



Acton Board of Health
Meeting Minutes
September 26, 2023
7:30 PM.
Virtual Meeting ONLY via Zoom

Present:

Virtual Members Present: Mark Conoby, Chairman, William McInnis, Dr. William Taylor, Dr. Rekha Singh and Mike Kreuzer.

Virtual Staff Present: Sheryl Ball-Health Director, Matthew Dow and Felix Garcia, Public Health Inspector

Others Present Virtually: Alissa Nicol, Select Board liason, Alek Chongris, David Bamforth, Patrick Manning, Attorney Mark Burrell, Sam Bajwa, Stephan Marsh, Julien D'Agostine, Meghan Kaye, Drew Vardakis, Beth Van Emburgh, John Mangiaratti, Justine Milne, Michael Atkinson, Call in User-1 and Brian Kopperl, Matt Schultz, Robert Knowles and Sarah Hussain.

1. Opening

Chairman – Mark Conoby opened the meeting at 7:30 P.M. A script was read that was provided by the Town and this meeting of the Board of Health was called to order.

2. Regular Business

Board Member Future Agenda Items

None

Health Director Update

Ms. Ball stated that both the Human Services and Senior Center located at 30 Sudbury Road and Acton Town Hall located at 472 Main Street have Free Covid test kits available to the public. These kits expire on 11-19-23. Ms. Ball also stated that residents can request 4 free covid test kits starting Monday, September 25, 2023 from USPS.gov by going to covid.gov/tests. Ms. Ball reminded people to protect themselves and their family by getting vaccinated, stay home when sick, wear a mask in crowded places, get tested if symptomatic, practice good hygiene and isolate if you test positive.



Mosquito

Ms. Ball stated that Acton is currently identified as being low risk for both EEE and WNV. The State has announced that EEE levels in some Massachusetts towns to the South are identified as High risk in towns like Dudley, Southbridge, Sutton and Sturbridge and other towns have been identified as moderate risk including Ludlow and Springfield. Ms. Ball stated that WNV has been found closer to Acton in Chelmsford, Billerica, Lincoln and Wayland and those communities are deemed moderate risk.

Positive Rabid Raccoons

Acton has identified two rabid raccoons in Acton and would like to send out a press release to residents tomorrow to include the following:

1. Avoid and report wildlife that is behaving strangely or appears sick or injured
2. Keep pets up to date on their rabies vaccination
3. Supervise your pets when they are outdoors
4. Seek immediate medical care if you are bitten or scratched by wildlife
5. Seek immediate care for your pet if they are scratched or bit by a raccoon or other wildlife.
6. Do not attempt to touch or feed wildlife.
7. See attached link from Massachusetts Division of Fisheries and Wildlife for more information about raccoons. <https://www.mass.gov/info-details/learn-about-raccoons>
8. Please remember daytime activity is not an indicator of disease for any wildlife in Massachusetts.

The Board asked staff to send this information out to the residents but also asked that information about prevention from Mosquitoes and Ticks bites be added.

Nursing Director Update –

Ms. York was not able to join us this evening but will provide an update at the next meeting.

Approval for Water Use Records -Play Together Acton, LLC- 544 Massachusetts Ave

The owner, Meghan Kaye, of Play Together Acton, LLC located at 544 Massachusetts Avenue is seeking Board approval to utilize water flow records to allow for a small business in her home. The home is currently permitted for 440 gpd but is only utilizing 65 gpd on average. Ms. Kaye has indicated that she is willing to dedicate and not use one bedroom to free up 110 gpd to run this business. The proposed business would be to have a caregiver and very small child (0-3 years old) class that focuses on caregiver education, relationship building, facilitated play and building community. Ms. Kaye is proposing that she be allowed to run 3 – 1 hr. classes per day and no more than 22 participants per day. Eventually Ms. Kaye would like to increase the classes and the participants ages and agreed to condition on her water usage. The Health Division has reviewed this request and recommends approval with the proposed conditions.



On a motion made by Mr. Kreuze, seconded Dr. Taylor, the Board unanimously voted to allow Ms. Kaye, to operate Play Together Acton, LLC from her property located at 544 Massachusetts Ave with the following conditions:

1. No more than 22 participants allowed per day.
2. The Health Division will require that water use records be submitted every three months for review by the Health Director. If at any time the permitted flow is exceeded, the Health Director shall be authorized to work with the applicant to ensure that the septic system remains in compliance or discontinue approval if compliance cannot be achieved.
3. The applicant must agree, in writing, that this approval is limited to their use of only 3 bedrooms.

