

Needham Board of Health Minutes

December 12, 2018 7:00 to 9:00 pm

Board: Edward Cosgrove, PhD, Vice Chair
Stephen Epstein, MD, MPP, Chair; and
Kathleen Ward Brown, ScD, Member

Staff Present: Timothy Muir McDonald, Director; Tara Gurge, Assistant Director; Maryanne Dinell; Carol Read; Diane Acosta; Dawn Stiller; Tiffany Zike; Donna Carmichael

Convene: Center at the Heights, 300 Hillside Ave, Multi-Purpose Room

Guests: Adam Ponte, Attorney for Fletcher, Tilton PC, speaking for the Coalition of Responsible Retailing and the New England Repair Association; DJ Wilson, Massachusetts Municipal Association; Jabar Sassine, Owner Mobil station on Great Plain Ave; Karen Shannon, Resident; Carly Caminiti, The 84; Doug Kress; Sara McColgan; John Brenner, 7 Eleven Regional; Hiron Patel, 7-Eleven Owner Highland Ave; Bhavini Patel, wife of 7-Eleven owner; Elisa Frederick, Resident; Gwen Stewart, TFM; Dennis Lane, New England Franchisee Owners Association; Anne Bettencourt, Business Owner; Christina Matthews, Resident; Cheryl Sbarra Massachusetts Association of Health Boards; Ken Farbstein, NIATX Foundation; Karen Price, League of Women Voters; Lauren Smith, Tobacco Free Massachusetts, Pediatrician; Edgar Duran, Health Resources in Action; Jan Fetherston, Ashland Board of Health; Lester Hartman, Pediatrician, Needham Resident; Lauren Smith, Tobacco Free Massachusetts; Chris Banthin, Public Health Advocates Inc; Janet Smeltz, Resident & HR; Mark Gottlieb, Northeastern University Public Health Advocacy Institute; David DiCicco, Park and Recreation; Michael Landon, Needham Baseball Director; Doug Fox, Needham Junior Football.

Dr. Cosgrove made a motion to call the meeting to order; Dr. Brown seconded. Upon motion duly made and seconded, the meeting was called to order by unanimous vote. Dr. Stephen Epstein, Chair of the Board of Health, started the meeting at 7:04 pm and laid the ground rules for the public meeting.

Hearing on Article 1 *Regulation Affecting Smoking and the Sale and Distribution of Tobacco Products in Needham* will convene at 7:30 pm.

Hearing on Article 24 *Concussion Prevention, Education, and Training* will convene at 8:15 pm.

The November minutes will be reviewed at the Friday December 14 meeting.

The Board and Director of Health and Human Services, Mr. Timothy Muir McDonald, discussed the publication of the hearing on the town website and in both local newspapers. The Board has received many documents via email. However, since the public comment period ends December 13 at midnight, there will likely be more to review. Seven substantial pieces of information arrived today.

Mr. McDonald noted he has met with Chief Schlittler (who will speak at the Friday morning Board of Health meeting) and John Shaer, Executive Director of the New England Convenience Store and Energy Marketers Association, to discuss personal use and possession laws. It was noted that, due to ongoing

criminal justice reform efforts, charges will not be filed against juvenile offenders by most District Attorneys unless the offense is sufficiently serious to warrant six or more months of jail time. Courts are highly unlikely to hand down sentences for those offenses, in the opinion of Chief Schlittler and the Executive Office of Public Safety and Security (EOPSS) which means that personal use and possession laws are incredibly challenging to enforce.

Mr. McDonald reported that he met with the Planning Department and the GIS coordinator for a preliminary discussion about the proposed tobacco setback distance and the commercial business district issues. There is significant work to be done on both. One question is whether Avery Square or Downtown Needham is more appropriate for the first commercial business district. The option to define smoking areas within any designated area will also need discussion. Since Northampton just enacted a smoke free commercial business district, their experience can be studied in a few months.

Mr. McDonald also provided background on the concussion regulation. The purpose of the regulation is to clarify the way to exclude and to return children to play following a concussion. Two years ago a system was started to track concussions. The website, with forms that can be filled out online, is ready to go and the email with link is pending with IT.

Budget and Funding Updates

Budget is finalized. The major requests are:

- A full-time Public Health Division Director;
- An Administrative Analyst for the entire Health & Human Services department (Aging Services, Public Health, Youth and Family, etc.); and
- IT budget will include request for continued funding of the food code pro software.

