



# ***Billerica Board of Health***

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Robert Reader, Chairman  
Sandra Giroux, Vice Chair  
Amit Gandhi, Ph.D., Secretary  
Marie O'Rourke  
Chris Ravin

Kristel Bennett, Director

## **BOARD OF HEALTH MINUTES July 10, 2023**

Robert Reader, Chairman called the meeting to order at 7:00 p.m. Also in attendance were Sandra Giroux, Vice Chair, Amit Gandhi, Ph.D., Secretary, Marie O'Rourke, Chris Ravin, Kristel Bennett, Director and Joanne White, Recording Clerk.

### **OPEN MICROPHONE**

Mr. Reader asked if anyone would like to comment on Open Microphone.

No one was present to speak on Open Microphone.

### **ACCEPTANCE OF MINUTES**

Mrs. Giroux made a motion to accept the Meeting Minutes of June 5, 2023.

Mrs. O'Rourke seconded. So voted unanimously.

### **BOARD OF HEALTH BUSINESS**

#### **Next Meeting – August 7, 2023**

Mr. Reader stated the next Board of Health Meeting is scheduled for August 7, 2023.

Mrs. Bennett requested that the August 7, 2023 be rescheduled to August 14, 2023 because she will be on vacation.

Dr. Gandhi and Mr. Ravin stated that they will be on vacation August 14, 2023 so the Board Members agreed to have the next meeting September 11, 2023.

Mrs. O'Rourke made a motion that the Board Members take a summer recess for the August 2023 Board of Health Meeting.

Mrs. Giroux seconded. So voted unanimously.

The next meeting will be September 11, 2023

**Health Department Activity Reports**

Mr. Reader stated the next item under Board of Health Business is the Health Department Activity Reports.

Mr. Reader stated the first activity report is from Health Agent, Phavy Pheng. Mr. Reader asked the Board Members if they had any questions.

Dr. Gandhi asked what the next steps for the owners at 232 Pond Street are.

Mrs. Bennett replied that 232 Pond Street is the first hearing tonight. Mrs. Bennett is requesting that the Board vote for an Enforceable Schedule. The Town is able to place a lien on the property. I contacted the mortgage company and requested a letter because Mr. and Mrs. Hughes have a reverse mortgage. There is sewer on Oak Street, however the pump station that serves that area can only handle the new development.

Dr. Gandhi asked about the criminal complaint at 24 Pelham Street.

Mrs. Bennett explained the owner failed to show up in court on June 27, 2023, so a criminal complaint was issued. Phavy will continue to follow that case.

Dr. Gandhi asked what the status of the code violations at 84 Alexander Road is.

Mrs. Bennett replied that the complainant has not responded to Phavy's phone call regarding the nature of the complaint.

Dr. Gandhi asked about the rat infestation at 25 Bicknell Road.

Mrs. Bennett replied that Phavy contacted the complainant and offered to conduct an inspection of the property. The owner refused so we are not moving forward with this case.

Mrs. Giroux asked what the status of 11 Lawrence St. is.

Mrs. Bennett replied that Phavy is drafting a letter for access to the property. One of the 3 occupants moved out. It was crowded in the unit and there was a lot of stuff in the unit. We are sending a letter to the owner requesting access for an inspection.

Mrs. Giroux asked is this a hoarding case or just a dwelling being overcrowded?

Mrs. Bennett replied the dwelling is overcrowded due to three (3) occupants in the dwelling and everyone having a lot of stuff.

Mrs. O'Rourke asked are the two lots on Carmena Road owned by the same person.

Mrs. Bennett explained that the owner of the vacant lot on Carmena Road has requested additional time to clean up the lot. The owner of 2 Carmena Road has removed 90% of the debris from the property so Phavy granted the owner until mid-July to finish cleaning up the property.

Mrs. Giroux asked when will the hoarding issue at 483 Middlesex Turnpike be resolved.

Mrs. Bennett replied that the owner is working with the Age Span Agency to finish the cleanup process. He has taken care of the outside violations and is working with Age Span to clean up the inside.

Mrs. Giroux asked about 113 Boston Road that is on both Phavy and Shelagh's report.

Mrs. Bennett explained that this has been going on for a while. In the rear of the building the siding is damaged and falling apart and there is also mold and grease on the siding. Phavy has spoken to the unit owners, and they are going to repair the siding. Shelagh's report addresses the dumpster area that is not being taken care of, emptying the grease trap and the removal of any trash or debris from the dumpster area.

Mrs. Giroux asked who is responsible for taking care of the mold, the grease and the siding.

Mrs. Bennett replied that Bella Pizza is responsible for the grease and the dumpster area, the condo owners are responsible for the siding.

Mrs. Giroux stated that with all that is going on in that area is Bella Pizza serving food.

Mrs. Bennett replied that Bella Pizza is not open.

Mr. Reader stated the next activity report is from Health Agent, Shelagh Collins. Mr. Reader asked the Board Members if they had any questions.

