

January 5, 2017  
Sterling Board of Health Meeting  
Butterick Building, Room 205  
1 Park Street, Sterling, MA. 01564

Meeting Minutes

6:30 PM Chairman Donna Clark called the meeting to order.

**Roll Call:** Donna Clark, Chair - present  
Gary Menin, Vice Chair - present  
Allen Hoffman, Member - present  
David Favreau, Health Agent - present  
Elaine Heller, Admin. Asst. - present

**Attendees:** Ryan Parkinson, Louis Massa, Michael Rivers

Gary Menin noted he was recording the proceedings of the meeting. David Favreau indicated he was recording the proceedings as well.

**Appointments and Agenda Items**

**Meet with Animal Inspector:**

Sterling Animal Inspector, Louis Massa, came before the Board to discuss his position and salary. He presented a comprehensive job description which listed the job functions and responsibilities. Member Hoffman explained Mr. Massa had inadvertently been shorted \$250.00 in last year's budget and noted he will receive that amount retroactively. In addition, a \$250.00 increase is in the FY18 budget. The allocated amount for this position for FY18 will be \$1500.00. Mr. Menin requested a detailing of hours performed for each of Mr. Massa's activities. Mr. Massa will compile an estimate of his hours and submit it to Mr. Favreau.

**Discuss Building Floor Plan/Bedroom Count for 24 Clinton Road:**

A discussion ensued regarding the bedroom count for the property at 24 Clinton Road, which had been listed by the realtor as two 4-bedroom units. Mr. Menin suggested septic plans, when presented, should be checked against the assessor's information to ascertain that the bedroom count is in agreement. Mr. Favreau stated that the BOH has no jurisdiction over how realtors list homes that are for sale.

According to Mr. Hoffman, both the original septic design from 1988 and new septic system plans are for a total of 6 bedrooms, consisting of two 3-bedroom units. Coinciding with that, Mr. Favreau provided the original building permit and building design floor plan outlining each unit to have 3 bedrooms (total 6 bedrooms). Mr. Favreau noted that at the time of soil testing for the design of a septic system, he, the engineer and homeowner walked through each of the dwelling units and confirmed 3 bedrooms in each unit. Further, Mr. Favreau also stated that Mr. Vincent, the property owner, had the Assessors in for a site visit and it was confirmed the property has two 3-bedroom units and all plans now match as outlined on the Assessor's field card.

Further, Mr. Menin requested that Sterling's Title 5 protective bylaws be revised to require Agent review of Assessor's data as part of any system upgrade/replacement towards the understanding/correction of any "bedroom count" discrepancies.

#### Public Records Request Presented to Gary Menin:

During a public hearing on September 8, 2016, Mr. Favreau submitted in hand to Mr. Menin, a formal public records request for the "complete unedited copy of the electronic audio recording for the August 11, 2016 Board of Health Meeting", which had been recorded by Mr. Menin. Mr. Hoffman provided an e-mail sent by Mr. Menin sharing this electronic audio recording with Mr. Hoffman for purposes of approving the meeting minutes. Mr. Menin believes the recorded minutes are not a public record and he submitted his rationale, an attachment to these minutes. Sterling resident Michael Rivers stated he deals with public records and it is his interpretation that Mr. Menin's recording is not a public record.

Mr. Hoffman had discussed this subject with former Town Administrator Michael Szlosek, who noted the recording is a public record. Mr. Favreau presented a copy of the Guide to Open Meeting Law with highlighted sections supporting Mr. Szlosek's testimonial.

Further discussion continued, with Mr. Menin noting he had requested public records from Mr. Favreau and did not receive all that were requested. Mr. Favreau read into the record the request Mr. Menin spoke of. Mr. Favreau also read into the record the written response which he previously provided in writing to Mr. Menin, stating "Included are all the documents this office has pertaining to our public records request".

Mr. Rivers mentioned he had recently looked online for meeting minutes and the BOH has no recent minutes posted. Mr. Hoffman stated copies of meeting minutes are kept in the office and available to the public upon request. Mr. Hoffman reminded Mr. Rivers that currently there is not a requirement to have them posted online as long as they are readily available when requested. Mr. Rivers then made a public records request for any approved minutes not currently posted in the last five years. He will consider his request complied with if the minutes are posted online.

