



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, September 3, 2015

Judge Welsh Hearing Room, Provincetown Town Hall,

260 Commercial Street, Provincetown, MA

Board Members Present: Mark Phillips, Chair; Dr. Janet Whelan, Betty Williams, Elise Cozzi and Steve Katsurinis, Vice-chair (arrived at 4:18)

Board Members Absent: Joseph Freitas, Alternate
(excused absence)

Other attendees: Morgan Clark, Director, Department of Health and Environment, Laura Marin, Health Agent, Sherry Prada, DPW Director of Operations

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

a. Public Health Failure Request – 5 Nickerson Street – Russell Perry, presenting

Discussion:

Russell Perry, contractor, and the owners of 5 Nickerson Street, Jane Barber and Linda Rohler, appeared before the Board to present the request to connect to the municipal sewer.

Ms. Clark informed the Board that since it last met, the Town has received approval of its Ground Water Discharge permit. The Sewer System now has an additional 50,000 gallons of flow available. This should be kept in mind when considering the two “public health failure” requests on the agenda today. Both properties have actual failed septic systems. Ms. Clark emphasized that true “public health failures” are not common. The ACO option still exists for “technical failures”, but for the actual failures that are along the sewer system, which has the capacity to serve, the designation of “public health failure” is appropriate.

Ms. Clark reminded the Board of the history surrounding 5 Nickerson Street. The property was given an ACO in November 2014, the Board then agreed to terminate the ACO in

July 2015 when the cesspool was found to be in actual failure and was not functioning. The Sewer Team reports that the sewer system at the location can serve the property and could be connected soon. Mr. Heufelder of the County reviewed the plan submitted by the owners. It comes down to how difficult should it be for a property to connect to the municipal sewer?

Sewer Team members, Ms. Clark and DPW Director Rich Waldo, agree that the property's cesspool is a "public health failure" and should be allowed to connect to the sewer. It is in the public interest to connect as many properties as possible, especially failed systems. If the property is allowed to connect to the sewer, an application must be made to the Health Department to abandon the cesspool. If the property is ordered to install a compliant Title 5, any variances will require approval of the Board of Health.

Mr. Phillips asked Mr. Perry to explain the variances required by the Title 5 plan that was submitted by the owners. Mr. Perry said he is not knowledgeable about the exact variances, but the tank is within 4 ½ feet of the lot line on one side and the leach field is within 4 feet of the lot line along Nickerson Street. The system cannot be installed in the northwest corner of the lot because there is a recently installed \$40,000 bluestone patio there. There is a sewer connection at 4 Nickerson Street just 35 feet away. Ms. Barber added that the property is very close to the harbor and has the potential of affecting water quality at the West End Racing Club.

Mr. Phillips pointed out that this is the first time the Board has considered the "public health failure" determination and he wants to proceed in a manner so as not to make any errors. The information Ms. Clark gave the Board regarding increased available gallonage changes the urgency that the Board has been under due to limited capacity of the system .

Ms. Williams stated that, in light of Ms. Clark's information, she is in favor of it. Ms. Cozzi thinks it makes sense both in terms of public health and expense to the owner. Ms. Clark stated that the property will be assigned 330 gallons. Dr. Whelan added that what appeals to her most, is not having a patchwork system in a neighborhood where most properties are already connected to the sewer. Mr. Phillips was in agreement with the other Board members and stated he would entertain a motion.

Motion: *That 5 Nickerson Street presents a public health priority and shall hereby be ordered to connect to the municipal sewer upon consultation with the DPW regarding the process of connecting and approval by the Water & Sewer Board.*

Motion: Betty Williams

Seconded: Dr. Janet Whelan

Vote: 4 – 0 - 0

Materials Provided:

Sketch Plan, Proposed Sewage Disposal System at 5 Nickerson Street, Provincetown, MA for Jane Barber and Linda Rohler, J.M. O'Reilly & Associates, Inc.

Email letter to the Board of Health from Greg Craig, 82 Commercial Street, Provincetown, MA, August 31, 2015

III. New Business

Mr. Phillips asked the Board if it would allow Item C to be considered out of order.

c. New Body Art Technician Permit (Tattoo) – David Locke at Mooncusser Tattoo, 3 Standish Street

Discussion:

David Locke appeared before the Board to present his application. Ms. Marin informed the board that Mr. Locke has submitted all the necessary documentation and everything appears to be in order. He has been a guest artist in Provincetown for several years. In response to questions by Mr. Phillips, Mr. Locke replied that he has been a tattoo artist for 10 years.

