

Town of Concord  
Board of Health

Minutes from the Meeting  
Tuesday, July 19, 2011

PRESENT: Dr. Alan Woodward, Chairman  
Ellen J. Hutt  
Kerry Diskin  
Jack Bergman  
JoAnn DiNardo

Susan G. Rask, Public Health Director  
Gabrielle P. White, Public Health Inspector  
Karen M. Byrne, Administrative Assistant

OTHERS: Evan Stidman, Stamski & McNary, Inc., 1000 Main Street, Acton, MA ; Timothy Igo, 12 Harrington Avenue; Pete Lowy and Jennifer Hashley, Pete & Jen's Backyard Birds; Student from Regis Nursing College (didn't sign in).

\*The agenda was taken out of order because the applicant's for the public hearing were not present at 7:00 p.m. when the meeting began.

1. **Septic Betterment Program**

**Preliminary Approval for Betterment Liens**

Karen Byrne processed loan applications for the following properties this past month. Stanley Sosnicki, Environmental Health Inspector reviewed the Title 5 inspection reports for the properties and confirmed that the systems were in failure:

- 12 Harrington Avenue – Igo/Damon (\$30,000)
- 14 Harrington Avenue – Moya (\$30,000)

Dr. Woodward moved that the Board VOTE to find the onsite sewage disposal systems for the above noted properties to be public health nuisances per MGL, CH 111, s., 127B & 127B ½ and to authorize the initial betterment lien assessments not to exceed \$30,000 for each property to be filed at the Registry of Deeds. Ellen Hutt seconded it. All VOTED in favor.

**Final Betterment Lien Assessments**

The onsite sewage disposal system for the following property has been completed and all invoices processed by the Administrative Staff.

- 117 Channing Road – (\$20,850) – Benzer/Peters

Jack Bergman moved that the Board issue the Order to Assess the Betterment for the above listed property in the amount of \$20,850. Such order shall be forwarded to the Town Collector. Ellen Hutt seconded it. All VOTED to approve.

## 2. Minutes from Meeting and Board Calendar

The Board discussed and reviewed the minutes from the Executive Session held on June 21, 2011 as it related to potential litigation from Walden Grille against the Town. Dr. Woodward wanted one word changed from “curtly” to “emphatically” on the second page. Ellen Hutt moved to approve the Executive Session Minutes as amended. JoAnn DiNardo

Following an additional discussion, Ellen Hutt moved that the minutes from the Executive Session not be released until resolution of the potential litigation from Walden Grille is resolved. Jack Bergman seconded it. All VOTED in favor.

The Board discussed and reviewed the minutes from the meeting on Tuesday, June 21, 2011. A minor grammatical amendment was made on page (2). The word “signed” was inserted to read as follows:

“.....at the May meeting had not been signed due to some issues...”

Ellen Hutt moved to approve the minutes as amended. Kerry Diskin seconded it. All VOTED in favor,

The Board confirmed it would have a meeting in August (16<sup>th</sup>) and that the September meeting had been rescheduled to September 13, 2011.

## 3. Public Hearing – Onsite Sewage Disposal System

### 12-14 Harrington Avenue, Request for Local Upgrade Approvals & Local Variances

The Board heard a request from Evan Stidman, E.I.T., Stamski and McNary, for his clients, Timothy Igo, Kathryn Damon (12 Harrington Avenue) and Kathleen Moya (14 Harrington Avenue) to replace the onsite sewage disposal system serving the property at 12-14 Harrington Avenue. Mr. Stidman asked the Board to grant (4) Local Upgrade Approvals from Title 5 in accordance with CMR 310 15.405 and (3) Local Variances from CBHR 3.06(A) as follows:

#### Local Upgrade Approvals from Title 5

- To construct a leaching field 6 feet to a property line, instead of 10 feet as required by Title 5 15.405(1)(a)
- To construct a leaching field 14 feet from a cellar wall, instead of 20 feet as required by Title 5 15.401(1)(B)
- To locate a septic tank 8 feet from a cellar wall, instead of 10 feet as required by Title 5 15.405(1)(B)
- To construct a leaching field 29 feet from a Bordering Vegetated Wetland, instead of 50 feet as required by Title 5 15.405 (1) (E)

## Local Board of Health Variances

- To construct a leaching field 29 feet from a Bordering Vegetated Wetland, instead of 75 feet as required by CBHR3.00, Section 3.06(A), Table 1
- To locate a septic tank 26 feet from a Bordering Vegetated Wetland, instead of 50 feet as required by CBHR 3.00, Section 3.06(A), Table 1
- To located a septic tank 6 from a pier or sonotube-type foundation, instead o f10 feet as required by CBHR 3.00, Section 3.06 (A), Table 1

Mr. Stidman explained that due to severe site constraints, these variances were required to be able to construct a new system (and bring the failed system into compliance) on the property.

