

TOWN OF SHELBURNE  
Minutes of Meeting  
Board of Health  
Tuesday, January 20, 2015

A duly posted meeting of the Shelburne Board of Health was held on Tuesday, January 20, 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  
Rob Hicks

**Administrative Assistant:** Liz Kidder

**Absent:**

**Audience:** Daravuthy Leav, Mary Kersell, FH-STOPP

**Press:**

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

**Motion to approve the minutes of November 18, 2014 was made by Deb and seconded by Rob.**

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

Appointments - none

**Hearing** – Good Spirits Liquor Shoppe Violation of Tobacco Control Regulations

Deb Coutinho noted that the Board of Health was holding a hearing regarding two violations of the Shelburne Regulations “Restricting the Sale of Tobacco Products and Nicotine Delivery Products” incurred by the Good Spirits Liquor Shoppe. The two violations are as follows:

1. November 21, 2014 – Section D Tobacco Nicotine Delivery Product Sales to Minors Prohibited.
2. November 29, 2014 – Section F. Cigar Sales Regulated: 1. “No retailer, ....shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars”, and Section G. Prohibition of the Sale of Blunt Wraps: “No person or entity shall sell or distribute blunt wraps in the Town of Shelburne.”

The violation notice #0605 dated November 21, 2014 was issued because of the sale of tobacco product to a minor. The violation notice #0621 dated November 29, 2014 was issued because of the sale of blunt wraps and two pack cigars. Deb Coutinho noted that the Shelburne regulations state in Section O.1.b “in the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.”

Mary Kersell, of the FH-STOPP, noted that her coalition through their work with the FDA has the responsibility of linking the violations of local and state regulations. Mary reviewed the two violations and presented photographs of the items/products that were purchased. These photos were entered into evidence. Their coalition does at least one inspection every year of every shop in their participating towns to check to make sure all the conditions of the local regulations are being complied with. When their inspector went into the store on the 29<sup>th</sup>, he found blunt wraps being sold and little cigars being sold for \$.69. They issued a second violation fine of \$200. The first violation had a \$100 fine. Deb noted that Shelburne has no control over when the state does their inspections. In a period of eight days, there were two violations of sales at one store. Mary did not have the products that were purchased but had filled out a form and had then phoned Deb Coutinho immediately to inform the Shelburne Board of Health. Deb asked if Mr. Leva, owner of Good Spirits Liquor Shoppe, if he had any comments. He said that he had not received any notices of blunt wraps not being allowed for sale. Deb noted that she had both mailed and hand delivered copies of the regulations and any changes were mailed or hand delivered. Mary asked if we included information on the regulations when the permits are issued. Mary noted that the back of many permits include a list of the limitations and the permittee has to initial that to ensure that they have received this information. Deb noted that the draft regulations were taken around by hand before the hearing on the Town regulations. The only person who attended the hearing was Mr. Patal from the Keystone market and Mary Vilbon of the business association. Mary said that she or their staff person Dennis visited all the stores after the regulations went into effect on April 2013

and went over the new regulations. Mary said that she felt there had been ample notification of local store owners of the new regulations. Mary said that she is only notified of inspections by the Federal FDA if there is a violation.

She suggested that going forward we add a list to the back of the permit for the owner to sign when they get their permit from the Selectboard each year. Since we didn't have Terry Narkewicz's file, we didn't have verification as to whether there is a list of the regulations on the permit itself. Rob noted that we should make sure that is on the list so that the owners can sign off every year to get their permit. The owner noted he hadn't received the regulations and that maybe it went to one of his staff but he wasn't aware of it. The owner did sign the violations and paid the fines; he was aware of the violations but stated he had no prior personal knowledge of the regulations.

Deb stated that there were two violations within 9 days, the stores were hand delivered the information, and she noted that the Shelburne Board of Health takes their regulations very seriously. Rob noted that the board had copies of the signed violation reports so the Board felt the evidence was there to substantiate the violations. Deb said it was necessary for the board to vote to suspend the license for one week. The owner asked when the suspension of his tobacco sales would be. He said he would prefer a suspension right away. But it was noted that the Board needs to do paperwork to make it official. The owner would also have to remove all the tobacco products from his store. It was decided that the suspension would take place Sunday, Feb. 1<sup>st</sup> through Saturday, Feb. 7<sup>th</sup>. The Board will get him another copy of the regulations. Deb asked the owner for his personal contact information so that we can be sure that he is receiving the information from the Board. Mary told Mr. Leav that if there is a violation within the next 3 years, there would be a full one-month suspension and a \$300 fine. Deb said that she would visit his store on Feb. 1<sup>st</sup> and verify that all the tobacco products are not on the premises.

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

Vote: 3 in favor, 0 opposed, 0 abstentions

**A motion to suspend the Tobacco Sales permit of Good Spirit Liquor Shoppe and to have them remove all the tobacco products from the premises for the time period of Feb. 1 through Feb. 7<sup>th</sup> was made by Deb and seconded by Rob.**

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

Mary reminded Mr. Leav that the FDA will have Good Spirits on their radar for more inspections. The FH-STOPP will have Dennis do an educational visit to make sure they understand the regulations before he does another compliance inspection. Mary suggested that the local liquor commission, usually the Selectboard, be informed that there have been violations.

