



BOARD OF HEALTH MEETING

March 15, 2016: Minutes

Members Present: William White, John Campbell, Patricia Bergeront

Others Present: Ade Solarin-Health Agent, Alexandra Kral-Administrative Assistant, Luke DeBettencourt, Ed Miano, Benjamin Deforest, Colleen Morris.

APPOINTMENTS:

10:00 Approval of Minutes for February 2, 2016.

BOH Members motioned to approve the minutes stated above during the next BOH meeting.

10:05 Review with Health Agent

- **Health Agent:** We have 5 items on today's agenda. First, is Ed Miano who submitted a building application for the garage at 41 Pondview drive. Unfortunately, I was not able to sign off on it due to existing nitrogen loading violations. Second, Luke DeBettencourt who had questions for us during our previous meeting. I prepared answers that hopefully will be helpful to Mr. DeBettencourt. Third, we have two septic plans from George Sourati that require variance approvals. We have an appointment with Ben Deforest to clarify which business we are permitting to operate, Red Cat Kitchen or Ken N Beck? Also, I would like to present draft copy of the grease trap regulation that was discussed during the BOH meeting on February 2nd. The last item on the agenda is a request to reduce maintenance operations on Waterloo Biofilter system at 105 East Chop Drive to twice a year.

Member White motioned to proceed to the first appointment.

Motion was unanimously approved.

10:10: Edward Miano at 41 Pondview Drive M28 P 2.47

Edward would like to override Health Agent's request for a walk-through of main building prior to signing off on building application

- **Edward Miano:** I turned in an application for a garage. It does not have any habitable space. Health Agent refuses to sign off on it. I'm here to ask board to sign off on my application instead.



- **Member White:** Ade, what's the reason for your refusal?
- **Health Agent:** House was built in 1994. It is located in Zone 2, which is nitrogen sensitive area. House was restricted to four bedrooms maximum. During the walk through on Monday, March 14th, 2016 I observed 5 bedrooms.
- **Member White:** Do you have five bedrooms in the house?
- **Edward Miano:** I have four bedrooms in the house. I did an addition 10 years ago. It was legally permitted. Previous Health Agent, Shirley Fauteux, and Building Inspector both signed off on it. The application that I submitted recently is for a garage and is not connected to the house. I was concerned about Health Agents overreach. I checked with two lawyers and all of them confirmed that Health Agent had no statutory right to come in the house because submitted application was for a garage. I went over the plan with Health Agent and he agreed that if what he observes matches the plan he would sign off on the application. I granted Health Agent access to do a walk through. He still refuses to sign my application. I don't believe there is any issue at the house. There are 8 rooms and state says if you divide number of rooms by half that is how many bedrooms you have.
- **Health Agent:** Please, look over the septic plan that shows four bedrooms. Certificate of compliance for septic system at this property was never issued. In this letter, Shirley Fauteux, Health Agent who signed off on that septic plan, requested to conduct a walk through. She was not granted access to confirm number of bedrooms. As a result of that, certificate of compliance was not issued.
- **Member White:** So they have never had a compliance certificate?
- **Health Agent:** Yes. State Law states that the maximum of four bedrooms can be built in Zone 2. Violation of this law can carry a fine of \$20,000.00 or more. If I report this issue to the State, Edward Miano can possibly be fined. Board of Health can't vary this request because it is a state law. Due to this reason I'm not able to sign off on Ed's application.

- **Member Campbell:** Do we have a copy of plans for garage?
- **Member Bergeront:** We have a letter from the Bank that Edward Miano was using at the time, requesting Health Agent (Shirley Fauteux) to provide certificate of compliance. Her response was: "In the order for certificate to be issued it will be necessary for me to do a walk through to determine if the number of existing bedrooms is consistent with septic design. Please advise your client to call this office and arrange an appointment for this to be done."
- **Member White:** What was the date of this letter?
- **Member Bergeront:** October 2008. Health Agent apparently never did a walk through. She noted again that walk through needs to be done because house has more bedrooms than Zone 2 allows.
- **Member White:** Were you aware of that?