Mrs. O'Rourke asked how long does it take Shelagh to respond to the complaint regarding unsanitary conditions at Maggie's Other Farm.

Mrs. Bennett replied that complaints of this nature are usually made that day or the next day depending on when the Health Department receives the complaint.

Mrs. Giroux asked have the area around the donation bins at 498-506 Boston Road been cleaned up.

Mrs. Bennett replied that she would ask Shelagh what the status of the area is.

Mr. Reader stated the next activity report is from Bethany Slack, Community Services Coordinator. Mr. Reader asked the Board Members if they had any questions.

Dr. Gandhi asked what Bethany is referring to when she states that she is working with residents looking for more resources for healthy food.

Mrs. Bennett replied Billerica Housing residents and residents with disabilities.

Mrs. Giroux asked are they registered with the Billerica Food Pantry.

Mrs. Bennett replied that she will check into that.

Mr. Reader stated the last activity report is from Kristel Bennett, Director of Public Health. Mr. Reader asked the Board Members if they had any questions.

Dr. Gandhi commented that there is not enough parking to accommodate residents at the Farmer's Market located at 793 Boston Road.

Mrs. O'Rourke asked how the new outdoor deck and kitchen renovations at Turnpike Market are.

Mrs. Bennett explained that the area came out quite nice. The owner did a great job on the inside of the store. The bathrooms have been renovated. The deck looks fabulous.

Dr. Gandhi and the Board Members congratulated Mrs. Bennett on her receiving her Soil Evaluator Certification.

**7:15 p.m. Robert Hughes- 232 Pond Street – Administrative Hearing for Violations relative to Massachusetts General Law Chapter III, Section 122, the Massachusetts State Environmental Code 310 CMR 15.000, and the Massachusetts State Sanitary Code 105 CMR 410.000**

Mr. Reader stated the first hearing is Robert Hughes, 232 Pond Street, Administrative Hearing for Violations relative to Massachusetts General Law Chapter III, Section 122, the Massachusetts State Environmental Code 310 CMR15.000 and the Massachusetts State Sanitary Code 105 CMR 410.000.

Mrs. Bennett explained that at the last meeting, the Board requested more information regarding the sewer availability on Oak Street. I spoke with the Town Engineer, Kelley Conway and at this time sewer is not available in that area. The pump station does not belong to the town. I met with the Town Manager, John Curran and explained the situation regarding the failed septic system at 232 Pond Street. Mr. Curran informed me that a lien would be placed on the property for the expenses that are incurred for the failing septic system. With all the information presented we still have a failing septic system. Mrs. Bennett explained that from what I understand there are two tanks, one tank has failed and the other one is overflowing. The whole system needs to be upgraded so that Mr. and Mrs. Hughes can stay in their house and not cause nuisance conditions in the neighborhood. Mrs. Bennett suggested that the Board vote on a motion that an Enforceable Schedule be issued, and a lien placed on the property in order to abate the nuisance, with the conditions that the Health Department would be responsible to contact an engineer to design a system, have a deep hole test done and then work with an installer to install the complete system within a certain time frame. The owner would have to give permission to the Health Department to arrange for all the work to be done and access to the property.

Mr. Reader asked Mr. and Mrs. Hughes if they agreed with the proposals that Mrs. Bennett has made.

Peter Hughes, son of Mr. and Mrs. Hughes, identified himself. Mr. Peter Hughes asked how much will the complete system cost? What would the option be to connect to the town sewer? If we go through with the repair, would we have to connect to town sewer in 10 years when the town sewer becomes available.

Mr. Reader explained that the town does not own the pump station so there is no option to connect to town sewer through Oak Street. The sewer and pump station on Oak Street was paid for by the developer of the project.

Mrs. Ellen Hughes stated that the houses across the street are connected to town sewer from Oak Street.

Ms. Conway, Town Engineer replied that as far as she knows those houses are not tied into town sewer, however she would check it out.

Mr. Reader asked if the Hughes would give the Health Department access to enter their property and do the testing for the upgraded system.

Mr. Hughes explained to his parents what needs to be done and asked them if they were willing to give the Health Department access to do the work.

Mr. Peter Hughes asked how will you determine who would do the work.

Mrs. Bennett replied that the town would get three (3) estimates and then a decision would be made.

Mr. Peter Hughes asked could we make payments.

Mrs. Giroux replied yes, you can make payments. If you pay the system off the lien would be removed.

Mr. Reader asked the Board Members if they had any questions.

The Board Members did not have any questions.

Dr. Gandhi made a motion to grant an Enforceable Schedule for the repair of the septic system at 232 Pond Street based upon the following findings of facts and subject to the following conditions:

**FINDINGS OF FACT**

1. A complaint inspection was conducted by Health Agent, Phavy Pheng on December 5, 2022. The sewage odor was detected coming from the property at 232 Pond Street. Mr. and Ms. Hughes informed Phavy that the septic system was installed in 1950 and the system has not been pumped. Ms. Pheng was denied access to verify the septic system location. It was determined that the condition creates a public health nuisance relative to Massachusetts General Laws Chapter 111, Section 122 for failing to maintain the sewage disposal system in a sanitary condition.

