



## **Acton Board of Health**

Meeting Minutes

August 15, 2023

7:00 PM.

Hybrid, Room 204 Town Hall and via Zoom

### **Present:**

Members Present: Mark Conoby and William McInnis

Virtual Members Present: Dr. William Taylor, Dr. Rekha Singh and Mike Kreuze.

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

Others Present: Alissa Nicol, Select Board Liaison, Jean and William Thompson,  
Attorney Mark Burrell, Sam Bajwa, Stephan Marsh, Terra  
Friedrichs, Jeff Vandegrift, Nina Pickering-Cook, Larry Spang,  
David Bamforth, Peter Light, Rob Ritchie, Madeline Cruz, Komal  
Bajwa. Jim D'Agostine, Kim Kastens, Dan Jones and Susan  
Hunter-Jones, Ellen Smith, Chris Williams, Kurt Marden

Others Present Virtually: Taisha, Mohamed Kassamali, Melissa Hatanaka, Kristin Corapi.  
Justine Thurlow, John M., John Atherton, Jake Prouty, Ian  
McGovern, Ellie, DCBA02, Craig Dutra, Anne Forbes, Alice  
Ferguson, Achrist, A and 978-808-4821

### **1. Opening**

Chairman – Mark Conoby opened the meeting at 7:05 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 the Fall Household Hazardous Waste Day will be held on Tuesday, September 12<sup>th</sup> from 4-6:30 PM. Ms. Ball stated that since COVID, we starting holding one event on the weekday and one on the weekend and the weekday event has been well received.



At the fall event we will again be offering tire disposal through CMMCP, however, the tires must be a small truck or passenger size only with rims off.

Ms. Ball also stated that the Health Division attended a National Conference in July and the trainings addressed so many Health concerns including, food safety, body art, wastewater, water quality and overall classes on healthy communities.

Ms. Ball stated that NARA water sampling has had excellent results this year. Ms. Ball stated that the Recreation Department does an excellent job making sure that the area around the pond is clean which has significantly helped due to the large amounts of rain we have received and that rain has caused other water body closure for other communities.

Central Mass. Mosquito Control Update- Ms. Ball placed an update in the Board packet and summed up the results stating that we have received 238 resident requests for spraying and 10 exemptions.

#### **Nursing Director Update –**

Ms. Ball presented the Board with the Nursing Service update stating that after the Health Division attended the national conference, we received word that there was a COVID outbreak at the event, including some from Massachusetts that attended the conference with us. Ms. Ball reminded people to stay home when you are sick and take a COVID test. Ms. Ball stated that Massachusetts has had 1,377 confirmed cases of Covid with the age ranging in the 40-54 age group. Ms. Ball reached out to both Benchmark Senior Living and Life care of Acton and Benchmark has had zero (0) cases and Life Care has 2 residents and 12 staff and are following Covid protocols for Long term care facilities. Life Care also stated that the initial unit where the first resident tested positive has now been Covid free for the last 7 days.

The Board asked about measures the Nursing Service is doing and Ms. Ball stated that positive cases are still coming through in MAVEN and both Long term care directors reach out to Nursing Staff regularly. The Board reiterated the need to practice good hygiene, vaccines efforts and follow preventative measures in order to help minimize these outbreaks.

Madeline Cruz, Sachem Way stated we should be sending out awareness on COVID to the general public as she has known people with active COVID to be outside where children are playing. Ms. Cruz also stated that she has seen quite a few children with Hand/Foot/Mouth disease and wondered if the Board of Health could send out awareness on that as well.

#### **Emergency Beaver Trapping Permit – 36 & 39 Mohegan Drive and 24R Cherokee Road**

The Health Division has received a request for an emergency permit for beaver trapping due to beaver activity with flooding occurring on 36 & 39 Mohegan Road and 24 Rear Cherokee Road that is impacting multiple homes in close proximity to septic systems. The Health Department conducted an inspection of these areas along with the Conservation Agent



and has confirmed that in accordance with the Rules and Regulations that a threat to Human Health and Safety by beaver or muskrat-caused flooding of a residential septic system exists at all these properties.

