



TOWN OF BURLINGTON, MA  
BOARD OF HEALTH  
MINUTES

Town Hall Main Hearing Room

TUESDAY, SEPTEMBER 14, 2021

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**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 7:00 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:** July 27, 2021 and August 24, 2021

Dr. Weiner asked that there be a motion to postpone the approval of minutes until the next meeting.

**MOTION:** Mr. McSweeney moved to table the approval of minutes until the next meeting. 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 continued to thank staff, board members and BCAT staff for all their hard work over this past year and half. COVID-19 is still here and people are still getting sick and dying. The vaccine is a personal choice but recommended getting the vaccine for all eligible people to keep everyone safe. People should wear masks inside and maintain personal distance. The Board and staff are here for any questions residents might have.

Dr. Weiner stated that they are going to schedule second interviews for the Associate Health Director with the entire Board.

Ms. Sheehan stated that the Small Cell Committee has been meeting and the first small cell tower installation is on Mall Road near the Lahey Hospital. The committee has spent a lot of time addressing the vague language, recouping costs for engineering, annual testing and recertification and validating carrier requirements. There are proposed changes from Counsel that will be reviewed.

Dr. Weiner asked that we take the Introduction to the IBC Community Representative out of order.



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**MOTION:** Dr. Saltsman moved to take the IBC Community Representative out of order. The motion was seconded by Mr. McSweeney and unanimously voted 5-0-0.

**Discussion**

***Introduction to IBC Community Representative Peter Dawe***

Ms. Lumenello stated that Peter Dawe is our new community representative for IBC. Mr. Dawe stated that his education is in accounting but all of his work experience is within facilities. Most of the work at MIT has been involved with the sanitization process within the labs.

Mr. McSweeney asked if Mr. Dawe was a replacement for Jim Harrison. Ms. Lumenello replied no, he will be the second Community Representative because there are so many IBCs in Burlington and it was getting too much for one person.

Dr. Weiner welcomed Mr. Dawe and thanked him for stepping up for this.

**MOTION:** Dr. Saltsman moved to confirm Peter Dawe as the IBC Community Representative. The motion was seconded by Ms. Welch and unanimously voted 5-0-0.

**Hearings**

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

Dr. Weiner stated that this item deals with a storm water complaint 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, make changes to the order or continue the discussion and get more information. Dr. Weiner stated that since the last meeting, the office has received a counter complaint last week and another site visit has been conducted. Town Counsel Jay Talerman also joined the meeting.

Ms. Mathis stated that this hearing was opened in July 2021 after a letter was sent to the Negron's in June 2021. Since that time, she has visited the site 15 times and photos were taken. There was a rain event in mid-August and it took 3 days for the standing water to dissipate. In September there was a large standing puddle after a heavy rain event. Ms. Mathis noted that 241 Fox Hill Road and 5 Sumner Street both had sump pumps that were properly infiltrating on their property. Ms. Mathis recommended to uphold the order.

Ms. Welch asked if there is a pipe at 241 Fox Hill Road. Ms. Mathis stated that the sump pump flows into an underground pipe that ends at a grate and then dissipates. Ms. Welch stated that the pumps behind the Rumsey property are not visible all the time.

Mr. McSweeney stated that 5 Sumner Street has 2 sump pumps with pvc pipes. Ms. Mathis stated that the pipes come out the back. Mr. McSweeney stated that it seems like there are vegetated wetlands behind the Reppucci property. Ms. Mathis stated that on her first visit, the Conservation Administrator came with her and there are no designated wetlands here. Mr. McSweeney asked if the sump pumps are contributing to the standing water. Ms. Mathis stated that they both are infiltrating and they may contribute to small pooling on the property line but not to the large standing water area. The distance is too great.



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Dr. Saltsman asked if 243 Fox Hill Road had any water in their backyard. Ms. Mathis stated that she spoke with Ms. Negron and she said no.

Dr. Weiner asked if the grass clippings and leaves have any impact on the flooding. Ms. Mathis replied that she does not believe so. The grass and leaves have been there for years and there was never a problem and they are porous. They may slow down the draining of water but they would not impede the water.

Kevin Rumsey of 5 Sumner Street – Mr. Rumsey asked where do the sump pumps for 243 Fox Hill Road discharge. Ms. Negron replied that they discharge into the front of the property underground. Ms. Welch asked how often the sump pumps are used. Mr. Rumsey replied they are temporary and only when needed. They pump to the right side of the property.

Sarah Sullivan appeared representing her mother who owns 241 Fox Hill Road – Ms. Sullivan stated that sump pumps are allowed to pump water from the basement that they discharge into their yard. There is a drainage grate about 10'-20' out from the house that the sump pump goes into and to say it then jumps 70' to where the ponding is occurring is ridiculous. Ms. Sullivan submitted pictures of the area about 15 years ago and there was never water like this. Dr. Saltsman asked if the sump pump is used to get water out of the basement. Ms. Sullivan replied yes. Dr. Weiner stated that the volume of water that comes out of a sump pump is not the volume of water that was ponding in the pictures.

