

**Meeting Notes from the Regular Meeting of the Peabody Board of Health,  
September 23, 2021**

In Attendance: Chairperson Thomas J. Durkin III, Anthony Carli (attending remotely via Zoom), Dr. Julia Fleet, Health Department Director Sharon Cameron, , and Recording Secretary Lisa Greene.  
The meeting was held in the Lower-Level Conference Room and remotely Via Zoom at 4:00 p.m.

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**Subject:** Meeting called to order

**Discussion:** Mr. Durkin called meeting to order at 4:06 p.m.

**HEARINGS**

**Subject:** Hearing scheduled for 4:00 pm to review nuisance complaints associated with the animal permit issued to Manuel Silva for 12 Tracey St., Peabody, MA 01960. A vote may be taken to uphold, modify, suspend, or revoke the animal permit.

**Discussion:** Mr. Durkin read the hearing notice and explained that we are meeting today live and also online via Zoom. He asked for a Health Inspector to tell what brings the issue before us. Mr. Yale told that he had received three recent complaints about odor, noise and insects from an abutter. He added that he had been out there recently three times to the permit holder's property and once to the complainant's. His first visit was to permit holder Manny Silva's house, and the complaint was that he had unpermitted turkeys, which was correct, so he issued an order to correct, and he gave one week to get rid of the turkeys. Subsequently the turkeys were removed. Mr. Yale reported that Mr. Silva has pest control in place, including fly traps and bait boxes. He told that he also has several dogs and rabbits, for which we don't require a permit, but they do have 5 chickens and 3 ducks which are only allowed by permit. Mr Yale told that after visiting Mr. Silva he then visited Mr & Mrs. Zgonis, the abutters. He told that he sat outside for some time talking with John Zgonis. Inspector Yale added that while John complains of bug bites on his body, at the time of his visit Mr. Yale didn't experience any nuisance odors or bugs biting him. He went on to explain that in 2016 we had some complaints there so a Board hearing was held then too, so there was a little history there, so it has been going on for a while. He stated that he has no recommendation either way, but is just reporting what he sees. Mr. Durkin asked if anyone present wished to speak. Labrinie Zgonis said every day she cleans her yard with water, if she doesn't clean there are a lot of bugs. She then told that yesterday Mr. Silva told her to go back to her country. She said that yesterday she came in to tell John about it, and was made even more sad. Mr. Zgonis was extremely emotional and said that he is a very sick man. Mrs. Zgonis said she has kids and grandchildren. She then directed her words to Mr. Silva and said please come have coffee with us, be a good neighbor. John Zgonis added that inspector John came to the house and saw the cloud of bugs, bugs eating the roses and the tomatoes. He told that he had shown the inspector the bug bites on his arms, and added that he went to doctor, got a prescription for the bug bites, and his foot bleeds from bug bites. He then said that he is sick, can't see his grandchildren who want to come here but can't come because of the bugs there. He asked is my life worth nothing, adding that it seems that only the chickens have rights. He said Mr. Silva is very sick too, so he can't take care of the animals. He added that Mr. Silva empties all of the water from his yard and it comes into their yard, because Mr. Silva is above him. He said that they have mice too, many mice, big mice, and added that he feels sad to have to bother the neighbor. Dr. Julia Fleet asked why the complaints didn't mention mice, and when the mice problem started. Mr. Zgonis said it has been an issue all along, many neighbors also complain. Mr. Zgonis said skunks also come because of the chickens. Mr. Durkin asked if he is sure the bugs are attributable to the animals. Mr. Zgonis said he believes that. Mrs. Zgonis said she can't enjoy her granddaughter because of the

bugs. She said that the neighbor has a pool and the water is so black and she saw ducks in the blue swimming pool, in the ground, but the water was very dirty. Mr. Zgonis said that when they clean, the dirty water from the chickens goes into their yard. Mrs. Zgonis said she loves animals but everything going on there makes them both very nervous; she added that now there are no roosters, but the chickens squack all the time, at 4:00 or 5:00 a.m., which makes her so nervous she can't sleep any more.

Manual Silva, owner of the animals, said that he has been there for 40 going on 50 years, has tried to follow what the protocol is, has the rat poison, and has done everything requested. He said that he has grapevines, and we both have peaches, and when rotting they attract flies, but there is nothing he can do. In 2017 he tried to make peace with them, adding that he has cancer. He said that what makes him able to go on is having the animals to take care of, so he gets up and takes care of the animals. He said he has some new ones, said he bought 4 turkeys on sale for \$1.00, had a place for them to go, at the same time just before John Yale came we had bad weather, he had put up a new fence, a plastic one the neighbors can't see through, can't nail to the wood. When that fell in, John Zgonis came over and said the fence came down, he said thank you and said he will fix it, and it took a few days. I try to do whatever I can to be friends, when he gets asked he takes care of it. She says he was rude, maybe he was, but he was upset that he has to come down here. He said that he loves his animals, he is able to sit in his backyard, he can cook, all their neighbors have their screens open, and no one else complains but them, adding that it hurts him deeply that these animals are being used as a weapon. Every day they have been walking on the pathway looking into his yard. Feels he is being harassed. He asked Mrs. Zgonis if she sees anything wrong here, mind your own business. Wish this could be resolved, leave the animals, leave me in peace. Everytime they ask something he does it and they didn't need to bring him in here.

