

REGULAR MEETING OF THE BOARD OF HEALTH
April 13, 2015

A Regular Meeting of the Board of Health was held at the Town Hall on Monday, April 13, 2015, at 6:30 p.m. Board members present: Peter DeTerra, Jeannine Lopes and Lindsay Gordon. Also present: Patricia Fowle, Health Agent.

Chairman DeTerra called the meeting to order at 6:32 p.m. and welcomed new Board member Lindsay Gordon. Mr. DeTerra asked for a motion to approve the minutes of the Meeting of March 2, 2015. Motion to approve the minutes was made by Ms. Lopes; seconded by Ms. Gordon. The vote was unanimous.

The agenda indicated a public hearing to take place for a possible suspension of a Tobacco Sales Permit issued to Fairhaven Valero due to offering for sale banned tobacco products, specifically "flavored" tobacco products. The health agent reported to the Board that upon advice of Town Counsel, Matt Schylar, and upon his subsequent discussions with the permittee's attorney, Joseph Fingless, Town Counsel recommends that the Board stay the first ticket issued for non-compliance of the regulation now that the permittee is in compliance and commits to remaining in compliance with all of the Board's Tobacco Regulations. The recommendation also includes that should Fairhaven Valero fall out of compliance with the regulations within the 36 month tolling period, then the first ticket would stand, a second non-criminal ticket would be issued which would necessitate the seven day suspension hearing as stipulated in the Regulation. Additionally Mr. Schylar cautioned that the violation notice was issued shortly after the Regulation's enforcement date and the court may find in the appeal process of the non-criminal ticket violation, that more education time would have been warranted. Discussion ensued. Ms. Lopes stated the Regulation was adopted to protect the Town's youth from starting smoking with such items as the flavored, cheap tobacco products. Additionally the permittee had been present at the public hearing and had received drafts of the regulation. She believes the Board has been tolerant. Ms. Gordon stated she is glad for the permittee's commitment to compliance now and noted the Regulation is intended to protect youth as stated by Ms. Lopes. Mr. DeTerra stated the same. The Board as a whole however, acknowledged having access to Town Counsel in these matters is rare and the Board should follow the advice of Town Counsel to avoid unwarranted pitfalls. Motion to accept the advice of Town Counsel was made by Ms. Lopes; seconded by Ms. Gordon. The vote was unanimous.

Health Agent's Report:

1. The new trash and recycle carts are still being distributed. Many homes have been missed. ABC Disposal, Inc. is making the distributions on weekends. This may take some time. Numbers for trash tonnage and recycle tonnage for March 2015 have been received. The initial trending shows recycle up about 8% to 22% and trash tonnage down significantly. Continuing data will be scrutinized.
2. A septic system inspection was done at 3 Antone Drive. No final report was received by the office as yet. The pump chamber will require work to set the float elevations correctly. Additionally the new owner would like to upgrade the system. The board will review the proposal when presented.
3. The Board of Health has been informed through the Board of Selectmen and Board of Public Works that about 30 homes out of 820 have not tied into Town sewer on the Sconticut Neck Road sewer project of 2005 as required by Town By-Law Chapter 158. Both boards have asked the Board of Health

to inform the non-compliant homeowners of the requirement to tie in. A draft notice was presented for the Board's approval. Discussion ensued. The Board will allow the health agent to use their stamps on the notices. Mr. DeTerra abstained in this aspect as he is a licensed drain layer.

Motion to send the mandate notice to the non-compliant homeowners was made by Ms. Lopes; seconded by Ms. Gordon. The vote was unanimous.

4. The Massachusetts Department of Public Health (MDPH) has forwarded two Tier III Beach extension requests for Board approval-West Island Town Beach and West Island Causeway Road Beach. The status of Tier III allows the Town to test beach water only once a month rather than weekly through the summer. The Board's preference is to test weekly as most beach goers prefer. By approving the Tier III status however, funding is made available through MDPH for the testing which is then supplemented by the Town for the additional testing.

Motion to approve the Tier III extensions was made by Ms. Lopes; seconded by Ms. Gordon. The vote was unanimous. The Chairman signed the documents for MDPH.

5. In Other Business: Island Provisions Inc. d/b/a Mackatan General Store, a new convenience store/cookery is planning to open at 39 Causeway Road. The structure is existing and not owned by the proprietor, Chris Medeiros. The proprietor is seeking a variance from Board of Health Regulation, Chapter 10, Section 1 stating there is not enough room in the structure for two handicap bathrooms and is requesting the Board to allow the one bathroom that will be handicap. This would be in compliance with the Plumbing Code and Building Code and Food Code, but not the Fairhaven Board of Health Regulation. The Board reviewed the submitted plan dated April 8, 2015 and received April 9, 2015. The plan provides for no seating either inside or outside of the structure. The Board discussed the requirement for two bathrooms-male and female-to be more intended for where food is consumed on the premise. Discussion ensued.

Ms. Lopes motioned to allow the use of one bathroom, handicap, in the existing structure with the conditions that, 1) No food consumption will be allowed on the premise-both inside and out, and 2) Should the structure ever be expanded, an additional bathroom will be required prior to any Board of Health approval for the food establishment; seconded by Ms. Gordon. The vote was unanimous.

6. General Information:

The Board reviewed structural and cultivation information on medical marijuana dispensary complaint reviews by engineers now involved in problem solving these businesses nationwide. The Board intends to keep abreast of these matters as they may occur in the dispensary proposed for Fairhaven.

The health agent informed of two food establishments that are of focus for the food inspector. Progress continues towards code compliance at Mystic Café and Flour Girls. The Board reviewed the inspector's work.

Invoices were signed.

There being no other regular business before the Board, motion to adjourn at 7:35 p.m. was made by Mr. DeTerra; seconded by Ms. Lopes. The vote was unanimous. A tentative date for the next meeting is May 6, 2015. Mr. DeTerra will confirm.

Respectfully submitted,
Patricia Fowle, Health Agent