

**ANDOVER BOARD OF HEALTH**  
**Minutes**  
**February 10, 2014, 6:00 P.M.**  
**CD&P First Floor Conference Room**  
**36 Bartlet Street**

The Board of Health Meeting was called to order at 6:01 p.m. Present were Ms. Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Gopala K. Dwarakanath, M.D., Clerk and Mr. Thomas G. Carbone, Director of Public Health.

**I. Approval of Minutes**

- **January 13, 2014**

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of January 13, 2014 with the following correction:*

- *On page 4, • **Salt Shed Update (not on Agenda)** – second sentence, change “He was under the impression...” to “He had been under the impression...”*

*Unanimous approval.*

**II. Appointments & Hearings**

- **6:00 p.m. – Attorney James Creed for 5 Oak Street – Show Cause Hearing to Repair a Failed Septic System (Continued)** – Mr. Carbone informed the Board that Attorney Creed reported that the mortgage holder has taken control of the property. Mr. Carbone had questioned that the occupants were gone because there were still cars and items left at the property, but Attorney Creed said they were left there by the previous owners. Mr. Carbone asked the Building Inspector to check out the property and he saw that there was snowblowing done, but the cars were covered with snow. Mr. Carbone believed that the Management Company is making it look like someone is living there. Dr. Dwarakanath asked who would take the cars off the property and Ms. Martin said that the Foreclosure stated that any property or materials that are left on the site belong to the mortgage holder.

Ms. Martin expressed concern that this has been going on for so long. Mr. Carbone told the Board that he received an e-mail from Attorney Creed and he said that if the Board would write a letter stating that there is a failed septic system that letter would be shared with any potential buyers.

Ms. Kellman asked if there would be anything that prevents the sale of the house without the septic first being fixed. Mr. Carbone replied that Title V states that an inspection has to be done prior to the sale of a house so the buyer knows what they are getting. The code says that within two years of discovery of the failure of Title V, you have to fix the system unless ordered to do so sooner, so the Board can make that

requirement. Since it is Winter, a Title V may not be able to be done now, so a new buyer may buy the house and live in it with a failed system, but the Board could require the new buyer to do the work within six months. Mr. Carbone could make sure the letter states that there is a failed septic system and the Board does not want the house reoccupied until such time as a new septic system is installed. Ms. Martin asked if there is no deed restriction or condemnation, what is holding them to do this. Mr. Carbone explained that all the letter will do is notify the next owner that this condition exists and they would still be required to upgrade the septic system. Whenever they move in, Mr. Carbone would issue a new ORDER to them to connect to sewer or upgrade the septic system. Technically Title V says when a Bank takes over under Foreclosure like this, they are not required to do the work – it would be up to the next owner. We normally do not get notified when a property is sold, but Mr. Carbone believed Attorney Creed would provide us notice when there is a sale. Ms. Martin told Mr. Carbone to put into the letter that Attorney Creed provide the date of when a sale was going to take place.

*Motion by Ms. Martin seconded by Ms. Kellman to close the Show Cause Hearing to Repair a Failed Septic System on 5 Oak Street with the condition that no occupancy occur until the septic system is replaced or connected to sewer, and that the Board be notified of the date of sale of the house. Unanimous approval.*

- **Daryl and Brenda Afshin for 7 (a/k/a 7R) Lowell Junction Road – Show Cause Hearing for Failure to Connect to Sewer and Condemnation Hearing (Continued)** – Dr. Dwarakanath was concerned that the Afshins did not show up for another meeting with the Board. Mr. Carbone told the Board that he had not heard from them and when he called them, he got a recording saying that the phone was unavailable. They did get the last letter from the January Board of Health meeting, but there has been no contract submitted to the Health Division and no notice of any plans going forward. Ms. Martin asked if Mr. Carbone knew if the easement has been filed and Mr. Carbone stated that he did not know and that it was up to the Afshins to take care of that. Mr. Carbone would like to seek action through Housing Court and would like the Board to direct him to seek that action. If the Board so decides, Mr. Carbone would file the paperwork by the end of the week, and that would trigger a Magistrate Hearing. Then they would have to show up and explain why a criminal complaint should not be issued. Mr. Carbone’s biggest concern is the metal septic tank. Ms. Kellman stated that she felt the Board doesn’t have any other choice since the Afshins have not shown up for two consecutive meetings. Ms. Martin and Dr. Dwarakanath agreed.

