BOARD OF HEALTH
MINUTE SUMMARY
June 13, 2018
3:00 PM

MEMBERS PRESENT:
Roger De Haan
Wayne Chilcote
Jeff Burrows

Members Absent:
Katie Scholl
Mick Turner

STAFF PRESENT:
Chris Taggart, minutes
Angelia Allen, PHN
Lyndsay Stover, Tobacco Free
Carol Calderwood, PHN
Kelly Arnold, RCEH

STAFF Absent:
John Palacio, RCEH

Guests Present:
Deborah Wise
Deanna Marshall
Tayler Reynolds
Ron Marshall
Coryn Van Grunsven
Marilyn Jones
James Neumayer
Roni Kaiser
MacGillivray Family
Trel W. Sidoruk
Tracy Perry
Edwin Marcotte
Kristen Page Na
Taryn Pettit
George Eichen
Ryan Wetzel

The meeting was called to order at 3:04 PM by Chairman Jeff Burrows.

I. May 17, 2018 draft minutes
Roger made a motion to approve the May 17, 2018 minutes as presented. Seconded by Wayne. Public comment on motion: none. Discussion: none. All voted “aye” (3-0).

II. CORRESPONDENCE:
Jim Neumayer hand out

III. AMENDMENTS TO THE AGENDA:
None.

IV. DEPARTMENT REPORTS:

Health Officer: Dr. Carol Calderwood
Nothing more to report, has been busy in the hospital. Flu season is wrapping up.

Public Health Nurse: Angie Allen
Some increases in GI illnesses, which happens every year. Also, there has been an increase in dog bites and rabies concerns. She requested that people vaccinate their dogs.

RCEH: John Palacio
Absent.

Tobacco Coordinator Report: Lyndsay Stover
May 24, 2018 she visited the Hamilton Middle School and reached 220 students, June 8, 2018 she held a youth summit at the Job Corps and reached 180 students. The DUI Task Force and Mental Health were at Job Corps event as well. She is continuing on the quality improvement team (joint team of Ravalli County and Missoula County) to include tobacco free devices.

V. OLD BUSINESS:
1. DRAFT Preliminary MOU - review (tabled from 5/17/18) TABLE TO JULY

2. MacGillivray Appeal regarding RCEH’s decision to deny a replacement system for 383 North Gold creek Loop, Hamilton - John (CONTINUED from May 17, 2018) – UPDATE John

Mr. John MacGillivray gave brief update from the May BOH meeting to current. A leader pipe to where the original pre 1972 structure was, was definitely located. John Palacio has photos. Groundwater monitoring is currently passing but Mr. MacGillivray feels that that is a separate issue. Mr. MacGillivray asked if he qualifies for a replacement permit due to the facts found.

BOH Discussion: Roger asked about the concrete tank, the 1972 aerial photo, the affidavit and the leader pipe now being found and is the pond still rising. Mr. MacGillivray said the pond is always full and sometimes overflows. Where the current existing groundwater monitoring pipe is located, that level has fluctuated 1-2 inches. There is water 68” below the surface. Mr. MacGillivray said the leader pipe was a PVC pipe and was very brittle. Roger would like to tie the design requirements of a system, based upon the current groundwater monitoring final results. Mr. MacGillivray agreed to install whatever system is required per the groundwater monitoring
results. He then requested that regardless of the existing groundwater monitoring location, would the BOH approve the issuance of a replacement system permit. Roger and Jeff said yes. Roger said you are only allowed the size of system per what the original home was. If groundwater monitoring is completed, then you can then put in an appropriate sized system. Mr. MacGillivray is cautiously optimistic with groundwater monitoring as it sits today, and that a standard system would be approved.

