

An organizational meeting of the Board of Health was held June 4, 2016 at 5:00 P.M.

Present were: Ian Murray, Chairman; Sandra Knipe, R.N.B.S.N. Member; John Bogdasarian, M.D.; Stephen Curry, Director; Cheryl Sbarra, Senior Staff Attorney, Massachusetts Association of Health Boards; AJ Tourigny, Mayor's Assistant; Dr. Ruediger Volk, Property Owner; Laura & Shawn Therrien, Tenants; Frederick Hutchings, Friend/Paralegal.

Tobacco Flavor Ban Discussion:

Review written comment results: Mr. Curry stated he received the following letters of support and letters of opposition for the record:

LETTERS OF OPPOSITION

Duffy Law Office – Steven J. Duffy
Cote's Variety – Vicky & Scott Cote
Marcus DiNatale – Fitchburg City Councilor
Coalition for Responsible Retailing
Fitchburg Variety, 938 Water St
In and Out Convenience Store, Mr. Sidhu, 37 Airport Road
B.P. Gas & Go –59 Whalon St
Twin City Market, Andy
M&M Variety, E. Castro
Elizabeth – Water St
Madvapes-Vaughn Collymore, 560 John Fitch Highway
Patriot Gas, 240 Lunenburg St
ABS Gas & Go, Lunenburg St
TFS New Co. LLC, Johanna Ollenu, 15 Main St
Citgo, Kerren Willis, 75 Main St
JV Discount Store, 405 Main St
Cote's Variety, 169 High St
Castleway Market, 432 Market St
Expressway Market, 449 Mechanic St

LETTERS OF SUPPORT

Elio Rodriguez, The 84 Movement
Emma Gallant, The 84 Movement
Sheiliraliz Santan, The 84 Movement
BillyJoe Perez, The 84 Movement
Catherine Zabierek, Human Being
Gary
Joyce Ryan

Ms. Knipe asked if the written responses are representing the people who were at the public hearing, and what is the biggest concern about the non-support letters? Mr. Curry's response was most of the letters with signatures were at the public hearing and there concerns are the loss of sales they will have on their business if this regulation passes.

Mr. Curry stated Ms. Cheryl Sbarra, Senior Staff Attorney for the Massachusetts Association of Health Boards is here to give an update on what is going on with the other towns in regards to the Tobacco Flavor Ban. Ms. Sbarra stated that Joan Hamlett from Tobacco Control sent an updated status of what is happening in the area. Leominster and Gardner have draft regulations on the June agendas but have not set public hearing dates yet. The thought was Fitchburg was ready for the hearing first and all three towns would have hearings then would vote on whether or not they would adopt similar regulations. Athol and Templeton are setting hearing dates in June. Orange has a flavor restriction regulation that goes into effect June 7. Maynard met recently and considering minimum legal sales age of 21 and the restricted flavor. Townsend held a hearing and already passed the flavor restriction regulation & minimum legal sales of 21 effective September 1, 2016. Stowe & Barre have draft regulation presentations and are planning on moving forward over the summer. Ashburnham & Ashby are interested in the restricting of flavor but presently they are implementing the cigar pricing and blunt wrap ban enacted on February 1, 2016 and will look to the fall to move forward. Ms. Sbarra also stated Worcester held a public hearing on the flavor restriction, cigar packaging, and minimum legal sales age to 21 and will be voting next week on the flavor restriction, cigar packaging requirements and capping but they did vote last night to increase the minimum sales age to 21.

Mr. Curry asked for an update on the increase of age to 21 Statewide. Ms. Sbarra said it's still in the Health Care Financing Joint Committee and passed the Senate with a 32-2 vote and hopefully is going to the floor of the House before the end of the legislature session which is rapidly approaching. Ms. Sbarra stated one of the speakers concern is the military piece to the 21. We supplied him with memos from the military in Hawaii where they now have the state law minimum legal sales age of 21 effective January 1, 2016, and even though the military is not bound by state law every branch has agreed to enforce the state law and has come out very strongly in support of it saying it's one of the best things they can do for military readiness is to increase the minimum legal sales age and eliminate tobacco use. If it gets heard by the House we have an indication from the Governor he would not be opposed to it and the Commissioner has come out publicly in support of it. If it makes it to the House it will do several things including but not limited to; increase the minimum legal age to 21; prohibit the use of electronic cigarettes wherever smoking is prohibited.

