



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, March 7, 2013

Caucus Room, Provincetown Town Hall,
260 Commercial Street, Provincetown, MA

Board Members Present: Ken Janson, Acting Chair, Elizabeth Williams, Paige Mansfield and Dr. Janet Whelan

Board Members Absent: Mark Phillips and Laurie Delmolino

Other attendees: Brian Carlson, Health Agent, and Morgan Clark, Public Health and Safety Officer

Call to Order: Ken Janson, Acting Chair, called the meeting to order at 4:00 p.m.

Public Comments:

There were no public comments.

New Business:

A. Variance requests under Title 5 regulations for a septic system upgrade for an existing dwelling located at 31 & 31-A Conwell Street, Provincetown.

Discussion:

Brian Carlson pointed out that the engineer for the applicant, Janet St. Onge, had not arrived yet, although abutters were present. He suggested that it could be tabled until the engineer arrives. A motion was made to do this.

Motion: *I propose that we table Item "A" under new business.*

Motion: Ken Janson

Seconded: Elizabeth Williams

Vote: 4 - 0 - 0

B. Request for relief from pumping the grease trap at the property located at 293 Commercial Street, Provincetown.

Discussion:

Steve Boggess, the owner of the building, appeared to speak on behalf of the request. He explained that there are two food establishments at this location, Lucky Dog and Twisted Pizza. During the years that the grease trap has been monitored, there has been no grease. It has been pumped twice year. He requested relief from pumping the grease trap. He appeared previously a year or two ago to make a similar request and was informed that the Board did not have jurisdiction to make this decision. He has since learned that the DEP determined that the authority rested with the Town and not with the State.

Brian Carlson explained that he did consult with Brian Dudley at DEP about how the Town could go about granting such a request for a variance for grease pumping; because it is hooked up to the municipal sewer the guidelines for Title 5 on-site systems do not apply. It rests with the local authority whether or not the Board would want to grant relief as requested. The grease regulations are found in several different places, the Licensing Board, the Board of Health and Water & Sewer Board. The Board of Health enforces grease pumping. Historically, it is something the Health Department has monitored and enforced. This is why the request is before the board again.

Mr. Carlson included in an information packet a very lengthy pumping record print out from the monitoring company Sepsensor, which is no longer in business, for Twisted Pizza from 2008 through 2011. Lucky Dog does not appear, although it is on the same system. It demonstrates the history of grease at this site. The percentage of grease back in 2011 reads 0% a lot of the time, then pops up to 2% in July and goes back down to 0%. In his review of it, the percentage of grease has been fairly low. The rules, from Title 5 and also the Sewer perspective are that the grease trap needs to be pumped if it reaches 25% of capacity, that is one of the thresholds, and the other threshold is twice a year. In order to get a business license, businesses have to demonstrate that they have pumped at least twice a year. Mr. Carlson recommended that the owner be required to have a grease monitor installed. This is a requirement. There has been a lapse since Sepsensor is no longer in business. Mr. Boggess added that these are seasonal businesses; from the middle of October to March or April there is nothing. Mr. Carlson mentioned that a similar request came before the Board for the Coffee Pot. Mr. Boggess' request is to reduce the number of times the grease trap has to be pumped.

Mr. Janson asked if it made sense, for the immediate future - the next couple of years - to do one pumping at the end of the season to see if there is anything to monitor, assuming that the same restaurants stay in that place and there is not going to be a Board of Health

March 7, 2013

change in the type of food service. If it is so low, it can be looked at it for a year or two. Ms. Mansfield suggested that once the new monitoring system is installed, when the monitor reaches 25%, it could be pumped. If it takes seven years to get to the 25%, then only when it is at that percentage, then that is when it would be pumped.

Ms. Clark noted that it is unprecedented for the Board to grant any variances based on the *percentage of grease*. It would be really hard for the Health Department to implement or enforce. The Licensing Board is the one who checks to see if a business has done its pumpings and based on that it does or does not grant a business license. It is based on the *number* of pumpings. Based on what is in the records, if these variances are granted it would have to be pumped once a year. To switch it to a percentage would be unprecedented.

