

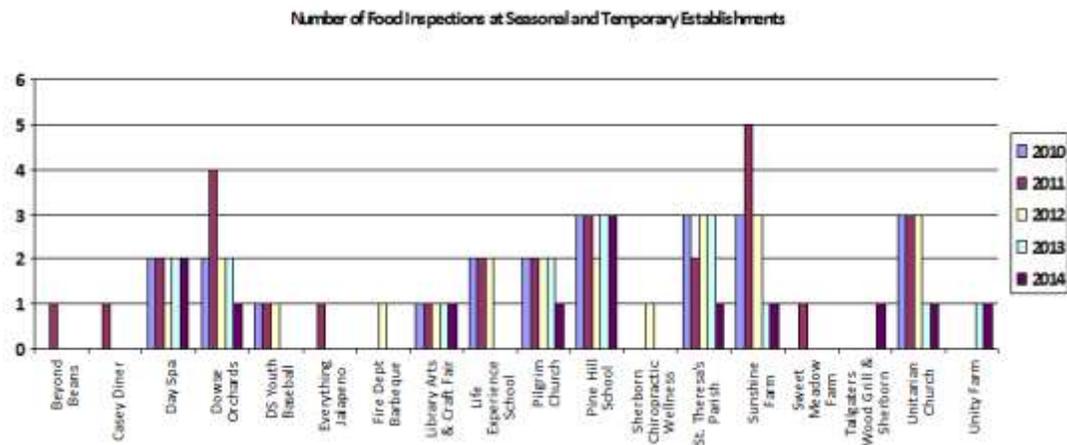
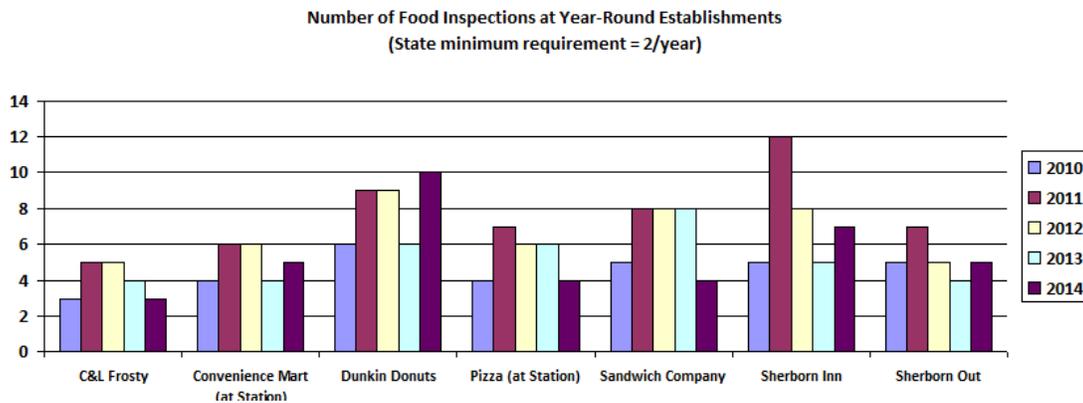
The Sherborn Board of Health is issuing the following Response to Investigator Eric A. Kinshrerf's (GPA) report titled "Review of Assertions Made by Robert Murchison Concerning Board of Health Agent Mark Oram and Envirotec Consultants (Dated: April 24, 2015).

Prior to and during the Kinshrerf Investigation, the Board of Health had also researched each of the assertions raised regarding the Health Agent. This Response provides brief summaries of the Board of Health's findings with respect to each of the Investigator's four primary conclusions.

Investigator’s Conclusion 1: Based upon our review of inspections of year round establishments, the required amount of inspections per the contract were met for year-round establishments but were not met for other types of establishments (seasonal, intermittent, or temporary).

Board of Health Assessment

State requirements were always met or exceeded. State code requires that year-round food establishments be inspected twice per year and other types of food establishments be inspected as needed but with less frequency since they may not be operating throughout the year. The graphs below illustrate the number and types of inspections performed for calendar years 2010 to 2014.



