



MINUTES

Southern Nevada District Board of Health Meeting
330 S. Valley View Boulevard, Las Vegas, Nevada 89107
Conference Room 2
Thursday, October 24, 2013 - 8:30 a.m.

Chair Woodbury called the meeting of the Southern Nevada District Board of Health to order at 8:35 a.m. Annette Bradley, Legal Counsel, confirmed the meeting had been noticed in accordance with Nevada's Open Meeting Law.

Annette Bradley noted a quorum was present at the start of the meeting with Members Beers, Collins, Crowley, Dobyne, Noonan, Osgood, Scow, and Woodbury seated.

BOARD:
(Present)

- Rod Woodbury - Chair – Councilmember, City of Boulder City
- Bob Beers – Councilmember, City of Las Vegas
- Michael Collins - At-Large Member, Registered Nurse
- Susan Crowley – At Large Member, Environmental Specialist
- Douglas Dobyne – At-Large Alternate, Regulated Business/Industry
- Bill Noonan - At-Large Member, Gaming
- Kenneth Osgood – At-Large Member, Physician
- Mary Beth Scow – Commissioner, Clark County
- Wade Wagner - Councilmember, City of North Las Vegas

(Absent)

- Chris Giunchigliani – Commissioner, Clark County
- Timothy Jones – At-Large Member, Regulated Business/ Industry
- Al Litman – Councilmember, City of Mesquite
- John Marz – Councilman, City of Henderson
- Marietta Nelson - At-Large Member, Physician
- Frank Nemec – At-Large Member, Physician
- Lois Tarkanian - Councilmember, City of Las Vegas
- Lori Winchell - At-Large Member, Registered Nurse

ALSO PRESENT:
(In Audience) Kathleen Peterson – At-Large Alternate, Environmental Specialist

LEGAL COUNSEL: Annette Bradley, Esq.

EXECUTIVE
SECRETARY: Joseph Iser, MD, DrPH, MSc, Chief Health Officer

STAFF: Richard Cichy, Heather Anderson-Fintak, Dr. Thomas Coleman, Margarita DeSantos, Forrest Hasselbauer, Amy Irani, Paul Klouse, Shirley Oakley, Jacquelyn Raiche-Curl, Rick Reich, Brian Riddle, Jennifer Sizemore, Bonnie Sorenson, Leo Vega, Valery Klaric and Jacqueline Wells, Recording Secretaries.

PUBLIC ATTENDANCE:

<u>NAME</u>	<u>REPRESENTING</u>
Sheila Billingsley	Blue Diamond Pool
Trent Billingsley	Blue Diamond Pool
Patricia Townsend	State of Nevada
Jonathan Leleu	Greenberg Traurig

- I. **PUBLIC COMMENT:** Public comment is a period devoted to comments by the general public on items listed on the Agenda. All comments are limited to five (5) minutes. The Chair asked if anyone wished to address the Board pertaining to items listed on the Agenda.

Seeing no one the Public Comment portion of the meeting was closed.

II. **ADOPTION OF THE OCTOBER 24, 2013 AGENDA**

The Chair called for a motion to adopt the agenda for the October 24, 2013 meeting as presented.

A motion was made by Member Crowley seconded by Member Dobyne and unanimously carried to adopt the October 24, 2013 Board of Health meeting agenda as presented.

III. **CONSENT AGENDA**

These are matters considered to be routine by the Southern Nevada District Board of Health and may be enacted by one motion. Any item, however, may be discussed separately per Board Member request before action. Any exceptions to the Consent Agenda must be stated prior to approval.

1. **APPROVE MINUTES/BOARD OF HEALTH MEETING:** September 26, 2013 (*for possible action*)
2. **PETITION #26-13:** Approval of Interlocal Contract between the City of Henderson and Southern Nevada Health District to provide Influenza Vaccines at the Hermitage Park Senior Facility, 380 S. Racetrack Rd., Henderson, NV 89015; direct staff accordingly or take other action as deemed necessary (*for possible action*)
3. **PETITION #27-13:** Approval of Interlocal Agreement between Immunize Nevada and Southern Nevada Health District to provide Influenza and Tdap Vaccines at various Clark County Schools between October 10, 2013 and May 3, 2014 in support of Immunize Nevada's School based vaccination grant; direct staff accordingly or take other action as deemed necessary (*for possible action*)

A motion was made by Member Scow seconded by Member Crowley and unanimously carried to adopt the Consent Agenda as presented.

Member Wagner joined the meeting at 8:36 a.m.

