

**CITY OF GLOUCESTER
Board of Health
Minutes of the Meeting
July 11, 2019
5:30 p.m.
City Hall Annex
3 Pond Road
Gloucester, MA 01930**

Board members present: Chairperson: Dr. Richard Sagall; Vice–Chairperson: Robert Harris Frederick Cowan; Claudia Schweitzer; and Joe Rosa. Present from the Health Department: Assistant Director: Max Schenk; Food Inspector: Rosalie Nicastro; Health Inspector: Marcus Costonis. Absent: Health Director: Karin Carroll.

Also present Gloucester Zoning Enforcement Officer: Greg Cefalo.

The meeting started at 5:30 p.m.

This meeting was recorded by audio in accordance with State Open Meeting Law.

PUBLIC ORAL COMMUNICATION

There was no “Public Oral Communication”.

APPROVAL OF MINUTES

MOTION by Mr. Rosa to approve the Gloucester Board of Health minutes of the meeting of June 6th, 2019 as written. **Seconded** by Mr. Harris. **CARRIED.**

MOTION by Ms. Schweitzer to approve the Gloucester Board of Health minutes of the meeting of June 20th, 2019 as written. **Seconded** by Mr. Cowan. **CARRIED.** Mr. Harris **Abstained.**

MOTION by Mr. Cowan to approve the Gloucester Board of Health Septic Review Subcommittee minutes of the meeting of May 30th, 2019 with amendment to the date. **Seconded** by Mr. Harris. **CARRIED.**

STANDING COMMITTEE REPORTS

Mr. Cowan stated that the Septic Review Subcommittee met on May 30, 2019 regarding a septic system upgrade project at 30 Lake Road, 6 Atlantic Street, and 33 Two Penny Lane which all passed unanimously.

NEW BUSINESS

Public Hearing - Changes to the Gloucester Board of Health "Regulation Restricting the Sale of Tobacco Products" (Rev. 5/1/2019) - To include the following changes to section E (12):

a. At any given time, there shall be no more than thirty-six (36) Tobacco Product Sales Permits issued in Gloucester, reduced by the number of permits not renewed pursuant to subsection (b) below. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

b. As of the effective date of this Regulation, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Gloucester Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.

c. At any given time, of the allowed Permit number in subsection (a) above, there shall be no more than five (5) Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition, in Gloucester. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

d. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein. Such applicant may choose to apply for a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store if the Current Permit Holder possessed the same or if a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store is available per subsection (b).

Mr. Schenk stated that the proposed changes would limit the number of tobacco permits to be capped at 36 and there are currently 33 issued in the city and the number of adult only would be limited to 5, there are currently 3.

Chairperson Sagall read a letter from Councilor Gilman in support (as a resident) on the proposed changes.

Chairperson Sagall asked if there was anyone in the audience that would like to speak for or against the proposed changes to the tobacco regulations. There was no one.

MOTION by Mr. Cowan to approve the changes to the Gloucester Board of Health "Regulation Restricting the Sale of Tobacco Products" (Rev. 5/1/2019) - To include the following changes to section E (12) as listed on the agenda. **Seconded** by Ms. Schweitzer. **CARRIED UNANIMOUSLY.**

NSDJ Real Estate, LLC, Represented by Demoura/Smith LLC, Appeal of Building Department Enforcement of Chapter 13 of the City Code of Ordinances Regarding Noise at 159 East Main Street (Map 63 / Lot 26):

Mr. Schenk stated that this item is an appeal on the process that was followed on a noise complaint at 159 East Main Street. He stated that the enforcement letter was resubmitted and the property owner resubmitted their appeal.

Attorney Ken Demoura appeared before the board on behalf of the owner. He stated that Nick Osgood, managing member of the LLC is present at the meeting with him. He stated that they believe that the enforcement letter should not be affirmed. He stated that the enforcement order continues to not comply with the procedural requirements of the noise ordinance because it does not describe the corrective action to be taken and the time in which it needs to be taken. He stated that the order is too vague and too indefinite. He stated that there was a sound study that was done on March 27, 2019 and that was 1 decibel above maximum decibel level allowed in the area. He stated that they have submitted that that figure cannot be used as a basis for violation because the noise meter that is used to measure the sound has a margin of error of 1.5 decibels either way.

