

MINUTES

Tompkins County Board of Health

October 23, 2018

12:00 Noon

Rice Conference Room

- Present:** Shawna Black; David Evelyn, MD, MPH; Edward Koppel, MD; Michael McLaughlin, Jr.; Susan Merkel; Janet Morgan, PhD; and Christina Moylan, PhD
- Staff:** Karen Bishop, Director of Community Health; Liz Cameron, Director of Environmental Health; Samantha Hillson, Director of Health Promotion Program; Frank Kruppa, Public Health Director; Deb Thomas, Director of Children with Special Care Needs; and Shelley Comisi, Administrative Assistant II
- Excused:** Brenda Grinnell Crosby, Public Health Administrator; William Klepack, MD, Medical Director; James Macmillan, MD, President, Board of Health Member; and Jonathan Wood, County Attorney
- Guests:** Karmjit Benipal, Operator, Sangam Restaurant; Amanda Champion, Tompkins County Legislator; Skip Parr, Senior Public Health Sanitarian; John P. Vico, Owner, Circus Truck; and Paula Winner, Community Mental Health Services Board Member

Call to Order: Vice President Michael McLaughlin called the regular meeting of the Board of Health (BOH) to order at 12:03 p.m.

Privilege of the Floor – Sangam Restaurant: Karmjit Benipal, operator of Sangam Restaurant, addressed the Board about the problem with his prep cooler. A few years ago, there was a problem with that cooler so he spent \$3,000 to repair it. This past summer, the health inspector visited the restaurant on a very hot day and the cooler was at 50°F. Committed to doing their best, he and his wife inspect the food themselves before it goes out. For 25 years, he has served many loyal customers without any complaints except this one. This is the first time he has been before the BOH. The cooler was fixed after the first inspection; unfortunately, there was a small gas leak. He presented a bill showing the cooler repair (Attachment 1).

Privilege of the Floor – Circus Truck: John Vico appeared before the BOH to discuss the two inspections of his Circus Truck. He noted the business is run professionally. Since he started serving food out of a “UPS type truck,” he has never had a single violation. When the first inspection occurred, it was one of the two hottest days of the year. Commercial refrigeration equipment is designed to be in a room at 70°F; however, the inspector’s thermometer read 99.8°F in the truck. In this hotter environment,

the inspector observed some food items out of temperature in a sandwich cooler. Mr. Vico emphasized he would never feed anyone any food that he would not feed his own children. The second inspection was another hot day so the unit was working extra hard but he tried to keep the unit closed and checked temperatures. The invoice he previously submitted shows a refrigeration specialist checked the sandwich unit. It is working properly. Believing the problem was due to the inspections occurring on hot days, he would appreciate the BOH reducing the fine from \$400. In addition, he wanted to voice his concern about the inspector. Since the concern involves personnel, Mr. Kruppa assured Mr. Vico that TCHD will investigate the matter.

Privilege of the Floor – Proposal to Ban Single-Use Plastic Bags: Amanda Champion, Tompkins County Legislator, spoke to the Board on the proposal to ban the distribution of single-use plastic bags in retail stores throughout Tompkins County. She has been working with the Environmental Management Council (EMC) in a subcommittee for the past six months to consider the issues. The group would be happy to give a presentation outlining their work to the BOH. With the concern about plastics in the environment, at least 15 municipalities in New York State as well as California and Hawaii have passed laws banning single-use plastic bags so there is a precedent. She is aware of the BOH's concern about the sanitary aspect of reusable bags and that should be addressed. Part of the EMC plan is to devote six to twelve months of education and outreach to the public, restaurants, and business owners. As for socioeconomic issues, the EMC is working with the Park Foundation to obtain a grant to purchase reusable bags for distribution to community members. The timeline for moving forward is a challenging question to answer. Many people on the Legislature support the ban but County Administration wants more time to consider it. Ms. Champion thanked Board members for the opportunity to speak to them. She reiterated her request to have an in-depth discussion before the BOH makes a statement regarding the proposed ban.

Approval of September 25, 2018 Minutes: Ms. Black moved to approve the minutes of the September 25, 2018 meeting as written; seconded by Dr. Koppel. The minutes carried with Dr. Morgan abstaining.