#### Floor Drain Discussion:

Representing the Sterling DPW Water Department, Paul Lyons had requested that the BOH regulations include prohibiting floor drains. Mr. Favreau presented a copy of Sterling's Protective Bylaws 4.7.5.2 (c) to Paul Lyons who determined the bylaws were adequate and would provide them to the DEP.

#### Review and Discuss FY18 Budget:

Mr. Hoffman attended the most recent meeting of the Montachusett Public Health Network (MPHN) and prepared a draft memo of their fees for FY18. Initially, funding for local services was covered by a state grant. The grant monies have been exhausted. The MPHN is now revising the fee structure to become sustainable; funding is now shifting to individual communities and each member community will pay for all services rendered to that community.

Mr. Hoffman noted the current alternate Food Inspector is leaving the position and Mr. Hoffman suggested the BOH hire an individual to perform food inspection services and also perform septic system inspections currently being done by the MPHN inspector in cases where the Health Agent is unavailable or when there is a conflict of interest.

Budget worksheets were previously provided to Board members during the December 8, 2016 public meeting by Mr. Favreau for their review. Mr. Favreau indicated the BOH increase for FY17 was 3.4%. The anticipated increase for FY18 is 3.5%. After review of the FY18 Budgets, Mr. Hoffman moved to submit the Budget to the Finance Committee and it was seconded by Donna Clark. Mr. Menin noted that during his eight or so year tenure on the Board, the Board has never taken serious action to attempt to reduce the proposed budget. Resident Mike Rivers

(in attendance) suggested the Board re-look at the Nashoba Health collaborative as a way to reduce costs. Vote: Ms. Clark - aye; Mr. Hoffman - aye; Mr. Menin - nay. Motion carried.

#### **Correspondence**

None

#### **Health Agent Report**

Commonwealth of MA vs. Mike Cove, Cove Septic Corp., court date:

Health Agent Favreau and Board member Hoffman attended a hearing on January 3, 2017, regarding the Commonwealth of MA vs. Mike Cove, Cove Septic Corp. In addition to this criminal matter, Ms. Laurey Cousins and Ms. Summer Day, who had septic service problems with Mr. Cove, also attended the hearing. The case was continued, with another hearing scheduled for February 2017.

#### **Follow-up Site Visit to 60 Clinton Road:**

Ms. Dolores Rich of 60 Clinton Road had attended the December BOH meeting to complain of water runoff from the 38 Clinton Road property onto her property, which she felt is affecting her septic system. Mr. Favreau visited the property on December 26 and December 27, and observed no excessive ponding or puddling of water. He will continue to monitor the site. Ms. Rich had also noted oil spillage at 38 Clinton Road. The Health Agent inspected the area and found no evidence of oil spillage. Ms. Clark indicated that it's inappropriate for the Agent, without reasonable cause, to do such an investigation on private property at the behest of a neighbor without the owner's permission.

#### **Title 5 Inspection Report - 10 Worcester Road:**

Mr. Favreau noted the Title 5 failed at the above address due to high ground water.

#### **Zoning Violation Letter from the Building Department:**

The Board of Health received a copy of a zoning violation letter from the Sterling Building Department in regard to Parcel ID 51-20, Pratts Junction Road, which is an aquifer district. The violation deals with junk, junk yards on the property.

#### **Signatures Required - Permits:**

Mr. Favreau indicated there are food permits to be signed by BOH members.

#### **Approve Available Minutes:**

A motion to approve minutes, as amended, of the December 8, 2016 meeting was made by Allen Hoffman and seconded by Gary Menin. All were in favor and the motion carried.

A motion to approve revised minutes of the August 11, 2016 meeting was made by Allen Hoffman and seconded by Gary Menin. With all in favor, the motion carried.

**Other Business:**

Ms. Clark spoke with the property owner at 85 Clinton Road, who gave his permission for the BOH to perform a site visit. Chairwoman Clark will select three dates for a site visit with the homeowner and have them available for the March meeting.

