

**Newburyport Board of Health Meeting
September 22, 2016**

Date of Approval: November 1, 2016

Attendees:

Dr. Robin Blair, Chairman
Dr. Sam Merabi, Board Member
Frank Giacalone, Health Director
Molly Ettenborough, Energy & Recycle Coordinator
Patricia McAlarney, Note Taker
Ron Beauregard - Massachusetts Coalition for Tobacco Control
Lisa Mead
Peter Durning
Bonnie Suntag
Peter Chu
Ann Vega
Colleen Yovara
Buck Lu
Pamela Hatcher
Chip Hall

Call to Order: Dr. Blair called the meeting called to order at 7:05 p.m.

Approval of Minutes: A motion to approve the Minutes of the Board Meeting from July 21 , 2016 was made by Dr. Blair and seconded by Dr. Merabi. The minutes were approved as submitted.

Energy and Recycling Update: Energy and Recycle Coordinator, Molly Ettenborough.

- The City is one year into the Organics' Pilot Program and it continues to go well with 427 participating residences with a 66% set out rate. Eighty one tons of organics have been collected thus far. At the end of the pilot the economics of the program will be evaluated to determine whether the program should be rolled out city wide. The report is being submitted to DEP next week.
- The City is undergoing a master plan update. The last one was completed in 2004. There is now a chapter on an Energy & Sustainability which includes food production, air quality, climate resiliency and a lot of health information. Molly will forward the chapter to the Board of Health for their input.
- There was a disposal company out of Gloucester that was shut down which greatly disrupted services to several cities on the north shore. Molly met with Mello Disposal and was assured that they remain solvent.

Updates from the Public Health Nurse

- Flu Clinics for this season have been scheduled; the first community clinic is being held this coming Monday at the Senior Center. The next community clinic will be October 13 at City Hall.
- The Food Recovery program is going well. The first recovery from the Nock Middle School and Bresnahan School will be on September 30. A meeting with the School's Food Director and the volunteers was held this week to ensure that food is handled safely and maintained at the proper temperature at all times.
- The diaper drive is going well with several drop off locations throughout the city.
- Nourishing the North Shore is continuing to thrive. Over 5000 pounds of produce has been distributed so far this and they will continue to harvest through the fall.
- The hepatitis B vaccine series for DPS workers has been completed.
- A five week cooking program for seniors was completed and was well received.
- A summary of the infectious disease cases from July 1 through August 1 was presented to the Board.

Tobacco Control

- Ron Beauregard provided an update from the Tobacco Coalition and informed the Board that the main policy change that is being considered by municipalities is the prohibition of the sale of flavored tobacco products and vaping products. Several municipalities have successfully enacted the provision. Under the provision the only stores that could sell these products would be retail tobacco stores often known as 'smoke shops' or 'vape shops'. These retail shops would not be allowed to sell any products requiring a food permit, they would not be allowed to admit anyone inside the store who is under the legal age to purchase tobacco and the primary products for sale must be the vaping/smoke items. This ordinance has withstood legal challenges in Rhode Island; and currently one third of the cities/towns in the state have adopted this ordinance. Mr. Beauregard will provide a recommendation of the wording of the ordinance and will send it to the Board for consideration at the next meeting.
- Mr. Beauregard also suggests that Newburyport consider changing the regulation related to the selling of cigars. Newburyport previously prohibited the sale of single package cigars; he now proposes that Newburyport change the regulation to also set a minimum price for a package of cigars. He suggested a price of \$5.00 for a package containing four cigars. Many other communities have adopted this pricing. Mr. Beauregard noted that there is a correlation between price and use when it comes to cigarettes.
- The third change Mr. Beauregard suggested is to the city's definition of the term "nicotine delivery devices." He suggests that the definition be changed so that vaping devices are specifically included in the definition of tobacco products regardless of the nicotine content. It is difficult to enforce a ban on vaping products under the current terminology of 'nicotine delivery products' since not all vaping products contain nicotine.
- Discussion ensued regarding the failure of the recent attempt for Massachusetts to raise the purchase age for tobacco products.

