

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

INVESTIGATION REPORT

FOR

THE TOWN OF EAST BRIDGEWATER

I. SCOPE OF THE INVESTIGATION

On or about December 7, 2020, the Board of Selectmen (“BOS”) of the Town of East Bridgewater (“Town”) directed the law firm of Clifford & Kenny, LLP to conduct an administrative investigation into the Town’s response regarding a large cluster of Covid-19 infections arising at the Commercial Club establishment beginning approximately during Thanksgiving week of 2020.

II. PERSONS INTERVIEWED

Susan Mulloy, Administrative Assistant to the Board of Health

Robert Philbrick, Health Agent for the Town

Robert Casper, Jr., Outsourced Health Inspector (Health Agent for the Town of West Bridgewater)

Myles Heger, Board of Health member

Lisa Lesagor, Board of Health member

Janet Brooks, Commercial Club General Manager effective 1/1/21

Don Ferbert, Commercial Club General Manager until 12/31/20

Commercial Club Patron “A”, Patron who wished to remain anonymous

John Clifford, Town Counsel for the Town

III. DOCUMENTS REVIEWED

- Health Agent Job Description
- Food Establishment Inspection Report of Cumberland Farms dated July 27, 2020

- Food Establishment Inspection Report of Subway dated August 17, 2020
- Food Establishment Inspection Report of Commercial Club dated August 20, 2020
- Food Establishment Inspection Report of Commercial Club dated December 14, 2020
- March 10, 2020 Declaration of a State of Emergency to Respond to Covid-19
- March 14, 2020 Declaration of Emergency by the Board of Selectmen and Board of Health
- Massachusetts Department of Health Covid-19 Interactive Data Dashboard Data as of March 4, 2021
- Massachusetts Covid-19 Executive Orders
- Massachusetts Covid-19 Mandatory Safety Standards
- M.G.L. c. 111, Sec. 30
- COVID 19 Reopening Request letter dated June 17, 2020
- Application for Temporary Restaurant Outdoor Use for Phase II Reopening dated June 16, 2020
- Temporary License dated June 22, 2020
- Email dated November 27, 2020 regarding Commercial Club closure
- Email dated December 14, 2020 regarding MA DLS Covid case #21c-11124
- Email dated November 29, 2020 regarding list of Covid-19 positive test results
- July 28, 2020 email chains regarding self-serve drink stations and Drink station closure
- August 3, 2020 Brockton Enterprise article titled "Self-serve beverages shut down at West Bridgewater Cumberland Farms")
- BOH meeting minutes for meetings between May 18, 2020 through December 7, 2020
- August 18, 2020 email chain regarding self-serve stations
- Email dated November 30, 2020 regarding Covid follow up
- December 15, 2020 Cease and Desist Order
- January 20, 2021 DLS letter
- 105 CMR 300.000: Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements

- Sector Specific Workplace Safety Standards for Restaurants to Address Covid-19
Updated as of September 22, 2020

IV. FINDINGS OF FACT

1. Robert Philbrick (“Philbrick”) was a member of the Town of East Bridgewater Board of Health (“BOH”) from approximately 1996-2000. Philbrick resigned from the BOH and was appointed as the Town Health Agent approximately in March of 2001. Philbrick stated that [REDACTED], but that there were four (4) other candidates for the position and he was the only candidate who was certified as a soil evaluator. Philbrick stated that someone reported his appointment to the Massachusetts Ethics Commission (“Ethics”), but that Ethics took no action due to Philbrick resigning for the proper amount of days prior to his appointment. Philbrick reports to the BOH and was recently reappointed as Health Agent for another three (3) years in June of 2020 by the BOH. The BOH minutes from June 15, 2020 state that the BOH voted to appoint Philbrick as the Health Agent for a period of three (3) years between July 1, 2020 and June 30, 2023. Philbrick stated he has never had an employment contract with the Town. As Health Agent, Philbrick enforces the sanitary and food code in relation to housing, landlord/tenants and establishments and enforces the Massachusetts Covid-19 Executive Orders and Mandatory Safety Standards. Philbrick also oversees Title V septic systems and approves plans, acts as the Towns sewage treatment operator and answers complaints. Philbrick inspected the Town’s restaurants up until approximately five (5) years ago. Philbrick stated that as a Town resident, he had become increasingly uncomfortable with performing food inspections of the restaurants within the Town as he was a Town resident and frequented such restaurants as a customer. Approximately in 2015, Philbrick stated that he and the BOH agreed that Philbrick would take over the duty of reviewing septic plans and doing soil evaluations for the Town. Philbrick stated such duties were previously performed by an outside contractor for an approximate annual cost of twenty thousand dollars (\$20,000.00). In exchange, Philbrick stated the

BOH hired an outside food inspector to inspect the Town's restaurants. The Health Agent Job Description states that the normal work hours are 35 hours per week, that the Health Agent is subject to call at all times and that one of the duties includes the investigation of all complaints of and recommend methods for correcting nuisances dangerous to the public health. Philbrick stated that he has been friends with BOH member Myles Heger ("Heger") for a long time and socializes with Heger. Philbrick stated he had known Chairman of the BOH Bill Hubert ("Hubert") a long time as well, but did not socialize with Hubert. Philbrick stated he just met BOH member Lisa Lesogor ("Lesogor") when she was elected in the spring of 2020. (Interview of Philbrick; BOH minutes, Health Agent Job Description)

2. Susan Mulloy ("Mulloy") started working for the Town as an Administrative Assistant approximately in 1998. Mulloy stated she initially worked for the Conservation Commission and then moved to the Board of Health ("BOH") in approximately 2003. Mulloy reports to the BOH and specifically had been reporting to Hubert, who had been Chairman of the BOH.¹ In addition to her administrative duties, Mulloy fields complaints from the public and assists with drafting correspondence on behalf of the BOH and also schedules restaurant inspections with the food inspectors. Mulloy stated she also has been assisting with conducting contact tracing in relation to positive Covid-19 tests. Approximately five (5) years ago, the BOH began using Arthur Bloomquist to conduct the food inspections for the Town. Approximately two (2) years ago, Robert Casper Jr., who is the Health Agent for the Town of West Bridgewater, took over the food inspections for the Town. (Interview with Mulloy)
3. Robert Casper Jr. ("Casper") is the health agent for the Town of West Bridgewater. Casper began doing food inspections for the Town in approximately the summer of 2018. After a brief pause in inspections due to Covid-19 and the resulting Executive Orders, Casper resumed regular food inspections in the Town approximately in May of 2020. (Interview of Casper)

¹ Mr. Hubert passed away on or about January 13, 2021.

