

# Town of Barnstable

## Board of Health

200 Main Street, Hyannis MA 02601



Office: 508-862-4644  
FAX: 508-790-6304



Wayne Miller, M.D.  
Paul Canniff, D.M.D.  
Junichi Sawayanagi

### BOARD OF HEALTH MEETING MINUTES Tuesday, November 10, 2015 at 3:00 PM Town Hall, Hearing Room, 2<sup>ND</sup> Floor 367 Main Street, Hyannis, MA

#### I. Hearing – Sewer Connections:

Stewart Creek Properties overdue for sewer connection.

Dr. Miller introduced Len Gobeil as a good resource to reach if any of the owners need assistance or direction. He may be reached at 508-862-4701.

A. Thomas & Michelle Russell, Hyannis owner – 44 Betty's Pond Road, Hyannis.

Mr. McKean summarized the attempts made to contact owners. One letter was returned to us by the post office. The second reminder letter was not returned and appears to have reached them. A certified show-cause letter was mailed 10/19/15 which the post office had not received a signature on yet. Staff had also posted a letter on the house. There has not been any response from owners.

Dr. Canniff said it appears they do live there as the property does have a residential exemption status.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board determined: 1) A Deputy Sheriff will hand-deliver an order to the responsible party informing them to attend the January 2016 Board meeting and 2) stipulating there is a potential fine of up to \$200 per day for not attending. (Unanimously, voted in favor.)

B. Scott & Jo Ann Dias, Hyannis owner – 17 Hill Street, Hyannis.

*Removed from Agenda – has work in progress.*

C. Rui Miranda, Hyannis owner – 61-65 Nautical Way, Hyannis

Mr. McKean stated the original order was mailed to address used by Assessor's office. A reminder letter was also mailed. We did receive the signed green card back from the certified show-cause letter showing it was received.

Dr. Canniff noted this property does not have a residential exempt status on it.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board determined: 1) A Deputy Sheriff will hand-deliver an order to the responsible party informing them to attend the January 2016 Board meeting and 2) stipulating there is a potential fine of up to \$200 per day for not attending. (Unanimously, voted in favor.)

D. Adrien & Rosanie Joseph, Hyannis owner – 83 Nautical Road, Hyannis.

Mr. McKean stated the original order letter and two reminder notices were sent out to this address. The post office shows they left a notice informing resident of a certified (show-cause) letter on 10/21/15 which needs their signature. The post office will continue trying -until November 20, 2015.

Dr. Canniff mentioned this property does not have a residential exempt status on it.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board determined: 1) A Deputy Sheriff will hand-deliver an order to the responsible party informing them to attend the January 2016 Board meeting and 2) stipulating there is a potential fine of up to \$200 per day for not attending. (Unanimously, voted in favor.)

E. Matthew & Catherine Conley, Hyannis owner – 35 Point Lane, Hyannis.

Mr. McKean stated the residents received the original notice and the reminders. The post office showed the certified show-cause notice was signed for and delivered on November 2.

Matt Conley did contact the Health Division. He was intending to attend the Board meeting but unfortunately was not able to attend due to an emergency. He is working on bids from two contractors and will keep in touch with the Health Division.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to continue this item to the December 8, 2015 meeting unless it is resolved sooner. (Unanimously, voted in favor.)

F. Christine Cotell, Hyannis owner – 31 Woodbury Avenue, Hyannis.

No one was present. It is questionable whether the unit is occupied or not.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board determined: 1) A Deputy Sheriff will hand-deliver an order to the responsible party informing them to attend the January 2016 Board meeting and 2) stipulating there is a potential fine of up to \$200 per day for not attending. (Unanimously, voted in favor.)

G. James Mitchell, Key West, FL owner – 38 Betty's Pond Road, Hyannis.

No one was present. Mr. McKean said the owners are now working with us.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to continue this item to the December 8, ~~2016~~2015 Board meeting. (Unanimously, voted in favor).

H. Mark & Peter Kunen, Bend, OR owner – 3 Keating Road, Hyannis.

*Postponed – work in progress.*

**II. Septic Variance:**

Michael Pimentel, JC Engineering, representing James and Sarah Hermitage, owner – 54 Nyes Neck Road, Centerville, Map/Parcel 223-010, 18,095 square feet parcel, on-site well, repair, no increase in flow, multiple variance requests.

Mike Pimentel presented the plan and stated that there will be a well in the future ~~and the~~ ~~the~~ The plan includes a variance for that well. All the abutters were re-notified including the new owners who were just purchasing at the time of the prior meeting.

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Dr. Canniff asked if the Health Division has the floor plans. Mike said he believes they were submitted in October 2014.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to grant the variances with the following conditions: 1) a one-bedroom deed restriction will be recorded at the Barnstable County Registry of Deeds and an official copy will be submitted to the Health Division, and 2) the engineer will oversee the installation of the system. (Unanimously, voted in favor.)

