

MEETING OF THE FAIRHAVEN BOARD OF HEALTH
July 25, 2011

A Regular Meeting of the Board of Health was held at the Town Hall on Monday, July 25, 2011 at 6:30 PM. The meeting was duly posted. Board members present: Peter DeTerra, Dolores Caton and Jeannine Lopes. Also present: Patricia Fowle, Health Agent.

Mr. DeTerra, Chairman, called the meeting to order at 6:30 PM and asked that the minutes of the meeting of July 11, 2011 be amended or approved.

Motion to approve the minutes was made by Ms. Lopes; seconded by Ms. Caton. Vote was unanimous.

Ms. Evora-Rosa, Community Liaison for the Division of Prevention & Wellness, Department of Public Health (DPH) appeared before the Board. She informed the Board that the DPH has received a five year grant from the Centers for Disease Control to address cancer and health issues in the region including tobacco use, nutrition and physical activity. Working with local health initiative organizations she asked the Board to consider amending its tobacco regulations in order to ban the sale of all tobacco products at healthcare institutions, predominantly pharmacies. This type of ban went into effect in Fall River in March and there has been no backlash, lawsuits or fines. A similar ban will soon be in effect in Wareham. Dartmouth and New Bedford are also considering the ban. The grant would cover any public hearing advertisement, legal notification and signage. Fairhaven has seven pharmacies that would be affected. A copy of a proposed amended tobacco sales regulation was provided for the Board's review. Ms. Evora-Rosa will keep in contact with the office for updates.

The Board then reviewed a draft policy "for the granting of a variance to the food code to allow dogs in outdoor food establishments". The policy had been drafted by the health agent as directed by the Board at its previous meeting. The Chairman stated that this part of the meeting was not a public hearing but rather a meeting in which the Board would discuss the draft policy and thereby review, amend, alter and consider adoption or not. Attorney Joseph Fingless, 469 Locust Street, Fall River, MA introduced himself to the Board and stated he was present to represent Ms. Lori Shubert, owner of Narragansett Star Café, 230 Huttleston Avenue who is the person requesting the food code variance to allow dogs on an outdoor deck at her food establishment. Mr. DeTerra, Chairman, stated that the Board had received written notice today from Mr. Edward Corris, the property owner that he is not in favor of the requested variance on his property at 230 Huttleston Avenue. The letter was read and is part of this record. Ms. Lopes motioned not to accept the proposed policy. There was no second to the motion. Ms. Caton stated she would like to review and discuss the proposed policy. Attorney Fingliss asked the Chairman to be recognized. Mr. DeTerra stated that this is not a public hearing on the proposed policy and comments would not be taken at this time. Attorney Fingliss stated he would like an opportunity to represent his client's objectives. He then presented a brief history as he understood it of the variance request. He stated that this was an opportunity for the Board to be creative and to show the community that they are business friendly. He further stated that the letter from the owner of the property must have no bearing on the Board's decision because the Board cannot legally condition a lease agreement.

Ms. Caton motioned to discuss the proposed policy; Ms. Lopes seconded. Vote was unanimous. Attorney Fingliss stated that his client had received a copy of the proposed policy and he objected to two of the items. Mr. DeTerra stated again that the meeting is not a public hearing on the subject and not open to public comment at this time. Attorney Fingliss persisted and then asked for a recess so that he could speak with his client. The chairman motioned for the Board to recess at 7:15 PM; seconded by Ms. Lopes.

Vote was unanimous. The Chairman motioned to reopen the meeting at 7:22 PM; seconded by Ms. Lopes. Vote was unanimous.

The Board reviewed the proposed policy. Ms. Caton motioned that the policy be amended by indicating the number of dogs per client allowed on the deck at one time is one (1); seconded by Mr. DeTerra. No vote was taken.

Attorney Fingliss insisted upon being heard and objected to the requirement that the property owner agree to the request in writing as part of the variance request. He stated the condition is an infringement on a lease agreement between individuals and no party has the right to condition such an agreement. The Chairman again stated that the meeting is not a public hearing and therefore not open to public comment at this time. Ms. Caton stated she would like Town Counsel's input on the matter. Attorney Fingliss persisted in representing his client's views and a strong verbal exchange continued.

Ms. Lopes motioned to deny the variance request; seconded by Mr. DeTerra. On the motion: Ms. Lopes stated that she believes the food code is good public health and through experience, she has observed that the code works to protect public health and for these reasons she is not in favor of granting any variances to the code. Mr. DeTerra read a prepared statement which is part of this record. Ms. Caton stated that she would like input from Town Counsel on the issue raised by Attorney Fingless.

Ms. Lopes and Mr. DeTerra voted to deny the variance. Ms. Caton voted against denying the variance. The variance request was therefore denied.

A septic system inspection at 28 Monondack Avenue performed by Steven P. Drew, Professional Inspection Services, Lakeville, MA was reviewed. The system is a 2,500 gallon tight tank. The system passed per the inspector's report of June 28, 2011. However, the property has since been sold and the tight tank appears to be malfunctioning. The health agent will be present for an on-site inspection on July 26, 2011 at 10:00 AM with Al Rivet, All Clear Title 5 Inspections, Mattapoissett. A report will follow.

Health Agent's report:

As requested by the Board, information from the Board of Public Works regarding illegal dumping was received. The Board will review the information and discuss possibly increasing the fines for illegal dumping at its next meeting.

The Department of Public Health, Office for Vaccine for Children (VFC) had its training meeting with the health agent today. A Standard Operating Procedure must be written and a sign-off form must be included for every person under the age of 19 who receives a flu shot. A reinspection will occur in 1 year. The Board has received a contract proposal from a new vendor to mow and trim the landfill cap this season. The health agent will contact the vendor's references and meet the vendor on-site with the Board Chairman. The proposed contract fee is considerably less than the competition.

The health agent has received an ipad2 through the Public Health Coalition emergency preparedness and is learning how to use it. State and office forms will be downloaded into it for day to day operations as well as during emergencies.

Food establishment inspections were reviewed. Complaints received were reviewed.

Invoices and payroll were reviewed and signed by the Board.

There being no other business before the Board, motion to adjourn the meeting at 7:45 PM was made by Ms. Lopes; seconded by Mr. DeTerra. Vote was unanimous. The next meeting is Monday, August 8, 2011 at 6:30 PM.

Patricia Fowle, Health Agent