

Description		
Date	07/01/2011	Location
		Board of Health
Time	Speaker	Note
7:48:50 AM		Members Present: Robin Cory, Berk Knighton, Laura Larsson, Brian Leland, Gretchen Rupp, Buck Taylor, Carson Taylor, Barbara Vaughn Excused: Bill Murdock Deputy County Attorney: Chris Gray Staff: Matt Kelley, Tom Moore, Nancy Rangel, Tim Roark Public: Nicole Olmstead, Jerry Ritter, Terry Threlkeld, Michael Tucker, Art Wittich
8:00:32 AM	Special Meeting	Called to Order
8:00:32 AM		Disclaimer for Audio Broadcasting
8:00:34 AM		Public Comment of a Non Agenda Item - none
8:00:36 AM		Consent Agenda
8:00:41 AM	Motion	Gretchen made a motion to approve the consent agenda as we find in the packet with minor typographical changes
8:00:43 AM	Second	Laura seconded the motion.
8:01:50 AM	Vote	Roll Call: Berk - yes Carson - yes Robin - yes Laura - yes Brian - yes Gretchen - yes Buck - yes Barbara - yes The motion passed unanimously.
8:02:55 AM	Carson Taylor	Regular Agenda – Carson Taylor Briefing to the Board of Health Regarding the Korner Klub Hearing Carson Taylor briefed the Board on the procedures of an informal contested hearing. The issue is whether or not to over rule the decision of the Health Officer in the matter of the refusal to validate the Korner Klub Food License . The key is to make a decision based on the evidence and testimony presented at the hearing. Carson gave instructions on procedural matters and asked the Board to take good notes in case the hearing is continued and stated that he is in charge of the process and the Board is in charge of the substance. Carson stated as the "hearing examiner" he will not vote.
8:16:45 AM		Gretchen asked what role Chris Gray, Gallatin County Attorney, will take. Carson explained that Chris is the Health Department attorney and if the Board has any legal questions, they need to address them to him (Carson). Brian asked about the appeal process.
8:40:09 AM		Adjourned
8:40:11 AM	Hearing	Members Present: Robin Cory, Berk Knighton, Laura Larsson, Brian Leland, Gretchen Rupp, Buck Taylor, Carson Taylor, Barbara Vaughn Excused: Bill Murdock Deputy County Attorney: Chris Gray

		Staff: Matt Kelley, Tom Moore, Nancy Rangel, Tim Roark Public: Nicole Olmstead, Jerry Ritter, Terry Threlkeld, Michael Tucker, Art Wittich
8:40:11 AM		In the Matter of Food License #FL8845 for the Korner Klub Hearing Appeal of Health Officer's Refusal to Validate License
8:40:13 AM		Meeting Called to Order
8:41:34 AM		Art Wittich, the lawyer representing the Korner Klub, asked to exclude any witnesses from the county until they have been called to testify.
8:42:57 AM		Carson granted the motion that Tom, Tim and Nicole, as fact witnesses, be removed from the courtroom until their testimony.
8:43:33 AM		Chris Gray, Deputy County Attorney representing the Health Officer, Matt Kelley, asked that the witnesses for the Korner Klub be excluded until they have been called upon to testify. After brief discussion, all witnesses left the courtroom.
8:45:13 AM		Art described the purpose of the hearing. For the record, he stated that he made a motion on Tuesday (June 28th) for a 60-day continuance of this hearing and stated it was a standing motion before the Board today. He asked for a continuance based on documents, provided by the county, were received late in the process and felt he would not be prepared in time. The Hearing Examiner denied the continuance.
8:47:36 AM	Motion	Art made a motion to continue the hearing.
8:48:04 AM		Chris explained the meeting scheduling process. Many months have passed since the original letter requesting information (Exhibit R1) was sent to Mr. Ritter in February 2011; a 30-day time-frame to appeal was given and an appeal was made; a subsequent hearing date was set and that was continued; then a pre-hearing conference was held on June 16th when the first request for documents was made. Chris asked the Board to deny the motion at this time thereby confirming Carson Taylor's decision not to grant the motion to continue for another 60 days.
8:49:54 AM		Art stated that there is much in the public record that was not in the February letter. He needs more time to gather evidence.
8:51:00 AM		Carson stated that on May 9th he wrote a letter to Mr. Ritter and Mr. Wittich setting the original hearing date on May 27, 2011. That date was continued and the hearing was rescheduled for today's date. Carson explained the exchange of information and how the request for a continuance was discussed and denied. Art had additional information that he requested and had not yet received.
8:54:39 AM		Barbara asked about the nature of the additional information.
8:55:04 AM		Art stated that he is not sure of the contents as he has not reviewed the documents and there may be more information and communications regarding his client and the business that he wants to find out. Typically, there is an exchange of all information and from what he was provided, he does not think he got all of the information.
8:58:14 AM	Motion	Brian made a motion to deny the continuance, to proceed with the hearing and to wait until the end of the day to determine the need for a continuance.
8:58:26 AM	Second	Buck seconded the motion.
8:58:31 AM		Board discussion - Gretchen stated that it had been 4-1/2 months since the letter was sent and supports Brian's motion. She also asked about the additional information. Robin asked if the restaurant is in operation and will it

