



## MINUTES

### ***Southern Nevada District Board of Health Meeting***

625 Shadow Lane  
Las Vegas, Nevada 89106  
Clemens Room

***Thursday, October 25, 2007 - 8:00 A.M.***

Chair Steven Kirk called the meeting of the Southern Nevada District Board of Health to order at 8:04 a.m. Stephen Minagil, Legal Counsel confirmed the meeting had been noticed in accordance with Nevada's Open Meeting Law and that a quorum was present. Chair Kirk led the Pledge of Allegiance.

#### Board Members Present:

Steven Kirk  
Gary Reese  
Ricki Barlow  
Jim Christensen, MD  
Susan Crowley  
Robert Eliason  
Joseph Hardy, MD  
Tim Jones  
Mary Jo Mattocks, RN  
Linda Strickland  
Lawrence Weekly

Chair, Councilman, Henderson  
Secretary, Councilman, Las Vegas  
Councilman, Las Vegas  
At-Large Member, Physician  
At-Large Member, Environmental Specialist  
Councilman, North Las Vegas  
At-Large Member, Physician  
At-Large Member, Regulated Business/Industry  
At-Large Member, Registered Nurse  
Councilmember, Boulder City  
Commissioner, Clark County

#### Absent:

Chris Giunchigliani  
Bubba Smith  
Travis Chandler  
Tom Collins  
Frank Nemec, MD  
John Onyema, MD  
Steven Ross  
Gerri Schroder  
Stephanie Smith  
Debra Toney, RN

Vice Chair, Commissioner, Clark County  
Councilmember, Mesquite  
Councilmember, Boulder City Alternate  
Commissioner, Clark County Alternate  
Alternate At-Large Member, Physician  
Alternate At-Large Member, Physician  
Councilman, Las Vegas Alternate  
Councilwoman, Henderson Alternate  
Councilwoman, North Las Vegas Alternate  
Alternate At-Large Member, Registered Nurse

#### Executive Secretary:

Lawrence Sands, DO, MPH

#### Legal Counsel:

Stephen R. Minagil

Other SNHD Board of Health Members/Alternates Present:

Lonnie Empey  
Jimmy Vigilante

Alternate At-Large Member, Environmental Specialist  
Alternate At-Large Member, Regulated Business/Industry

SNHD Lobbyists:

Bryan Gresh  
Gary Milliken

Staff: Mike Walsh; Dennis Campbell; Rory Chetelat; Angus MacEachern; Deborah Williams; Patricia Rowley; Ann Markle; Bonnie Sorenson; Bob Gunnoe; Nancy Gerken; Maria Teresa Johnson; Dan LaRubio; Maria Azzarelli; Jorge Viote; Ed Larsen; Jo Alexander; Nikki Burns-Savage; Angela Jones; Clayton Sellers; Tammie Easterday; Cara Evangelista; Lorraine Oliver; Veronica Morata-Nichols; Glenn Savage; Mary Ellen Harrell; Patty O'Rourke-Langston; Gwen Osburn; Jennifer Sizemore; Stephanie Bethel; Leo Vega; Lance Johnson; Recording Secretaries: Shelli Clark and Diana Lindquist

**ATTENDANCE:**

<u>NAME</u>	<u>REPRESENTING</u>
Joseph Roche	American Shredding
Rob Vincent	American Shredding
Milen Mitchevi	Rebond and Foam Recycling
Silvia Georgieva	Rebond and Foam Recycling
Terry Montgomery	Redrock Engineering for Elizabeth Caruso
Fredrick Gregoryan	Self
Dale Martin	Hardin & Sons, Inc. (Gregoryan Res.)
Lex Anderson, RN	Self (former nursing employee)
Linda Anderson	Attorney General's Office / Health Division
Stephanie Bruning	City of North Las Vegas
Katie Fellows	Jones Vargas
Melissa Moyer	Touro University – PA student
Annette Wells	Review Journal
Jim Wadhams	Jones Vargas
Seon Higgins	Herbst Gaming
Trevor Hayes	Lionel Sawyer & Collins
Valerie Miller	Las Vegas Business Press
Don Lyle	KVVU Fox

Chair Kirk asked Dr. Sands if there were changes to the agenda. Dr. Sands confirmed there were no changes. Chair Kirk called for a motion to approve the agenda as presented.

*A motion was made by Member Reese to approve the agenda as presented; seconded by Member Mattocks and was unanimously approved.*

**RECOGNITIONS:**

**3<sup>rd</sup> Annual "Feets & Seats" Drive**

Bob Gunnoe, human resources supervisor, stated that Amended Hearts and Community 9-1-1 partnered with Child Haven for the 3<sup>rd</sup> annual "Feets & Seats" Drive, and had hopes to solicit 3,000 pair of sock and underwear for children under the custody of Child Haven. County Manager Virginia Valentine challenged the 2008 Clark County Leadership Forum to embrace this drive as a service project. SNHD staff donated 1,290 pair of socks and underwear, which accounts for 40% of the entire county's goal. Three agencies were recognized at the collection ceremony on October 10<sup>th</sup>, including Clark County Fire & Rescue, Clark County courts, and the Southern Nevada Health District. Mr. Gunnoe displayed some artwork presented to the district created by the children of Child Haven.

Dr. Sands said that this was an example of the devotion of health district staff and the response rendered when service is needed.

### **2007 Silver Syringe Recipients**

Bonnie Sorenson, director of clinics & nursing services, stated that Clark County's immunization rates are among the lowest in the nation; however there are good efforts moving forward to improve the numbers, even though the difference won't be seen statistically for nearly two years. She is encouraged by the work being performed in southern Nevada. This was the first year staff participated in the Silver Syringe Awards presented in northern Nevada. Several community members were recognized for outstanding efforts in immunization, including Jorge Viote and Lorraine Oliver, both SNHD employees. Ms. Oliver works at the North Las Vegas clinic and her team organized neighborhood wellness clinics in non-traditional locations in very low income, underserved neighborhoods. Clinics were held at day care centers where healthy kids exams and immunizations were done. At one clinic, 220 children were immunized, some of whom were eighteen months old, and had only received one or two vaccinations to date.

Mr. Viote received an outstanding community partnership award for his efforts in being an immunization champion. He helped to organize activities in the under-immunized Hispanic community and recruited financial and volunteer support for clinics and educational activities in Clark County.

