

# Summit County Board of Health Meeting Minutes

Conducted Remotely through Zoom

**Monday, June 22, 2020 - DRAFT**

Topic	Discussion	Action or Summary
<b>Attendance</b>	<p><b>Board Members Present:</b> Ilyssa Golding - Chair, Doug Evans, Marc Watterson, Chris Cherniak, Chris Ure, Kim Carson, Dorothy Adams</p> <p><b>Staff Present:</b> Dr. Richard Bullough – Director, Dr. Phil Bondurant, Shelley Worley, Nate Brooks, Derek Siddoway, Alyssa Mitchell, Jami Brackin, Dave Thomas, Blaine Thomas, Katy Staley</p>	
<b>Welcome and approval of minutes</b>	<p>The meeting was called to order at 3:00 p.m. <b>Board Member Cherniak made a motion to open the meeting. Board Member Carson seconded the motion.</b></p>	
<b>Public Comment</b>	<ul style="list-style-type: none"> <li>No public comment was made.</li> </ul>	
<b>COVID-19 Data Update</b>	<ul style="list-style-type: none"> <li>Dr. Bullough shared a COVID-19 update. Dr. Angela Dunn, the State Epidemiologist sent an email stating that the State is in an acceleration phase of COVID-19. One priority for the Health Department moving forward is communicating risk. The main goals are to keep the economy open and control outbreaks and deaths. Four weeks ago, Utah was one of the most successful states for controlling COVID-19, and now we are one of the least successful. The entire state may need to move back to Orange if the average number of cases per day is not below 200 by July 1, 2020. There could be a pause on lessening restrictions, and face coverings could be mandated. Lately, decisions have been made based on economics, and not health. The easing of restrictions has happened too fast and too randomly and have been based on decisions of state government. Summit County Health Department is working on a communications strategy with specific target populations and specific messages. The community needs to hear these messages from businesses and community leaders.</li> <li>The Health Department is also in the process of developing internal capacity for contact tracing. The State cannot handle all of the cases. The Health Department is planning for a surge in cases by obtaining adequate amounts of PPE (Personal Protective Equipment), having plans in place, and increasing testing. There will be mass vaccination clinics once a vaccine has been developed. There is a need to reduce risk in certain settings. The key is education.</li> <li>The Arts Festival chose to cancel this year. The Health Department’s role is to sound a warning related to events. The Health Department is identifying high risk events and determining what can be done to lower the risk at these events. Some factors include exposure, time indoors and outdoors, mask wearing, and enforcement. A data committee is being formed. Decisions need to be made that will impact the community moving forward.</li> <li>Board Member Evans shared that the current seven-day average of COVID-19 in the State is 468. Dr. Bullough stated that Summit County has had a seven-day incidence increase of forty percent. The cases are all over the County and not just in Western Summit County.</li> <li>Board Member Evans stated that he wished the State would mandate masks. Wearing masks is easy and has proven effective. Dr. Bullough stated that Summit County is discussing mandating masks. Data support wearing masks. An Ordinance for wearing masks must be concise. The Summit County data does not currently support a move back to Orange, but the trend of incidence is increasing, which is concerning. Next steps are being looked at.</li> </ul>	<p><i>Summary:</i></p> <ul style="list-style-type: none"> <li><i>Dr. Bullough shared a COVID-19 update. The State is in an acceleration phase and the risk needs to be communicated. The main goals are to keep the economy open and control outbreaks and deaths.</i></li> <li><i>Summit County is working on a communication strategy, developing internal capacity for contact tracing, and planning for a surge in cases.</i></li> <li><i>The Health Department is working to identify high-risk events and determining what can be done to lower the risk.</i></li> <li><i>Summit County is discussing the possibility of making mask wearing mandatory.</i></li> </ul>