**Review of Future Agenda Items:**

Mr. Menin suggested a future agenda item be a review of the protective bylaws. Mr. Hoffman noted the Board needs suggestions on what changes may be necessary. A discussion on this topic will be an Agenda item in April.

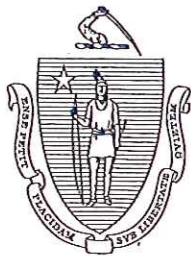
Mr. Menin mentioned the necessity of making sure bedroom counts jive with Assessors information vs. septic design plans and would like the Board to develop a plan in this vein.

Mr. Favreau said the Board is scheduled to meet with the Board of Selectmen at an upcoming meeting. He will notify members of the date and time.

**Adjourn:**

Gary Menin moved to adjourn the meeting and it was seconded by Allen Hoffman. All were in favor and the meeting adjourned at 9:00 PM.

# A Guide to the Massachusetts Public Records Law



Published by  
William Francis Galvin  
Secretary of the Commonwealth  
Division of Public Records

*Updated January 2017*

[www.sec.state.ma.us/pre/prepdf/guide.pdf](http://www.sec.state.ma.us/pre/prepdf/guide.pdf)

addresses of the customers are intimate details of a highly personal nature, the balancing test between individual's privacy interests and the public interest in disclosure does not apply.

### Exemption (d) – The Deliberative Process Exemption

Exemption (d) provides a limited executive privilege for policy development. It applies to:

*inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based*<sup>71</sup>

The exemption is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed. Its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process.<sup>72</sup> Factual reports which are reasonably complete and inferences which can be drawn from factual investigations, even if labeled as opinions or conclusions, are not exempt as deliberative or policy making materials.<sup>73</sup> Only portions of records that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

**For example:** Is a town's appraisal report, prepared for the purpose of litigation before the Appellate Tax Board, a public record?

Such a report may contain recommendations to the town. As long as the town is still negotiating a settlement, the deliberative process has not been concluded and the report may be withheld under Exemption (d).

### Exemption (e)

Exemption (e) allows the withholding of:

*notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit*<sup>74</sup>

The application of Exemption (e) is limited to records that are work-related but can be characterized as personal to an employee. Materials covered by the exemption include personal reflections on work-related activities and notes

<sup>71</sup> G. L. c. 4, § 7(26)(d).

<sup>72</sup> *Babets v. Sec'y of the Exec. Office of Human Servs.*, 403 Mass. 230, 237 n.8 (1988).

<sup>73</sup> *Moore-McCormack Lines, Inc. v. I.T.O. Corporation of Baltimore*, 508 F.2d 945, 948 (1974) (construing cognate federal provision).

<sup>74</sup> G. L. c. 4, § 7(26)(e).



created by an employee to assist him in preparing reports for other employees or for the files of the governmental entity. The exemption may not be used to withhold any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.<sup>75</sup>

*For example:* A requester sought all documents from a government entity related to a particular issue. The responsive records included personal notes of the government entity's employee. Are these notes public?

Notes are not public if they are personal in nature, kept by the employee merely to assist him in preparing reports, are not shared with anyone in the department and are not maintained as part of the department's files.

*For example:* Are handwritten shorthand notes taken by the secretary of a public body a public record?

Such notes are not personal in nature simply because they contain the secretary's subjective impressions of a board meeting. The notes cannot be considered merely a reference to assist the secretary in fulfilling duties, but rather the notes comprise a government file itself.

Where notes of open meetings have been taken by secretaries, it has been held that the notes are public at the time that they are created. In a sense, the notes are minutes even though not yet approved. Accordingly, Exemption (e) does not provide a basis for withholding of such notes.

## Exemption (f) - The Investigatory Exemption

Exemption (f), the investigatory exemption, provides custodians a basis for withholding:

*investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest*<sup>76</sup>

The exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed. Exemption (f) does not, however, create a blanket exemption for all records that investigative officials create or maintain.<sup>77</sup> A records custodian must demonstrate a prejudice to investigative efforts in order to withhold requested materials. Accordingly, a records custodian may withhold any information relating to an ongoing

<sup>75</sup> G. L. c. 4, § 7(26)(e).