4. The BOH enforces sanitary and food codes and regulations, oversee title V septic systems, handles inspections and complaints and enforce the Covid-19 Executive Orders and Mandatory Safety Standards. M.G.L. c. 111, Sec 30 allows Boards of Health to appoint agents to act for them in cases of emergency or if they cannot conveniently assemble. Any such agent has all of the authority of such Boards of Health, however such agent(s) must report actions to said Boards of Health within two (2) days of an action taken. (Interview of Philbrick, M.G.L c. 111, Sec. 30; Covid-19 Executive Orders/Mandatory Safety Standards)
5. Hubert was a member of the BOH for approximately fourteen (14) years and recently became the Chairman in the spring of 2020. Hubert was a longtime member of the Commercial Club and had also previously worked at the Commercial Club as the General Manager. (Interview of Mulloy)
6. Heger is a current member of the BOH. Heger was elected to the BOH in approximately April of 2015. Heger works as a manager at an auto body shop and became a member of the Commercial Club in November of 2020. Heger stated that anytime someone comes directly to him with BOH related complaints or concerns, Heger directs such individuals to contact Philbrick or Mulloy at the BOH office. (Interview of Heger)
7. Lisa Lesogor ("Lesogor") is a current member of the BOH. Lesogor was elected to the BOH in approximately June of 2020. Lesogor works as a nurse and became a member of the Commercial Club in November of 2020. Lesogor stated that prior to Covid-19, the BOH met approximately once per month, however the BOH now meets approximately twice per month. Lesogor stated complaints usually go through the BOH office and that Philrick or Mulloy usually address and bring to the BOH's attention if needed. (Interview of Lesogor)
8. On March 10, 2020, Governor Charlie Baker declared a State of Emergency in response to Covid-19. On March 14, 2020, the BOS and BOH issued a Declaration of Emergency in response to Covid-19. As of March 6, 2021, in Massachusetts there have been five hundred fifty-six thousand three hundred and seven (556,307) confirmed cases of Covid-19 and fifteen thousand nine hundred and ninety-two (15,992) confirmed deaths

due to Covid-19. Since the beginning of the Covid-19 epidemic, Mulloy and Philbrick have been taking phone calls from the public at the BOH office. Philbrick stated that his style of enforcement of Covid-19 rules and regulations is more based on having a conversation and educating the public regarding such rules and regulations rather than enforcement of a penalty. Philbrick stated that he has seen people out in public who Philbrick knew were quarantined, but that he did not address anyone in person as he felt “uncomfortable” and did not know what to do. Specifically, Philbrick stated he ran into an individual in line at a store buying cigarettes who Philbrick was aware was under quarantine. Philbrick stated he did not want to say anything to the person at the store due to privacy concerns in case other people in the store overheard their conversation. When questioned by this Investigator about the possibility of following up with the individual at some point after the encounter in the store, Philbrick stated he could have followed up with the individual, but did not. Philbrick stated he felt the quarantine was voluntary and that he couldn’t do anything about someone not quarantining. Philbrick stated there is no ability for him to enforce the quarantine or impose a fine related to the failure to quarantine. Philbrick stated that at the time he saw this particular quarantine violation, it was when the quarantine requirement was fourteen (14) days and the individual was in the last few days of quarantine. (Interviews of Mulloy and Philbrick; March 10, 2020 Declaration of a State of Emergency to Respond to Covid-19; March 14, 2020 Declaration of Emergency by the Board of Selectmen and Board of Health; Massachusetts Department of Health Covid-19 Interactive Data Dashboard Data as of March 4, 2021)

9. Philbrick stated he also has previously seen people who he knew were under quarantine driving in their vehicles, but that he did not consider seeing them violating quarantine by just being in their vehicles. Philbrick also stated he saw one of his neighbors violating quarantine. (Interview of Philbrick)
10. 105 CMR 300.200 authorizes local boards of health to implement and enforce isolation and quarantine requirements upon the report of a case or suspected case of disease declared dangerous to public health. 105 CMR 300.210 (B)(1) titled “Voluntary

Compliance” states “(a) Before using mandatory measures, the Department or local board of health shall educate the individual or group about the reasons and requirements for isolation or quarantine, and shall attempt to secure voluntary compliance. (b) When an individual or group agrees to comply voluntarily with isolation or quarantine, no written or oral order shall be necessary.” 105 CMR 300.210 (G) titled Enforcement of Written or Oral Order states “(1) The Department or local board of health shall take all reasonable measures to minimize the risk of exposure to disease of police officers and others assisting with enforcement of an isolation or quarantine order. (2) If an order for isolation or quarantine is violated, the Department or local board of health may apply to a judge of the Superior Court for an order to enforce the isolation or quarantine in a manner that will protect the public health.” (105 CMR 300)

11. On or about July 27, 2020, Casper stated he inspected the Cumberland Farms and 7-11 establishments and both had open self-serve beverage stations in violation of the Covid-19 guidance. Casper informed the manager of the establishments that the self-serve beverage stations needed to be shut down and that he would be informing the BOH. Casper stated that at that time, a beverage station could only be open if it had an employee attendant. (Interview of Casper; Food Establishment Inspection Report of Cumberland Farms dated July 27, 2020)
12. On July 28, 2020, Mulloy sent an email to the BOH members and Philbrick stating that Casper had notified Mulloy that Cumberland Farms and 7-11 were both operating self-serve drink stations in violation of the COVID-19 executive orders and requested that Mulloy send out letters to the establishments. Mulloy wrote that Philbrick asked her “to hold off”, but she wanted to bring the matter to the BOH attention as Casper, Mulloy and Philbrick all work for the BOH and this would be noted in Casper’s reports. Heger and Lesogor replied that both were in favor of sending out the letters. Later that evening, Philbrick emailed the BOH members and Mulloy and requested that the BOH members reconsider or postpone the closure of the drink stations. Philbrick cited a number of reasons for his request including a lack of complaints, low positive cases and low death rate in the Town. Lesogor sent a reply requesting that the issue be tabled until the next

BOH meeting. The State's Mandatory Safety Standards at that time stated "self-serve, unattended buffets, topping bars, drink stations, and other communal serving areas must remain closed." (July 28, 2020 email chains regarding self-serve drink stations and Drink station closure; Covid-19 Mandatory Safety Standards)