Food Establishments

- Lexi's is now officially renovated and open for business.
- The site of the former Loretta restaurant on State Street is undergoing renovation by a new owner and is expected to open in one month.
- Nix's Place - Plans have been submitted to the Health Department for consideration of adding a smoker to the establishment. The fire department has stated that this may be acceptable. Director Giacalone instructed the owners that the area of the smoker must be enclosed and the odors must not create a nuisance.
- Ale House construction is progressing. The opening date is unknown at this time, however, the owner still has a full year on the lease at the site of the Black Cow.

Evergreen

- Chairman Blair noted that at last meeting the matter of the Evergreen development was discussed but that no official action was taken by the Board of Health. However a letter was drafted by the Board stating their concerns on the potential impact the development could have on the City wells from use of chemicals used for residential lawn use. The concern is over the quality of water available to the City. Dr. Merabi stated that he is interested in hearing about the level of organization that the Developer and Home Owner Association can develop to monitor and maintain a safe water supply. Dr. Blair explained that the Board of Health is only interested in reviewing issues that are under the purview of the Board.
- Lisa Mead, attorney for the Developer, explained that the applicant had a hearing before the Planning Board to present the impact on the Zone 2 Aquifer. She stated that it is important to note that the development is more than 720 feet away from the City well (and believes that it may actually be even further away.) She noted the City has hired AE Com to review the results and compile a report for the Planning Board. Lisa suggests that the Board of Health take no action

until the Planning Board has had the benefit of reviewing this professional evaluation. Ms. Mead noted that a "Zone 2" designation allows for the construction of single family homes and even allows septic systems (although there are no septic systems proposed for this development.) Ms. Mead referred to the report drafted by J. Billings of Northeast Geoscience, NGI, and referenced the conclusions that were stated. (A copy of the NGI report was submitted to the Board.) The NGI report stated that the proposed development was not a significant threat to the quality of city water and that removing the golf course may eliminate some identified issues of contamination that are currently present. Ms. Mead asked the Board to take all reports including the NGI report and the AE Com reports into consideration before making their final determination.

- Dr. Merabi noted that it would be helpful to have the report on a CD and that he would like to hear directly from the geologists that developed the reports.
- Bonnie Suntag, ViceChair of Planning Board noted that the Planning Board would be hearing and discussing the results of the AE report at their next meeting on October 19. In preparation for making a final decision on this matter, Chairman Blair, Dr. Merabi and Director Giacalone stated that they would make every effort to attend the meeting of the Planning Board on October 19. The next meeting of the Board of Health will be on November 1, 2016.
- Peter Durning, 12 Arthur Welks Drive, the attorney representing some of the residents of Boyd Drive suggested the Board of Health meet prior to the October 19 meeting of the Planning Board and be prepared to submit to the Planning Board their recommendation for the project based on the Board of Health's expertise on such matters. Mr. Durning explained that this project and this parcel have been before the Board of Health previously in the 1970's when the parcel was derelict. The owner wanted to develop it into a 70 dwelling development. The Board of Health approved the project, however, after more investigation into the impact on the well head the Chairman of the Board of Health stated to the Planning Board his concerns over the impact to the City well and the Planning Board denied the project. The developer sued the City and ultimately the appeals court found in favor of the developer because there was no report from the Board of Health formally rescinding their decision to approve the project.
- Ms. Mead informed the Board that she will advise the applicant to request at least a two week extension after the 19th so that there is an opportunity to have the AE Com report available for review. This would allow for one more meeting with the Planning Board and would allow the Board of Health to have all the facts before meeting to make a final determination. While only the Planning Board can allow for this extension, Ms. Mead assured the Board that the developer would request it. Ms. Mead wanted to clarify three points: the developer from the 1970s is not the same as the developer today. The city had not adopted zone 2 and, at the time, the City did not have water regulations that are in place today.
- Chairman Blair noted that the Board of Health is currently operating with only two members and he anticipates that it may be a full Board (three members) by the end of October. He would feel more comfortable making this determination with benefit of a full Board. He also noted that the quality of drinking water is the only issue of this development that falls under the purview of Board of Health.
- Peter Durning noted that while there is considerable information gathered in regards to this project it is important consider the statements by residents of this area who have delved into the reports but who are also personally aware of environmental events that have occurred in the past. He noted that when the golf course was approved there were protocols set in place to manage and monitor the use of pesticides herbicides, fertilizers etc. The other City departments were able to approve the project since the covenants were incorporated into several aspects of the project, including Conservation and Planning. In 2013 the then owner received from the Conservation Commission a certificate of compliance that all work under the original work order had been met. However the certificate did not make it a continued condition of compliance so that the Conservation Commission had no means of enforcing that the original protocols be

