

BOARD OF HEALTH MEETING

October 20, 2014

Town Council Chambers of the Town Hall

CALL TO ORDER: Dr. John Straus called the meeting to order at 7:05 PM.

PRESENT: Dr. John Straus, Dr. Barbara Beck, Richard Arnold, Donna Moultrup, Interim Health Director, Kristel Bennett, Chief Environmental Health Officer, and Dan Repella, Health Officer.

Minutes: Richard Arnold made the motion to approve the minutes of the September 25, 2014 meeting and it was voted unanimously.

108 Pleasant Street – Kristel Bennett informed the Board that the property owner had verbally requested to withdraw the request for modification of compliance with the order to correct letter dated August 22, 2014. Richard Arnold made the following motion: “I’ll make a motion that as a result of the information presented tonight, that the owner has shown a good faith effort to correct the violations listed in the August 22, 2014 order to correct letter and will correct the remaining violations as specified in the order to correct letter. By verbal request of the property owner, the request to modify compliance time with the order to correct letter is withdrawn.” It was voted unanimously.

Wonder Café – Kristel Bennett informed the Board that Wonder Café was before the Board for a status hearing to provide an update to the Board as to the progress of the September 25, 2014 Board of Health order. Present from Wonder Café were Sue Chen and John Szeto, Wonder Café’s Food Consultant. Mrs. Bennett reported the progress made with the August 20, 2014 Board of Health order. Mr. Szeto discussed the food audits. Dr. Barbara Beck made the following motion: “I make a motion that to continue the September 25, 2014 Board of Health order.” It was voted unanimously.

16 Olcott Street – Kristel Bennett informed the Board that the property owner had requested an administrative hearing for modification of compliance with the order to correct letter dated September 12, 2014. Dan Repella reviewed the Health Department inspection findings. Nancy Falter property owner discussed the requirements of the lead paint order letter and updated the Board as to the progress made to comply with the September 12, 2014 order letter. Dr. Barbara Beck made the following motion: “to approve the request to modify compliance time with the order to correct letter dated September 12, 2014 to February 9, 2015. The owner must correct the remaining violations listed in the order to correct letter for violations of the State Sanitary Code 105 CMR 410.000 in conjunction with the schedule in the lead paint order letter. If the violations remain outstanding past the deadline of the lead paint order letter, February 9, 2015, then a court complaint will be filed against the owner of 16 Olcott Street in Waltham District

Court for non-compliance with the order letter date September 12, 2014.” It was voted unanimously.

45 Barnard Avenue – Dog Hearing – Present for the Dog Hearing was Thomas Theune, resident of 45 Barnard Avenue, and Theresa McGoldrick, resident of 71 Robbins Road. Dr. Straus called the hearing to order at 7:35 PM.

Kristel Bennett, Chief Environmental Health Officer, stated that the Board of Health is holding a dangerous dog hearing at the request of Karen O’Reilly, Animal Control Officer. The purpose of the hearing is to determine whether the dog, Katie, owned by Thomas and Namita Thuene of 45 Barnard Avenue is dangerous due to being off-leash and has twice bitten other dogs.

Ms. Bennett introduced herself as the Moderator; Donna Moultrup will take minutes and Dan Repella will be the timekeeper. Members of the Board of Health, Dr. John Straus, Barbara Beck, and Richard Arnold, constitute the Hearing Authority. Thomas Thuene and Theresa McGoldrick were sworn in by Ms. Bennett.

Karen O’Reilly was asked to review the chronology of events prior to the testimony. There had been a complaint of the dog off-leash in 2008 which was addressed. In 2010 there was a complaint that the dog was off-leash and off property and had confronted two children walking their own dog by the property. A copy of the animal control ordinance and license application was mailed to the owners. The dog was then licensed. Later in November of that year, there was another complaint regarding the dog being off-leash.

In July, 2014, there was a report by a Barnard Ave. resident of an incident involving Katie and a neighbor walking her dog down the street. Karen O’Reilly followed up the report and spoke to the neighbor involved in the incident. The resident, Theresa McGoldrick, sent a detailed e-mail to Karen involving the attack on her dog, including biting, skin punctures and scratches. Katie was quarantined at that time, but the owners were out of the country and the individuals staying at the house stated that they were not responsible for the dog. Ms. O’Reilly spoke to the dog’s caretaker when the quarantine order was lifted. He was unaware that Katie had bitten another dog. He stated that Katie had not been trained and that the dog should be sent away for intensive training.

In August, 2014, there was another attack by Katie, during which, two dogs were attacked, and their owner had fallen to the ground during the incident. Both police and animal control had been dispatched. Katie was in the house when they arrived and Mr. Thuene stated that he did not know that the dog was outside, even though neighbors had stated that the dog had been roaming for a few hours.

