

PITKIN BOARD of HEALTH MEETING

September 10th 2024 at 7:00pm

Newcomb Community Center

MINUTES

- 1. Call to Order:** Mayor pro tem Tom Gibb called the meeting to order at 7:00pm. Board of Health members Ed Pianalto and Jerra Garetson were present. Board of Health member Ramon Reed was present via Zoom.
- 2. Presentation:** Environmental Health Agent (EHA) Gayla Gibb to discuss the role of the Board of Health per Regulation 43.

EHA Gayla Gibb stated that in 2018, the Town of Pitkin was mandated to adopt CO State Regulation 43. This document is long and difficult to read, however, the Town has been tasked to follow it. She is not someone who is in the role of enforcement for this document. She can identify things and the Board of Health makes decisions on what to do about them. It's not about who is doing what, but what is the Board of Health going to do and how. As Regulation 43 is enforced by the Board of Health, EHA Gayla Gibb feels it is her responsibility to bring some things to their attention. The purpose for tonight is for the Board to discuss her message and form a plan.

Regulation 43 is promulgated pursuant to the On-Site Wastewater Treatment Act, CRS 25-10-101, which is Colorado Statute. It was mandated across the State and the Town of Pitkin adopted it. Regulation 43 deals with all aspects of OWTS and the Local Board of Health is responsible to enforce the act.

If they [Local Board of Health] fail to administer the provisions of any sections of the regulations adopted under the OWTS act, the division (the State) may assume the function of the Local Board of Health as may be necessary (Reg 43 4 H 1-2). There seem to be a few provisions that Pitkin is having difficulties with. This is to advise the Board of Health of some things they might want to look into and resolve.

Currently, we have an ordinance that says that RVs and Campers without OWTS parked past 14 days is beyond the limit of our ordinance. This is an aside, it is not in Regulation 43.

43.4.O – 4 says “no person shall construct or maintain any dwelling or other occupied structure which is not equipped with the facilities for the sanitary disposal of sewage.”

43.4.O - 3 “a person must not connect more than one dwelling - commercial, business, institutional or industrial unit- to the same OWTS unless such multiple connection was specified in the application submitted and the permit issued, which means in the engineering.

These two parts of 43.4.O seem to be looming the most large.

It boils down to whether this Board has the intention of supporting and enforcing Regulation 43.

3. For Council Action**:

1. Discuss and formulate a plan for abatement of Regulation 43 infractions

Tom Gibb recalled in 2018 when the State mandated [the adoption of Regulation 43]. There was no support or funding from the State. They do support the Town when the Town reaches out with questions.

Since Reg 43 came into the jurisdiction of the Board of Health in 2018, they have been at a loss as to how to enforce. We all took our oath to uphold the ordinances of Pitkin and the laws and statutes of the State of Colorado. In the event that the local Board of Health is unable or unwilling to enforce State regulations, the division may assume the function of the Local Board of Health. He is not fond of that idea of the State assuming any local functions. He does not recall any enforcement regarding Reg 43 since it was adopted. There are two questions: Does the Board intend to enforce Regulation 43? If the Town is not willing to, they need to notify the State.

There are provisions for a cease and desist or for a fine for ongoing infractions. How does the Town pull that off and collect the fine or ensure that a cease and desist happens. He would like the Board to discuss and formulate a plan tonight. Lawyer or State support may be required.

Board of Health Jerra Garetson would like to first take a look at a lower level and have a protocol for communication with the person who has the infraction. She would like to work out a win-win situation. She wants to make sure the Town is within legal boundaries and not crossing the rights of the citizens.

Mayor pro tem Tom Gibb wants to know where the Town goes from the point of identifying an infraction. There have been occasions where we've passed that point without resolution.