**III. Clarification on number of bedrooms**

Attorney John Kenney representing Richard and Evelyn Morris, owners – 216 Ebenezer Road, Osterville, Map/Parcel 122-088, number of bedrooms.

Attorney John Kenney and Evelyn Morris were present. Attorney Kenney presented the affidavit from Evelyn Morris which spelled out the time-line of events and presented Exhibit A which includes 10 items. The Board of Health said they were in agreement that the house is a five bedroom.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board agreed with the clarified and granted the recognition of the property of 216 Ebenezer Road, Osterville as a five bedroom home with a septic system handling five bedrooms.

**IV. Septic Installer (New):**

Carmen Shay, Mashpee, MA

Mr. McKean stated that Mr. Shay had passed the exam and has septic installer permits in nine other towns of which none had issues and his references were fine.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board voted to grant Carmen Shay an installer's permit. (Unanimously, voted in favor.)

**V. Proposed Changes in Fees.**

Mr. McKean discussed the increase in some of the Health Division fees listed in Exhibit B. He also mentioned the fee for temporary food permits is right in line with other towns. The increases would bring in an additional \$75K in revenue which is for a much needed increase in hours to full-time for two of the division's positions, a health

inspector and the Hazardous Materials Specialist. Mr. McKean is asking for rates to be effect January 1, 2016.

Dr. Canniff said he believes the reasons are fine even though he hates to see fee increases.

Dr. Miller said he is very happy that this would allow the Hazardous Materials person to become full-time as it is needed to properly do that job.

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board voted to adopt the increase in fees as listed on Exhibit B.

**VI. Old / New Business:**

A. Minutes.

Continued to December 8, 2015

B. Grease Trap Policy

Upon a motion duly made by Dr. Canniff, seconded by Mr. Sawayanagi, the Board adopted the grease trap policy (See Exhibit C).

*Recess was called to allow the arrival of the town attorneys and counsel representing Aids Support Group of Cape Cod who were returning from the court hearing.*

**VII. Hearing and Discussion (Continued) Regarding 428 South Street, Hyannis**

Discussion and possible vote to affirm, modify, or rescind the Department's order of September 23, 2015 directing the AIDS Support Group of Cape Cod to Cease and Desist Distribution of Needles and Syringes (Continued from the November 3, 2015 Board meeting.)

Also present: Town Assistant Attorney Charles McLaughlin, Bennett Klein, Senior Attorney, AIDS Law Project Director, and Andrew Musgrave, Legal Director, AIDS Action Committee of MA.

*Meeting returned to session.*

Hyannis News reporter/owner Rob Bastille announced that he would be recording this portion of the meeting.

Dr. Miller stated the Town and Board were brought in to court this afternoon by AIDS Support Group of Cape Cod for an injunction prior to the Board meeting. The court granted a restraint of the Town's Cease and Desist Order of the distribution of needles and syringes to AIDS Support Group of Cape Cod. The Board of Health must lift the order.

Dr. Miller stated that the Board of Health was trying to come to terms with the AIDS Support Group's attorneys and achieve a mutual agreement.

Attorney Klein stated that the AIDS Support Group's attorneys felt the two groups were too far apart to arrive at a mutual agreement and they were concerned with the lives of their patients.

This discussion was heard at the Board meeting on November 3, 2015 and was continued to this meeting, November 10<sup>th</sup>. The Board of Health had suspended the Cease and Desist Order for the week prior to today's meeting and hoped an agreement could be achieved. Dr. Miller expressed that he was very sad the AIDS Support Group chose not to continue with the discussions.

The Board of Health recognized the serious health issues, both positive and negative, for the addicts and for the public safety.

Dr. Canniff said he did not feel the location of the distribution was a good one as there are a number of schools in close proximity along with the two dental offices there, one specializing in children. The dental offices have informed the Board that the used syringes are dropped all over the parking lot, walkway, and yards of the offices.

Attorney Charles McLaughlin explained that we are going to have a full fiduciary evaluation instead of hearing briefs, etc. The decision in this type of case is very difficult to reverse under the Appellate Court if it does not result in the favor of the Town.

Attorney Ben Klein said he did appreciate the actions of the last meeting but in the end, felt the two parties were too far apart. He said they no longer have staff parking at their location in the hopes that less of their patients will park at the dentist offices.

Dr. Miller said due to the Court decision, there is not much more to be said at this time. However, he felt he must point out the following comments:

In using the AIDS Support Group's own numbers, AIDS Support Group distributes 112,000 needles/yearly and they state the percentage of their patients' population with Hepatitis C is 70%, or 78,400. It is known that the clients reuse and share needles many times.

