

CITY OF ENGLEWOOD - BOARD OF HEALTH MINUTES

October 3, 2007

1. The regular meeting of the Board of Health, City of Englewood, Bergen County, was called to order at 8:09 p.m. by Lisa Levien, President, Board of Health.

PRESENT: Lisa Levien, President, Dianna Lachman, Vice President, Curtis Caviness, Jerald Chambers, and Dr. Blanche J. Skurnick.

ABSENT WITH APOLOGY: Dr. Lisa Wisotsky and Dr. Earl A. Marsan

ALSO PRESENT: Nelson Xavier Cruz, Director, Health Services/Secretary to the Board, Deborah Greene, Administrative Assistant/Office Manager/Registrar, Janet Kast, Executive Secretary, and Richard A. Lustgarten, Esq., Board of Health Attorney.

Mr. Lustgarten read the Public Notice, in compliance with the Sunshine Law, regarding the revised schedule for the Regular Meetings of the Englewood Board of Health for the remainder of the 2007 calendar year, and the Open Public Meetings Act statement.

2. Minutes of the September 10, 2007 Meeting

Motion to approve the minutes of the September 10, 2007 meeting was made by Dr. Skurnick, and seconded by Ms. Lachman. A roll call vote ensued:

Dr. Blanche Skurnick -	“Yes”	Jerald Chambers	-	“Yes”	
Curtis Caviness	-	“No”	Dianna Lachman	-	“Yes”

Mr. Caviness indicated, for the record, that he was voting no because he believed the Board was operating illegally.

Lisa Levien - “Yes”

Motion was carried.

Motion to approve the Minutes of the Closed Session of the September 10, 2007 meeting was made by Dianna Lachman, and seconded by Dr. Skurnick. A roll call vote ensued:

Dr. Blanche Skurnick -	“Yes”	Jerald Chambers	-	“No”	
Curtis Caviness	-	“No”	Dianna Lachman	-	“Yes”

Lisa Levien - "Yes"

Motion was carried.

Ms. Levien asked if there was anything to discuss. Mr. Caviness asked how a Board member who was absent from the previous meeting could vote on the Minutes. Dr. Skurnick responded that she had read the Minutes and was voting on that basis. Mr. Caviness then asked why the Minutes were signed by Mr. Cruz, and not by the Health Department employee asked to record the Closed Session. Dr. Skurnick answered that Mr. Cruz is Secretary to the Board. Mr. Caviness said there was a stenographer, a Secretary, and a tape recorder, and asked if Mr. Cruz's contract stated that he was Secretary to the Board. A discussion followed, and Mr. Lustgarten said the Board could entertain a motion to include the title of Secretary to the Board in Mr. Cruz's contract, "nunc pro tunc," or retroactive to its signing.

Motion to include the title of Secretary to the Board to Mr. Cruz's contract was made by Dr. Skurnick, and seconded by Ms. Lachman. A roll call vote ensued:

Dr. Blanche Skurnick -	"Yes"	Jerald Chambers -	"No"
Curtis Caviness -	"No"	Dianna Lachman -	"Yes"
Lisa Levien -	"Yes"		

Motion was carried.

3-7. Receipts/Bills/Employee Reports/Communications/Digest of Mail

Mr. Cruz reported on the receipts and bills for the month of September 2007. According to Mr. Cruz, the Department generated \$11,738.25 in total cash receipts and \$2,590.95 in total expenses for the month of September 2007.

Ms. Levien asked for a Motion to approve items 3-7. Motion was made by Dr. Skurnick, and seconded by Dianna Lachman. A roll call vote ensued:

Dr. Blanche Skurnick -	"Yes"	Jerald Chambers -	"Abstain"
Curtis Caviness -	"Abstain"	Dianna Lachman -	"Yes"
Lisa Levien -	"Yes"		

Motion was carried.

8. License Approvals

There were no licenses to be approved for the month of September, 2007.

