

Minutes from July 15, 2021

Newburyport Board of Health

Regular meeting (via Zoom)

Present: Robin Blair –Chair, Frank Giacalone- Director, Patti McAlarney – Assistant Director, Robert Slocum – member, Sam Merabi – member, and Ron Beauregard, of Tobacco Control.

Members of the Public – Linda Garcia, Ron Case

Robin called the meeting to order at 15:18 (probably 7:18 p.m.) of the audio transcript.

Frank noted that Ron Beauregard, of Tobacco Control, was on the Zoom meeting, for an update. Since the Agenda was posted, Frank's been getting calls regarding the indoor smoking at one of the private clubs. Frank would like to move the discussion about the club to earlier in the meeting in order to allow Ron Beauregard to weigh in.

Robin asked if there was a motion to approve the minutes.

Sam moved that the minutes from the most recent meeting be approved.

Motion seconded.

Motion passed.

Ron Beauregard: There are new state regulations with regard to sales to underage youth, flavored tobacco, and other related provisions. The violations section of the law, Section 045, has set up stricter penalties for a first, second, and third offense – stricter than we've ever had, and stricter than any municipality has had for a sale to a minor. It calls for a retail establishment that has been caught selling a tobacco product to a person younger than 21 to be fined \$1000. There is also a prohibition from selling tobacco products for up to 30 days.

However, in the following section, Section 045, the wording can possibly be understood two ways. There's an opinion that because Section 045 starts out "unless otherwise specified or provided for in 105 CMR 665.000, violations of 105 CMR 665.000 shall be assessed as follows:", what is meant is that section D, which calls for the "up to 30-day prohibition of tobacco product sales," could stand alone. That is, if the penalty in D is dealt, then the penalties in the violations sections do not have to be dealt. I'll follow whatever your opinion is.[00:20:56]

Sec. 057 is a pre-emption clause. It says the local board may make standards, as long as they don't conflict with the state's rules. There's no flexibility, however, to reduce fines. There's a cloudiness about "educational warning."

One thing I haven't mentioned to Frank is that in Section 055 D., it says if a Board of Health has failed after a reasonable length of time to enforce 105 CMR 665.000, the State can step in. (24.30)

The only action the Board can take at an appeal hearing, according to the State, is whether a transaction of a sale to an underage youth took place.

Frank- Can the Board reduce the fine?

Ron Beauregard- Your local counsel might disagree, but the parties that are advising us are saying that at a hearing, the only thing the Board can consider is whether or not the transaction took place.

Private Clubs

Ron Beauregard: In your regulations, in Section 17, under the State's smoke-free workplace, you made some restrictions beyond the State's restrictions, such as no smoking in Adult-only cigar bars, no smoking in outdoor spaces. However you did not prohibit smoking in private clubs.

Massachusetts state law allows local health departments to prohibit smoking more strictly than the state laws allow.

Frank- If a club allows a non-member to buy alcohol, it's not a private club.

Ron Beauregard- It's a hard law to enforce. If a non-member is being accompanied by a member, the member is supposed to be present the whole time.

Frank- I'd like you to help the Board understand about clubs and smoking because we've had some inquiries about smoking from one club in particular. The caller would like smoking to be prohibited, but some of the vocal members want to keep smoking. It seems like they have non-members going in there. There's a name here on the attendance list that I'm not familiar with, so I'm not sure if there is someone who wants to speak.

Linda Garcia ("Ron Beauregard Case" on the transcript) – I called Frank. It was so nice during COVID when there was no smoking here. The Elks Board would like to not allow smoking, but some of the members keep insisting that smoking is allowed because we're a private club, it's grandfathered in, and that if the Neptune Club can smoke, so can we. Ron Beauregard mentioned that members can go into a private room to smoke during a public event, but what they do at the Elks is non-members can also go into the separate room to smoke. Also, sometimes children are here, we have children's parties. We would like it if the City would clarify the issue. Thank you.

Ron Beauregard: By the way, I could give you a list of the municipalities that have prohibited smoking in membership organizations. It's quite lengthy.

Linda: Yes, thank you.

Robert: Who makes the rules at the Elks Club?

Linda: We have a Board of Directors and we also have a house committee. But the members vote. If we had a vote, the smokers would show up, but the others won't show up.

Sam: I have a lot of friends who first started drinking at private clubs, under age. That exposure and easy access, I'm a little nervous about this. It fights against all the other measures of trying to reduce smoking addiction. I think that's the major factor for me.

Linda: Do we have a mandate in Newburyport? I own Abraham's Bagels, and I have often gone out to the patio and asked people not to smoke. And the clubs, I don't know what the policies are.

Frank: The state smoke-free workplace law means no smoking indoors. We also have in our local regulations no smoking in restaurant seating outside. I wasn't expecting to push for a vote, but given what Sam said, maybe for further discussion as to whether these private clubs are actually a private club.

Robert: I agree. What's the process? Say I'm not a member. What do I have to do to be able to have a drink at the Elks?