- IV. **PUBLIC HEARING / ACTION:** Members of the public are allowed to speak on Public Hearing/Action items after the Board's discussion and prior to their vote. Each speaker will be given five (5) minutes to address the Board on the pending topic. No person may yield his or her time to another person. In those situations where large groups of people

desire to address the Board on the same matter, the Chair may request that those groups select only one or two speakers from the group to address the Board on behalf of the group. Once the public hearing is closed, no additional public comment will be accepted.

No items to be heard.

V. REPORT/DISCUSSION/ACTION

- 1. 2014 BOH Meeting Schedule**; direct staff accordingly or take other action as deemed necessary (*for possible action*)

Dr Iser presented the proposed 2014 BOH meeting schedule. Proposed meeting schedule exceptions are in April (evening meeting to allow the community the opportunity to attend the budget discussion meeting), November (on Monday due to Thanksgiving holiday) and December (no meeting unless circumstances warrant).

A motion was made by Member Scow seconded by Member Crowley and unanimously carried to adopt the 2014 BOH Meeting Schedule as presented.

- 2. Blue Diamond Pool Inspection**; direct staff accordingly or take other action as deemed necessary (*for possible action*)

Paul Klouse, Aquatic Health Program Manager, introduced himself and Jacque Raiche-Curl, Aquatic Health Program Supervisor, who would be providing further information requested by the board regarding the permanent suspension and subsequent reopening of the Blue Diamond Recreation Association pool in August.

Ms. Raiche-Curl addressed some of the concerns that were brought forward by Mr. Trent Billingsley at the September 26, 2013 BOH meeting:

- *Mr. Billingsley stated that his pool did not require a lifeguard. Per NAC 444 any pool that is greater than 2,000 square feet does require a lifeguard. The Blue Diamond pool is 2,618 square feet and is required to provide lifeguard service*
- *There was a concern that the district did not provide notice or warning for the inspection. There is no regulatory requirement that notice prior to an inspection must be provided. The idea is that the safe conditions are present at all times, not just at the time it is believed that the inspectors will be walking through.*
- *There was a concern that the district did not provide a list of closure with fee items, nor did Mr. Billingsley have access to this list of items. This list has been provided on District's website under the Pool Program, now titled the Aquatic Health Program since 2004.*
- *In reference to Mr. Billingsley's statement that the Blue Diamond pool has two drains versus one, Ms. Raiche-Curl deferred to the presentation and will go into further depth at that time, as well as the definition of a regulated pool.*
- *In the NRS 444.100 the board expressed concern that the district did not provide the 48 hours required for corrections. The regulation is discussing suspension, which is closure. The 48-hour requirement is in reference to revocation of permit. State law is clear that if revocation of a permit is pursued, 48 hours must be given to the permit holder to provide the final*

opportunity to make corrections. The 48-hour notice of revocation does not does not apply to the Blue Diamond closure.

Ms. Raiche-Curl provided a brief presentation in regard to the actions taken and the law, regulations, policies and procedures relevant to those actions. (Attachment 1)


Public Swimming Pool Defined

- ▶ **NAC 444.058 “Public bathing or swimming facility” defined. (NRS 439.200, 444.070)**
- ▶ 1. “Public bathing or swimming facility” means any:
 - ▶ (a) Artificial swimming lagoon;
 - ▶ (b) Isolation and flotation tank;
 - ▶ (c) Mineral bath, therapeutic pool or similar facility;
 - ▶ (d) Special purpose pool;
 - ▶ (e) Spray pool;
 - ▶ (f) Swimming pool;
 - ▶ (g) Wading pool; or
 - ▶ (h) Water recreation attraction, that is used by the public for swimming or bathing.
- ▶ 2. The term does not include any facility at a private residence controlled by the owner of the residence, the use of which is limited to members of the family or invited guests of the owner.

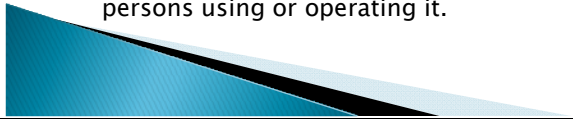
Public Swimming Pool Defined

- ▶ **NRS 444.065 “Public swimming pool” defined.**
 - 1. Except as otherwise provided in subsection 2, as used in [NRS 444.065](#) to [444.120](#), inclusive, “public swimming pool” means any structure containing an artificial body of water that is intended to be used collectively by persons for swimming or bathing, regardless of whether a fee is charged for its use.
 - 2. The term does not include any such structure at:
 - (e) Any location if the structure is a privately owned pool used by members of a private club or invited guests of the members.
- ▶ Legal counsel determined that 2(e) does not apply to Home Owners Association in a Memo dated July 16, 2009.
- ▶ Current legal counsel concurs with the original assessment
- ▶ Several sections of the NAC 444 specifically refer to “... condominium or other facility containing multiple dwellings” this specifically applies to HOA’s or community pools.

