

REGULAR MEETING AND PUBLIC HEARING OF  
THE BOARD OF HEALTH  
Minutes of Meeting  
October 23, 2019

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2019 DEC -6 P 3:57

A Regular Meeting and Public Hearing of the Board of Health was held at the Town Hall on Wednesday, October 23, 2019, at 6:30 p.m. The meeting was duly posted. Board members present: Chairwoman Jeannine Lopes, Michael Silvia and Peter DeTerra. Also present: Mary Freire-Kellogg, Health Agent and Amanda Blais, Administrative Assistant.

**Before the Board:**

Chairwoman Lopes asked for a motion to approve the minutes of the Regular Meeting of September 26, 2019. Motion to approve the minutes was made by Mr. Silvia, however Mr. DeTerra expressed concerns with minutes regarding discussion of the Open Meeting Law complaint. Mr. DeTerra stated the Board did not have a discussion on the matter and Chairwoman Lopes explained the discussion was in regard to the complaint; the complaint was duly noted and filed in the office, however a full discussion could not be done at that time due to Chairwoman Lopes not receiving a violation letter from the Attorney General's office. Mr. DeTerra stated the current public hearing should not move forward since the Open Meeting Law complaint had not been discussed and a response given to the Attorney General's office. Mr. DeTerra further informed Chairwoman Lopes he had called the Attorney General's office to find out if the complaint had been responded to by Chairwoman Lopes. Mr. Silvia asked the Board to proceed with the current meeting. Mr. DeTerra stated Chairwoman Lopes only wanted to proceed with the meeting because she didn't want to hear about the complaint. Mike Ristuccia, resident, stood up from the audience to ask the Board if a complaint had been filed and Mr. DeTerra responded there had been. Chairwoman Lopes informed Mr. Ristuccia that there is not a public discussion on this topic during the current meeting. Mr. Ristuccia stated Chairwoman Lopes does not know the Open Meeting Law and Chairwoman Lopes informed Mr. Ristuccia to sit back in his chair or he would have to leave the meeting. Mr. Ristuccia responded that he would not leave the meeting and continued to ask audience members if they knew what the Open Meeting Law states. Chairwoman Lopes used the gavel to control the audience. Motion to approve the minutes from September 26, 2019 was made by Mr. Silvia; seconded by Chairwoman Lopes. Mr. DeTerra refused to vote. The motion passed 2-1.

Nancy Santoro of 148 Dogwood Street requested to appear before the Board to discuss the septic tank on her property. Ms. Santoro informed the Board she had notified the Board of Public Works since they had performed the sewer tie-in in 2001, however she was instructed to speak with the Board of Health. The tank is sitting in the backyard and is empty. Ms. Santoro would like to know what to do with the tank. Chairwoman Lopes stated Ms. Santoro should go back to the Board of Public Works since their inspector signed off on the tank being crushed and filled. Ms. Santoro stated she had requested to appear before the Board of Public Works but was denied. The Health Agent mentioned at the time of the sewer tie-in, perhaps a tank was crushed and filled but there was a second tank that was unknown to the homeowner. Ms. Santoro showed the Board a map that showed where the tank would've been located at the time of the tie-in. Mr. DeTerra stated the tank is most likely not a septic tank, but a beehive that is part of the leaching field; Ms. Santoro would be responsible to have the beehive crushed and filled with sand. The Health Agent informed Ms. Santoro she would perform an inspection once this has been done to have on record.

The Board reviewed septic repair plans for 732 Sconticut Neck Road. Motion to approve septic repair

plans for 732 Sconticut Neck Road was made by Mr. Silvia; seconded by Chairwoman Lopes; Mr. DeTerra abstained. The motion passed.

The Board reviewed a new food permit application for Big Lots located at 9 Plaza Way. The Health Agent informed the Board the store is selling commercially prepackaged foods and installing a cooler. Motion to approve the food permit for Big Lots was made by Mr. Silvia; seconded by Mr. DeTerra. The motion passed unanimously.

The Board reviewed a new food permit application for Hissho Sushi located inside Stop and Shop at 221 Huttleston Avenue. The Health Agent informed the Board the previous sushi establishment located inside Stop and Shop is no longer in operation. Motion to approve the food permit for Hissho Sushi was made by Mr. Silvia; seconded by Mr. DeTerra. The motion passed unanimously.