Mr. Janson, Acting Chair, asked the Board if there were any further comments?

Ms. Mansfield inquired that since the monitoring company is no longer in business if a letter is being sent out to all food service establishments that they have to be re-hooked up to a monitor by a certain date? Mr. Carlson replied that he had just finished a mailing to the restaurants that are still not monitoring their grease. A little over 50% have reconnected with a grease monitoring company. A second reminder letter has been sent out this week. Mr. Janson asked about the conditions given the Coffee Pot. Morgan Clark offered to check on her computer, to see what the conditions were.

Mr. Janson then asked if there was another agenda item that could be handled quickly while Ms. Clark was researching the information. Mr. Carlson suggested Agenda Item D.

D. Ratification of one-year extension granted for installation of septic systems at 386 & 390 Route 6

Discussion:

Mr. Carlson explained to the Board that this property is the Dunes Edge Campground, which is under purchase and sale agreement by the Massachusetts Land Conservation Trust and The Trustees of Reservations. It is being purchased to be maintained as a campground. A letter of February 19, 2013 from the Trustees of Reservations, Jennifer Dubois, originally requested a two-year extension. He spoke with the County and a few others about these types of requests. This property is not slated to be put on the municipal sewer system, so an ACO (Administrative Consent Order) was not a course of action that made any sense, in terms of giving them extra time. A letter and authorization from the Board extending some time for them to install a system based on the circumstances laid out in the letter would be acceptable. Mr. Carlson had already written the letter due to timing issues of the closing on the property. Based on

the discussion with the County, they recommended a one year extension instead of a two year extension and that they would be welcome to come back and request more time if they needed it. He did grant them a one extension in the letter. This is for your ratification and approval.

Motion: To request the one year extension at 386 & 390 Route 6

Motion: Paige Mansfield

Seconded: Elizabeth Williams

Vote: 4 - 0 - 0

Morgan Clark returned to the meeting and the discussion continued on Item B:

Request for relief from pumping the grease trap at the property located at 293 Commercial Street, Provincetown

Discussion:

Morgan Clark presented to the Board information regarding the Board Of Health Action for the Coffee Pot request for a reduced pumping schedule of their grease trap. The Board had based their decision on the business hiatus and decided if there was going to be one pumping a year when it would make the most sense to do it. The pumping would be done before the season started in May. They had similar minimal low levels of grease, so it was not likely that they would get close to the 25%.

Paige Mansfield asked Mr. Boggess how much it costs to have the service? He replied that he was quoted \$600 for the year plus a one-time charge of \$250 to install the equipment. The pumping itself is \$350 per pumping. Ms. Mansfield made the following motion:

Motion: To grant pumping at the 25% level at 293 Commercial Street provided that the new monitoring system is installed.

By way of clarifying the question, Dr. Janet Whelan pointed out that there is no precedent for doing it that way. There is only a precedent for doing it as the regulations require, which is twice a year or at 25%. It would be establishing a new precedent if it was based on only reaching 25%. We could reduce the frequency and be within the spirit of the regulation.

Mr. Janson reminded the Board that there was a motion on the table. If it is seconded then the discussion can continue. He asked if there was a second to the motion.

The motion was seconded by Elizabeth Williams.

Further discussion ensued. Dr. Janet Whelan asked if there was any further clarification of the regulation? What is the wording and spirit of the regulation before we make a change? It has to be pumped twice a year or, if it reaches 25%, before then, it has to be pumped. It is not either/or. It is both. Paige Mansfield expressed that logically if there is no grease then it shouldn't have to be pumped. Ken Janson agreed with Janet Whelan that they should go with the once a year pumping, which is something that has been done in the past, rather than doing something which is creating something new that has not happened before. Paige argued that there is no reason to pump something that is not there.

Brian Carlson stated that the baseline evidence is that grease level is minimal, so it is the level of safety that the Board wants to insure whether it comes from once a year at the beginning of the season or you want to monitor it at the 25% level. The precedent issue is up to you.