Pool Operator Responsibilities

- ▶ **Regulations Governing Certification of Swimming Pool Service Companies, Technicians, Technician Apprentices, and Pool Operators**
Adopted October 27, 1988
Amended July 28, 1989
 - ▶ 9.1 Any person who provides pool services at a public swimming pool within the jurisdiction of the enforcing agency shall provide these services in accordance with the standards and requirements set forth in the provisions of Nevada Administrative Code Chapter 444...
 - ▶ 11.1 The enforcing agency may suspend or revoke the certificate of a ... swimming pool operator if work of the ... swimming pool operator is performed in violation of the requirements of these regulations or in such a manner as to create unsanitary, unsafe, or unhealthful conditions.
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Inspection Notice/ Action

- ▶ **NAC 444.300 Notice of violation. (NRS 439.200, 444.070)** If the health authority inspects a public bathing or swimming facility or natural bathing place and finds a violation of any provision of NAC 444.010 to 444.306, inclusive, that does not seriously endanger the public health, the health authority shall issue a written notice of the violation to the owner or his or her representative and allow a reasonable time for the violation to be corrected.
 - ▶ **NAC 444.302 Suspension or denial of operating permit. (NRS 439.200, 444.070, 444.080, 444.100)**
 - ▶ 1. The health authority may order a suspension of an operating permit and may order the owner or operator of a public bathing or swimming facility or natural bathing place to prohibit any person from using it if the health authority finds:
 - ▶ (a) A failure of the equipment, structure, area or enclosure of the facility or bathing place which jeopardizes the health or safety of the persons using or operating it.
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Reason for Closure with Fee

- ▶ Closure fee was approved by the BOH 6/24/2010; items subject to closure fee published on Aquatic health website;
- ▶ Events of inspection – Broken drain cover discovered during routine inspection 8/8/13. Pool was closed and fee was assessed per established protocols. Fee was paid by facility 8/12/13. Re-inspection 8/13/13. Meeting with Division Director and Manager held 8/21/13
- ▶ Leads to risk of entrapment – broken drain cover identified as being broken
 - System does not operate as designed – gutter system disabled.

Why Hold Facility Accountable

- ▶ Although water recreational facilities provide many benefits to a community, there are also inherent risks associated with such facilities.
- ▶ It is important that each facility have a risk management plan and be responsible for self monitoring to ensure the risk of accidents and injuries are minimized.
- ▶ Unannounced Inspection = test time, not a time for consultation.

Statistics

- ▶ According to CDC data – 12.1% of all routine water recreation inspections result in an immediate closure due to imminent health hazard
- ▶ SNHD 2013 – 7% of all routine inspections resulted in an immediate closure
 - SNHD evaluates circulation systems to a higher degree than the average national health inspection
 - Why are our statistics so far below national average?
 - Fee offers a tangible incentive to maintain pools/spas free from imminent health hazards.
 - Less than 3% of all inspections result in closures with fees.

Clarification

- ▶ Facility reported during the meeting with the EH Director that they hold swim meets at the Blue Diamond Community Pool
- ▶ EH Supervisor offered to schedule an inspection next season prior to the facility opening to address any concerns before exposing the public to potential risk – as of the last email correspondence, the operator declined
- ▶ The pool is >2000 sq ft and does require a lifeguard.

Clarification

- ▶ Operator does not provide timely compliance even when the Health District offers to work with them– evidenced by 5 year fence deficiency noted in 2006 with a compliance schedule established
- ▶ Operator has demonstrated resistance with the requirement to install required vacuum and pressure gauges on the system
 - Gauges needed to reliably establish flow

In Conclusion

- ▶ Blue Diamond Community Pool does not fit any reasonable criteria to be considered a private club
- ▶ Blue Diamond Community Pool does not provide a proactive management approach to keep patrons free from unreasonable risks
- ▶ SNHD's practice of enforcing closures with assessed fees has ultimately provided a safer community overall evidenced by local closure rates in comparison to national statistics

Ms. Raiche-Curl added that it is important to understand when the fee was assessed, Mr. Billingsley is not contesting that the violation was present; there is merely a lack of understanding as to the importance of the drain cover violation.

