

Town of Concord  
Board of Health

Minutes of the Meeting  
Tuesday, May 17, 2011

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

Stanley J. Sosnicki, Acting Public Health Director  
Gabrielle P. White, Public Health Inspector  
Karen M. Byrne, Administrative Assistant

OTHERS: Attorney David Summer, 77 Franklin Street, Boston, MA (Walden Grille);  
Jack Grant, owner, Walden Grille, 74 Walden Street; Pat Grant; Hedy  
Alexander, owner, 1681 Main Street; Jennifer Hashley and Peter Lowy,  
Jen & Pete's Backyard Birds, Verrill Farm, Concord

Dr. Woodward opened the meeting at approximately 7:00 p.m.

1. REORGANIZATION OF THE BOARD

Dr. Woodward reviewed a letter that he and Karen Byrne received from the Town Manager's office advising that Jack Bergman and JoAnn DiNardo were eligible for reappointment to the Board. He was pleased to report that both members agreed to serve their first full term. He reminded the Board that since they had completed unexpired terms for two former Board members, this would technically be their first 3-year term.

Karen Byrne noted that the Board historically elected a new Chairperson for the upcoming year following the Annual Town Meeting. After a brief discussion on different scenarios for the Board's consideration (Chair, Vice-Chair, etc), JoAnn DiNardo moved to elect Dr. Alan Woodward to serve as chairman for the upcoming year. Ellen Hutt seconded the motion. All VOTED in favor.

\*The agenda was taken out of order at this point because the parties for the 7:05 hearing was not present\*

2. Public Hearing – Food Establishment

Walden Grille, 24 Walden Street, - Violation of Consent Agreement & Documented Food Safety Violations

Walden Grille owner Jack Grant was ordered via hand-delivered notification by the Health Department staff to appear before the Board of Health at this hearing to discuss the ongoing enforcement issues relating to his establishment.

## Background

In April, the Board discussed at length possible enforcement actions it felt appropriate for this restaurant, which in its' collective opinion, had been "blatant in its' disregard for illegal dumping of waste material into a catch basin after repeatedly being told to cease those behaviors, as well as the recurrent food safety violations." Board members reviewed lengthy inspection reports and a written chronological history of the repeated, chronic food safety violations of this establishment. It heard testimony from the owners, the staff, head-chef, and general manager relating to why these violations continually occurred over the years. Staff presented protocols they assured would be implemented immediately. Mr. Grant asked for an opportunity to bring his restaurant into full compliance and not be closed down.

After much consideration, the Board agreed and allowed Walden Grille to remain open during repairs; primarily because the owner guaranteed he and his staff were "completely confident they could bring the establishment into full compliance by May 3, 2011."<sup>1</sup>

During that same discussion, the Board of Health directed staff to draft a Consent Agreement (which would be a condition of this establishment's annual license to operate) stating at a minimum that this facility adhere to certain conditions as it relates to both illegal dumping into a catch basin and compliance with the food code.

Note:<sup>2</sup>

## Summary of Inspections 4/19/11 - Present<sup>3</sup>

At this point, Acting Public Health Director, Stanley Sosnicki provided a summary of events relating to what he called, "the extensive and daily inspections" that both he and Public Health Inspector Gabrielle White had conducted from April 20<sup>th</sup> to present. He noted on April 27, 2011, Board Member, Kerry Diskin accompanied them to evaluate compliance with general housekeeping and sanitation requirements. During the final compliance inspection on May 3, 2011, the restaurant continued to contain certain violations of the Food Code, but considerable progress had been made to improve the conditions, so it was the opinion of the Acting Public Health Director to allow Walden Grille (7) additional days to comply with the Board's vote on 4/19/11. Compliance was not met and the restaurant was closed by order of the Board of Health on Wednesday, May 11, 2011,

The entire Health Department staff has spent an inordinate amount of time working with the owners and staff of this establishment to assist them in bringing this restaurant into full compliance with the Food Code; including, an inspection conducted by Stanley Sosnicki on a Saturday (5/14/11). Upon re-inspection, Mr. Sosnicki again felt that significant progress had been made in the physical and sanitary conditions and lifted the suspension. He also noted that Lisa Berger, Berger Food Safety Consultants was present during his re-inspection and was visibly pleased with the progress she had observed since her initial consultation with the staff.

