



BOARD OF HEALTH

Special Meeting

Town of Nantucket

16 Broad Street

Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Malcolm MacNab, MD, PHD, (chair), James Cooper (Vice chair), Helene Weld, RN, Stephen Visco, Rick Atherton

Staff: Roberto Santamaria, Artell Crowley, Kathy Lafavre, Anne Barrett

~~ MINUTES ~~

Thursday, March 24, 2016

4 Fairgrounds Road, Community Room – 4:00 pm

Called to order at 4:01 p.m.

Staff in attendance: R. Santamaria, Health Director; A. Crowley, Assistant Health Director; T. Norton, Town Minutes Taker

Attending Members: Malcolm MacNab, MD, PHD; James Cooper; Helene Weld, RN; Stephen Visco; Rick Atherton, Board of Selectmen

Absent Members: None

Agenda adopted by unanimous consent

I. ANNOUNCEMENTS

II. PUBLIC COMMENTS – ANY MEMBER OF THE PUBLIC MAY ADDRESS COMMISSIONERS AT THIS TIME

1. None

III. APPROVAL OF MINUTES

1. March 17, 2016: Approved by unanimous consent.

IV. REVIEW DUKES ROAD LETTER

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Copy of draft letter to go to Dukes Road residents.

Discussion **Santamaria** – Reviewed the purpose and contents of the letter.

Atherton – It's direct and to the point. He considers it appropriate.

Cooper – Asked if the sewer line is the correct size and will it sustain all the residents once they're are tied in. If problems come up after they tie in, this board will hear about it.

Santamaria – The engineer says yes and the Department of Public Works (DPW) Director says it meets the standards.

Cooper – To his knowledge, when a line is put in the DPW has to sign off on it; asked if they have done that and have the appropriate paperwork.

Santamaria – To his knowledge the DPW has the signed off on the lines and has the paperwork.

Weld – Asked how the letter will go out.

Santamaria – Two copies of this letter will go to the residents, one to their local address and one to the address on file with the tax collector, to ensure everyone receives it.

Cooper – Reiterated his concern about this coming back on the BOH should something go wrong.

Santamaria – The Town has taken the line; if something goes wrong, it is the responsibility of the Town to repair it.

V. WARRANT ARTICLE REVIEW

1. Article 65 (Bylaw: Town of Nantucket Right to Farm)

2. Article 70 (Bylaw Amendment: Nuisance Animals)

Sitting MacNab, Cooper, Weld, Visco, Atherton

Recused None

Documentation Copies of Warrant Articles 65 & 70; Town Counsel decision.

Discussion **MacNab** – In his view, there is some conflict between these two articles though Town Counsel says there is none. By State statute, the BOH is responsible for overseeing agricultural activities; the question becomes whether or not the state law supersedes this regulation.

Santamaria – Yes. Though there is no direct conflict in the two articles, it falls on us to do the enforcement; however, with the passing of Article 65, it would put the burden of proof on us to prove that a farm is working outside commercial best practices for any nuisance unless there is an immediate danger to public safety.

MacNab – Town Counsel says that Article 70 applies to personal animals; however it doesn't specify that it is just personal animals; that implies it pertains to farm animals as well.

Santamaria – The intent of Article 70 is for personal pets, but it's not written that way. As written, we could use Article 70 to enforce Article 65; but a farm can use Article 65 to protect against Article 70. When he asked for that clarification, Town Counsel said it is an internal policy discussion.

MacNab – Another concern about Article 65 is that it sends grievances to the Agricultural Commission (AgCom); that's like giving up our authority.

Santamaria – Town counsel explained that if the BOH finds a public health risk, we can act immediately without going through AgCom. Reviewed what constitutes a public health risk. Also, we can take action under the State nuisance law; however, it depends on Town policy which would have to be settled by the Board of Selectmen (BOS).

Read Town Counsel's decision. The BOH can take action for BOH issues because State law supersedes Town bylaws. This gives the AgCom internal authority. In his opinion, the AgCom is competent to enforce Article 65. The only issue his department is if a person were to declared his property a farm, there is no minimum size requirement for a commercial farm; an abutter could not complain.

Cooper – He thought that to be declared a farm and be able to pay under that tax rate, a property had to be a minimum of 5 acres.

Santamaria – Regardless of the size, they would still have to meet the definition of a commercial farm before they could receive protection under Article 65.

Atherton – A small point, the Finance Committee recommended some changes but you can't tell from the warrant, which changes were made.

Asked who would be responsible for notification within 21 days of purchase that a farm exists.

Santamaria – In the article, it lists three boards that have jurisdiction aside from the AgCom: the BOS, BOH, and Zoning. Anything that is related to nuisance laws falls under the BOH.

Atherton – Read, "A copy of the disclosure notification shall be given before the closing date to the purchaser and filed with the Board of Selectmen."

Visco – Noted that farms are taxed differently than other properties; there is nothing to stop someone from declaring popping up a green house and declaring the property a farm just for that benefit.

Cooper – As he understands it, to get that tax break, the property has to meet a minimum size requirement.

As far as realtors are concern, if a purchaser asks if there is a farm nearby, the realtor has to provide an answer; if the purchaser doesn't ask, the realtor needn't provide the information.

Santamaria – The State Department for Agricultural Resources states that the size of farm is decided by the local zoning bylaws. He will get that information and forward it to the board members before Town meeting.

If both articles are passed as written, whenever a complaint is received against a farm that is not an immediate public health issue, that grievance must be forwarded to the AgCom so they can take it under advisement at their next meeting, deliberate, come to a decision to either mediate or provide BOH with an enforcement recommendation.

The burden of proof falls on the Health Department to prove that there is an immediate public health danger. Noted that farms are subject to some stiff regulations.

MacNab – At a minimum, the Health Department and BOH should be copied on all complaints so that they can be aware of possible public safety threats.

Atherton – Suggested adding a clause that requires complaints be copied to the BOH.

Cooper – Asked if the Island realtors need to be notified before this becomes a law.

Santamaria – According to Article 65, the disclosure notification would be part of the purchase and sales packet. Also, because this is going in as a bylaw and added to the Code of Nantucket, ignorance of the law is no defense.

Cooper – Reiterated his concern about notifying the realtors about this.

MacNab – Asked about enforcement.

Santamaria – Because we have statutory authority to enforce all BOH regulations under Chapter 31, we can issue tickets and citations to farms if we feel the violation supersedes this bylaw.

Discussion about farm noise impact such as roosters or other noise that might occur over night.

Santamaria – Read Article 65 Section 3. For a farm, there is a difference between incidental noise and nuisance noise. Nuisance noise isn't protected under Article 65. Article 70 and the state nuisance law grant the police authority to enforce nuisance noise.

Cooper – Going back to the real estate notification, this indicates that a buyer must be informed that there is farming “in the Town where the farm is located.” As that is written a purchaser of property anywhere on the Island must be told that there are farms on the Island regardless of proximity to that farm.

Santamaria – It is a disclosure notification. The part we were most worried about is not an issue. This is a well-thought-out bylaw. We can ask for an amendment requiring we be notified of any complaints against farms.

Further discussion about the disclosure required by the realtors.

Tracey Pattenden, 4 Sunset Hill Lane – This article is identical to the state document. As far as the spirit of it, the neighbors near the former MSPCA property are suing the current owners to get rid of the boarding facility; this would prevent after-the-fact purchasers from such actions against existing businesses.

Motion to Adjourn: 4:47 p.m.

Submitted by:
Terry L. Norton