The Board reviewed a residential kitchen permit application for Dough Company located at 41 Grandview Avenue. The Health Agent informed the Board this would be the first residential kitchen permit to be given in town according to her knowledge. Jillian and Jason Cotter explained to the Board they are currently having a commercial kitchen built in New Bedford, however while the kitchen is currently being built, they would still like to be able to bake and sell items at farmers markets. The Health Agent explained Dough Company would only be able to sell at farmers markets, not retail establishments. Motion to approve the residential kitchen for Dough Company made by Mr. Silvia; seconded by Mr. DeTerra. The motion passed unanimously.

The Board reviewed a well permit for 284 Mill Road. Motion to approve the well permit for 284 Mill Road was made by Mr. Silvia; seconded by Chairwoman Lopes; Mr. DeTerra abstained. The motion passed.

The Board reviewed septic repair plans for 298 Mill Road. Motion to approve septic repair plans for 298 Mill Road was made by Mr. Silvia; seconded by Chairwoman Lopes; Mr. DeTerra abstained. The motion passed.

#### **Public Hearing:**

Chairwoman Lopes asked for a motion to close the regular meeting and open the public hearing. Motion to close the regular meeting and open the public hearing was made by Mr. Silvia; seconded by Chairwoman Lopes. Mr. DeTerra was against conducting the public hearing. The motion passed 2-1.

Chairwoman Lopes opened the public hearing by stating the public hearing would be to discuss the tobacco flavor ban and reducing the cap of tobacco establishments. Chairwoman Lopes read the Introductory Statement, instructing there would not be any Board decisions made during the current meeting and also advised all audience members present who wished to speak during the hearing of the public hearing rules and of their allowed speaking time of five minutes. Those who wished to speak during the hearing were instructed to sign their name on the sheet on the table near the microphone. Any resident or business owner who could not attend the hearing would still have until November 6, 2019 by 4:30p.m. to turn in a letter or email to the Board of Health.

The Health Agent stated the State of Massachusetts Tobacco Control Program is recommending the Board include mint, menthol and wintergreen in the current flavor ban. The next discussion is in reference to the tobacco establishment cap; the Board has maximized their cap to twenty establishments. If an establishment failed to renew their tobacco permit within sixty days or decided

they no longer wanted to have a tobacco permit, that permit would not be able to be taken over by another establishment. The only way a tobacco permit could be transferred to another establishment would be to keep the tobacco permit current.

Chairwoman Lopes asked Health Inspector, Daniel Shea to read from the list of individuals who wished to speak during the public hearing. In short, the following statements were made:

Joseph Carvalho, Tobacco Inspector for the Town of Fairhaven – part of the Tobacco Cessation Coalition; the Coalition is deeply concerned with the availability and risks of menthol products; menthol hides the unattractive features of smoking to youth, making the youth population more apt to smoking; menthol products also target underserved populations; the Coalition is in favor of the ban of mint, menthol and wintergreen.

Colleen Jackson, Jackson's Variety – establishment has been in business since 1967; sales include 80% tobacco with 48% including menthol; if ban goes into effect, the store will have no choice but to close; the ban will close small businesses and will not stop anyone from smoking; menthol smokers will drive to a smoke shop or another town that allows menthol; the Board of Health should get together with the Fairhaven school system or the library if they are so passionate about protecting youth; was able to obtain 700 signatures from small businesses that were not in favor of the ban. Mr. DeTerra stated he is for the people and encouraged his statement by clapping with audience members as Ms. Jackson finished her statements.

Mark Riley, Fairhaven Wine and Spirits – believes the Board should take a pass on the ban and instead let the State handle the issue; it doesn't make sense to allow certain towns and cities to do the ban individually; store sells about 50% menthol cigarettes; believes the issue involving youth has to do with vaping, not smoking cigarettes

Mike Ristuccia, resident – not at the public hearing to speak about the flavor ban, but to speak about the Open Meeting Law complaint. As Chairwoman Lopes began to inform Mr. Ristuccia that this item is not included in the current public hearing, Mr. DeTerra shouted to "let the man speak, as he wanted to hear what he had to say." Mr. Ristuccia responded that he had the floor and would not be bullied from speaking. Mr. DeTerra continued to shout "let the man speak." As Mr. Ristuccia demanded to continue to speak on the topic, Chairwoman Lopes asked for the officer on duty to escort Mr. Ristuccia from the meeting area. Mr. DeTerra informed the audience that Chairwoman Lopes is "up for re-election so don't worry." Chairwoman Lopes used the gavel to again rein in the audience.