There are over 189 providers in the immunization program, and fourteen of these providers were recognized for having immunization levels of 90%; three providers are at 100%. Staff is looking at placing an ad in local newspapers to acknowledge this feat as we need to celebrate the successes of our community as well.

### **Code Enforcement Officer of the Year: Clayton Sellers**

Glenn Savage, environmental health director said the Nevada Association of Code Enforcement named Clayton Sellers the NAC Enforcement Officer of the Year 2007. The nomination for the award reads:

"Clayton Sellers attended the NAC June 13, 2007 training provided by ATLAS, the Anti-Trafficking League Against Slavery, which exposed to our members what children, teens, men or women can be subject to when by force, bribe or coercion are used for the purposes of sexual exploitation or forced labor. Clayton quickly put this training and information into action by identifying human trafficking within a network of street and fruit vendors working throughout southern Nevada. According to Terry Miller, ATLAS' director, Clayton's actions resulted in a rescue and alerted their organization to this ongoing situation. Clayton is recognized by law enforcement and regulatory officers in Clark County as a person who is a first respondent and lends a helping hand at a moment's notice. Clayton is constantly called upon to assist with task force operations and daily enforcement events from a wide variety of agencies and jurisdictions. Clayton makes himself accessible night or day, offering real-time on-site expertise which in turn ensures the general public the best in customer service. His exceptional work ethics have directly improved the health and safety standards of southern Nevada."

Mr. Sellers said he was surprised to receive the award and received tremendous support from his family. He said it was nice to be recognized by other people from outside the agency.

### **Lead Poisoning Prevention Month Proclamation from Clark County**

Commissioner Lawrence Weekly stated at the last commission meeting October was deemed lead poisoning prevention month. It was determined that in his district there were numerous homes pre-dating 1950 which were painted with lead-based paint. As a result, a large percentage of children presented with symptoms of lead poisoning. The commissioners decided to bring this matter to the attention of the community. Mr. Wil' Townsend educated community members about lead poisoning prevention efforts. The Board of County Commissioners presented SNHD with a proclamation in recognition of staff's efforts in promoting lead poisoning awareness.

### **Flu Awareness Week Proclamations – Cities of Henderson, Las Vegas and North Las Vegas**

Chair Kirk said due to the high number of people at risk for the flu, the City of Henderson wanted to reach out and recognize the health district for their efforts in promoting flu awareness and helping those who are stricken with the illness. He learned that the flu vaccine is given for free to many individuals, and proper hand washing hygiene is important in preventing spread of the illness.

Member Reese said the City of Las Vegas also recognized flu awareness week. He said many seniors in his ward have a difficult time and are appreciative of the free flu shots offered and they take advantage of this service. Dr. Sands said the flu shot not only protects yourself, but the community as a whole.

Member Eliason said the City of North Las Vegas recognized the district's efforts in promoting national preparedness month as well as flu awareness. He stated that the propane explosion brought to light the need to recognize flu awareness and preparedness for national disasters. Dr. Sands said that with fires in southern California and the subsequent exposure to smoke, it is extremely important to have family preparedness kits and plans in place.

### **2007 Public Health Leader of the Year Award from the UNLV School of Public Health**

Dr. Sands said the health district was recognized at the Nevada Public Health Association in October. The last legislative session saw the passage of SB 266 which requires testing of women for HIV during pregnancy; if a woman's status is unknown at time of delivery, rapid testing can be done to prevent transmission to the child during birth. This Legislation was accomplished through the partnerships between the legislature, UNLV School of Public Health, both Washoe County and Carson City health departments, the Nevada State Health Division and numerous SNHD staff members, including the division of clinics & nursing, HIV/STD program staff, PIO staff who track legislation and prepare testimony, and our lobbyists Bryan Gresh and Gary Milliken. The plaque reads:

"The 2007 Public Health Leader of the Year Southern Nevada Health District in appreciation of your leadership and support of SB 266, signed into law June 13, 2007. A major contribution to the prevention of HIV transmission to Nevada's newborns. From the UNLV School of Public Health, Founding Dean Mary Guinan, PhD, MD."

Dr. Sands commented that this award recognizes what public health partners can do when everyone works together.

## **I. CONSENT AGENDA**

These are matters considered to be routine by the Southern Nevada District Board of Health and may be enacted by one motion. Any item, however, may be discussed separately per Board Member request before action. Any exceptions to the Consent Agenda must be stated prior to approval.

1. **Approve Minutes / Board of Health Meeting:** 9/27/07
2. **Approve Payroll / Overtime for Periods:** 9/08/07 – 9/21/07; 9/22/07 – 10/05/07
3. **Approve Accounts Payable Registers:** **#1094:** 9/06/07 – 9/12/07; **#1095:** 9/13/07 – 9/20/07; **#1096:** 9/21/07 – 9/27/07; **#1097:** 9/28/07 – 10/03/07
4. **Petition #40-07:** Approval of Revision of District Family Planning Fee Schedule
5. **Petition #41-07:** Approval of Interlocal Contract with Nevada Department of Health & Human Services for the Food Stamp Nutrition Education Program

*A motion was made by Member Reese to approve all consent items; seconded by Member Crowley and was unanimously approved.*

## **II. PUBLIC HEARING / ACTION**

1. **Variance Request** to Install an Individual Sewage Disposal System (ISDS) on an Undersized Lot Served by an Off-Site Public Water Supply with a Shallow Absorption Field and Septic Tank within 8 Feet of a Property Line (APN 129-36-510-024). **Petitioner:** Elizabeth Caruso, 13 Aspen Avenue, Mt. Charleston, Nevada

Chair Kirk declared the public hearing open.

Dan LaRubio, environmental health engineer/supervisor, was present to answer any questions of the Board. Terry Montgomery of Redrock Engineering was present on behalf of Elizabeth Caruso. Chair Kirk asked if he had anything to add to the information before the Board. Mr. Montgomery said he did not and that he understood and accepted all conditions listed.

Commissioner Weekly asked the closest proximity to the nearest neighbor and if there were concerns from surrounding property owners. Mr. LaRubio said that information had been publicly posted and no concerns were expressed.

Member Jones asked how many plots are in the entire project and how many had been permitted to have a separate sewer system. Mr. LaRubio said all the information had been accounted for.