The Chair took roll call and all were in favor.

92B Willow Street – Update and Condemnation/Vacate Order Enforcement

The Board asked Ms. Ball to give an update and Ms. Ball stated that we are here this evening to discuss any updates and to also discuss the Condemnation/Vacate Order Enforcement for the property located at 92B Willow Street. Ms. Ball also stated that since the last Board of Health meeting we haven't received a lot of updates but noted an email from Mr. Sam Bajwa that was placed in the Board packet this evening. Ms. Ball informed the Board that only Attorney Mark Burrell is present tonight The Board expressed their displeasure that Mr. and Mrs. Thompson (the tenants) were not present this evening and asked Ms. Ball to continually check to see if they join. The Board reminded everyone that the tenants appealed the Board's order to the Concord District Court and that court placed a 14 day stay to the Board of Health's vacate order. The judge for Concord District Court also advised Mr. and Mrs. Thompson to transfer their appeal to the Housing Court. The Town has received confirmation that has been transferred and the Town has filed a motion for a speedy trial. The Board asked if the tenants have vacated the unit and Ms. Ball stated no. The Board stated that the Town has been working diligently with the tenants to help locate alternate housing and questioned if the tenants have accepted an offered unit. Ms. Ball confirmed they have had offers of units with the latest one being a two bedroom fully accessible unit and was not aware if that had been accepted by the tenants. The Board asked if the units offered were affordable and Ms. Ball stated yes. The Board commended many Town staff for helping the tenants with the process of finding affordable housing.

The Board took a call from call in user #1 in the hopes that the tenants had joined the meeting but the call was from Terra Friedrichs. Ms. Friedrichs thanked the Board for not using the condemnation process to subvert the eviction process. The Board informed her that it is two separate issues. Ms. Friedrichs also stated that she has not aware that the tenants were offered an affordable unit and asked to see that in writing.

Attorney Mark Burrell stated that he was with Sam Bajwa (owner), Stephan Marsh (licensed construction supervisor) and Jim D'Agostine. Atty. Burrell stated that in his opinion there is nothing preventing the Board from enforcing the vacate order and reminded the Board that the tenants appealed the Board's order which the Board upheld, and the stay that was issued by Concord District Court ended on August 21, 2023. Atty. Burrell stated that he has been



following the case in the Housing Court but nothing is going on and he wants the Board to enforce their vacate order. The Board asked the owner what their intention was after the unit is vacated by the tenants and it was stated that they would demolish the unit. The Board asked the timeline of that and were told they would secure the unit immediately and demolish the unit within a 30-60-day time period. The Board stated that they appreciate that timeline.

The Board asked if the tenants acknowledged receipt of the agenda and if they were aware that this action item was being discussed this evening. Ms. Ball stated that they had emailed receipt to the Town Manager and were aware that this was being discussed tonight. Ms. Ball checked the participant list on the zoom and confirmed that the tenants had not joined this meeting. The Board stated that this is the second time the tenants did not join a scheduled BOH meeting as they also did not attend their initial appeal request which the Board had to continue to another meeting date.

The Board stated that the tenants are living in this uninhabitable unit, have claimed injury from this unit and have agreed that the unit should have been condemned. The Chair outlined the potential processes that the Board could act on tonight which include:

1. Enforce the order of removal effective immediately.
2. Enforce the order of removal within a set time period so that it could be conditioned on the disposition of the current appeal in the Housing Court.
3. Not enforce the order of removal.

Mr. McInnis stated that he would recommend that the Board enforce the order for removal conditioned on the disposition of the current appeal in Housing Court and stated that he doesn't wish to supplant the courts authority or jurisdiction. Mr. McInnis further stated that the Town has made good faith efforts to assist the tenants with safe suitable housing that meets their requirements and noted that the tenants so far as been unwilling to leave this unhealthy and unsuitable environment. The Board stated that the tenants have agreed to the condemnation and the conditions of their existing unit are not acceptable so they need to vacate but have failed to accept a new affordable unit that has been offered to them. The Board stated that we have worked with counsel throughout this process and believes that the appeal process should be heard prior to ordering the vacate.

