



Public Meeting

Judge Welsh Meeting Room

Thursday
June 16, 2011
4:00 p.m.

Members Present: Joe DeMartino, Ken Janson, John Livingstone,
Mark Phillips, and Elizabeth Williams.

Members Absent: Laurie Delmolino, alternate

Staff: Jane Evans Health Agent (excused)
Brian Carlson Health Inspector

The meeting was called to order at 4:00 p.m.

AGENDA

Public Hearing-Continued from June 2, 2011

Board of Health Proposed Changes to
Part IX – Tobacco Regulation; Section 4 – Prohibition of Smoking in Public
Places

New Tobacco Regulations

The Provincetown Board of Health will hold a Public Hearing on **Thursday, June 16, 2011** at 4:00p.m. in the Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, Massachusetts, to discuss and take action on the request for the following proposed new tobacco regulations.

Section 4 – PROHIBITION OF SMOKING IN PUBLIC PLACES

A. As of October 1, 2002, Smoking shall be prohibited in all restaurants, **(including outdoor seating areas of restaurants)**, bars and bar areas of restaurants (100%). See definitions, section 3 A, B, I and K.

B. Areas where smoking is NOT regulated are listed below:

1. Private clubs

2. Hotel and motel conference rooms/meeting rooms and public and private assembly rooms, including restaurants, while these facilities are being used for private functions.

3. Outdoor bar areas provided the outdoor area is not enclosed **by more than one wall and a roof and no food is served.**

C. Exceptions to this section: Hotel and motel rooms rented to guests that are designated as smoking rooms. The rooms so designated shall be posted with signage indicating that smoking is allowed therein. The number of rooms that are designated as smoking and the number designated as non-smoking must be submitted in writing to the Board of Health. No changes in room designation can take place without prior written approval of the Board of Health. **Establishments with outdoor bar areas enclosed by more than one wall and a roof may request a variance to Section 4.B.3.**

Mark Phillips, the Chair, read the meeting notice (listed above) into the record.

Mark then reported that town counsel had no objection with our proceeding with the public hearing. Mark shared the parameters of the hearing - each person is limited to a 5 minute statement and he reminded the audience that the Board does not respond directly to public comments.

Mark Phillips then read a written statement into the record.

Ken Janson said that the BoH is mandated to guard public health and every report he has read says that 2nd hand smoke is dangerous. He's the only board member still sitting that passed the original ban on smoking.

Dr. John Livingstone, a physician, said much the same thing about 2nd hand smoke. He continued by saying that a by law is a personal preference and the BoH goes by science that is accountable to the state of MA and can create a more strict regulation if it believes it is important for the health of the public. If it comes to personal opinion and business opinion – that is a matter for town meeting. Our charge (BoH) is to protect the health of the public.

Joe DeMartino said that he has read most of the letters that the BoH has received. The original intent was to ban smoking in outdoor eating areas

only and not in outdoor bar areas. There is one change in the regulation to outdoor bar areas – outdoor eating and bar areas and if you think about it – it may still not be clear. Also the addition to the exception (last sentence in section 3C) is to give relief if a business owner falls into a gray area. The intent was to continue to allow smoking in outdoor bar areas. Bar patrons can move but diners cannot and from the feedback – clarification of the regulation is important.

Elizabeth Williams agrees with Joe, i.e., the time spent on the regulation was on the outdoor restaurant areas and it was not to stop smoking in the outdoor bar areas.

Howard J. Wayne, an attorney, then said that he had filed a 2-page letter with the BoH and in that letter he made several points that he wants to be part of the record. He felt Board members should recuse themselves because of a potential conflict of interest. Mark advised Mr. Wayne that he had read his letter, shared it with town counsel and town counsel had no objections to continuing the hearing and did not believe that a conflict of interest existed.

Mr. Wayne then asked how many smoking rooms existed in town. Mark replied by saying that as far as the town is concerned there are none as no establishment has registered with the Board of Health that they have designated smoking rooms. If any establishment does have smoking rooms than they need to contact the Health Agent to have them registered.