Member Beers noted that he is hung up on the determination that the Blue Diamond pool is not included in the legislative exception, as he comprehends it to be written specifically for them, however former legal counsel has determined that they are analogous to a Home Owners' Association (HOA) more so than to a private club, which has nothing to do with the incidence found at the pool or the disagreement over the importance of the drain cover. It is a legal fact or a legal interpretation, that Blue Diamond fits quite clearly in this exception and legal counsel disagrees. Ms. Bradley stated that the initial opinion that was done several years ago was done for a different issue with respect to the information given to staff today (Letter from Trent Billingsley, Attachment 2), Mr. Billingsley states that that the Blue Diamond Charitable Association is a private club and is privately owned and operated. Ms. Bradley noted that she has not had the opportunity to review the information submitted by Mr. Billingsley and when she looked up the Blue Diamond Charitable Association on the Nevada Secretary of State site their Article of Incorporation had been revoked and Ms. Bradley has been unable to determine their status.

Member Beers stated that he did not know if a private club is required to register with the Secretary of State. Ms. Bradley reiterated that she does not know what they are and a private club is not inherently or fundamentally a HOA.

Member Beers asked if the opinion of former legal counsel (Mr. Smith) was rendered on this instance to which Ms. Bradley responded it was not. Member Beers asked if the board were relying on the belief of Ms. Bradley that Mr. Smith's opinion is analogous to this situation to which Ms. Bradley responded no. Member Beers referenced "Current legal counsel concurs with original assessment" in Ms. Raiche-Curl's presentation. Ms. Bradley explained that reference in respect to whether an HOA is excluded because Environmental Health permits and evaluates pools in HOAs, a separate and distinct issue and Mr. Billingsley is not representing that he is a HOA, he is representing that he is a private pool as evidenced by the letter that he submitted today. Ms. Bradley added that there is no evidence or substantial information to prove or disprove their existence as a private entity.

Member Beers asked if he could go to pool. Shelia Billingsley stated that Mr. Beers could be outside the fence. Mr. Billingsley stated that Mr. Beers could be his guest to which Mrs. Billingsley agreed, and added "But no, you really can't."

The Chair confirmed that Ms. Raiche-Curl was finished with her presentation.

For the record, Mr. Billingsley noted photos in the document that he submitted which included a posted list of club memberships (paid members) from which lifeguards check before allowing entry to the pool area, a "Private Property" sign and "Pool Rules" which state "Members and their out of town guests only". Mr. Billingsley added that by very definition, they are a private membership club that it seems the legislature carved out specifically for that reason.

Chair Woodbury asked Mr. Billingsley if there is an actual entity created. Mr. Billingsley responded yes and advised that the Blue Diamond Charitable Association has a Board of Directors and meets once a month. In the past Mr. Billingsley has

been on the board and it is his understanding that it is a 501(c)4 corporation (corrected by Mrs. Shelia to be a 501(c)6 corporation).

Chair Woodbury asked if the entity is registered with the Secretary of State of Nevada. Mr. Billingsley stated that he thought it was but apparently it is not currently in compliance.

Chair Woodbury asked Mr. Billingsley if he had evidence that his entity was a 501(c) corporation. Mr. Billingsley stated that he did not have it with him at the time, but it could be provided.

Chair Woodbury asked if there are bylaws and Mr. Billingsley stated that there are. Mrs. Billingsley stated that she is a former board member and at one time secretary of the Blue Diamond Charitable Association and has the tax letter with identification number (does not know if it is upheld or not) and the bylaws which she can bring to the next meeting as the crux of the issue is what type of entity they are.

Chair Woodbury asked if the Blue Diamond Charitable Association has a governing body to which Mr. Billingsley responded there is a Board of Directors.

Ms. Bradley stated that she did not think it would be necessary to carry this issue to another meeting as it can be resolved off-line if the supportive documentary evidence can be submitted by the Billingsleys.

Chair Woodbury stated that he is not comfortable making a decision until the issue of jurisdiction has been vetted.

