

**Town of Middleton, Massachusetts  
Board of Health**



**MINUTES OF THE MEETING**

May 16, 2012

The Middleton Board of Health held a public meeting on May 16, 2012 at the Fuller Meadow School (Media Room), 143 South Main Street, Middleton, Massachusetts at 7:00 p.m.

**Board Members Present:**

Robert Ambrefe, Chair  
George Demeritt  
Matthew Greenfield  
Paul LeBlanc

**Others Present:**

Derek Fullerton, Public Health Director  
Stacey Haynes, Recording Secretary  
Greg D'Agostino, Liberty Square Group  
Lisa Teichner, Tri-Town Council Director  
Diane Knight, Northeast Tobacco-Free Community Partnership Director  
Suzanne Snell, Tri-Town Transcript  
Donald J. Wilson, Massachusetts Municipal Association Tobacco Control Director  
Ron Beauregard, Health Communities Tobacco Control Program  
Barbara Smith, Cumberland Farms Manager  
Ken Flint, Cumberland Farms Area Manager  
Shelly Landeck, Cumberland Farms Assistant Manager  
Paul Giacalone, Old Cuban Cigar Factory Owner

Chairman Ambrefe opened the meeting at 7:00 p.m.

**MEETING MINUTES**

Mr. Demeritt states that the meeting minutes from April 4, 2012 show that he was present, but he was unable to attend the meeting. Mr. Demeritt then questions if he is still able to vote on the minutes. Mr. Fullerton explains that recent changes in public meeting law, if any board member is not present at the meeting but has ample time to review the minutes they may vote on them.

Mr. Chairman also notes a correction on page three of the meeting minutes. The statement, “Mr. Chairman also questions if the proposed amendments to the Tobacco Regulations can include the ban of tobacco sales at supermarkets that have an onsite pharmacy” should be changed to: “Mr. Chairman also questions if the proposed amendments to the Tobacco Regulations can include the ban of tobacco sales at supermarkets that contain drug stores”.

***MOTION: Matthew Greenfield moved to accept the meeting minutes from the April 4, 2012 meeting, following the necessary corrections. Paul LeBlanc seconded the motion. Motion carried unanimously.***

## **MOSQUITO/WNV/EEE PRESENTATION**

Mr. Chairman announces that the Mosquito/EEE/WNV will be rescheduled for the June 6, 2012 regular Board meeting.

Mr. Fullerton has been informed that the local access cable station can now record anywhere; therefore, the presentation will be held back at the Flint Public Library and not at the Fuller Meadow School (Media Room) as originally planned.

## **118 FOREST STREET (MAP 16 LOT 37A)**

Mr. Timothy Willey, property representative, appeared in front of the Board to request the following variance request for 118 Forest Street (Map 16 Lot 37A): 310 CMR 15.405 (1) to allow for a 1 foot reduction between the bottom of the leaching facility and the estimated seasonal high water table.

Mr. Fullerton explains the variance request is for the repair of a failed septic system. Soil tests were performed and the results showed the soils to be really tight and slow, with a perc rate of 46 minutes per inch. During the soil testing, Mr. Fullerton also inspected the tank and discovered it to be an H2O commercial tank in fine shape with the need to retrofit the deteriorating baffles with pvc inlets and outlet pipes. The variance to groundwater is to alleviate having to put in a pump system where they are re-using the existing septic tank. Mr. Fullerton suggests the Board consider the slow perc rate in this case.

Mr. LeBlanc questions why an H2O tank installed on the property. Mr. Fullerton explains he is not sure why and was unaware that it was a commercial tank prior to inspecting it.

Mr. Chairman asks if everyone has water service and if there are any existing wells within 100 feet of the soil absorption system. Mr. Fullerton states has not finished reviewing the project and will verify abutter well locations with the engineer.

Mr. LeBlanc agrees that it is necessary to make sure there are no existing wells within 100 feet of the soil absorption system, but feels that the requested variance is the best option for maximum feasible compliance.

***MOTION: Mr. LeBlanc moves to accept the local variance request upon verification there are no existing wells within 100 feet of the soil absorption system: 310 CMR 15.405(1) to allow for a 1 foot reduction between the bottom of the leaching facility and the estimated season high water table.***

## **EDS PLANNING AUDIT**

Mr. Fullerton shows the Board the Emergency Dispensing Site Plan for 2012, which he has just completed in preparation for the upcoming CDC audit. Mr. Fullerton briefly discusses how the EDS Plan works and the audit process. Good scores on EDS across the state will help the Massachusetts Department of Public Health to continue to receive federal funding for emergency planning. Mr. Fullerton will also prepare a copy to each Board member so they may sign it stating they have read it, and understand the rules and responsibilities of the Health Department. The Board thanks Mr. Fullerton for all his hard work and efforts on preparing the very labor intensive EDS Plan.

