

Town of Concord
Board of Health

Minutes of the Meeting
February, 13, 2017

PRESENT: Ray Considine, Chairman
Dr. Deb Greene
Mark Haddad
JoAnn DiNardo

Susan G. Rask, Public Health Director
Karen M. Byrne, Administrative Assistant

OTHERS: Jim White, Concord Convenience, 107 Lowell Rd; Namesh Patel, Nine Acre Convenience; Jennifer Clarke, Youth Services Coordinator/Town of Concord.

1. **OPEN MEETING**

Chairman Ray Considine opened the meeting at 7:00 p.m.

2. **PUBLIC HEARING – TOBACCO VIOLATION HEARING**

Concord Convenience

On October 22, 2016, youth compliance checks were conducted by Maureen Buzby, Tobacco Control coordinator, for adherence to Concord Board of Health Regulation, “*Sale of Tobacco Products and Nicotine Delivery Products.*” This regulation defines the Minimum Legal Sales Age (MSLA) as twenty one (21). During these compliance checks, Concord Convenience staff allowed two male youth assistants (18 & 19 years of age respectively) to purchase tobacco and/or nicotine products and were not asked their age or to show identification to prove their age.

James White, co-owner met with the Board on behalf of his daughter Elizabeth Akehurst-Moore who manages both the convenience store and restaurant (Trails End Café), 107 Lowell Road to discuss the violation that had occurred in October. Mr. White repeated sentiments expressed in a letter to the Board in November 2016 (requesting a continuance) apologizing for the offense and stating that both he and his daughter take the sale of tobacco products to minors very seriously. All convenience store staff has been retrained and required to sign a certification indicating that they understand the consequences of the offense. Mr. White said that he too understood the ramifications of the offense and hoped not to be in front of the Board of Health again.

Board members reiterated that they take the sale of tobacco to minors very seriously and encouraged Mr. White to provide routine training for the staff at the convenience store so that it “stays fresh” and to reinforce how important it is to comply with the tobacco products regulation. Consensus was that no further action was required at this time and the Board thanked Mr. White.

The Chairman announced that items would be taken out of order at this point pending the public hearing scheduled to begin at 7:15 p.m.

3. **SEPTIC BETTERMENT PROGRAM**

Final Betterment Liens Assessment

The replacement onsite sewage disposal systems for the following properties have been installed and inspected. All invoices for the properties have been processed and the betterment paperwork closed out by Administrative Staff. Ms. Byrne requested that the Board issue the Order to Assess the final betterment liens for:

- 109 Minuteman Drive (Carpenter) - \$30,000
- 54 Prescott Road (Hubbard) - \$26, 150

Mark Haddad moved that the Board VOTE to Order to Assess the Betterments for the above referenced properties in the amount as specified and that such ORDER be forwarded to the Town Collector. JoAnn DiNardo seconded it. All VOTED in favor.

4. **MINUTES AND BOARD CALENDAR**

The minutes from the November 22, 2016 December 20, 2016 meetings were reviewed and discussed. JoAnn DiNardo moved to approve the minutes as submitted. Dr. Greene seconded it. All VOTED in favor.

The next regularly scheduled meeting of the Board of Health is March 21, 2017.

5. **POLYSTYRENE BYLAW**

Over the past several months, the Board has been discussing its role of being tasked by the Town Manager as the Town entity responsible for granting waivers to facilities (restaurants, retail stores, etc.) that will be affected by the Polystyrene Bylaw that was passed at Town Meeting 2016. Last fall, the Polystyrene Education and Outreach Committee was created and part of its charge was to develop criteria to assist the Board of Health in determining what circumstances would constitute an undue hardship and were a valid basis for granting waivers.

Both PHD Rask and BOH Chairman Ray Considine attended the committee meetings and at the January meeting it came up with a list of five (5) criteria for the Board of Health to consider in its review of waiver exemption applications¹. At this time, the Board reviewed those criteria and the draft “Polystyrene Bylaw Exemption Form” developed by staff.

