

KINGSTON BOARD OF HEALTH MEETING MINUTES JULY 26, 2010

The Meeting of the Kingston Board of Health was called to order by: Chairman, Bill Kavol, In attendance were: Vice-Chairman, Jack Breen, Joe Casna, Dan Sapir, Bill Watson and Health Agent, Henny Walters.

7:02 Meeting called to order by Chairman, Bill Kavol

Bill Kavol wanted to bring up something that he is involved in, he donated \$100 for the new senior center and he is going around trying to get a 100 people to donate money to the center. He also cut a piece from the newspaper about a horse dying in Middleboro.

Departmental Bills Reviewed

Health Agent's Report

The Health Agent stated, attached is a letter from Jay Talerma, Town Counsel to Attorney, James F. Sullivan pertaining to wood burning stove 16 Foster Lane. Once cooler weather arrives the Board's Order will be re-activated as may be necessary.

Old Business

Review Executive Session June 14, 2010

Motion: Joe Casna as amended
Second: Bill Kavol
Vote 4-0-1, 1 present not voting Dan Sapir

Review July 12, 2010 Meeting Minutes

Motion: Joe Casna to accept minutes as presented
Second: Dan Sapir
Vote 3-0-2, 2 present not voting Jack Breen, Bill Watson

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New Business

Jack Breen asked about EEE anything new. Dan said I think in every circumstance we should place minutes and Health Agent's Report on the agenda every 2 weeks even if they are not ready.

Old Business

Dan Sapir said to get back to the Health Club issue he thinks we need to take some action. We didn't know about Kayla's Law until Jack Breen brought it to our attention. Now we are well aware of what happened to the young lady. We have talked about it we have also enacted a regulation. Dan said if we feel more comfortable going into Executive Session to have this discussion I think it would be more than warranted or we can have it in open session. Joe Casna said the State had already made a regulation covering this matter. What Jack Breen brought to our attention was not the regulation itself but a complaint of a violation. The regulation stated that during staffed hours someone should be available. The business did comply with that regulation prior to our regulation. Joe said, we could consider saying that any business that was in business prior to January 1, 2010 could be granted some form of a variance from this regulation non transferable to any other owner. I think the regulation was a good thing.

Motion: Joe Casna business could be grandfathered if in business as of January 1st, 2010 grant them a variance from our regulation which cannot be transferable to any other owner and to operate on that pretense.

Second: Jack Breen for discussion only

Discussion: Dan Sapir said we sat down for quite an exhausted study of this regulation. And when it comes to variances, I would never support your variance request. We cannot grant variances for health & safety issues. When laws changed for cigarettes you couldn't grandfather somebody that was selling cigarettes prior to new laws. Dan Sapir said he would make a motion to go into executive session Board of Health Regulations and potential non-compliance which could lead to litigation. Joe Casna said I would like to finish with the motion that I have on the floor. Dan said it was premature I would ask you to withdraw your motion, you are asking for the applicant that isn't here to ask for it. Dan also wants to make one more pitch to see if the Selectmen will see us as a Board. Last meeting Jack talked to a lawyer and you weren't sure about the indemnification issue. As a member of the board I talked to the Town Administrator about this and she got us the necessary paperwork and we are indemnified if it is an outside counsel. Dan said on other issues, I received a phone call from a guy named Sinclair, he is a member of the Carver Planning Board. Apparently they had a hearing on a request from franchise Anytime Fitness to go into Shaw's Plaza in Carver.

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That meeting has been continued to August 3rd. Dan also brought up the issue of tanning facilities. There is a State Law for tanning facilities that someone should be in attendance at all times that anyone is using a tanning booth. The Health Agent said letters were sent to all tanning facilities in the town stating the State Regulations. Jack Breen said there are a couple of motions to take a vote on. Dan said the 1st one is the grandfather for variances, Joe said, the language has been corrected the grandfather clause that could be enacted. Dan said he just wanted to say one more thing before the vote is called, I caution the Board that you would be setting a precedent. Joe Casna said no we won't because we closed the door, the motion clearly said that it is non-transferrable and you had to have been in business 1-1-10. Dan said you are advocating change. Dan said you are changing the regulations. Bill Kavol read the motion and stated that the motion that Joe has made is to grandfather the business as of 1-1-10. Bill Watson said now one of them can come in now and be open 24 hours a day.

Vote 0-0-1, Jack Breen-no, Joe Casna-yes, Bill Kavol-no, Dan Sapir-no, Bill Watson-no

Motion: Dan Sapir that we take one more shot to agree to meet in executive session or to meet with Selectmen over where we are at with this regulation and its application with this particular business.

Second: Bill Watson

Vote 2-0-3, Jack Breen-no, Joe Casna-no, Bill Kavol-no

Dan said there was no discussion on that.

Dan Sapir said where are we in this issue we defeated Joe's motion, we defeated my motion. Dan said, while this thing goes unabated, I would be only too happy to speak on behalf of the aggrieved if an accident ever happens at Anytime Fitness, I would testify against the Town of Kingston. And I would also suggest that there would be no indemnification because the actions of the Kingston Board of Health do not warrant indemnification. Jack Breen said I think Dan is absolutely correct. Dan said we have somebody that is in non-compliance right now in his own handwriting it would not be cost effective for him. Joe Casna said, we need a documented violation. Dan Sapir said if there is a lawyer who has municipal experience that is willing to take this job pro bono, he thinks it is a big issue what sticks here in Kingston could become a blue print for other towns. There is nothing wrong with contacting a lawyer. The Health Agent presented a letter that was written by counsel and signed by Joe Casna that stated Anytime Fitness is in non-compliance. Bill Watson said Mr. Pylant has already told the board that he is only there 8 hours a day, 5 days a week. Jack Breen said the last correspondence we got from Mr. Pylant stated that he has 2 people there. Let's find out, let's be aggressive and find out. Bill Watson said, than Jack you go down at 4 o'clock on a Sunday afternoon and do an inspection.

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Motion: Bill Watson to have Jack Breen do inspection at 4 o'clock Sunday afternoon at clubs, or any hour you want to go 3 o'clock in the morning.

Dan Sapir I would like to make a friendly amendment to the motion that I will go with Jack to do inspections.

Discussion: Bill Kavol said I will volunteer to go with Mr. Sapir Sunday night at 2 o'clock in the morning to do inspections. Dan said we will decide a date and time so no one will know when we will be going. We never chose to go into Executive Session on this issue. Bill Kavol & Dan Sapir will pick a time to do inspection at clubs.

Second: Joe Casna

Vote 5-0-0, unanimous

Dan Sapir asked the Board Members do you want me to get the name of this Lawyer who he is, or where his office is? Dan said, he didn't want to contact that Lawyer and make any thoughts or any issues with him without contacting the Board. Dan stated that he wanted to mention tanning facilities, he wants the Health Agent to order signs for all tanning facilities which states it must be supervised anytime someone is tanning and the door should remain open if no one is tanning. The Health Agent will deliver them by hand to each facility.

Motion: Jack Breen to adjourn

Second: Joe Casna

Vote 5-0-0, unanimous

8:55

Adjourn,

Respectfully submitted,
Linda G. Randall, Clerk

Linda G. Randall

Kingston Board of Health