



Town of Provincetown

Meeting of the

BOARD OF HEALTH

Thursday, May 16, 2013

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

Board Members Present: Mark Phillips, Chair; Ken Janson, Laurie Delmolino, Vice Chair; and Elizabeth Williams

Board Members Absent: Janet Whelan and Paige Mansfield, Alternate

Other attendees: Morgan Clark, Public Health and Safety Officer and Brian Carlson, Health and Environmental Affairs Manager

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

Public Comments:

There were no public comments.

Discussion:

There was no discussion at this time.

Old Business:

There was no Old Business brought forward.

New Business:

A. Discussion about model “Youth Access To Tobacco” regulations with Bob Collett of Barnstable County

Discussion:

Mr. Collett was not present at the meeting at this point in time. The Board agreed to move on to Agenda Item B.

**B. Public Hearing: Proposed Changes to the Board of Health Regulations
Part IV, Article 3 – Swimming pool Regulations**

Discussion:

The Board discussed the regulations at a meeting in April and tentatively approved the changes to the regulations contingent on public comment at the Public Hearing advertised in the paper. It is basically a rewrite of the local regulations removing wording not in agreement or redundant with State regulations. There was no public comment at the hearing regarding the advertised changes.

Motion: *To adopt the changes to Pool and Spa Regulations as adapted in the May 16, 2013 Public Hearing.*
(Regulations adopted as advertised in the Banner)

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

At the point in the meeting, the Board agreed to take Agenda Item D out of order.

D. Election of Board of Health Officers

Discussion:

Officers are elected annually. The first officer to be elected is the Board Chair.

Motion: *I nominate Mark Phillips for Chair.*

Motion: Ken Janson Seconded: Laurie Delmolino Vote: 4 – 0 – 0

The next officer to be elected is Vice-Chair.

Motion: *I nominate Laurie Delmolino for Vice-Chair of the Board.*

Motion: Ken Janson Seconded: Mark Phillips Vote 4 – 0 – 0

The final position to be elected is Board Clerk.

Motion: *I nominate Betty Williams for Board Clerk*

Motion: Ken Janson

Seconded: Mark Phillips

Vote: 4 – 0 – 0

Seeing that Mr. Collett had arrived, Mr. Phillips resumed discussion of Agenda Item A.

A. Discussion about model “Youth Access To Tobacco” regulations with Bob Collett of Barnstable County

Discussion:

Mr. Bob Collett of Barnstable County and Donald J. Wilson, Massachusetts Municipal Association appeared to discuss with the Board upgrading local “Youth Access to Tobacco” regulations. Mr. Collett raised several new provisions, which he asked the Board to consider.

1. To expand the regulation to include all nicotine delivery products (Electronic cigarettes)
2. Include cessation signage requirement
3. Include signage requirement for nicotine delivery products (Must be 18 years old)
4. Permit Requirement to abide by Ma Department of Revenue minimum pricing
5. No permit renewal if outstanding fines
6. Cap and/or reduce permit number (Similar to alcohol license quota)
7. Include minimum cigar package size (Limit access by minors through price point)
8. Ban blunt wraps (Used primarily for marijuana use by young people)
9. Ban coupon redemption
10. Ban Self-service displays
11. Ban “Roll Your Own” machines
12. Ban Vending machines
13. Ban tobacco sales in health care institutions and pharmacies
14. Ban tobacco sales in educational institutions of higher learning
15. Fining structure
16. Tolling period for violations (Repeat violations)
17. “Shall” vs. “May” language for suspensions

Mr. Wilson distributed information to the board regarding state-wide statistics of various localities’ regulations that have been adopted as to minimum pricing/packaging policy, licensing and sales. Young people are price sensitive when buying tobacco.

Mr. Phillips asked where the sample regulations came from. Mr. Wilson stated that they have been developed over time by the Mass. Tobacco Control Program and Massachusetts Health Officers Association. It reflects the last 15 years of policy making. It has been tested in the courts. Most law suits have been on second hand smoke not the licensing issues. Mr. Phillips asked to have a work session to discuss the regulations and then develop a proposed policy based on that.

Morgan asked if the changes in the regulations limits the sale of nicotine delivery products by pharmacies? FDA approved devices and products are not included in the regulation. Are blunts available if blunt wraps are banned? What is the cessation information required and who provides it?

Mr. Wilson offered to take the Boards check list and changes to the local regulations and meld it into the State regulations when the time comes.

The board opted for a work session on June 20, 2013 at 3:00 before the Board of Health meeting on that date.

