

**ANDOVER BOARD OF HEALTH**  
**Minutes**  
**October 4, 2010, 5:55 P.M.**  
**1st Floor Conference Room**  
**36 Bartlet Street**

The Board of Health Meeting was called to order at 5:55 p.m. Present were Ms. Candace B. Martin, Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health. Dr. Donald H. Miller, Vice-Chairman, was not present due to a scheduling conflict.

**I. 6:00 p.m. Hearing - Suspension of the Board of Health Meeting to Convene to the Board of Selectman Meeting for Executive Session**

*Motion by Ms. Martin, seconded by Ms. Kellman, to suspend the Board of Health Meeting at 5:56 p.m. in order to join the Board of Selectmen in Executive Session to discuss ongoing litigation. The Board of Health Meeting will reconvene at the conclusion of the Executive Session with the Board of Selectmen. Roll Call Vote taken, Ms. Martin, Aye, Ms. Kellman, Aye. Unanimous approval.*

**II. Resumption of the Board of Health Meeting**

*With the Executive Session with the Board of Selectmen being finished, the Board of Health voted at 6:47 p.m. to reconvene the Regular Session of the Board of Health. Vote taken, Ms. Martin, Aye, Ms. Kellman, Aye. Unanimous approval.*

**III. Approval of Minutes**

- Regular Meeting of September 13, 2010

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of the Meeting of September 13, 2010. Unanimous approval.*

**IV. Appointments & Hearings**

- **6:30 p.m. – Charlie Eliopoulos for My Brothers Place – Show Cause Hearing (Continued)** – Mr. Charles Eliopoulos and his Consultant, Ms. Michelle Cramm, were present. Mr. Carbone informed the Board that he was pleased with the progress Mr. Eliopoulos has made and that things were looking good. Ms. Martin remarked that she saw significant improvement when looking at the Inspection Reports and thought the Consultant he hired helped a lot. Mr. Eliopoulos stated that hiring Ms. Cramm helped him so much; she let them know what they were doing wrong and now they are on top of everything. Ms. Martin stated that she would like Ms. Cramm to continue doing her inspections on a by-monthly basis and then the Show Cause

Hearing could be continued for another six months. She was confident that there was still advice to be provided in that time that he could benefit from.

*Motion by Ms. Martin, seconded by Ms. Kellman, to continue the Show Cause Hearing for six months, with the requirement that an independent Consultant conduct three more inspections, one every other month, that copies of the inspection reports are provided to the Director of Public Health, and that after six months, the Board will review the reports and hopefully close the Show Cause Hearing. Unanimous approval.*

- **6:45 – Yuemao Xu for Teatone Restaurant – Show Cause Hearing to Revoke or Suspend Food Service Permit for Sanitary Code Violations** - Ms. Xu was present at the meeting. Last month the Health Division received a complaint of rodents at the Train Station near the Teatone Restaurant and when Mr. Carbone and Ms. Crafts inspected the area on Friday, September 9, 2010, they found the back door open and discovered food handling issues in the restaurant. Ms. Xu was out of town, so Mr. Carbone and Ms. Crafts spoke with her husband. They had to throw away some of the food and informed the owner that he had two options – either voluntarily close so that the establishment could be cleaned up or receive an ORDER to close from the Health Division. He chose to close and clean up the restaurant, and Ms. Crafts conducted a re-inspection to open again on Saturday afternoon. Mr. Carbone’s observation is that there is not enough supervision on the food safety side and that more training of the staff is needed.

Ms. Xu informed the Board that she was in China when the inspection occurred. She submitted to the Board pictures of her establishment showing how everything had been cleaned up.<sup>1</sup> Mr. Carbone noted that the pictures show everything very clean now, but that the establishment was very dirty at the time of the inspection. She admitted that sometimes there are no hand towels in the sink area. Mr. Carbone stressed that the most significant issue was the hand sink because when he was there on that Friday and turned the water on, the water backed up into the other sink next to it. Ms. Xu’s husband had that repaired on Friday night, but there was no way of knowing how long that sink had been like that. Mr. Carbone also noted that the three-bay sinks were labeled incorrectly in the supplied photos in English, but her staff is Chinese and cannot read English. She stated that she heard about the rodent issue in the downtown area a few months ago and thought that they migrated from there. She pointed out a picture of the dumpster area that was now cleaned as well as a picture of the back door which has always been a screen and stated that in the warmer months they open the door because they need air. She stated that considerable cleaning has been done and would make sure the workers will follow her directions because she realizes they may get lazy when she is gone. Mr. Carbone explained that that was part of the problem; when she is not there, there should be people in charge to make sure things are clean. Another issue is that food was left out at room temperature; a fact

