

Board of Health Minutes
Monday, February 11, 2016 5:30 PM
Meeting Room C, Town Hall
25 Green Street, Ipswich, MA

Call to Order: Susan Hubbard called the meeting to order at 5:33 PM.

Members attending: Susan C. Hubbard, Dr. Spencer Amesbury and Margaret McDermott were in attendance.

Others in attendance: Director of Public Health; Colleen Fermon, Public Health Administrative Assistant; Jennifer Brown, Maureen Lee, Food Inspector; Leslie McCormack, Daniel Johnson R.S., Hugh L. Graham, P.E., Sonia Johnson and John Bruni.

Citizens Queries: None.

Minutes: Susan Hubbard made a motion to approve the December 14, 2015 minutes with a correction; replace January 4, 2015 with January 4, 2016 on page number 3 regarding the last date of pumping. Margaret McDermott seconded the motion. The motion passed unanimously. The January 11, 2016 minutes were not ready for approval.

Hearings:

5:36 - Five Corners Café and Deli – 0 Central Street – represented by Leslie McCormack – Refusal of food establishment permit

Colleen Fermon provided the history. A food establishment permit has not been issued to Leslie McCormack to operate Five Corners Café and Deli in 2016. Pursuant to the Massachusetts State Sanitary Code, Article X, 105 CMR 590.000/1999 Federal Food Code 8-301.11, a person may not operate a food establishment without a valid permit issued by the regulatory authority. Five Corners Café and Deli was operating in 2016 without a permit.

Leslie McCormack's application for a food establishment permit was received on January 25, 2016. The renewal permit was not issued pursuant to 105 CMR 590.012(H)(2)(a), (b), (e), (i), and (j).

On January 26, 2016, Leslie McCormack, through her person in charge at the restaurant, was ordered to close Five Corners Café and Deli immediately upon receipt of the closure order, remained open. The closure order was served by a constable in the morning. On January 27, 2016, Ms. McCormack finally closed the food establishment in the afternoon.

Ms. McCormack's written request for a hearing before the Board of Health was received in the Public Health Office on February 1, 2016. The hearing was scheduled for February 8, 2016 but had to be rescheduled due the closing of Town Hall because of inclement weather.

Ms. Fermon continued with the history. In August 2015, Colleen Fermon and Food Inspector, Maureen Lee, met to discuss the past two years of inspection reports of Five Corners Café and Deli. Due to repeat violations observed during routine inspections, a failure to correct violations in entirety for re-inspections, the operator's lack of engagement and communication with the Public Health Department and outstanding re-inspection fees, Ms. Fermon held an enforcement conference on September 8, 2015 with Leslie McCormack, owner and operator of Five Corners Café and Deli. At the meeting the establishment's and operator's history of noncompliance was reviewed. After the meeting a compliance plan was outlined in a September 24, 2015 letter. Exhibit A and B, enforcement conference letters dated August 8, 2015 and September 24, 2015.

Subsequently, inspections on October 21, 2015 and January 19, 2016 revealed repeat critical violations; October 21, 2015 (6 critical) and January 19, 2016 (5 critical) Exhibit C and D. Ms. Fermon noted that this was especially troubling since these inspections occurred after the enforcement conference on September 8, 2015.

The State Sanitary Code, at 105 CMR 590.012, includes the following provisions regarding the issuance of permits to operate a food establishment:

(H) Conditions for Issuance.

- (1) * * * The board of health may renew a permit for an existing food establishment ... after a properly completed application is submitted, reviewed, and approved, the fees are paid, *and an inspection shows that the establishment is in compliance with 105 CMR 590.000.* * * *

Although the application was received on January 25, 2016, based upon a pattern of noncompliance and no demonstrated change in the operation after the enforcement conference, as documented in the two subsequent inspection reports, Ms. Fermon felt a permit should not be issued. The Board reviewed Exhibit E, Inspection Chronology September 2013 through January 2016 from Food Inspector, Maureen Lee.

Pursuant to 105 CMR 590.012(H)(2)(a), (b), (e) (i) and (j), a refusal to issue a permit and closure order was delivered by constable to the person in charge on January 26, 2016, Exhibit F.

- (a) Failure to submit a permit application in accordance with the board of health's procedures;
- (b) Failure to submit the required permit fee;
- (e) The applicant operated the facility without a permit;
- (i) Failure to comply with local regulations/ordinances related to the operation of the facility;
- (j) Failure to comply with provisions of 105 CMR 590.000.

Each of these grounds by itself constitutes full and adequate grounds to refuse to issue a permit to operate. The background for each of these grounds was explained by Ms. Fermon.

(a) Failure to submit a permit application in accordance with the board of health's procedures.

The October 7, 2015 letter sent to remind operators about expiring certifications and permit expiration is Exhibit G. The October 30, 2015 reminder letter is Exhibit H. The procedures, submitted the application and fee by December 1, are outlined in it and the same language is used each year in a letter sent out to all operators in October or November. Exhibit I is the second reminder notice that had to be sent to the operator last year in January 2015. Exhibit J is the second letter sent to the operator regarding 2016. The operator had to be sent letters about renewing the permit after January 1 for the past three years.

As a permit holder and a person in charge, the operator is required to be knowledgeable of the requirements of 105 CMR 590.000. Additionally, Ms. McCormack has certified each year on the application that she will comply with 105 CMR 590.000 and all other applicable laws.

