

REGULAR MEETING OF THE OAKLAND BOARD OF HEALTH

March 20, 2018 - 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 7:34 PM.

Roll Call: Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

Others Present

Council Liaison Pasquale Pignatelli, Thomas J. Romans, Esq. and Senior REHS Kristin Caperino

MEETING ANNOUNCEMENT

Mr. Tiffinger read the meeting announcement: This meeting is 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 February minutes.

On motion of Ms. West, seconded by Mr. Mr. Ashkenazi, the February minutes were adopted.

Roll Call: All Yeas – Ms. Ashkenazi, Mr. Ashkenazi, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West. Mr. LaForgia abstained.

REVIEW REPORTS

The Board reviewed the following reports:

- BCDHS Public Health Nursing Activity Report & CDRSS Report – February
- REHS' Monthly Report & Summaries – February
- Tyco Animal Control Report – February
- Secretary's/Registrar's Report – February

On motion of Ms. Ashkenazi, seconded by Mr. LaForgia, the reports were accepted.

Roll Call: All Yeas – Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

PAYMENT OF BILLS

The Board reviewed the following bills:

3/01/2018 – Tyco Animal Control (February 2018 Animal Control Services)	\$1,275.00
3/20/2018 – Thomas J. Romans, Esq. (For professional services provided during March)	\$ 243.75

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 2

On motion of Ms. West, seconded Mr. LaForgia, the Board approved the bills for payment.

Roll Call: All Yeas – Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

UNFINISHED BUSINESS

No unfinished business.

NEW BUSINESS

On motion of Ms. West, seconded by Mr. LaForgia, the meeting was opened to the public.

Roll Call: All Yeas - Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

LENAPE VALLEY DINER

Mr. Tiffinger said the Chapter 24 Inspection conducted by REHS Steven Salerno under the observation of Sr. REHS Kristin Caperino resulted in a Conditional rating, violating the establishment's licensing stipulations set forth during the Lenape Valley Diner hearing held in December 2017. Mr. John Nissirios, owner and his attorney were summoned to appear before the Board. Mr. Nissirios hired a new attorney, John Conte, Jr., Esq., to represent him.

Those present representing Lenape Valley Diner introduced themselves:

- John Conte, Jr., Esq. of Rubenstein, Meyerson, Fox, Mancinelli, Conte & Bern, 1 Paragon Drive, Montvale, NJ, representing Mr. Nissirios.
- John Nissirios, Owner, 176 Ramapo Valley Road, Oakland, NJ
- Maria, Nissirios, Manager, 176 Ramapo Valley Road, Oakland, NJ
- Constantine Stamatelatos, 724 Mountain Avenue, Wyckoff, NJ
- Angela Merrian, Part-Time Wait Staff Manager, 7 Park Avenue, Bloomingdale, NJ
- Dr. Kalliopi Nissirios, of 285 West Grove Street, Paramus, said she was present to provide moral support for her father.

Also introducing themselves were members of the Board, Board Attorney Thomas J. Romans, Senior REHS Kristin Caperino from Bergen County Department of Health Services and Board of Health Secretary Karin Kennedy Dubowick.

Mr. Conte said he just became involved in this matter since Friday and in his prior municipal position as prosecutor took these violations very seriously. He reviewed the paperwork from the inspections and said the reputation of Ms. Caperino is above reproach. He found whatever her statements were to be incredibly credible because he knew her previously and knew her as a hard worker; she is very diligent in her job, so when he saw her name he knew the right job was done.

Mr. Conte said he went to the restaurant, read the reports and noticed the violations, some of which were more serious than others. The restaurant has been in business in the Borough for about 10 years and the downside of the implications of the Board shutting down the establishment on March 31st are drastic in that the establishment employs 20 people. He realized there is a real possibility the restaurant can be shut down. Mr.

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 3

Conte said he would like to explore bringing in a consultant or some other manager to provide greater oversight to prevent the easily avoidable violations such as providing paper towels at the wash sink and washing hands for 20 seconds. Mr. Conte said that he was educated early on about bacteria spread as a prosecutor – 18 years ago in two different towns – when the implications were explained to him by health inspectors. Then, as a municipal court judge, he was much harder on establishments than he had been before. Mr. Conte said he was trying to be a part of the solution and has only a few days to get going and to find an REHS or manager who could provide better oversight. He also felt that perhaps there could be a problem of understaffing. He said he asking for a little more time so no violations will occur.