Chair Kirk asked if anyone from the public wished to speak to this matter. No one came forward to speak and Chair Kirk closed the public hearing.

Member Jones again asked for the total number of systems involved in the project and how many have been installed to date. Mr. LaRubio did not have the numbers at present. Member Jones asked for this information to be provided at a future meeting.

*A motion was made by Member Reese to approve the application as submitted with the conditions outlined in the memorandum; seconded by Member Crowley and was unanimously approved.*

2. **Variance Request** to Install an Individual Sewage Disposal System (ISDS) on an Undersized Lot Served by an Off-Site Public Water Supply with a Deep Absorption Field within 20 Feet of a Building and a Septic Tank within 8 Feet of a Building (APN 129-36-111-050). **Petitioners:** Fredrick and Olga Gregoryan, 1380 Silver Tip Trail, Mt. Charleston, Nevada 89124

Chair Kirk declared the public hearing open.

Dan LaRubio, environmental health engineer/supervisor, was present to answer any questions of the Board.

Fredrick Gregoryan was present. Chair Kirk asked if he had anything to add to the information before the Board. Mr. Gregoryan said he did not.

Chair Kirk asked if anyone from the public wished to speak to this matter. No one came forward to speak and Chair Kirk closed the public hearing.

Member Reese asked Mr. Gregoryan if he read the conditions of the variance and if he agreed with the same. Mr. Gregoryan responded affirmatively.

*A motion was made by Member Christensen to approve the application as submitted with the conditions outlined in the memorandum; seconded by Member Crowley and was unanimously approved.*

3. **Memorandum #24-07:** Consider/Adopt Amendments to District Emergency Medical Services Regulation 1300.570 "Patient Transport"

Chair Kirk declared the public hearing open.

Rory Chetelat, EMS & trauma system manager spoke relative to this item. Mr. Chetelat said staff is asking for regulations changes to 1300.750. The changes are minimal and are a requirement of SB 244. Staff met with the state and held public workshops. The regulations will now require EMS providers to document their off-load times in the system. The details will be written into procedure and will be easy to change and adopt in the future.

Member Weekly asked about attendance at the public workshop held on October 15<sup>th</sup>. Mr. Chetelat said there were about twenty to twenty-five people in attendance. There were no areas of concerns. Attendees were mostly EMS and hospital providers; there were not many in attendance from the general public.

Chair Kirk asked if anyone from the public wished to speak to this matter. No one came forward to speak and Chair Kirk closed the public hearing.

*A motion was made by Member Reese to approve the application as submitted with the conditions outlines; seconded by Member Crowley and was unanimously approved.*

4. **Memorandum #30-07:** Application for Approval for American Shredding, Inc. to Operate a Solid Waste Management Facility – Recycling Center, Located at 4280 W. Windmill, Unit 206, #A and B, Las Vegas, NV 89139 (RC018-XXX-01)

Chair Kirk declared the public hearing open.

Member Eliason said he would be abstaining on this item due to a conflict of interest. Member Strickland asked to disclose a prior attorney/client relationship to Mr. Joe Roche and a relation to the applicant. She said this relationship bore no conflict.

Dennis Campbell, solid waste compliance manager spoke relative to this item. Mr. Campbell stated that American Shredding, Inc. has met all requirements to function as a recycling center as specified in section 4 of the Recycling Center Regulations. At this time, staff recommends approval for this permit based on final inspection with the conditions as outlined in the memorandum. Robert Vincent, owner and Joe Roche, general manager were present to answer questions of the Board.

Chair Kirk asked if Mr. Vincent or Mr. Roche had any additional information to present to the Board. There was no further information.

Chair Kirk asked if anyone from the public wished to speak to this matter. No one came forward to speak and Chair Kirk closed the public hearing.

*A motion was made by Member Crowley to approve the application as submitted with the conditions as outlined in the memorandum; seconded by Member Mattocks and was unanimously approved with Member Eliason abstaining.*

5. **Memorandum #35-07:** Application for Approval for Mintchevi Inc. dba Rebond & Foam Recycling to Operate a Solid Waste Management Facility - Recycling Center, Located at 1816 Industrial Road, Warehouse #1, Bay #6, (APN: 162-04-704-004), Las Vegas, NV 89102 (RCO20-XXX-01)

Chair Kirk declared the public hearing open.

Dennis Campbell, solid waste compliance manager spoke relative to this item. Mr. Campbell stated that Rebond & Foam Recycling has met all requirements to function as a recycling center as specified in section 4 of the Recycling Center Regulations. At this time, staff recommends approval for this permit based on final inspection with the conditions as outlined in the memorandum. Milen Mintchevi was present to answer questions of the Board.

Chair Kirk asked Mr. Mintchevi if he agreed with the conditions as outlined; he responded affirmatively.

Chair Kirk asked if anyone from the public wished to speak to this matter. No one came forward to speak and Chair Kirk closed the public hearing.

*A motion was made by Member Reese to approve the application as submitted with the conditions outlined with the memorandum; seconded by Member Crowley and was unanimously approved.*

### **III. REPORT / DISCUSSION / ACTION**

**1. Petition #39-07:** Adopt Procedures for Aggrieved Business to Object to a Rule by the Governing Body

Stephen Minagil legal counsel, spoke relative to this item. Mr. Minagil said this is a request that the Board adopt a procedure for aggrieved businesses to object to a rule by the governing body. Nevada Revised Statutes (NRS) 237.100(4) requires each governing body to provide a procedure for the grieved business to object to a rule adopted by the governing body. To date, the Board of Health has not adopted such a procedure. This is related to business impact statements provided to the Board along with regulations. A rule is a regulation or ordinance that includes the establishment of a fee or the increase of a fee, and the law requires that a procedure be in place in the event of an objection to the business impact statement. Mr. Minagil consulted with counsel from Clark County and the City of Henderson and drafted a procedure in accordance with the law and to be consistent with both Clark County and the City of Henderson.

Member Hardy asked if this matter referred only to fees of business impact and if it is regarding a decision made by this governing body or could it be a rule made by staff. Mr. Minagil said it is a rule by the governing body and the rule as defined by the statute is an ordinance or regulation and the establishment or increase of a fee.