The Food Inspector met or exceeded the Board’s revised requirements. Sherborn’s prior Food Inspector’s contract requested that all but seasonal and temporary establishments be inspected 4 times per year and seasonal/temporary be inspected less frequently and when open. In 2011, the Board of Health determined that the Town and its food establishments would be better served by a realignment of Food Inspector efforts to a more risk-based approach, as was being advocated at the State level. Unfortunately, amendment of the written contract was overlooked.

However, the Food Inspector's practices since 2011 reflected the verbal instructions provided by the Board. They included:

- meeting the state minimum in all cases;
- targeting 4 inspections per year for year-round establishments but allowing reassignment of food inspection efforts to help establishments in greater need; and
- reducing the minimum number of inspections for churches with kitchens to the State minimum because such kitchens are seldom used for food preparation other than making coffee, reheating meals prepared elsewhere, etc.

Instructions for the Food Inspector have been modified to accurately specify State requirements and revised local expectations.

The Board's modified requirements serve the Town better. Before the Board requested the changes in Food Inspector practices, it:

- researched the inspection practices in other, comparable towns;
- took into account changing philosophies at the State level regarding protection of public health relative to food establishments (i.e., putting resources where they are most needed); and
- considered the best means for meeting Sherborn's needs within budgetary constraints.

Investigator's Conclusion 2: Based upon the documents we reviewed, there do not seem to be unrealistic commitments of time.

Board of Health Assessment

The Health Agent fulfilled the duties required for Sherborn. The Board arrived at the same conclusion as did the Investigator, although based on more information than was used by the Investigator. Furthermore, the Board recognizes that many people work more than 40 hours per week.

Because the Board was hiring the Health Agent for only about 11-15 hours per week on average, the Board sought guidance from Town Counsel about the relevance to or authority of the Board to investigate the activities undertaken by the Health Agent outside the part-time contractual service to Sherborn. Before the Board received clear guidance about this issue, the Board of Selectmen indicated their intent to employ an outside investigator for the issues. Once the outside investigation was launched, the Board felt it was appropriate for that investigator to render a judgement on this aspect of the allegations first.

The Board reviewed the data provided by the resident who raised concerns about this topic and the methodology of its development. Based on its knowledge of the specifics surrounding the Health Agent's work, the Board used different methods in its assessment than did that resident.

Investigator's Conclusion 3: There is lack of sufficient detail provided to support the amount of time charged to the Town.

Board of Health Assessment

Documentation existed prior to FY2015 but was less detailed than what is being provided since July 2014. Prior methods of invoicing were transparent and known. Numerous financial audits of the Town did not identify the practices as problematic.

In the past, the Health Agent maintained a written log of tasks performed; the log was kept in the Board of Health office. This was the accepted procedure for tracking Health Agent activity. No other written records for the Health Agent's accounting of time were specified by the Board of Health, Town administration, or Town financial entities.

Current invoice details provide verification of what the Board has been able to observe via meetings and other interactions with the Health Agent and via review of Health Agent work product. Since June 2014, new procedures have been adopted for contractor invoicing to the Board of Health. For example, detailed supporting documentation now accompanies each invoice. Below are excerpts from August 2014 and June 2015 invoices that illustrate time spent, the mix of Health Agent activities, and in-office versus field activities.

August 12; 5.0 hours, calls, emails and office, updates with staff, groundwater review for [redacted] Nason Hill, process [redacted] Ames building and certificate of compliance, building application reviews for [redacted] Brook Street, [redacted] Maple Street and [redacted] Forest Street, [redacted] Nason Hill Title 5 review and contact inspector on report error, process certificate of compliance for [redacted] Snow Street and [redacted] Old Orchard Road, correspondence on bat concern in office, Field, [redacted] Old Orchard and [redacted] Ames, final grades, alarms and house at [redacted] Old Orchard with installer and homeowner

June 17, 2015, Wednesday, 4.75 hours; emails and calls, Board of Health meeting, pre and post meeting office work and review, process building applications for [redacted] Page Farm Road approved and [redacted] Page Farm Road updated, email and calls, Field, [redacted] Farm Road septic building pipe.

