

TOWN OF SHELBURNE
Minutes of Meeting
Board of Health
Tuesday, September 15, 2015

A duly posted meeting of the Shelburne Board of Health was held on Tuesday, September 15, 2015 at 6:00 pm in the meeting room at Shelburne Town Hall, 51 Bridge St., Shelburne Falls, MA.

Present: Bob Gonzalez, Chair
Deb Coutinho, BOH
Rob Hicks, BOH

Administrative Assistant: Liz Kidder

Audience: Mary Kersell-FH-STOPP, Melissa Ward-Partnership for Youth, Ken Farbstein-Tobacco Free Mass, Michele Komosa, Daravuthy Lean, Ellen Eller, Michael Eller, Sylvia Davenport

The meeting was called to order at 6:00 pm.

A motion to approve the minutes as written of the Shelburne Board of Health July 21, 2015 meeting and public hearing was made by Deb and seconded by Rob.

Vote: 2 in favor, 0 opposed, 1 abstention by Rob who was not in attendance at that meeting.

Poll of Audience - no comments presented.

Appointments – none.

Special Permit Applications – none.

A motion was made by Deb to temporary suspend the Board’s regular meeting so that the Public Hearing on the proposed regulations entitled “Regulation Restricting the Sale of Tobacco Products” can be opened, Rob Seconded.

Vote 3 in favor, 0 opposed, 0 abstentions.

6:15pm : the public hearing for the proposed Shelburne “Regulations Restricting the Sale of Tobacco Products” was called to order by Chair Bob Gonzalez. Bob asked Deborah Vincent-Coutinho to chair the public hearing on behalf of the Board.

Deb welcomed everyone to the Shelburne Board of Health Public Hearing to receive input on a proposal to regulate the sale of tobacco and nicotine delivery products. She noted the Board’s appreciation of all those in attendance taking the time to be here. She said that a copy of the proposed regulation was on the table at the front of the room. In the interest of time, she asked everyone to adhere to the following ground rules:

- Any person wishing to make comments should sign in. The sign-in sheet is located on the front table. Please write legibly and include your address.
- Before addressing the Board, you should have read the proposed regulations.
- When addressing the Board, please identify yourself by name, address, and any professional affiliation you may have that may impacts your comments.
- Identify the section of the proposed regulation on which you wish to comment.
- Please limit your comments to 3 minutes so that other members of the audience may have a chance to speak.
- Please be considerate of those persons speaking, whether you agree or disagree with them, and refrain from commenting out of turn. Any person showing verbal disrespect to a person speaking will be asked to leave the public hearing.

Deb noted that she had personally hand delivered copies of the proposed regulations to all five of the stores who are licensed to sell tobacco in the town of Shelburne.

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Ellen Eller, 1 Homestead Ave., Buckland, noted she and her husband are the owners of Sawyers News. While she totally appreciates the health risks and is a former smoker herself, she doesn't believe that changing the age from 18-21 will make a difference in children starting to smoke. She remembers how the habits developed over time. She feels that this a case of over regulating the situation. She really questions another governmental step in regulating people and people's choices. Michael Eller, stated that since we are talking about younger people who still live with their parents, why is the burden being put on the store owner and not on their parents. Young people who can go and buy a gun and go off to war should be able to buy their own cigarettes.

Michele Komosa noted she works in the regional tobacco control programs. She wants to comments on section G. "Sale of Flavored Tobacco Products Prohibited". Dr. Ruth Potee, a local doctor specializing in opiate addiction, has shown a connection between younger aged children who move on to other addictions. She said that the prefrontal cortex of the brain is not fully developed by age 18 and therefore delaying the use of cigarettes is very important. In regards to flavored tobacco products, research has been done that concludes adults are not using the flavored products, those are being marketed towards children.

Michel Eller stated that they are not against the regulations as they pertain to the flavored products or e-cigs, they are against the age change to 21 years old.

Ken Farbstein of Tobacco Free Mass, submitted a copy of a letter to the New York Times regarding the advantages of restricting the sale of flavored tobacco products. Ken mentioned that he also has copies of other briefs that he can submit if the Board would like more documentation. He said that if Tobacco 21 would go nationally, it would save thousands of lives. He noted that many people present the argument that people under age 21 can serve in the military, but he noted that car companies will not rent cars to individuals unless they are age 25. The military has actively tried to discourage smoking by soldiers since they have determined that it makes them less focused.

Melissa Ward stated that she is representing the Partnership for Youth program and that she has also submitted a letter of support to the Board via email. She feels that when such regulations that are put in place by the local government it is sending a strong message to the community that adults care whether young people use these substances.

