

Time being 7:00 p.m. **January 14, 2019** Paul Steeves opened the meeting of the Foxborough Board of Health, under the Open Meeting Laws of the State of Massachusetts. Paul Steeves, Chairman presiding, Eric Arvedon, Vice Chairman, Todd Whitehouse, Clerk, Pauline Zajdel, Health Director, and Diane Passafaro, Public Health Coordinator were present. Meeting took place in the Andrew A. Gala, Jr. Meeting Room inside Foxborough Town Hall at 40 South Street. Minutes were taken by Diane Passafaro.

Others present:

Jimmy Bentley

Rich Carrigg

Antoine Fares

Dr. Lester Hartman

Jeff Lovely

Jess Oyer

Rajesh Patel

7:00 p.m. Jeffrey M. Lovely, Esq. – Counselor At Law – Septic Covenant Approval for the Highland Ridge Project – 144 Main Street

(No interested parties in attendance for this agenda item)

The Highland Ridge project, located at 144 Main Street in Foxborough, MA is a 40B housing project consisting of eight, single family homes with one shared septic system. In accordance with Title V, shared systems require a Covenant and Easement to be recorded with the local Registry of Deeds.

Jeff Lovely presented the Board with the septic design plan for 144 Main Street. The Plan showed the layout of the shared system servicing all eight properties and Mr. Lovely informed the Board that the installation of the septic system has already been completed. Also presented to the Board, was the completed Covenant and Easement document to which Mr. Lovely requested that the document be signed by the members of the Board that night. Mr. Lovely explained that this covenant provides the Board with the authority to impose additional requirements related to the shared system including annual testing, an operation and maintenance schedule and financial surety in the event the system needs to be repaired.

Eric Arvedon asked who would be the holder of the money related to the financial surety should repairs be needed. Mr. Lovely explained there will be a Trustee of the Trust.

Pauline Zajdel informed the Board that Health Inspector, Kevin Duquette had no issues with the Covenant.

Eric Arvedon made a motion to approve the “*Grant of Title 5 Covenant and Easement*” for the Highland Ridge project located at 144 Main Street as written.

Todd Whitehouse seconded the motion. Hearing no further discussion, Paul Steeves called for a vote. All in favor, motion passed, 3 – 0.

The document entitled “*Grant of Title 5 Covenant and Easement*” was signed by all three Board members and returned to Mr. Lovely for recording at the Norfolk Registry of Deeds.

Hearing no further discussion related to 144 Main Street, Paul Steeves declared the matter closed at 7:11 p.m.

7:11 p.m. Paul Steeves stated that the next agenda item was not until 7:15 p.m. and would like to move on to other meeting business.

7:11 p.m. Todd Whitehouse made a motion to approve the following bills:

The Arc South Norfolk (January Services)	\$812.83
J.R. (January Communications)	\$50.00
D.P. (January Communications)	\$50.00
P.Z. (January Communications/Mileage)	\$61.77
HealthCare Options, Inc. (January Services)	\$2,463.75
NEHA (Annual Membership – P.Z.)	\$100.00
Foxboro Reporter (Public Hearing Notice – 12/13/18)	\$54.52
Rodman Ford (Repair/Part on Town Health Vehicle)	\$95.65
MEHA (Educational Seminar – D.P. and P.Z.)	\$150.00
MHOA (Membership Renewal – D.P./J.R./P.Z.)	\$180.00
Ecolab Food Safety Specialties (Food Insp. Equip.)	\$39.95

Eric Arvedon seconded the motion. Hearing no discussion, Paul Steeves called for a vote. All in favor, motion passed, 3 – 0.

7:14 p.m. Eric Arvedon made a motion to approve the minutes of December 10, 2018 as written. Todd Whitehouse seconded the motion. Hearing no discussion, Paul Steeves called for a vote. All in favor, motion passed, 3 – 0.

7:15 p.m. **Waxy O’Connors - Paul McKenna, Owner**
Discussion and vote to re-instate their suspended food license.