Board of Health member Ed Pianalto asked if the Town will enforce equally on all infractions. Given the information that was provided by the EHA, it appears that we are targeting a couple of people for these infractions. A couple of RVs in a couple of different locations. Today he went around town to look at other possible infractions. Maybe they didn't have hoses, but it looked like people were living in them. He counted 7 possible other infractions. He will not stand behind enforcing only certain people. The State is impartial.

Mayor pro tem Tom Gibb asked how the Board plans to address issues when they come up. Mayor pro tem Tom Gibb stated that the pictures shared were the visible tip of the iceberg. Board of Health member Ed Pianalto wants to not just target RVs.

Board of Health member Ramon Reed stated that Reg 43 goes back to 2015, not 2018. The original adoption was in 2015. He recalled a possible statement at a previous meeting after an executive session when the attorney stated that the Town should not try to enforce the State Law [Regulation 43]. The local ordinance also couldn't be enforced without some changes. He believes the Board would like to enforce Regulation 43. People need to understand what's an infraction and what isn't. He would like to know why the attorney didn't want to approach this issue from the State law. He requests a confidential memo explaining this reasoning. Mayor pro tem Tom Gibb supposed that a State regulation would carry some weight. He would like to contact the attorney and see how this process might look. He would also like to ask the EHA to pursue a verbal conversation with our State authority in regard to this. The town is ineffective in pursuing infractions to a correct end if the individual committing the infraction is not willing to be compliant. Pitkin has been

largely compliant to the rules and regulations but with the incoming of Reg 43 things escalated a bit. We continue to escalate into new times.

Board of Health member Ramon Reed stated that the EHA should be the one to look into and report infractions to the Board, just like infractions to the Zoning Code come through the Zoning Board but then to the Trustees for enforcement.

Mayor pro tem Tom Gibb agrees.

Board of Health member Ramon Reed would like to see a letter from the Attorney to explain why the Town should or shouldn't enforce State law.

Mayor pro tem Tom Gibb wonders if the State would give an opinion. He wonders if the State would support the Town in court. He does not know how serious the State is about taking over if the Local Board of Health is unwilling or unable.

Board of Health member Ed Pianalto thinks the attorney can be asked if he knows of any situations like this. He understands that the Board of Health is responsible for the Regulation 43 and its enforcement. He would like an audit of all inspections in Town. The Town needs to look at all systems with composting toilets and black water systems.

Mayor pro tem Tom Gibb has an interest in some of the remodels he's heard of with consideration to their OWTS.

Before formulating a plan, Board of Health member Ed Pianalto wants everyone to be in agreement with enforcing equally. Mayor pro tem Tom Gibb agrees.

Board of Health member Ed Pianalto wants to look at all the properties. He does not want to see only RVs.

Board of Health member Jerra Garetson stated that Reg 43 is a big paintbrush to cover the whole state. As long as the Regulation makes common sense for our situation, that's fine. She is concerned about how to make this big paintbrush fit our canvas. She wants more information like that.

Mayor pro tem Tom Gibb stated that tonight is about the process. He would like to request of the attorney that he formulate the steps of the process and what the end game looks like.

Board of Health member Ramon Reed pointed out that there are only two towns left in Colorado that have OWTS and not a sewer system – Pitkin and Marble.

Mr. Cousino should be involved in the question of process and what the end game looks like if the Town gets to that point with anyone.

Would EHA have a point-blank conversation with Cousino to see exactly what is the State's position regarding the Town of Pitkin. EHA Gayla Gibb stated she would.

Board of Health member Jerra Garetson suggested a conference call with Cousino.

Board of Health member Ramon Reed wants a work session for the Board of Health to look at the overall aspect of this issue, including some of the things that Mr. Varnell brought up. He would like to have some discussion about looking to the future as well as how we deal with the present.

The Board agreed that it would make more sense to have a work session after having conferences with the Town Attorney and Mr. Cousino.

Public comments: Jesse Garetson (2 comments), Chad Varnell (2 comments), Rodger Lull

4. Adjourn: Meeting adjourned at 8:00 pm.