Attorney Richard Vita, Bobby Negron and Kimberly Negron of 243 Fox Hill Road appeared to discuss the violation that was given to them. Attorney Vita stated that the regulations state that sump pump outfalls must be up gradient and cannot be down gradient. The sump pump at 241 Fox Hill Road flows down gradient as well as the sump pump at 5 Sumner Street. If they are not down gradient, it should go underground. Ms. Lumenello stated that there is a slight gradient but it discharges on their own property. Dr. Weiner stated that it is hard to believe that the sump pumps discharge over 2 ½' of water to cause the large ponding.

Mr. McSweeney stated that there are issues being brought up in the counter complaint. Attorney Talerma stated that the Board can't discuss the counter complaint without the proper notice but if there are relevant items to the defense of the Negron's those can be discussed tonight. Dr. Weiner stated that on the counter complaint, we may not even hear it if it is found to be no issue or if they comply with the order. Attorney Talerma replied that was correct. Mr. McSweeney stated that he would like to look at all sides before making a decision.

Dr. Saltsman asked if the Negron's sought the advice of a professional engineer on the impacts of the water and environment before taking down the trees and bringing in the fill. Attorney Vita replied no but Ms. Negron called some Town departments and was told nothing was needed. Attorney Vita submitted a picture from Google Earth prior to the work being done.

Brian Sullivan appeared representing his mother who owns 241 Fox Hill Road. Mr. Sullivan stated that he is the caretaker for this property. In the past there would be a small amount of water that may fill a trash barrel or two during a storm that comes from the sump pump. The Negron's took down a tremendous amount of trees and the water is now an issue. In the past, if there was any standing water it would disappear within 24 hours and to say that the water will travel that far without any scientific proof is ridiculous. There



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has never been an issue with standing ground water in 40 years. The leaves and grass clippings have been there for years and it was never an issue.

Jack Reppucci of 3 Sumner Street – Mr. Reppucci stated that this problem was first noticed on December 26, 2021. He had to borrow a sump pump from a friend to pump out the water from his yard. It was approximately 14,800 gallons and he pumped it three times into the catch basin. The Sullivans have had a sump pump for 6 years and the Rumsey have also had a sump pump and there was never an issue until the Negrón's altered their yard and cut down trees. There used to be a catch basin at 243 Fox Hill Road that the water would go into.

Connie Reppucci of 3 Sumner Street – Ms. Reppucci thanked the Board members and staff for coming out to the properties and all the work that is being done on this issue. There are 4 homes involved with this issue. We at 3 Sumner Street never had a sump pump or had water until the Negrón's changed the land and cut down the trees. We have been putting leaves in the back of the property for years and they compost down and have never caused a water issue. The trees that they cut down absorbed water underground and now they are gone. The Negrón's have had to spray for mosquitos twice this year.

Mr. Rumsey stated that years ago he was in the Town's amnesty program for illegal sump pumps. The Town came out and looked at the setup and said they would not change it to flow into the catch basin. Ms. Lumenello stated that the amnesty program was different. If a sump pump was going into the sewer, the Town allowed for residents to come forward and they would help with the design to infiltrate the water from the sump pumps. The Board of Health regulations come out of the drainage permit process.

Ms. Sullivan asked if the Board of Health determines that the Negrón's have not violated the regulations of flooding other people's property, will they help to reduce the water. Ms. Lumenello replied no.

Ms. Lumenello stated that if the violation is upheld, then the Negrón's will have to provide mitigation to address the additional water and make it as it was before. There is water everywhere. Ms. Welch asked if a permit was required to cut trees. Ms. Lumenello replied no. Dr. Weiner asked if we could have a peer review look at the information. Ms. Lumenello stated that the Negrón's would have to pay for that. If the hearing is continued, the Board needs to state the reasons why, such as more information is needed. There is also a question if the Negrón's are going to look at providing any mitigation as asked at the last meeting. Attorney Vita stated that they did speak with Joe Pandolpho and he would come down and look at the property. If he was to connect a pipe at the corner of the properties to the storm drain it would cost about \$13,000 and the Town of Burlington would need to approve it. Ms. Lumenello stated that we could continue this hearing which would allow the staff to address the counter complaint, which involves the leaves and sump pumps. Attorney Talerman stated that the counter claim is a separate issue. The question before the Board is did the owners of 243 Fox Hill Road violate the Board of Health regulations. The sump pumps and leaves could be a contributing factor. On the counterclaim action is where and how sump pumps discharge which is a very different issue than the original complaint. Dr. Weiner asked if we could order a peer review of the violation. Attorney Talerman stated that this is an appeal of an order. There would need to be a pre and post development report for an engineer to compare to. There has been no engineering report provided so it may be very difficult to get the property owners to pay for a peer review.