**Special Permit Applications:** none presented

#### **Review of phone messages, mail and emails**

**a. Kinder Morgan Pipeline** – request for information and consideration of a Shelburne Review Committee

Deb reviewed the materials and correspondence received by the Board of Health from Lori Ferry the AECOM project manager. Deb noted for the record that her house is within the .25 mile corridor and that she is going to be talking to Town Counsel regarding how that would affect her involvement in any reviews.

Liz reported that the planning board had sent a letter to Lori Ferry at AECOM and presented a draft BOH letter that she had developed for the BOH to use as their response. Liz mentioned that the FRCOG is looking for representatives to serve on a regional review board; Tom Miner, Shelburne Concomm, is on it as both a regional and a Shelburne representative. Rob said he thought the letter was good and that we should send it.

A motion to sign and mail the letter to Lori Ferry was made by Deb and seconded by Rob.

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

Bob suggested sending an email supporting the development of a Pipeline review committee for Shelburne and requesting a BOH position on the committee.

**Cooperative Public Health Service Program update** – the latest meeting was cancelled and will be held next week. Deb said they are still battling with the financial support for Flu clinics. Until they get an answer, we can't finalize the mini-grant expenditures.

**Planning Board updates**- Liz passed out the Planning Board letter to Lori Ferry at AECOM.

**MAPHCO – Mini-grant program update** – the grant expenditures are in limbo waiting for a response on the request to support flu clinics through this grant.

**Emergency Management Committee update** – the next meeting will be held in February. Deb and Chris Meyer did a mini-emergency shelter at the Senior Center and evacuated some seniors from Highland Village. The Highland Village policy is they won't implement any emergency procedures unless the power is out for at least 24 hours. Deb is going to work on this. During the last power outage, the power had been out for 18 hours and a gentlemen from the state told the Highland Village supervisor his very strong opinion that this was an inadequate response. Deb will continue to work on this. The Town Hall now has a plug installed for a generator and can serve as an emergency shelter. The other site is Trinity Church which has a great kitchen, bathrooms and it is also higher than anticipated floodwater levels. Fellowship Hall is good for rural Shelburne with Trinity Church good for the village.

**Inspections** Deb and Rob are progressing with food inspections. Deb has Hagars and the gas station left. Rob noted he has talked with Ponte Restaurante about what they can do in their new small space. Rob noted he did a couple of inspections last week and is going to do a couple of more this week.

**Permit requests** – one of the Title Vs done recently, needs a variance since the well is 99 feet from the septic at a house that had a fire.

#### **DPH reports**

a. Tobacco21 FH-STOPP – Mary reported there is a new model regulation – 5 new things mimicking the federal regulations.

1. new definition of tobacco products
2. ban on the sale of flavored tobacco products – everything except menthol (a youth prevention strategy)
3. clarification of the cigar language
4. banning sales within 500 feet of a school
5. raising the minimum sales age from 18-21 – that means 18 years old wouldn't be able to buy products for younger kids in high schools. It also addresses the medical issues of brain development into the mid 20's -- the more you can delay people being attracted to bad habits or addiction the better. Just as it was better going from 18-21 for alcohol; most people start smoking between the ages of 18-21, therefore the longer you can delay it, the better.

Mary noted she and Deb had gone to a presentation on the effort to change the age to 21. Mary said that Montague is thinking of doing it, Amherst is very interested, Leverett is considering it, and Greenfield is thinking about it. Randy Croshure of Gill apparently said it should just be a state law. Deb said she was all for 21 based upon every piece of information she has been able to find. Rob said he would like to know what the financial impact would be on local stores. Mary said that there was one store owner who said it was only 1-2 % of their business. From the business perspective, it would actually make it easier for liquor stores since then they would only be checking ages for the same age, 21. Bob G. noted that bars strongly objected to not having smoking in their bars out of fear of sales lost when in fact they actually had increased sales because more people wanted to come to a bar that wasn't full of smoke. Deb and Bob both thought holding a hearing would be good to see what the reaction in town is. Rob noted then that a business could come and state their case if it was really going to hurt their business.

Mary suggested that the Board be confident that it is really just a public health issue. Mary also noted we don't have to go with all 5 new conditions. Deb said the Board can read it all over, and at the next meeting make a decision on holding a hearing. Mary has already edited our regulations to include the updates. At this time Mary said that 40 towns in Massachusetts have gone to age 21, in Western Mass, Hatfield is the only one that has passed it so far. The consensus of the Board was to proceed and to get the public input at a hearing on the proposed regulation changes.

**DEP reports** - none

**Invoices** – Baker’s pharmacy inspection fee has been received and there is an invoice out to Foxtown.

**Trainings and Certifications** - Deb noted that all Board members should go online and do the Conflict of Interest certification. Rob Hicks submitted a copy of his certification.

**Schedule next meeting:** Tuesday, March 17, 2015

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

Vote: 3 in favor, 0 opposed, 0 abstentions

The meeting was adjourned at 7:43pm.

Respectfully submitted by:

Liz Kidder

Administrative Assistant