Atty. Burrell reiterated that he believes the Town can exercise its right to enforce the vacate order as there is no order by any judge to prevent the Board from enforcement of that order. Atty. Burrell also stated that the tenants have also had many extensions.

Terra Friedrichs stated that she thought the tenants would be joining the meeting but urged the Board to not act tonight. Ms. Friedrichs urged the Town to speak with the Thompson's again as there were reasons why the tenants did not accept the units that were offered to them stating it was because one was near a dumpster.

On a motion made by Mr. McInnis, seconded by Dr. Taylor, the Board voted to proceed with their order for removal of the tenants but held that order in abeyance with the execution of the appeal that is currently in front of the Housing Court. The Board further stated that this stay may be revisited at any time if there is no action within 30 days where the Board could modify or amend the order.



A motion was also made by Mr. Kreuze to immediately have the tenants vacate but that motion was not seconded.

The Chair took roll call on the original motion by Mr. McInnis. Mr. Conoby, aye., Dr. Singh, aye, Mr. McInnis, aye, Dr. Taylor, aye, Mr. Kreuze – abstain. The vote was 4-0-1 (abstained). Motion passes.

On a motion made by Mr. Kreuze, seconded by Mr. McInnis, the Board also voted to immediately secure the unit and demolish no later than 30- 60 days from the time the unit is vacated for the property located at 92B Willow Street. The Chair took roll call and all were in favor.

The Board advised staff to keep this subject on future agendas.

13 Lawsbrook Road – Variance(s) Request

The Health Division is in receipt of multiple variance requests from the owner’s engineer, Chongris Engineering, for the property located at 13 Lawsbrook Road. Ms. Ball stated that the proposed system is being replaced in the same area of the existing system due to extreme site limitations. The entire backyard consists of extreme slopes and ledge. The Board asked if the Health Division has experience with this IA technology, Waterloo Biofilter and Ms. Ball stated no, however, Mr. Chongris stated they have used them in quite a few tight spaces and they work essentially like a Presby system. Mr. Chongris stated that the abutter has been notified that the system will be placed closer than 10’ to his property line. The Health Division has reviewed the plans and recommends these variances:

1. 310 CMR 15.211 – SAS to be a minimum of 10 ft from the property line.
2. 310 CMR 15.211 – Septic tank / pump chambers to be a minimum of 10 ft from the property line.
3. Acton Board of Health Rules and Regulations 11-8.1.1 Minimum SAS required for a three (3) bedroom to be 600 SF.
4. Acton Board of Health Rules and Regulations 16-6 Figure 1 for a minimum groundwater offset of 6 ft in an Acton Groundwater Protection Zone 3.
5. 310 CMR 15.405 is requested to allow only one test pit in the proposed SAS area. Due to site limitations, a second test pit couldn’t be performed.
6. 310 CMR 15.104 is requested to allow for a sieve test instead of a percolation test. Due the size of the lot, and how deep the fill was, a large enough hole in accordance with OSHA safety regulations could not be performed.

On a motion made by Mr. McInnis, seconded by Dr. Taylor the Board unanimously approved variances from 310 CMR 15.211, 11-8.1.1, 16-6 and 310 CMR 15.405 and 15.104 with the following conditions:

- 1) The system shall, at all times, be maintained in compliance with the most recent Remedial Use Approval issued by MASS DEP for the Geomatrix Systems and the Standard Conditions for Secondary Treatment Units Approved for General Use for the Waterloo Biofilter.



- 2) The septic tank shall be pumped a minimum of once every two years or sooner as per the operation and maintenance manual by the manufacturer of the Waterloo Biofilter.
- 3) The system shall be constructed in accordance with the above listed conditions and the plan stamped by Chongris Engineering, dated 9/19/2023.
- 4) The property line must be surveyed, staked, marked and maintained during construction.

The Chair took roll call and all were in favor.