- **Edward Miano:** I was not aware of that. When I did an addition I was told that I have too many bedrooms and I need to put laminated vinyl lumber and create an opening to combine two rooms. Unfortunately, I did not have funds to complete that work. So, we came to an agreement that I empty the room and not use it as a bedroom.
- **Member White:** Well, the issue is that certificate of compliance was never issued.
- **Edward Miano:** I have a certificate of occupancy.
- **Member Bergeront:** Does it have Shirley's signature on it?
- **Edward Miano:** No, Dick Mavro signed on it.
- **Member White:** Do we have that on file?
- **Health Agent:** No. But let's check if building department has anything on file.
- **Member Bergeront:** Just to clarify anytime there is any addition built or any other work is done inside the house, Board of Health absolutely has power to verify that the performed job has been done in accordance with the plan that Health Agent signed.
- **Edward Miano:** I told Ade that there is no Laminated Vinyl Lumber in that room. He told me it will be fine as long as everything else is according to the plan.
- **Member White:** It is not according to the plan.
- **Edward Miano:** It is not. This additional room is not used as a bedroom. If you divide number of rooms by 2 you will get four bedrooms.
- **Member Bergeront:** That is not how Board of Health identifies bedroom.
- **Member Campbell:** Ade please provide us with the definition of Bedroom as it states on BOH Policy. I think we should consider separating this into two separate issues. Garage does not have any habitable space we could approve that and have Health Agent follow up on situation at the house to make sure Mr. Miano will come to compliance with Towns definitions of Bedroom.
- **Member Bergeront:** I disagree. This case has been open since 2008. Mr. Miano failed to come in compliance before. I don't believe that after the completion of the garage he still will be willing to comply with BOH policies.
- **Member Campbell:** Health Agent will be responsible for enforcing this compliance to be met.
- **Health Agent:** I don't have a way to enforce it. Besides sign off.
- **Member Campbell:** He can fine Mr. Miano according to the State regulations.
- **Health Agent:** I don't have authority to fine.
- **Member Campbell:** You can bring this matter to the State's attention.
- **Health Agent:** I would not want to do that if he can rectify the problem as presented.
- **Member Bergeront:** We should try to prevent this situation. My opinion is that it's best not to sign off on the garage application until Mr. Miano receives compliance certificate for his house.
- **Edward Miano:** I don't want to delay construction of the garage.



- **Member Bergeront:** You were supposed to come in the compliance in 2008. You still have not met compliance.
- **Edward Miano:** I request the board to sign off on my garage application and set a deadline for me to meet the compliance. I don't want to lose all scheduling that was set for the garage construction.
- **Colleen Morris:** Building official is not here so I'm acting on his behalf. Certificate of Occupancy was issued for this house in 1994. Addition permit was applied for in 2005. There is no certificate of occupancy for the addition. I notified Mr. Miano that according to the board of health there are 3 steps he needs to take to receive certificate of occupancy. First, eliminate one bedroom, sign deed restriction and schedule an appointment with Health Agent for the walk through. I told him that I have no proof on file that those requirements were satisfied. I advised him to apply for the demolition permit to eliminate the bedroom.

Member Bergeront motioned to deny Mr. Miano's request to sign off on building application for garage. Member White supported the motion. Member Campbell insisted on further discussion to sign off on the application with a list of conditions.

Motion to deny Mr. Miano request was approved.