*A motion was made by Member Reese to approve the petition as submitted; seconded by Member Crowley and was unanimously approved.*

**2. Memorandum #36-07:** Request for Approval of Year 2008 Meeting Dates for the Southern Nevada District Board of Health

Dr. Sands presented the proposed meeting schedule for 2008, which follows the established schedule of meeting on the fourth Thursday at 8:00am, with the exception of November and December, which conflicts with the holidays.

*A motion was made by Member Crowley to approve the application as submitted; seconded by Member Reese and was unanimously approved.*

### 3. Nevada Clean Indoor Air Act – Status Report, Direction to Staff

The following is a verbatim transcription of the discussion item concerning the Nevada Clean Indoor Air Act.

Dr. Sands: There have been several questions about the status of enforcement activities with the Clean Indoor Air Act here in Clark County with the health district. I've asked Stephen Minagil to give a brief presentation about our activities and the status of that, and where we're going in the future with addressing and responding to the Nevada Clean Indoor Air Act that was passed almost a year ago last November.

Member Reese: Mr. Chairman, if I could please. I just have some comments, if I could, Dr. Sands. To me this is something that this Board certainly didn't ask for, as an enforcement body for this type of regulation. I think some of the other entities have shied away from it. But again, though, we have to adopt regulations to protect our staff, and I think they've done a great job. I know a lot of the pubs and taverns have complied – I certainly appreciate those that have complied. I know that there are some questions and concerns of other entities wanting to. And I just hope that this meeting today should not be a forum for anybody from the tavern industry to come here and try to lambaste someone that's trying to do a job that was shoved down their throat, no funding for them to do the enforcing. And I think that we can set meetings in the future to adopt the regulations, have public hearing on the regulations. And I think that at this time if they can't comply with what our staff is asking them to do, then they need to cease and desist until such time that we get the regulations on board. And with those comments I said everything I need to. Thank you.

Chair Kirk: Thank you, Councilman. I appreciate that.

Stephen Minagil: Mr. Chairman, members of the Board. This matter is before the Board today because at last month's meeting you received during public participation some comments from counsel from Golden Gaming, and Chairman Kirk requested that the matter be agendaized, and we put it on the agenda for a report and discussion to including direction to staff if you please.

Briefly, I provided each of you with a copy of the Act (**attachment #1**), and I just wanted to direct your attention to a couple sections that are pertinent to our discussion. I provided you three pages. On the first page, as you'll see on section I where I've drawn the arrow, is the general prohibition of smoking tobacco in any form is prohibited within indoor places of employment, and those subsections are places that are included – it's not an all inclusive list, but as you'll see in sub-g, all indoor areas within restaurants smoking is prohibited. Down the page a bit, section III is the list where smoking is not prohibited, and your attention is directed to sub-b which is stand-alone bars, taverns and saloons.

Turning the page to page two, at the top of the page is paragraph seven that tells who's to enforce the provisions of this section. And as you'll see I drew a line through NRS 202.2492 because Judge Herndon's decision in January struck the criminal provisions, meaning that police officers and



sheriffs and their deputies are not required to enforce the law, and the only enforcement agency there is the health authority.

In section IX on page two, on those sub-paragraphs, are some critical definitions, and there's three that I would direct your attention to: in reverse order at the bottom of the page "stand-alone bar" is specifically defined and it means "an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises" and here's the key "in which food service is incidental to its operation." That phrase is defined above in section f, and it means "the service of prepackaged food items including, but not limited to peanuts, popcorn" etc. You also see in sub-paragraph i the definition of restaurant which is "a business which gives or offers for sale food" in essence and if you recall from page 1, smoking is prohibited in all indoor areas of the restaurant.

With that, as we've advised you periodically, the health district began its enforcement efforts with education. Health district developed guidelines, frequently asked questions – those were posted on the website. Guidelines were mailed to every food establishment permittee in Clark County. The questions and answers developed by staff, along with the guidelines posted on the website, are consistent with those which are posted on the Washoe County health district website. We've been meeting with businesses for months – it's mainly restaurants with bars, bars and grills, taverns. We have a plan review team. Businesses have come in and met with the environmental health director, Mr. Savage, and myself regarding not only physical changes but interpretation of law, what is permitted under the law and what isn't.

In the course of doing inspections, staff has reported back, along with complaints from citizens, and as a result of those, I have sent letters to approximately twenty-five businesses throughout the County advising them of what our inspectors have found, about actions which we thought were undermining the Act, inviting the businesses to come speak to us to ensure that their business plan complies with the law. As a result of the letters to twenty-five businesses, two lawsuits were instituted by the District: one to a business who expressly refused to comply; another to a business we felt was not willfully complying with the food service restrictions. That food service case was resolved by agreement – myself representing the District, and the counsel for the affected food establishment – where we specified in a court order the rules regarding food service and what is permitted and what is not permitted. We worked out that specific case so that patrons can obtain food from the restaurant next door and bring it into the stand-alone bar.

We've also requested the justice court in Clark County to integrate citations into their court system. Now after approximately nine months into the Act, current issues have developed over these months that we're still working with. One of the issues is how food gets into a stand-alone bar, and for that we refer back to look at the Act on page 2, section IX sub-section m, the definition stand-alone bar and incidental food service. The health district's position, taking into consideration purpose of the law and looking at the four corners of the document, that delivery of food, service of food in a stand-alone bar where there is smoking is not prohibited. We have been presented with different interpretation, opposing interpretation whereby

food and smoking is okay under one roof as long as the food provider under the same roof is a different corporation, into an establishment – bar on the right, pool tables in the middle, kitchen on the left. We've been presented with the idea that as long as the kitchen is operated by somebody than who operates the bar they can just wheel food into where the bar is, where there's smoking, whether there's a wall up there or not. We don't think that's what the law provides. It can't be – it doesn't further the purpose of the Act. That's one issue we're working with now with businesses.

