



Billerica Board of Health

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Sandra Giroux, Chair
Marie O'Rourke, Vice Chair
Mike Grady, Secretary
Robert Reader
Elizabeth Villar, Ph.D.

Richard Berube, Director

BOARD OF HEALTH MINUTES March 4, 2019

Sandra Giroux, Chair called the meeting to order at 7:00 p.m. Also in attendance were Marie O'Rourke, Vice Chair, Mike Grady, Secretary, Robert Reader, Dr. Elizabeth Villar, Richard Berube, Director and Joanne White, Recording Clerk.

OPEN MICROPHONE

Mrs. Giroux asked if anyone was present for open microphone.

No one was present for open microphone.

ACCEPTANCE OF MINUTES

Mrs. O'Rourke made a motion to accept the Meeting Minutes of February 11, 2019.
Mr. Reader seconded. So vote unanimously.

BOARD OF HEALTH BUSINESS

Health Department Activity Reports

Mrs. Giroux stated the first item under Board of Health Business is the Health Department Activity Reports.

Copies of the Health Department Activity Reports for the month of February 2019 are included in the Board's package.

Mr. Berube explained that the Public Health Nurse, Christine West continues with her routine activities and Communicable Disease Case follow-ups. Christine attended the Region 3C Coalition meeting in February to prepare for the emergency coalition deliverables mandated by the state. The next set of deliverables is due by the end of March.

Mrs. Giroux asked the Board Members if they had any questions regarding Christine's report.

The Board Members did not have any questions.

Mrs. Giroux stated the next report is from Health Agent, Phavy Pheng.

Mr. Berube stated that he would update the Board Members on Phavy's court cases. The hearing for 11 Kingston Street scheduled for March 4, 2019 was rescheduled because of the weather conditions. 616 Middlesex Turnpike, the owner failed to show up for the February 25th hearing, however the fine has been paid. A criminal complaint has been issued.

Mrs. Giroux asked what is going on with the property at 183 River Street.

Mr. Berube replied that no progress has been made with that property. The town is in the process of taking over the property for back taxes.

Mr. Grady asked if Crescio Company has finalized the stormwater plan for Billerica Avenue.

Mr. Berube stated that the Board of Health has reviewed the preliminary plan. We are waiting for the plan to be finalized.

Mrs. Giroux asked the Board Members if they had any questions regarding Phavy's report.

The Board Members did not have any questions.

7:15 p.m. Hearing for the Adoption of Revised Rules and Regulations – Chapter 4 Tobacco Control Regulations Governing Vaping Products

Mrs. Giroux stated the first Hearing is for the Adoption of Revised Rules and Regulations for Chapter 4 Tobacco Control Regulations Governing Vaping Products. Mrs. Giroux explained that on Monday, March 4, 2019 at 7:15 p.m. in Room 210 of the Billerica Town Hall, the Board of Health will hold a public hearing on the proposed amendments and regulations on tobacco products and smoking. The public is invited to attend and express their concerns. Anyone that would like to speak, please state your name, the name of your establishment and the address of your establishment. The proposed amendment to Billerica's tobacco product regulations, Chapter 4 would prohibit the sale of all vape products including but not limited to e-cigarettes, vape juices, vape pods in all establishments except for adult-only retail tobacco stores, vape/smoke shops where entry by persons under the age of 21 is always prohibited and the primary purpose of the business is to sell tobacco and/or vape products. The Board will also cap the number of adult-only retail smoke/vape shops in Billerica. This proposed amendment will go into effect July 1, 2019. The Board will consider the proposed amendments to address the prevalence of vaping among under age youth. Youth as young as elementary school are having access to these products. It is affecting their childhood, growth and development in the school systems. It is our job as public health to protect them.

Mrs. Giroux introduced the first guest speaker, Cheryl Sbarra.

