



## Town of Provincetown

### Meeting of the BOARD OF HEALTH

Thursday, March 21, 2013

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

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**Board Members Present:** Mark Phillips, Chairman, Ken Janson, Elizabeth Williams and Dr. Janet Whelan

**Board Members Absent** Laurie Delmolino and Paige Mansfield (Alternate)

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

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

**Public Comments:**

There were no public comments.

**Discussion:**

There was no discussion at this point in the meeting.

**Old Business:**

There was no old business raised or discussed.

**New Business:**

**a. Show Cause Hearing - Unlicensed Body Art – 24 Pearl Street**

**Discussion**

Michael Roberts, Executive Director of the Fine Arts Work Center, among others, was present to address the issue of unlicensed body art. He introduced the following individuals who were involved with the event in question: Esteban Del Valle, Heather Hart, Michael Calway-Fagen, as well as, Janelle Iglesias, visual arts coordinator.

Morgan Clark read into the record the Health Agent's report of the incident as follows:

On February 25, 2013 I met with Michael Roberts, Executive Director of the Fine Arts Work Center, Fellows Mike Calway-Fagen, and Heather Hart about an incident that occurred on February 1, 2013. They reported the following:

On February 1, 2013 Mike Calway-Fagen had an event to present his work to the public (each fellow has a night throughout the season). He planned an artistic performance that was a participatory event. There were three participants: Calway-Fagen, Esteban Del Valle, another FAWC Fellow, and Ewa Nogiec, a Provincetown artist. Del Valle and Nogiec were informed of the circumstances of the performance and agreed prior to the performance to participate. Part of the performance was receiving tattoos. Nogiec also signed a release form.

Calway-Fagen asked another Fellow, Heather Hart, to do the tattooing. Hart has done tattoos before with her family, but is not a licensed or trained tattoo artist. She also reports she has no intention of becoming one. She agreed to perform the tattooing as part of the performance because she had done tattooing before.

The instrument used in the tattooing was constructed – as in, made by hand - as part of the performance. It consisted of batteries, a mechanical pencil, sewing needles, and wire. India ink was used as the ink. Hart changed needles in between tattoo recipients, soaking the sewing needles in alcohol prior to using them. It was Hart's belief that this would sterilize the instrument. Hart wore gloves while performing the tattoos.

Neither Calway-Fagen or Hart were aware of the local body art regulations. No members of the public at large were tattooed. Upon receiving a letter of Cease and Desist from Brian Carlson, the tattooing instrument was disassembled and discarded.

On February 27 and 28, I contacted those who received tattoos (Calway-Fagen, Nogiec, Del Valle) to make them aware that there is an official investigation in process and to encourage them to get tested for blood borne pathogens. The AIDS Support Group of Cape Cod's Prevention and Education Office offers free testing for Hepatitis and HIV, and I informed the tattoo recipients of that option.

Calway-Fagen was not concerned with the risk, as different needles were used for each tattoo recipient. I informed him of the prevalence and hardness of the Hepatitis virus, particularly, and he saw no need to get tested. Nogiec thanked me for the information. Del Valle has seen his doctor for a check up after the event, and had blood work performed.

Brian Carlson added that on the day of the event he had called the Executive Director of FAWC, who complied with everything he had asked of him, informing him of the Cease and Desist Order and of the regulations governing this type of activity. Action was taken right away and the investigation proceeded from that point forward with the interviews being conducted on February 25.

Michael Roberts responded that the report was a very succinct and accurate report of the facts. This event was the first in the series of solo shows by the artists. There were

a variety of activities taking place during the event in the Walker Gallery including a puppet show and other interactive activities. There was not knowledge of the tattooing before the fact. Neither he nor the other artist involved realized that tattooing was a highly regulated activity. There was no intention to violate the law. It was intended to be a serious art performance.

Janelle Iglesias explained the context in which the event took place. The artists have full creative control and trust. There is no need to check in with the administration for prior approval. Within contemporary art practice it is common to have socially engaged events within a gallery context which become a work of art.

Heather Hart stated that she has learned a lot about how to do “social practice” art and what to check into. She never thought much about it since it is something that has been done in her family for generations. She pointed out that the photos of the tattoos were filtered through Instagram and looked gorier than they really were and they had healed without any problems. She said she will never do another tattoo again after learning what she did from Morgan.

