



# Town of Provincetown

## Meeting of the

### BOARD OF HEALTH

Thursday, August 6, 2015

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

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**Board Members Present:** Mark Phillips, Chair; Steve Katsurinis, Vice Chair; Dr. Janet Whelan; and Elizabeth Williams

**Board Members Absent:** Joseph Freitas and Elise Cozzi [excused absences]

**Other Attendees:** Morgan Clark, Director Department of Health and Environment and Laura Marin, Health Agent

**Recording Secretary:** Susan Leonard

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

#### **I. Public Comments:**

Elizabeth Brooke appeared before the Board to speak about banning smoking on public beaches. She mentioned that eight towns on the Cape have already done this. The Cape Cod National Seashore has also banned smoking on six of its beaches. She is quite concerned about the effects smoking and discarded cigarettes have on children and dogs. Cigarette filters containing nicotine and other dangerous substances are buried in the sand and are not picked up by the beach rake. She hopes the Town will take a stance on addressing the situation.

Also, an email letter from Mary Jo Avellar in support of Ms. Brooke's position of banning cigarette smoking at Provincetown's public beaches was read into the record by Mr. Phillips.

#### **II. Old Business**

There was no old business brought forward for discussion.

#### **III. Public Hearing: Board of Health Regulations, Part XII Art.1 - Habitations for Rent - Rental Certificate – Conditions, Term and Fees**

##### **Discussion:**

Mr. Phillips read into the record the posting for the Public Hearing that specified the following change to be considered:

Under Section 4. Rental Certificate – Conditions, Term and Fees

**All advertisements of property for rent shall clearly post the rental Certificate number assigned by the Town of Provincetown.**

Mr. Phillips asked if there were any public comments in favor or opposed to the proposed change. Hearing none, he closed the Public Comment portion of the hearing and asked the Board for there comments.

Mr. Katsurinis stated that he was very much in favor of this modest change. It gets to the issue of the ability for the Health Department to see who is offering properties for rent and gives for renters a reference number to contact the Board of Health with any concerns they may have about a property. Mr. Phillips agrees with Mr. Katsurinis that these are reasonable changes to make.

*Motion: To approve the change to the Board of Health Regulations, Part XII Art.1, Section 4 as printed in the Banner.*

**Motion: Steve Katsurinis                      Seconded: Dr. Janet Whelan                      Vote: 4 – 0 - 0**

**IV. New Business:**

**a. Ratify Decision to Terminate ACO – 5 Nickerson Street**

**Discussion:**

Ms. Clark explained that after this question came up at the last board meeting, she met with town Counsel to get guidance on the process of ACOs. Town Counsel agreed with the Board’s position that an ACO does not give a property a faster track to a sewer connection and also suggested that if conditions change or more is learned about a particular property’s situation then the Board can terminate an ACO. The Board must ratify the termination.

A “letter of termination” has been sent to Jane Barber, property owner of 5 Nickerson Street.

Mr. Russell Perry, contractor for the property owner stated that he has no objection to the termination. He stated that, at the time of the ACO request, he did follow the Town’s protocol for the circumstances pertaining to property’s septic system.

Ms. Williams stated that the Board has thoroughly gone over the question at hand at the previous meeting and she is in favor of terminating the ACO and would like to propose the motion. Mr. Phillips agrees and thinks it is good to know that termination is an option. Mr. Katsurinis added that the property owners and contractor should not feel that they did anything wrong. At the time of the ACO request, the Board did not know that the sewer system was approaching a condition of “limited capacity”. The process is changing for everyone involved.

*Motion: To terminate the ACO at 5 Nickerson Street.*

**Motion: Betty Williams                      Seconded: Steve Katsurinis                      Vote: 4 – 0 - 0**

**b. Public Health Failure Request – 5 Nickerson Street- Russell Perry, presenting Discussion:**

Ms. Clark explained that, after the termination of the ACO, Ms. Barber, the property owner, submitted a request that the Board of Health determine her property a Public Health Priority under Section 6E(2) of the Water and Sewer Regulations.

In her report, Ms. Clark outlined the history of the ACO being approved on November 6, 2014 and being terminated on July 23, 2015 after an official Title 5 inspection found the cesspool to be in actual failure. The Sewer Team advises that the sewer system in that area can serve the property and could be connected soon.