115 River Street – 20 Sonar Drive, LLC- Hazardous Materials Control Permit

The Health Division has received and reviewed a hazardous materials control permit for a small scale ESS battery for the property located at 115 River Street. The Board initially reviewed this request at a previous meeting but asked that the applicants work with staff and bring back to the Board for review. Health staff worked with the applicant and the applicant has agreed to the proposed Board of Health standard conditions, however, they would like to speak to the Board about condition #23. Condition #23 states that an independent site field evaluation and field listing by a UL, ETL or other NRTL of the products, equipment and installation shall be required to certify compliance limited to NEC and NFPA code and regulations, and shall be submitted to the Health and Building Divisions prior to operation or use and prior to issuance of the permit. The owner of the property, David Bamforth was present and stated that this equipment already comes pre-certified with UL listings and would like to avoid paying this expense. The Board explained that while it is pre-certified at purchase, it is not certified after install so it is imperative to have this tested by a nationally recognized laboratory. The owner also stated he was concerned with the cost of this and the Board told them that the cost should not be a lot but if it becomes a hardship then they could come back before the Board. Patrick Manning, general contractor for this project also mentioned the cost of the sound study. The Board stated that the noise generated on site needs to follow the Mass. DEP noise regulations so this is being requested to ensure the noise that is generated complies prior to operation or if mitigation is required then that should be done prior to operation. The Board advised the applicants that if the concerns noted become a hardship they should work with staff to bring back to the Board to reevaluate.

On a motion made by Mr. McInnis, seconded by Mr. Kreuze, the Board unanimously voted to approve a Hazardous Materials Control Permit to 20 Sonar Drive, LLC located at 115 River Street with the following conditions:

1. All liquid Hazardous Materials and Wastes shall be stored in a containment area capable of containing 110% of the largest volume stored in the containment area.
2. All Safety Data Sheets (SDS's) for the Hazardous Materials shall be maintained on site. SDS's shall be reviewed with employees at the time of their employment and on an annual basis thereafter. SDS sheets must be made available to all employees upon request.
3. A Contingency Plan, including emergency contact numbers (Telephone numbers of owner, operator, etc.) and a sketch showing clearly all Hazardous Material and Waste locations shall be submitted and updated annually, to the Health Division, Fire Department, Police Department, and Civil Defense.



4. Emergency procedures and local Emergency Response Telephone Numbers (Health, Fire, Police, D.E.P., Civil Defense, etc.) should a spill occur, shall be posted in clear view of all employees where Hazardous Materials or Wastes are used or stored.
5. All Hazardous Wastes must be disposed of by a Licensed, D.E.P. approved, hauler or be recycled on site.
6. Copies of either all invoices or manifests for any Hazardous Materials or Waste, received or disposed, shall be submitted to the Health Division annually or as required.
7. All Hazardous Materials Containers shall be labeled and dated when filling first began.
8. Speedy Dry, or its equivalent, shall be kept in the storage area, in case of a Hazardous Materials or Wastes spill. Protective equipment, including at a minimum, chemical resistant gloves, eye goggles and (rubber) boots, in addition to soap and water, portable eye wash, shall be made available to all employees, at all times, in any Hazardous Materials or Waste storage or use area. Appropriate personnel protective equipment must be stored and immediately available for use on site at all times.
9. A portable safety eye wash kit shall be located anywhere Hazardous Materials are stored or used.
10. A fire extinguisher, containing an appropriate fire extinguishing agent, shall be placed in the Hazardous Materials Storage area as approved by the Acton Fire Department.
11. No food or drink shall be stored or consumed in any area where Hazardous Materials are stored or used.
12. Prior to any new chemical or processes being used or stored, the Board of Health shall be notified and requires prior written Health Division approval.
13. The operation of this facility shall follow all present and future regulations of E.P.A. and D.E.P. at all times. Nothing in this permit allows or requires non-compliance with all present and future applicable laws or regulations of the Federal or State Governments.
14. The Health Division shall conduct a site inspection prior to use and at least once per year. This permit shall be renewable yearly and all Hazardous Materials and Wastes shall be updated to ensure proper oversight of disposal and storage of all existing and new chemicals.
15. Fire Safety training must be provided by the applicant to the Acton Fire Department and other Town response personnel prior to operation and twice per year, at Town designed times to accommodate different shifts. This safety training shall be provided yearly as needed and coordinated with Acton Fire and Health Department.
16. Full Compliance with DEP Guideline Bureau of Resource Protection Drinking Water Program for Proposed Solar and Wind Energy Projects is required.
17. Sound studies by a licensed profession engineer acceptable to the Health Division shall be required. The sound studies, including frequency and background levels at night, must be completed to ensure that any potential noise generated from this site shall follow the State of Massachusetts Noise Ordinance 310 CMR 7.10. The sound studies shall be performed at the proposed location once all tree clearing has occurred and prior to construction and again after start up prior to operation and issuance of final permit to document compliance with DEP requirements. A follow-up sound study shall also be conducted six (6) months after start-up to document operational compliance.
18. Provide a sound barrier acceptable to the Health Division to help mitigate any potential noise to abutters prior to start up. A noise mitigation plan shall be submitted for approval by Health and other Town departments prior to permit issuance which shall include at a minimum additional screening and sound mitigation measures to be implemented in the event of exceedance.
19. Provide the Health Division prior to startup with a complete contact list, response time and phone numbers of qualified list of technicians in the event of an emergency prior to start up.
20. A complete final health and safety plan combined with an emergency response plan shall be submitted to the Health Division, Fire Department and other town departments for review and approval prior to start up and issuance of a permit. The plans shall include, at a minimum, a section regarding any potential impact to all sensitive receptors and abutters in the event of a spill, fire or off gassing event and plans to address this event and identify levels and plans that may be required. The plan shall specify the response time for technicians to arrive at site in the event of any issue or emergency. The plan shall specifically provide information detailing actions for protection of water runoff that could potentially impact the wetlands or runoff into catch basins or grounds.
21. Physical barriers, bollards, or jersey barriers must be provided and maintained around the entire project to prevent potential entrance by vehicles or other hazards.



