



Town of Barnstable

Board of Health

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Daniel Luczkow, M.D., Vice Chair
Donald Guadagnoli, M.D.
Paul Canniff, D.M.D.
Christine M. Beer, PhD.
Steven Waller, M.D. (alternate)

BOARD OF HEALTH MEETING MINUTES

Tuesday, March 24, 2026, 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, March 24, 2026. The meeting was called to order at 3:00 P.M. by F.P. (Thomas) Lee, Chair. Also in attendance were Board Members Daniel Luczkow, M.D., Donald Guadagnoli, M.D., Paul Canniff, D.M.D., Christine Beer, PhD, and Steven Waller, M.D. Health Division staff members Thomas McKean R.S., C.H.O., and Vanessa Tripp, Office Manager, were present.

1. **Septic Installer License Approval:**

Patrick Arruda, Septic Installer, representing Pride Environmental & Construction, 70 North Main Street, Berkley, MA - Requesting approval to become a licensed septic installer in the Town of Barnstable.

Patrick Arruda was not present.

Health Staff, Vanessa Tripp, stated Mr. Arruda passed the exam. Ms. Tripp stated all references were checked and were all good references.

Health Staff, Thomas McKean, stated Mr. Arruda is currently not licensed in other Towns, but was previously licensed. Mr. McKean contacted three Towns and Mr. Arruda was previously licensed in one of the Towns.

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to grant Patrick Arruda a septic installer permit.

2. **Septic System Variance:**

A. (Continued from January 27, 2026) Ryan Pina, EIT, Outback Engineering, Inc., representing owner, Ronald Oliveira – 282 Parker Road, West Barnstable, Map/Parcel 176-013, 19,602 square feet parcel – Proposed MicroFAST system; multiple variances requested from Section 397-8(E) to install a soil absorption system 55 feet away from an onsite well in lieu of the 150 feet minimum setback required; from Section 397-8(E) of the Town of Barnstable Code to install a soil absorption system 118 feet away from a neighbor's private well at "264 Parker Road, West Barnstable" in lieu of the required from 150 feet setback; from Section 397-8(E) to install a septic tank 51 feet away from the onsite well in lieu of the required 100 feet minimum setback; and variances from 310 CMR 15.405(1)(g), State Environmental Code as described in variance application request.

Tom Lee noted this was also related to Item 8B, Correspondence, agenda item.

This was an email from Thomas McKean and attachment from Daniel Ojala, PE, PLS of Down Cape Engineering regarding surveying services at 264 Parker Road, West Barnstable, accepted by David Cameron on February 11, 2026. Tom Lee stated these two matters are related. Tom Lee noted the answer received from Daniel Ojala was that the property line on the design drawing was correct, based on land court records. Tom Lee stated the application itself is only specified as a two-bedroom house. Tom Lee noted that Lieutenant Cameron discussed an advertisement showing a four-bedroom home. Tom Lee stated this is incorrect and that the Board can only approve this as a two-bedroom under the application submitted. Tom Lee stated the Board is not approving four bedrooms on this parcel at this point.

Mr. McKean stated if the multiple variances requested are granted by the Board, he suggested the Board should require a condition that the owner shall record a two-bedroom deed restriction for this property at the Barnstable County Registry of Deeds.

There was one public comment. David Cameron was present. Mr. Cameron lives at 264 Parker Road, West Barnstable. Mr. Cameron is an abutter to the immediate east of the applicant and lived at this address for 46 years. Mr. Cameron stated the property lines have been staked out by the applicant's surveyor. In addition, Mr. Cameron also hired a surveyor. Mr. Cameron stated that research revealed that in the late 1960s, the Land Court became involved in adding a Town of Barnstable right of way, located just to the west of the applicant's property. Mr. Cameron stated this right of way would give access to the Town's Conservation land, located to the rear of both the applicant's property and his property. Mr. Cameron stated the actual width of the right of way appears to be assumed and not entirely clear. That Land Court decision resulted in adjusting the property lines of the applicant's property, as well as Mr. Cameron's property. Mr. Cameron stated the layout of the properties have been described by both surveyors as, "weird." One of the surveyors described the conveyance of property during this matter as sloppy, and although it is a Land Court decision that was legal representation, Mr. Cameron emphasized it may be a case to be made. Mr. Cameron will be pursuing this option. Mr. Cameron continued to voice his objections, as an abutter, to the requested variances for all the reasons that were previously stated in his past two appearances to the Board of Health. Mr. Cameron is highly concerned about well-sourced drinking water contamination. Mr. Cameron noted the applicant's current septic system is in violation. In Mr. Cameron's view, the on-site well is at risk. A variance allowing just a 55-foot and 51-foot setback perpetuates the risk. Mr. Cameron asks, "Why not manage that now?" Mentions have been made of groundwater flow in previous meetings. Mr. Cameron noted he watched the recent workshop the Board of Health had last week (March 16, 2026), with members of the Wastewater Management Committee. Of note, was a comment made by a prominent committee member that, "groundwater doesn't move like a river, it moves all over the place." Mr. Cameron noted he had to replace his well 12 years ago, and the new well had to be moved across his driveway to accommodate the required setback. Mr. Cameron hired a company with a specialized machine to drill under his driveway to make the connection between the well and his home. Mr. Cameron noted hearing many times from the applicant in his presentation that this application is for a two-bedroom home and that is noted in the plan. Mr. Cameron noted the owner at 282 Parker Road, West Barnstable is a realtor, and on his personal and company Facebook page, he advertised his property as having four bedrooms. Copies were provided to Thomas McKean. Mr. Cameron noted some listings advertise this property as a rental. Mr. Cameron stated four bedrooms on the property would double the daily flow, putting more strain on the system and the well.