Another issue that has been developed over the past month is what we call "dual permitting." This was attempted on a trial basis by the District. This is where an establishment wants to be a restaurant during the day and serve food and have no smoking, but at night they want to not serve food and have smoking and be a bar. The District, under Dr. Sands' direction, tried this on a trial basis. We issued approximately ten permits to businesses who had requested this. The permits were temporary; there were all set to expire at the end of a particular quarter, and during this particular time we received certain information. First of all, Dr. Sands received scientific information from CDC and from our health education department that indicated that under this particular plan, even with a change of air, and even with two or three hours between the end of the bar business and the opening of the food business that the deadly carcinogens, which this Act is designed to protect people from, are not removed, and therefore this plan of dual permits is not consistent with protection of public health. The second thing we received, is we received clarification from the drafters of the Act – they told us specifically that when they were drafting the ballot initiative that was passed by Nevada voters, that they rejected what they call the "red light/green light approach." When I asked them about the concept of dual permitting, they said "oh yeah, the red light/green light approach – we talked about that, we considered that, and we rejected it and we did not include it in the Act." As a result of this information from the drafters, and as a result of the scientific information presented to Dr. Sands, Dr. Sands did not authorize the extension of these dual permits on a trial basis – they have all expired.

So what do we do now? Where does this take us now? Where are we now? Well for starters, some of these issues that we have differences of opinions with businesses in our community, one was is we could go to the court – we could file an action for declaratory relief and ask a judge who's otherwise unfamiliar with this case, who hasn't worked with the law like we have or like the businesses have, to make a call that somehow we can't make. We don't think that's the best approach; it's one approach, we don't think that's the best approach. We think the best approach is to codify our guidelines, our positions, our interpretations into regulation form. We think there's three important reasons why this is the best way. Number one it provides certainty to businesses and the public, and we think certainty equals compliance. The second important reason is it avoids the argument of arbitrary action on behalf of staff and the District. And third, we think this allows the affected businesses and the public to participate in the regulation drafting process through public workshops and presentation of information to the Board.

Now because we want consistent guidelines and enforcement, and business wants consistent guidelines and enforcement – that does not equate that the health district has been inconsistent in its enforcement and guidelines. We have not been inconsistent about food service into a stand-alone bar. We have never approved a business plan where a waitress delivers food from the kitchen on the left side of a building to the bar on the right side of the building, whether you have different names, whether you have a wall or no wall, we have never approved that idea. The health district has not been inconsistent with any establishment making physical changes to be a stand-alone bar, from being required to be in compliance now. Nobody has ever got a pass from the health district saying “no problem; you need four months? No problem, take four months” and they’re not in compliance for four months. The health district has never said that; we have not been inconsistent with that approach. Nor was the health district inconsistent with the trial basis of issuance of dual permits. All of them have expired; they’ve not be re-issued after review of scientific evidence; the health district has never said you get one, you don’t.

Now, we agree we should have consistent interpretation and enforcement. We’ve received input and proposed guidelines from two business groups of tavern owners. We have begun drafting regulations. We have been using regulations from the state of Ohio, from the state of Arizona, we’ve used the proposed guidelines presented to us by the two business groups; we’ve already met with State, Washoe County and Carson City health district representatives about developing uniform guidelines which would be used by all jurisdictions throughout the state, and we are scheduled to meet with them in a person-to-person meeting, all of us, to develop the specific language for what we hope will be uniform guidelines utilized by all jurisdictions throughout the state.

Staff believes that, if you believe that direction to staff is necessary, that you may direct continued development of regulations, coordinating with other health authorities, and involving public and affected businesses through the public workshop and comment process. Thank you.

Chair Kirk: Thank you very much, Mr. Minagil. We appreciate it. I have a sense that this will be, either we can discuss now. I think there are people from the public who would like to speak on this item. Rather than wait and have them come up during citizen participation, I think it would be appropriate that any member of the audience who would like to speak on this item now, come forward, state your name for the record.

Member Crowley: I’d like to say something . . .

Chair Kirk: Please.

Member Crowley: Is it open forum . . .

Chair Kirk: It is.

Member Crowley: . . . while someone is getting ready. I want to tell our staff that I am very supportive of developing regulations and just make a comment that what we’re doing here is developing rules that we were directed to try to develop, in essence, by the citizens of the state and specifically our county. This

isn't something we invented; we didn't come up with this idea of just bringing up this subject. Although many people are supportive of eliminating smoking, especially when there are kids around. However, this is a hard process to go through. You've got some citizens that want one thing, some citizens, including businesses, that want another thing. It's not going to be an easy path to go through, and we recognize that. But what we're trying to do is comply with the directive that we've been given by the citizens of the state, not necessarily by regulators, by citizens. This is a referendum that started this whole process off.

Chair Kirk: Thank you very much.

Member Weekly: Mr. Chair?

Chair Kirk: Commissioner Weekly.

Member Weekly: I think Susan is absolutely right. I know that I've met with staff and I know that staff is working with all the necessary tools that they have to try and get some consistency out here, but I think in meeting with some of the folks in the industry that's one of things, Attorney Minagil, that I'm hearing that we're being inconsistent in what we're saying. And so, I guess hopefully, we'll get some direction here today as to what direction we want to give our staff, because I also agree with Mayor Pro Tem Reese, I think it's really unfair that we're sending our compliance officers out to try and enforce this particular issue here – we're putting folks in harm's way. And I know that, I'm not trying to be discriminatory here, but I'm really concerned when we send our female officers out there into these bars and they're trying to enforce this, and they're on their own, they're by themselves, I think that's kind of dangerous. Not to say that it's just for the women, but the men as well. I mean it's a situation out there that people don't understand. I drive by and I'm looking and I'm paying attention and I see signs on some of these establishments that are saying daily food specials, smokers are welcome. And it's like wow, you know, what are we doing to work toward a happy medium to get toward something that was mandated that we were given. This is going to be a lot of discussion, I believe, and I know that the industry is saying that this is not consistent, you know, the health district needs to do a better job with that.

Member Christensen: I'd just like to echo on the safety issue. Any time you mix strong opinions and alcohol, you have a recipe to light a match and someone is going to get hurt. Yes we've been given a direction, but we also have to be reasonable, prudent and remember that you can only lead the horse to water – you can't necessarily make him drink.

Chair Kirk: Dr. Hardy.