Mary Kersell of FH-STOPP, in reference to raising the minimum age to 21 noted that one of the major effects of raising the age in a National Institute study is that younger youth are less likely to ever start smoking. It probably wouldn't affect older people now-- most of the impact will be on the very youngest kids. The longer we can delay the onset of tobacco use, the more young people are less likely to ever start smoking; therefore it is an effective public health strategy. She noted that many towns locally have passed these regulations throughout Hampshire and Franklin Counties. Buckland has held their hearing but has not yet voted. Many of the communities in the coalition have passed them. Granby did not pass 21 but did pass the other regulations. Mary noted that 74 communities in the state that have already passed the Tobacco 21 regulations. Mary submitted a copy of the list of towns for the record.

Michael Eller asked if there is a state regulation relative to age. Mary Kersell replied that the State regulation is 18 and communities can be more restrictive but not less restrictive. Michael Eller asked about a recent decision by the state supreme court related to sex offenders under which Springfield was told they couldn't be more restrictive and isn't this the same situation. Mary Kersell said this proposed regulation was within the Towns' authority.

Ellen Eller noted that she questions that smoking leads to a possible opiate problem and the study stating that soldiers who smoke are less focused; at what point is there going to be regulations that restrict the kind of candy that can be sold. She understands the negative effect of smoking but the principal she is concerned about is over regulation; what are we really regulating when there is already a regulation setting 18 as the age for purchasing tobacco.

Ken Farbstein submitted an article for the record and noted The American academy of Pediatricians and other health associations have supported raising the legal age to 21. All these bodies have concerns about public health and they all support raising the age to 21.

Deb noted that the Board will be deliberating later this evening on the regulations and will consider the comments presented during the hearing.

A motion to close the hearing was made by Deb and seconded by Bob.

Vote: 3 in favor, 0 opposed, 0 abstentions.

The Public Hearing was closed at 6:40pm.

A motion to reopen the meeting was made by Bob and seconded by Deb.

Vote 3 in favor, 0 opposed, 0 abstentions.

Chairman Gonzalez called the Board of Health meeting back in session at 6:41 pm.

Deliberation on “Regulations Restricting the Sale of Tobacco Products”. The Board reviewed all the letters and emails that had been received and the comments made during the hearing.

Rob asked if there needs to be a unanimous vote for the regulations to pass; it was stated that it is just needs to be a majority vote. Deb noted that she has been to several meetings in other towns listening to the stories about all the problems for young people who start smoking at a young age. Deb feels very strongly in favor of moving the minimum age for the purchase of tobacco to 21.

Rob said he is torn. He said he would feel better if this was a state law. He recognizes he has a responsibility as a BOH member but he also appreciates the problems of small retailers and he really wishes it was a statewide regulation. He agrees with many comments that parenting and education are concerns that need to be addressed. He said he wishes there were more regulations on the manufacturers to not create those flavored products that entice young people.

Bob is torn about the regulations too. He is 100% in favor of regulating flavored products but is torn on the 21 age limit. He also wishes it was a state regulation. The state has so many different definitions of adult age, 18 for some things, 23 for child support, etc. As a Board of Health Member he understands his role is to look at the public health impact of the proposed regulations.

Mary Kersell said she finds a compelling need to take tobacco out of high schools. It is very easy for 18 year olds to buy cigarettes for younger children. Twenty-one year olds are less likely to hang out with younger children still in local schools. She said it is harder for a young person to look 21 rather than 18. Mary said the BOH could try it and if it doesn't work, then the regulation could be rescinded. Mary noted that in some of the towns that have already passed this regulation, the actual smoking rates did go down and no stores went out of business. Ken noted that he is from Needham and studies have been done that show there has been a huge positive impact on public health without local stores going out of business. Deb mentioned she had been to a meeting where a Doctor talked about how this regulation can be very effective at reducing the numbers of young people starting to smoke.

Ken noted that when the legal age for alcohol was lowered to 18 there were many more car accidents and that after the age was raised back up to 21 the numbers of accidents went down. Deb noted that 2 of the 5 licensed stores in town have had two violations each and have had suspensions. Deb firmly believes that if there is less smoking at the high school that is a public health advantage. Mary and Deb noted that the owner of Happy Trails said she was totally in favor of raising the age to 21 and the owner of Keystone had stopped in and said he had no problem with the regulations. The Board reviewed the emails that had been received from residents in town and regional organizations. It was noted that only 1 email from the Coalition for Responsible Retailing had issues with raising the age to 21 and that there was a detailed response to that letter from Cheryl Sbarra of the MAHB.