13. Philbrick stated that one of the reasons he was against Casper's recommendation to close the Cumberland Farms drink stations in East Bridgewater was that Philbrick was aware that the drink station at the Cumberland Farms in West Bridgewater (where Casper is the Health Agent) was still open. An August 3, 2020 news article reported on Casper's attempts at trying to have the Cumberland Farms in West Bridgewater comply with the State's guidance. (Interview of Philbrick; August 3, 2020 Brockton Enterprise article titled "Self-serve beverages shut down at West Bridgewater Cumberland Farms")
14. The minutes from the August 3, 2020 BOH meeting state that there was a discussion regarding self-serve drink stations and that Casper believed the stations must be closed under the State guidance and requested a letter be sent. The minutes state that the BOH tabled the discussion until they could do more research. The minutes note that Philbrick was on vacation. Heger stated he did not recall the details of that meeting. Lesogor stated that she recalled that they were in the middle of looking into the issue and were waiting to see if the drink stations at the establishments were being manned by an employee. The next BOH meeting was held on August 17, 2020 and self-serve drink stations were not on the agenda. (August 3, 2020 and August 17, 2020 BOH minutes; Interviews of Heger and Lesogor)
15. On August 18, 2020, Mulloy sent an email to the BOH members and Philbrick informing them that the State had stepped in on the issue of Cumberland Farms keeping their self-serve drink station open and that the matter was on the agenda for a conference call that same day with an order for Cumberland Farms to comply with the State guidance by August 21, 2020. Mulloy suggested that, despite the BOH decision to not act on the matter, that a letter be sent to 7-11. Lesogor sent a reply inquiring of the Subway drink station and Mulloy replied that Casper had inspected the Subway the previous night and informed Subway the drink station needed to be closed. Heger and Lesogor replied that

they were in favor of sending letters to the establishments and Mulloy wrote that she had spoken with Hubert and that he would sign the letters as Chairman. Philbrick stated that he was not aware of the State guidance mandating closure of self-serve drink stations until sometime after his opposition to the self-serve drink station closures. (August 18, 2020 email chain regarding self-serve; Interview of Philbrick; Food Establishment Inspection Report of Subway dated August 17, 2020)

16. The Commercial Club is an establishment with private membership in East Bridgewater. The Commercial Club has a function hall, outdoor pavilion and a downstairs restaurant and bar. The downstairs restaurant and bar is open to the private membership and is also typically open to the public from 10:00 am until 2:00 pm on weekdays along with pizza night on Thursday nights and Sunday morning breakfast. The restaurant serves items such as burgers, hot dogs, pizza, steak tips, tuna salad and breakfast food. The bar is a full bar with liquor, wine and beer. The function hall has remained closed since approximately March of 2020. (Interviews of Don Ferbert and Janet Brooks)
17. Don Ferbert ("Ferberty") had been the general manager of the Commercial Club for approximately the last fourteen (14) years and recently retired as of December 31, 2020. Despite his retirement, Ferbert agreed to stay and assist with the reopening of the Commercial and help out with the new general manager during the month of January 2021. (Interview of Ferbert)
18. Janet Brooks ("Brooks") was hired on as the new general manager of the Commercial Club starting January 1, 2021. Brooks has been a Commercial Club member for approximately three (3) years and previously worked at the Bridgewater Citizens Club as a bar manager. (Interview of Brooks)
19. Due to Covid-19 and the related Executive Orders, the Commercial Club closed and laid off all of its employees on or about March 17, 2020. On or about June 17, 2020, the Commercial Club issued a type written letter to the BOH with the subject title "COVID 19 Reopening Request" with the words "Outdoor Dining" handwritten in the subject line as well. The letter states that the Commercial Club's reopening committee had reviewed the MA Safety Standards and MA Covid-19 Checklist and had created a plan to

implement and be in compliance with such standards/guidelines. The letter requests an inspection of the Commercial Club and their Covid-19 plan by the BOH. The letter is stamped as received by the BOS office on June 17, 2020. The Commercial Club also submitted a form to the BOS office titled "Temporary Restaurant Outdoor Use for Phase II Reopening" which was dated June 16, 2020 and signed by Ferbert. The application states the Commercial Club would be serving food and beverage outside Wednesdays through Saturdays five pm (5:00 pm) through ten pm (10:00 pm) with fifteen (15) tables outside and a total of ninety (90) total seats outside. Ferbert checked the boxes on the form that stated that the total number of outdoor seats would not exceed the existing seating capacity of the restaurant, that alcohol would be served outdoors, that the COVID-19 Control Plan had been completed and that such Plan must be kept on the premise and made available in case of inspection or outbreak and that the Commercial Club was in compliance with the mandatory safety standards for restaurants. A Temporary License was issued on June 22, 2020 to the Commercial Club for on-premises consumption of alcohol for outdoor seated service provided that food is prepared on-site under a retail food permit. The Temporary License had an expiration date of November 1, 2020. (Interview of Ferbert; COVID 19 Reopening Request letter dated June 17, 2020; Application for Temporary Restaurant Outdoor Use for Phase II Reopening dated June 16, 2020; Temporary License dated June 22, 2020)

20. The Commercial Club re-opened for outdoor dining on or about June 24, 2020 with the assistance of member/employee volunteers. Ferbet stated that Covid 19 guidelines for re-opening were covered with such volunteers. Upon the Executive Order allowance of indoor dining, the Commercial Club also began to allow indoor dining subject to Covid 19 guidelines. Approximately in the beginning of August 2020, the Commercial Club Board of Directors ("BOD") voted to bring the restaurant employees back to work. Ferbert stated that he held a meeting with such employees on August 3, 2020 and went over the Covid 19 guidelines with the employees. Ferbert stated that the acting bartender was always the Covid-19 officer. Ferbert stated that there was a sign in sheet for customers and the bartender would approach any customers who did not sign in and

tell them to do so. The bartender also informed customers of requirements such as the mask mandate and social distancing protocol as well as that customers needed to order food with alcohol. Ferbert stated the Commercial Club allowed people who did not arrive together to sit with each other as many members of the club are friends with one another. Ferbert stated it was the position at the time that they “have to trust people” and that the “members knew what the guidelines were.” (Interview of Ferbert, Ferbert email dated December 14, 2020)

