

REGULAR MEETING OF THE OAKLAND BOARD OF HEALTH

May 15, 2018 - 7:30 p.m.

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

REGULAR BUSINESS

CALL TO ORDER

Mr. LaForgia called the meeting to order at 7:34 PM.

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

Absent Members

Mr. Tiffinger was absent due to vacation.

On motion of Mr. Talucci, seconded by Ms. West, Mr. Tiffinger's absence was excused.

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

Others Present

Council Liaison Pasquale Pignatelli, Board of Health Attorney Thomas J. Romans, Senior REHS Kristin Caperino

MEETING ANNOUNCEMENT

Mr. LaForgia 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 April minutes.

On page five, two errors were noted. The word "why" in the seventh line of the second paragraph should be "they" and the name "Forgia" in the third line of the 1st paragraph should be "LaForgia". Ms. Dubowick made the corrections.

On motion of Ms. West, seconded by Mr. Provenzale, the May minutes were adopted, as amended.

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

REVIEW REPORTS

The Board reviewed the following reports:

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

The Board was made aware of a situation wasting Inspector Caperino's time. A representative from an engineer's office is calling and requesting meetings multiple times with Inspector Caperino to discuss septic designs prior to submitting plans. The reason is to discuss what kind of system should be designed for the property. Inspector Caperino said the type of system proposed for the property is discussed on site with the

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engineer when test holes are witnessed and all other engineers just submit the septic design based on that discussion. Furthermore, it is up to the engineer to decide the type of system being designed. When the individual calling the meetings was told he must submit the plans for review, he sent the property owners in with the plans to discuss them prior to submission. Inspector Caperino said this is happening nearly every time this particular engineer submits a plan which is a few times a month. She said property owners were complaining they were being charged extra by the engineer because the town is rejecting their plans, so it was felt the calls and meetings were to avoid re-review fees charged after the initial review and one re-review.

The amount of time Inspector Caperino is spending on the meetings and phone calls with this particular firm is taking away from the time she could be spending actually reviewing plans. Since the County charges for her time by the hour, this practice is costing the town money.

The Board discussed the matter and found the practice unacceptable as it seemed like an abuse of the process. On Mr. Romans' recommendation, the Board instructed Inspector Caperino to tell engineers they must submit plans prior to discussing them. In the event anyone objects, a letter from Mr. Tiffinger to this effect will be prepared by Ms. Dubowick over Mr. Tiffinger's signature and given to Ms. Caperino for her to present as proof of the Board's instructions.

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

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

PAYMENT OF BILLS

The Board reviewed the following bills:

5/01/2018 – Tyco Animal Control (April 2018 Animal Control Services)	\$1,275.00
5/01/2018 – Tyco Animal Control (April 2018 Emergency Responses - Three)	\$ 180.00
4/19/2018 – Thomas J. Romans, Esq. (For additional professional services provided during April)	\$ 405.00
5/15/2018 – Thomas J. Romans, Esq. (For professional services provided on May 15, 2018)	\$ 243.75

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

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

UNFINISHED BUSINESS

LENAPE VALLEY DINER

Inspector Caperino reported that Inspector Dorsey conducted the last inspection at this establishment on the Friday of the first week in May and found it Satisfactory, though there were still two critical violations. She said the temperature of one Bain Marie was a little high and the kitchen staff had a better understanding of what needs to be done. Spot sanitizer was good, all items were labeled, sinks were being used properly and there were no eggs found out on the counter. She said John Nissirios and his daughter Maria were there but

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Mr. Sanchez was not. Inspector Caperino also said they pleaded not-guilty to all of the summonses issued and the court date has been rescheduled. She added that Café L'Amore did so, as well.

Mr. LaForgia said he reviewed the Corrective Action Plan which addressed what the Board was looking for but felt the plan was a little light. After a lengthy discussion, the Board identified two deficiencies in the Plan that must be corrected and set forth the conditions for the establishment to operate moving forward.

On motion of Ms. West, seconded by Mr. Provenzale, the Board decided a letter will be sent to Mr. John Nissirios, with a copy to his attorney Mr. John Conte, setting forth the following requirements and conditions for the establishment to operate moving forward:

The Corrective Action Plan must be amended as follows: Under Paragraph 1, "Purported Problem" – The last sentence in paragraph one states, "The Restaurant runs the risk of its license being revoked on May 30, 2018 if operational changes at the Restaurant are not made." Remove from the Plan "on May 30, 2018". Under Paragraph 3, "Responsible Individuals" – Paragraph three states as follows: "Mr. Sanchez shall randomly visit the establishment one or two times per week and conduct an assessment utilizing the State Retail Food Inspection Report form." Change to "Mr. Sanchez shall randomly visit the establishment a minimum of one time per week through the end of the year and conduct an assessment utilizing the State Retail Food Inspection Report form."