## **RAILS TO TRAILS PLANNING**

Mr. Fullerton updates the Board on the Rails to Trails plan, stating that the warrant article for the program was passed unanimously at the Town Meeting held last week. The next step will be to wait for the Selectmen to assist Mr. Fullerton in appointing a steering committee. Mr. Fullerton states he would like to have at least one Board of Health member on the committee. Mr. Greenfield volunteered to join the committee as he is very passionate about the project.

## **PUBLIC HEARING TO DISCUSS AND ADOPT REVISED BOARD OF HEALTH REGULATION CHAPTER 31, ARTICLE 1: SALE OF TOBACCO PRODUCTIONS TO MINORS**

Mr. Chairman now opens the public hearing to discuss the Addendum to the town's existing Tobacco Regulation Chapter 31, Article 1: Restricting the Sale of Tobacco Products and Nicotine Delivery Products to Minors. Mr. Chairman begins by reading the Statement of Purpose, Section A of the Addendum. The Addendum is attached to this record.

Mr. Chairman now opens the hearing to public comment asking if there is anyone who would like to speak in favor of the proposed revisions.

Lisa Teichner, Director of the Tri-Town Council and the Tri-Town Youth Substance Prevention Coalition, approaches the Board with a statement of support for the proposed revisions. Ms. Teichner strongly supports the proposed revisions explaining that both organizations serve Middleton, Topsfield and Boxford and focus on youth health, wellness and safety issues. Ms. Teichner has her statement in writing and hands it to the Board to be attached to this record.

Diane Knight approaches the Board thanking them for the opportunity to speak in favor of the proposed revisions. Ms. Knight is the director the Northeast Tobacco-Free Community Partnership which serves the town of Middleton and 48 other communities in the Northeast Region. Ms. Knight also offers the Board her statement in writing, which is attached to this record.

Mr. Chairman now asks if anyone would like to speak that is opposed to the proposed revisions.

Ken Flint, Area Manager for Cumberland Farms approaches the Board. Mr. Flint explains to the Board that the Cumberland Farms in town has never had a problem with selling tobacco/products to any minor, and that their register system will not operate without proper identification. Mr. Flint also states that by regulating the cost of a single cigar would be a legal issue and/or be considered “price-fixing”. Mr. Flint states he just wants to bring that information to the Boards attention, and thanks them for their time.

Mr. Greenfield asks Mr. Flint if he knows what the financial ramifications would be if the revisions are adopted, and their establishment was to be fined with selling to a minor. Mr. Flint states he is not at liberty to say.

Mr. Demeritt asked Mr. Flint if he is opposed to the proposed revisions, or is just offering his comments. Mr. Flint states he is opposed to the proposed revisions.

At this time, Mr. Chairman reads a letter the Board of Health has received written by Thomas A. Briant, Executive Director and Legal Counsel of NATO (National Association of Tobacco Outlets Inc.). The letter was submitted to the Board in opposition of the proposed revisions and explains how the ordinance will directly impact NATO member retail stores, as well as all other retailers that sell tobacco products in Middleton. The letter is attached to this record.

Mr. Chairman now asks Ron Beauregard to offer his comments on the letter.

Mr. Beauregard from the Healthy Communities Tobacco Control Program first offers some background information regarding the proposed regulations, as he has been instrumental in assisting Middleton with drafting the proposed Tobacco Regulations.

Mr. Beauregard analogizes that it is illegal to purchase a single cigarette, and states the same laws should be applied to the sale of single cigars. The sale of single cheap cigars and small packages of cigars are aimed at the youth and young purchasers. Since smoking cigars is on the rise among the youth, Mr. Beauregard believes approving the ban would help remedy this problem.

Mr. Beauregard briefly explains how the same Regulation was passed by the City of Boston in February, and that Middleton’s Proposed Regulations contain a delay effective date of one year to “wait and see” how it works out in Boston before implementing it in Middleton. Mr. Beauregard also reports there has been no negative activity or challenges reported by the City of Boston to date.

Mr. Beauregard has brought examples of the most popular brands of small packaged cigars and now hands them to the Board for their review.

Mr. Beauregard now offers his comments regarding the letter received by NATO.

Mr. Beauregard explains that NATO's statement "Middleton lacks legal authority to set minimum cigar prices" misconstrues the intent of the proposed regulation. The proposed regulation is not to set "minimum pricing", but to set "minimum packaging". Only products that are below \$2.50 would be affected.

Mr. Beauregard also disputes NATO's suggestion that the Middleton Board of Health's authority is limited to the "enforcement of second hand smoking", stating it is "non sensible". Mr. Beauregard explains that the proposed regulation pertains to the sale of tobacco, not to smoke it. According to Mr. Beauregard, those regulations are correctly listed in the MAHB document: Duties of Local Boards of Health in Massachusetts, which was provided by NATO. The MAHB document is also attached to this record.

