

Town of Concord  
Board of Health

Minutes of the Meeting  
Tuesday, September 13, 2011

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

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

OTHERS: Mike Lawson, FinCom; Brent Reagor, ES3, Consultant for the MWPH Grant (Charleston, SC & Acton, MA); Jack Grant, owner Walden Grille, 24 Walden Street; Lisa Berger, Berger Food Safety Consultants; Jesse Rosen, head chef, Walden Grille; Richard Harrington, Stamski & McNary, Inc., 1000 Main Street, Acton, MA; Nashoba Brooks School, 200 Strawberry Hill Road

**1. Board Calendar & Minutes**

The Board re-reviewed and discussed the minutes from the Executive Session held on July 27, 2011 as it related to potential litigation from Walden Grille against the Town. At the last meeting, Ellen Hutt had requested additional time to review the minutes and to revote if she felt changes were merited; she had one grammatical change which was forwarded to Karen Byrne and the official record was updated. Following a brief discussion, Jack Bergman moved to accept the minutes as amended. Ellen Hutt seconded it. All VOTED in favor to approve.

The Board reviewed and discussed the minutes from the August 16, 2011 meeting. Jack Bergman recommended that the 2<sup>nd</sup> paragraph under Walden Grille's public hearing be changed to read as follows: "...*although no critical violations were noted during the inspection, it was noted that the non-criticals were repetitive in nature.*" Jack Bergman moved that the minutes be accepted as amended. JoAnn DiNardo seconded it. All VOTED in favor to approve.

The Board reviewed the calendar for upcoming meetings and confirmed the next regular meeting would be held on Tuesday, October 18, 2011.

Dr. Woodward asked for a volunteer to attend the Selectmen's Chair Breakfast in his absence next week; Jack Bergman and/or Kerry Diskin will attend.

## **2. Public Hearing – Food Service Establishment**

### Walden Grille – 24 Walden Street (continued enforcement review)

At the July 27, 2011 meeting 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 conditions<sup>1</sup>; including, but not limited to weekly inspections by a food safety consultant, as well as appearing at regularly scheduled Board of Health meetings.

The Board reviewed the inspection reports submitted by Lisa Berger, Berger Food Safety Consultants and were informed that the reports did not contain any critical violations, but the Public Health Director did note that Ms. Berger had moved a previously documented temperature control violation (critical) to the "notes" section of her report.

Ms. Berger explained that in this case, the temperature violation occurred during the course of her inspection and the next time she checked the temperature of the food item (within minutes), it was within a safe range. In her opinion, that indicated the staff was properly trained and it had taken immediate steps to remedy the situation. Since the violation had been abated while she was onsite, she wrote it up in the "notes" section; Ms. Berger advised the Board she was not minimizing the violation, but that it was abated.

Board members were introduced to head chef, Jesse Rosen who has taken over management of Walden Grille's kitchen staff and implemented many of the food safety protocols and procedures developed by Ms. Berger for this establishment (previously reviewed by the Board). Mr. Rosen reviewed in detail his personal style in managing the staff, noted that he was taking full responsibility for every aspect of the operation of the kitchen, from temperature logs, to ensuring training of staff, to physically "taking apart" a refrigerator that was not operating correctly to determine why it was not maintaining proper temperatures and then coordinating the repairs with the appropriate parties.

A lengthy discussion ensued, several Board members expressed their continued concerns that although Mr. Rosen appeared to be dedicated and was exhibiting extraordinary commitment to turning the decade's worth of unacceptable behavior and violations of this establishment; that one person alone could not do it and that it was a huge task for one person alone to be responsible. Board members asked Mr. Rosen directly if he felt that he was receiving the support he needed from ownership as it related to proper resources for training, purchasing equipment, etc. He said that ownership had been responsive to supporting what needed done. Mr. Rosen also told the Board that he was completely confident in his personal ability to maintain the pace required to keep the restaurant operating at a much higher level it had been in the past.

The Board debated whether or not to reduce the number of inspections required by the outside food safety consultant and/or modify any of the conditions that were set as part of Walden Grille's permit to operate at the July 27, 2011 meeting.

---

<sup>1</sup> Attachment of conditions voted by Concord BOH 7/27/11  
BOH Minutes

Lisa Berger stated that in her professional opinion, this establishment was “getting it finally” and that weekly inspections seemed a bit over the top; however, she conceded that with its’ unfortunate past history of critical violations and non-compliance, she understood if the Board felt differently.