Motion: *That Mr. Locke be approved for a body art license.*

Motion: Janet Whelan

Seconded: Elise Cozzi

Vote: 4 – 0 - 0

a. Appeal Decision of DPW Operations Director/Request Variance to BOH Regulation Part VI, Article 3, Section 1(I) – 60 Race Point Road - Jane Macdonald, presenting

Discussion:

Jane Macdonald, Trustee at White Pines Condominiums at 60 Race Point Road, appeared before the Board to present the appeal. There has been trash pick up at the property for the last 10 years. It is comprised of 15 units; three of which are affordable units and only 5 units are lived in year round. The condo association recently abruptly received a notice that only condo associations of 8 units or less qualify for trash pick up. The association members believe it is an undue financial burden, especially for the affordable unit owners, to have to hire a private trash pick up service. The association fees are structured for maintenance, grounds keeping and insurance, not trash removal. It seems discriminatory that certain properties get trash service and others don't. What is the rationale? Five of the units overlook the DPW yard and are subjected to light and noise intrusion for the activity there and have been good neighbors despite this.

Ms. Prada, DPW Director of Operations, explained that the sanitation department has a new director and foreman who have been trying to follow the rules as they have been laid out. To the DPW, it erroneously looked like two distinct parcels and this is why it has received service all these years. This year there are 4 other condo properties that received a similar notice. Additional notices have been sent to many properties regarding recycling and removal of barrels from bins because the DPW is not allowed to enter a property to empty barrels.

Mr. Phillips asked what response the department received from the other properties that were notified. There were 2 that did not respond at all and another that was issued in error

because the assessor's data base had parking spots listed as units. The Town is no longer picking up at them.

Ms. Clark verified the number of units at the property, which makes it ineligible. The policy statement by the Board of Selectmen that provides services to affordable properties does not apply. She recommended that the Board reaffirm the decision of Ms. Prada.

Dr. Whelan stated that rules are meant to be followed, despite the compelling argument presented today. The volume of trash and recycling needs to be considered. Ms. Cozzi added that since the other associations complied, it should be enforced in this case, as well. Mr. Katsurinis stated that since he missed the beginning of the presentation, he would abstain, but he agrees with the arguments already made.

Motion: *That the Board reaffirm the DPW Operations Manager's decision to cease the Town's the pick up of trash for the condominiums at 06 Race Point Road and recommend that the board consult with the DPW on the date when the pick up will cease.*

Motion: Betty Williams

Seconded: Dr. Janet Whelan

Vote: 4 – 0 - 1

b. Public Health Failure Request – 600 Commercial Street – Thomas Tannariello, presenting

Discussion:

Ms. Clark informed the Board that this case is very similar to the one they considered earlier in the meeting. Mr. Tannariello, contracted buyer of 600 Commercial Street, has supplied a comprehensive packet of documents regarding the history of the septic systems at the property. There is a lengthy record of failure of the cesspools. The DPW states it can connect the property, but not immediately because of a planned paving project in the area. It can be done within the next year. George Heufelder, from the County, makes recommendations with the caveat that the Board determines what its threshold for declaring a public health failure is. He states that the property could accommodate a mounded system, single tank treatment units or a drip dispersal system.

Ms. Clark and DPW Director Rich Waldo recommend the property be declared a public health priority. It is in the interest of public health and the environment to connect as many properties as possible, especially failed systems. It is not in the Town's interest to promote a patchwork system by requiring a Title 5 system be installed. If the property is allowed to connect to the municipal system, an application must be made to abandon the existing septic systems and an engineer must be hired to design a "quick fix" until the sewer system becomes available. If a Title 5 is ordered and variances are required it must come before the Board There is a standing date for compliance that exists and it must come into compliance by that date.

In response to a question from Mr. Phillips, Ms. Clark stated that the flow from the property will be 660 gallons.

Ms. Williams asked if the building is currently occupied? Mr. Tannariello replied that it is and as the contracted buyer he is responsible to remedy the waste systems, but the

property is to be delivered vacant. Eviction notices have already been served. He is willing to have the system pumped again until the tenants vacate.

Mr. John Schnibel, engineer from Coastal Engineering, stated that he had designed a compliant system according to Mr. Heufelder's recommendations, but not a "quick fix" He added that perhaps they could install some pits.

Ms. Cozzi asked how long the property will be vacant? Mr. Tannariello said he will be developing the whole property so it will take some time. It will remain vacant until the project is done. Ms. Clark added that she can condition it so that a Certificate of Occupancy not be issued until connection to the sewer is made.