Michael Calway-Fagen stated that the incident has inspired a new sensitivity to being part of a community. The show was an assemblage of intimate gestures and he thought of the tattoo as the most intimate between consenting artists. One of the other intimate gesture was a T-shirt designed by an elementary school student.

Mr. Phillips, Board Chair, solicited questions and comments from the Board.

Ken Janson asked if Mr. Calway-Fagen had ever done anything like this before? Mr. Janson expressed surprise, after hearing that Mr. Calway-Fagen had done something similar in Tennessee and California and apparently wasn't aware of any regulations covering tattoos.

Dr. Janet Whelan stated that since the '80s when we began to understand HIV/AIDS and a vaccine was developed for hepatitis we have information that has been available and is public knowledge. We all know about the danger of dirty needles. It is a common sense thing, because of the serious health risks there are now regulations for this. I am amazed that you don't have a greater sensitivity to the risks.

Mr. Del Valle FAWC Fellow mentioned that he was never concerned about the manner in which the tattoos were done and knew that, although there was a risk, he never felt “at risk”. He clarified that he although he had blood work done it was not for this reason.

Elizabeth Williams reiterated what Dr. Whelan had previously stated and commented that she can't believe and is surprised that they, as young people, did not know the

dangers of tattooing and perceive the dangers of Hepatitis C, HIV and serious blood infections. She is 75 years old and she knows that. I know you will never do it again.

Morgan Clark read the Health Agents Recommendations into the record for the Board.

The incident in question presents a difficult and nuanced case. The Board of health has jurisdiction over any Body Art activity that occurs in Provincetown, and the Body Art activities that occurred on February 1, 2013 were an example of unlicensed body art.

The Board of Health has the right and responsibility to enforce Provincetown Board of Health Regulation Part IV, Article 7- Regulation of Body Art which was adopted under Massachusetts General Law, Ch.111, Sec.31 which allows local Boards of Health to make reasonable health regulations. Under that regulation the Board may fine up to \$500 for each separate offense. The offenses that occurred include performing Body Art without a Body Art Technician License or any of the attending requirements for receiving a Body Art Technician License, performing Body Art outside of a Body Art Establishment, performing Body Art outside of Clean Procedure Conditions, failing to provide required information to customers/clients, failure to use appropriate instruments and equipment, failure to meet the standards of Conduct of Body Art.

Aspects of this case give me pause in recommending fining. I think it worthwhile for the Board to discuss the particular circumstances of this case and whether those circumstances merit fining those involved in the incident. Those aspects include 1) the Body Art was not offered to the general public, 2) the Body Art in question was performed by a nonprofessional, working artist who made no claims to be a professional Body Art Technician to the tattoo recipients, nor performed the Body Art in attempt to become a professional body artist, 3) all those participating were willing participants who knowingly agreed to the act.

I am wary of a precedent being set in which the Board involves itself in either 1) the performance of art in which the general public is not at risk or 2) the private performance of Body Art as a cultural activity. By this last concern I mean, that while the Board of Health and Health Department should not condone, sanction, or encourage Body Art occurring in any other venue than a licensed establishment and by a licensed technician, we still must be aware that from time to time individuals do perform body art on themselves or their friends and family (think of a family member piercing a child's ear) and the Board needs to decide whether those cases are included in the Board's jurisdiction of regulating Body Art for the purposes of protecting public health and safety.

Ms. Hart put herself and her tattoo recipients at risk for infection and acted in violation of the Provincetown Board of Health Regulation Part IV, Article 7 – Regulation of Body Art. It is up to the Board to decide the appropriate course to address this fact.

Mr. Phillips asked if the individuals present, who were involved in the Unlicensed Body Art, had any comments or questions in response to Morgan's report. Mr. Calway-Fagen stated that he appreciated Morgan's sensitivity.

Mr. Phillips closed the public portion of the Show Cause Hearing and turned over to the Board for discussion. He suggested that the first thing the Board needs to decide is whether a violation occurred. Betty Williams said that a violation did occur although she didn't think it was intentional. Ken Janson agreed with Betty and although a violation did occur the individuals were not aware of the code.

Mr. Phillips suggested that there are three things that have to be determined:

- 1) If there were violations
- 2) Who committed the violations
- 3) Whether to impose any fines.

**Motion: A violation did occur.** (The specific sections of the Board of Health Code, Part IV, Article 7 previously mentioned by the Health Agent were referenced.)