To illustrate the spread of Hepatitis C, Dr. Miller used AIDS Support Group's Hep C population (78,400) and the number "five" as the number of times each needle distributed in the needle exchange program is likely to be reused (this is conservative):

EXAMPLE:

Current Hep C group's potential to spread Hep C to uninfected group:

$78,400 \times 5 = 392,000$ , Then subtract out the initial time the needle is used  
(as it would be the client already infected with Hep C),  
this would result in  $(392,000 - 78,400)$  or

**313,600** Additional injections potentially spreading Hepatitis C.

Even if only 1% of those injections were in the uninfected population, this would be (313,600 x 1%) or

**3,136** Hepatitis C contaminated needle reuses by uninfected individuals.

Hepatitis C is easily transmitted – basically, anyone directly exposed to it in this manner will have a high risk to contract it.

Distribution of needles without careful policy can result in greater harm to all.

Attorney Ben Klein said he is still optimistic and thinks the Town and AIDS Support Group can still work things out. He said he appreciates the comments from the doctors on the Board.

Town Assistant Attorney Charles McLaughlin stated for the record that the Town had engaged in lengthy meetings with staff and the one key focus was to eliminate the fixed needles. There are fully auto-retractable needles available.

Dr. Miller said the medical expense for Hepatitis C cases is so high that even if there are only three (3) preventions of Hepatitis C cases, this will more than cover the increased cost to AIDS Support Group in using all fully auto-retractable needles. AIDS Support Group has a \$1.6 million budget and the difference in total expense would be less than 2.75% of their budget.

Upon a motion duly made by Mr. Sawayanagi, seconded by Dr. Canniff, the Board voted to adjourn. (Unanimously, in favor.)

EXHIBITS

Board of Health Meeting on November 10, 2015

Exhibit A

Affidavit from Evelyn Morris on the history of house during her ownership.

- Item#1 Recorded Deed at the Registry of Deeds
- Item#2 Initial Floor Plan before upgrade -2 bedroom, 2 full bath.
- Item#3 Agreement of Sale dated June 24, 1983.
- Item#4 Occupancy Permit dated June 28, 1983
- Item#5 Floor Plan with upgrade
- Item#6 Job Quote and description of work to be done by Hickey Construction for septic
- Item#7 Invoice from Hickey Construction dated 3/27/89.
- Item#8 Application for Disposal Works Construction Permit dated 2/27/89.
- Item#9 Map showing zone property was in at time of permit.
- Item#10 Map with more detail of zone property is in.

Exhibit B

Proposed Health Division Fee Revisions

Exhibit C

Proposed Grease Trap Policy

Exhibit B

**FINAL CHANGE IN FEES**

**Board of Health Meeting November 10, 2015**

<b>Type</b>	<b>Existing Fee</b>	<b>Proposed Fees</b>
Application fee/plan review: new establishment, renovation, or new applicant (body art, camp, disposal installer license, horse stable, retail food market, motel, hotel, new food service establishment with no floor plan changes- Less than 8,000 square feet )	\$100.00	Same
Application fee/plan review: new establishment or renovation (retail food market, motel, hotel, new food service establishment with no floor plan changes – 8,000 square feet or greater)	\$200.00	Same
Application fee/plan review: new establishment, renovation, new floor plan or changes (Swimming pool, food service establishment, supermarket- Less than 8,000 square feet)	---	\$300.00
Application fee/plan review: new establishment, renovation, new floor plan or changes (food service establishment, supermarket- 8,000 square feet or greater)	---	\$500.00
Disposal system construction permit - new construction without I/A or S.T.U. components	\$150.00	Same
Disposal system construction permit with I/A component(s) – new construction	\$150.00	\$200.00
Disposal system construction permit with S.T.U. component(s) – new construction	\$150.00	\$225.00
		<b>AFTER-HOURS INSPECTIONS</b> Week-day 4:30 p.m. Inspection-Additional

Type	Existing Fee	Proposed Fees
		\$50.00 ; Week-end, Holiday Inspection – additional \$150
Disposal system construction permit – Minor Repair (i.e. replacement of distribution box, replacement of piping	\$100.00	\$ 75.00
Disposal system construction permit without I/A or S.T.U. components - repair [repair of conditionally passed systems and failed systems]	\$100.00	Same
Disposal system construction permit with I/A components - repair [repair of conditionally passed systems and failed systems ]	\$100.00	\$150.00
Disposal system construction permit with S.T.U. components - repair [repair of conditionally passed systems and failed systems ]	\$100.00	\$175.00
		AFTER-HOURS INSPECTIONS Week-day 4:30 p.m/ Inspection- Additional \$50.00 ; Week-end, Holiday Inspection – Additional \$150
Hazard Analysis Critical Control Point (H.A.C.C.P.) Plan Review	-0-	\$100.00
Food Establishment Permits:		
0 to 49 seats	\$200.00	\$250.00
50 or more seats	\$250.00	\$300.00
Food service permit (temporary): pre-approved events only	\$35.00 (maximum four days)	\$40.00 (1 day) \$50.00 (2+ days)
Hazardous Materials 26 - <del>110</del> 55-gallons	-0-	\$ 50.00

