



Town of Barnstable

Board of Health

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Wayne Miller, M.D.
Paul Canniff, D.M.D.
Junichi Sawayanagi

BOARD OF HEALTH MEETING MINUTES

Wednesday, September 17, 2014 at 3:00 PM

Town Hall, Hearing Room, 2ND Floor

367 Main Street, Hyannis, MA

A regularly scheduled and duly posted meeting of the Barnstable Board of Health was held on Wednesday, September 17, 2014. The meeting was called to order at 3:20 pm by Chairman Wayne Miller, M.D. Also in attendance were Board Members Paul J. Canniff, D.M.D, and Junichi Sawayanagi. Thomas McKean, Director of Public Health, Health Inspectors Donna Miorandi, David Stanton, Donald Desmarais and Marybeth McKenzie, along with Sharon Crocker, Administrative Assistant, were present.

AT 3:00 PM

I. Show-Cause Hearing – Food:

Attorney James Connors representing Arthur Beatty, Sunnyside Restaurant – 282 Main Street, Hyannis – denied entry to Health Inspectors to premises of food establishment on July 8, 2014.

Show Cause Letter read into the Minutes

July 21, 2014

Mr. Arthur Beatty
Sunnyside Restaurant
282 Main Street
Hyannis, MA 02601

Notice of Show-Cause Hearing

Dear Mr. Beatty,

Acting under the authority of 105 CMR 590.014. State Sanitary Code, Minimum Sanitation Standards for Food Establishments, you are hereby notified to appear before the Board of Health on Tuesday, August 19, 2014 at 3:00 p.m. at the Town Hall second floor Hearing Room, 367 Main Street, Hyannis,

This hearing will be held due to your actions which occurred on Tuesday, July 8, 2014 when you denied entry to agents of the Board of Health and impeded the work of the duly authorized agents of the Board of Health at the Sunnyside Restaurant owned/operated by you located at 282 Main Street Hyannis Massachusetts. These actions constitute full and adequate grounds to suspend a permit. The Board of Health, or its agent, may issue an order to suspend or revoke a permit or refuse to renew a permit to operate a food establishment for any grounds cited in 105 CMR 590.014 (B) (1) (b) through (h) which in the discretion of the Board of Health, are sufficiently serious. At the August 19th

meeting you will have the opportunity to state why your permit to operate a food establishment should not be suspended or revoked.

PER ORDER OF THE BOARD OF HEALTH

Note: Attorney Connors had requested the hearing be postponed until today, September 17, 2014.

Health Inspector David Stanton read his summary of the event into the record:

On July 8, 2014, Health Inspector Donald Desmarais, R.S., and myself volunteered (this is not our inspection territory) to conduct a re-inspection of the Sunnyside Restaurant. As you know by law (105 CMR 590.013(E)(1) we must fill out an inspection report which I have done and submitted to you. I have attached a copy of the official report to this e-mail for your convenience. This memo and email are in regards to a separate request from the official inspection report. Please note that the vulgar language addressed by Mr. Beatty during the inspection has been blurred out at your request. If you need me to decipher the vulgar language, please let me know and I will assist you. The following is from the official inspection report:

- We let Mr. Beatty know we were there to conduct a follow up inspection to the previous violations.
- Mr. Beatty said we couldn't do a ***** inspection and called me an *****.
- Called Tom McKean, Director, and let him know of the refusal of inspection. Tom said to let Mr. Beatty know it is a violation to refuse an inspection and that a write up will be done on the refusal and sent to Dr. Miller and Richard Scali.
- Mr. Beatty stated he still did not want an inspection until after his public hearing, as he requested in a letter dated June 9, 2014.
- Mr. Beatty was reminded again that refusal of an inspection is a violation and Mr. Beatty stood by his decision for the refusal.
- Mr. Beatty continued on about his hearing request and wants to know when his re-inspection will be done.

Per the results of our phone call to you during the incident, we did not contact the police to keep the peace so we could conduct an inspection and we also did not close them down. We left the establishment after several adequate reminders of the violation of refusing an inspection during normal business hours. We returned to the office to let you know that he still refused the inspection and document what occurred.

I hope this memo and e-mail meet your needs. Should you need any further information or clarification on this subject, please let me know.