Dr. Luczkow asked Mr. Cameron if there have been any thoughts as to what a solution would be.

Mr. Cameron answered that this involves a considerable amount of square footage.

Dr. Luczkow asked if there are other places the system could be placed. Dr. Luczkow stated there are some limitations on the property, right?

Mr. Cameron stated, "right."

Dr. Luczkow stated he knows that Mr. Cameron knows the property well.

Mr. Cameron stated, "I think it would fit."

Dr. Luczkow stated, "okay."

Mr. McKean stated a lot line location change in this regard may result in moving the SAS closer to the well. Mr. McKean also stated the land surveyor, Daniel Ojala, informed him that the Land Court information contradicts the deed description of having lot lines at right angles. However, Mr. Daniel Ojala also informed Mr. McKean that the current property line configuration and property line location has been this way for approximately 50 years according to documents he researched.

Tom Lee stated, "right." Tom Lee noted as far as the setbacks, he was looking at the groundwater flow and the setback from the leaching field is more concerning than the septic tank itself. This is assuming the tank is not leaking, so there is no wastewater coming out from there and is more from the leaching field itself. The design plan is only showing as a two bedroom and can only approve this plan with a deed restriction for two bedrooms.

Mr. McKean asked the Board if we could ask the applicant to tell the realtor to correct these records. Tom Lee answered "Right." Tom Lee stated the applicant needed to notify the client that they cannot advertise this as a four (4) bedroom dwelling because the house plan shows only two (2) bedrooms.

Ryan Pina, Outback Engineering, was present. Mr. Pina stated he would notify his client that it is a two-bedroom home. It is an existing two bedrooms and that is what was designed by Engineer.

Tom Lee stated, "Right."

Dr. Beer asked if there was an inspector that goes to inspect the septic system. Mr. McKean answered that the health inspector would inspect the final step of the septic system installation, but health inspectors do not normally go inside houses to count bedrooms during the disposal works construction permitting process.

Dr. Beer stated, "Just that it's installed for a two bedroom (capacity)."

Mr. McKean stated, "Yes."

Dr. Guadagnoli asked how this can be resolved. He noted that this is currently being advertised as four bedrooms online.

Mr. McKean asked Mr. Pina if he submitted floor plans with the application.

Mr. Pina answered, "We have not, no."

Mr. McKean stated this is commonly requested and that floor plans should be requested and reviewed as part of the process.

Mr. Pina stated he went out to the site on the date of the percolation test, May of 2025. Mr. Pina is unsure what has been done since then, and it was agreed to be a two-bedroom design.

Tom Lee stated, "Correct."

Mr. McKean stated another condition would be to require floor plans before final approval.

Dr. Luczkow noted that the owner should come to the Board and provide explanation before final approval is provided.

Tom Lee requested floor plans prior to April 28, 2026 and for clients to come to the Board of Health meeting for an explanation of the conditions.

Dr. Guadagnoli noted that if Mr. Pina's clients are not going to be present at the scheduled Board of Health hearing, this agenda item should be postponed until such time they can be present. Mr. Pina stated, "Understood."

Mr. Pina noted as far as the distance from the existing well and why the system is originally positioned where it is was due to the lot being tight with how large the system had to be. Even being a two-bedroom design, Mr. Pina noted there was a slow perc rate and it ended up being a very large system. This was the only place that they could fit the system, while still keeping it as far away as possible from the well and meeting other setbacks. If you try to position it anywhere else on the lot, you either don't meet your twenty-foot setback from the foundation or ten feet from the property line. Mr. Pina noted they are 10.5 feet from the property line and ten feet from the back property line.

Mr. Pina noted that the system's location was determined by the limited size of the lot and the large area required for the septic system due to the slow percolation rate, despite it being designed for a two-bedroom dwelling. Mr. Pina further explained that relocating the system on the lot would result in not meeting the setback requirements.

After some discussion, and upon a motion made by Daniel Luczkow, M.D., duly seconded by Donald Guadagnoli, M.D., the Board voted unanimously in favor, to continue this matter to the April 28, 2026 Board of Health meeting.

- B. Douglas Brown, representing Christian and Elizabeth Oman - 63 Hickory Hill Circle, Osterville, Map/Parcel 120-068; proposed temporary repair of septic system by excavating contaminated soils and stone surrounding leaching pit; site is located within Phase 1 of the sewer expansion plan.

Douglas Brown was present. Mr. Brown noted that there are two existing leaching pits at this property. He will work on the leaching pit immediately adjacent to the driveway. Mr. Brown stated it is easier access that leaching pit. Sewage is currently overflowing onto the yard. The homeowners were told this property is located within Phase I of the CWMP plan.

Mr. McKean stated it is anticipated public sewer will be available to this site in the year 2032, according to the Department of Public Works.

Tom Lee stated, "6 years."

Mr. McKean asked Mr. Brown if he believed it would last that long?

Mr. Brown stated, "Definitely, yes, I think so."

Tom Lee noted if there is any black material surrounding the stone, that unsuitable material is being replaced.

Mr. Brown stated it seemed like that on all of them that were done so far. Mr. Brown provided example of a property on Donegal Circle, and the stone was completely black. Mr. Brown stated they pump it out, let it sit overnight, and then the next day dig it all out. Mr. Brown noted each one is different.

