



# Town of Barnstable

## Board of Health

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### BOARD OF HEALTH MEETING MINUTES

**Tuesday, May 12, 2015 at 3:00 PM**  
**Town Hall, Hearing Room, 2<sup>ND</sup> Floor**  
**367 Main Street, Hyannis, MA**

Rev.

**I. Hearing – Tobacco:**

Tobacco violations as reported by Bob Collette of Barnstable County Tobacco Control.

- A. Sav-On Gas, 326 (a.k.a. 300) West Main Street, Hyannis – First Offense, tobacco products sold to a minor.
- B. Sav-On Gas, 590 Iyannough Road, Hyannis – First Offense, tobacco products sold to a minor.

Upon a motion duly made and seconded, the Board voted to issue each of the two locations of Sav-On Gas, 326 West Main Street and 590 Iyannough Road, Hyannis, with a written warning for a tobacco violation as neither have had a violation in the past three years. (Unanimously, voted in favor.)

**II. Hearing – Hazardous Materials:**

Shaun Breau, owner, The Pool Man – 40 Industry Road, Unit# 15, Marstons Mills, storage of hazardous materials.

**WITHDRAWN:**

Issue resolved.

**III. Septic Variance (Cont.):**

Thomas Roux representing Richard Kiotic, owner – 56 Alderbrook Road, West Barnstable, Map/Parcel 133-054, requesting septic variances.

Mr. Roux and Mr. Kiotic were present. Mr. Kiotic said he was originally interested in having a three bedroom but has decided to go with a two bedroom for cost efficiency. Thomas Roux will prepare a plan for a two bedroom with the following additions to the plan: 1) groundwater adjustment increased 1.2 feet, 2) list all variances and codes on plan 3) show all well setbacks within 150 feet and more than 100 feet, 4) will clarify whether tank is H10 or H20 (and correct second notation), and 5) will do new floor plans.

Upon a motion duly made and seconded, the Board voted to continue this item to June 9, 2015. (Unanimously, voted in favor.)

**IV. Septic Variance:**

- A. Peter McEntee representing Peter and Kathleen Shea, owners – 483 Elliott Road, Centerville, Map/Parcel 227-116, 26,320 square foot parcel, multiple variances.

Mr. McEntee presented his plan. The staff had no objections to granting the variances. Mr. McEntee said when using the method of counting rooms to calculate bedroom count available, it would come out to 5 bedrooms available. However, the system design chosen is a four bedroom. The rooms in the basement have been there and are already pre-existing. A four-bedroom deed restriction would be acceptable.

Upon a motion duly made and seconded, the Board voted to grant the variances with the following conditions: 1) a four bedroom deed restriction be recorded at the Barnstable County Registry of Deeds and a proper copy be submitted to the Health Division prior to the septic permit. Note: the correction on the Board's summary of variances was acknowledged: A) a 7' variance S.A.S. to cellar wall for a 13' (not 17') setback, and B) a 56' (not 58') variance, S.A.S. to coastal bank for a 45' setback. (Unanimously, voted in favor.)

- B. Darren Meyer, Meyer & Sons, representing Victoria Viera, owner – 329 School Street, Cotuit, Map/Parcel 020-113, 0.87 acre parcel, septic variances.

Darren Meyer presented his plan. It is a three bedroom home. The Title V inspector found that the plumbing in the basement had never been connected to the main septic system installed in 2000. The basement is completed finished and it is not possible to connect that plumbing to the internal outlet to the current system.

Darren said the only option is to place a two-compartment tank on the lower level of the lot and pump it up to the existing septic system. Unfortunately, he said it would be 55 feet from the wetland and the d-box 91 feet.

Dr. Canniff asked about a monolithic tank. Mr. Meyer said to special order a two-compartment, H2O tank as a monolithic tank would be extremely expensive. An alternative was accepted. Mr. Meyers will confine the space of entry and parge the tank area with hydraulic cement to seal it. He will also conduct a water test to make sure it is water-tight.

Upon a motion duly made and seconded, the Board voted to grant the variances with the following conditions: 1) they will use hydraulic cement to seal the two compartment H2O tank and control the inflow and outflow, and 2) a water test on the tank will be done by Darren Meyer. (Unanimously, voted in favor.)