Mr. Romans' responded to Mr. Conte. Mr. Romans said Mr. Nissirios had contacted him after the December hearing, when the agreement was entered into and his comment to Mr. Romans was "You're trying to put me out of business." Mr. Romans said he just doesn't think Mr. Nissirios understands. He has made comments to the Board numerous times that the Board is out to get him, he owns other restaurants and doesn't have these kinds of problems there. Mr. Romans said he finds Mr. Conte's comment interesting, because based on his own personal involvement, Mr. Nissirios doesn't seem to understand because the Board is not having these problems with other establishments in town and just wanted to make that observation.

Ms. Ashkenazi spoke about the number of times Mr. Nissirios had been given opportunities over a period of months to straighten out the problems at the establishment and said Mr. Stamatelatos was supposed to be the consultant who straightened everything out the last time an extension was granted. She felt it was unreasonable for them to request more time. Mr. Conte said he had never asked for more time and didn't know until today how many times Mr. Nissirios had been before the Board when he went to the Secretary's office and listened to the recording from the hearing and went through every exhibit Mr. Romans painstakingly entered into evidence and listened to Ms. Caperino's testimony.

Mr. Romans said he thinks Mr. Conte is not suggesting another manager but someone who is more hands on and in control of the situation, someone who understands the importance of the sanitary laws and procedures. If Mr. Conte said he has no excuse for the way it was before and there cannot be any "outs" on the reports, only "ins" and the Board has every right to do what they need to do. Had he had more time, he would have investigated or procured someone who could do that. Mr. Conte said he doesn't know if the problem is understanding or not, but felt management needs to change. He's just trying to avoid the shut down and employment it would cause. Again, had he known in advance, he would have contacted Mr. Romans and provided the suggestion this evening but just didn't have time.

Mr. Talucci asked if Mr. Conte had someone in mind or plan of attack or a certain area of expertise, as an attorney. Mr. Conte said he had never represented a restaurant to a Board of Health until that night. His experience had been as a prosecutor and meeting with the health inspectors and hearing about the various violations. He was unaware of all of these issues until he became a prosecutor 18 years ago and learned the importance of bacteria and temperature. Mr. Conte said none of what he read about in the inspection reports an be happening.

Ms. Ashkenazi asked if anyone at the restaurant had been fired for violations and Mr. Nissirios mentioned the employees he had fired, including the chef and his manager. He said the new manager started yesterday. Mr. Tiffinger said the violations are not rocket science. Mr. LaForgia said they are "Page 1" of ServSafe. Mr. Provenzale said these are pure fundamentals and if the employee had taken and passed the food safety course he should be very knowledgeable.

Mr. LaForgia said the person in charge was not knowledgeable in food safety which gave him pause. So if someone at the sight is not responsible and knowledgeable at all times, how can the Board ensure the establishment is being run in a safe manner at all times? Ms. West said it is awkward for the Board members

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 4

to come to a meeting and have to shut down a restaurant because no one wants that to happen, but as Board members, they are responsible to make sure all establishments are safe. Ms. West said many of the Board members are professionals, herself a nurse and another a pharmacist and coming from places where they are held to standards on their jobs. They know the health inspectors are professionals trying to hold the restaurants to standards and each time a restaurant is made Conditional and not shut down, it's giving the restaurant another chance. The restaurant is conditional, there is education provided and they return for a re-inspection. So when a restaurant has four or five conditionals from 2017 into 2018, that's four times they were not up to standard but given another chance and at what point does the Board draw the line. The inspectors keep getting sent out to inspect which is costing money, so Ms. West wondered at what point is the Board being lackadaisical and shirking their responsibility.

Mr. Conte said something has been done but he just doesn't know if it was done to the extent it should have been. Mr. Stamatelatos did exactly what he was supposed to by stopping by twice a week and sometimes dropping in by surprise in between. Mr. Conte said, it looks like the restaurant had someone overseeing the place, and wondered what happened. Mr. Tiffinger said it didn't seem to work. Mr. Conte said that is his concern. Mr. Conte said it was no disparagement against Mr. Stamatelatos who was trying to help out. He just didn't know if the facility needed that at the time or more which is what he would have recommended in December. He was aware that three months had since passed but he is trying to correct it. He believes the new manager will make a substantial difference.

Ms. Maria Nissirios said the new manager will be there six days a week, from 11 AM to 9 PM. On the seventh day, Ms. Nissirios said she will be there in the morning with Ms. Merrian. Another food handler who works at the register is there the rest of the day. Mr. Talucci asked Ms. Dubowick if the restaurant provides proof of their training to the Health Department. Ms. Dubowick said the certificates are provided at the time licenses are renewed but not when staff changes. Mr. Romans asked about the new manager's experience and training. Mr. Nissirios said the new manager just started working today and worked for his brother for 17 years and is a food manager. Mr. Nissirios mentioned the places where the new manager previously worked. Kiriokos Marmarinos is the new manager and holds a Food Handler's certificate and his certificate needs to be renewed.