21. Restaurant inspections by the BOH are typically performed two (2) times per year for each establishment. In cases where an establishment has been closed for a week or more, food inspections are required prior to re-opening. However, due to most/all of the establishments in Town re-opening in the approximate same time period and the use of an outsourced food inspector, the Commercial Club was not inspected by the BOH prior to re-opening. After ceasing food inspections in Town since approximately March of 2020, Casper began performing food inspections again starting approximately in May 2020. Casper performed the food inspection of the Commercial Club on August 20, 2020. (Interviews of Mulloy and Casper)
22. Casper stated that he typically does not schedule inspection appointments, but rather will just show up for an inspection when he knows the establishment is open for business. The August 20, 2020 inspection of the Commercial Club by Casper indicated that the Commercial Club was in compliance for the majority of the inspection. The box titled “Physical facilities installed, maintained and clean” was checked “out of compliance.” Casper noted later in the report that this was in regards to a backdoor screen that needed repair. As well, in the “Other Information” section, Casper wrote “Covid 19 Control Plan printed up while I was here. Don just has to fill it out and post.” Casper stated that every establishment is required to have a Covid 19 Control Plan and such plan is required to be onsite. Casper stated he met with Ferbert during the inspection and requested the Covid 19 Control Plan from Ferbert. Ferbert informed Casper that he did not have the Covid 19 Control Plan. Casper stated that he and Ferbert went to Ferbert’s office where Casper showed Ferbert the website which had

the template for the Covid 19 Control Plan. Ferbert printed out the Covid 19 Control Plan template and Casper instructed Ferbert to fill out Covid 19 Control Plan and post it in the restaurant. On the Inspection Report, Casper also noted that the Covid 19 signage was on the door and that Ferbert understood the new guidance regarding alcohol service. Casper stated he discussed the Ferbert the requirement that food was required to be ordered with alcohol. Casper also noted that there were no seats at the bar. (Interview of Casper; Food Establishment Inspection Report of Commercial Club dated August 20, 2020)

23. On or around September 16, 2020, Mulloy stated that Hubert contacted Mulloy and stated that he had received complaint(s) regarding the Commercial Club about the amount of people at the club. On September 16, 2020, Mulloy emailed Ferbert regarding the complaint(s) and reiterated the gathering limits of functions (twenty-five (25) at the time) as well distancing and alcohol service requirements. On September 18, 2020, Ferbert replied back to Mulloy asking when the incidents took place in order to help Ferbert and his staff. In his interview, Ferbert stated that he was not always at the Commercial Club during operating hours and was seeking additional information to relay to his staff in regards to the complaint(s). On September 18, 2020, Mulloy replied to Ferbert that the complaints had been conveyed to Hubert. (Emails between Mulloy and Ferbert dated September 16-18, 2020; Interviews of Ferbert and Mulloy)
24. On September 23, 2020, Mulloy sent a group email to a number of establishments including the Commercial Club/Ferbert. The email included an attachment of updated safety standards which would take effect September 28, 2020. The update included the increase of the size of a party seated at a table from six (6) to ten (10). The update also included the allowance of bar seating provided that either "[T]here are no active work areas or working staff behind the bar at least 6 ft away; or [T]here is a physical barrier (e.g. Plexiglass) separating customers from the bar space that is at least 30 inches high and a gap/opening at the bottom of the barrier is allowed for food and drink service as long as the gap/opening is no more than 8 inches high; In addition, parties must be seated at bars (no standing customer service) and parties must be spaced at least 6 ft

from other parties.” (Email from Mulloy dated September 23, 2020; Sector Specific Workplace Safety Standards For Restaurants To Address Covid-19 Updated as of September 22, 2020)

25. Upon receiving notice of the potential for the re-opening of bar seating, Ferbert stated that the BOD discussed the bar seating issue. Ferbert stated that both he and the BOD were not in favor of re-opening the bar seating as they had safety concerns. However, Ferbert stated that he and the BOD were aware that many of the Commercial Club general membership wanted the bar seating to re-open. Ferbert stated that the BOD decided to request that the BOH come down to the Commercial Club to see if bar seating could safely be implemented. Ferbert stated that approximately during the last week of September 2020, Philbrick came out to the Commercial Club to view the bar area and discuss the potential of having bar seating. Ferbert stated that Philbrick informed him that it would be ok for the Commercial Club to start having bar seating again. Ferbert stated he felt the biggest issue would be having a plastic shield to separate the bartender from the patrons sitting at the bar, but Philbrick informed Ferbert he didn't think shields were required. Ferbert stated he did not remember Philbrick giving any specific instructions regarding seating patrons and/or separating parties at the bar. Ferbert stated there were approximately ten (10) barstools at the bar. (Interview of Ferbert)
26. Mulloy stated that approximately during the last week of September 2020, she received a phone call from Ferbert in which Ferbert asked if the BOH could send an inspector to see what they could do about potential bar seating and possibly implementing plexiglass. Mulloy stated that Philbrick went to the Commercial Club to discuss the issue with Ferbert. (Interview of Mulloy).
27. Philbrick stated that approximately the first week in October 2020, he went to the Commercial Club to discuss the bar seating with Ferbert. Philbrick stated he went over the regulations with Ferbert and that Ferbert was familiar with and understood the regulations. Philbrick stated at that time, there was no time limit restriction and up to ten (10) people could be seated in a group. Philbrick stated he was not sure how to

regulate who was in a group or party because the guidelines did not define such at the time. Philbrick stated that plexiglass was installed at the drink station, but that plexiglass at the other areas of the bar was not required due to the bartender being more than six (6) feet away from the patrons. Philbrick stated there were approximately fifteen (15) stools at the bar. (Interview of Philbrick)

28. Commercial Club Patron "A" stated that they visited the Commercial Club sometime after the first week of October 2020 after the bar had re-opened. Commercial Club Patron "A" stated that they viewed the bar at the Commercial Club completely full with every seat taken without any separation of parties or groups. Commercial Club Patron "A" stated that when an individual or group seated at the bar left, other patrons would take the empty seats and sit directly next to other individuals/parties sitting at the bar. (Interview of Commercial Club Patron "A")

29. On or about Saturday November 21, 2020, the Commercial Club held a meat raffle in the restaurant section of the club. The meat raffle ran for approximately two (2) hours from 6:30 pm until 8:30 pm. Ferbert stated that the Commercial Club did not interpret the meat raffle as a special event (at the time the limit on indoor events was twenty-five (25) people) because the raffle was held during the time dinner was being served in the restaurant. Ferbert stated that a member of the entertainment committee walked around to each table with a face covering on and sold tickets. The sign-in sheet for that day indicated thirty-nine (39) name entries for the day. Brooks stated that they were unsure of exactly how many people took part in the meat raffle because the sign-in sheet reflected the total amount of names entering the club for the entire day, not just the meat raffle. Brooks stated that as people could buy as many raffle tickets as they wanted, the number of people buying raffle tickets was difficult to discern. (Interviews of Brooks and Ferbert)