Mr. McKean asked if the system doesn't last, then the applicant could come back in three to four years.

Tom Lee confirmed, "Yes."

Mr. Brown noted he does not see any issue and that they always put extra stone.

After some discussion, and upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to approve this variance request.

- C. Hanna Piarfilava, owner, 32 Buckwood Drive, Hyannis, MA, Map/Parcel 272-056-005, 26,136 square feet lot - Variance requested from State Environmental Code Title 5, 310 CMR 15.223(1)(b), Septic Tanks. Proposed to construct a one-bedroom ADU above attached garage, without replacing existing septic tank, with a double compartment tank and/or without adding a second tank by using MassDEP approved effluent filter.

Hanna Piarfilava, owner, was present. Richard Peckham was also present.

Ms. Piarfilava stated they have a three-bedroom house with a three-bedroom septic system. Ms. Piarfilava stated they are planning to build an attached three-car garage with an ADU above and planning to move one of the bedrooms that is in the main house and give it to the ADU. Ms. Piarfilava stated there is no change to the bedroom count and floor plan is going to stay the same. Ms. Piarfilava stated there are only two people living in the house and that the septic system is maintained. Ms. Piarfilava and Mr. Peckham noted they were not in the plan to tie into Town Sewer.

Tom Lee noted the owners are proposing to replace an existing bedroom in the main house for this ADU and keeping the same number of bedrooms on the lot itself.

Ms. Piarfilava stated, "Yes."

There was no public comment.

Mr. McKean stated everything appeared to be in order. Mr. McKean changed a written notation on the disposal system construction permit (dated 1984) from two bedrooms to a three.

Dr. Canniff asked what brand effluent filter was being used.

Ms. Piarfilava stated it was Polylok.

Dr. Canniff asked if the DEP requires a contract with an Installer to clean the filter at least once a year. Ms. Piarfilava answered that she believed it mentioned the once-a-year maintenance or cleaning.

Dr. Canniff asked if they planned to have a contract with the installer?

Ms. Piarfilava stated, "correct." Mr. Piarfilava stated they have a septic installer that they are working with that provides that service.

After some discussion, and upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to table this to April 28, 2026.

3. Sewer Connection/Extension Requests:

- A. Paul Baron, Baron Property Management LLC representing Strawberry Hill Condominiums - 1431 Iyannough Road, Centerville, Map/Parcel 274-021; No sewer available for connection(s) yet.

Paul Baron and Douglas Brown were present. Mr. Baron noted they have been trying to get an indication from the Town of when the Strawberry Hill Condominium will be connected to the sewer project. Mr. Baron stated they have a failed septic system in one of the four buildings, since Year 2023. The leaching pit is being pumped monthly. Mr. Baron noted it has become a financial burden for the association to do this. Mr. Baron asked the Board if there was any alternative to avoid having to pump every month. Mr. Baron noted he was looking to replace the leaching pit.

Douglas Brown, licensed septic installer, stated, "Re-stone it, not replace it."

Tom Lee stated he thought there were two failed septic systems.

Mr. McKean presented to Mr. Brown records from Laserfiche (digitized paper records) of two systems that failed, Buildings D and A.

Tom Lee discussed with the Board Members a couple of options following his review of these records in Laserfiche. The first option is to re-stone the leaching pit and the second option is to put another leaching pit between the two failed leaching pits.

Mr. Brown stated when he went to property, he only saw one pit that was wet above it. He confirmed with Mr. Baron that it was Building C, not Buildings D or A.

Mr. Baron noted they haven't been maintaining Building D, and have been maintaining Building C.

Tom Lee asked, "The other one (leaching pit) is not in failure?" Mr. Brown stated, "No." He noted that on Building C, this was the only one that water was coming out and that is in the parking island.

After some discussion, the building identified was another property.

Tom Lee stated he had no issues with replacing the stone.

Mr. Baron asked where the stub was going to be?

Tom Lee noted that the applicant needed to discuss these questions with DPW.

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to approve septic repair by replacing all of the stone surrounding the leaching pit.

- B. Wayne Hyman, Craigville General Store, owner – 628 Craigville Beach Rd, Centerville, Map/Parcel 246-028, Phase 1, SEWH-24-19, requesting third extension to connect to public sewer.

Joseph Butler was present. Mr. Butler stated Mr. Hyman is working on an extension and he is working on a plan to renovate the store at the same time as the sewer tie-in.

Tom Lee asked how much of an extension was being requested.

Mr. Butler answered six to twelve months.

Mr. McKean noted, previously, it was a one-year extension. Mr. McKean stated he would not recommend more than six months.

Tom Lee noted that the Board should only give a six-month extension, so that the applicant can get the engineering plan on schedule.

There was no public comment.

After some discussion, and upon a motion made by Daniel Luczkow, M.D., duly seconded by Donald Guadagnoli, M.D., the Board voted to grant a six-month extension to both complete the engineering design work and to connect the building to public sewer. (Vote: 4 in favor, 1 opposed – Paul Canniff, D.M.D.)

- C. Drew Conover representing Agree Stores, LLC – CVS 1080 Falmouth Road, Centerville, Map/Parcel 250-027-X01 & X02, 2.456 acres, Phase 1, requesting extension due to winter weather conditions, engineering plan preparation, source of vendor, and execution of contract.

Mr. Conover was not present.

