

Town of Provincetown
Meeting of the
BOARD OF HEALTH
Thursday, November 7, 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 and Dr. Janet Whelan

Board Members Absent: Ken Janson and Paige Mansfield

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

Recording Secretary: Susan Leonard

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:

Mark Phillips raised the issue of an ACO reviewed in May 2013 for a property on Conwell Street. The Board had asked the property owner to come back within 60 days of the closing of the property. It has been 6 months and he would like to know what has happened with that?

Brian Carlson replied that the title transfer of the property did occur and some of the preliminary things have been done such as blocking off the garage and they have contracted with a septic designer and installer. He has not seen a septic permit application yet.

Mr. Phillips stated that the Board wanted the new owner to come back to the Board at the end of the 60 day period with a plan for the septic system. Can we put it on the agenda for the next meeting?

New Business:

A. 2 Bradford Street – Re-sign ACO

Discussion: Mr. Phillips stated that at the last meeting the Board had asked that the property owner of 2 Bradford Street attend this meeting. He asked if the property owner was present? Mr. Carlson replied that the property owner was not present although she was contacted about the meeting. With the approval of the Board the agenda item was postponed to the end of the agenda.

B. Discussion – Fertilizer Regulations

Discussion: Morgan Clark explained that the public hearing is scheduled for the next meeting on November 21, 2013. At the time that the Board last spoke about it, the Board did not have the latest update to the proposed regulations from the County. The Board now has available before it two documents. One is the actual Ordinance 13-07 that establishes the District of Critical Planning Concern. This is the foundational document that allows the towns on the Cape adopt the fertilizer regulations. The other is the actual regulation. She asked the Board to review the documents over the next two weeks. It applies to the whole town. It regulates who can apply fertilizers, in what circumstances and when. Landscapers will have to be trained.

C. Charter Review

Discussion: Betty Williams who is a member of the Charter Review Commission spoke on the matter. The Board of Health only has two items to review. The Charter Review Commission asked that the Board look them over. Section 6-8-1 mentions that one of the five Board of Health members be a registered health practitioner. What happens if the Board cannot get a health practitioner?

Brian Carlson suggested that the language be changed from “shall” to “may”. Laurie Delmolino said the term “health practitioner” is vague. Morgan Clark said it is defined in State Law. Dr. Whelan added that the term “health provider” is used to include nurse practitioners and physician’s assistants. It is limited to individuals who have a clinical practice. Do we know the intent of this?

Morgan Clark will get the clarifying information for the Board. She also pointed out that the other section for review 6-8-2 mentions having one alternate. It would

be good to change that to two alternate Board members. Mr. Phillips and Betty Williams both agreed it would be a good idea especially in the winter months when people are vacationing since they are a regulatory board and must meet.

D. Approve 2014 Board of Health Meeting Schedule

Discussion: Mr. Phillips noted that the first meeting of the New Year is scheduled for January 2, 2014. The Board weighed in and decided that it would not be an issue to meet on that date. Morgan Clark added that she did take the meeting that falls during Town Meeting week off the schedule. It has been done in the past.

Motion: *To approve the new Board of Health 2014 meeting schedule.*

Motion: Laurie Delmolino

Seconded: Dr. Janet Whelan

The motion was passed by unanimous vote 4 - 0

E. Letter to Camp Lightbulb Parents

Discussion: Morgan Clark stated that Town Counsel made some revisions to the letter. He changed some of the language to the passive tense. The content of the letter basically remains unchanged. She still has not gotten the list of addresses. She wanted to hear from the Board first.

Betty Williams asked if the camp director knows that she will be sending out the letter? She replied, no. She will ask the director for the addresses.

Brian asked if it should it be phrased “Prior Order of Termination”? Mark Phillips suggested that the date of the Order of Termination be added so it can’t be misconstrued as a new order.

Betty Williams asked if the State DPH knows that they gave money to an unlicensed camp? Morgan explained that the State gave money to a fiscal agency that in turn gave money to the camp. Betty wanted to know if the camp is pursuing licensure for the following year? She is concerned because two functions have given large amounts of money to Camp Lightbulb. She is concerned that it will be properly licensed. Betty expressed concern that the State DPH and/or fiscal agent know that the money went to an unlicensed camp.

Morgan Clark said that if the Board wished, she would follow up with the fiscal agent, the Community Health Center of Cape Cod. The Department of Public Health will soon be auditing its grantees for the year. Now is the time to let them know. She reported that it appears the camp is making a good faith effort to come into compliance for 2014. She stressed that the Health Department is not a consumer advocacy group.

Motion: That the board endorses the letter as drafted with the change of adding the date of when the camp was originally terminated to the letter.