Cheryl Sbarra, Massachusetts Association of Health Boards, Director of Policy and Law identified herself. Ms. Sbarra explained that we have heard from more and more school districts and mayors have heard from superintendents, school committees and parents, about a wide spread epidemic of vaping products. These vaping products are being used by the high school, middle school and now elementary school students. You will hear that vaping products are considered a benefit for harm reduction smokers. Smoking a combustible cigarette is one of the worst things you can do for your health. There are a lot of physicians that take a stand that if adult combustible smokers switched to a vaping product that would probably be more helpful. Billerica is not prohibiting these products. They are just restricting them to adult-only retail tobacco shops in Billerica. So the vaping products will be available to residents in Billerica. Marketing of these products in the convenient stores is driving this epidemic. I am sure the retailers are trying to do the right thing. However, it has been said that minors are not getting these products from convenient stores only but from on-line sales. However, marketing of these products in these stores is a large part of the problem. The Attorney General's office has strengthened their enforcement of on-line sales of these products. We as public health professionals have the authority to try to arrest this epidemic as best as we can. There are some municipalities that have implemented this new regulation and there are many more that are considering this regulation. Ms. Sbarra stated that a law suit has been filed in Somerville, MA. They prohibited all e-cigarettes including e-cigarettes with tobacco flavor. The only place they can be sold in is adult only retail tobacco stores. Billerica is considering restricting all e-cigarettes. Ms. Sbarra explained Billerica's regulations would not restrict menthol products or remove tobacco flavored products. Ms. Sbarra stated that she would answer any questions that the Board may have.

Mike Higgins, Substance Abuse Coordinator for the Town of Billerica, identified himself. Mr. Higgins explained that he was hired four (4) years ago to try to straighten out some of the issues in Billerica. My background is thirty-five (35) years in the court system as a Probation Officer. I have run many drug programs. I also run alternative programs for kids that get in trouble. I do not begrudge anyone that wants to make money. My issue is do you know what you are selling? FDA took over the aspects of vaping in 2016. Any study that has come out about vaping is worse than the last one. In 2016, the study showed cancerous aspects of polyglycol and diacetyl in all the drugs and colored vapes. No one knows that and no one pays attention. We have a very serious problem in Billerica. Mr. Murphy, Principal of Billerica High School will speak after me. Between Billerica High School and Shawsheen Valley Technical High School last year forty-two (42) students came through my program for vaping violations in the school. It is such an issue in the schools right now that I had to buy test strips to see what is marijuana or vape or regular tobacco. 75% is marijuana. You have to pay attention to what you are smoking. Most of the students that come through the Billerica Adolescence Recovery (BAR) program tell me where they bought their vapes. There is an issue in this town. It is how you want to handle it. Some studies have been done and are inclusive because the FDA has only had two (2) years to deal with this problem. There is an epidemic in this town. This town spends about \$10,000 a year to try to straighten out this epidemic. It is your decision on how you want to vote.

Tom Murphy, 35 River Street, Principal of Billerica Memorial High School identified himself. Mr. Murphy stated that he has been the principal since 1994. Four (4) years ago there was no smoking in the high school. It lasted for two (2) years. Two (2) years ago we became aware of vaping. Vaping is very prevalent and significantly impacts every group of students. They have

access to vape products. The question is where are they getting the vape products from? The industry is marketing towards youths. Skittles are the newest vape product.

Mrs. Giroux stated that we will now go row by row for anyone in the audience that would like to express their concerns or comments on the issue before us. Please state your name, the name of your establishment and state your reasons that you are for or against this amendment.

Jess Oyer, Attorney for the Law Firm of FletcherTilton, identified himself. Attorney Oyer explained that he represents the Coalition Responsible for Retailing (CRR). CRR looks out for retail tobacco stores. CRR agrees that the problem needs to be addressed. What I don't agree with is the manner in which the regulation is being addressed. This is damaging to the retailers. There are several things I would like to suggest. In Billerica from 2011-2019 the FDA conducted 287 compliance checks and 275 checks were successful. There were only 12 failures in the course of nine (9) years which equals a 96% success rate.

Mrs. Giroux stated that we do our own compliance checks and have a different set of numbers.

Mr. Berube stated that he does not know how the FDA conducts their compliance checks. No one contacts us, so I question the results of their checks.

Mrs. Giroux stated we have a different set of results so I am going to dispute that fact

Attorney Oyer stated the next point is that the regulation states that the CDC study indicates that 14% of underage youths have changed where they buy their cigarettes. 86% of the youths are buying them from somewhere else.