Karen O’Reilly stated that she was saddened to be at this hearing; she believes that if Katie were trained and given adequate supervision, these problems would not exist. She asked that the ruling tonight put in place additional confinement requirements for Katie in order to protect the neighborhood dogs and residents from further injury.

At the conclusion of the chronology, Dr. Straus asked if the dog had been licensed throughout the period just chronicled. Karen responded that the dog had been licensed only when requested by her, not annually, as required.

Testimony by Theresa McGoldrick:

She has lived at 71 Robbins Rd. for ten years. She grew up in Watertown. She would like the Board to use her e-mail message to Karen O'Reilly as her testimony:

"I am writing to you to complain about a dog that attacked my dog recently. The family that lives at 45 Barnard Avenue in Watertown has owned this dog for several years. On many occasions the dog has attacked other dogs in the neighborhood. It is constantly left unleashed and unsupervised and has attacked my own dog twice. Most recently on Wednesday evening, I was walking my dog, Missy, a 4 year old beagle cavalier mix on a leash up Barnard Ave. The dog that lives at 45 Barnard Avenue, a black dog, breed unknown, came running from the yard and charged me and my dog. The dog bit down on my dogs back and groin and punctured the skin and caused cuts on my dog. The black dog continued to attack and I was afraid it would attack me as well. It wasn't until another neighbor and I pulled the dog off of my dog and stood before them that the dog stopped. The owners of the black dog were not home. An individual that didn't identify himself staying at the home on 45 Barnard Ave. came finally and retrieved the dog. He had no leash and had trouble getting the dog back home because the dog was still trying to charge and attack my dog. My dog has a license and is up to date with all shots but I don't think the black dog is. I would like to file a complaint regarding this matter. This dog is a hazard to other dogs, children and adults. If you interview neighbors they will tell you of many occasions where this dog has been unleashed, unsupervised and continues to attack and bite other dogs. It is a public safety concern and I would ask for your assistance in addressing this matter."

She stated that there was another time when she was walking with her daughter in complete darkness and the dog ran out. The male owner has control over the dog but not the other individuals in the house. She felt that she had to bring this concern to the Board of Health's attention.

Testimony by Thomas Thuene: Mr. Thuene stated that he had no comment.

The Moderator stated that, hearing all testimony, the hearing was now closed, at 8:10 PM.

After a short discussion, Richard Arnold made the following initial motion: "I make a motion that based on the testimony of the Animal Control Officer, the witnesses, and the evidence presented, to deem the dog, Katie, owned by Thomas and Namita Thuene of 45 Barnard Avenue as dangerous. Thomas and Namita Thuene shall humanely restrain the dog, Katie, on a leash at all times when outside the dwelling at 45 Barnard Avenue." This motion was voted unanimously.

After further discussion, and questions to the witnesses, Barbara Beck made the following motion: "Thomas and Namita Thuene shall confine the dog, Katie, by building an outdoor pen or dog run securely enclosed and locked on the premises of 45 Barnard Avenue. The dog pen or run shall have a secure roof and the sides shall be embedded into the ground for not less than two feet and within the pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog."

The motion continued, "If you are found in violation of this order, then your dog shall be subject to seizure and impoundment by a law enforcement officer or the Animal Control Officer. Under

M.G.L., Chapter 140, Section 157A: “an owner or keeper of a dog who fails to comply with an order of a hearing authority or district court shall be punished, for a first offense, by a fine of not more than \$500 or imprisonment for not more than 60 days in a jail or house of correction, or both and for a second or subsequent offense by a fine of not more than \$1,000 or imprisonment for not more than 90 days in a jail or house of correction.” The motion was voted unanimously.

Food Manager Regulation – After discussing the comments from the public hearing held on September 25, 2014, Richard Arnold made the following motion: “I’ll make a motion to adopt the “Regulation Pertaining to Certification of Managers in Food Safety”. This regulation shall become effective on November 1, 2014 and shall supplant the “Regulation Pertaining to Requirements for Certified Food Protection Managers and Persons in Charge (PIC)” adopted March 1, 2002 and the "Rules and Regulations Pertaining to Certification of Managers in Food Safety" adopted on September 4, 1997.” The motion was voted unanimously.

Tobacco Regulation – Public Hearing – The Tobacco Hearing was called to order approximately 8:20 PM. Prior to the discussion, Donna Moultrup, Interim Director of Health, was asked to review the changes reflected in the Tobacco Regulation. These changes had been distributed prior to the meeting to food service establishments and retail tobacco permit holders. Testimony was then given by the following individuals:

Tony Palomba, 40 Oakley Rd. in Watertown and a Town Councilor – He stated that he supports the proposed changes, particularly raising the minimum legal sales age to 21. His background is in public health and he applauds changes that will reduce the overall health care costs. He hopes that it will pass.

Michael Digregorio – He is the owner of the Cigar and Lounge in Watertown. In the city of Waltham, the age is 18, so that five minutes down the road, customers can get tobacco which will hurt his business. He has a large number of military enlisted come in at 18 ½ years of age and he will lose those customers if the age is raised to 21.