Mr. Beauregard now responds to NATO's reference to a lawsuit they have filed against the City of Providence, RI. NATO is seeking to overturn the ordinance passed in Providence that has placed a ban on the sale of legal flavored tobacco products. Mr. Beauregard has general knowledge of this lawsuit, and it is his understanding that case would be "irrelevant" to the proposed Regulations. Mr. Beauregard explains by stating the lawsuit concerns to the ban of flavored tobacco products, and the proposed Regulation by the Middleton Board of Health concerns minimum packaging of all flavored and unflavored low priced cigars.

Finally, Mr. Beauregard believes NATO's suggestion that the proposed restriction on coupon redemption is "unenforceable" is without bearing. Mr. Beauregard explains that the proposed regulation could be applied to cigars, preventing the "free" distribution of tobacco products, which is consistent with the Board's current laws.

George Demeritt now references the NATO letter, and asks how the amount of \$2.50 has been determined and if it will violate any laws by the set price.

Mr. Beauregard explains to Mr. Demeritt that the dollar amount of \$2.50 has been set as a line to distinguish between a "cheap cigar and a "good/premium cigar", and offers that Mr. DJ Wilson could give more information regarding the question.

DJ Wilson, Tobacco Control Director for Massachusetts Municipal Association explains that the proposed regulations mimic the city of Boston's and that is the dollar amount they have set. Mr. Wilson also states that the Board of Health has a "broad authority" over determining a minimum price, which is information not offered by NATO. Mr. Wilson assures the Board that the set price of \$2.50 will not violate any laws on their behalf. Mr. Wilson adds if NATO has any question about the proposed regulation, they need to contact the city of Boston.

Mr. Chairman states the Board received a letter from NESSARA (New England Service Station & Auto Repair Association, Inc.) which strongly opposes the proposed minimum packaging regulation. The letter is attached to this record.

Mr. Fullerton states he has also received a letter from the Retailer's Association Massachusetts opposing the ban of tobacco sales at drug stores and pharmacies. The letter is attached to this record.

Mr. Fullerton states he has received letters in favor of the proposed regulations from: Donna Davis, of the Tri-Town Council for Substance Abuse; Karen Trevenen, RN from Masconomet High School; Gwen Lemire, RN from Masconomet Middle School and Danielle Panneton-Zenga, owner of Sol Bean Café. Their letters are also attached to this record.

Mr. Wilson addresses the ban of tobacco sales in pharmacies and presents the Board with a Summary of Local Efforts Regarding Tobacco Sales Ban in Pharmacies handout he has prepared. The ban has been implemented in 32 cities and towns in Massachusetts, and Mr. Wilson reports there has been no opposition and/or lawsuits to date.

Mr. Fullerton states that by serving on the Tri-Town Substance Abuse Coalition he has been an "eye opener" seeing how much the youth have access to what can cause them harm. As Middleton holds the majority of the tobacco permits for the Tri-Town area. Having to travel further and further away, Mr. Fullerton believes it will deter the youth from buying these products.

Mr. Paul Giacalone, owner of the Old Cuban Cigar Factory states for the record that he is in favor of all the other proposed Regulations, but opposes the Board of Health "dictating the pricing of a product". Mr. Giacalone is concerned that the \$2.50 will increase, and if retailers will have any protection against the price increasing.

Mr. Wilson explains that the price is not "set in stone", it is a provision that will only increase inflation. Mr. Wilson again stresses that the amount of \$2.50 was set is to distinguish between a "cheap" cigar" and a "high priced" cigar.

## **BOARD OF HEALTH VOTE TO ADOPT ARTICLE 1: SALE OF TOBACCO PRODUCTS TO MINORS**

Mr. Chairman asked if there were any more comments on the issue at this time.

Mr. Demeritt thanks everyone who attended the hearing to give their pros and cons and the Board appreciates their great comments and input.

At this time, Mr. Chairman states that since there are no further comments on the issue, the Board will now make its motion.

***MOTION: George Demeritt moves to approve the revised Board of Health Regulation Chapter 388, Article 1: Sale of Tobacco Products to Minors. Mr. Greenfield seconds the motion. Motion carried 3-0.***

Mr. Chairman thanks everyone for their comments and states the Board is open to suggestions in the future.

Mr. Chairman also tells Mr. Giacalone that his concern for the \$2.50 figure is “well taken” by the Board.

Mr. LeBlanc adds that he goes into the Cumberland Farms in town everyday and has never seen anyone purchase these products. Mr. LeBlanc states that he does not want the stores to suffer in business, but the proposed regulations are important to him and the Board.

## **ADJOURNMENT**

***MOTION: There being no further business, Mr. Greenfield moves to adjourn the meeting. Mr. DeMeritt seconded the meeting. Motion carried unanimously.***

## **NEXT MEETING**

The next regular Board meeting will be held on June 6, 2012.

***Respectfully submitted,***

***Stacey Haynes  
Recording secretary***