

REGULAR MEETING OF THE OAKLAND BOARD OF HEALTH

February 18, 2014 - 7:30 p.m.

Conference Room - Municipal Building, Municipal Plaza, Oakland, NJ

REGULAR BUSINESS

CALL TO ORDER

Mr. Tiffinger called the meeting to order at 7:35 PM.

Roll Call: Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

ABSENT MEMBERS

Ms. Wilgus was absent due to illness.

Motion of Mr. Ostapczuk, seconded by Dr. Danko, Ms. Wilgus was excused.

Roll Call: All Yeas - Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

OTHERS PRESENT

Thomas J. Romans, Esq., R.E.H.S. Kristin Caperino and Sr. Public Health Nurse Meg Mantello

MEETING ANNOUNCEMENT

Mr. Tiffinger announced that the meeting was being held in accordance with the regulations of the Public Meetings Law, notices of which were sent to The Record, Suburban Trends and any other persons requesting same.

ADOPTION OF MINUTES

The Board reviewed the January minutes. An error was noted under "Any Other Business", i.e., Ms West, who was not present, is shown as having seconded a motion. The error was corrected by Ms. Dubowick.

On motion of Mr. Ostapczuk, seconded by Mr. Talucci, the minutes were approved, as amended.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger. Ms. West abstained.

REVIEW REPORTS

The Board reviewed the following reports:

- Sanitarian's (REHS') Report – January
- Secretary's/Registrar's Report – January
- Tyco Animal Control Report – January
- Valley Hospital Public Health Nursing Activity Report – Year End 2013
- BCDHS Public Health Nursing Activity Report - January

On motion of Ms. Blanco, seconded by Ms. West, the reports were accepted.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

PAYMENT OF BILLS

The Board reviewed the following bills:

2013 Bills

1/28/2014 – Thomas J. Romans, Esq. (Research Public Health Nuisance Code Administrative Authority & Appellate Case in response to complaint of dead deer.)	\$ 132.00
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2014 Bills

1/28/2014 – Thomas J. Romans, Esq. (For professional services provided, including reviewing Case law on Public Health Nuisance Code & prepare Report to Board re complaint of dead deer)	\$ 377.50
2/1/2014 – North Jersey Media Group (Reschedule January BOH Meeting)	\$ 35.40
2/1/2014 – Tyco Animal Control (January 2014 Animal Control Services)	\$1,200.00
2/1/2014 – Tyco Animal Control (January Emergency Calls – 2 + 4 from December)	\$ 360.00
2/18/2014 – Thomas J. Romans, Esq. (For professional services rendered in February)	\$ 212.50

On motion of Mr. Ostapczuk, seconded by Ms. Blanco, the Board approved the bills for payment.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

UNFINISHED BUSINESS

APPOINT ATTORNEY

Motion of Mr. Ostapczuk, seconded by Ms. West, Mr. Romans was appointed Board of Health Attorney for the year 2014.

Roll Call: All Yeas - Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

ATTORNEY CONTRACT

Motion of Ms. Blanco, seconded by Ms. West, the Board of Health Attorney Contract was approved and Mr. Tiffinger was authorized to execute same.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

BOARD OF HEALTH ATTORNEY RESOLUTION #1-14

Motion of Mr. Ostapczuk, seconded by Mr. Talucci, Resolution #1-14 was adopted.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

NEW BUSINESS

MEETING OPENED TO THE PUBLIC

On motion of Mr. Ostapczuk, seconded by Ms. Blanco, the meeting was opened to the public.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

OAKLAND CHINESE CUISINE

The owner of this establishment was summoned to appear before the Board for having received two Conditionally Satisfactory ratings within a 12-month period. Mr. Xiang Cao, 14 Aspen Way, Oakland, NJ, introduced himself to the Board. Mr. Tiffinger noted that the two Conditionally Satisfactory ratings had been issued since October 2013.

Inspector Caperino reported that Mr. Cao was cited for repeat violations, i.e., food not labeled, garlic in oil that was 70°, bins of chicken and beef that were improperly stored in the refrigerator. On reinspection, the violations were found to have been corrected. Inspector Caperino told Mr. Cao that he needs to keep the kitchen in the same condition she found it during the reinspection. Mr. Tiffinger commended Mr. Cao on achieving a satisfactory rating without knowing the inspector was coming and reiterated what Inspector Caperino said.

FLU VACCINE ORDER

Ms. Dubowick reported that the County has requested Oakland's flu vaccine requirements for this year's Adult Flu Shot Program. Due to numerous sites offering flu vaccine, the Board agreed that 75 doses would be sufficient. Ms. Dubowick will submit the order to the County. Ms. Mantello noted that 25% of the vaccine may be returned.