Mrs. Giroux explained that the Billerica Substance Abuse Prevention Committee does an anonymous survey and the information reveals that the youths are buying these products in stores. So we will dispute that fact.

Attorney Oyer asked do you know what the percentage is.

Mrs. Giroux replied that Mr. Higgins will be able to get that information for you.

Attorney Oyer stated that in forty-four (44) other states there is what is called Purchases and Possession Law. The purpose of that law is to make it illegal for a minor to purchase and possess these products. The behavior you are trying to change is the youth's use of the product. There are studies that demonstrate the laws are only as good as the enforcement. We do recommend a system that would scan the individual's license into a program and provide how often that person is buying the vape products. Attorney Oyer talked about black market as a result of the regulations and vaping versus combustibles. This isn't a total ban it is just a restriction. I am not here to convince you of anything I am here to present you with ideas.

Mrs. Giroux thanked Attorney Oyer for his input.

Dr. Villar stated that she is a member of the Board and is a PhD Chemist. Dr. Villar explained that she is familiar and knows a lot about these compounds and the science that goes into them. I am available for research if needed.

Rayan Saliba, 7-Eleven Franchise Owner, 314 Boston Road identified himself. Mr. Saliba explained that he has children and he does not want them or any other youths to smoke or use vape products. I am the store owner and it is my responsibility to train my people not to sell any tobacco products to a minor. We have been doing a good job. This is my livelihood. What you are proposing is not the solution. I am not the problem. Some of the minors are getting the tobacco products from gas stations and convenient stores maybe that is true, it can happen. Most of them are getting it from the internet, the black market and through family and friends. We are not the problem and this is not the solution. Thank you.

Jim Ellis, Owner of Jim's Quick Stop, 502 Boston Road identified himself. Mr. Ellis explained that he has been selling cigarettes and checking ID's for 27 years. I have talked to many of the individuals that purchase tobacco products about where will they buy the product. They told me that they will go to New Hampshire if they cannot buy it in Billerica.

Mrs. Giroux replied that I understand your point however we have to start someplace. If they have to drive ten, fifteen or twenty miles maybe that will prevent them from buying it that day. I am not taking that as a valid argument.

Mr. Ellis stated that he agrees you have to start somewhere. I don't agree that there should only be a couple of vape stores where it can be purchased. All the retail owners do the best job we can. We check ID's. You need to start someplace else. I have asked the youths where will they buy the products. They have said no problem we will get it somewhere. Mr. Ellis explained that he has seen underage youths smoking out in front of his store and the police officer cannot do anything about it. Mr. Ellis asked the Board if they had any questions.

The Board did not have any questions.

Ken Camille, Region Manager, Cumberland Farms, 301 Boston Road identified himself. Mr. Camille stated that youth vaping problems are important to address. As a member of the community we acknowledge the problem. Youth vaping epidemic is unacceptable. Cumberland Farms has a strong record of compliance across the state. We had 2 violations and have addressed them. Mr. Camille explained how they addressed the staff when a violation occurred. We are doing the best we can. We take selling tobacco products to a minor seriously. We are not perfect. We are constantly investing to improve the process. Mr. Camille provided the Board with a copy of an article from the New England Journal of Medicine regarding Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. Vaping products are an important part of the equation when an adult is trying to quit. Mr. Camille read the notes that he had wanted to share with the Board of Health. We urge the town to take a different approach. It doesn't make sense to rush into a regulation that will hurt law abiding retailers. The town should consider other options.

Mrs. Giroux thanked Mr. Camille.

Ray Nurzynski, Owner of Fill N Chill, 653 Boston Road identified himself. Mr. Nurzynski stated that the tobacco regulation changes in the past (single cigar, flavored tobacco, etc.) have worked. One of the most effective regulations was raising the age of selling tobacco products to 21. I do not think this will solve the problem. A lot of the youths are getting the products on the internet. I work behind the counter 8-10 hours a day and the average age buying tobacco products in my establishment is 45. My establishment is not anywhere near a school. A lot of people will go to New Hampshire or buy on-line. This will not be the solution. There must be a better way.

