

Town of Concord
Board of Health

Minutes from the Meeting
Tuesday, July 27, 2011

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

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

OTHERS: Kevin D. Batt, Counsel for the Town of Concord, Anderson & Kreiger, Boston; Marcia Rasmussen, Director Planning & Land Management; Jack and Pat Grant, owners, Walden Grille, 24 Walden Street; David Summers, Esq., 77 Franklin Street, Boston, MA; Lisa Berger, Berger Food Safety Consultants

Dr. Woodward opened the meeting at 7:00 p.m.; Kerry Diskin moved that the Board of Health move into Executive Session to discuss possible litigation against the Town from Walden Grille. Jack Bergman seconded it. All VOTED in favor to move into Executive Session. The Chair asked for a roll call vote:

Ellen Hutt – in favor	JoAnn DiNardo – in favor
Jack Bergman – in favor	Kerry Diskin – in favor
Dr. Woodward – in favor	

The open session of the meeting ended and the Board proceeded into an Executive Session.

At 7:30 p.m., the Board of Health returned to the Open Session portion of the meeting and agenda resumed accordingly.

Food Service Establishment – Walden Grille (Enforcement Hearing)

Dr. Woodward advised audience members that this portion of the meeting would be recorded and that prior to any discussion the Board would officially enter certain material prepared by staff be into the public record as follows:

- A. **“Walden Grille Chronology of Enforcement Actions – 2011”**, dated July 27, 2011. Ellen Hutt moved that the above referenced document be entered into the Board of Health’s hearing record. Jack Berman seconded it. All VOTED in favor.
- B. **“Record of Inspections and Food Code Violations Walden Grille 2011”**, dated July 27, 2011. Jack Bergman moved that the above referenced document

be entered into the Board of Health's hearing record. Ellen Hutt seconded it. All VOTED in favor.

C. Documents related to enforcement actions in 2011 for Walden Grille.

Ellen Hutt moved that the following documents including, but not limited to inspection reports, Orders to Correct violations, Board of Health meeting minutes, audio CDs, and other associated documentation relating to 2011 correspondence and enforcement action against Walden Grille, 24 Walden Street, Concord be entered into the Board of Health's July 27, 2011 hearing record. Jack Bergman seconded it. All VOTED in favor.

D. Documents relating to violations found during the (4) most recent inspections.

Jack Bergman moved that the following documents be entered into the Board of Health's July 27, 2011 hearing record: Food Safety Inspection Report prepared by Berger Food Safety Consulting dated 7/21/11; Enforcement Letter dated July 20, 2011 to Walden Grille relating violations found at inspection on 7/18/11; Enforcement Letter dated July 18, 2011 to Walden Grille relating to violations found at inspection on 7/14/11; Food Safety Inspection Report prepared by Berger Food Safety Consulting dated 6/14/11. Ellen Hutt seconded it. All VOTED in favor.

Discussion & Review

During a routine inspection of Walden Grille conducted on July 14, 2011, Public Health Director Susan Rask and Public Health Inspector Gabrielle White observed several violations, many of them critical as defined in the 1999 Food Code, Chapter 10 of the State Sanitary Code, 105 CMR 590.000, *Minimum Sanitation Standards for Food Establishments*. Upon re-inspection on July 18th, at which time violations should have been corrected, the Public Health inspector observed an additional 6 critical violations and 5 non-critical. Ms. Rask summarized the information that the Board entered into the record. Reiterating the numerous occasions Mr. Grant had been put on notice; either by Order Letter or directly at Board of Health meetings, most recently, the June 21, 2011 hearing that if these types of violations continued, his license to operate would be suspended. In short, she stated that these violations were simply unacceptable; particularly for an establishment that has had the type of enforcement and oversight this restaurant has had since April. The violations are repetitive in nature and it appears that the owner and staff do not have the skill set or commitment to turn it around.

Board Members were appalled that this facility was before them again. In less than one month's time (from the issuance of the License to Operate a Food Establishment, which was just issued on 6/27/11) the staff had completely turned around again; critical and non-critical violations (repeated violations) occurring as they did back in April. Ellen Hutt said it was inexcusable.