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<sup>1</sup> Ms. Xu presented to the Board ten photographs of the Teatone Restaurant showing the inside area of the business as well as the outside dumpster area. The photographs were inserted into the Meeting Packet following page # 23.

that Ms. Xu felt was an accepted practice. Mr. Carbone explained that food has to be put into the refrigerator while marinating, not left at room temperature, and meat products cannot be left out on the counter to thaw out. All these issues indicated poor practices and suggested that Ms. Xu didn't understand the importance of that specific food code.

Mr. Carbone stated that he believed her staff needs more training and supervision than she can give. Mr. Carbone stressed that since she and her husband cannot be at the restaurant on a full-time basis, and the code specifically states that all food establishments must have a full-time-equivalent Certified Food Handler in its employ, then she should send some of her staff to Food Safety classes. Mr. Carbone also suggested that Ms. Xu hire a Consultant to perform inspections and to help with the issues that have been discussed. A Consultant has worked well with other establishments with the same types of issues, and both Food Safety class instructors and food Consultants are available who speak her language. The language barrier can be a big problem when Health staff try to communicate issues to the staff if there is no translator there. Ms. Xu informed the Board that she would prefer to send someone to Food Safety Class rather than hire a Consultant, so Mr. Carbone told her he would send her a list of classes and she could choose one that is in Chinese. If she is willing to do that, then Mr. Carbone would support continuing the Show Cause Hearing for a month. Since the course has to be taken in Chinese, the Board agreed to continue the Hearing until December if there is proof that a staff member has been at least enrolled before the next Board of Health Meeting on November 15, 2010, and that another inspection shall be done by the Health staff following the training.

*Motion by Ms. Martin, seconded by Ms. Kellman to continue the Show Cause Hearing until the December 13<sup>th</sup>, 2010 Board of Health Meeting with the requirement that the Board get an update before the November 15<sup>th</sup>, 2010 Board of Health Meeting from Ms. Xu on the training and that an inspection be done prior to the December Show Cause Continuation Meeting. Unanimous approval.*

The Board asked Ms. Xu for an update on the holding of sushi rice at Mootone. Ms. Xu informed the Board that she has a company in Boston who will do a HACCP plan for them. Meanwhile she has a schedule ready to measure the PH levels. Mr. Carbone explained that she would need a special variance from the Board of Health, so that needs to come for an approval as soon as possible. Ms. Xu asked if she could call the company tomorrow and get the plan ready by the end of the week. Mr. Carbone said the sooner the better because then the process can get started and also stated that he would want her husband involved in the November meeting as well.

## **V. Discussion**

- **Division Work Load Indicators** – Ms. Martin said that she understood the costing example, but was not sure if we are ready to go the route of an Enterprise Fund at this time. Mr. Carbone agreed, but just wanted to speak with the Board about this. The Town of Acton uses Health Enterprise Funds and they break it down into actions so

that you can see what it is costing to run programs. The costs would be broken down by this formula to determine what we should collect for permit fees. Ms. Martin stated that if we used an Enterprise Fund costing example, a \$100.00 re-inspection fee would not be sufficient to cover our costs. Mr. Carbone stated that this type of formula is useful to help to find what your actual costs are. Ms. Martin stated that she wouldn't want to raise the regular fees for some restaurants that are spending money and complying because then you would be hurting them, so she would rather increase the fees of the ones that do not comply.

Ms. Kellman asked Mr. Carbone to give her a little background on this subject. Mr. Carbone explained that in theory, any fee that we charge should be covering the cost of administering that fee. We have yet to quantify all of that; for example, when you do a re-inspection, staff can be tied up on site for a couple of hours; there is prep time for your Administrative Hearing and time to hold the Hearing, and all this would have to figure into your fees. Mr. Carbone got the costing example from the Acton Health Director and he runs his entire Health Department on an Enterprise Fund instead of through taxes. You start with what your clerical and inspectional service costs are and add 25% to factor in the overhead such as the Director's work and for the Auditor and the Treasurer.

