

Town of Provincetown
Meeting of the
BOARD OF HEALTH
Thursday, October 17 , 2013
Judge Welsh Hearing Room, Provincetown Town Hall,
260 Commercial Street, Provincetown, MA

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

Board Members Absent:
Alternate Paige Mansfield

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

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

Public Comments

There were no public comments.

Old Business

There was no old business brought forward.

New Business

A. Public Hearing - The Special Town Meeting Warrant 10/21/ 2013

Mr. Phillips asked the Board to review the Special Town Meeting Warrant to see if there were any articles they wanted to weigh in on. He also asked if the Health Department had any recommendations that the Board should consider. They did not have any.

Hearing that there were no recommendations or comments by the Board in support of any of the Warrant articles, the chair moved onto the next agenda item.

B. 11 Brewster Street Administrative Consent Order

Brian Carlson presented the details ACO request to the Board. The cesspool failed due to a collapsed wall. Mr. Carlson along with the property owner, Darel Moss and a septic system installer inspected the property. The property owner would like to do a "quick fix" and enter into an Administrative Consent Order with the Town until such time as the municipal system is available there. The lot is quite small; he probably would not be able to get a non-varianced system on the property. The property owner indicated that it is not lived in presently, but it had been rented during the summer. There is no immediacy to getting it fixed, but it should be fixed as soon as possible. The ACO would allow the property owner to repair and operate the system until he can connect to the sewer system. He would be paying into an account. If it is determined that the property would not be served by the municipal system then the owner will be given the money so he can install a new system.

Betty Williams asked how many bedrooms there were and would the owner be renting it out again in the summer with the cesspool? Also, would he have an occupancy permit with a cesspool?

Mr. Carlson stated there are 4 bedrooms. He has informed the owner that he needs to get a renters certificate if he intends to rent his property. There is no renters certificate on record for prior years.

Mr. Janson asked if the sewer was in the neighborhood?

Mr. Carlson explained that the sewer is on Bradford Street, but not on Brewster Street. He pointed out that ACOs get priority by the sewer design team for upcoming phases of the municipal sewer.

Mr. Phillips asked when the Sewer Department would be making the decisions of where the sewer would be going in the future? He also asked if the Sewer Department could come before the Board once they know where the sewer will be going in the future?

Mr. Carlson stated that the Sewer Department would be doing an evaluation this Fall. He can get that information and report back to the Board for the next meeting. Right now the sewer priority is the campground in the West End.

Mr. Carlson recommended that the Board allow the property owner to enter into an Administrative Consent Order.

Ms. Delmolino raised the point that the Board still does not have a policy for following up on failed and repaired systems. There is no mandatory reporting inspection yearly.

Mr. Carlson stated that a permit is required for the work when it is done. There is a certificate of compliance once the work is done. As far as monitoring the system on a yearly basis, that does not exist.

Motion: *To allow 11 Brewster Street to enter into an Administrative Consent Order.*

Motion: **Ken Janson** Seconded: **Betty Williams**

Laurie Delmolino suggested that they follow it up with an inspection in a year.

The motion passed by unanimous vote of the Board 5 - 0

At this point in the meeting Elizabeth Williams asked to be recused because the next three agenda items are related to 90 Shankpainter Road where she resides.

C. 90 Shankpainter Road Complaint From Tenant- John Doucette

Mr. Doucette was not present at this time, therefore Agenda Item D was taken up by the Board next.

D. 90 Shankpainter Road Complaint From Tenant-Thomas Bifani

Mr. Bifani appeared before the Board to present his complaint. He stated that he was here to continue the May 16, 2013 Board of Health meeting complaint regarding noise at Province Landing, 90 Shankpainter Road. He would like the Board of Health to advocate permanent relief for the residents of Province Landing. Mr. Bifani read his prepared statement. He also submitted to the Board letters written by residents of the complex Ronald Wheeler, Apartment 303 and Maria Alvarez, Apartment 301. He added that, as of now, three tenants of the first floor have left Province Landing and no second floor tenants have left. The noise and impact on first floor tenants depends on the second floor tenants behavior. This has been a complaint from the beginning, since over a year ago. Acoustical engineers have discovered and documented a problem. Province Landing has experimented with two apartments that have Letters of Accommodation, but the problem still remains. He questions if the ceiling assembly was constructed for

carpeted floors instead of hardwood floors.