Attorney David Summer (Walden Grille) took issue with the most recent order letters and claimed that Walden Grille was doing a much better job than the Health Department observed. Mr. Summer focused on two particular violations: (1) relating to

food waste in the sink designated for hand-washing and (2) that proper temperature logs were not being maintained.

He argued that the material in the sink was caused by “herbs or other food material” on an employees hand and that was what the Health Department observed. Public Health Director Rask interjected that she was present during that inspection and that it was clear that a “bucket” of something was poured into that sink. Ms. Rask said there was food residue all over the sink – it was not from an employee washing his/her hands. Mr. Summer insisted that the same thing could happen from an employee washing their hands. He maintained that many of the violations in the most recent order were duplicative and should never have been assessed separately.

Mr. Summer deferred to Lisa Berger, Berger Food Safety Consultants and she concurred that there were times when similarly categorized violations could be cited as one, as opposed to each being noted separately.

Ellen Hutt stated that it did not matter how Mr. Summer or Ms. Berger interpreted how the violations were grouped; the fact of the matter, she insisted was that the violation was present in the first place. Ms. Hutt said whether it was soup or lobster salad - if the proper temperature was not maintained, it was a serious violation. Dr. Woodward agreed. He said that since 2010 this restaurant has had a chronic violation history.

Mr. Summer respectfully disagreed and said that Walden Grille had been doing a much better job since April. Ms. Hutt asked what basis he possibly could have to make a statement like that with the information that the Board had before it to review. He said that Lisa Berger’s most recent inspection report dated 7/21/11 showed marked improvement with a rating of 92% - Excellent. He said he asked her “point blank” if she felt his restaurant should be closed down and that it was Ms. Berger’s opinion that it should not.

Ms. Berger said that she truly had “complete confidence” in the staff that Mr. Grant now had in place to turn his restaurant around. Following her inspection in June and review of the critical violations and training with staff, she said it was her opinion that for the first time in a long time, “they got it”. When she came in for her July inspection (7/21/11), she told the Board that she was thrilled with what she observed; the facility looked “fabulous”. It was during the time she was typing up her report that the new head chef Jesse Rosen approached her to discuss the inspections that had been conducted by the Health Department on 7/14 and 7/18.

Ellen Hutt asked Ms. Berger if she would have had the same enthusiasm for this staff had she witnessed what the Health Inspectors had witnessed four days previous. Even after days of inspections and violation letters, Walden Grille still had 3 critical violations present at the time of Ms. Berger’s inspection – in other words, the third try in a very short window. Ms. Hutt had real concerns about that and asked Ms. Berger to comment.

In her opinion, the former Sous Chef directly affected the outcome of the health department inspections; he was not capable of managing the kitchen staff in a manner necessary to adhere to the sanitary requirements of a restaurant. Jack Grant, owner

interjected that the majority of the violations from 7/14 & 7/18 were related to this former employee; he said he was a “bad hire”.

Discussion continued for several minutes as it related to the inability of Walden Grille’s management/ownership’s to retain quality restaurant employees; whether it be a chef or a manager, employee turnover at this facility contributed to the ongoing troubles and could be considered as another chronic issue.

Ms. Berger felt that new manager and Head Chef Jesse Rosen was the key to getting this place turned around had complete confidence in his commitment and ability. She was putting her reputation (her business) on the line by endorsing Mr. Grant’s new team. She assured the Board she would not be at the meeting if she did not have confidence it could be done. Ms. Rask advised the Board that she had spoken extensively with the Mr. Rosen, who was a well spoken, well-meaning young man who seems quite capable; but, he could not be expected to single handedly rectify this situation. Ms. Rask told Mr. Grant directly that it was not a realistic plan for compliance to have one person “work double shifts” ad infinitum to ensure that staff is doing what they are supposed to do.

As discussion continued, Ms. Berger was particularly enthusiastic in her optimistic outlook on what this new chef and team could accomplish with continued assistance from her and additional training of staff. The Board listened to Walden’s counsel for several minutes as he outlined what he felt was Walden’s right to operate and that they should be given another chance. Mr. Summer felt the Board should be encouraged by Ms. Berger’s commitment of additional inspections and said he was certain that Ms. Rask would also be inspecting more often.