Richard Ramirez, who resides with Mr. Silva, asked to speak, and said the hose doesn't reach back there, the fence is butted to the ground, the pool is dirty sometimes, and the water gets changed every day. Water goes into the garden, not onto the neighbor's property. Mr. Silva said he has not seen one mouse on his grounds. Mr. Durkins asked about noise. Mr. Silva said chickens make noise at 6:30-7:00 am, Mr. Ramirez said he would be woken as well. He added that Manny never said go back to your country because he is an immigrant as well, adding that he has known him for 32 years, and knows that he would never say it. Mrs. Zgonis said she has a new woman in her house and that is why she had to come down near the fence, and then he said too many bad words to her. She lives on the 1<sup>st</sup> floor and has two apartments, tries to keep her people, the other tenant left because of the chickens. Mr. Ramirez replied that her tenants left because they had a baby and didn't have room. He added that there are no bugs, and they can eat outside. He said that if there were odors, why would everyone around keeps windows open. He added that, on occasion, on a very hot day after a rain you might smell a little, said they bust their butts to clean every day. Dr. Fleet asked Mr. Silva, if you have had chickens or ducks all along, what has changed. Mr. Silva said he had put up a new fence when the old fence was knocked down. Since then new fence went in, they weren't happy with the fence, they are upset they can't look over at his property. He said there was also an issue over the location of the fence. Dr. Fleet asked the Zgonis's if in 2018 were the mice, noise, and bugs a problem. Mrs. Zgonis replied that it was a big problem. She also added that the fence only covers part of the area, and said that every day the swimming pool is dirty, adding that she knows that ducks don't go in the water if it is not dirty. She said her husband has had big surgery. Mr. Zgonis said he is sorry, but he likes his life, without chickens, he has a life. Mr. Durkin asked John Yale, is Mr. Silva in compliance with the Health Dept guidelines for keeping animals. Mr Yale replied yes. Mr. Durkin asked it is typical of other animal pens we have city wide. Mr. Yale replied yes. Mr. Durkin asked

how long they had chickens, Mr. Silva said over 40 years. Ms. Zgonis said we always had a problem. Mr. Zgonis cried out that the city only gave him permit for chickens, not for ducks, why is he lying he has ducks. Mr. Yale replied that Mr. Silva has had the permit for ducks as well for a few years. Ms. Cameron added that we have a challenge to balance the rights of both neighbors, adding that it can both be true that a permit holder is in compliance with our guidelines and can still be a nuisance to the neighbors. We have issued this permit to allow chickens and ducks, but we need to look at the the burden of all of the animals, the rabbits and dogs as well, and not limit the discussion to only those controlled under permit, to determine if there is a nuisance. Mr. Durkin said he needs to look at if the animals are a burden to the neighbors. Mr. Silva replied there are many people with animal permits in the area. He said he has tried to follow the requirements, his property is not overgrown, he is active with Topsfield Fair, it is not a money thing, he just doesn't have anything else to do. For 11 years he has been doing nothing more than his backyard work. Mr. Durkin said that he wants to address the burden on the neighbors, and asked how many dogs they have. Mr. Silva replied that they have 6 dogs, but they are chihuahuas, and stay in the house, and 18 rabbits. Mr. Durkin said he has concerns about the number of animals- with 3 ducks, 5 chickens, the dogs and rabbits, it is a lot. Mr. Silva said no. Mr. Durkin said the houses are very close. Mr. Silva said no. Mr. Yale said these neighbors are behind them. Mr. Durkin said he feels this is a lot of animals on the property, and asked Mr. Silva what can you do to lessen the burden. Mr. Durkin asked if they could find a way to get along on the matters that are not about the animals. We need you to get along, and we can only help with the animal part. He asked Mrs. Zgonis if she can try to get along as neighbors peacefully, and she replied of course. Mr. Silva replied that anything can be done if they talk but instead they drag him in and he is embarrassed. Ms. Cameron said that while there was no sign of rodent activities, the yard needed to be cleaned of dog feces. Mr. Silva said it was winter, it has been cleaned. Ms. Cameron added that to have more than 3 dogs requires a kennel permit. Mr. Silva said they are not all in his apartment. Ms. Cameron said there is a technicality that you split them between the two units, Mr. Silva said he would be willing to get one, one is very sick, all are old. Mr. Zgonis said thank you for pointing out that they do not have room there for all of those animals close to his yard, which is why it bothers him. And they had 25 ducks last year. Mr. Durkin said we need to deal with today not the past. Dr. Fleet asked who controls the other animals. Ms. Cameron replied that dogs are controlled by the animal control department but no one regulates rabbits. She pointed out that a case like this is tricky because the BOH regulates chickens and ducks but the complexity is the combined impact of these with the other animals which are out of our purview. Mr. Durkin said the totality of the animals needs to be considered. Mr. Yale suggested that is there any way he could move the coop farther away from the neighbors' property. Mr. Silva said the property line is his property line, his sister said if they are going to complain, we can do what we want with our property, we had given them over an inch on the property line. Mr. Silva then said that he is willing to do that, but asks that they say hi or hello, not to just stare into his back yard. Mr. Durkin asked Mrs. Zgonis if she understands the point here, that we need to find a way to cooperate. She said no because he says bad words to her husband. At 4:59 Mr. Durkin closed the hearing and asked the Board members for their ideas. Mr. Carli said that he suggests we table this until next meeting,` wait for Mr. Silva to move the coop and see about it next month. Mr. Silva said he would move it, and that he will let John know so he can inspect. Mr. Zgonis asked if we have to come back next month, Mr. Durkin said they are welcome to come but may not have to.