(b) Failure to submit the required permit fee.

An application must be submitted pursuant to 590.012: Permit to Operate - Federal 1999 Food Code Chapter 8-3.
(G) Expiration and Renewal of Permit.

- (1) A permit shall expire no later than one year from the date issued.
- (2) An annual food establishment permit may be renewed by applying at least 30 days prior to the expiration of the permit on a form provided by the FC-regulatory authority.

The fee must be paid at the time of application, Exhibit H. All annual food permits expire on December 31st. The operator has failed to submit the fee by December 1 for 2011, 2014, 2015 and 2016.

(e) The applicant operated the facility without a permit:

Pursuant to the Massachusetts State Sanitary Code, Article X, 105 CMR 590.000/1999 Federal Food Code 8-301.11, a person may not operate a food establishment without a valid permit issued by the regulatory authority.

The operator has failed to apply for a permit by December 1 for permits for 2011, 2014, 2015 and 2016. Her failure to apply for her annual permit by December 1 was the third year in a row and 4 out of the last 6 years she has missed this deadline.

Operating without a permit January 1, 2014 - January 24, 2014.
Operating without a permit January 1, 2015 - January 21, 2015.
Operating without a permit from January 1, 2016 - January 26, 2016.

Ms. Fermon noted that the operator continued to operate the establishment even after the closure order was served by a constable and received by the person in charge on January 26, 2016. The establishment remained open on January 26, 2016 and January 27, 2016. Exhibit K, email from Town Attorney dated January 27, 2016.

(i) Failure to comply with local regulations/ordinances related to the operation of the facility:

The fee schedule is a local regulation. For many years the operator has failed to pay the re-inspection fees within the prescribed timeframes. The Board reviewed the table below. The re-inspection fee must be paid within 30 days of receipt of the notice for the first notice. Second notices had to be sent in 2014 and 2015 when the payment was not received within 30 days.

<u>Date of First Notice</u>	<u>Payment Received Date</u>
9/7/10	1/6/11
3/4/11	8/5/11
10/13/11	12/27/11
3/5/12	5/30/12
10/1/12	11/13/12
10/15/12	11/13/12
10/4/13	12/9/13
1/14/14	3/3/14
5/22/14	9/4/14
6/18/14	9/4/14
6/2/15	9/8/15
7/31/15	9/8/15
11/12/15	1/25/16

After the enforcement conference with Ms. Fermon on September 8, 2015, the operator did not comply with the enforcement plan outlined in her September 24, 2015 letter and she failed to pay the re-inspection fee within the prescribed timeframe. Exhibit L, November 12, 2015 letter and Exhibit J, second notice - January 15, 2016 letter.

(j) Failure to comply with provisions of 105 CMR 590.000.

Reports and documentation from 2013, 2014 and 2015 were reviewed. For the past 3 years there has been a need to conduct 6 inspections per year; repeat violations are observed during routine inspections and violations are not corrected in entirety for re-inspections.

Food temperature violations were found during inspections on December 8, 2013, April 29, 2014, October 28, 2014, May 4, 2015, July 15, 2015 and July 30, 2015. After the enforcement conference on September 8, 2015 food temperature violations were found during inspections on October 21, 2015 and January 19, 2016.

Bare hand contact with ready to eat foods was observed on September 10, 2013 and October 21, 2015. Ms. McCormack refused to discard food.

Insufficient sanitization was cited on September 10, 2013, September 30, 2013, July 15, 2015 and July 30, 2015.

A noncompliant consumer advisory was cited on October 21, 2015 and January 19, 2016.

The establishment is not maintained in a clean and sanitary condition as documented in the inspection reports; noncritical violations 2014-2016.

Ms. Fermon stated that a review of the past 3 years reveal a failure to comply with order/inspection report and correct violations within prescribed timeframe have been documented on October 25, 2013, January 8, 2014, May 19, 2014, November 19, 2014, June 2, 2015, May 28, 2015, June 30, 2015.

Ms. Fermon said an example of failure to correct is the basement floor. The operator was ordered to repair the basement floor on October 28, 2014. On November 19, 2014 she was directed to contact The Public Health Office for an extension. No contact was made. December 18, 2014 a letter was sent with deadline of December 30, 2014. On January 2, 2015 the operator said she'd close to do the repair. In January she was directed to submit documentation to the Public Health Office. On May 4, 2015 the violation remained. On May 27, 2015 an order to repair in 7 days was hand delivered and sent by certified mail and received on May 30, 2015. The operator called on June 16, 2015 and said the violation had been corrected. On July 15, 2015, inspector documented the floor was sealed with paint but some areas were either worn away or never painted. There was no change on July 30, 2015. On August 18, 2015 another letter was sent for an enforcement conference. The floor violation corrected on October 21, 2015.

Ms. Fermon explained that there has been a failure to comply with orders to provide repair slips and documentation to the Public Health Office. Letters were sent on September 7, 2010, January 3, 2013, May 27, 2015, and an email dated July 17, 2015. Inspection reports dated May 4, 2015, July 15, 2015 and January 19, 2016 order documentation to be submitted to the Public Health Office. In the January 19, 2016 inspection report, the operator was ordered to submit documentation for refrigeration repair within 24 hours and documentation for correct consumer advisory within 24 hours.

How to do a correct consumer advisory was discussed with the operator on January 21, 2016. As of this date no documentation had been submitted for either violation.