Mr. Osgood stated that they have worked extensively with the City's Building Department on trying to get the facility to quiet down. He stated that they have changed out nine motors on the roof, closed a redundant exhaust vent and other improvements such as constructing walls to address the concerns regarding the sound. He stated that since he acquired the property they have dropped the noise level from 71 to 54. He stated that they are constantly making improvements and they are switching out two more motors this week. He stated that they feel they have addressed the objectives and that they have met the requirements of the ordinance.

Mr. Demoura urged the Board of Health not to affirm the enforcement order and set it aside.

Greg Cefalo, Zoning Inspector appeared before the board. He stated that sound is a very sensitive issue and there are very diverse districts and uses within the city which can be problematic. He stated that *Mr. Osgood* has been very receptive and has made many good faith efforts on trying to alleviate the issue. He stated that the City has made an effort to alleviate the concerns too and there has been less concern from residents since *Mr. Osgood* acquired the property.

Mr. Rosa asked if there have been any recent sound studies done. *Mr. Osgood* stated that the last study was done in March.

Mr. Rosa asked if the operation has been running at full capacity. *Mr. Osgood* responded that it has.

The board discussed whether the trees have much of an impact on the sound.

Chairperson Sagall asked if there was anyone in the audience that would like to speak for or against the agenda item. There was no one.

Ms. Schweitzer stated that they received a letter from an abutter, Loren French stating that his concerns regarding the sound still remain.

Mr. Schenk stated that he believes that the enforcement letter is valid. He stated that with the modifications that the property owner has made, he doesn't see a reason for punitive measures to be taken. He recommended that the board let the property owner make the further modifications and then request another sound study.

MOTION by Mr. Cowan that the Gloucester Board of Health does not agree that the enforcement letter is not valid but in light of new evidence removing the violation is appropriate with the stipulation that within 30 days after modifications have been made to the property or November 1st, whichever comes first, that another sound test be completed. **Seconded** by Mr. Harris. **CARRIED.**

OLD BUSINESS

Chairperson Sagall changed the order of business on the agenda.

Attorney Nora R. Adukonis, representing Sandpiper Bakery, 65 Middle Street, Appeal of Health Department Order Dated April 18, 2019:

Mr. Schenk recused himself from the agenda item and left the meeting for the item.

Chairperson Sagall stated at the last meeting the board asked the owner, Susanne Clermont of Sandpiper Bakery for a progress report.

Nora Adukonis attorney representing the Sandpiper Bakery appeared before the board on behalf of the owner, Susanne Clermont. She stated that the detailed progress report that was requested, in retrospect, did not seem optimistic given that the time included Fiesta and Fourth of July week. She stated that her client wasn't able to connect with the Health Department during that period. She stated that Sandpiper was not able to connect with the Health Department until July 8 but despite that there has been a new mat put in under the work table, they added charcoal filters to the ventilation system, and there has been plans made to purchase a quieter spray gun for the sink. She stated that they were not able to collaborate with the Health Department regarding developing a plan for a Type 2 hood.

Chairperson Sagall stated that he spoke with Chip Payson, at the City's Legal Department and he suggested that all communications go through the Legal Department.

The board agreed to have all communication go through the Legal Department.

Chairperson Sagall stated that they are only discussing the appeal of the Health Department's issue of violations.

Mr. Mark Nestor attorney representing the owners of 65 Middle Street, Units 2 and 3. He stated that at the last meeting the Board of Health requested another inspection by the Health Inspector and he asked for the findings of that inspection. He stated that the Board of Health was very clear two weeks ago that they wanted a timetable. He stated that he did not hear the appellant state that they had hired an expert to dispute the need for a Type 2 hood.

Mr. Costonis stated that he visited the Sandpiper Bakery on July 10, with Mrs. Nicastro and the Fire Prevention Inspector, Adam deBrigard, to make it easier on the owner to do all the inspections at one time. He stated that when he went to do his inspection the property owner was not very cooperative. He asked Ms. Clermont for the documentation she told him she would supply and he was asked to leave the property and she would only speak with the Fire Inspector. He stated that as far as he saw no modifications or plans have been made. He stated that he hoped that in the last 93 days a contractor would have been contacted to come to the property and submit a report on the ventilation system but that has not happened. He stated that he has nine emails that with correspondence with Ms. Clermont in the last two days. He stated that he does not answer phone calls on contentious matters because of the inherent lack of documentation. He stated email is the best way to communicate so there is a record of the conversation. He stated that nothing has been presented to the Health Department as plausible forward movement.