**V. Informal Discussion – Sewer Connection (Cont.):**

Gilbert Wood, owner – 730 and 740 Bearses Way, Hyannis

Gilbert Wood was not present.

Town Engineer Roger Parsons summarized prior items discussed on this matter – acknowledging that Mr. Wood did hook up his two units (Cape Tire and unit to Southeast of Cape Tire) to the sewer system in 2010 when it became available by connecting at Enterprise Road, crossing other owner's property, bringing water to the properties, and sewer rates are based on water use. Usually, the individual properties are separately metered. Separate metering was not at the time of connection. There is a single supply that goes into Unit# 740; then, is piped out to two other buildings. There are no bathroom facilities in #730. Currently, Unit# 740 is connected to a septic system. The sewer has been available to Unit# 740 since the late 1990's.

Mr. Wood expressed at an earlier meeting that the new owner of the property which his water line goes through has made reference that he will shut Mr. Wood's water off. Roger said the steps to proceed would be for one of the two property owners to file with Roger requesting a challenge to change the current situation. He believes that since there is still not a main to connect to in the frontage of Mr. Wood's property, the piping would be expected to stay as it is, in all fairness.

Dr. Miller and Dr. Canniff both expressed a desire to have Unit# 740 hooked up as it is in a problematic section of the town and the sewer has been available for a long time. Mr. Wood will most likely opt to have the three buildings separately metered now that the ownerships have or will be changing.

The Board determined that a notice will be sent to Mr. Wood informing him that this will be on next month's agenda (June) and he is invited to come before the Board in order to discuss an order to hook up his other building(s) to sewer.

**VI. Informal Discussion – Nitrogen Land Credit:**

Thomas Bunker, BSS Design, representing Timothy and Italia Luff, owners – 90 East Lane, Cotuit, Map/Parcel 037-018, 0.97 acre parcel, and Timothy Luff, owner - -0- Old Post Road, Cotuit, Map/Parcel 037-004, 2.24 acre parcel, both parcels are in Zone II.

Thomas Bunker presented his plan. He is looking to use 1.1 credits from the -0- Old Post Road parcel and apply it to the house lot of 90 East Lane Road. The properties are almost adjacent to each other. They are both in the Zone II Wellhead Protection which is restricted to three bedrooms per acre.

Mr. McKean said that he discussed this with Brian Dudley, MA DEP, and the piece to be used for the credit could not be used for anything including no lawn, no fertilizer, and no animals, once it is used in this manner.

Mr. McKean and Dr. Miller also explained that the Town Council had put a stipulation of no variances are to be granted in Zone II Well Protection Zone. Therefore, there are only three bedrooms allowed per acre on the house lot. One small corner of 90 East Lane is actually outside the zone. If the engineer is able to design a system and its reserve area to fit inside that corner, then they would be allowed to put more bedrooms on the property and wouldn't need to do the Nitrogen Land Credit.

Mr. Bunker acknowledged that was not possible and appreciated the clarification.

**VII. Extension Deadline for Sewer Connection**

Bradford Malo, Coastal Engineering Company, representing Harbor Village Condominiums, 160 Marston Avenue, Hyannis, Map/Parcel 288-180, previous deadline extension expired April 30, 2015.

Bradford Malo said Bortolotti Construction is working on connecting the 21 condo units on Stewarts Creek to the sewer. There are a few items to be finished and are requesting a two- week extension.

Upon a motion duly made and seconded, the Board voted to extend the deadline to connect to sewer to May 15, 2015. (Unanimously, voted in favor.)

**VIII. I/A Monitoring Plan:**

Michael Lavington, owner – 112 Nye's Neck Road East, Centerville, Map/Parcel 232-011-002, requesting a reduction in testing.

No one was present.

Mr. McKean said the staff reviewed the testing results. The results were very good and suggests reducing the monitoring to twice a year. Mr. McKean would like to see the well water tested. The monitoring results were some of the best results the Board had seen.

Upon a motion duly made and seconded, the Board voted to reduce the monitoring to twice a year pending the receipt of a well water test result. (Unanimously, voted in favor.)