At this point, the Public Health Director interjected that the entire Health Department Staff had spent an inordinate amount of time dealing with this restaurant over the past six months. She noted that eleven inspections were conducted by the Board of Health staff at this facility during that time period. They should be inspecting this facility twice a year. Ms. Rask said no other restaurant has ever required this type of departmental involvement or oversight and “hand-holding”. Ms. Rask stated the Health Department cannot be in this restaurant every two weeks, it has to have confidence that a facility can operate safely on its own and she was not confident this facility could do so. To put in context, Ms. Rask said a facility like this should be inspected twice a year.

Jack Bergman stated he had not heard anything different from Mr. Grant indicating any type of significant change in his management philosophy that would facilitate change in operations. He noted that complete dependence was being put upon one individual employee to “turn it around”. But, he said, if that employee leaves, Walden Grille would be in the exact same place it was today. Mr. Bergman wanted to know what the backup plan was and he had not been convinced one was in place. Kerry Diskin agreed. She said there was a layer of managerial oversight simply missing from the equation.

Mr. Grant explained that in the corporate world, you always have your replacement ready to go and he was doing his best to ensure that type of plan was being created. However, he submitted that if Mr. Rosen left today, his restaurant would

be in worse shape that it was now, but that he hoped with the help of Ms. Berger and the others that he had hired, that would not happen.

Dr. Woodward, Mr. Bergman and Ms. Hutt each expressed deep concern over the lack of managerial oversight the ownership of this restaurant has exhibited. Dr. Woodward said this was by far the most egregious case that the Concord Board of Health or staff has ever dealt with; no other restaurant has ever had the continued history of violations as Walden Grille. Restaurant's who had similar situations were able to remedy it – period. The Board said it was its' job to protect the public health and to do what was within its authority to do so; consensus was the management at this restaurant seemed incapable.

Based upon what was heard tonight, Dr. Woodward asked the Public Health Director directly if she felt this restaurant was capable of bringing this restaurant up into full compliance and maintain it to a level that was adequate and safe for the community. Ms. Rask said the record did not demonstrate it.

Dr. Woodward asked how many years this establishment had been operating; he was advised twenty five. In that time frame, Ellen Hutt said after all these years, critical violations seem to be the common thread and the lessons learned are not generalized and carried forward. How did Mr. Grant and his attorney expect the Board to have confidence that anything was going to change; she said the Board has the public's trust to think about and stated that in honesty, "who would want to have a meal here?" She would not recommend this restaurant to her friends, speaking as a member of the Board and as a member of the community.

Jack Bergman said it was worrisome to him if the food safety consultant only monitors this facility for a finite period of time; he felt it needed to be indefinite. Dr. Woodward said this was a chronic and very frustrating issue and the choices were limited; the Board revokes your license or it issues the license with onerous conditions for a limited period of time, however, he was sensing very little confidence from staff or the Board members that Walden Grille could turn this around in the foreseeable future.

Ms. DiNardo directly addressed Mr. Grant stating "the buck stops with you". She said it was his responsibility to set the tone for compliance and to get his employees to sign on board as a team. If it takes "babysitting", then Ms. DiNardo said that was what he needed to do until his staff was able do carryout proper procedures by route. She also admonished an earlier comment made as it related to the Food Code and gray areas in regards to interpretation. Ms. DiNardo noted she has worked under the jurisdiction of MDPH for years and that they are "black and white; you comply or you don't". Her team complies because she is in charge and encourages them to get on board.

Dr. Woodward said the Board was in an awkward place; Mr. Grant implored that the Board give him until the August meeting to show that the team he had in place could bring the restaurant into compliance.

Board members felt that no further discussion was warranted because all it had been doing for the past hour was reiterating the same dialogue.