The above deficiencies must be corrected by the June 19, 2018 Board of Health meeting. At that time the Board will decide whether to issue the establishment's annual license.

The establishment's Temporary Health License will be extended through June 30, 2018. The fee for the Temporary Health License is \$250.00.

Should the establishment be issued a subsequent Conditional rating, the owner will be required to appear before the Board of Health, at which time the Board will consider taking disciplinary action with respect to the establishment's license.

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

Ms. Dubowick will prepare the letter over Mr. Tiffinger's signature and forward it to Mr. Romans for his approval.

CAFÉ L'MORE

Inspector Caperino reported that she and Inspector Salerno conducted the re-inspection on May 31st which resulted in a second Conditional rating. Inspector Caperino said the owner Mark was very difficult to deal with during this inspection and the last, arguing with everything she said. He argued about the temperature reading of a piece of chicken. He didn't have a thin probe thermometer but was using a meat thermometer to take a reading of chicken cutlets. Inspector Caperino said he was so difficult she had to get her supervisor on the phone during the inspection. There were hand washing issues. In checking the shellfish tags, they were again short the proper number for a 90-day period, a repeat violation. When Inspector Salerno was reviewing the report with the owner, he was looking the other way, completely ignoring what was being discussed. In December, the other owner was there and he didn't behave the same way. Both owners are Certified Food Managers. When Inspector Caperino reviewed the inspection report with her supervisor, she was told the violations were all the same violations for which the establishment was repeatedly cited when they opened 20 years ago.

Ms. West said something needs to be done so the Board isn't going back to the beginning each time an

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establishment receives multiple Conditionals. Mr. LaForgia agreed that a set of steps needs to be developed.

Mr. LaForgia said the Board needs to consider bringing the establishment in for a hearing and decide how many years' worth of violations should be discussed during the hearing. Inspector Caperino said only three years' worth of violations because that's how many years' of records are required in the files. Ms. Dubowick said, all records pertaining to legal action are permanent records. Mr. Romans said the repeat violations, though they were 20 years apart show a pattern of repeat violations and disrespect and ignorance for the law. The establishment was compliant in between, so Mr. LaForgia said he didn't feel it was a pattern. It was also agreed that both owners should come to the hearing.

Mr. Pignatelli asked about where the inspection placard is posted. Inspector Caperino said it just has to be posted in a visible place. Mr. Pignatelli said New York City requires it to be posted in the front window of the establishment. Inspector Caperino said that would make it much easier to see if they have it properly posted. The Board felt this was a good idea and decided at some point, the Food Ordinance should be amended to require food establishments to post inspection placards on their front doors.

Ms. West said that she feels there should be specific steps that are taken when someone gets a Conditional, such as, after the first one, a form letter is sent out stating that a plan must be submitted to explain how the violations will be corrected and advising if another Conditional is issued, the establishment will have to come for a hearing. This would avoid the going back and forth and the chance after chance they are given only to achieve a Satisfactory and then made Conditional at the next inspection. Ms. Ashkenazi said the Board keeps going around in circles. Ms. West said using set steps protects the Board because every establishment is being treated the same way. Mr. Romans felt the Board has made an impact when looking at how several other restaurants had come around as a result of hearings. Mr. Pignatelli said the requirement for a hearing is a Board of Health requirement, not a state requirement. That in other towns, restaurants get a Conditional and go to court repeatedly. Mr. Romans said there is no precedent in the law for this. Ms. West asked if the two owners could be required to bring in a corrective action plan that can be talked about with them. The Board discussed Ms. West's suggestion and agreed it would be good way to proceed.

On motion of Mr. LaForgia, seconded by Ms. Ashkenazi, both owners of Café L'Amore will be summoned to a hearing held immediately after the June 19th Board meeting and will be required to submit a written action plan to address the deficiencies for which they were cited.

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

Ms. Ashkenazi added that developing a protocol to follow will also provide future Board members with steps to follow in the future.

Mr. Romans said he will need copies of the last three years' inspection reports and will send the letter to Café L'Amore. Ms. Dubowick said she would be leaving for vacation in three days and would e-mail the reports prior to leaving as Mr. Romans felt the letter should be sent while Ms. Dubowick is away.