Dr. Canniff made a motion to deny this request.

Dr. Luczkow asked Dr. Canniff to clarify reason of denial.

Dr. Canniff stated it had been three years, and this was the first time they went to the Board. Dr. Canniff stated this is a big company and does not see a reason why they can't connect.

Dr. Luczkow asked if it has been three years.

Dr. Canniff stated they were notified three years ago.

Tom Lee asked Health staff if we have spoken with the representative on this application.

Mr. McKean stated it has been very difficult to reach the owner of this property. It should be noted however, that it has taken other property owners approximately four months or longer to obtain engineering plans. Thus, Mr. McKean stated he agreed with the extension request for engineering - and suggested a six-month extension.

Tom Lee recommended a six-month extension. The applicant will need to get an engineering plan.

Dr. Canniff stated, "I disagree with that."

Dr. Luczkow asked, "Is this the first extension they have asked for?"

Mr. McKean stated, "Yes."

Dr. Luczkow noted it was unusual to deny a request for an extension, particularly if they have a signed contract.

Dr. Canniff had made a motion to deny application request. Motion was not seconded.

After some discussion, and upon a motion made by Daniel Luczkow, M.D., duly seconded by Christine Beer, P.h.D., the Board voted to approve a six-month extension. (Vote: 4 in favor, 1 opposed – Paul Canniff, D.M.D.)

4. Proposed Tight Tank

John O'Dea P.E. representing Jack and Betty Anne Schneider - 127 Short Beach Road, Centerville, Map/Parcel 206-046, 0.14-acre parcel, high groundwater, existing septic system failed inspection, public sewer anticipated in 2029.

John O'Dea, Sullivan Engineering and Consulting, was present. Mr. O'Dea stated owners purchased the property in August, and owners found out that the septic system failed. Mr. O'Dea noted they have been working on plans to redevelop the site or rebuild the house, with no increase in bedrooms. Mr. O'Dea noted given the conditions, proximity to groundwater, it would be a task to try to fit a septic system on there, and where Town sewer is so close. Mr. O'Dea stated there were at least two other properties in the Short Beach neighborhood with tight tanks.

There was no public comment.

Mr. McKean stated according to Engineer's letter, Town Sewer will be anticipated in the Year 2029. Health Staff had no objections to a tight tank.

Tom Lee asked Mr. O'Dea if the tight tank has the high-level alarm notification system.

John O'Dea stated, "Yes. Note number 12 on the engineering plan indicates the audio and visual alarms are set to activate at 3/5 tank capacity."

Tom Lee stated, "Okay."

Tom Lee clarified, to the Board members, that a tight tank would require an alarm so that the homeowner would know that the tank is full and then call the pumper to pump out the system.

Upon a motion made by Paul Canniff, D.M.D., duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to approve tight tank requests.

5. Preliminary Subdivision:

Kieran Healey R.L.S of BSC Group, Inc. representing Marcello Mallegni, Ocean Grove Preliminary Subdivision - 337 & 345 Main Street Hyannis, Assessor's Map/ Parcel 327-111 & 112, 18,550 square feet, four (4) parcels, development will be served by public sewer.

Kieran Healey was present. Patrick Nickerson, Law office of John W Kenney, was present. Mr. Healey stated this was a four-lot subdivision plan off Main Street and corner of Main Street and Ocean Street in Hyannis. Mr. Healey stated each of the lots conform to common zoning regulations.

There was no public comment.

Mr. McKean stated Health staff recommended connecting to public sewer and public water, which were not checked off on the initial application to the Planning Board.

Mr. Healey stated they do propose to connect to public water.

Tom Lee asked what is being proposed on these four lots.

Mr. Nickerson answered this was a theoretical preliminary subdivision plan. Mr. Nickerson noted it was one of the tools and a land use developer's toolkit to freeze zoning in effect at the time the preliminary subdivision plan is filed. Mr. Nickerson noted the proposal remains the same as it has been for years. It is a proposed multi-family redevelopment with first floor commercial space fronting Main Street. Mr. Nickerson noted 22 apartments are proposed on the second, third, and fourth floors. Mr. Nickerson stated it was a theoretical plan designed to trigger a zoning freeze under Mass General Law of 48, Section 6.

Dr. Canniff asked, "How do you provide parking?"

Mr. Nickerson noted that under the proposed multi-family development, there would be parking access underneath the building at grade level, shown on the curb cut, on Ocean Street. Mr. Nickerson stated the Planning Board approved that curb cut last September.

Dr. Canniff asked, "How many spaces?"

Mr. Nickerson stated he did not recall but believed it was 25 or so for 22 dwelling units. Tom Lee asked if this was for one lot or for all subdivisions.

Mr. Nickerson stated for the proposed multi-family redevelopment, he believed it would be approximately 25 parking spaces underneath the building at grade level, access from the curb cut shown on the plan, under the downtown Main Street zoning district. Mr. Nickerson noted there is no parking required for food or beverage services. The first floor is a proposed restaurant.

Tom Lee asked if there was a letter from DPW to accept this development.

Mr. Nickerson stated they did receive comments at the hearing before the Planning Board. Those are going to be incorporated into the definitive plan.

Tom Lee noted that reason this was mentioned is that this is all depending on whether the wastewater plant has the extra capacity to take on this development. It is important for the DPW to issue approval on the connections to the sewer system.

After some discussion, and upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to approve support of this subdivision request to the Planning Board (unanimously in favor).