Ms. West asked if any employees at the restaurant had been trained in food handling since the last meeting. Mr. Stamatelatos said they all went through the ServSafe website, had the video training and he printed out material for them. There was only one kitchen staff employee who failed the test and needed to retake it. He then passed the test. All management certifications are current. He went over material with them. He said he had pretty much done everything he said he was going to do.

Mr. Stamatelatos said, circling back to what Mr. LaForgia said about the violations, that the managers don't seem to have proper training and background, on the inspection sheet, whenever there is a violation, the manager is automatically noted as not being knowledgeable in proper food practices, whether they have the training or not. Mr. LaForgia said, they are not demonstrating proper food practices to which Inspector Caperino agreed. Inspector Caperino said if there is one "out" on the first page, then the "out" box is automatically checked for person in charge demonstrates proper food practices, but she never checks this box if there is only one violation. The employee cited for bare hand violations and terminated was trying to do too much at once and was overwhelmed because he was alone, cooking and plating. He was also trying to help the inspectors speak to the staff cooling food because they did not speak English and was distracted. The inspectors advised him that before he handled any food, he needed to put gloves on. After they stepped away, they saw him touch ready-to-eat foods with his bare hands.

Mr. Stamatelatos said this incident happened last week and no one in the room was present, except for the officials. He said John called him and to tell him the inspectors were there. He said he and John put forth a

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 5

lot of effort and was disheartened by the results. He understands the seriousness of the situation and did at the hearing, as well. He understood the Board was giving John a chance to change his ways. Mr. Stamatelatos told the employees, you not only have to look out for yourself, but you have to look out for your job because if the doors close, that's it. He would terminate an employee if he felt that was what needed to be done. He said he is doing this out of the goodness of his heart and has been trying to get current. Mr. Stamatelatos said he feels like he failed and took this personally. He said he not only went in twice a week but did surprise visits, so they just weren't "shining up the apple" for inspections.

Ms. West said she understands the difficulty in maintaining reliable staff and training problems, and the staff needs to have a basic knowledge in food handling principles; but it's the food manager that has to be the accountable person.

Mr. Romans asked about the situation with employees. Mr. Nissirios told the Board if he fires one employee all of his friends leave. Mr. Romans asked if Mr. Nissirios has a problem firing people. Mr. Stamatelatos said it goes in layers. The person who works in the establishment knows the mechanics of the establishment, knows his routines, his recipes and how he wants things done. If that employee has to be terminated, Mr. Nissirios is at risk of losing one or two other employees in his friendship group. When he terminates the employee, there may not be a competent person to replace him. He said, because they are already investing 12 hours a day in the restaurant, John's days of working behind the grill are gone and those shoes cannot be filled without a shortcoming occurring in some other area of the business because you cannot be in two places at once. He said, when you fire an employee, you run the risk of not being able to find someone who is reliable, experienced which is the crux of the food business because everyone who comes in will tell you they have experience in the food business. That working in Burger King and in a pizza place is not the same as working in a diner. And then, he said, after two weeks go by, you find out the person has a drug, drinking or gambling problem, so where does that leave you?

Mr. Romans said the other establishments in town seem to be overcoming this problem and for some reason, they are not. Mr. Stamatelatos said he would like to know how long the employees have been at the other establishments. He and John do not like to hire college students because of the investment of time in training them only for a hole to occur. He said there is no return on investment for that kind of an employee in a high-end restaurant or a diner. He cannot speak to other businesses in town because he is not as physically involved and wishes them well. He said when he was in the business he prided himself on the length of time his employees stayed with him because he invested in them and they appreciated the work and worked hard. He noted how our society had changed and that people don't want to work today.

Mr. Romans asked if the new manager is going to fix the problems at the restaurant. Mr. Stamatelatos said he didn't know. Mr. Nissirios said he has seven years of experience and worked for his brother's restaurant. Ms. West asked if the new manager is doing Mr. Nissirios a favor. Mr. Nissirios said he wasn't and that his chef worked for him for 17 years and spoke about the changes he made at the diner, but he was on vacation when the inspection was done. He is a good worker.