Linda: Supposedly you have to know a member, and a member has to sign you in. It would be up to the bartender or steward or if board members were present to inquire who you were to be with. Realistically, if you didn't cause a problem, nobody would know it. When we have Joker's Wild and \$5000 jackpots, everyone makes sure they're signed it. The public comes on Bingo nights on Saturday, you don't have to be a member.

Ron Case: It's difficult to police, we have two doors, and if people don't use the exhaust fan people leave a door open, and the smoke spews out into the public area.

Sam: I have a suggestion. Could your membership vote to become more public, so a membership sign-in wasn't required?

Ron Case: That would be tough, as we are part of a national organization and the by-laws come from the Grand Lodge.

Sam: I understand. What if, as the Board of Health, we limit smoking at private clubs to outdoors.

Linda: That's an excellent idea.

Robert: To be clear, the Board isn't talking specifically about the Elks, we would have to address ...

Ron Beauregard: private clubs or membership organizations.

Robert: So this would be followed for the North End Boat Club and Neptune Club.

Ron Case: The North End Boat Club doesn't allow smoking indoors. Having the Elks fall into the definition of a private club is kind of slippery. It's subject to federal law. I think if you did limit clubs to outdoor smoking only, that would be a big fix. Linda's a trustee, and I'm the House Manager, so we implement the day-to-day operations of the facility.

Frank: I can look into what the other two clubs are doing, whether they allow smoking, and whether they have a sign-in system for non-members, and get this information to the board.

Linda: I believe there are five clubs that have liquor licenses, including the American Yacht Club, the Dalton, the Elks, the Neptunes, and the North End Boat Club.

Ron Case: Another issue is I don't think any of the facilities really have an isolated smoking room with a separate ventilation system.

Robin: So, the question is what do we do with the Elks Club.

Sam: Are we going to discuss it next session for a vote?

Ron Beauregard: I would recommend that if you're going for a vote, that you have a public hearing. This type of question brings out some spirited debate.

Sam: I would say the vote would be to restrict smoking in private clubs to outdoor spaces.

Ron Case: Frank, I'll send you an email with the case of Athol and the Lithuanian Club that went to the State Supreme Court, and ended up allowing the town to restrict smoking in private clubs.

Robin: Any more discussion? From the silence, I would say we will table this discussion until the next meeting when we will take a vote on it.

(Thanks ensued, and well wishes to Patti on her retirement.)

Robin: Next item is **7 Myrtle Avenue**.

Frank: Robin, you might remember this address. Back when Matt Lipinsky was the Animal Control Officer, the Health Department issued a muzzle order on the dog. Currently we're getting complaints from two people. They walk down the street to get to the school, and are afraid the dog will jump over the fence. The dog has gotten out a couple of times and bitten another dog. We found out that the muzzle order does not apply to this dog. This is a new dog, but the same owner. Kayla can fill in the rest.

Kayla: I've been aware of this dog ever since I was the assistant, as Scott showed me the key problem areas, with 7 Myrtle Avenue being one of them. This household is right near the Bresnahan School, and there's a sidewalk that runs right alongside his fence. We received complaints of Axel jumping really high on the fence. Kids were afraid of the barking and growling, and during this period the fence wasn't up to par; it was kind of falling apart. Luckily, the fence got fixed last summer. That was after a bite last summer. Last May he escaped and went after a golden retriever. That dog had a couple of bite wounds. After that incident Mr. Rocco, Axel's owner, put up a really nice white fence. It's pretty hard plastic, six feet tall.

We didn't have any complaints since then until June 13. In that situation Mr. Rocco's ex-wife was removing her belongings from the house and accidentally left the front door open. Axel doesn't go after people, but he's definitely not socialized with dogs. He bit another dog and I guess it was pretty hectic, given the email that she sent me. Mr. Rocco's wife came out and got the dog and secured him.

Axel was quarantined following both of those incidents, so I got to meet him and see his demeanor. In my opinion, he's not people-aggressive. When Mr. Rocco had him on leash he couldn't care less about me. Unfortunately, whenever he gets out there's an incident.

From the incident in June I received a couple of emails. One was a thread from Kristin, the owner from the attack last summer, and the other from Jennifer, from the most recent attack. Both expressed that they don't walk by the house anymore. Jennifer packs her dog up in her car, drives by the house, and then walks her dog. They have expressed that they want the dog removed from the city. That can't happen, however, because then you're just putting the problem elsewhere.

We do have options. We can put restrictions on Mr. Rocco's dog. We can deem him dangerous, which is basically putting a title to the behavior and then also some regulations with it to hopefully tighten up what's going on over there. I've put copies of the emails, along with some pictures, on the Z drive. Both Jennifer and Kristin have expressed that they would like to be present to talk about the situation at a public hearing.

Robin: Since you're the most knowledgeable, what do you feel we should do?