Ellen Hutt moved that the Board of Health adopt the following findings of fact regarding Walden Grille:

1. In the six months since February 2011 there has been an extensive effort on the part of the Concord Health Department staff and the Board of Health to work with Walden Grille to bring the restaurant into compliance with requirements of the Food Code.
2. Concord Health Department staff has collectively spent several hundred hours of time on inspections and follow up efforts at Walden Grille in 2011.
3. Walden Grille has appeared before the Board of Health on March 15, April 19, May 17, and June 21, 2011 to discuss ongoing violations at the restaurant as evidenced in the document *Walden Grille Chronology of Enforcement Actions 2011* dated July 26, 2011.
4. Concord Health Department staff and Walden Grille's food safety consultant have conducted at least 14 food safety inspections of the restaurant since February 2011, as evidenced in the document of *Record of Inspections and Food Code Violations, Walden Grille 2011*. Numerous critical and non-critical violations of the Food Code were found at every inspection.
5. Critical item violations are defined in 105 CMR 590.002 (incorporating by referenced the 1999 Food Code) as "a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard."
6. Inspections show that critical violations have been ongoing and the same violations have been found on multiple inspections.
7. Critical violations have included numerous instances of holding potentially hazardous foods at improper temperatures. Holding potentially hazardous foods at improper temperatures is known to foster the growth of pathogenic organisms and therefore increase the likelihood of food borne illness.
8. Other critical violations include bare hand contact with read to eat foods; hand wash sinks not provided with soap and paper towels; improper segregation of raw and cooked foods; food uncovered; lack of test strips and proper sanitizer levels in the dishwashing machine;; and lack of sanitizer in active kitchen work areas.
9. Walden grille owner Jack Grant was ordered to appear before the Board of Health at its May 17, 2011 meeting. At this hearing, and in a letter from the Board of Health dated May 20, 2011, Mr. Grant was warned that Walden Grille's license to operate would be suspended if three or more critical violations were found on subsequent inspections, and that the license would be revoked for failure to fully comply with minimum standards of the Food Code. Since this time, 3 or to fully comply with minimum standards for the Food Code. Since this time, 3 or more critical violations have been found on each of the inspections held June 14 (7 critical violations), July 14 (8 critical violations), July 18 (6 critical violations) and July 21 (3 critical violations) 2011.

10. Records (ServSafe Certificates) submitted by Walden Grille indicate ongoing significant staff turnover at the restaurant. High staff turnover has resulted in untrained staff and contributed to the ongoing food service violations. For example, on July 15, 2011 Executive Chef Jesse Rosen submitted to the Concord Health Department a list of the restaurant staff showing a total of 5 kitchen staff who handle food. As of July 27, 2011, 2 of these 5 staff are no longer employed by Walden Grille and a third staff member will leave her position in early September 2011.
11. At a Board of Health hearing held April 19, 2011, and in letters dated May 3, 2011 and June 22, 2011, Walden Grille owner Jack Grant was required to contract with a food safety consultant to provide training in safe food handling practices to all employees of the restaurant. The last known food safety training for staff was conducted April 25, 2011 by Berger Food Safety Consulting. Due to the high staff turnover, it is unknown which, if any, staff currently employed at the restaurant were employed at Walden Grille and received this food safety training on April 25, 2011. No evidence had been provided that food safety training has occurred for new staff members who have been hired after April 25.
12. At a Board of Health hearing held June 21, 2011, Walden Grille owner Jack Grant was verbally warned by the Board of Health that failure to comply with requirements of the Food Code would result in suspension or revocation of the restaurant's license to operate.
13. Full compliance with the Food Code was placed as a condition of Walden Grille's license to operate which was issued June 22, 2011.
14. Based on the record, the Board has determined that there are sufficient grounds to revoke Walden Grille's License to Operate as follows: Walden Grille has failed repeatedly to comply with requirements of the Food Code. Walden Grille has failed to provide sufficient food handling safety training to its staff to ensure that their food handling procedures comply with requirements of the Food Code. Walden Grille has had three (3) or more critical Food Code violations on each of the four most recent inspections. The ongoing critical Food Code violations found at Walden Grille demonstrate that the restaurant is operating in a manner that is not protective of public health.

Kerry Diskin seconded it the motion. All VOTED in favor to adopt the above finding of facts into the meeting record.