Also, Mr. Carbone stated that the two hours of office time the Inspectors have every day can involve customers looking to do work at their houses, so the Inspectors have to take time to review plans and sign off on them. In theory what Acton does is build that time into that fee schedule. Ms. Martin expressed concern that people who pay the high price will demand more. Ms. Kellman asked where the tax money that was allocated for the Health Division would go to instead. Mr. Carbone replied that the fees we generate now wouldn't end up in the General Fund. If we generate \$20,000 worth of fees now, you would have pulled \$20,000 out of the General Fund, but if you set up the Enterprise Fund and make it fee based you actually pull more than that \$20,000 from the expenditure side because it is not being taken out of the tax levy any more. Ms. Martin stated that Funds do not address issues outside of the permit activity that you and your staff cannot cover due to staff limitations. To determine required staffing levels, we should use the information provided by Mr. Carbone such as the graphs and permits and equate that to the hours it takes to complete these tasks, and then relate them to an FTE. However, what it doesn't capture is all the other activities staff performs that are not fee based, such as responding to complaints.

Ms. Kellman asked if we should be looking into doing anything other than an Enterprise Fund. Mr. Carbone replied that we are getting a new permitting program, and as part of that will be putting together some flow charts on our processes. This may help us to estimate our time because we can probably add in each step of the process as well as the timing of each step.

Mr. Carbone asked if there were any questions about the graphs and charts he provided showing Health related activities. Ms. Martin stated that she felt it was a good time to get ready for next year's budget. Mr. Carbone listed in his Monthly

Report all the outstanding issues that are not being addressed because of a lack of staff. Ms. Martin commented that Show Cause Hearings or open complaints issues are a problem. Mr. Carbone agreed and stated that complaints and open sewer permits that are not closed are things he wants to work on completing, and again, there is a time issue of dealing with these problems. Ms. Martin stated that there are a lot of things outside the norm that are being handled and wondered if that was all captured in his report. She suggested that Mr. Carbone have a section with a running list of each step to show why projects are not completed due to the day-to-day things that come up. Mr. Carbone replied that he would try to add that information into his report. Ms. Martin stated that this is intended to highlight to the Town Manager that these are projects that have not been progressing.

- **Flu Clinic Dates** – Mr. Carbone explained that having the Staff go out to the schools to give flu shots was started last year because of the H1N1 virus. Since that was so successful and well received, the Public Health Nurses and the School Nurses have been working together to do the shots at the schools again this year. Right now, the nurses are concentrating on the Middle Schools and the High School.
- **Tobacco Control Update** – Mr. Carbone explained that last year Mr. Beauregard, Director of the Healthy Communities Tobacco Control Program, did thirty compliance checks at sixteen retailers and had two sales at the same business. There is an expectation that more money will be provided for Tobacco control which will help with fees and payroll. The extra money will also allow us to help some of the non-funded communities. Right now we have twelve members with us. Mr. Beauregard has put together a proposal that would fund inspections, not compliance checks, in non-member communities. An inspector would enter an establishment to provide education on the proper ways to deal with the sale of tobacco products and to raise awareness. The Advisory Board, which is comprised of a Health Agent or Health Director from those member communities, met last week. The debate has been whether to help one large community, or to look at helping out multiple non-member small communities that are interspersed with our members. Mr. Beauregard is talking about getting a written agreement with those other Health Departments. They have to invite us in and want our involvement, so we are still working on that.

## **VI. Old Business**

- **38 Michael Way Update** – The Board had no public discussion concerning 38 Michael Way because discussion took place during Executive Session with the Board of Selectmen.
- **27 Kirkland Drive Update** – Mr. Carbone explained to the Board that he is working with Inspector of Buildings, Kaija Gilmore, concerning this property and both Mr. Carbone and Ms. Gilmore have sent out ORDERS to the Santangelos. Their previous Attorney, Michael Abodeely, called Mr. Carbone on Friday afternoon and said he has not been retained by the Santangelos yet, but has been contacted by them. Mr. Abodeely asked Mr. Carbone to fill him in on where the Board is at concerning this

issue and asked what our intentions are. Mr. Carbone replied that the Board's intention was to file an application in Housing Court within the next week or two if they do not comply.

*Motion by Ms. Martin, seconded by Ms. Kellman to authorize Mr. Carbone to take action to bring this to Housing Court if it is deemed necessary before the next Board of Health Meeting in November. Unanimous approval.*

- **Rodent Issues** – Mr. Carbone informed the Board that Patricia Crafts, Health Agent, has done an amazing job working with property owners and issuing ORDERS to get the situation under control. Most of the property owners were receptive to receiving the ORDERS.