Motion: Elizabeth Williams                      Seconded: Ken Janson                      Vote: 4 – 0 – 0

Mr. Phillips stated that the next question of who committed the violation has some level of complexity to it. Betty offered that in the beginning she held all the participants accountable, however since the artists had "carte blanche" to do what they wanted without any involvement from the directors of FAWC it is now her opinion that the person who actually did the tattoos is responsible. Janet thought the responsibility is shared between the person who did the tattoos and those who received the tattoos. Ken thought that FAWC should be held partially responsible. Mark added that Ms. Hart was responsible since she did the tattoos, however organizations should be responsible for events that they sponsor, especially when it could endanger public health.

**Motion: That Ms. Hart and the FAWC be held responsible for the violation.**

During further discussion of the motion, Dr. Whelan asked if the motion excluded those who got tattooed from responsibility? Upon questioning by Mr. Phillips, Morgan explained that the Show Cause letter was sent to the director of FAWC, Ms. Hart, who performed the tattoos, Mr. Calway-Fagen and, as well, to the individuals you received the tattoos. Mr. Phillips stressed that in terms of the violation already decided it was the person who did the tattoos without a license, not the recipients.

Motion: Mark Phillips                      Seconded: Elizabeth Williams                      Vote: 4 – 0 – 0

On the question implementation of fines the entire Board agreed that no fines should be given. Dr. Whelan stated that it behooves everyone involved to familiarize themselves with the rules and regulations governing tattooing, not because they are going to do it, but to understand the standards which are in place for sterilizing instruments. Alcohol just does not cut it to sterilize.

**Motion: *That we do not fine any of the participants.***

Motion: Dr. Janet Whelan

Seconded: Ken Janson

Vote: 4 – 0 – 0

## **b. Town Meeting Recommendations**

The Board reviewed and discussed several articles that appear on the Town Warrants of the Special Town Meeting and the Annual Town Meeting of April 1, 2013 which the Board of Health may have an interest in recommending. The following articles were considered and voted on:

### **Article 6. Special Town Meeting Warrant, Town Emergency Shelter Retrofit**

To see if the Town will vote to raise and appropriate, or transfer from available funds, or borrow the sum of \$391,718, less any remaining FEMA grant funds, to be expended under the direction of the Town Manager and associated with the permitting, purchase and installation of a protective shutter system, an emergency generator and other appropriate protective systems to mitigate for high wind events including all costs incidental and related thereto: or to take any other action relative thereto.

**Motion: *In favor of Article 6 of the Special Town Meeting Warrant***

Motion: Mark Phillips

Seconded: Ken Janson

Vote: 4 – 0 – 0

### **Article 11. Annual Town Meeting Warrant, FY 2014 Capital Improvements Program/ Section 10**

To see if the Town will vote to raise and appropriate, borrow, or transfer from available funds the following sums to defray the costs of the Fiscal Year 2014 Capital Improvements Program submitted in accordance with Chapter 9, section 2 of the Provincetown Charter as follows, provided that one of or more of the appropriations listed below shall be contingent on a Proposition 2 ½ Capital Outlay or Debt Exclusion ballot question ...

Section 10. Storm Water Management \$100,000 to be expended under the direction of the town Manager and the Director of public Works to be used for ongoing

improvements to the town's drainage system in conjunction with making application for various grants which become available, and costs related thereto; or take any other action relative thereto.

**Motion: *To approve the storm water management plan.***

Motion: Elizabeth Williams      Seconded: Ken Janson      Vote: 4 – 0 – 0

**Article 14. Annual Town Meeting Warrant, Human Services Grant Program**

To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$61,675 to be expended under the direction of the Board of Selectmen, to fund grants to assist non-profit agencies and organizations to maximize available resources to meet the needs identified by the community by providing services to local residents, particularly those of low and moderate income and those who are uninsured or underinsured, as follows ...

**Motion: *To support Article 14 as enumerated.***

Motion: Mark Phillips      Seconded: Elizabeth Williams      Vote: 4 – 0 – 0

**Article 8. Annual Town Meeting, Cape Cod Greenhead Fly Control District Assessment**

To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$1,438.75 for Greenhead Fly Control as authorized by Section 24, Chapter 252 of the General Laws; and authorize the Town Treasurer to pay said appropriation into the State Treasury; or take any other action relative thereto.

