The Board of Health Meeting was called to order at 6:00 p.m. Present were Ms. Pamela Linzer, Chair, Gopala K. Dwarakanath, M.D., Clerk, Mr. Thomas G. Carbone, Director of Public Health.

**Appointments & Hearings**

- **#1 - 6:00 p.m. – Andover Spa – Discussion Concerning Flavored Tobacco Products in the Establishment** – Present were Mr. Narenda Patil and Amit Kumar Patel, co-owners of Andover Spa and Mr. Ronald Beauregard, Healthy Communities Tobacco Control Program Director. Mr. Patil was present at the beginning of the Meeting and Mr. Patel joined the Meeting at 6:09 p.m. Mr. Carbone explained that this is the third tobacco related violation since 2015; two of them were sales to minors and this is the first for the stocking of flavored tobacco. Mr. Beauregard conducted checks for CBD products and found the flavored tobacco for sale on the shelves. Mr. Beauregard informed the Board that the product was Mango Juul pods. Mr. Patil informed the Board that he was not an owner at the time of the sales to the minors and has only been a co-owner for a couple of years. He did not know that flavored tobacco was not allowed because he didn’t see it on their documentation. Ms. Linzer pointed out to Mr. Patil that she wanted him to understand that this is a very serious matter; the Board only allows a limited amount of Tobacco Permits and the risk is they could lose their license if this happens again. Dr. Dwarakanath asked what the owners plan to do to insure this does not happen again now that they are aware of the regulation. Mr. Patil replied that when the vendors come in, the owners decide what products to buy, so it is the owners’ responsibility to know what is allowed for them to sell. So now that they know what they cannot sell flavored tobacco products, they will not order those types of products again. Mr. Patil stated that he now understands that they can only sell tobacco products with mint or menthol flavors.

Mr. Patel arrived to speak with the Board of Health and stated that it was an honest mistake and he was not sure what happened. Mr. Carbone pointed out that Mr. Patel has been involved with this store for a long time and felt that he should have known about the new regulations. Every establishment selling tobacco products was notified of the flavor restrictions. Dr. Dwarakanath stressed to Mr. Patel that if he had one more offence, he may not be able to sell any tobacco products.

Ms. Linzer stated that the reason she will not make a motion tonight to suspend the Tobacco License for a short period of time is because the offences were for varying reasons and that this regulation is fairly new. However, if any violations happen again, then the Board would be taking some action. The matter was closed with no vote taken.
Approval of Minutes

- # 2 – August 19, 2019

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to approve the Minutes of August 19, 2019. Unanimous approval.

Discussion Items

- #3 – Polystyrene & Thin Film Plastic Bag Bylaw Updates & Waivers – Mr. Carbone informed the Board that some waivers are still coming in. Our Contractor, Rae Dick, has reported that most of the establishments have been visited. The Andover/North Andover YMCA and the Andover Deli & Pizzeria have requested Waivers. He also provided the Board with additional Waiver requests for Ballardvale Café and Kindercare for the Board to review.1 Mr. Carbone is recommending an end date of November 30, 2019 for all the establishments.

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to approve the Waivers with the November 30, 2019 date for the Andover/North Andover YMCA, Andover Deli & Pizzeria, Ballardvale Café and Kindercare. Unanimous approval.

- #4 – Discussion- Possible Amendment to Polystyrene By-Law - Mr. Carbone stated that at the last Board of Health Meeting on August 19, 2019, the Board asked him to write a Draft Amendment to the By-Law that would allow the Board to issue Variances to the By-Law. Mr. Carbone added §7 to the existing By-Law to cover Variances. If approved by Town Meeting the Board would then have the authority to grant a Variance. The Board would need to hold a Hearing on the Variance request. The Board would be able to place conditions on the Variance and would not allow it to be transferable from owner to owner. If the Board would like to consider going forward with this, Mr. Carbone will bring it to Town Counsel for review.