**Roger moved that based upon the Findings of Fact (FOF 1-3):** 1. 1972 aerial photo, 2. The leader pipe to where the original pre 1972 structure was, was definitely located and photographed by RCEH, and 3. The affidavit provided that this system was pre 1972 and that the BOH could guarantee a replacement system on an estimated size of the old house and if that estimated size wants to be expanded upon, Mr. MacGillivray will have to wait for groundwater monitoring results. **Seconded by Wayne.** Public comment on motion: none. Discussion: none. All voted “aye” (3-0)

3. Health Officer Authorization documents – John and Angie **TABLED TO JULY 11, 2018**

4. Replacement guideline/policy – John **TABLED TO JULY 11, 2018**

VI NEW BUSINESS

1. Discussion with possible decision: Ravalli County Clean Indoor Air Act – Electronic Tobacco Products

Jeff read Katie’s written comment letter (in record).

**Public comment:**
Ron Marshall, owner of Freedom Vapes: When he heard that the BOH passed an ordinance, which he found out via Facebook, he immediately filed a Freedom of Information Act (FOIA) request for all CIAA related documents from the BOH. His FOIA did not include any public announcement, which per MCA 7-1-2121 refers to public notice requirements. MCA, Section 7-5-303, contains the requirements in order to pass an ordinance. Once this all came out, the news jumped on this, and Ms. Stover was quoted that this ordinance would become effective immediately. That is an MCA violation and why weren’t the businesses contacted prior. Referring to August 09, 2017 minutes, it seems that if State policy act would be enforced, there is conflicting information and stories being circulated. How can the tobacco specialist have a lawsuit filed on them and continue to harass the businesses. Is he next? Per the October 11, 2017 minutes, pertaining to the smoking shelter policy, along with the draft CIAA, which was requested to add the e-cigs “to help make her job a lot easier”. There is a big difference between E Cigs and vaping. Smoke requires the act of burning. Smoking and vaping are completely different worlds. Why are e cig users treated like heroin addicts? He quoted from an addiction specialist hand out. Why is the BOH demonizing vaping businesses? E Cig fluid is not considered a tobacco product. The Federal Bureau of Tobacco says manufacturing e cigs and vaping devices, neither of which contains tobacco, and thereby these businesses do not have to apply for the TTPA. Within the definitions section, there is no definition for vaping or e cigs. Senate Bill 56 (2015), which became
effective January 2016, defines by Montana state law what a tobacco product is and what a vaping product is. The nicotine he obtains is FDA approved and is also used by FDA. On March 14, 2018, Ms. Stover gave an e cigar presentation. He has offered and tried to help the state but such offer has never been accepted. He does not want school children to use and showed the BOH a certificate of appreciation he just received from FDA.

Jeff explained public hearings and the requirements for such. Regular scheduled meetings can be done via 48 hour notice in paper of record.

Wayne commented that he is a physician, Michael Turner is also a physician and Katherine Scholl is a forensic nurse and chief ER nurse.

Mr. Marshall stated that the Montana Clean Indoor Act does not say anything pertaining to vaping or e-cigs at the state level. Public places should be in charge of enforcement. Lyndsay is a state employee which makes her ineligible to enforce this topic at a county level. MCA is there to govern at state level. He offered help to BOH, to stop e cigs being used and taken to schools.

Kristin Page Na from the American Cancer Society (18 years): The ACS works on evidence based policies and provides folks ways of early prevention. If BOH has any questions, she is available. We support the protocol that was revised to include E Cigs being prohibited because we see it is important to protect people from being exposed. Vaping and E-Cigs contain deeply small particles which can be inhaled causing lung disease. E Cigs and Vaping are not in CIAA because they are pretty new. She said we did not realize what a boom would occur. Jeff asked about Legislation. Kristin explained that legislation did not include e cigs or vaping in CIAA. Now we have nine communities which have passed that. Protocols suggest that the definition of alternative smoking devices be changed to electronic smoking devices. She referred to US Court of Appeals that ruled FDA should regulate e cigs as tobacco products. She is against exempting certain businesses.

Deanna Marshall, owner of Freedom Vapes: She stated that there is no such things as an electronic smoking device. BOH made a decision on random information provided. The facts provided included nicotine poisoning which has nothing to do with CIAA. She provided medical findings and studies on her products (large amount of handouts in folder). She encouraged BOH to read all of her handouts. In March, 2018 the American Cancer Society issued a new statement stating e cigs are safer than tobacco products. She referred to many studies, all of which stated that vaping “2nd hand smoke” was not harmful. She was a three pack a day smoker for 30 years. She tried vaping and immediately quit smoking tobacco cigarettes. Her entire life has changed. If BOH policy stays in effect, they will be forced to close their Hamilton store. Free market should decide as to allow vaping or not, not the government. She is requested that the policy be cancelled immediately.