*Motion by Dr. Dwarakanath, seconded by Ms. Martin to take allow Mr. Carbone to go to Housing Court for a Hearing and file a Complaint.*

Discussion followed. Mr. Carbone stated that this is a two part issue and that the second part is the Condemnation Hearing. The Board could ORDER the house condemned for the failed septic system with a specific date the house should be

vacated by, or the Board could continue the Condemnation Hearing for a status update after a certain amount of time.

*Motion by Ms. Martin, seconded by Dr. Dwarakanath to continue the Condemnation Hearing to the March 17, 2014 Board of Health Meeting for a status update. Unanimous approval.*

### III. Discussion

- **Draft Tobacco Control Regulations (See attachment in Drop Box)** – Mr. Ronald Beauregard, Healthy Communities Tobacco Control Program Director was in attendance to present his proposed changes to the regulations governing the sale of tobacco products and smoking. The proposed changes were e-mailed to the Board, so a copy of the document has been added to the packet after page 35.<sup>1</sup>

The following are changes that are proposed. E-Cigarettes are now approved as a smoking device, so no one under the age of 18 should be allowed to purchase them and retailers would need to ID anyone purchasing them. A sign would be mandated to be posted stating that it would be illegal to sell these types of products to such persons. An 8½ X 11 sign would be mandated to be posted providing customers with an 800 number to call to help them quit using tobacco. Only permanent, non-mobile establishments would be allowed to sell tobacco products. Anyone selling an establishment must have any outstanding fines paid before the new buyer will be issued a Retail Sale of Tobacco Products License. Pricing must follow the current minimum retail price compliant with the current Mass. Dept. of Revenue requirements. Coupons that are given to reduce the price of the tobacco products or for free would be prohibited. Roll Your Own machines, which are machines that you put tobacco into and then make about 200 cigarettes in about five minutes would be prohibited. Mr. Beauregard mentioned the Pharmacy ban on sale of tobacco that several communities have adopted, and the Board responded that it was not going to regulate that.

Cigarettes and cigars will be prohibited from being sold in single packets. Cigars that are inexpensive (\$2.51) will be required to be sold in packs of at least four. Singles have been more accessible because of the low price and some are flavored which are an attraction to youths. The sale of Blunt Wraps would be prohibited except in retail tobacco stores. Blunt Wraps are partly or wholly made of tobacco and wrap around a straw so you can roll your own cigars. The sale of tobacco would not be allowed at any Colleges or other educational institutions. No vending machines would be allowed at these locations either.

Mr. Beauregard proposed to change the tolling period when a violation occurs. The first violation would be a fine and a second violation within (3) years would incur a larger fine and possible suspension of the Tobacco License. If more violations occur, the fines and suspensions would become larger and longer, and in the end would result in revocation of the Retail Sale of Tobacco Products License.

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<sup>1</sup> A copy of the Draft Tobacco Control Regulations that were in the Drop Box has been added to the packet after page 35.

Smoking would also be prohibited in retail stores, smoking bars, and any outdoor spaces where food or alcohol is served, as well as in restaurants per previous regulations. Smoking bars would include establishments known as cigar bars or hookah bars. Mr. Beauregard stated that his opinion was that hookah was tobacco and should be part of the prohibition and that allowing smoking bars would be a setback of where the Town of Andover is now.

At this point of the meeting, the owners of the Lux Hookah Lounge in Plymouth, MA, Maryanne Nagle and Bahaa Dalloul, asked to speak about Hookah Lounges and how the tobacco is consumed. Ms. Nagle stated that hookah is different than tobacco because it is pure tobacco with no chemicals or additives. Hookah is flavored with fruit and molasses. The way it is lit, the chemistry of the tobacco is changed because of the length the smoke has to travel through the water in the pipe. Also, people do not smoke hookah daily like they do cigarettes and cigars. Ms. Nagle explained that there would be no food or alcohol at the establishment and no one under the age of 18 would be admitted. She explained that the use of the hookah to smoke tobacco is a cultural tradition in the Middle East where Mr. Dalloul comes from. The people who come to a Hookah Lounge come to play backgammon, share ideas and talk. The Hookah is passed around from one person to another and each person has their own mouthpiece. The tobacco is filtered twice; once through the water in the hookah and then through the person's lungs. Dr. Dwarakanath stated that the issue the Board is focusing on is the use of smoking in small spaces, which the Board usually does not allow.

Ms. Nagle and Mr. Dalloul provided the Board with some information and studies about the practice of smoking tobacco from a hookah and the effects of that action as well as the cultural aspect. Dr. Dwarakanath stated that since he is a Doctor, he would make use of his medical library and research the subject independently so he can be more knowledgeable before making any decisions.