Sincerely,
David W. Stanton, R.S.

Mr. Beatty said that he did not swear and that he always has a call prior to inspections and he did not receive one. (This is not procedure, except at the annual inspection)

Health Inspector Donald Desmarais read his remarks on the event:

I, along with David Stanton, proceeded to conduct a re-inspection at the Sunnyside Restaurant on Main Street, Hyannis. We arrived at approximately 10 am on Tuesday, July 8, 2014. Upon entrance to the establishment, we were confronted by the proprietor (Author Beatty). We were asked if he should be notified for a re-inspection. Dave told him no. Mr. Beatty said you are not inspecting until I get my Board of Health hearing. Dave asked if he

was refusing the inspection and Mr. Beatty said "Yes, I am refusing the ***** inspection!!" He walked away carrying dirty dishes after calling David an "*****". Dave called Tom McKean and Tom instructed us to tell Mr. Beatty that by refusing the inspection a report would be written up and given to Richard Scali and the Board of Health. We did as we were instructed. The discussion degraded to swearing and degrading remarks towards David Stanton from Mr. Beatty. At that point, we left.

Attorney Connors said there was a misinterpretation of the MA codes by Mr. Beatty. Mr. Beatty thought he could request a hearing with the Board of Health for an administrative issue. This is not within the Board's parameters as their response letter noted.

Dr Canniff said he has known the inspectors for eight years and he does not believe the inspectors would lie. Dr. Canniff does not understand why the restaurant was not immediately closed when Mr. Beatty refused to allow the inspection. Dr. Canniff said he believes Mr. Beatty should bear some consequences for his actions. In reading the inspection reports, Dr. Canniff said he can not believe how many issues there are and how many are re-occurring items.

Attorney Connors asked if the hearing has moved into the second portion of the show cause – discussion of inspection.

Dr. Miller said no, we will finish with the first issue. Dr. Miller said the reason the items on the inspection are relevant is because the reason for inspection was due to the violations and that is why he should not have refused the inspectors. The Board must be able to answer public safety issues and the inspectors must be able to do inspections to make sure the State Codes are upheld.

Dr. Miller understands there was confusion on Mr. Beatty's part. Dr. Miller also said he agrees with Dr. Canniff. He has known these inspectors and believes them to be truthful. Dr. Miller is interested in moving forward and preventing this from happening again so he proposed the following: a 7 day suspension of the food permit with (a) some or all of it not to take place (this portion up for discussion with Board members) unless there is another refusal of inspection or impediment of the inspector's work. Dr. Miller will provide Mr. Beatty's attorney with a piece of paper which defines what the administrative requirements are of our inspectors and what we expect from our licensees and what is going to be the "code of conduct" required. If Mr. Beatty does anything to impede the inspectors, then the balance of the suspension of his food permit will be enacted immediately and carried to term.

Dr. Miller gave Attorney Connors the Protocol Regarding Courtesy and Professionalism (attached at end) dated August 14, 2012 (above referred to as 'code of conduct') and had a five minute recess for review with client, Mr. Beatty.

Attorney Connors said that Mr. Beatty accepts the Protocols stated and that if he runs into a dispute or misunderstanding, he will inform the inspector(s) that he is going to record the inspection (as the law requires informing this), and the recording may be introduced into evidence, if necessary.

Dr. Miller said “another option is whether there should be a disinterested third party”. The Board’s opinion is that they absolutely believe the Health Inspectors as they know them. Dr. Miller said he has no control of who inspects as he does not take care of administrative items. Dr. Miller’s suggestion to Mr. McKean and Mr. Scali is that there is a third party as the Health Division probably can not afford to have two inspectors each time.

Attorney Connors said he did speak to Mr. McKean and had offered to be the third party observant as he has done this in the past for Licensing. Mr. Connors said he does not foresee future problems as in a police presence needed.

Dr. Miller believed the owner was wrong to refuse the inspection but wants to move forward and prevent it from happening again. Dr. Miller proposed a 7-day suspension of license to operate with the allowance of postponing the suspension for three years. If there are no other infractions of impediment of inspections, the suspension will be waived. Dr. Miller said the Code says the Board can suspend the license if the Board sees there is an immediate risk to the public health. As the violations weren’t serious enough to close the restaurant initially, it would result in a hearing in front of the Board as opposed to closing immediately.