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	<p>Board Member Cherniak stated that the State Health Department shows that 65 percent of positive cases are in people under the age of 65. It is important to share that COVID-19 is not an old person's disease.</p> <p>Chair Golding stated that it is sometimes unclear when masks need to be worn. Since you never know how many people will be around, always carry a mask.</p>	
<b>PUBLIC HEARING</b>		
<p><b>Appeal of Order of Abatement #2020-0521</b></p>	<ul style="list-style-type: none"> <li>• Steve Reid, the appellant stated that he provided documents to the Health Department. Mr. Reid acknowledged that there is a hazard, including standing water and danger to wildlife. Mr. Reid has been actively pursuing a building permit, but there have been easement issues that have taken a long time to resolve. Steps have been taken to drain the water from the foundation and the foundation is essentially dry now. With a building permit imminent, the problem should be solved. Mr. Reid obtained a bid for a chain link fence to be installed if required. There is a contractor lined up and Mr. Reid has the financing to build. If the neighbor signs the easement (which has not been done yet), then Mr. Reid is willing to put up a six-foot high steel-panel fence like most construction sites use, but there must be access during construction. The foundation was poured over two years ago, but there was snow the next day. The original house plan would not fit on the property and then Mr. Reid was unable to get financing. The current redesign is for a smaller home and is now within Mr. Reid's budget. Several signatures are needed for the easement, and a public review process will be needed once the signatures are obtained.</li> <li>• Deputy County Attorney, Jami Brackin stated that the open foundation has been deemed a nuisance. The Board of Health needs to determine if Mr. Reid needs to abate the nuisance, and if so, what the abatement will look like.</li> <li>• Mr. Reid stated he has a feeling there is a spring near the foundation. The sump pump that is being used does not work on less than two to three inches of water, but the foundation is dry right now.</li> </ul> <p>Board Member Cherniak stated that the timely nature of putting up a fence is critical. Mr. Reid stated that the timing depends on the vendor.</p> <p>Board Member Ure stated that the ten feet of orange fence laying on the ground is not okay. A chain link fence needs to be up tomorrow. A kid or a car could go into the hole of the open foundation. Kicking the can down the road is not acceptable. It is unbelievable that Mr. Reid received a building permit. Mr. Reid stated that he will get a fence installed as soon as possible. Board Member Evans stated he is concerned with the hazard. It would be horrible if a kid fell in the open foundation. The building permit was issued three years ago and there should have been a fence a long time ago.</p> <ul style="list-style-type: none"> <li>• Deputy County Attorney Blaine Thomas stated there has been an unfinished foundation for a long amount of time. Mr. Reid has previously promised fencing and water removal. There is not a current building permit and none has been guaranteed. There is an eight to ten-foot open foundation with stagnant water that is against the County Code of Health. This would still be a public nuisance even with a fence installed. Mr. Reid is required to remove and or abate the nuisance.</li> <li>• Nate Brooks, the current Environmental Health Director stated that this open foundation requires enforcement and is seen as a nuisance. The Health Department has legally responded and made site visits. Mr. Reid did make some fixes, but those fixes have not been ideal, which led to the decision to issue the Order of Abatement. Putting up a chain link fence would probably be sufficient to abate the danger, but a deadline is</li> </ul>	<p><i>Summary:</i></p> <ul style="list-style-type: none"> <li>• <i>Summit County Health Department issued an Order of Abatement to Steve Reid for an open foundation that poses a safety hazard and a health hazard.</i></li> <li>• <i>A motion passed that requires Mr. Reid to have a permanent chain link fence around the open foundation by June 27, 2020. The Board of Health will meet in Executive Session to create an official order that addresses all the concerns regarding the open foundation, including deadlines. The Order of Abatement will not be stayed.</i></li> </ul>

