



Town of Northborough

Board of Health

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Members Present: Glenn French
Deirdre O'Connor
Dilip Jain
Jamie Terry, Board of Health Agent

The Board of Health met on Tuesday, May 15, 2012 in the Selectmen's Meeting Room of the Northborough Town offices. The meeting was called to order at 6:10 PM by Chairman Glenn French. The minutes from the March 13, 2012 meeting were approved as read, Deirdre O'Connor abstaining due to absence from the meeting. The minutes from the April 20, 2012 meeting were approved as read, Glenn French abstaining due to absence from the meeting.

Ms. Terry and the Board discussed a request from the Massachusetts Department of Agricultural Resources (MDAR) State Reclamation and Mosquito Control Board. MDAR is looking for a representative from the Town to serve as a commissioner for a term to be specified by the enabling legislation. Ms. Terry inquired as to if anyone had any interest in doing this on behalf of the Town of Northborough; Deirdre O'Connor and Dilip Jain both requested a copy of the letter.

Ms. Terry and the Board discussed the recent food inspections that were performed - no outstanding issues were reported.

Ms. Terry informed the Board that she received a food-borne illness complaint from an individual who recently consumed food at Wegmans. Ms. Terry reported that she investigated this complaint and it was unfounded.

Mark Farrell of Green Hill Engineering was unable to attend tonight's meeting RE: 71 Newton Street. Ms. Terry and the Board discussed the variances that are being requested - offset to well (100' required, 70' provided), and offset to foundation (20' required, 18' provided). Ms. Terry and the Board reviewed and discussed the plan that was submitted for review. Ms. Terry informed the Board that the new proposed system is far more protective than what currently exists in the ground. The Board did express some concern about the existing well on the property and highly recommends testing the well every two (2) years since there will be a 30' reduction of the well regulation. Chairman Glenn French made a motion to grant the requested variances, Deirdre O'Connor seconded the motion and the vote was unanimous.

Karen and Donald Tipper of 216 Newton Street appeared before the Board tonight. The Tipper's are interested in having a new drinking water well installed and are currently unable to maintain the required setback from property line (35' required, 17'6" provided). Ms. Terry and the Board discussed the proposed site. Mr. Tipper informed the Board that the existing well only produces 4gpm and rapidly decreases after that. Chairman Glenn French made a motion to grant the variance request, Deirdre O'Connor seconded the motion and the vote was unanimous. Mr. and Mrs. Tipper thanked the Board for their time and informed the Board that the existing well on the property will be decommissioned.

Due to continued non-compliance The New Great Wall of 259 West Main Street appeared before the Board tonight for a revocation hearing. This revocation hearing is based on a series of violations for some time now and the Board is especially concerned about the most recent critical violations that were found while on probation.

Ms. Terry and the Board reviewed the establishment's history dating back to 2010. Ms. Terry informed the Board that she did not prepare a recommendation for them as she wanted the Board to hear all the facts and make a decision as a Board.

Attorney Russell Chin spoke on behalf of the owners of the establishment. Mr. Chin told the Board that he recognizes that there is a history of this restaurant having to appear before them on numerous occasions but states that his clients have tried to correct the issues along the way. Mr. Chin and his clients believe that they were misled by their former consultants Mr. Szeto and ESI Qual International of Stoughton, MA. Mr. Chin stated that Mr. Szeto failed miserably as he did not provide his clients sufficient and effective communication. Mr. Chin and his clients also argue that ESI Qual failed to give recent audit findings to his client claiming that they were almost working for the Board as a pair of internal eyes. Mr. Chin informed the Board that his clients have retained a new consultant, Dr. Sam Wong of MD Consulting and that they are here tonight to show good faith and ask for one last opportunity to demonstrate compliance. Deirdre O'Connor stated that she would like to hear from ESI Qual to better understand why the establishment wasn't made aware of the audit findings. She also questioned why we were relying on consultants to do the owners job. Chairman Glenn French stated that even if they didn't receive the audit reports a follow-up inspection was conducted by the health department and violations were still found and the establishment was essentially put on notice that certain violations appeared constantly over a period of time. Dilip Jain informed Mr. Chin that it takes a great deal for an establishment to be called before the Board and it's not normal for an establishment to be called before the Board three times in two years.

Ms. Terry informed the Board that the establishment has very much improved over the last couple of weeks; implementation of a permanent labeling system, walk-in cooler is now in proper order, and they have demonstrated proper food storage. Mr. Chin requested that the Board look at the body of work and even though it hasn't been perfect his clients are doing everything they can to get up to code. Mr. Chin questioned if there had been any foodborne illness complaints at this establishment. If not, that should be an indication to the Board that things are going well. Ms. Terry informed Mr. Chin that we cannot use foodborne illness complaints as a measure that things are going well at any establishment as they are not often reported to the BOH. Ms. Terry stated that all

foodborne illnesses are not the same and often times there is a delay between exposure and when symptoms of illness begin – this delay can range anywhere from hours to days, and oftentimes it is not the last thing you ate.