Dr. Canniff felt there is enough evidence exists that the inspectors should have been able to close it immediately as the Health Division was not able to access it and see if items had become worse. He felt the owner should be punished for this violation now and does not want it to set an example for others.

Mr. Sawayanagi believed the owner was wrong in not allowing access for the inspection. Inspections must be done to ensure safe operations. He believed the owner should be punished. After much discussion, Mr. Sawayanagi decided to support moving forward and supported holding off enforcing the suspended license unless an infraction occurred again.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted on the following:

FINDING: The Board found the owner in violation of the State Food Code. The inspection was unable to be completed on July 8, 2014, because the inspectors were denied complete access by the owner, and due to this the Board issued a suspension of the permit to operate for seven (7) days, but the suspension will be on hold for a period of three (3) years. If there is a future infraction of denial for an inspection or reoccurrence of impeding access for an inspection, then the suspension will go into effect immediately; otherwise, the suspension will be waived. (Two votes in favor, one voted no (Dr. Canniff).

II. Show –Cause Hearing – Food:

Attorney James Connors representing Arthur Beatty, Sunnyside Restaurant – 282 Main Street, Hyannis – recurrence of food violations (both critical and

non-critical) during inspections on May 13, June 5, July 11, and August 12, 2014.

Show Cause Letter read into the Minutes

August 21, 2014

Mr. Arthur Beatty
Sunnyside Restaurant
282 Main Street
Hyannis, MA 02601

Notice of Show-Cause Hearing

Dear Mr. Beatty,

You are scheduled to appear before the Board of Health on Tuesday, September 9, 2014 at 3:00 p.m. at the Town of Barnstable Town Hall, Hearing Room, Second Floor, 367 Main Street, Hyannis, for a show-cause hearing.

This hearing will be held to show-cause why your food permit should not be suspended or revoked due to critical and non-critical violations and recurrence of violations at your food establishment, Sunnyside Restaurant, 282 Main Street, Hyannis, on May 13, 2014., June 5, 2014, July 11, 2014 and August 12, 2014.

During this hearing, you will have an opportunity to be heard, present witnesses, and provide documentary evidence pertinent to this case.

PER ORDER OF THE BOARD OF HEALTH.

David Stanton read into the minutes the violations on the inspection performed by Donald Desmarias and himself on May 13, 2014:

<u>NC/C*</u>	<u>Violations:</u>
NC	Mops needed to be hung to air-dry
NC	General cleanliness issues: freezer chests in back, by 2-bay sink, wall dirty, and heater vent has filth in it by the front entrance
C	Lack of handwashing observed
	Log kept for dishwasher = good. 150ppm = good.
NC	Broken floor tiles by walk-in cooler
NC	Walk-in cooler needed general cleanliness in all areas (ie, racks, ceiling...)
NC	Freezer (stand up) by walk-in – needed to be defrosted
C	Carrots, etc, being heated, were at 125 degrees F, need to reheat, then held at 140 degrees F.
*	Eggs been held out of temp, need to request a variance to do this. I will bring back information for you or mail to you.
C	Small refrigerator with cream at 55 degrees F.
C	Creamer dispenser not holding product cold and not packed in ice (noise)
C	No paper towels at front hand sink
NC	Ice machine needs cleaning
NC	Coffee mugs need netting underneath them
NC	Employee using cup to scoop ice (need to use scoop and have clean hands.)

*NC = Not Critical, C= Critical

5 CRITICAL FAILED Inspection

David Stanton, R.S., read into the minutes the violations on the re-inspection performed by David and accompanied by Richard Scali, Director of Regulatory Services, on June 5, 2014:

<u>NC/C*</u>	<u>Violations:</u>
	Small refrigerator at 40 degrees F = good
NC	Need to defrost small refrigerator, must ice up top.
NC	Front floor regulator could use some cleaning
C	Ice machine has a can of soda in it.
NC	Ice machine still has grime in it
	7 pounds of butter at room temperature
C	No soap in men's bathroom (empty)
NC	No "Employees Must Wash Hands" sign in men's bathroom
NC	Utensils and utensil holder needed better cleaning
C	Meat slicers need to be cleaned every four hours, some dried debris present.
NC	Mop not being air-dried properly. Given copy of Town- Public Health Code variance procedure. Need to apply for variance if holding large quantities of eggs, etc.
NC	Broken floor tiles (long term)