<sup>76</sup> G. L. c. 4, § 7(26)(f).

<sup>77</sup> *District Attorney for the Norfolk District v. Flatley*, 419 Mass. 507, 512 (1995); *WBZ-TV4 v. District Attorney for the Suffolk District*, 408 Mass. 595, 603 (1990).





***Does a requester have greater right of access to records if he is the subject of a record?***

Under the Public Records Law, every requester is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person.

Some statutes and regulations allow requesters to obtain records in a manner that does not require a request under the Public Records Law. It should be noted that once a record is deemed public it may be obtained by anyone upon request.

A list of statutes limiting access to public records is found in the back of this book. This list includes student records, criminal offender record information, and other records the access to which is limited by law.

***Is a requester required to disclose the intended use of the public record requested?***

With the possible exception of situations where the RAO is anticipating the withholding of records pursuant to Exemption (n) of the Public Records Law, determining whether the records are being requested for a commercial purpose, or determining whether to grant a fee waiver, a records custodian may not ask a requester the reason for the request or the intended use of the requested records.<sup>3</sup>

***How should an RAO respond to an unclear request?***

RAOs must help the requester to determine the precise record or records responsive to a request; however, a requester must provide a reasonable description of the requested records. If a request is unclear the RAO is expected to seek clarification from the requester.

***What if a records custodian claims that it is not subject to the Public Records Law?***

The Public Records Law only applies to Massachusetts governmental entities. The burden lies with the entity to show that the Public Records Law does not apply.

***Are RAOs required to forward a request for records not in their possession?***

RAOs must use their knowledge of the records to ensure that a request for records is delivered to the appropriate party. A large public records request may include items for which the RAO is not directly responsible, as it may

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<sup>3</sup> G. L. c. 4, § 7(26)(n); 950 C.M.R. 32.06(2)(h).



1/5/12

**David Favreau**

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**From:** Kathie Nickerson [knickerson@sterling-ma.gov]  
**Sent:** Tuesday, December 27, 2016 1:44 PM  
**To:** 'Gary Menin'  
**Cc:** Allen Hoffman`; 'Donna Clark Sterling BOH'; 'David Favreau'; 'Sterling - BoH David Favreau'  
**Subject:** August 11 BOH Minutes

Gary...due to the controversy surrounding the August 11 Board of Health Meeting minutes, I was asked to request that the audio copy of those meeting minutes be sent to the remainder of the Board and the Agent.

Thank you for your attention to this matter.

Happy Holidays.....

Kathie Nickerson  
Associate Health Agent  
Sterling  
978-422-8111 X2305





# Town Of Sterling

## Board of Health

Butterick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2305 • FAX: (978) 422-0289

April 10, 2016

To whom it may concern,

As Animal Inspector for the Town of Sterling I have numerous job functions and responsibilities that need to be done on a Dailey/yearly basis. Below is an extensive list of the main duties that I perform.

1) There are between 40 and 45 cat and dog quarantines I do a year. These typically range from 10 to 45 days long and can be up to a 6 month quarantine depending on the circumstance. The process of quarantining an animal involves me going to the resident's house for anywhere from 30 to 60 minutes depending on where they live in town, and I then inspect the animal. At time of release I then re-inspect the animal to make sure it is healthy. Then both the state and the animal owner receive the necessary paperwork.

2) There are 12 kennel inspections I do a year which can take from 30 to 60 minutes for each one depending number of dogs. A kennel owner can have from 5 to 25 dogs depending on the level of kennel license they have, there is paper work involved.

3) If there is any animal that I am concerned about on possibly being rabid I always have it tested especially if there is possibly Human or Domesticated exposure, you can never take any chances; There has been a range from 2 to 4 animals I have test yearly. This is done by me bringing the deceased animal over to VCA Sterling Animal Hospital within 48 hours (state regulation) for testing with the necessary paperwork. I have been vaccinated with pre-exposure rabies shots because any one of these animals I have tested whether it is a bat, raccoon, skunk and sometimes a feral cat/ Domesticated Animal. Rabies is on the decline but you can never take any chances, there is paper work involved.