Susanne Clermont, owner of Sandpiper Bakery, appeared before the board. She stated that since attending the last Board of Health meeting she knew she had to make improvements to the air quality in the bakery and to work with Mr. Costonis to do that. She stated that she was supposed to meet with Mr. Costonis to hear his suggestions before she met with a contractor. She stated that she disagrees with a Type 2 hood. She stated that she received a certified letter from Mr. Costonis on June 25, 2019 stating that he would not advise her on how to better the air movement at the bakery. She stated that she sent a letter to Ms. Carroll requesting to set up a meeting with Mrs. Nicastro and Mr. Costonis and that meeting was set up for July 3, 2019. She stated that she asked Mrs. Nicastro if Mr. Costonis would be joining her and she said no, that she would just be coming. She stated that she heard from Mr. Costonis on July 8, 2019 and at this time she doesn't know what she is supposed to do because she has not been able to get a hold of Mr. Costonis to discuss a plan. She stated that Mr. Costonis followed up and stated that he will be in with a City Official on July 8th and Mrs. Nicastro and he did not identify the official that was coming with him. She stated that at this point she felt like she could not trust Mr. Costonis. She stated that she met with the Building Inspector on Tuesday. She stated that she left two voicemails for Mr. Costonis and he did not respond until Monday. She stated that she asked Mr. Costonis at the visit why he hasn't responded and he responded that this was not the time or place. She stated that the Fire Inspector looked at the oven for one minute and declared it needed a Type 2 hood. She stated that she wants to solve this issue but she doesn't think she can work with Mr. Costonis. She stated that she got some recommendations to run the

bathroom fan all day and to install some Roxul installation. She stated that the NSF mat came today.

Mr. Cefalo stated that he is the Zoning Enforcement Officer and he reads blueprints and plans but does not make judgements on courses of action. He stated that Jim Butler is the local Building Inspector. He stated that the hood is part of the International Mechanic Code that is regulated by and through the Building Department. He stated that he received an email today from Fire Chief Smith responding to the Board of Health that this is a Building Code issue. He stated that the building is an older building and he can say with certainty that the work that was performed for the bakery met the requirements of the code or the inspector would not have issued the permit. He stated that he would recommend making sure that during the building process that the contractors met the requirements of the code.

Ms. Adukonis stated if they do other modifications to try to match what a Type 2 hood would do and the Health Department says it is not enough you still need a Type 2 hood, then there will not be a bakery. She stated that that is why it is crucial to have communication with the Health Department regarding the proposed modifications to see if they are satisfactory.

Chairperson Sagall stated that it is his understanding that if a Type 2 hood is not installed then it would have to be other technology that achieves the same goal.

Ms. Schweitzer stated that she would like to see the improvements that were mentioned take place and then hear from the tenants next month to see if the modifications have made a difference.

Mr. Nestor stated that this issue has been pending since March; he asked how difficult would it have been to get an HVAC person to come out and write a letter stating that they don't need a Type 2 hood if that is the case. He asked Ms. Clermont to supply a report and some documentation that says they don't need a Type 2 hood. He stated that there should be a specific date set to have this resolved.

Mr. Harris agreed with Mr. Nestor. He stated that the Board of Health asked for a timeline at the last meeting.

Mr. Rosa agreed with Mr. Nestor. He stated that by delaying the issue one more month he hopes that it is clear to the City's Legal Department that they are not resetting the clock to zero and a solution should happen as soon as possible. He stated that he wished Ms. Clermont had written down what modifications have been made.

Ms. Clermont responded that she did type a list out and supplied a copy to board members.

Mr. Costonis stated that there have been 19 emails in the last three days between himself and Ms. Clermont. He stated that he should be recused and someone else should be assigned to work with Ms. Clermont.

Mr. Cowan stated that it is not the Health Department's job to design a solution for the issue. He stated that the suggestion was that without Mr. Costonis's participation that the owner could not move off the spot, and that is not true.

Ms. Adukonis stated that it was their understanding that they were supposed to work with Mr. Costonis to develop a plan.

Mr. Cowan stated that it is their responsibility to develop a plan and then present the plan to the Health Department.

Ms. Schweitzer stated that the Board of Health needs something very specific at the next meeting, not just some ideas or information.

Ms. Clermont stated that she wants to make sure what she does is enough to please the board.

Chairperson Sagall stated that is why people hire consultants to confirm if modifications will work.