Mr. Janson reminded the Board that there is a motion and second on the floor and asked if the Board was ready for a vote?

Paige Mansfield asked if she could modify the motion to include *“unless there is a change in the type of food”*. The modified motion reads as follows:

Motion: *To grant pumping at the 25% level at 293 Commercial Street provided that the new monitoring system is installed and unless there is a change in the type of food.*

The motion failed. Vote: 2 - 2 – 0

Mr. Janson called for another motion, if not he offered to make one.

Motion: *To grant a variance for an annual May grease trap pumping at 293 Commercial Street, as long as the grease trap is monitored and unless there is a change in the food service.*

Motion: Ken Janson Seconded: Dr. Janet Whelan Vote: 3 - 1 – 0

Documents Submitted: Application To Appear Before The Board of Health, dated 02/20/2013; Sepsensor print out of grease trap monitoring 2008 through 2011

Now that Alan Cabral, engineer for 31 & 31A Conwell Street, was present the Board resumed the discussion of Item A:

Variance requests under Title 5 regulations for a septic system upgrade for an existing dwelling located at 31 & 31-A Conwell Street, Provincetown.

Discussion:

Alan Cabral of Felco Engineering, appeared to represent the applicant 31 & 31A Conwell Street. He explained that in its current state the house is very chopped up and has multiple rooms and multiple potential kitchens areas. Both he and Mr. Carlson did a walk-through of the building and came up with a potential for three bedrooms and one kitchen. The new owner will be sitting with a 3 bedroom, one kitchen home. The proposed upgrade is a septic tank and 2 leach trenches replacing two existing cesspools. The variances are typical by Provincetown's fare; cell wall variances and property line variance. We are asking for a reduction of 24% of the leach field and also an excess of 3 foot of cover; all of which are allowed under local upgrade approval. Where it is situated on the lot it does not negatively impact any of the abutting properties. He understands that the local sewer is not contemplated for this property for many years. This is why they were hired to do a Title 5 upgrade. He offered to entertain any questions.

Elizabeth Williams asked if what he meant by "upgrade" is an entirely new Title 5 system. Mr. Cabral responded yes, it was replacing two cesspools. Ken Janson commented that the site plan seems to indicate a larger building. Does the site plan show the "Existing" drawing of the building? Mr. Cabral assured him that it is the "Existing" drawing.

Mr. Carlson said he and the Building Commissioner did a walk through; it is very cut up and it is very old. The lot is two lots that are combined or will be combined. Mr. Cabral said it is two parcels on the assessors map, but it is deemed combined. It is an awkward lot. The county also took a look at it, as well. There is a letter in an email from an abutter Mr. Robert A. Small-Jason and there are abutters present also. Brian consulted with Sherry Prada at the Sewer Department; this property is not being eyed for connection to the sewer any time soon.

Pauline and James Richmond abutters at 21-A and 21-B Conwell Street spoke on the proposed project. Ms. Richmond made it clear that the dirt road abutting this property is, in fact, her driveway. She inquired what the results were of the deep observation hole and was it sufficient for 1,500 gallons of septic in that area. Mr. Cabral said that the soil was suitable and that it is not 1,500 gallons of septic; the leach area is only 330 gallons. The septic tank is 1,500 gallons. The percolation test was acceptable by Title 5 standards.

Ms. Richmond also asked about where the property line variances were proposed and also the location of the flow barrier. She requested that an additional flow barrier be

installed on her driveway side of the property. Mr. Cabral agreed that was not an unreasonable request at all. If the board sees fit to include a flow barrier around the driveway side they can make that as a condition. Mr. Cabral had no objection to that. Ms. Richmond pointed out if the system ever failed, because of the grade it would flow down to her property. Mr. Cabral replied that the trenches would be below the level of her road. There would be no way for the leach area to break out because it is below the level of her property. Ms. Richmond added that the erosion level of the road is ongoing at a rapid rate and it has lost 3 feet in the last ten years. She asked the board to please consider a barrier around all the water systems that abut her side of the property.

