

**Board of Health Minutes**  
**Monday, February 1, 2010, 6:00 PM**  
Meeting Room C, Town Hall  
25 Green Street, Ipswich, MA

**Call to Order:** Susan Hubbard called the meeting to order at 6:11 PM.

**Members attending:** Susan Hubbard and Dr. Spencer Amesbury.

**Others attending:** Health Director Colleen Fermon, Health Administrative Assistant Jennifer Brown, Larry Graham, P.E., Zong Song Zou, Dale Therberge, David Grasso, Attorney Richard Kallman, Elizabeth Berkman, George Rathe and Benjamin Gorniewicz.

**Citizens Queries:** None.

**Minutes:** Susan Hubbard made a motion to postpone the approval of the December 7, 2009 minutes Dr. Amesbury seconded the motion. The motion passed unanimously. Susan Hubbard made a motion to approve the January 4, 2010 minutes. Dr. Amesbury seconded the motion. The motion passed unanimously.

**6:12 – Mayflower Restaurant – 15 Depot Square – represented by Zong Song Zou, President –noncompliance of sushi operation.**

Zong Song Zou presented, and a hearing was conducted regarding noncompliance with an order from the Board of Health and the suspension of the sushi operation.

Previously, at the meeting of the Board of Health on January 4, 2010, a hearing was conducted regarding non-compliance with May Flower Restaurant’s Hazardous Analysis Critical Control Point (HACCP) plan for acidifying rice and the resulting suspension of their HACCP approval issued on December 12, 2009.

The Board of Health determined that the sushi operation could re-open provided the sushi is prepared with refrigerated rice only. The rice had to be kept refrigerated, at a temperature below 41 degrees Fahrenheit, to prohibit the growth of pathogens that could cause a foodborne illness. Acidified rice, using pH as a barrier to the growth of pathogens, could not be used until Mr. Zou resubmitted his HACCP plan and receive approval on it.

A re-inspection of the sushi operation was conducted on January 21, 2010. The inspector found sushi rice in a holding container at the sushi bar that was 75 degrees Fahrenheit. No refrigerated rice was available in the establishment. At the time of inspection Mr. Zou stated that the rice was in the process of cooling.

Since the Board specifically ordered Mr. Zou to use only refrigerated rice at the sushi bar as a condition of keeping the sushi bar open and Mr. Zou did not comply with that order his approval to keep the sushi operation open was suspended. The sushi operation was ordered to close immediately and no sushi, either from the sushi bar menu or main menu, could be offered. The suspension was lifted by Colleen Fermon after she met with Mr. Zou and he confirmed a training of staff was scheduled for that week and that he had 3 certified people now on staff. He was told he still had to attend the Board meeting and discuss the sushi operation with the Board.

At the meeting, Mr. Zou provided documentation to the Board that a food consultant trained his staff in their native language on January 28, 2010. Seven (7) staff members were trained. He also provided paperwork to show three (3) people are certified in food protection management.

Colleen attested that Mr. Zou provided her with a list of the seven (7) staff members trained on January 28, 2010 but it was not clear to her what the training entailed. Mr. Zou confirmed that sanitizing, hot holding; cooking procedures, etc. were reviewed.

Colleen asked Maureen Lee, Ipswich Food Inspector, to do an inspection on February 1, 2010 to determine if the training of the staff resulted in improved procedures and less violations so the Board could get a feel for how the establishment is progressing. Colleen stated that the re-inspection report from February 1, 2010 revealed some critical violations, however; there were no violations of food holding temperatures and the sushi rice was at 41 degrees Fahrenheit. The Food Inspector spoke to Colleen and recommended allowing Mr. Zou and his staff time to put into practice what was learned at the January 28, 2010 training. Maureen felt that after a few inspections the Board should be able to assess that they are either improving with additional guidance or that they can not implement what they have been taught and should not be operating.