22. An independent site field evaluation and field listing by UL, ETL, or other NRTL of the products, equipment, and installation shall be required to certify compliance with limited to NEC and NFPA code and regulations, shall be submitted to the Health and Building Divisions prior to operation or use and prior to issuance of final permit.
23. A site and equipment decommissioning plan must be submitted to the Health Division and other Town department for approval prior to issuance of permit.
24. Safety Data Sheets (SDS) shall be updated to the Health Division yearly and immediately upon use of any new hazardous materials and must remain current all times.
25. Provide insurance documents, types of insurance and amounts must be submitted to the Town and Health Division for approval prior to issuance of a permit.
26. A copy of the O&M contract must be submitted to the Town and Health Division for the approval prior to issuance of the permit.
27. The site and facility risk assessment plan must be submitted to the Town and the Health Division, Fire Department, and other Town departments for approval prior to issuance of a permit.
28. Any approval of the hazardous materials control permit application is conditioned on and subject to all other required town departments for approvals and specifically subject to approval and conditions of the site plan and building permits.
29. The Hazardous Materials Control Permit shall not be sold, transferred, assigned, change of ownership with the express written prior to the approval of the BOH and Town of Acton.
30. Provide a containment basin for potential runoff including but not limited to runoff contaminated with hazardous waste in the event of failure or fire suppression and any additional containment measures will be subject to the Health Division approval.
31. Provide 24/7 remote alarm monitoring to be approved by the Fire Department and any other applicable Town Departments prior to issuance of permit.

The Chair took roll call and all were in favor.

Hazardous Materials Control Permit – Syncarpha Solar & Storage Project – 50 Independence Drive, Acton

The Health Division is in receipt of a Hazardous Materials Control Permit for an ESS storage facility from Syncarpha Acton, LLC (applicants) located at 50 Independence Drive. Ms. Ball stated that staff has met with the applicants and provided them a copy of the Board's standard conditions. Ms. Ball stated that she worked with the applicants to address those conditions, however, the applicants have not agreed to all the conditions in regards to providing 110% containment, fire extinguisher, sound study, UL certification, labeling and providing speedy dry. The applicant has also requested that since they have agreed to pay \$40,000 to the Fire Department through the site plan process they would like the condition for Fire Department training to be modified. Ms. Ball also stated that we have not seen the Emergency Response Plan and requested that the ERP condition #21 be merged with condition #28. The Board discussed this application and agreed to merging those conditions. Drew Vardakis, Civil Engineer for this project stated that this site is an EPA regulated Super Fund site so they are very limited to site disturbance. Mr. Kopperl asked Ms. Ball to display the aerial image of the site for the Board to review. Mr. Kopperl stated that he is working as a co-developer for this site along with Syncarpha and spoke about the parcel indicating it is approximately 30 acres and the 5-megawatt solar project will be on the eastern side of the parcel against the Town of Concord line. The site does not have water service. Mr. Kopperl also stated that the Department of Energy and Resources requires all solar facilities larger than 1 megawatt in size to have a battery