(No one representing Waxy O’Connors was present at the time of their appointment)

Chairman, Paul Steeves informed the other Board members that at 4:24 p.m. that afternoon, Pauline Zajdel received an e-mail from the Owner of Waxy O’Connors, Paul McKenna. This e-mail read, in part, “Due to being closed for

business, Waxy's will not be attending tonight's hearing." Paul McKenna also asked in the e-mail what the next steps were with regards to their license.

Eric Arvedon asked Pauline Zajdel if she had received any formal correspondence from Waxy O'Connors stating they have officially closed and no longer in operation. Ms. Zajdel confirmed there has been no communication except the e-mail received that afternoon.

Eric Arvedon made a motion to leave Waxy O'Connors 2019 Food Service Establishment License suspended until further notice and until such time that the establishment meets the minimum standards of the State Sanitary Code, an inspection confirming compliance is conducted, and an appearance in front of the Board occurs. Or until there is a formal correspondence to the Board of Health detailing the establishment is officially closed for business. Todd Whitehouse seconded the motion. Hearing no discussion, Paul Steeves called for a vote. All in favor, motion passed, 3 – 0.

Hearing no further discussion related to Waxy O'Connors, Paul Steeves declared the matter closed at 7:24 p.m.

7:24 p.m. Paul Steeves made it known to those present that the meeting would continue with Health Director updates and wait until 7:45 p.m. to open the public hearing.

7:24 p.m. Health Directors Updates

- The extension approval for occupancy associated with the temporary trailer located at 78 South Grove Street, which was granted by the Board of Health during the January 29, 2018 meeting, has expired. There have been no additional requests for an extension from the Owner and the Building Department confirmed they have not issued a Certificate of Occupancy associated with that address. The Board requested that the Owner be called and informed that they must request, in writing, a meeting with the Board of Health to discuss the reason for the expired extension and to request any additional extensions as allowed.
- The Foxborough Health Department was the recipient "Kenneth E. Pickard Municipal Innovation Award" for our annual and collaborative Septic Hauler Inspection Day conducted with three other nearby Towns. Bill Keegan will be accepting the award on behalf of the Foxborough Health Department.
- Health Inspector, John Robertson will be conducting a food safety training for our permitted food establishments relative to the New Code. This training is tentatively scheduled for mid-March.

7:38 p.m. Paul Steeves called for a short recess.

7:45 p.m. Public Hearing: Discussion relative to incorporating a change into the Town of Foxborough current regulation entitled “Restricting the sale of Tobacco Products”. The Board may vote to take action in regards to the entire class of electronic nicotine delivery devices

Todd Whitehouse read the public hearing notice that was published in the Foxboro Reporter on January 10, 2019.

Eric Arvedon began and informed the other Board members that he was the one that asked to have this meeting. It was to have a discussion on the issues associated with electronic nicotine delivery devices and how the Board of Health could do their part in eliminating these issues. He stated that the “tipping point” for him was after reading the most recent Surgeon General’s advisory on *E-cigarette Use Among Youth*. Eric Arvedon read the advisory, in part during the meeting, and spoke of the other State and Federal agencies that have also provided their statements on the matter. He further spoke of the request made to Cheryl Sbarra and Marilyn Edge for language related to electronic nicotine delivery devices, so that when speaking about them or if a motion was to be made, he could be all inclusive with his language. Mr. Arvedon stated he never asked for draft regulations to be produced. His intent for the meeting was to have a discussion with his fellow Board members on the topic.

Pauline Zajdel informed the Board that she and Health Inspector John Robertson recently attended a meeting and met with the Principal and Assistant Principal of the High School, Two Resource Officers for the High School and Regional Charter School. Information from that meeting confirmed that a use of electronic vaping devices does occur at the Foxborough Middle and High Schools. Those in the meeting, however, spoke of the challenges in catching students with these devices, as they are good at hiding them.

Todd Whitehouse provided his opinion and stated that he is leery of removing a legal item off the shelves of our Retailers and did not believe this course of action would put a dent in the overall issue, adding he did not think that younger children are getting them at the local Stores, but rather, from older siblings or online. He continued and stated he thought it was unfair to the Retailers. If they are unable to sell these legal items, they are not only losing the tobacco sale, but the sale of the gas and milk, etc. He remarked that we have to trust the Retailers are doing their due diligence and added it is not our job to police it. Until the State says it can’t be sold, Retailers are being treated unfairly should they not be allowed to sell.