Chair Woodbury asked the following questions, noting that they may be moot if it is determined that the district does not possess jurisdiction:

- *Was the Virginia Graeme Baker (VGB) drain issue properly enforced when it was applied to Blue Diamond or has it changed since?* Ms. Bradley stated that the district does not enforce VGB. Mr. Billingsley referenced his inspection report from 2010 and commented that at the time he told in no uncertain terms that he had to comply with VGB Act and the inspector told him that he would be shut down and not allowed to open if he did not install the drain covers. Mrs. Billingsley added that the pool had cast iron drain covers on it for 60+ years that had never broken, never had any problems with them and no one had ever been hurt. Mr. Billingsley stated that it was his understanding that the pool would be shut down if he did not comply and referenced the sticker on the bottom of the inspection report that states "Attention: To ensure compliance of the VGB Act you must contact a certified pool operator to evaluate your pool for compliance of the VGB Act." Mr. Billingsley added that when he got a new inspector a couple of years later, he was told "Oh, you didn't need to do that, nobody did that." Mr. Billingsley noted that he spent \$2500 putting in new drain covers that lasted less than 5 years. Mr. Billingsley feels that there should be a better way to do this rather than with a heavy fine and added that his pool is "old and funky" and he is doing the best that he can to keep it operating and believes it is super important for his community, although it is not a community pool, it is a private pool, but it is a huge part of what adds to their village. Mr. Billingsley is trying to keep the old pool running and compliant and is trying to

put in a new pool. He would like to work with the district to keep it compliant, but finds that when he is “slapped with fines”, although he is not complaining that he did not get notice of inspection as he realizes inspections need to be unannounced, his problem is he was fined while he was trying to do the best he could.

In regard to the concern about the requirement for the drain cover replacement brought forward by Mr. Billingsley, Ms. Raiche-Curl noted that there is nothing in the file requiring the drain covers to be changed. She explained that when the VGB Act went into law in 2009, the inspectors informed all regulated pool and spa operators of the new law, advising that the Consumer Product Safety Commission (CPSC), not the district is not the enforcement entity, however, should the CPSC find the facility out of compliance there are heavy fines. Ms. Raiche-Curl added that the district would be remiss in its duties by not properly informing those that are regulated of the repercussions if they did not comply, although the District could not take any enforcement action, but that they were subject to enforcement action by the Consumer Product Safety Commission, who is the enforcement entity. Ms. Raiche-Curl stated that the sticker read by Mr. Billingsley was taken out of context and read that the entire notice, “The inspection performed today is to determine compliance with Nevada Administrative Code NAC 444 Public Bathing Places. It is not an evaluation for compliance with the VGB Act. To ensure compliance with the VGB Act you must contact a certified pool contractor to evaluate your pool or spa for compliance with the VGB Act. Please visit www.CPSC.Gov for more information on VGB requirements.” Ms. Raiche-Curl added that at no time did an inspector document anywhere in the Blue Diamond pool file that Mr. Billingsley was required to change the drain covers. Chair Woodbury asked Mr. Billingsley if he agreed that other than the sticker on the inspection report there was nothing else in writing. Mr. Billingsley stated that is true, however he was relying on what the inspector at that time said as well as the sticker. Mr. Billingsley stated that he also researched this information online and it appeared to him that he would be shut down if he did not comply. Member Wagner stated that he had reviewed the inspection document with the sticker and as a business owner he is subject to inspections and compliance visits by the district and to him the sticker implies that he should comply by insinuation, but none of it is relevant if the District does not have jurisdiction over the Blue Diamond pool.

- *Is Mr. Billingsley alleging that nowhere in the statute the district is given the authority to impose fines?* Mr. Billingsley stated that he is assuming that somewhere in the statute or in the amendments to the statute the district is probably given the authority to impose fines, but the fines on this case is what brought him to the board. Mr. Billingsley added that he has worked with SNHD and had great success with three out of four inspectors and the one he has a problem with is the one who had him install the new drain covers and cited him for the gate closure, which the prior inspector did not because the area was always lifeguarded. The new inspector immediately fined Mr. Billingsley and closed the pool even though the gate closure was fixed that afternoon. Mr. Billingsley added that the drain covers were fixed “as soon as humanly possible” but “got slapped with a fine anyway” and that is not working for him as he is trying to keep the pool open with very little budget.

Mr. Billingsley stated that they are not an HOA, community pool or public pool, but an odd entity that sit outside the norm, which is exactly what the carve out exception made by the legislature is for.

- *Does the district have the authority to impose the fines?* Ms. Bradley stated that as the regulatory, authority the district has the authority to enact regulations and enforce to the degree appropriate, so fines would be in an appropriate measure of the regulation.
- *Does the district have particular policies in place that have been implemented pursuant to that broad authority to give the public notice that they will be fined if they don't comply?* Ms. Bradley stated that the fees are board approved. Ms. Raiche-Curl added that in 2004 the first closure fee was approved by the board and was in effect for food facilities, public swimming pools and public accommodations. During the last general permit fee increase in 2009, a member from industry suggested what the fines should be, and the district was directed by the board at that time to implement. Every one of the programs where the fine is applicable has standards as to what would constitute a fine. In the food program, it is imminent health hazard (something that would result in immediate closure or an inspection that results in greater than 40 demerits). In the pool program it is the nine mutually agreed upon list of items developed in conjunction with the group from industry in 2004.

