

**BOARD OF HEALTH
MINUTES
MAY 19, 2008**

MEMBERS PRESENT: Helen Shah, DNSc, Chair
Charles Kelliher, Vice Chair
Ann Greenbaum, RN
Evelyn P. Hayes

MEMBERS ABSENT: Robert Brown, Ph.D, Clerk

OTHERS: Bruce G. Murphy, MPH, Health Director
Harry Miller, owner, Cavalier Motel, Seagull Beach Motel,
West Yarmouth Lodgings
Julie Molloy, attorney for Mr. Miller
Arlene Crosby
Kathleen Martin Estes
Ann Rebello
Tom Sullivan
Peggy Rose, Board Secretary

I. Hearing – 2008 Motel Licenses - Cavalier Motel, Seagull Beach Motel, West Yarmouth Lodgings

A. Cavalier Motel

The Chair read the notice of the hearing that was published in the Cape Cod Times. She then asked Mr. Miller if he was providing lodging for transient guests as provided under MGL Chapter 140, Section 32B. He responded that he was providing emergency transient accommodations. He believes that he has a legal right to do so.

The Chair stated that under the common definition of transient, it appears that Mr. Miller's guests are not transient. They are staying longer than 30 days which is the length of stay allowed under the town's motel bylaw. Mr. Miller replied that they are staying longer than 30 days. The Chair stated that if Mr. Miller is providing lodging for transients, the Board can give him a motel license.

Attorney Julie Molloy handed out to the Board an inventory of the town's affordable housing. She also included questions the owner would like the Board to answer.

She stated that establishments must collect room tax and because the time frame for collecting the tax expires does not mean that room cannot continue to be occupied. The Vice Chair stated that on the 91st day of occupancy, room tax is not collected anymore. Ms. Molloy advised that because of circumstances, it was not uncommon for motel stays to be 6 months or more with the occupant intending to move to a permanent address.

Attorney Molloy stated that the motel regulation is a town bylaw that should be enforced by the zoning inspector and not the Board of Health. The state room tax is based upon occupancy of 90 days.

The Chair stated that Mr. Miller is well aware of the town's actions regarding the motel bylaw and has had time to determine how he would comply with it. The Vice Chair stated that if Mr. Miller was willing to have his establishment conform to MGL Chapter 140 and be used for transient guests only, the license would be issued.

Ms. Hayes advised that the Board had met with the Selectmen regarding motel licenses. It seems that whether or not a license is issued all comes back to the definition of transient. Ms. Molloy responded that transient had only become an issue when the motel bylaw was passed in September, 2006.

Attorney Molloy asked for the definition of transient. The Chair stated there was no definition within Massachusetts General Law but the dictionary definition of transient was brief. It is understood and has been represented in the past that some people were staying at Mr. Miller's properties from 2 to 3 months to over a year. Mr. Miller stated that he was providing workforce housing.

The Vice Chair asked Mr. Miller if the other 2 properties, Seagull Beach Motel and West Yarmouth Lodgings, are used in the same manner as the Cavalier. Mr. Miller said that they were and it was well known that they were used for the same as he has obtained building permits from the town for these properties.

Ms. Molloy asked if there had been any violations of water quality, operation of the septic system or safety issues which would result in the suspension of the motel license by the Board. She was informed that there were none.

MOTION: (Mr. Kelliher) To suspend the motel license of the Cavalier Motel for 30 days.

Seconded: Ms. Greenbaum

Discussion: The Chair requested that the motion be amended. Mr. Kelliher withdrew his motion and Ms. Greenbaum withdrew her second of the motion.

MOTION: (Mr. Kelliher) To suspend the motel license of the Cavalier Motel until such time as the owner can demonstrate that the facility is being operated under the provisions of Mass. General Laws Chapter 140, Sections 32A and B.

Seconded: Ms. Greenbaum
Discussion: None
Vote: Unanimous

B. Seagull Beach Motel

The Vice Chair asked if the establishment was being operated under the provisions of MGL Chapter 140, Section 32A and B. Attorney Molloy stated that the motel was in compliance. He asked Mr. Miller if there were any guests staying longer than 30 days. Ms. Molloy stated that since there was no definition of transient in the regulation, she has advised Mr. Miller not to answer.

Attorney Molloy stated that an application has been filed with the Board of Appeals to have the property classified as apartments.

Residents Kathleen Martin Estes and Ann Rebello both asked the Board not to suspend Mr. Miller's licenses because of the suffering it would cause the residents of the establishments. The Chair responded that the Board was not in a position of policy making. Resident Tom Sullivan supported the Board in its attempt to have motels be in compliance with the regulations.

MOTION: (Mr. Kelliher) To suspend the motel license of the Seagull Beach Motel until such time as the owner can demonstrate that the facility is being operated under the provisions of Mass. General Laws Chapter 140, Sections 32A and B.

Seconded: Ms. Greenbaum
Discussion: None
Vote: Unanimous

C. West Yarmouth Lodgings

Attorney Molloy stated that West Yarmouth Lodgings was in compliance. There had been no violations and there are no grounds to suspend the license. Mr. Miller does provide needed housing for the workforce. As the town does not have a definition of transient, she believes that Mr. Miller is in compliance.

The owner was not seeking a motel license so the hearing was continued to a mutually convenient date to allow for additional legal advise for the Board from Town Counsel.

MOTION: (Mr. Kelliher) To suspend the motel license of West Yarmouth Lodgings until such time as the owner can demonstrate that the facility is being operated under the provisions of Mass. General Laws Chapter 140, Sections 32A and B.

Seconded: Ms. Greenbaum
Discussion: None
Vote: Unanimous

II. Update – VNA Nursing Contract Amendment

The Health Director advised the Board that, with the approval of the accounting department, the VNA contract will now be amended in order for the VNA to provide home assessments. This was previously discussed by the Board. He stated that there are already 2 or 3 potential cases.

III. Discussion/Decision – Board of Health Representative

The Health Director advised that it has been requested that a representative from the Board of Health to serve on the county's human service advisory committee. He will be the representative. He stated that at one time, the Board was directly involved with the oversight of the town's human service budget. The Vice Chair stated that he always enjoyed working with the human service people.

MOTION: (Mr. Kelliher) To have the human services funds returned to the town.

Seconded: Ms. Hayes

Discussion: None

Vote: Unanimous

IV. Certificate of Appreciation – Yarmouth Health Department and Volunteers

The Health Director passed around the Certificates of Appreciation received by the department and the volunteers for participation in the rabies baiting program.

V. Approval of Minutes of Board of Health Meeting

MOTION: (Ms. Greenbaum) To approve the minutes of April 28, 2008 as written.

Seconded: Mr. Kelliher

Discussion: None

Vote: Unanimous

VI. Other

The Health Director advised that a letter had been received from DEP approving the request for 74 seats from the Egg & I Restaurant.

The Health Director has received a letter from the owners of the Windrift Motel advising that they will not be opening all the units in the motel this season as some of the units need repairs. The motel permit has been issued with the rooms that are open noted on the permit. The number of rooms that are closed was forwarded to both Building and Planning Departments.

VII. Adjourn

There being no further business, the Chair adjourned the meeting at 4:30 PM.

Respectfully submitted,

Robert Brown, Ph.D, Clerk

Minutes Taken by Peggy Rose