The operator has failed to apply for a permit by December 1 for 2011, 2014, 2015 and 2016. Late applications were submitted for the past three years and for 4 out of the past 6 years.

Additionally, Ms. McCormack has operated without a permit from January 1, 2014- January 24, 2016, January 1, 2015 – January 21, 2015, and January 1, 2016 –January 26, 2016.

Furthermore there was a failure to comply with the closure order after it was served by a constable and received by the person in charge on January 26, 2016. The operation was open on January 26, 2016 and January 27, 2016.

Ms. McCormack addressed the Board. She stated that the 3 violations cited as critical violations during the last inspection were not actually critical violations.

1. Allergen poster –water damaged and not in full view of staff
2. Consumer Advisory – statement is incomplete, and
3. Kitchen handsink had no paper towels

Ms. Fermon explained that the state regulation determines what constitutes a critical violation, not the inspector or the operator. Under 105 CMR 590.000, these items are deemed critical violations.

Regarding the late paperwork, Ms. McCormack said she did not think this was an issue. She thought there was a grace period for submitting her annual application and for paying re-inspection fees. To remedy the situation she has hired a book keeper. The book keeper will process all paperwork and pay bills in a timely manner. Ms. McCormack also confirmed she now understood her annual permit application must be completed and paid for by December 1st.

Ms. McCormack also admitted to repeat violations but felt that some violations cited were not accurate and did not make sense to her. Ms. McCormack attested that she has been careful since the September 8, 2015 conference to ensure there have been no temperature violations. She has been careful to monitor temperatures. Additionally, she is having two (2) employees take the serve safe course and she will invest in thermometers to monitor the refrigerator temperatures. Furthermore, she will ensure that any potentially hazardous foods (phfs) are put inside the bottom of the refrigerator at the end of each shift.

Additionally, the refrigerator was repaired. She has instructed her employees to keep the refrigerator doors closed and to keep the inserts in the inline refrigeration unit.

Concerning the floor, Ms. McCormack said she asked for an estimate from a contractor but the estimate took a long time to receive. Once she received it, the estimate was too expensive to have the floor sealed and resurfaced. She is maintaining the floor by having it sealed with paint approximately every 6 months. She is now using a better product which keeps the floor in better condition.

Ms. McCormack also noted that the dumbwaiter was cited as blocking the electrical panels. There are no electrical panels near the dumbwaiter.

Maureen Lee, Food Inspector, said blocking the electrical panels was noted in the report but was not marked as a violation. In a subsequent report the clarification of it being a dumbwaiter not an electrical panel was noted.

Ms. McCormack also expressed her frustration regarding choke-save certifications. The establishment only has 22 seats, yet at every inspection she is asked to provide certifications. Choke-save certifications are required for establishments with 25 seats or more.

Ms. McCormack noted too that she was never told to discard foods due to temperature violations. This comment seemed odd to her. Ms. McCormack said she has always chilled food until “cold” by putting it into an ice bath and then puts the food in the walk-in refrigerator. Ms. McCormack made no mention of whether the temperature was confirmed to be 41 degrees or below, the state requirement, before putting the food into the walk-in refrigerator.

Susan Hubbard questioned why it took so many years to figure out to get thermometers.

Dr. Amesbury noted that the inspections since the September 8, 2015 meeting did not show any improvement.

Susan Hubbard asked why Ms. McCormack remained open on the 26th and 27th after the closure order had been issued. Ms. McCormack said she didn't know she had to close. An employee told her the letter said she needed a permit to operate and she had submitted her permit paperwork.

Susan Hubbard said the closure order served on January 26 ordered the closure of the establishment immediately upon receipt of the closure order. Although her application for a food establishment permit was received on January 25, 2016, the renewal permit would not be issued pursuant to 105 CMR 590.012(H)(2)(a), (b), (e), (i), and (j). Susan Hubbard informed Ms. McCormack that she was sent a closure order. This was not a suggestion that she close but an order directing her to close the operation immediately.

Susan Hubbard felt that Ms. McCormack looked at state and local regulations as “suggestions.” There has been a pattern of Ms. McCormack not taking orders/violations seriously.

Dr. Amesbury noted that food temperature violations have been pervasive and that Ms. McCormack has not done a good job complying with violations cited. He stated that Ms. McCormack has demonstrated a very lackadaisical approach to handling food and there is a pattern of failing to comply across the board. He is concerned about the food safety violations, lack of knowledge of regulations and the pervasive lack of compliance.

Margaret McDermott questioned if the 2 employees had finished the Serve Safe course and were certified. Ms. McCormack said they just recently took the test and are not sure of the results. Leslie noted that she was certified 5 years ago. It was noted that Food Management Certifications are only valid for 5 years.

Susan Hubbard said that being certified has not seemed to help. She asked Maureen Lee, Food Inspector to comment.

Maureen Lee, Food Inspector, noted that during her last inspection on January 19, 2016 Darrel was the on-site manager. Previously, Leslie was always the manager she interacted with.

Ms. Lee addressed the handsink by the stairs. She noted that paper towels are required to be at the handsink in the dispenser; available and accessible. Upon inspection, the paper towels were across the kitchen by the basement stairs and not in a dispenser as required. This results in employees with dripping hands and germs traveling across the kitchen. This is why the state considers this a critical violation.