NEW BUSINESS

PORTOBELLO FEASTS

Inspector Caperino spoke about how four years ago the owner hired someone to run the restaurant for him and how well it was maintained at that time. If there was a problem, it was fixed immediately. The owner, Frank Amen, came back a few years ago. Last June, the inspector who conducted the inspection found sushi being made on the premises without a HACCP Plan. Previously, the sushi station had always been closed. They

were told they had to supply a HACCP Plan if they were going to make sushi. They were made Conditional, but upon re-inspection, the establishment was given a Satisfactory.

During the most recent inspection, Inspector Salerno found chicken juice dripping on boxes of veal, hand washing violations and that they were making sushi again without notifying the Health Department and without the HACCP Plan. They did not know how to make the slur for the sushi, they had no pH stabilizer and Inspector Caperino said she didn't think they had a pH meter. There were also a lot of cross contamination issues and cooking issues. The chicken that was temped at 144° was put back on the grill and brought up to proper temperature. There was also a problem with the shellfish tags. A re-inspection is required. Based on history, however, it is anticipated they will achieve a Satisfactory rating at the re-inspection.

This establishment received two Conditionally Satisfactory ratings within a 12-month period which requires the owner to appear before the Board to explain why the establishment should be allowed to remain open. With the Café L'Amore hearing being held immediately following the June 19th Board meeting, the Board decided to postpone Portobello Feasts' appearance until the September meeting. Ms. Dubowick will prepare and send a letter over Mr. Tiffinger's signature summoning the owner to the September meeting.

OTHER BUSINESS

Ms. West suggested Board members come up with ideas for a protocol for establishments with Conditional ratings. With the hearing next month, there would not be any time to discuss it. Ms. West offered to collect ideas from the rest of the Board and said that nothing would be decided, rather she would just collect the information for discussion at a future meeting. Mr. LaForgia felt it was a good idea, so Ms. West said she would be in contact with everyone.

Mr. LaForgia, said he also would like to have placed on a future agenda the topic of an ordinance requiring food establishments to post placards on the front door of the establishment. Inspector Caperino said Fort Lee passed a similar ordinance and she would try to obtain it.

Mr. Romans said he would like to talk about penalties for summonses. Mr. Romans said there is an Oakland ordinance that says a summons will be issued if a food establishment does not have an owner or manager certified in Food Management. Inspector Caperino said she has to have her supervisor approve all summonses issued and that they try to educate first and then issue summonses. She said it also takes a lot of time to go to court. She said they usually address the issue of having the proper staff certified in Food Handling and Management at the beginning of the year and they are given three days to provide proof of certification or they are issued a summons. Mr. Romans said that's what the ordinance says. Inspector Caperino said she would be in court all the time if she enforced that code, as written, and each time she's there it takes at least two hours which is costly to the town. Mr. LaForgia said there has to be a balance due to the cost of having an inspector sitting in court. She said so many summonses were being dismissed in court, it was decided that the supervisor would review the violations to approve summonses for only the most serious violations. Also discussed was the conflict in the amount of penalties in various ordinances. The penalties for state codes and local codes are different and, though she makes recommendations, the prosecutor and judge ultimately decide upon the amount of the fine. Mr. Romans, said the fine needs to increase with repeated violations because taxpayers are paying the cost of the inspector's time to go to court and the legal fees for the hearings. The summonses are way for the town to recoup those costs. The license fees cover the costs of inspections but there are no fees being charged to cover the court and legal fees. Mr. Pignatelli said the fine is out of the Board's hands because the judge decides. Mr. Romans said the Mayor and Council appoint the judge and they can evaluate the judge's decisions to which Mr. Pignatelli said they Board has done in the past.

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The Board discussed passing a motion to post the Corrective Action Plan on the website. Mr. Romans advised against it because of a request made by Mr. Nissiorios' attorney. Mr. LaForgia said he would like to have the inspection reports posted on the internet which would be the best deterrent because people who see the reports will share about them on Facebook. Mr. Talucci questioned whether that would be a problem if the establishment is found not guilty on summonses that were issued. Mr. Pignatelli said those are two entirely separate issues. The inspection rating is what it is and nobody can change it. Once the rating is issued it will always be that rating for the inspection. Establishments receiving Conditional ratings are posted in The Record. Mr. LaForgia said the Board will have to discuss posting the inspection reports at a future meeting and come up with a plan to implement it.

ADJOURNMENT

On motion of Ms. Ashkenazi, seconded by Mr. LaForgia, the meeting was adjourned at 9:26 PM.

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

APPROVED:

Stephen C. Tiffinger, President

ATTEST: _____
Karin Kennedy Dubowick, Secretary

DATE: _____