Member Hardy: Thank you, Mr. Chair. I had the opportunity of having lunch in a restaurant by day and a bar by night. I was there during the day. I admire the staff and the health district for being able to figure out how to do some of this and, you know, there's a legal term about the absurd, and that kitchen, you know, that was described if you're a separate corporation you can do it, but if you're not, it's absurd. So some of the things we do legislatively have what we call legislative intent – what we intended to do. So I appreciate the fact that the health district has sought out the drafters of the Act,

recognizing that I don't know of any, and not being an attorney, case law that looks at the intent of the drafters of an Act as much as there's case law as far as the legislative intent. And so I think it behooves us as a policy board to come up with policy that when we walk out of here today I don't expect to have all of the answers and hope that we do what Mr. Minagil has suggested we do, with looking at the public process of getting the stakeholders involved to clarify what challenges and problems there are with this process so that we can come up with a workshop within the next say three months where we actually have policy made by us after we've taken input and weighed the consequences on business people, lungs, hearts and bodies that we can not only be safe but healthy and recognize that the drafters of the Act had an idea in concept, but in every law that is difficult to enforce, you've got to have regulations. And so I don't look for us to come up with the regulations as much as for us to have the opportunity in place to make the regulations and then us adopt those regulations. That's the process that I see involved with this. So, I appreciate this Board looking at that very issue – how do we set up the schedule for the workshops, not pretending to come up the regulations today.

Chair Kirk: Great. Very good.

Member Eliason: Mr. Chairman? He's going to want to sit down before he gets to talk. I agree with all my colleagues up here. I look at this no different than I looked at the MRF. You know, we started down that road, let staff do their job, they brought us back the regulations, we negotiated them, decided where we really wanted to go, then we adopted and moved on. I don't know if this is the forum to have that discussion yet, because we have no regulations in place. I think it's premature and I think once those regulations have been drafted then that's when those discussions should take place.

Chair Kirk: Thank you. I think what we'd like to do is not, if you'd come forward, we'd not want to get into any kind of deliberative kind-of scenario here today; I think we'll take your input, we'll listen to your testimony. But I think until we actually have regulations that we can point to and look at, I think that would probably be the most prudent way to go about this. So, we appreciate your being here today and we look forward to what you have to say to us.

James Wadhams: Thank you, Mr. Chair. For the record, my name is Jim Wadhams with the law firm of Jones Vargas here today representing Golden Tavern Group, and I take your admonition seriously. It's always difficult to tell a lawyer to be brief...I will attempt to do that. I want to echo a little bit of what Councilman Reese. This is not a time to bash staff, and I want to make it clear on the record that the company that I represent, and in particular me and others in my law firm, have been welcomed into the staff's office by Steve Minagil, Glenn Savage, Paul Klouse, Steve Goode time and time again. We've literally met with them probably a dozen times and it's always been with a smile coming in and a handshake going out. It's been open and completely cooperative. So this is not an exercise in bashing the staff, it is a recognition that there are going to be policy decisions in order to protect public safety, as well as reasonable enforcement of the regulations. We look forward to that opportunity. There are some subtleties in this because the will of the people permitted smoking in certain places. And

lots of us think that we didn't – we passed a clean indoor air act, yet in that section 3 there are five categories of facilities in which smoking is permitted. And that really doesn't have to do with smoking as good or bad, it just is a facility regulation component, and that's where I think the risk is in the policy decisions that are going to have to be made. So again, we certainly want to commend staff for their willingness so far. I would hesitate to say they have been inconsistent, I guess I would prefer to say that we recognize that this has been a work in progress. The company that I represent has 43 facilities throughout this valley, all of which are different, at least seven categories if we would roughly break them down. But they're all different, there's probably several hundred facilities and so these are not necessarily cookie-cutter solutions. So it's about a work in progress and we welcome the opportunity to work with staff, be able to come up and comment on regulations when they are developed. But in closing I would ask one direction to staff – ask Mr. Minagil to make his type font a little larger when he writes me letters; that fine print's very hard to read. Thank you.

Chair Kirk: Thank you very much.

Member Barlow: Mr. Chairman?

Chair Kirk: Please.

Member Barlow: Just to echo to staff, as we move forward and draft the regulations, if you will, will the various taverns and bars be included in those discussions as far as to see what the impact would be on their various establishments?

Dr. Sands: Absolutely. I mean, that is part of the purpose of the public workshops and as Mr. Minagil had indicated, we've already received over the last few months input from bars and taverns, the tavern association and so forth and the industry some of their ideas about how the guidelines should go, where they think we have authority and where they think we don't. So we've already begun receiving that, and that will continue as part of the workshops. I think the thing is being able to do that effectively we need to at least come up with and draft something initially based on all the input we've got so far and throw that out here for people to react to. We want to do that after we've also worked with our colleagues and the other health districts in Carson City, Washoe and the state health division – because we're all responsible in our own jurisdictions for enforcing this, and so we want to be sure that whatever we do down here isn't in compromise with enforcement activities elsewhere.

Member Barlow: Lastly, just my concern would be I understand that clean air act, I support a lot of it, but also I understand that there is a great impact to those establishments, a financial impact, to those establishments who have multiple businesses that previously had food as well as smoking, and now to alleviate that the financial impact on the business, I'm pretty sure, is pretty tough at this point. So having both sides work to define that happy medium would be at least as close to success as possible. Thank you.

Chair Kirk: I agree. Thank you very much. Mr. Minagil, I have a question for you, a couple of them. How many public meetings do you anticipate holding

before you'll have something and how long do you think that will take? And are you the point at the district to do this?

Stephen Minagil: Yes, along with probably the environmental health division – Mr. Savage. I would think we would have maybe two or three public workshops, Mr. Savage? And we'll probably do one in Las Vegas, we may do one in Mesquite and maybe one in Laughlin and if we have a lot of input and we need to come back and re-draft, we would come back and reset public workshops until everybody, until we're sure that everybody has had their say and their input and that we've considered all their ideas. Time-wise, I would anticipate two or three months and I think the steps are completing our first drafts, next step is already scheduled – we have meetings set already with the state representatives up north, we're going on the road to take it to them, and once we all get on the same page – the health authorities – then we're ready to set the public workshops, we're ready to distribute our draft to the affected businesses.

Member Strickland: I have a quick question.

Chair Kirk: Please.

Member Strickland: This is somewhat procedural. I understand that you think it's better to go instead of the debt relief action to do the codification of the health district's position. That won't insulate us from an action brought by a disgruntled tavern or bar later on challenging the codification, correct?

Stephen Minagil: That's correct – it's doesn't insulate us from that, but from a lawyer's standpoint, I think that's a much safer position for the Board. We've followed a process and as long as we stay within the boundaries of the law, I think our chances of prevailing in an action challenging that are much better than the shot we would we take in declaratory relief action.