Jack Bergman moved that the Board of Health allow Walden Grille to continue to Operate a Food Service Establishment in the Town of Concord with the following conditions:

1. Owner will supply to Health Department a list of all staff and their daily job duties.
2. Owner will contract with Berger Food Service Consulting Services to provide customized food safety training to each staff members based on their job duties.

3. Food Service Consultant (Berger) will create written food safety protocols and training manual for each job position; this manual can be passed to new staff members as they are hired so that job responsibilities and related food safety protocols are understood by new staff.
4. When any staff member at restaurant is replaced, owner must notify Health Department within 5 days of staff termination that new staff will be hired and trained.
5. Within 10 days of hiring a new staff member, owner must certify to Health Department that new staff member has received training appropriate to their job position from contracted food service consultant. This training must occur in person; i.e., merely giving the written training manual for that job to the new employee will not be considered sufficient training.
6. Contracted food service consultant will inspect restaurant weekly and based on any violations found, will engage staff in remedial training as necessary to adopt proper food protection practices. Contracted food service consultant will report to Health Department within (2) two days the results of all inspections performed and all new and remedial training that he/she has conducted.
7. Weekly inspections by contracted food service consultant will continue until no critical violations of food code regulations have been found on 5 consecutive inspections.
8. After the period of weekly inspections has ended, the food service consultant will continue to inspect restaurant on a regular monthly basis.
9. If, within (2) months after the adoption of these requirements, the restaurant fails to show what the BOH considers to be adequate progress in meeting the requirements of the food code regulations, operation of the business will be deemed inadequate to protect the public health and this will be considered grounds for revocation of the restaurant's license to operate.
10. Health Department staff will continue to inspect on a monthly basis and will issue non-criminal citations for all violations of the food code that are found upon inspection.
11. Notwithstanding item #9 or any other of these provisions the Board reserves the right to revoke or suspend Walden Grille's License to Operate a Food Service Establishment in the Town of Concord in accordance with and under any and all applicable law.

JoAnn DiNardo seconded the motion. Dr. Woodward asked if there were any further comments.

Ellen Hutt wanted to clarify if the Board was solely relying on Lisa Berger's outside inspection services or would the Concord Health Department staff's time and resources continued to be taxed by the ongoing time commitment needed to facilitate this establishment. Dr. Woodward said if the motion carried, then yes, for the next two months, additional inspections and Town resources would be utilized for assurance of

compliance (in addition to the outside food safety consultant). Ms. Hutt also reiterated the importance of item #11 of the conditions and wanted the record to clearly note that the Board of Health reserved the right revoke or suspend Walden Grille's license in accordance with and under any and all applicable laws in order to protect the public health. Board members reworked a few grammatical notes in the conditions and slightly modified conditions #6 and #7 (changes were incorporated as listed above).

Dr. Woodward said there was a second on the table with the slightly modified wording and asked if there were any additional comments. There was none.

A vote was taken and the motion carried 3-2 to allow Walden Grille to remain open with the above listed conditions:

Affirmative Vote

Dr. Woodward
Jack Bergman
JoAnn DiNardo, RN

Dissenting Vote

Ellen Hutt, Esq.
Kerry Diskin

The Board ordered Walden Grille to appear at the August 16 and September 13 meetings and that Berger Consultants submit a minimum of (3) inspection reports by the August 16, 2011 meeting. Lisa Berger made a comment that she had other clients as well and would do her best to carry out the number of inspections the Board requested. Board members and the Public Health Director were quick to advise her that she had just spent the better part of the meeting advocating and assuring the Board she would inspect as required; Susan Rask wanted to know immediately if this was not something Ms. Berger felt was feasible. Ms. Berger said she would work with Walden to comply and conduct (3) inspections.

The meeting adjourned at approximately 10:15 p.m.

Board of Health Minutes
Signature Page
Tuesday, July 27, 2011

Respectfully submitted by,

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

Dr. Alan Woodward, Chairman

Ellen J. Hutt, Esq.

Kerry Diskin

JoAnn DiNardo, RN

Jack Bergman