Mrs. Giroux stated we cannot be blaming the internet for all the problems.

Kathleen O'Leary, a resident in Reading, identified herself. Ms. O'Leary explained that the changes you are proposing tonight have been implemented in Reading. I am also a nurse of thirty (30) years and a nurse practitioner for the past fifteen (15) years as a tobacco treatment specialist. I was certified at UMass Medical School eight (8) years ago. I work at a 400+ bed care facility in this area. My title is Tobacco Treatment Nurse Practitioner. I consult with all patients who are admitted and who say yes to using nicotine products within the last thirty (30) days. These patients are going through withdrawal. I have worked with adults and youths. I give them suggestions, tips, health medications and tools to help get them through the withdrawal stage. Nicotine withdrawal is similar to opiates, alcohol or caffeine. We then counsel them to see what their smoking status is. The average age ranges from 18 to 99. I work with forty (40) to sixty (60) patients a day. 98% of my patients want to quit. A lot of these patients have used these tools. Have I seen it work, yes. Do some go back to smoking, yes. Our goal is to get people to quit and stay that way. Tobacco has changed dramatically. When I was certified eight (8) years ago there was 3,800 known chemicals in tobacco, now there is 7,000. It is a factor that we can control and help people remove from their life style. Health care costs are rising and we want to keep these people healthy and out of the hospital. We do see people using e-cigarette vape. The United States is doing some research on e-cigarettes. Formaldehyde is a heating unit and is not FDA regulated. Companies can put whatever they want in vaping products and they do. These are facts. I have seen popcorn lung which is from a chemical flavoring called diacetyl. It causes permanent scar tissue. I have seen cases in young adults. If we can keep these products out of one child's hands if not a thousand it is worth it. We know that the brain develops between the ages of 14 to 24. We are born with nicotine receptors. Our scientific medical approach is to use FDA approved medications such as nicotine gum, lozenges, the patch, nasal spray, bupropion and inhalers to help with this addiction. The receptors will get used to being without nicotine in 4-8 weeks. However if you reintroduce nicotine the receptors will turn on again. Ms. O'Leary explained about the behavioral factors, the risk of stroke and heart attacks from using these products. Ms. O'Leary stated that the average age of using a nicotine product is eight years old. How do they get these products? On-line, at the store, from an older brother or cousin. Ms. O'Leary stated that she would be happy to answer any questions that the Board may have.

Mrs. Giroux thanked Ms. O'Leary

Mrs. Giroux asked if anyone else would like to speak. Mrs. Giroux asked Mr. Curran if he would like to comment.

John Curran, Town Manager identified himself. Mr. Curran stated that he would speak from a municipal perspective and with the data that the last speaker presented I feel that we can regulate this product through 1 or 2 places of sale rather than across town. Mr. Curran commented that the

speaker from Cumberland Farms talked about effects of e-cigarettes and was not very passionate. Somebody that has to deal with just the retail smoke shop will be better regulated and we can keep a better eye on that than the whole town. One product line not being sold on the shelf in a convenient store in this town will not kill the business but that product line can kill your kids. One vape cartridge has as much nicotine as a pack of cigarettes. Juuls and vape products are designed to get

your kids hooked. I have an eight (8) year old and a four (4) year old and I don't want them using these products or be exposed to these products. I don't want them walking into a convenient store and seeing these products everywhere. I think they should be hard to get. These vape products have been primarily used for marijuana. I was in a meeting talking about the sale of marijuana in this community. This problem isn't going away. To say that we should find other ways to solve the problem and not deal with this tonight is just a copout. We need to do whatever we can to regulate this product. As the previous speaker mentioned this product is not FDA approved. There are a lot of things we do not know about this product and the harm that they can cause. They are being designed with scents to attract the kids. We need to take this very seriously with the Board of Health. We need to impose regulations so that we can do the best job we can do to try to regulate this product and the impacts it can have on our children.

Mrs. Giroux asked if anyone else in the audience would like to speak.

Mrs. Giroux asked the Board Members for their questions or comments.

Dr. Villar stated that this is a hard case to make because some of the tobacco retailers think it should be about regulations and compliance checks.