The Health Department recommends that the Board of Health approve a 10-day emergency permit, with an additional 10 days if needed, beginning on Wednesday, August 16, 2023, giving the licensed trapper and its agent the right to use restricted traps and breach the dams or dikes subject to the conditions of the Conservation Commission.

On a motion made by Dr. Taylor, seconded by Mr. McInnis, the Board unanimously approved a 10-day emergency beaver trapping permit, with an additional 10 days if needed, beginning on Wednesday, August 16, 2023, giving the licensed trapper and its agent the right to use restricted traps and breach the dams or dikes subject to the conditions of the Conservation Commission for the properties located at 36 & 39 Mohegan Road and 24R Cherokee Road.

The Chair took roll call and all were in favor.

### **115 River Street – Hazardous Materials Control Permit**

The Health Division is in receipt of a hazardous materials control permit for an energy storage system (ESS) and solar array for the property located at 115 River Street. The site is proposing to utilize a grid System known as the Gridbox utilizing lithium ion cells for a 100kW inverter battery combo to store power generated by a 190kW solar system. The Health Division has conducted a review of this application for Sonar Drive, LLC, and has designated the categories of 7: “Hazardous Waste User”, 9: “Hazardous Material Storer Small Industry”, and 12:” Hazardous Waste Storer Industry. Ms. Ball further surmised the Interim Fire Chiefs comments that were received the end of last week and were included in the Board’s packet but the Chief was away and did not have time to review prior to tonight’s meetings. The Board commented on the application and found that the following was still needed prior to approval:

1. Confirm compliance with Interim Fire Chief ‘s concerns.
2. SDS sheets need to be translated from Chinese or provide copy in English
3. Ensure the correct size of the battery is reflected on SDS and consistent on all other documents
4. Show setbacks from proposed ESS location to all abutters and wetlands buffer zones on a map.
5. All ESS facilities shall utilize standard conditions.

The owner of the property was present along with others that were present virtually and stated that they are in a bit of a time crunch to get this approved. The Board did state that they understand the applicants need to obtain approval but felt that the recommended conditions from the Health Division should be standard conditions similar to the previously approved conditions for 100 Discovery Way. The Board also stated that this application process will hold up their ability to provide solar and ESS but not the actual construction of the building. The applicant



stated that they were seeking this approval prior to construction due to the proposed location of the ESS which will be behind the transformer which would make it difficult. The Board also did not receive the second page of the proposed conditions outlined by the Health Division so this will need to be reviewed. The Board asked staff to work with the applicants, send them their task list and also advise the applicants of the standard conditions and bring this back to the next available Board of Health meeting.

On a motion made by Mr. McInnis, seconded by Dr. Singh, the Board unanimously voted to continue this application until the next available Board meeting.

A member of the audience stated that she was happy this was being continued.

The Chair took roll call and all were in favor.

### **New Information/Status Update- 92B Willow Street**

The Board reminded everyone that tonight is a status update from all parties of any new information.

Ms. Ball stated that since the last Board of Health meeting, the Health Division received a summons and a complaint on Friday August 4, 2023 from the Concord District Court informing the Town that the tenants Jean and William Thompson appealed the Board's condemnation order of the Board's order of April 18, 2023. Both Town Counsel and Matthew Dow attended Concord District Court on Monday, August 7, 2023. Ms. Ball further stated that Town Counsel will speak to this item tonight. In addition, Ms. Ball stated that both Matthew Dow and Ms. Ball conducted a reinspection of the unit today, August 15<sup>th</sup>. That inspection revealed some violations corrected, some not and one new violation. The Board confirmed that the revised order letter was sent via certified mail today and Ms. Ball stated it had.