6. Food Variance

Usama El Sehrawey, Fashion Food LLC dba Wendy's, 715 West Main Street, Hyannis-Time/temperature control variance requested from Section 3-501.16 of the 2013 Federal Food Code to keep lettuce and tomato on the service line without refrigeration for four (4) hours, in lieu of the requirement to maintain temperature at 41°F or less.

Usama El Sehrawey was present. Mr. Sehrawey stated he was present to request a variance based on the time and temperature for the lettuce and tomato. Mr. Sehrawey noted it is held at 38 degrees in the walk-in cooler, put a time and temperature on it, and then it is brought to the service line for another four hours, but they also hold it at 38 degrees on the service line. He noted that all the other Wendy's on Cape Cod and Plymouth are holding it for four hours, according to the franchisor.

There was no public comment.

Mr. McKean asked what was used to determine the four hours. Mr. Sehrawey answered four hours are written on the line and temperatures are taken four times a day. This is the time when they are making sure all the temperatures are being taken. He added that they guarantee that it does not last more than 2 to 2 ½ hours.

Mr. McKean asked if time is written down. Mr. Sehrawey clarified that they do have a labeling system that will be implemented.

After some discussion, and upon a motion made by Donald Guadagnoli, duly seconded by Daniel Luczkow, M.D., the Board voted unanimously in favor, to approve this variance request.

7. PROPOSED REGULATIONS (ESTIMATED START TIME 4:45 PM) :

(Continued from November 25, 2025) Proposed Tobacco and Nicotine Control Regulations.

This agenda item began at 4:45 P.M. Minutes are below following Item 9, Minutes.

8. Correspondence:

A. Email from Paula Crowley dated January 27, 2026, with attachments.

Tom Lee stated this was in reference to the bird feeder, rats, and nuisance complaints. Tom Lee stated information was provided on this.

He noted a discussion would need to be made on these items.

B. Email from Thomas McKean and attachment from Daniel Ojala, PE, PLS of Down Cape Engineering regarding surveying services at 264 Parker Road, West Barnstable, accepted by David Cameron on February 11, 2026. This is pertinent to Item #2 of this agenda.

Tom Lee noted this correspondence was acknowledged under Agenda Item 2A, Septic System Variance.

C. Letter received in the mail from Nicotine Free Generation, Belchertown, MA.

Tom Lee acknowledged receipt of letter received.

9. Minutes: January 27, 2026, Board of Health Meeting

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to approve meeting minutes. (Unanimously in favor).

Board of Health will resume at 4:45 P.M. for Item 7 because a start time of 4:45 P.M. was posted.

PROPOSED REGULATIONS (ESTIMATED START TIME 4:45 PM) :

(Continued from November 25, 2025) Proposed Tobacco and Nicotine Control Regulations.

Tom Lee explained the process and stated comments would be provided by the public (approximately three minutes for each speaker). Tom Lee noted following public comment, the Board would then go over the checklist that was provided by Bob Collette, Tobacco Control Division Program Director. Tom Lee asked for clarification of the proposed language and if the Town Attorney reviewed the language .

Mr. McKean stated MAHB (Massachusetts Association of Health Boards) Executive Director and Senior Staff Attorney Cheryl Sbarra indicated to him that the proposed draft language was reviewed with the Town Attorney.

Tom Lee stated the Bob Collette and Cheryl Sbarra, MAHB (Massachusetts Association of Health Boards) Executive Director and Senior Staff Attorney, would be providing guidance during the discussion on the checklist items.

Tom Lee stated the Board received numerous letters in support and opposing.

There were public comments.

David Lawler, Attorney, was present on behalf of West Main Gas and other parties. Mr. Lawler discussed why the Board of Health should not adopt it. Mr. Lawler stated this was not a Tobacco ban and that it is a Nicotine ban, involving vapes and pouches. Mr. Lawler shared a personal experience about his son and his transition from using tobacco products to nicotine pouches. Mr. Lawler stated the issue is the unintended consequences of what's being driven, such as easily getting products online. He highlighted that people would be driving to neighboring Towns to purchase these products. Mr. Lawler provided a list of municipalities that have either been tabled or denied similar bans, suggesting a universal approach by the Commonwealth. Mr. Lawler discussed the risks associated with counterfeit products, including those containing substances like fentanyl and lead. He noted that banning nicotine products could drive users to the black market to get these products, which has its own negative repercussions. Mr. Lawler emphasizes there has been no factual evidence supporting the effectiveness of the ban and the potential harm to local businesses and residents.

Dr. Luczkow noted the three-minute time limit for public comments.

Mr. Lawler acknowledged the time limit and requested to be allowed to speak after the County's presentation, at the next hearing, to respond directly to what the arguments are.

Dan Griffin, concerned citizen, was present. Mr. Griffin asked the Board if anyone had done an economic study on the tourism impact of this. Mr. Griffin stated one in five people choose nicotine as a small luxury and that Cape Cod is a tourist town. He stated, "You are forcing people that come here to quit smoking." Mr. Griffin expressed concerns about the negative consequences, for example fights at gas stations and citizens getting hurt.