**Subject:** Hearing scheduled for 4:10 pm - Application for permit for 5 hens and 1 rooster at 8 Hathaway Ave. submitted by Michael Munroe. Vote anticipated to grant or deny permit.

**Discussion:** At 5:01 Mr. Durkin called the hearing to order. He asked if Mr. Munroe was present. Mr. Munroe replied that he was. Mr. Durkin asked what interested him in having the chickens. Mr.

Munroe replied that he wants to do this for his granddaughter and grandnieces, and looks forward to eggs. He admitted that he accidentally got a rooster, but got the collar for him that shuts him up, keep him from crowing. Mr. Durkin asked if any Board members have questions. None were asked. Mr. Durkin asked if the Inspector would speak. Mr. Yale told that he had found out about the chickens through a complaint of a rooster crowing. Mr. Yale told that he spoke to Mr. Munroe, who told that he had ordered a collar. Mr. Yale said that he had told him about our regulation, about the suggested best practices, and gave him all of the literature, and he submitted the permit application within a week, and subsequently got the collar for the rooster and we haven't received any other complaints. Mr. Yale told that he still hadn't received any pest control report. He said he had walked the property and told Mr. Munroe to get rid of some rotten wood, had an inspection and it said that there was no evidence of rodents present. The coop is well built, he is doing what is asked for. Dr. Fleet asked if at his second visit he had heard the rooster, and Mr. Yale said he had not. Ms. Cameron said in our best practices we say we don't want roosters, but we have allowed them on very big properties with no abutters. We were not aware of the device to quiet them, we are only concerned if the rooster created a nuisance, so we can make it a condition that it can remain as long as it doesn't create a nuisance. Mr. Durkin asked if anyone here or online wanted to speak on this issue. No one replied. Mr. Durkin asked if he was confident that the device will keep him quiet, Mr. Munroe said he is confident, adding that he checks it regularly. Mr. Munroe said he thought that roosters only crow in the morning but they don't. He had asked at the location he purchased it what to do, but they didn't know, but he did research and found about this device, adding that it doesn't hurt the rooster. Mr. Durkin closed the hearing at 5:09. Mr. Carli made a motion to approve the permit, Dr. Fleet seconded the motion. Dr. Fleet said we can approve with the stipulation that it be this rooster and that he be kept quiet. A vote was taken, all agreed to grant the permit with the requirement that the rooster be kept quiet and if it does pose a nuisance in the future, the permit will be revised.

**Subject:** Hearing scheduled for 4:20 pm - Application for permit for 5 hens at 7 Longwood Ave. submitted by Rachel Childress. Vote anticipated to grant or deny permit.

**Discussion:** Mr. Durkin read the meeting notice and asked if the applicant was present. Ms. Childress was present via Zoom. She told that she and her husband Craig were present, and said that they had these hens for over 4 years, have had no complaints, had no issues with rodents, and got them almost five years ago because her daughter got lyme disease, and chickens are avid eaters of ticks and since then haven't had a single tick. Mr. Durkin asked if anyone had any questions. Mr. Yale said he found out about these chickens from inspector Suckney who was in the neighborhood on another issue, and Mr. Yale went out and explained the best practices and application process, but wanted to confirm that there were no negative issues at this location. Mr. Durkin asked that they keep aware of the rodent issue. He asked if anyone present or on Zoom wishes to speak on this matter. No one replied. Mr. Durkin closed the hearing at 5:15. Dr. Fleet made the motion to approve. Chief Carli seconded the motion. A roll call vote was held and all agreed to grant the permit.