Member Strickland. Okay, thank you.

Member Jones: I would just say I look forward to working on putting together guidelines. We've had good experience with the public accommodations guidelines, in that vein. As that goes forward I think we need to stay focused just on the clear message, the clear words of the law as it's written. Sometimes what was intended versus what was written doesn't come across clearly. But what we have to work with is the clear language of this law. Unfortunately there's open interpretation to that, but I think that has to be the focus of where we go.

Chair Kirk: You know, I agree with you and I think it's important to point out, once again, that we are just trying to implement the law as has been really put upon us by the voters, and like it's been mentioned, this wasn't something that came forth from one of the members of the Board. We're trying to protect the public health – I think that's number one. But also, we're trying to be sensitive to business and their problems and issues and so I think working together, I think that's the best way to approach that and so I think, Mr. Minagil, today that would probably be the direction you'll hear from the staff, is continue to work together with the industry to a successful conclusion of some regulations that everybody can, maybe both parties will be equally dissatisfied and maybe if we get to that point, we're probably

doing a pretty good job. So I would urge you to just keep working with the industry and please keep us informed as to the progress. Please?

Member Reese: Dr. Sands, I guess what really bothers me about this whole process, with no disrespect to Dr. Hardy, again this unfunded mandates come down to us as entities, three or four cities plus the county, how are we set financially to handle this burden as far as having these meetings as far-sighted as travel. I know it is expensive and I know going through the budget process last year that we were going to be tight with our budget. Do we see any pitfalls down the road with this?

Dr. Sands: I don't expect having, I mean certainly there will be some financial impact, but I don't think anything that we will not be able to handle. I kind of look at it also from this perspective that this investment up front will save us dollars down the line, because up to now, after we've gone past the education process and that's helped to bring a majority of people into compliance, we moved on to the legal action approach that Mr. Minagil has outlined to you, and that got us only so far, too. And that was also at a pretty large cost. I think that I'd much rather see us invest more of our resources right now into codifying regulations because I think that, in the end, will wind up being the most cost effective way for us to manage this.

Member Reese: Well I guess at this time of the year we always have that legislative session we need to go look at and be sure that those people who represent us up at the legislature are informed and maybe we have to let legislature ask for some financial help or something.

Member Eliason: The state has some deep pockets.

Chair Kirk: Commissioner, do you have a comment?

Member Weekly: Oh, boy. Yes sir. So Dr. Sands or Mr. Minagil, where do we stand at this point, and this is just for my own understanding, I know that the direction today is we're going to move forward and be working toward these workshops with staff and with the industry. Where do we stand as of today? What message is out there as it relates to where does the industry go from here today until these regulations are brought back and adopted? What's out there right now? I mean, are we at a point where we're saying, Mayor Pro Tem I think you mentioned cease and desist, and I don't think we're there. But what are we working with as of today?

Stephen Minagil: We're working with the four corners of the law right now, and what we think are plain interpretations of what's in the Act. As I said, we've been pretty consistent about our positions about food service and we'll continue to maintain those positions and those positions we'll write as guidelines into the regulations. So the message is still the same to businesses out there – if you're a restaurant, you cannot have smoking; if you want to be a stand-alone bar, you have to be physically segregated, you have to be in a separate building or physically segregated from areas where smoking is prohibited and we'll work with you on how to make your business that way. We want those businesses, our message is still, if you're a business and you're affected by this and you have questions about your plan or your operation, come see us and we'll work through those within the four corners of the document. So we're still working with businesses, we still



have the message if you're a restaurant there's no smoking allowed. And then about the stand-alone bars...

Member Weekly: And then can you put on the record based on the conversation that we had in our briefing, there was a question from someone in the industry that asked us if there is a patron sitting at the bar and there is a fast food restaurant next door or carry-out restaurant next door and they just so happen to order food that's delivered to them at the bar, can you give some clarification on that because I think that we also discovered that there was some misunderstanding as it relates to that as well.

Stephen Minagil: The health district's position has been that a patron may obtain food from any source and bring that into the stand-alone bar, the law does not address that. The law addresses food service, so in that particular scenario our position has consistently been the patron can go get the food and bring food into the bar, but that restaurant cannot serve in the bar – cannot deliver to the patron sitting at the smoking bar. That's food service. And we think the law says food service in a bar where there's smoking is limited to popcorn, peanuts, pre-packaged foods that don't need a food permit. So that's the message we're continuing to give to the community in effect.

Member Barlow: Mr. Chair, I would like just to echo, just two comments actually. Just to go a step further, is it possible for the establishment to order the food for the patron?

Stephen Minagil: We say no, because we say that's part of food service.

Member Barlow: Okay. And also there's been concerns from the industry that they've stated there's been inconsistencies in how we regulate. Where, for the record, do you consider those inconsistencies lie as it relates to the health district?

Stephen Minagil: Well, I think perhaps one comment about inconsistency would be the way that we did the dual permits. So, you know, we tried a trial basis in a dual permit situation, and now that we don't do that, a member of the affected business community or public may say we're inconsistent, may say that we did this for a period of time and now we're not doing it now, or we've changed our mind or changing our mind equals inconsistency, and that would be one example. We don't see it as inconsistent, we see it as we tried something and received additional information, and as Mr. Wadhams has said this is a work in progress. So that may be one area.

Member Barlow: And that one area that you just mentioned, was it explained to the industry that this was a trial period?

Stephen Minagil: Yes.

Member Barlow: Thank you.

Stephen Minagil: You're welcome.

Chair Kirk: Great. I'll entertain a motion then, if there's nothing further.

Member Reese: Well, I'll go ahead and make the motion. I think it's important that we do this as quick as we can. And that is to find regulations to control this clean indoor air act as soon as possible. I would ask that staff keeps the members of the public, as well as members of this Board, very much involved with these meetings that we hold so the people from Boulder City if we have a meeting out there, or in Laughlin, they can attend the meetings if they so desire. I think that there has to be a resolution for enforcement; I think there has to be a resolution for the fines or who's going to be responsible if we consistently have people that are not going to abide by the regulations once they're adopted. Very responsive so that all these types of things, all these questions are answered in the regulations. And I look forward to being able to see the first draft of regulations to see where we're at and where we're going. And if there's anything else I need to add, I'd be welcome to add any other comment.