Jeff asked how this policy, if kept in place, would cause her to close the Hamilton store. Deanna explained that her customers are able to sample products inside the store.

Deborah Wise: is a Freedom Vapes customer. She was a 45 year smoker and tried vaping but did not find a flavor she liked, but the Marshalls allowed her to sample various flavors until she found
one. Also, she does not receive the newspaper and asked how she would keep informed. Jeff explained the calendar is also on the website.

Ryan Wetzel, prevention specialist of Western Montana: He visits schools all the time and talks about addictions and mental health. He also has family who has started vaping to get off the smoking of tobacco. We don’t really fully understand with the ingesting of vaping 2nd hand smoke. He will send out article of vaping 2nd hand smoke. We are all fairly new to this vaping business. Youth that he has worked with have purchased a vaping device instead of purchasing cigarettes because the vaping devices are easier to hide. He is not advocating for anyone to become unemployed. We need to look at the water based vapes with certain aerosols which may not be as harmful. We need to find a way to work together.

Coryn Van Grunsven: She was a smoker for years, until she found vaping. Chantix did more harm to her body than anything. Her father is 110% against smoking, but he allows her to use her vaping pen in his home. After quitting cigarettes, she started vaping. She stopped coughing, her smelling and taste came back. Her dad is thankful that she quit smoking and started vaping. Nicotine is not the same type in cigarettes than what is in vaping devices. Vaping is not smoking and there is enough proof to support excluding them from the CIAA.

Taryn Pettit, teacher at Florence: Thanked BOH for adopting the CIAA. She said 30% of high school students use electronic devices and now it is growing in the middle schools. She does not want to see these devices normalized. This could give kids the idea that these are not bad for them. It is very possible that kids could be injecting nicotine. It is foolish to think that we can police young people from using these products as they do now with other things. Bottom line is she does not want to see it normalized to see it in public places.

Public comment closed 4:37 PM

BOH Board Discussion:
Wayne: said he is a bit overwhelmed. He wants to go through all pros and cons received before he makes any more discussion on this. We are hearing strong statements on both sides. Roger: said he has learned a lot today and the part that he did not know is how vaping helps people. In no way does he want to diminish that tool for people. People’s privacy and places should be up to them to decide but he does not like the schools being involved. He would like, on a different day, for the BOH to speak with Mr. Marshall to discuss how to keep these out of schools. Generally, people should be able to go to school or a restaurant and not be next to these. Katie: agrees with Wayne and Roger. She thinks before the next BOH meeting, a subcommittee should be formed to include folks on both side, and she will help with that and come back to July 2018 meeting. Wayne agreed to help as well. Jeff explained his position on the vote done in May (against passing E Cigs to be included within Ravalli County CIAA). His thoughts are that the process went too fast and that is why he voted against the CIAA Enforcement Protocol. He requested pushing an education session.

Katie moved to delay implementing the RC CIAA Enforcement Policy ALTERNATIVE SMOKING DEVICE Section until 15 working days after the August 8, 2018 BOH meeting (August 29, 2018). Seconded by Wayne. Public comment on motion: Trel W. Sidoruk said his
daughter is in the 10th grade and talks about this vaping all the time. Kids are using vaping machine and putting “other” products in them. It is happening and he requested that the BOH consider that factor. Coryn Van Grunsven said she does not want her rights taken away in order to protect others from doing illegal things. Kristen Page Na of American Cancer Society asked that public health and safety be strongly considered. Ron Marshall stated that laws do not allow kids to buy e-cigs, however, those laws have no teeth and older kids are buying them for younger kids. Taryn Pettit wants to keep focus on public places. Deanna Marshall wants the BOH to focus on CIAA policy only. Lyndsay Stover commended all who are trying to quit smoking. She was never one to say that e cigs don’t have as many chemicals as cigarettes but current studies are showing more and more chemicals, especially being used in public places. All voted “aye” (3-0)

2. J Neumayer P#1200610 Fine Assessment– John – Beginning construction without permit

John Palacio is now present.