Mr. Grady stated that he agrees with the Town Managers concerns. When we do this other communities will follow. I really do not think they will have to go to New Hampshire, there are other shops around. It will be easier to monitor one or two adult-only retail tobacco smoke shops. No one went out of business when the regulation was changed about flavored and blunt wraps, etc. You have enough time to get rid of your inventory. Our job is to look out for the well-being of the entire community.

Mr. Reader stated that he can understand where the retailers are coming from but it is hard to dispute this when you think of the youths in this town.

Mrs. O'Rourke stated that Mr. Curran and the last two speakers have said it all. It has to start somewhere. It is pretty sad when an eight (8) year old has access to these products. They are just babies. I feel bad for the retailers however, I don't think it will affect any of the businesses in town.

Mrs. Giroux stated that eight (8) years old is too young to start an addicted behavior that is going to affect the rest of their life. Breathing issues, asthma, etc. there is so many medical conditions that you can get without smoking. You don't need to add that risk to it. I am sorry that it affects your business but the welfare of the children and the welfare of the community come first. Currently, we have one adult only retail tobacco store, there are permits available if anyone choses to convert to a twenty-one (21) plus store until the number of capped stores have been reached.

Mrs. Giroux asked the Board to make a motion to cap the number of adult only retail tobacco stores in Billerica.

Mr. Berube commented that he has discussed this with Ron Beauregard, Healthy Community Tobacco Control Coordinator and it was decided that there should be 2-3 adult only retail tobacco stores in Billerica.

The Board Members discussed the number and agreed that the cap would be three (3) adult only retail tobacco stores in Billerica

Mr. Grady made a motion to cap the number of adult only retail tobacco stores in Billerica to a maximum of three (3).

Mrs. O'Rourke seconded. So voted unanimously.

Mrs. Giroux reiterated that someone that currently has a tobacco permit can convert to an adult only retail tobacco store. Mrs. Giroux asked for a motion to be made that prohibits sales of all vape products in all establishments effective July 1, 2019.

Dr. Villar made a motion to adopt the regulations that prohibit sales of all vape products (including but not limited to e-cigarettes, vape juices, vape pods) in all establishments, except adult only retail tobacco stores effective July 1, 2019.

Mrs. O'Rourke seconded. So voted unanimously.

Mrs. Giroux explained this is a Board of Health Regulation. It is not a Warrant Article. This does not go to Town Meeting to be voted on. It is official. This goes into effective July 1, 2019.

7:25 p.m. Jumbo Capital Management – 129 Concord Road – Request for a Variance and a Stormwater Management Permit

Mrs. Giroux stated the next hearing is Jumbo Capital Management, 129 Concord Road, requesting a Variance and a Stormwater Management Permit.

Nathan Mahonen provided the Board with a large scale drawing of the proposed project to be located at 129 Concord Road.

Nathan Mahonen, Assistant Project Manager, Bohler Engineering representing Jumbo Capital Management, identified himself. Mr. Mahonen explained that the proposed project is to be located at 129 Concord Road. The site contains approximately 31 acres of land situated on the westerly side of Concord Road. The site is located within the industrial district and the flood plain overlay district. The applicant has applied for a Variance and a Stormwater Management Permit for the project associated with the Concord River. Mr. Mahonen pointed to the plans and explained the floodplain area and the flood plain buffer. The proposed project will include a 45,000 square foot expansion to the existing Entegris building, modifications to the existing parking areas and construction of multiple solar arrays over the existing parking areas. The Stormwater Management System has been reviewed by the Board of Health and the Conservation Commission peer reviewer.

The Stormwater Management will be modified for the proposed expansion to allow for compliance with the Department of Environmental Protections (DEP) stormwater management regulations. Mr. Mahonen pointed to the plans and explained that the solar arrays would be located over the existing paved parking areas and landscaping will be added around the site. The work will be done within the 100 foot buffer to the flood plain. There will be some minor repairs and maintenance to the existing stormwater management system. There will be no additional fill. This project has been approved by the Planning Board and the Conservation Commission. BETA has reviewed the project and also given approval for this project. Mr. Mahonen stated that he would answer any questions that the Board may have.