4) There are between 40 and 45 barns inspections that need to be done on a yearly basis, which can take from 30 to 60 minutes due to varying amounts of farm animals at each resident's house in town. Doing the barn inspections on a yearly basis can help prevent health issue with farm animals that could in turn potentially impact the public, acting as preventive medicine. The state will also send me paper work in the mail on any new farm animal that comes into the town of Sterling, which I have to inspect, usually four or five of these a year, Each one can take 30 to 60 minutes. All these new animals that come into town need proper vaccines which depending on each individual animal, I may have to do some additional research such as a rare instance of when I had to inspect a new camel at Davis farmland. Paper work involved.

5) In addition, I have to keep an eye on all the bird flu/viruses that keep coming up yearly, making sure we do not have any problems in town. Some of these viruses never make it to Massachusetts, while others do. I usually listen to conference calls from the state for emergency planning just in case these viruses do make it into Massachusetts. Conference calls range from 30-Minutes to 1 hour. I also help coordinate the rabies/Micro chip clinic two times a year held at VCA Sterling Animal Hospital.

Respectively Submitted,  
Louis Massa  
Animal Inspector  
Town Of Sterling







# Town Of Sterling

## **Board of Health**

Butterick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2305 • FAX: (978) 422-0289

January 6, 2017

To: Sterling Finance Committee

From: Board of Health

Subject: BOH summary statement to accompany BOH submission to the Finance Committee

Sterling has been a member of the Montachusett Public Health Network (MPHN) for approximately 4 years. MPHN was funded by a state grant to enable development of a regional public health network among the public health agencies in the Montachusett region. There are 11 member communities. The membership agreement between Sterling and MPHN was approved and signed by the Selectmen in 2012. Fitchburg is the lead agency and provides administrative services.

MPHN provides an a la carte menu of public health services that are available to member communities. Initially the state grant provided all of the funding for these local services. Gradually funding for local services has been shifted to the individual communities. FY18 will be the first year that MPHN will be self-sustaining and each member community will pay for all the services rendered to that community. MPHN also applies for grants to fund dedicated public health initiatives. Currently Sterling is one of the communities participating in a grant that targets underage drinking. Grant funded activities are provided at no cost to the community.

The Sterling Board of Health proposes to utilize the following MPHN services for FY18.

Membership fee: \$600: Base membership is \$500 plus an additional fee based upon population. For a small community (under 10,000 population) that fee is an additional \$100.

Nursing Services: \$1000: These services include mandated MAVEN reporting to state agencies and investigation of routine reportable diseases. Immediate disease investigations are not included and are billed for time at \$50/hour plus travel at the federal mileage rate. In addition, pre-approved expenses may be charged. We do not anticipate any immediate disease investigations and have not budgeted funds for this activity in FY2018. However the \$1000 base fee insures that should immediate disease investigations be required, the needed resources are only a phone call away.

Inspections (Title 5, food, housing, bathing beaches, etc.): Retainer \$500: Services are billed at \$75/hour for time plus travel at the federal mileage rate). We anticipate some limited use of the MPHN inspector in cases where the Health Agent would be unavailable or where there would be a conflict of interest. Therefore we expect to use up the \$500 retainer. The alternate food

inspector has indicated that he is unable to continue in his position. As a result of the discussions of the Health Agent's workload brought up by the Finance Committee at our March 2016 meeting, we intend to seek an alternate inspector outside of MPH N who would be able to perform both food and Title 5 inspections. We propose changing the wording under part time wages (Richard Gibbons contracted Food Inspector) to Contracted Septic and Food Inspectors in the amount of \$5000. This would allow us to move away from using the MPH N inspector and provide increased inspection capabilities at lower cost.

Kiosks for needle (sharps) and drug collections: Opt-in fee \$100 plus anticipated disposal costs of (1000). Total: \$1100. Previously this cost has been entirely borne by the MPH N grant. Utilizing the MPH N contract with the disposal company likely reduces the cost of this service when compared to Sterling funding this important activity independently.

Since we propose utilizing the MPH N Nursing Services, we also propose to delete the duplicative line item of \$1500 for Wachusett Home Health Care.