30. Brooks stated that a few days later on or about Tuesday November 24, 2020, the Commercial club held a "Queen of Hearts" raffle where the tickets were sold all during the week prior and the winning tickets were read aloud that Tuesday evening. Brooks stated the sign-in sheet for that date contained twenty-three (23) name entries for the

entire day. Brooks stated that it was later discovered that some of the same people had attended both raffle and that a bartender who had worked both raffles ended up testing positive for Covid-19. (Interview of Brooks)

31. Ferbert stated that on or about Thursday November 26, 2020 (Thanksgiving Day) at approximately 7:00 pm, he received a phone call from the vice president of the club informing him that a member of the club had tested positive for Covid-19. Ferbert stated he was told that the member had last been in the club at a meeting of the personnel committee on Wednesday November 18, 2020 and that Covid-19 symptoms of the member began on Saturday November 21, 2020. Ferbert was told that the member later went for a rapid Covid-19 test on Wednesday November 25, 2020 and such member received a positive Covid-19 result later that afternoon on that same day. Ferbert stated he called the BOH main phone number on the morning of Friday November 27, 2020 and his call was sent to the voicemail. Ferbert stated that he did not leave a message on the BOH voicemail. Ferbert stated in hindsight he should have left a message, but at the time he had wanted to get an immediate response and he then called the Massachusetts Covid-19 hotline number. Ferbert stated that the representative from the hotline number instructed Ferbert to check with the local police to see if they had other contact phone number(s) of the BOH. Ferbert stated that he eventually received a cell phone number for Philbrick from the club's vice president. Ferbert stated that he texted a message to Philbrick's cell phone number informing Philbrick that the Commercial Club member had tested positive and waited for a response. Ferbert later spoke to the East Bridgewater Police who confirmed that the cell phone number which Ferbert had received for Philbrick was correct. (Interview of Ferbert)

32. Philbrick stated he was on vacation during the Thanksgiving week of 2020 (Monday November 23, 2020 through Friday November 27, 2020). Philbrick stated he had his town issued work cell phone at his home during this time while he was on vacation, but that he was "off work" when Ferbert attempted to contact him and "didn't see" the text from Ferbert. Philbrick stated that he answers the work phone if he has it, but that he

usually keeps it on his night table and keeps "it turned down." Philbrick said that Ferbert could have called any of the BOH members and that the BOH members have his and Mulloy's private cell phone numbers. Philbrick stated he did not recall if he actually read/received the text from Ferbert later that weekend when Mulloy eventually contacted him and that he may not have read the text until the morning of Monday November 30, 2020. When Philbrick did read the text from Ferbert, Philbrick stated it was received on his phone on the morning of Friday November, 27, 2020 and the text stated that the Commercial Club had a positive Covid-19 test and were looking for guidance as to what to do. (Interview of Philbrick)

33. Ferbert stated that later on Friday November 27, 2020 he went into the Commercial Club to check to see if any emails had been received from the Town which there had not. Ferbert stated the Commercial Club opened that day. Ferbert stated that later that afternoon as he was leaving, he saw Heger at the club and explained the Covid-19 situation and information he had received from the club's vice-president. Ferbert stated that Heger told Ferbet that Heger would make some calls and get back to Ferbert. Ferbert stated that Heger called him approximately one (1) hour later at 3:30 pm. Ferbert stated that Heger told Ferbert he had spoken with Mulloy and that since the member who had tested positive had not been in the club for over one (1) week, the club was ok to remain open and that the club did not need to close for twenty-four (24) hours for cleaning. (Interview of Ferbert)

34. Mulloy stated that Heger called her on Friday November 27, 2020 inquiring of the infectious period of Covid-19 and when a person becomes contagious. Mulloy stated that she informed Heger that the exposure period for contact tracing was forty-eight (48) hours prior to symptoms of if no symptoms forty-eight (48) hours prior to the test. Mulloy stated that Heger told her the member had not been in the Commercial Club during exposure period that Mulloy had provided. (Interview of Mulloy)

35. Heger stated he was at the Commercial Club on Friday November 27, 2020 and that Ferbert approached him and had some questions about Covid-19 and protocol regarding a member who had tested positive. Heger stated that he only spoke to Ferbert for

about one (1) minute or so and directed Ferbert to call Mulloy. Heger stated he did not recall speaking with Mulloy at that time. (Interview of Heger)

36. Ferbert stated that later in the day on Friday November 27, 2020 at approximately 5:00 pm, Ferbert was contacted by the vice president again who informed Ferbert that he had been made aware of three (3) more positive Covid-19 tests of members. Ferbert stated at that point it was decided to immediately close the club. At approximately 5:22 pm on Friday November 27, 2020, an email was sent out to the Commercial Club members stating that there were at least three (3) confirmed Covid-19 cases of members who were recently at the club and that the club would be closed until further notice. The email also informed members if they are exhibiting symptoms, they should get tested and notify the club to assist with contact tracing. (Interview of Ferbert; Email dated November 27, 2020 regarding Commercial Club closure)
37. Approximately at 5:30 pm on Friday November 27, 2020, Mulloy stated she received a phone call from Heger. During the call, Mulloy stated that Heger informed Mulloy of the positive tests and the closure of the club. Mulloy stated that she requested that Heger contact Ferbert to tell Ferbert to call Mulloy. (Interview of Mulloy)
38. Ferbert stated that the Commercial Club BOD held an emergency online zoom meeting at 10:00 am on Saturday November 28, 2020. During the meeting, Ferbert stated it was decided to keep the club closed until the club received further direction from the BOH. (Interview of Ferbert; Email dated December 14, 2020 regarding MA DLS Covid case #21c-1112)
39. Mulloy stated that she did not receive a phone call from Ferbert on Friday November 27, 2020. Mulloy stated she called Heger on Saturday November 28, 2020 and asked Heger for Ferbert's cell phone number. Mulloy stated that Heger provided Mulloy with Ferbert's cell phone number and Mulloy called Ferbert that same day with Mulloy asking Ferbert what was going on with the club. Mulloy stated that she told Ferbert that Heger had informed her of the positive tests and the closure of the club. Mulloy informed Ferbert that he was required to notify the BOH as soon as the club becomes aware of a positive test. Mulloy stated that Ferbert informed her that he had texted

Philbrick, but that Philbrick did not reply and Ferbert then confirmed Philbrick's cell phone number with the police and that he also spoke with Heger. Mulloy stated Ferbert provided her with the contact information for the club's recording secretary, Autumn Perkins ("Perkins"), in order to assist Mulloy with the contact tracing process. (Interview of Mulloy)

