

TEWKSBURY BOARD OF HEALTH

Minutes

March 19, 2015

**Call of Meeting to Order**

Mr. Barry called the meeting to order at 6:02 PM. The meeting was held at the Tewksbury Senior Center. Present at the meeting were, Vice Chairman Raymond Barry, Phillip French, Charles Roux, Christine Kinnon and Health Director Lou-Ann Clement. Chairperson Kathleen Brothers was not present.

**Public Hearings**

**Variance of 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments, State Sanitary Code, Article X and the Federal Food Code Section 3-502.11 – Located at PT Sushi, 10 Main Street, Tewksbury – Applicant: Saw Koko, Owner**

Mr. Barry read the public hearing notice.

**MOTION** - Ms. Kinnon made a motion to open the public hearing. The motion was seconded by Mr. French and unanimously approved by a vote of 4-0.

Applicant Saw Koko was present at this public hearing.

Ms. Clement stated that this is a transfer of management for PT Sushi. She has reviewed the package and has done a site visit. They are following the regulations. She is not a fan of the PH meter that is being used, but it does comply with the regulations.

Ms. Kinnon asked how many times this establishment is inspected. Ms. Clement replied twice a year unless there is a complaint, and then they go immediately.

Ms. Barry asked if this was the Applicant's first time involved with sushi. Ms. Koko replied no, she has many locations and they use the same recipe.

**MOTION** - Mr. French made a motion to approve the variance for PT Sushi at 10 Main Street. The motion was seconded by Mr. Roux and unanimously approved by a vote of 4-0.

**MOTION** - Ms. Kinnon made a motion to close the public hearing. The motion was seconded by Mr. French and unanimously approved by a vote of 4-0.

**Variance of Tewksbury Board of Health Regulations, Chapter 9 Grease Tank and Grease Traps Requirements for Food Establishments, Located at Origins Thai, 1699 Shawsheen Street, Tewksbury, MA – Applicant: Paul Rossi for Garret Nominee Trust, Owner**

Mr. Barry stated that the public hearing scheduled for 1699 Shawsheen Street has been rescheduled until April 16, 2015 since no public notice was given.

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## **New Business**

### **Revolving Account**

Ms. Clement stated that the Town Manager and Community Development Director agreed to expand their existing revolving account. This account was originally created for the 72 Hour Go Kits but it will be expanded to cover everything. The Town Manager will send this to Town Counsel to be finalized for the warrant.

### **Board Member Reports**

Mr. Roux stated that he invited Keith Anderson and Mark Kratman to the meeting to discuss their campaign for elected office. Mr. Anderson is here tonight. Mr. Anderson stated that he has been a life long resident of Tewksbury and graduated with Mr. Roux and has raised four kids. Mr. Anderson stated that he is a retired fire chief from Nashua, NH and is a small business owner in Tewksbury. Mr. Anderson stated that if he gets elected to the Planning Board, he will always be available.

## **Old Business**

### **Reminder Letter for Grease Tanks and Dumpster**

Ms. Clement stated that she sent out the reminder letters for grease tanks and dumpster regulations to all restaurants.

### **Notice to Tobacco Retailers Regarding E-Cigarettes**

Ms. Clement stated she has also sent out reminder letters regarding e-cigarettes.

Mr. Barry asked if a notification has been sent to restaurants about e-cigarettes being banned in public places. Ms. Clement replied no, but she will be sending it out.

## **Announcements**

Ms. Clement stated that the Lowell Health Department will be collecting unwanted medication and sharps on April 15, 2015.

Ms. Clement stated that the work at Sutton Brook will be starting back up this week, so this means that the truck traffic will increase.

Ron Beauregard appeared for the next public hearings.

Mr. Barry asked if there is a spreadsheet of the compliance checks done. Mr. Beauregard replied yes. There have been two compliance checks. Mr. Barry asked if he could get that information to gage how the compliance checks are going.

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**Public Hearings Continued**

**Non Compliance of Chapter 11 Tewksbury Board of Health Regulations for Tobacco Control Restricting the Sale of Tobacco Products & Nicotine Delivery Products Located at Mobil – Life Too Short – 1785 Andover Street, Tewksbury, MA**

**MOTION** - Ms. Kinnon made a motion to open the public hearing. The motion was seconded by Mr. French and unanimously approved by a vote of 4-0.