# FY18 BUDGET WORKSHEET

Account Number	Account Description	2015 Actual	2016 Actual	2017 Final	2017 to date	2017 % to date	FY18 Dept Request	FY18 \$ Change	FY18 % Change
01250-51100	ANIMAL INSPECTOR SALARY	1,000.00	1,000.00	1,250.00	0.00	0.00%	1,500.00	250.00	20.00%
01250-57000	ANIMAL INSPECTOR EXPENSE	680.07	549.00	900.00	170.00	18.89%	900.00	0.00	0.00%





Town of Sterling  
FY18 Budget  
ANIMAL INSPECTOR

I. Summary Sheet

ANIMAL INSPECTOR

ACCOUNT DESCRIPTION	EXPENDITURES			BUDGETS		INCREASES	
	FY 2015 Spent	FY 2016 Spent	FY 2017 Y-T-D Dec 31, 2016	FY 2017 Appropriated	FY 2018 Request	Dollar Change	% Change
Salary	1,000	1,000	500	1,250	1,500	250	20.00%
Expenses	680	549	170	900	900	0	0.00%
Grand Totals	1,680	1,549	670	2,150	2,400	250	11.63%



# FY18 BUDGET WORKSHEET

Account Number	Account Description	2015 Actual	2016 Actual	2017 Final	2017 to date	2017 % to date	FY18 Dept Request	FY18 \$ Change	FY18 % Change
01510-51100	BOH SALARY	309.00	309.00	309.00	0.00	0.00%	309.00	0.00	0.00%
01510-51110	BOH INSPECTOR SALARY	74,352.49	78,495.28	82,000.00	29,130.84	35.53%	88,130.00	6,130.00	7.48%
01510-53000	BOH WACHUSETT HOME HEALTH CARE	0.00	0.00	1,500.00	0.00	0.00%	0.00	(1,500.00)	-100.00%
01510-53001	BOH MONTACHUSETT PUBLIC HEALTH	2,250.00	3,675.00	4,500.00	1,175.00	26.11%	3,200.00	(1,300.00)	-28.89%
01510-57000	BOH EXPENSE	4,074.16	4,387.09	4,530.00	842.98	18.61%	4,530.00	0.00	0.00%



Town of Sterling  
FY17 Budget  
BOARD OF HEALTH

III B. Personnel Services-Wages

Line	Name and Job Title	Hours/ Week	Grade & Step	Longev, Stipend, Quinn, Vacat BB	Wages FY15 Expend.	Wages FY16 Approp.	Wages FY17 Request	Wages FY18 Request
Full Time Wages	David Favreau Health Agent				56,699			
						57,821		
							58,978	
								60,158
Full Time Wages	Kathie Nickerson Associate Health Agent				18,764			
						19,139		
							19,522	
								19,912
Part Time Wages	Elaine Heller Administrative Assistant							
					0			
						1,500		
							3,000	
								3,060
Part Time Wages	Contracted Food and Septic Inspector							
					500			
						500		
							500	
								5,000
Casual Wages								

<b>TOTAL WAGES</b>					75,963	78,960	82,000	88,130
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Town of Sterling  
FY18 Budget  
BOARD OF HEALTH

VI. Detail General Fund Expenditures

	EXPENDITURES			BUDGETS	
	Actual Fiscal 2015 Expenditures	Actual Fiscal 2016 Expenditures	Fiscal 2017 Y-T-D Expenditures	Fiscal 2017 Appropriated	Fiscal 2018 Requested Budget
Expenses					
BOH- Clinics&WaterQuality Test	200.00	490	210	200	200
BOH - Supplies	1,010.77	1,130	151	1,500	1,500
BOH - Inspector's Expenses	2,413.39	2,392	482	2,330	2,330
BOH - Dues and Meetings	450.00	375	0	500	500
BOH - Expense		4,387	843		
<b>TOTAL EXPENSES</b>	<b>4,074</b>	<b>8,774</b>	<b>1,686</b>	<b>4,530</b>	<b>4,530</b>
BOH Montachusett's Pub Health	2,250	3,675	1,175	4,500	3,200
BOH Wachusett Home Health Care	0	0		1,500	0

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