Attorney Pickering-Cook stated that she and Matthew Dow attended the hearing at Concord District Court on August 7, 2023 and stated that the court made three things clear:

1. The Judge stated that having the tenants stay in a condemned unit is not recommended.
2. The Judge also advised Mr. and Mrs. Thompson that the Housing Court would be a better location to hear the appeal.
3. The Judge put a 14 day stay on this property giving the tenants time to find another unit.

Atty. Pickering Cook stated that this 14 day stay pressed pause on the Board of Health's ability to forcibly remove the tenants from the unit which was supposed to be vacated by August 7<sup>th</sup>. Atty. Pickering Cook stated that the Town has spent considerable time assisting the tenants with finding a suitable housing situation and every day helps to get the tenants closer to finding safe and affordable housing. Atty. Pickering Cook further stated that once the 14-day stay is over the Board of Health is free to order the tenants to be vacated unless a subsequent court order is either received by the Town of her office. Atty. Pickering Cook stated that all parties have agreed that this unit is not livable and we should all continue to work together to assist the tenants in finding suitable housing.



Ms. Jean Thompson stated that they are still looking for housing and they have a few housing authorities that they are working with. Ms. Thompson also stated that she misspoke at the last Board meeting where she stated that not all paperwork was in order but rather clarified that the paperwork was indeed submitted but each Housing Authority has their own paper work that they also needed to submit. Ms. Thompson also stated they are looking forward to finding alternate housing but mentioned that they have medical needs which is making the process more difficult. Ms. Thompson also stated that they filed the action with the Concord District Court as they were afraid of being removed from the unit on the vacate date. Ms. Thompson also stated that she is aware that the Sanitary Code changed in May and questioned whether the home would still be condemnable stating that the moisture is from flooding due to the terrible drainage on the outside of the unit. Ms. Thompson stated that they don't want to be in this unit but also don't want to be homeless. Ms. Thompson also referenced the pictures that were included in the Board packet. Lastly, Ms. Thompson stated that they did get a storage unit delivered and are looking for the Town to reimburse them for the cost as the cost is too much for them to bear. Ms. Thompson also stated that she would like the vacate date pushed back.

The Board asked what the Thompson's need to move and Ms. Thompson stated that they need a habitable 2-bedroom space and can't have a unit with stairs. They also asked for assistance with moving the items to the storage unit, however, they don't feel right asking volunteers to assist.

The Board asked Ms. Ball whether this unit would have been condemned under the new code and Ms. Ball stated that the new code does have changes so the grading reference is no longer in the new code, however, 410.420 (A) states: No room or area in a residence may be used for habitation if it is subject to excess moisture. Ms. Ball stated that there is no dispute that the unit is subject to excess moisture as the unit is indeed below grade, has water entering at grade, sits on a cement slab, the unit is subject to excessive moisture and this new housing code would have also condemned the unit.

Attorney Pickering-Cook stated that Town should be looking for short term emergency solutions as well as long term and asked the Thompsons if they have looked at interim solutions. Atty. Pickering-Cook stated that she is concerned with the prolong living within this unit and if it doesn't look like there will an immediate long-term solution a short-term solution should be looked at.

Ms. Friedrichs stated that she is concerned with the eviction process that defends the right of the tenants to stay in this home. Ms. Friedrichs further stated that the responsibilities should fall on the landlord and agrees with the suggestion of a short-term solution. The Board stated that they have followed the due process for this condemnation in regards to holding a condemnation hearing as well as an appeal hearing.

Mr. Sam Bajwa believes the best solution would be to find them suitable housing soon. Mr. Bajwa further stated that they were notified 1 ½ years ago to vacate the unit and only in the last two weeks has he received a landlord reference for alternate housing. Mr. Bajwa also stated that they have never paid rent on time and it will be difficult for him to give the Thompsons a



reference, but the Board told Mr. Bajwa that this meeting is only to update on new information since the last meeting and not to talk about these past issues and suggested that he is not under any obligation to respond to the reference requests.

Mr. Marsh, the owner's representative as well as a Licensed Construction Supervisor stated that they have been back to the unit numerous times to address the violations and stated that there is a lot of water infiltration at this site and digging outside the foundation would be unsafe as he believes there are structural issues due to cracks in the foundation which he will seek having this validated by a structural engineer. The Board asked Mr. Marsh to forward that report if conducted.