Ms. Lee said repeat temperature violations appear to be the result of food that is not properly reheated since it is being done with holding equipment which is not sufficient. Heating equipment needs to be

utilized instead. Ms. Lee reviewed the Food Code Requirement for reheating; Reheat foods intended for hot holding to 165F for 15 seconds, within 2 hours. There is an increased potential for growth of bacteria in re-heated cooked foods than in raw foods. Raw foods contain spoiler organisms that inhibit the growth of disease causing bacteria. During cooking competing organisms are killed. Subsequent re-contamination caused by personnel, un-sanitized equipment, procedures or other factors will allow bacteria to grow without competition if temperature abuse occurs. The best preventative method is for food workers to monitor time and temperature of foods during the reheating process. Reheating should be done on equipment that is capable of reheating the volume of food rapidly such as stove top, fryolator, and microwave. Steam table or bain-marie equipment is not recommended for re-heating. Foods not reheated to 165F within 2 hours are to be discarded.

Ms. Lee said cold holding violations seem to happen because all the inserts in in the inline refrigeration unit are not always there. As a result cold air escapes. Ms. Lee said metal pans are best for maintaining temperatures at 41 degrees and below. Ms. McCormack uses plastic inserts.

Ms. Lee reviewed the Food Code Requirement – hold cold foods 41F or below, hold hot foods 140F or above. She explained that bacterial growth and/or toxin production can occur if potentially hazardous food remain in the Temperature Danger Zone (41F – 140F) too long. The best preventative method is for food workers to monitor temperatures of foods being held for service.

Additionally, cold holding temperature violations are due to hot foods being put into the unit before being cooled. The inline unit is not designed to bring the temperature down; it is to hold cold food. Ms. Lee noted that it is not the equipment that is the issue, it is improper techniques being used.

Ms. Lee Said during her January 19, 2016 inspection the person in charge/manager on-site, Darrel, could not explain why the soups were 51 and 49 degrees and could not demonstrate corrective action. When Ms. Lee asked when the temperature was last taken the manager said it hadn't been done that day. He also could not explain how the soup was cooked. The food was discarded by Darrel.

Ms. McCormack explained that the food was cold when it was put in the walk-in.

Dr. Amesbury said “cold” is not the requirement. The food must be properly cooled and then maintained at 41 degrees or below. This is another pervasive food temperature violation. Dr. Amesbury stated that Ms. McCormack was not doing a good job at following state food safety regulations.

Maureen Lee explained the Food Code Requirement for cooling. Cool cooked food from 140F to 70F within 2 hours then from 70F to 41F within 4 hours; for a total of 6 hours. Proper cooling requires removing heat from food quickly enough to prevent pathogen growth. When food is not cooled in accordance with the times and temperatures provided above, pathogens may grow to sufficient numbers to cause foodborne illness.

To prevent abuse during cooling it is necessary food workers monitor both the time and temperature of foods. Effective cooling methods are required to facilitate rapid temperature reduction. Examples of effective cooling methods are reduced volume (2-3 inch product depth), ice baths and cooling wands. Plastic containers act as an insulator and are not recommended for cooling foods. While cooling foods should be uncovered, vented or loosely covered.

Once initial heat is removed, foods are to be placed in the walk-in refrigerator. Walk-in refrigerators provide enough air circulation to complete the cooling process rapidly and can absorb the heat without affecting the temperature of other stored foods.

Foods that did not reach 70F in two hours may be reheated to 165F within 2 hours and re-cooled. Foods that reached 70F with two hours, but did not reach 41F within 4 hours are to be discarded.

The Board reviewed Exhibit M; Inspection comments from Maureen Lee

Time / Temperature Violations:

- 4/29/14 Cooling / Chicken cooked previous day and cooled. Observed stored in walk-in refrigerator 50F. Discarded by PIC.
- 10/28/14 Holding / In line refrigeration unit / Turkey 50F.
Holding / In line refrigeration unit / Hot Dogs 47F 12/18/14 Re-heating / Observed chili in steam table 58F. Cook states placed in steam table at 8AM. Time of inspection 9:20am.
- 5/4/15 Holding / In line refrigeration unit / Sausage 45F
- 7/15/15 Holding / Stuffing 70F observed without temperature controls.
Holding / In line refrigeration unit / Sausage 64F; Hotdogs 60F.
- 7/30/15 Holding / In line refrigeration unit / Sausage and Hot Dogs temperatures not corrected.
- 10/21/15 Holding / In line refrigeration unit / Cooked Potato 52F
Holding / In line refrigeration unit / Hot Dogs 49F
- 1/19/16 Holding / In line refrigeration unit / Cooked sausage 44F; Cooked Chicken 46F; Chick Peas 44F; interior cabinet storage – cooked potato 44F.
Cooling / Soup cooked previous day and cooled. Corn Chowder 51F;
Greek Lemon Soup 49F. Unsanitized Equipment Violations:

9/10/13 Sanitizing solution / 0ppm.
Dishmachine / Chlorine 0ppm

9/30/13 Sanitizing solution / 0ppm

7/15/15 Dishmachine / Chlorine 0ppm
Sanitizing solution / 0ppm

7/30/15 Dishmachine / Chlorine 0ppm
Sanitizing solution / 0ppm

Bare Hand Contact w/ Ready to Eat Food Violations:

9/10/13 Bare Hand Contact w/ Ready to Eat Foods

10/21/15 Bare Hand Contact w/ Ready to Eat Foods- PIC refused to discard

Susan Hubbard asked Margaret McDermott if she had any questions for Ms. McCormack. She had no further questions.