The public was then asked if they wished the letters received on the subject be read aloud. They did so. Board members took turns reading the letters into the record

Public Comments:

One person asked about a point of order. He wanted to know if the town counsel had given the Chair a written letter stating that his recusal was unnecessary.

Gregory Daniels - Gifford House manager – cited OSHA and the safety of the employees. He said that OSHA regulations felt that the proposed regulation would be called a vanity regulation. It's not an issue of employee's health; the employees have been protected. A customer has a right to go to any place he wants to go but how about the business owner? He's not gone to places for a number of reasons, i.e., screaming kids and/or a rotten smell of

seaweed and that's life. At the June 2nd meeting he said that he holds volunteers in high esteem and he also asked you to seek legal counsel. He feels that a realtor and a guesthouse owner maybe should be under "conflict of interest." He feels that as someone who works or owns an inn - you're making your businesses more appealing by allowing smoking on decks, etc. As for real estate agents – there are no regs regarding smoking in rentals.

The owner of the Patio feels that the BoH is confused. The employees have to be protected – you want to exclude bars? Also he's confused about the name – the regulation should read Prohibition of Smoking. There are a lot of studies out there and we should close the traffic on Commercial Street because exhaust fumes are dangerous. We try to seat smokers on the outside periphery. If this reg went into effect, we would have to have smokers get to the other side of the fence. No one is compelled by law to patronize one eating space over another. He feels "live and let live" and one single complaint to town hall over the last year doesn't necessitate this reg.

Clarence Walker – 182 Bradford Street – said that the comments from Dr. Livingstone he feels are scary. He feels the BoH has the right to make the rules more stringent. He's not a smoker - and if indeed it's a health issue - why not drinking? Then he commented about what Provincetown was and is. Nils Berg came to Ptown by mistake – he was bound for Rockport and took the wrong bus. Rockport is a dry town so he is not certain that this is founded in law and takes into consideration – why this ruling?

Daniel Banks said that he's lived through the smoking ban, etc. Ptown Pooh Bar is where he works and he feels that you're taking something and pushing it to a personal thing.

James Foss said that he owns two businesses in town and one is a guest house that bakes and serves food that is heated. He feels that this change is directed toward restaurants and his opinion is that guesthouses can do whatever they like. He has an educated background and studies can say anything. This wasn't a studied ruling. Dr. Livingstone is a psychiatrist – not a medical doctor and all we had were 3 complaints so why is this happening? Then there's the economic impact.

Astrid Berg said that she'd like to know how many complaints since October has the BoH received. Dec. 16th was the only other one and why do 3 complaints raise this issue. Laurie Delmolino was going to make a report

and up to today there was no report from her. On May 4th she was going to look into this. Astrid just doesn't understand what the real reason is for why we're doing this. It's Ptown – let's take this up in the fall. We're all being too hasty and she doesn't feel that the BoH has done enough research.

Mary Jo Avellar works for the Yingling family and although smoking is allowed on the patio at Bubalas, most people leave their table to smoke. Just as restaurants decide whether to allow dogs or not – the individual owners should determine what to allow. She concludes that the decision has already been made. You very seldom find someone who's inconsiderate about smoking.

Marcene Marcoux said that what strikes her is the why. She's disappointed that this is coming forth as a health issue. She thinks the health issue is questionable. Where are the studies that say what you are touting. She wonders whether this is scientific. How about regulating obesity, alcohol, etc. This is a tourist town - health, business and tourism.

Rick Murray disclosed that Joe D. is employed by a business he owns. There were 35 letters against the reg and 8 people who spoke against. Those of us who are in business in Ptown – love Ptown. People are attracted by the simple beauty of the town and he wants to postpone this reg. He's vehemently opposed to John Livingstone's statement. You now have what you consider to be deleterious so I hope you would not make this ruling. In concluding – if Gregg Russo wants no smoking – let him post it!