**Subject:** Hearing scheduled for 4:30 pm - Application for permit for 10 hens at 20 Howard Ave. submitted by Wagner Gomes. Vote anticipated to grant or deny permit.

**Discussion:** Mr. Durkin read the hearing notice and asked if the applicant was present. Mr. Gomes was present and told that he had bought the chickens last winter during the pandemic for his three kids after they said they wanted chickens. He keeps the property clean and gets along with neighbors. He said that inspector Yale came to the property and explained that there is an application process so he applied. Mr. Yale told that Mr. Suckney was in the neighborhood on a rodent complaint and was told that there were unpermitted chickens, but no complaints had been filed. He told that he had walked property, saw no evidence of rodents, and saw bait boxes. He told

that property is 16,000 feet. Mr. Durkin asked Mr. Gomes to show on the plan where his property is located, he showed that he is the last house. Mr. Yale said our best practices say 10 chickens would be the maximum, but they are located way to the back with no abutters. Mr. Gomes said he worked on properties and knows to keep everything clean, no rats, good neighbors, the school nearby, keeps it clean to help everyone. Mr. Durkin asked Mr. Suckney if he had seen any evidence of rodents. Mr. Suckney replied no, but saw bait boxes. Mr. Yale read the pest control report and said that it doesn't show any rodent issues. Ms. Cameron suggested that because of the location of the lot, we might allow the permit for the existing 14 hens but that as the chickens die over time they will not replace them so they will get down to the maximum of 10. Mr. Gomes said he understands and agrees. Mr. Durkin asked any comments. None were proffered. Mr. Carli made a motion to approve. Dr. Fleet seconded. A vote was taken and all agreed to approve the permit.

**Subject:** Hearing scheduled for 4:40 pm - Request for hearing regarding Notice of Inspection and Order to Correct Violations at 2 Dane St. submitted by Angela Karavolas. Vote anticipated to uphold, modify, suspend, or revoke the Order and/or any associated penalties.

**Discussion:** Mr. Durkin opened the hearing at 5:22 pm and read the hearing notice and asked Inspector Pasquale to speak on this matter. Mr. Pasquale told that a complaint about possible lead paint was received from the resident at 2 Dane Street, whose wife is pregnant, so he requested info about lead compliance status from owners. The owners did not give him any info, so he did a test and found some positive lead in the house and issued the Order to Correct. The appeal was requested because the homeowner feels the tenant is being retaliatory because she had already been issued an eviction notice to the tenant. He told that the owner was issued all of the lead paint information and she is trying to comply, there is a timetable she has to meet, and she has hired a lead paint inspector. Mr. Durkin asked the board members if there were any questions for Mr. Pasquale. None were asked. Mr. Durkin asked Irene, Ms. Karavolas's daughter, who spoke for her mom, who, she explained, is sick. Irene stated that when the violation was found, we had already planned to address the issue, and had inspectors there before that time. She told that the tenants complained when they had any contractors come out. She explained that her sister and her mother had decided they were not going to renew the tenant's lease. On August 13, the tenant told them that she was expecting a baby, but had never mentioned this before then, and then she called the health department. Irene told that she had hired Inspector Mel Blackman to do the inspection, but the tenant won't let any repairmen in. She said we should not have to delead the apartment if they are being evicted, and asked what remedy the owner has if the tenants are not allowing them in. She said she also got a notification from housing court of a mediation scheduled for Oct. 7 on the eviction. Mr. Durkin asked if there were any questions? None were asked. He asked Inspector Pasquale if he had any more to say on this. Mr. Pasquale replied that the next step is to get the full lead inspection, so the owner has to go ahead with the inspection and the deleading even if the tenants move out, as a timeline is now in place. There are some other violations, bathroom floor, but we need to make sure there is no lead there because they may need to hire a lead safe contractor for other work as well. Ms. Cameron asked if there was a child under 6 living there. Mr. Pasquale replied that there was not at the current time, but the tenant is expecting. Mr. Durkin asked if Irene disputes any of the issues stated. She said no, we had already had contractors out to look at making the repairs, but the tenants refuse to cooperate. Irene explained that she also lives on the second floor of the property. Ms. Cameron said if they are in the business of renting out the property, they should comply with the Lead Law because to not do so would potentially put them in a position of either not renting to people with children which would be discriminatory, or else renting to people with children and being in violation of the Lead Law and posing a potential health risk to the children. She told that since the child is not yet in residence, they do have more time to get the work done for compliance