Colleen added that Maureen has reviewed the HACCP Plan submitted to the Health Department on January 25, 2010. There are a number of things missing from the plan. At this time the plan is disjointed and not in a useable working format since Mr. Zou's day to day plan for acidifying rice is not explained. The plan was not approved since the submission is incomplete.

Susan Hubbard questioned if it was feasible for Mayflower to continue to use refrigerated rice for their sushi operation and forgo the Hazardous Analysis Critical Control Point (HACCP) plan for acidifying rice. Colleen agreed that this may be a better approach if there continues to be difficulty developing and implementing the plan. Maureen Lee reviewed their procedures for making sushi with refrigerated rice and saw no problems with it.

Susan Hubbard made a motion to allow the sushi operation to remain open with the condition that only refrigerated rice is used at the sushi bar. In addition, quarterly inspections will be conducted to determine if Mr. Zou and his staff are able to implement what was reviewed at the January 28, 2010 training. Ongoing training of the staff must be done by the certified Food Protection Managers. Personnel must be able to demonstrate to the Food Inspector that they have a complete understanding of standard operating procedures at the time of inspection or the establishment may be subject to closure. Dr. Amesbury seconded the motion. The motion passed unanimously.

#### **6:25 – Hearing - Frank Hertz – 154 Argilla Road-represented by H.L. Graham Associates, Inc. – septic variances.**

Larry Graham, P.E. presented, and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Gerard McDonald, P.E., plan 09-903, dated November 20, 2009 and last revised January 12, 2010, for the dwelling located at 154 Argilla Road, Ipswich, Massachusetts.

The septic system failed a Title 5 Inspection on July 2, 2007. This is an existing summer residence. The new owner is upgrading the system and making it a permanent residence.

For the previous owner the Board granted variances and approved a septic upgrade plan on December 10, 2007. The plan was revised for the new owner Frank Hertz. In May 2009 the Board granted an extension on the upgrade deadline of July 2, 2009 to allow for the house to be re-built in conjunction with the septic system. The installation deadline was set for December 31, 2011 since the house was only being used on weekends except during the summer.

The revised septic plan was submitted to the Health Department on January 14, 2010. The revised plan moved the system upland further away from the wetland area.

Mr. Graham attested that the home was used this summer but that the owners are ready to submit building plans for approval.

The following variances were requested:

- A 1 foot reduction in the separation between the bottom of the leaching chambers to estimated seasonal high groundwater (ESHGW). A 3 foot separation is provided.
- Reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day for the pump chamber only.

Susan Hubbard asked for Colleen's thoughts. Colleen recommended approving the variances with the condition that the Installer must be certified by Infiltrator.

Susan Hubbard made a motion to approve the plan and grant the variances as requested with the following conditions:

- The Installer must be certified by Infiltrator.
- The dwelling is to be utilized only on weekends except during the summer it can be used weekly.
- The upgrade must be completed with the Certificate of Compliance issued by December 31, 2011.

Dr. Amesbury seconded the motion. The motion passed unanimously. The motion passed unanimously.

**6:30 – Hearing - J & J Contracting – 18 Birch Lane – represented by H.L. Graham Associates, Inc. –septic variances.**

Larry Graham, P.E., presented, and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health regulations to upgrade a sewage disposal system designed by Gerard McDonald, P.E., Plan # 04-429, dated, October 15, 2004 and last revised January 26, 2010, for the dwelling located at 18 Birch Lane, Ipswich, Massachusetts.

The septic system failed a Title 5 inspection on August 6, 2004. The previous owner was granted upgrade extensions since the upgrade of the system could only be financed by the sale of the property. The property did not transfer title and the permit expired on December 14, 2008. Since the permit expired, new engineered septic plans designed to meet current Title 5 and Ipswich Board of Health regulations were required.

The bank now owns the home and H.L. Graham is working for J & J Contracting to get the home ready for sale. New engineered septic plans were submitted to the Health Department for approval on January 26, 2010.