<b>Type</b>	<b>Existing Fee</b>	<b>Proposed Fees</b>
<del>Hazardous Materials 56-110 gals.</del>	<del>0</del>	<del>0</del>
Hazardous Materials use/storage (111-499 gallons)	-\$100.00	-\$125.00
Hazardous Materials use/storage (500 gallons or more)	\$100.00	\$150.00
 <u>Swimming pool permit:</u>		
Pre-operation inspection(s) conducted during normal business hours	\$ 75.00	\$100.00
 After hours inspection fees (excluding temporary food events, farmer's markets)		
- At 4:30 p.m.	---	Additional \$ 50.00
- After Hours, Weekends, Holidays	---	\$150.00

**IN-GROUND GREASE TRAP (1,000 GALLON MINIMUM)**

**VARIANCE REQUEST GUIDE**

According to 310 CMR 15.230 (1) of the State Environmental Code Title V, "grease traps shall be provided at restaurants, nursing homes, schools, hospitals, and other installations from which grease can be expected to be discharged." The Board of Health Regulation requires the installation of a minimum 1,000 gallon grease trap at food service establishments.

**I. LIST OF FOODS WHICH MAY BE PREPARED AND SERVED**

The following foods may be prepared without first seeking a variance from the Board of Health:

- Sandwiches, including sandwiches which include mayonnaise as a condiment, not including any sandwiches which utilize mayonnaise as a major ingredient.
- Ice-cream and frozen deserts using homogenized ingredients only
- Smoothies, protein shakes
- Pre-packaged foods may be sold

**II. LIST OF FOODS WHICH MAY BE HEATED AND SERVED**

The following foods may be heated, reheated, or cooked without first seeking a variance from the Board of Health:

- \* Hot dogs (grilled only, not steamed)
- \* Pre-made breads, buns, and cookies may be heated (however, these items cannot be prepared)
- \* Vegetables may be washed and heated without use of any oils
- \* Popcorn
- \* Coffee

**III. FOODS WHICH REQUIRE THE INSTALLATION OF AN INGROUND GREASE TRAP**

All applicants who propose to prepare or cook any food items including and not limited to bacon, bakery items, hamburgers, clam chowder, dairy products, fish scaling and/or

processing, fried foods, pizza, ravioli, roast beef, sausages, and steak and cheese sandwiches will be required to install in-ground grease traps.

#### **IV. VARIANCE CRITERIA**

The Board of Health may grant a conditional variance to prepare or cook other foods. However, when such a variance is granted, the following is a list of the conditions which will be enforced by the Board of Health:

- a. Paper plates and plastic utensils shall be utilized.
- b. The under-the-sink grease interceptor, if required in accordance with the State Plumbing Code, shall be cleaned thoroughly on a monthly basis.
- c. Only those food items listed on the submitted menu may be cooked, heated, or prepared as specified. No other food items may be cooked, heated or prepared.
- d. The variance may be revoked anytime a member of the Board of Health or an employee of the Health Division observes non-compliance with any one or more of the above listed conditions.
- e. The variance is not transferable to another owner or leasee of the food establishment.
- f. The annual food permit shall indicate the variance granted.
- g. The variance decision letter from the Board of Health shall be posted on the wall in an easily accessible location adjacent to the food establishment permit for viewing by a Health Inspector anytime food establishment inspections are conducted.

#### **V. EXEMPTIONS FROM IN-GROUND GREASE TRAPS**

Lodging houses and bed and breakfast establishments with nine bedrooms or less, churches which occasionally prepare meals (i.e. less than 12 meals per year), and workplace lunch rooms are exempt from the in-ground grease trap requirement.

**VI. BUILDINGS CONNECTED TO PUBLIC SEWER** – An applicant for a variance request involving a building which is connected to public sewer shall first seek a review of his/her application from the Town Engineer or other authorized agent of the Town of Barnstable Department of Public Works, Engineering Division. If the authorized DPW representative provides a written favorable recommendation to grant the variance, the Director of Public Health may grant the applicant a variance, in writing, on behalf of the Board of Health. The applicant shall strictly comply with conditions IV. a – g listed above.

#### **PER ORDER OF THE BOARD OF HEALTH**

**Wayne Miller, M.D.**

**Paul Canniff, D.M.D.**

**Junichi Sawayanagi**