---

<sup>1</sup> Board of Health Minutes 4/19/11 – vote on Walden Grille

<sup>2</sup> The day after the meeting, let it be noted that the General Manager of the facility contacted the Health Department and advised Karen Byrne that Walden Grille was going to voluntarily close for 3 days so that repairs could be made in a less disruptive manner to the routine business at hand (i.e., operating a restaurant and preparing food for its' clientele).

<sup>3</sup> Order Letter 5/3/11 – attached; Order to Close 5/11/11 attached

Public Health Inspector Gabrielle White noted that she had spoken with Ms. Berger again during the week and that the contract for monthly inspections was in place; a copy of the report was reviewed by the Board.

### Discussion & Consent Agreement

Mr. David Summer, attorney for Walden Grille, asked that the record reflect that Mr. Grant and his staff had “done everything within their power” to comply with the Board’s order and felt that in the past few weeks there had been some issues in that the Health Department staff had not “clearly written” or “communicated” specifically what it expected from the restaurant. Mr. Summer said that “Walden is a small business doing the best they can do”. Dr. Woodward noted that this establishment, even during enforcement proceedings had sub-optimal compliance. Consensus of the Board was that no additional comment or discussion was required and moved onto the next order of business, the consent agreement.

### Consent Agreement<sup>4</sup>

Acting PHD, Stanley Sosnicki drafted a consent agreement that was reviewed by the Town Manager and Board of Health that included, but not limited to the following items:

- \$300 non-criminal dispositions for critical or repeat violations noted during a food inspection.
- Automatic suspension of permit to operate for 3 or more critical violations noted. Require remedial food safety training for all violations noted before lifting suspension.
- Permanent revocation of license to operate a food service establishment for illicit discharge to the catch basin and/or failure to comply with the other contract provisions set forth.

Mr. Sosnicki provided a copy of the Consent Agreement to Walden Grille’s Attorney and recommended that it be signed tonight. Following a brief discussion, Mr. Summer requested some time to carefully review the language of the agreement with his client and return it as soon as possible. Health Division staff strongly urged the Board to set a deadline for returning the signed agreement.

Dr. Woodward asked fellow Board members and staff if they felt (7) days was a reasonable timeframe and asked for a motion to reflect such. JoAnn DiNardo moved that the Consent Agreement be signed and returned to the Health Department no later than May 24, 2011. Ellen Hutt seconded it. All VOTED in favor.

Mr. Grant asked if his renewal application would be affected by these hearings and/or the consent agreement not being signed. The Board and staff said it was a condition of his permit that the agreement is in place. Karen Byrne advised the Board that Food Service Establishment licenses expire on 5/31 annually.

---

<sup>4</sup> Draft Consent Agreement - attached  
Concord BOH

### 3. Public Hearing – Housing Inspection

#### Request to Modify Order Letter from Concord Board of Health – Housing Inspection 1679 Main Street

The Board heard a request from Hedy Alexander, owner of 1679 Main Street, Concord to modify an order to correct certain housing code violations noted during an inspection conducted on April 12, 2011. The Health Department notified the tenants, Bill and Jean Thompson of this public hearing; the record will reflect they were not in attendance.

#### Background

Stanley Sosnicki, Acting PHD, advised the Board that the Health Department had received a request by the tenant of this property and inspection was subsequently conducted on 4/12/11. During the inspection six violations of the State Sanitary Code, “Minimum Standards of Fitness for Human Habitation”, 105 CMR 410.00 were observed and order to abate was issued on 4/13/11 to Ms. Alexander. In his opinion, Mr. Sosnicki felt that these violations were fairly easy to correct. Once a written request for a public hearing is received by the Health Department, enforcement action is delayed; however, Mr. Sosnicki recommended that the Board uphold the original enforcement letter and order the property owner to complete the repairs within 30 days of this hearing (6/17/11) or the matter will be referred to the Northeast Housing Court.