Motion: Mark Phillips

Seconded: Dr. Janet Whelan

The motion was passed by unanimous vote 4 - 0

F. Medical Marijuana Letter of Support/Non-Opposition

Discussion: Mr. Tim McCarthy and Sean Nightingale appeared on behalf of the Kingsbury Group to ask for a letter of support from the Board of Health for its “medical marijuana” application. Their mission is to create a viable client base setting for dispensing medical marijuana in Provincetown, Oak Bluffs and Dennis, Massachusetts. They need to have approval for all three applications. It is important for the board to not only support the Provincetown location, but all three dispensaries . The growth facility and client base of the Upper Cape are needed to underwrite the dispensaries in Provincetown and on Martha’s Vineyard. The DPH are concerned that the plan meets the community needs. Mr. McCarthy explained that he will be the CEO, Irene Rabinowitz would be the Chief Operating Officer. Brian O’Malley will be the Chief Medical Officer. His medical building will be the Provincetown dispensary. Because of the geography of Cape Cod they are asking for two locations in Barnstable County.

Betty Williams stated that she was not comfortable with the idea of approving for the other locations. Why are we, the Provincetown Board of Health, giving approval for something that is happening in Martha’s Vineyard and Dennis?

Mr. McCarthy replied that the growth facility in Dennis is needed to supply the Cape wide client base. It would not be financially feasible to have three separate growth facilities and, as well, the Dennis facility needs the client base from the other two locations. Mr. Nightingale explained that they do not expect Provincetown to approve anything outside of its jurisdiction.

Mr. Phillips stated that it would be easier for the Board to recognize the Group's business strategy that a growth facility is need Up Cape, than to approve a specific location.

Betty Williams asked if Mr. McCarhty and Mr. Nightingale would be writing the letter and the board would approve it? Mr. Nightingale said that he could supply a lease with Dr. O'Malley if needed. In order to submit the application, the State DPH requires an address for the dispensary.

Dr. Whelan stated that she was confused about what they were asking for. Do we have to be specific as to mention the location of the Provincetown dispensing site? She thought that a more general approval would be more appropriate. You are asking the Board of Health to support your business plan, not to support any of the details.

Morgan Clark mentioned that she has read the State regulations which are quite complicated. What these gentlemen are presenting is exactly what they are required to have in their application to the State.

Mr. Phillips mentioned that there is a timing issue. The Board does not have a draft letter to look at. There is not enough time for them to write the letter and come back to the next meeting to get it approved, in order to meet the proponent's deadline. Mr. Phillips stated that he is not sure if the Board has enough information, at this point, to write a letter. Mr. Nightingale responded that anything the Board might need he can get to them tomorrow.

Mr. McCarthy clarified that the application requests the applicants to provide one of three letters of support either from the Town Manager, the Board of Selectmen or the Board of Health. They wanted to present all three with their application. The letter actually does not have to be a letter of support; it simply has to say the Board is not objecting to it. All DPH wants to know is that no one is objecting to what is being proposed.

Mr. Phillips asked the Board how do they generally feel about the request? Do they support the process? Betty Williams and Laurie Delmolino answered yes and Dr. Janet Whelan replied that she does not object to it.

He suggested that perhaps there could be a motion which states that the Board supports or does not object to the proposal. Then a letter could be drafted that on

November 7, 2013 the Board met and heard from the proponents and agreed to support their process by approving the following motion.

The following motion was made by Elizabeth Williams:

Motion: To ask Morgan Clark to draft a letter of support on behalf of the Board of Health to approve that we are supporting the proposed marijuana dispensary in Provincetown.

Dr. Janet Whelan asked if she could amend the motion to “the Board of Health is supporting the application, or is not objecting to the plan of the Kingsbury Group”.

Mr. Phillips interjected that there is a procedural issue. The first motion was not seconded by anyone yet. We need to have a second before amending it. He asked if there was a second to Betty’s motion?

Laurie Delmolino seconded the above motion.

Motion to amend: That the Provincetown Board of Health is supporting Kingsbury Group’s medical marijuana business plan.

Motion: Dr. Janet Whelan

Seconded: Elizabeth Williams

The motion was passed by unanimous vote 4 - 0

G. Summer Bathing Beach Water Quality Update

Brian Carlson presented the information to the Board. The 2013 Bathing Beach Season had a total of 15 beach closures. The beaches in the East End had the most beach closures with a total of 11 closures from Winston Avenue to 451 Commercial Street. There was also a small cluster of closures between the Coast Guard Station and the West End parking lot. In comparison, in 2012 there were a total of 20 single sample failures and 10 geo-mean sample failures. In 2011 there were a total of 29 single sample failures and 28 geo-mean failures and in 2010 there were a total of 37 single sample failures. This drastic change in beach closures cannot definitively be attributed to the new porous pavement on Commercial Street, but there is a possible trend in correlation developing. Perhaps, in one or two more years we might be able to determine this. The closures are

definitely down in the East and West Ends and we did not have any closures in the part of Commercial Street where the porous pavement has been installed.