Matt Crowley, Project Manager, BETA Group identified himself. Mr. Crowley explained that BETA Group performed the peer review for the Conservation Commission and the Board of Health for stormwater management, flood plain and some of the wetland aspects. Included in the Board's package is a copy of the our review letter dated February 7, 2019. The applicant has addressed all of BETA's comments. BETA has recommended several conditions at the end of the letter. The plans have been revised to show three (3) new water quality units in locations that will capture runoff from parking areas and not be diluted by rooftop runoff. This will provide an additional improvement while maximizing the effectiveness of the units. This will be a significant improvement over the existing conditions. Mr. Crowley stated that he would answer any questions that the Board may have.

Mrs. Giroux asked if there were any abutters in the audience that would like to ask any questions.

No abutters were present.

Mr. Berube stated that this will be a vast improvement over what is there now. The installation of the solar canopies in the parking area is something that you will see occur in more projects. Mr. Berube stated that he would recommend granting the Stormwater Management Permit as well as the Variance with the conditions recommended by BETA Group.

Mrs. Giroux asked the Board Members if they had any questions.

The Board Members did not have any questions.

Mr. Grady made a motion to grant a Variance and Stormwater Management Permit for Jumbo Capital Management to allow the construction of an addition to an industrial building for work within one hundred (100) feet of the Green Engineering Flood Plain and the installation of solar arrays and also include the conditions recommended by BETA Group based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (2) and Chapter 6 inclusive.

- 2) The Board of Health conducted a public hearing on March 4, 2019 and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The project is located at the southern section of the existing Entegris Building and northwest of the Nuvera Building. The project proposes to construct a 45,000 square foot addition to the Entegris Building with reconfigured paved parking areas, landscaping and utilities. Also, solar arrays are proposed north of the Entegris Building and northwest of the Nurvera Building in the parking areas. Stormwater management for the building expansion area includes the capture of stormwater runoff using deep sump catchbasins and routing a portion of the building addition to a subsurface infiltration chamber system. In addition, significant improvements will be made to the existing stormwater management system to treat runoff from portions of the existing parking areas.
- 4) The project does not fall within the FEMA Flood Plain and the Green Engineering Flood Plain (GEFP) associated with the Concord River. However, the northwestern portion of the site is within the 100 foot buffer to the GEFP. Work within this area is limited to repaving of the existing parking lot and a small area of construction for solar canopies. The work will not have a detrimental impact to the GEFP.
- 5) The project was reviewed by Matt Crowley of BETA Group, Inc., the Board of Health's Consulting Engineer, for compliance with applicable drainage and Flood Plain regulations.
- 6) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
- 7) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard Conditions #1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28 and 29.

- A) All construction must be in accordance with the following plans submitted for review and approval:
 - a) Site Plan entitled "Site Development Plans for Proposed Jumbo Capital Management Building Expansion and Parking Lot Solar Arrays," prepared By Bohler Engineering, dated November 12, 2018, revised to January 31, 2019 and stamped by John Kucich, RPE#41530.
- B) If dewatering is determined to be necessary during work, the applicant shall submit a dewatering plan to the Board of Health for review and approval prior to any dewatering activity occurring;

- C) The approved Operation and Maintenance Plan for the stormwater management system must be submitted to the Board of Health prior to the approval of an occupancy permit.
- D) The owner shall maintain maintenance records for the Stormwater Management Operations and Maintenance in accordance with the approved plan and provide them to the Board of Health upon request.
- E) The applicant shall submit a Stormwater Pollution Prevention Plan (SWPPP) and copy of the EPA Notice of Intent to the Board of Health for review and approval at least fourteen (14) days prior to beginning construction.
- F) An Agent of the Board of Health or its designees shall observe the subsurface soil condition in the area of excavation for the subsurface stormwater infiltration systems. The system shall not be constructed until the subsurface soils have been deemed suitable for infiltration.
- G) Perimeter erosion controls shall consist of silt fence and compost sock used in combination.
- H) All silt fence shall be removed from the site prior to the issuance of a Certificate of Compliance.
- I) The stockpiling of materials within 50 feet of the wetlands shall be prohibited.
- J) Signed Operations and Maintenance Plan and Maintenance Agreement shall be recorded with the Middlesex Northern Registry of Deeds prior to the issuance of a Certificate of Compliance with the Board of Health.

