regulations.

Mr. Phillips opened up the public hearing for comments from the public. There were no comments made.

Ms. Clark explained that several changes in the Tobacco Regulations had been suggested by Bob Collett from the County. Mr. Collett visited all the Boards of Health on the Cape. The Provincetown Board of Health then voted on the changes they wanted to make. Ms. Clark also asked Town Counsel to review the town regulations and remove anything that is duplicative with State regulations. Town Counsel split the regulations into two separate articles: The sale of tobacco products and the use of tobacco products.

The major changes in the regulations are expanding the regulation to include e-cigarettes and other nicotine delivery products, not allowing renewal of permits if there are any outstanding fines, banning the sale of “blunt wraps” and “roll your own” machines, and not allowing sale of tobacco in educational institutions.

At this time the public comment section of the hearing was closed.

In response to a question by Mr. Phillips, Ms. Clark stated that she thought the regulation changes were effective immediately upon approval by the Board. She consulted with the Town Clerk. The answer was that upon publication, the regulations are in effect.

Dr. Whelan asked if there would be people who would be in violation of the new regulations if it is effective immediately. Mr. Phillips responded that they may want to debate that.

Motion: That the Board accept these regulations and that they go into effect upon publication.

Motion: Janet Whelan

Seconded: Ken Janson

Vote: 5 – 0 - 0

**c. Public Hearing on the Warrant Articles For Special Town Meeting,
October 27, 2014**

Discussion:

Mr. Carlson discussed potential Special Town Meeting articles that the Board might be interested in supporting. His recommendations were the following:

~ **Article 8. General Bylaw Amendment/Plastic Bag Reduction**

~ **Article 13. Funding For Phase III Of Commercial Street Paving Project**

Mr. Carlson explained that Article 8 was requested by the Recycling and Renewable Energy Committee. It is a general by law addition. It is a more explicit definition of single use plastic bags that was proposed at the previous Annual Town Meeting. It would go into effect April 15, 2015.

A motion was made for purposes of further discussion by Mr. Katsurinis.

Motion: To recommend the adoption to Special Town Meeting of Article 8

Motion: Steve Katsurinis

Seconded: Ken Janson

Further Discussion:

Mr. Katsurinis continued, that he has no doubt that plastic bags are detrimental to the environment and the animals that come in contact with them. Research supports that banning them has an immediate impact on the environment. The revisions to the article are more focused and allow the business community to understand what is expected from them.

Betty Williams also recommended Article 8, but has questions as to the proposed fining. It is not clear how it will be enforced. Mr. Phillips added that the Board is hoping for cooperation and compliance from the business community.

The Board recommended Article 8 unanimously in favor by a vote of 5 – 0 - 0

Mr. Carlson stated that Article 13 is for the repaving of the East End of town. The way the article is written it would allow traditional paving, as well as, porous paving. He is in favor of the porous paving because it treats storm water run-off. This phase of paving is thought to run from the Public Library to Howland Street.

Motion: *That the Board recommend Article 13 to the Special Town Meeting.*

Motion: Ken Janson

Seconded: Betty Williams

Further Discussion:

Dr. Whelan asked if the Board would be recommending the article if it did not include porous paving? Mr. Carlson explained that it is his understanding that the article is written so it could be either. Mr. Janson said he would recommend it be porous paving because they know it has been working. Mr. Katsurinis added that the Board could say that they do not recommend the article as written because it does not specify porous paving. Mr. Phillips said that the Board's recommendation could be that it approves Article 13 only if porous paving is used.

An amended motion was offered:

Motion: *That the Board will recommend the passage of Article 13 only if the paving of Phase III will be porous paving.*

Motion: Ken Janson

Seconded: Betty Williams

Vote: 5 – 0 - 0

Mr. Katsurinis suggested that, although the Board may not want to consider it at this point, it may want to weigh in some time in the future on the issue of outdoor lighting.

There is some evidence that light pollution has detrimental effects on humans and animal behavior. He does not have enough information at this point to suggest to the Board members that they take a position based on health. Mr. Carlson said he had no scientific based information regarding this and cannot speak to this.

Re: Agenda Item II b. Public Hearing - Board of Health Regulations: Part IX, Article 1 – Tobacco Use Regulations and Part IX, Article 2 – Tobacco Sales Regulations

At this point of the meeting, Ms. Clark asked the Board to take up Agenda Item II b again because of information she just received from the Town Clerk regarding the implementation of Board of Health regulations. She stated that it is somewhat different than other Boards and she would like a new motion that specifies when the regulations go into effect, because the Board of Health does not publish its regulations.