The Board asked that this be scheduled at the next Board of Health meeting.

### **Nexamp– Hazardous Materials Control Permit – Boardwalk School – 75 Spruce Street**

Ms. Ball stated that the applicant, Nexamp was present before the Board in February, 2023 and they were asked to provide some additional information regarding their Hazardous Materials Control Permit for the property located at 75 Spruce Street, Acton. The applicants specifically were asked to provide a sound study, updated emergency response plan, fire department review, notification to abutters and lastly for them to look at changing the proposed location of the battery storage unit. The applicants were also provided sample conditions for their comments prior to this meeting. The applicants have submitted those responses to the Board and they are included in the Board packet. Mr. Rob Ritchie, Director of Energy Storage at Nexamp was asked to give an overview to the Board and Mohamed Kassamali was also present from Nexamp to address any questions. Mr. Ritchie stated that Nexamp has been working closing with the School and further stated Eversource and structural design for the carport solar array have caused some delay with this project. This project has three components, solar array on roof of building, solar carport over parking and the battery energy storage system (ESS). Mr. Ritchie stated that the location of the ESS was decided due to the location of the electrical infrastructure and he is happy to respond to any abutter or Board questions.

The Board stated that they were pleased that Nexamp was moving closer to achieving the proposed conditions but is still very concerned with how close the proposed location is to both the residences and the school. The Board questioned why it couldn't be closer to the train tracks or to the proposed solar carport. Mr. Ritchie stated that the lot is restricted due to wetlands and believes that the proposed location meets all applicable codes and standards. The Board further asked if it was impossible to move the proposed location and it was stated that the schools have already installed a substantial amount of infrastructure under the roadways, encountered ledge and space is a factor due to other site restrictions including wetlands. The Board stated that they understand that the proposed location meets regulations, however, the schools are part of the community which is chartered by the residents of the town. The Board also questioned whether the proposed system provided secondary containment and it was stated yes. In addition, the Board asked if bollards would be added, if training will be provided to the fire department and if physical barriers would be added for sound mitigation. The Board asked if any of the proposed



conditions would be unachievable. Mr. Ritchie stated that they do not believe the following are needed:

1. A fire extinguisher on site.
2. They would like the fire department training language to be modified to state they would be available to the Fire Department if training is needed.
3. An independent UL certification is not needed as it is already factory certified.

The Board pointed out that even though it is factory certified that is also important to have an independent certification for field connections, additional equipment components, grounding, etc. The Board also pointed out that the electrical code allows a local electrical inspector to conduct the field inspection but most do not have the expertise with these types of systems. The Board further stated that the field inspector would determine the scope of work that they feel would be appropriate to provide a full certification but having the factory certification would reduce these requirements and the Board would defer that to the Electrical Inspector. Mr. Kassamali reminded the Board that the proposed system is factory certified compared to others the Board has dealt with in the past. The Board also asked Nexamp what safety systems are in place to prevent thermal runaway and how these units would detect an issue, provide isolation and containment of any potential safety events. Mr. Kassamali stated that Tesla was selected for this project because of their enhanced safety features, stating that risk is a function of two things, likelihood and severity. Mr. Kassamali described the protection scheme with the Tesla Megapack and stated that the system mitigates risks to make the system less risky and safer. Mr. Kassamali stated that the battery cells are designed so that if a single cell goes into thermal runaway it will not cause propagation and the proposed batteries have a thermal management cooling system that keeps these batteries cool which provides a more uniform battery rather than the traditional HVAC cooling systems used by other battery manufacturers. Mr. Kassamali stated that they are also designed to vent out gases that expel heat in an upwards direction before it reaches the lower flammability limit and lastly has detection alarms that provide a warning before they become alarms. In addition, Tesla has numerous temperature voltage sensors that are being constantly monitored 24/7. The proposed units at this site have shifted from an LTO to NMC technology which has higher resistance to thermal runaway. The Board did state that there have been failed units with Tesla battery units in the US and questioned Nexamp on that. Nexamp stated that those failures were due to earlier iterations of Tesla megapacks and the loss of power at one of these failure sites was the root cause of that failure. Nexamp did state that in both cases those older iterations of the batteries reached a level which exceeded normal thresholds and this has since been corrected by Tesla. In addition, the proposed battery at the school site provides for one single enclosure rather than numerous battery megapacks as were the case in the failure. The Board also questioned the chemistry within those older battery megapacks and Nexamp stated they will double check that chemistry but noted it is definitely different than the previous iteration. The Board also stated that the Tesla batteries seem to constantly be in the Beta mode and stated that Tesla isn't very responsive to customer queries and concerns. The Board also stated that the proposed conditions are standard conditions issued by the Board for another battery sites and stated that those conditions were approved so the Board could manage the potential risk and would want those same conditions on this application. The Board stated that this locations purpose is to congregate a thousand children and without