Jack Grant asked the Board for an opportunity to “show them” that his staff could stay the course with the additional oversight from him as the owner, head chef Jesse Rosen, and continued contact with Ms. Berger but reduce the number of inspections to monthly and then revisit the issue.

Ms. Hutt recommended that Mr. Grant and Mr. Rosen carefully consider what they were requesting from the Board of Health; she stated it was the Board’s duty to protect the public health – period. She used an analogy of a child riding a bike with training wheels; “once the wheels are off, this is not happening again, the training wheels are not being put back on for another try...”

She asked other Board members for their opinions, but personally felt if the Board voted to reduce the number of inspections by the outside food safety consultant and Walden couldn’t maintain, they should not be allowed “back to the drawing board”. It should be the end of the road, no more hearings, no more inspections or modifications to the vote. The permit would be revoked. The consensus of the Board was that Ms. Hutt was accurate in her summarizing the sequence of potential events.

Ultimately, it was the Board of Health’s decision whether to reduce the number of inspections, but members gave Walden Grille representatives numerous opportunities during the discussion to present additional information and/or arguments for not reducing the number of inspections because it felt this was one of the best “support measures” it could provide to Mr. Rosen and his staff. However, Mr. Rosen was resolute in his conviction that he needed to be given the opportunity to “be the boss” and felt that he no longer needed the additional support of the weekly inspections by Ms. Berger.

After further discussion, Jack Bergman moved that the Board of Health modify the conditions taken by vote on July 27, 2011 and the inspection schedule for Walden Grille as follows:

1. Outside food safety inspection schedule by Lisa Berger, Berger Food Safety Consultants be reduced from weekly to bi-weekly contingent upon the Health Department’s satisfaction that those inspection reports reflect that an optimal level of sanitary conditions are adhered to;
2. The Health Division Staff will inspect the restaurant once prior to the October 18, 2011 meeting to ensure adherence to the 1999 Food Code as amended by Chapter 10 of the State Sanitary Code, 105 CMR 590.000, *Minimum Sanitation Standards for Food Establishments* and the remaining conditions mandated by vote on July 27, 2011.

Ellen Hutt seconded it. All VOTED in favor.

The Board advised Mr. Grant that he and his staff would not be required to appear before the Board of Health until November 15, 2011, unless the Health Division staff observed critical violations during their routine inspection (prior to October 18,

2011). However, if any critical violations were observed during the Health Division inspection, they would be required to appear at that hearing.

### **3. Public Hearing – Onsite Sewage Disposal System Request for Waiver from BOH Policy #07-01 – Title 5 Building Reviews**

Nashoba Brooks School, 200 Strawberry Hill Road

The Board heard a request from Richard Harrington, PE, Stamski & McNary, Inc., system designer as it related to the onsite sewage disposal system on this property and its' proximity to a proposed addition at Nashoba Brooks School. Mr. Harrington requested that the Board grant two local upgrade approvals in accordance with 310 CMR, 15.405 and Concord Board of Health Regulation CBHR3 (including a waiver from local policy #07-01, Title 5 Building Reviews).

#### **Local Variance**

- **Locate a foundation wall 3 feet from a grease trap, instead of 10' feet as required by 310 CMR 15.211, CBHR 3.08(D)**
- **Locate subsurface drains 1-2' from a grease trap instead of 5 feet as required by 310 CMR 15.211, CBHR 3.08(D)**

#### **Background**

Title 5 Building Reviews are required whenever a resident/applicant applies for a building permit to ensure that proper setbacks are maintained to the septic system components and that the proposed addition or modification will not impact the carrying capacity to the septic system (or municipal sewer system in cases of buildings on Town Sewer).

Nashoba Brooks School submitted a Title 5 Building Review in August and the plans were reviewed by Environmental Health Inspector Stanley Sosnicki for compliance; the applicant was advised that the proposed addition (foundation) was too close to the grease trap (approximately 3 feet away and the drains were less than 5 feet from the septic tanks).

#### **Discussion**

During review by the Board, it was noted that the onsite sewage disposal plan that Mr. Harrington had submitted for the modification/construction to the septic design did not correlate with the plans submitted with the building review. Mr. Harrington noted that he had subsequently submitted a modified plan to Stanley Sosnicki directly via email (the day prior); however, not to Karen Byrne for inclusion in the Board's material for review.

Mr. Harrington explained that the only significant change was the foundation itself had been redesigned, but that the variance requests remained the same. (It went from straight to round).

Ms. Rask said that she had also reviewed the plan, but had some additional concerns that the grease trap could be damaged during construction and would strongly recommend that the Board place certain conditions, such as a water tightness test on the grease trap prior to backfill.