C. Discussion: Citizen complaint by Laurie Roles regarding noise at Province Landings development located at 90 Shankpainter Road

Discussion:

Betty Williams asked for a minute to speak with board. She stated that a resident of Province Landings she would recuse herself from this portion of the meeting. She did write an impact statement and asked that it be read.

Brian Carlson stated that he has met with Ms. Roles on several occasions to discuss her noise complaint. David Gardner and Mr. Carlson also met with the builder and the manager to discuss the complaint. Also, Province Landing Limited Partnership, the landlord and manager of the development are present to answer any questions. He has attached documentation and a report which Ms. Roles has provided a document on impact noise and how it affects ones health, and also a piece by BKL Consultants in Acoustics, *Footstep/Impact Noise in Apartments, Condominiums and Other multi-Family Dwelling* and *The Acoustics of Floors in Condominiums* by Marshall Long; and *Form 14: Tenant Petition for Enforcement of the State Sanitary Code* a reference for filing a complaint in trial court.

Mr. Carlson did not have any recommendation.

Mr. Roles read a prepared statement outlining in the noise problem and the impact it has had on her health. It has been necessary to seek medical help for health issues such as migraines due to disrupted sleep arising from the noise level, which she has

found to be totally unacceptable. Noise and vibration from the exterior staircases and the surrounding apartments have not been addressed. On numerous occasions she has brought it to the attention of the property manger and felt that her complaint was ignored and made to think that she was the only one with such a problem. She does not feel that she can mediate a situation when it is a structural building flaw.

Mark Phillips read impact letters from the following individuals into the record:

Elizabeth Williams, Unit #402, April 27, 2013

Elizabeth Williams, Unit #402, May 13, 2013

Stephen Lanphier, Unit #607, February 21, 2013

Chris Dibzinsky, April 3, 2013

Tom Bifani, a tenant of the complex, spoke reiterating the previous complaints in the letters. He has also submitted a *Request for Reasonable Accommodation*. He stated that he is trying to resolve sound proofing the ceiling and walls. He resides in Unit #603.

Michael Lozano, project manager for Community Builders and John Economos, senior property manager were present to speak on behalf of Province Landing Limited Partnership the owner of the development. Mr. Lozano stated that they have heard the concerns are working to address them and find a solution. A professional sound consultant has been retained and has made some recommendations – additional floor coverings (carpet padding) on the floors and large area rugs. Sound attenuation systems *may* be recommended or new under-layment under the floors, but these solutions would require significant disruption of the tenants while the floors were torn up.

Mark Phillips asked if other developments that he has managed have had similar complaints? Mr. Lozano explained that there will always be noise complaints in multi-family wood construction buildings. Not everything will be able to be resolved. Mr. Economos, added that they have tried to resolve the issues through mediation and what can be implemented quickly, which might not be a final solution, but is a start in the right direction. About half of the total residents have some complaint and the other half does not. Mr. Lozano stressed that they are partners with the Town in this project and it is their goal to be good landlords and neighbors.

In response to a question by Board member Laurie Delmolino, Mr. Braun weighed in on the building construction process. It was a “construction control” project where the design team oversees the construction process, as well as the Town Building Department’s inspectors, who assure that it abides by the building code. The design was executed according to the building code. The building code, however, sets very

minimum standards. The noise standard in the code is not extensive. ***Even if the sound transmission code standards were met, it does not mean that there will be no noise.*** This project is light residential frame construction. Mr. Lozano added that they could have installed “wall to wall” carpeting which could have alleviated some of the sound issues, but chose not to because of health issues. Wood floors look nicer and everyone likes them. Sound deadening measures were taken in the construction, including multiple layers of under-layment and sound damping insulation in between the joists.

Ms. Roles commented that she did expect some noise because it is community/affordable housing, but she is awakened from sleep by felt vibrations. There is no practical way to mediate with the many people using the exterior stairways, which are 3 ½ feet from the bedroom wall. It is a perfect echo chamber. She feels the communications from the management has been misleading regarding what is being done to alleviate the problem. Tom Bifani added that it is not an isolated problem and people have moved out because of the noise. In some cases, it is going on a year without a solution.

Mr. Lozano stated that he cannot give a time frame for a solution. He is actively in discussion with flooring manufactures to determine how it will work with what is already installed and that it will meet the specifications that the consultants have given him. It will be done as quickly possible. Board member Laurie Delmolino pointed out that there seems to be a fair amount of miscommunication or non-communication. If the management team could communicate better, perhaps they wouldn't be here now.