Board members discussed whether Health Division staff would be contacting the establishments affected by this bylaw or if Public Works would be doing so because it was the enforcing authority (minus the waivers). PHD Rask stated that all businesses that are issued a food service permit (retail, establishment, temporary, catering, churches, etc.) will be notified by the Health Department and provided a copy of the waiver request form. Any inquiries relative to

¹ Waiver Criteria developed by PEOC

enforcement of the bylaw will be referred to Public Works. The Board's purview is narrow and relative only to granting a waiver to an establishment unable to meet the requirements of the bylaw when enforcement goes into effect (July 1, 2017)

Consensus was that the draft application waiver form was well done and should be used moving forward. It also determined that all waiver application forms should be submitted by March 1, 2017 so that Administrative Staff could begin to stagger and schedule hearings for potential waiver hearings. Following further discussion, PHD Rask said that she and Karen Byrne would work on getting a mailing out to all affected licensees by the end of the week

At this time (7:15 p.m.) the hearing for Nine Acre Convenience was called to order.

6. **PUBLIC HEARING – TOBACCO VIOLATION HEARING**

Nine Acre Convenience – Show Cause Hearing – Potential License Suspension

Background

In November 2016, the owners of Nine Acre Convenience met with the Board of Health to discuss violations that occurred during youth tobacco compliance checks for adherence to Concord Board of Health Regulation, "*Sale of Tobacco Products and Nicotine Delivery Products*" conducted in October 2016. His establishment was one of (5) that sold to youth assistants (18 & 19 years of age respectively) and was ordered to appear at the November meeting to discuss the matter and provide the Board with a plan to rectify and provide assurances that his staff had been re-trained in tobacco sales protocol within the Town of Concord (MSLA 21).

Since that meeting, PHD Rask advised the Board that the Health Department had received FDA tobacco inspection reports from September 2016 at which time compliance officers found that Nine Acre Convenience sold "blu Plus Cherry Crush e-liquid" to a minor (under 18 years of age – violating state laws). This information was not received prior to November meeting. Upon receipt of the September 2016 FDA report, PHD Rask conducted a routine compliance inspection at the store and found the establishment was selling flavored tobacco products and flavored cigars in packages of twelve for \$7.96. Concord Board of Health Regulations states that "no flavored tobacco allowed/packages must be minimum of five cigars no less than \$10/pkg)." This was the third violation of this establishment within a 24 month period of time and a ticket in the amount of \$300 dollars was issued at the time of inspection.

Following the inspection, Mr. Patel was notified and advised that he would be ORDERED to appear before the Board at tonight's meeting for a show-cause hearing at which time the Board of Health would determine whether it would suspend the Tobacco/Nicotine Delivery Product Sales Permit.

Discussion

Mr. Patel and his staff met with the Board very apologetic about the transactions that had taken place stating that his staff had been retrained on the local sales regulation (MSLA 21) but obviously there had been some confusion as to what they were able to stock on the shelves for sale. Both he and his manager expressed concern that Tobacco Sales Representatives were stocking "their

shelves” with items that are not allowed under Concord’s local regulation and inquired whether a Board member or staff member could walk through the store pointing out what items were allowed.

Board members were not sympathetic to Mr. Patel’s argument. In a terse statement, Chairman Considine said that in his opinion it was clear that neither Mr. Patel nor his staff understood how seriously the Board of Health took the issue of underage sales of tobacco/nicotine products to minors. To blame it on the Tobacco Representatives was “not flying” – it was his responsibility to understand the local regulation which his license to sell tobacco products was issued under and comply with it. Dr. Greene concurred.

As the newest BOH member, Mark Haddad stated that in the last two of the three Board meetings he was in attendance, Mr. Patel had been ordered before the Board for non-compliance of this specific regulation. Mr. Haddad said that did not sit well with him. He agreed with what others had spelled out and reiterated it was clear that Mr. Patel and staff did not seem to fully grasp the implications of not adhering to the local regulations.