Mr. Phillips acknowledged that Mr. Bifani was before to advocate relief. He asked what relief was he looking for?

Mr. Bifani repeated resolution #4 of his statement: ***Installation of eco-friendly, allergy free, wall to wall, noise and impact resistant carpeting and padding on the second floors.***

Mr. Phillips thanked Mr. Bifani for coming before the Board. He mentioned that in August the Board chose not to take further action after looking into the situation at Province Landings. He read into the record the letters the Board had received from residents Laurie Roles, Elizabeth Williams, Maria Alvarez, and Ronald Wheeler.

Mr. Phillips asked for input from the Board members.

Ken Janson stated that, as he understands it, the construction methods used were pretty standard and should be offering some degree of soundproofing. It is apparent that it is not to the satisfaction of the tenants. He asked about the sound test that was conducted and why the results have not been given to the tenants.

Brian Carlson stated a sound test was done and the full report of the results was requested some time ago and has not been received yet. An abbreviated, revised report was received. He does not know if all tenants received this report.

Laurie Delmolino asked what were the parameters and criteria for the test? After reviewing the revised report that the Board received, Mr. Janson said the report states it meets minimum standards and the remainder of the report is comprised of recommendations of how to fix it. Dr. Whelan asked what the results were of the testing? Do we have that? Mr. Carlson replied that we do not have it.

Dr. Whelan asked what is the relationship of the Town to this development? Brian Carlson explained, as he understands it, that the land is owned by the Town and there is a 99 year lease granted to The Community Builders Company to build manage and operate the housing units on the land.

Mr. Phillips recognized that the residents are unhappy and that there is an issue, but on the other hand it seems to be a landlord/tenant issue. He doesn't know how and when the Board of Health inserts itself into the process. Tenants have certain rights spelled out clearly in the law. There are remedies available. He is not sure

what the Board of Health can do.

Dr. Whelan stated that the issue revolves around "private" versus "public nuisance" and she thinks it is a private nuisance because it affects the residents and not the Town as a whole. It does not affect adjacent properties or on the street.

Mr. Janson added that is how the Board felt originally when the issue first came before it. He still feels that way. The tenants do have rights and there should be another way to deal with it.

Ms. Delmolino said she cannot come up with an analogy to use to justify it crossing over the public/ private line. Would the Board intercede in the case of toxic smells? She asked Mr. Bifani if he and the other residents have looked into other legal options?

Mr. Bifani replied that most people do not have the means to hire a lawyer to pursue this. He asserted that it is public, affordable housing [community/ affordable housing] which serves the needs of permanent residents and has received money from various governmental grants. He asked the board to look at it as a "public nuisance". The Town provided the land for The Community Builders to build on. It is a partnership.

Mr. Janson asked Mr. Bifani if he has gone before the Town Manager and the Board of Selectmen with this problem? At this time he has not.

Ms. Clark read the letter from town Counsel Gregg Corbo which defines "public nuisance" versus "private nuisance" which clarifies the Boards actions in each instance. The Board of Health determines whether a private nuisance crosses over to become a public nuisance in any particular situation. It is not required to do so, however.

E. Board Determination Vote Regarding Nuisance Regulations

Mr. Phillips asked the Board to determine at this time whether the issues at 90 Shankpainter are a "private nuisance" or a "public nuisance".

Mr. Janson referred to the above mentioned letter by Mr. Corbo. It states "a nuisance is public when it interferes with the exercise of a public right by directly encroaching on property or by causing common injury."

He interprets this to say that this situation is a private nuisance not a public

nuisance.

Mr. Phillips asked if Mr. Janson would like to make a motion?

Motion: *The noise that is being suffered by the people of this housing complex is a private concern. It is not a public nuisance.*

Motion: Ken Janson

Seconded: Laurie Delmolino

The motion was carried by the vote of 4 - 0

At this point Elizabeth Williams returned to the meeting.

F. 23 Winthrop Street - Historic Bedroom Determination- Robert Santos

Gary Reinhart appeared before the Board representing Mr. Santos. Mr. Santos is purchasing the property and had asked Mr. Carlson to walk through it to count the bedrooms. There are 5 units; the main house having 4 apartments. They have always been rented as 2 studio apartments, a 2 bedroom apartment and a 4 bedroom apartment. There is a cottage on the property that has 1 bedroom. The problem is that the 4 bedroom apartment you have two bedrooms that you have to walk through one to get to the other. Mr. Santos intends to remedy this issue when he renovates the building. He has a letter from the current landlord that the apartment in question has been rented as a 4 bedroom apartment. He also has a septic system plan from 1996 stamped by the Board of Health approving a system for 9 bedrooms.