The following variances were requested:

- A 1 foot reduction in the separation between the bottom of the leaching system and estimated seasonal high groundwater (ESHGW). A 3 foot separation is provided.
- Reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Colleen stated that back in 2004, when it was required, a variance for having a percolation rate greater than twenty (20) minutes per inch was also granted in addition to the two (2) aforementioned variances.

Susan Hubbard asked Colleen for her thoughts. Colleen recommended approving the variances with a short time-frame for the installation of the system if the home is going to be occupied since the system failed in 2004 due to a back-up in the septic tank because the leaching system was in failure. Additionally, there is a laundry system that is separate that also had little capacity left in it at the time the system failed. The system was last pumped on September 27, 2007.

Susan Hubbard made a motion to approve the plan and grant the variances as requested with the condition that the system is installed prior to the home being occupied. Dr. Amesbury seconded the motion. The motion passed unanimously.

**6:35 – Hearing - David Byer – 19 Cedarview Road-represented by H.L. Graham Associates, Inc. – septic variances.**

Larry Graham presented, and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health regulations for a sewage disposal system plan designed by Gerard McDonald, P.E., plan 09-928, dated January 5, 2010 and last revised January 26, 2010, for the dwelling located at 19 Cedarview Road, Ipswich, Massachusetts.

The septic system failed a title 5 Inspection on November 22, 2009.

The proposed pressure distribution system plan was reviewed by the Board.

Mr. Graham stated that the soils were fairly slow so the permeability of the system was designed on forty (40) minutes per inch.

The following variances were requested:

- A 4 foot reduction in setback between the septic tank/pump chamber and the foundation. A 6 foot separation is provided for both tanks.
- A 1 foot reduction in the separation between the bottom of the leaching system to estimated seasonal high groundwater (ESHGW). A 3 foot separation is provided.
- A reduction of design flow rate from 150 gallons/bedroom/day to 110 gallons/bedroom/day.

Susan Hubbard asked Colleen for her thoughts. Colleen recommended granting the variances.

Dr. Amesbury made a motion to approve the plan and grant the variances as requested with the following conditions:

- A 2 year Operations and Maintenance contract for the Pressure Distribution system must be submitted to the Health Department prior to the issuance of the Disposal System Construction Permit.
- The Installer must be certified by Infiltrator.
- The upgrade must be completed with the Certificate of Compliance issued by November 22, 2011.

Susan Hubbard seconded the motion. The motion passed unanimously.

#### **6:40 – Discussion – Recombinant DNA presentation and draft regulation – presented by Rebecca Ryan Caruso, consultant for Ipswich Board of Health.**

Rebecca Ryan Caruso, consultant for Ipswich Board of Health, presented; and a discussion was held regarding the draft Recombinant DNA regulation.

Dr. Amesbury acknowledged that he is a member of the Institutional Biosafety Committee for New England Biolabs.

The National Institute of Health (NIH) has national guidelines for the use of Recombinant DNA. Many towns and cities have been developing their own regulations based on the NIH guidelines and then setting up additional requirements such as permitting requirements and annual inspections.

The proposed regulation will allow the Ipswich Board of Health to oversee all uses of Recombinant DNA in the Town of Ipswich, even experiments that are exempt from NIH guidelines. The regulation is promulgated under the authority granted to Boards of Health under Massachusetts General Law 111, Section 31.

The purpose of the proposed regulation is to protect the safety of the citizens of Ipswich, to promote the safe and responsible conduct of science with entities using Recombinant DNA and Recombinant DNA materials, and to provide a mechanism for objectively permitting laboratories through a non-biased review process.

Recombinant DNA is a form of DNA that does not exist naturally, which is created by combining DNA sequences that would not normally occur together. In terms of genetic modifications, recombinant DNA is introduced through the addition of relevant DNA into an existing organismal DNA, such as the plasmids of bacteria, to code for or alter different traits for a specific purpose, such as antibiotic resistance. It differs from genetic recombination, in that it does not occur through processes within the cell, but is engineered.

