

Somerville Board of Health Meeting

December 11, 2003

Present: Dr. David Osler, M.S., Chairman
Arnold Duclersaint, Member
Cecilia Sosa-Patterson, Member
Jack Vondras, Health Department Director
Cesar Pungirum, Tobacco Control Program
Approximately 5 Members of the Public

Meeting called to order at: 4:38 p.m.

Accept Minutes:

Minutes were not mailed to Board members Duclersaint and Sosa-Patterson. Though Board members had ample time to read the minutes before the motion was made to move to accept the minutes of November 13, 2003, the motion did not pass because Mr. Duclersaint said that the discussion that took place at the end of the previous meeting was not represented in the minutes. This was a result of the tape recorder being turned off during said conversation. The Director indicated he would reconstruct the conversation and add it to the minutes. Mr. Duclersaint indicated that none of this discussion was recorded in the minutes and he would not accept the minutes. A motion was made by Dr. Osler to table minutes until next meeting. Seconded by Mr. Duclersaint. Ms. Sosa-Patterson was not yet present.

Clean Air Works:

The Health Director read the resolution that was unanimously passed by the Somerville Board of Aldermen on November 13, 2003: "That this Board of Aldermen hereby requests that the Somerville Board of Health reconsider implementation of the smoking ban until a statewide ban is initiated, at which time Somerville's smoking ban would be re-enacted. This should commence after scheduling a public hearing to receive input from the public."

Mr. Duclersaint said he was not happy with the Director for calling him at home to influence his vote. Dr. Osler said he had asked the Director to call the board members to

brief them on what was being forwarded at the meeting. The Director indicated that he told Mr. Duclersaint what he was going to bring forward.

Dr. Osler suggested that the Board address the resolution. Mr. Duclersaint said he wants the Board to be independent. Dr. Osler responded by saying that the Director can make recommendations, but the Board is independent.

Mr. Pungirum mentioned that Chelsea's Board of Health had been asked by their City Council to rescind the smoking ban. Chelsea acknowledged resolution but decided not to rescind. The Framingham smoking ban has been rescinded. A representative from the state program indicated that in November they went back to separate spaces for smokers and non-smokers, essentially rescinding, until July when it is expected to be passed by the state. So Board could follow Chelsea. The Somerville Board of Health could decide to hold public hearing on rescinding the ban or not. Mr. Pungirum indicated that historically this Board usually holds public hearings. Should the Board decide to hold a public hearing, notice to the public must happen prior to. Thus, Mr. Pungirum felt that the meeting couldn't occur prior to January.

Dr. Osler mentioned that the Board has not yet dealt with private clubs. He then asked if the Director had any additional comments. The Director said that if the Board votes to have a public hearing, he recommends they address private clubs as well.

Dr. Osler asked if anyone from public wanted to speak.

Rick, a Representative of the Restaurant and Bar Association of Somerville spoke. He mentioned that at the Board of Alderman meeting there was a large contingency of workers and owners from bars and restaurants in attendance who supported removing the ban, even temporarily until July of 2004, when the State pushes for a state-wide ban. Lost wages over the holiday season is a big issue for workers in these establishments at this point. He requested the Board temporarily rescind until state-wide ban goes into effect for the sake of the workers. He said this was not a mere "cigarette smoking" issue, but a financial security issue for people over the winter months.

Dr. Osler asked if Mr. Pungirum attended the tobacco conference this past week. He indicated in the affirmative. Mr. Pungirum then said that the article from the Boston Globe, a copy of which was put into their meeting packets, was an accurate representation of the study unveiled during the conference. Copies of the article were also made available for those members of the public in attendance. Forty-nine smokers were interviewed for the study, according to the article. The Massachusetts Hospitality Association indicated that though business is down, smoking is just a part of it. The fire in Rhode Island, the economy and the smoking ban were three things that contributed to business being down. The study also showed that air in bars and restaurants are over 90% cleaner. The study suggested that smokers' behavior, as far as patronage goes, hasn't changed. Finally, it suggested that the percentage of smokers who support the smoking ban in Boston increased from around 17% to 20%.