The Board reviewed notes prepared by staff. Stanley Sosnicki, Environmental Health Inspector reviewed the plans and recommended granting the variances as requested because the engineer had designed the best possible system for this lot under the conditions that existed and that it exceeded compliance of the system that was previously in the ground. Mr. Sosnicki noted that at one point in time, this was a two family home that was converted to condos (2 separate units); the existing failed system is sized for a 4-BR home, whereas the existing condos contain a total of six bedrooms (3-BR each).

Following a brief discussion, Ellen Hutt moved to GRANT the (4) Local Upgrade Approvals from Title 5 in accordance with CMR 310 15.405 and (3) Local Board of Health Variances from CBHR 3.00 as listed above. Jack Bergman seconded it. All VOTED in favor to approve.

#### 4. Appointment of Agent

In accordance with MGL, Ch. 111, Section 30, the Board of Health may appoint the Public Health Director to act as its agent in cases of emergency or if they can not conveniently assemble. This appointment empowers the agent with legal abilities to enforce state and local regulations to protect the health and environment.

Karen Byrne noted that as was done in the past, the Board should formally appoint Susan Rask as an Agent to the Concord Board of Health in accordance with the above referenced laws for the duration of her employment.

Jack Bergman moved to appoint Susan Rask, Public Health Director, as the Board's Agent in accordance with MGL, Ch. 111, Section 30 for the duration of her employment with the Town of Concord. Dr. Woodward seconded it. All VOTED in favor to approve.

Karen Byrne advised the Board that formal vote was not required to authorize Ms. Rask as a Region 4A representative, but that it had to formally add her name to the list of authorized personnel who could represent the Town as it relates to Emergency Preparedness. The entire Health Department Staff is on this list. The document was signed and will be forwarded to the Region 4A Coalition.

## 5. Food Service Establishment – Pete & Jen’s Backyard Birds

The Board of Health heard a request from Pete Lowy and Jennifer Hashley, owners of Pete & Jen’s Backyard Birds to allow the slaughter of rabbits on site at Verrill Farm, 159 Wheeler Road (Verrill Farm, 11 Wheeler Road),

### Background

The Board approved the annual site license as it related to the Mobile Poultry Processing Unit (MPPU) that is used by Pete & Jen’s poultry processing business at its May 2011 meeting. At that time, it was unable to approve the additional request to slaughter rabbits because they had not received the required approvals from the Massachusetts Department of Public Health (MDPH). Since that time, MDPH has issued a license in accordance with MGL 94, Section 305C, “Process or Distribute Food for Sale at Wholesale” for the purpose of rabbit slaughter. Ms. Hashley & Mr. Lowy presented the Board with a summary of the process and other supporting documentation that was reviewed and discussed by the Board.

Public Health Director Susan Rask expressed her uneasiness relating to MDPH issuing this particular type of license for the purpose of rabbit slaughter because it removed the local oversight. Nonetheless, those concerns have been documented to MDPH Food Protection Program and are in the record.

Ms. Rask recommended that as with the MPPU for the poultry processing, the Board issue a similar site license for the slaughter of rabbits in accordance with MGL, 111, Section 151 (Slaughter Houses) with the following conditions:

- Applicant agrees that no processing water from slaughter operation will be disposed of in the food prep sink or any other fixture that discharges to the on-site sewage disposal system.
- All processing water, blood, and solids from the slaughter operation will be disposed of in an approved composting pile.
- No mops will be washed in or floor wash water disposed of in sinks used for preparation.
- Maximum number of rabbits to be slaughtered not to exceed 500 annually.
- Rabbit slaughter process to be carried out in accordance with all state and local board of health regulations.
- Applicants must submit copies of all MDPH inspection reports to the Concord Board of Health; these reports must be filed prior to annual issuance of rabbit slaughter site facility license.

Following a brief discussion, Dr. Woodward moved to approve the site license with the above referenced conditions. Jack Bergman seconded it. All VOTED in favor to approve.

## 6. Reports from Public Health Director and Staff

### Mosquito Control

Karen Byrne provided the Board with a copy of the overview of services that will be provided to the Town of Concord in Fiscal Year 2012 by the Eastern Middlesex Mosquito Control Program (EMMCP). Although the Town of Concord does not utilize spraying as a means to control mosquitoes, EMMCP provides an integrated mosquito management program including a catch basin larval control program, surveillance and trapping, wetland inspections to monitor larval populations and identify obstructions in drainage systems.