The Recombinant DNA draft references the National Institutes of Health (NIH) guidelines and the latest edition of the Biosafety in Microbiological and Biomedical Laboratories (BMBL).

A handout was given to Board members outlining some of the National Institute of Health (NIH) guidelines. The guidelines have risk groups for agents used and biosafety levels for the physical containment needed based on the agent used.

Ms. Caruso explained that biosafety levels 1 and 2 are the lowest levels of biosafety. Biosafety level 3 is a level where organisms that typically contain a risk by aerosol transmission and the diseases produced by these agents are serious but treatable. Additional safety requirements include increased safety equipment, laboratory facility design, and laboratory

practices. A biosafety level 4 includes agents that are likely to cause serious or lethal human diseases for which preventative or therapeutic interventions are not usually available. This containment level requires extensive facility design construction, lab equipment and laboratory practices. Everything included in the National Institute of Health (NIH) guideline will be included in the town's regulation as well as the purchase or transfer of transgenic rodents which is exempt under III F from the NIH guideline. The draft regulation covers biosafety levels 1-3. Biosafety level 4 is not allowed as the draft regulation is currently written.

Dr. Amesbury and Susan Hubbard agreed that materials categorized as Risk Group 4 shall not be permitted in Ipswich and experiments requiring Biosafety level 4 containment shall not be permitted also.

Most towns' regulations require a town committee to oversee RDNA permitting. The Town of Ipswich will utilize a consultant, in place of a committee, to make recommendations to the Board based on the regulation as to whether or not the applicant should be permitted.

Dr. Amesbury suggested the Board assess the community interest in a review committee before deciding to use a consultant. Ms. Caruso thought this approach could work but stressed the importance of having committee members who have expertise in RDNA and can explain the RDNA terminology. The Board agreed to move ahead with the consultant language but if interested, qualified people could be identified in the community then the committee approach could be revisited.

Under the draft, an entity planning to use Recombinant DNA must first be granted a permit by the Board of Health. All permits will be issued for one (1) year and may be revoked by the Board if conditions are not met.

There will be a permit fee and the cost of the application review and inspection associated with the new regulation would be paid for by the applicant. The Board must adopt a regulation which will enable the Board to use consultants for the purpose of project or plan reviews. Colleen spoke with the Finance Director today to discuss setting up special accounts to hold an entity's money to pay for the application review. Applicants will be required to submit a pre-determined amount of money to cover the application review and inspection all associated fees. If the project is under budget the applicant will be reimbursed.

Ms. Caruso spoke briefly about the application review process. A new entity would require four (4) to six (6) hours to evaluate. This would include a review of the application and a field inspection. Annual reviews for exiting entities would require about two (2) hours for paperwork review and two (2) hours for an inspection.

Additionally, the Board discussed modifying language in different areas of the draft regulation. For example, paragraph two (2) under scope should be reworded to make it clear that biological work other than DNA is included. The permit fee and use of consultant language needed to be finalized.

Colleen will work with Ms. Caruso to edit the draft regulation. She will update the Board next month with the changes made to the regulation. The draft should be ready for public hearing soon after the next review.

### **7:30 – Hearing - Benjamin Gorniewicz – 104 Little Neck Road – upgrade extension.**

Mr. Gorniewicz presented, and a hearing was held, upon his request; to discuss an extension for the upgrade of the septic system serving 104 Little Neck Road, Ipswich.

Mr. Gorniewicz purchased the property on January 25, 2008 without benefit of a Title 5 Inspection being conducted as required under 310 CMR 15.000 Title 5. In a letter dated March 12, 2008 Mr. Gorniewicz was ordered to have a Title V inspection done within 30 days of receipt of the notice or enter into an enforceable agreement with the Board of Health within thirty (30) days of receipt of the notice to upgrade the septic system within two (2) years from the date of title transfer. Mr. Gorniewicz signed an agreement with the Board of Health to upgrade the system within two (2) years from the date of title transfer; January 25, 2010.