these conditions, is unsure if that level of risk could be managed for this site. The Board also stated that Nexamp did not mention anything about gas detectors and would like that addressed. The Board further believes that there is history from the schools coming after the fact for approval as is the case for this proposed application.

Superintendent Light and Larry Spang were present and spoke to the technical aspects of this application. Superintendent Light stated that they don't want to discount resident's concerns around the proposed location of the ESS and feels that have been very responsive to the abutters since the beginning of this project. Mr. Spang stated that this site is very challenged with wetlands, floodplains and ledge. Mr. Spang further stated that the electrical infrastructure was placed in the proposed location as the electricity was brought from the Arlington Street side and ledge was encountered so the infrastructure was placed in a small trench along with the electricity needed for the school. It was also stated that they even entertained the ESS to be located at the Douglas site. Mr. Spang stated that the Board is seeing this application late in the process because of the permitting processes that they were required to go through. The Board asked why these lines can't be above ground so the ESS location could be moved. Mr. Spang stated that emergency evacuation, if the need arises, will be the area closest to the railroad tracks and septic field so it could not be located there as there are approximately 1000 students that would need to be sent there in an event of evacuation. The Board asked if the solar panels could exist without the need for the ESS so all concerns identified this evening could be resolved. It was stated that this building is looking to achieve net zero and not having the energy storage component would have long term cost implications to the district as the savings is anticipated to be around 3 million dollars and there are demand response programs being offered by the utilities which are also helpful for cost reduction to the district. The Board commended the schools for eliminating the fossil fuels, however, it was stated that only manages one of the risks. The Board also asked if the ESS could be located on another site. It was pointed out that the School Committee already approved this proposed location and the district is putting forward good mitigation strategies to address the safety concerns. The Board asked the District to consider conducting a financial impact statement to help both the Board and the residents understand the cost associated with not providing the ESS component. Nexamp stated that relocating the ESS on another site would not be the same benefit as it being onsite as it would be tied to the buildings load.

The Board took comments from the abutters/residents:

1. One abutter was concerned he was not notified of this meeting and is very concerned with placing this in a residential area and believes these should be located in commercial areas.
2. The noise of the ESS was also identified as a concern.
3. Thermal runaway and fire was also a concern.
4. The proposed savings to the school will be around 3 million dollars over the course of 30 years which equates to 100,000 per year and an abutter stated that his peace and quiet is worth more than that.
5. A residents asked that it be located somewhere else and believes that it isn't a big deal not to have the ESS component.