## **VII. Definitive Subdivision Plans**

- N/A

## **VIII. Plan Review**

### **A. D.W.R.P. Variances/Local Upgrade Approval (LUA)**

- **25 Noel Road – Allow SAS to be 3' above Water Table, 4' Required** – Mr. Carbone explained to the Board that the applicant needs the LUA to avoid the installation of a pump, and the existing septic tank will be used. Mr. Carbone recommended approval.

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the SAS to be 3' above the Water Table where 4' is required. Unanimous approval.*

- **7 Cardinal Way – LUA to Allow SAS to be 17' from Foundation, 20' Required** – Mr. Carbone explained to the Board that the applicant needs the LUA in order to maximize the setback to a wetland across the street, and allow the applicant to avoid moving the water service and removing a tree. Mr. Carbone recommended approval.

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the SAS to be 17' from Foundation where 20' is Required. Unanimous approval.*

- **23 Osgood Street – LUA to Allow SAS to be 13' from Foundation, 20' Required** – Mr. Carbone informed the Board that the original approval had no LUA, but when work was started, the excavator found ledge that would interfere with the new system, so new plans had to be drawn up. Since the SAS will be so close to the foundation, the engineer proposed the installation of a plastic barrier to prevent wastewater from getting too close to it. Mr. Carbone recommended approval.

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the SAS to be 13' from Foundation where 20' is Required. Unanimous approval.*

## **IX. Staff Reports**

### **A. Director's Report:**

- **Board of Selectmen Lyme Disease Discussion about Opening up Land for a Deer Hunt (Not on Agenda)** – Mr. Carbone gave the Board a copy of a letter that he sent to Robert Douglas, Director of Conservation concerning Lyme Disease as well as comments on the proposed hunt of deer on Town property.<sup>2</sup> The Board of Selectmen is having a discussion tonight about opening up some land owned by the Conservation Commission and the Water Department for the deer hunt. Mr. Carbone stated that he couldn't guarantee that a hunt of this type would have any effect on Lyme Disease incidences. In Mr. Carbone's opinion, the only way this would help would be if they widened the hunt, because if you decrease the deer population per square mile, from 18 down to 10, all that is going to do is cause the deer around the area to come in and redistribute themselves. You wouldn't be able to harvest the number of deer you need to harvest to decrease down to a number that is manageable in one season. They would have to harvest a large amount of deer in order to get to that ideal number. They are working with the State biologist on the deer hunt itself and the importance of it. Mr. Carbone's feeling was Lyme Disease might have a play in this, but it shouldn't be the only reason to organize a hunt. If they want to hunt to decrease the deer population so that you decrease the number of car accidents, or to decrease the stress on foliage, those could be reasons why they would want to do this.
- **Meeting with the Commissioner of Public Health in Boston (Not on Agenda)** - Mr. Carbone informed the Board that he was invited to meet with the Commissioner of Public Health in Boston. Dean Harold Cox at the BU School of Public Health saw Kerri Barton's work that she did for us for Lyme Disease this past Summer. The Commissioner had questions about tick borne illnesses and Lyme Disease, so Dean Cox brought this to his attention. The Commissioner invited Mr. Carbone, Joanne Martel, and Ms. Barton to meet with him and Dean Cox as well as the DPH's Veterinarian and a person from the Communicable Disease Department at DPH. They had a discussion to update the Commissioner on the whole Lyme Disease issue and he asked what they would do to address this.

Mr. Carbone informed the Board that Ms. Barton was very articulate, and she did a great job and he was very happy for her. Mr. Carbone felt that the Commissioner walked out of their meeting with some good advice. This problem is a nationwide issue because of the deer tick increase and the incidence of them transmitting the illness has increased. Mr. Carbone also gave the Commissioner the packet from Wood Hill Middle School on the H1N1 work that they did. He

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<sup>2</sup> The letter was inserted into the Meeting Packet after page #46.

got in touch with Jane Anthony who sent him some DVD's to give to the Commissioner who will share it with the State Lab.

- **Important Dates:**

- October 26<sup>th</sup> to 29<sup>th</sup>, MHOA Educational Conference
- November 9<sup>th</sup>, Flu Clinic at Andover High School Field House
- November 15<sup>th</sup>, Board of Health Meeting at 6 p.m.
- November 22<sup>nd</sup>, Flu Clinic at Andover Senior Center
- December 13<sup>th</sup> – Board of Health Meeting at 6 p.m.

**B. Inspectors' Reports for September, 2010** – The Inspectors' Reports were for informational purposes only.

**X. Board Member Reports**

- N/A

**XI. Adjournment**

*Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 8:27 p.m. Unanimous approval.*