#### Discussion

Ms. Alexander was given an opportunity to present documentary evidence as to why this order should be modified and/or withdrawn. The Board carefully listened to the owner’s explanation that the tenants were not providing reasonable access to the apartment so that repairman could remedy the situation; she provided copies of unclaimed certified mail receipts (indicating that the tenants ignored attempts of notification by the owner to contact them to make arrangements for necessary repairs). She also showed the Board pictures of the apartment and an agreement signed by the tenants prior to renting the property several years ago. The Board asked Mr. Sosnicki if the photographs reflected how the property looked during his inspection. He said the most notable difference of course was that the photographs being presented showed an empty apartment; but that no, the physical conditions in the photos (walls, floors, etc.) did not remotely look like the property he inspected last April.

Ms. Alexander stated the tenants were less than receptive to any form of communication and at times felt “unsafe”. Ellen Hutt advised Ms. Alexander that she should contact the Police Department if that were the case and request an escort during the delivery of the notices. Ms. Hutt felt strongly that if the tenants were not being reasonable, then the issue should be dropped.

The consensus of the Board was that if the tenant did not provide reasonable access to the landlord then the enforcement matter should be dropped. Dr. Woodward asked staff if it was reasonable for it to phone the tenants and advise them of such. Mr. Sosnicki said he could attempt to contact the tenants and advise them of the Board’s discussion. At this point, both Mr. Sosnicki and Karen Byrne reminded the Board that it had a written enforcement letter on the table and that the Board needed to vote on the matter at hand, whether to modify, uphold, or withdraw the order to remedy the housing violations.

Following further discussion, Jack Bergman voted that the Board sustain the conditions noted in the order letter dated 4/3/11 relative to sanitary conditions in the rental unit 1670 Main Street that all violations be abated within 30 days (6/16/2011) contingent upon the tenant providing reasonable access to the landlord. Ellen Hutt seconded it. All VOTED in favor.

The tenants will be notified in writing and advised that this order will be dismissed and that no further action will be taken by the Health Department if evidence indicating that the tenant is not working with the landlord in providing reasonable access. The owner of the property was strongly urged maintain copies and records of any and all attempts to coordinate these efforts (copies of this material should be submitted to the Health Department as part of the official record).

#### 4. Public Hearing – Food Service Establishment

##### Pete & Jen’s Backyard Birds – Review of Operation of Mobile Poultry Processing Unit

Pete Lowy and Jennifer Hashley, co-owners of Pete & Jen’s Backyard Birds, met with the Board to review the operation of the Mobile Poultry Processing Unit (MPPU) used at their facility operated at Verrill Farm. One of the requirements for permitting by the Department of Public Health Food Protection Program continues to include that the owner of the business where the mobile unit will be located receives written approval from the local Board of health in accordance MGL, Ch. 111, Section 115. This year, Ms. Hashley would like to amend the license to also include the slaughter of rabbits.

##### Background

Public Health Inspector Gabrielle White noticed in March 2011 that Pete & Jen’s were advertising products on their website beyond the scope of their permit to operate. Products such as pesto were being prepared onsite without sufficient facilities or license to prepare food. Rabbits were also being offered for sale as food and processed on the farm. A letter was sent advising Ms. Hashley to stop these activities until proper approvals and permits were obtained.

Ms. Hashley did suspend production and sale of “potentially hazardous foods” at the farm stand upon receipt of the letter and contacted the Health Department. She said it was never her intention to operate outside the scope of her MPPU. She advised the Board processing rabbits had been part of their production for the past 2 seasons “under the full knowledge” of the MDPH and she assumed that meant approval.

Mr. Sosnicki provided the Board with a copy of email correspondence<sup>5</sup> from Kim Foley, Assistant Director of the Food Protection Program (dated 5/5/11) who provided in part the following explanation:

*“...We have explained to Jenn that until we can finalize our policies concerning rabbit slaughtering, her options are to have USDA present under their voluntary inspection program or to take her rabbits to a USDA facility for processing. We cannot issue her a license to slaughter rabbits at this time. We feel confident that we will be able to work out the details and be able to get licenses issues for this but we are not there yet.”*