*NC = Not Critical, C= Critical

3 CRITICAL Re-Inspection (grading – N/A)

Donna Miorandi read into the minutes the violations on the re-inspection performed by herself. The inspection was an announced inspection on July 11, 2014:

<u>NC/C*</u>	<u>Violations:</u>
	Soap and Handwash signs are in both bathrooms
	Utensil holder is clean.
	Carpets to be replaced
	Grates are clean
	Upright freezer is at 12-29 degrees F. Must be at -0- degrees C. Recommend new freezer. This one is old & not efficient.
NC	Foreign debris on the slicer.
	Small refrigerator is at 41 degrees F and defrosted
C	Sink being utilized with ice for cooling yogurt, melons & whip cream. However, yogurt is at 48 degrees F-which should be at 41 degrees F, or below. Must stop and utilize mechanical refrigeration
	Ice machine is clean
NC	Recommended properly restrained hair for waitresses so no loose hair getting into customers food. Noted: there is a long term plan to replace broken floor tiles
NC	Much foreign debris down beside fryolator. Must clean more frequently. Recommend shelf on line be changed from laminate to stainless steel.
NC	Air conditioning unit on wall had much dust and dirt that can be blown on diners, etc. Ceiling tiles above are damaged.
NC	Bus bucket area has much foreign debris behind them on shelves. - bug attraction.

- NC Potato bins in rear area with whole & peeled potatoes have much foreign debris – potential bug attraction & source of cross-contamination.
Dishwasher at 102 degrees F and 75 ppm = ok
- C Horizontal freezer is at 10 degrees F with beef patties in it – Must be at -0- degrees F.

*NC = Not Critical, C= Critical

Re-Inspection (grading – N/A)

Donna Miorandi, R.S., read into the minutes the violations on the re-inspection performed by herself. The inspection was an unannounced inspection on August 12, 2014:

NC/C*

Violations:

Noted – they had a brand new upright freezer

Utensil holder is clean.

Sink no longer used for chilling products

Only had a minimum amount of eggs out on the line

- The bus bucket area still had foreign debris buildup
- Small counter refrigerator was at a temperature of 56 degrees F. It should be at 41 degrees F or below. (Their thermometer on back wall read 50 degrees F).
- Noted: the cantaloupe and milk was stored in the refrigerator (at 56 degrees F). Cantaloupes are potentially hazardous foods which can cause salmonella. They must be stored at 41 degrees F.
- Wipe cloths were in a bucket of water – should be in sanitizing solution
Inspector tested solution using the strip test method and it showed no sanitizing in it.
- There was open cranberry sauce and baked beans in open aluminum cans in the walk-in cooler.
- There was butter left on counter of hand sink at 84 degrees F. It should be stored at 41 degrees F or below (unless received a variance). Butter is a PHF (potentially hazardous food).
- There was foreign debris on slicer and on a film wrap dispenser and both are sources of cross contamination sources.
- Much build up of potato peelings on shelf and stored in cardboard box next to horizontal freezer.
- Cutting board had much debris and inspector instructed them on how to clean and sanitize it or replace it.

Pictures are also in the file.

Attorney Connors said that Mr. Beatty hired the consulting firm Berger Food Safety Consulting (BFSC) to assist him. They reviewed the town inspections and the restaurant's practices. Mr. Beatty said 3-4 people cleaned and scrubbed for 6-8 hours prior to consultant's inspection. The first day Berger Consulting came in and did overview, then the second day, the consultants spent 6-8 hours with Mr. Beatty going over all the processes and then wrote up the report. Upon Berger's final review, the facility only had one violation which was non-critical. (This was an announced inspection.)

The Board was very pleased with the progress made and the effort extended. Dr. Miller expressed how it must be a cooperative effort to move forward and to continue with these positive results. Dr. Miller explained how the inspections can

not be announced. Dr. Canniff added that he does not think any particular inspector should be chosen by the restaurant owner. The inspector for that territory should be the one to handle it and the inspector should be treated with respect. If the internal workings of the Health Division requires reassignment of the inspectors, that's fine. This establishment should be treated like all the other ones. The Board is in agreement. Attorney Connors acknowledged agreement, as well.