Jim Neumayer explained that back in June, 2015 he bought property in the east fork area. Months prior to purchasing, John looked in RCEH’s calendar and confirmed that Rod Daniel did have a site visit scheduled for the Property in May of 2015 parcel. Jim met with Rod Daniel to discuss Jim’s plans for the property which included the location of a well and the septic. Also due to the placement of the neighbors well and septic, Rod said what Jim’s plan seems to be workable. He does not remember the chronological order one must obtain a permit prior to construction. He thought he was in compliance, the well is in and the cabin is dried in. He called the RCEH and requested a septic permit and RCEH found that the building was started prior to a permit being issued. A cease and desist order has been in place now on his property for 5 weeks. He just thinks it was a misunderstanding.

Roger asked if a valid site is had. John said the non-deg has not been performed yet to determine if or what kind of system will be required. Jim said Rod made things sound very simplistic with regard to the soils and soils testing. Jim reiterated that it was not his intent to circumvent the process. He thought that he had complied somewhat when he met with Rod. He assumed he had started a process that was somewhat in compliance. Discussion ensued regarding if the contractor who dug the foundation hole is culpable or not.

Roger said he does not think there was any intention to circumvent the process. John said the issue is going to be in keeping the mixing zone on the lot itself and having non-degradation analysis pass. John then stated that until the non deg analysis is done and passed, we cannot issue a permit for Mr. Neumayer. Roger said is the cease and desist keeping the RCEH from issuing the permit. John said no and that the meeting is to determine whether the BOH will assess fines or not, and in previous occasions, the BOH has not allowed the issuance of a permit unless the fine is fully paid or with a plan for payment.

Roger said some sort of fine is appropriate but if the lot is tight and the home needs to be altered or an expanded system would be required, both of those scenarios are expensive.

Commented [JP1]: I did not look up info prior to purchasing.
Discussion ensued. Jim stated that since he has been basically locked out of his property for five weeks, he asked if that lock out would cover or suffice any “fine” that could be assessed.

BOH suggested that RCEH start charging for site visits BUT including handing out rules at said site visit and require that the handouts be initialed by the person receiving the rules.

Jeff explained that the fine negotiated is in-lieu of the Board filing a compliance order against the property for violation of the regulations.

Roger moved to assess Jim Neumayer a fine of $300 as the “contractor” and waive the fine as the “homeowner”, for a total fine amount of $300.00 and allow Mr. Neumayer to continue with the septic permitting process. Seconded by Wayne. Public comment on motion: none. Discussion: none. All voted “aye” (3-0). The cease and desist remains until the septic permit is issued.

3. Establishment closure document – John TABELLED TO JULY 11, 2018

VII: PUBLIC COMMENT
Trel W. Sidoruk purchased the old Tolman Meat property which is approximately 5.5 acres (old beer can hill) with a separate 2.3 acre lot near the water. When he bought the property it was to build a community type location (fisherman, cyclists). He had a bunch of records which really didn’t show that this would be an issue. There is still a cement base there from Tolman’s Meats buildings (which burnt down). Trel assumed that since the Tolman’s Meats was there, he started putting down dirt. He was stopped due to the location being in a flood fringe area. MDOT in installing the bridge raised the whole area which did not help his properties situation. The back portion of the property is dry as a bone and is not in the flood fringe. He read aloud an RCEH memo from Theresa Blazovich dated 2004. Jeff said this sounds like a floodplain issue and not a septic issue. Roger stated that Trel should get something in writing from the Floodplain manager and then present that info to RCEH. Jeff will talk with John P. and then will get back to Trel.

VIII. NEXT MEETING:
July 11, 2018 at 3:00 PM

IX. ADJOURNMENT:
Wayne made a motion to adjourn the meeting at 5:54 PM. Seconded by Roger. All voted “aye” (3-0).