Ms. Linzer expressed concern that the Board is not able to make changes to a By-Law as opposed to a Board of Health Regulation. Since it was a Warrant Article at Town Meeting, the Board would have to prepare an Article to present to the Town Meeting to amend the bylaw because Town Meeting is the legislative body of a By-Law. Mr. Carbone could send the Draft document to Town Counsel and could schedule a Hearing for October to give the public a chance to bring their ideas and opinions to the Board before a decision is made. By starting in October that gives the Board time to get an Article ready by December. After consideration, Ms. Linzer decided to not make a motion at this time and to keep the By-Law as is.

Three residents attended the Board of Health Meeting. Ms. Jane Gifun stated that she was under the impression that the schools were concerned about the cost. They were balancing the recycling with the knowledge that some items may not be compostable;

1 A copy of the Waiver Requests for Ballardvale Café and Kindercare will be added to the Agenda Packet under Item # 3.
specifically the plastic utensils. When this By-Law passed, that was one of the big concerns the schools had. Mr. Carbone informed the residents that the Food Service Director for the schools knows what is needed and that to comply with the By-Law, more money must be spent. No one from the Schools have come to the Board expressing any concerns. Mr. Carbone stressed that anyone can put an Amendment to the Article together for Town Meeting, including the schools. Dr. Dwarakanath expressed concern that a lot of items are being put into the trash at the schools instead of being recycled. Mr. Carbone explained that the schools have a composting program. Food waste goes into a separate container and the trays are compostable, which saves on water. They have different buckets for different items to be disposed of.

- **#5 – Mosquito Control Update** – Dr. Dwarakanath was pleased to have the good news that there have been no EEE cases in Andover yet. Ms. Linzer asked if the spraying is completed now and if testing is still being done. Mr. Carbone responded that spraying is done for the time being and that the only traps that are set up right now are at the Spring Grove location. The number of mosquitoes being trapped are in the single digits which is a good sign. There are no plans on lifting ban on nighttime activities at the schools at this time, and that would be a decision the Board of Health would make. Our risk level is still marked at high; Methuen is the only one listed as critical because of a horse death in Methuen.

Ms. Gifun asked if the mosquitoes have already laid their eggs and if that could pose a threat for next year. Mr. Carbone explained that the problem is not that the larva is contaminated, the problem is with the birds; the adult mosquito bites an infected bird, then transmits the disease to a mammal. We may not have any issues next year, but Mr. Carbone anticipates we will be starting the season next year at a moderate risk level because we cannot be sure this will not happen again. Ms. Gifun asked about the distinction of the risk as far as the general public is concerned. Mr. Carbone replied that there are certain criteria we follow to determine the risk. We start out as remote, then if we find a positive mosquito, it changes to moderate. Since we have seen it in our testing, the next thing is to educate the public to be aware of it, dress accordingly and use insect repellant. Since we had three areas test positive this year and we are adjacent to a community with a mammal death, we were upgraded to high risk.

- **#6 – Adopt 2020 Fee Schedule** – Mr. Carbone explained that he was not recommending any changes this year because we are anticipating changing the Food Licenses from a set fee to a risk-based fee in 2020.

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to approve the Fee Schedule under the authority of M.G.L.c. 111, §31, to become effective November 1, 2019. Unanimous approval.

**Old Business**

- N/A
Subdivision Definitive Plans

- N/A

Septic System Variances/Local Upgrade Approval

- #7 – 1320 South St. - LUA to allow SAS to be 4.3’ above SHWT, 5’ Required; allow Septic Tank inverts to be 2” above the SHWT, 12” is Required – Mr. Carbone explained that the Engineer has designed a pump, but is still seeking a little less than a foot LUA to the water table. After reviewing the plan, he recommends the Board issue a waiver on the depth of the septic tank because of the water table. The code requires that the pipes going in and out are 12” above the water table. This will be 2” to 3” above, so to cover what is needed, he requested that the Board approve that also. Mr. Carbone wants to speak to the Engineer so he can understand why full compliance cannot be met with the groundwater setback for the leach field. Testing on this property was done in June and the system had to be relocated. The Engineer has not been available due to a family health issue, so he will discuss the groundwater setback with the Engineer when he returns. Mr. Carbone requested that the Board allow him to use his best professional judgement as he discusses the changes with the Engineer.