storage component. Mr. Vardakis stated that the batteries will contain lithium ion and will not have a fire suppression system, therefore he doesn't believe that containment should not be provided. Justin Milne is a registered fire protection engineer and also stated that since there is no suppression system and no water that a secondary containment is unnecessary. Justine Milne stated that the \$40,000 payment to the Fire Department was negotiated during the site plan special permit so they would like that condition amended.

Matt Schultz from Syncarpha stated that the batteries will be cooled by an HVAC system and the Board questioned what coolant is being used. Ms. Ball stated that she spoke with the Interim Fire Chief today and she is ok with no fire suppression system as their intention in the event of a fire is to let it burn. Mr. Vardakis stated that there is no liquid so speedy dry should not be required. Mr. Milne stated that it would be unsafe to have a fire extinguisher as it could be used by untrained personnel and the risk is too great as employees should move away from the site rather than try to put out a fire. The Board stated there should be a fire extinguisher on site for other fires that could occur and could locate it outside the fenced area as the Board's goal is to manage risk. Mr. Vardakis also would like the condition to conduct a sound study removed as the site is so remote. The Board stated that a large residential development is planned for this site and it is best to get ambient to establish a baseline. Mr. Kopperl stated that the development is on the north side of this parcel and not near the proposed ESS and also provided the Board with a sound attenuation and it is projected to comply due to the remote location of this project. The Board suggested that the applicant provide calculations or other analyses to the Health Director as if satisfied this condition could be waived. Mr. Vardakis also questioned the Board regarding the independent field evaluation citing the time it takes to have it evaluated and if it could be tested after it was energized. The Board stated that it can be energized once the inspectors allow it but until that happens it can't be used or operational until the testing and evaluation are complete. Mr. Schultz stated that they would like to speak with their vendors to understand the timing and the costs involved. Mr. Vardakis also asked about the Emergency Response Plan and when it needs to be submitted. Ms. Ball stated that a draft is usually provided for review and then the finalized copy could be submitted prior to a Building permit. Mr. Kopperl stated that the approval process was extensive and the digging on site is regulated by the EPA so digging a containment basin is not advisable. The Board stated that we would consider lips or berms. The Acton Water District was involved with the Site Plan approval and recommended that fire extinguishers be PFAS free since this is close to town drinking water well. Ms. Ball stated that when speaking with the Interim Fire Chief she indicated she is looking for a 10' gravel area around the fencing. The Board asked staff to resolve these comments and bring this back at a future meeting. On a motion made by Mr. Kreuze, seconded by Mr. McInnis, the Board unanimously moved to continue to the next available Board of Health meeting. The chair took roll call and all were in favor.

Minutes – June 27, 2023, July 18, 2023 and August 15, 2023

On a motion made by Mr. Kreuze, seconded by Mr. McInnis, the Board unanimously voted to approve the minutes of June 27, 2023, July 18, 2023 and August 15, 2023 with corrections as noted. The Chair took roll call and all were in favor.



Next Meeting

The next Board of Health meeting will be on October 10, 2023.

Adjournment

On a motion made by Mr. Kreuze, seconded by Dr. Singh, the Board unanimously voted to adjourn at 10:36 PM. The Chair took roll call and all were in favor.

Documents and Exhibits Used During this Meeting;

- Town of Acton script for boards and committees opening meeting
- Board of Health agenda
- 544 Mass. Ave – Variance request to use water records, staff recommendations
- 92B Willow Street – supporting documents from Sam Bajwa
- 13 Lawsbrook Road – variance request, staff recommendations and septic plan
- 115 River Street – 20 Sonar Drive, LLC – Hazardous Materials Control Permit application, supporting documents, health recommendations
- 50 Independence Road Syncarpha – recommendations from Health and supporting documents
- Minutes from 6-27-23, 7-18-23 and 8-15-23

Respectfully Submitted,

Sheryl Ball
Acton Board of Health

Mark Conoby, Chairman
Acton Board of Health