maintained. Therefore, the City has accepted Boyd Drive and the covenants are now null and void. Some of the express covenants were environmental based related to use of chemicals. Mr. Durning stated that putting the onus on a home owner association is not justifiable; he has no confidence that the association could police all 38 residences. He feels that the Board of Health should not approve the development so that the city water can be protected. At the time that the Golf Course was developed the City had explored alternative areas for wells and were unable to identify another suitable site. Therefore if this well is compromised there may not be a suitable alternative site. Protection of the well head is of paramount importance; as is configuration of the road ways. The developer is planning to extend an already too-long cul de sac. The road would be under the sole jurisdiction of the homeowner association, not the City. The road would be inadequate for emergency vehicle access and would not provide adequate egresses for all of the residents of this area. There needs to be room for two way traffic, not just a 20 foot road. Dr. Blair noted that the roadway configuration is not really the role of the Board of Health, it falls more appropriately under the Planning Department.

- Peter Chu, resident of 17 Boyd Drive, provided a map of the area and showed how the direction of the flow of water from the proposed development will go directly to the City well carrying with it any residue (such as chemicals and fertilizers.) Mr. Chu stated that the reports that were generated for this development did not have a sufficient length of time to gather the amount of data that would be required to make an informed decision. The entire population of the City is affected by the quality of the water supply. Mr. Chu noted that he is a chemist and, as such has reviewed all of the information available about this project. He displayed the current water quality reports for Newburyport and noted that they passed on all points; however, if a well is to become contaminated how long would it be before the contamination was detected? Mr. Chu also noted that the sampling for the reports that were recently generated for the developers reports were done during drought conditions which may affect the accuracy of the reports. Mr. Chu encouraged the Board to use common sense as they make their decision.
- Ann Vega, resident of 21 Boyd Drive, stated that she has reviewed hundreds of documents related to this issue. At last night's Planning Board meeting she asked the hydrogeologist questions to determine if contaminants could reach the well and if so, could they be toxic and would these chemicals accumulate? The water flow is exactly the same as what was found in the earlier reports. It was confirmed by hydrogeologists that the bedrock forms a barrier of 12 feet and an adjacent test showed a barrier of 14 feet. However the seasonal high water could be at 5.5 and 7.5. She said that when asked if it was possible for the water to breach the barrier, the hydrogeologist said, 'probably.' She said that likely with the development in place that there may be an 8% increase in sodium. (She showed figure 8, from the report.) She informed the Board that nitrates are tested to determine the presence of fertilizers that have reached the well. Current reports show that nitrates and sodium are already reaching the well and she feels that to add additional residences to this area would compound the problem. The previous owner of the golf course had explained to her that as a commercial buyer he cannot purchase certain types of fertilizers; this restriction has been a protective measure for the well. The residents of Boyd Drive are asking that the City consider all of the information that is available in making this decision. She noted that fertilizer such as GBH (Round Up is an example) can contaminate soil and subsequently, a well. Once an area is contaminated with GBH there is way to eliminate it and if consumed, it will accumulate in the human body.
- Colleen Yovara, resident from 13 Boyd Drive, stated that she is a Medical Doctor specializing in Oncology and Blood Disorders. She worked previously in a situation involving a town where residents were affected by leaked contaminants from a government project. Ultimately those residents were awarded a settlement from the government that covered all of their medical expenses. She questioned how easily contamination can occur? She stated that she puts her trust in the City Boards that issues like water quality will be monitored and maintained to ensure it is safe. She presented an article from a medical journal of environmental health by Myers et al for the Board's consideration that discussed the issues and concerns related to risks associated with the use of products that contain glycosate based herbicides, GBH. The article devised a