**IX. Food (Cont.):**

Hyannis Anglers Club – 235 Ocean Street, (Upstairs and Downstairs)  
Hyannis. restroom facilities.

Attorney David Lawler, representing Hyannis Anglers Club, was present. The Hyannis Anglers Club owns both the upstairs and downstairs units. They are interested in renting the downstairs space out to another food service establishment and will be coming before the Licensing Committee. The Hyannis Angles Club signed a letter stating they agree to share the restrooms upstairs with the tenant downstairs. Currently the men's room up and downstairs each have a

urinal and a toilet, the ladies room upstairs has two toilets and the downstairs ladies room has one toilet but will have a second toilet put in.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant a toilet facility variance with the following conditions: 1) there will be 99 seats downstairs and 109 total seats (inside and outside) upstairs, 2) an agreed upon document be generated and signed by owner (using the upstairs space) and the downstairs tenants, once rented, which insures the sharing of the bathrooms up and down stairs with employees from each, and 3) a clear drawing of the restrooms will be submitted to Health. (Unanimously, voted in favor.)

**X. Food (New):**

- A. Matt Baecker and Mike Baldwin, Five Guys – Cape Cod Mall, 793 Hyannough Road, Hyannis, restroom facilities variance.

Mike Baldwin, franchisee, was present and said they are planning to open May 19<sup>th</sup>. They originally had a 62 seat floor plan, not realizing the toilet facility issue.

The revised floor plan is requesting 50 seats and Sears has agreed to allow their employees to use their restroom facilities. There would be approximately 8 employees per shift. There are no plans to have outside seating and there is no space available.

Dr. Miller said the Board has granted variances up to 25% above the allowed seating in the past which would be 62 seats in this case. Also, the Board acknowledged that a large percentage of Five Guys's business will be take-out. Mr. Baldwin agreed as 60% of volume is expected to be take-out.

There are two stalls in the ladies room and one stall in the men's room into the restaurant. The restrooms in Sears are 125 feet away and there are four stalls in each of the men's and ladies' rooms which are always open.

Upon a motion duly made and seconded, the Board voted to grant the toilet facility variance with 62 seats. (Unanimously, voted in favor.)

- B. Farmers Market, Hyannis – new location at 1336 Phinney's Lane, Hyannis (Cape Cod Beer).

Beth Marcus, co-owner of Cape Cod Beer, said that they would like to sponsor the Farmers Market at their location as the prior Hyannis Farmers Market is not going to be run this year. They are interested in having about 10 vendors and having the event on Friday afternoons during the summer and early fall.

After a discussion on shell fish, it was determined that the Board asked that Beth take the vendor, Sea Farms, off the list until further determination is made. Also, the Board did not approve of Local Scoop preparing crepes at their table due to the element of being outside and that it contains eggs which can be hazardous.

When asked if a mobile truck would be able to prepare crepes in the mobile truck, the Board agreed that if the mobile truck passes inspection, it is capable of safely preparing the crepes.

The fee was discussed and decided on at \$180 for 18 weeks maximum. If additional weeks are requested after 18 weeks, the reduced, combined rate for additional weeks will be set at \$35 per week.

Upon a motion duly made and seconded, the Board voted to grant the new location for the Mid-Cape Farmers Market with the following conditions: 1) the menu is limited to whole fruits and vegetables, eggs, honey, frozen pre-packaged beef, frozen pre-packaged pork, wine, jelly, baked goods, bottled juices, frozen pre-packaged ice-cream pops, cookies, live shellfish and kettle corn. No other foods are authorized to be served or sold, 2) at least one certified food handler at each table where potentially hazardous foods are sold, 3) prior to selling any live shellfish, the applicant must seek and obtain the approval of the MA Department of Public Health, the MA Division of Marine Fisheries and any other State agency which has jurisdiction regarding shellfish sales. (Unanimously, voted in favor.)

**XI. Swimming Pool – Variance**

Scott Donahue, Cape Crossroads, 800 Bearses Way, Hyannis, variance for qualified swimmers.

Scott Donahue, Property Manager of Crossroads, stated that this year he is having difficulty finding lifeguards to hire for the pool so he is interested in applying for the qualified swimmers.