2. The Board of Health issued a Notice of Violation and Order for Correction letter on December 6, 2022 for 232 Pond Street. The Order for Correction letter ordered Mr. and Ms. Hughes to abate the public health nuisance condition by installing a compliant septic system within 30 days and pump the septic system.
3. The December 6, 2022 Board of Health Notice of Violation and Order for Correction letter was received by Mr. Hughes on December 9, 2022.
4. Received notice that the septic system at 232 Pond Street had been pumped out by Waynes Drains on December 29, 2022.
5. On January 12, 2023, Director of Public Health, Kristel Bennett spoke with Mrs. Hughes regarding developing a plan for correction of the December 6, 2022 Board of Health Notice of Violation and Order for Correction letter.
6. On January 18, 2023, the Board of Health received a written response from Mr. and Mrs. Hughes stating that they intend to fix the septic system.
7. On January 24, 2023, Ms. Bennett spoke with Ms. Hughes regarding the written response. It was discussed that more frequent system pumping will be required - monthly pumping to alleviate the existing nuisance conditions. It was also discussed that Ms. Hughes would need to contact a design engineer for an upgrade of the septic system and contact a licensed installer.
8. On January 31, 2023, Ms. Bennett responded to Mr. and Ms. Hughes letter. Ms. Bennett required that the Hughes provide monthly pumping of the septic system and to upgrade the system by May 2023. This letter was hand delivered by Ms. Pheng on February 1, 2023.
9. On May 2, 2023, the Board of Health sent a warning letter to Mr. and Ms. Hughes notifying them that they had failed to comply with the December 6, 2022 Order for Correction and bring the septic system into compliance and that the Board of Health may take further legal action for compliance. This letter was hand delivered by Ms. Pheng on May 3, 2023.
10. On May 21, 2023, Ms. Bennett sent a hearing notice letter to Mr. and Ms. Hughes, this required Mr. and Ms. Hughes to attend the June 5, 2023 Board of Health meeting for failure to comply the December 6, 2022 Order for Correction and bring the septic system into compliance.
11. On June 5, 2023, the Board of Health held an administrative hearing to determine what administrative action the Board of Health shall take to correct the sanitary and environmental health violations at 232 Pond Street. At this hearing Mr. and Ms. Hughes informed the Board they do not have the funding available to bring the septic system into compliance and they have a reverse mortgage. At this hearing the Board voted to table the hearing to the July 10, 2023 Board of Health meeting to obtain more information regarding sewer availability in the area of 232 Pond Street.

12. On July 10, 2023, the Board of Health held an administrative hearing for 232 Pond Street for failure to comply with the December 6, 2022 Order for Correction and bring the septic
13. system into compliance. At this hearing, it was reported by the Town Engineer, Kelley Conway that sewer was not available at this time for 232 Pond Street, and sewer would be available in 8-9 years. Ms. Bennett informed the Board she had discussed this matter with John Curran, Town Manager, and he was in support of the Town placing a lien on the property to bring the septic system in compliance. It was at this meeting that Mr. and Ms. Hughes allowed the Town of Billerica and its agents on the property for purposes related to bringing the septic system in compliance.

**CONDITIONS**

Special Conditions: #11, 12, 13, 14, 15, 25 and 29

- A. The owner and any subsequent owners shall take appropriate measures (for example: regular pumping) to ensure the protection of the public health and safety and the environment pursuant to 310CMR15.305 (1)(b), until such time that the septic system is brought into compliance.
- B. This decision shall not limit the authority of the Board of Health to properly carry out their responsibilities under the Massachusetts State Environmental Code and to properly protect the health, safety and the environment, at any reasonable time as considered necessary.
- C. This decision shall not be construed as a guarantee of the operating performance of the existing system. Furthermore, it is explicitly implied that this agreement hold the Town of Billerica harmless and its employees from any liability that may result from adverse conditions which may develop from continued use of the existing onsite subsurface sewage disposal system.
- D. The Health Department shall follow proper processes that will allow the Town of Billerica to place a lien on the property for the costs to bring the septic system into compliance with to Massachusetts General Law Chapter 111, Section 122, the Massachusetts State Environmental Code 310 CMR 15.00, and the Massachusetts State Sanitary Code 105 CMR 410.000.
- E. The Health Department shall obtain three cost estimates from Licensed Disposal Works Installers for repair of the septic system to bring it into compliance with to Massachusetts General Law Chapter 111, Section 122, the Massachusetts State Environmental Code 310 CMR 15.00, and the Massachusetts State Sanitary Code 105 CMR 410.000.
- F. The Health Department shall coordinate and carry out the repair of the septic systems following proper processes, rules, and regulations pursuant to the Massachusetts State Environmental Code 310 CMR 15.00 and the Board of Health Rules and Regulation, Chapter 5, Sections 3, 4, and 5.