than was stated in the initial Order. Irene told that her family had not rented to them, and said that they are trying to get the unit back, and asked, if we didn't rent it to them, then why are we required to delead, and then asked if it is because they are renting to the public. Ms. Cameron replied that is correct. She again said that if they are renting to the public, and the unit has lead, they would be in a position where they are either discriminating against families, or in violation of the lead law. She added that they will have more latitude now with timelines and options, and are eligible to get a letter of interim control and not full deleading compliance at this time if they choose. Irene asked what her next step should be. Ms. Cameron replied that they should proceed with bringing the unit into compliance with the Lead Law but they have more latitude with the timing. Irene asked if she should go ahead and proceed with eviction. Ms. Cameron said that we can't advise on any issues regarding tenancy. Ms. Karavoulas said she has a court case scheduled. She asked what can she do if the tenants do not let them in. Mr. Pasquale said we can inform him now that under the state housing code he needs to allow access to the owner to make repairs, adding that the owner has to give reasonable advance notice. She replied that she plans to set up contractors for when she is out of quarantine. Mr. Durkin asked if anyone present or on Zoom wishes to speak on this request. Olgvert Vija was present via Zoom, and said that Irene is telling lies. He said that she contacted us and we said you can come in. We have all of the messages, there are violations there that we talked about a month and a half ago. When she found out the wife was pregnant, she sent a letter to evict. If she wants to do the repairs she can do it when ever he is home, he will be available.

Irene reminded that she has to be out of quarantine. Mr. Durkin asked if anyone else was present who wishes to speak. No one replied. Mr. Durkin asked Irene about 2 Abington Ave, is everything ok? She replied that her mother being sick things got behind, but said she hired a cleaner, is addressing some wood rotting on the dormer, and brought in a landscaper to cut overgrown vegetation and now she can better assess the house. She said that she had gotten go green to clean it out, but they have a new neighbor on the right and mice were coming in, so she is working on that now. She said that she would keep them updated on that address. Mr. Durkin closed hearing at 5:40 p.m.. Mr. Durkin asked if the Board would like to have any discussion. Mr. Carli suggested tabling this and revisiting at October's meeting. Dr. Fleet seconded . Vote held, unanimously decided to table the issue and revisit next month.

**Subject:** Hearing scheduled for 4:45 pm – Request for variance from 105 CMR 435 re: projections from pool surface at Brooksby Village. Vote anticipated to grant, modify, or deny variance request.

**Discussion:** Mr. Durkin opened the hearing at 5:42 and read the hearing notice. Justin Paradis , Director at Brooksby Village was present via Zoom, and he reported that his colleague Anthony was also on call. Mr. Paradis thanked the board for all of their time and guidance. He told that they have a pool that has been there for 20 years, and, while working with contractor to retile, had determined that there are some items that would require them to apply for a variance. He explained that there is a projection into the pool. He said that they will put in a 4 inch stripe of a contrasting color. He also said that on the bottom step they will also put a stripe of contrasting color. He also told that a part of the spa is adjacent to the pool, and that it would be a significant cost to change the configuration of the pool for these items, so they are requesting the variance. Mr. Durkin asked the inspector to speak on this matter. Mr. Pasquale explained Brooksby is doing a large renovation including the pool, and that there is a bench running along the inside of the pool, adding that 20 years ago it was ok to build that way. He told that the Mass Dept. of Public Health said that they are required to apply for variance. He added that the stairs go out to a point beyond the railing, which they will delineate with a 4 inch contrasting strip. The state recommended not just adding a stripe on the top but also along the top edge of it to be seen under water. Where spa protrudes is a ledge. DPH wants signage that

says no sitting, standing or diving off that ledge, and said it would be best if it was placed on the face of it, but it is up to them, as it can be on the wall, so they can propose a plan to us. He told that the spa also need to be a different color so that you can recognize it. Delineation is the main thing; 4 inch stripe of contrasting color is the main issue. Mr. Durkin asked if anyone has any questions. Dr. Fleet asked if they had any problems with any people bumping or crashing into it. Mr. Paradis replied not that he is aware of. Mr. Durkin asked about the issue of no standing or sitting, asking if this is just for the spa wall and does not refer to the bench. Mr. Pasquale said yes and showed on a plan the location of the spa. Mr. Durkin asked if anyone present or online wished to speak. No one replied. Dr. Fleet made a motion to approve variance with the conditions outlined by the inspector. Mr. Carli seconded the motion. Mr. Durkin asked if there was any discussion, none was forthcoming. A vote was taken, all agreed to grant the variance.

**Subject:** Hearing scheduled for 4:50 pm – Request from Nothing Bundt Cakes for variance from Federal Food Code requirements for labelling. Vote anticipated to grant, modify, or deny variance request.

