

MINUTES OF THE BOARD OF HEALTH MEETING

Wednesday, December 15, 1999

ROOM 221, MEMORIAL BUILDING

FRAMINGHAM, MASS

The Board of Health meeting held on Wednesday, December 15, 1999 was called to order by Chairman Adam Sisitsky.

Board Members Present: Adam Sisitsky, Chairman
Thomas L. Treadwell, M.D. Secretary
James A. Gordon

Staff Present: Robert T. Cooper, Public Health Administrator
Loretta L. DeLucia, Administrative Assistant
Michelle Zeamer, Tobacco Control, Program Director

Other Attendees: George E. McCarthy, Neil Somner, Lesley Ellis, III, Scott Kirkland, and Paul V. Galvani (late arrival, Patricia Mazzola

ACCEPTANCE OF MINUTES -

The minutes of November 18, 1999 were tabled for discussion later in evening.

GEORGE. MCCARTHY, JR. ATTORNEY AT LAW FOR; CHICKEN BONE SALOON

Adam Sisitsky asked all present for Chicken Bone Saloon to introduce themselves, which they did and they included: George McCarthy, Jr. Attorney, Neil Somner, partner, and Lesley Ellis, III, partner. Adam Sisitsky asked Attorney McCarthy to share with the Board why the Chicken Bone Saloon was requesting a classification as a bar which would allow the Chicken Bone to remain a smoking facility without building physical barriers between smoking and non-smoking sections, under the Town By-Law. Attorney McCarthy spoke for Chicken Bone (Zenga Corp.) and started by saying that in his opinion, based on his interpretation of the By-Law, the Chicken Bone Saloon is a bar and they were here to present the facts. Adam Sisitsky recognized Michelle Zeamer, the town Tobacco Administrator, was also an attorney, and was present to clarify bar vs. non-bar area. Mr. Cooper noted that the Board of Health regulated restaurants and that the Board of Health would serve as the enforcer under the By-law in determining whether an establishment was classified as a bar only or a restaurant with a bar area. A "bar" only means that food is incidental to the serving of alcoholic beverages.

Attorney McCarthy claimed that under this definition, Chicken Bone is a bar as the bar runs the full length of the facility with most seats at the bar. Adam Sisitsky stated that Chicken Bone did serve food. Attorney stated that only 17% of the sales on the premises come from food. The majority of sales are from alcohol. Neil Somner stated that Chicken Bone was a bar and blues club, originally being set up as Chicken Bone Saloon featuring "Wings To You". He further stated that most of the food was delivered. Most of the 17% of the food being served in-house was bar food such as wings, burgers, fries, and chicken tenders.

James Gordon stated that we need standards to go by to determine how to enforce the By-law. Robert Cooper stated that a vast majority of facilities fell into one of two

categories, restaurant or bar. Chicken Bone could go either way and is the only one we have a question about. Adam Sisitsky asked for questions before he asked Michelle Zeamer for a definition of a restaurant. There were none at this time, therefore Michelle Zeamer proceeded with the definition of a restaurant as being an establishment with a full service kitchen for the purpose of preparing food to serve in house or to deliver. Adam Sisitsky stated that a bar is where mostly alcohol is served and food is only incidental. Chicken Bone claimed that only 17% of food served in-house, while total food prepared was 33% of their business. Adam Sisitsky agreed that upon walking into the Chicken Bone Saloon, it appeared to be a bar. Adam Sisitsky expressed a concern that the regulation does not appear to take in account whether food was for take out or for being served on the premises.

James Gordon asked how long Mr. Somners and Mr. Ellis owned the Chicken Bone Saloon, and what type of clientele the served. The response was 6 years and the age range of the clientele was blue collar, primarily blue-collar working class people in the age range of 30's to 50's.

Adam Sisitsky asked Michelle Zeamer if it would clarify the matter if Chicken Bone had a separate takeout area so the public would not have to walk through the smoking section. Michelle Zeamer stated that it would make a difference if the patrons picking up food did not have to walk thru the bar. Neil Somner stated they could look into alternatives so that patrons did not have to walk through the bar. Adam Sisitsky asked if we could provide a waiver for 2 months while the Chicken Bone looked into alternatives. Michelle Zeamer stated, "No" because it was a Town By-Law, and there are no provisions for variances. James Gordon asked Mr. Somner if he thought the bar could be segregated from the pickup area. Neil Somner responded that they could try to figure out a way. Attorney McCarthy stated that it might have to be an outside window. Robert Cooper questioned the front area near the train tracks as a possible place.

Neil Somner asked if the Board could help him to understand the By-law; are you asking us to accommodate people who do not smoke? Michelle Zeamer responded that the By-law applied to all the public's health, and made no distinction between smokers and non-smokers.