Mr. Phillips asked by what means the Health Department will make the new regulations known? Ms. Clark said an electronic newsletter could be sent to the establishments. A date certain in the future would give them time to inform the public and businesses.

Motion: To reconsider the wording of the previous motion regarding Tobacco Regulations.

Motion: Janet Whelan Seconded: Ken Janson Vote: 5 – 0 – 0

Motion: To amend the motion to read: *That the Board accept these regulations and that they take effect as of December 1, 2014.*

Motion: Janet Whelan Seconded: Ken Janson Vote: 5 – 0 – 0

d. Administrative Consent Order request for the property located at 34A Pearl Street

Discussion:

The owner of the property in question was not present. The Board agreed to carry it over until the next meeting.

e. Reconsideration of Board of Health historic bedroom determination for the property located at 344-346 Commercial Street

Discussion:

Mr. Phillips announced that procedurally the Board must first agree to reconsider the request. He thinks there are facts that need to be put into the record.

Motion: To reconsider the request.

Motion: Mark Phillips

Seconded: Ken Janson

Further Discussion:

Mr. Katsurinis feels that the Board's procedures need to be revised first before any further historic bedrooms are considered. The Board needs a process to follow in order to make any determinations. He will be opposing any reconsideration so the Board can have time to fix the process. Ms. Williams added that she also was under the impression that the Board was going to study it and work on it in order to have a basis for future historic bedroom determination. She will not be in favor of reconsideration at this time.

Mr. Phillips reminded the board that in its September 4, 2014 decision, it did give Mr. Tannariello the option to come back before the Board if it became problematic for him and he could not move forward. Mr. Phillips feels the Board has an obligation to hear the owner.

Dr. Whelan was not at the meeting when the determination was made and is aware of all the issues pertaining to it.

Vote: 3 – 2 -0 in favor of reconsideration

Mr. Tannariello summarized why he came back before the Board. He stated that the previous owner clearly used the space in question as a bedroom; there is a separate entrance to it on the left. He also provided a photo showing a kitchen that was in use as well. There is a legal egress through French doors to a balcony. When he renovates the property he will bring any bedrooms he has up to code. He has been before the Planning Board and received approval for an A& R; the lots have been combined. He has sufficient square footage. "By right" he is entitled to a one bedroom dwelling unit. No changes in the volume of the building will be made. Zoning will be involved only for a reduction to zero parking spaces. He consulted with the Water & Sewer Department and has been told that there is ample capacity in the area to accommodate the bedrooms.

In his research, 493 Commercial, Unit 13 was granted an historic bedroom use of a loft space labeled as a sleeping area that was not included in the original condo documentation which was based on Title 5 capacity for the property of 14 bedrooms. He is of the opinion that this was an illegal bedroom use. He is asking relief from the Board considering the new information.

Mr. Phillips summarized it for the Board members. Mr. Tannariello is asking for a second bedroom. When the Board first considered the request on September 5, 2014 it looked at the town records that showed that in the 1970s there were 3 bedrooms on the property. The owner at the time converted it to commercial property and gave up the bedrooms. The Board deemed that historically there were 3 bedrooms at the property, but it denied the request for 1 historic bedroom. However, the Board was not prepared to increase the property card since those bedrooms had been taken away.

Mr. Carlson shared his comments, among which are that the small lot size does not seem adequate to site a non-varianced Title 5 which is required by Growth Management to connect to the town sewer system, and an official action by a previous owner abandoned the residential use of the property, consequently, the historic bedroom use cited by the current owner was an illegal bedroom. Because Growth Management is not an option, there are two options for adding bedrooms. One is a deed restriction for workforce housing and the other is getting an historic bedroom determination from the Board of Health. The Board of Health has acknowledged the existence of 3 bedrooms in the past, but did not approve an historic bedroom designation for a sleeping area that was deemed illegal.

Mr. Phillips turned the meeting over to the other Board members for their comments. Mr. Katsurinis asked if an historic bedroom was approved would it required to be brought up to code? Mr. Tannariello responded that the Building Department will require him to bring it up to code because the building was demoed. Betty Williams asked if the property is now on the Town Sewer.