Also, Ms. Richmond asked if the vent pipes will be the “candy cane” type or the straight pipes. Mr. Cabral said the plan calls for the straight pipe with a filter. It is not intended to go toward her property. The vent pipe could be routed anywhere, so she could ask the Board to locate it away from her property. She abuts other projects that used unfiltered “candy cane” vents and the smell is terrible. Ms. Richmond requested that the Board consider the location of the vent, explaining that it does abut a wooded lot which is not built on yet, but may be some time in the future. Mr. Cabral offered whenever they can mitigate any problems they are willing to do that. Ms. Richmond was interested in the letter from the other abutter that the Board of Health received. Was it for or against the project?

Elizabeth Williams asked to read the pertinent questions contained in the previously mentioned letter from the abutter, Mr. Robert A. Small-Jason, at 29 Conwell Street.

1. If the flow of the proposed new system to be installed cannot operate at a capacity of 100%, I am NOT in favor of a variance being granted to the applicant.

Betty asked, won't it operate at 100%? Mr. Cabral explained that built into the Title 5 code was the understanding that certain circumstances would not allow a 100% sized system. That does not mean that the system won't operate at 100% capacity. It just means that you have a slightly downsized leach area. Title 5 regulations allow up to a 25% reduction. They knew that the big leach areas wouldn't fit everywhere. Felco has asked for dozens of these reductions in Provincetown. This leach area will take all the water pumped into it.

2. Will any outflow from the leaching portion of said system travel horizontally under my property in any way? If so, I am NOT in favor of a variance being granted to the applicant.

Alan Cabral said the short answer is NO. He is 70 feet away in the wrong direction on the uphill side.

3. If Accessing, excavating and or staging any equipment and or materials on my property for said proposed project will not be allowed under any circumstances by applicant, Janet St. Onge and or any representative of hers or of anyone designated to perform such work on her, under her direction, and or on her behalf.

Betty stated that he obviously does not want anyone on his property.

4. Is there currently a functioning septic system located on the property at 31 Conwell Street, or was it removed during last week while excavation work took place on said property? If said existing system has been removed, were any and all the permits and or approvals in place to allow for such? And if said system has been removed, is this allowed prior to any hearing and or approval or denial of an application for a Title 5 Septic System variance hearing?

Mr. Cabral assured the Board that nothing was removed. The cesspools are still there. Whether they function or not, he does not know. They were not hired to inspect them. The work that was done was strictly for the percolation test and soil suitability.

Brian Carlson asked Mr. Cabral if because the house is so odd would it be more suitable to have two bedrooms instead of three bedrooms and could a non-varianced system be installed instead of a varianced 3 bedroom system? Mr. Cabral replied that he would still need to apply for a variance for two bedrooms as for three bedrooms.

Ms. Richmond asked where all the construction equipment is going to park? No one has asked about using her property and she does not want her driveway blocked. Mr. Cabral assured her that they can access the property and install the system without going down her driveway and suggested a pre-excavation conference. Mr. Carlson said when the permit is pulled he can make sure the contractors are aware of the situation.

Motion: *To grant a variance to 31 & 31A Conwell Street with the following restrictions: that a flow barrier be put on the North side of both the leaching field and the septic tank; that the vent pipe be moved closer to the existing shed; that there is a deed restriction to limit the property to one kitchen and three bedrooms and that there is an on-site visit before the contractors come in.*

Motion: Ken Janson

Seconded: Paige Mansfield

Vote: 4 – 0 – 0

Documents Submitted: Owner's Application to Appear Before The Board of Health, dated 2/13/2013; Cover letter Felco, Inc. February 14, 2013; Site & Sewage Plan 31 & 31A Conwell Street, Provincetown, MA, dated 02/11/2013, Existing Floor Plan 31 & 31A Conwell Street, Provincetown, MA; Assessors Abutters Map, Abutters List; Letter from abutter Robert A. Small-Jason at 29 Conwell Street, Provincetown, MA Board of Health March 7, 2013

C. 262 Bradford Street request of an Administrative Consent Order (ACO)

Discussion:

Mr. Carlson introduced the ACO Request of Marguerite Major and Cynthia Forrest, 262 Bradford Street

Health Agents Report

The property is presently served by a cesspool that was inspected by Chris Lucy on February 27, 2013. The cesspool is reported to be working properly, however the property owner would like to enter into an ACO to begin the process of connecting to the municipal sewer. There is a real estate transfer coming up. In preparation to that they want execute an Administrative Consent Order.