There are two possible actions available to the Board. It can determine that 5 Nickerson Street presents a public health priority and order it to connect to the municipal sewer or it can find that 5 Nickerson Street does not present a public health priority and order it to upgrade to a compliant septic system.

In response to a question by Mr. Katsurinis, Ms. Clark stated that she would not bring a request for a public health priority determination by the Board of Health unless it has already been approved by the Water & Sewer Team. At this time, the Water & Sewer Team is agreeable to making available the remaining gallons for public health priorities. It will also be doing the accounting of the remaining gallons. The Board of Health's domain is to make the determination of public health priorities.

The contractor, Mr. Perry stated that he currently does not have an engineered septic plan, yet. He does know it can't go in the back yard because of a new patio that was recently installed. The owners would prefer to hook up to the Town sewer. A septic system would have to be configured to fit in a small driveway.

Mr. Phillips asked Mr. Perry to provide more information regarding a Title 5 system. Ms. Clark added that a preliminary Title 5 sketch with attention to reducing the number of variances be submitted by an engineer. It does not have to be a final design. The County will review the plan. Mr. Phillips explained to Mr. Perry that if a Title 5 can be installed then it would not be a public health failure.

Mr. Katsurinis stated that he would be looking at the variances closely and would not approve a plan with too many variances. He would support a determination of public health failure.

Ms. Clark informed Mr. Perry that she would like to have the preliminary Title 5 plan for review in time for the September 3 meeting. The Board can't make any determination at this time without the plan.

The agenda item was tabled until the next meeting.

### **c. ACO Process and Next Steps – Discussion**

#### **Discussion:**

Ms. Clark met with Town Counsel last week to discuss how to proceed. There is a new Second ACO contract that has been drafted for the Board to review.

The Sewer Team has recommended that any properties with ACOs that are rated medium to high priority should be offered a renewal of their ACOs. Any ACO properties that are expiring and are rated low priority will be receiving an Order to Correct informing them that they should begin making plans to install a Title 5.

Mr. Katsurinis asked if there is a limited capacity of gallons why are we issuing or renewing ACOs? Ms. Clark replied that the DPW hopes that the Town will vote to expand the sewer. Keeping the ACO properties going will help with planning future expansion. It would make no sense to install a Title 5 in an area where there is a likelihood of a future connection.

Mr. Katsurinis recommended an effort be made to educate the townspeople of the level of properties still interested in a sewer connection and the impact it would have on the Town, as a whole, of approving or not approving the sewer expansion.

At the next meeting, Ms. Clark will bring the list of ACOs that never were properly implemented for the Board to review. The Board can either offer a new ACO contract or require an inspection first. Mr. Phillips asked Ms. Clark to order an inspection of these properties. Mr. Katsurinis added that we should not enter into an ACO again with someone who has a failed system.

In discussions with Mr. Waldo of the DPW, it has been clarified that ACOs have nothing to do with public health priority. What matters, is if the sewer is in the area and the Sewer Team verifies there is some capacity available.

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### **d. Follow up from Joint Meeting on Grease Management – Discussion**

#### **Discussion:**

Ms. Clark created a flow chart outlining the responsibilities of each board involved in grease management, the policy and regulatory changes that should be made, process changes at staff level, and the steps for ensuring compliance. She will be speaking to each of the boards involved with grease management in the next few weeks.

For the Board of Health, it is recommended that it defer to the regulations of the Water & Sewer Department, Plumbing Code, Food Code and Title 5 rather than restating its own criteria. It will ensure compliance with grease management devices and plans by conducting plan reviews of all new food establishments, checking grease device monitoring logs and conducting variance request reviews.

The Board of Health can also issue Orders to Correct, fine for not keeping grease inspection logs, suspend licenses for grease discharge into the sewer and order reinstallation of interior grease interceptors as required by the Plumbing Code.

Ms. Clark would like to offer FOG courses on line in various languages.

She recommended that regulations should be created to require septage haulers to submit grease pumping records on line that can be shared with the other boards. This would give the Board of Health the information it needs to ensure compliance by issuing Orders to Correct or withholding permits and licenses. Although electronic data monitoring data accuracy has been questioned in the past, it is still acceptable to use it, as well as, visual inspection.

