



TOWN OF BURLINGTON, MA  
BOARD OF HEALTH  
MINUTES

Town Hall Main Hearing Room

TUESDAY, JULY 27, 2021

**Board Members Present:** Ed Weiner, PhD, Chairman; David McSweeney, Vice Chairman; and Dr. Wayne Saltsman, MD, PhD (Remote Access); Maribeth Welch and Andrea Sheehan

**Board Members Absent:** None

**Staff Members Present:** Susan Lumenello, REHS/RS, CHMM, Director of Public Health; and Christine Mathis, Environmental Engineer

Dr. Weiner called the Board of Health meeting to order at 7:03 PM. This is an in-person meeting at the Town Hall Main Hearing Room but will have a remote option.

The Pledge of Allegiance was recited.

**Approval of Minutes:** June 22, 2021 Regular Session and June 22, 2021 Special Session

**MOTION:** Mr. McSweeney moved to approve the Board of Health minutes of June 22, 2021 regular meeting as submitted. The motion was seconded by Ms. Welch and unanimously voted 5-0-0.

**MOTION:** Ms. Welch moved to approve the Board of Health minutes of June 22, 2021 special meeting as submitted. The motion was seconded by Ms. Sheehan and unanimously voted 5-0-0.

**Citizen's Time:** There were no citizen's coming forward.

**Chairman's Report:**

Dr. Weiner thanked staff, board members and BCAT staff for all their hard work over this past year and half. COVID-19 is still here and there are new variants coming out. He believes that vaccination is a personal choice but it is so important to help everyone stay well. If anyone has any questions, please reach out to the staff or himself and they will try to answer them.

Dr. Weiner congratulated Ms. Lumenello on the birth of her first grandchild.

**Permits**

***Biological Safety Permit – 147 South Bedford Street, Northeastern University, Building 5***

Dr. Jared Auclair, Rachel Spiller and Elizabeth Clark (via WebEx) appeared for the Biological Safety Permit from Northeastern University. Dr. Auclair stated that the Burlington Campus is based on collaborations and



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

they have expanded to Building 5. They received a \$4.2 Million grant to expand the labs for manufacturing. They will have a BSL-2 and no pathogens will be used at this time.

Mr. McSweeney stated that Northeastern has always been a great corporate citizen and the last time you were here we discussed Building 3 and what would happen in case of an emergency. Ms. Lumenello stated that they have shared information on all the chemicals in Building 3.

Dr. Weiner asked what ICBM stands for. Dr. Auclair replied it stands for Innovation Campus, Burlington, MA.

There were no questions from the audience.

**MOTION:** Mr. McSweeney made a motion to approve the Biological Safety Permit for 147 South Bedford Street, Northeastern University, Building 5. The motion was seconded by Ms. Welch and unanimously voted 5-0-0.

***Biological Safety Permit – 60 Blanchard Road, Moderna, Inc.***

Eric Rubinow, Jason Eliow and John Gillian from Moderna and Paul Paldino from Azzur appeared for the Biological Safety Permit. Mr. Rubinow stated that Moderna will be occupying 11,520 SF of lab space (Labs 6-20) and 2,100 SF of office space. This site will employ 100. They will have a BSL-1 and will be working with E.coli cultures. The first IBC meeting was held on July 8<sup>th</sup>.

Ms. Lumenello asked if there are other tenants in Azzur does the Small Quantity Generating (SQG) permit get bumped up to Large Quantity Generating (LQG). Mr. Paldino stated that Azzur collects all the material and meets the SQG permit with all the tenants. If it goes over, then Azzur would apply for an LQG permit.

Mr. McSweeney asked if Moderna has used any other Azzur facility. Mr. Eliow replied no. We have our headquarters in Cambridge and offices in Norwood. Mr. McSweeney stated that the plan is to only use E.coli

There were no questions from the audience.

**MOTION:** Mr. McSweeney moved to approve the Biological Safety Permit for 60 Blanchard Road, Greenhouse Light Biosciences, and Inc. with the proposed conditions. The motion was seconded by Ms. Welch and unanimously voted 5-0-0.

***243 Fox Hill Road, Stormwater Regulations***

Dr. Weiner stated that this item deals with storm water complaints and a violation order that was issued. The Board will listen to all sides and review the material and we can uphold the order, dismiss the order or continue the discussion and get more information.

Ms. Mathis presented the information. In mid-May the office received a complaint regarding standing water after grade changes at 243 Fox Hill Road. A site visit was conducted on May 13, 2021 and pictures were provided. Additional site visits were conducted on June 1<sup>st</sup>, July 14<sup>th</sup> and July 21<sup>st</sup> and standing water was present. Mr. McSweeney asked if there are wetlands on the property. Ms. Mathis replied no, John Keeley



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

joined her on the first site visit and determined there were no wetlands. Ms. Lumenello stated that the fence in the pictures was moved out after the fill was added. Ms. Mathis stated that there appears to be an older drainage pipe from 243 Fox Hill Road that goes into the Town's catch basin. After review of all the material, a violation letter was issued.