Financial Summary: Ms. Grinnell Crosby was not present for the meeting. In her absence, Mr. Kruppa provided a financial update. Due to a significant uptick in rabies biologicals this year, a request has been made to the Legislature to transfer some money to account for spending. Fortunately, there are some underspent program areas where monies are available to be transferred. For 2019, the budget line for the rabies program has been increased and staff is looking at ways to reduce costs. Rabies is 100% fatal so treatment will be provided to those who need it.

Administration Report: Mr. Kruppa reported:

- Last month, he was in Albany advocating for public health and mental health needs. As part of the New York State Association of County Health Officials (NYSACHO), he met with staff in the Governor's office to talk about increasing state aid for public health. It was a positive meeting with some movement to potentially allow changes in items eligible for state aid. Currently, fringe costs are ineligible. That change would be helpful to counties who do not have the resources to create positions. There was also a good conversation about recreational marijuana. State officials showed some receptiveness to having Public Health representatives at the table as details are discussed. In addition, he met with state leadership regarding mental health and substance use issues. Time was spent advocating for the Alcohol and Drug Council's detox proposal. There is a letter of intent on a facility in the Village of Lansing; however, the State has not made a commitment for ongoing operational funds. Staff is working hard to obtain that commitment.

- The Kresge Foundation’s Emerging Leaders in Public Health initiative has accepted and approved \$125,000 for our project proposal. He and Ms. Hillson are still working on the details of the project. So far, the focus has been on the following activities: identifying three staff members to participate in the Natural Leaders Initiative; meeting with local professional development coaches to select a suitable coach; and planning visits in November to two health departments from the previous Kresge grant cohort to learn from their experiences.
- Volunteers are needed for a Nominating Committee to consider and recommend: (1) a candidate to fill the impending vacancy in Dr. Macmillan’s physician position, (2) Dr. Evelyn’s application for reappointment, and (3) a slate of officers for 2019. Dr. Moylan, Ms. Black and Ms. Merkel volunteered to serve on the committee. To facilitate the decision-making process, the committee can communicate through email. After they decide on Dr. Evelyn’s application and the slate of officers, a vote on their recommendations can occur at the December 4, 2018 meeting. The physician vacancy will be filled on a timeline that is driven by the applicants.
- On December 4th, TCHD will be providing a special holiday lunch for the BOH in appreciation for the service and contribution of our Board members.

Follow-up question to Mr. Kruppa’s Report: With respect to state aid, Dr. Moylan asked about the impact on the county’s contribution for services if the State increased its aid. Mr. Kruppa explained state aid supports core public health services. The State reimburses 100% for the first \$650,000 spent on eligible services and reimburses 36% after that amount is reached. Fringe benefits are considered an ineligible cost. In Tompkins County, fringe benefit costs are covered through grants, fees or support from the County Legislature. TCHD would like to reinvest increased money from the State into additional public health services so the department would need to put forward a request to the Legislature not to decrease its contribution.

Health Promotion Program Report: Ms. Hillson mentioned she is in the midst of reapplying for the Healthy Neighborhoods grant through the New York State Department of Health (NYSDOH). It should be completed by the November 2nd deadline.

Medical Director’s Report: Dr. Klepack was not present for the meeting.

Division for Community Health Report: Ms. Bishop reported the nurses in her division are busy administering flu shots. She reminded everyone to get vaccinated.

In appreciation, Ms. Merkel thanked the Communicable Disease Team of Nanette Scogin and Kevin Zippel for coming to her class to give a presentation on STIs. The two nurses did a great job of sharing information with her students about incidents and controlling STIs. Ms. Bishop will relay her comments to the team.

Children with Special Care Needs Report: Ms. Thomas had nothing to add to the written report.

County Attorney’s Report: Mr. Wood was not present for the meeting.

Environmental Health Report: Ms. Cameron had nothing to add to the written report.

Report on the Community Services Board (CSB) Meeting: Dr. Macmillan, Ms. Merkel, and Dr. Morgan attended the October 1, 2018 meeting. Speaking for the group, Dr. Morgan commented most of the time was spent discussing the recreational marijuana letter previously discussed by the BOH. The CSB reviewed the steps involved in formulating the letter before making their additions. At the end of the discussion, the letter was jointly signed by the two boards and sent to Tompkins County Legislators.

Mr. McLaughlin thought the BOH/CSB joint meeting went well as a first effort to work together. He would like to see that collaboration continue.