Mrs. O'Rourke seconded. So voted unanimously.

**7:20 p.m. KS Partners, LLC- 298 Concord Road – Request for a Stormwater Management Permit, a Variance for work near the Flood Plain, and a Stormwater Variance**

Mr. Reader stated the next hearing is KS Partners, LLC, 298 Concord Road requesting a Stormwater Management Permit, a Variance for work near the Flood Plain and a Stormwater Variance.

Angela Botto provided the Board with large-scale drawings of the proposed GMP Lab Facility.

Angela Botto, Sr. Design Engineer for Bohler Engineering, representing the applicant KS Partners, identified herself. Ms. Botto explained that the applicant is requesting a Variance for work near the flood plain, a Stormwater Management Permit and a Stormwater Variance. The applicant is proposing to demolish the buildings at 298 and 300 Concord Road and construct a 121, 630 square foot GMP Lab Facility in place of the existing office building. Ms. Botto explained that the applicant is proposing some additional landscaping, associated parking, loading, utility services and stormwater management systems within the limits of the existing parking area. Ms. Botto pointed to the plans and explained how they planned on grading to accommodate the loss of volume. The site has high groundwater, that is why we are requesting a Variance. We have met all MASSDEP stormwater standards. The stormwater management improvements provided meet 91%TSS removal, total phosphorus removal of 95% and retention of 1 inch of runoff greater than the requirements. We have satisfied all the Peer Review comments submitted by BETA Group. We received approval from the Planning Board on May 8, 2023 and the Conservation Commission on June 14, 2023. Ms. Botto explained the flood plain areas and the stormwater improvements that will be installed. Ms. Botto stated that she would answer any questions that the Board may have.

Mr. Reader asked what buildings are going to be demolished.

Ms. Botto pointed to the plans and explained the buildings that would be demolished and what would remain.

Mr. Reader asked Mr. Crowley for his comments.

Matt Crowley, Beta Group, identified himself. Mr. Crowley stated that he was representing Phil Paradis. Mr. Paradis performed the peer review for this project. A number of comments and revisions were submitted to the applicant. All the comments have been addressed. The SWPPP comments have been addressed and are in compliance with the Board of Health Regulations. There are no outstanding comments that need to be addressed. Mr. Crowley read the conditions that BETA Group recommends the Board of Health include in their Order of Conditions.

Mr. Reader asked Ms. Botto if she was satisfied with the conditions recommended by BETA Group.

Ms. Botto replied yes.

Mrs. Giroux asked Mrs. Bennett if she had any comments.



Mrs. Bennett replied that the peer review has been done. The Board needs to vote on the Variance for the flood plain and the Variance for the groundwater separation for Stormwater and the Stormwater Management Permit.

Dr. Gandhi asked do you know who the new tenants will be.

Ms. Botto replied that she does not know. Potential tenants commented that the first building that was proposed was too small, therefore the plans were changed to construct a larger building because a lot of the potential tenants were looking for more square footage.

Dr. Gandhi asked is 90% nitrogen the town's requirement.

Mr. Crowley replied that the town's standard is 50%.

Mr. Reader asked if any abutters were present.

No abutters were present.

Mrs. O'Rourke made a motion to grant Stormwater Management Approval, a Variance for Work within the Flood Plain and a Stormwater Variance for 298 Concord Road, for the construction of a GMP Lab Facility, associated parking, loading, landscaping, utility services and stormwater management systems within the limits of the existing parking area 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(1) and Chapter 6 inclusive.
- 2) The Board of Health conducted a public hearing on July 10, 2023 for the proposed project and properly notified abutters in accordance with Billerica Health Regulations, Chapter 1, Section 1.2.007.
- 3) The project is a partially developed 44.4 +/- acre site, comprised of Assessor's Map 86, Block 108 Lot 5, and is located on the east side of Concord Road and west side of Route 3. The existing development comprises of 3 partially vacant office buildings. The project parcel is within the Industrial Zoning District. Abutting properties are also in the industrial district while properties on the west side of Concord Road as well as a few of the east side are within the Rural Residence District. Light manufacturing, and R&D are uses allowed by right.
- 4) A perennial stream (Mill Brook) flows through the parcel and a wetland on-site. There are also mapped wetlands on the east side of the property. Portions of the subject parcel are located within the FEMA mapped 100-year flood zone a flood zone shown on Green Engineering Floodplain (GEFP) Map (59). The property is not in proximity to or estimated habitats of rare of endangered species. NRCS soil maps indicate the presence of

Charlton-Urban land-Hollis complex with Hydrologic Soil Group Rating (HSGR) A (high infiltration).