---

<sup>5</sup> Email correspondence from Kim Foley 5/5/11 - attached  
Concord BOH

*“...So for now, we will not be able to issue an approval to process rabbits. If a firm wants to process rabbits for sale of the meat, for now, they need to use USDA.”*

## Discussion

Ms. Hashley expressed frustration with the MDPH and the very slow process in determining how to license the rabbit processing operations in Massachusetts. She stated that it was very costly to send product to other facilities to be processed, as well as licensing fees that she felt should be waived and/or reduced significantly; in her opinion, much of the “red tape” defeated the purpose of supporting local farmers. Some board members noted that fees covered inspections, etc., and Dr. Woodward said that he was certain Pete & Jen’s along with other similar venues were charging a fair price for the product in which they already had approval or there would not continue to be such a high demand for it.

At this point, Ms. Hashley reviewed in detail her intentions to continue to rent the MPPU from the New England Small Farm Institute to process the broiler chickens as they have since 2008. She reviewed all the procedures as outlined in the original approval and noted that the MDPH will continue to inspect the facility regularly. In addition to the birds, Ms. Hashley said other livestock, such as pigs raised on the farm fields rotating between Concord and Sudbury would be offered. The pigs will be processed at a USDA-inspected facility in Athol, Massachusetts.

Jack Bergman and Dr. Woodward asked why the rabbits couldn’t be brought to this same facility and again, they were advised it was too costly.

After a long discussion, consensus of the Board and staff was that it had supported this endeavor since the implementation in 2008 and congratulated Ms. Hashley and Mr. Lowy on their success. However, it tabled discussion on amending the permit to include rabbits until proper licensing is obtained by the Department of Public Health.

Jack Bergman moved that the Board of Health approve the site license for the operation of the Mobile Poultry Processing Unit (MPPU) with the following conditions:

1. The unit, to be provided by the New England Small Farm Institute, is to be set up at a site to be approved by the Concord Health Department.
2. After the unit is set up for the first processing event, but prior to commencement of operations, the Concord Health Department shall inspect the unit.
3. The Unit shall only process chickens raised and owned by Pete and Jen’s Backyard Birds, 159 Wheeler Road, Concord, MA
4. The sale of all chickens processed shall be in full compliance with all applicable local, state, and federal regulations.

5. At any time, should the Massachusetts Department of Public Health (MDPH) revoke or not issue a meat and poultry processing license to Pete and Jen's Backyard Birds, this approval shall be null and void.
6. The facilities used to package the processed chickens shall be inspected by the Concord Health Department.

Kerry Diskin seconded it. All VOTED in favor to approve.

5. Staff Reports

No additional reports were made at this time that weren't covered during the regular meeting.

6. Board Reports

Chairman's Report

Dr. Woodward noted that Marcia Rasmussen, Director of Planning and Land Management was unable to attend this evening, but that she had advised him via email that the position of Public Health Director had been offered and accepted by Susan Rask. Ms. Rask is currently employed as a Senior Environmental Health Specialist for the Barnstable County Department of Health and Environment. Dr. Woodward briefly reviewed Ms. Rask's credentials and resume. Her anticipated start date could be as early as June 15, 2011.

Dr. Woodward mentioned that new guidelines/mandates in how school food service facilities are inspected would be implemented shortly by the Massachusetts Department of Public Health.

7. Minutes and Board Calendar

The minutes from the April 19, 2011 meeting were reviewed and discussed. Kerry Diskin moved to approve the minutes as written. JoAnn DiNardo seconded it. All VOTED in favor.

The next regularly scheduled meeting of the Board of Health is Tuesday, June 21, 2011.

Karen Byrne asked Ellen Hutt if she had been contacted by Erin Duggan, the Youth Services Coordinator since being assigned liaison to the Board. Ms. Byrne will contact Ms. Duggan to ensure that proper meeting notices are being forwarded. Jack Bergman also expressed interest in this group.

8. Septic Betterment Loan Program

No action was required this month.

The meeting adjourned at approximately 9:30 p.m.

Respectfully submitted by,

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

---

Dr. Alan Woodward

---

Kerry A. Diskin

---

JoAnn DiNardo, RN

---

Jack Bergman

---

Ellen J. Hutt, Esq.