Sandra Knipe made a motion to continue to process all the information that we have and wait for Leominster and Gardner to have their hearing so we can proceed together on a vote. Motion was 2nd by Ian Murray. Mr. Murray amended the previous motion to postpone the vote on Tobacco Flavor Restriction until Leominster and Gardner have their hearings with the caveat that should they not hold their hearing in a reasonable amount of time we will move forward with a vote and this board supports this restriction. Motion was 2nd by Dr. Bogdasarian. All in favor. Motion carries.

Correspondence from Attorney Edwin H. Howard: Ms. Sbarra suggested because this letter mentions potential litigation that we should go into an executive session for the purpose of discussing this letter.

Sandra Knipe made a motion to go into an executive session to discuss this letter. Motion was 2nd by Dr. Bogdasarian. All in favor. Motion carries.

BOH entered Executive Session at 5:14PM reopened at 5:45PM and recessed to arrange for a hearing request.

Hearing Request: Mr. Ian Murray, Chairman re-opened the meeting and hearing of the Board of Health at 5:54 pm regarding 30-32 Prichard St Nuisance Letter. This hearing is to determine:

1. Whether the Board of Health shall sustain, modify, or withdraw an order and determination that the property located at 30-32 Prichard Street is, and has been maintained as a nuisance pursuant to G.L. c. 111 s. 122, and whether alleged violations of 105 CMR 410.000 exist at the property.

Mr. Curry stated because there are alleged Sanitary Code violations we will operate under the regulations of State Sanitary Code. At this hearing the petitioner has the opportunity to be heard first. Mr. Curry stated Mr. Volk is here to convince the Board to Health to withdraw or modify the order that was issued.

Mr. Volk stated common ground for all in this room is he is operating life and business quiet, efficient and humane, low cost, no public money involvement, maximum of freedom and place for residence, non-involvement of government and landlord. Mr. Volk stated he is here to oppose the designation of 30-32 Prichard St as a problem property because it harms him as the owner/landlord to operate the business. He understands the next step here would be to lose the place in conjunction with receivership, and losing the place all together. He said the tenants lose a place to live, the city loses a historical property and the environment loses an environmental oasis (green spot).

Mr. Volk stated he opposes the designation because it harms people who are not guilty of what the city is claiming to be the cause, only the people who are guilty should be punished. He will prove he is not an absent landlord and said he is involved in issues around the house and with the tenants. He has moved his residence from Boston to 22B Omena Place in Fitchburg. Mr. Volk is on the property three times a week and involved with issues around his property and his tenants. The following are new improvements made to the property:

Two hot water furnace installed, \$7,000 dollar investment.
Fully fenced in yard preventing people trespassing, \$1350.00 dollar investment
Magnetic lock for front door, \$3050.00 dollar investment.

Mr. Volk stated the NICE Task Force asked him to provide information on his selection method of tenants and time frames for eviction of problem tenants. He has multiple applications and forms. He does not support ground for deviant or criminal activity. He feels the biggest concern the Board of Health and the public have is the amount of calls this property attracts. The majority of calls are because of opioid drug use and unwanted guests.

Mr. Curry asked for the tenants to identify themselves (they wished to speak). Shawn and Laura Therrien, identified themselves.

Mr. Volk stated because of this designation he gave two tenants a 30 day notice to quit. There is one eviction in the process and another tenant in apt #2 will be in court June 3, 2016. There will be one tenant left in the house and all human inflicted issues are eliminated.

Mr. Volk stated in regards to health issues at the property there was only one time the Health Department was called for a mice infestation, Mr. Volk was working with the tenants, mainly to combat

the mice infestation and provided constant material to the tenants to trap and kill the mice. He also cleaned the stove (not part of the report) and offered to buy a new one. There are issues in the apartments and the tenant is not 100 percent cooperative.

Mr. Volk stated in terms of Police calls and activities drawing attention to this property, Mr. Volk said he has spent a lot of time investigating these calls and the calls are roughly half of what police are claiming and very seldom are his tenants involved. Mr. Volk stated none of the findings indicate as the owner participate, support or gave fruitful situation for deviate or criminal activities. 90 percent of the calls are from guests (wanted or unwanted) of the tenants. The choice of tenant and long term elimination of tenants is the only part as a landlord and owner he has control of. Mr. Volk has suggested solutions for the problems as follows;

- Empty the house boarded it up and it sit empty.
- Keep only reliable tenants
- Sell the house, difficult to find a buyer
- Invest money for a parking lot.