Mr. Pignatelli asked Mr. Romans if another agreement is at hand. Mr. Romans said he didn't know if the Board would want to interview the new manager but he would like to get their opinion. He said the new manager is the critical element and he didn't know if the new manager would have the capability to deal with the personnel problems and if he has the expertise in food handling and management. Mr. Romans said it seems as though there are personnel problems at the establishment, with firing and disciplining people. Ms. West questioned the value of Board members interviewing the employee because of their lack of knowledge about the business and that proof of his expertise will show up in the inspection that is done. Mr. Talucci said the employee should be able to tell the Board about his experience and how he is going to fix the problems, if the Board chooses that route. Mr. Provenzale said it needs to be a long-term fix, too. If the establishment has

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 6

a problem with people leaving, there must on-going training in place and he doesn't sense the establishment has that. Mr. Stamatelatos said he made that suggestion and that employees must work as a team. That it's not just about employees collecting a paycheck and going home because the business is at risk and their jobs are as well. Ms. West felt the manager should go through the checklist every day and Mr. Stamatelatos agreed.

Mr. Tiffinger suggested having a new manager and a consultant in the restaurant every day. Mr. Conte agreed with Mr. Tiffinger but said he does not have a person to fill that position. He said maybe the manager is so good that it will be a non-issue. Based on his review, oversight is needed. Ms. Ashkenazi said she would share with the new manager all of the reports showing the repeat violations so he can see what problems are continuing. Mr. LaForgia said in his line of work they have a continuous quality improvement program and these are the kinds of things that are reviewed. You sit down with your staff, look at the violations and tell them we need to work on these things, such as making sure everyone understands the proper hand washing protocol. Mr. West asked if the manager is the only person cooking. Mr. Stamatelatos said the manager does not cook. Speaking to Mr. LaForgia's point, Mr. Stamatelatos said that is where he started in December or the first of the year and he described the various changes he made. He said there are so many parts to the entire operation and the smallest thing can throw it off. He said everyone in the restaurant has to do his or her part and that a culture change has to take place.

Mr. Romans said it seemed to him that food handling and preparation are one part of the business and the other part is the employees. He asked if they are paid properly, if they understand the language and if they have the right benefits to keep them there. He said he doesn't know what's being done in that area but he senses there's a real problem there, and both Mr. Stamatelatos and Mr. Conte are pointing that out so it needs to be addressed. Again, it was discussed that a consultant with higher credentials than Mr. Stamatelatos' be brought in for 48 to 72 hours on-site consulting. Ms. West said it seems someone who is paid and has an investment in the business, rather than someone who is doing it out of the goodness of his heart, will make the difference. Otherwise the money is just being thrown out the door.

Mr. Romans said it sounds like Mr. Stamatelatos has tackled some major operational problems, but the little things like not having any paper towels or knowing how to clean, rinse and sanitize dishes, gloves, simple little things that the employees should understand, is troublesome. Mr. Talucci asked about differentiating between paid employees and employees who just don't know what to do because they are lazy and if they understand why it's important. You can assume they do but perhaps they don't and you're thinking they're just taking shortcuts. When they don't know what to do, there can be a breakdown. Mr. Talucci compared what's happening at the restaurant to following protocols in the pharmacy at the hospital. He said this has to be clarified.

Mr. Nissirios spoke about violations he was cited for in December, how he addressed them and how much it cost. Mr. Conte said whatever the requirements are, that's what is going to happen. Ms. West asked how much time he would need to bring the establishment up to offered to kitchen employees if they achieve a Satisfactory to give them an incentive to comply. Mr. Stamatelatos felt that was thinking outside of the box and he liked the idea. Mr. Conte agreed and said he'd make a note of it, felt it should be considered.

Mr. Nissirios spoke about how he comes in the morning and tells his employees "work", "do this", "do that" and he leaves for his other restaurant and comes back tells employees to check temperatures. Mr. Conte told Mr. Nissirios someone needs to be doing that every minute of every day and every moment the restaurant is open and how to do that is not the Board's job. Mr. Romans said maybe Mr. Nissirios needs help motivating people to help them get the message.

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 7

Mr. Talucci asked how we move forward with this and said the only thing the Board knows about this new manager is his name. He said the person's name is needed and he would like to speak to the new manager to find out if he is certified. Mr. Pignatelli asked if a committee should be formed to do so rather than waiting for the Board to meet again. Mr. Ashkenazi said he did not think it is the Board's function to interfere with this, that it's not the Board's job to manage the business. Ms. West said the Board will know if he is doing his job or not from the results of the inspection. Mr. Stamatelatos offered to set up a time and date sometime before Friday for whoever wants to come to the restaurant, have a cup of coffee and ask the manager whatever questions they have. Mr. Romans said the meeting should take place at Borough Hall.