Mr. McDonald also noted that the Youth and Family Services Division has requested another part-time counselor. Also, the Fire Department will request a full-time emergency management position to be jointly supervised by Mr. McDonald and the Fire Chief.

Requests for Aging Services include: a part-time program manager; funding for programmatic offerings for weekday evenings as well as Saturday mornings; and options for free or reduced costs for fitness center use, along with expanded fitness center hours.

In the Environmental Health unit, the new part-time food inspector has just started. Also, Ms. Gurge obtained two FDA grants. The first is for just over \$18,000.00 and will support the continued adoption and implemented of the nine standards outlined in the 2013 FDA Food Code. The second grant will support training costs for Ms. Gurge and Ms. Acosta.

Accessory Dwelling Units (ADU)

Mr. McDonald reported that the display board was posted at the Center for the Heights, the Library, the Rosemary Recreation Complex, and, briefly, at Town Hall. The impetus for promoting awareness about accessory dwelling units was the survey conducted three years ago on senior health and wellness. Additionally, Health Division staff conducted dozens of interviews and studied ADU regulations/by-laws

in 11 comparable communities. The Planning Board is still considering a zoning by-law that is likely to be quite limited in scope. Such a restrictive by-law would be of limited value. Mr. McDonald asked the Board to attend the Planning Board meeting to discuss the range of the proposed by-law. Dr. Epstein noted that a phased-in approach to a more expansive by-law might address the Planning Board concerns. Based on the survey and interviews it is clear that the seniors' ability to stay in town depends on accessibility and affordability.

Article 1 Tobacco Regulation Hearing. Dr. Epstein moved to open the hearing and Dr. Cosgrove seconded the motion. The motion was carried. The vote was unanimous. Dr. Epstein opened the hearing at 7:30 am. He informed the attendees that each presenter will have 3 minutes, the hearing will last for 45 minutes, and any additional comments by today's speakers may be addressed at the Friday December 14 meeting. He also noted that no decisions or votes will be taken tonight.

The tobacco regulation under consideration is an amendment to the current law. The Board is considering banning mint, menthol, and wintergreen flavored produced including liquid in vaping devices. The change would phase in over the course of a number of months. All other flavors are already restricted. The Board has taken up the proposed change because research has shown that menthol e-cigarettes are an entry point for young people to take up combustible smoking. The Board is concerned about the health of children who are enticed by e-cigarettes and likely to become addicted to nicotine. E-cigarettes are just as addictive but may be less harmful than combustible cigarettes.

Karen Shannon. Ms. Shannon, a Needham resident who is also employed part-time at the Public Health Division, stated that she has three children ages 23, 21 and 18. She supports the ban because her 21 year son started vaping at 16 and he would vape in any and all flavors. He is now addicted to nicotine and has been unable to quit. She is very concerned about the increase vaping numbers among youth. She also noted that she is concerned about targeted marketing to communities of color as well as youth.

Carly Caminiti. Ms. Caminiti is a cessation project manager. This is a statewide program for young people against tobacco that is under the auspices of the Massachusetts Department of Public Health. Ms. Caminiti has organized meetings across Massachusetts and noted that 84% of youth in 2007 did not smoke and in 2018 the figure was 94%. In her most recent October 2018 meeting, attendees noted that youth think of menthol and mint as a flavor the same as in iced tea or coffee. The youth in the program believe that the exemption for menthol and mint from flavor bans is a racial equality issue because the e-cigarettes are targeted at communities of color. The exemption allows youth to experiment with e-cigarettes and often to move to regular menthol combustibles as the menthol reduces the harshness of the smoke and youth become addicted quickly.

Adam Ponte is a lawyer representing the Coalition for Responsible Retailing. He thanked the Board for the meeting and noted he had spoken at the November 16 meeting. Mr. Ponte said that if the goal is to stop smoking, restrictions in retail establishments will not help as these stores already have a 97% compliance rate. Mr. Ponte quoted statistics that indicate 86% of youth who vape do not purchase in convenience stores. Mr. Ponte would like Needham to consider use and possession laws and he appreciated the meeting with Mr. McDonald and Chief Schlittler earlier this month. Mr. Ponte reiterated his November comment that the Town might be open to legal discrimination issues because

the African American community prefers menthol products. He cited two studies from the National Cancer Institute and the Royal College of Physicians (London, England).