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	<p>needed. There also needs to be a pumping schedule to abate the water problem. There needs to be something in place that is safe, secure, and timely that would fulfill the requirements for mosquito abatement.</p> <ul style="list-style-type: none"> <li>• Attorney Blaine Thomas summarized that Mr. Reid has created a nuisance that needs to be abated. If the nuisance has not been abated within thirty days of the Order of Abatement then Mr. Reid will be charged with a Class B Misdemeanor. Mr. Reid has worked with the Health Department, but the issue came back up. Deputy County Attorney Jami Brackin stated that enforcement action was taken in 2019 for the same property, and a permanent solution was required but not completed by the deadline but was done on August 22, 2019. The Health Department did not feel like what Mr. Reid did at the time was a permanent solution.</li> <li>• There was discussion about the standing water and mosquito habitat. The sump pump has to be manually turned on and is not automatic. Any water released from the foundation is ponding near the road. There is not a permanent system in place right now to remove the water.</li> <li>• Board Member Carson recommended that fencing be required no later than June 27, 2020 and then the water issues would be taken under advisement. Board Member Ure stated that the water issue needs to be discussed and resolved by August 1, 2020.</li> <li>• <b>Board Member Carson made a motion to require that permanent fencing be up by June 27, 2020. The fencing needs to be a permanent chain link fence similar to what was submitted in materials and reviewed and approved by the Environmental Health Department. The current Order of Abatement will not be stayed. The Board will meet in Executive Session to come up with written orders with deadlines and further information about other concerns with the foundation. Board Member Ure seconded the motion. Motion passed 7-0.</b></li> <li>• If fencing is not completed by June 27, 2020 then the County may pursue criminal charges and daily fines will accrue. The County has required a foundation to be buried in the past.</li> </ul>	
<p><b>Appeal Regarding Park City Vapor Company</b></p>	<ul style="list-style-type: none"> <li>• Jami Brackin stated that there were some documents that had been submitted by Park City Vapor Company after the deadline for the appeal, and those documents are not accepted as evidence. It is understood that legislation is part of the appellant’s argument.</li> <li>• Phil Dyer, legal representative for the appellant shared that Exhibits A through H are part of the record. Exhibits A through H were presented. Park City Vapor Company has had a business license as a general retailer good through January 2021. HB23 states that after July 1, 2020 general retailers will be prohibited from selling flavored e-cigarette products. If Park City Vapor Company is not granted specialty retailer status then they will not be allowed to sell the flavored e-cigarette products. Park City Vapor Company has had ongoing communication with the Health Department about this issue. Specialty tobacco retailers are not allowed to be located within 1000 feet of a school or community center, but a daycare is not necessarily considered a school. Park City Vapor Company should have a two-year window to meet the proximity requirements. The current location of the business is not a permanent location. Mr. Maxon’s (the appellant) business license needs to be granted and should be grandfathered in according to SB37. SB37 grandfathers businesses which have had a tobacco specialty business license as of 2015. The business falls within the definition of a tobacco specialty retailer as named a Vapor shop. There are letters in record from senators that define the intent of the 1000-foot proximity rule. Specialty businesses prohibit sales to minors and</li> </ul>	<p><i>Summary:</i></p> <ul style="list-style-type: none"> <li>• <i>Park City Vapor Company appealed the decision of the Summit County Health Officer to deny a specialty tobacco retailer permit. Arguments were made for and against the appeal.</i></li> <li>• <i>Summit County Board of Health passed a motion to deny the appeal for Park City Vapor Company.</i></li> </ul>