**Discussion:** Mr Durkin opened the hearing at 5:50 and read the hearing notice. He asked if the applicant was present. Claire Jessen, director of culinary for the brand, was present via Zoom, and said that she handles the nutritional information for the locations with their legal counsel. Mr. Durkin asked for the Inspector to speak on this matter. Mr Yale told that during a routine food service inspection he had noticed that some of the products for sale were packaged but had no labels. He said that he looked into it, talked with Ms. Cameron and with Ms. Jessen, and had received a response from their legal team, but he still thought it was made clear in the code that packaged items should be labelled. He said that he understands that bakeries don't have to label things if they are not prepackaged, but once you package it you need the label, and wants to know how to handle this going forward. He added that the company's legal counsel said that they are packaged but stay in the case, so a customer can not pick them up and take them away on their own. Ms. Jessen added that even with over 400 locations, this has never been challenged before. She explained that this is not a grab and go style store. She explained that a customer walks into their "buntique," goes up to the case, and the server would hand the products to the customer, and if they had any questions they could ask the server. Ms. Cameron said that, since it is in the food code, it is required, but she would be willing to grant a variance. Mr. Durkin closed the hearing at 5:56. Dr. Fleet made a motion to grant a variance for this purpose. Mr. Durkin seconded the motion. Mr. Carli had to leave the meeting for an emergency. A vote was taken and those present unanimously agreed to grant the variance.

**Subject:** Hearing scheduled for 5:00 pm – Request from Main Street Smoke Shop for hearing re: Notice of Revocation of Adult Only Tobacco Product Sales Permit. Vote anticipated to uphold, modify, or revoke Notice of Revocation.

**Discussion:** Mr. Durkin opened that hearing at 5:57 and read the hearing notice. He asked Mr. Suckney to refresh the Board's memory on this matter. Mr. Suckney told that at last month's hearing Mr. Patel had his adult-only status revoked by a vote of the Board, but was given a choice to keep the adult-only status or to keep his non-incidentals including lottery, and operate under a regular tobacco permit. Mr. Suckney told that Joyce Redford, present on Zoom, and he had gone out to the store and Mr. Patel told them he planned to give up lottery and other non-incidentals, would move the cash register to be in sight of door, and would train his staff. Mr. Suckney told that on the 24<sup>th</sup>, after deadline for removal of lottery products, nothing had been done. Mr. Patel's father was working at the store at the time, so Mr. Suckney had asked him to call his son. During that telephone conversation between Mr. Suckney and Mr. Patel, Mr. Patel said that due to the fact that it is not a

legal requirement, that he would not be moving the cash register or installing a buzzer system to control entry. He also mentioned that the state lottery commission has asked him why the lottery machine was disassembled and told him to reinstall it, and he did. Inspector Suckney said since Mr. Patel intends to continue the sale of incidental items, we are again revoking the adult-only tobacco product sales permit.

Mr. Durkin invited Mr. Patel to speak. Mr. Patel said that he did not hook the lottery back up again, but the lottery came out and hooked it back up. They asked if someone from the town could tell them that he can not have the lottery, and said that he can not take down the machine until the lottery comes down. He said he told lottery he took down the machine, got a call back, they are going to reinstall it, and if the town wants it taken out they will have to call the lottery. Attorney Patrick Jameson representing Mr. Patel and his partner, was present. He explained that he was hired on September 21st, had contacted the Board of Health and asked for a continuance and a request for the production of documents, but did not get any response. Ms. Cameron said that she returned that call today. Mr. Jameson said that he was not aware. He went on to say that he requests a continuance for 60 days to gather any information to present a more cohesive presentation to the board. Mr. Patel said all the things the letter states, to install a buzzer, to move the cash register, have all been done. Not to where the lottery is but it is still closer to the door. He said he has trained employees on tobacco regulations. He said he ran simulations, and showed that they must check to see customer ages before buzzing them in. Mr. Durkin asked if there were any questions. Joyce Redford, director of North Shore Cape Ann Tobacco Control Program, told that this is the only establishment in her entire area that is allowed to have this other use, since adult only regulations prohibit other uses. She added that Mr. Patel had agreed to all of the terms at the prior meeting, and she had visited to make sure that he was clear on the requirements. Mr. Patel said it took him 5 ½ weeks in to get someone to put in the buzzer. Mr. Durkin asked Attorney Jameson if he can make an argument on why he can keep the lottery machine. He replied yes. Mr Patel said he understand simple language, and is in between the state lottery and the city. He feels that he is getting penalized \$20,000 per year. He said he did take out the machine when he got the letter, and he contacted the lottery, and told them that he wanted to drop off the machine on the 26<sup>th</sup>, but the people at the lottery said that the city can't do this. He said that they said she has to speak to them. Ms. Cameron replied that the City is not a party to the contract between Mr. Patel and the state lottery. She added that the city is not telling Mr. Patel that he has to get rid of the lottery. He is the only adult-only tobacco sales location in 25 communities with a variance allowing lottery at an adult-only location, but due to his repeated lack of compliance with the adult-only tobacco regulations, he was told that the variance has been revoked. He can no longer keep both the adult-only tobacco permit and lottery sales, and he has to choose whether to operate under a general tobacco sales permit as is the case for all other stores that sell lottery.