Hiran Patel identified himself as a business owner on Highland Avenue. He said that his store has a 100% compliance rate and he is fully behind preventing youth smoking. However, eliminating mint and menthol will severely affect his business. Mr. Patel noted that with the minimum wage increase in 2019, his costs will increase and if he loses the \$8,000.00 to \$9,000.00 a month from menthol products he doubts he will be able to continue to operate.

Dennis Lane from the Coalition for Responsible Retailing spoke next. He noted that he has been working in retail for forty four years and is the current president of New England Franchise Owners. Mr. Lane said that he would like to see possession and use laws enforced. He is against the proposed ban because stores already have high compliance rates.

Elisa Frederick, a pediatric oncology nurse practitioner, spoke next. Ms. Frederick said that as her job is trying to cure cancer, she feels strongly that anything that can be done to prevent youth smoking will benefit the community and prevent increases in the cancer wards.

Jabar Sassine, owner of the Mobil station on Great Plain Avenue, spoke next. Mr. Sassine said that he feels that the proposed ban's negative effect on business has been underestimated. In his store menthol accounts for 25% of the combustible cigarette sales per month and Juul is 60% of his sales per month in the mint category. Mr. Sassine said that it will be hard to survive and most of his customers are Needham workers rather than residents.

Anna Bettencourt identified herself as a retailer in Massachusetts and feels retailers are all on the same side with the Board of Health. She would like the Board of Health to work more with retailers especially as they are already doing a great job at preventing the sale of tobacco products to those under the age of 21. Her recommendation is to wait for the FDA to act and allow time for research.

Christina Mathers spoke. She noted that 30% of youth feel e-cigarettes are less harmful. The studies are not there to support that e-cigarettes help adult smokers quit. Her fear is that more youth will use e-cigarettes because advertising makes their use appear harmless and helps young people present a sophisticated image.

Cheryl Sbarra, Director of Public Policy for Mass Association Health Boards (MAHB), spoke. She noted that the 2009 FDC ruling which prohibited flavored tobaccos kept an exemption for menthol, mint, and wintergreen. The evidence from the tobacco industry showed that mint and menthol were known to develop replacement smokers and that young people in particular favor mint. Restricting mint flavored products has already been upheld in Providence, RI. Massachusetts is in the same area served by the First District Circuit Court of Appeals. The scientific advisory board for the FDA noted that menthol flavor is attractive to youth. The opinion of MAHB is that extending the 2009 flavor restriction ban to include menthol is a rational extension of the 2009 law and can be defended in the Court of Appeals.

Ken Farbstein stated that he is the Network for the Improvement of Addiction Treatment (NIATx) manager. He thanked the Board for the Tobacco 21 law. It saved his daughter who never got involved with nicotine because of the ban. He has a petition from 55 voters, the Superintendent of Needham Schools, several doctors, and Town Meeting members who are supportive of the proposed mint and menthol sales restriction. He noted that when Tobacco 21 was enacted business owners said then they

would go out of business. The Director of Economic Development noted that none had, and he had submitted a letter to the Board to that effect.

DJ Wilson, an attorney with Massachusetts Municipal Association, said that it is common sense to enact the ban. He noted that a pod of Juul with its sleek design is very attractive to young people and that one pod is equal to a full pack of cigarettes in nicotine content.

Edgar Duran, a staff member at Metro Boston Tobacco Free Kids initiative funded by the Massachusetts Department of Public Health, spoke next. Mr. Duran said that his organization works on cessation and education for 16 cities and towns that include Needham. Mr. Duran is in support of the proposed ban. He noted that research has shown nicotine is almost as addictive as heroin and that most smokers started before the age of 18. Tobacco Free Kids believes that the 2009 ban was flawed because menthol remained. Mint is popular among youth with the anesthetic qualities making it easier to smoke and harder to quit. Menthol combustibles are very popular among the LGBT, Hispanic and African-American communities. More than half of Hispanic smokers use menthol products, and over a third of the LGBT community use them as well. Tobacco Free Kids has found that big tobacco continues to use predatory advertising tactics in reaching these communities and in particular targets youth.

Dr. Lester Hartman, a pediatrician at Westwood Mansfield Pediatric Associates and a Needham resident, spoke next. Dr. Hartman said that among his 14,000 patients, he sees youth using mint now that everything but mint has been banned. Dr. Hartman stated that the American Academy of Pediatrics has taken policy positions against personal use and possession laws. The CDC has found that 44% of seniors in high schools vape and that 22% of kids are now addicted to Juul. This means that 3 million kids across the US are now addicted to Juul. His goal is to focus on the kids and prevent more addiction.