Attorney Howard Wayne said, once again, that he had written a 2 page letter about this proposed change in the regs. He came to Ptown in 1972 and raised a family here in the summertime. What attracted us to town was the openness of this community and it was the most forgiving place that he could possibly be in. Also, the majority of people who spoke are all opposed to it – so WHY?

James Foss who owns both the Gifford House and the Watership Inn spoke again. This time about the pool areas of the Ptown Inn. Also, if we're talking about Relish (and he doesn't think you really put all this together) what about people who buy a sandwich and sit on the bench in front of the shop? It just gets so strange! He said that he's asthmatic and allergic to dogs so he doesn't want pets near him – so he just moves and/or sits where he wants to.

The public comments segment closed with thanks to everyone who shared their opinions.

**Motion: Move that the BoH now discuss and review the proposed regs.
Motion: John Livingstone Seconded: Ken Janson**

Although this motion was made and seconded Mark said that he couldn't work with it as it did not cause any action to be considered as the board could discuss the proposed regulation without a motion.

Joe DeMartino said, "Maybe we didn't get it right." He then said that - first of all our intention was to simply ban smoking in eating areas where people can't get up and leave - not pools, not bars - but specifically restaurants where people couldn't move. If we didn't write it carefully enough about bar areas - we'll look into it further. Our intent was simply to make the language clearer. We're not talking about guest houses, pools and if we have to clarify the language - then we'll go back and re-examine the regs.

John Livingstone said that as he thought about the confusion that exists - section 4a - he added "outdoor table food service areas" and he's just suggesting and it's meant to clarify the intent. In response to Mary Jo's comment - we are really open to discussing this. We're talking about 2nd hand smoking. In defense of her comment - he would also say that his credentials include public health and surgical.

Ken Janson said that he agrees with what John proposed and he has written up an amendment also - rewriting it to read "where no meals are being served."

Betty Williams assured everyone that there were no ulterior motives - and no one has any axe to grind.

Mark made a motion to approve the regulation has written and amend if necessary based on town counsels recommendations. There was no second.

Joe DeMartino than made the following motion:

Motion: Move to postpone approval of this regulation until we have town counsel's input to clarify the language so that the intention of the Board is clear and to then hold another public hearing.

Motion: Joe DeMartino Seconded: Ken Janson Vote: 4-1-0

Mark voted against the motion because he thought it was premature to agree to another public hearing. He preferred to wait and make that determination after the language for the regulation was made clear.

John Livingstone said that he has a call in to a researcher on this very matter.

Motion: Mark Phillips then moved to close the public hearing portion of the meeting. Seconded by Ken Janson. Vote 5-0-0

Approval of Minutes for June 2, 2011

Motion: Move to approve the minutes of the June 2nd meeting as written.

Motion: Joe DeMartino Seconded: Betty Williams Vote: 5-0-0

Health Inspector's Report

Brian Carlson said that he doesn't have a formal report but he wants to discuss the reformatted regs which the BoH has already reviewed. Mark wants everyone to have a copy of the regs so that they can refer to them.

Brian also said that David Gardner said the regs should be separated in a way that people don't have to go through all of them to find one thing. That will be worked on.

John said he has a question about the sampling areas for pollution. Brian said that we have no say in the closed areas.

Board Members' Statements

Betty said that she had mixed feelings and she was terribly disappointed with the people of town who don't want smoking and didn't show up.

John said that his personal understanding is that we should just take complaints and weigh in on them.

Ken had e-mailed Jane for some documentation on smoking. He'd like the documentation at one of our meetings.

Mark appreciated everyone's input but added that he did not understand the comparison of smoking to alcohol as alcohol does not have a second hand component and we're discussing regulating second hand smoke exposure.

Joe doesn't want to go through this again! We could rewrite it but it would be best to get town counsel's recommendations to make the Board's intent clear.

John thought that it was better to have the energy spilled in this room.

The meeting adjourned at 5:53 p.m.

Respectfully submitted,
Evelyn Rogers Gaudiano

Approved by _____ **on** _____, 2011.
Mark Phillips, Chair