Ms. Hubbard questioned if the Board wanted to uphold the closure order or issue a permit for 2016 with conditions.

Dr. Amesbury asked Ms. McCormack if she wanted to reopen. Ms. McCormack said she wanted to reopen.

Susan Hubbard noted that she was having difficulty allowing the establishment to remain open.

Dr. Amesbury asked Ms. Fermon for her thoughts.

Ms. Fermon made the following recommendations to the Board, if they decided to issue a permit for 2016:

1. The operator shall engage the services of a consultant. The consultant chosen shall be listed on the MA DPH Food Protection Manager Trainer directory and regularly offer consulting services. A copy of the signed contract shall be provided to the Public Health Office.
2. The consultant and operator must attend a meeting with the Director of Public Health and Food Inspector to review orders, conditions, time frames and establishment history. The operator shall contact the Health Office and schedule the meeting.
3. The operator shall complete the application #16-18 and 26, and provide a valid allergen certificate for a certified food manager that is not expired and submit documentation that the inline refrigeration unit, cited in the January 19, 2016 inspection report, was repaired.
4. Food safety training for all staff and persons in charge, provided by the consultant, shall be completed prior to the opening re-inspection.
5. The operator shall contact the Public Health Office at and schedule an opening re-inspection. The re-inspection shall occur prior to opening and after staff training has occurred. A \$75 fee will be assessed for the re-inspection.
6. A permit will be issued after 1-5 have been completed, the re-inspection has been conducted and all violations have been corrected and the \$75 re-inspection fee has been received in the Health Office. You shall not operate Five Corners Café and Deli without a valid permit issued by the regulatory authority.
7. The operator shall work with the consultant to assess food processes and identify procedures and management tools needed to sustain compliance. Subsequently, the operator shall submit a written plan for sustaining compliance to the Public Health Office.
8. The consultant shall provide audits within 5 days of training and again within 14 days of first audit. The consultant shall submit audit results to the Public Health Office within 48 hours of each audit.
9. The consultant shall continue to provide audits monthly, from the date of the second audit, for 3 consecutive months. The consultant shall submit audit results to the Public Health Office within 48 hours of each audit.
10. The operator and consultant must attend the regularly scheduled Board of Health meeting in June 2016. At the June meeting the consultant must outline for the Board if additional intervention is needed for continued compliance.

Ms. Fermon felt if the Board decided to issue a permit it should be conditioned in this way so there are provisions in place to make sure the establishment has oversight so it can achieve and maintain compliance.

Ms. Hubbard stated that she was having difficulty allowing a permit to be issued even with the aforementioned conditions. What if the consultant witnesses the same problems/violations?

Dr. Amesbury suggested adding language regarding critical violations.

Margaret McDermott was willing to give Ms. McCormack a permit for 2016 as long as she was able to adhere to conditions set forth by the Board.

Susan Hubbard asked when Maureen Lee would do a re-inspection. The consultant will do the inspections. Susan Hubbard did not want these violations to go on for 6 months and suggested Maureen Lee do a re-inspection in 3

months to confirm compliance. The Board concurred.

After the hearing, based upon the complete hearing record, Susan Hubbard made a motion that a food establishment permit may be issued to Ms. McCormack to operate Five Corners Café and Deli if the following conditions are met by Ms. McCormack.

1. The operator shall engage the services of a consultant. The consultant chosen shall be listed on the MA DPH Food Protection Manager Trainer directory and regularly offer consulting services. A copy of the signed contract shall be provided to the Public Health Office.
2. The consultant and operator must attend a meeting with the Director of Public Health and Food Inspector to review orders, conditions, time frames and establishment history. The operator shall contact the Health Office at 978-356-6606 and schedule the meeting.
3. The operator shall complete the application #16-18 and 26, and provide a valid allergen certificate for a certified food manager that is not expired and submit documentation that the inline refrigeration unit, cited in the January 19, 2016 inspection report, was repaired.
4. Food safety training for all staff and persons in charge, provided by the consultant, shall be completed prior to the opening re-inspection.
5. The operator shall contact the Public Health Office at 978-356-6606 and schedule an opening re-inspection. The re-inspection shall occur prior to opening and after staff training has occurred. A \$75 fee will be assessed for the re-inspection.
6. A permit will be issued after 1-5 have been completed, the re-inspection has been conducted and all violations have been corrected and the \$75 re-inspection fee has been received in the Health Office. You shall not operate Five Corners Café and Deli without a valid permit issued by the regulatory authority.
7. The operator shall work with the consultant to assess food processes and identify procedures and management tools needed to sustain compliance. Subsequently, the operator shall submit a written plan for sustaining compliance to the Public Health Office.
8. The consultant shall provide audits within 5 days of training and again within 14 days of first audit. The consultant shall submit audit results to the Public Health Office within 48 hours of each audit.
9. The consultant shall continue to provide audits monthly, from the date of the second audit, for 3 consecutive months. The consultant shall submit audit results to the Public Health Office within 48 hours of each audit. If any audit results in critical violations being found, the board of health's agent, shall, without a prior hearing, suspend the permit to operate the food establishment if an imminent health hazard is found to exist.
10. The operator and consultant must attend the regularly scheduled Board of Health meeting in June 2016. At the June meeting the consultant must outline for the Board if additional intervention is needed for continued compliance.