Mr. Gorniewicz asserted that he could not get the system installed prior to the close of the installation season; December 15, 2009. He is in the process of obtaining four (4) bids for the installation of the septic system and the home remains unoccupied.

Dr. Amesbury made a motion to grant an extension for the installation of the system until November 1, 2010 with the condition that the dwelling remains unoccupied until the system has been installed. Susan Hubbard seconded the motion. The motion passed unanimously.

**7:35 – Hearing - Evan Parker – 213 High Street – upgrade extension.**

Mr. Parker did not appear at the hearing. It was the decision of the Board to request Mr. Parker to appear at the March 2010 meeting.

**7:35 – Hearing - Elizabeth Berkman – 6 James Road – upgrade extension.**

Elizabeth Berkman presented, and a hearing was held to discuss an extension for the installation of the upgraded septic system serving 6 James Road.

Previously, at the August 10, 2009 meeting Ms. Berkman explained to the Board that she had been unemployed for nine (9) months and recently returned to work so she could no longer finance the installation of the system. Financially she was not able to keep the home and has put it on the market to be sold.

The home is still on the market and the owner is having difficulty selling the property with the failed septic system. She has had some interested buyers but they have been unwilling to take on the septic upgrade.

Susan Hubbard asked how many people were living in the home. There are currently five (5) people living in the home but two (2) of her older children will moving out in the near future.

Susan Hubbard questioned if there have been any complaints regarding the property. Colleen attested that there have been no complaints. One abutter did speak with her to inquire what was happening with the property.

Colleen added that the last pumping record the Health Department has on file was for a service done by D.F. Clark, Inc. on March 16, 2007. Ms. Berkman stated that the system is being pumped regularly by Essex Septic Systems, Inc. She will contact Essex Septic to ensure the pumping records are submitted to the Health Department within thirty (30) days of the pumping occurring.

Based on her assertion that the home is still on the market to be sold, and since the financing of the upgrade is contingent upon the sale of the property; Dr. Amesbury made a motion to have Ms. Berkman attend the July 2010 meeting to give an update of where she is in the process of selling the home and to provide a timeframe for bringing the property into compliance. The system must be pumped once prior to the July 2010 Board of Health meeting to ensure it is operating properly. Susan Hubbard seconded the motion. The motion passed unanimously.

**7:40 – Hearing - George Rathe –26 Town Farm Road – upgrade extension.**

George Rathe presented, and a hearing was held to discuss where he is in the process of obtaining revised septic plans and bringing his property into compliance.

Previously, at the meeting of the Board of Health on August 10, 2009, a hearing was held to discuss where he was in the process of obtaining revised septic plans that meet current Title 5 and Board of Health Septic Regulations since he failed

to comply with the Board of Health order, issued on May 5, 2008, to either upgrade the septic system or connect to town sewer by May 17, 2009. The Disposal System Construction Permit expired on May 17, 2009 therefore a new septic plan was required.

At the August 10, 2009 meeting, Mr. Rathe explained that he was unemployed, and after obtaining an estimate from his engineer, was unable to finance the revised septic plans. He stated that his intentions were to find work, re-mortgage the home, and install the new system; but he may be forced to sell the property.

At the February 1, 2010 meeting Mr. Rathe explained that he has been unemployed for a year and just got a part-time job. He is having difficulty with his mortgage company and was told that he did not qualify under the federal guidelines for financial assistance. He now has a state agency, working on his behalf, with his mortgage company.

Susan Hubbard made a motion to have Mr. Rathe attend the July 2010 Board of Health meeting to give an update on his financial situation and where he is in the process of updating the septic system design. Additionally, the system must be pumped once before July 2010 to ensure it is operating properly. Dr. Amesbury seconded the motion. The motion passed unanimously.