Adam Sisitsky asked for a motion to designate Chicken Bone as a bar for 90 days while they research ways to adhere to the new By-law. Dr. Treadwell asked "Why". "They are a bar and why not just give them a permanent designation as a bar, and if we get complaints, we could look at it again". Adam Sisitsky asked Michelle Zeamer what would happen if the Board took no action at this time. Michelle Zeamer responded that the Chicken Bone would be designated as a restaurant. James Gordon stated he would be interested in letting the owners come up with a solution, and that he would make a site visit to assist them. Robert Cooper stated that Chicken Bone would still have to designate non-smoking seats to protect the public health. Adam Sisitsky moved to designate Chicken Bone as a bar for 90 days from today, December 15. James Gordon seconded, and Dr. Treadwell abstained. Dr. Treadwell felt it was a bar, and that they had to make incidental food somewhere. He also felt the law was ambiguous. Chicken Bone Saloon was given 90 days to come up with a solution to accommodate the By-law.

HARGRAVES, KARB, WILCOX & GALVANI, LLP RE: REQUEST FOR VARIANCE FOR MR. BILLIARDS, INC.

Adam Sisitsky asked Attorney Paul Galvani, who represented Scott Kirkland, owner and manager of Mr. Billiards for past 10 years, to present his case. Attorney Galvani started by stating that Mr. Billiards has 25 pool tables and 8 video games and is currently classified as a restaurant. Mr. Billiards proposes to drop their limited food service and

not get a Common Victualer's license which would then classify Mr. Billiards as a public place. Under the new By-law, section 7. will seek a variance under 4.1 from no smoking in a public place.

Attorney Galvani pointed out that the Zoning Board of Appeals requires that no minors are admitted without a parent. In actuality, the clientele is primarily over 18, between 18-20, men and women, no one being old enough to go to a bar. Mr. Billiards is open until 12 pm and later on weekends. The premises are managed by 1 person at a time, either Scott Kirkland or one other person. Scott mentioned that 80% of the clients smoke, and he feels that if smoking is banned, he will lose a significant amount of business. He also pointed out that Mr. Billiards is the only pool hall in Framingham, therefore, giving them a variance would not set any precedent in town. Fun & Games is the only other amusement type place in Framingham, and they cater to a much younger crowd. Mr. Kirkland further mentioned that Marlboro is his competition and they do not have a smoking ban. He feels that a non-smoking ban will cause a significant loss of business. Banning smoking in a pool hall will cause a significant hardship. Mr. Kirkland told the Board that he had high ceilings and five high capacity smoke purifiers that are serviced regularly.

Adam Sisitsky asked the Board if they had any questions. James Gordon asked if they could set aside a no-smoking area. Mr. Kirkland responded that the pool hall was one large open room. He had spoken to clients already. People do not pay an admission charge to get inside. They play by how much time is spent playing pool. If the smoke becomes a problem for them, they can leave without incurring much expense, if they play 10 minutes, they only pay for 10 minutes. James Gordon asked if the employees smoke. Mr. Kirkland replied that he did not smoke, however, his other two employees do. Michelle Zeamer interjected that she has done compliance checks there, saw minors in there not forced to leave, when the kids came back out, they wreaked of smoke leading her to believe that the ventilation is not effective. Ms. Zeamer reminded the Board of the issues with Bingo regarding variances. We cannot distinguish between money for profit or for charity.

James Gordon asked how many people are in the pool hall at one time. Mr. Kirkland replied between 80-90. Adam Sisitsky brought up the standard under Section 7 of manifest injustice. Mr. Kirkland stated that he spoke to his customers, and that he goes smoke free, they will have to go somewhere else because they cannot play pool and not smoke. James Gordon asked where else they could go. Mr. Kirkland mentioned Marlboro, Hudson, and Westboro. Adam Sisitsky asked Michelle Zeamer if she had gotten any feedback from Westboro who is also smoke free. She replied that she had spoken to someone on the Board who stated that their pool hall had been unaffected. At this point, Mr. Kirkland interjected that he heard the pool hall in Westboro was in trouble and were ready to close.

Dr. Treadwell spoke out that he didn't feel the Board could make an exception for bars and pool halls. He further spoke that people who want to smoke could do so outside. When the public passed this By-law, they spoke out against smoking. Attorney Galvani asked if they could propose a compromise; perhaps 50% smoke free or certain days/hours smoke free. He stated that a pool hall is not that profitable a business to start with, and would need some relief.

Adam Sisitsky asked for a motion. Dr. Treadwell moved not to grant a variance. James Gordon reluctantly seconded the motion. All were in favor, and the motion carried. Adam Sisitsky told Attorney Galvani that Mr. Billiards could appeal this in court.

Again Attorney Galvani asked if they could come up with a proposal, would the Board hear the plan. Adam Sisitsky stated that there was room for continued dialog, and the Board will look at a reasonable proposal.