OLD BUSINESS

9. Salary Ordinance No. 07-04

Mr. Cruz began a discussion of Salary Ordinance No. 07-04. Mr. Caviness asked what was different about the Salary Ordinance from what was introduced at last month's Board Meeting. Mr. Cruz said he was bringing it up for further discussion. Mr. Lustgarten said it could be re-introduced, with more discussion, requiring that it be read by title, or it could be discussed informally.

Ms. Lachman said she would prefer to vote on this ordinance when more Board members were present and when they had checked to see if these salaries were competitive. Ms. Levien asked if Mr. Cruz had investigated whether the salaries were competitive. Mr. Cruz asked Ms. Greene to elaborate on the methodology for the salaries. Ms. Greene talked about the minimum base salaries, and said they may not be considered competitive, but when there was only one person per title the budgeted salary had been used. If these minimum salaries are increased, that person must be given a raise accordingly. Ms. Lachman said if there were salaries lower than the minimums listed, a lower salary could be offered when someone leaves a position. She asked who had checked on these salaries with other municipalities. Ms. Greene said they hadn't. Ms. Lachman said this would require hiring someone at the minimum salary listed, which is a person's salary who has been employed for some time.

Ms. Greene said one person had declined a position because of the low salary. She indicated that there is one person in the Department at less than \$30,000, while there is not one position in the City for that type of position part time or full time at less than \$30,000. Ms. Greene explained that several years ago, the city's salary increases were structured so that employees making under \$30,000 were given flat rate increases in order to raise their salaries above the \$30,000 level, yet this person was later hired at \$26,000, which is egregious. Mr. Caviness said the Board should take care of the people at the bottom.

Ms. Greene said the positions were broken down, for this Ordinance, because some staff have more than one title or position. She said it may not be possible to hire one person to fill the position with multiple titles, that the person is filling right now.

Dr. Skurnick stated, regarding the part time/full time positions, that knowing the responsibilities for each position would be helpful, and thought this discussion should be tabled until they knew more about whether the minimum base is commensurate with other salaries. She said it is standard practice for a beginner to start at a lower salary than an experienced person. You need to know the responsibilities and the hours of the person who is leaving, that the salary is based on.

Ms. Levien had two suggestions: that they have a description of the jobs, and have a committee report back to the board in two or three months. Mr. Caviness interjected that this was not acceptable without the Health Officer, that it was illegal. He read a section from Practice Standards relating to the Health Officer's duties and responsibilities. Dr. Skurnick asked for a

copy of what he was reading from, and said she didn't think the Health Officer had to be part of the committee. Mr. Caviness said all Board members had a copy of the Practice Standards.

Mr. Lustgarten said that defining the task of each person would help determine a reasonable salary range for each title. His recommendation was to form a sub-committee to explore all titles, get a job description for each, and get analyses from comparable towns and their salary ranges. He asked if there were titles there that are not filled, if the Board should get a full definition of those. Mr. Caviness asked about Practice Standards, since it contains job descriptions and since all Board members would be on the same page. Dr. Skurnick said it was a good recommendation.

Mr. Lustgarten asked for a consensus of the Board regarding a sub-committee to study Englewood Health Department salaries incorporating Mr. Lustgarten's recommendation. Motion was made by Dr. Skurnick, and seconded by Dianna Lachman. A roll call vote ensued:

Dr. Blanche Skurnick	-	"Yes"	Jerald Chambers	-	"No"
Curtis Caviness	-	"No"	Dianna Lachman	-	"Yes"
Lisa Levien	-	"Yes"			

Motion was carried.

10. Medicare Provider Status

Mr. Cruz reported that the Englewood Health Department application to be a Medicare provider had been approved, which will help offset any costs incurred for the flu and pneumonia vaccines. As a Medicare provider, the Englewood Department of Health will have the ability to get reimbursed for flu and pneumonia vaccines under Medicare Part B. Dr. Skurnick congratulated Mr. Cruz on receiving the Medicare Provider Certification, indicating that it had been an issue before his hire. Ms. Levien asked if this coverage applied to other services. Mr. Cruz said it could possibly cover other screenings in the future, but that the primary reimbursement was flu and pneumonia.