According to Ms. Black, the Health and Human Services Committee (HHS) passed a resolution to support decriminalizing and legalizing marijuana in New York State by a 5-0 vote. The resolution will appear in front of the full Legislature on Tuesday, November 20th at 5:30 p.m. There will be public comment at the beginning of the meeting. She invited BOH members to attend and be a part of the conversation. At the state level, Governor Cuomo has established a workgroup to write the legislation and figure out the tax implications. Talking group sessions around the state have been well attended. She believes the legislation will be up for a vote in January or February.

Resolution #EH-ENF-18-0030 – Sangam Restaurant, C-Ithaca, Violation of Subpart 14-1 of the New York State Sanitary Code (Food): Karmjit Benipal, owner/operator of the Sangam Restaurant, addressed the BOH earlier in the meeting regarding two temperature violations.

Ms. Merkel moved to accept the resolution as written; seconded by Dr. Koppel.

Ms. Black made a motion to amend the resolution by reducing the fine from \$400 to \$200. She pointed out the owner has been in business for several years and this was his first appearance before the BOH. Furthermore, he produced a receipt showing the problem was fixed. For purposes of discussion, Dr. Moylan seconded Ms. Black's motion to modify the fine to \$200.

Board members considered the case summary showing there have been previous temperature violations. In the past five years, Dr. Morgan noted there has been a problem with refrigeration about once a year except in 2017. During a brief discussion about fines, Mr. Parr explained Public Health Law sets \$250 as the maximum amount for the first violation and \$500 for the second violation; therefore, the maximum penalty for this case would be \$750. Ms. Cameron added TCHD usually sets \$400 for an initial repeat violation in food service establishments which is within the regulatory framework but not the maximum. Ms. Black felt it was appropriate to reduce the fine since the owner made a serious effort and took corrective actions. Other members did not feel there were any extenuating circumstances to support the reduction.

The vote on the motion to reduce the fine to \$200: Ayes – 1; Nays – 6.

Mr. McLaughlin directed attention to the original motion and opened the floor to discussion. There was no further discussion. The vote to accept the resolution as written: Ayes – 6; Nays – 1; motion carried.

Resolution #EH-ENF-18-0031 – Circus Truck, C-Ithaca, Violation of Subpart 14-4 of the New York State Sanitary Code (Food): John Vico appeared before the BOH earlier in the meeting to represent his small business consisting of a mobile food truck.

Dr. Evelyn moved to accept the resolution as written; seconded by Ms. Merkel.

Ms. Black made a motion to amend the resolution by reducing the fine to \$200; the motion was not seconded. Concerned that many small businesses and restaurateurs struggle to make

ends meet, Ms. Black believes the \$400 fine is a consequential amount for a small business. She requested a future time to discuss lower fees for a first infraction. According to Ms. Cameron, TCHD historically has not fined any food establishment for the first violation. Owner/operators are given the chance to correct problems after the first violation without paying a penalty. Circus Truck was given that same opportunity. Ms. Cameron agreed it would be beneficial to discuss and formalize a policy. Her staff has been working on a written policy to bring to the BOH at some future time. The conversation will continue.

Mr. McLaughlin called for a vote. The vote in favor of the resolution as written: Ayes – 6; Nays – 1; motion carried.

Resolution #EH-ENF-18-0029 – Asian Taste, C-Ithaca, Violation of Subpart 14-1 of the New York State Sanitary Code (Food): Ms. Cameron stated the restaurant had repeat food out of temperature violations resulting in a first time fine of \$400.

Dr. Koppel moved to accept the resolution as written; seconded by Dr. Moylan. Ms. Black recused herself as she knows the owner. The vote: Ayes – 6; motion carried.

Resolution #EH-ENF-18-0032 – Tamarind, C-Ithaca, Violations of BOH Orders #EH-ENF-18-0018 and Subpart 14-1 of the New York State Sanitary Code (Food): Mr. Parr stated Tamarind is before the BOH for the third time in one year. The restaurant continues to have issues with food out of temperature, some items not stored under refrigeration, and storage issues involving toxic chemicals. The facility operators came for a conference with TCHD staff to hear about our concerns regarding the repeated violations. A \$1,250 fine is proposed. In addition, TCHD will be issuing short-term (three months) operating permits to monitor compliance. If there are continued violations of BOH Orders, TCHD will not issue a new permit to operate the facility. There has been no indication there is a language barrier. The operator has completed a ServSafe course which she has translated for her cooks and other food workers.

Dr. Morgan moved to accept the resolution as written; seconded by Dr. Moylan; and carried unanimously.