Follow up inspections will be done to verify the consultant's reports are correct. Mr. Beatty was told a disinterested third party may attend these inspections, as well. If a police officer attends either of them, it would be a plain clothes person.

Upon a motion duly made by Dr. Miller, seconded by Mr. Sawayanagi, the Board voted to not take any action of a suspension at this time as the reasons for considering closing the restaurant have been corrected according to the consultant's report and will be verify by our inspectors. An unannounced inspection will be done within seven (7) days and another one will be done within thirty (30) days. (Unanimously, voted in favor.)

AT 4:00 PM

III. Show Cause Hearing – Food:

Joann Lucas and Panagis Kappatos, owners, Egg & I Restaurant – 521 Main Street, Hyannis, recurrence of food violations (both critical and non-critical) during inspections on June 17, July 23, and August 28, 2014.

Attorney David Lawler was present and represented the owners.

Marybeth McKenzie, R.S., read into the minutes the violations at the inspection she performed on June 17, 2014:

<u>NC/C*</u>	<u>Violations:</u>
C	<ul style="list-style-type: none">- Upon arrival, no servsafe personnel on premises- Slide refrigerator temperature was 39 degrees F and there was drainage build up on bottom shelf.- Flooring was "spongy" and tiles cracked, especially by slider refrigerator unit.- Shelving under shelf which is on line had food debris and crumbs – should be cleaned.- Flooring was "spongy" entering kitchen and tiles cracked in kitchen.- Hood working, lights shielded, filters clean – good.- Floor under grill was filthy with food debris, must clean- Waffle maker was clean – good.- Grease build up above heater fixture by grill (hot heating unit) – must clean.- Sandwich unit – mold on gaskets, lids need cleaning and inside of unit. Unit at 40 degrees F. Hot holding 173 degrees F – good.
C	<ul style="list-style-type: none">- Eggs (scrambled mixture) at 47 degrees F – pancake mixture held in dispenser on counter at 63 degrees F – must be discarded.- Heavy build up of food in drip pans on stove unit.- Fry baskets need to be scrubbed, build up of debris, under unit and sides need cleaning and degreasing.
C	<ul style="list-style-type: none">- Not wearing gloves making toast while buttering and serving, must wear gloves or use utensils with ready to eat foods.

- oven needs cleaning, build up noted on sides and bottom.
 - Broken handle on freezer, sharp edges – need to fix
 - C - Shelves were filthy were spices held and spices were in containers.
 - Hand sinks stocked in kitchen – good
 - Ceiling tiles by 3-bay stained, they are accoutical also – need to replace
 - Servsafe person did walk in at that time – Joellen Haley.
 - Wall by knife rack – dirty with food debris, along with wall by 3-bay and by walk-in.
 - Need new gasket on walk-in shredding – can't clean.
 - Need new threshold stainless steel ripped – temperature is ok., need to clean around fans and mold noted.
 - Need to clean wall under spray unit – black noted.
 - Dirty ash trays in with clean dishes.
 - C - Stainless steel. cart was “dirty” and it held the clean dishes.
 - C - Low temperature dishwasher log kept till 6/5/14 – no sanitizer registering on strips.
 - Freezer unit at 35 degrees F – product defrosted – must fix unit – may move product to refrigerator – Don't re-freeze product.
 - Need stoppers for 3-bay sinks.
 - Ceiling tiles by “clean dish area” – need replacing.
 - All shelving needs to be cleaned.
 - No soap in ladies and men employee restrooms.
 - C - Paper towels not stocked in patrons bathroom.
 - C - Need to remove filthy milk cartons under onions and potatoes.
 - Need to remove paper products from closet – paint and clothes in closet, so it was a mixed use, thus, must reorganize and separate..
 - Air curtain on the side door not working correctly, must fix.
(Don't open 6/18/14 until approval by health inspector.)
- Pictures in file.

At this point, the Egg and I voluntarily shut down and they worked hard through the night. Marybeth, R.S., went back and re-inspected the next day, 6/18/14.

At the re-inspection, all violations had been corrected with the exception of the physical facility which they would need more time to accomplish.

Following up, Marybeth McKenzie did another inspection in a month, on 7/23/14.