Joyce Redford added that when she went to the store after the last meeting to clarify and make sure he understood that if he wanted to continue as an adult-only tobacco sales location then he would need to discontinue the lottery sales. She added that he was clear at that time stating that he had decided to get rid of the lottery and keep the adult-only tobacco permit. He stated that he did not want to make the change to a standard tobacco permit, and said that he didn't want to become a typical convenience store. She added that nothing has changed on the city side, but something clearly changed on his side to not follow through.

Mr. Durkin stated that we already revoked the variance at the last meeting; the period of appeal of that has come and gone, and you had a chance to appeal and did not. We issued the revocation on

September 10<sup>th</sup>, why didn't he put together an argument then. Attorney Jameson replied that it had only been two weeks, , and said that Mr. Patel had been looking for legal counsel and hadn't found appropriate counsel until this week when he signed on with him, adding that Mr. Patel is entitled to hire the attorney of his choice. He said that he was hired on the 21<sup>st</sup> and had sent a notice of representation, so a continuance should be issued. He added that the issue is not clear, the revocation of the variance and revocation of the lottery, so both issues are still in play. He added that the revocation of the lottery may be a constitutional violation. Mr. Durkin said that he is not opposed to allowing this to be continued. Attorney Patrick said that his client requests 60 days as he will be away next month. Dr. Fleet agreed that continuance was acceptable. Ms. Cameron asked if Mr. Patel would be willing to voluntarily stop selling the products in question until after the appeal. Mr. Patrick conferred with his client and replied that he would not. Mr. Patel added that he has done everything now that they asked, had moved register. Mr. Durkin replied that he hadn't removed the lottery. Attorney Patrick replied that this is what we are asking for time to look into these matters. Mr. Patel added that it takes more than two weeks to get the contractors in to do the lock. Dr. Fleet made a motion to continue the matter to the November meeting. All agreed. Mr. Durkin closed the hearing at 6:21.

## **BUSINESS**

**Subject:** Approval of minutes – July 22, 2021 and August 23, 2021 and August 26, 2021- Vote anticipated to approve or amend minutes.

**Discussion:** Dr. Fleet made motion to approve all three sets of minutes. All agreed. A vote was taken and it was unanimously agreed to accept the three sets of minutes as presented.

**Subject:** Update on COVID-19 response actions: a) Data update

**Discussion:** Ms. Cameron showed 9/22/21 covid statistics, and told that there have been over 8,000 cases in Peabody. She told that we are still in a surge period, with an incidence rate of 28 new cases per day per 100,000 population, adding that the state number is 23 cases, and the City's positivity rate continues to be higher than the state average. She added that the seven day incidence rate is 31, the highest rate since last April. She directed the Board's attention to the chart in her slides with percentages of populations affected, and pointed out that there are many cases in people under age 19, which is shown as the biggest portion of the graph. She reported that there have been a total of 333 deaths in Peabody due to Covid, the majority of which were in older people but we have seen deaths in all age groups. She told that 65% of the population here is vaccinated, but the number is only increasing by 1-2% per week. Only 72% of our over-75 year old population is vaccinated. Only 57% of the 12-15 age group is vaccinated. She told that school is back in session, and we are seeing more cases. The first week of school was a short week and we saw 8 cases in students and staff. The next week, a full week, we saw 30 cases among students and staff. This week the schools have begun implementing the test and stay program so that students who were in proximity to someone who tested positive can test and if asymptomatic and negative, can remain in school. She said that those exposed outside of school are still required to quarantine, adding that the rules are confusing, and pointed out that after an exposure, even those who test and stay are supposed to follow quarantine protocols when outside of school, not participate in sports, etc. She told that one school has 12 cases identified. Dr. Fleet asked what level that occurred in. Ms. Cameron replied that it was in an elementary school., with 10 of the cases occurring in one grade. She added that they can't confirm that it was an in-school transmission because there were other events like sports, parties and sleepovers so there is no way to tell.

**Subject:** Update on COVID-19 response actions: b) Vaccine equity/outreach initiative

**Discussion:** Ms. Cameron told that they continue to see a disproportionate impact among Spanish and Portuguese residents. Vaccination rates among those with Spanish ethnicities is 10% behind the rest of the population.