Mr. Chambers asked how a person could qualify for Medicare Part B. Mr. Cruz said Medicare Part B covers out-patient services, Medicare Part A covers inpatient services, and Medicare Part D covers prescriptions; for persons 65 years of age and older, disabled, etc. As a Medicare certified provider, health maintenance services rendered by the Health Department to Medicare beneficiaries would be reimbursed.

NEW BUSINESS

11. Resolution No. R07-10 - Appointment of Dr. Suzie Jean-Louis as Health Educator

Mr. Caviness said this was one of the responsibilities of the Health Officer, and not in the purview of what the Board should be doing at the present time. Ms. Lachman reminded him that

the Health Officer was not available at this time, and if necessary, a backup from another town would be consulted. Mr. Caviness stated that a Health Officer from another town would not be making personnel decisions for Englewood. There was general discussion on this point.

Mr. Cruz read the Resolution No. R07-10 in its entirety. A motion to adopt the resolution was made by Dr. Skurnick, and seconded by Dianna Lachman. A roll call vote ensued:

Dr. Blanche Skurnick	-	“Yes”	Jerald Chambers	-	“No”
Curtis Caviness	-	“No”	Dianna Lachman	-	“Yes”
Lisa Levien	-	“Yes”			

Motion was carried.

Ms. Levien welcomed Suzie Jean-Louis to the Englewood Health Department staff.

12. Flu Clinics

Mr. Cruz stated that two dates have been scheduled for flu clinics: Friday, October 26, 2007, from 9:00 a.m. to 11:00 a.m., at the Englewood Municipal Court, and Wednesday, November 7, 2007, from 10:00 a.m. to 11:00 a.m., at the Englewood Health Department. He said we have received 410 doses of flu vaccine, and have prepared press releases and promotional flyers advertising the clinics in English and in Spanish.

Dr. Skurnick remarked that it was a good idea to offer pneumonia vaccines. Mr. Cruz answered that both flu and pneumonia vaccines had been purchased and received. Dr. Skurnick spoke about the importance of pneumonia vaccines for persons over the age of 65 and the chronically ill, and was pleased that they were being offered at the Health Department. Ms. Lachman asked if a prescription from a private doctor was needed to get a vaccine. Mr. Cruz said it was not necessary, but they should bring their Medicare cards.

Mr. Caviness asked Ms. Greene how many years the Health Department had been offering flu and pneumonia shots. Ms. Greene answered that both had been offered for as long as she had been employed, which was 14 years. Dr. Skurnick said that, in her tenure on the Board, she had not noticed the pneumonia vaccines on the flyer before.

Ms. Levien asked how the flyers were distributed. Mr. Cruz said they had been provided to some community-based organizations, faith-based organizations, schools, stores, and some eating establishments, and were available at the Health Department. Ms. Greene said an ad would be published in the Suburbanite next week, and it was already on the City web site.

13. Request for City Abatement/Cost Recovery - 148 William St.

Mr. Cruz summarized the raw sewage problem at 148 William Street, which was affecting

properties from 144 to 156 William St. and referred the Board to the enclosure in their Board Packets. He stated there was a discharge of raw sewage to the street and sidewalk, bad odor, and stagnant water. An abatement notice went to the property owner on September 21, 2007. The abatement notice deadline of September 28, 2007 expired and was not met. The property owner was non-compliant as of September 29, 2007, and a summons will be issued daily until the problem is abated.

Mr. Cruz read from the revised Health Code of the City of Englewood, New Jersey, under Chapter 10, Article 1, on Prohibitions of Specified Nuisances, and 10-1(a), it states that “the following matters, things, conditions, or acts and each of them are hereby declared to be a nuisance and injurious to the health of the inhabitants to this City” and specified in 10-1 (a) as “Any matter, condition, or act which is or may become detrimental or a menace to the health of the inhabitants of this City” and 10-1 (c) as “Pollution, or existence of a condition or conditions which cause or threaten pollution, of any waters in this City in such manner as to cause or threaten injury to any of the inhabitants of this City either in their health, comfort or property, including surface overflow or discharge of sewage.”