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to approve the LUA’s for 1320 South Street to allow the SAS to be 4.3’ above the SHWT, where 5’ is required; allow the Septic Tank inverts to be 2” above the SHWT, where 12” is required, with the flexibility for Mr. Carbone to use his best professional judgement when he reviews the need for the groundwater setback with the Design Engineer. Unanimous approval.

- 228 Chandler Rd. - LUA to allow SAS to be 3’ above SHWT, 4’ Required. (Not on Agenda) Mr. Carbone explained that this plan came in prior to the time we closed the Agenda, but his review took longer because this plan is a bit more complicated since it is an alternative type of septic system design. Mr. Carbone looked at the plan today and the LUA that is required is a 1’ setback from the groundwater. He e-mailed the Design Engineer and asked why he couldn’t reach full compliance since he was putting in a pump. The Engineer responded that without the LUA the system would be 1’ higher, which would cause grading issues. Also, the cost would probably increase by approximately $1000.00 for the fill material if the LUA is not granted.

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to approve the LUA for 228 Chandler Rd. to allow the SAS to be 3’ above SHWT where 4’ is required. Unanimous approval.

Staff Reports

A. #8 - Director’s Reports:

- Important Dates:

2 A copy of the Memo dated 9/16/2019 describing the LUA request information and copy of the design plan will be added to the Agenda Packet under item # 7.
September 16, 2019 BOH Minutes

- September 22, 2019 – Andover Day
- October 12 through 20, 2019 – Director’s vacation
- October 1 & 8, 2019 – 9 a.m. to Noon – High Dose Flu Clinics
- October 19, 2019 from 10 a.m. to 1 p.m. – Fire Department Open House
- October 21, 2019 at 5 p.m. – Board of Health Meeting
- November 6 through 8, 2019 – MHOA Conference
- November 14, 2019 at 4 p.m. to 7 p.m. – Community Flu Clinic
- November 18, 2019 at 6 p.m. – Board of Health Meeting
- December 16, 2019 at 6 p.m. – Board of Health Meeting

B. #9 – Community Health Report for August, 2019- The Community Health Report for August, 2019 was for informational purposes only.

C. #10 – Environmental Health Reports for August, 2019 – The Environmental Health Inspectors’ Reports for August, 2019, were for informational purposes only.

Board Member Reports

- **Board Member replacement** – Mr. Carbone informed the Board that the candidate for the open Board of Health seat decided not to take the position. On the list of interested candidates that was provided to Mr. Carbone are a couple of medical practitioners. Ms. Linzer stated that she will be the screener for the applicants and would bring her recommendations to the Board for review.

Adjournment

Motion by Ms. Linzer, seconded by Dr. Dwarakanath, to adjourn at 7:00 p.m. Unanimous approval.

Per the New Open Meeting Law, the following is a list of the documents that were either distributed to the Andover Board of Health before the meeting in a packet, or at the meeting.

1. Board of Health (BOH) Meeting Agenda.
3. Letter from Ronald Beauregard, Healthy Communities Tobacco Control Program Director to Andover Spa, dated August 12, 2019, citing them for Tobacco violation of the sale of flavored Tobacco products.
4. Memo from Mr. Carbone to the BOH, dated 1/17/2018, concerning Andover Spa Sale of Tobacco to a minor.
7. Memo from Mr. Carbone to the BOH, dated 9/10/2019, concerning Waivers from the Polystyrene & Thin Film Plastic Bag Bylaws and corresponding Waiver applications.
8. Memo from Mr. Carbone to the BOH, dated 9/10/2019, concerning the Polystyrene Bylaw Draft Amendment with corresponding draft document.
9. Memo from Mr. Carbone to the BOH, dated 9/10/2019, concerning EEE response.
10. Memo from Mr. Carbone to the BOH, dated 9/10/2019, concerning the 2020 Fee Schedule.
11. Memo from Mr. Carbone to the BOH, dated 9/10/2019, concerning a LUA request for septic system at 1320 South Street.