Wayne Clarke – He lives at 10 Melendy Ave. in Watertown. He appreciates the Board holding a public hearing on these changes to the tobacco regulation. However, he feels like the Board should be tackling a real problem like obesity. He doesn’t see bans on fried food or on large sugary drinks, like they have in New York. The data is that 18-19 years olds are decreasing smoking already, so that a change to 21 will just hurt the businesses, not decrease smoking.

James Richard – He is a co-owner of the New England Vaping Company at 100 Main St. in Watertown. The change to age 21 will be a mixed bag for his business, but there are several parts of the regulation that will be very problematic. They sell liquid and need to be able to give out samples, which they do for a fee currently. It is important for his customers to be able to sample the liquids prior to investing in a fairly expensive item. Also, the electronic parts are often bulk packaged so they are not sold in the original packaging. He currently has some employees under the age of 21 and he would not like to lay off these individuals which he would have to do if this regulation passes. He also feels that his business does not fit under the

definition of smoking bar or retail tobacco store. He would like to work with us to make this regulation more compatible with his business.

Donna Moultrup stated that the update of this regulation started when his business applied for a license and the then-current regulations did not address a number of issues. This updated regulation was intended to correct the issues found during the licensing process and is not designed to hinder his business. She will be happy to work with them to clarify any difficulties.

Daniel Grenkin – He is a resident of Newton and is a patron of the Cigar and Lounge. He started smoking at age 18; it was a conscious decision on his part. He frequents the Cigar and Lounge for its friendship and comraderie much more than for the opportunity to smoke or buy tobacco products. He feels strongly that the government should not be making these decisions for him.

Keith St. John - He lives in Marlboro, MA and drives the 1 ½ hours to go to the Cigar and Lounge. The friendship and group support is much more important there than the tobacco products or the opportunity to smoke. He just wants to speak on behalf of this business. He also wants to remind the Board that restaurants and other businesses in Watertown are supported by people like himself who come to town for the Cigar and Lounge but frequent other businesses as well.

Keith Langston – He lives at 24 King St. in Watertown. He smokes cigars and considers it a recreational use. He could stop tomorrow if he wanted to. His parents, brother and wife all smoke. He strongly disagrees with affecting the businesses negatively. It will really hurt the community if the Cigar and Lounge were forced to close due to this regulation. It was explained that a lot of other communities are changing the age to 21, but we shouldn't do it just because someone else is. He loves Watertown and doesn't want to see businesses hurt with these regulations.

Joe McCarthy – He is a Brighton, MA resident. The definition of a commonwealth is to provide choices for individuals. Who are we to tell our soldiers that they can't buy cigars? Small businesses make this country and we need to not make regulations that could have very negative impacts. This is just faulty logic.

Heleen Venter – She is a co-owner of the New England Vaping Company. Most of their customers are over 25, but it should be a choice. Her father loved nicotine and his levels are so much better now using electronic cigarettes instead of tobacco. It is a natural way to decrease nicotine intake and is especially good for older adults who have been smoking for a long time.

Alex Maserejian – He lives in Belmont, MA and is a customer of the Cigar and Lounge. He does not support raising the age to 21. The customers of the Cigar and Lounge also frequent restaurants and other businesses in the area so a change in this regulation will not just affect the tobacco stores.

Drinnan Thornton – He is also a patron of the Cigar and Lounge but also sells tobacco to retailers for a living. He would like to challenge the philosophy of these changes. It is not the retailers' responsibility to keep young people from smoking. Some people really enjoy smoking and it is a

personal responsibility. Prohibition has never worked. Individuals must weigh the risks and make their own personal choice.

Mike Sullivan – He is the manager of Tedeschi Food Shops in Watertown. He asked whether all flavors of tobacco would be banned from sale. It was explained that there are exceptions. The flavors of tobacco, mint, menthol and wintergreen would be allowed for sale. The primary purpose of this part of the regulation is to eliminate the flavors that would be most attractive to young people. He also asked about the effective date of the regulation and was told that it would be January 1, 2015.

Dan Repella – He is a Health Officer in the Watertown Health Department and some might be surprised to know that he was a member of the Marine Corps. He believes strongly that at age 18, one is an adult, can be a member of the military and vote for the President. He disagrees wholeheartedly with the change to 21. It is un-American. He saw many of his friends die in wartime and the thought of telling soldiers on the battlefield that they are too young to smoke is just not right. As an enforcer of these regulations, he believes that enforcement of the current laws is the only thing to do and that it will achieve the desired result.

The hearing was then closed with the Board stating that there will be further discussion at the November Board of Health meeting.

Next Meeting: Monday, November 17, 2014

Adjourn: Meeting was adjourned at 9:45 PM.

Respectfully submitted by Kristel Bennett, Chief Environmental Health Officer