- 5) Applicant proposes to demolish buildings 298 and 300 and construct a 121,630± sq. ft. footprint Lab Facility with a 45,000± mezzanine with associated parking, loading, landscaping, utility services, and stormwater management systems within the limits of the existing parking area.
- 6) The project includes work within wetland resource areas, including buffer zones to bordering vegetated wetlands areas and bordering land subject to flooding which will require obtaining an Order of Conditions from the Billerica Conservation Commission. The project will disturb more than an acre of land as well as within or within proximity of mapped flood zones and therefore require a Stormwater permit from the Board of Health. Stormwater management systems will need to comply with the MassDEP Stormwater Management Standards and the Billerica Stormwater Management Bylaw and regulations.
- 7) A previous project was approved (DEP File No. 109-1450/BBL-1450) for this site (within the east parking lot). The following review assumes that the previously approved project will not be built.
- 8) The project is subject to the requirements of Chapters 5 and 6 of the Board of Health Regulations. Per the Stormwater Management Bylaw, Chapter 6 of the BOH Regulations applies to the project as it will disturb greater than 1 acre of land. Conformance to Chapter 6 is discussed in the Stormwater Management section below.
- 9) Building floor elevations of 193.7 is greater than 2 foot above the estimated seasonal high groundwater, based on test pits completed throughout the Site.
- 10) A portion of the project parcel is within 25 feet of the FEMA-mapped 100-year flood zone (Zone A). Work in this area includes grading, removal of existing pavement, and construction of a wall and parking lot. A portion of the project is also within the 100-foot wetland buffer zone, and/or within a 200-foot Riverfront Area. This work includes paving, grading, landscaping, and installation of stormwater BMPs, a wall and light fixtures.
- 11) The applicant has requested a variance from the Board of Health to allow encroachments, including new construction within 25 feet of the GEFP (Board of Health Regulations 5.5.005(1)). The applicant states the site improvements do not extend into the flood plain further than existing conditions and there is no change to drainage patterns with these extents.
- 12) The project proposes to disturb land on more than one acre within the Town of Billerica. It is therefore subject to the Stormwater Management Regulations and is required to obtain a Stormwater Management Permit from the Board of Health. As depicted, the project meets the new development treatment requirements by recharging 1 inch of runoff for impervious areas which also provides in excess of 60% phosphorous removal. The proposed stormwater management design generally consists of capturing runoff in new catch basins and routing runoff to water quality units to a subsurface infiltration system under the west parking lot. Runoff from roofs will be collected and routed into the

subsurface system as well. The existing runoff from the east parking lot is directed to the existing stormwater basin on the south side of the building. The basin will be modified to fit the building and parking area. Compensatory storage for the modifications will be provided in a separate subsurface infiltration system under the parking lot. As currently configured the existing open south basin is a dry detention basin which provides no TSS removal and limited phosphorous removal. Stormwater runoff from the existing drive along the west and south sides of the project discharges directly to wetland resource areas with little to no treatment.

- 13) The applicant has requested a variance from the Board of Health Regulations 6.7.001 for Stormwater Management Standards based on the Massachusetts Stormwater Handbook: Stormwater Management Standards #4 that there must be at least a two-foot separation between the bottom of the infiltration structure and the seasonal high groundwater table. The applicant has requested relief to allow for one foot of separation from the seasonal high groundwater table and the bottom of the subsurface infiltration system due to high groundwater constraints on-site.
  
- 14) An independent peer review of the proposed project for stormwater management design and work proposed in the FEMA mapped 100-year flood zone and the local floodplain (Green Engineering Floodplain) was completed by Philip Paradis of BETA Group, Inc., the Board of Health's Consulting Engineer. The peer review was streamlined with Engineering for Stormwater Regulations and the Conservation Commission for compliance with Wetland Regulations, Stormwater Management Standards, and Flood Plain Regulations.
  
- 15) The following documents were received and reviewed by BETA Group:
  - Response to comments letter to the Conservation Commission and Board of Health dated June 6, 2023
  - Site Plans (15 sheets) entitled ***Proposed Site Plan Documents for KS Partners Owned & Managed Proposed GMP Lab Facility Location of Site: 298 Concord Road Town of Billerica, Middlesex County, Massachusetts Map 86, Block 108, Lot 5*** dated January 25, 2023, last revised June 13, 2023, prepared by Bohler Engineering, and stamped by Zachary L. Richards, Registered Professional Engineer No. 51848.
  - ***Supplemental Stormwater Package for Proposed GMP Lab facility 298 Concord Road Billerica, Massachusetts Middlesex County*** dated June 6, 2023.
  
- 16) The Board of Health will impose reasonable conditions to ensure the project is constructed in accordance with approved plans.
  