Mr. Duclersaint said we shouldn't revisit this item because the public and the community has already had the opportunity to express themselves and there was overwhelming support of the ban. There is no need to re-subject the community to the process again.

Ms. Sosa-Patterson said the Board of Health has followed the procedures and guidelines. If bar and restaurant owners had concerns, they could have addressed them during the process. Going to Aldermen was going around the process. The Aldermen realize the best they can do is put forth the resolution. She said she was part of the transition team for implementing the Smoking Ban and worked with restaurants and after October 1, we agreed to reconvene. We met recently, a meeting which included the Fire, License, and Police Departments and there were no big difficulties. Only two places had smoking but they thought that the Alderman rescinded the ban. Ms. Sosa-Patterson is concerned over procedure. The Board exists to protect the Health of the City. It wasn't the intention to hurt anyone economically. She has been available to public during meetings, and outside of meetings, and this has not been acknowledged. Private clubs is still an issue. She would like to set a vote to make a process for private clubs. Mr. Duclersaint seconded. She said the Board should send a letter to the Aldermen thanking them for their concerns, but sadly their position is not our take on the situation. Mr. Duclersaint agreed with her.

Dr. Osler asked if they would be willing to hear testimony on how ban is going in general since they are going to have a hearing on private clubs. Mr. Duclersaint said he would love to include private clubs in the hearing. Dr. Osler asked about allowing the community to speak. Mr. Duclersaint responded that the community has already spoke. He also said that the community wouldn't have a lot to say about private clubs.

Ms. Sosa-Patterson said we don't know if private club memberships are increasing or decreasing as a result of the ban. She has concerns over reconsidering the ban.

Dr. Osler agreed that the BOH mission is to protect public health, but said he is more than willing to accept testimony from public at large. He said that since the Board will have a hearing for the issue of including private clubs, the Board may as well hear general testimony. Mr. Duclersaint said no, we will listen to private clubs and listen to their concerns, but we are not revisiting the same subject again. We are protecting the public from smoke and second hand smoke. We have already heard testimony about dangers of smoke. Now six months later, after ban has been implemented, the Aldermen want to change it.

The Health Department Director mentioned that he attended Board of Aldermen meeting and heard testimony and received numerous calls. He said the political climate has changed, and economic situation in Somerville needs to be acknowledged. He strongly recommends a hearing from both sides. He said the Alderman have asked for public hearing and he strongly recommends that the Board hears the public.

Mr. Duclersaint disagreed saying it is not about the economic downfall of business community. We have had several meetings with them already, and there is no need to revisit that again.

Dr. Osler said he is willing to listen to people talk. He is not saying he is indicating how he feels, but he would like to hear the public speak. He said the perception is that a large group is opposed to the ban, but he knows other restaurants that are happy with the ban.

Dr. Osler said that since we are having a public hearing on private clubs anyway, why not allow the public to speak their minds? But if consensus of Board is not to have public testimony, then so be it.

Ms. Sosa-Patterson said that within four weeks you can not tell how big of an impact the ban is having. We should be strong about what our area is regarding protecting the public safety of the community. The message that should be sent to the Aldermen is that our decision is final.

After a brief silence, Dr. Osler said that Mr. Duclersaint put forth a motion to reject having public hearing and that is what we are voting on now. The Motion on the table is that only private clubs are to be heard at the public hearing, and that the Board is not accepting vote of the Alderman and their recommendation, and that we are not revisiting the subject again. The Motion was second by Ms. Sosa-Patterson. All in favor? Two affirmative votes were cast by Mr. Duclersaint and Ms. Sosa-Patterson, and one negative, which was cast by Dr. Osler. Motion passed.

There will be a public hearing only to hear the testimony about the inclusions of private clubs in the ban. This will happen during our next meeting, which is January 8, 2004.

Mr. Duclersaint said the Board should send a letter to the Aldermen telling them that the Board reconsidered and decided not to hold public testimony and not to rescind the regulations. The next meeting is Jan 8th. Mr. Pungirum indicated that there is enough time to inform public. The regular monthly meeting will be used to have hearing.