Additionally, if any audit results in critical violations being found, the board of health's agent, shall, without a prior hearing, suspend the permit to operate the food establishment if an imminent health hazard is found to exist.

The Food Inspector shall conduct a routine inspection 3 months after the establishment has been issued a permit. Dr. Amesbury seconded the motion. The motion passed unanimously.

6:30 - Hearing – Robert Macklin – 3 Stage Hill Road – represented by Domestic Septic Design, Inc. – alternative technology waiver, septic system variances, and local upgrade approval requests.

Daniel Johnson R.S., presented and a hearing was conducted to consider variances from Title 5 and Ipswich Board of Health Septic System Regulations for a sewage disposal system plan # J-2449 designed by Daniel Johnson, R.S., dated December 30, 2015, and last revised January 21, 2016, for the 3 bedroom dwelling located at 3 Stage Hill Road, Ipswich, Massachusetts.

Mr. Johnson said this is a voluntary upgrade on a small lot with under 7,000 square feet.

Mr. Johnson proposed a 2,000 gallon septic tank with a pump vault, a Waterloo Biofilter system, and a 50 foot by 10 foot Pressure Distribution leaching field for the upgrade and requested the following variances:

- To allow a 50% reduction in the leaching area size with the use of a Waterloo Biofilter system.
- To allow a reduction in the setback between the SAS and the cellar wall. An 8 foot setback is provided.
- To allow a reduction in the setback between the septic tank and the cellar wall. A 2 foot setback is provided.
- To allow a reduction in the setback between the cellar wall and the Waterloo Biofilter tank. A 6 foot setback is provided.
- To allow a reduction of the design flow from 150 gallons/bedroom/day to 110 gallons/bedroom/day.
- To allow a reduction in the setback between the leaching area and the wetlands from the 100 foot local requirement. A 51 foot setback is provided.

Mr. Johnson selected the Waterloo Biofilter for the upgrade because of the reduced size in the leaching area and the ability to maintain a 50 foot setback from the wetlands. The system couldn't go in the front yard; it would be higher than the first floor elevation.

Dr. Amesbury questioned what type of system is currently serves the property. Mr. Johnson said currently there is a cesspool that serves the property.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said she met with the designer and she felt this was a fair approach. She recommended granting the variances as requested with the following conditions:

- A 2 year Operations and Maintenance contract for the Waterloo Biofilter and Pressure Distribution system must be submitted to the Public Health Department prior to the issuance of the Disposal System Construction Permit.
- A Notice of Alternative Disposal must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Department prior to the issuance of the Disposal System Construction Permit. A sample Notice of Alternative Disposal can be found on the Massachusetts Department of Environmental Protection's website <http://www.mass.gov/dep>
- A Lifetime Maintenance restrictive covenant for the Pressure Distribution system must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Department prior to the issuance of the Disposal System Construction Permit.
- Conservation Commission approval must be obtained prior to the issuance of the Disposal System Construction Permit.
- An Ipswich licensed installer must come to the Public Health Department prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee.
- If the property transfers title before the Certificate of Compliance is issued, a Title 5 inspection must be done or the owner must sign an agreement to upgrade the septic within 2 years from the date of transfer.

Susan Hubbard made a motion to approve the plan with the aforementioned conditions. Margaret McDermott seconded the motion. The motion passed unanimously.

Hugh L. Graham, P.E. presented, and a hearing was conducted to consider a variance from Ipswich Board of Health regulations for a sewage disposal system plan # 99-00530 designed by Gerard McDonald, P.E., dated January 6, 2016, and last revised January 25, 2016, for the 2 bedroom dwelling located at 79 Labor In Vain Road, Ipswich, Massachusetts.

Mr. Graham said the property is limited by resource and buffer zone areas on all sides of the property except for the east side. This is a voluntary upgrade. Also, a dug well will be replaced by a new well. He requested the following variance:

- To allow a reduction in the 150 foot setback between the septic system components and the Area of Critical Environmental Concern (ACEC). A 62 foot setback is provided.

Dr. Amesbury questioned what type of system currently serves the property. Mr. Graham said currently there is a cesspool and a well that serve the property.

Susan Hubbard asked Colleen Fermon for her thoughts. Ms. Fermon said there are no other options for the property. She asked the Board to consider the following conditions for approval:

- A Water Supply Certificate must be issued for the well prior to the issuance of the Disposal System Construction Permit.
- A 2 bedroom deed restriction must be filed at the Southern Essex County Registry of Deeds with a recorded copy provided to the Public Health Department prior to issuance of the Disposal System Construction Permit. A sample bedroom deed restriction can be found on the Massachusetts Department of Environmental Protection's website <http://www.mass.gov/dep>.
- The domestic water service from the existing well must be disconnected prior to issuance of the Disposal System Construction Permit.
- Conservation Commission approval must be obtained prior to the issuance of the Disposal System Construction Permit.
- An Ipswich licensed installer must come to the Public Health Department prior to beginning the project to complete the application and submit a trench permit application signed by the owner and the \$50 trench permit fee.
- If the property transfers title before the Certificate of Compliance is issued, a Title 5 inspection must be done or the owner must sign an agreement to upgrade the septic within 2 years from the date of transfer.

Dr. Amesbury made a motion to approve the plan and grant the variance as requested with the aforementioned conditions. Susan Hubbard seconded the motion. The motion passed unanimously.