#### **7:45 – Hearing - Aquatic Therapy dba Aqua Spa – owner – Dale Therberge – 40 Turnpike Road – pool violations.**

Dale Therberge, David Grasso, and Richard Kallman, Esq., presented and a hearing was conducted regarding non-compliance with 105 CMR 435.000 Minimum Standards for Swimming Pools, State Sanitary Code, Chapter V.

The pool walkway was modified in October 2008. Pool permits were issued for both the swimming pool and spa on October 31, 2008 after pre-opening inspections conducted on October 9, 2008 and October 31, 2008.

An inspection conducted on March 11, 2009 revealed the following provisions of 105 CMR 435 were violated:

- 435.13 Plants obstructing the walkway.
- 435.08 and 435.25 Access to the emergency shut off pump switch and the emergency communication system was blocked by furniture.
- 435.21 CPO records were not available
- 435.29 The ph level in the pools was not being maintained between 7.2 and 7.8.
- 435.25 There was an incomplete first aid kit.

An inspection on December 21, 2009 revealed that the walkway was still obstructed, there were no weekly standard chemical records on site from the Certified Pool Operator (CPO), and there were no daily chemical standards for ph and chlorine available. This is supposed to be done four (4) times daily.

The inspection conducted on December 21, 2009 resulted in repeat violations of the following:

- 435.13 Slide obstructing the walkway.
- 435.21 CPO records were not available

In addition, there was a violation of 435.03 since the door into the pool enclosure did not fully close and latch.

In her December 21, 2009 inspection report, given to the operators, it was stated that a re-inspection would occur in January 2010.

A re-inspection was conducted by the Health Agent on January 28, 2010. Repeat violations were found despite the scheduled re-inspection. The walkway was still blocked with plants and furniture and the expanded walkway area installed in October 2008 was flipped up essentially creating no walkway at the end of the pool. There were no records for daily testing of chlorine and ph levels since January 21, 2010, no records for the Certified Pool Operator (CPO) available since 2009, and the ph levels were not being maintained between 7.2 and 7.8. The first aid supplies were damaged from moisture. This was verbally discussed in December 2009; that the moisture was impacting the kit so the supplies need to be checked and replaced as needed. Furniture was still blocking the emergency 911 call button and pump shut off for the spa. Additionally, there was no thermometer available for the spa. This was also cited in the October 31, 2008 inspection.

The January 28, 2010, re-inspection resulted in the citation of repeat violations of the following:

- 435.13 Plants and furniture obstructing the walkway.
- 435.08 and 435.25 Access to the emergency shut off pump switch and the emergency communication system was blocked by furniture.
- 435.21 CPO records were not available and there were no chemical standards records since 1/20/10.
- 435.29 The ph level in the pools was not being maintained between 7.2 and 7.8.
- 435.25 There was an incomplete first aid kit.

Ms. Therberge attested that she has a second first aid kit outside the pool area. Colleen informed Ms. Therberge that a complete first aid kit must be on site at the pool for easy accessibility. The kit needed to be checked daily to make sure it was complete so there is no reason that the same water damaged bandages found in December should be in the kit in January. Colleen also added that Ms. Therberge should look into why the humidity is so high in the pool area. She asked if the dehumidifies system is continuously running. Ms Therberge said it is.

Colleen stated that at the January 28, 2010, re-inspection, Mr. Grasso, the owner's husband; claimed he was not in charge of the pool yet he always handles the inspections with the Health Agent. His son Nicholas was in charge of the pool but isn't very knowledgeable. Ms. Therberge was home but did not get involved in the inspection.

Since the pool was permitted in October 2008 the same violations have occurred during the three (3) inspections. Having no chemical standards records means there is no way to show the pool is being properly maintained to assure disinfection is occurring. Although Ms. Therberge is the Certified Pool Operator (CPO), there are no CPO records so it not known if alkalinity and calcium hardness are being checked weekly or that she is reviewing daily records. It was clear to the Health Agent that Ms. Therberge was not conducting a record review or she would have noticed that there were no records between January 21, 2010 and January 28, 2010.

