

BRAINTREE BOARD OF HEALTH

MINUTES

April 16, 2015

IN ATTENDANCE: Dr. Philip Nedelman, Chairman
Paula Dowd, Vice-Chairman
Dr. Arthur Bregoli, Clerk

ALSO PRESENT: Marybeth McGrath, Director of ML & I

Dr. Nedelman called the meeting to order at 7:00 pm.

REORGANIZATION OF THE BOARD:

Motion By: Dr. Nedelman to nominate Dr. Bregoli as Chairman
Second By: Mrs. Dowd

Motion By: Mrs. Dowd to nominate Dr. Nedelman as Vice-Chairman
Second By: Dr. Bregoli

Motion By: Dr. Nedelman to nominate Mrs. Dowd as Clerk
Second By: Dr. Bregoli

MINUTES:

Motion By: Dr. Nedelman approve the meeting minutes of February 12, 2015.
Second By: Mrs. Dowd
Unanimously Voted

NEW BUSINESS:

1. Sale of Tobacco Violation:

Present: Jerry McLaughlin, Tobacco Compliance Officer

a. East Braintree Gas-411 Quincy Avenue

Present: Ed Maloney, District Manager

Mr. McLaughlin advised that on March 19, 2015, tobacco compliance checks were conducted in the town of Braintree for compliance of the tobacco regulations for sales to minors. At approximately 7:15pm, a compliance check was conducted at the East Braintree Super Shine located at 411 Quincy Avenue. A nineteen year old female left his vehicle at that time with no identification on her and no money, except the money provided by Mr. McLaughlin. She proceeded into the establishment, and asked for and bought a pack of Newport cigarettes. She came directly back to Mr. McLaughlin's

vehicle with the cigarettes, which were given to Mr. McLaughlin at that time, marked as evidence by him and maintained by him until they were turned over to Ms. McGrath. The price of the cigarettes was \$ 9.30. The clerk that sold the cigarettes was a male, young adult.

Mr. Maloney advised that he is not arguing it, if they sold cigarettes to a minor. He will take the penalty and punishment. He advised the Board that he has several problems follows:

-He had a problem at the Citgo Gas Station at the Union Street rotary last week with a nineteen year old gentleman who wanted a pack of cigarettes. He started arguing with his attendant and told the attendant that he was going to punch him out if he did not sell him a pack of cigarettes. The clerk pointed to the We Card and 21 signs that indicates the buyer must be 21 years old to purchase cigarettes. The gentleman kept arguing with the clerk, and then went onto his smart phone to the Town's website and looked up the regulations, which indicate a buyer needs to be 18 years of age to purchase.

Mr. Maloney advised that this is the second time that he has been told about the regulation on the Town's website indicating 18 years of age to purchase cigarettes.

Ms. McGrath advised that she takes full responsibility for that issue, and assured that the Town's website will be updated on April 17, 2015.

-Mr. Maloney advised that the last time that he was before the Board for a previous similar incident of sale of tobacco to a minor, he did fired the attendant for the sale. He advised that he has brought this issue up to the Board in the past. The only way that attendants are going to stop selling, is if there is a penalty against the attendant, instead of the establishment. He advised that by firing the attendant who sold the tobacco, he is effectively giving him a one year paid vacation by firing him.

He further advised that the company requires that the employees sign a piece of paper indicating that they understand that the penalty for selling tobacco to a minor, or to someone under 21 in Braintree, is instant termination. He is appealed on all terminations, as a wrongful termination, even though the employee has signed the agreement that they understand the regulations of sale of tobacco to a minor. Not only does he get penalized by the Board for selling to a minor, but he is still getting penalized with unemployment benefits to the terminated attendant. Not only are there no consequences to the employee who actually sold the cigarettes, but rather a penalty both monetary and a tobacco sales permit suspension to the establishment. He advised that his employees have been trained internally by the company, but also by Mr. McLaughlin regarding the sale of tobacco. He advised that nothing seems to work with the employees, which is why, in his opinion, laws need to change.

Ms. McGrath advised that the permit issued for the Sale and Distribution of Tobacco Products and Nicotine Delivery Products is issued to the establishment. The Board and Department has no ability to issue a permit for the same to an employee.

Mr. McLaughlin advised that with regard to the attendants being fined. This subject matter has been brought up many times at the state level and in the court system. The license is given to the vendor. The employee works as an agent of the vendor, so you cannot fire an employee for working on your behalf, for a violation. Whether the establishment does fire the employee or not is at the

establishment's peril. The Board and Mr. McLaughlin have always advocated for training, not dismissal of an employee because of the court rulings in the past.

Ms. McGrath advised Mr. Maloney that the Board never encourages an establishment to terminate an employee for a sale of tobacco to a minor.

Mr. Maloney continued discussion with the Board about his concern regarding sales of tobacco by attendants without any personal penalty to them, and this issue likely continuing to occur.