Motion: Move that the property at 600 Commercial represents a public health priority and be ordered to connect to the municipal sewer in consultation with the Department of Public Works regarding the process of connecting and approval by the Water and Sewer Board and further once the property becomes vacant that it remain vacant until it is connected to the sewer unless a waiver is requested.

Motion: Steve Katsurinis

Seconded: Betty Williams

Vote: 5 - 0 - 0

d. 227R Commercial Street – Condemnation Order Compliance

Discussion:

Ms. Clark informed the board that Mr. Rose stated that he needed legal representation and has opted not to be present at the meeting.

Mr. Phillips asked Ms. Clark if the condemnation order has been complied with? Ms Clark replied that she does not know. She inspected the property early Monday morning with Austin Brandt. They looked for signs of life. It is a second story dwelling so she could not see directly in any windows. She did run into Mr. Rose on the street and asked if anyone was living there and he refused to comment. At Mr. Rose's invitation she was allowed into the lower restaurant portion of the building only. She has no conclusive evidence of whether it is occupied.

Separate from the Board of Health conversation, the Fire Chief had asked for the building to be vacated and had asked the police to keep an eye on the building every hour. There is a question of its fire danger. The hourly police report does not show much evidence on habitation. However, a police check in this morning at 3:45AM shows Mr. Rose as being there. To her knowledge, Ms. Clark stated that she has not seen much movement towards securing the building or correcting the concerns regarding restoring water and electricity to the building. Mr. Rose expressed difficulty in getting a contractor to work at the property. Mr. Salisbury, Water Superintendent, communicated with Mr. Rose what is expected from him. He will not approve a temporary service from the neighbors. Mr. Waldo, DPW Director indicated that the sewer stub might be closer to the Rose property than previously thought.

Dr. Whelan stated that part of the compliance was that the building was to be boarded up and vacated. Has this been done? Ms. Clark replied that the property has always been boarded up to a point. It hasn't limited access, however. Mr. Rose argues that he needs access to the building to make repairs and his former tenants are now on his pay roll to

make repairs. He doesn't want anyone in the building if there is not safe egress from the building.

Mr. Katsurinis asked if the necessary repairs require pulling a permit? Ms. Clark has not gotten a satisfactory answer from the Building Commissioner due to the mixed use of the building. The electrical and plumbing issues require a licensed professional.

Ms. Williams suggested that they should be most concerned with the residential aspect of the property not the commercial portion of it. We are not talking about the restaurant. We are concerned with the habitability of the apartment.

Mr. Katsurinis wanted to know whose responsibility it is to eject tenants from a condemned building. Is it the police or the Department of Health? The police are not agents of the board of Health. A court order would be enforceable. Is there an option at the expense of the town to secure the building? Mr. Phillips said a court order from the judge would be necessary first.

Mr. Phillips stated that it is unfortunate that Mr. Rose is not present. He could have answered questions the Board has and it may be the last opportunity to retain control of the building. A court order would give the Court and Town more control over the property than they currently have. It would behoove him to comply with the order that has already been made.

Mr. Phillips asserted that based on what we have heard it is not clear the Mr. Rose has complied. The Board should reaffirm its original order and to take the additional step that Town Counsel seek a court order if it is determined the property is not secured and vacated by noon tomorrow.

Dr. Whelan questioned if more time for the occupants to be relocated would it enable Mr. Rose to be in compliance? Ms. Clark stated that Mr. Rose would not be able to house the tenants at the Harbor Hotel. Mr. Katsurinis added that the process at the Court will take some time anyway.

Mr. Phillips added that Mr. Rose can avoid all of this by complying with the order.

Motion: I move that the Board find, based on facts adduced at this hearing, including police reports and other eye witness accounts of activity at the property, that the owner of the property located at 227R Commercial Street has failed to comply with the Board's August 27, 2015 order, insofar as he continues to permit occupancy of the dwelling, he has failed to relocate the occupants to suitable alternative housing and he has failed to secure the premises within the time frame established in the order, and I move that the Board reaffirm its finding that the dwelling is unfit for human habitation and further order that, if the dwelling is not vacated and secured by noon on Friday, September 4, 2015, the matter be turned over to town Counsel to institute proceedings in Barnstable Superior Court to remove the occupants and to authorize the Town to secure the dwelling, both at the owner's expense, and, in addition, I move to clarify the Board's August 27, 2015 order by stating that the dwelling will be considered secured when all windows and doors are securely fastened with wooden boards nailed to the frames and that no person shall be permitted inside the

dwelling except for the owner and contractors hired by the owner for the purpose of making improvements and/or repairs pursuant a plan approved by the Building Commissioner and only between the hours of 8:00 am and 6:00 pm and while such work is being conducted. The owner shall notify the Board of Health of the identity of any such contractors and the date and time that they will be on the premises at least twenty-four hours in advance and shall not permit entry unless it is expressly approved by the Board of Health staff, such approval to not be unreasonably withheld.

