January 14, 2015
Environmental Health Subcommittee Meeting Minutes
Courthouse Conference Room 208E
1:00pm

Present: Steve Custer, Gretchen Rupp, Matt Kelley, Chris Gray, Tim Roark, Tom Moore, Denise Moldroski, Theresa Sevareid
(No Board quorum was present so this meeting was a discussion)

- Chapter 3 Discussion

Tim described the process for adopting new Chapter 3 regulations.
1. First Public Reading is held to propose the changes
   a. Board receives public comment
   b. Board suggests changes
      i. Substantive changes require staff return for redrafting;
      ii. Non-substantive changes and the Board moves forward with a second hearing.
2. Second Reading and Board Action
   a. Board receives public comment
   b. Board suggests changes (same procedure as at first reading); or
   c. Adopts the proposal as a rule
   d. Becomes rule at 30 days from date of adoption.

Tim continued with discussion of a more concise and precise Chapter 3 Health Code that refers to DEQ4, State laws, regulations and circulars. Chapter 3 was adopted in 2004 with a fee adjustment done in 2009. The BOH adopts the regs and directs the Health Officer to create procedures that implement the Board policies.

Chris discussed Chapter 3: Section 1, 1.10 – criminal prosecution for violation or civil for injunction. Not complete yet – attorneys will ensure this wording is solid. To put into context, the Lindvig case is where attorneys first noted that change was necessary.

Chris continued that Section 1 has substantive parts and general statements; Section 2 is a streamlined permitting process and delegates how the HO will carry out the process; Section 3 is a general statement of enforcement and substantive provisions (3.2 A, B, C are more stringent than DEQ4); Section 4 outlines the variances and charted in regs;

Matt asked Chris to discuss Section 3.5 – it offers a choice - BOH could avoid hearing some variances related to clearance of groundwater due to request for a deviation.

Chris: Process for deviations listed in DEQ4; it is a policy direction for issues where 4 out of 5 variances come from ESMs due to not enough vertical separation; this calls it out.
Steve: Deviation process – cannot pass unless you get a deviation.

Theresa: A deviation gets to the applicant's needs quicker.

Gretchen prefers taking this to the full Board. The West Yellowstone variance is a beautiful example.

Tom: in favor of the deviation process. In favor of side board replacement and doing the best they can = give them a deviation. New construction and new property knowing less separation he feels we should not be doing this. Protects MT groundwater

Matt: think of this as when none of us are sitting at the table together any longer – this is in the code. Eyes wide open. Big change!

Gretchen: less work for the Board but how much more work for staff? Tim says equivalent or a little less. Technical work is the same. No BOH packet needed. Existing problem (John Stewart) – parcel w/exemption of no structure on it, little over one acre. Circumstance changed and now must live there but high groundwater. No way, due to subdivision sanitation law, that he can pass the sanitation act. High groundwater is more complicated than slam dunk, so HO would say no to deviation and would be a Board hearing.

**Chris advised applicants can do deviations today!**

_Denise: How to deviate when in the rule? HO can say no deviation. If in ARM? ARM does not allow waering, except for a variance. Deviations from DEQ4 and against ARM. Advised Matt to say no deviation. Conflicting._

**Technical issues**

Tim asked if an expedited permit is a deviation? Overseeing a direct public health issue.

Steve: since we are following DEQ4, is Section 3.5 on deviation necessary? Chris: no, more a matter of a statement of your policy.

HO gets direction from Board and DEQ 4 gives guidance on how to use the authority. Chris: direction and section of 4ft of separation.

Steve: side boards better.

Tim: design a policy or procedure.

__(Referring to Chapter 3, Section 3.5)__

Chris: period after DEQ4

Re-do expedited permit. Treated as variance application. If 4-feet of separation in DEQ4 and ARM, Chris sees this as a loop hole. If grant deviation and can justify.

2.5A: clear to all? Statement of our policy (unpermitted system of pre- and post 1966). Need more specificity? Chris: Board is directing HO to follow policy. The Board is giving clear guidance to the HO.

Steve: Asked Tim – does any decision Matt makes go to the Board due to their authority? The procedure outlines.

Steve: If Matt considers a permit with serious health concerns, he would deny

Tim: HO would say put in a sand mound and applicant says no,

Steve: if water table at 3.99 ft, then that could be deviated? Chris: systems with no permit and put into ground before permitted or before permits were required are in violation. Those in violation must go through permitting and be evaluated with today’s regulations.

Situations that fall into the deviation bucket because not much they can do.

Matt noted specific standards of evaluation and criteria are in place for determining deviation.

Tim: Definition of dwelling – should be occupied with water in the plumbing system but if not occupied, how do we address this?

Chris: occupy then arguments i.e., if only there to watch a game – so we need a better word;

Steve: what are we worried about? Running sewage into illegal system so a solution could be to say “occupied with sewage being delivered to waste treatment site on site.”

Tom: concern is discharging sewage in violation of state law – how do we capture?

Chris: Chapter 3, Section 1.10 - ‘uses or inhabits’. A tool to use discretion.

Section 1.10, D, E - Tim: define dwelling as it does with subdivision COSA or planning issues and does it matter? Chris: no conflict as far as enforcement is concerned.

Dwelling definition to remain.

Steve: Section 1.1 – what struck him about the diseases listed in this section is that there no mention of nitrates and ammonia and other contaminants that come with this. Prefers language = STEVE WILL WORDSMITH

Section 4.1.B: Gretchen found format issues – Enforcement notices (remove the word ‘Issue’)

Section 4.3: Gretchen – enforcement orders should be served? Chris noted the word ‘should’ is more discretionary. By sheriff, certified mail,
A fee discussion can be had later.

Procedures Document (Tim welcomed any format and grammar comments)

States how to get to the regulations.

Chapter 3 is not in shape for the Board. Will work with Chris on the revisions discussed today. Steve will wordsmith. And policies will be added

Another committee meeting to be had with more attendance.

Appoint members to subcommittees at the beginning of the year. County Commissioner is not required to be a part of this subcommittee. Steve suggests food & hotel expertise. Tim suggests ad hoc committee at that time.

Chapter 2 – Food code: requires serve safe training.

Chapter 4 – hotels, motels, body art changes to match this model.

Adjourned at 3:10pm