Previously, the owner got permission to modify the pools walkway to bring it into compliance with state regulations but she has failed to provide an unobstructed walkway since she has plants, furniture, an outdoor children's slide and pool equipment, etc. around the pool.

Colleen felt that the person(s) responsible for the pool don't react to the violations cited and seem to be unaware of state requirements. Nicholas only knows to take certain chemical standards. He did not know there was a sample form in the regulation and didn't think it was a problem having insufficient records at two (2) inspections. Additionally, the pool is open without anyone observing who is using the pool. Mr. Grasso told Colleen the pool was closed for maintenance at her January 28, 2010 inspection but as Colleen arrived there was someone leaving the pool. Two (2) additional people used the pool during the inspection. Clearly, there is no responsible party in charge of the pool.

Attorney Kallman reported that the owner had a child and gave the responsibility of the pool to her stepson. This didn't work out well. Attorney Kallman added that Ms. Therberge agrees that sloppy recordkeeping is an issue. He added that Mr. Grasso just lost his job and the pool is their sole means of income.

Attorney Kallman requested the Board give his clients another chance. Ms. Thurber stated that her son was fired and asserted she will take full responsibility in running the pool. She also insisted that there were no problems in 2003 when she ran the pool.

Colleen disagreed with Ms. Theberge stating that when the pool was initially permitted in 2003 and 2004 violations of the walkway and having pool records was also cited.

Colleen reported that there are supposedly two (2) Certified Pool Operator's (CPO's) on site and yet there are still no records. Ms. Therberge offered to fax pool records to the Health Department for review for several weeks. Colleen felt faxing records would not accomplish anything. Testing would need to be done to confirm the records match the chemical standards of the pool.

Dr. Amesbury felt for years the attitude of the owner has been that she does not need to follow the rules. This is evidenced by a pattern of pervasive noncompliance resulting in requests to appear before the Board on several different occasions.

Attorney Kallman alleged that there have been too many people involved in running the pool and said that Ms. Therberge is ready to assume full responsibility. He recommended the Board not suspend the pool license and give the owner one (1)

month to obtain compliance. If at that time compliance has not been met then he recommended closing the pool.

Susan Hubbard felt if this had been the first violation the Board could be more lenient. Unfortunately, there have been too many repeat violations not addressed to consider allowing the pool to remain open. She felt the owner clearly has not taken previous Board of Health order's seriously. She recommended a thirty (30) day suspension of the pool license and Record keeping should continue during this time to show that it can be properly done.

Dr. Amesbury suggested a fourteen (14) day suspension of the pool permit but that the next violation found will result in an immediate closure of the pool with the suspension of the pool permit for thirty (30) days.

Based on violations found on March 11, 2009, December 21, 2009, and January 28, 2010, Susan Hubbard made a motion to suspend the pool permit for fourteen (14) days with the condition that the next violation found will result in an immediate closure of the pool with the suspension of the pool permit for thirty (30) days. After an inspection is conducted, the pool may be allowed to reopen if full compliance with 105 CMR 435.000 is demonstrated. A sign stating that the pool is closed must be posted on site for the duration of the suspension. Dr. Amesbury seconded the motion. The motion passed unanimously.

### **8:15 - Report of the Health Agent:**

**9 Estes Street:** As a result of a complaint received by the Health Department, a housing inspection was conducted on September 8, 2009, at 9 Estes Street, Ipswich. In accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation a violation of 410.354: Metering of Electricity and Gas was cited since a written letting agreement which provides for payment by the occupant for gas had not been provided to the tenants.

In response, Attorney Ross forwarded the Health Department a copy of a letter sent to the tenant, dated September 19, 2009, indicating that the tenant was responsible for paying for heat.