Mr. Barry read the public hearing notice.

Sherry Sutherland, Steve Rollings and Phil Sutherland appeared for the public hearing at 1785 Andover Street.

Mr. Beauregard stated that this sale occurred on February 11, 2015 and it was the second offense in two years. There is not a question about the sale. The clerk was remorseful and treated him with respect. Mr. Beauregard stated that they held a training session and 12 out of 17 employees attended and they will follow up with the remaining five.

Ms. Sutherland stated that she has been in business for over 15 years. They take this very seriously and are against sales to minors. They provide a new employee package and gave the Board a sample of the package. Ms. Sutherland also supplied pictures of existing signage. Ms. Sutherland stated that the first sale was a new employee. This violation occurred when the store was very busy and it was a bad judgement call. A warning was given to the employee and they were told next time, they would be fired. A 7 day suspension would be very difficult.

Mr. French stated that Mr. Beauregard is pleased with what is being done to prevent future sales and we have the right to lower the suspension.

Ms. Kinnon stated that she would agree to a lower suspension but warned that a third violation will receive the maximum 30 day suspension.

Mr. Roux also agreed with less than a 7 day suspension and a third offense would trigger the 30 day suspension.

Mr. Barry asked if there is a high turnover rate for employees. Ms. Sutherland replied no, she has loyal employees because they pay over minimum wage. Mr. Barry asked if more violations happen at gas stations vs. tobacco only stores. Mr. Beauregard replied that he could look into that.

Ms. Sutherland stated that they frequently refuse sales and once an ID is asked for, they cannot go back and make the sale without an ID.

Mr. Barry stated that he agrees with the other members that a 2 or 3 day suspension is appropriate but a third violation would trigger a 30 day suspension. Mr. Barry asked what is the normal procedure following a sale. Mr. Beauregard stated that they will follow up with another compliance check and if there is another sale before September 2015, a 30 day suspension would occur.

**MOTION** - Mr. French made a motion to impose a consecutive 2-day suspension of tobacco products. This is a lower suspension due to all the efforts made by the establishment to prevent underage sales of

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tobacco. If a third sale occurs, a 30 day suspension will be in effect. The motion was seconded by Ms. Kinnon and unanimously approved by a vote of 4-0.

Mr. Beauregard stated that all tobacco products have to be removed from the shelves during the suspension. Ms. Sutherland asked what happens if a sale occurs in October. Mr. Beauregard stated that it would be considered a second offense.

**MOTION** - Ms. Kinnon made a motion to close the public hearing. The motion was seconded by Mr. Roux and unanimously approved by a vote of 4-0.

**Non Compliance of Chapter 11 Tewksbury Board of Health Regulations for Tobacco Control Restricting the Sale of Tobacco Products & Nicotine Delivery Products Located at Shell – Nouria Energy – 1985 Main Street, Tewksbury, MA**

**MOTION** - Mr. French made a motion to open the public hearing for 1985 Main Street. The motion was seconded by Mr. Roux and unanimously approved by a vote of 4-0.

Mr. Barry read the public hearing notice.

Mary Joe Kamuso, Manager and John Mattes, Assistant Manager for Shell appeared for the hearing at 1985 Main Street. Mr. Beauregard asked if there was a dispute over the sale. Ms. Kamuso replied no. She smoked for 30 years and she doesn't want kids smoking. Ms. Kamuso stated that the employee who sold during the compliance was very sorry and everyone deserves a second chance. They will re-train all the employees and instruct them to ID everyone who looks under 27 and all employees must take the Ready Train Online (RTO) every three months. Ms. Kamuso stated that they also do their own compliance checks. Ms. Kamuso asked why the State cannot force everyone to buy the scan machine and she is not sure what else can be done.