		continue to operate?
9:01:03 AM	Vote	Roll Call: Berk - yes Robin - yes Laura - yes Brian - yes Gretchen - yes Buck - yes Barbara - yes The motion passed unanimously.
9:01:40 AM	Opening statements	Art explained that all restaurants require a license to operate. On February 14, 2011, the Health Officer, Matt Kelley, sent a letter to Jerry Ritter refusing to validate the Korner Klub 2011 food license because of wastewater treatment issues. Art asked the Board to examine the evidence and not to be a rubber stamp for the health officer.
9:05:15 AM		Chris stated that this is a simple case. On February 14, 2011, the Health Officer refused to validate, in writing, the 2011 food license because the Korner Klub does not have the proper approvals for their Public Wastewater Treatment System. Chris reminded the Board of the campylobacter outbreak at the Campfire Lodge in Hebgen Lake in which at least 90 people were sickened in 2010, with many admitted to the hospital. He said the circumstances surrounding Korner Klub – a business with an old, unknown septic system functioning beside a public water system that has a history of monitoring problems – make it susceptible to the same type of public health risks as at Campfire Lodge.
9:07:31 AM	Evidence RI	R1 administered into evidence - Letter of February 14, 2011 .
9:08:07 AM		Matt Kelley, Gallatin City-County Health Officer called to testify.
9:08:26 AM		Carson Taylor swore Matt Kelley into oath.
9:08:38 AM	Testimony	Matt Kelley testifies.
9:29:49 AM	Evidence KK10	KK10 admitted into evidence - February 24, 2011 email regarding meeting with Jerry Ritter .
9:36:04 AM	Evidence KK12	KK12 admitted into evidence - March 1, 2011 article in The Belgrade News
9:41:28 AM	Evidence R8	R8 admitted into evidence - Retail Food Large Restaurant License
9:45:05 AM	Evidence KK1	KK1 admitted into evidence - previous years Korner Klub Restaurant Licenses.
9:45:07 AM		Matt Kelley excused from the witness stand.
10:04:36 AM		Board Discussion.
10:13:04 AM		Tom Moore called to testify.
10:13:53 AM		Carson Taylor swore in Tom Moore under Oath.
10:13:59 AM	Testimony	Tom Moore testifies.
10:18:23 AM	Evidence KK3	KK3 admitted into evidence - November 1, 2010 Complaint against Korner Klub.
10:25:29 AM	Evidence R4	R4 admitted into evidence - Gallatin County Septic Tank and Sewage System Permit No. 532.
10:26:56 AM		Tom excused from witness stand.