**Motion: *To support Article 8 of the Annual Town Meeting Warrant.***

Motion: Ken Janson      Seconded: Janet Whelan      Vote: 4 – 0 – 0

**Article 21 Annual Town Meeting Warrant, Climate Crisis**

To see if the Town will vote to approve the following resolution on the Climate Crisis:

WHEREAS, man-made greenhouse gases in the atmosphere have contributed significantly to global warming, glacial melt, sea level rise and climate changes, and all over the globe extremes in weather are being experienced with increased frequency in the form of droughts, heavy rainfall, record high temperatures, and dangerous storms resulting in wild fires, floods, crop failures, destruction of homes and communities, and loss of life; and

WHEREAS, there is a limit to the amount of carbon and other greenhouse gases the atmosphere can contain beyond which life on the planet as we know it will be seriously impacted and ultimately unsustainable; and

WHEREAS, the fossil fuel industry is reaping enormous profits and exercising great power over policy makers and legislators by means of large contributions to the campaign chests of friendly politicians in exchange for favorable legislation and massive government subsidies ... at the expense of support for clean, renewable, and sustainable energy; and

WHEREAS, every household in Provincetown, motivated by a sense of responsibility to protect the planet and guarantee a future for the next generation and beyond, has the ability to decrease its contribution of greenhouse gases (its “carbon footprint”) by taking relatively simple steps to decrease its use of fossil fuel; and

WHEREAS, the town of Provincetown has chosen to become a GREEN COMMUNITY and under our own Energy Committee, tasked by the Board of Selectmen, significant progress has been achieved in making our municipal buildings more energy efficient;

THEREFORE, be it resolved that the citizens of Provincetown commit ourselves to meeting our individual and collective responsibility in the face of the increasing climate crisis by adopting energy efficiency and conservation practices; and

FURTHER, we urge our elected state officials to direct the managers of the State Pension Fund to divest the Funds of holdings in fossil fuel industries and to invest, instead, in alternative sustainable energy companies, a step consistent with the Commonwealth’s commitment to clean, renewable, green energy that does not further burden our fragile atmosphere and our planet

**Motion: *To recommend the resolution.***

Motion: Elizabeth Williams

Seconded: Ken Janson

Vote: 4 – 0 – 0

Seeing that there was an individual present for the discussion of Item D, and not wishing her to have to wait any longer the following motion was made:

**Motion: *To take Item D. of New Business out of order.***

Motion: Ken Janson

Seconded: Janet Whelan

Vote: 4 – 0 – 0

#### **d. Discussion: 2 Willow Drive Title 5 Septic System Variance Request**

#### **Discussion:**

Robin Reid appeared for discussion purposes only on the Variance Request for the Title 5 septic system at 2 Willow Drive. She explained that in August 2006 she had applied for and received approval for two variances for her proposed septic system. The plan was prepared for a sale of the property that did not occur. According to her records, the variance was renewed a couple of times. She had not been in a position to install the system. She now wants to install the septic system. The septic system, as proposed, is to be installed in the front of the property where there is less room than in the back of the property. Although there is room in the back, that would not require a variance, it would require hiring a crane to install it and would also destroy a very large oak tree. The variances requested are because the system would be too close to the lot line and too close to a hill. She would like to determine if the Board would like to speak with the engineer of the system again and whether the abutters need to be noticed again.

Mr. Carlson explained that the permit expired in September 4, 2008 and the deed restriction has been recorded for 3 bedrooms and a home office. All the requirements have been fulfilled except the actual installation of the septic system. He doesn't see any issues with the request. Answering a question posed by Mr. Phillips, Mr. Carlson informed the Board that the variances requested are the same as those of the original request of 2006. He will check into whether the requirements have become stricter in the interim.

Mr. Phillips reiterated that the only question the Board might have is if the State Regulations have changed since the original permit. It will not be a problem to find that out. If the regulations have not changed then Ms. Reid can come back on her own without the engineer of the system being present.

### **c. Discussion about Provincetown Board of Health Regulations Part IV, Article 3 Swimming Pool Regulations and enforcement of those regulations**

#### **Discussion:**

Morgan Clark explained that she has been working on these regulations for the past year. She learned that there are some local regulations that do not correspond with the State Regulations. In discussion with the State, local regulations can only be stricter than State Regulations. Any Guest House, Inn, Bed and Breakfast, etc. that has a hot tub open to guest is operating what the State of Massachusetts deems a *semi-public special purpose pool or spa*. The following are regulations regarding pools and spas which may be somewhat burdensome for the inns and hotels:

#### **All Semi-Public Pools and Spas Must be Supervised by a "Pool Supervisor".**

The supervisor must be a Certified Pool/Spa Operator and visit the pool once a week to ensure and document that the pool is being operated in a safe and sanitary manner. [There are many approved courses to become a Certified Pool/Spa Operator and the courses generally run 3-5 days. Certification lasts 5 years.]