Adam Sisitsky thanked Michelle Zeamer for her guidance and hard work. Michelle Zeamer mentioned a new billboard on Waverly St. regarding no smoking. Michelle Zeamer also told the Board that we will begin cessation in Portuguese, and finally that she will be on maternity leave in 90 days.

Adam Sisitsky recognized a woman in the audience who was not on the agenda. She introduced herself as Patricia Mazzola and thought she was supposed to be there to discuss her application for a massage license. Robert Cooper told her that we had just received her application one day ago, it was incomplete, and we would have contacted her regarding which meeting she was to attend. In addition, the company which she was to work for, The Fitness Company, was not licensed at this time. Therefore, they would have to appear before the Board along with Ms. Mazzola at the next meeting. Adam Sisitsky excused Ms. Mazzola and apologized for any misunderstandings.

REVOCATION HEARING OF ANIMAL PERMIT FOR: HERIBERTO SANTOS, 9A MORTON STREET

Mr. Santos was not in attendance. He was notified about the meeting, and the Board had received a certified mail receipt from him, therefore, we knew he got the invitation. Adam Sisitsky read the police report about Mr. Santos' mistreatment of animals. Mr. Santos was ordered to serve 120 hours of community service, pay restitution of \$500 to the MSPCA, was put on probation for 4 months, and would not be allowed to have animals for one year. Adam Sisitsky asked for a motion to revoke Mr. Santos' animal permit. Dr. Treadwell made a motion, and James Gordon seconded. The motion passed to revoke the animal permit of Mr. Santos.

ANIMAL PERMIT FOR HOWARD KEE

Mr. Kee was not present. He had applied for a permit to keep 1 horse and 2 cows. Robert Cooper stated that Mr. Kee was a repeat offender. The Health Department had received a call from the Animal Control officer that she found a horse running down the street. Mr. Kee had claimed it. The Animal Control officer found 2 cows on the premises that were allowed to graze on the aqueduct, a hole had been cut into a fence to allow the cows to pass through. In addition to keeping animals without a permit, Mr. Cooper brought up the fact that the property is unkempt; with 15 abandoned unlicensed vehicles, rubbish all over and many animals including cows, pigs, chickens, and the horse. Mr. Cooper told the Board that the Health Department sent letters to all abutters including the MWRA, the cemetery and all neighbors. More than half the abutters were opposed to the animal permit. In addition, the Animal Control Officer was opposed.

Adam Sisitsky asked the Board if they wanted to table the permit since Mr. Kee was not present or to not issue. Dr. Treadwell noted that a violation had occurred. Adam Sisitsky believed the Board should take no action and that if Mr. Kee were to re-apply, we would take action at that time. Since Mr. Kee has no permit at this time, the animals must be removed within 14 days.

FISCAL YEAR 2001 BUDGET

Robert Cooper gave an account of the Budget for 2001. He stated that the figures were up mostly due to salaries. Mosquito Control was asking for a 3.9% increase. Consulting figures were up due to hiring a consultant to help with inspections. Now, we have four inspectors with four territories, and the inspections are more thorough. The Inspectors can go to observe food handling techniques, check holding temperatures and spend more time at each restaurant. Medical expenses are up a bit due to ordering special syringes that make needle sticks less likely. Therefore, they cost a bit more. Mr. Cooper

reported a needle stick accident. One of the nurses had dropped a needle and it hit her foot. She went for testing and is being taken care of. Telephone bills are now paid by the Town, then broken down and charged to departments. Long distance is on a separate bill. Rates have gone way down. Postage was budgeted at \$2100, but was increased to \$3000. Educational Training was increased due to rising charges for seminars and training. A CPO course that 5 people will be taking, is \$150 each. George King, Town Manager, is in favor of training. Mr. Cooper also requested money to replace some of the desks that have never been replaced. Dr. Treadwell asked if the state covers the cost of rabies testing. Mr. Cooper replied, yes.

ADMINISTRATOR'S REPORT

Mr. Cooper brought up the fact that the Health Department sent letters to all major apartment complexes last month requesting their cooperation in implementing a recycling program. The Health Department received no letters or callbacks in regard to the letter. If they do not cooperate, the Town gets no funds. The Recycling Coordinator wants us to try to pass a regulation to require apartment complexes to recycle. The Board felt no action should be taken until the DPW proposes action.

ACCEPTANCE OF MINUTES

Adam Sisitsky brought up minor changes to minutes and asked for a motion to accept as amended. James Gordon made a motion to accept. Dr. Treadwell seconded the motion. The minutes were accepted as amended.

The next Board of Health meeting was set for Wednesday, January 19th and the meeting adjourned at 9:15 p.m.

Adam Sisitsky, Chairman