10:27:00 AM		Tim Roark called to testify.
10:27:49 AM		Carson swore in Tim Roark under Oath.
10:27:49 AM	Testimony	Tim Roark testifies.
10:34:56 AM	Evidence KK6	KK6 admitted into evidence - Tim Roark's email correspondence to DEQ dated February 8, 2011 and DEQ response dated February 9, 2011.
10:48:11 AM	Evidence R2	R2 admitted into evidence - Letter dated February 9, 2011 from Tim Roark to DEQ.
10:48:11 AM	Evidence R3	R3 admitted into evidence - Letter dated February 10, 2011 from DEQ to Tim Roark.
11:07:49 AM		Board Discussion.
11:15:47 AM	Evidence R6	Sewage Disposal Application dated December 4, 1985 admitted into evidence.
11:17:50 AM	Evidence R5	Gallatin County Septic Tank and Sewage System Permit dated 1973 admitted into evidence.
11:19:01 AM		Tim Roark excused from witness stand.
11:19:08 AM		Terry Threlkeld called to the witness stand.
11:28:09 AM		Carson Taylor swore Terry Threlkeld under Oath.
11:29:29 AM	Testimony	Terry Threlkeld testifies.
11:37:40 PM	Evidence KK19	KK19 admitted into evidence – Affidavit of Steve Kilbreath
12:21:10 PM		Terry excused from the witness stand.
12:22:29 PM		BREAK
1:35:32 PM		Jerry Ritter called to testify.
1:35:39 PM		Carson Taylor swore in Jerry Ritter under Oath.
1:40:43 PM	Testimony	Jerry Ritter testifies.
1:49:29 PM	Evidence 18	KK18 admitted into evidence - signed Statement Affidavit by Mike Boylan.
2:38:39 PM		Jerry Ritter is excused from the witness stand.
2:38:48 PM	Testimony	Matt Kelley testifies and is still under oath.
3:13:36 PM		Matt is excused from the witness stand.
3:14:42 PM	Motion	Art renewed his motion from the beginning of the proceeding for a 60-day continuance. Art asked for the time in order to produce Brett Walker as a witness, to have a response from DEQ to produce existing records, and to obtain emails between the County and State. He believes the documents would prove the septic system validation. Discussion commenced regarding the letter Environmental Health sent to Jerry Ritter, the exhibits and how Brett Walker's testimony would make a difference.
3:22:22 PM		Chris asked the Board to deny the motion and move on with a decision.
3:23:15 PM		Board discussion.
3:33:23 PM	Motion	Buck made a motion that the Board does not continue today's hearing and press ahead.
3:33:37 PM	Second	Gretchen seconded motion.

3:33:42 PM	Vote	<p>Roll Call: Berk - yes Robin - yes Laura - yes Brian - yes Gretchen - yes Buck - yes Barbara - yes</p> <p>The motion passed unanimously.</p>
3:53:53 PM	Closing Arguments	<p>Art stated he has the burden of proof to show Mr. Kelley was wrong. He is asking the Board to deny Mr. Kelley's decision due to no records, no evidence of rejection, no system failure or a permit. He referred to Exhibit R1 and the MCA's. Mr. Ritter was never asked about his septic approval prior to receiving the letter of refusal for his food license validation. There were no public health complaints. He asked if there is a public health concern regarding this septic system? Would like to look forward and discuss solutions.</p>
4:04:32 PM		<p>Chris gave closing arguments and referred to the Campfire Lodge outbreak last summer due to faulty septic and water systems, as an example of how things are done the old way. This Board is duty bound to protect the public health. The Korner Klub has a similar scenario as we don't know what they have in place for a sewer system. There are no approved plans for a wastewater treatment system at the Korner Klub. Matt has the duty to protect the public health. The records are clear that DEQ states he does not have an approved septic system, the law states you cannot validate a license without an approved system.</p>
4:11:29 PM		<p>Testimony is closed</p>
4:12:02 PM		<p>Carson gave directions to the Board on making a decision and explained the options.</p>
4:23:29 PM		<p>Board discussion.</p>
4:38:56 PM	Motion	<p>Laura made a motion: In the case of the notice of refusal to validate license # FL8845 in as much as we were unable to find an approved septic system according to 75-6-112 MCA I make a motion to uphold Matt Kelley's findings and that the Korner Klub does not have a current valid restaurant license.</p>
4:39:56 PM	Second	<p>Brian Leland Seconded.</p>
4:40:15 PM	Modified Motion	<p>Laura modified motion to "affirm Matt Kelley's decision not to validate the Korner Klub's Restaurant License based upon 75-6-772 MCA.</p>
4:40:21 PM	Second	<p>Brian seconded motion with modification.</p>
4:40:51 PM		<p>Do we assume the two parties are going to work something out or do we need to do something more formal. Board discussion.</p>
4:41:31 PM	Friendly Amendment	<p>Berk Knighton amended the motion to strike Matt Kelley's name and replace it with Health Officer.</p>
4:41:53 PM	Second	<p>Brian Leland Seconded the motion</p>
4:42:14 PM		<p>Brian would like to make sure that the parties can get together and work out some methodology to give the Health Officer the comfort level that he needs to validate the restaurant's food license so Mr. Ritter can continue to operate until such time a solution can be worked out.</p>
4:43:21 PM		<p>Roll Call: Berk - yes</p>

	Vote	Robin - yes Laura - yes Brian - yes Gretchen - yes Buck - yes Barbara - yes The motion passed unanimously.
4:43:44 PM		Facts of Findings due on July 24, 2011.
4:44:05 PM		Hearing Adjourned

Secretary

Date

Chair

Date