Chair Woodbury stated that if this issue comes back to the board and it is decided that the district does have jurisdiction, he would like to see the statutory authority that gives the right to regulate and impose fines and what specific regulations have been implemented that state policy on fines.

Dr. Iser suggested that the Billingsleys provide Ms. Bradley with documentation that indicates what they are, so it can be researched and if it is determined that the district does not have regulatory authority this issue does not need to come back to the board, the Billingsleys will be given back the fines that they have. Dr. Iser clarified that the board's opinion is that if Ms. Bradley agrees that the district does have regulatory authority this issue will come back to the board next month.

Member Scow asked if Mr. Smith's determination was based on case law and asked for knowledge on the background; however that may not be necessary if it is found that the district does not have jurisdiction. Member Scow added that she has heard from members in the community that inspectors have different opinions and change the rules in the middle of the game, which of general concern. Dr. Iser stated that the food program is starting to standardize all food inspections to the same standards as the FDA standards. Ms. Raiche-Curl added that prior to last year pool inspections were divided among inspectors who did food inspections as well. In the last two years, it has become a centralized program and there has been much increased standardization and the same message is being disbursed by all of the inspectors and there is now a dedicated program with a detailed SOP so that an inspector can refer to the SOP and evaluate each problem they encounter and enforce it in a uniform manner.

Dr. Iser mentioned from his experience as a former investigator for the FDA specializing in biomedical research, that two inspectors going into Stanford, for

example, looking at their biomedical research may find the same thing, but because of the willingness of Stanford to respond to the findings, one inspector may go forward with one recommendation and one with the other, which is inherent with the process of regulation. As best as possible, the district is standardizing processes, but there should also be some flexibility, as indicated in the use of flexibility from standing protocols related to the TB issue.

Member Crowley asked if there are two inspectors and one looks at the gate closure situation and determines that it is okay because either it is locked or a lifeguard is on duty and the next inspector finds that it is a violation, is it appropriate to fine someone when they have received conflicting information. Ms. Raiche-Curl stated that there are photos of the gate for both inspections that were referred to and in the second inspection there was absolutely no latching mechanism at all installed on the gate, which is different from the year before and there was no documentation of any gate violation for the previous year. In that case, if someone did not address an issue, then they were not following appropriate protocol and it would be addressed through district administrative processes, however, with the SOP in place today, it specifically outlines what needs to be in place. Ms. Raiche-Curl added that this SOP has been in place for two years and has been revised and updated three times, mostly for clarification in response to the comments from industry as well as comments that were open for misinterpretation, but the SOP was written in 2008/2009 and the gate portion is very specific to NAC 444.136 subsection 6B "All gates must be self-closing and positively self-latching from any open position" and without exception, that is the law and has not changed since the 70's.

Member Osgood clarified with Mr. Billingsley that he is before the board because an inspector came out and inspected the pool, found a violation, which was corrected subsequent to the inspection, a fine was issued and he is asking that the fine be reduced or eliminated. Mr. Billingsley stated that he is asking that the fine be reduced or eliminated but while he was doing research on that issue he realized that there is the legislative exception which he seems to fall squarely in, so there is also the jurisdiction issue.

Member Beers referenced AB350 from the 2009 legislative session which is the bill that changed the law to add that exception and the entire bill is about HOAs, so the fact that the board is relying on a legal opinion that finds that this element of a bill which was all about HOAs has nothing to do with HOAs is probably an incorrect legal opinion and he applauds the move by the district and past administration to put standard processes in place as a wide variety of practices have been the problem. Member Beers added that he has a problem with taking action on this issue today. Ms. Bradley stated she reviewed the legislative history of AB350 and Mr. Beers is correct, it does have to do with the community interest of the CICs and HOAs but the language that added to 444.065 was added at the last minute, because she was unable to find any discussion with respect to adding this language. Chair Woodbury is also not comfortable with deciding this issue today without all of the information available.

Ms. Bradley specified that in regard to this issue, she needs documented evidence as to what they are. Chair Woodbury stated to Mr. Billingsley in regard to whether his particular association fits within the exception, if he wants the benefit of the law then he should be in compliance and needs to provide documentation of what they are and make sure that his entity is not in default and is in good standing, provide by-

laws, articles of organization, 501(c) exception documentation and tax identification to Ms. Bradley in a timely manner.