40. On Saturday November 28, 2020, Mulloy texted Philbrick on his private cell phone number inquiring whether anyone from the Commercial Club had contacted him. Mulloy stated that Philbrick informed her that he had missed the text as he was on vacation. (Interview of Mulloy)
41. On Sunday November 29, 2020, Mulloy received an email from Perkins listing names and phone numbers of people from the club who the club had been informed had tested positive. The list contained approximately seventeen (17) names. The email also contained another nine (9) names of club members who had tests pending and were awaiting results. Mulloy stated she called nurse Lisa Royal regarding the list and started calling people on the list. Mulloy stated that Perkins sent Mulloy follow-up emails regarding further test results as well as sign-in sheets from the club. (Interview of Mulloy; Email dated November 29, 2020 regarding list of covid positive)
42. Mulloy stated she called the State Department of Health on Sunday November 29, 2020 to inform them of the information regarding the Commercial Club. Mulloy stated she spoke with the on-call epidemiologist who informed her that that the state guidance mandated a deep cleaning and twenty-four (24) hour shutdown of an establishment each time positive Covid-19 test is received, but that the BOH and/or Health Agent had the authority to close the Commercial Club for up to fourteen (14) days based on positive Covid-19 test(s). Mulloy stated that Town Nurse Lisa Royal ("Royal") had been assisting Mulloy with the contact tracing over the weekend. Mulloy stated that she and Royal discussed the issue and, given the large number of positive tests at that point as well as the ongoing receipt of positive tests arising out of the Commercial Club, both were of the opinion that the Commercial Club should be shut down for fourteen (14) days. Shortly thereafter, Mulloy stated she called Philbrick informing him of the large

number of positive tests and that she and Royal believed Philbrick should shut down the Commercial Club for fourteen (14) days. Mulloy stated that she discussed with Philbrick the fact that the BOH members were all members of the Commercial Club and that they should not be involved in the decision due to conflict(s). Mulloy stated that Philbrick told her he did not want to make any hasty decisions and that he needed more information. Mulloy stated that Philbrick told her he felt that the club could do a cleaning and re-open and that he didn't feel it was necessary to close for an extended period. (Interview of Mulloy)

43. Philbrick stated that he spoke with Mulloy on or about Sunday November 29, 2020 and that Mulloy informed him that she wanted to close the Commercial Club for fourteen (14) days. Philbrick stated that at that time the Commercial Club had voluntarily decided to remain closed and Philbrick would be back at work on Monday so an immediate decision did not need to be made and he felt they could discuss this issue on Monday. (Interview of Philbrick)

44. Mulloy stated that she spoke with Philbrick at work on Monday November 30, 2020 and Philbrick informed her that he did not feel comfortable shutting down the Commercial Club for fourteen (14) days. Upon Philbrick informing Mulloy that he would not be closing the Commercial Club for fourteen (14) days, Mulloy stated spoke with Ferbert to go over the requirements for the club to re-open and Covid-19 guidelines. Mulloy sent Ferbert a follow up email with Philbrick copied on such email reiterating their phone conversation, citing that the "cluster quickly went from 1 to 25 in just 4 days.". (Interview of Mulloy; Email dated November 30, 2020 regarding Covid follow up)

45. Philbrick stated the Commercial Club was closed on Monday November 30, 2020 and was supposed to open on Tuesday December 1, 2020 and that he never issued an order to close the Commercial Club. (Interview of Philbrick)

46. Mulloy stated that around this time she had concerns regarding the potential re-opening of the Commercial Club. Mulloy stated she was also aware that the three (3) BOH members were all also members of the Commercial Club and Mulloy was worried about potential conflict of interest issues. On or about Tuesday December 1, 2020,

Mulloy stated that she spoke with Town Counsel John Clifford (“Clifford”) as well as former BOH and current BOS member Peter Spagone Jr. (Spagone) regarding her concerns. (Interview of Mulloy)

47. Clifford stated that he spoke with Spagone about his concerns regarding the Health Agent’s reluctance to act and the potential conflict issues with BOH members. Clifford stated that Spagone immediately contacted Commercial Club officials and strongly recommended that they voluntarily remain closed. (Interview of Clifford)
48. On or about Tuesday December 1, 2020, the Commercial Club BOD voted to voluntarily remain closed until December 15, 2020 due to the number of positive cases considered to be related to the club. (Interview of Ferbert; Email dated December 14, 2020 regarding MA DLS Covid case #21c-11124)
49. On December 7, 2020, the BOH held a meeting in which they discussed the Commercial Club. Mulloy updated the BOH on the contact tracing being performed and that as of that time, approximately fifty-five (55) cases of Covid-19 were associated with the club within a two (2) week period and that the club was closed and cooperating with the contact tracing. Clifford was at the meeting and recommended to the BOH that, as all three (3) BOH members were also Commercial Club members, the BOH members recuse themselves from the matter and have the Massachusetts Department of Labor Standards (“DLS”) conduct an independent investigation. After some discussion, the BOH members voted to recuse themselves and request that DLS investigate the matter. Lesogor stated she was opposed to the recusal as she did not feel there was a conflict, but stated she was “outvoted.” (December 7, 2020 BOH minutes; Interview of Lesogor)
50. Philbrick stated that sometime after the Commercial Club had voluntarily closed down on Tuesday December 1, 2020, numerous individuals including Hubert, informed Philbrick that they had witnessed violations of the Covid-19 rules at the Commercial Club such as patrons not wearing masks when walking around and patrons getting drinks from the bar. Philbrick stated that he did not receive any of these complaints prior to the shutdown of the Commercial Club or any other complaints regarding the Commercial Club. Philbrick stated that Hubert and Ferbert had some type of personal

grievance(s) amongst each other and that that may have been why Hubert did not previously report the alleged prior violation(s) to Philbrick. Philbrick also stated that such personal issues between Ferbert and Hubert may have been why Ferbert did not attempt to contact Hubert upon the first club member testing positive for Covid-19. (Interview of Philbrick)

51. Heger stated that he had never received any complaints regarding the Commercial Club. Heger stated that he did not see any Covid-19 violations during the times he was present at the Commercial Club. (Interview of Heger)

52. Lesogor stated she did not receive any complaints regarding the Commercial Club, but that Mulloy had mentioned that someone had made a complaint regarding the club's function room. Lesogor stated she did not see any Covid-19 violations during the times she was present at the Commercial Club. (Interview of Lesogor)

53. Casper performed a food inspection of the Commercial Club on December 14, 2020. The Commercial Club had previously voluntarily agreed to remain closed until December 15, 2020 and Casper stated Mulloy had requested that Casper perform a food inspection due to the potential of the Commercial Club reopening the following day. Casper stated there were no significant issues as a result of his inspection. Casper stated he met with Ferbert and specifically addressed the issue of seating groups/parties and went over such in detail. Casper stated he informed Ferbert that as many of the Commercial Club members came as single parties, those parties had to be seated on their own and could not be seated with other parties. Casper stated that Ferbert understood this and that he needed to keep individual parties separate. (Interview of Casper; Food Establishment Inspection Report of Commercial Club dated December 14, 2020)