6:41 - Hearing - 94 Essex Road Trust – 94 Essex Road – represented by H.L. Graham Associates, Inc. – soil testing results variance

Hugh L. Graham, P.E., representative for 94 Essex Road Trust, presented, and a hearing was conducted to consider a variance to Ipswich Board of Health Septic System Regulations 8.9; which states that soil testing conducted for new construction or upgrades shall be valid for two (2) years from the date of testing. Soil testing was conducted on September 8, 2004. Previously at the June 2, 2014 meeting, the Board granted a variance and soil testing was extended until December 31, 2015.

At the meeting Colleen Fermon noted that the upgrade septic plan is currently in design review. The design requires a few modifications before it can be approved. The soils need to be extended again so they can be utilized in the design.

Susan Hubbard questioned if there had been any changes to the property. Mr. Graham confirmed that there have been no changes to the property since the date of soil testing.

Based on this information, Susan Hubbard made a motion to grant another variance and extend the use of the soil testing results conducted on September 8, 2004 until March 31, 2016. Dr. Amesbury seconded the motion. The motion passed unanimously.

The Board noted that at the December 14, 2015 Board of Health meeting, it was the decision of the Board that the system must be installed with the Certificate of Compliance issued on or before September 1, 2016. No more

extensions will be granted. If the system is not installed by September 1, 2016, the Board of Health will deem the dwellings unfit for human habitation since it does not have an approved wastewater disposal system. This finding will result in an order of condemnation requiring the owner to have the dwelling vacated and secured.

6:42 - Hearing - John Bruni – 42 Essex Road – extension request on order for correction

As a result of a complaint received by this office, a housing inspection was conducted on December 1, 2015, at 42 Essex Road, Ipswich in accordance with 105 CMR 410.000: State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation. Violations were found and an order for correction was issued on December 1, 2015. On January 25, 2016, Mr. Bruni requested a hearing before the Board of Health to request more time for some of the repairs.

On February 1, 2016 a re-inspection was conducted and the following violations remained uncorrected.

1. 105CMR 410.500: The roof has vegetative growth and green moss.
2. 105CMR 410.485: The owners name and contact information needs to be posted.
3. 105CMR 410.351: The gas furnace/fireplace insert in the fireplace area is not working.
4. 105CMR 410.500: The closet in the bedroom still has cracked and broken plaster.
5. 105CMR 410.353 and 105 CMR 410.502: A lead safe certificate has not been provided.

At the February 11, 2016 meeting, the Board reviewed the remaining violations. Mr. Bruni stated that the owner name and contact information has been posted on the basement door and the cracked and broken plaster was repaired. The gas insert in the fireplace area is inoperable because the gas is shut off and it is just decorative. Mr. Bruni also attested that the lead was tested in 2012 and there were exterior lead issues that were remediated but he never had the building re-inspected. Mr. Bruni attested that he recently had the building re-inspected. He will forward a copy of the lead safe certificate to the Public Health Office once he receives it.

Mr. Bruni requested an extension until April 15, 2016, for the removal of the vegetative growth on the roof since he would like to wait for warmer weather; about 25% of the roof is impacted. He also asked the Board to withdraw the order to repair the gas fireplace. The tenant was informed prior to occupancy that the unit was not operable and you felt that it was safer to keep the insert in place but disconnected since the occupant has children. There is sufficient heat without the gas fireplace.

Susan Hubbard made a motion to withdraw the order to correct the violation of 105 CMR 410.351 and to modify the order and extend the timeframe for corrections for the remaining violations until April 15, 2016. Dr. Amesbury seconded the motion. The motion passed unanimously.

A re-inspection must be conducted by a representative of the Public Health office to confirm compliance. Once the corrections have been completed, Mr. Bruni must call to schedule a re-inspection.

6:53 - Hearing - Ken Hamilton, potential buyer – Estate of Doris Warren – 41 North Ridge Road – bedroom count

Ken Hamilton, Sonia Johnson, and Hugh L. Graham, P.E., presented, and a hearing was held regarding the number of existing bedrooms in the dwelling at 41 North Ridge Road, upon Mr. Hamilton's request. The Public Health Office does not have engineered plans for the septic system serving the property or floor plans of the existing dwelling. Pursuant to Board of Health Septic System Regulation 2.14; the design flow for a dwelling shall be based on the number of bedrooms in existence at the time the septic system plan is designed if there are no engineered plans accompanied by a Certificate of Compliance for the existing septic system. If there are no engineered plans, the Health Agent will conduct a walkthrough of the dwelling or review floor plans of the dwelling, supplied by the property owner, and determine the bedroom count utilizing the definition of bedroom provided in Title 5, 310 CMR 15.000.

On November 5, 2002, the Building Department determined the structure located at 41 North Ridge Road was unsafe and an order was issued to the owner to demolish or reinforce the structure to make it safe. Since the structural integrity of the dwelling was unknown, the Board of Health Agent was unable to conduct a walkthrough of the dwelling.

At the meeting, the Board of Health reviewed the Assessor's records. The property is currently assessed as having 3 bedrooms and 6 rooms. The realtor, Sonia Johnson of Windhill Realty, confirmed there are

currently three (3) bedrooms on the second floor of the dwelling but she did not have measurements of the rooms.

As the proposed buyer, Mr. Hamilton requested the Board determine how many bedrooms are in the dwelling. He requested the Board designate the dwelling as having three (3) bedrooms since he would like to demolish the existing structure and rebuild a 3 bedroom dwelling. He said the dwelling is in major disrepair but when he was inside it there were two small and one large bedroom on the second floor.