Mr. Phillips asked Mr. Carlson if he had any thoughts as to what the issue in the East End might be? He responded that there is a lot of wrack line down there, and of course run off. Last year, in the East End Winston Avenue failed routinely. They have a lot wrack line there. Another aspect is that we are into the 3rd year of beach raking in the center of town. It will continue for another year in its current form. There is interest in expanding it, however from the far East End. Mr. Phillips asked if we have anecdotal evidence that raking the wrack line improves the water quality then perhaps it should be mentioned that it could mitigate the problem when the question of raking the East End comes up? Mr. Carlson advised him that there is an extensive permitting process that is required before it is approved. It has to be budgeted for and disposal of the seaweed had to be arranged. Also, much of it takes place on private property.

Mr. Phillips asked if there still is energy behind the Harbor Water Quality Committee? Mr. Carlson said there seems to be more happening with the Cape Cod Commission meetings that he and Laurie Delmolino have attended. It has been given a grant to rewrite and revamp the 2008 Plan, which is the water quality study of the entire Cape Cod watershed. It is gathering facts and updating information gathered from water quality studies of the various towns. Laurie added there is an educational component about what can be done to ameliorate some of the problems that arise specific to each watershed.

Reconsideration of the Motion of Agenda Item II F

A procedural question about Agenda Item II F was raised by Dr. Whelan. She asked, that now that the board has voted on the question can the wording be reconsidered? Mr. Phillips informed her that she could move to reconsider the motion.

Dr. Whelan made the following motion:

To reconsider the wording of the letter that is to be sent.

The motion was seconded by Mark Phillips.

The motion to reconsider was passed by unanimous vote 4 – 0

Discussion: Dr. Whelan stated that she is not comfortable with the wording of supporting the “business plan” of the Kingsbury Group. It sounds too specific. They are asking us to support the whole thing not just the dispensing site. For example, what if there is something we don’t know about their business plan.

Mr. Phillips clarified it by saying that there is a concern that by including the word “business” that the Board is somehow endorsing the business.

Motion to amend the original motion: *To support the Kingsbury Group’s medical marijuana application.*

Motion: Laurie Delmolino

Seconded: Dr. Janet Whelan

The motion was passed by unanimous vote 4 - 0

Agenda Item 2 A. - 2 Bradford Street – Re-sign ACO

Mr. Phillips returned to the question of Agenda Item 2 A. which had been postponed to the end of the meeting because the property owner was not present. He asked if the owner was present at this time. She was not. Mr. Carlson stated that he had informed the owner by telephone that it would be on the agenda for this meeting. Mr. Phillips expressed dismay that the owner was not at this meeting, as well as not having been present at the previous meeting when the issue came before the Board. He raised the point that the property owner is subject to significant fines of up to \$500 per day over more than 400 days in this case.

Betty Williams asked that Mr. Carlson contact the property owner again and Mr. Phillips added that he should tell her that she would be subject to fines of up to \$500 per day. Laurie Delmolino suggested that it be made known that it is a criminal offense.

Motion: *That the owner be called again and that their presence is requested at the Board’s next meeting and that they are liable to substantial fines of \$500 per day back to the date of the ACO.*

Motion: Dr. Janet Whelan

Seconded: Mark Phillips

The motion was passed by unanimous vote 4 - 0

Any Other Business That Shall Properly Come Before the Board

Mr. Phillips informed the Board that the town received a letter of resignation from Paige Mansfield as an alternate on the Board of Health. She stated that she has too much work to do to be able to participate on the Board. There is an application on file and the board of Selectmen will address it on their agenda.

Approval of Minutes

There were no minutes available to consider at this time.

Health Department Report

Morgan Clark brought up the anti-harrassment training that is being offered. It is mandatory for all board members to attend it. The next training session will be on November 13th.

She did get to meet face to face with Town Counsel regarding tobacco regulations. She came across problems merging the new County regulations, which were just passed, with the local regulations and the State regulations. They will remove any parts that are restating State regulations so it more of a Provincetown specific regulation and checking the legality of it.

Inspections are ongoing for yearly liquor renewals.

Mr. Phillips asked Mr. Carlson if he had checked to determine if any other unfiled ACOs had slipped through the cracks? Mr. Carlson replied that he would check into it. He will have to check with the Assessors and search the county Registry of Deeds since he does not always get the registry slip back. Mr. Phillips asked if a tickler process could be set up on the Board of Health calendar to make note of the time frame set by the Board to register the ACO.

Board Members' Statements

Betty Williams mentioned that several citizens have approached her regarding dogs in restaurants and smoking. Maybe we can think of something before next Spring. She was at a restaurant where there were 5 large dogs on the patio. She is concerned that someone will be bitten.

Laurie Delmolino asked if Betty thought the number of dogs should be limited?

Morgan pointed out that these problems exist because the Board chooses to make regulations which allow things under certain conditions. It makes it hard for the agents to enforce and explain to public complainants.

Betty Williams also mentioned that her term on the Board expires the end of November and she would like to continue on the Board. Mr. Phillips said he would be delighted if she stayed on the Board.

Adjournment:

There being no further business, Mr. Phillips adjourned the meeting at 5:23 pm.

Respectfully submitted,

Susan Leonard

Approved by _____ on _____, 2013