Mr. Reader seconded. So voted unanimously.

7:30 p.m. Town of Billerica – 250 Boston Road – DPW Garage Generator Installation - Request for a Waiver of Regulations

Mrs. Giroux stated the next hearing is Town of Billerica, 250 Boston Road requesting a Waiver of Regulations for the Installation of a Garage Generator at the Department of Public Works.

Kelley Conway provided the Board with a large scale drawing of the proposed garage generator installation at 250 Boston Road.

Kelley Conway, Town Engineer identified herself. Ms. Conway explained that the proposed project would be located at the Department of Public Works (DPW) yard, 250 Boston Road. The project includes the installation of an 80 kilowatt generator that would service the highway and recreation buildings and also the mechanics garage. Ms. Conway pointed to the plans and explained where the generator would be located inside the fenced in area of the highway yard. The generator will be powered by natural gas and located outside of the FEMA flood plain. However, the entire site is in the Green Engineering Flood Plain. Ms. Conway stated that she would answer any questions that the Board may have.

Mr. Berube explained that it is a necessity to keep the highway department operating under loss of power. The loss of flood storage will be negligible.

Mrs. Giroux asked the Board Members if they had any questions.

Mrs. O'Rourke asked will the generator be placed on a slab.

Ms. Conway replied yes it will be put on a cement slab.

Mrs. O'Rourke asked will the generator be wired into the building.

Ms. Conway replied yes.

Mr. Grady made a motion to grant a Waiver of Regulations for the Town of Billerica to allow for the installation of an emergency generator at the DPW Highway Department, 250 Boston Road facility within the flood plain or within one hundred (100) feet of the flood plain based upon the following facts and subject to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request, and as per plan submitted by the Billerica Department of Public Works, is within an area subject to protection under the Board of Health's Rules and Regulations, Chapter 5, Section 5.5.005(1)(2).
- 2) The project consists of the installation of 80 kW emergency generator at the DPW Highway Department facility located at 250 Boston Road. A portion of the property falls within the FEMA Flood Plain and the entirety of the property falls within the Green Engineering Flood Plain (GEFP). The work will be limited to an area that only falls within the GEFP.
- 3) The emergency generator is necessary for the DPW Highway Department to continue operations during times of power loss. The minimal loss of flood storage will be negligible.
- 4) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment, and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard Conditions # 2, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 25.

- A) All construction must be in accordance with plans and information submitted for review and approval, prepared by Woodard & Curran, dated February 2019.

Dr. Villar seconded. So voted unanimously.

7:35 p.m. RKACO, LLC – 292 Treble Cove Road – Request for a Variance for work within 25 feet of the Flood Plain

Mrs. Giroux stated the last hearing is RKACO, LLC, requesting a Variance for work within 25 feet of the Flood Plain at 292 Treble Cove Road.

Attorney Weicker provided the Board with a large scale drawing of the proposed project to be located at 292 Treble Cove Road.

Attorney Raymond Weicker, representing RKACO, LLC identified himself. Attorney Weicker explained that Mr. Ahern is seeking a variance for work within twenty-five (25) feet of the flood plain. Attorney Weicker pointed to the plans and explained the location of the proposed dwelling.

Robert Ahern, applicant and owner of RKACO, LLC identified himself. Mr. Ahern explained that the house burned down in 1984. The septic system has been designed and approved however it does not meet the setback standards.

Attorney Weicker pointed to the plans and explained the location of the leach field.

Mr. Berube explained that as Mr. Ahern mentioned the Board of Health has reviewed and approved the septic plans. The issue is that the system will be within four (4) feet of the boundary in the buffer zone. There will be no activity in the flood plain. They cannot put the septic system one hundred feet away otherwise it would be in the middle of the road.

Attorney Weicker explained that because of the topography and shape of the lot it is impossible to put the septic system any where else.

Mr. Berube explained that the house is very old. The house was like a summer cottage.

Mr. Reader asked where 292 Treble Cove Road is.