Member Osgood stated that an inspection was made, a violation was found, a fine was associated with the violation and the violation was repaired, so the issue at hand is whether the fine should be suspended or modified and define if the district has jurisdiction. Ms. Bradley stated that these issues can be resolved based on the documentation requested from Mr. Billingsley and if the documentation is adequate, there will be no need to bring the issue back to the board, it can be updated under "Report Items".

Member Crowley stated that she would still like to know whether HOAs in general are covered or excluded.

Member Beers asked if there is a separate statute that governs HOA pools. Mr. Klouse stated that there are a number of pools that are considered private, but that are regulated, which are HOAs, condominiums, town homes and apartment complexes where the use of the pool is limited to people that live there and their guests and it would have a very broad impact on the safety and health of people's swimming facilities in Clark County if that were the case.

Chair Woodbury asked Ms. Bradley to come back and advise the board who this law applies to and who it does not apply to.

Dr. Iser stated that the broadest issue is the health and safety of the people and visitors of Clark County. Dr. Iser recommended to Mr. Billingsley that he operate a safe pool and hopes that the board is convinced that he has not had that history over the last 5-7 years and asked the board members if they would allow their children or grandchildren go to that pool. Dr. Iser added that usually when someone meets regulations after a fine or finding, that is the best time go to it, but if an entity, not matter what its status is, cannot operate a safe pool, maybe it should not be operating a pool for the safety of the public. Member Crowley stated that she believes that everyone agrees with that, but at issue is whether or not the district has authority, and if not, it needs to be fixed or clarified, otherwise, people will continue to come in and question the district's authority.

Mr. Billingsley stated that the pool is closed for the winter and added that he has appreciated the district's oversight but has a problem with the conflicting reports from the inspectors and heavy handedness of the fines. Mr. Billingsley added that it is not true that it took him five years to comply because he actually complied immediately and wrote and received a grant to pay for a fence and, in consultation with the inspector at the time, applied construction netting around the outside of the fence. Later on, the next inspector came in and said that it did not meet requirements and he needed to put up a new fence. Mr. Billingsley stated that it took a while to come terms with it and finally do that, as they do not have a large operating budget. To have conflicting decisions given to him or information that is not correct has cost him \$4000 in the last 8 years. Mr. Billingsley would like to build a new pool and move on, but what has gone from a very collegial relationship where the inspectors help steer him in the right direction has gone to one in which he is shut down and fined. Mr. Billingsley added that he realizes his pool is old, but he would like to continue to operate it in a safe manner until he can build a new one.

Chair Woodbury advised Mr. Billingsley that the board understands his hardship argument, but it probably not get him very far in terms of public safety and the duty of the board and district is to enforce public safety. The Chair added that jurisdictional clarification needs to be made and if

the district did not have jurisdiction he is sure that whoever has jurisdiction will want to ensure that the pool is operated safely and in the best interest of all. Chair Woodbury reminded Mr. Billingsley to provide Ms. Bradley the information and advised him that if this issue needed to come back to the board it would. (Ms. Bradley provided her business card to Mr. Billingsley)

Member Crowley asked if it is determined that the district does not have jurisdiction then what entity governs HOAs. Ms. Bradley and Chair Woodbury concurred that no one governed HOAs if the district does not.

Mr. Billingsley stated that his pool is not an HOA.

VI. BOARD REPORTS: The Southern Nevada District Board of Health members may identify emerging issues to be addressed by staff or by the Board at future meetings, and direct staff accordingly. Comments made by individual Board members during this portion of the agenda will not be acted upon by the Southern Nevada District Board of Health unless that subject is on the agenda and scheduled for action.

Hearing none, the Chair closed this portion of the agenda.

VII. HEALTH OFFICER & STAFF REPORTS

• CHO Comments

Dr. Joseph Iser, Chief Health Officer, reported that in addition to the TB issues he has been busy meeting with board members and city officials, police and fire chiefs and community partners and intends to continue these meetings after he returns from surgery next week.