Ms. McGrath advised that many, many communities in the Commonwealth are following suit and increasing their community's age for sale of tobacco and nicotine delivery products to 21 years of age.

Mr. McLaughlin advised that this particular clerk did not ask the buyer for an ID or her age. So, whether the buyer was 19 years of age or 16 years of age, the question was not asked.

Ms. McGrath advised the Board that the last violation occurred by this establishment was on July 25, 2013, so this is within a two year period as per the regulation. This is the second offense for the establishment within a two year period, so the penalty is a ten day suspension of the tobacco sales permit and a three hundred dollar fine.

Motion By: Mrs. Dowd to impose the penalty for a second offense to commence on Friday April 17, 2015 at 12:00 pm.

Second By: Dr. Nedelman
Unanimously Voted

b. Super Petroleum-2140 Washington Street

Present: Fouad Drioufai, Manager

Mr. McLaughlin advised that on March 19, 2015 at approximately 8:00pm, a compliance check was conducted at Super Petroleum at 2140 Washington Street. At that time, a nineteen year old female left his vehicle and went into Super Petroleum to buy a tobacco product, a pack of cigarettes. She left his vehicle with no identification and no money on her, except the money that was given to her by Mr. McLaughlin. At that time, she returned to Mr. McLaughlin's vehicle with a package of Newport cigarettes which were purchased for \$ 10.14. She gave the cigarettes to Mr. McLaughlin, who marked them as evidence and kept in his possession until turned over to Ms. McGrath for the hearing this evening.

The clerk that sold the cigarettes was an adult male. The clerk did not ask the buyer for her age or an ID.

Mr. Drioufai advised that all employees are trained not to sell cigarettes to an individual under the age of twenty one. They also sign the company policy of the same. In order to sell the cigarettes, the employee must ask for the ID and then enter the age on the ID into the computer. After a review with the employee on duty at the time of the sale, the employee was asked why he sold the tobacco to the minor and told the manager that it was because it was busy. The employee has been suspended for one week for this violation.

Ms. McGrath advised that this is a first offense within a two year period. The last sale that occurred in this establishment was on September 24, 2014, which is over the two year period. This is considered a first offense. The penalty for a first offense is a five day suspension of the tobacco sales permit, a one hundred dollar fine and within thirty days of the first day of the suspension, all employees involved in tobacco and nicotine delivery products sales must seek merchant education.

Motion By: Dr. Nedelman to impose the penalty for a second offense to commence on Friday April 17, 2015 at 12:00 pm.

Second By: Mrs. Dowd
Unanimously Voted

2) Request for Lifeguard Variance:

a. Royal Lake Village Condominium Trust-3 Royal Lake Drive

Present: No representative from Royal Lake was present.

Ms. McGrath advised the Board that this is the annual lifeguard variance request from Royal Lake Village Condominium Trust of the lifeguard provision for their outdoor pool. The property is primarily an adult community with few to no children, except those visiting family members on the property.

Motion By: Dr. Nedelman to approve the variance request.

Second By: Mrs. Dowd
Unanimously Voted

b. Jonathan's Landing Condominium-400 John Mahar Highway

Present: No representative from Jonathan's Landing was present.

Ms. McGrath advised the Board that this is not a new request. Jonathan's Landing was before the Board two and three years ago. Several buildings were already built on the property, which additional buildings under construction at that time. Very few residents lived on the property at those times. The variance requests were approved on those occasions by the Board. Ms. McGrath advised that last year (2014), she would not allow them to come before the Board because they did not track bather load which is required by regulations. It establishes who is utilizing the pool, and gives the Board use data on bather load for the pool. With the increase in the number of occupied buildings now, they went from thirteen residents to hundreds of residents. They have provided bather load activity for the 2014 swimming season. The establishment is not asking for a complete lifeguard variance, but rather a modified variance during slow times on weekdays, in the early morning from 8:30am- 12:00 noon and after Labor Day if the pool is still opened. They would plan to have a lifeguard on weekends and holidays.

Motion By: Mrs. Dowd to approve the variance request.

Second By: Dr. Nedelman
Unanimously Voted

c. Reservoir Crossing-614 Pond Street

Present: No representative from Reservoir Crossing was present.

Ms. McGrath advised the Board that this is the annual lifeguard variance request from Reservoir Crossing of the lifeguard provision for their outdoor pool. As the Board may recall, the residents of this condominium complex must go through the main building and use a key card to get into the pool enclosure. If they do not use the key card, an alarm will go off through the entire building. They have all of the required signage displayed. They are not looking for a complete lifeguard variance, but rather a modified variance to have a lifeguard present during higher peak bathing times on weekends and holidays.

Motion By: Dr. Nedelman to approve the variance request.

Second By: Mrs. Dowd

Unanimously Voted

Motion By: Mrs. Dowd to adjourn the meeting at 7:36 pm.

Second By: Dr. Nedelman