June 18, 2015, Thursday, 3.25 hours; emails and calls, updates with installer on [redacted] Farm Road and [redacted] Maple Street, Office, update with Administrative Director, Conservation Commission Agent on Harrington Ridge Road with call to owner on past soil test location being filed in and noted soil test were conducted and recorded and need for engineer data and need to evaluate fill being brought in for asphalt shown in pictures provided by Conservation Agent and [redacted] Washington Street new soil test plan reviewed with Conservation Agent and call engineer to schedule soil test, [redacted] South Main Street return call and review status of fill and order to correct with owner and return call to person on house and septic tank abandonment for back house, [redacted] Bullard Street, return call to person inquiring on use of land and review historical decisions on new construction related to groundwater and technical and regulations for Title 5 and local regulations - referred to Board of Health and explained to place in writing with specifics for request to meet with Board of Health, [redacted] Forest Street, process new Certificate of Compliance Field, [redacted] Maple Street status if replaced grades at septic tank, Harrington Ridge fill site from street view, [redacted] Western Avenue status of covering and [redacted] Curve Street status of installation

June 19, 2015, Friday, 3.5 hours, office, email, calls, housing inspection 2 visits, with discussion with landlord after both inspections

Details such as these align with the prior understanding that the Board had regarding how time was spent by the Health Agent.

The Board is aware of the duties and services of the Health Agent. Due to an average of two meetings per month, the Board is familiar with what work is on-going and the general level of effort associated with Health Agent functions. Each meeting involves input from and significant interaction with the Health Agent, most notably for technical evaluation of the variety of projects that the Board must regulate. Another significant portion of Health Agent effort is field work. The current Board would not tolerate a lack of service and, on a practical level of addressing the work load, could not; we doubt that past Boards would have done so.

The Board operating during the Investigation period notes that the Health Agent:

- performs technical and regulatory review of submissions not only on time but typically well in advance of required deadlines, sometimes even turning around information within several hours of receipt, and the reviews are thorough;
- is prepared to respond to questions posed by the Board at meetings and between meetings;
- has taken the initiative to develop tools that aid in application reviews, including checklists that help applicants to understand what items are missing from submittals;
- evaluates projects according to the state and local regulations and brings questionable issues to the Board.

Investigator's Conclusion 4: Invoices were submitted at the end of fiscal years 2009, 2011 through 2014 to bill at or near the amount of appropriation.

Board of Health Assessment

There are two main reasons that Health Agent hours go up at the end of the fiscal year:

- Although the septic-related test period begins November 1st and runs through the Spring, winter can be a challenging time to perform the testing. Thus, when warmer weather comes, there is often a rush to get such testing done so that building can begin during the summer months (e.g., soil testing to determine maximum ground water elevation must be completed before April 29th and percolation tests must be completed before June 30th).
- The Board of Health is faced with the challenge of balancing a fixed annual budget with work demands that are not entirely predictable (e.g., it cannot be known how many septic systems might need to be evaluated in a year). Thus, the Board tries to hold off lower priority tasks until the end of the year; the Health Agent's highest priorities during the year are serving well and septic applicants, reviewing building applications, and nuisance complaints. An example of a deferred activity is Title V report reviews. When Title V reports are submitted to the Board of Health office, only those that pertain to current septic plan submittals are reviewed in detail and the rest are screened for several key pieces of information only. Budget permitting, screened reports are closely examined at the end of the fiscal year (which ends June 30th). Such examination is a worthwhile task that can identify septic characteristic or performance information that is important to highlight or correct in the files for the benefit of future property owners/activities.

Coincidentally, food inspections also intensify at the end of the fiscal year as establishments are checked for warm weather readiness.

Below is a graph of the Health Agent's hours per month during FY2015 and the first 2 months of FY2016. It illustrates the seasonal variability that often exists for the Health Agent work load.