This letter was reviewed by General Counsel of the Massachusetts Department of Public Health. General Counsel determined that this letter did not constitute a written letting agreement; a written letting agreement is an agreement between landlord and tenant in advance of a start of tenancy regarding the terms of the lease. As outlined in an October 1, 2009 letter, The Health Agent determined, based on the opinion of General Counsel of the Massachusetts Department of Public Health, that compliance with 105 CMR\_410.354: Metering of Electricity and Gas was not achieved with the aforementioned letter.

Attorney, Peter M. Ross, requested a hearing with the Board of Health to appeal her decision. The Board of Health heard the case on October 19, 2009.

It was the decision of the Board of Health to stay the portion of the order and take no further action against the owner pending the court's decision on whether or not the September 19, 2009 letter is a valid letting agreement.

A January 28, 2010 letter regarding the court's decision was received by the Health Department from attorney, Peter M. Ross. The letter stated that the parties at 9 Estes Street reached an agreement, signed by the Judge, whereby the tenant will vacate the premises by February 28, 2010 and all issues raised by the tenants are dismissed.

The Board of Health reviewed the letter. It was the decision of the Board that the violation of 105 CMR\_410.354: Metering of Electricity and Gas identified in the Board of Health order letter dated September 14, 2009 shall be dismissed.

**Board of Health Manual:** The Board of Health Manual, published by the Massachusetts Department of Public Health, was updated in January 2010. Each Board of Health member received an updated copy of the manual which outlines the authority of local boards of health. Local boards of health in Massachusetts are required by state and local laws and regulations to perform many critical duties related to the protection of public health.

**H1N1 Update:** The Board of Health vaccinated 197 residents at the H1N1 clinic held on January 15, 2010 and 209 residents at the H1N1 clinic held on January 22, 2010.

**Food Allergen Awareness Act:** The purpose of the Act is to minimize risk of illness and death due to accidental ingestion of food allergens by increasing the restaurant industry and consumer awareness of regulations and best practices with respect to major food allergens. The Act requires that certain food establishments comply with regulations developed by the MDPH that will include provisions for the prominent display of a food allergy awareness poster in the staff area of food establishments, a notice on menus for consumers with food allergies, and additional food allergy training for persons in charge, who are certified in food safety. The regulation will take effect on July 1, 2010.

**Calorie Posting:** The proposed amendments add requirements for defined food establishments to post calorie information for food items on menus, menu boards and food tags. This new regulatory requirement is a major component of the Department of Public Health's overall effort to address the continued rise in the prevalence of overweight and obesity in Massachusetts. Establishments with twenty (20) or more businesses in Massachusetts will be required to post nutritional information. The revised amendments now exempt grocery stores, markets, and convenience stores, except for separately-owned covered food establishments located on the premises of an otherwise exempt establishment. The amendments also have been revised to specifically exempt institutional food establishments such as schools, licensed health care facilities, assisted living and group residences, and prisons; and also to exempt private clubs, temporary food establishments, caterers, and vending machines. These changes more specifically direct the amendments to chain restaurants with a significant presence and food service volume within the state, and allow for more efficient and targeted use of state and local enforcement resources to address the epidemic of overweight and obesity. For Ipswich this will include Dairy Queen and Dunkin Donuts. The regulation will take effect on November 1, 2010.

**Beach Regulation:** In 2009 the Department of Public Health amended the Beach regulation to require beach operators to obtain a permit from the boards of health prior to beaches opening or by the beginning of May 2010. It was the decision of the Board to set a public hearing date and adopt a permit fee of fifty dollars (\$50.00).

**Next Board Meeting:** The next meeting of the Board of Health was scheduled for March 1, 2010 at 6pm.

**Adjourn:** Susan Hubbard made the motion to adjourn at 8:30 PM. Dr. Amesbury seconded the motion. The motion to adjourn passed unanimously.

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Susan Hubbard, Chairperson

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Dr. Spencer Amesbury, Board Member