statement of concern which considered published literature describing the use of the chemical the mechanisms of action on the body's toxicity in lab animals and epidemiological studies on the use of GBH. Ms Yovara specifically pointed out section 1 of the article which summarized that fertilizers containing GBH are the most heavily used in the world with a 100% increase in use since the 1990s. GBH contaminates drinking water from run off and by leaching into the water supply; exposure can also occur from bathing in contaminated water. The half-life ranges from few days to as long as a year depending on soil composition. The risk of long-term build-up is driven by highly site specific factors which would be difficult to predict and costly to monitor. There are cancer causing elements in GBH that disrupt DNA which cause abnormal cell replication that affects the liver and kidneys (particularly of young individuals.) There was a study that showed that migrant workers who dealt with GBH had a significant increase in the incidence of non-hodgkins lymphoma. There are numerous articles that name the carcinogenic properties of GBH.

- Buck Lu, resident of 14 Boyd Drive stated that he was impressed by the letter the Board of Health sent to the Planning Board stating their concerns about the potential impact the development could have on the city's wells. Mr. Lu noted that the soil in the area of well is very permeable making the well vulnerable to contamination. As a neuropsychologist, he stated that it is very difficult to regulate human behavior and yet we would be expecting the homeowners' association to regulate the behavior of the 38 to 44 residents whose homes would be in the vicinity of the well. Mr. Lu stated that he supports the opinion of the Board as stated in their letter regarding concerns over the impact on the city's wells.
- Peter Durning noted that yesterday a preliminary plan was submitted that included 44 homes. The new subdivision plans would have the same concerns regarding protecting the well head as the development plan for 38 homes.
- Lisa Mead highlighted certain points from the report presented by AGI and noted that the zones are based upon DEP standards for regulating ground water and wells. Zone 2 does not allow junk yards, retail gas stations, bulk petroleum storage etc which pose applicational risk for contamination of the well. The golf course is listed as a potential source of contamination and DEP would prefer to not have a golf course in the zone 2. Ms. Mead pointed out that zone 2 does NOT disallow single family homes and this area does currently have homes which are not under control or monitoring of what is applied to yards and does not have control over the storm water run-off which presently runs into the golf course aquifer. The golf course run off is treated by the permeability of the soil; however the City no longer has control of the golf course through the Conservation Commission or through the covenants. The Board of Health could regain control by making it a condition that none of the homes be allowed to use any pesticides, herbicides etc. She also noted that the current proposal calls for a development that would utilize only 62% of the area currently used for the golf course; 21.3 acres would remain as unmanaged, open space.
- Pamela Hatcher, resident of 15 Boyd Drive stated that the condition of the golf course is such that it is clearly not being treated, fertilized or maintained. Ms. Hatcher stated that the time is now to be pro-active to think of the future and protect the city resources. She just learned recently that Boyd Drive residents were not supposed to be using anything that was not organic on their lawns; no one had ever informed her of this and she suspects that the other residents were also unaware. She also stated that organic lawn care is very, very expensive and time consuming. It is her opinion that the new residents of the development will want their properties to be well kept and manicured; she stated that she believes that people will be inclined to use the easier remedies (such as Round Up.)
- Ann Vega stated that at the Planning Board Meeting it was brought up that DEP would not want a golf course located in a zone 2. She stated that she had been unable to obtain clarification as to whether the golf course was only supposed to use certain types of fertilizer. Ms. Vega also noted that while much data has been presented, it is possible for data and statistics to be manipulated.

Thirty years ago when the development was being built, the storm management plan called for containing the water in two clay lined areas (to prevent leaching.)

- Chip Hall - represents the firm that is going to be developing this property. He noted that DEP measures the nitrate levels of zone 2 areas because these areas often contain septic systems; it is not to determine presence of fertilizers. But we are not doing septic in this area. DEP determined that the zoning for this area (even if it would include septic systems) would be for one acre parcels; which would accommodate 36 homes.

Dr. Sam Merabi stated that this issue is of great concern to the Board and the Board takes the responsibility very seriously. He has worked with wells in Africa with Safe Water International and is educated in understanding geo-data. The Board will take the time to review all of the information to develop their findings.

Dr. Blair stated that Board Members will review the reports and will attempt to attend the Planning Board meeting on October 19th. The next scheduled meeting for the Board of Health will take place on November 1, 2016.

Meeting adjourned 8:45 p.m.