Elio Younes, Fairhaven Gas – believes in freedom and the ability to have meetings to discuss topics; if the people want menthol products, that's what they should be able to get; habits can't be changed but resources can be made available.

Diane Hahn, resident 86 Francis Street – doesn't believe putting a ban on cigarettes will change anything; small businesses will close, employees will be let go, other towns will profit; consider other options rather than a ban such as restricting the sell of tobacco products within so many feet of a school or recreation center.

Alan Grant, resident – putting a ban on menthol will lead to putting a ban or restrictions on other things; menthol has been around for many years.

Patrick Tinsley, Attorney with Fletcher Tilton – believes the ban is wrong; other communities that have

put the ban in place are currently facing litigation; fully intends to bring a lawsuit to Fairhaven once the ban becomes effective; looking over the statistics from the past year, there have been 100% passing scores on tobacco inspections; when was the last time the Board had a meeting to discuss these tobacco establishments selling to minors?

Anusha, senior of Bridgewater State – all advertisements are geared to target youth; menthol makes the most sales and provides a soothing effect that makes it easier to smoke and lead to nicotine addiction; menthol is a social justice issue.

Marissa Vital, program manager at Seven Hills – in support of proposed regulation changes, menthol, mint and wintergreen products have and continue to target LGBTQ, people of color and youth community; chemical compound makes it easier to smoke.

Daniel Freitas, Fairhaven Board of Selectman – adults make their own choices; asked Board when the last inspection was performed that caught a tobacco establishment selling to a minor? Joseph Carvalho stated within the last five months, two establishments have sold to minors. Mr. Freitas asked what happened as a result of selling to minors and Mr. Carvalho stated he issued fines to both establishments. Mr. Freitas stated he is not in favor of the ban; putting the ban into effect will also ban adults the right to make their own decisions; asked when the cap was put in place to only allow twenty establishments to obtain a tobacco permit. Chairwoman Lopes stated the cap was put in place in 2017.

The Health Agent asked Joseph Carvalho to speak in reference to the Town of Fairhaven being in full compliance with tobacco inspections. Mr. Carvalho explained that during the tobacco inspections for this year, two out of 19 operating tobacco establishments had sold to minors, which resulted in a \$100 fine. The Health Agent was notified of the two violations and this information would've been turned over to the Board.

The Health Agent asked Sarah McCloughlin from MHOA to speak in reference to the current litigation; Fletcher Tilton represents a number of establishments within communities that have put the flavor ban into effect and Cumberland Farms has also started litigation. The Town of Fairhaven would be sued by both Fletcher Tilton and Cumberland Farms if the ban is put into effect. There are eight other communities that are in litigation with either one or the other or both Fletcher Tilton and Cumberland Farms.

After the Board had heard from the audience, Chairwoman Lopes informed the public that the goal was to hear public comments regarding the ban before a decision would be made. It has been asked from the State that the Board look into and consider the flavor ban. Colleen Jackson asked when the Board would make a final vote whether or not to put the ban into effect and Chairwoman Lopes stated the Board is unsure of when this vote would take place. The Board is still waiting to see the result of the current litigations within other communities.

Chairwoman Lopes asked for a motion to close the public hearing and to reconvene with the regular meeting. Motion to close the public hearing and to reconvene with the regular meeting was made by Mr. Silvia; seconded by Mr. DeTerra. The motion passed unanimously.

## **Health Agent's Report:**

Ms. Freire-Kellogg informed the Board of the Household Hazardous Waste event schedule for Saturday, October 26, 2019 from 9a.m. until 2p.m. MXI will be the hazardous waste hauler. Latex paint reclaim will be offered again. The number of cars accepted will be 260.

Ms. Freire-Kellogg introduced Reid Santos, the departments' new intern from UMass Dartmouth. Ms. Santos is interested in learning more about public health before applying to graduate school. Mr. DeTerra stated he wanted to be part of the interns' ride along.

