

MEETING OF THE FAIRHAVEN BOARD OF HEALTH  
June 14, 2011

A Regular Meeting of the Board of Health was held at the Town Hall on Tuesday, June 14, 2011 at 6:30 PM. The meeting was duly posted. Board members present: Peter DeTerra, Dolores Caton and Jeannine Lopes. Also present: Patricia Fowle, Health Agent.

Mr. DeTerra, Chairman, called the meeting to order at 6:30 PM and asked for the minutes of the meeting of May 31, 2011 be amended or approved.

Motion to approve the minutes was made by Ms. Caton; seconded by Ms. Lopes. Vote was unanimous.

Ms. Lori Shubert, owner of Narragansett Star Café, 230 Huttleston Avenue, entered the meeting. Ms. Shubert is in receipt of a letter from the Board dated May 4, 2011 that stated pets would not be allowed to dine with their owners on a new deck of the establishment as stipulated in the 1999 Federal Food Code which was adopted by Massachusetts Department of Public Health in 2001. Ms. Shubert disagrees with the interpretation and stated from her research on line and in speaking with others, that the Board can allow dogs on the deck while customers are dining. Copies of the research pages were provided by Ms. Shubert and the Board had received them prior to the meeting. A book of dog-friendly establishments had been given to Ms. Shubert by a customer. Ms. Shubert presented the book to the Board. Ms. Shubert stated she has always intended her establishment to be dog-friendly and thought it was understood. Her dog is always on site and has a fan club. There was a collection jar in the establishment just for this purpose. She received \$260 in donations and paid \$8,000 of her own money for the deck and she does not own the property. A 400 signature petition was presented. There are no-dog friendly places in Fairhaven and it is needed. She believes a variance can be granted.

Ms. Lopes asked if Ms. Shubert had read the food code. Ms. Shubert stated she has a different interpretation than the Board's. Mr. DeTerra questioned why the Board was not involved in the permitting for the new deck if its intended use was for dining. He stated the project should have come before the Board prior to construction. Mr. DeTerra reiterated the Board's need for code compliance. Ms. Shubert asked why other towns allow dog-friendly eateries. Ms. Caton stated her love of dogs is well known, but as public officials the Board must uphold the law. She read the research materials given and noted they were dated 2006. She briefly opened the book Ms. Shubert brought with her and noted it was published in 2001. She stated the information is not current and information changes quickly. Ms. Caton stated the Board must say and do what the law allows. Ms. Lopes stated her dog is her love but the food code only allows service and security dogs at eateries. Ms. Lopes also stated that in Fairhaven we follow the rules and do what is required. The Board is not picking on her establishment but simply following the law. What occurs in other towns is not the Board's concern. Ms. Shubert stated she wished she had known of the opposition before investing in the deck. Her hope was to be the first dog-friendly outdoor eatery in Town. Ms. Lopes reiterated that without prejudice to the food establishment, in Fairhaven the Board will follow the law, abide by the law and uphold it. Ms. Shubert stated she regrets spending the money and should have put it into moving the business out of town. Ms. Caton stated she had a conversation with Ms. Shubert on the need to tether Ms. Shubert's dog when it is on the grounds of the establishment which is on Route 6 with lots of traffic. Mr. DeTerra stated just this Sunday he had two complaints of Ms. Shubert's dog being in the food establishment. Ms. Shubert stated her dog is well behaved and does not need to be tethered. She believes the Board is being disrespectful to her and her customers. She opened the establishment with the intent to be dog-friendly. She said this issue is not done and she will return with many people demanding a change. Ms. Shubert stated the health agent knew all along of her intent and it is the health agent's fault. She believes the health agent misled her and the Board. Mr. DeTerra questioned the health agent in this regard. The health agent stated on a number of occasions Ms. Shubert stated she would "love to" make the establishment dog friendly but this did not correlate to just doing so without proper Board of Health review. The deck permit issued by the Building Department stated "replacement for old deck that was removed". There is no note of use of the deck for dining. If there had been the Board of Health would have had review of the proposal. Ms. Shubert stated she disagreed and will continue this at another meeting. Ms. Shubert exited the meeting.

Ms. Caton requested the health agent review the food code to check for a legal process as to whether or not the Board can grant a variance from the food code. It would seem, as with other regulations the Board must enforce, that

State codes are considered "minimum codes" and thus variances cannot be granted. Ms. Caton also requested the Department of Public Health-Food Protection Division be contacted for input. Ms. Lopes stated she has seen dogs at outdoor eateries in Boston but they are tethered in a fenced area away from the diners. Mr. DeTerra stated the food code should be upheld.

A septic system inspection for 289 Mill Road was performed by Andrew Gomes of Andrew J. Gomes Equipment, Acushnet, MA. The system passed the inspection.

Motion to accept the septic system inspection for 289 Mill Road with the condition that note be made that the property has not had normal discharge flows into the system for at least two years was made by Ms. Lopes; seconded by Ms. Caton. Vote was unanimous.

Food establishment inspections were reviewed. Complaints received were reviewed.

Invoices and payroll were reviewed and signed by the Board.

There being no other business before the Board, motion to adjourn the meeting at 7:10 PM was made by Ms. Lopes; seconded by Ms. Caton. Vote was unanimous. The next meeting is Monday, June 27, 2011 at 6:30 PM.

Patricia Fowle, Health Agent