Ms. West said that at the December hearing if another Conditional was issued, the establishment's annual license would not be issued. So the Board will have to decide whether they are sticking with that decision, allowing the restaurant to remain open till the end of the month or granting another month's extension. The Board agreed that with the commitment being made by the restaurant, the license would be extended through April 30th and an unannounced re-inspection would be made sometime after two weeks have elapsed.

Mr. Tiffinger said, to sum up, the temporary license will be extended for one month, they will hire a new manager and consultant. Mr. LaForgia said also needed are the certificates for all of the managers and a requirement that a certified manager must always be on site to ensure there is always someone in charge with that capability on site. Also discussed was how much time and how many days the consultant should be there. Mr. Ashkenazi again said it's not the Board's position to tell Mr. Nissirios how to run his business, rather he has to make the decision about how much time and how many days the consultant will work and if he has the right credentials. Mr. Nissirios has to make sure he does what he is supposed to do. Mr. Romans said they have to identify the problems, whether they are food handling or personnel problems, and come back to the Board with who their consultant is and how he is going to address the problems that have been identified. Mr. Romans said there are real personnel issues and the suggestion made by Ms. Dubowick is something they should seriously look at.

Mr. Conte said he will provide to Mr. Romans, a letter stating what certificates everyone has, the consultant's name and CV. Mr. Romans asked to have the information sent to Ms. Dubowick. Mr. Conte said it will take a couple of days. Ideally, this person would be an inspector. He will keep the Secretary advised so the Board has that information. Hopefully it will take only a few days. Mr. Romans said the Board should proceed by a motion and put it to a vote.

Ms. West asked what will happen if the re-inspection results in a Conditional rating, if the Board will have to go through this process again or if it will be a done deal at that point. Ms. Ashkenazi felt it should be a done deal and so did Mr. Provenzale. Mr. LaForgia asked how much additional time should be granted and a one-month extension was agreed upon. Mr. Provenzale said what's at risk has been clearly stated they know what the stakes are, that the business and jobs are at risk. Mr. LaForgia said to Mr. Nissirios the Board doesn't want to shut him down, rather it wants him to be successful and ensure everyone who eats at his establishment stays healthy. Mr. Romans said he doesn't think the Board is prejudging the matter. There are serious concerns and their inclination to take drastic action next time, if there is a next time. He said will meet again in a month and consider it, but the Board has expressed an opinion that they are very concerned about this and they may very well take drastic action to do something like not renew the license or not grant a license.

The Board discussed what information about the consultant should be provided. Mr. Ashkenazi once again said this is not the Board's position. Mr. Conte would make that determination. Ms. West said once the consultant has assessed the situation, a determination on how much time is required would be made by that consultant. Mr. Provenzale asked if the Board could suggest someone for the position because he knows someone who might be interested. Mr. Romans said the Board could not make a recommendation but could provide a name on list of people to choose from, with the understanding that it's not going to help or hurt them one way or the other if they hire this person. The Board is interested in helping them. If they wanted to

Regular Meeting of the Oakland Board of Health – March 17, 2018 – Page 8

bring their consultant to the next meeting, if they think it will help, they may do so. Hopefully, it won't be necessary.

On motion of Ms. Ashkenazi, seconded by Mr. Provenzale, the Board decided:

1. The establishment will be granted a one-month license extension, through April 30, 2018.
2. A consultant must be hired.
3. The new manager must be certified in Food Management and his name and credentials must be submitted to Ms. Dubowick.
4. The establishment will be re-inspected by the end of April and it must be Satisfactory or the Board will consider further action. The further action will be based on a number of things, including Mr. Conte writing to provide information about what is being done, how they are addressing the problems. A re-inspection will be done and the Board will make a decision based upon what happens.

Roll Call: All Yeas – Ms. Ashkenazi, M/r. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

Mr. Conte thanked the Board and, on the record, said he wanted to thank the Secretary for accommodating him today to listen to the tape and review the evidence. Ms. Dubowick said it was her pleasure.

ANY OTHER BUSINESS

A positive case of Pertussis was reported in one of Oakland's elementary schools. This case was connected to one of the cases at the high school.

On motion of Mr. Talucci, seconded by Mr. LaForgia, the meeting was closed to the public.

Roll Call: All Yeas - Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

ADJOURNMENT

On motion of Mr. LaForgia, seconded by Mr. Provenzale, the meeting was adjourned at 8:47 PM.

Roll Call: All Yeas – Ms. Ashkenazi, Mr. Ashkenazi, Mr. LaForgia, Mr. Provenzale, Mr. Talucci, Mr. Tiffinger, Ms. West

APPROVED:

Brian LaForgia, Vice-President

ATTEST: _____
Karin Kennedy Dubowick, Secretary

DATE: _____