Mr. Phillips verified with Mr. Reinhart that the only questionable apartment was the 4 bedroom apartment.

Brian Carlson added for the record that the Assessor's Property Card states that the property was built in 1850 with a total of 7 bedrooms. The septic system was constructed for a total of 9 Bedrooms. He conducted an inspection on October 4, 2013 and found 9 bedrooms, 4 units and 1 cottage.

Unit A	1st floor	Studio	1 Bedroom
Unit B	1st floor		2 Bedrooms
Unit C	2nd floor		2 Bedrooms
Unit C	3rd floor		2 Bedrooms
Unit D	1st floor	Studio	1 Bedroom

Cottage Studio 1 Bedroom

Mr. Carlson added that the property will be redeveloped by the new owner and the bedrooms will be brought up to the current standards. It will not allow an historic bedroom to persist, but take it up to the current code.

Mr. Phillips asked for any questions from the Board.

Laurie Delmolino asked if there is plenty of precedence for this?

Motion: *To approve the historic bedroom request at 23 Winthrop Street to a total of 9 bedrooms.*

Motion: Laurie Delmolino Seconded: Dr. Janet Whelan

Ken Janson asked the Board if it wanted to mention anything about the renovation of the property resulting in the bedrooms being up to the current code? Can we add that?

The revised motion reads as follows:

To approve the historic bedroom request at 23 Winthrop Street to a total of 9 bedrooms and that the redevelopment of the property would lead to all the bedrooms being up to the current code.

The motion passed by unanimous vote of the Board 5 - 0

G. Re-sign ACO for 2 Bradford Street

This ACO was executed by the Board of Health in 2012. The owner has not recorded it and has lost the original and is eager to connect to the sewer as the work is commencing in that end of town. She called and would like the Board to re-sign it so she has an original to record at the Barnstable County Registry of Deeds.

Mr. Phillips asked if the assessment had been paid? Mr. Carlson replied that no money has been paid and it has not been recorded. It was signed on February 16, 2012.

Mr. Phillips stated that he has more issues about process than the request. Do we

have anything in place to catch these kind of things? Do we need to set up a tickler to monitor the recording of the ACO?

Mr. Carlson stated that it is supposed to be recorded within 14 days or otherwise face fines. The fine is to compel property owners to file the ACO on their own. The fine is \$500 per day; each day constitutes a separate offense.

Dr. Whelan asked how would we know when to levy a fine if we don't know if it has been recorded? In this instance, there have been no fines. Have we issued fines in the past?

Mr. Janson asked if there was a quick fix done on a cesspool on this property and do we know what the septic situation is? Mr. Carlson stated there are 3 cesspools. Laurie Delmolino asked if the cesspools should be inspected? Mr. Phillips asked if we know if the quick fix was done 18 months ago? Betty Williams suggested that the property owner be asked back to a Board Meeting to present it with her proof.

Mr. Phillips was in agreement with Betty Williams' suggestion. The Board should ask the property owner back to the Board with the documentation. We should wait until the owner comes before the Board to sign the ACO for the property. We will continue this agenda item to the next meeting, November 7, 2013.

Any Other Business That Shall Properly Come Before The Board

Mr. Phillips received an email from the Charter Enforcement Review Committee with the section of the Charter applicable to the Board of Health. They would like us to take a look at that and determine whether the language needs to be updated or modified or if there are specific things that are missing. He asked the Board members to take a look at that email. We will put it on the agenda for the November 7, 2013 meeting to discuss.

Morgan Clark mentioned an email that was sent regarding the most recent working draft of regulations about the use of fertilizers and turf management. She first heard of this regulation when she attended that last stake-holder meeting on Tuesday. The State legislature allowed the Cape Cod Commission to pursue these regulations under a special provision. It is actually up to the individual towns in the County to adopt the regulations, but it is the County that has done the work for us. If the local Boards of Health want to adopt the regulations they have to do so by early December and then those regulations have to be approved by the County Commission again. The County Commission needs to make sure that the local

Boards of Health haven't changed things radically to be outside of the County's intent. Everything has to be in place by January 1, 2014. Ms. Clark stated that this is not how we usually have done regulation adoption and changes; it is usually a more timely process. She will be getting the final draft of the regulations in a few days which she will send to the Board, then post for a public hearing if that is what the Board would like. It is only about turf management, not applying fertilizer in ornamental gardens. She checked with DPW and it does not affect their management since the Town has already switched to organic management.