Mr. Cruz said that since the property owner had been duly notified and was non-compliant, he was asking the Board to request that the City perform the abatement and recover all costs incurred by the City from the property owner.

Mr. Lustgarten pointed out that the first notice had been sent to the residents of that address on September 6, 2007. Mr. Caviness asked why this matter was being brought to the Board’s attention. Mr. Cruz answered that he thought the Board had a duty and responsibility to protect the residents’ health. Mr. Chambers asked what the Board could do. Mr. Cruz said the Board could assist with getting the City and the DPW involved, as the Department had utilized and exhausted all options available to ensure the property owner is compliant with the order for abatement.

Ms. Levien asked if the Board should request that the City perform the service. Mr. Caviness said that was called a summary abatement, where the City can put a lien on the property, but he questioned why this was being brought to the Board. He said a summary abatement should be sent to the City Engineer and that in his three terms on the Board, this kind of matter had never been brought to the Board.

Ms. Levien said she thought the Board of Health would be the first step towards abatement. She read from the Health Code, Chapter 10, Article 2, Abatement of Nuisances, “If the owner, tenant or occupant upon being notified as provided by this Article shall not comply with such notice within the time specified therein and fails to remove or abate such nuisance, the Board of Health shall proceed to abate the nuisance or may cause it to be removed or abated in a summary manner by such means as the Board shall deem proper.” She said the staff has done what it needed to, and now it is before the Board.

Mr. Lustgarten said the structure of Article 2 comes to the Board of Health as one part in the process, and acts as a check and balance, but the full impact is on the property owner. He asked for a consensus that this is an immediate health hazard and should be referred to a City agency, with the bill to be sent to the property owner. Mr. Caviness said that could be flawed and that this is not the proper place for it to be done and that the Board could be opening up a can of worms.

Mr. Chambers asked if there was any precedent. Mr. Lustgarten said he didn't know, but the situation had been brought to the Board's attention, and asked if they wanted to refer it to the appropriate authority. Mr. Caviness said if a Court summons was issued, and monetary fines have been levied, a lien could be placed on the property. Mr. Lustgarten stated that there was a concurrent process--a Court process and an abatement process. Mr. Caviness asked if there was a double jeopardy issue, and what would happen if the sewage was not coming from that property. Mr. Lustgarten said this was only an allegation.

Dr. Skurnick asked for clarification on who was going to clean up the street. Mr. Cruz said he had been in contact with DPW and they would go to the City Council. Ms. Levien said since the idea is to not have raw sewage spilling out to the street and sidewalk, she asked for a Resolution to send to DPW, indicating that this is unhealthy. Mr. Chambers felt the problem was already being addressed and didn't think it was necessary for Mr. Cruz to send a letter or for the Board to adopt a Resolution to have this taken care of. He said their role was as an Advisory Board and they didn't know what was causing the sewage problem.

Mr. Lustgarten agreed that they didn't know the source, but said that there is a sewage problem and there is no court date for another 14 days. He said this would only mean that the Board was referring it to another City agency.

Mr. Chambers said if there is a problem this serious, it should not wait 2-3 weeks, and Mr. Cruz should be designated to interface with the property owners at City Hall. Mr. Chambers discussed potential liability, and said the Board needed to be very careful. Mr. Lustgarten responded that they had tort claims immunity, and as long as the Board acted reasonably, they would not be liable.

Mr. Caviness said that, based on his experience in Teaneck, the Board needed to be careful not to put themselves in a position where they were legally exposed and subject to a potential lawsuit.

A Motion was made to send a letter to City Administration as soon as possible to have this abated by the City, by Dianna Lachman, and seconded by Dr. Skurnick. A roll call vote ensued:

Dr. Blanche Skurnick	-	"Yes"	Jerald Chambers	-	"Yes"
Curtis Caviness	-	"No"	Dianna Lachman	-	"Yes"
Lisa Levien	-	"Yes"			

Motion was carried.