(Police and Fire Depart report has been removed as it contains sensitive records and medical records)

Mr. Curry stated for the record:

Page 1 – states the State Sanitary Code requires the health department to notify Mr. Volk of the hearing.

Page 2 - Mr. Volk's letter of requesting the hearing.

Page 3 - copy of the letter from the Director of Public Health deeming the property at 30 Prichard St a Nuisance. A list of police calls for service at this property in 2014 there were 41 calls, 2015 there were 131 calls and 2016 there are 50 calls for a total of 222 calls to police department in the past two years to this property.

Sandra Knipe asked Mr. Curry who is making these calls to the police department? Mr. Curry stated he couldn't answer that. Sean Therrien a tenant at the property stated he has placed most of the calls. Mr. Curry stated on the next page is a copy of the most recent complaints from the Health Department which Mr. Volk went over earlier from unit 4. Mr. Curry said an inspection will be conducted on unit 4 on Friday, June 3. An inspection was done today on the exterior of the property the inspector noted the front door lock did not self-lock or self-close as regulations require on a multi-family unit;

- (a) Every door of a dwelling unit shall be capable of being reasonably secured against unlawful entry.
- (b) Every door of a dwelling until shall be capable of being reasonably secured from unlawful entry and shall be properly fitted with an operating locking device.
- (c) The main entry door of a dwelling containing more than three dwelling units shall be so designated or equipped so as to close and lock automatically with a lock, including a lock with an electrically –operated striker mechanism, self-closing door and associated equipment.

Mr. Curry stated this wasn't installed until last year but it's routinely in disrepair and Mr. Volk has admitted it's not corrected.

Mr. Curry stated the next letter is from the NICE Task Force meeting on September 2, 2015, which at this time Mr. Volk was invited to attend to discuss the problems listed on the attached letter which are;

- Tenant screening methods
- Copy of rental application of which Mr. Curry stated they never received.
- Requested an itemization of repairs to be made and time frames for those repairs.

Mr. Curry stated Mr. Volk was also invited to the NICE Committee meeting in 2014 for Sanitary Code Violations.

Mr. Curry stated the Fitchburg Fire Department responded to a call in March, 2016 for an overdose. Narcan was administered at that time. In 2015 there were a total of 12 narcotic offenses in the last two years with 6 tallied in 2015. We feel that the property is a continual source of sanitary code violations, a source for crimes and illegal activity especially that the front door swings open for anyone to walk in. The property is littered with trash, trash disposal curbside system is often forgotten for weeks at a time and trash builds up. This property is a nuisance to Main Street and the City of Fitchburg. Mr. Curry is asking the Board to sustain the order that this property is being maintained as a nuisance, and allow the Health Department to move forward with a court date as well as receivership. A Receiver will be appointed to manage the building, collect rent and/or evict tenants if needed and have proper management in place. Mr. Curry stated this process takes time through Housing Court and we need to convince the judge that the property at 30 Prichard St is a nuisance and health issue to the City of Fitchburg.

Mr. Volk asked which apartment had the overdose. Mr. Curry responded apartment #2. Mr. Volk said he had a property manager in place last year and it didn't reduce the calls.

Sean Therrien asked how many arrests have there been? Mr. Volk stated roughly seventeen.

Sandra Knipe asked Mr. Volk if he owns other property besides 30 Prichard St. Mr. Volk stated he does.

Mr. Curry asked Mr. Volk how many units are in 22 Omena Place. Mr. Volk stated there are 3 units.

Fred Hutchings, previous tenant and paralegal & friend of Mr. Volk stated he was a tenant three years ago. He stated that Mr. Volk does not promote prostitution and drugs and that is not correct and takes pride in his property at Prichard St. He also stated that Mr. Volk should be called Dr. Volk not Mr. Volk. Mr. Curry offered an apology for calling Dr. Volk, Mr. Volk.

Ian Murray asked Mr. Hutchings if there is anything regarding the allegations in the nuisance letter that you could rebut? Mr. Hutchings stated when he lived there he didn't see anything.

Mr. Curry asked Mr. Hutchings if he has any legal ownership of the property. Mr. Hutchings reply was he does not.