Motion: Steve Katsurinis

Seconded: Dr. Janet Whelan

Vote: 5 – 0 - 0

e. 227R Commercial Street – Temporary Housing Request – H. Bradford Rose, presenting

This article was tabled due to the absence of Mr. Rose.

f. Follow up from Joint Meeting on Grease Management - Discussion

Discussion:

Ms. Clark informed the Board that she has met with all the Boards and departments that are involved with grease. A change in Water & Sewer processes was discussed and approved to allow more tailored approach to grease catchment. She asked the Board of Health for permission to draft regulatory changes that it can review during its upcoming work session. Water & Sewer thought it would be better that a Board of Health policy or regulation regarding inspection of all grease traps once every 5 years be made because all restaurants and food establishments are under BOH jurisdiction. This is something that would protect the sewer system. We have very little information about grease trap layouts and how well they function. This would provide a baseline to work from.

g. Licensing of Online Rentals – Discussion

Discussion:

Ms. Clark referred all the Board's questions to Town Counsel. The new administration has stated that The Board of Selectmen has already asked Town Counsel many of the same questions and has denied permission to the Board of Health to make further inquiries. Ms. Clark suggests a joint meeting with Board of Selectmen to discuss the questions it has. It could also request a meeting with Representative Peak, since it seems a question for the legislature. Another option would be to write Atty. General Healy or Governor Baker for an opinion. We are the Licensing entity, but we are licensing the safety of habitations.

Mr. Phillips pointed out that one of the reasons the Board is having this conversation is because it received communication from the State Department of Public Health. Town Counsel seems to make it clear that we can regulate on line rentals. There continues to be a question about occupancy tax, which is not up to the Board of Health.

Mr. Katsurinis said the regulation of the limits of occupancy is the Board's concern. We could inform the Board of Selectmen of our interest and assist them with that. The issue of proper fee schedules can be justified by inspection of these properties.

Ms. Cozzi asked if the Board regulates houseboats? Ms. Clark replied that building code does not apply to houseboats. It does have jurisdiction over wastewater disposal.

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

Mr. Katsurinis raised the issue of regulating smoking on Provincetown's beaches. It has been determined that it would best be addressed by a town by-law. He thinks it should be pushed for the Fall Town Meeting. The Town by laws have no definition of beaches. His motion would declare all beaches to be smoke free.

Motion: That the Town at Town Meeting consider prohibiting smoking on town beaches.

Motion: Steve Katsurinis

Seconded: Elise Cozzi

Vote: 5 – 0 - 0

Dr. Whelan mentioned to the Board that vibrio has been found in the oyster beds on Martha's Vineyard. People should be alert to this fact.

V. Approval of Minutes

August 6, 2015 Minutes

Motion: *Move to accept the minutes of Thursday, August 6, 2015*

Motion: Betty Williams

Seconded: Steve Katsurinis

Vote: 5 – 0 - 0

VI. Health Department Report

Ms. Clark outlined the following points of information in her report:

~The ground water discharge permit has been approved

~Can the scheduled work session be moved to another date? (Rescheduled for December.)

~The COA is sponsoring a flu clinic on October 15, 2015

- ~Staff has created a list of limited facilities which is available on line in a Google doc.
- ~The FOG Course has yet to be developed, but it will be worked on over the winter.
- ~The Board had recommended 2 press releases at the last meeting:
 - *Lack of beach closures – waiting for rest of data and a few questions to be answered by the County water quality lab
 - *Hopes to expand sewer - DPW requested to wait until preliminary indication from engineers that expansion is possible
- ~Does the Board want to hold off on extending invitation to re-sign expiring ACOs
- ~ 10 year budget outlooks submitted for Board Of Health and Health Department. Many changes made, including new line items for Board Of Health based on past discussion

Mr. Katsurinis suggested that fees should be looked at to see if they are sufficient for the work being done. Do they need to be adjusted?

Mr. Phillips stated that a Board member could be present when the budget meetings take place.

~Data collection for needs assessment almost finished. A draft report will be shared when it is complete

Ms. Marin stated that there has been a 100% compliance with swimming pool bacterial testing and all locations have passed. There have been a lot of complaints to the department about rentals regarding properties not having rental certificates. The restaurant inspection compliance has been very good also.

VII. 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 5:45 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2015