- TB Investigations Update – Dr. Iser explained that there was a young mother who was in one hospital and gave birth to twins at another hospital who were in the NICU. The mother, subsequently because of her illness was transferred to another hospital in southern California where she died a day and a half later. On autopsy, she was diagnosed with TB. Immediately the district was notified and in turn notified the hospital that put the surviving twin in the NICU as the first twin died soon after birth. The surviving twin was immediately put into isolation and was found to have active TB. The initial investigation related to contacts that the mother may have had outside the hospital and contacts in the hospital led to the initial determination that it was not believed that any of the newborns in the NICU had likely been exposed, the primary reason being most infants that young do not transmit TB, although the method of transmission still cannot be guaranteed. One family member and one hospital worker have been found to have active TB that is believed to be linked to either the mother or the infant. Because it was determined that transmission was likely to have occurred in the NICU, the investigation was expanded to include 141 infants, 101 of which were likely exposed to either the mother or the infant and another 40 that were exposed to the hospital worker only. All of the data has not been received yet, but the epi-link indicates that there are some people who were exposed to one of those three active cases (hospital worker, infant or mother). Testing is still ongoing as well as identification of some people who may have perhaps been at risk at the hospital that were not identified initially. Dr. Iser believes that the epi-link is not just epidemiological, as it also includes the resistance patterns of the TB germ itself and the resistance pattern in the hospital worker is similar to that in the infant and southern California did not get any samples from the mother for comparison. Once this phase of the investigation is completed, looking at the tests that have been run, if any tests have to be repeated and x-rays on those that are

positive, individual clinical evaluations will have to be done as well as anyone else who is found who could be linked. Dr. Iser warned that if anyone else is found with active TB the investigation will have to expand again and that every active TB case that is found will not be linked to one of these 3 cases and some independent investigations will need to occur.

- Richard Cichy, Community Health Nurse Manager, informed that more laboratory reports on the foreign traveler have been received and more resistance has been revealed. Dr. Greenberg, Infectious Disease Specialist, is going to assume care and the district has consulted with the National Jewish Hospital in Denver, Colorado for assistance as well.

Member Crowley asked if someone who has contracted TB can be effectively cured, or if they would still continue to harbor nodules that could potentially become active in the future. Dr. Iser advised that if someone has a positive blood or skin test the next step is to ensure that they are not infectious, which is part of what the x-ray does. If the person is found to be non-infectious (latent tuberculosis) and not treated then that TB germ continues to lie in nodules in the lung or elsewhere and can be reactivated. The progression to active TB from latent TB in about 10% of cases nationwide will progress to active TB without treatment and about half of that 10% occurs in the elderly or those on chemotherapy, weakened immune systems or with certain diseases. People with latent TB are encouraged to take medication and that is considered a cure. If a person has active TB and they follow the treatment they should be cured as well unless they are exposed again.

Member Beers asked if the TB drug regime forever to which Dr. Iser responded it depends, it could be long period of time, anywhere from 6 to 9 months to years, depending on whether it is active or latent TB. Dr. Iser added that this particular TB germ is bovine and found primarily in cattle.

- Building Update – Dr. Iser advised the board that Elaine Glaser, Director of Administration, will be ending her service with the district on November 1 and he and Ms. Bradley will be taking over as lead on the building updates. Dr. Iser stated that the district has been working closely with the county and its property management group in regard to 400 Shadow Lane and the three other properties identified to get estimates and appraisals, which he hopes to have by the end of the week. Next steps will be to review appraisals and determine if the properties are affordable and reasonable.

VIII. INFORMATIONAL ITEMS

- 1. Chief Health Officer and Administration**
 - A. Monthly Activity Report - September 2013
- 2. Community Health:**
 - A. Monthly Activity Report - September 2013
- 3. Environmental Health:**
 - A. Monthly Activity Report - September 2013
- 4. Clinics and Nursing:**
 - A. Monthly Activity Report - September 2013

- IX. PUBLIC COMMENT:** A period devoted to comments by the general public, if any, and discussion of those comments, about matters relevant to the Board's jurisdiction will be held. No action may be taken upon a matter raised under this item of this Agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to NRS 241.020. Comments will be limited to five (5) minutes per speaker. Please step up to the speaker's podium, clearly state your name and address, and spell your last name for the record. If any member of the Board wishes to extend the length of a presentation, this may be done by the Chairman or the Board by majority vote.

Chair Woodbury asked for anyone else wishing to speak and seeing no one closed the Public Comment portion of the meeting.

Seeing no one the Public Comment portion of the meeting was closed.

- X. ADJOURNMENT**
The Chair adjourned the October 24, 2013 Southern Nevada District Board of Health meeting at 9:49 a.m.

SUBMITTED FOR BOARD APPROVAL

Joseph P. Iser, MD, DrPH, MSc
Chief Health Officer/Executive Secretary

/jw