- 17) 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, 16, 17, 18, 19, 24, 25, 27, 28 and 29

- A. All construction must be in accordance with the plans submitted for review and approval: Site Plans (15 sheets) entitled ***Proposed Site Plan Documents for KS Partners Owned & Managed Proposed GMP Lab Facility Location of Site: 298 Concord Road Town of Billerica, Middlesex County, Massachusetts Map 86, Block 108, Lot 5*** dated January 25, 2023, last revised June 13, 2023, prepared by Bohler Engineering, and stamped by Zachary L. Richards, Registered Professional Engineer No. 51848.
- B. In coordination with the Conservation Department and the Board of Health, the applicant shall retain the services of an independent Consulting Environmental Stormwater Monitor to monitor construction activities and conduct inspections. The Consulting Environmental Stormwater Monitor must be qualified and pre-approved by the Board of Health Director and the Director of Environmental Affairs. The applicant shall pay the cost of the scope of services fee for stormwater monitoring provided by the Consulting Environmental Stormwater Monitor for the duration of the project, said fee shall be paid prior to the preconstruction meeting. The role of the Consulting Environmental Stormwater Monitor shall be to assist the Board of Health in its oversight of construction activities including but not limited to 1) installation of drainage/ stormwater management system; 2) inspect construction activities occurring within the local floodplain; and 3) overall compliance with the conditions listed in this approval. Specific duties include:
- (a) Review the Stormwater Pollution Prevention Plan and make recommendations for proposed changes if necessary.
  - (b) Advise on current erosion and sedimentation control practices and make recommendations for proposed changes, if necessary.
  - (c) Ensure adherence to this approval letter and report any non-compliance to the Board of Health.
  - (d) Attend the pre-construction meeting and conduct periodic inspections during stormwater/drainage construction, observe test pits to verify subsurface soil conditions and groundwater elevations, observe native soils after excavation for basins to confirm design assumptions, observe buffer zone restoration activities, and observe dewatering activities; periodically inspect erosion controls; oversee any emergency placements of controls and regular inspection or replacements of erosion and sedimentation control devices.
  - (e) Provide weekly to bi-weekly monitoring reports/memorandums during the period(s) when work is being conducted or as directed by the Director of Public Health. Said memos shall include photographic documentation of on-going work activities and summarize work complete, any problems that arise and corrective measures needed in the field. The Applicant will be supplied with all reports submitted by the Board of Health Consulting Environmental Stormwater Monitor. The Applicant will be expected to make said changes immediately as identified

and requested by the Board of Health Consulting Environmental Stormwater Monitor.

- (f) Conduct review of the as-built plan required as part of the Request for Certificate of Compliance review.
- C. The Board of Health Consulting Stormwater Monitor shall monitor all stormwater activities and conduct inspections to ensure compliance with approved plans and conditions. All inspections shall be conducted in accordance with an inspection schedule approved by the Director of Public Health.
- D. 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.
- E. An as built plan shall identify the new existing conditions of the site as they relate to the as-built conditions, be submitted to the Board of Health before the approval of any occupancy permit, or other documentation to satisfy the intent of the Board of Health's approval of any project. A certification from the design engineer should be shown on the plans identifying that the plan is within substantial conformance with the approved plans. If not, then the design engineer should state the differences on the as-built plan vs. the approved plans along with a description in writing to the Board of Health about the changes.
- F. The Board of Health Consulting Environmental Stormwater Monitor shall review the as built to ensure compliance with approved plans and conditions. The applicant shall pay the cost of the scope of services fee for the stormwater as built, said fee shall be paid to the Board of Health prior to issuance of an occupancy permit or Certificate of Compliance.
- G. Provide soil tests within the footprint of proposed infiltration system prior to installation.
- H. Soil conditions in the area of the proposed infiltration basin are to be observed by an agent of the Town following excavation to subgrade elevation to verify soil conditions.
- I. Provide copies of the SWPPP, Notice of Intent, and EPA letter of approval (§6.6.013(1)) per NPDES General Permit for Storm Water Discharges from Construction Sites including all requirements of (§6.6.013) prior to preconstruction meeting.
- J. The signed final, updated Operations and Maintenance Plan and Maintenance Agreement shall be recorded with the Middlesex Northern Registry of Deeds and a recorded copy shall be submitted to the Board of Health prior to the issuance of a Certificate of Compliance with the Board of Health.

Mrs. Giroux seconded. So voted unanimously.

**7:30 p.m. Town of Billerica – Yankee Doodle Bike Path – Waiver of Regulations**

Mr. Reader stated the last hearing is Town of Billerica, Yankee Doodle Bike Path requesting a Waiver of Regulations.

Kelley Conway, Town Engineer for Billerica, identified herself. Ms. Conway introduced Dan Cannata, Environmental Wetland Scientist from VHB. Mr. Cannata is going to present the Yankee Doodle Bike Path project.

Mr. Cannata provided the Board with large-scale drawings of the proposed Yankee Doodle Bike Path.

