

Town of Concord
Board of Health

Minutes of the Meeting
Tuesday, November 15, 2011

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

 Susan G. Rask, Public Health Director
 Karen M. Byrne, Administrative Assistant

OTHERS: Jack Grant, owner, Walden Grille; Jesse Rosen, head-chef, Walden Grille

1. Public Hearing – Food Service Establishment

Walden Grille – 24 Walden Street (continued enforcement review)

At a meeting on July 27, 2011, the Board of Health voted by a 3 to 2 vote decided in lieu of an immediate revocation of Walden Grille's license to operate, to allow Walden Grille to continue operation subjected to additional conditions¹ including, but not limited to bi-weekly inspections (as amended at BOH meeting on 9/13/11) by a food safety consultant, as well as appearing at regularly scheduled Board of Health meetings as determined by the Board and the Health Division staff.

The Board reviewed the inspection reports submitted by Lisa Berger, Food Safety Consultant. Public Health Director, Susan Rask also provided the Board with an overview of the inspections that were conducted by Public Health Inspector, Gabrielle White since September. In her opinion, Ms. Rask felt from the perspective of food handling, significant improvements had been observed (and implemented by Walden's staff). However, she said the physical space violations that continue to plague this facility were not being adequately addressed in a timely manner.

Specifically, Ms. Rask noted that the flooring in the basement needed to be repainted again (floor was peeling and not easily cleanable) and that the floor behind the bar and server pantry had been completely torn out (exposed to the sub-floor; and that was wet and not in good condition).

Mr. Grant advised the Board that the bar floor had been "fixed" in March/April, but that the contractor hired did not properly remedy the situation and recently, the floor began to buckle. Mr. Grant contacted the original flooring contractor a few weeks ago so that it could be fixed properly, but due to some unfortunate and extenuating personal circumstances he was not available until this week to correct.

¹ Attachment of conditions voted by Concord BOH 7/27/11; amended BOH vote 9/13/11

Mr. Grant asked the Board for some time to allow “this fellow to make good” on the project and hopefully save himself (Mr. Grant) some money.

Jack Bergman repeated misgivings he had that Mr. Grant did not have any contingency plan in place when and if vendors or contractors renege on obligations. After hearing the details of why the contractor was unavailable, Mr. Bergman said it was highly likely that a similar occurrence was imminent. Ellen Hutt agreed. Ms. Hutt said it was not the Board’s concern whether this contractor made good on a business deal, but that the facility was maintained in a manner that met the appropriate sanitary conditions under the law. She told Mr. Grant if he had to pursue other avenues to re-coup financially, that was what he would have to do; in the meantime, the Board of Health’s responsibility continued to be one of protecting the public health.

Other Board members said they were not convinced that Mr. Grant “got it” when it came to the seriousness of these lingering facility problems. JoAnn DiNardo asked him directly if he truly believed there wasn’t another qualified contractor who could be contacted to repair the floors immediately. Mr. Grant restated his intention of giving this person a chance to “make it right” and perhaps not having to start the entire process over (therefore, saving some money). But, he assured the Board that he would be in daily contact with Ms. Rask until the matter was resolved.

Karen Byrne suggested that he contact representatives of another restaurant in town that had similar problems and were able to quickly remedy the situation.

Susan Rask strongly recommended that the Board set specific dates for the floors to be corrected and to outline the enforcement action that it would take if proper corrective measures were not met. Board members debated a variety of options ranging from closing the facility so construction could be properly conducted to issuing monetary fines or suspending the license if the owner failed to remedy the situation.

Prior to closing discussion, Mr. Grant asked the Board if it would also consider allowing him to test the catch basin outside of the restaurant on a quarterly basis, instead of monthly. Public Health Director Rask noted that she saw no problem in modifying that schedule. Dr. Woodward agreed and asked other Board members for comment.