Mary commented that it would be wonderful if the state would raise the age to 21. In reality, the state will likely change the age limit once there is a ground swell by local boards. It just took a year after a lot of towns adopted e-cig regulations and then the state

passed their own related regulation. If the Board wishes it was the state making the change, then Shelburne passing the regulation would help lead to that within just a few years.

Rob is concerned about where will all the regulations end. Mary noted that the Board is protecting children who really have no franchise or protection. The BOH has the ability to help children who need protection. The BOH is in the position of representing an underrepresented group. It is a difficult situation but there is something the Board can accomplish. Deb said if you save one kid from smoking, it is important. Deb's father was a smoker and Deb has asthma and her brother needed a double lung transplants. If you can stop kids from smoking then probably their kids won't smoke. It is a small town and she feels the Board can make a difference.

Ken Farbstein said that he had heard that most smokers support raising the age to 21 since they wish they had never started. Deb noted that the owner of Happy Trails had said just that. It was noted that of the 5 stores, 3 of the stores have stated they were okay with raising the age limit. One, Good Spirits had said he would find it easier for his liquor store to just check for one age limit rather than 18 for cigarettes and 21 for alcohol. It was noted that Sawyers news was the only store that has stated opposition to the regulation out of the 5 stores licensed in Shelburne. Ken noted that 70% of the public supports raising the age limit to 21.

It was noted that the Town of Shelburne already has regulations restricting the sale of tobacco products that was passed last year. Mary Kersell said these revised regulations include: language relative to the flavored products, the age limit of 21 for the purchase of tobacco products, restricts the sale of tobacco within 500 feet of a school, revocation language that allows the Board (may) to revoke a permit if someone is an egregious offender (once revoked it can't be undone), and a bit of language about having to dispose of the e-cigarette cartridges in a safe way since it is classified as a hazardous waste. This regulation mimics the FDA regulations of mint (menthol) products and is therefore not in conflict the FDA. If someone wanted to open a tobacconist store, the regulation allows that only people who are over 21 can enter the store and in that situation, the store can sell the flavored tobacco products. The goal is to get the products out of the hands of kids. It is not banning anything from adults; it is keeping the products from kids. A tobacconists store would be selling only tobacco products.

A motion to approve the regulations as presented was made by Deb and seconded by Bob.

Vote: 3 in favor, 0 opposed, 0 abstentions.

A motion was made by Deb to rescind the previous Town of Shelburne Tobacco Regulation Restricting the Sale of Tobacco Products and substitute it with the newly passed regulation.

Vote: 3 in favor, 0 opposed, 0 abstention.

The Board set November 15, 2015 as the effective date for the new regulation. The FH-STOPP staff will contact each of the licensed stores in Town and education them about the new regulations and give them the appropriate warnings in regards to the flavored tobacco products.

Review of phone messages, mail and emails – the board reviewed a file of emails received.

Cooperative Public Health Service Program update – Deb noted she was working with Lisa White to set up flu clinics.

Planning Board updates – Liz distributed copies of the zoning definitions being considered by the Planning Board has part of the annual updating of the zoning bylaw. She noted that since she owns a short term vacation rental in the village that she sought and received a waiver under the conflict of interest law from the Shelburne Selectboard. Since she works for both the Board of Health and Planning Board she and Deb had noted inconsistencies between the zoning definitions for lodging house, bed and breakfast home, and bed and breakfast establishments. These inconsistencies could prove to present enforcement problems where one business could be allowed or regulated by the Board of Health and have conflicting rules under zoning. The consensus of the Board was to suggest to the Planning Board that the pertinent definitions in the zoning bylaw be revised to be consistent with the Mass DPH definitions.

MAPHCO mini-grant program update – Deb noted Shelburne was able to get some additional equipment for emergency services that has come in through the grant and Deb is going to be storing the equipment in some of the other towns in the Mohawk EDS as appropriate. Shelburne is able to obtain some flu vaccine through MAPHCO efforts that will allow the Board to do a clinic at the Senior Center and the school. We will have to charge this year but people with insurance can bring their insurance card to the clinic. Lisa White is in the process of purchasing the flu vaccine. There has been some reassignment of staff at the FRCOG and Deb will still be attending the meetings and bringing back information. Deb expects to shortly receive information on the next round of mini-grants. If any board members know of items needed in the community they should let her know.

KM Pipeline update - Bob is representing the Board of Health on the Shelburne Pipeline Committee. Deb is recusing herself from any discussion of the pipeline due to its proximity to her home.

Inspections

Anonymously reported septic issue problems on Little Mohawk Rd. have been resolved. Deb has talked to the person who reported the problem. A perc has been done, the Board is awaiting plans to approve and there is a contractor lined up to do the repair work.