Dan Cannata, on behalf of the Town of Billerica. Mr. Cannata explained that the proposed project is going to be 3.9 miles. It will run from the Billerica Memorial High School to the Bedford Town Line. The path will be 10 feet wide with 3-foot shoulders. The proposed bike path will also include the construction of two (2) boardwalk structures and truss bridges over wetlands and intermittent streams, there will be two (2) stream perennial crossings using oversized or open bottom culverts, and a ramp structure to make up the 30- foot elevation difference between the path along the Route 3 corridor and Elliot Street (Orchard Road) to minimize wetland impacts. Mr. Cannata pointed to the plans and explained the 100-year Green Engineering and FEMA Flood Plains on the site. The work is close to the Concord River. There will be six (6) separate mitigation areas installed along the corridor to compensate for any fill or the structures that will be constructed. The mitigation measures will include six (6) compensatory flood plain storage areas to be constructed to offset the impacts to the proposed work within the floodplain. The Conservation Commission reviewed this project on July 5, 2023 and an Order of Conditions has been issued. The proposed project design has been peer reviewed as part of the Notice of Intent by both Patrick Garner, Patrick C. Garner Company, Inc. and Matthew Crowley, BETA Group. Mr. Cannata stated that he would answer any questions that the Board may have.

Mrs. Bennett explained that VHB has provided compensatory storage. VHB has used more restrictive Stormwater Standards. BETA Group has reviewed this project. All the requirements for Stormwater Management have been met.

Dr. Gandhi stated that he has safety concerns when it snows there will be skiers and people using show shoes.

Ms. Conway replied that the path is not going to be plowed or maintained in the winter. You will be using the path at your own risk.

Mrs. O'Rourke asked is there any land that will be taken for this path.

Ms. Conway explained that there are a number of easements, both temporary and permanent, that will be required. Since we are coming out of the Environmental Permitting process, we are about to start the Right of Way project and will be meeting with the abutters.

Mrs. O'Rourke asked how close the path would be to the condos near the high school.

Ms. Conway pointed to the plans and explained how the path would be configured along River Street near the Condos. There would be a 5 ft. buffer from the edge of the curb and then there would be the 10-foot path. We met with the Condo Association Board last week.

Mrs. Giroux asked how they accepted that information.

Ms. Conway replied that after we showed the abutters the route where the path would be located, they were very congenial. Ms. Conway pointed to the plans and explained the entire proposed bike path in detail.

Mr. Ravin asked why you don't use the railway.

Ms. Conway explained that Cabot did not want us to use their property.

Dr. Gandhi asked how long will this project take?

Ms. Conway replied the project is scheduled to be advertised in August 2024.

Dr. Gandhi asked if there will be bikes available to rent like they have in Boston.

Ms. Conway replied maybe, but at this time I do not know. It is not part of the project now.

Mrs. Giroux asked do you anticipate any problems with the easements.

Ms. Conway replied we have discussed this with bigger businesses and there does not seem to be any opposition.

Mrs. Giroux commented that residents losing 15 ft of their property might be a problem.

Mr. Ravin commented that assuming everything goes right, how long do you think it will take to complete this project.

Ms. Conway replied that assuming that the project goes out to bid next year, the project proposes to start in 2025. The project will be taking approximately 2 years.

Mr. Reader asked where on River Street will the path go.

Ms. Conway replied the path goes behind the condos at 21 River Street. The path is on the right at the end of the Condos property. Ms. Conway pointed to the plans and explained that there will be a traffic light signal for people to cross. We will go to Fall Town Meeting for the pay outs on the easements.

Matt Crowley, BETA Group identified himself. Mr. Crowley explained that the BETA Group peer reviewed this project for the town. The 10-foot-wide path is being added to impervious area and one of the stormwater principles is to utilize natural features. A bike path is not subject to same pollutant loads as a roadway. The bike path will not be maintained during the winter and be subject to sanding and salting. We don't see any major impacts from this project to the stormwater prospective.