10:20: Luke DeBettencourt: Corner Store 24 Circuit Avenue

Luke would like to challenge the requirements for his establishment to obtain a food permit

- **Luke DeBettencourt:** I submitted four questions to the Board of Health on March 10 trying to seek clarity in regards to the requirement to obtain a Food Establishment Permit. First time, I brought this matter to Boards attention in 2009.
- **Member Campbell:** So you requesting fee waiver?
- **Member White:** As I understand, Mr. DeBettencourt is asking for clarification of regulations that applies to his store. Correct?
- **Luke DeBettencourt:** Yes. I believe that Corner store is not required under 1999 Food Code to obtain a Food Establishment because I don't carry any Potentially Hazardous Foods in my store. Products available for sale are either time controlled or temperature controlled.
- **Member White:** I think Health Agent is able to answer all you questions.
- **Health Agent:** Let's start with identifying your store according to the Food Code. It states that Food Establishment does not include an establishment that offers only prepackaged foods that are not potentially hazardous. You are requesting not to be regulated by BOH based on the fact that you carry only prepackaged products that are not Potentially Hazardous Foods however numerous inspections at your establishment showed that you carry ice cream and milk that are listed as potentially hazardous foods. The information that you provided on your



annual applications differs from what you actually sell in the store. Previous Health Agent sent you a letter with request to forward her a list of all products available for sale at the corner store. We don't have any record of your reply.

- **Member Bergeront:** The only thing Mr. DeBettencourt has to do is get rid of ice cream and milk products. Would you consider not selling these two products?
- **Health Agent:** I have an issue with that option. If Mr. DeBettencourt eliminates those two products I don't have the capacity to keep checking that he won't resume selling those products after inspection.
- **Member Bergeront:** Members of Board of Health are regular customers at Corner Store and will be able to notice if Mr. DeBettencourt won't keep his word.
- **Health Agent:** Just for the record the permit fee for Corner Store was reduced to \$100 from \$350 a few years ago.
- **Member Bergeront:** There are few establishments that are similar to Corner Store in Oak Bluffs.
- **Member Campbell:** Those fees help offset cost for seasonal food inspector. Even if Mr. DeBettencourt is not carrying Potentially Hazardous items, summer inspector still has to inspect this business.
- **Member White:** Mr. DeBettencourt, are you looking to completely waive reduced fee of \$100?
- **Luke DeBettencourt:** I'm trying to approach situation economically, if the profit from ice cream and milk products that are available for sale at Corner Store is lower than the fee for the food establishment permit, then I don't see a reason to carry those products.
- **Health Agent:** If we stop permitting this establishment, the BOH won't have any jurisdiction over what food items are being sold. I still think we should permit Corner Store, what if PHF's resurface after we rescind our permit?
- **Member Bergeront:** I disagree. There is no need to charge Mr. DeBettencourt fee and permit his establishments just in case he brings those items back.
- **Member White:** Mr. DeBettencourt what's your plan regarding PHF products in your store?
- **Luke DeBettencourt:** I have to look through my books to determine if profit from those products is larger than the permit fee. Based on that I'll decide if I want to proceed with Food Establishment application or not. I was just trying to find out what was triggering the requirement for my store to obtain a food permit.
- **Member Bergeront:** Milk and Ice Cream products are causing this problem.
- **Member White:** Mr. DeBettencourt, please complete your cost analysis and get back to us with your decision.
- **Member Bergeront:** Does Mr. DeBettencourt have to come back to us from now on or Luke and Health Agent can discuss this matter between each other?
- **Health Agent:** I would like this matter to come back to the board in order to keep everyone up to date.



Member Bergeront proposed to schedule an appointment for Luke DeBettencourt during next meeting. Mr. DeBettencourt is to get back to Health Agent and Board of Health with his decision regarding termination of milk and ice cream products in Corner Store.

10:45: Ben Deforest: Ken N Beck Food Establishment

Red Cat Kitchen vs Ken n Beck: What establishment is the BOH Permitting?