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	<p>a small child from a daycare is not going to be allowed in the shop. There is no legal basis for denying this application.</p> <ul style="list-style-type: none"> <li>• Chief Civil Deputy Attorney Dave Thomas stated that Park City Vapor Company has not contested that the business is located within 1000 feet of a library and a daycare. The only way to get the specialty tobacco permit is if it is grandfathered in. Starting in 2012, specialty tobacco retailers were separated from general retailers with special rules, including the proximity requirement. Initial legislation indicated that shops would be grandfathered, but if the business model changed or there was a new business after May 8, 2012, then the permit would be evaluated by the County and it would fall to the local Health Department to give a new permit. Counties and cities are prohibited from giving a business license to specialty tobacco shops. The grandfathering clause was moved to 2015, and because of the wording of SB37 it was believed there was a loophole for grandfathering between 2015 and 2018. Summit County Health Department has disputed this loophole and will follow the overall intent of the statute. Summit County Health Department originally denied Park City Vapor Company for a general tobacco retail permit because Park City Vapor company met the definition of a specialty tobacco retailer. Park City Vapor Company appealed that decision and was granted a general tobacco retailer permit. In May of 2020 Park City Vapor Company applied for a specialty tobacco retailer permit. HB23 and SB37 have a coordinating clause that tells how the two bills should interact. SB37 closed the unintended loophole by defining that a specialty business license was required. The grandfathering and two-year window to comply does not apply to Park City Vapor Company because they would have had to obtain a specialty tobacco retailer permit before December 31, 2018, which they did not. The letters from Senators are not allowed in court. It is clear from the plain language and history of HB23 and SB37 what the intent is. Dave Thomas asked the Board of Health to uphold the decision of the Public Health Officer.</li> <li>• Board Member Ure stated that he can see how the Code could be interpreted differently and asked for clarification of if or why Park City Vapor was previously considered a specialty tobacco retailer. Dave Thomas answered that Park City Vapor Company was not considered a specialty tobacco retailer before the current legislation. The appellant must comply with proximity requirements if they want to sell flavored tobacco products. Grandfathering is spelled out in the statute and the appellant must have had a specialty tobacco retailer permit prior to December 31, 2018 to be grandfathered. Jami Brackin stated that the proximity provisions were in place in 2018 and Park City Vapor Company did not want to be a specialty tobacco retailer because of the proximity requirements (per an affidavit from Alyssa Mitchell, Summit County Health Department).</li> <li>• Beau Maxon, the appellant stated that he was operating under the confines of the law and the Health Department determined that Park City Vapor Company was a specialty tobacco retailer because Vapor was in the name and the allocated floor space for specialty products was over twenty-five percent. Mr. Maxon had an electrical measurement done for the floor space and was allowed to conduct business and sell flavored tobacco products as a general tobacco retailer. Mr. Maxon stated that he worked closely with senators to allow businesses to remain open while simultaneously working to curb youth usage. HB23 clearly states that a childcare facility is not a school. The Park City Vapor Company is exempt from the proximity rule for the Summit County library. This decision is about whether Park City Vapor Company meets the criteria for grandfathering. The appellant argued that he held himself out as a</li> </ul>	

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	<p>specialty retailer as Park City Vapor Company is a vapor shop from the day it opened. In order to conduct business, it had to be done as a general retailer. The day has finally come where the appellant can conduct business as a specialty tobacco retailer through HB23.</p> <ul style="list-style-type: none"> <li>• Mr. Dyer argued that there is no reference in the coordinating clause to overrule grandfathering. Dave Thomas argued otherwise.</li> <li>• Jami Brackin stated that any motion will not take effect until written Findings of Fact and Conclusions of Law can be accepted by the Board of Health. If no decision is made by July 1, 2020 then Mr. Maxon would have to quit selling the flavored vaping products until a decision is made. Mr. Dyer stated that in the event the appeal is denied, then the appellant would move for a stay and appeal to the Third District Court.</li> <li>• <b>Board Member Adams made a motion to deny the appeal by Park City Vapor Company. Park City is required to be in compliance with the Order issued by Summit County Health Department moving forward. This decision is based on the adoption of Findings of Fact and Conclusions of Law that will be accepted by the Board of Health. Board Member Carson seconded the motion. Motion passed 6-1. Board Member Ure opposed.</b></li> </ul>	
Other Board Items	<ul style="list-style-type: none"> <li>• The Board needs to be updated more frequently about COVID-19. Board Members Doug Evans and Chris Cherniak will present data to the Board in upcoming meetings.</li> <li>• The meeting to render a decision for the appeal of the Order of Abatement #2020-0521 will be on Wednesday, June 24, 2020. There will be an Executive Session with the Board meeting at 8:00pm, then the decision will be announced to the public.</li> </ul>	<p><i>Summary:</i></p> <ul style="list-style-type: none"> <li>• <i>There will be more frequent updates for the Board related to COVID-19.</i></li> <li>• <i>The decision for the Order of Abatement will be shared on June 24<sup>th</sup> after an Executive Session is held.</i></li> </ul>
Adjourn	<ul style="list-style-type: none"> <li>• The meeting adjourned at 5:48 p.m.</li> <li>• <b>Board Members Carson and Cherniak made a motion to adjourn. Motion passed 7-0.</b></li> </ul>	<p><i>Summary:</i></p> <ul style="list-style-type: none"> <li>• <i>The next regular meeting will be scheduled as a Zoom conference on Monday, July 6, 2020.</i></li> </ul>