Mr. Pungirum said he was not clear on how this information will get back to the Aldermen. He thinks in Chelsea the Chairman of the Board wrote a letter. This resolution from the Somerville Board of Aldermen was addressed to the Board of Health. As a result, Dr. Osler indicated that through his capacity as Chairman, he would draft a letter from the Board and would forward it to Mr. Duclersaint and Ms. Sosa-Patterson for approval.

Dr. Osler mentioned that his negative vote was not intended to demean his role as monitor for the public health. His intention in casting the negative vote was to hear the public, not to demean the Board's role in public health.

Old Business: None.

New business:

The Director passed out a memo of correspondence from the City Solicitor's office addressed to Senior Sanitary Inspector Vaughan regarding business who have not paid taxes. There are now approximately eight businesses that have not negotiated a payment structure. The Solicitor's office said the business owners must come before the Board. The Director recommends they come at once. We will give businesses 14 days notice and request that we hold this process during a special meeting that is not part of the smoking meeting. This can happen in February.

Mr. Duclersaint was concerned that the City hadn't exhausted all avenues for collection. He would hate to see the closing of businesses. He wants the Director to make another effort with them to make a payment plan. The Director said the Senior Sanitary Inspector visits them almost weekly and we will continue to do this up until the meeting. Our goal is to have none. But we are approaching April 1 and have already allowed eight months at this point. We don't want to be in the renewal cycle.

Mr. Duclersaint started on a new topic and indicated that he received Dr. Osler's telephone message. He wishes he had received the call earlier. By calling a day before the meeting, he was not able to be prepared legally. The issue appears to be about an executive session. According to the City Solicitor, depending on the issue that one wants to have an executive session about, you may have to have legal representation. If issue is not about existing personnel, then you may be able to go into executive session. If the issue surrounds existing personnel, then you may need legal representation.

Mr. Duclersaint asked what the Director meant when he said, "if it is about an employee." The Director said that if the issue on which Mr. Duclersaint wanted to have an executive session about pertained to the "current performance" of employee, then no legal representation would be required. If the issue was something other than "current performance of a current employee" legal representation would have to be present. Mr. Duclersaint said that he asked for an executive meeting and was told he could not do that and there was never any discussion about what the executive session would be about. He said that as a Board member he called for executive session.

Dr. Osler told Mr. Duclersaint that if he wants to go into executive session then he could call for it, but warned him that he could not violate the City Solicitor's recommendation. Mr. Duclersaint said he wanted to talk about a subject, his problem, and he feels he was shut out. He feels he has to go to the public now. What he needs to discuss he can talk about in an open meeting. Dr. Osler said that unless it is something that is deemed a personnel issue that you need to go into executive session about, then the Board could discuss it.

Dr. Osler said the Board could discuss Mr. Duclersaint's issue now, or it could into executive session. Mr. Duclersaint said he is not ready to go to an executive session now. Dr. Osler asked if there was anything else he would like to discuss, new or old business. Mr. Duclersaint told Dr. Osler that Dr. Osler didn't know what Mr. Duclersaint was

calling an executive session about. Mr. Duclersaint said that that is the part he is upset about, not about following guidelines. If he has concerns over personnel he should be able to bring up and discuss with the board. Dr. Osler said that he called him yesterday and he apologized to Mr. Duclersaint for not calling earlier.

Dr. Osler asked what Mr. Duclersaint's preference was at this point. Mr. Duclersaint said it didn't mater now.

Ms. Sosa-Patterson mentioned that last month she suggested the Board get guidelines for executive session. We haven't had a session to discuss a specific person. If we have a situation like that then we have to follow this process. So it would make sense to get guidelines. She wants both the state and city regulations. She feels it makes sense to get clarity from regulations.

Dr. Osler suggested the Board ask the City Solicitor to come to the meeting to sit in on Mr. Duclersaint's executive session. Dr. Osler then suggested that the Board receive any regulations ahead of time.

Meeting adjourned at 5:30 p.m.

Respectfully submitted,

Linda Dubuque