Health Agents Recommendation

I recommend that the property be entered into an ACO and that the ACO be recorded at the Barnstable County Registry of Deeds and that proof of the recording be submitted to the Health Department.

Joan Lenane appeared to represent the property owners. There is a real estate transaction; they are hoping to close sometime in the middle of April. There is a cesspool which by definition is “failed”. She spoke with Sherry Prada at the Sewer Department who said that they are currently working on doing that stretch of Bradford Street. The “Home Port” property next door is already connected, so one can assume that there is a stub and pit installed nearby.

Dr. Whelan asked what an ACO is? Brian Carlson explained that it a contract between the Board of Health and a property owner that commits them to hook up to the municipal sewer system when and if it becomes available. Upon executing the contract, the property owner commits money into an interest bearing account that is prepaying for their betterment and connection to the sewer system. If the sewer is deemed not to be able to serve that parcel, they can take the money out of the account, but it has to be used to put in a compliant Title 5 system. It also authorizes them to do a “quick fix” in the interim.

Motion: To recommend that an ACO be granted to the property at 262 Bradford Street.

Motion: Elizabeth Williams

Seconded: Paige Mansfield

Vote: 4 – 0 - 0

Documents Submitted: Application to Appear Before The Board of Health, dated 02/05/2013; Letter from Chris Lucy, Certified Title 5 Systems Inspector, 02/27/2013

E. Local Board of Health Grant Application

Discussion:

This agenda item was addressed by Ms. Clark. Every once in awhile the Massachusetts Department of Public Health and the Massachusetts Association of Health Boards team together to make money available to local Boards of Health to apply for. We are eligible to apply for the amount of \$500, which happens to be the price of a desk top scanner which we really need. We can have electronic documents and files; something which she and Brian Carlson had identified as one of their goals this year. In order to submit the application Board approval is necessary.

Motion: *To approve the \$500 grant for a scanner.*

Motion: Paige Mansfield

Seconded: Ken Janson

Vote: 4 – 0 – 0

F. Ratification of vote taken at an emergency Board of Health meeting held on February 26, 2013 at 1:00PM at Town Hall 260 Commercial Street to revoke a condemnation of the property located at 24 Cottage Street.

Discussion:

Brian Carlson asked for a vote to put the revocation of the condemnation on the record and also to take this opportunity to discuss the project further. Anne Howard was at the site the day they moved. There is a new heating system and new electric hot water heater. The bathroom has new fixtures. A kitchenette has been installed upstairs; it was originally downstairs and has been demolished. There is still work to be done downstairs if they want to bring it up to a higher level of habitability. The owner has been told that they cannot live down there, but can use the space for other purposes. There will be further follow up through Elder Services and the COA. Arrangements are being made for trash and debris to be taken away. New furniture has been donated including beds and living furniture. A success story.

Motion: To ratify the vote taken at the emergency Board of Health meeting taken on February 26, 2013 and revoke the condemnation of the property located at 24 Cottage Street.

Motion: Ken Janson

Seconded: Elizabeth Williams

Vote: 4 – 0 – 0

Any Other Business That Shall Come Before The Board

There was none.

Approval of Minutes

January 3, 2013

Motion: *Move to approve the minutes of January 3, 2013*

Motion: Elizabeth Williams Seconded: Paige Mansfield Vote: 4 – 0 - 0

February 7, 2013

Motion: *Move to approve the minutes of February 7, 2013*

Motion: Paige Mansfield Seconded: Elizabeth Williams Vote: 4 – 0 - 0

February 26, 2013

Motion: *Move to approve the minutes of Tuesday, February 26, 2013*

Motion: Paige Mansfield Seconded: Ken Janson Vote: 4 – 0 – 0

Health Department Report

Inspections

Inspections of seasonal restaurants and guest houses are picking up.