54. Ferbert stated that prior to the December 14, 2020 inspection, the Commercial Club had removed the bar seating from the club. (Interview of Ferbert)

55. On December 15, 2020, Department of Labor Standards Investigator John Dallen ("Dallen") issued a Cease and Desist Order ("Order") to the Commercial Club for noncompliance with Covid-19 safety standards. The Order stated that the Commercial Club had "not properly responded or provided documentation requested in the COVID

Cluster Investigation” and that the Commercial Club had been identified as a location “of a COVID infection cluster involving more than 55 persons.” (December 15, 2020 Cease and Desist Order)

56. On January 20, 2021, Dallen issued a letter to the Commercial Club stating that DLS had determined the club’s COVID-19 Control Plan satisfactory and that the December 15, 2020 Order was rescinded. (January 20, 2021 DLS letter)

V. CONCLUSION

In terms of the Commercial Club cluster and its initiation, it certainly would have been advantageous if Ferbert had made more of an initial effort to contact the BOH upon receiving the initial information of the positive Covid-19 on Thanksgiving evening. Ferbert himself admitted that in hindsight, he should have left a message upon receiving the BOH voicemail. Ferbert could have also emailed Mulloy (Ferber had Mulloy’s email as Mulloy had been consistently emailing Ferbert and other establishments throughout the summer with updated Covid-19 guidelines) and/or attempted to contact the BOH members, all of whom were also Commercial Club members. However, Ferbert did text Philbrick’s Town issued cell phone (and verified that such number was correct with the police) regarding the positive test and awaited a response. But had Ferbert relied solely on seeking a response via Philbrick’s Town issued cell phone, Ferbert most likely would not have received a response until Monday November 30, 2020. Philbrick stated that he only became aware of the missed text from Ferbert when Mulloy contacted him over the weekend. Fortunately, Ferbert eventually made contact with Heger who in turn informed Mulloy of the situation.

The job description for the Health Agent stated that the Agent is “subject to call at all times.” Health-related emergencies occur at random times/days/hours and do not abide by normal working hours so the reason for such mandate is clear. The Town issued cell phone for the Health Agent is provided so the Health Agent can receive and address such emergencies in a timely fashion. The need for adequate receipt and response of health-related emergencies is even more heightened at this time during the ongoing Covid-19 epidemic, in which at the time

of the issuance of this report in Massachusetts alone there have been five hundred fifty-six thousand three hundred and seven (556,307) confirmed cases and fifteen thousand nine hundred and ninety-two (15,992) confirmed deaths. If Philbrick was not going to accept or respond to calls and/or texts on the Town issued cell phone during vacations and/or other time off, it is vitally important that he takes the proper steps to ensure that the public and the Police Department are aware of the cell phone number which should be used to reach him in case of an emergency. Philbrick stated that all the BOH members had his private cell number, however this is irrelevant unless it was clear to anyone trying to contact him that he was not checking his Town issued phone at that time. Neither the Police Department nor Ferbert were aware that Philbrick would not be checking his Town issued cell phone. As a practical matter, Philbrick must respond to all calls and texts on the Town issued cell phone, even when off duty as his position mandates. If there is a period in which Philbrick would be unable to reply to calls/messages, it is imperative that he ensure that someone else is responsible for responding to every call and/or message during such period.

Once she became aware of the multiple positive Covid-19 tests, Mulloy, who is not the Health Agent but the Administrative Assistant, filled her weekend with managing the Commercial Club cluster. Mulloy initially tracked down Ferbert when he failed to contact her, contacting the State Department of Health and working with Royal and Perkins to conduct contact tracing of the cluster. Based on the guidance from the State and the high and escalating positive numbers that she and Royal were seeing, Mulloy contacted Philbrick on Sunday November 29, 2020 to share the information she had received and advocated that Philbrick, as the Health Agent, shut down the Commercial Club for fourteen (14) days due to such high and increasing number(s) of positive tests arising out of the cluster. However, Philbrick seemed content that the Commercial Club had voluntarily closed and felt that any decisions could wait until Monday, November 30, 2020. Upon returning to work on Monday, November 30, 2020, Philbrick informed Mulloy he did not feel comfortable shutting down the Commercial Club for fourteen (14) days and did not issue any type of order to the club.

As Mulloy noted in her November 30, 2020 email to Ferbert, the cluster went from 1 to 25 in 4 days. Despite Mulloy's concerns and her recommendation of a fourteen (14) day

closure, Philbrick opted not to issue a closure order. While Mulloy is not the Health Agent, she was the only person associated with the BOH who recognized the seriousness of the cluster and took decisive action by speaking with Town Counsel and the Selectmen's office. Absent the involvement of Mulloy, Spagone and Clifford, the Commercial Club likely would have opened on Tuesday December 1, 2020. And while it is impossible to predict how many more positive cases there would have been had the club re-opened at that time, it is fair to say there most likely would have been significantly enhanced cluster amounts based on the large and increasing numbers in such a short time frame coupled with the club's failure to follow Massachusetts Covid-19 Executive Order and Mandatory Safety Standards.

Clusters can happen anywhere and certainly it is possible to get sick even if you are following all the rules. However, Ferbert admitted that club members were allowed to basically sit with whomever they wanted when they showed up at the club and were allowed to join with other parties. Therefore, members could just show up and sit with other members at the club's bar and tables and there was minimal, if any, separation of parties as required by the State's workplace safety standards. Commercial Club Patron "A" verified this practice as they viewed the seating at the bar completely full with every seat taken with patrons coming and going as they pleased without any separation of parties or groups. This practice is directly inapposite of the mandatory workplace safety standards and most likely why the cluster was so large and grew so quickly.

Philbrick visited the Commercial Club in late September/early October when bar seating was allowed to re-open. Philbrick said at that time he was not sure how to regulate a group/party as the regulations at the time did not disallow various people from different households to sit together as a party. Philbrick said that he went over the Covid-19 regulations with Ferbert and that Ferbert was aware of and familiar with said regulations. Ferbert said he and the BOD had concerns about re-opening the bar seating and the use of plexiglass, but that he did not recall Philbrick giving any specific instructions regarding seating patrons and/or separating parties at the bar and that Philbrick informed him he didn't think they needed plexiglass between the bar seating and the bar. It does not appear that there was a specific

conversation, question(s) and/or guidance regarding the separation of individuals and/or parties at the bar.