**Subject:** Update on COVID-19 response actions: c) Mask guidance

**Discussion:** Ms. Cameron told that the BOH had made a recommendation for masking requirements in public buildings. The state currently has a requirement for masking in schools through October 1<sup>st</sup>. She added that there is no info on what will happen after, but the deadline is approaching. She told that the state may allow schools with over 80% vaccination rates to allow vaccinated kids to remove masks, but believes at this time it is important that we keep our recommendation in place that masks be worn given the high 14 day incidence and lower vaccination rates. Mr. Durkin asked if anyone wanted to speak on these issues. A hand was raised on the Zoom call and Mr. Fred Ballini was asked to speak. Mr. Ballini said he is a resident and lives on Clark Road, and wanted to know why masking in private businesses is a recommendation in Peabody and not a requirement as it is in Salem. Mr. Durkin replied that our board assesses Peabody separately from other communities, and found that the data did not support the need at this time to make it a requirement in grocery stores and other businesses at this time. Mr Ballini said that he thought he had heard that cases were increasing each week. Mr. Cameron told that she had reported that vaccination rates have been increasing by 1-2% each week, but incidence rate has actually dipped slightly. Mr. Durkin assured Mr. Ballini that the Board hasn't been hesitant to impose mask and other requirements when needed, and we are not averse to meeting off schedule should the need arise to put additional precautions in place. He said that we continue to watch the data carefully and if numbers do shift in the wrong direction we may make it a requirement. Ms. Cameron added that we support any business who wants to impose their own mask requirements as they see fit. Mr. Ballini thanked the board for allowing him to speak. Ms. Cameron asked if the Board supports the recommendation to keep the existing mask guidance in place. All indicated their support.

**Subject:** Update on COVID-19 response actions: d) DESE guidance

**Discussion:** Reviewed

**Subject:** Environmental updates: a) Rousselot update

**Discussion:** Ms. Cameron told that there have been a couple of complaints last night, but the annual numbers are lower than we have had for many years, so we are seeing forward movement.

**Subject:** Code enforcement updates: a) Chapter II: Update from Avalon Essex; 252 Newbury St; 1132 Avalon Dr; 29 Abington Ave.

**Discussion:** Ms. Cameron told that we just received an update from Avalon Essex during this meeting, so she hadn't had a chance to review, but she read to the board that they have implemented a policy of documenting trash with photographs, they have completed two unit repairs, and have begun on unit that was flooded and one that had moisture issue. Ms. Cameron told that she continues to receive complaints from tenants of this development. She told that there are some times when trash is overflowing and they say the tenants did it, but it is the management's responsibility to deal with trash. She told that at 252 Newbury Street Ms. Venezia had hired a company who cleared everything out. After being emptied they found rotted floors, inoperable plumbing, and other serious structural issues. It may not be repairable, but they have agreed in a call on Wednesday to continue this in court until November. The unit remains uninhabitable.

**Subject:** Code enforcement updates: b) Nuisances: 672 Lowell St; 260 Andover St; 286 Newbury St; 10 Lincoln Rd; 12 St. Lo Dr; 1000 Cranebrook Way; 9 Sarah's Way; 166 Main St

**Discussion:** Reviewed

**Subject:** Code enforcement updates: c) Other: EZ Disposal Service; JRM Hauling;

**Subject:** Permitting updates: a) List of permits issued in August 2021

**Discussion:** Reviewed.

**Subject:** Public Health Nursing updates: a) August 2021 surveillance report

**Discussion:** Reviewed.

**Subject:** Public Health Nursing updates: b) Flu clinics

**Discussion:** Ms. Cameron told that they have begun their flu clinics, adding that there will be one drive through clinic as well as four others. She told that there will be requests for housebound visits, and they will be doing that after the clinics are completed, since the staff are very busy.

**Subject:** Grant updates

**Discussion:** Ms. Cameron told that they have been granted a contact tracing grant., of \$407,000 per year for two years. She told that they will be hiring a supervisor and staff and outreach workers. She told that this will be a shared resource. She told that the state will be eliminating their contact tracing program as of November 1<sup>st</sup>. She said that the grant covers 7 communities, and tracing each case is not doable and not sustainable, so they will be moving toward looking at clusters, like at schools, sporting events, places of employment, as they would not be able to handle the number of cases even with the state funding. She told that for the state 25% of cases get closed without follow up, and that the state is working under surge protocols and we will probably be as well. Each community will continue to be responsible for their own cases; these contact tracing resources are supplemental.

**Subject:** Correspondence

**Discussion:**Reviewed.

**Next Meeting Date:** October 28th at 4:00 **Adjournment:** 6:53 p.m.

Note: Dr. Fleet indicated that she will likely participate remotely next month. Ms. Cameron said she would look into the requirements regarding the possible requirement to have a majority of the board in person and would let the board know.