Mr. Ravin made a motion to grant a Waiver of Regulations to allow the development of the Yankee Doodle Bike Path within the Green Engineering Flood Plain and FEMA Flood Plain based upon the following findings of fact 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 applicant is proposing to construct a 3.9-mile-long bike path, as an alternative transportation project in which the use of the path will be non-polluting and will not contribute to the path surfaces or to stormwater runoff. The stormwater features will not contribute contaminants to the path surface or to stormwater runoff. The stormwater features of the path are designed to minimize impact, provide erosion control protection, and provide groundwater recharge to the maximum extent practicable. Portions of the project that are located within the floodplain will be mitigated with compensatory flood storage areas that create a net excess of flood storage volume.
- 3) The proposed bike path will begin along the northern side of River Street at Billerica High School, continuing west along River Street, then south and across Richardson Street and Concord Road. The Bike Path then continues west along Route 3, Orchard Road, Technology Park Drive, and Astrig Way, ending at the Billera/Bedford Town line. The work area includes a mixture of roadside lawns and existing sidewalks, cleared areas associated with an overhead power line, and the Route 3 Right-Of-Way. Plans depict wetland resources areas and Riverfront Area throughout the project area and several wetland/stream crossings are proposed. Portions of the work area are within the FEMA-mapped 100-year flood zones and the Green Engineering Flood Zone. The limit of work is not in proximity to any wellhead protection areas or stormwater critical areas. The NRCS soil maps indicate a variety of soil types with the most prevalent areas rated as hydrologic soil group D (very low infiltration potential). The proposed work includes the construction of a 10-foot-wide shared use path with 3 foot shoulders.
- 4) The proposed bike path will also include the construction of two boardwalk structures and a truss bridge over wetlands and intermittent streams, two stream perennial stream crossings using oversized or open bottom culverts, and a ramp structure to make up the 30-foot elevation difference between the path along the Route 3 corridor and Elliot Street (Orchard Road).
- 5) The Bikeway will be open to pedestrians, joggers, bicyclists, roller bladders, and other non-motorized modes of travel. During the winter months the Bikeway will not be plowed or maintained for snow and ice control and will be available for use by cross-country skiing and snowshoeing. Uses of the Bikeway will be non-polluting and will not contribute contaminants to the Bikeway surface or to stormwater runoff from the Bikeway. Stormwater will be maintained as a “country” drainage system with no curbing along the Bikeway. Associated site features include pedestrian ramps, driveways, curbing along roadways, railings, boardwalks, bridges at stream crossings, slope protection, retaining walls, compensatory flood storage, and wetland replication. Stormwater



management features include grassed swales, deep sump catch basins, culverts, and paved waterways. Existing utilities will generally be retained/adjusted though several replacements are proposed.

- 6) Portions of the project will be conducted within FEMA 100-year flood plain and the locally regulated Green Engineering Flood Plain (GEFP). Work within or near to the flood plain will include portions of the bike path grading, tree clearing, wetland replication, and bridges. Mitigation measures will include six compensatory flood plain storage areas to be constructed to offset the impacts to the proposed work within the flood plain.
  
- 7) A satisfactory independent peer review of the proposed project for the stormwater management design and work proposed in the floodplain was completed by Matthew Crowley of BETA Group Inc, the Board of Health’s Consulting Engineer. The following documents were received and reviewed by BETA Group:
  - ***Notice of Intent for Yankee Doodle Bikeway***, dated January 2023, revised April 2023, prepared by VHB, Inc. including the following attachments:
    - Cover Letter
    - Narrative
    - WPA Form 3 – Notice of Intent
    - Abutter Information
    - Order of Resource Area Delineation
    - Wildlife Habitat Evaluation
    - Stream Crossing Standards Evaluation
    - Stormwater Management Memorandum
    - MassDOT Construction Specifications (revised 6-8-2023)
  - Notice of Intent Site Plans (97 sheets) entitled ***Yankee Doodle Bike Bath, Billerica, Middlesex County***, dated January 11, 2023, revised June 13, 2023, prepared by VHB, Inc., Watertown, MA
  - Impact Plans (12 sheets) entitled Yankee Doodle Bike Path, Billerica, Massachusetts, dated January 11, 2023, revised April 19, 2023, prepared by VHB, Inc., Watertown, MA
  - Alignment and Grading Plans (22 sheets), plotted June 10, 2023, prepared by VHB.
  - ***Notice of Intent Errata Letter***, dated January 11, 2023, prepared by Gene Crouch of VHB.
  - ***Alternatives Analysis***, dated January 19, 2023, prepared by VHB.
  - ***Stormwater Report***, dated April 19, 2023, prepared by VHB, including O & M Plan Dated May 2023.
  - ***Permeable Parking Lot Sketch***, dated May 24, 2023, prepared by VHB.
  - ***Response to Comments Letters (Garner & BETA)***, dated June 9, 2023, prepared by VHB.
  
- 8) 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 the 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, 11, 12, 13, 14, 15, 24 and 25

- 1) All construction must be in accordance with the following plans submitted for review and approval:
  - **Notice of Intent for Yankee Doodle Bikeway**, dated January 2023, revised April 2023, prepared by VHB, Inc. including the following attachments:
    - Cover Letter
    - Narrative
    - WPA Form 3 – Notice of Intent
    - Abutter Information
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  - **Response to Comments Letters (Garner & BETA)**, dated June 9, 2023, prepared by VHB.
- 2) Agents of the Board of Health or their designee's, such as the Board of Health Consulting Engineer or others so designated shall have access to property covered by these conditions to make inquires, conduct inspections, or take actions deemed necessary to protect the public health and the environment.
- 3) The applicant shall submit a final detailed report on the work completed for the Yankee Doodle Bike Path projection.

Mrs. Giroux seconded. So voted unanimously.

Mrs. O'Rourke made a motion to adjourn.

Mrs. Giroux seconded.

The Board adjourned at 8:30 p.m.

Respectfully submitted,

Amit Gandhi, Ph.D.  
Secretary

Joanne M. White  
Recording Clerk