After a short discussion, consensus of the Board was that the variances could be granted on a conditional basis contingent that the Public Health Director and Environmental Health Inspector reviewed the plan and came to agreement upon the conditions. If staff felt further review from the Board was needed, then the applicant should be scheduled for the October hearing.

Dr. Woodward moved that Board grant the local variances as requested with subsequent special conditions to be determined by the Health Department Staff as needed:

- **Locate a foundation wall 3 feet from a grease trap, instead of 10' feet as required by 310 CMR 15.211, CBHR 3.08(D)**
- **Locate subsurface drains 1-2' from a grease trap instead of 5 feet as required by 310 CMR 15.211, CBHR 3.08(D)**

Jack Bergman seconded it. All VOTED in favor.

#### **4. Public Health Resources - Discussion**

Brent Reagor met with the Board to review the status of the Metro West Public Health and Nursing Grant. Mr. Reagor is the consultant who was awarded the contract to oversee certain aspects of the grant and to develop the plan for the implementation.

Several months ago, the Town of Concord, along with 12 other communities expressed a commitment to the collaborative effort to regionalize certain services that would enable Towns to target particular areas of public health, such as youth issues, obesity prevention, continued wellness clinics, etc. At the August meeting, it appeared that the Metro West Public Health and Nursing District Grant was on track to move forward but since that time, both he and Ms. Rask explained that the Massachusetts Department of Public Health continued to alter the required deliverables.

After careful consideration, Ms. Rask advised the Board that she had met with both the Town Manager and Marcia Rasmussen, Director of Planning and Land Management and due to the arduous conditions MDPH continued to add as requirements and/or deliverables with receiving very little in return for the efforts of staff, the Town of Concord was opting out of the grant at this time.

Mr. Reagor said that several of the original 13 communities that had applied for the grant were also not moving forward (Acton, Stow, Marlborough, etc). However, the core group that had applied for the grant was going to continue discussions on the areas where local towns could regionalize services to address public health needs and accomplish mutual public health goals. He will continue conversations with Ms. Rask and update the Board as things move forward.

The Board thanked Mr. Reagor for his efforts up to this point and looked forward to supporting mutually agreeable public health initiatives with other communities that made sense for the Town of Concord to pursue. Board members noted that there was an obvious need for certain services and that it was unfortunate that the MDPH was making it less accessible to maneuver through the grant process.

## **5. Discussion – Banning Tobacco Products in Pharmacies**

Dr. Woodward has been in discussions with Dr. Joe Dorsey (Walpole) and Steve Shestakofsky, Executive Director (Tobacco Fee Mass) relating to their efforts and success in passing regulations banning the sale of tobacco products in pharmacies. Dr. Woodward felt pharmacies should be, by definition, be considered a type of health care facility. In other words, it did not make sense, in his opinion, that a facility where medicine was received to make you well is the same facility that allows you to purchase a product known to cause cancer and numerous other diseases. He felt strongly that the Town of Concord should follow suit and either adopt a regulation and/or amend the existing bylaws relating to smoking.

Some Board members questioned the legality of prohibiting the sale of a legal product and singling out certain businesses. Following a brief discussion, it was decided that the Board would invite DJ Wilson from the Massachusetts Tobacco Control Technical Assistance Program, Steve Shestakofsky and Dr. Dorsey to the next meeting to discuss the issue. The Board directed Public Health Director Susan Rask to draft language for review at the October meeting.

## **6. Chairman's Report & Reports from BOH Members**

Dr. Woodward mentioned that the Boston Globe would be running an article on September 14, 2011 as it related to mandatory influenza vaccines for employees at two Boston Hospitals (Beth Israel & Children's Hospital). Health Care workers are very prone to be vectors, transmitting disease to others, and they can be infections well before they show symptoms, which would be an obvious threat to patients. Dr. Woodward noted that he was quoted in the article as a member of the Public Health Council.

## **7. Miscellaneous**

Mike Lawson, a Finance Committee member introduced himself to the Board. Mr. Lawson is FinCom's liaison to the Board of Health and was taking over for Judith Quanrud who attended BOH meetings regularly.

The meeting adjourned at approximately 8:50 p.m.

Board of Health Meeting  
Tuesday, September 13, 2011

Signature Page

Respectfully submitted by,

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

\_\_\_\_\_  
Dr. Alan Woodward, Chairman

\_\_\_\_\_  
Jack Bergman

\_\_\_\_\_  
Kerry Diskin

\_\_\_\_\_  
JoAnn DiNardo

\_\_\_\_\_  
Ellen J. Hutt, Esq