Dr. Canniff asked if he had tried the YMCA as they had recently told the Board that they had plenty of lifeguards they had trained. He said he had already contacted them, along with a number of other avenues and was not able to find a lifeguard.

Mr. Donahue completed all the paperwork for the qualified swimmers.

Upon a motion duly made and seconded, the Board granted the variance for qualified swimmers. (Unanimously, voted in favor.)

**XII. Body Artist Variance:**

Donald Lariviere, Body Artist for Great Island Tattoo, 12 Enterprise Road, Hyannis.

Lorna Berger, owner, and Donald Lariviere presented his qualifications to the Board. He had worked with Dana Pierce at Hole in the Wall in Brewster. The reason they are here is because Lorna would like to have Donald under a one-year apprenticeship as outlined in the recent approved policy. It would be for tattoos and no body piercing.

Mr. McKean said that the staff has no objections to the apprenticeship.

Upon a motion duly made and seconded, the Board voted to approve the one-year apprenticeship for Donald Lariviere for tattoo and no piercing. (Unanimously, voted in favor.)

**XIII. Old / New Business:**

A. Approval of the Minutes: April 7, 2015

Upon a motion duly made and seconded, the Board voted to approve the April 7, 2015 minutes with the minor changes made. (Unanimously, voted in favor.)

B. Article – Few Changes in Pool Rules.

The article was provided in the Board package as informational.

Next week, Mr. McKean and Dr. Miller will be meeting with Jessica of the Hyannis Chamber of Commerce and depending on the amount of interest in the changing of this Board's pool regulations is anticipated, the Board will either set up a separate special meeting for the pool regulation or it will be at the end of the regular September 2015 meeting.

C. Article – Septic pump-outs overly prescribed

The article was provided in the Board package as informational.

The Board said their meeting with George Heufelder, Director Barnstable County Health, two weeks ago greatly clarified some items. Every septic system is different depending on use, etc., and the need for pumping would vary greatly, as well. For some, every ten years is frequent enough in terms of nitrates and solids.

Dr. Miller said that in terms of removing phosphates, the Board may want to consider mandatory pumping for septic systems located upgradient of fresh water. It may be reasonable to require a pumping every 3-5 years in these cases. The phosphorus issue is poorly addressed presently. Dr. Miller asked Mr. McKean how difficult would it be to identify properties in these locations?

Mr. McKean said he would have to rely on the help of the Cape Cod Commission with Thomas Cambareri and others working on it. Mr. McKean said a setback would have to be established after finding out how far phosphorus travel to a lake (300 feet) and at what point to include properties close to groundwater located close to fresh water.

The Board is interested in exploring further into this.

D. Mary Schobel, owner, 102 Nyes Neck Road East, Centerville – follow up as deadline to connect to electricity or not live there was 5/11/15.

Mr. McKean said the applicant pulled an electrical permit and it was completed on May 6<sup>th</sup>. The trash is still there but it is the property owner next door who is responsible for the trash.

The Board asked Mr. McKean to write a letter to their lawyer and let him know that contrary to the lawyer's claim, the trash has not been removed and the owner is ordered to appear before the Board at the June 9, 2015 meeting or provide evidence that it has been removed.

- E. Water Departments are uncomfortable in writing letters stating water is turned-off.

Update on: 718 Craigville Beach Road, Centerville, the water has been turned off. Water Department is uncomfortable with giving the Board a letter stating the water has been shut off because they do not want to be responsible to the Board if the customer comes back in and turns it back on.

**ADDITIONAL:**

- F. Letter from Hyannis Water Department re recent contamination found and the action they are taking for it.

The Hyannis Water Department closed two of the wells and is being overly cautious at this time.

- G. Egg & I Restaurant Summary. A meeting occurred with Mr. McKean and Donna Miorandi, Health Inspector and the owners and reviewed all procedures established to maintain the establishment and the Health Division was satisfied.

Attorney David Lawler, representing Egg & I Restaurant, inquired whether the owners needed to return to the Board for anything. The Board explained that provided Mr. McKean was satisfied after he met with them on their progress, they would not need to return to the Board. Mr. McKean said that both he and health inspector Donna Miorandi were very happy with the steps and procedures that were taken in cleaning up. They are all set; no need to return.

Motion to adjourn – 5:25pm