Attorney Richard Vita, Bobby Negro and Kimberly Negrón of 243 Fox Hill Road appeared to discuss the violation that was given to them. Attorney Vita stated that there was no drain witnessed on the property. Ms. Mathis replied that the pipe was seen in the street. Attorney Vita stated that they visited the DPW on July 21<sup>st</sup> and they have no records of the drain. Mr. McSweeney stated that Ms. Mathis is a Town employee and she is stating the facts that she observed. The violation was issued for bringing in fill. Attorney Vita stated that the violation also mentions removal of a drainage structure as well and there is no proof of that. Dr. Weiner stated that even if we remove the drainage structure issue there is still an issue with accumulation of water. Ms. Lumenello stated that the Negrón's have asked for evidence of a drainage structure but according to the DPW Director, the Town does not keep records of drainage structures on private property. Attorney Vita stated that he has submitted a motion to dismiss the violation. The grade was raised to meet the grade of the Sullivan and Reppucci's properties. Their land was 20% lower and they did remove some trees. From time to time water accumulated and it would flow onto the Negrón property so they leveled their property in the back. The water is not flowing onto the neighboring property and it is pooling because of the soils and the dumping of leaves that has gone on for years.

Mrs. Negrón and Mr. Negrón both read statements for the record which included a timeline of activities and pictures.

Mr. McSweeney asked if there was a water problem prior to grading. Mr. Negrón replied yes and in his opinion the grading did not make the water worse. Mr. Negrón added that Mr. Reppucci has a sump pump to pump the water. Mr. McSweeney asked if there was water on their property prior to the grading. Mr. Negrón replied yes.

Judy Sullivan, Sarah Sullivan and Brian Sullivan appeared representing their mother who owns 241 Fox Hill Road. Their mother is 92 and could not make it here tonight. Ms. J. Sullivan stated that her parents bought the home in 1964 and there were flooding issues back then so the previous owners of 243 Fox Hill Road installed a drain. She remembers it when she was a kid. Ms. S. Sullivan stated that there was a metal grate in the middle of the back yard. The property of 243 Fox Hill Road was higher in the back and sloped to the catch basin. Ms. S. Sullivan stated that when they were kids they would run through the back of this property and there was never that much standing water. This past Mother's Day was the first time she saw that standing water and 243 Fox Hill Road is substantially higher and now it's a swamp behind 241 Fox Hill Road. Ms. J. Sullivan stated that she noticed pooling this past December. Ms. Sullivan stated that the leaves have been put back there for 50 years and there was never a problem. If the leaves were removed there would still be standing water. Ms. Welch asked if there is a sump pump at 241 Fox Hill Road. Ms. J. Sullivan stated that they have a sump pump underground and it discharges to the side yard. Mr. Sullivan stated that there used to be a drainage ditch and there was a drainage system in the back and there was never a water issue here. There were a number of trees removed and a lot of fill brought in. They are now concerned with mosquitos with the standing water and additional flooding when the ground freezes and then thaws. Ms. S. Sullivan stated that the neighbor across the street has the exact same drainage pipe that was installed at 243 Fox Hill Road.



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

Jack Reppucci of 3 Sumner Street – Mr. Reppucci stated that the drain was at the low point in the yard and it drained to the catch basin. There are underground springs in this area. The first time he ever used a sump pump was December 27, 2020 and he had to borrow a portable one from a friend. He has to use it 3 times this spring. He has lived at his house for 42 years and he has never had to use a sump pump. There was a low spot where the three properties met and they would have a little water occasionally but it would drain quickly. When Mr. Negro told him that he was removing the trees and bringing in fill, he reminded him of the drain pipe and he said that he didn't care about the pipe. He brought in 300 yards of fill, 29 truckloads and 80 yards of loam. Dr. Weiner asked who close the drain to where the standing water was. Mr. Reppucci stated that it is about 40' but it was in the low spot.

Kevin Rumsey of 5 Sumner Street – Mr. Rumsey stated that his property is uphill from 243 Fox Hill Road. He has a sump pump but they started noticing water around his house around Christmas time. This is when his basement flooded. He has never seen water in his back yard until the fill was brought in.

Attorney Vita stated that the Sullivan's said the first time she saw water was Mother's Day. The area is dry today and is not always wet.

Attorney Jay Talerman, Town Counsel – Attorney Talerman stated that the Board of Health regulations are perfectly legal. The memorandum supplied by Attorney Vita is not applicable to this situation. The Board of Health has the right to enforce the storm water regulations and has determined that the alteration to the property may have caused the pooling of the water. The Board needs to evaluate the evidence and credibility and determine if 51% more likely than not that the additional fill caused the standing water and if the violation should stand. This is not a matter of intention. The Board should look at the acts of the property owner and the results of altering the property caused the change in storm water resulting in standing water. The memorandum provided is not related to this matter.

Dr. Saltsman had no questions.

Ms. Sheehan stated that she is stepping back

Ms. Welch had no questions.

Dr. Weiner stated that the options of this Board are to uphold the violations, dismiss the violation or continue the meeting for more information.