At this point, Administrative Assistant Karen Byrne reminded the Board and the PHD that she believed that there were enforcement documents currently in place (written and voted upon at previous meetings). She suggested that those documents should be reviewed prior to altering this schedule. Ms. Byrne recalled that several other departments, including NRC and the Public Works Department, had fairly strong opinions relating to repetitive violations with Walden Grille’s staff and the catch basin when this issue was first discussed in the spring. She recommended that the Board not vote to modify that matter until she could research the enforcement paperwork.

Dr. Woodward said he would entertain a motion for the other requests for modifications and repair schedule; but not to move on the catch basin until staff could verify the feasibility of doing so.

After many more minutes of discussion, Ellen Hutt moved that the following corrective measures be taken as it relates to the repair schedule:

1. Replace floor in the bar and server pantry no later than December 1, 2011.
2. Basement floor shall be repainted with a proper sealant to prevent peeling and allow for it to be properly cleaned no later than Monday, November 28, 2011.

Jack Bergman seconded it. All VOTED in favor.

Ellen Hutt moved that the Board modify additional conditions for permit to operate (voted upon 7/27/11; amended 9/13/11) to include the following:

1. Outside food safety inspection schedule by Berger Food Safety Consultants be reduced from bi-weekly to monthly contingent upon the Health Division's satisfaction that those inspections reflect that an optimal level of sanitary conditions are being adhered to;
2. If any critical violations of the Food Code (105 CMR 590.000), Minimum Sanitation Standards for Food Establishments are found upon inspection by Berger Food Safety Consultants, Walden Grille will be required to appear at the December 2011 meeting; otherwise, not until February 15, 2012.
3. The Health Division staff will conduct a full restaurant inspection at least once prior to February 15, 2012 meeting.

Jack Bergman seconded it. All VOTED in favor to approve the modifications.

Karen Byrne will review the enforcement paperwork from last April and advise the Board on the catch basin prior to the next meeting.

2. Discussion – Proposed Regulation

Banning Tobacco Products in Health Care Institutions²

At the last several meetings, the Board of Health has been considering whether to propose a Town Bylaw or enact a local regulation to ban the sale of tobacco products in pharmacies. In October, it met with DJ Wilson, Massachusetts Municipal Association Tobacco Control Assistance Program and reviewed language from regulations passed by other municipalities. Public Health Director, Susan Rask and Mr. Wilson collaborated in drafting a proposed regulation that she presented to the Board for its consideration and review.

Dr. Woodward reiterated his position that pharmacies are part of the "health care delivery system" hiring employees who provide medical advice and sometimes treatment (i.e., flu shots and medi-clinics) and selling tobacco products within those facilities, in his opinion, contradicted a message of promoting health and wellness. Board members agreed with Dr. Woodward and felt that a regulation addressing this issue sent a strong message as to where it stood as a public health regulatory board to promote measures that could have a direct impact.

² Proposed Draft Regulation – Banning Sale of Tobacco Products in Health Care Institutions
BOH MINUTES

The Board reviewed the language provided by the Public Health Director and following a brief discussion, Jack Bergman moved that the Board approve the language of proposed draft regulation "Sale of Tobacco Products in Health Care Facilities" to be discussed at a public hearing on December 20, 2011. Jo Ann DiNardo seconded it. All VOTED in favor.

Karen Byrne, Administrative Assistant will notify the affected parties (pharmacies that sell tobacco products) and prepare a legal notice for publication in the Concord Journal prior to the hearing. Copies of the proposed regulation will be available at the Concord Health Department Office and once the notice is published in the newspaper, Ms. Byrne will put the draft regulation on the website as well.

The Board of Health was also pleased that the Jackie Doane from the Greater Boston Tobacco-Free Community Partnership submitted an article to the Concord Journal on the issue.

3. Minutes and Board Calendar

The Board reviewed the minutes from the October 18, 2011 meeting. Jack Bergman moved to approve them as submitted. Ellen Hutt seconded it. All VOTED in favor.

The next regularly scheduled meeting of the Board is Tuesday, December 20, 2011. Board members decided to change the February 2012 meeting to February 15th if possible due to several vacation conflicts. Ms. Byrne will notify the Board of the meeting venue and post the change accordingly.