AJ Tourigny, Chief of Staff to the Mayor stated on behalf of the Mayor who could not be here tonight wanted to convey to the Board Members that he fully believes this is a nuisance property to the city and since he has become the Mayor Assistant his office has received several calls and complaints on this property and has full faith in the department head and his efforts to ensure that this property is up to code. Regardless of Dr. Volk's statements of how much money he has invested into this property in terms of fixing it up should not serve as an excuse, as we hold all our landlords accountable.

Sandra Knipe stated after reading these letters there are multiple issues that Dr. Volk has not addressed such as the trash & fire codes. Ian Murray stated his concern is these letters go back 2 years and Mr. Volk has not been able to fully address some of these complaints. Mr. Curry said he has not included all of the code violations or the history of the property within the packet. Dr. Volk stated he has proof every Thursday night he passes by the property, has made architectural plans and indicated exactly where the trash carts are located and would have his tenant Sean Therrien be sure they are emptied every week and in return gave him a reduction of fifty dollars in his rent. This was implemented last year. Mr. Curry stated the trash issue has been improving. Dr. Bogdasarian asked Mr. Volk what type of Doctor is he, and Mr. Volk responded he is a Scientist.

Sean Therrien stated that if the tenants that have caused some of the problems leave the premises these issues would possibly go away. Mr. Murray's concern is the property has been managed this way for several years and it doesn't seem to have improved. Mr. Curry said the property does quiet for a little while when the NICE Committee gets involved but then over time things return to the same issues.

Sandra Knipe stated their job as the Board of Health members is to promote healthy ways of living in the City of Fitchburg and Ms. Knipe supports this letter.

Sandra Knipe made a motion to support/sustain the Board of Health Director's letter.

Motion was 2nd by Ian Murray. All in favor. Motion carries.

Mr. Curry asked Dr. Volk if he would object to the Health Department doing a full inspection of the building and object if Mr. Curry asked the Board to order a full inspection. Dr. Volk stated, "Do what you need to do but you will have an empty building." Mr. Volk does not object. Mr. Curry stated the Health Department will seek an order for a full inspection of the property during its pleadings for potential Receivership. Mr. Curry stated he will file in housing court and appoint a receivership and will also ask for a full inspection.

Mr. Volk requested a copy of the minutes of this meeting.

Review and accept meeting minutes from April and May meetings. Sandra Knipe made a motion to accept the April 7, 2016 and May 5, 2016 minutes. Motion was 2nd by Ian Murray. All were in favor.

Montachusett Public Health Network (MPHN)

A. Inter-Municipal Agreement Amendment: Mr. Curry stated the Inter-Municipal agreement is a function of the MPHN that the City of Fitchburg is the lead agency which includes 11 communities involved with the MPHN. These 11 communities already have an Inter-Municipal agreement signed and approved by the city Council and this Board in 2012. The issue with the previous Inter-Municipal Agreement (IMA) is we have two towns Winchendon and Bolton that would like to join this network and our current IMA doesn't allow additional towns to join. The first IMA was written by DPH attorney, Joan Langsam. The only difference is the second IMA will allow new towns to join the MPHN. The second IMA would have to be agreed upon by all the towns presently in the network. The present IMA includes the towns that are already in it that will include new language for other towns to join. This IMA will have to be approved by City Council. This has been reviewed by the Assistant City Solicitor.

Sandra Knipe made a motion to accept the new draft amendment for both Inter-Municipal Agreements. Motion was 2nd by Dr. Bogdasarian. All in favor. Motion carries.

FY 17 Health Budget Update: Mr. Curry stated the FY 17 budget has been heard and approved by the City Council. There have been no changes since our last budget discussion.

Reports from Staffing: Housing reports include March and April. Dr. Bogdasarian made a motion to accept the staff reports. Sandra Knipe 2nd the motion. All were in favor. Motion carries.

Food Inspectors Report: Sandra Knipe made a motion to accept the Food & Milk staff reports. Dr. Bogdasarian 2nd the motion. All were in favor. Motion carries.

Nurse Report: Nursing reports for April and May. Ian Murray made a motion to accept the Nurse's report. Dr. Bogdasarian 2nd the motion. All were in favor. Motion carries.

Sandra Knipe made a motion to adjourn, motion was 2nd by Ian Murray. BOH adjourned at 7:40PM