Ricky Patel, C.B. Perkins, was present. Mr. Patel stated he has been in the Tobacco industry for over twenty years. Mr. Patel highlights the various regulatory changes that have been adopted over the years, including raising the legal age from 18 to 21, flavor restrictions to adults only requirements, to statewide product bans. Mr. Patel noted he and his family adapted every time and have always obliged. Mr. Patel noted that the proposed generational restriction would create an unfair distinction based on birth year and that it is not equal treatment under the law. Mr. Patel also highlighted practical consequences. Barnstable is a tourism-based industry and economy. He noted that this would harm locally owned businesses while benefiting neighboring communities and online retailers. Mr. Patel asked, "What is the plan for Public Health to regulate online sales?" Mr. Patel highlighted that the proposed regulation would lead to a shift in demand to unregulated markets, increasing enforcement challenges and tax revenue concerns. He cited an example of New Zealand's failed tobacco ban. Mr. Patel asked the Board to consider consistency in Public Health policy and if the concern is adult health, the conversation should be comprehensive and evidence based across all regulated substances, not just tobacco. Mr. Patel noted it eliminates legal access for future adults who are voters in this Town. Mr. Patel asked the Board to carefully consider the legal fairness, economic impact, enforcement realities, and unintended consequences before moving forward. Mr. Patel noted the state of Massachusetts has regulations in place that are well-thought-out that do not need to be exceeded.

Tom Lee noted if a script is written, the public may provide a copy for our records.

Eric Schwaab, resident of Hyannis, was present. Mr. Schwaab asked why adults couldn't make choices about their own lives, including the decision to smoke. Mr. Schwaab noted a visit to previous speaker's store, noting the variety of products and that he had not been to a tobacco facility in 15 years. to Ricky's store. I haven't been at a Tobacco store in 15 years. He noted the right of smokers to purchase cigarettes and the right of businesses to distribute products without excessive regulation. He noted the number of regulations on retailers are increasing. Mr. Schwaab concluded with striking a balance between personal liberties, commerce, and regulation and that it is considered judiciously.

John Julius, citizen of Hyannis, was present. Mr. Julius stated prior speakers "hit the nail on the head". He noted he never smoked a cigarette in his life. He highlighted the importance of equal protection and the rights of business owners. Mr. Julius expressed frustration over the Town's priorities, questioning recent actions and decisions. Mr. Julius discussed an ongoing lawsuit from the Conservation Law Foundation against the Town. Mr. Julius addressed environmental issues, such as pollution and overdevelopment. He noted that the focus this afternoon was taking the rights away from business owners and that the focus should be on the water and sewer in the Town. Mr. Julius noted the impact of these restrictions on the tourism industry. Mr. Julius concluded by reiterating the importance of the lawsuit and the need to focus on the right issues.

Dr. Guadagnoli requested the room to recognize the fact that the Board doesn't solicit what is brought before them. Dr. Guadagnoli noted that it sounded like many people were presuming opinions as to how the Board of Health felt. Dr. Guadagnoli stated this was brought before them, the Board didn't ask for it and had been asked to make determinations on it.

Tom Lee asked the public to provide their comments and to not make assumptions.

Heather Swenson, citizen of Centerville, was present. Ms. Swenson stated she despised the smell of smoke anywhere in vicinity. Ms. Swenson noted this restriction would take away market sales and harm
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local businesses by diverting customers to stores outside the Town. Ms. Swenson noted that people often purchase other items alongside cigarettes, such as gas and milk. Ms. Swenson stated people are now going to change their stopping point to a store or gas station outside of Barnstable. She noted that the restriction will not prevent people from smoking and would hurt local businesses, and these are people that reside in the Towns, pay taxes, and have children in the schools. Ms. Swenson noted that she had sent an email detailing her concerns, which aligned with many others. Ms. Swenson further discussed the Board's focus on Tobacco, while ignoring the issue of contaminated drinking water. She noted that contaminated drinking water could have long-term, catastrophic effects on the community. Ms. Swenson believes that the Board was focusing their efforts in the wrong direction, and for this reason Ms. Swenson requested the Board to reject the nicotine-free proposal.

Raheel Chaudhry was present. Mr. Chaudhry discussed first the ban on flavored tobacco wraps a few years ago. He emphasized that the main issue was stopping underage children from getting addicted to Tobacco. Second, Mr. Chaudhry noted he wanted to see how this would affect hemp wraps, which have no Tobacco. He asked if this was a separate item. He highlighted the use of Tobacco wraps, particularly for cannabis. Mr. Chaudhry noted the Massachusetts Senate Bill 221 is currently in committee. He noted this was to standardize the Tobacco purchasing age across the State, and Mr. Chaudhry suggested waiting for the outcome of the bill. Mr. Chaudhry noted an email received from Bob Collette on FDA marketing orders that could limit the number of items sold. He noted this item was not on the current agenda and he expressed the need for a discussion on this in more detail.

Tom Lee thanked Mr. Chaudhry for his comments and for providing information regarding FDA limitations.

Adnan Qayyum, Hyannis business owner, was present. Adnan stated the problem is Health or business? Adnan noted if it is about Health, to stop the fast foods and packaged foods that are not good for us. He stated that alcohol is not good for us. Adnan noted if this was about business, it would affect local businesses, for example, people are going to go to other places to get their cigarettes and nicotine. Adnan noted the sight of kids smoking weed in cars and the availability of tobacco products from other states like New Hampshire and Rhode Island. He provided an example of a convenience store in Tiverton, RI making significant sales compared to a store in Massachusetts. Adnan stated they already lost business from college graduates and that they don't want to return to Cape Cod. Mr. Qayyum stated he has been in business for 20 years in the Town. He noted losing business first with the age restriction and losing business with the non-flavored tobacco product regulations. He further referenced a previous speaker's comments regarding purchasing additional items such as milk and candy at a store, and that he would not make two stops to go somewhere else. He noted that like the plastic bottle ban in another Town, customers are coming to Barnstable to buy the plastic bottle; the ban will redirect sales.