Ms. Welch left the meeting at 8:35 PM.



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Ms. Sullivan asked if dumping leaves is a violation. Dr. Weiner stated that there will be an investigation with the counter complaint. Mr. McSweeney stated that the counter complaint should be investigated before we issue a final determination on this complaint. He is concerned with opening this up to more finger pointing by the neighbors. He would like staff to continue to investigate the counter claim and bring both back for final determination at the next meeting.

Mr. Sullivan stated that there have been pictures submitted by the Negron's from his property and he did not give permission for them to come onto his property. Ms. Negron stated that the pictures were taken on the day of the site walk with the Board of Health.

Dr. Saltsman stated that there are two separate issues and he is ready to vote on this tonight.

Dr. Weiner asked for permission of the property owners at 241 Fox Hill Road, 243 Fox Hill Road, 3 Sumner Street and 5 Sumner Street to allow the Board to go on their property. All property owners agreed and asked that they be notified prior to visit if possible.

**MOTION:** Mr. McSweeney moved to continue the hearing for 243 Fox Hill Road Stormwater Regulations until September 28, 2021. The motion was seconded by Ms. Sheehan and unanimously voted 3-1-0. Dr. Weiner, Mr. McSweeney and Ms. Sheehan voted in favor and Dr. Saltsman voted opposed.

### **Discussion (Continued)**

#### ***COVID-19 & Facial Covering Advisories & Mandates***

Dr. Weiner stated that he spoke with the Select Board at their last meeting. There is no way to enforce a mandate but they will push for the education of the residents.

Mr. McSweeney stated that Burlington's vaccination rate is about at the State level but he is concerned that our senior numbers are not higher.

Ms. Lumenello stated that a subcommittee was formed to keep an eye on the numbers.

Dr. Saltsman stated that he read the email from the community member and is concerned with the content and misinformation that masks don't work. The vaccine can reduce the severity of the symptoms. Wearing masks, hand washing, social distancing and staying home when you are sick all help with not spreading COVID as well as the flu. Masks help.

### **Staff Reports**

#### ***Environmental Engineer***

Ms. Mathis presented her report.

- Household Hazardous Waste Day will be September 18, 2021 from 8:30 AM to Noon at the Francis Wyman school.
- On Friday, DPH raised Burlington's risk level to High for West Nile Virus. This will remain until the first hard frost.



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**MOTION:** Dr. Saltsman moved to approve the Environmental Engineer report. The motion was seconded by Ms. Sheehan and unanimously voted 4-0-0.

***Director of Public Health***

Ms. Lumenello presented her report which included the Supervisory Nurse, Health Agent and Associate Health Inspector.

- Ms. Johnson will be coming to the meeting in October to discuss grants that are available to stream line food inspections.
- They continue to work on COVID transmissions at the schools.
- The Flu Clinic will be October 16<sup>th</sup> from 9:30 AM to 12:30 PM.
- The School has signed up for a joint program from DPH and DESE for a Test and Stay program. The application has been submitted but they have not heard back.

Dr. Weiner stated that the staff continues to track other communicable diseases.

Mr. McSweeney asked what the utility company is doing when they trench around the poles. Ms. Lumenello stated that they are installing treatments to prevent the telephone poles from rotting. Their website specifies what is being used.

Dr. Weiner wished everyone a Happy Jewish New Year.

**MOTION:** Mr. McSweeney moved to approve the Director of Public Health reports. The motion was seconded by Dr. Saltsman and unanimously voted 4-0-0.

**Adjourn**

**MOTION:** Ms. Sheehan moved to adjourn the Board of Health regular meeting at 9:03 PM. The motion was seconded by Mr. McSweeney and unanimously voted 4-0-0.

*Respectfully Submitted by Dawn McDowell,  
Recording Clerk*



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DOCUMENTS REVIEWED AT MEETING – TUESDAY, SEPTEMBER 14, 2021

**Agenda**

**Approval of Minutes:** 07/27/21 & 8/24/21

**Citizen's Time:** None

**Chairman's Report:** None

**Hearings:**

- ***243 Fox Hill Road, Stormwater Regulations***– 9/14/21 Memo from C. Mathis including pictures, 9/1/21 Email from K. Negron with pictures, 7/27/21 Counter complaint with pictures, Google Earth picture submitted by K. Negron at the meeting

**Discussion:**

- ***Introduction to IBC Community Representation – Peter Dawe*** – None
- ***COVID-19 & Facial Covering Advisories & Mandates*** – 9/14/21 Email for Frank Ursino

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