Paul Steeves provided his comments and re-emphasized the fact that the bottom line is that kids are getting them. It is a fact that nicotine is highly addictive and teens don’t have the mental capacity to make informed decisions. He continued stating that the job as a Board of Health is not to worry about money or the Retailers, but the Health of our Town and the kids.

Mr. Arvedon expressed that he would do everything he could to eliminate this epidemic and added that multiple State and Federal entities are struggling on how to deal with the Surgeon General's advisory.

Mr. Steeves also commented his belief that compliance checks are just a small window of the activities that occur at the Retail level.

Dr. Lester Hartman indicated that studies have shown that 3,000 – 4,000 eighth graders are purchasing vaping products from retail stores. He informed the Board that nicotine is a level one carcinogen and added that electronic nicotine devices are not marketed as a cessation device, but meant for a nicotine initiation among children and teens.

Eric Arvedon made a motion to ban electronic nicotine delivery devices, which include but not limited to, electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, e-liquids, or other similar products, regardless of nicotine content that rely on vaporization or aerosolization, within the Town of Foxborough. Todd Whitehouse seconded the motion.

Paul Steeves opened the room for comment.

Jeff Lovely agreed with the Board that reducing exposure of nicotine to kids is a good thing, however, the Board does not have the factual evidence that product is being purchased from retail convenience stores to propose a motion to ban these products. He continued by using the analogy of banning vaping devices within retail stores to is like banning Doctors from prescribing opioids, adding “where does the Board of Health power lie” and asking whether banning is the most effective option.

A Foxborough resident expressed his opinion stating that the banning of these vaping devices could create a black market for these items as it did with marijuana.

Jess Oyer, spoke on behalf of the Coalition for Responsible Retailing and agreed with the Board's concern, however, stated he did not believe banning nicotine products from Retail stores would address the issue. He brought forward to the Board different approaches that may assist in minimizing the epidemic. He began by first commenting on the 100% compliance rate related to the FDA compliance inspections that occurred during the years 2014 through 2018 at the retail stores. He also spoke to the Board about Massachusetts being one of five States that do not have a Use and Possession Law. By not having a Use and Possession Law, Police Officers are unable to confiscate tobacco devices from under-aged children should they find them smoking in public. A law of this nature is typically associated with a fine, which ultimately brings the Parents into the conversation to address the issue with their children. With no law, there is no discouragement at

that level. Mr. Oyer's third comment was associated with what could be proposed at the retail store level, and includes removing the visible presence of the vaping devices, for example, hiding them from view. This minimizes the exposure to the under-aged youth in the Stores, however, regular customers will be aware they are still available for sale.

Rich Carrigg inquired if education in the schools was occurring. Ms. Zajdel commented that there is education and penalties if kids are caught vaping, including being suspended from sports programs. Mr. Carrigg also suggested an increase in compliance checks.

Paul Steeves addressed the room and stated that he was not ready to vote on any motion related to tobacco until there is a discussion with Cheryl Sbarra or the Attorney General to fully understand the legal ramification of a vote to ban electronic nicotine delivery products.

Eric Arvedon made a motion to postpone the pending motion to a later date. Todd Whitehouse seconded the motion. Hearing no further discussion, Paul Steeves called for a vote. Motion passed, 3 – 0.

Eric Arvedon thanked all those that attended and provided their comments during the meeting.

Hearing no further discussion related to the public hearing, Paul Steeves declared the matter closed at 9:01 p.m.

9:01 p.m. Health Director Updates Continued

- On February 6, 2019, Morissa Vital will be providing a presentation for Foxborough Middle and High School Parents on the dangers of vaping. Marilyn Edge will be present, but her services and time will need to be paid out of our budget.
- In direct response to a recent Resident's comment on being able to contact the Board of Health directly, the Board was asked if they would like the IT Department to set up a "Board of Health" e-mail account in order for people to communicate directly to the Board. The Board agreed yes.

9:08 p.m. Eric Arvedon made a motion to adjourn. Todd Whitehouse seconded the motion. All in favor, motion passed, 3-0.

The next meeting is scheduled for January 28, 2019.

Todd Whitehouse, Clerk/dp