14. Date of Next Meeting - November 7, 2007

Ms. Levien acknowledged that the date of the next Board of Health Meeting was Wednesday, November 7, 2007, at 8:00 p.m.

Ms. Levien inquired about the 2006 Englewood Health Department Annual Report. Mr. Cruz said the last Annual Report published was for 2005. He said there was a draft for 2006, but that it needed to be finalized. Ms. Levien asked if it was possible to have it done before the next Board Meeting. Mr. Cruz said he would have a draft for the Board to review at the next meeting.

A motion was made to open the Public Session by Dianna Lachman, and seconded by Dr. Skurnick. A roll call vote ensued:

Dr. Blanche Skurnick	-	“Yes”	Jerald Chambers	-	“No”
Curtis Caviness	-	“Yes”	Dianna Lachman	-	“Yes”
Lisa Levien	-	“Yes”			

Motion was carried.

Public Session

Mr. Carter Jackson

Mr. Jackson said 136 Humphrey Street had raw sewage for more than a year, and that the Health Department had done absolutely nothing about it, even though the neighbors complained. The Engineering Department told the resident it might be his fault. The residents had to do the repairs themselves, and now they are going to sue the City. This new sewage problem might be along the same line as the other one.

Ms. Cornelia Rogers

Ms. Rogers said the problem with sewage at Humphrey Street went on for several years. She said when the Board of Health was notified, they said it was a water problem. When United Water Company went there, there were seven incidents of digging and patching, that went on for several years. Not long ago they were threatened with fines. She said this is causing problems, not only on Humphrey Street but also on William Street, and this is an engineering problem.

Mr. Eugene Skurnick, 296 Marlboro Rd.

Mr. Skurnick congratulated Mr. Cruz and the Board for addressing this problem in the 4th Ward. He said he was glad the Board of Health was taking the initiative on public health related problems there, as nothing had been done for years. He said the poor people were being taken advantage of, and those responsible should be taken to court and fined for each day since

inception.

Ms. Cornelia Rogers

Ms. Rogers repeated her previous statement that the City Engineer is well aware that this is an engineering problem. She said the Engineer altered the size of the pipes, and that is the Engineering Department's responsibility.

Diane Jordan

Ms. Jordan said her understanding was that the public wasn't to speak until the Public Session was open, but noted there were people from the public speaking out of turn and passing notes around when they were not in Public Session. She asked if this was legal.

Several Board members agreed that no one should speak out of turn, but that they do accept notes that are passed to them, and that this happens frequently.

Chief David Bowman

Chief Bowman responded to a remark made earlier by Eugene Skurnick about his title, and said that his position is still Chief, and that he would not tolerate that kind of disrespect.

A Motion to close the Public Session was made by Curtis Caviness and seconded by Jerald Chambers. A roll call vote ensued:

Dr. Blanche Skurnick	-	"Yes"	Jerald Chambers	-	"Yes"
Curtis Caviness	-	"Yes"	Dianna Lachman	-	"Yes"
Lisa Levien	-	"Yes"			

Motion was carried.

Mr. Chambers returned to the situation regarding the raw sewage, and said the Board could be opening themselves up for a lawsuit. He said many of these water and sewer systems in Englewood are very old, and the home owner could not be blamed every time. Ms. Levien said no one wants raw sewage in the street, and if the Health Department/Board refers it to the proper City authority, it should be addressed quickly. Mr. Chambers said he agreed that it should be addressed, but the Board needed to work very closely with the Engineering Department to see who is at fault.

Mr. Caviness said they should follow due process. He asked how we knew that was raw sewage and how we knew where it came from. Mr. Lustgarten repeated that these are allegations coming before the Board. The only action the Board took was to refer this to the appropriate City personnel in another City agency. They must use due diligence.

Ms. Lachman made a Motion to Adjourn, seconded by Dr. Skurnick. All members voted “aye,” in favor. Motion was carried.

The meeting officially adjourned at 9:20 p.m.

Respectfully submitted,

Nelson Xavier Cruz
Secretary to the Board
/jk