Pareesh Patel, owner of AM-PM convenience store, was present. Mr. Patel noted that since owning a convenience store, everything was good until 2017-2018, due to flavor restrictions. He noted if you visit the store, there is not much to sell these days. Mr. Patel noted that there is a decline in smoking among the younger generation, leading to increased sales of vapes and nicotine pouches. He noted that the Health Commission and Barnstable Tobacco Control are constantly on them. Mr. Patel noted that despite selling FDA approved products that come from genuine distributors, and getting a letter from the manufacturers, that this product does not contain any flavor, they still get turned down by Tobacco Control. Mr. Patel discussed the issue of black-market products and said that customers still manage to obtain these products.

Henri Gumbrecht, resident of West Barnstable, was present. He noted that his son asked him to make public comments on his behalf. Mr. Gumbrecht stated there was a lot of good information from previous speakers. Mr. Gumbrecht noted that living in a Town, where there are a lot of golf courses, there are areas in which you can have a cigar or smoke a cigarette. He stated the next generation is not going to

experience this. Mr. Gumbrecht noted a comment from his son that stood out to him was for the Board to reject the Nicotine Free Generation section and strengthen the enforcement of the existing age 21 law. Mr. Gumbrecht stated that everyone knows that they are going to get these products somewhere else.

Mike Ferrill, resident of Cotuit, was present. Mr. Ferrill stated that the overreach was “ridiculous”. He referenced prior actions, such as shutting down 24-hour Burger King location and banning menthol cigarettes. Mr. Ferrill stated, “we can’t do what we want as adults.” Mr. Ferrill noted the department’s role during Covid-19 in closing businesses, specifically shutting down restaurants. He further stated that everyone will be getting flavored products wherever and that this was an overreach. Mr. Ferrill emphasized what he believed the Health Department oversaw, including cleanliness and fire suppression at a restaurant. Mr. Ferrill stated he is against the restrictions and will not forget what the Health Department did during Covid-19.

End of public comments

Thomas McKean provided copies of a status list which detailed a current listing of local health (tobacco) regulations versus a list of proposed items which were not previously adopted by the Board of Health.

Cheryl Sbarra, MAHB (Massachusetts Association of Health Boards) Executive Director and Senior Staff Attorney, clarified where they are in the process. Ms. Sbarra stated, to her understanding, this meeting was for the Board to vote on which of the seven policy decisions that are not in the current regulations. Ms. Sbarra stated for the Board to include in the draft regulations, based on a sales template that would be provided, and then reviewed by the Town Attorney. Ms. Sbarra noted a public forum, where the Board would get more intake from the public. Ms. Sbarra further noted that the Board would then put together a proposed draft regulation and would hold a public hearing, at which time you would take more testimony from the public. What is currently being reviewed is what is in the current draft template that are currently not Barnstable’s regulations. Ms. Sbarra stated that most of the eighteen policy decisions are in Barnstable’s regulations and there are **seven** that are not.

Tom Lee stated that from the checklist, the seven questions are the following - #3, #5, #6, #8, #9, #10, and #16 (*please refer to full checklist items*). Tom Lee noted that once the Board has the draft language, and then reviewed by Town Attorney, a public hearing would be sometime in the month of June.

Dr. Guadagnoli stated that #18, on the checklist, is not included as one of the ones that need to be looked at. Dr. Guadagnoli stated there is a difference between the word “shall” and “may.” Ms. Sbarra stated she believed the reason Health Director Thomas McKean did not put that in his status list is because of what the current regulation reads. Thomas McKean stated, “yes it reads the word “*shall*.”

Dr. Guadagnoli asked if it could be changed to “may.” Ms. Sbarra answered, “Yes.”

Question #18 was added. Tom Lee noted that it is open for discussion in terms of that checklist.

Dr. Luczkow stated, to clarify for the public, that the Board are not the ones who generated this. He asked, “what is the genesis of this?” Bob Collett answered this was a draft model regulation that all the Towns across the Cape have looked at. The Town of Barnstable is the last Town to look at all these policy decisions. With the exception of nicotine free generation, every other Town has this regulation in place.

Dr. Luczkow asked, “who came up with them?” Bob Collett answered that these were decided upon, over a period of time, by suggestion from local Boards of Health and by Department of Public Health (DPH), with technical assistance from legal team at DPH. Mr. Collette stated these are evidence-based

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strategies to help reduce exposure to tobacco by youth and to protect further generations from the deleterious effects of tobacco use.

Dr. Luczkow stated, "So, it is from the Department of Public Health?" Bob Collett stated, "right."

Dr. Guadagnoli asked if what is in *yellow* (on the draft) is already there and that the Board does not have any choice, but to agree with. Ms. Sbarra answered that this is state law.

Dr. Guadagnoli asked who came up with the *green* (on the draft)? Ms. Sbarra stated those are policy proposals that the Department of Public Health and providers, such as Ms. Sbarra, that many Boards of Health have adopted. Ms. Sbarra stated it is local and not state required at all.

Dr. Luczkow stated the Department of Public Health should hold the hearings for the discussions before they come up with these proposals. Dr. Luczkow stated that the fact that we have this level of response and involvement is an indication that we are in the wrong forum. Dr. Luczkow stated the Board are elected volunteers and are not accountable to anyone.