Regulations

The process of updating the Board of Health Regulations continues. We have been working on the regulations by Part. Each Part takes a significant amount of staff time and coordination with relevant departments and staff. One of the bigger projects are the supplements to Title V. They will likely require significant Board discussion as well. The Board should instruct the Department as to whether the Board would like to discuss suggested changes to the regulations by Part or as a whole. With that in mind,

we can bring the Title V supplements and the sanitation and solid waste regulations soon.

One thing that has come up and requires discussion earlier is the issue of pools and hot tubs and what we require of them. For the next meeting, I can bring the regulations for the pools and hot tubs for your vote and clarification before I send out the applications.

The Recycling and Renewable Energy Committee is presenting to the Selectmen at the March 11th meeting the policy on Pay- Per-Throw. This is within our jurisdiction. It is part of a larger discussion with Semass. They won't be making any decisions on it at this time. We will report back to you.

Emergency Planning

The Town set up a warming station at Town Hall in preparation for winter storm Nemo. It was a success. The town shelter is not operational at the VMCC due to construction at the building. This the second season when it is not functioning as a shelter. We have been working with the County Nurse planner on emergency planning and we have met all the requirements that the CDC requires for the town. Every year a town is chosen to be audited. It is a very comprehensive process; all of our emergency planning documents are now up dated if we are chosen next year.

Ongoing Projects

The AmeriCorps service member has completed a first draft of a GIS map showing those properties which still have cesspools, as requested by the Board. This data needs to be cross-referenced with the DPW and the property files to ensure it is accurate. An updated map will be presented at a future meeting. The AmeriCorp volunteer will be leaving. She has found a full time job. We are reapplying for another service member and hopefully we will have someone starting in October.

Departmental Processes

The Health Department sent out it annual letter to restaurants reminding them of necessary certificates to acquire, etc. Please see the samples in your packets. A letter has also been sent out to food service establishments who have not renewed with a grease monitoring company.

Also, the Health Department is working on a Frequently Asked Questions (FAQ) page for its website. This will hopefully save the department and the townspeople time as it will direct people to applications and forms, as well as give instructions as to how certain processes work. If you have any suggestions for information that should be included, or recall some questions you have been asked in the past, please email Morgan with those and she will add them to the list.

We are offering again with the Medical Reserve Corps choke safety training in June. This training is required by state law for any restaurant that seats 25 or more people. We offer it for free. In the past, we have done a brochure of the Top Ten Things You Need to Know before opening a restaurant. I decided to focus on just one issue for the season ... glove use. It is a bright orange poster that can be posted in the restaurant.

Other

The Health Department is working with the Tourism Department, Police Department, Housing Specialist, Outer Cape Health Services and other concerned citizens on a Handbook for Summer Workforce. This will be part of outreach efforts to summer workers, informing them of important numbers, places to get help, their rights and other matters.

Morgan is planning a training for the Board of Health to orient or to remind Board members of the Board's responsibilities, governing laws and regulations, general open meeting law components, and other salient issues. The tentative date is April 18th, prior to the Board of Health regular meeting. **Please inform Morgan whether this date works for you.**

Paige Mansfield asked if it could be arranged to be held at 3:00 pm on April 4th? It was decided to hold the orientation meeting on April 4th, instead of April 18th.

We got a letter from the Massachusetts Department of Public Health to the Board of Health about sodium analysis that has been included in the packets. It includes a fact sheet about sodium drinking water levels for the public.

Board Members' Statements

Ken Janson took the opportunity to thank Brian Carlson and Morgan Clark for their service. For the many staff members that he has been associated with they are organized and seem to be getting things done. Thank you very much for all your hard work.

Adjournment:

There being no further business, Ken Janson moved to adjourn the meeting at 5:38 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013