BLIMPIE

The owner of this establishment was summoned to appear before the Board for having received two Conditionally Satisfactory ratings within a 12-month period. Ms. Mary Dai, 1124 Sycamore Lane, Mahwah, NJ, introduced herself to the Board. Inspector Caperino said she did not do the inspection but read the report. The hand washing violations cited in the previous inspection report were not observed during the inspection. Violations observed during this inspection were cleanliness of the store, both food contact and non-food contact surfaces. Other violations included eating where food was being served and not cleaning the thermometer with an alcohol swab in between taking temperatures of different foods. A reinspection had not yet been done.

Ms. Dai was upset with the health inspector who conducted the inspection in her establishment and alleged that he ordered her around and was disrespectful." Ms. Dai said the inspector asked her to take the temperatures of the food instead of doing it himself and wondered why he had no equipment with him like the other inspectors. Ms. Dai said she thought the inspector might be a fraud because her establishment had just been inspected in December and she had once experienced someone coming into her establishment posing as a health inspector. Ms. Dai asked to see the inspector's badge and the inspector complied. The inspector told Ms. Dai one of the walls was dirty and she had to clean it. Ms. Dai said the building is old and she can't always clean it. Ms. Dai was also upset because she couldn't read what the inspector wrote in his report and couldn't understand what he was saying. Ms. Dai also alleged that as the inspector was leaving, he told her she was lucky she got a yellow card and the next time she might get a red one. She said it was crazy and she had never experienced anything like it. The owner of the Oakland Diner said he experienced the same craziness, but Inspector Caperino said the inspections at the two establishments had been done by different people.

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Mr. Tiffinger said the Board had not met the new inspectors. Dr. Danko said it was important to hear Ms. Dai's side of the story and that the Board needs to hear from the inspector.

OAKLAND DINER

The owner of this establishment was summoned to appear before the Board for having received two Conditionally Satisfactory ratings within a 12-month period. Mr. Harry Mihas, 1250 Ringwood Avenue, Haskell, NJ, introduced himself to the Board. Inspector Caperino reported that most violations were storage issues and temperature related, such as refrigeration temps being too high and hot holding temps being too low. Food debris was also found in the microwave. Mr. Tiffinger said temperatures are important.

Mr. Mihas was upset that he received a Conditionally Satisfactory placard. The inspector came in at lunch time when he was in the midst of receiving four deliveries. He said he wasn't even given a chance to correct problems. He said he was cited for having food containers stored right-side up when they were sealed in plastic, something he couldn't understand. This was just one of a number of violations for which his establishment was cited that Mr. Mihas felt were ridiculous and said in all the years he's been in business he'd never experienced anything like it. He felt that having so many Conditionally Satisfactory ratings in Oakland made the town look bad. Mr. Mihas also said the inspector had a big smile on his face when he was writing up the violations which Mr. Mihas said made him very angry.

Mr. Talucci said most of the people in the room are medical professionals and they are used to dealing with inspectors. In hospitals, inspectors come unannounced, 10 at a time, and they don't leave the hospital until they've found something wrong. Mr. Talucci said most Board members in the room understand what he is saying.

Inspector Caperino said when she conducted an inspection at the Oakland Diner last year, Mr. Mihas immediately corrected any problem she observed.

Ms. West told Mr. Mihas that it's important to hear about the issues he is having and that the Board has to follow up with the County.

Mr. Mihas said that regardless of what he's been cited for, he is going to do whatever he is told to do. What he was upset about is that he was given a Conditionally Satisfactory rating which was published in the newspaper.

Ms. Caperino said that Senior Inspectors will be going out with the new inspectors to conduct the reinspections. The Senior Inspectors need to ensure that the inspectors are being consistent.

Ms. West said that the inspectors are there to validate what the food handlers already know; the people who work in the establishments are already certified, so things should be correct. Mr. Mihas said it just seems a bit extreme. Mr. Tiffinger said the Health Department has not had problems with Mr. Mihas' establishment. Mr. Mihas thanked the Board for listening to his concerns.

MEETING CLOSED TO THE PUBLIC

On motion of Mr. Ostapczuk, seconded by Ms. Blanco, the meeting was closed to the public.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

Mr. Ostapczuk noted that it's only been within the last six months that so many conditionals have been issued, all of which had been done by the new inspectors. Mr. Tiffinger said it's not just the owners of these two establishments complaining, that it's come from everyone that's before the Board. Mr. Tiffinger feels that the

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problem is three-fold, i.e., Oakland has different inspectors working in towns, the County has a lot of inexperienced inspectors and there is no inspector supervisor showing the new inspectors what they should be looking for and what their demeanor should be when they are making an inspection. Mr. Tiffinger said the inspectors are educators when they conduct inspections. A discussion about temperatures took place and how readings are taken. Mr. Talucci added that the inspector who conducted that Elm Street Grill where the chef quit is the same inspector who conducted the inspection at the Oakland Diner. Inspector Caperino noted that the inspection done at Blimpie was the first inspection conducted in Oakland by one of the new inspectors. All of the other Conditionally Satisfactory ratings were issued by a different new inspector. It was noted that the inspectors need to be respectful and that there are two sides to the story.