Mr. McSweeney stated that he doesn't believe that there was ill will by anyone but he strongly suggests that the Negron's try to rectify this issue because more than 1 neighbor is impacted. He would suggest that the neighbors get together and come up with a solution.

Ms. Lumenello stated that it could be beneficial to monitor the situation.

Dr. Weiner stated that he doesn't think the Negron's did this intentionally and this has been the second rainiest July on record. We should contact the DPW and ask if the Town would allow the reconnection of a drainage pipe to the Storm Water system. The Negron's should look at where the drain would be installed.



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

Connie Reppucci of 3 Sumner Street – Ms. Reppucci stated that she has never met the Sullivan's. We are not in court and the way Attorney Vita spoke to people was wrong. A lot of trees were cut down and trees absorb water. She has lived there 42 years and there has never been water like this. They had to borrow a sump pump to get the water out of the back yard. She was there when her husband told Mr. Negron about the drain and he said he didn't care. This needs to be remedied.

Mr. McSweeney asked the property owners if they want to try to rectify this issue or do they want the Board to vote. Attorney Vita stated that they are willing to discuss a remedy but it must be shared by the neighbors equally.

Mr. Sullivan stated that the water only happened due to the actions of the Negron's.

**MOTION:** Dr. Saltsman moved to continue this matter to the August meeting to allow for further investigation. The motion was seconded by Mr. McSweeney for discussion purposes.

Dr. Weiner asked for permission of the property owners at 241 and 243 Fox Hill Road and 3 Sumner Street to allow the Board to go on their property. All property owners agreed and asked that they be notified prior to visit. Dr. Weiner stated that he will call Mr. Reppucci during the next rain event.

Ms. Lumenello stated that a site visit with the Board will be scheduled. Ms. Mathis will visit the site regularly during rain events. We will contact the DPW regarding the drainage pipe. Mr. McSweeney expects that a proposed solution should be submitted by the Negron's.

**MOTION:** Dr. Saltsman moved to continue this matter to the September 14, 2021 meeting. The motion was seconded by Mr. McSweeney and unanimously voted 5-0-0.

### ***Environmental Engineer***

Ms. Mathis presented her report.

Dr. Weiner asked when HouseHold Hazardous Waste day will be. Ms. Mathis replied it is scheduled for September 18, 2021.

**MOTION:** Dr. Saltsman moved to approve the Environmental Engineer report. The motion was seconded by Ms. Welch and unanimously voted 5-0-0.

### ***Director of Public Health***

Ms. Lumenello presented her report which included the Supervisory Nurse, Health Agent and Associate Health Inspector. Ms. Lumenello stated that the tentative date of the Flu Clinic is October 16<sup>th</sup> at the High School.

Mr. McSweeney asked what the context of the duck conversation was. Ms. Lumenello replied it was in discussion with the Keeping of Animals regulations.

Dr. Saltsman stated that he received a call via the Nurse and it came up as Spam. We need to make sure the phone number being used for emergencies is marked as Board of Health or Town of Burlington. Ms.



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

Lumenello stated that she will add that in the after action report. This probably has something to do with the Code Red system but she will look into this.

Dr. Weiner asked that the information for the bottle water rebate due to the PFAS be added to the website.

**MOTION:** Ms. McSweeney moved to approve the Director of Public Health report. The motion was seconded by Dr. Saltsman and unanimously voted 5-0-0.

**Adjourn**

**MOTION:** Mr. McSweeney moved to adjourn the Board of Health regular meeting at 9:52 PM. The motion was seconded by Dr. Saltsman and unanimously voted 5-0-0.

*Respectfully Submitted by Dawn McDowell,  
Recording Clerk*



TOWN OF BURLINGTON  
BOARD OF HEALTH MINUTES  
JULY 27, 2021

DOCUMENTS REVIEWED AT MEETING – TUESDAY, JULY 27, 2021

**Agenda**

**Approval of Minutes:** June 22, 2021 Regular Meeting and June 22, 2021 Special Meeting

**Citizen's Time:** None

**Chairman's Report:** None

**Permits:**

- ***Biological Safety Permit – 147 South Bedford Street, Northeastern University, Building 5 –*** 7/27/21 Northeastern BioSafety Meeting Presentation, 7/12/21 Application
- ***Biological Safety Permit – 60 Blanchard Road, Moderna, Inc.–*** 7/27/21 Moderna BioSafety Meeting Presentation, 7/14/21 Application
- ***243 Fox Hill Road, Stormwater Regulations –*** 6/25/21 Violation Letter from C. Mathis, 7/27/21 Presentation from C. Mathis including pictures, emails from D. Negron dated 7/11/21, emails from K. Negron dated 7/9/21, 7/27/21 Mass Law Covering Reasonable Use Standard & Unclean Hands Doctrine, 7/27/21 Motion to Dismiss

**Staff Reports:** Environmental Engineer's Report and Director of Public Health's Report (Includes Supervisory Nurse, Health Agent and Associate Health Inspector's reports)