Mr. Beauregard stated that a 19 year old clerk made the sale and he didn't seem to care. Ms. Kamuso stated that she wants to give \$100 bonus for passing a compliance check but management hasn't given her the authority. Mr. Beauregard stated that he finds that those employers that have been ticketed will never sell to underage customers again. Ms. Kinnon stated that Shell's policy was that anyone ticketed with selling tobacco products to underage customers was to have their employment terminated. Mr. Beauregard stated that he would suggest a lower suspension and perhaps an ID all program for six months.

Mr. Barry asked what happens if there is a sale during the ID program. Mr. Beauregard replied then it would be a violation of the Board of Health regulations.

Ms. Kamuso stated that she doesn't understand why everyone in the State shouldn't be required to use the driver's license scanner. The machine costs about \$3,000 and a sale of tobacco or liquor cannot be made unless an ID is scanned.

Mr. Barry stated that six months is a long time to ID all. It should only be two or three months.

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**MOTION** - Mr. French made a motion to impose a consecutive 3-day suspension of tobacco products and a two month ID all program. This is a lower suspension due to all the efforts made by the establishment to prevent underage sales of tobacco. If a third sale occurs, a 30 day suspension will be in effect. If during the ID all program, a violation is made, then the full 7-day suspension will be instituted. The motion was seconded by Ms. Kinnon and unanimously approved by a vote of 4-0.

Ms. Clement stated that a letter will be sent out.

**MOTION** - Mr. French made a motion to close the public hearing. The motion was seconded by Mr. Roux and unanimously approved by a vote of 4-0.

Mr. Barry asked if it would help if we sent a letter to the AG in favor of the driver's license scan machine at all tobacco sales establishments. Mr. Beauregard stated that the problem he has found with these machines is that it can store all the information on the license and people feel that is an invasion of privacy.

**New Business Continued**

**Tobacco Control Update**

Ms. Clement stated that she didn't realize that the violation counter reset after 24 months. Mr. Beauregard replied yes, the regulations reset after 24 months. Ms. Clement stated that during the last compliance check, there were five sales out of the forty-one establishments. There were three first time sales from Oakdale Liquors, Tewksbury Convenience, and the Tobacconist. Mr. Beauregard stated that the Tobacconist sale occurred within 3-4 weeks after opening and the owner was remorseful.

Mr. Beauregard stated that there has been a lot of talk about raising the age to sell tobacco to 21 years old. There are concerns if a town raises the age, then they will just go to another town or to New Hampshire. There is also concern that smoking tobacco leads to smoking other things. Ms. Kinnon stated that we could look at increasing the age to 19 years old because 18 year olds are still in High School.

Mr. Beauregard stated that other communities are banning the sale of tobacco in pharmacies. CVS has voluntarily stopped selling tobacco.

Mr. Beauregard stated that North Andover has banned selling flavored cigarillos. These include the products that sell 3 for \$.99 with flavors of watermelon, mango, etc and also e-cigarette juice. Mr. Beauregard stated that there is a Federal law that bans the sale of flavored cigarettes except for menthol flavor, so now they are making flavored cigars.

Ms. Kinnon stated that Ms. Brothers asked if we should look into restricting sale of e-cigarettes and flavored cigars. Mr. Beauregard replied we could. The regulations prohibit selling single cigars under \$2.50. In Billerica, Lowell, Lawrence, Middleton, Newburyport, Westford and North Ready, they ban the single \$2.50 cigar and packs under \$5.00.

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Mr. Beauregard stated that Andover and Billerica have adopted freezing the number of tobacco permits issued.

Mr. Beauregard stated that there is now flavored rolling paper.

Ms. Clement stated that they are going to do a survey at the Health Fair and she wants smoking to be part of the survey.

**Announcements Continued**

Ms. Clement stated that Diane Joy has resigned. Her last day will be March 27<sup>th</sup>.

Ms. Clement stated that the Health and Wellness Fair would be held on April 8, 2015 from 2:00 to 6:00 PM. Ms. Clement stated that she wants to have a survey for the Health Fair and would like to limit the number of questions to five. Ms. Clement asked the Board to send her questions. Ms. Clement stated that there are 60 exhibitors and she is looking for Board members to man the Board of Health table.