Mr. Phillips asked if there is a course just for hot tubs?

### **Hot Tubs Must be Drained, Cleaned, and Refilled Every Two Weeks**

Semi-public and public hot tubs must be drained, cleaned and refilled a minimum of once every 14 days. Local regulations require that all pools and hot tubs submit their monthly bacteria tests. These two regulations seem to be at cross-purposes. State regulations allow local boards of Health to set requirements for bacteria testing.

### **Emptying/Draining Tubs**

Both State and local regulations fail to provide a preferred method of wastewater disposal. There are many methods that are **not** permitted at either State or local levels. The State requires that wastewater must be de-chlorinated prior to disposal. My research suggests that the preferred method is to leave the water uncovered and unheated for a few days to let the chlorine burn off from the sun and allow the water to come to ambient temperature, then drain the water onto the **grass** on the hot tub owner's property.

Mr. Janson raised the issue of not only do the hot tubs have to be drained every 14 days, but they have to be shut down for 2 or 3 days prior to be drained to let the chlorine burn off. Morgan Clark agreed that is just one of the major inconsistencies with the requirements. She asked for the board's guidance with this.

### **Variations**

In discussion with Peter Wheeler at the State he pointed out that there is room for variations on a case by case basis if, in the opinion of the Board of Health, enforcement "would do manifest injustice" and the applicant has proved the same degree of protection" required under the regulation can be achieved without a strict application of the particular provision. The variance would then go to the Mass. Department of Health who would approve, disapprove or modify the variance within 30 days.

The "same degree of protection" is probably what the Town was going for with the monthly bacteria tests.

Mr. Janson asked how many hot tubs are in Town in regards to asking the individuals to come in for a variance? Brian Carlson said there are about 15 to 20 in town. Janet Whelan asked about monthly testing? The Health Agent replied that they do get monthly reports from the testing company and for the most part the regulation is being complied with. There were only one or two which were below standards. Betty Williams pointed out that by the time the Town granted a variance and it was reviewed and approved by the State, Summer would be almost over.

#### **e. Discussion of Animal Inspector Duties**

Morgan Clark explained that up until now, the Animal Inspector duties have defaulted to agents of the Board of Health. Searching the list of Animal Inspectors on the Massachusetts Department of Agricultural Resources website she discovered that out of the 16 towns in Barnstable County, 11 Animal Inspectors are also the Animal Control Officers, 8 of whom are employees of the Police Department, 2 are managed by Natural Resources or Marine /Environmental Departments, and one is managed by the Town Administrator.

Morgan stated that in Provincetown the Town Manager appoints the Animal Inspector. Historically, it has been an agent of the Health Department. In order to quarantine an animal, it is a fairly simple procedure, but lifting the quarantine is more complicated and she has not been trained in the procedure. If there is an animal bite in town, people call the police. The Animal Control Officer then tells the owner there is a quarantine coming. The Health Agent often does not hear about the incident in a timely manner. There can be a delay in dealing with the situation and issuing the quarantine because of this. This is not an efficient way of handling it. The responder to the incident should issue the quarantine at that time. The Animal Control Officer would be the logical person to do this.

#### **Any Other Business That Shall Properly Come Before The Board**

There was no other business to be discussed.

#### **Approval of Minutes**

#### **March 7, 2013 Minutes**

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

**Motion: Ken Janson**

**Seconded: Elizabeth Williams**

**Vote: 3 – 0 - 1**

## **Health Department Report**

### **Inspections & Permitting**

Inspections are picking up with businesses opening up. There have been quite a few new rental property inspections as well.

### **Staff Level Meeting Grease Regulations**

There is a staff meeting scheduled on April 16th about grease regulations with the Department of Public Works, the Sewer Department, Wastewater Treatment Facility, the Assistant Town Manager, Board of Health and the Licensing Board to understand each others jurisdiction and procedures and discuss how the public is impacted by the regulations. We are working on making things more clear and concise.

### **Board of Health Training Session**

The Training Session will be on April 4 at 3:00 P.M. for the Board of Health. The goal is to familiarize the board with their general powers and what the health Department does for you.

### **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 \_\_\_\_\_, 2013**