However, despite the lack of such specific guidance, ignorance of the law is not a defense. The Commercial Club is required to be aware of and follow all Covid-19 rules and regulations. If Ferbert and the BOD had serious safety concerns about their re-opening of the bar seating (and concerns that their members may not follow the workplace safety standards), then they should have not re-opened the bar seating and/or they could have implemented plexiglass separations on their own despite Philbrick's recommendation that such were not needed. Ferbert's alleged concerns regarding the opening of the bar area and his position that members could sit with who they wanted because they "have to trust people" and that the "members knew what the guidelines were" directly conflict with one another.

Following the recusal of the individual members of the Board of Health on December 7, 2020, at the invitation of the Town, DLS began an investigation into the events surrounding the Commercial Club cluster and the club's overall compliance with Massachusetts Covid-19 Executive Order and Mandatory Safety Standards. The DLS issued a Cease and Desist Order on December 15, 2020, which forced the club to remain closed until they were in full compliance with all Massachusetts Covid-19 Executive Order and Mandatory Safety Standards. That order was not lifted until January 20, 2021, and the Commercial Club opened shortly thereafter. Because of their role in this outbreak and their failure to adhere to Covid-19 mandatory safety protocols, the Commercial Club was closed for almost eight (8) weeks.

During this investigation, non-Commercial Club issues concerning overall Covid-19 enforcement arose as well. Of most concern to this investigator was Philbrick's admission that Philbrick himself viewed various Town residents violating mandatory Covid-19 quarantine and Philbrick did nothing to follow up on such violations. This raises the question: If the Town's Health Agent is not enforcing mandatory quarantines, who is? Philbrick stated he felt there was nothing he could do. This is incorrect. Should someone be unwilling to voluntarily quarantine, 105 CMR 300.000 authorizes Philbrick to order the quarantine and enforce the quarantine if necessary. And while Philbrick should be aware of the laws pertaining to his position, even if he was not aware of 105 CMR 300.000, it is unclear why Philbrick did not

follow his own mantra of education over enforcement. At an absolute minimum, Philbrick should have contacted each and every one of the individuals he viewed violating quarantine and, as in his words, have a “conversation” and educate such individuals regarding their violation(s) and their impacts on their community.

Another area of concern was the issue of the open self-serve drink stations. Philbrick’s actions/recommendations were in direct contrast to the Covid-19 Mandatory Safety Standards at that time which clearly stated self-serve drink stations had to be closed. And while the BOH members initially were in favor of following Casper and Mulloy’s recommendations, they were apparently swayed by Philbrick’s arguments and the BOH ended up taking no action regarding the open self-serve stations until they were informed that the State had moved in and taken action against Cumberland Farms. Which begs the question: If Philbrick did not feel comfortable doing such inspections within the Town which resulted in the Town paying an outside inspector to perform such inspections, why was Philbrick offering opinions on inspection(s) he did not perform nor want to perform? Philbrick admitted that when he offered such opinions, he unaware of the very clear and unambiguous Covid-19 Mandatory Safety Standards that stated self-serve drink stations were required to be closed. Therefore, the BOH ended up relying on the incorrect recommendation of a Health Agent who did not perform the inspection (which allowed the violation(s) to continue) instead of relying on the correct recommendation of the Health Agent who actually performed the inspections and was aware of the law.

This same question/concern arises regarding Philbrick’s decision to go to the Commercial Club to discuss the potential for re-opening the bar seating instead of forwarding the request to Casper. Bar seating is subject to the Covid-19 Mandatory Safety Standards which falls under food inspections and reopening guidelines. Casper had been charged with performing the food inspections within the Town because Philbrick no longer felt comfortable with inspection and enforcement of establishments within Town. If Philbrick felt so uncomfortable that he did not want to perform food inspections within the Town (which includes enforcing Covid-19 Mandatory Safety Standards), then Philbrick should have delegated the request by the Commercial Club to Casper.

The BOH has broad statutory authority to address all of the issues under their purview. However, they are an elected board of volunteers who are subject to Open Meeting Law requirements and other restrictions which limit their ability to respond quickly to urgent matters or emergencies. Philbrick is the Town's Health Agent and as such, is the sole professional empowered to enforce health codes and regulations on a day to day as well as emergency basis. Philbrick's role is even more critical during the ongoing COVID-19 pandemic. His failure to maintain basic communication protocols/procedures while he was on vacation is inexcusable. If Philbrick was not going to answer calls or texts to the Town issued phone, he should have handed the phone off to someone who would respond and/or otherwise made sure someone would respond. It is not acceptable for the Town's primary public health official to not check his phone while on vacation during a pandemic, leaving the Town without coverage.

Once Philbrick did finally speak with Mulloy about the issue of the Commercial Club Covid-19 outbreak, he was reluctant to exert the statutory authority necessary and appropriate to deal with that situation and essentially did nothing in response to what was clearly a public health emergency. Such reluctance may have been influenced by the fact that all of the BOH members are also Commercial Club members. Philbrick's failure to act also appears to be related to his overall reluctance to fulfill his duties with respect to enforcement of Massachusetts Covid-19 Executive Order and Mandatory Safety Standards. In any case, Philbrick's shortcomings raise serious concerns regarding his ability to protect the Town's public health interests.

Given the fact that there is sufficient credible evidence of repeated abject failures of Philbrick to complete the most basic aspects of his position, this Investigator recommends [REDACTED]

Finally, concerns regarding the Ethics and Open Meeting Law arose during this investigation. While the BOH did vote to recuse themselves from involvement with the Commercial Club cluster, there was significant discussion on this subject and Lesogor stated that she did not feel there was a conflict of interest and that she was "outvoted." Had Lesogor not been outvoted,

the BOH would have been acting on matters in their official capacity regarding a private club of which they were all members. As well, Philbrick stated that Heger and Philbrick have been longtime friends and socialize together. A reasonable person may consider that such relationships and affiliations could prevent fair and objective performance of the duties of the BOH and thus such would result in the appearance of a conflict of interest which is a violation of the conflict of interest law. In addition, in reviewing emails amongst the BOH members as part of this investigation, it appears that the BOH members may not be aware of the open meeting law requirements regarding communications amongst fellow board members as this investigator viewed several open meeting law violations. Therefore, it is this investigator's opinion that the BOH members would benefit from receiving trainings in both Ethics and Open Meeting Law.

Respectfully Submitted,

Christopher J. Kenny

March 8, 2020

Christopher J. Kenny, Esq.

Date