Mr. Patel reiterated that he wanted to comply but felt that the tobacco representatives contributed to the issues being presented this evening pertaining to product not sale to minors. He asked for an additional chance to come into compliance. At this point, staff interjected and asked Mr. Patel whether he had ever provided the tobacco reps with the regulation? JoAnn DiNardo segued onto that statement by adding that it was not the tobacco representative’s responsibility to adhere to Concord’s regulations but the proprietors. She asked how often, if ever, Mr. Patel surveyed the tobacco products inventory? Ms. DiNardo felt certain that other items in the convenience store, i.e., soda, snacks etc., were looked at on a routine basis for reordering – it would appear the same protocol would be implemented for tobacco/nicotine products. She said if something is not supposed to be sold – it was his responsibility to remove it from the shelves because it was his license not the tobacco companies.

Board members continued discussion adding that not only were products being sold that were not allowed under Concord’s regulations but, underage sales were happening and the pricing requirements were being discounted. Mr. Haddad told Mr. Patel that in his opinion, there was no debate as to whose responsibility it was to adhere to the parameters of his license to sell tobacco and nicotine products; “your store, your product, your responsibility to know the laws/regulations – local or otherwise to which your license is granted.”

Consensus was to suspend Nine Acre’s Tobacco Sales permit for a set period of time but members debated as to what would be a reasonable length of time for a first offense. Dr. Greene, Mark Haddad and Ray Considine leaned towards a seven day suspension but JoAnn DiNardo felt that seven days was a “slap on the wrist” and in her opinion it should be two weeks minimum to make a clear statement.

Following further discussion, Dr. Greene made a motion to suspend Nine Acre Convenience’s license To Sell Tobacco and Nicotine Delivery Products for the period of seven (7) days effective February 14 through February 21, 2017 with the proviso that each employee at the store be provided with a copy of the Concord Board of Health Regulation, “*Sale of Tobacco Products and Nicotine Delivery Products*” and that a copy of signed written statement from each employee be submitted to the Board of Health indicating that he/she has read and fully understands the regulation. Mark Haddad seconded the motion. The motion carried 3-1 in favor of the 7 day suspension. (Greene, Considine, Haddad in favor; DiNardo not).

Mr. Haddad warned Mr. Patel that if any subsequent violations occurred he personally would not hesitate to recommend a thirty (30) day suspension. All Board members agreed.

PHD Rask instructed Mr. Patel that all tobacco and/or nicotine delivery products must be removed from the retail establishment until such time the suspension has expired. She advised that failure to remove all tobacco or nicotine delivery products would constitute a separate violation of the bylaw.

Prior to leaving, Mr. Patel stated that he would comply and remove everything from the shelves. He asked if Ms. Rask could provide him with copies of the statements to be signed by the employees and she agreed to visit the store in the morning.

7. **DISCUSSION – 2016 YOUTH RISK BEHAVIOR SURVEY**²

Jennifer Clarke, Youth Services Coordinator for the Town of Concord met with the Board to review the most recent Youth Risk Behavior Survey (YRBS) that was conducted in 2016 and to share and discuss topics and programs/services that she (and the town) have been working on for the past year as well as seeking input from the Board of Health on items to which it may collaboratively work.

Specifically focusing on the YRBS and the “Concord” data, Chairman Considine said it could be deceiving because it “looks pretty good and doesn’t look like we need help” – but, he stated that based upon facts presented to the Board independently on the opioid crisis alone (in Concord) would clearly show that is not the case. Some of the positive points of the survey indicated that tobacco use and “binge” drinking had gone down amongst use – but suicidal tendencies and thoughts had increased. He personally felt that in conjunction to what the Board had been discussing at other meetings, it needed to come up with some type of “position” paper as to what issues it would like to see addressed from a public health perspective and how it would like to address them as a community working collaboratively with partners like Ms. Clarke, the Police Department, schools, etc.

Ms. Clarke agreed and noted that although there are many “good” things happening to assist people with particular issues, whether substance abuse and/or another mental health issue, Concord’s “story” needed to be more clearly defined. She said that she personally was “all in” but her time was limited (part time position) and it was her hope that by working collaboratively with other entities perhaps those efforts could be implemented in a more cohesive manner.

Mark Haddad said that he personally was a bit taken aback by some of the other data outlined in the study relative to safety issues ranging from seat belt use, texting while driving, suicidal thoughts, weapons – even at a 2-3% rate he said that was rather concerning to him as a parent of younger children. The drug and alcohol use and the current opioid crisis is extremely worrisome to everyone but he felt that some of these other issues needed to be addressed as well trying to educate the children in schools even at a younger age if necessary.