Mr. Carbone stated that he wanted guidance from the Board of Health if they agree with the proposed changes. Ms. Martin stated that she agreed with some of the points, but not all, but was willing to have the Hearing. Mr. Carbone stated that if the Board was comfortable with the proposed revisions, he would draft up the regulations and will make them available on the website. He will also put out a notice that we will hold a public Hearing at the next Board of Health Meeting on March 17, 2014. The Board agreed.

- **Mobile Food Vendor Bylaw** – Mr. Carbone explained to the Board Members that this matter will be on the Town Meeting Warrant this Spring to allow the Board of Selectmen to regulate where and when food trucks may operate. This does not require any action on their part, but since this concerns Mobil Food Vendors, he wanted to make the Board aware about this. Ms. Kellman stated that she thinks this makes the licensing process more complicated if the Board of Selectmen adopts regulations, especially because the Board has been working to make things easier. Mr. Carbone

stated that if Town Meeting adopts this bylaw, it only allows them to regulate where the food trucks can park and between what hours. They may adopt regulations to set aside three parking places in the Municipal lot at the Town House, similar to how Boston and Cambridge have assigned designated spaces where they can park their vehicles. If they do grant licenses they would have to establish a fee. As far as the Board of Health is concerned, our permitting process would not be affected.

- **Volunteer Letter for the 2013 Flu Immunization Program** – Mr. Carbone presented the Board with a letter for them to sign that is issued annually thanking the Volunteers who helped with the program.<sup>2</sup> The Board Members signed the letter and Mr. Carbone will send copies out to all the volunteers.

#### IV. Old Business

- N/A

#### V. Subdivision Definitive Plans

- N/A

#### VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**
  - **3 Cottonwood Circle, Additional LUA to allow the Septic Tank and Pump Chamber to be 85' from the Wetland, where 100' is Required (Not on Agenda)** – Present was homeowner, Joe Reilly. Mr. Carbone informed the Board that the Board looked at this plan last month and had approved one LUA for the groundwater setback. In the meantime, Mr. Carbone had a conversation with our Conservation Agent who felt the Wetlands delineation was off by 10' to 20'. The Conservation Commission approved the work subject to the approval of any other needed LUA's by us. Norse Environmental went out to flag the wetlands and found they were 10' closer to the house than originally depicted. The leach field has to be 10' from the property line. In this case, because the wetland is bordering vegetative wetland on a tributary to a water supply, we have to keep everything 10' away including the sealed concrete septic tank and pump chamber. Because of the altered wetland line, the Engineer has shifted the leach field as far out as he can, and is maintaining the 100' setback. Now there is not enough room for the septic tank, so Mr. Carbone is asking the Board to approve the LUA to allow the septic tank and pump chamber to be 85' from the wetland, where 100' is required. Mr. Carbone stated that this is a solid tank designed not to leak. Mr. Carbone explained that wetlands are fluid and we have to base our

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<sup>2</sup> A copy of the letter thanking volunteers for their help during the 2013 Flu Immunization Program has been added to the packet after page 40.

decisions on where the wetlands are today. Mr. Carbone explained that there really is not enough room in the front yard, and we like to minimize the run of the sewer line from the foundation to the tank. The original plans had a longer run because the Engineer was trying to minimize the LUA's needed. The Engineer is not using a monolithic pour tank, but the Board could make that a requirement. Typically these tanks are poured with a seam about half way; if you require the monolithic pour the seam would be up above the flow line. Ms. Martin stated that this would be a good precaution.

*Motion by Ms. Martin, seconded by Ms. Kellman to approve the LUA to allow the septic tank and pump chamber to be 85' from the wetland, where 100' is required in addition to the already approved LUA to allow the leaching facility to be 4' above SHWT, where 5' is required; as well as a request that a monolithic pour tank be used if possible. Unanimous approval.*

## **VII. Staff Reports**

### **A. Director's Reports:**

- **Important Dates:**

- February 15, 2014 at 9 a.m. to Noon – Budget Hearing
- February 20, 2014 at 9 a.m. – MHOA/MDEP Seminar in Wilmington
- March 17, 2014 at 6 p.m. – Board of Health Meeting
- April 14, 2014 at 6 p.m. – Board of Health Meeting

**B. Nurses' Report for January, 2014** – The Nurses' Report for January, 2014, were for informational purposes only.

**C. Inspectors' Reports for January, 2014** – The Inspectors' Reports for January, 2014, were for informational purposes only.

## **VIII. Board Member Reports**

- N/A

## **IX. Adjournment**

*Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:42 p.m. Unanimous approval.*