Mr. Phillips asked Brian Carlson under what authority the Board can investigate the request made by Ms. Roles. He responded that it may be covered under Article 8 of local Nuisance Regulations and also Massachusetts General Law Ch.111, Section 31. The Town does not specifically have a code for noise. The Board has to determine if noise is a nuisance under the nuisance code and whether it rises to the level of causing injury to public health, if it can be documented properly.

Mr. Janson suggested a site visit. Mr. Phillips asked if the Board thinks the situation warrants a site visit. It is what Ms. Roles has requested. He asked for a motion to that effect.

Motion: The Board will investigate noise complaints at 90 Shankpainter Road and ask staff to gather the appropriate background information including regulations which may be potentially in violation.

Motion: Mark Phillips

Seconded: Laurie Delmolino

Vote: 3 – 0 – 0

This will be continued on the next meeting's agenda under Old Business. Board member Betty Williams, who had recused herself from the discussion of the previous agenda item reentered the room.

E. Discussion of Board of Health and Health Department Goals

Morgan Clark stated that that they reviewed last year's goals and formulated the following goals for 2014:

- ~ Continue to review and revise Board of Health regulations so that they are clear, reasonable, and enforceable**
- ~ Continue to coordinate with all Town departments that our regulations effect**
- ~ Better communicate Health Department processes, regulations, and policies to the public through FAQs on website**
- ~ Further strengthen information and referral capacity**
- ~ Work with other Town Departments and community actors to improve resources for "collectors" (hoarders)**
- ~ Enhance Town recycling efforts with the DPW, the Recycling and Renewable Energy Committee, and the County Cooperative Extension**
- ~ Continue to update emergency planning documents and continue to convene Local Emergency Planning Committee meetings**
- ~ Continue to work with the Beach and Water Quality Working Group to develop programs to address poor water quality, erosion and storm damage protection**
- ~ Continue to initiate targeted campaigns to bring regulated industries into better compliance (eg, glove use campaign for summer 2013)**

Mark Phillips asked about one of last year's goals of compiling a census of cesspools. Brian Carlson stated that he does have a map of cesspools that has been created as well as a spread-sheet of data collected from the Assessors Office and the DPW. He can bring it for the next meeting.

F. Discussion of Emerging Trends

Mark Phillips, Chairman, stated that he has been keeping a list of trends as they arise.

~ Regulating fragrances in office buildings. More and more communities have begun to regulate fragrances because of various allergies to different fragrances.

Morgan Clark said that they can ask the selectmen to regulate what happens in Town buildings. Should local businesses chose to regulate it in their own buildings as a private policy we could guide them in the process. It is a legitimate health concern. We can link to resources and information on our website.

~ Regulation of “Lunch Coaches”

Brian Carlson informed the Board that mobile food carts are not allowed in town according to zoning regulations

Morgan Clark raised the issue of the delay in beach closures. There is an ongoing discussion among the Health Departments of the Cape and Islands regarding this. There is no rapid testing available currently. We enforce it the way we can and are required to.

Any Other Business That Shall Properly Come Before the Board

There was none

Approval of Minutes

There were none available to review

Health Department Report

Brian Carlson informed the Board that he and Bob Colett had been at 90 Shankpainter Road earlier that day to investigate a tenant complaint with smoking. The grievance has come before the Health Department according to the nuisance bylaw. This is a

“smoke free” development, but it has a designated smoking area. It has been moved and is now impacting a tenant. We met with the manager, John Economos. There is another location that will require some improvements. We are trying to come to a solution at staff level so it will not have to come before the Board. Pool and hot tub applications are coming in and people are complying. We have opened 9 hot tubs and 5 pools already. Restaurant inspections are ongoing.

Board Members’ Statements

Ken Janson asked about conflict of interest regarding Betty Williams being on the Board who is a resident at 90 Shankpainter Road. Is it accurate that the Board cannot ask her for any information other than what she has already written in her letter to the Board as a resident of the complex?

Betty stated that she checked with Town Clerk, Doug Johnstone about it recently.

Mark Phillips publicly thanked the DPW and the Robert B. Our Company for the wonderful job on the streets and sidewalks. The sidewalks are beautiful and the porous pavement works. He noted that after a recent heavy rain there was no puddling in the newly paved areas as compared to the other parts of Commercial Street.

Adjournment:

There being no further business, Mark Phillips moved to adjourn the meeting at 5:45 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013