



Town of Barnstable

Board of Health

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John T. Norman, Chair
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Donald A. Guadagnoli, M.D.
Daniel Luczkow, M.D.
Paul Canniff, D.M.D.
Stephen Waller, M.D.-Alternate

BOARD OF HEALTH MEETING MINUTES

Tuesday, August 22, 2023 3:00 PM

James H. Crocker Jr. Hearing Room, Town Hall
367 Main Street, 2nd Floor, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Tuesday, September 26, 2023. The meeting was called to order at 3:00 pm by John Norman, Chair. Also in attendance were Thomas Lee, Vice Chair, Board Members Donald Guadagnoli, M.D., Paul Canniff, D.M.D., and Stephen Waller, M.D., Alternate. Thomas McKean, Director of Public Health, and Sharon Crocker, Administrative Assistant, were present. Daniel Luczkow, M.D, was not able to attend.

I. **Innovative/Alternative (I/A) – Secondary Treatment Unit (S.T.U):**
(moved from July 25, 2023 meeting)

Brian Yergatian, BSC Group, representing Hyannisport Club – 2 Irving Avenue, Hyannis, Map/Parcel 266-031, 156 acre parcel, proposed expansion of Racquets Facility, requesting to not install an Innovative Alternative (I/A) Septic system

Withdrawn without prejudice by the applicant.

II. **Show-Cause Hearing: Tobacco:**

Bob Collett, County Tobacco Enforcement Officer, discussed each violation

FOR SECOND VIOLATION WITHIN TWO YEARS:

Mr. Collett stated the second violation according to the State regulations is a \$2,000 fine with a suspension of the tobacco permit of between one – seven days.

Dr. Guadagnoli expressed dissatisfaction with the State imposing such high fines and penalties, leaving it very difficult for small businesses to operate. He feels most know of the difficulty of having employees, many young ones, who make the mistakes. He understands the \$2,000 fine is mandatory; however, he suggested to choice a date with runs concurrent with first penalty. He would also be interested to have the person who is working for Mr. Collett to come in and see if it is hard to determine their age.

Dr. Canniff believes the law is trying to reduce the consumption of cigarettes and, as a former smoker, he suggested possibly a 7-day suspension.

Dr. Guadagnoli, also a former smoker, agrees that reducing the consumption is very worthwhile; but disagrees with the State telling us how to handle the situation especially as this location is already unaffordable.

- A. Cape Mart – 130 Center Street, Hyannis
The previous penalty is to be served December 25, 2023.

Cape Mart expressed that they had gone over all the regulations again with their employees after the last violation. This employee, unfortunately, made an error. They do have a number of other stores which all passed the inspection of May 8th.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 3, Against – 2, Dr. Canniff, Dr. Waller.)

Mr. Norman and Dr. Guadagnoli acknowledged that it is difficult to get employees to not make errors as everyone is capable of making an error. Dr. Guadagnoli said his frustration is the State telling the Town had to fine as we already have a huge struggle to have the Cape an affordable place to live. He is in full support of trying to prevent younger people from smoking. Mr. Collett stated there has to be something in place to encourage the regulations to be upheld. He knows that no one wants to be known as the vendor who will sell to underage individuals and he understands the economic is tough but we need to follow the rules.

- B. Mobil / J & J Auto – 381 Camp Street, Hyannis
The previous penalty is to be served January 9, 2023.

Jay stated that his new employee was properly trained but unfortunately did not ask for an ID. He now has a policy that every single customer, regardless of whether in more than once a day, must be asked for an ID for tobacco products.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 4 in favor, Against – 1, Dr. Canniff.)

- C. Osterville General Store – 16 West Bay Road, Osterville
The previous penalty is to be served January 9, 2023.

Owner said unfortunately, the new employee just started job and did ask for the ID but happened to make an error on the math. The store has not had any violations for seven years prior to this year. Mr. Collett informed the owner that he must have been thinking of a different sale as his assistants go in without any ID's on them, only money. Some employees mistakenly asked for the person's date of birth instead of asking for the actual ID. The assistant would give them their true birthday but the Clerk may sell it to them anyways.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 3 in favor, Against – 2, Dr. Canniff, Dr. Waller.)

- D. Sam's Food (Santuit Gulf) – 4738 Falmouth Road, Cotuit
The previous penalty is to be served January 9, 2023.

Mr. Collett's assistant purchased cigars without asking for ID. The clerk had been right in the midst of a gas spill and calling 911 and unfortunately sold the product without asking for ID during the confusion.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 3 in favor, Against – 2, Dr. Canniff, Dr. Waller.)