Mr. Barry stated that he was reviewing the application for 1699 Shawsheen Street and comparing that to the new regulations. Grease tank or interceptors are located outside and they are proposing installing these inside. Our regulations don't specifically state what is required for an internal system. Ms. Clement stated that they are coming in for a variance because the regulations require an external grease tank. The variance allows for an internal grease trap and/or eliminates the external grease tank.

Ms. Kinnon stated that Ms. Brothers asked if there is a flammable issue with having grease inside. Mr. Roux stated that methane is vented through the plumbing. Ms. Kinnon asked if the grease could catch fire.

Mr. Roux stated that in his opinion, these devices do not fill the need to accomplish what our regulations are trying to do. These do not allow for the 24 hour detention period because they are only 250 gallons and they do not allow for emulsified liquid to solidify.

Mr. Barry stated that an external grease tank allows the liquid to cool and separate. Mr. Roux replied that was correct, this doesn't allow for surface area to cool and separate. Mr. Roux stated that he is looking to get more information. Mr. Roux stated that in the past, the Water Department had to go onto this property to clear the lines of grease and there was also a 1,000' back of grease in the line to Dascomb Road. Ms. Clement stated that there are four food establishments in Kerri Plaza, including Dunkin Donuts, Luna Rossa, Winner's Pizza and Origin Thai. Origin Thai is the only one coming before this Board right now.

**MOTION** - Mr. French made a motion to close the meeting and adjourn at 8:40 PM. The motion was seconded by Ms. Kinnon and unanimously approved by a vote of 4-0.

**Approved On: July 16, 2015**

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**List of Documents for 3/19/2015 Agenda**

**Documents are located in the Board of Health's Office**

**Public Hearings:**

Exhibit #1 Variance package regarding 105 CMR 590.000 Minimum Sanitation Standards for Food Establishments State Sanitary Code Article X and the Federal Food Code section 3-502.11.

Located at PT Sushi 10 Main Street, Tewksbury Applicant: Saw Koko, Owner

Exhibit #2 Letter of Non Compliance of Chapter 11 Tewksbury Board of Health Regulations for Tobacco Control Restricting the Sale of Tobacco Products & Nicotine Delivery Products dated February 27, 2015 Mobil – Life Too Short 1785 Andover Street Tewksbury MA

Exhibit #5 4 - Pictures from Tewksbury Mobil AKA Circle K

Exhibit # 6 Tewksbury Mobil AKA Circle K Work Rules

Exhibit #3 Letter of Non Compliance of Chapter 11 Tewksbury Board of Health Regulations for Tobacco Control Restricting the Sale of Tobacco Products & Nicotine Delivery Products Shell – Nouria Energy 1975 Main Street, Tewksbury MA

Exhibit #4 Variance Package regarding Tewksbury Board of Health Regulations Chapter 9 Grease Tank and Grease Traps Requirements for Food Establishments Located at Origins Thai 1699 Shawsheen Street, Tewksbury MA Applicant: Paul Rossi for Garret Nominee Trust, Owner

Exhibit #5 4 - Pictures from Tewksbury Mobil AKA Circle K

Exhibit # 6 Tewksbury Mobil AKA Circle K Work Rules

Exhibits number 7 through 12 are from the Municipal Tobacco Control Technical Assistance Program:

Exhibit # 7 Local Summary of Tobacco Sales Bans in Pharmacies

Exhibit #8 Municipalities that Ban the sale of Blunt Wraps

Exhibit #9 Local Policies on Banning Flavored “Other Tobacco Products” (OTP)

Exhibit # 10 Municipalities that limit the number of Tobacco Sales Permits

Exhibit # 11 Municipalities with Minimum Pricing for Cigars

Exhibit #12 Local Policies on Increasing the Minimum Age for Tobacco Sales Municipalities and Effective dates with MLSA of 21

Exhibit #13 North Andover Board of Health New Regulations Restricting the Sale of Flavored Tobacco and Nicotine Delivery Products

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Exhibit #14 Notice from North Andover Board of Health: New Regulations Eliminating the Sale of Individual, Inexpensive Cigars and Required Pricing and Packaging

Exhibit #15 Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products

Exhibit #16 Tobacco Control Advisory Board Meeting Agenda December 16, 2014