4. Chairman & BOH Member Reports

Dr. Woodward mentioned that the Coordination Meeting for the Annual Town Meeting 2012 is scheduled for Saturday, December 3, 2011. The only item the Board of Health will need to bring forward at this time is an amendment to "Appendix A" as it relates to fines in the proposed regulation banning tobacco products. He asked Ms. Rask to contact the proper parties for draft language for this amendment and attend the meeting.

5. Staff Reports & Updates

2229 Main Street (f/k/a Starmet & NMI)

Karen Byrne provided the Board with correspondence outlining the summary of events from the 2229 Main Street Committee relating to the Starmet Cleanup and former NMI employees finally vacating the facility. Also submitted for review was the EPA's most recent site update sheet relating to the Superfund Cleanup. Kerry Diskin, BOH liaison to the 2229 Main Street Oversight Committee provided a brief update to the Board on protocol and procedures relating to steps taken by the EPA to secure the site and for dismantling the building³. Ms. Rask noted that Pam Rockwell, Chairman of the 2229 Main Street Oversight Committee has offered to meet with the Board at a future date to discuss the matter.

³ Summary provided by 2229 Main Street Oversight Committee & EPA Site Update/November 2011

CHNA 15 Healthy Community Planning Grant

Ms. Rask mentioned that she would be submitting a grant application through the CHNA15 Health Communities program which is geared towards developing positive health initiatives, plans and programs through community engagement and outreach.

In order to apply for the grant, Ms. Rask said she needed the Board to take “ownership” of the proposal (i.e., the Board and the Health Division staff would be the lead personnel engaging with consultants, etc.) and also, she advised that a vote authorizing her to recommend that the Town Manager under take the effort was necessary. Jack Bergman moved that the Board of Health wholeheartedly supports that the Public Health Director submits a grant application for consideration of funds to develop a plan to improve the health and well-being of the community and recommends to the Town Manager that the Town undertake the effort. Ellen Hutt seconded it. All VOTED in favor.

Cancer Incidence in Massachusetts, 2004-2008, City and Town Supplement⁴

The Department of Public Health submitted the above referenced document to the Board of Health for informational purposes. Ms. Rask noted she would review the material and if something out of the ordinary stood out, she would bring it up for discussion in December.

Housing Inspection Update – 1679 Main Street

The attorney for the owner at 1679 Main Street subpoenaed both Environmental Health Inspector Stanley Sosnicki & Public Health Director Susan Rask to housing court relating to the tenant/landlord dispute at the above referenced property. The owner and the tenants had been before the Board several times, but once the housing code violations were abated, the matter became a civil matter. During the first appearance, the tenants refused to settle and insisted upon a jury trial. At the second appearance in court, Mr. Sosnicki was called to testify during the proceedings.

The Health Department was recently notified that the housing judge ruled that the property owner was entitled to most of the rent owed by the tenants (minus a slight proration due to a determination that one of the rooms could not be utilized as a bedroom) and could move forward with eviction proceedings.

Pending

The existing Animal Regulation is next in line for the Board of Health to review and likely revise in order to bring it up to date with current standards relating to maintaining sanitary conditions for the keeping of farm animals. Public Health Inspector Gabrielle White worked on this issue previously with Brent Reagor, but due to other matters, it was put on the back burner. Ms. Rask felt this was an important issue to re-visit due to the significant increase in residents who are becoming back yard farmers (i.e., maintaining their own chickens, ducks, goats) and to ensure that the regulations enforced by the Health Department accurately reflect what it has jurisdiction over and eliminates areas that do not fall within public health parameters (i.e., zoning enforcement).

The meeting adjourned at approximately 8:45 p.m.

⁴ *Cancer Incidence in Massachusetts 2004-2008, City and Town Supplement – dated 11/14/11*

Respectfully submitted by,

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

Dr. Alan Woodward, Chairman

Ellen J. Hutt

Jack Bergman

JoAnn DiNardo

Kerry Diskin