- E. Tobacco Master – 606 Main Street, Hyannis
The previous penalty is to be served January 9, 2023.

No one asked for an ID on the date of the sale – May 8, 2023.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 3 in favor, Against – 2, Dr. Canniff, Dr. Waller.)

- F. United Gas – 199 Falmouth Road, Hyannis
The previous penalty is to be served January 9, 2023.

No one asked for an ID on the date of the sale – May 8, 2023.

The owner explained he does not smoke and stated a convenience store only stays in business if it 1) sells cigarettes and 2) sells lottery. They are both part of the business in order to survive.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted on the mandatory \$2,000 fee and the suspension to run concurrent on December 25, 2023. (Voted in favor: 3 in favor, Against – 2, Dr. Canniff, Dr. Waller.)

- G. West Main Gas – 577 West Main Street, Hyannis, Map/Parcel 269-003
The previous penalty is to be served January 9, 2023.

Attorney David Lawler and owner, Eli Naomo, were present.

Attorney Lawler argued that because it is a criminal fine (being over \$300), it must be beyond a reasonable doubt. The letter that went out was dated July 19, 2023, over two months past before they were notified therefore, they couldn't go back to their tapes in the store to review the tape so he can represent himself. The tapes in convenient stores usually reloop after 2 weeks to one month. Also, the report only states that the sale was a male and the owner has 6-7 male employees so he has no way of determining who, if anyone. Attorney Lawler also mentioned the assistant isn't here nor is there an affidavit from them. He does not feel the burden of proof was met.

Some discussion mentioned to appeal the fine in court and have the magistrate make the determination as the Board is not a Court of Law.

Dr. Guadagnoli made a motion to dismiss the offense as he is in agreement that the burden of proof is not met. The motion did not carry – no one seconded the motion.

Upon a motion duly made by Mr. Lee, seconded by Dr. Waller, the Board voted to Approve a fine of \$2,000, being a second offense, and a suspension to run concurrent on December 25, 2023. (Voted in favor: 4 in Favor, 1 Against – Dr. Guadagnoli)

III. Body Artist – New:

Taylor Lindley and Stephen Von Staats, owners of Hotline Tattoo, are applying for a new body artist, Katherine Terrio, at 64 Enterprise Road, Hyannis.

Taylor Lindley was representing Katherine Terrio. Katherine received an Anatomy, Physiology and Skin Course for Body Art Practitioners Certificate dated August 8, 2023, issued through Save Each Life.

Mr. McKean said the course covers the Anatomy and Physiology requirement for body artist permit with the exclusion of body piercing. Her paperwork is complete and he had no issues.

Upon a motion duly made by Dr. Guadagnoli, seconded by Mr. Lee, the Board voted to accept Katherine Terrio as a body artist with no body piercing. (Unanimously, voted in favor.)

IV. Regulations/Policies:

Proposed Revisions to Section 385-7 of the Town of Barnstable Code, Hiring of Outside Consultants.

Mr. McKean explained that there is a regulation that already exists and would like to add words to include the HAACP Plans for foods as they can take lengthy periods of time to review a plan. This would allow the Health Division to require the applicant to cover the cost of hiring an outside consultant to review the HAACP plan. This may happen when they want to add a particular food which might require a HAACP plan. Mr. McKean said they called around and found some to charge \$150/hour and it may take many hours. Mr. McKean said he would have the Health Inspector due the review themselves if it were to only take an hour or two, but they do not have the time to research it for multiple hours.

Mr. McKean has already spoken to the Legal Department who felt it was a minor change to the regulation and said to bring it before the Board.

The Board determined to read this proposed revision in and the Health Division will notify each of the food permit holders of the proposed with the information that it will be brought back onto the agenda for the next meeting, September 2023.

Upon a motion duly made by Mr. Norman, seconded by Mr. Lee, the Board voted to continue to the next meeting, September 26, 2023. (Unanimously, voted in favor.)

V. Minutes:

May-July 2023 Minutes.

Moved the Minutes to the next meeting.

VI. Update Monthly Regulations/Policies:

A. Policy – Draft “Deadline to Connect Buildings to Public Sewer”

Continuing to work on this.

B. Policy – “Temporary Holding Tanks at Locations Where Public Sewer Will Be Provided in the Near Future (within Two or Three Years)”.

Continuing to work with MA DEP on this.

MOTION TO ADJOURN.