- **Benjamin Deforest:** Red Cat Kitchen is not separate business. It is a technique and special approach to food. All permits and directories listings states Ken- N- Beck. I feel that Health Agents threatens my business by asking me to become completely relicensed or not use Ken-N-Beck brand. There is no Red Cat Kitchen sign on the building or menus. We are Ken- N-Beck restaurant. Also in support of my statement I would like Board of Health to review business licenses that belong to Oak Bluffs Food Establishments operating under different names than their permits state. I don't mind getting rid of all Red Cat Kitchen signage if other establishments will comply with same requirement.
- **Member Campbell:** Ade, can you please clear up this issue?
- **Health Agent:** I wanted to make sure that we are permitting the right business. Ken-n-Beck is permitted by the Board of Health, but we have another establishment called Red Cat Kitchen operating at Ken-n-Beck's location. Menu on their website has Red Cat Kitchen name and logo on it and we received a temporary food event application from Red Cat Kitchen. Ken-n-Beck application states that they don't have any employees. We have similar establishment called Chef Deon's Kitchen. He operates at the VFW. We permit VFW and Chefs Deon Kitchen separately. Chef Deon holds catering permit with Board of Health and fully licensed by the Town. I suggest that Mr. Deforest applies for catering permit to operate at Ken-n-Beck and registers Red Cat Kitchen as a separate business.
- **Member White:** Does Ken-n-Beck have a business license?
- **Health Agent:** Yes.
- **Member Bergeront:** Ken-n-Beck is Red Cat Kitchen.
- **Health Agent:** Not legally.
- **Member Campbell:** Who do we issue Ken-n Beck permit to?



- **Health Agent:** Carol and Tom Ward. Owners of the building.
- **Member Campbell:** What are the relationships between Mr. Deforest and Mr. & Mrs. Ward?
- **Benjamin Deforest:** My Corporation No Trespassing 101 LLC has an operating agreement with Ken-N-Beck holdings. No Trespassing 101 LLC is responsible for the workers compensation. I'm a manger of the liquor license at the restaurant. I had no knowledge of Temporary Catering application being submitted on the name of Red Cat Kitchen, which was done by the General Manager who was terminated due to incompetence. There is no sign on my building that says Red Cat Kitchen.
- **Member Campbell:** Would the issue of a separate license for Red Cat Kitchen affect food inspection process.
- **Health Agent:** Not exactly.
- **Member Campbell:** If there is a violation who will be responsible for it?
- **Health Agent:** Ken-n-Beck.
- **Member Bergeron:** If we are going to make Mr. Deforest comply with Health Agents request we will have to make every business that has the same issue comply as well.
- **Health Agent:** Mr. Deforest's claims about other establishments have to be verified.
- **Member Bergeront:** I think we should let Mr. Deforest open and look into the problem more deeply.
- **Member White:** That is a complex issue.
- **Member Bergeront:** Ade, could you please explain what difference you see between Red Cat Kitchen and Ken-n-Beck?
- **Health Agent:** Ken-n-Beck has no employees. They have a contractor working and serving food at Ken-n-Beck establishment, who is not permitted by Board of Health. Are you a Ken-n-Beck employee?
- **Benjamin Deforest:** Yes, I am.
- **Health Agent:** It is not stated on Ken-n- Beck food permit application.
- **Benjamin Deforest:** I think Health Agent can't see full picture because he has not read the management agreement between my corporation and Ken-n-Beck Holdings.
- **Health Agent:** I have looked through it. I look at it from a regulatory point of view.
- **Member White:** So the only problem is Red Cat signage on the menus and site?
- **Health Agent:** We have one business that is not permitted by Board of Health occupying a different business that is permitted by the BOH.
- **Member Campbell:** I don't believe that Mr. Deforest has a separate business named Red Cat Kitchen.
- **Member White:** Ade, are you trying to stop Mr. Deforest from opening based on this issue?
- **Health Agent:** No, I'm trying to put Mr. Deforest on the right track.
- **Benjamin Deforest:** I feel singled out. None of the other businesses with the same issue are currently going through the same process. I would like to request another Health Agent to conduct a pre-opening inspection for my restaurant or to have a Board of Health present



during such inspection. I'm opening on April 1st and I have an appointment for an inspection on March 24th.