Based on the information provided, Susan Hubbard made a motion to grant a variance to Board of Health Septic System Regulation, 2.14 and recognize the dwelling at 41 North Ridge Road as having 3 bedrooms with the condition that a three (3) bedroom septic system is installed. A septic system design for three bedrooms will need to be approved before a building permit application to construct a three bedroom dwelling can be approved. Dr. Amesbury seconded the motion. The motion passed unanimously.

7:01 - Director of Public Health Report:

January Activities Report. The report was reviewed the Board members. The following points were discussed:

Ipswich YMCA Pool: The pool construction plans comply with 105 CMR 435.000, Minimum Standards for Swimming Pools without the activity features the YMCA would like to add to the pool (slide, basketball hoops, tumble bucket, ropes and climbing wall), so these features were removed from the pool submittal and the pool was approved.

The YMCA requested variances for the proposed activity features. At the December 14, 2015 Board of Health meeting, the hearing was conducted to consider variance requests from 105 CMR 435.000. The variances would allow the YMCA to have a slide, basketball hoops and tumble bucket at the pool.

It was the decision of the Board of Health that the YMCA proved manifest injustice and the same degree of protection so the requested variances were granted with conditions.

The Board also reviewed the information the YMCA provided on the cargo net and swinging ropes. These two elements will be suspended from a steel structure above the pool. They will cross the span of the pool and be affixed to a steel frame. The Board did not approve the use of the ropes and cargo net. The Department of Public Safety (DPS) has not provided the Board with an answer as to whether they will be overseeing the construction and use of the ropes and cargo net.

The Board's variance letter was filed with the Department of Public Health (DPH) in December 2015. On January 22, 2016, DPH variance letter was received. The DPH approved the variances related to the slide and tumble bucket with conditions. The variance for the basketball hoops was not approved by DPH.

Substance Abuse: Beverly and Gloucester/Cape Ann communities received a Substance Abuse grant. Gloucester is the lead community for the grant. Ipswich has been invited to join the grant but there will be no money for Ipswich, just capacity building. The goal of the grant is the prevention of first use of alcohol and other drugs by youth and young adults. Chief Nikas and Colleen Fermon met with representatives of the grant partnership in December to obtain more information. Memorandums of Understanding for Police, Health, Schools, and Town Manager were discussed. Ms. Fermon received a Memorandum of Understanding for the Public Health Department which she will sign to participate.

Conflict of Interest: Ms. Fermon reminded the Board members that they must complete the Conflict of Interest Training and return it to Town Hall by February 29, 2016.

Next Board Meeting: The next meetings of the Board of Health were scheduled for April 4, 2016, May 9, 2016, June 13, 2016, July 18, 2016, and August 8, 2016 at 5:30 PM.

Adjourn: Susan Hubbard made the motion to adjourn at 7:10 PM. Margaret McDermott seconded the motion. The motion to adjourn passed unanimously.

Documents used at the February 11, 2016 Board of Health meeting:

- Five Corner Café and Deli inspection reports from September 12, 2011 through January 19, 2016.
- Food Establishment permit applications submitted for 2011-2016.
- State Sanitary Code Chapter X and 1999 Federal Food Code.
- Massachusetts Department of Public Health Food Protection Manager Certification Trainer Directory.
- Letters from Colleen Fermon regarding Five Corner Café and Deli dated August 18, 2015, September 24, 2015, January 25, 2016, October 7, 2015, October 30, 2015, January 9, 2015, January 15, 2016, January 25, 2016, November 12, 2015, August 15, 2015 and February 1, 2016.
- Inspection Chronology from September 2013 through January 2016 for Five Corner Café and Deli provided by Maureen Lee.
- Emails dated January 21, 2016 and January 28, 2016 from Maureen Lee.
- Email from George Hall dated January 27, 2016.
- Photos of Five Corner Café and Deli emailed on January 22, 2015 from Maureen Lee.
- Refusal of permit and closure order dated January 25, 2016 from Colleen Fermon.
- Re-inspection invoices for Five Corner Café and Deli dated September 7, 2010, June 7, 2011, September 9, 2011, April 19, 2012, October 1, 2012, October 15, 2012, October 30, 2012, March 6, 2013, November 12, 2013, January 14, 2014, February 21, 2014, June 18, 2014, July 28, 2014, June 30, 2015, August 15, 2015, November 12, 2015 and January 15, 2016.
- Request for a hearing dated February 1, 2016 from Leslie McCormack regarding Five Corner Café and Deli.
- Darrel Franks Food Protection Management Certification expiring June 20, 2019.
- Leslie McCormack's Allergen Certification expired on February 2, 2016.
- Septic system design plan for 3 Stage Hill Road designed by Daniel Johnson, R.S.
- Septic system design plan for 19 Bunker Hill Road designed by Gerard McDonald, P.E.
- 94 Essex Road soil testing report dated September 8, 2004.
- Assessor's record card for 41 North Ridge Road.
- Chapter II of the State Sanitary Code.
- 42 Essex Road Order for Correction and inspection report.
- Emails from John Morris dated February 1, 2016 and February 2, 2016 regarding 42 Essex Road.

Susan C. Hubbard, Chairperson

Dr. Spencer Amesbury, Board Member

Margaret McDermott, Board Member