Chair Kirk: That could possibly be the longest motion we've ever had on this Board.

Member Crowley: I'll second it.

Chair Kirk: And we have a second. Is there any discussion? All those in favor, please say "aye."

Board members: Aye.

Chair Kirk: Any opposed. Motion carries. Thank you very much. We'll look forward to the participation of the public and industry. Mr. Minagil, thanks for all your work.

*A motion was made by Member Reese for staff to draft regulations concerning the Nevada Clean Indoor Air Act, and directed staff to involve the public and the Board as much as possible, and the regulations should address enforcement and penalties for those in violation of the regulations; seconded by Member Crowley and was unanimously approved.*

#### **IV. CITIZEN PARTICIPATION**

Citizen participation is a period devoted to comments by the general public about matters relevant to the Board's jurisdiction. Items raised under this portion of the Agenda cannot be acted upon by the Board of Health until the notice provisions of Nevada's Open Meeting Law have been complied with. Therefore, no vote may be taken on a matter not listed on the posted agenda and any action on such items will have to be considered at a subsequent meeting.

Chair Kirk invited any individuals wishing to address the Board on matters under their jurisdiction to come forward.

Member Crowley wished to speak as a citizen, and asked if a report card on how well Clark County is doing with recycling. There was a report card provided by EPA some ten years ago, but no newer information has been provided. Ms. Crowley said she is a big proponent of recycling and would like to further the public's knowledge of who can provide recycling services. She asked permitted agencies could be posted on our website with a link to that agency's website or a description of what could be recycled at that particular location. Member Christensen said an index of permitted sources would provide this information. Dr. Sands said that this is something staff could research.

Chair Kirk asked again about posting restaurant inspection information on the website, as was mentioned a few meetings ago. He said he is receiving numerous complaints from individuals seeing

reports after they have eaten at a restaurant. Some individuals prefer to know the health and safety of a restaurant before they eat there. He would like to see this information online. Member Barlow commented that if a facility does not have an "A" grade, he will not eat there.

Member Reese asked if he would receive a ten-year service pin for his time on the Board of Health.

## **V. HEALTH OFFICER & STAFF REPORTS**

### **Chief Health Officer**

Dr. Sands directed Board members to the 2007 Annual Report to the Community. A recycling report is included in the environmental health section. He said the report tells the story of the health district and what we do, and the value of public health.

Board members also received invitations to the holiday/service awards dinner to be held on December 7<sup>th</sup>. He encouraged all members to attend if they are able. He asked interested members to notify Shelli of their attendance.

Dr. Sands updated the Board relative to his briefings of the local jurisdictions in regard to a replacement facility. He met with the manager of North Las Vegas last week, and is meeting with both the managers from the cities of Las Vegas and Mesquite next week. Meetings with Boulder City and Henderson will occur prior to the next Board meeting. He plans to bring a report forward at the November meeting of the outcomes of the briefings.

### **Open Space & Trails Summit – Deborah Williams, Chronic Disease Prevention & Health Promotion Manager**

Dr. Sands invited Deb Williams forward to discuss the October 18<sup>th</sup> Open Space & Trails Summit held at the Springs Preserve. He said this was a wonderful opportunity to marry public health with the issues of the built environment and chronic disease. Deb Williams said there were over 200 attendees at this meeting, which was the first of its kind. Representatives from the planning department, developers, elected officials, decision makers, recreation staff, conservation experts, health and safety officials and local, state and federal governmental agencies dealing with land use. Speakers addressed various models which looked at health, economic, social and environmental impacts in how communities are built. With Dr. Sands' assistance the health impact was able to be interjected into the discussions. The community has done a good job in planning, but health has not been a consideration, but as a result it will be. SNHD has been invited to participate in three distinct planning efforts as we move forward. A statement of intent was signed, which reads:

"We the undersigned, agree to work together to define the vision of an integrated and interconnected trail and open space system for Southern Nevada. Additionally, we agree to participate, as appropriate, in a working group with the goal of determining feasibility, implementation processes, roles and responsibilities, and funding mechanisms that can best support implementation and maintenance of a trail and open space system. The following Agencies are Partners to the Creation and Implementation of this Statement of Intent: City of Boulder City, City of Henderson, City of Las Vegas, City of Mesquite, City of North Las Vegas, Clark County, Clark County Regional Flood Control District, Clark County School District, Regional Transportation Commission of Southern Nevada, Southern Nevada Health District, Southern Nevada Regional Planning Coalition, Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service."

There is broad support for this concept. Staff will continue to update the Board on the progress of this venture. This opened new partnerships and staff participated in the planning efforts. Dr. Sands said this is another direction the District is moving toward in particular to the chronic disease prevention program. Staff looks forward to developing various partnerships as a result.

**VI. INFORMATIONAL ITEMS**

***DULY NOTED***

**A. Chief Health Officer and Administration:**

1. Monthly Activity Report, Mid-September 2007 – Mid-October 2007
2. Financial Data: Revenue and Expenditure Report for General Fund, Capital Reserve Fund and Public Health Laboratory Fund for the Month of September 2007
3. Public Information Monthly Report, Mid-September 2007 – Mid-October 2007
  - a. Letter of appreciation to Jay Johnson from a former Catholic Charities volunteer

**B. Community Health:**

1. Monthly Activity Report, September 2007
  - a. Letter of Appointment of Deb William to AHEC Board of Trustees
  - b. Cryptosporidiosis Press Release/Health Alert
  - c. Aseptic Meningitis Press Release/Health Alert
  - d. September 2007 Disease Statistics
  - e. Third Quarter 2007 Disease Statistics

**C. Environmental Health:**

1. Monthly Activity Report, September 2007
  - a. Letter to Glenn Savage from Evergreen Recycling
  - b. Certificate of Recognition to Denise Young, EHS II from the Stratosphere
  - c. Nevada Association of Code Enforcement Certificate of Excellence to Clayton Sellers, EHS II

**D. Clinics and Nursing:**

1. Monthly Activity Report, September 2007
2. In-service schedule

**VII. ADJOURNMENT**

There being no further business to come before the Board, Secretary Reese adjourned the meeting at 9:25 a.m.

SUBMITTED FOR BOARD APPROVAL

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Lawrence Sands, DO, MPH, Chief Health Officer  
Executive Secretary

/src

attachment