Kayla: Let me backtrack. The winter prior to last winter there was a woman who would walk along the fence and she would antagonize Axel. She sent me a video of her standing at the fence, saying, "Look at him, look at him, look how high he can jump!" I replied that obviously a dog would bark and try to get you because he can't see you and you're antagonizing him. I wouldn't deem a dog dangerous just because he's jumping and lunging at the fence. I do feel that we should put some regulations on Axel, something that may help Mr. Rocco kind of stay on top of it. For instance, help him think, I have to go get the groceries from the car, so let me put Axel behind the door, because the regulation states that the dog must be secured at all times, even in the home.

The regulations are kind of lengthy, but I can email them to you. I do think that we should do something, given the amount of complaints and that every time he gets out something happens.

Frank: This might be more than just an issue with the dog. I believe it's a neighbor issue as well. They want them to take the dog to a training farm and basically get rid of the dog, and I don't think these complaints warrant that.

Kayla: It does seem like Axel's owner is getting ganged up on by the neighborhood. It is also unfortunate that sometimes people don't report things. For instance, I received an email stating that two years ago, Axel jumped over the fence, jumped on a woman's mother and knocked her to the ground. But that was not reported.

Robert: Are there any restrictions, like, this dog obviously shouldn't be at Mosley or Cashman Park- ?

Kayla: Axel doesn't go anywhere except in his backyard, so that's why there's so much frustration. And he's a Dutch shepherd. As a working breed, he needs stimulation and an outlet.

Sam: Can we place restrictions like- the dog should be walked three times a day, and a recommendation that the dog get exercised, and a recommendation about a type of leash, like a pinch leash, or certain type of collar? I wouldn't want to do a town hall meeting, with everyone getting up and acting like an expert on animals, but if we did put on restrictions, or label him dangerous, would that constitute a step that could lead to the dog being put down?

Kayla: In the law, Chapter 140, section 157, euthanizing the animal is mentioned, but there are about eight other restrictions that you can put on the dog. It doesn't mention anything where we can tell him to walk his dog X amount of times a week, or you have to see your trainer once a week.

Sam: Can we talk to the owner and give him recommendations?

Kayla: Yes, and he's been pretty receptive and cooperative and understands that what his dog is doing isn't good. He might just not have the time for the dog.

Sam: I don't want to label the dog dangerous if it's just slightly neglected and has a lot of frustration.

Kayla: One woman mentioned in an email that if you're facing Mr. Rocco's house, to the right there's a sort of side porch fence that isn't as high as the other fence. Maybe four and a half feet high. She expressed concerns about him getting over

that. I could possibly ask him to make it a little higher so the neighborhood can feel a little bit better walking past his house.

Sam: Yes.

(various discussion)

Sam: It seems like there are some personal things going on here, and I don't think it's in our power to bring both parties in and bring them to a place where they're both satisfied.

Frank: I guess it's more education. Kayla, you and I can sit down and then maybe I'll go down there with you, and meet the owner, and I'll respond to this woman. Nothing warrants taking this dog out of the City.

Kayla: I'll write up a document with some suggestions and ideas, and also places and trainers that I can give Mr. Rocco that might inspire him.

Robin: I think this is the avenue that you and Frank should pursue.

Sam: I agree.

Robin: Report back on any other steps that are necessary.

We want to move on to the **COVID-19 update**.

Frank: I just checked the updated list, and there are zero new cases so far this month. I wanted to have the vaccination rates for you, but I didn't have time.

(something about age groups, but recording very unclear and transcriptions extremely spotty)

Department Updates

Frank: You heard the most current news, that Patti is retiring. Her last day is tomorrow. She is moving out to Arizona, to her family. We'll really miss her, she's done a lot. Through her ten and a half years with this department, she's learned a

tremendous amount and gained lots of skills and certifications that led to her being named Assistant Director of Public Health. Because we don't feel that we'll find anyone with those qualifications, we are going back to the position of Administrative Assistant Office Manager. We'll start internally, and then go outside. I do have some candidates outside that I feel the Board would like.

We don't have contact tracers anymore, although we are keeping two of them on who can help us catch up, and can help with Patti leaving. That will be through the end of August.

There is one more thing- this came in today. The results of yesterday's beach testing, the water samples from the four bathing beaches, are in, and they are not good. We had two elevated counts, and the other two were close. I went out again today to re-test. I did put signs out there: No swimming due to high bacteria counts. We'll get the results from today's testing late tomorrow afternoon. The water today was pretty murky. If they come back high, we'll have to wait until Wednesday when we do our next testing. We had discharges all week, due to the heavy rains.

Robin: Any other matters? Hearing none, let's set a date for our next meeting.

Robin: OK, we'll meet on August 26th.

Robin: Motion to adjourn?

Sam moved to adjourn, Robert seconded the motion, which passed.

Robin adjourned the meeting at 1:34 on the transcript (which was about 8:34 p.m.)

Respectfully submitted,

Laurel Hanke (who did not attend the meeting. Minutes were prepared from the Zoom transcript)