Mr. Berube replied near Winning Pond. Mr. Berube explained that since there was a house on the property Mr. Ahern has the right to construct another house.

Mrs. Giroux asked if there were any abutters present.

Patricia Sullivan, 1 Goldenrod Lane, identified herself. Ms. Sullivan stated that the house that burned down years ago was more like a summer camp. It was vacant most of the year.

Elizabeth Sullivan identified herself. Ms. Sullivan stated that my parents asked about buying that land a long time ago to construct a garage. They were told they could not build a garage because there was too much water on that property.

Mr. Berube asked who told you that.

Ms. Sullivan explained that about four (4) years ago, my husband came to the town hall and was told that we could never build anything on that property.

Mr. Berube stated that Mr. Ahern went through the proper procedures and was told that he could purchase the property. It is a buildable lot.

Mrs. Giroux asked the Board Members for their comments.

Dr. Villar asked if a lot of trees and shrubs would be removed and was an evaluation done for flooding.

Attorney Weciker replied that Norse Environmental did the analysis with respect to the removal of trees. A retaining wall will be constructed. Norse Environmental is confident that the control shrubbery, the landscaping and infiltration basins will prevent any erosion.

Dr. Villar stated that the Board has had issues in the past where a house was being proposed and a lot of flooding occurred. Has an evaluation been done on this property.

Attorney Weciker replied my assumption is that they did not design a house that would float away in the event of a flood. There will be a deck off the back that will be built on pilings. Once the proper foundation and drainage is put in place there will not be an issue.

Mrs. O'Rourke asked will there be a foundation.

Mr. Ahern replied yes.

Mrs. O'Rourke asked will louvers be put in so that the water can flow through.

Mr. Berube replied they do not need louvers because they are outside of the flood plain.

Mrs. O'Rourke asked have you gone before the Conservation Commission.

Attorney Weciker replied yes.

Mrs. O'Rourke asked has Conservation approved this project.

Attorney Weciker replied no, Conservation appealed it to the state with respect to the buffer area.

Mr. Berube explained that he recommends granting the variance provided that they infiltrate roof and driveway runoff so that there will not be any runoff into the pond.

Attorney Weciker replied that was one of the things that was considered and planned on.

Mr. Reader made a motion to grant a Variance for work within 25 feet of the Flood Plain at 292 Treble Cove Road provided that they infiltrate roof and driveway runoff based on the following findings of fact and pursuant to the following conditions:

FINDINGS OF FACT

- 1) The work described in the applicant's request is within an area subject to protection under the Billerica Health's Rules and Regulations, Chapter 5, Section 5.5.005 (1).
- 2) The applicant proposes to construct a single family dwelling on property that abuts Winning Pond. Previously, the property contained a campstyle dwelling that was destroyed by fire in 1984. FEMA Flood Plain and the Green Engineering Flood Plain (GEFP) encroach upon a portion of the property. However, the proposed dwelling will be located upland approximately four (4) feet outside the Flood Plain at its closest point. Furthermore, the basement floor of the proposed dwelling will be elevated two (2) feet above the flood elevation. Stormwater management will be addressed through the installation of infiltration structures for roof and driveway runoff.
- 3) The Board of Health has determined that the actions proposed by the applicant are adequate measures to protect the public health and environment and complies with the intent of Board of Health Rules and Regulations. Further, approval of the applicant's request will not be detrimental to the public health and environment.

CONDITIONS

Standard Conditions # 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 24, and 25.

- A) All construction must be in accordance with plans submitted for review and approval, prepared by Frederick W. Russell, PE, dated October 8, 2018 and revised to January 9, 2019 and stamped by Frederick W. Russell, Jr., RPE#36713.
- B) Infiltration structures for roof and driveway runoff shall be installed in accordance with plans approved by the Board of Health. The Board of Health shall be properly notified to inspect the installation of said structures.

Mr. Grady seconded. Four voted in favor, one vote opposed (Dr. Villar).

Mr. Reader made a motion to adjourn. Mrs. O'Rourke seconded.

The Board adjourned at 8:30 p.m.

Respectfully submitted,

Mike Grady
Secretary

Joanne M. White
Recording Clerk