### Goals & Initiatives

Discussion postponed to a future meeting to be determined at a later date.

### Staff Activity

Susan Rask, PHD and Environmental Health Inspector, Stanley Sosnicki will be conducting a "comprehensive housing inspection" upon the request of the tenants residing at 1679 Main Street on July 21, 2011. This inspection will be conducted in the presence of a police escort and legal counsel for the owner of the property due to the somewhat contentious dealings both staff and others have had with the parties involved in this matter. Staff will keep the Board updated.

### Influenza Clinics

The Public Health Director, along with Karen Byrne, Administrative Assistant met with Sharon Malone, Nursing Manager, Emerson Hospital Home Care to discuss influenza vaccine and the annual senior clinic sponsored by the Board of Health.

At this time, the Massachusetts Department of Public Health has allotted 300 doses of flu vaccine for the Town of Concord (in the past, Concord received 1,300 doses) with stringent guidelines attached to have it is distributed. Only residents who are considered uninsured and/or severely "underinsured" are privy to this vaccine. The majority of the clientele served by our senior clinics do not fall within these two categories. Therefore, Emerson Home Care (Concord's Nursing Provider) has ordered 600 doses of private vaccine through Emerson Hospital's Pharmacy for the clinics. As is always the case, the clinics cannot be scheduled until the vaccine manufacturer has assured delivery date.

.Susan Rask said that she was also going to contact MDPH and suggest that it keep the allotted doses slated for Concord so that it can be reallocated to a community and/or clinic that could use it under the guidelines set by the State.

### Public Health Grants

Brent Reagor, former Public Health Director, who is currently serving as the lead consultant for the Public Health Community Nursing Grant is scheduled to appear

before the Board at the August meeting for an update as it relates to the scope and goals of the grant.

### Beach Testing

Gabrielle White, Public Health Inspector, has been conducting weekly tests of the (3) semi-public bathing beaches in the Town of Concord (White Pond, Annursnac Hill, Silver Hill) and to date there have been no closures. Walden Pond, which is a state run facility, was closed for 1 day due to high bacterial counts, but reopened the next day.

### Walden Grille Update

Following an administrative hearing on 6/21/11, the Board of Health agreed to issue Walden Grille a license to operate contingent upon several conditions; one of which was that all operations, including but not limited to, general housekeeping and sanitation of the entire facility must be maintained in full compliance with the Food Code. In a letter<sup>1</sup> dated 6/22/11, Jack Grant, owner was advised that failure to comply with any of the conditions noted in the approval would result in suspension of the license to operate.

Ms. Rask informed the Board that she and Gabrielle White, Public Health Inspector conducted a routine sanitary inspection of this facility on 7/14/11 and observed 15 violations (8 were critical in nature). Upon re-inspection on 7/18, some of the violations had been abated, but she witnessed an additional 9 critical violations at which point an order letter<sup>2</sup> was written ordering them to appear before the Board at its August 16<sup>th</sup> hearing, unless the Board preferred holding an emergency hearing to address either suspend and/or revoke the license for this restaurant.

Board members were appalled by both the egregious violations witnessed by the Health Department staff and the blatant non-compliance of this owner and his staff in less than one month's time from when the owner vowed these types of violations would not be occurring because he finally had hired a "high caliber" kitchen staff. Ms. Rask noted that staff that was in place in June had either left or were fired.

Following a brief discussion, Board members agreed to hold an additional meeting on July 27 or 28 (depending upon when Town Counsel could be present) and directed staff to notify the owner of Walden Grille that he was hereby ordered to appear at such hearing (with or without his attorney). The Board of Health will hold an Executive Session to discuss the potential litigation against the Town with Town Counsel prior to the open hearing to discuss the possible revocation of Walden Grille's License to Operate.

The meeting adjourned at approximately 9:00 p.m.

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<sup>1</sup> Letter dated 6/22/11 – Administrative Hearing Findings

<sup>2</sup> Order letter dated 7/18/11

Town of Concord  
Board of Health  
Signature Page  
July 19, 2011

Respectfully submitted by,

Karen M. O'Keefe-Byrne, Administrative Assistant  
Concord Board of Health

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Dr. Alan Woodward, Chairman

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Kerry Diskin

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Jack Bergman

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JoAnn DiNardo

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Ellen Hutt, Esq.