Mr. Katsurinis asked for clarification of grease trap pumping regulations. Ms. Clark explained it is based on Title 5 guidelines. According to Title 5, pumping should take place every 90 days that a food establishment is open or whenever the grease trap is at 25% capacity. When people can show evidence of monitoring then the Board Water & Sewer Board can entertain variances. Ms. Clark continued to explain that now that Water & Sewer would be considering grease trap variances, the people who do have variances will have to provide the monitoring information and grease trap plans to it.

Mr. Katsurinis asked if prioritizing new businesses for plan review is onerous for people trying to start a business in Provincetown. Ms. Clark stated that plan review is required by Food Code; it just hadn't been done consistently in the past.

Ms. Clark offered two options for grease trap inspection for existing businesses:

1. Create an enterprise fund to contract inspectors to do a baseline survey and check grease traps
2. Require inspections every 5 years and submit an engineered plan of the system

Ms. Clark had suggestions for refining the Water & Sewer Regulations which included removing the mandate for electronic monitoring and allowing visual inspections, setting pumping frequency standards, and increasing the amount of allowable grease to 200mg/liter which is the industry standard.

Changes for the Licensing department would be an update to its regulations stating that a business cannot receive a license without showing proof of compliance with an approved grease management program. The Board of Selectmen should find out from DPW/Health/Plumbing if an existing grease catchment system can actually handle additional flow before granting Growth Management gallons to a business.

#### **e. Licensing of Online Rentals – Discussion**

##### **Discussion:**

Mr. Phillips brought to the Board's attention a May 16, 2014 memorandum from the Massachusetts Executive Office of Health and Human Services, Bureau of Environmental Health, Community Sanitation Program. The pertinent information contained in it reads

*“DPH has determined that lodging provided through Airbnb or similar online services is subject to local licensure or permitting as a lodging house or bed and breakfast in the same manner as traditional lodging houses and bed and breakfast establishments are licensed or permitted.”*

Mr. Phillips pointed out that this is an issue that has been discussed for several years and Town Meeting has come out in support of this, as well. It implies that if they are treated the same way then the town is permitted to collect occupancy tax. Mr. Phillips requested that Ms. Clark get an opinion from Town Counsel, within 60 days, on the matter. Can the Town Boards rely on the Memorandum as a basis for regulating them and which Board would it fall under?

Mr. Katsurinis suggested that the focus of the regulations is transient lodging. Excluding rentals of 90 days or longer could be written into the regulation. Mr. Phillips added that a Public Hearing would be necessary in the case of regulation changes.

## **V. Any Other Business That Shall Properly Come Before the Board**

There was none.

## **VI. Approval of Minutes**

### **July 16, 2015 Minutes**

**Motion:** *Move to approve the minutes of Thursday, July 16, 2015 as written.*

**Motion:** Elizabeth Williams      **Seconded:** Dr. Janet Whelan      **Vote:** 4 – 0 - 0

## **VII. Health Department Report**

Ms. Clark informed the board that she is following up smoking cessation programs and is exploring the possibility of building it into the VNA contract or using those funds when the Health Department assumes some of the public health budget.

She has spoken with George Heufelder from the county regarding an intern for next summer to track waste water systems at non-sewered properties. He asked what the purpose would be - would the data change what the Board wants to do? If the Board wants to eliminate cesspools then it should go ahead and do it. The Assessor's data base could provide a lot of the information; the original sewer map was designed from its information. The DPW has a list of cesspools, also, that just hasn't been updated.

Mr. Phillips replied that it would be good to know how old a system is. Knowing the age of a Title 5 would allow the Board to be proactive with upgrading aging systems and not wait until a title transfer.

Smoking at town benches was brought up at staff meeting, where it was agreed that the Selectmen are the ones to address the issue.

The department has been very busy with complaints, mostly about housing, however there has not been anything that required the Board's attention. The State Department toured the Town following

up on concerns and living and working conditions of J1 workers. Property owners have been cooperative in addressing issues.

Recent orders to correct are being met. The Old Colony now has a hand-washing sink behind the bar.

Mr. Phillips asked about scheduling a work session in the fall to discuss grease, habitations for rent and smoking on the beaches. October 1<sup>st</sup> at 3:00 was set for the meeting.

**VIII. Board Members' Statements**

There were no statements made by the board members

**Adjournment:**

There being no further business, Mark Phillips moved to adjourn the meeting at 5:30 pm.

Respectfully submitted,

Susan Leonard

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2015