- **Member White:** We have a Health Agent who is getting paid by the town to do inspections. I won't be present during an inspection on March 24th. May be other Board Members will be willing to do it.
- **Benjamin Deforest:** Why am I singled out?
- **Health Agent:** We have not received applications from other establishments yet.
- **Member Bergeront:** I can be present during pre-opening inspection. Health Agent still has a regulatory authority.
- **Health Agent:** I won't be comfortable having any board members during an inspection.

Member Campbell motioned to recognize Red Cat Kitchen and Ken-n-Beck as the same business named Ken-n-Beck.

Motion was unanimously approved.

10:30: George Sourati: Isaac Avenue M22 P59; Re: Variance Approval

Mr. Sourati was not present for his appointment. Rescheduled for the April 12th, 2016.

10:40: George Sourati: Isaac Avenue M22 P59.2; Re: Variance Approval

Mr. Sourati was not present for his appointment. Rescheduled for the April 12th, 2016.

MEMBERS:

HEALTH AGENT:

- Grease Trap Regulation discussion

- **Health Agent:** I wanted to present you with a draft copy of Grease Trap Regulations.
- **Member Bergeront:** I have talked to the plumber on the behalf of Holy Ghost Association. He informed me that internal grease traps that are proposed by this regulation can be very costly.



Maybe instead of making it mandatory to install expensive equipment we can enforce all existing grease traps to be pumped prior opening.

- **Health Agent:** That is a part of regulation. However, we don't want new establishments to go down the same path as the existing ones.
- **Member White:** So price to install internal grease trap for new establishment is less than for the one that already exists.
- **Member Bergeront:** Only if we are talking about new constructions.
- **Health Agent:** This regulation would apply to new construction, renovations and existing establishments.

Board Members agreed to review proposed Grease Trap Regulations and schedule a discussion for the next meeting on April 12th, 2016.

- Clear Water Industries

Reduce maintenance on Waterloo Biofilter system at 105 East Chop Drive to twice a year

- **Health Agent:** We received the request from Clear Water Industries on behalf of owners of at 105 East Chop Drive. It is a seasonally occupied home and they ask our permission to reduce maintenance to twice a year.
 - **Member White:** Ade, what is your opinion?
 - **Member Bergeront:** Does it make it worse if septic is not used year round?
 - **Health Agent:** Depends on the system. Recommended maintenance should be performed four times a year. We can grant permission to reduce it to twice a year since the system is used seasonally.
 - **Member Campbell:** Does that property have a potential to be a year-round residence.
 - **Health Agent:** Yes. It is heated.
 - **Member Bergeront:** Do we have jurisdiction over this matter?
 - **Health Agent:** I met with Department of Environmental Protection on Monday, March 14th. We can allow them to conduct maintenance twice a year. If the house becomes a year round occupancy, we can always make them go back to four times a year.
 - **Member Campbell:** Is there any way we can keep track of it? If the property becomes occupied year-round how do we get notified?
 - **Health Agent:** Owners will be on Island during summer season. No decision has to be made until then. We can talk to them when they get here to get details
 - **Member White:** I suggest we make a motion on it today.
 - **Member Bergeront:** What would be a signal that system is failing?
 - **Health Agent:** I will see it on one of the inspection reports or a complaint may be filled by anyone that observes a failed septic on the property
 - **Member Campbell:** Can we dictate on what time of the year those inspections will be held?



- **Health Agent:** I would go by the recommendations made by Clear Water Industries. July and September.

*Member Bergeront motioned to allow owners of 105 East Chop Drive, Oak Bluffs reduce maintenance on Waterloo Biofilter system to twice a year July and September.
Motion was unanimously approved.*

Member White: Motioned to adjourned

Respectfully submitted by,
Alexandra Kral, Administrative Assistant