Status of food inspections – Deb and Rob reviewed food service inspections that have been done this year. At this point in the year they are up-to date on inspections.

Mocha Maya – Rob went in response to an email and he will go again in November. An email had been received from Karen Powers asking to meet with the Board. Liz was asked to inform her of the next meeting and that she is welcome to come in at that time.

Iron Bridge Paving – Deb reviewed the complaints about the iron bridge paving that the Board had received. Deb said neither Buckland nor Shelburne Town Halls were notified of the construction work. It was decided to contact Steve Kulik for help since it was the Mass Highway Department which had been responsible for that repaving project, Steve Kulik contacted the Mass Highway and the Town received a complete explanation of the paving project scheduling and the materials sprayed on the bridge. It was noted that Steve Kulik was very helpful.

Permit requests – Cider days is coming up the first weekend in November. Rob spoke with organizer, Sue McFarland, who said they have outgrown the Shelburne Town Common but they will be using the Community center for ongoing workshops. They expect around 3-400 people stopping through for workshops but the dinner will be at Berkshire East. There will only be one or two vendors set up outside of the community center. Deb will be meeting with the new Director of the GSFABA about Moonlight Magic and the BOH temporary food service permit needs for that event. Deb will report back at the next meeting.

DPH reports – none presented

DEP reports – none presented

Invoices – Liz reported that most inspection fees have been received but that she will be rebilling the Villager restaurant.

Trainings and Certifications – Deb said that she has an opiate meeting this evening and will be trying to make that after this meeting.

Other Business not reasonably foreseen 48 hours prior to the meeting – Deb brought up the increased responsibilities for the BOH -all those things that the Board is required to do. Deb mentioned that Liz is putting in more time than she is paid for. Deb is keeping track of her time and there is just too much to do. Deb is going to write something up because she needs more time from Liz; Deb is going to so many meetings and trying to stay on top of things. Liz also works on the mini-grants which has brought grant money into the Town to purchase much needed supplies.

Schedule next meeting – November 10th, 6pm.

A motion to adjourn the meeting was made by Rob and seconded by Deb.

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Vote: 3 in favor, 0 opposed, 0 abstentions

The meeting was adjourned at 7:50 pm.

Respectfully submitted by:

Liz Kidder
Administrative Assistant

List of Documents:

Documents received relative to the Public Hearing:

August 5, 2015 Letter from Phoebe Walker, FRCOG Director of Community Services and Kat Allen & Rachel Stoler, Partnership for Youth Co-Directors

Sept. 1, 2015 letter from Max Rangel, Columbia University

Sept. 15, 2015 Letter and email from Ken Farbstein, American Cancer Society Action Network

Sept. 15, 2015 Letter and email from Cheryl Sbarra, Massachusetts Association of Health Boards

Sept. 15, 2015 Letter and Email from Lester Hartman, Medical Director for the Patient-Centered and Jonathan P. Winickoff, Division of General Academic Pediatrics

Sept. 14, 2015 Letter and Email from Matthew McLachur, Co-Executive Director of the Coalition for Responsible Retailing

Article: Retail Impact of Raising Tobacco Sales Age to 21 Years

Tobacco21 brochure "Healthy Towns, Healthy Kids"

Article by Lester Hartman, MD, Co-founder of Massachusetts Tobacco21, "Why Tobacco21 Time is Now!"

May 16, 2015 Email from Lester Harman

Article – Tobacco 21 – An Idea Whose Time Has Come by Winickoff, Gottlieb, Mello

Article – Community reductions in youth smoking after raising the minimum tobacco sales age to 21 by Schneider, Buka, Dash, Winickoff, O'Donnell

Nicotine and the Developing Human, A Neglected Element in the Electronic Cigarette Debate by England, Bunnell, Pechacek, Tong, McAfee

Sept. 14, 2015 Letter and Email from Chia Collins

Sept. 8, 2015 Email from Linn Bower

Letter from Allyson Perron, American Heart Association/Stroke Association

Sept. 14, 2015 Letter and email from Melinda Calianos Director, Tobacco Free Community Partnership for Hampshire and Franklin Counties

August 31, 2015 email from Shelburne Planning Board on Sept. 23 Public Information Meeting

Article on What is Natural Resource Protection Zoning (NRPZ)

MDPH notice on food recalls.

Excerpts from Shelburne Zoning Bylaws regarding Lodging Houses and Beds and Breakfasts.

Food Service Establishment Inspection Checklists

Memo regarding Municipalities and Effective dates that Towns Passed Tobacco21 regulations

Article submitted by Ken Farbstein "Public Health Implications of raising the Minimum Age of Legal Access to Tobacco Products"