In closing the discussion, Dr. Greene said that in her opinion, it should not be difficult to draft “Concord’s story” relative to the opioid crisis and some of these other public health/safety issues that were brought to the Board’s attention in the YRBS 2016 survey. In a community where

² Youth Risk Behavior Study 2016

“helicopter” parents are prevalent and where the community base was willing to “fight” for safe playing fields, eliminating plastic in foodservice wares, etc., she would find it difficult to believe the Board of Health could not convey the seriousness of addiction, suicides, mental health and other issues that fall within the purview of public health and the wellbeing and safety of its community and garner the necessary support from Town residents and leadership.

Dr. Greene offered to work with PHD Rask and Ms. Clarke in drafting a letter of intent for the Board’s review at the next meeting and to work with other “partners” in getting the story out in short order particularly as it related to the opioid epidemic crisis.

8. **PROPOSED WARRANT ARTICLE – Town Meeting 2017**

The Board reviewed Article 39³ – “Marijuana Establishment Temporary Moratorium” that will be put forth by the Planning Board at this year’s Town Meeting.

“..To determine whether the Town will vote to amend the Zoning Bylaw by adding a new Section 4.8 Marijuana Establishment Temporary Moratorium....”

The Board reviewed the “Selectmen’s Key – Voting on Positions on Warrant Articles and discussed how it wanted to proceed on this particular article. Consensus was that it was in the best interest of the Town from a public health perspective to adopt a moratorium to allow Town staff the necessary time to consider whether additional regulation of marijuana retail sales and distribution might be warranted as well as consideration that the Town may take action to “opt out” of allowing retail sales all together.

After further discussion, Dr. Greene moved that the Board of Health **Recommend Affirmative Action** of the Planning Board’s proposed 2017 Town Meeting Article 39 – Zoning Bylaw Amendment-Marijuana Establishment Temporary Moratorium as written. Joann DiNardo seconded. All VOTED in favor.

Staff will write a letter to the Planning Board and Select Board on its behalf.

9. **DISCUSSION – BOH “POSITION PAPER”**

The Board of Health reviewed a lengthy summary drafted by the Public Health Director for talking points relating to topics it may want to include in its position paper to Town on potential recommendations to develop necessary substance abuse prevention efforts within the Town (i.e., but not limited to opioid crisis and recreational marijuana). Board members also reviewed a generic template used by other cities and towns as a guide for language on the matter.

Following this discussion, PHD Rask inquired whether the Board of Health felt it appropriate to write a letter to state legislatures (Senators Michael Barrett, James Eldridge and Representative Cory Atkins) outlining its concerns over the recent passage of the legalization of recreational marijuana use and the sale of marijuana in local cities and towns.

Susan Rask suggested that staff draft a letter and email it to the Board within the next few weeks and that Board members send their comments directly to her. She would incorporate for discussion at the March meeting. Administrative Assistant Karen Byrne reminded Board members

³ Zoning Bylaw Amendment – Marijuana Establishment Temporary Moratorium

on proper open meeting protocol and advised that all comments needed to be sent directly to PHD Rask and members should not be discussing via email. All agreed that comments would only be sent to Ms. Rask.

10. **CHAIRMAN'S REPORT**

Mr. Considine asked staff to slate approximately 10-15 minutes on the March agenda for the Board to discuss the 10 essential services/duties of a local Board of Health. Since most of the members are fairly new to serving on a local town Board he felt that it would be a beneficial overview to provide. PHD Rask will obtain the copies of the Manual for Local Boards of Health for the discussion.

11. **STAFF REPORTS**

Items to report had been discussed earlier on the agenda.

12. **ADDITIONAL COMMENTS**

There were none.

The meeting adjourned at approximately 9:30 p.m.

Board of Health
Signature Page
Monday, February 13, 2017

Respectfully submitted by,

Karen M. Byrne, Administrative Assistant
Concord Board of Health

Ray Considine, Chairman

Dr. Deb Greene

Mark Haddad

JoAnn DiNardo