Ms. Sbarra stated that local Boards of Health have the legal authority to adopt laws. Dr. Luczkow stated, "doesn't make it right."

Bob Collett stated, as purveyors of Public Health to the Town of Barnstable, it is the Board's responsibility to uphold and adopt the best policies to protect the public in general. Mr. Collett stated these are suggestions and you are not mandated in any way to adopt any of these.

Dr. Luczkow stated the Board functions in more of a judicial capacity, for example, resolve settle disputes between the Town and residents of the Town with different areas. Dr. Luczkow stated that passing a nicotine ban falls into the category of new legislation. Dr. Luczkow stated the Board is not a legislative body and puts the Board in a difficult and uncomfortable position.

Bob Collett stated they were present to provide technical information and to answer any questions posed by the Board of Health, in order for the Board to make decisions.

Dr. Guadagnoli stated that the Board should adopt what is already regulation in the State of Massachusetts.

Ms. Sbarra stated you must enforce the state law anyway. Ms. Sbarra stated it would be nice for the retailers to have a local regulation that incorporates the state law so they understand what the state law is.

After some discussion, Tom Lee began to read off the eight questions on the draft checklist for policy decisions.

#3: No sales to the following persons (select one):
Any person under the age of 21 (___)
*Nicotine Free Generation (___)

Currently, the Town DOES **NOT** prohibit nicotine sales. Thomas McKean suggested the Board members should focus on the third item listed under #3 identified as 'nicotine free generation.' The first item (age 21) is already in effect. Ms. Sbarra stated this is already State law.

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to reject Nicotine Free Generation. (Vote: 4 in favor, 1 opposed – Paul Canniff, D.M.D.)

Next, Tom Lee read item #5:

No new permits within (---) feet of an existing retailer (§E.8)

1,000 (___) | 2,000 (___) | 3,000 (___) | or more (___)

Currently, the Town DOES **NOT** prohibit new tobacco retail stores with any distance to another tobacco retail store.

Upon a motion made by Daniel Luczkow, M.D., duly seconded by Donald Guadagnoli, M.D., the Board voted to leave it as state law with no restriction. (Unanimously in favor).

Next, Tom Lee read item #6:

#6 Cap and/or reduce number of permits (§E.10)

Simple Cap (___) | Reducing Cap (___)

Currently, the Town DOES **NOT** cap the number of tobacco retail stores in Town.

Thomas McKean confirmed that there are existing 63 Tobacco permits currently in the Town of Barnstable.

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to leave it alone. (Unanimously in favor).

Next, Tom Lee read item #8.

#8: Include minimum cigar package size/price (§H)

Currently, the Town does **NOT** require a minimum cigar price.

Dr. Guadagnoli asked, "what did this grow out of?"

Mr. Collett stated this is a strategy to make it more difficult for youth to access these.

After some discussion, and upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted not to set a minimum price limit. (Vote: 4 in favor, 1 abstained – Paul Canniff, D.M.D.)

Next, Tom Lee read item #9:

Oral Nicotine Pouches (§G)

Prohibit more than 6 mg of nicotine per pouch

Sale restricted to adult only retailers

Currently, the Town does **NOT** prohibit nicotine pouches nor sales of pouches.

After some discussion, and upon a motion made by Daniel Luczkow, M.D., duly seconded by Donald Guadagnoli, M.D., the Board voted to keep it the same and not to set a limit. (Vote: 4 in favor, 1 abstained – Paul Canniff, D.M.D.)

Next, Tom Lee read item #10.

#10: Ban blunt wraps (§K)

Currently, the Town does **NOT** ban blunt wraps

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to leave it as is. (Vote: 4 in favor, 1 abstained – Paul Canniff, D.M.D.)

Next, Tom Lee read item #16

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#16: Tolling periods for local violations (§S)
State level at 36 months (___) | Over 36 months (___)

Currently, the local code discusses a 24-month tolling period for fines and suspensions (**NOT** 36 months). See Section 371-12 (D) of the Town of Barnstable Code.

Thomas McKean asked the Board to vote to maintain a tolling period of 36 months to be consistent with past hearings held and to be consistent with the rest of towns on Cape Cod. Ms. Sbarra stated it is the State law.

Dr. Luczkow asked for clarification on what a tolling period is. Mr. McKean stated a tolling period looks back at the history of violations that occurred.

After some discussion, and upon a motion made by Daniel Luczkow, M.D., duly seconded by Donald Guadagnoli, M.D., the Board voted to keep tolling period at 36 months. (Unanimously in favor).

#18: “Shall” vs. “May” language for suspensions (§T)

Currently, the local code already utilizes the term “shall” in regard to suspensions in the local regulation language. See Section 371-12 (D) of the Town of Barnstable Code.

After some discussion, and upon a motion made by Donald Guadagnoli, M.D., duly seconded by Daniel Luczkow, M.D., the Board voted to change the “shall” to “may.” (Vote: 4 in favor, 1 opposed – Paul Canniff, D.M.D.)

Thomas McKean suggested we would not need to schedule a future hearing to change these few words in our regulations. Dr. Guadagnoli agreed. Mr. McKean stated we would update the language and have the Town Attorney and Bob Collett review it.

Adjourn – 5:46 P.M.

Upon a motion made by Donald Guadagnoli, M.D., duly seconded by Paul Canniff, D.M.D., the Board voted to adjourn. (Unanimously in favor).