Inspector Caperino asked if the Board would like the R.E.H.S. who inspected the Oakland Diner to come to the next Board meeting. Mr. Tiffinger said he would like the inspector's supervisor to come in. Inspector Caperino added that she was just reading the Oakland Diner's inspection report and did not know what the inspector who wrote the report observed.

Ms. Mantello noted that the facts are the facts and temperatures speak for themselves. Mr. Tiffinger noted that the violation does not warrant a Conditional unless the temperatures are high or low enough. Ms. Mantello said that every inspector is different, that hands-on experience will make a difference and there are two sides to every story. Ms. Mantello said the information needs to be taken back to the County to be addressed. Also discussed was the need to ensure that thermometers used in refrigerators are properly calibrated. Ms. Mantello said she can understand why the restaurant owners are so upset since the information is published in the newspaper, a practice that most towns use.

It was reported that someone who had eaten at the Oakland Diner over the weekend called to complain that the inspection placard was missing from the wall behind the register. The complainant was suspicious that the Diner might be Conditional. If it was, he felt the Conditional placard should have been posted. Ms. Dubowick informed the complainant that the establishment was, in fact, Conditional, that the placard should have been posted and she would have an inspector investigate. Inspector Caperino confirmed the validity of the complaint and informed the Manager at the Diner that the Conditional placard must be posted.

ANY OTHER BUSINESS

UPDATE ON CHRISTINE GUNSET COMPLAINT – PUBLIC HEALTH NUISANCE CODE

Mr. Romans reported that he prepared a comprehensive report on the statutory law of New Jersey because he thought it would be good for the Board members to understand what the law provides in terms of the powers of the Board and what it can and cannot do. Attached to Mr. Romans' letter report are the statutory authorities that apply and Appellate Division opinions on the Public Health Nuisance Code. Mr. Romans also looked at the Solid Waste Code of New Jersey and reported that under "refuse" there is a definition for animal or vegetable waste. The definition of waste includes animal waste resulting from the handling, preparation and consumption of foods. Inasmuch as the individual eats animals, Mr. Romans said it could be construed as food preparation. Also included is the Public Health Nuisance Code and, attached to it, is the Administrative Advisory issued by the State Board of Health in 2012 that talked about the two decisions of the Appellate Division. It is Mr. Romans' opinion that the Nuisance Code is still good in terms of Subdivision "h" which talks about accumulation of garbage, refuse, manure or animal or vegetable matter which may attract flies and "i" depositing, maintaining any matter that serves as food for insects or rodents, etc. Mr. Romans said there are still provisions in the Nuisance Code that are surviving as well as other statutory provisions. The New Jersey Statutes provide that the board of health may act to abate sources of disease or conditions that are injurious to health without the necessity for an ordinance. The Board has that power. Mr. Romans thinks it is

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ridiculous to suggest that every time the Board observes something that it feels is an obvious health hazard that it needs to pass an ordinance. Certain common sense rules apply. If it is a glaring health hazard, it is Mr. Roman's opinion that the Board may act.

Inspector Caperino reported that she had written a letter to the 12 River Road property owners, those with the deer carcass in their yard. The property owner called Inspector Caperino and said she will not clean it up because the complainant has dog waste in her back yard, observed on two occasions by Inspector Caperino, burns trash in her back yard and is dumping. Since the burning of trash is not a health department issue, a complaint would have to be filed which the property owner declined. The property owner was told that once the snow melts, the carcass would have to be removed.

Mr. Romans added that in Title 26:3-46, "The local board shall prohibit any nuisance, offensive matter", etc. "and all causes of disease which may be known to the board or brought to its attention which in its opinion are injurious to the health of the inhabitants therein and cause the same to be removed." Under a criminal statute, "a person is guilty of maintaining a nuisance when he knowingly or recklessly maintains a condition which endangers the safety or health of a considerable number of persons." Mr. Romans said the question is whether this is a considerable number of persons. It is also a misdemeanor in New Jersey to create a nuisance.

Inspector Caperino is issuing an abatement notice to Ms. Gunset for the dog waste and to the 12 River Road property owner for the deer carcass, as Mr. Romans thinks an abatement notice should be issued before a summons.

ADJOURNMENT

On motion of, Mr. Ostapczuk, seconded by Ms. Blanco, the meeting was adjourned at 9:03 PM.

Roll Call: All Yeas – Ms. Blanco, Dr. Danko, Mr. Ostapczuk, Mr. Talucci, Mr. Tiffinger, Ms. West

APPROVED:

Stephen C. Tiffinger, President

ATTEST: _____
Karin Kennedy Dubowick, Secretary

DATE: _____