Ms. Freire-Kellogg updated the Board about the flu clinics. There will be a flu clinic at the Board of Public Works on October 30<sup>th</sup> from 3-5p.m. and at the Council on Aging on November 12<sup>th</sup>. Information is on our website and is available to the public.

Ms. Freire-Kellogg informed the Board of the complaint received from Fairhaven Smoke Shop. The complaint letter and all signatures obtained from the petition against the tobacco flavor ban will be filed in the office.

Ms. Freire-Kellogg informed the Board there has been an ongoing complaint made through the Selectmen Office regarding dog feces not being picked up by dog owners on Green Street. The Health Agent spoke with the Animal Control Officer; there is a by-law through the Board of Health about not picking up after your dog, however a correction order would be issued to the owner of the property that has the dog feces on the property. The Animal Control Officer said he could attempt to locate the owner of the dog by researching the breed of the dog through its dog license. The Health Agent believes the fine specified in the by-law should be issued through Animal Control or the Police Department.

Ms. Freire-Kellogg informed the Board it is time to apply for retail food standard funds through NACCHO; a letter of support from the Board was signed last year in order to apply for funding. The Health Agent asked the Board to resign another letter of support to attach to the grant application. Mr. DeTerra refused to support the NACCHO grant funding opportunity, stating he has received numerous complaints from food establishments about the grant putting restraints on their business. The Health Agent asked who would complain about the department receiving grant funds and Mr. DeTerra stated when grant money is received, more restrictions are put on food establishments. The Health Agent responded it is part of the Selectmen's Goals that the department apply for grant funding.

Ms. Freire-Kellogg reminded the Board of the permit renewal period. The notice for all permit renewals has been emailed to the establishments who have provided their email addresses and has been posted to the departments' website. A reminder email will be sent mid-November.

Ms. Freire-Kellogg informed the Board she had a meeting with Mark Rees, Town Administrator, to discuss her annual step increase. Mr. Rees informed the Health Agent since she answers to the Board, it is their decision whether or not a performance evaluation be complete prior to approving the annual step increase. Mr. DeTerra stated this should be discussed during the next Board meeting, where there will be enough time for paperwork to be completed. Chairwoman Lopes mentioned the Health Agent hasn't received her step increase since August; the next Board meeting would make three months. Mr. DeTerra stated the topic was on the previous meeting agenda, however the Health Agent skipped over the item for discussion and the performance evaluation was not in his packet. Mr. Silvia asked whether or not the Board wanted to complete an evaluation and Mr. DeTerra insisted an evaluation be done, as

it would make the Board better. Chairwoman Lopes informed the Board an evaluation has never been done previously for a Health Agent. The Health Agent stated she asked for an evaluation to be done last year and was told by the Board that they don't perform evaluations. Chairwoman Lopes made a motion to approve the Health Agent's annual step increase and Mr. DeTerra stated "only because you work for her sister." The Health Agent stated there is no process to have this evaluation completed. Mr. DeTerra stated all three Board members are the Health Agents' boss, not just one member. Mr. Silvia asked how much of an increase is the Health Agent scheduled for and felt it to be unfair to vote on a figure when that figure is unknown. Chairwoman Lopes stated the discussion would be on the agenda for the next meeting and Mr. Silvia stated whoever wants to turn in a review should do so for the next meeting. Mr. Silvia mentioned he would meet with Mr. Rees for a discussion.

Ms. Freire-Kellogg informed the Board of a passed Title V inspection report for 23 Goulart Memorial Drive. Motion to accept the Title V inspection report was made by Mr. Silvia; seconded by Mr. DeTerra. The motion passed unanimously.

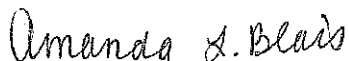
Ms. Freire-Kellogg informed the Board she will be sending a thank you letter to the Board of Public Works for removing the sunscreen dispensers and assisting with the mattress recycling grant program.

**Invoices/Other Business:**

The next Board meeting will be November 14, 2019.

There being no other business before the Board, Mr. Silvia made a motion to adjourn and was seconded by Mr. DeTerra. The motion passed unanimously. Meeting adjourned at 8:30 p.m.

Respectfully submitted,



Amanda L. Blais  
Recording Secretary/Administrative Assistant