Resolution #EH-ENF-18-0036 – Sicilian Delight, V-Lansing, Violations of BOH Orders #EH-ENF-18-0017 and Subpart 14-1 of the New York State Sanitary Code (Food): Ms. Cameron reported Sicilian Delight appeared before the Board earlier this year. The facility continues to have violations. TCHD is proposing a \$1,000 penalty in addition to short-term operating permits. There is a payment plan for the previous penalties of \$1,100.

Dr. Morgan moved to accept the resolution as written; seconded by Dr. Moylan; and carried unanimously.

Discussion Regarding Public Health Concerns of a Plastic Bag Ban in Tompkins County: Mr. Kruppa expressed his appreciation to Ms. Champion for coming to the BOH to speak on the issue. In consultation with staff, he drafted the letter in the packet to provide a basis for discussion. It gives the Board an opportunity to be heard on this issue before any action is taken at the County level.

Main points from the discussion:

- There is no definitive timetable for Legislative action on the proposed ban.

- Mr. Wood brought this issue forward to the BOH at the last meeting. As County Attorney, he is responsible for crafting local law based on county policy and he also serves as the attorney for the BOH. Since Mr. Wood was aware that the NYSDOH had information related to reusable bags, he wanted to make sure the Board had a chance to consider the proposed ban.
- The National Environmental Health Association (NEHA) did a study using tracers on reusable bags and found contact on cashiers, baggers, counters, etc. but it was not connected to a disease study.
- It is reasonable to mention there are potential public health risks.
- The local law has not been written so the specifics of the ban have not been defined yet. EMC is putting forward some proposals. It would be helpful to have the EMC make a presentation to the BOH because the group has been studying and working on this issue for several years.
- Implementation and enforcement of the ban is currently outside the mission of TCHD so it would be new programming that would impact the department. However, there will be a need to educate the public about the safe practices for using reusable bags so there is the potential that TCHD would be involved.
- The BOH should make it clear to the Legislature that there needs to be appropriate funding to the department responsible for any new program.
- Perhaps a written statement in the form of a letter is unnecessary. The thoughts of the BOH could be verbally communicated. Ms. Champion and Ms. Black are two of the Legislators who were present to hear the conversation at this meeting.

After listening to Board members, Mr. Kruppa feels comfortable carrying their message forward. He will be making the BOH's concerns known to the people working on the issue.

Based on the discussion, Mr. McLaughlin summarized no action would be taken on the letter at this time. However, Dr. Moylan noted the issue could come back to the BOH at some future point in time.

Review and Approval of Use of Enhanced Treatment Units (ETUs) in Onsite Wastewater Treatment Systems in Tompkins County: Policy and Procedures: Ms. Cameron announced the change in the way the onsite wastewater treatment system program is implemented requires a policy. Enhanced Treatment Units (ETUs) (Attachment 2) provide more degradation of the biodegradables in the waste stream. These units are more expensive, more difficult to install, and must be maintained. Currently, ETUs are not included in our local sanitary code. There are standing waivers for replacement sewage systems that cannot be brought up to meet current code. Through the State Septic System Replacement Fund, there is funding for lakeside properties that have small lots. ETUs could help those owners. TCHD would issue an operating permit to ensure the ETU was being maintained and track the unit through our Accela software system. The ETUs would be used for small lots or other lots with siting constraints where a traditional system would not be effective. Owners of three properties have expressed interest in the unit and there is the possibility for some other locations.

There was a brief discussion about ETUs. Ms. Cameron advised these units are being proposed only for replacement systems – not new systems. If an owner wanted to use an ETU in a new project, the owner would have to obtain a waiver from the BOH. Concerns about enforcement have been raised if the owner fails to maintain the system and it does not cause obvious failure. Our engineer has worked on these units in Tioga County. His experience has been that people maintain them. When issuing an operating permit, staff would want to see a service contract.

Dr. Evelyn moved to approve the *Use of Enhanced Treatment Units (ETUs) in Onsite Wastewater Treatment Systems in Tompkins County: Policy and Procedures*, as written; seconded by Dr. Moylan; and carried unanimously.

Mr. Kruppa added that he supports the policy change. It is the single best way to achieve more effective treatment on smaller lots. From his experience with these units in the Florida Keys, there will be logistical problems. Some of the issues will be coming to the BOH.

Adjournment: At 1:50 p.m. Mr. McLaughlin adjourned the meeting.