Dr. Hartman also reiterated his November meeting point that the closest smoke shop is 6.8 miles away in Newton. He says that adult smokers who are using e cigarettes to quit will not be inconvenienced in obtaining the product.

Jon Featherstone, Chair of the Ashland Board of Health, was the next speaker. Mr. Featherstone remarked that the issue of mint and menthol is sensitive everywhere but it needs to be discussed. Mr. Featherstone is in strong support of leaders who will take on the long term health effects of mint and menthol use. It is not a minority or demographic health issue.

Chris Banthin, an attorney, spoke next, saying that he supports the move of menthol products, both noncombustible and combustible, to adult only smoke shops. Mr. Banthin said that the threat of litigation based on a discrimination charge is ongoing but that NAACP in 2016 stated that they “support efforts of local government to restrict sale of flavored products especially menthol”. Legal enforcement should go after commercial producers not individual consumers. Mr. Banthin said that the FDA may propose something but he recommends not waiting for them to do so. He noted that the 2009 legislation required graphic warnings on cigarette boxes and this has not occurred to date. The availability of menthol products to youth is both common and pernicious.

Janet Smeltz spoke next. Ms. Smeltz said that she has worked years in addiction treatment for forty years and is the mother of a 13 year old. For the last 25 years Ms. Smeltz has worked at the Institute for Health and Recovery in Cambridge and treats tobacco use disorder as an addiction. Tobacco use is the leading cause of death for many people with mental health issues. Ms. Smeltz said that she strongly

supports the ban because of what she sees in her work every day. Menthol is easier to inhale and thus smoking initiation starts quickly and is hard to stop. Menthol also means that people start smoking earlier in the morning and the need for the next cigarette is faster than with regular tobacco. Ms. Smeltz said that some research shows that menthol may slow metabolism of nicotine in the body. In 18-25 year olds, brains are still developing and we don't know how menthol affects that process but we do know it affects it in many ways. Ms. Smeltz noted that in her organization's studies, 65% of young smokers who smoke menthol would make every effort to quit if menthol is banned.

Mark Gottlieb, Executive Director of the Public Health Advocacy Institute at Northeastern University, said that the ban on all tobacco flavors in San Francisco is underway and so far there are no legal challenges. Enforcement began in August 2018 in Minneapolis and so far there have been no incidences or legal challenges. Canada has had a complete ban nationwide and so far they have no problems. Professor Gottlieb noted the New York Times piece interviewing Matt Murphy, a Needham resident, on his menthol use as a good illustration of how addiction occurs. This past summer the family of Patrice Brown was able to collect in a wrongful death suit based on her addiction to Newport menthol cigarettes. The ban should be adopted because it will prevent more kids from becoming addicted.

Dr. Cosgrove made a motion to adjourn hearing at 8:20 pm and to keep the hearing open until the second meeting on December 14. Dr. Brown seconded. The hearing will be reopened on Friday December 14. Upon motion duly made and seconded, the public hearing was adjourned until Friday December 14 by unanimous vote.

Article 24 Concussion Regulation

A motion was made to open the public hearing on Article 24 by Dr. Cosgrove. Dr. Brown seconded the motion. Upon motion duly made and seconded, the public hearing on the concussion protocol was opened. The vote was unanimous.

David DiCicco, Michael Landon, and Doug Fox all discussed the need for a longer notification period to the Public Health Division for concussions because the coaches are volunteers. They also raised the issue record storage. Most leagues and teams do not have their own storage space. Ms. Zike said that the Health Division is required to keep files for three years but she currently does not have a secure method for electronic storage. Dr. Epstein said that electronic storage and secure email is a Health Division request to IT anyway and the new protocol would be another argument for obtaining both.

A motion was made to adjourn the hearing on the Article 24 concussion protocol by Dr. Cosgrove at 8:40 pm. Dr. Brown seconded. The hearing will be reopened on December 14. Upon motion duly made and seconded the public hearing on the concussion protocol was adjourned until Friday. The vote was unanimous.

Dr. Cosgrove made a motion to adjourn the meeting at 9:00 pm. Dr. Brown seconded. Upon motion duly made and seconded, the meeting was adjourned at 9:01 pm. The vote was unanimous.

Minutes Respectfully Submitted,

Faith Crisley, Recording Secretary