Mr. Janson asked for clarification of the Board's determination at the September 4, 2014 meeting. Ms. Clark stated that the board was noting the historical fact of the existence of 3 bedrooms, but not issuing a correction for current use.

Mr. Katsurinis asked if the board is bound by a previous determination? Ms. Clark said in her experience it has always been on a case by case basis. Mr. Phillips stated that the property was converted to a commercial property. How can you have an historic bedroom in a commercial property?

Mr. Katsurinis asked which entity approved the conversion of a property from commercial to residential? Mr. Carlson answered that it is the Zoning Board that

approves change of use. Mr. Katsurinis then asked if the ZBA assigns a number of bedrooms to the property? Mr. Carlson stated that this property does meet the standard for a dwelling unit with one bedroom. Mr. Katsurinis added that he believes that the Board is bound by its rules as they are written now. He has to consider the application, however, he does not think the current regulations work.

Ms. Williams stated that she has completely changed her mind. This happened before the Board had its discussion about historic bedrooms and came to the conclusion that it was being used to get around Growth Management.

Mr. Katsurinis said because of the history of this property he cannot agree with making a space an historic bedroom after the bedrooms were given up. He cannot support granting a second bedroom.

Mr. Janson asked Mr. Tannariello if anything happened with the town that made him come back this Board; nobody in the town told him he couldn't do what he wanted to? Mr. Tannariello replied no and continued to outline the process he has followed through the various boards. He will be limited to 1 bedroom, however.

Mr. Phillips suggested that, since the board agreed to reconsider the decision, it has to either affirm the original decision or make a new one.

Motion: To approve the consideration of a historic bedroom due to the fact that other people have been granted historic bedrooms on lesser merit.

Motion: Betty Williams

Seconded: Ken Janson

Mr. Katsurinis stated that he does not see that how they can correct a past injustice by granting an historic bedroom that they otherwise would not be entitled to. I don't think we would be approving this if there had not been a previous act in the past. He is swayed to vote no.

Vote: 3 – 2 – 0 in favor of the historic bedroom determination

Mr. Katsurinis asked to make a motion.

Motion: That we hold our historic bedroom determinations in abeyance until we take further action to consider them and any applications will be put on hold.

Motion: Mark Katsurinis

Seconded: Betty Williams

Vote: 5 – 0 - 0

IV. Any Other Business That Shall Properly Come Before the Board

Ms. Clark brought to the attention of the Board the fertilizer regulations that she had emailed to them. She stated that they have about 6 weeks to review and adopt them. She would like the Board's comments. The regulation centers on the "best management practices" which have been included in the Board's information.

Mr. Phillips asked Ms. Clark to reach out to the ToxFree advocacy group who appeared before the Board in the past. After some discussion, it became apparent that there may not be a quorum at the November 20 meeting. Mr. Phillips asked if it could be pushed into December? Ms. Clark replied that it has to go before a special commission that requires 30 days for the review. If there is sufficient time to publish the regulations and Town Counsel is prepared it might be done on the November 6, 2014 meeting.

V. Approval of Minutes

There were no minutes to be considered by the Board.

VI. Health Department Report

Ms. Clark spoke to the board about a Hoarding Summit. There is some effort being made to garner local resources to solve hoarding on a local level. Gosnold may facilitate the mental health aspect of it. The Board of Health is the enforcement end and is last resort with this issue. Betty Williams and Janet Whelan would like to attend the meeting.

DPH is asking for input on mental health and substance abuse services. The closest resources are in Fall River.

Ms. Clark will be contacting Rich Waldo of the DPW regarding any proposed fee changes. The fee changes are explicit in the Health Department regulations and must be posted.

The Health Department has been having regular meeting with Community Development. One of the issues the various departments is focusing on is auditing gallons of restaurants. They will be starting with liquor renewals to verify seating and how many gallons they have for the sewer.

Regarding the rabbit issue, the meat cannot be sold to the public. A letter has been sent to local restaurants advising them not to buy any. There does not to be any action by the operator to pursue a State license. The Zoning Board has sent a letter informing the operator that he cannot have livestock without a permit.

Judy Cicero has notified the health Department that she is working on getting an installer to rectify the groundwater sump system. She has not been able to meet the October 15, 2014 deadline set by the Board.

Mr. Phillips commented that this seems a little loose and would like to see this completed by the November meeting.

VII. Board Members' Statements

There were no additional comments.

Adjournment:

There being no further business, Mark Phillips moved to adjourn the meeting at 5:48 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2014