6. Another abutter stated that the company he works for, burns these batteries and believes that while lithium ion phosphate is safer than some, he stated that no lithium battery is safe.
7. The safety of the students at this school should also be a factor.
8. Another resident stated that the manual indicates that these batteries are extremely sensitive to water and the battery cannot be opened until the humidity in the air is measured. The resident also stated that there shouldn't be standing water on the pad that houses the ESS and that New England weather could contribute to this from a rain event or snow storm. It was further stated that since this is next to the bus pick up and drop off road salt could also be a factor. An additional resident stated that this ESS storage site is most likely located in the flood zone and this area has historically been flooded.
9. This technology is too new to understand failure and hazard risks.
10. A resident questioned the justification for this permit application
11. The school could still get the benefits of the solar panels and the ESS is not required.
12. A resident also stated he is concerned with a system that is built with multiple layers of safety features and questioned how dangerous this technology really is if those measures are already in place.
13. A resident stated that this area is the bus pick up and drop off location so questioned what the consequence to the students on a bus would be in the event of a fire.
14. A resident stated that they need to see the data documents on the claims that Nexamp made this evening.
15. A resident expressed a concern if this ESS was hit by a vehicle.
16. A resident stated that if another location is not viable then this should not be placed in the proposed location.
17. A resident stated that an independent assessment absolutely needs to be conducted.
18. A resident asked what other departments needed to review this application.

The Board asked Nexamp to provide an overlay map showing the wetlands, flood plains and building setbacks and asked them to submit to Health staff for posting. Nexamp also stated that an electrical permit and building permit will need to be applied for. The Board also stated that Acton is blessed to have many professionals in this town and that the Board is also comprised of Doctors, Lawyer and other Health professionals.

Nexamp asked for clarification of what was said tonight and it was stated that Health staff will send over the draft minutes for their review once completed. The Board asked that Nexamp and the District review these comments and send back their answers prior to this being rescheduled with the Board.

On a motion made by Mr. McInnis, seconded by Mr. Kreuze, the Board unanimously voted to continue this application and bring back to a regularly scheduled Board of Health meeting once the applicant has submitted responses to all the Boards concerns.

The Chair took roll call and all were in favor.



### **YuTao Wang – Board of Health Agent**

The Health Division would like to ask that the Board appoint YuTao Wang as a Board of Health agent in order to assist the Town with necessary soil evaluation for Town projects. YuTao Wang is currently employed by the Town in the Engineering Department but is not currently an engineer so he would need to be appointed as a BOH agent to be eligible for the soil evaluation class. The Health Division recommends that YuTao be appointed as an agent of the BOH effective July 21, 2023.

On a motion made by Mr. McInnis, seconded by Mr. Kreuze, the Board unanimously voted to approve YuTao Wang as a Board of Health concurrent with his employment with the Town of Acton to assist with the Town needs.

The Chair took roll call and all were in favor.

### **Minutes – June 27, 2023 & July 18, 2023**

The Board asked that these minutes be brought back to a future meeting for review.

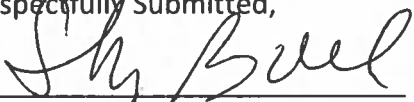
### **Adjournment**

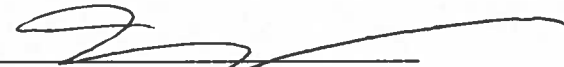
On a motion made by Mr. Kreuze, seconded by Dr. Singh, the Board unanimously voted to adjourn at 9:51 PM. The Chair took roll call and all were in favor.

### **Documents and Exhibits Used During this Meeting;**

- Town of Acton script for boards and committees opening meeting
- Board of Health agenda
- Beaver Trapping Application, staff recommendations for Mohegan and Cherokee Road
- 115 River Street – Hazardous materials control permit application, supporting documents and staff recommendations from Health and Fire
- 92B Willow Street – supporting documents from William and Jean Thompson
- 75 Spruce Street – AB Boardwalk School – Hazardous Materials Control Permit application, supporting documents, health recommendations and abutter concerns
- BOH agent appointment – recommendations from Health for appointment
- Minutes from 6-27-23 & July 18, 2023
- Extra Information – Update from Central Mass. Mosquito Control Project.

Respectfully Submitted,

  
\_\_\_\_\_  
Sheryl Ball  
Acton Board of Health

  
\_\_\_\_\_  
Mark Conoby, Chairman  
Acton Board of Health