- | | |
|--------------|---|
| <u>NC/C*</u> | <u>Violations:</u> |
| C | <ul style="list-style-type: none"> - Upon arrival, no servsafe personnel on premises - In the cold holding, still keeping individual containers in large ice buckets with ice – not holding temperatures correctly,.... |

Dr. Miller asked if the establishment had given any reason why they, again, did not have a servsafe person on premises. He inquired whether they had a good explanation or were they operating continuously without one. Marybeth said originally the person overseeing was 'David' and he had an expired servsafe certificate. So, they called in a person with a current certificate. The next inspection, Marybeth was told that David was attending a servsafe class at that moment.

Attorney Lawler said that the owners, Joann and Panagis, take this very seriously. The reason they were not able to attend the hearing today is that they had scheduled a meeting with a professional hospitality recruiting firm for consulting on reorganizing the food handling. They had done this prior to the Board rescheduling this hearing to accommodate Atty. Lawler's conflict with his court appointment. The firm they hired is a

very established company which works mainly in Boston and teaches servsafe classes and consults in food handling preparations.

Atty. Lawler said he does not dispute anything Marybeth has stated and they appreciate Marybeth doing her job. They are only open during the summer and it gets very busy and they have realized they need help to create better processes to handle the demands.

Atty. Lawler said the owners now realize it would be best to have a servsafe certified person in the kitchen, in addition to the one out front. They will be closing soon for the season and they will make sure they have the additionally trained personnel for next season.

Marybeth McKenzie said she does believe they will clean up what is needed as they are hard working, but she is concerned with the possibility of repeating.

Dr. Miller said there are two levels of concern. One concern is the items that need to be cleaned up today. The second is the items which need to be done during the off season, while closed.

Dr. Canniff said he is concerned that they have received three F-ratings on inspections and are repeating the violations.

The health inspector and Mr. Lawler both felt that the violations can be resolved with the proper training for the kitchen personnel, as well.

Upon a motion duly made by Dr. Miller, seconded by Dr. Canniff, the Board recommended the owner give a copy of the consultant's proposed plan of action to the health inspector and to Mr. McKean for final input. The Board to continue this item until the October 14, 2014 meeting. (Unanimously, voted in favor.)

Voted to Adjourn - 4:40 pm

August 14, 2012

Protocol Regarding Courtesy and Professionalism

I.. EXPECTATIONS OF AN EMPLOYEE – The Town expects its employees to conduct themselves professionally. Explanations shall be given whenever deficiencies are noted. The employee shall also ensure that his/her body language is appropriate and is non-threatening to an applicant, complainant, or licensee.

II. EXPECTATIONS OF AN APPLICANT, COMPLAINANT, AND LICENSEE – The applicant, complainant, and/or licensee is also expected to behave with courtesy. Outbursts, threats, bullying, and any other outlandish unacceptable behavior shall not be tolerated. Whenever threats or bullying occurs, the Public Health Division employee shall:

- a. quickly explain that the applicant's or licensee's behavior is unacceptable and
- b. unless the behavior quickly returns to professional and courteous, the inspection ceases to continue and will have to be rescheduled, and
- c. A re-inspection fee will be charged for the rescheduled inspection.
- d. Denial of entry or attempts to impede the work of a duly authorized agent of the Board of Health shall constitute as full and adequate grounds to suspend a permit (as per 105 CMR 590.014 [B]). Also if any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access to every part of a structure, operation or premise where inspection authorized by the State Sanitary Code is sought, the Board of Health or the authorized agent or representative of either may revoke or suspend any license, permit or other permission regulated under the State Sanitary Code where inspection of the structure, operation or premises is sought to determine compliance with the State Sanitary Code (as per 105 CMR 400.100). For the purposes of this protocol, outbursts, threats, bullying and other outlandish unacceptable behavior by a permit holder or his/her agent during an inspection, shall also constitute as an "attempt to impede" the work of a duly authorized agent of the Board of Health.

III REPORTING TO POLICE- A Public Health Division employee shall immediately contact the police if at any time he/she is assaulted or feels threatened during an inspection. It is the employee's responsibility to ensure that the local police department emergency and non-emergency contact information is kept up-to-date in the cellular phone issued to him/her.