Margaret Russell of 65 Middle Street, Unit 2 appeared before the board. Ms. Russell stated Sandpiper Bakery is a tenant in Condominium Unit 1. She stated that in 2017 she researched Roxul Safe and Sound and she offered to contribute to Ms. Clermont for the product. She stated that if Ms. Clermont is invested in staying there then the business needs to make those modifications to adhere to the condominium documents. She stated that it is her opinion that they need to shore it up and enhance the buffering so she and her neighbors are not negatively impacted. Whatever the cost is the responsibility of a business owner. She stated that this has been going on a lot longer than three months.

Theresa Gallo appeared before the board. She stated that she is the landlord for 65 Middle Street, Unit 1. She stated that the building is very old and there are many open spaces. She stated that when Ms. Russell purchased the property (Unit 2), it was as a commercial space and got her residential occupancy permit later without a special permit and the work was never inspected. She stated that perhaps the issue is not with the bakery but with the open spaces in Ms. Russell's unit that maybe were not sealed properly when the work was done.

Nikki Bach of 29 Woodbury Street appeared before the board. She stated that she was the general contractor and project manager for the bakery. She stated that they did have an architect who laid out the whole plan and they were signed off on each and every inspection. She stated that Ms. Russell asked to be put up in a hotel during construction because there was debris in her condo and when she went there she felt terrible; there were open construction holes through her floor. She asked if the Board of Health signed off originally on the construction, why is the onus on the business owner. She asked if there was any way to establish a qualifier.

Ms. Schweitzer stated that it is the Board of Health's responsibility to explore complaints when they come before the board.

Chairperson Sagall stated that there are two issues; one is the necessity of a Type 2 hood based on the regulations and the second issue is whether the odor is considered a health issue. He stated that the second issue is not before the board today.

Susan Erony of 65 Middle Street, Unit 3 appeared before the board. She stated that she has lived in the building a long time and the problems with the first floor unit only started when the use of the unit was changed to food establishment. She stated that the issue with the bakery has been going on for two years. She stated that they have asked to go to arbitration and remediation and were refused on all counts. She stated that the tactic to delay this is no different than what has been happening for the last two years. She stated that unit 2 and 3 had full inspections after the dust incident and met every requirement set by the Building and Fire Departments.

Ms. Clermont stated that she is willing to put in the Roxul tiles, and run her bathroom fan full-time. She stated that she believes the charcoal filter will work. She asked if she finds a mechanical engineer that states she does not need a Type 2 hood, can she be released from this.

Chairperson Sagall responded that she needs a Type 2 hood or equivalent technology.

John Clermont co-owner of Sandpiper Bakery appeared before the board. He stated that when they did the build out they hired a contractor and they made sure everything was done according to code.

Mrs. Nicastro explained that on her visit to Sandpiper Bakery before the order was issued, she observed a familiar ventilation system in place that had proved to be adequate in other commercial kitchens. She presumed therefore the existing vent by its reputation would be sufficient for her to report "issue unsubstantiated".

Ms. Schweitzer stated that the recommendations to remediate the problem must be in place by the next meeting on August 1, 2019. She stated that if any issues arise they will need, in writing, the reason for delay. The board agreed.

Update on Recent Issuance of Mass Department of Public Health Policies Regarding CBD Containing Products:

Chairperson Sagall stated that they received some information and it seems that no CBD products should be sold in the State.

The board discussed the issue and decided to wait until there is further guidance from the State.

MONTHLY REPORTS

Presented by Max Schenk

The following "Monthly Report" was given to Board members.

June Monthly Report

Mr. Schenk stated that they will be meeting to discuss the deficit at the Dental Center.

Mr. Schenk stated that beach testing has been satisfactory.

Mr. Schenk stated that the Mass in Motion van program for seniors has not yet started.

CONCERNS OF BOARD MEMBERS

Chairperson Sagall stated that "Concerns of Board Members" need to be brought up before hand to put on the agenda as an item.

City Email Addresses- *Chairperson Sagall* mentioned that the City is looking into obtaining City email addresses for all board members.

Next Regular Monthly Meeting Board of Health- The next Board of Health monthly meeting will be on August 1, 2019 at the CATA Training Room at 5:30 p.m.

MOTION by Mr. Rosa to adjourn.
Seconded by Mr. Cowan. **CARRIED.**
MEETING ADJOURNED – 7:29 p.m.

Respectfully submitted,

Bobbi Orlando

Accepted by:

Richard Sagall, Chairperson

Documents Referenced:

July 11, 2019 Board of Health Agenda

June 6, 2019 Board of Health Minutes

June 20, 2019 Board of Health Minutes

June 2019 Monthly Department Reports