Chairman Glenn French informed Mr. Chin that it is not the Board's job to educate restaurant owners it's to make sure that they are educated and clearly they are not. They are not students, they are business owners and this is not normal history and not an accepted practice. Ms. Terry stated that any establishment can have violations as it's normal to make an error. However, it is not normal to have numerous repeated critical violations. The Board expressed extreme concern regarding the fact that they do not meet the minimum standards to operate a food establishment. Chairman Glenn French indicated that while he doesn't feel comfortable leaving them open; he's also not comfortable shutting them down.

Dr. Sam Wong of MD Consulting has been retained by the owners of the establishment. Dr. Wong informed the Board that he has reviewed the chronology and agrees with the Board that there is no excuse for it. He agrees that the inspection on May 8, 2012 was not good and he would like to help them as much as he can. Dr. Wong informed the Board that he is here tonight to advocate for them and would like the Board to extend the probation period. Dr. Wong feels as though this extension will give his clients one last chance to continue the trend of improvement. Dr. Wong stated that this is his clients livelihood and they are doing everything they can do to make it. Dr. Wong's recommendation to the Board is one last chance to meet and maintain compliance. In the event that any critical violations are found he will support the Board's decision to hold a revocation hearing.

Ms. Terry and the Board reviewed correspondence from Town Counsel. Ms. Terry pointed out that since the history of this establishment poses a risk by endangering the public's health the Board has the authority to revoke the food permit. Chairman Glenn French stated that there is no question that the Board has the right to revoke if warranted. However, he feels as though Dr. Wong's presence at tonight's meeting is helping their cause. The Board agreed that Dr. Wong's reputation in this field precedes him.

Wen Qin Lin (Karel) spoke about the new procedures Dr. Wong is looking to put in place to assure that temperature violations will not continue to occur. Attorney Chang informed the Board that the Great Wall has taken measures to alleviate the violations that were found during an inspection on May 8, 2012 and he feels as though this was an appropriate step to show the Board that they now have a better understanding of the seriousness of the violations. Dr. Wong informed the Board that he is willing to do whatever it takes to get this restaurant where it needs to be. Dr. Wong feels as though Karel appears to have the knowledge as she is the person in charge (PIC) however they are lacking a system to fall back on continuously. Dr. Wong is proposing to set up a procedure for them which will help them monitor and maintain temperatures. Deirdre O'Connor believes that this is shortsighted and a dangerous course of action since the people they are serving are at risk. The responsibility to meet the food code and prepare food safely lies with the owner of the restaurant and no one else. All other food establishments in the Town of Northborough are ordered to meet the food code and the Great Wall has clearly demonstrated that they are not able to do this. At this time Ms.

O'Connor is not willing to put the public at risk anymore and she understands that it is a matter of livelihood vs. lives. However, at this time she feels as though the risk to the public far outweighs the family cost.

Chairman Glenn French made a motion not to revoke the food permit at this time; Dilip Jain seconded the motion. Vote: 2/1 with Glenn French & Dilip Jain in favor and Deirdre O'Connor opposed.

Chairman Glenn French made a motion to give this establishment one final opportunity to achieve and maintain compliance by extending their probation period with strict provisions. This probation period runs from today, May 15, 2012, to the next regularly scheduled meeting to be held on Tuesday, June 12, 2012. The establishment is ordered to be closed until Dr. Wong can provide the necessary training. Once the training is complete the establishment will be allowed to re-open with the understanding that Dr. Wong will re-visit in two (2) weeks for a full day of observation. Spot inspections will occur at minimum one (1) inspection a week by either Ms. Terry and /or an independent inspector to be hired by the owners of the establishment. Ms. Terry and the Board were unsure if the Town of Northborough would be able to hire a temporary inspector to conduct these inspections at this time. Ms. Terry indicated that she would look in to the matter and report back to Dr. Wong with her findings. Any critical violations observed by Ms. Terry will result in immediate suspension of the food permit and the establishment will be closed until the next regularly scheduled meeting at which time the Board will have no choice but to consider permanently revoking the food permit. If the establishment remains in compliance with the food code the Board is requiring that the owners appear before them at the next regularly scheduled meeting to discuss the continued compliance. Dilip Jain seconded the motion. Vote: 2/1 with Glenn French & Dilip Jain in favor and Deirdre O'Connor opposed.

Ms. Terry and the Board reviewed the proposed changes to the tobacco regulations. Ms. Terry informed the Board that we will need to make these available to the public with the possibility of holding a public hearing at the next regularly scheduled meeting. Chairman Glenn French disagrees with some of the proposed changes and requests to discuss this at the next regularly scheduled meeting.

Meeting was adjourned at 9:00 PM

Respectfully submitted

Sarah Jean