Betty Williams asked if the Board has a public hearing will they have enough information to answer the public's questions intelligently? Morgan Clark suggested that someone from the Cape Cod Cooperative Extension might be able to attend the meeting. Hopefully, the regulation will speak for itself and answer the questions anyone might have. Mr. Phillips added that this regulation would cover anyone who has a lawn.

Mr. Phillips stated that the only public hearing date available that works to put it on the agenda would be November 21, 2013. Let's plan for that. We will need a copy of the draft for the November 7, 2013 meeting to review.

Ms. Clark raised the point that Section 6 of the draft regulations mentions education, certification, enforcement and penalties. Section 6.1 and 6.2 are not regulations. They pertain to implementation of the regulations. She would prefer not to have them in the Town's regulations. It would be up to the Cape Cod Cooperative Extension how they manage the certification program (6.2). We have also received a letter from George Heufelder who is the County Department of Environmental Health Director. He wants to educate Boards of Health about nutrients and water quality. He sent 125 pages of documentation in support of his letter, as well.

Laurie Delmolino asked if there was information available about cyano-bacteria. Do we have an issue here with it? There are fresh water and salt water types. Aerosolization of the bacteria might pose a problem in wells, also.

The Board instructed Ms. Clark to contact the Town of Truro and inform them that it is considering these regulations since we share their water source.

Approval of Minutes - Thursday August 1, 2013,

Hearing no corrections or comments by the Board the following motion was made:

Motion: *That we accept the minutes for August 1, 2013.*

Motion: Dr. Janet Whelan Seconded: Elizabeth Williams

The motion passed by unanimous vote of the Board 5 - 0

H. Correction of Minutes May 16, 2013

Mr. Phillips explained that these minutes were previously approved. Morgan Clark stated that the correction of the minutes was requested by Laurie Roles. A change in wording on page #6 would strike the use of the word "*public*" and replace it by the words "*community /affordable*" housing.

Ms. Delmolino asked do we record what is said versus what you want? Mr. Phillips said that we should state for the record that as the minutes are prepared for tonight's meeting the term that should be used is "community/affordable" housing. Mr. Carlson said, as he understands it, the minutes of May 16, 2013 will be altered and the minutes of today will reflect that the change has been made. It should state clearly that they were altered.

Motion: *That we amend the minutes of May 16, 2013 on the sixth page where it says "public" to say "community/affordable".*

Motion: Mark Phillips Seconded: Laurie Delmolino

The motion was approved by a vote of 4 - 0 - 1

Health Department Report

Ms. Clark stated that she has submitted the Tobacco Regulations to Town Counsel. She has been involved in the Fertilizer Regulations discussion this week. She will be going on maternity leave in January, which is about the same time for renewals for some of the industries that we regulate. She has sent out a reminder to body art establishments and technicians to submit their paperwork early so she can process it. We'll do the same with tobacco. She is also trying to get the regulations they have been working on underway before she leaves.

Brian Carlson mentioned that he would bring in the water quality update for the next meeting now that he has it.

Board Member Statements

Betty Williams asked if we have heard anything from Camp Lightbulb?

Ms. Clark replied that she and Brian sat down with Mr. Markham a couple weeks ago to walk through the regulations. We decided on a two step process for the camp to become licensed. The first step is to get all the documentation and procedural manuals, etc. in order far before the season begins and come before the Board so that you can say yes you can proceed. Then they will let us know how you are going handle the food and other issues. The camp director and I are both contacting the DEP to get clarification of what kind of camp it is. It is not clear what category it falls under.

Betty Williams wanted to make sure that they are planning to come back. Brian Carlson stated that they are pursuing licensure.

Laurie Delmolino asked if plans about refrigeration of foods and other Health Department issues had to be written as a policy by them? It would be nice to have it in writing as something concrete. Betty Williams stressed that the children should not be crossing Route 6. A safety plan should be written.

Hearing no further questions or comments from the Board, Mr. Phillips adjourned the meeting at 5:35 p.m.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013